



## Immigration Law

by Mikaila Mariel Lemonik Arthur

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In the past few centuries, people have moved around the globe on a scale previously unknown in human history. These movements have increased in recent years, as people have gone to other countries to earn a living, to escape persecution for various reasons, or to pursue education.

Many nations have responded to the tide of migrants by tightening controls on who can move to or visit within their borders. The categories of people who generally have the easiest time migrating are those with occupational skills in demand and those with close relatives (spouses, parents, children, and sometimes siblings) in the receiving country.

Even after migrating, many individuals do not receive the full benefits of their new homes: gaining citizenship is often arduous and sometimes impossible for migrants, and without citizenship many financial and legal protections are absent. Additionally, many individuals migrate illegally, which leaves them in danger of deportation back to the sometimes desperate circumstances they left behind, at risk for exploitative work situations, and liable to prolonged imprisonment without civil liberties protections.

### **GLbtq Refugees**

These difficulties are especially glaring for glbtq people, who face severe persecution in many countries. Migration may be the only way for them to live their lives openly and engage in romantic or sexual relationships without fear of harassment, imprisonment, or even death. While most developed nations do have refugee policies that allow those fleeing persecution to apply for special immigration status and be permitted to stay in the country without going through normal channels, this status is usually difficult to attain.

According to the 1999 *World Legal Survey* of the International Lesbian and Gay Association, the following countries accept applicants for refugee status because of homosexual persecution: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Great Britain, Greece, Ireland, Latvia, Netherlands, New Zealand, Norway, South Africa, Sweden, and the United States. Some of these nations also allow applicants to claim transgender discrimination or persecution as a reason for refugee status.

The rules and regulations for attaining refugee status vary greatly from country to country--some are quite restrictive, some have never been used, and others are expansive.

The granting of refugee status is subject to hearings and decisions by individual immigration officials and immigration judges. Some of these individuals may not take particular claims of persecution seriously. For instance, in 1998, Canadian officials denied the refugee status of an individual fleeing Colombia after police abuse and harassment because he did not "appear gay" or "frequent gay spots."

The choices that individuals make to avoid harassment can thus come back to haunt them when they try to prove that they need to escape said harassment. While individuals are waiting for their cases to be

decided, they often face detainment in immigration facilities that are much like jails (and in some cases actually are jails). Applicants for refugee status have been known to be detained for two years or more. After all of this, they still face the possibility of being returned to whence they came.

### **United States Refugee Law**

In the United States, refugee law specifies that "refugees are people who are outside their homeland and have been persecuted in their homeland or have a well-founded fear of persecution there on account of race, religion, nationality, membership in a particular social group, or political opinion." These criteria are vague and subject to interpretation.

Therefore, any individual seeking refugee status in the United States on the basis of homosexuality or transgenderedness has to prove that he or she actually experienced persecution or had a well-founded fear of persecution on the basis of their membership in a social group of homosexuals or transgendered people or as a result of their political opinion. Since homosexuality and transgenderedness are not clearly specified as reasons for applying for refugee status, there is much room for immigration officials to declare individual cases ineligible.

### **Spousal Preferences**

Since glbtq people can not legally marry in most areas of the world (with the notable exception of the Netherlands, Belgium, and Canada), they are generally unable to take advantage of spousal preferences for migration. This means that while transnational heterosexual couples can easily and speedily use legal means to unite themselves in one country, glbtq couples generally must go through lengthy visa application processes and try to find sponsored employment in the destination country as individuals.

Marriage also brings with it a speedier route to citizenship than most non-married migrants experience. Some nations have adopted domestic partnership, civil union, or registry policies that allow same-sex couples some measure of the rights granted to married heterosexual couples. For instance, in Denmark citizens and permanent residents can sponsor their partners as immigrants.

As of 2000, the following countries had some sort of policy allowing individuals to sponsor same-sex partners for immigration: Australia, Belgium, Canada, Denmark, Finland, France, Great Britain, Iceland, Netherlands, New Zealand, Norway, South Africa, and Sweden.

In countries where these policies do not exist, such as the United States, transnational couples must either choose to live in different nations, migrate illegally (and run the risk of imprisonment or deportation), or find another legal method for migration.

In the United States, if one is not eligible for family-sponsored immigration, one is generally dependent upon one's work skills for migration. Visas are easier to obtain by those who have skills that are desirable and in short supply in the United States workforce (such as nursing and teaching in inner-city schools).

Potential migrants usually must secure sponsorship from an employer before they can be granted a visa. Those who lose their jobs are at a significant risk of losing their visas if they do not get another job quickly. Additionally, individuals can try to gain employment from a multinational corporation headquartered in their own country that is willing to send them to their partner's country, but this method carries the risk of being recalled at any time.

Finally, many individuals use educational visas to enter the country. These visas carry the requirement of full-time study and are rescinded shortly after a specified degree is earned. Most of the time, visa holders are not permitted to work while using an educational visa and they are required to report periodically to the government on degree progress, address, and major field.

Once in the United States on a visa, individuals can apply for permanent residency (a *Green Card*). But while those who get green cards through marriage or family sponsorship can leave the country, those who do it through other types of visas may not be able to leave the United States for years.

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## **About the Author**

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