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Issue Brief: The LGBT Community and Immigration in the U.S.

Key Words

Lesbian, gay, bisexual, and transgender (LGBT), Immigration, Asylum, Withholding of Removal, Convention Against Torture (CAT), Repeal of DOMA

Description

The issue brief describes the intersection between the LGBT community and immigration in the United States. It explains the ways in which LGBT individuals can seek asylum in the U.S. and how successful immigration laws have been in promoting the rights of the LGBT community.

Key Points

- Many countries illegalize homosexuality, which has caused foreign people who identify as LGBT to seek asylum in America.
- The LGBT community has three options when attempting immigration to America: asylum, withholding of removal, and relief under the Convention Against Torture (CAT).
- In the past, it was not that easy for homosexual people to win asylum.
- The *In re Toboso-Alfonso* case set a precedent for allowing LGBT individuals to seek asylum.
- Recent immigration laws have been relatively successful in protecting LGBT immigrants.
- The Supreme Court's repeal of Section 3 of DOMA allows homosexual Americans to sponsor their partners for immigration from other countries.

Issue brief

Homosexual people have faced rampant discrimination throughout the world, causing foreigners to attempt to immigrate to the United States in order to try and live a life free of persecution. Seventy-eight countries declare homosexual relationships illegal, with seven countries even enforcing the death penalty for transgressions into this lifestyle. In contrast, homosexual people can marry in only 14 countries ("Immigration Reform," 2014). The lesbian, gay, bisexual, and transgender (LGBT) community has

three options when attempting immigration to the United States: asylum, withholding of removal, and relief under the Convention Against Torture (CAT). In order to file for asylum, an individual must prove that they have faced persecution in their home country due to their LGBT or HIV status. Withholding of removal requires an LGBT person to demonstrate that there is over a 50 percent chance that he or she will be victimized. Other people can apply for CAT relief if they believe they may be subject to torture by their home government (“Know Your Rights,” 2013). In addition, with the repeal of DOMA, foreign-born homosexuals may be sponsored by an American partner, which would provide them with immigration rights.

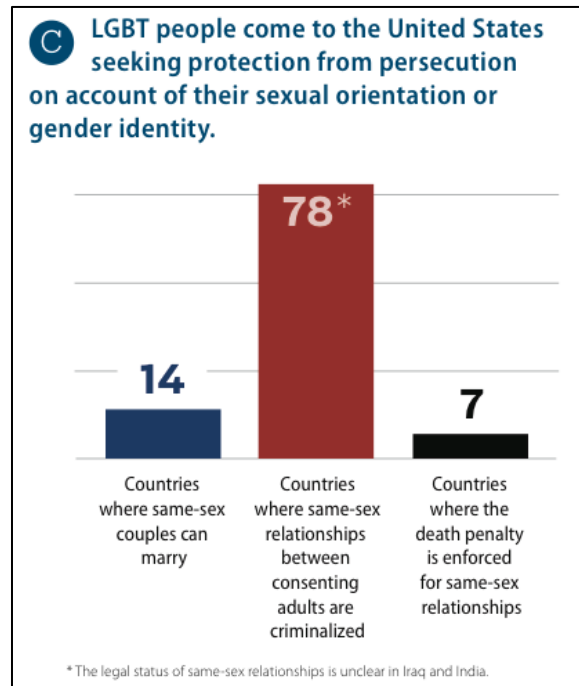


Recent immigration laws have been relatively successful in protecting the LGBT immigrants through these three avenues; however, this has not always been the case. The Immigration Act of 1917 excluded immigrants that the government deemed ‘mentally

defective' or who had a 'constitutional psychopathic inferiority,' a definition that once included homosexuals. The 1952 Immigration and Nationality Act (INA) continued this ban on homosexuals, since it forbade "aliens afflicted with a psychopathic personality, epilepsy, or a mental defect" (Davis, 2014) from entering the United States. While the act was somewhat ambiguous concerning whether homosexuals should be classified under 'psychopathic personality,' Congress resolved this issue in 1956 when it passed an amendment to the INA that added "sexual deviation" as a medical basis for banning immigrants. These laws continued until Congress passed the Immigration Act of 1990, which eliminated 'sexual deviation' from the INA (Davis, 2014).

Fortunately, homosexual immigration laws have experienced a great deal of improvement. Since 1994, oppression due to homosexual orientation has been a ground for asylum, including transgender and HIV-positive individuals. The *In re Toboso-Alfonso* case set a precedent for LGBT individuals seeking asylum. Toboso-Alfonso, a homosexual man, came to the United States from Cuba in 1980. The Cuban government and police officials had previously harassed him due to his sexual orientation. His asylum testimony showed evidence that Cuban homosexuals often were subject to labor camps, torture, and incarceration. Because Toboso-Alfonso held another U.S. criminal conviction, the Board of Immigration Appeals (BIA) denied asylum but instead, allowed him to stay through withholding of deportation in 1990. This case later became a binding precedent for Immigration and Naturalization Service (INS) officials deciding on other immigration and asylum decisions, established under Order 1895094 in 1993. This Order increased the number of successful LGBT asylum applications in the U.S., as people now try to come over from places such as Brazil, Columbia, Pakistan, Iran, and Russia.

(Lalwani, 2013). Currently, there are about 637,000 LGBT documented immigrants and 267,000 LGBT undocumented immigrants (Gruberg, 2014). These statistics demonstrate that the number of LGBT applicants hoping to gain asylum will surely grow.



Another salient issue involving the LGBT community and immigration law involves homosexual Americans who are in committed relationships with foreign-born individuals. Prior to the repeal of Section 3 of the Defense of Marriage Act (DOMA), homosexual people were not given the right to sponsor their partner for a green card or visa. However, on June 26, 2013, the LGBT community enjoyed a major victory with the Supreme Court's decision to revoke Section 3 of DOMA, declaring that legally married same-sex couples are given equal rights to the benefits under federal law that all other married couples enjoy. This is a central issue for the LGBT community because homosexual Americans may now sponsor their partners for immigration from other countries, just like any other citizen. This will certainly increase the number of

homosexual people who immigrate to the United States in pursuit of being with their partner (“Supreme Court’s DOMA Decision,” 2014).



Due to the social and political stigma surrounding the LGBT community in other countries, it is imperative that the United States continues to open its doors to individuals facing discrimination due to their sexual orientation and/or transgender status. Recent immigration laws and the repeal of DOMA have increased the opportunities for LGBT individuals to immigrate to the United States in search for asylum. While this has not always been the case, recent American immigration laws have been progressive in its attitudes towards immigration and the LGBT community. Hopefully, this positive trend for LGBT immigration rights will continue.

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