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The Detroit News

February 21, 2000, Monday

SECTION: Opinion; Pg. Pg. A9

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HEADLINE: Gays need equality on dual-passport issue

BYLINE: Deb Price / The Detroit News Washington Bureau

BODY:

New legislation in Congress and a unanimous resolution by San Francisco's Board of Supervisors spotlight an unfair but little-known federal immigration law that causes untold hardship and heartbreak:

Unlike heterosexuals, gay Americans who fall in love with foreigners cannot protect their partners from deportation. To live together permanently, a dual-passport gay couple eventually must break U.S. law or try to find refuge abroad. A dual-passport straight couple can gain "permanent resident" status for the foreign partner simply by marrying -- not yet an option for gay couples.

In a targeted, intelligent response to this particularly inhumane inequity, Congressman Jerry Nadler, a New York City Democrat, introduced the "Permanent Partner Immigration Act of 2000" on Feb. 14. Nadler's Valentine to the gay community would allow gay citizens to sponsor their permanent partners to become permanent U.S. residents. One beauty of Nadler's solution is that it does not depend on state and federal recognition of gay marriage.

Meanwhile, San Francisco has been proclaimed a "City of Refuge" for dual-passport gay couples. City supervisors voted Feb. 7 to instruct city workers not to alert immigration officials to partnered gay foreigners living on expired visas -- often after finding creative, legal ways to stay with their American partners for years.

Together, the Nadler and San Francisco initiatives represent a "quantum leap forward" in raising awareness of this injustice, says Shannon Minter, coordinator of the San Francisco chapter of the Lesbian and Gay Immigration Rights Task Force (www.lgirtf.org).

"We are not under any illusions that (Nadler's bill) is going to pass in the near future. But we have been champing at the bit to start the work of lobbying and educating Congress and the public, and this is a vehicle to do that," Minter adds.

Federal immigration policies are a barometer of U.S. attitudes toward gay men and lesbians. Homosexual immigrants were long banned -- first by being branded psychopaths, then "sex deviates." Thanks to openly gay Congressman Barney Frank, the immigration ban ended in 1990. Now, under Atty. Gen. Janet Reno, foreigners persecuted in their homelands for being gay can petition for asylum. Nadler's bill is an appropriate next step.

Having met gay couples with tragic, needless immigration woes, Nadler wants nothing more -- or less -- than to establish fair standards that apply equally to "all couples who show a lifelong commitment." He told me, "It is not only a question of equality and rights. It's also a question of gratuitous cruelty."

Already, at least 13 countries allow the gay partners of their citizens to become permanent residents: Australia, Belgium, Canada, Denmark, Finland, France, Iceland, the Netherlands, New Zealand, Norway, South Africa, Sweden and the United Kingdom. Also, Israel recently let the foreign partners of two gay Israelis stay.

Nadler's leadership provides a window into Congress' future if Democrats take back the House in November. Serious gay civil rights legislation -- not just on such high-profile issues as hate crime and job discrimination but also on immigration and partner benefits for federal workers -- would get a hearing. Nadler, a co-sponsor of that benefits bill, would chair a Judiciary subcommittee. So would its sponsor, Frank, a Massachusetts Democrat.

A continent away from Capitol Hill, San Francisco is an ever-brighter beacon of progress. Having led the way for cities to start requiring their contractors to provide gay workers equal benefits, San Francisco keeps advancing the national debate on full equality.

Like gay Americans serving in the military and gay kids harassed at school, dual-passport gay couples risk making their troubles worse if they dare call attention to their plight. That puts all the more responsibility on the rest of us to speak out for fairness.

Family unification is at the heart of U.S. immigration law. The law ought to reflect the reality that a gay couple is a family.

Deb Price's column is published on Monday. Write letters to The News at 615 W. Lafayette, Detroit, MI 48226, or fax to (313) 222-6417 or send e-mail to

**INS FACSIMILE**

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U.S. Immigration & Naturalization Service
Office of the General Counsel
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Washington, DC 20536
(202) 514-2895

TO:Irene Buend**TELEPHONE:****FAX:**202 - 456-5581**DATE SENT:**4-10-00**PAGES + COVER:**4**FROM:**Idea LawOffice of the General Counsel (HQCOU)**TELEPHONE:**(202) 305-8414**FAX:**(202) 514-0455**COMMENTS:**Re: Matter of Toboso-Alfonso

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Subject

Attorney General Certification
of Matter of Toboso-Alfonso

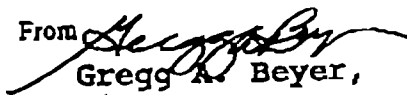
Date

02 AUG 1994

To

All Asylum Office Directors
All Asylum Officers

From


Gregg A. Beyer,
Director
Asylum Division

This memo is to inform all Asylum Officers of the status of Matter of Toboso-Alfonso, a case decided by the Board of Immigration Appeals (BIA) on March 12, 1990.

My memorandum dated April 15, 1994, on a recent decision granting asylum to a Mexican homosexual, stated that

neither the Board of Immigration Appeals nor a Circuit Court of Appeals has issued a reported (published) decision that might provide a "precedent" for the analysis of asylum cases involving homosexual claimants.

Attorney General Order No. 1895-94, dated June 19, 1994, stated: "I hereby designate the decision of the Board of Immigration Appeals In re: Toboso-Alfonso (March 12, 1990) as precedent in all proceedings involving the same issue or issues."

The Attorney General's Order now provides Asylum Officers with such precedent. It bears reiteration that "particular social group" under the refugee definition can be defined by homosexual orientation. This does not imply a "group", blanket, or other generic determination regarding the myriad elements of asylum eligibility.

In its interpretation of "particular social group", the BIA concluded that the term referred to individuals who share common characteristics that "... the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." Matter of Acosta, Int. Dec. No. 2986 (BIA 1985). Sexual orientation appears to satisfy this aspect of Acosta. Further guidance may be referenced in a December 9, 1993 General Counsel memorandum providing guidance on "membership in a particular social group".

ATTACHMENT

Memorandum



HQCOU 120/11.9-P

Subject

Membership in a particular social group
defined by sexual orientation

Date

APR - 4 1996

To

All Regional Counsel
All District Counsel

From

Office of the General Counsel

As you know, in Matter of Toboso-Alfonso, 20 I&N 819 (BIA 1990), the Board of Immigration Appeals (BIA) upheld an Immigration Judge's determination that a Cuban asylum applicant had established his membership in a particular social group defined by the status of being homosexual. In 1994, the Attorney General designated this BIA decision "as precedent in all proceedings involving the same issue or issues." Attorney General Order No. 1895-94, dated June 19, 1994. Therefore, briefs and arguments on behalf of the INS are to follow the reasoning in this decision in all cases where homosexuality is claimed as establishing membership in a particular social group. The INS position is that homosexuals do constitute a particular social group. Accordingly, our briefs should not pursue arguments that homosexuality fails to define a particular social group because it is not an immutable characteristic. Nor should the INS argue that homosexuals are too diverse and non-cohesive a group to qualify as a particular social group.

Of course, this does not mean that homosexuals automatically qualify for asylum. As the BIA stated in Matter of Toboso-Alfonso, an "initial finding that a particular social group existed in Cuba was not 'tantamount to awarding discretionary relief' to that group. Individuals in a particular social group are not eligible for relief based on that fact alone[;] among other things they must establish facts demonstrating that members of the group are persecuted, have a well-founded fear of persecution, or that their life or freedom would be threatened because of that status." Thus in cases of homosexual applicants, as in all asylum cases, the INS should carefully evaluate the facts of each case in determining the INS position on issues such as the well-foundedness of an applicant's fear, the motive of the alleged persecutor, and the availability of internal flight options and state protection.

Please be certain that all briefs filed in asylum cases are consistent with this guidance.

