

October 17, 2014
United States Citizenship and Immigration Services
Department of Homeland Security
Attention: 79 FR 49527

Dear Sir/Madam:

We are pleased to have the opportunity to comment on the I-589 Application for Asylum and for Withholding of Removal form. A population of particular concern to us is lesbian, gay, bisexual, and transgender (LGBT) asylum seekers. After the *Windsor* decision, USCIS acted quickly to ensure equal treatment of same-sex couples. We thank USCIS for its work, and ask that USCIS continue in its efforts towards ensuring the equal treatment of LGBT migrants in the asylum process through updating the I-589 form to better reflect the diversity of applicants and families. Below, we have identified several potential areas for changes to the proposed form.

Lesbian, Gay, Bisexual, and Transgender Aliens Are an Especially Vulnerable Population

There are at least 637,000 LGBT adult immigrants in the United States that have legal status. An estimated 24,700 Americans are in same-sex binational couples. While the immigration system has become easier to navigate for same-sex couples that can get married, 33 states do not recognize the marriages of same-sex partners. Regrettably, the history of discrimination against LGBT people both in the United States and abroad leads to lower participation rates in the systems available to seekers of lawful status.

The mere state of being lesbian, gay, bisexual, or transgender is criminalized in scores of countries around the world. Some countries impose the death penalty for homosexual acts; other countries imprison LGBT people, with up to life-long sentences. The criminalization of sexual orientation and gender identity in those countries increases the number of refugees seeking a safer life in the United States. At the same time, a lifetime spent hiding their sexual orientation or gender identity adds a layer of fear and isolation to the already difficult experience of uprooting from one's home country and settling somewhere new.

While data on the number of LGBT refugees is not tracked by any governmental agency, the Heartland Alliance's Rainbow Welcome Initiative estimates that approximately 5,000 LGBT refugees entered the United States in 2010. That number is likely to be steadily growing. Office of Refugee Resettlement (ORR) torture treatment programs report regular assistance to LGBT torture survivors. A San Francisco Refugee Resettlement office estimates that 5-10% of asylum seekers they serve file claims based on sexual orientation or gender identity. Widespread persecution and attendant underreporting may mean that those numbers are even higher.

Recommendations

The following recommendations will aid USCIS in collection more accurate information on asylees, and will better reflect the lived experience of the LGBT migrant population:

Use “surname prior to marriage” in place of the antiquated term “maiden name” in both Part A.I.6 and Part A.II.8. The term “maiden name” is rarely used by men who take their partner’s name after marriage, and is quickly becoming uncommon for women who take their partner’s name after marriage. In addition, the term “maiden name” is not used in all English-speaking parts of the world. “Surname prior to marriage” is likely to be better understood by all who fill out the form, and to fit better with the lived experience of individuals in same-sex relationships.

Use gender-neutral language in Part A.III.5 in place of the current “mother and father.” Since not everyone has a mother and a father, and some applicants may have two parents of the same gender, we recommend using “Parent A” and “Parent B” to allow applicants to correctly identify parents who are not represented by gendered terms.

Provide examples in Part B.1 of “Membership in a particular social group” to clarify that LGBT status can qualify. Membership in a particular social group is a term that is unfamiliar to many pro se litigants. Adding examples, such as “gay, lesbian, bisexual, or transgender community,” can help clarify the category.

Include questions on sexual orientation and gender identity in Part A.I. for biographical information collection. Part A.I of the form currently asks for nationality, race, ethnic, or tribal group, and religion. Adding questions on sexual orientation and gender identity will provide much needed data that is currently lacking on the number of LGBT asylum seekers coming to the United States. Collecting LGBT inclusive data will create a clearer picture of how many LGBT people are seeking asylum.

While this information is vital to provide a clearer picture of who is seeking protection, it is also sensitive and potentially stigmatizing. We encourage collection of this data and also strongly encourage the development and implementation of protocols to protect the privacy of applicants. Many studies have been conducted on how to appropriately ask questions on sexual orientation and gender identity in a manner that does not discourage disclosure, such as providing a range of descriptions to choose from.¹

We look forward to working closely with USCIS to address these issues and ensure that asylum is accessible to LGBT people fleeing persecution. Thank you for your continued efforts to protect asylum seekers. If you should have any questions regarding these comments, please contact Sharita Gruberg, Policy Analyst, at (202) 745-5463, or by email at sgruberg@americanprogress.org.

Sincerely,

The Center for American Progress

¹For more information on collecting sexual orientation data, go to: <http://williamsinstitute.law.ucla.edu/wp-content/uploads/SMART-FINAL-Nov-2009.pdf>; for more information on collection gender identity data, go to: <http://williamsinstitute.law.ucla.edu/wp-content/uploads/GenIUSS-Gender-related-Question-Overview.pdf>

