

Strategies for Helping Same-Sex Partners Enter the U.S. Legally

BY MICHAEL WILDES

Under current United States immigration law, same-sex partners, even those married in states that perform same-sex marriages, do not qualify as "spouses" for immigration purposes. Consequently, while a U.S. citizen in a heterosexual marriage can petition for a green card for his or her spouse, this option is not available for same-sex couples. In the fifteen years that I've practiced immigration law, I have had the privilege of helping a number of foreign nationals join their same-sex partners legally in the United States. In the absence of legislative reform, the following are methods that, with the assistance of a qualified immigration lawyer, may be successfully employed to reunite bi-national same-sex couples.

Foreign nationals wishing to enter the country for up to six months to visit a domestic partner may apply for a travel visa at the United States consulate in their home country. This process can sometimes be difficult: foreign nationals bear the burden of proving to the consular officers that they do not intend to immigrate to the United States. To do this, they should prepare documents that establish their ties to their home country such as proof that they own property, are employed, and hold family ties to their native country. Whether or not the travel visa is granted is ultimately up to the discretion of the consular officials who interview them and process their application.

While many of the other family immigration benefits available to heterosexual couples are unavailable to same-sex couples under current U.S. immigration law, the same-sex partners of those entering the country on professional work-related visas such as the E, H, and L visas are eligible for B-2 visitor visas that last for the duration of their partner's stay in the U.S.

Foreign national partners interested in studying in the U.S. may consider obtaining a student visa. After graduating, they can extend their stay by one year to pursue optional practical training, which grants them an additional year of employment authorization during which time they can search for an employer who will sponsor them for an H-1B

visa. H-1B status allows foreign nationals to work for this employer for a three year period at which point they may be eligible to file for a permanent labor certification, which, if approved, will earn them their green card.

Foreign national partners coming from eligible countries and satisfying certain education requirements may qualify for the Department of State's annual diversity lottery visa. Those selected in this lottery are permitted to apply for permanent resident status in the United States. If you are currently residing in the country illegally, you should NOT apply for a diversity lottery visa

as you will be unable to adjust to permanent resident status even if you afforded this opportunity.

LGBT partners coming from countries that persecute homosexuals and who have suffered past persecution or have a well-founded fear of future persecution may be eligible to gain lawful permanent residence status by filing for political asylum. Persecution on account of sexual orientation has been

recognized as grounds for political asylum since 1994. Though political asylum cases can be filed by those who entered the country illegally, this filing must typically be done within one year of the most recent entry.

If you are engaged in a same-sex relationship with a foreign national partner and wish to have him or her join you in the United States, I would strongly advise you to consult with an experienced immigration lawyer. One approach I strongly discourage is entering into a phony marriage with a United States citizen of the opposite sex in order to obtain immigration benefits. Contrary to popular belief, the United States Citizenship and Immigration Services (USCIS) thoroughly investigate any marriage it suspects may be fraudulent. A finding of fraud is a criminal offense; one that can earn your partner a permanent ban from the United States. ▼

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