David A. Martin
General Counselcc: Office of International Affairs
Office of Immigration Litigation



U.S. Department of Justice
Immigration and Naturalization Service

HQCOU 120/11.9

Office of the General Counsel

425 I Street, N.W.
Washington, D.C. 20536

Honorable Barney Frank
US House of Representatives
2404 Rayburn Building
Washington, DC 20515-2104

JUN 3 1996

Dear Congressman Frank:

Thank you for your memorandum of May 14 about the INS brief to the Ninth Circuit in Pitcherskaia. I have carefully reexamined the Board's decision in Matter of Toboso-Alfonso and the materials surrounding the Attorney General's designation of that decision as precedent. Although the decision -- importantly -- recognized the Cuban homosexual applicant as a member of a particular social group, I cannot honestly find in the Board's opinion a holding as broad as the proposition you urge in your memorandum: that gays and lesbians are members of a particular social group for the purpose of asylum law. This is not to say that I disagree with the proposition; I simply am unable to represent to a court that Toboso-Alfonso so holds.

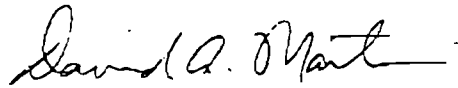
Nor am I able to interpret the Attorney General's order of designation or the cover memorandum that accompanied it as modifying or expanding the Board's holding in Toboso-Alfonso. The cover memorandum simply summarizes the case as holding that a homosexual "may be eligible for relief under the refugee laws on the basis of persecution because of membership in a social group," and concludes that the case "represents an appropriate application of the law to the facts as described in the opinion." In our brief to the Ninth Circuit in Pitcherskaia, we have attempted to represent the holding of Toboso-Alfonso as accurately as possible. The INS does not have the authority to rewrite the Board's opinion or Attorney General's order designating it as precedent in order to expand or modify the holding in that case.

But let me emphasize: where we do have the authority to reach further than the Board's decision as a matter of INS policy, we have done so. This policy decision is reflected in my April 4, 1996 memorandum to INS District and Regional Counsel, of which I have provided you a copy, directing that "[t]he INS position is that homosexuals do constitute a particular social group." (Incidentally, thank you for your kind words about that memorandum, in your April 25 letter to Commissioner Meissner.) We will continue to present this INS position in all cases where the point is relevant.

This position is not inconsistent with the jurisdictional arguments the INS has presented to the Ninth Circuit in Pitcherskaia. The INS argued that because the Board explicitly found it unnecessary to address the issue of membership in a particular social group in order to decide this case, the court has no jurisdiction to review the issue. In other words, the Board based its decision on the failure of other elements of Pitcherskaia's claim, and the court should confine its review to those issues. As you know, it is routine and entirely proper to argue that a court does not have jurisdiction to reach issues not addressed by the decision it is reviewing. It would be particularly discordant in such a setting for the INS to go out of its way to expatiate on its policy regarding an issue we are telling the court it has no jurisdiction to consider.

For all the reasons indicated here, I have decided not to request permission to submit a substituted brief or an errata sheet to the Ninth Circuit. I believe, however, that the INS policy, reflected in my memorandum of April 4, is fully consistent with your views about gays and lesbians as members of a particular social group. As to your further concerns about the Board's rulings on this issue, you may wish to address them directly to the Board, which has established avenues for submission of amicus briefs.

Sincerely,

A handwritten signature in dark ink, appearing to read "David A. Martin". The signature is fluid and cursive, with a long horizontal stroke at the end.

David A. Martin
General Counsel

Sexual orientation

Social group, membership in a particular

Matter of Toboso-Alfonso

Int. Dec. # 3222 (BIA 1990)

Abstract

Issue

Whether homosexuality constitutes a social group for the purpose of asylum and withholding of deportation

Legal Ruling

Homosexuals may constitute a social group because homosexuality is an immutable characteristic.

Facts

The applicant was a 40 year old native and citizen of Cuba who was paroled into the United States in June of 1980, as part of the Mariel boat lift. In 1985 his parole was terminated and he was placed in exclusion proceedings. The applicant applied for asylum and withholding of deportation.

Applicant testified that homosexuality is a criminal offense in Cuba. As a homosexual, he was registered with the government. As a result of his homosexuality, he was imprisoned for 60 days. He was also subjected to physical and verbal abuse by the authorities. He left Cuba because he was given the "choice" of spending four years in a penitentiary or leaving for the US.

Procedure

The IJ denied the applicant's request for asylum as a matter of discretion, due to past crimes, but granted withholding of deportation. INS appealed the IJ's decision to the BIA. The BIA dismissed the appeal.

Legal Reasoning

The Service argued that homosexual activity was not a basis for finding a social group within contemplation of the Act. The Board found that the applicant's testimony and evidence did not reflect that it was specific activity that resulted in the governmental actions against him in Cuba, it was his status as a homosexual. The Board found that the Service did not challenge the IJ's finding that homosexuality was an "immutable" characteristic. Nor was there evidence that once registered by the Cuban government as a homosexual, that that characterization was subject to change. This being the case, the BIA did not find that the Service's challenge to the IJ's finding that this applicant was a member of a particular social group in Cuba was adequately supported by the arguments set forth on appeal.



U.S. Department of Justice
Immigration and Naturalization Service

425 Eye Street N.W.
Washington, D.C. 20536

JUN 28 1994

*Pls: Use this as official
reply on this issue!*
JG/JS

Mr. Reed Brody
Executive Director
International Human Rights
Law Group
1601 Connecticut Avenue, N.W.
Washington, D. C. 20009

Dear Mr. Brody:

Thank you for your letter dated June 16 to the Attorney General concerning the Department of Justice's policy toward homosexuals who seek asylum in the United States based on a fear of persecution in their home countries.

On June 16, 1994, the Attorney General directed the ^{Board} Bureau of Immigration Appeals to designate a previous decision on this issue as precedent. The effect of that order is that the earlier decision, In re Toboso, now serves as guidance for immigration judges and asylum review officials adjudicating asylum claims. United States law provides that individuals who demonstrate that they have a well-founded fear of persecution based on membership in a particular social group have grounds for asylum. The Toboso decision demonstrates the possibility that a valid fear of government persecution on the basis of homosexual orientation can constitute grounds for asylum.

I am pleased to note that this recent action is consistent with the recommendations contained in your letter.

Thank you for your support of the Department's policy. Please do not hesitate to contact my office regarding other matters of mutual concern.

Sincerely,

John W. Cummings
John W. Cummings
Acting Director

Office of International Affairs

Official file copy. [unclear]



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Fax Cover Sheet

To: <u>Irene Bruno</u>	From: <u>B. Stack</u>
Fax: _____	Pages: <u>3</u>
Phone: _____	Date: <u>4/10</u>
Re: _____	
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• Comments: _____	

EXECUTIVE OFFICE OF THE PRESIDENT
Office of Management and Budget
Legislative Reference Division
7218 New Executive Office Building
725 17th Street, NW
Washington, DC 20503-0001

Date: 3/20, 2000

TO:	AGENCY:	FAX Phone	Recipient's Phone
Irene Bueno	DPC	6-5581	6-6558

FROM: Lisa J. Macecevic

PHONE: (202) 395-1092 FAX: (202) 395-3109 E-MAIL: Lisa.Macecevic@omb.eop.gov

COMMENTS:

Irene,
I'm attaching ^{unofficial} 1 comments from INS via
Greg Jones on HR3650 - Permanent Partner.
See his note.
Thanks - Lisa

March 20, 2000

Note for Lisa Macecevic, OMB

From: Greg Jones, DOJ *Greg*

Re: HR 3650 – permanent partners legislation

Here are some comments I received from the INS on this bill (which you circulated at the request of DPC).

These should not be taken as “official”, since I have not vetted them within DOJ. However, I thought you might find them helpful in determining what kinds of technical issues the bill raises. As you can see from the attached news release, the President endorsed this sort of bill at an event last fall (which was attended by Mr. Nadler, the bill’s chief sponsor).

For now I am not planning to do anything further, absent some indication the bill is going to move.

Thanks.

