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LGBTs face immigration hurdles in United States

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LGBT immigrants in the United States face many hurdles to seeing their applications for asylum be granted. The first of which is a ticking clock.

Under U.S. immigration law, a person seeking asylum has one year from the first day they step foot on American soil to file their paperwork. The deadline presents quite an obstacle for many LGBT people, who either are unaware of the time limit or often have yet to grapple with or come to terms with their own sexual orientation or gender identity.

Even if an asylum seeker does get their paperwork in on time, then they face another series of challenges. Foremost is proving that they are indeed gay, lesbian, bisexual, or transgender, and if sent back to their home country, that they are likely to face persecution for being an LGBT person.

Many lack the resources to hire an immigration lawyer to represent and guide them through the process. And language barriers can further complicate matters.

At a time when LGBT Americans remain second-class citizens and continue to fight for their own rights from local, state, and federal governments, the issue of LGBT immigration to the U.S. is often overlooked.

But advocates and lawyers who handle immigration cases say the issue will only grow as more people around the world come out and flee anti-gay persecution.

"There is a lot of work out there," said Ann Lewis, an attorney in the New York office of Ropes and Gray, which was the recipient of the 2010 Safe Haven Award from Immigration Equality for its pro bono work assisting LGBT asylum seekers.

In 2009 the firm won asylum for 10 clients referred to it by Immigration Equality, more than any other law firm in the country. The asylum seekers included a lesbian from India; a gay HIV-positive Jamaican and his son; a gay HIV-positive Ghanaian; a gay Ukrainian; and a gay man from the Dominican Republic.

Lewis told the *Bay Area Reporter* that a key first step in a successful asylum case is to meet the one-year filing deadline. By doing so the process is friendlier than fighting a deportation, she said,

and moves rather quickly. Most applicants will wait up to five weeks to be interviewed by immigration officials, and most receive an answer within two weeks, said Lewis.

"People should be aware if you file an affirmative application you are not in immigration proceedings," said Lewis. "It is a lot less scary and adversarial than federal removal proceedings."

Just as important is for the asylum seeker to be as truthful as possible during their interview about the anti-gay treatment they have faced. At times, Lewis acknowledged, it is not easy for an LGBT person to recall past ill-treatment or to understand what sorts of experiences would apply to their asylum case.

"It is very painful. To make a case like this it is difficult; these people often have been closeted since early adolescence or learned to keep their feelings to themselves," said Lewis. "We were just talking about a specific case I am working on where the young man didn't actually think he suffered past persecution. But he had been sexually abused because he was effeminate."

It took time to have the man, who is from Jamaica, understand what had happened to him in the past, said Lewis.

"In this case the young man was abused by his uncle. In these very macho, homophobic societies, young men who are effeminate are viewed as targets," she said.

The issue of LGBT asylum and immigration in the U.S. was part of a two-day workshop in San Francisco at the end of June organized by the Organization for Refugee, Asylum and Migration. Known as ORAM, the local nonprofit brought together advocates, lawyers and activists for a teach-in about the process people must go through when they come to the U.S. seeking asylum.

In 2009 the U.S. granted more than 22,000 asylum applications and accepted less than 75,000 refugees. It is unknown how many of those were LGBT.

"We have no idea how many people are LGBT because no one is counting them," said ORAM Executive Director Neil Grungras.

Kim Seelinger, a staff attorney and clinical instructor at Hastings College of the Law's Center for Gender and Refugee Studies, noted that the 12-month limit can be a challenge for an LGBT person to meet.

"Either you come to the U.S. and know you are gay but have deeply entrenched shame or your sexual orientation only becomes clear when you are here," said Seelinger.

Jeffrey Martins, an immigration attorney in private practice in San Francisco, said such cases have been made all the more difficult to prove because of a requirement that applicants show "social

visibility."

"Now you have a de facto test you have to be socially visible to qualify. In most cases you can't see sexual orientation when a person is walking down the street," said Martins.

The Internet can be a double-edged sword, said attorneys and advocates, in developing facts for an asylum case. At the same time the web can be used to source anti-gay acts in a certain country, immigration officials can use it to find gay groups, bars, and pro-gay laws in that country.

Sometimes both can be true, clouding the argument that a person will face persecution if sent back home.

"Mexico is a prime case in point," said Linda Tam, a staff attorney and clinical instructor at the East Bay Community Law Center.

On the surface it looks very pro-gay because of the adoption of same-sex marriage in Mexico City, she noted, yet LGBT Mexicans still face harassment.

"If you dig deeper you see a backlash against LGBTs because of the existence of that law," said Tam.

Martins said the main reason many LGBT asylum cases in the U.S. are rejected has to do with the credibility of the person's claims. Oftentimes, he said, the "judge doesn't trust you."

"When you have an LGBT client get as much documentation as possible so if a person's memory isn't clear you have lots of proof," advised Martins. "They love photos."

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