

Family, Community and Sexuality Project Building a Movement

from the Ground Up

Impacts of Policy on Immigrant and Refugee LGBT people and families

Binational Couples and Families

In the United States, many families are binational—that is, many families consist of partners from different countries. In the 2000 census, over 30,000 same-sex binational couples were reported as living in the United States. Unfortunately, although 16 nations around the world allow citizens to sponsor their same sex partners for immigration benefits, the United States does not.

Due to the 1996 federal Defense of Marriage Act, same-sex couples who have been married (either in Massachusetts or one of 19 countries worldwide) cannot receive any of the rights and responsibilities bestowed by federal law—including changing a partner's immigration status. And since discrimination is very much a part of US immigration laws, same-sex couples have very few legal options for staying together. When a foreign-born partner's visa expires, an American partner cannot help h/her. The couple is faced with a huge dilemma: they must either separate or leave the country.

Asylum

In 1994, sexual orientation was added to the list of legal grounds for seeking asylum in the United States. In order to be granted asylum, an individual must prove that harm will befall them if s/he is forced to return to a hostile country. For many who have been forced to remain closeted, proving their identities can be extremely difficult.

In addition to all the other hurdles facing LGBTQ immigrants, regulations state that in order to receive asylum, individuals must reside in the United States without exceeding time limits for residency.

Since 1994, very few individuals have been granted asylum based on gender identity, and fewer still were protected on the basis of HIV status.

Transgender Issues

According to guidelines from the United States Citizenship and Immigration Service (CIS), transgender immigrants should be able to obtain identity documents in the “outward, claimed and otherwise documented sex of the applicant,” meaning, essentially, that transgender immigrants who have had sex reassignment surgery should be able to get identity documents (such as work authorization, “green card,” naturalization certificate, etc.) in the gender with which they identify.

In 2004, the Bush administration issued a new immigration policy that no longer recognizes legal marriages with a transsexual spouse. In 2005, the Board of Immigration Appeals published an interim decision which upheld the validity of legal marriages. It remains to be seen how couples will be treated under this interim decision. However, if the transgendered person is gay or lesbian they are subject to the same discriminatory immigration laws as all LGBT people.

The Real ID Act (HR 418) creates broad requirements that individual states must meet in order to have their identification documents recognized for all federal purposes. The new laws and subsequent documentation may have negative consequences for transgender people. In addition, the Act may further hinder the ability of transgender individuals to receive asylum in the U.S.

HIV Issues

The United States has one of the harshest immigration policies in the world with respect to HIV-positive individuals. In general, an HIV-positive foreign national is not permitted to immigrate (permanently reside) in the United States, or even visit here, unless he or she qualifies for a very narrowly defined waiver.

Detention

When Immigration and Customs Enforcement (ICE) takes a person into custody, it is referred to as “immigration detention.” The reasons an individual might end up in immigration detention range widely. Due to a series of harsh immigration laws that were passed in the 1990s, persons with minor visa violations, even asylum seekers, often end up in detention for months or years. ICE currently detains about 200,000 immigrants a year. All indications show that this number will rise. Although detainees are not held for criminal violations, the majority of them are confined in county jails and contract facilities under jail-like conditions. LGBT and HIV-positive detainees are particularly vulnerable in these severe environments. They are often the subjects of discrimination, harassment and outright abuse. HIV-positive detainees suffer additionally from the substandard health care in place at many of these facilities.

Changing Federal Policy

The Uniting American Families Act (UAFSA) would make a simple change to current immigration law that would end the discrimination LGBT individuals face. This legislation would simply add the term “permanent partner” in sections of the Immigration & Nationality Act where “spouse” appears. In other words, it would recognize the partnership of those couples in domestic partnerships, civil unions and gay marriages. The UAFSA has been sponsored by Jerrold Nadler in the House and Patrick Leahy in the Senate for the past three sessions and is gaining support. It will be reintroduced in 2007.

This information was compiled from the following websites:

Immigration Equality, www.immigrationequality.org

Out 4 Immigration, www.out4immigration.org

The National Center for Lesbian Rights, www.nclrights.org

National Center for Transgender Equality, www.nctequality.org

Transgender Law Center, www.transgenderlawcenter.org