*PLEASE DO NOT SEND INS COMMENTS
OUTSIDE EXOP.*

INS comments on HR 3650, "Permanent Partners Immigration Act of 2000"

Per the message from the DPC, it appears the Administration has made the policy decision to support a change in law to permit access to the U.S. immigration system by "life partners," therefore, our comments are limited to technical issues in Mr. Nadler's bill.

Technical Comments:

This bill would very broadly (but not entirely uniformly) give a "permanent partnership" the same status for immigration law purposes as a marriage, and put a "permanent partner" in the same place as a spouse. The bill seems technically quite well drafted to achieve its goal. It generally plugs in "or permanent partner[ship]" after "marriage" or "spouse" in most places it appears in the INA (i.e., family-based immigration, waivers from removal, spouses of refugees and asylees), and makes other appropriate conforming changes that recognize that the different legal character of marriages and permanent partnerships requires technical changes to some sections that go beyond simply plugging in the "or permanent partner" language.

The extensive marriage-based provisions of the INA reflect the national policy decision that the immigration law should reflect the values of the United States, particularly the interest in marriage and family unification as the basis of a strong and stable society. Whether this principle should extend to relationships other than marriages or other family relationships that are legally recognized within the United States is an important national social policy question about which individual views undoubtedly will passionately differ, but one that does not seem to be within the particular expertise of this office to opine on. This change would give rise to new evidentiary issues for the INS, and the possibility of fraud, but these concerns would likely not be insoluble ones, and they should not by themselves determine whether this bill should become law, any more than the existence of marriage fraud should lead to a rejection of marriage as a relevant factor in immigration law.

Sec 2. Definition of "Permanent Partner"

The draft bill adds to Sec 101(a) of the INA new subparagraphs (50) & (51) to define the terms "permanent partner" and "permanent partnerships." The definitions of these terms will require a subjective determination by the INS or consular officer to determine whether an alien qualifies for benefits under the Act. Through regulation, many of the terms used in these definitions can be interpreted but regulatory interpretations will be subject to public comment. Further, an alien may be required through regulation to demonstrate his/her qualifications as a "permanent partner" by presenting documentation or other evidence.

It is reasonable to expect an alien to present documentation demonstrating that he/she is 18 years of age or that the alien is financially interdependent with the other individual

[see INA 101(a)(50)(B)]. However, it is difficult to conceive of the types of documentation or other evidence that INS could require through regulation that the alien present to demonstrate whether: (a) the alien is in a "committed, intimate relationship" with another individual over 18 years of age... [see INA 101(a)(50)(A)]; (b) the alien is in "permanent partnership" with anyone other than that other individual [see INA 101(a)(50)(C)]; the alien, in the case of a heterosexual, is unable to contract with that other individual a marriage cognizable under this Act [see INA 101(a)(50)(D)]; or the alien is not a 1st, 2nd, or 3rd blood relation of that other individual unless the Government is in a position to require or impose DNA testing [see INA 101(a)(50)(E)]. It is administratively difficult to regulate in a manner by which the alien must prove a negative or establish an intangible (e.g., commitment or intimacy).

Section 2 provides the key definitions of "permanent partner" and "permanent partnership." These definitions seem generally well crafted, but there is one omission that needs to be corrected. Although under clause (C) the permanent partner cannot be married to or be in a permanent partnership with anyone other than the other partner, in the definition as drafted the other partner could in fact be married to or in a permanent partnership with a third person (note that although the (51) definition of "permanent partnership" would not apply if either of the partners is married to someone else, amendment to (50) is still necessary because the bill more often than not amends the INA by using the term "permanent partner" without reference to "permanent partnership"). This can best be fixed by adding ", and in which neither party is married to or in a permanent partnership with any other person" at the end of (A). This fix then makes (C) unnecessary, and it can be deleted.

In the definition section 101(a)(50), we would substitute the word "person" for individual throughout. This obviously is a stylistic change but is in keeping with the rest of 101 when other terms such as citizen or alien are not used.

We also note that at least half of the foreign legislation that we aware of has a minimum time requirement for the relationship (i.e. has existed for at least a year etc.) we don't know if this time frame applies equally to nonimmigrant and immigrant visa categories. Maybe the after admission "marriage fraud" provisions are enough for our purposes.

This bill limits the degree of blood relation that can exist between domestic partners. Does this comport with generally accepted restrictions on who may or may not legally marry at least in the United States? Keeping in mind that the INS will generally honor a marriage that is valid in the place where it is celebrated.

Section 3:

201(b)(2)(1)(A) immediate relatives -- the bill would allow a permanent partner to maintain IR status for 2 years after the death of the USC partner or until the person enters into a new permanent partnership with another person. This provision looks nice for parity's sake but it seems to me that this provision would be difficult, if not impossible to enforce. Unlike marriages, few places document such relationships, how will the Service

know whether a widowed spouse or domestic partner has in fact later entered into a permanent partnership relationship unless they affirmatively seek to have the relationship acknowledged by the Service, which they obviously won't do if it will have a negative impact on the benefits they are seeking to obtain.

Section 5 would give permanent partners of LPRs second preference for immigration, i.e., behind unmarried sons and daughters of USCs but ahead of married sons and daughters, brothers or sisters of USCs. This provision – combined with Section 3's defining of permanent partners as immediate relatives of USCs, which does not directly affect visa availability under section 203 of the INA, but which generally gives preferential treatment to permanent partners of USCs as compared to section 203 applicants – is likely to be controversial among those who are unable to obtain visas, or who face long waits, to sponsor family members and now see themselves falling even further behind as a result of a preference granted to partners, especially since permanent partners of LPRs are ranked ahead of many close blood relatives of USCs.

Sec. 11. ADMISSION OF NONIMMIGRANTS.

There may be missing conforming changes to all applicable paragraphs under 101(a)(15) to add the term "permanent partner." From my review of the draft bill, only INA 214(e) has been amended to permit the classification of "permanent partners" in addition to spouses.

Section 11 would treat permanent partners of nonimmigrants the same as spouses for the purposes of NAFTA entrants and caps on H nonimmigrants. Why these, but not other nonimmigrants? The bill does not amend 101(a)(15) to treat permanent partners as spouses for the purpose of accompanying A, G, L, and other nonimmigrant categories. It would seem the bill, to be consistent, either should consider permanent partners as equivalent to spouses only for permanent immigration purposes, or should generally apply the philosophy of the bill to all INA purposes, including nonimmigrants. By the way, if the latter approach were adopted, the bill could be substantially shorter, because specific insertion of "or permanent partner" in dozens of places after "spouse" could be replaced with a global definition in 101 that "spouse" should be construed as including "permanent partner."

Sec. 12/Sec 13. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES, PERMANENT PARTNERS, AND SONS AND DAUGHTERS & CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, PERMANENT PARTNERS AND CHILDREN.

Just as it will be administratively difficult to develop criteria to ascertain whether an alien qualifies as a "permanent partner" under the Act, it will be difficult to establish that a "permanent partnership" is improper or that a "permanent partnership" has terminated for purposes of sections 216 & 216a(a) of the Act.

Section 14 (3) establishes an equivalent fraud ground of deportability for permanent partnership fraud as for marriage fraud. Because a permanent partnership, unlike a marriage, is not legally terminated independent of the INA but is purely a condition that flows from continued satisfaction of the definitional criteria, the phrase "and which, within 2 years subsequent to such admission, is terminated because the criteria for permanent partnership are no longer fulfilled" should be technically simplified to "and which, within 2 years subsequent to such admission, has ceased to be a permanent partnership" in order to avoid the implication that there is a necessary element of "termination" in addition to failure to satisfy the definitional criteria.

Section 17:

I don't think inserting "permanent partner" in 245(d) makes sense. The would-be amended second sentence applies only to fiancées (K visa holders) seeking to adjust. The bill does not propose to amend 101(a)(15)(k) to allow persons to come to the United States to conclude their permanent partnership within 90 days of arrival.

