



NATIONAL CENTER FOR LESBIAN RIGHTS
Immigration Project

IMMIGRATION PROJECT

NCLR

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ABOUT THE NCLR IMMIGRATION PROJECT

The National Center for Lesbian Rights

is committed to helping overcome the immigration hurdles faced by lesbian, gay, bisexual and transgender immigrants. U.S. immigration law unfairly discriminates against lesbian, gay, bisexual, transgender (LGBT) and people with HIV and/or AIDS. Since 1994, NCLR's Immigration Project has provided free legal assistance to thousands of LGBT immigrants nationwide. Through our national intake service, as well as through free monthly clinics in the San Francisco Bay Area, we help LGBT immigrants understand visas, asylum claims, and the HIV exclusion. NCLR also provides direct representation to LGBT immigrants in impact cases and individual asylum claims. In addition, NCLR provides assistance to private attorneys representing LGBT immigrants in proceedings before the Immigration Court, the Board of Immigration Appeals, the Federal Courts of Appeal, and the U.S. Supreme Court.

PHOTO ABOVE:

NCLR Immigration Project Supervisor Lena Ayoub honored immigration and asylum clients at NCLR's annual gala.

IMMIGRATION EQUALITY FOR BI-NATIONAL SAME-SEX COUPLES

Under federal law, U.S. citizens and lawful permanent residents are unable to petition for their same-sex spouses or partners to immigrate to the United States, a right afforded U.S. citizens and lawful permanent residents in different-sex marriages. As a result of this discrimination, many bi-national couples have been forced to separate, relocate to another country, or maintain expensive and emotionally challenging long-distance relationships. Because they are denied any family-based immigration protections, same-sex couples who wish to stay together often find themselves in a state of desperation and must explore alternative visa options to enable foreign partners to lawfully remain in the U.S.

The National Center for Lesbian Rights provides information regarding a foreign national's eligibility for employment-based visas, diversity lottery visas, student visas, and family visas based on the foreign national's relationship with parents, siblings, or adult children who are U.S. citizens or lawful permanent residents. LGBT people from other countries also may be eligible for asylum in the U.S. if they have been persecuted, or have a well-founded fear of being persecuted, on account of their sexual orientation, gender identity, or HIV status.

The National Center for Lesbian Rights also educates bi-national same-sex couples on their ability to immigrate to a country that will recognize their relationship. As of June 2006, nineteen countries have



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changed their immigration policies or laws to allow LGBT citizens to sponsor their same-sex partners for immigration purposes. These countries include: Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden, Switzerland, and the United Kingdom.

UNITING AMERICAN FAMILIES ACT

The National Center for Lesbian Rights assisted in drafting the Uniting American Families Act (formerly known as the Permanent Partners Immigration Act), legislation that would enable U.S. citizens and lawful permanent residents to petition for visas on behalf of their same-sex partners. Representative Jerrold Nadler (D-NY) first introduced this bill to Congress in 2000. On July 21, 2005, the bill was re-introduced under its new name, the Uniting American Families Act, in both chambers of Congress as H.R. 3006 and S. 1278. More than 35,000 bi-national same-sex couples living in the United States could benefit if this bill is passed.¹

TRANSSEXUAL SPOUSES AND IMMIGRATION

The National Center for Lesbian Rights provides assistance to immigration attorneys who represent married couples in which one of the spouses is transsexual. Marriage is a legal option for many transsexual people. Transsexual people who have undergone sex-reassignment are able to marry a different-sex partner in most states and many

Luis, a gay man from Mexico, was granted asylum in 2004.

¹ Gary J. Gates, PhD, *Bi-National Same-Sex Unmarried Partners in Census 2000: A demographic portrait*, The Williams Project on Sexual Orientation Law and Public Policy, UCLA School of Law.

countries worldwide. For decades, the immigration service appropriately treated these marriages the same way they treat others, which is to accept marriages that are valid where they are performed. In 2004, however, the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) issued a memorandum instructing immigration officers to deny all spousal and fiancé petitions filed by or on behalf of transsexual individuals. In 2005, the Board of Immigration Appeals (BIA) reversed this policy and held that marriages involving a transsexual spouse must be treated the same as others and thus can be the basis for immigration benefits, so long as the marriage is valid where enacted. Because of this decision, the USCIS must follow the BIA's instructions to approve spousal and fiancé applications involving valid marriages in which one or both of the spouses are transsexual. Please contact NCLR if you are experiencing difficulties in the adjudication of an application for permanent residency based on a marriage involving a transsexual spouse.