Section 18 extends criminal penalties for "any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws" to permanent partnership fraud by inserting "or permanent partnership" after "marriage." However, this change does not capture the type of fraud that is likely to arise in the permanent partnership context. A person enters into a permanent partnership as defined by this bill by satisfying the criteria, i.e., by being in a "committed, intimate relationship", etc. It is difficult to see how a person could in fact enter into a permanent partnership that is for an evasive purpose, since by definition he or she has not entered into the partnership unless the purpose is not evasive, since the "permanent partnership" depends upon actual satisfaction of the substantive elements rather than obtaining a legal document. In contrast, in a fraudulent marriage there is the legal piece of paper but not the emotional and financial commitment that is generally expected to back it up in a real marriage. Rather, a fraudulent permanent partnership is much more likely to be one that is claimed or purported, but where --because the "partners" are in fact only posing as such for immigration purposes -- it is not a permanent partnership and has not been "entered into." This amendment does not address that type of fraud. Therefore, the provision should be amended to read, "An individual who knowingly enters into a marriage or permanent partnership, or who falsely claims to have entered into a marriage or permanent partnership, for the purpose of evading any provision of the immigration laws shall be" This version better addresses likely methods of fraud while retaining the bill's equitable treatment of marriage and permanent partnership.

Sec. 20 adds permanent partnership to section 324, which provides for the restoration of U.S. citizenship to certain women who lost it under prior immigration law by marrying an alien. Since no one has lost U.S. citizenship through entering into a "permanent partnership" with an alien, the concept of permanent partnership is irrelevant and inappropriate to section 324, and Sec. 20 of the bill should be deleted.

MISCELLANEOUS.

Including "permanent partners" among those aliens eligible for benefits under the INA may beg the need to expand the definition of the term "child" used in Titles II and III under the Act to include non-traditional, genetically-engineered, and surrogate parent/child relationships.

Also is the amendment to 245(e) really necessary? I assume that if the AG determines that the relationship entered into was not done in good faith but to gain an immigration benefit, the AG simply wouldn't recognize that relationship and that would be the end of the story. This is not like a marriage where a third party can certify the relationship and all INS can do is question the bona fides of it after the fact. Which brings up a question as to whether the sanctioning of such relationships should be solely in the AG's discretion of reviewable in federal court.

Naturalization related provisions:

I note that the bill does not amend 311 to provide that naturalization shall not be denied or abridged because such person is in a permanent partnership relationship.

Also, 319 -- allowing fast track natz after 3 years -- was not amended to include someone whose permanent partner is a U.S.C.

No mention of inserting the term permanent partner into stand alone immigration benefits provisions such as Family Unity, NACARA 202, HRIFA, Cuban Adjustment Act etc.
Intentional or oversight?

Jones, Gregory M

From: Jones, Gregory M
Sent: Tuesday, March 07, 2000 10:20 AM
To: 'Irene_Bueno@opd.eop.gov@inetgw'
Cc: 'lisa_j_macecevic@omb.eop.gov'
Subject: RE: Question about HR 3650 Permanent Partners/Immigration bill

Thanks. I actually did see this in the WH Archives and wasn't sure if it applied... However, I see Nadler was there, so I suppose that's close enough. I guess any letter we write should be supportive in concept up front. but then discuss technical issues. I have 4 pages of technical comments from INS that I need to sift through. Greg Jones, DOJ PS. We it a draft bill to OMB for clearance on 2/28 to change the "registry date" in sec. 249 of the INA from 1972 to 1986. I prepared this bill at OMB's request on the understanding that it was included in the FY 2001 Budget proposal and that the WH wanted it. Now I have a comment from the State Dept. objecting to the proposal outright. Is this or is this not something we should be pursuing? Tnx.

-----Original Message-----

From: Irene_Bueno@opd.eop.gov@inetgw [mailto:Irene_Bueno@opd.eop.gov]
Sent: Tuesday, March 07, 2000 9:39 AM
To: Jones, Gregory M
Subject: Re: Question about HR 3650 Permanent Partners/Immigration bill

See below.

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October 08, 1999 13:37 Eastern Time

SECTION: NATIONAL DESK

LENGTH: 1986 words

HEADLINE: Transcript of Clinton Remarks to the Empire State Pride Gala
 (1/2)

BYLINE: White House Press Office, 202-456-2100

DATELINE: WASHINGTON, Oct. 8

BODY:

Following is a transcript of remarks by President Clinton yesterday to the

Empire State Pride Gala (part 1 of 2):

Sheraton New York Hotel and Tower

New York, New York

9:56 P.M. EDT

THE PRESIDENT: Thank you very much for your energy and your enthusiasm,
 your passion and your wonderful welcome. I want to begin by thanking
 Jeff, who
 has been a wonderful friend and advisor, a prodder and supporter to me.
 And I

thank him so much. (Applause.)

Thank you, Kate Callivan, for your work tonight. Thank you, Matt
 Forman,

for your leadership of Empire State Pride. (Applause.) And thank you,
 Chuck

Schumer, for running and winning and for all you have done to make this a
 better
 state and a better country. (Applause.)

I'd also like to thank two other members of the Congress who are
 here,

Congressman Jerry Nadler and Congressman Anthony Weiner, for the work they
 do

for you. Thank you. (Applause.) I'd like to thank my longtime friend,
 the New

York public advocate, Mark Green, who is here, for his steadfast support of your

agenda. Thank you, Mark. (Applause.)

I understand the borough President of Manhattan is here, Virginia Fields.

Thank you, Virginia. We're glad to have you. (Applause.) There are members of the State Assembly and members of the City Council here. Emily Gish (phonetic),

the Vice President of the State Democratic Party, is here. I thank her. (Applause.) And we've got all these great people from the administration

-- a lot of them stood up, but I want to mention their names -- the two highest ranking openly gay and lesbian appointees in the House, Sean Maloney and Karen

Tramontano -- (applause) -- my good friend, Richard Soccarides, who is leaving

-- (applause) -- Fred Hochberg, the Deputy Administrator of SBA -- (applause) --

and two former appointees. Roberta Eichenberg and Ginny Apuzzo are here.

I thank them for what

I'd also like to thank Marsha Scott, who was my first liaison to the gay

and lesbian community this year. (Applause.) And the head of our anti-HIV and

AIDS efforts, Sandy Thurman, who's done a wonderful job this year. I thank her

for being here. (Applause.)

Let me begin by saying something I need to say a lot in the time I have

left as President: thank you. (Applause.) Thank you for the support, the guidance, and the urging you have given to the Vice President and me, and to our

administration and our families. Thank you for the example you have set.

Thank you for helping Chuck Schumer to get elected. Thank you for giving us the opportunity to learn and grow, and do our jobs better, and serve all Americans

better.

Jeff said that, you know, last year the Vice President came, and this year

Chuck and I are here. And you're looking for a speaker. I think, you know, you

ought to invite a woman to speak next year. (Applause.) And if you want, I have

a suggestion. (Laughter.)

Actually I talked, as chance would have it, to both the Vice President and

to Hillary this afternoon -- (laughter) -- not so I could tell you that I did,

either. (Laughter.) But they asked me what I was doing -- there's a lot more

attention on what they're doing than what I'm doing now, but they did ask me

what I was doing, which was nice, that someone, somewhere in America still cared

what I was doing. (Laughter and applause.) So when I told them what I was doing, they said to give you their best wishes, and they wish they were here.

(Laughter.)

Jeff mentioned that seven years ago, when I first ran for President,

I said I had a vision for America and you were a part of it. I met with a

group
of activists from your community here in early 1992, and in California in
late
1991. And I began to try to listen and to learn and to understand why so
many
of these issues have presented such big problems for America.

One couple came through to see me earlier tonight, two men; one was
from Australia, the other from New Zealand and they said that as a couple,
they hadn't the same immigration rights coming into America as they did in
either Canada or New Zealand. I don't think that's right; I think that
ought to be changed. (Applause.)



But I think the first thing I want to say to you — I want to talk
more
about this, but I'm obviously giving a lot of thought these days to what
happens
to America over the long run. We enter a new century, we enter a new
millennium, the way we work and live and relate to each other and relate
to
people around the world is changing in profound and speedy ways. It's
almost
difficult to grasp. More of it is good than bad.

But we all have to be much more open to each other if we want this to
work. We've got to learn to listen as well as to talk. We've got to learn
to
feel as well as to think. We have to learn as we're all told we should do
from
childhood, to stand in the other person's shoes. We have done what we
could to
make the future one of equal opportunity and equal responsibility and
equal
membership in our American community, whether it is in fighting to pass
the hate
crimes law or the employment nondiscrimination act or to invest more in
research, prevention and treatment for HIV patients.

I would like to take just a few moments tonight to try to put all the
things you care about into a larger context of where America is and where
I hope

America will go. When I started running for President, I did so because I
thought the country was in trouble and without direction and growing more
divided. First, economically. Unemployment was too high, job growth was
too
low, incomes were stagnant, inequality was increasing. And there was a
sense of
literal despair about it in many places.

I worried about social division. You remember, we had a riot in Los
Angeles. But everywhere, there was this quiet sense of unease. And every
campaign, it seemed to me, was yet another example of how we could sort of
carve
up the electorate and make one group resent another, and hope that your
group
was a larger group of resenters than the other group. And it seemed to me
that
that was a bad way to run a country.

And it wasn't just anti-Hispanic and gay, it was tensions between the
races, tensions between immigrants and citizens. And it built on this
whole
pattern of thought that had accumulated in Washington over decades that
everything had to be divided into hostile camps. You couldn't be
pro-labor if
you were pro-business, and vice versa. You couldn't be pro-economic
growth and
be in favor of improving the environment. You couldn't be pro-work and
pro-family. We had to have these divided views. You couldn't have an
urban

policy if you really cared about what was going on on the farm.
You know, we don't think like that. None of us do, instinctively.

We
always try to think of how we can live an integrated life, and how our
minds
will think in an integrated way that pulls things together and moves
things
forward. But everything about our politics was about how to pit us
against one
another.

And since we all wake up every morning -- I know maybe none of you
do, but

some days I wake up on the wrong side of the bed, in a foul humor.

(Laughter.)

I'm sure you don't ever do that, but I do sometimes. (Laughter.) And it
has

occurred to me really that every one of us has this little scale inside,

you

know. On one side there's the light forces and the other side there's the

dark

forces in our psyche and our makeup and the way we look at the world. And

every

day we wake up and the scale is a little bit tilted one way or the other.

And

life is a big struggle to try to keep things in proper balance.

You don't want to have so much light that you're just a fool for
whatever

comes along. But if the scale tips dark even a little bit, things turn

badly

for people and those with whom they come in contact. And it can happen

for

communities and for a whole country.

So, anyway, when I ran I thought maybe I could change the way we
think

about politics. And if we do, maybe we can change what we do and how we
do it.

And

And, you know, there's an old adage that the Lord never gives you
more

than you can handle, but I have been severely tested in this resolve.

(Laughter

and applause.) But most days, you know, it's been kind of fun, but
bewildering.

(Laughter.)

So anyway, we came up -- Al Gore and I -- (applause.) Well, for
whatever

reason -- and the American people took a chance on me and Al Gore in 1992.

And

we got the Democrats together, and we tried to reach out to the
Republicans.

And usually they said no; sometimes they said -- a few of them would say
yes.

But we said, look, let's take a different direction -- on the
economy, on

crime, on welfare, on the environment. Let's try to think of a way to
integrate

the things that we want to achieve, and build a creative tension so we
could

move the country forward. And let's try to build a country where

everybody has

a place. And we just made an argument in 1992. It was just an argument.

You

-- no one could know for sure whether it would work.

You know, I'm rethinking my position about wanting everybody to have

a
cell phone in this country. (Laughter and applause.) He's a good guy,
don't
worry about it. (Applause.)

But anyway, so we made this argument, you know, and you guys took a
chance. And New York really stood behind us, gave us a chance to serve.

But it's not an argument anymore. Those of you who've been with us

six
and a half years, when you go out to discuss citizenship and issues, and
the
future, say, look, whatever you want to say about that crowd, there are
certain
things that you can't dispute. We now have the lowest unemployment rate
in 29

years; the lowest welfare rolls in 32 years; the lowest crime rates in 26
years;

the lowest poverty rates in 20 years; the first back-to-back surpluses in
42

years; the longest peacetime expansion in history; and 19.5 million new
jobs.

You can't argue; that happened. (Applause.)

And every time -- (applause) -- every time -- (applause) -- every
time we

did something that tried to reconcile our economic objectives with our
other

objectives -- whether it was family and medical leave or vetoing the first
two

welfare bills because they didn't have guaranteed food and medicine
coverage for

poor children and enough money for child care, or trying to clean up the
air and

the water, or saying that the system we had for taking care of little kids
and

immunizing them -- we were nuts and we were determined to reach 90 percent
immunization, which we did, by the way. All of these things -- people

would say

-- or, raising the minimum wage, or you name it. That was always going to
be

something that would hurt the economy. It turned out that that was wrong,
that

putting things together made all of our efforts reinforce one another.

I feel even more strongly about that when it comes to putting people
together. One of the things I've spent an enormous amount of time doing

in the

last two years is trying to make sure America is Y2K ready. I've even got

these

little things that look like beanie babies that are Y2K bugs I have around

just

to remind me that we don't want there to be one.

You know, to most people, that's about adjusting a computer. But if
you

think about it, there is a lot more than mechanics involved in being ready
for

the new millennium, and a lot more than economics involved in being a
successful
country.

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House of Representatives
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OFFICE OF CONGRESSMAN JERROLD NADLER

Date: 2/15/2000 Time: _____

To: Jesse and J. Potter

Fax#: 456-6218 Telephone#: 456-1687

From: Rep. Jerrold Nadler _____ Amy Rutkin _____
Brett Heimov _____ David Lachmann _____
John Doty X _____ Joshua Kruskol _____
Janice Siegel _____ David Greengrass _____
Rachel Kahn _____ Marisa Milton _____
Eric Schmeltzer _____ Intern _____

Number of Pages (including cover sheet): 18

Comments: Permanent Partner info

If there is a problem with this fax please contact our office. Thank you.
PHONE 202-225-5635 FAX 202-225-6923

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REGIONAL WHIP

Congress of the United States
House of Representatives
Washington, DC 20515

February 4, 2000

CO-SPONSOR

THE PERMANENT PARTNERS IMMIGRATION ACT
End Unfair Discrimination in our Immigration Laws

JERROLD NADLER
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Dear Colleague:

Please join me in co-sponsoring legislation to amend the Immigration and Nationality Act to allow United States citizens and lawful permanent residents to sponsor their "permanent partners" for residency in the United States.

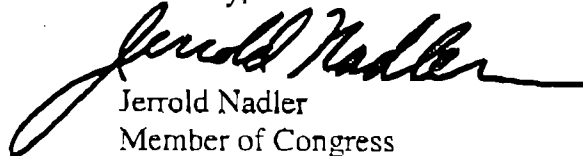
U.S. immigration is largely based on the principle of family unification, which allows U.S. citizens and legal permanent residents to sponsor their spouses (and other family members) for immigration purposes. Unfortunately, our current laws are based upon a restrictive definition of family. Same-sex partners of U.S. citizens and permanent residents are not currently included in family-based immigration. Because of this inhumane policy, thousands of lesbian and gay binational couples are kept apart, torn apart or forced to live with the foreign partner undocumented and in constant fear of deportation. We must combat this injustice in our immigration system.

Currently, thirteen countries recognize gay and lesbian couples for immigration purposes. Of those, six offer immigration rights to same-sex partners who have entered into 'Registered Partnership Agreements', a civil status similar to marriage. The remaining countries which do not have 'registered partnership' permit same-sex partners of their citizens to immigrate based on their relationship.