ASYLUM

The National Center for Lesbian Rights helps many LGBT people win asylum in the U.S. Asylum is a legal protection for people who have been persecuted, or



who have a well-founded fear of being persecuted, because of their race, religion, nationality, membership in a particular social group, or political opinion. People who are persecuted (or who fear that they may be persecuted) because of their sexual orientation, gender identity, or HIV status are eligible for asylum under the category of “membership in a particular social group.” Being granted asylum allows the applicant to lawfully reside and seek employment in the United States, as well as to be eligible for some public benefits. A person who has been granted asylum can apply for adjustment of status to that of a lawful permanent resident one year after the grant of asylum.

Under current law, a person must apply for asylum within *one year* of their last entry into the U.S. In limited circumstances, an applicant may be able to overcome the one year filing deadline by showing either the existence of changed circumstances that materially affect the applicant’s eligibility for asylum or extraordinary circumstances that justify the delay in filing.

PERSECUTION ON ACCOUNT OF HIV STATUS

The National Center for Lesbian Rights helps many people with HIV and/or AIDS win asylum in the U.S. Typically, an applicant with HIV must demonstrate that he or she will be severely mistreated because of his or her HIV status. A person’s inability to receive the same level of medical treatment in his or her country of origin that is available in the United States is alone *not* sufficient to win asylum.

Examples of mistreatment that may give rise to an asylum claim are:

- Imprisonment, or similar confinement, against one’s will on account of HIV status;

- police abuse, isolation, or civil discrimination – such as mandatory testing policies – which result in job loss;
- so-called “social cleansing” practices by police or other government agencies to rid the country of people infected with the HIV virus;
- denial of treatment for a non-HIV-related illness due to the patient’s HIV status;
- being treated as a social pariah and unable to carry out basic life functions, such as attending school or house of worship;
- criminalization of the individual’s HIV status (for instance, a person who is HIV-positive may be categorized as a prostitute, drug addict, or sex criminal, without regard to the person’s individual circumstances).

THE HIV EXCLUSION

Current immigration law excludes people infected with HIV from immigrating to, or even visiting, the United States. Foreign nationals with qualifying relatives who meet certain financial and public safety concerns may be eligible for a waiver to this exclusion.

Qualifying relatives include:

- the heterosexual spouse of a U.S. citizen or legal permanent resident;
- the unmarried son or daughter of a U.S. citizen or legal permanent resident;
- the minor, unmarried lawfully adopted child (under 18) of a U.S. citizen;
- the parent of a son or daughter who is a U.S. citizen or legal permanent resident.

Refugees and asylees fall under a “humanitarian” exception to the HIV bar and are not excluded from adjusting their status to that of a lawful permanent resident.

The HIV exclusion has a particularly negative impact on lesbian, gay, and bisexual people because they are unable to qualify for a waiver based on their relationship to their same-sex partner or spouse, and often do not have a qualifying U.S. citizen child or other relative.

FREE LEGAL CLINICS

NCLR sponsors regular, free legal clinics in San Francisco that give foreign nationals the opportunity to meet with attorneys familiar with the specific circumstances of immigrants in the LGBT community. All consultations are private and strictly confidential. To make an appointment, please call 415.392.6257 or e-mail immigration@nclrights.org.

FREE TELEPHONE INFORMATION FOR IMMIGRANTS AND THEIR ATTORNEYS

NCLR's national intake service provides legal information to immigrants and their attorneys. Immigrants with general immigration and asylum-related questions and inquiring attorneys can contact NCLR at 415.392.6257 or e-mail immigration@nclrights.org.

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NATIONAL CENTER FOR LESBIAN RIGHTS

THE NATIONAL CENTER FOR LESBIAN RIGHTS —

is a national legal resource center committed to advancing the rights and safety of lesbian, gay, bisexual, and transgender people and their families through litigation, public policy advocacy, and public education.

We can be reached through our website at www.nclrights.org or by phone at 415.392.6257.