This bill is about justice, equality, and ending unfair discrimination.

If you would like to be an original co-sponsor of this legislation please contact me or John Doty at 225-5635 before February 10th. Thank you.

Sincerely,



Jerrold Nadler
Member of Congress

Current Co-Sponsors of the Permanent Partners Immigration Act

Rep. Barney Frank
Rep. Tammy Baldwin
Rep. Joseph Crowley
Rep. William Delahunt
Rep. Tom Lantos
Rep. Xavier Becerra
Rep. Jim McDermott
Rep. Maurice Hinchey
Rep. Michael Capuano
Rep. Henry Waxman
Rep. Ed Towns
Rep. Nancy Pelosi
Rep. Anthony Weiner

The Permanent Partners Immigration Act of 2000

Section 1 is the short title for the bill, "Permanent Partners Immigration Act of 2000."

Section 2 adds the definition of permanent partner and permanent partnership to definitions section of Immigration and Naturalization Act (INA). The bill defines permanent partner as an individual over 18 years of age who -- is in a committed, intimate relationship with another unmarried individual over 18 years of age in which both parties intend a lifelong commitment; is financially interdependent with that other individual; is not married to or in a permanent partnership with anyone other than that other individual; is unable to contract with that other individual a marriage cognizable under this Act; and is not a first, second, or third degree blood relation of that other individual..

Section 3 amends the section of the INA that limits the worldwide level of immigration to family-sponsored immigrants, employment-based immigrants, and diversity immigrants. Certain individuals are exempt from these numerical limits including legal permanent residents and immediate family members. Immediate relatives includes children, spouses, and parents. This bill would add "permanent partners" to this list of immediate relatives.

Section 4 amends the section of the INA that limits the level of immigration from individual countries. Under current law, special consideration is given to spouses and children of legal permanent residents so that most are not counted against the numerical limitation placed on each nation. This bill would add "permanent partners" to this group that receives special consideration. In addition, under current law unmarried children receive special consideration. This bill would ensure that unmarried children must also not be in a permanent partnership in order to qualify for the benefits of an unmarried child.

Section 5 amends the section of the INA that allocates visas in a given order: unmarried children of citizens, spouses and unmarried children of permanent resident aliens, married sons and daughters of citizens, skilled workers, etc. This bill would add permanent partners to this section and add that unmarried children must also not be in a permanent partnership in order to qualify for the benefits of an unmarried child. This section would also bar a person who applies for an employment creation-based visa to count his or her permanent partner among citizens employed, and would enable a permanent partner accompanying or following to join his or her permanent partner to be entitled to an immigrant status and immediate issuance of a visa.

Section 6 amends the section of the INA that describes the procedure for granting immigrant status. This section of the bill would allow a foreign permanent partner to file a petition for immediate relative status. It would also bar anyone who had previously filed for a permanent partnership, that was determined by the Attorney General to be fraudulent, from being approved as a permanent partner. This measure is intended to reduce fraud and prevent anyone from abusing the system.

Section 7 amends the section of the INA that describes admission status of spouses and children of refugees. This bill provides that a permanent partner of a refugee who is not him or herself a refugee is entitled to same immigrant status as the refugee if accompanying or following to join the refugee, and that the admission shall be charged against the numerical limitation established in accordance with the appropriate subsection under which the refugee's admission is charged, and provides that the Attorney General may terminate the refugee status of a permanent partner if the Attorney General determines that the alien was not in fact a refugee.

Section 8 provides that a permanent partner of an alien who is granted asylum may be granted the same immigration status as the alien if accompanying or following to join the alien.

Section 9 provides for the maximum number of adjustments of status to Legal Permanent Resident for refugees and their permanent partners.

Section 10 amends the section of the INA that describes inadmissible aliens. For example, individuals who entered the country illegally, brought others into the country illegally, are members of totalitarian parties, or are likely to become a public charge are generally inadmissible. However, current law also includes numerous exceptions for parents, children, and spouses of US citizens or legal permanent residents who may fall into one of the above categories. This section of the bill would add permanent partners to the group of people who may be eligible for certain exceptions.

Section 11 amends the INA that was written as part of NAFTA. Under current law, citizens of Mexico and Canada who enter the country for business purposes can bring their spouses and children with them. This bill would add permanent partners to this section.

Section 12 provides that an alien permanent partner who receives Legal Permanent Resident status has obtained that status on a conditional basis pursuant to the provisions that follow in this section. This is similar to the conditional status that is granted to spouses under current law. The conditional status can be revoked if the Attorney General

determines within two years that the marriage has been terminated or that the purpose of the marriage was to evade immigration law. Under this bill, the same restrictions would apply to a permanent partnership and the Attorney General would have the ability to revoke the conditional status if the partnership is terminated or was entered into in order to evade immigration laws.

Section 13 amends the section of the INA that grants certain benefits for alien entrepreneurs and allows for conditional permanent resident status of their spouses and children. This bill would also allow permanent partners of alien entrepreneurs to obtain conditional permanent resident status.

Section 14 provides that an alien with conditional permanent resident status as the permanent partner of another is deportable if that status is terminated within two years subsequent to such admission unless the partner can demonstrate to the Attorney General that the relationship was not entered into for the purpose of evading any provisions of the immigrations laws.

Section 15 amends the section of the INA which provides that a removal order for failure to appear at a removal hearing may be rescinded because of "exceptional circumstances." Under current law, exceptional circumstances can include the serious illness of a spouse, child, or parent. This bill would add permanent partner to that list.

Section 16 amends the section on cancellation of removal. Under current law, the Attorney General can cancel removal if doing so would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child. This bill would add permanent partner to that list.

Section 17 amends the section on adjustment of status. It adds "permanent partner" to the subsection title regarding restrictions on adjustment of status based on marriages entered while in admissibility or deportation proceedings, provides that an alien in deportation proceedings may not have his or her status adjusted based on a permanent partnership entered into during those proceedings, provides that the prohibition described in (b) above will not apply if an alien establishes to the Attorney General's satisfaction that the permanent partnership was entered into in good faith and not for the purpose of procuring the alien's admission as an immigrant, and (with the two following sections) provides that certain classes of aliens who are the beneficiaries of a petition for classification under the INA or an application for a labor certification and are accompanying their permanent

partners may apply to have their status adjusted to that of an alien lawfully admitted for permanent residence.

Section 18 is designed to prevent partnership fraud by subjecting anyone who knowingly enters into a permanent partnership in order to evade immigration laws to be imprisoned for not more than 5 years, or fined not more than \$250,000 or both.

Section 19 adds the term permanent partner to a list that includes spouses and dependent children that are members of the household of a person who qualifies for the benefits of this subsection. These individuals would then be entitled to the benefits during the period for which they were residing abroad as dependent members of the household of the person.

Section 20 would allow permanent partners who lost U.S. citizenship simply by entering a permanent partnership with someone else, may nevertheless be naturalized as a U.S. citizen if certain conditions are met. This parallels the same provision that exists for married individuals in the same situation.

HR 3650 IH

106th CONGRESS

2d Session

H. R. 3650

To amend the Immigration and Nationality Act to provide a mechanism for United States citizens and lawful permanent residents to sponsor their permanent partners for residence in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES**February 14, 2000**

Mr. NADLER (for himself, Mr. FRANK of Massachusetts, Ms. BALDWIN, Mr. CROWLEY, Mr. DELAHUNT, Mr. LANTOS, Mr. BECERRA, Mr. MCDERMOTT, Mr. HINCHEY, Mr. CAPUANO, Mr. WAXMAN, and Mr. TOWNS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to provide a mechanism for United States citizens and lawful permanent residents to sponsor their permanent partners for residence in the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.

(a) SHORT TITLE- This Act may be cited as the 'Permanent Partners Immigration Act of 2000'.

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT- Except as otherwise specifically provided whenever in this Act an amendment or repeal is expressed as the amendment or repeal of a section or other provision, the reference shall be considered to be made to that section or provision in the Immigration and Nationality Act.

SEC. 2. DEFINITION OF 'PERMANENT PARTNER'.

Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following:

“(50) The term ‘permanent partner’ means an individual over 18 years of age who--

“(A) is in a committed, intimate relationship with another individual over 18 years of age in which both parties intend a lifelong commitment;

“(B) is financially interdependent with that other individual;

“(C) is not married to or in a permanent partnership with anyone other than that other individual;

“(D) is unable to contract with that other individual a marriage cognizable under this Act; and

“(E) is not a first, second, or third degree blood relation of that other individual.

“(51) The term ‘permanent partnership’ means the relationship that exists between two permanent partners.’.

SEC. 3. WORLDWIDE LEVEL OF IMMIGRATION.

Section 201(b)(2)(A)(i) (8 U.S.C. 1151(b)(2)(A)(i)) is amended--

- (1) by inserting 'permanent partners,' after 'spouses';
- (2) by inserting 'or permanent partner' after 'spouse' each place such term appears; and
- (3) by inserting 'or enters a permanent partnership with another person' before the period at the end.

SEC. 4. NUMERICAL LIMITATIONS ON INDIVIDUAL FOREIGN STATES.

(a) PER COUNTRY LEVELS- Section 202(a)(4) (8 U.S.C. 1152(a)(4)) is amended--

- (1) in the paragraph heading for paragraph (4), by inserting ', PERMANENT PARTNERS,' after 'SPOUSES';
- (2) in the subparagraph heading for subparagraph (A), by inserting ', PERMANENT PARTNERS,' after 'SPOUSES'; and
- (3) in the subparagraph heading for subparagraph (C), by inserting 'WITHOUT PERMANENT PARTNERS' after 'DAUGHTERS'.

(b) RULES FOR CHARGEABILITY- Section 202(b)(2) (8 U.S.C. 1152(b)(2)) is amended--

- (1) by inserting 'or permanent partner' after 'spouse' each place it appears; and
- (2) by inserting 'or permanent partners' after 'husband and wife'.

SEC. 5. ALLOCATION OF IMMIGRANT VISAS.

(a) PREFERENCE ALLOCATION FOR FAMILY MEMBERS OF PERMANENT RESIDENT ALIENS- Section 203(a)(2) (8 U.S.C. 1153(a)(2)) is amended--

(1) in the paragraph heading--

- (A) by striking 'and' after 'SPOUSES' and inserting ', PERMANENT PARTNERS,'; and
- (B) by inserting 'WITHOUT PERMANENT PARTNERS' after 'SONS' and after 'DAUGHTERS'; and

(2) in subparagraph (A)--

- (A) by inserting ', permanent partners,' after 'spouses'; and
- (B) by inserting 'without permanent partners' after 'sons' and after 'daughters'.

(b) PREFERENCE ALLOCATION FOR SONS AND DAUGHTERS OF CITIZENS- Section 203(a)(3) (8 U.S.C. 1153(a)(3)) is amended--

- (1) in the paragraph heading, by inserting 'AND DAUGHTERS AND SONS WITH PERMANENT PARTNERS' after 'DAUGHTERS'; and
- (2) by inserting 'or daughters or sons with permanent partners' after 'daughters'.

(c) EMPLOYMENT CREATION- Section 203(b)(5)(A)(iii) (8 U.S.C. 1153(b)(5)(A)(iii)) is amended by inserting 'permanent partner,' after 'spouse,'.

(d) TREATMENT OF FAMILY MEMBERS- Section 203(d) (8 U.S.C. 1153(d)) is amended by inserting ', permanent partner,' after 'spouse' each place the term appears.

SEC. 6. PROCEDURE FOR GRANTING IMMIGRANT STATUS.

(a) CLASSIFICATION PETITIONS- Section 204(a)(1) (8 U.S.C. 1154(a)(1)) is amended--

- (1) in subparagraph (A)(ii), by inserting 'or permanent partner' after 'spouse';

(2) in subparagraph (A)(iii)--

(A) by inserting 'or permanent partner' after 'spouse' each place the term appears; and

(B) by inserting 'or permanent partnership' after 'marriage' each place the term appears in subclause (I); and

(3) in subparagraph (B)(ii), by inserting 'or permanent partner' after 'spouse' each place the term appears.

(b) IMMIGRATION FRAUD PREVENTION- Section 204(c) (8 U.S.C. 1154(c)) is amended--

(1) by inserting 'or permanent partner' after 'spouse' each place the term appears; and

(2) by inserting 'or permanent partnership' after 'marriage' each place the term appears.

SEC. 7. ANNUAL ADMISSION OF REFUGEES AND ADMISSION OF EMERGENCY SITUATION REFUGEES.

Section 207(c) (8 U.S.C. 1157(c)) is amended--

(1) in paragraph (2)--

(A) by inserting 'or permanent partner' after 'spouse' each place the term appears; and

(B) by inserting 'or permanent partner's' after 'spouse's'; and

(2) in paragraph (4), by inserting 'or permanent partner' after 'spouse'.

SEC. 8. ASYLUM.

Section 208(b)(3) (8 U.S.C. 1158(b)(3)) is amended--

(1) in the heading, by inserting 'OR PERMANENT PARTNER' after 'SPOUSE'; and

(2) by inserting 'or permanent partner' after 'spouse'.

SEC. 9. ADJUSTMENT OF STATUS OF REFUGEES.

Section 209(b)(3) (8 U.S.C. 1159(b)(3)) is amended by inserting 'or permanent partner' after 'spouse'.

SEC. 10. INADMISSIBLE ALIENS.

(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION- Section 212(a) (8 U.S.C. 1182(a)) is amended--

(1) in paragraph (3)(D)(iv), by inserting 'permanent partner,' after 'spouse,';

(2) in paragraph (4)(C)(i)(I), by inserting ', permanent partner,' after 'spouse';

(3) in paragraph (6)(E)(ii), by inserting 'permanent partner,' after 'spouse,'; and

(4) in paragraph (9)(B)(v), by inserting ', permanent partner,' after 'spouse'.

(b) WAIVERS- Section 212(d) (8 U.S.C. 1182(d)) is amended--

(1) in paragraph (11), by inserting 'permanent partner,' after 'spouse,'; and

(2) in paragraph (12)(B), by inserting ', permanent partner,' after 'spouse'.

(c) Section 212(g)(1)(A) (8 U.S.C. 1182(g)(1)(A)) is amended by inserting 'or permanent partner' after 'spouse'.

(d) Section 212(h)(1)(B) (8 U.S.C. 1182(h)(1)(B)) is amended by inserting 'permanent partner,' after 'spouse,'.

(e) Section 212(i)(1) (8 U.S.C. 1182(i)(1)) is amended by inserting 'permanent partner,' after 'spouse,'.

SEC. 11. ADMISSION OF NONIMMIGRANTS.

(a) PERSONS ENTERING UNDER NAFTA- Section 214(e)(2) (8 U.S.C. 1184(e)(2)) is amended by inserting 'or permanent partner' after 'spouse'.

(b) LIMITATION ON CERTAIN NONIMMIGRANTS- Section 214(g)(2) (8 U.S.C. 1184(g)(2)) is amended by inserting ', permanent partners,' after 'spouses'.

SEC. 12. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES, PERMANENT PARTNERS, AND SONS AND DAUGHTERS.

(a) SECTION HEADING-

(1) IN GENERAL- The section heading for section 216 (8 U.S.C. 1186a) is amended by inserting 'AND PERMANENT PARTNERS' after 'SPOUSES'.

(2) CLERICAL AMENDMENT- The table of contents is amended by amending the item relating to section 216 to read as follows:

'Sec. 216. Conditional permanent resident status for certain alien spouses and permanent partners and sons and daughters.'

(b) IN GENERAL- Section 216(a) (8 U.S.C. 1186a(a)) is amended--

(1) in paragraph (1), by inserting 'or permanent partner' after 'spouse';

(2) in paragraph (2)(A), by inserting 'or permanent partner' after 'spouse';

(3) in paragraph (2)(B), by inserting 'permanent partner,' after 'spouse,'; and

(4) in paragraph (2)(C), by inserting 'permanent partner,' after 'spouse,'.

(c) TERMINATION OF STATUS IF FINDING THAT QUALIFYING MARRIAGE IMPROPER- Section 216(b) of such Act (8 U.S.C. 1186a(b)) is amended--

(1) in the heading, by inserting 'OR PERMANENT PARTNERSHIP' after 'MARRIAGE';

(2) in paragraph (1)(A), by inserting 'or permanent partnership' after 'marriage'; and

(3) in paragraph (1)(A)(ii)--

(A) by inserting 'or has ceased to satisfy the criteria for being considered a permanent partnership under this Act,' after 'terminated,'; and

(B) by inserting 'or permanent partner' after 'spouse'.

(d) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION- Section 216(c) (8 U.S.C. 1186a(c)) is amended--

(1) in paragraphs (1), (2)(A)(ii), (3)(A)(ii), (3)(C), (4)(B), and (4)(C), by inserting 'or permanent partner' after 'spouse' each place the term appears;

(2) in paragraph (3)(A), in the matter following clause (ii), and in paragraph (3)(D), (4)(B), and (4)(C), by inserting 'or permanent partnership' after 'marriage' each place the term appears.

(c) CONTENTS OF PETITION- Section 216(d)(1) of such Act (8 U.S.C. 1186a(d)(1)) is amended--

(1) in the subparagraph heading for subparagraph (A), by inserting 'OR PERMANENT PARTNERSHIP' after 'MARRIAGE';

(2) in subparagraph (A)(i), by inserting 'or permanent partnership' after 'marriage';

(3) in subparagraph (A)(i)(I), by inserting before the comma at the end ', or is a permanent partnership recognized under this Act';

(4) in subparagraph (A)(i)(II)--

(A) by inserting 'or has not ceased to satisfy the criteria for being considered a permanent partnership under this Act,' after 'terminated,'; and

(B) by inserting 'or permanent partner' after 'spouse';

(5) in subparagraph (A)(ii), by inserting 'or permanent partner' after 'spouse'; and

(6) in subparagraph (B)(i)--

(A) by inserting 'or permanent partnership' after 'marriage'; and

(B) by inserting 'or permanent partner' after 'spouse'.

(e) DEFINITIONS- Section 216(g) (8 U.S.C. 1186a(g)) is amended--

(1) in paragraph (1)--

(A) by inserting 'or permanent partner' after 'spouse' each place the term appears; and

(B) by inserting 'or permanent partnership' after 'marriage' each place the term appears;

(2) in paragraph (2), by inserting 'or permanent partnership' after 'marriage';

(3) in paragraph (3), by inserting 'or permanent partnership' after 'marriage'; and

(4) in paragraph (4)--

(A) by inserting 'or permanent partner' after 'spouse' each place the term appears; and

(B) by inserting 'or permanent partnership' after 'marriage'.

SEC. 13. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN ENTREPRENEURS, SPOUSES, PERMANENT PARTNERS, AND CHILDREN.

(a) SECTION HEADING-

(1) IN GENERAL- The section heading for section 216A (8 U.S.C. 1186b) is amended by inserting 'OR PERMANENT PARTNERS' after 'SPOUSES'.

(2) CLERICAL AMENDMENT- The table of contents is amended by amending the item relating to section 216A to read as follows:

'Sec. 216. Conditional permanent resident status for certain alien entrepreneurs, spouses or permanent partners, and children.'

(b) IN GENERAL- Section 216A(a) (8 U.S.C. 1186b(a)) is amended, in paragraphs (1), (2)(A), (2)(B), and (2)(C), by inserting 'or permanent partner' after 'spouse' each place the term appears.

(c) **TERMINATION OF STATUS IF FINDING THAT QUALIFYING ENTREPRENEURSHIP IMPROPER**- Section 216A(b)(1) (8 U.S.C. 1186b(b)(1)) is amended by inserting 'or permanent partner' after 'spouse' in the matter following subparagraph (C).

(d) **REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION**- Section 216A(c) (8 U.S.C. 1186b(c)) is amended, in paragraphs (1), (2)(A)(ii), and (3)(C), by inserting 'or permanent partner' after 'spouse'.

(e) **DEFINITIONS**- Section 216A(f)(2) (8 U.S.C. 1186b(f)(2)) is amended by inserting 'or permanent partner' after 'spouse' each place the term appears.

SEC. 14. DEPORTABLE ALIENS.

Section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227(a)) is amended--

(1) in paragraph (1)(D)(i), by inserting 'or permanent partners' after 'spouses' each place the term appears;

(2) in paragraphs (1)(E)(ii), (1)(E)(iii), and (1)(H)(i), by inserting 'or permanent partner' after 'spouse';

(3) by adding at the end of paragraph (1) the following new subparagraph:

“(I) **PERMANENT PARTNERSHIP FRAUD**- An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 212(a)(6)(C)(i)) and to be in the United States in violation of this Act (within the meaning of subparagraph (B)) if--

“(i) the alien obtains any admission to the United States with an immigrant visa or other documentation procured on the basis of a permanent partnership entered into less than 2 years prior to such admission and which, within 2 years subsequent to such admission, is terminated because the criteria for permanent partnership are no longer fulfilled, unless the alien establishes to the satisfaction of the Attorney General that such permanent partnership was not contracted for the purpose of evading any provisions of the immigration laws; or

“(ii) it appears to the satisfaction of the Attorney General that the alien has failed or refused to fulfill the alien's permanent partnership which in the opinion of the Attorney General was made for the purpose of procuring the alien's admission as an immigrant; and

(4) in paragraphs (2)(E)(i) and (3)(C)(ii), by inserting 'or permanent partner' after 'spouse' each place the term appears.

SEC. 15. REMOVAL PROCEEDINGS.

Section 240(e)(1) (8 U.S.C. 1229a(e)(1)) is amended by inserting 'or permanent partner' after 'spouse'.

SEC. 16. CANCELLATION OF REMOVAL; ADJUSTMENT OF STATUS.

Section 240A(b) (8 U.S.C. 1229b(b)) is amended--

(1) in paragraph (1)(D), by inserting 'or permanent partner' after 'spouse';

(2) in the heading for paragraph (2), by inserting ', PERMANENT PARTNER,' after 'SPOUSE'; and

(3) in paragraph (2)(A), by inserting ', permanent partner,' after 'spouse'.

SEC. 17. ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE.

(a) **PROHIBITION ON ADJUSTMENT OF STATUS**- Section 245(d) (8 U.S.C. 1255(d)) is amended by inserting 'or permanent partnership' after 'marriage'.

(b) **AVOIDING IMMIGRATION FRAUD**- Section 245(c) (8 U.S.C. 1255(e)) is amended--

(1) in paragraph (1), by inserting 'or permanent partnership' after 'marriage'; and

(2) by adding at the end the following new paragraph:

'(4) Paragraph (1) and section 204(g) shall not apply with respect to a permanent partnership if the alien establishes by clear and convincing evidence to the satisfaction of the Attorney General that the permanent partnership was entered into in good faith and in accordance with section 101(a)(50) and the permanent partnership was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 214(d) with respect to the alien permanent partner. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.'

(c) ADJUSTMENT OF STATUS FOR CERTAIN ALIENS PAYING FEE- Section 245(i)(1)(B) (8 U.S.C. 1255(i)(1)(B)) is amended by inserting 'or permanent partner' after 'spouse' each place the term appears.

(d) INFORMANTS- Section 245(j) of such Act (8 U.S.C. 1255(j)) is amended by inserting 'permanent partner,' after 'spouse,' each place the term appears.

SEC. 18. MISREPRESENTATION AND CONCEALMENT OF FACTS.

Section 275(c) (8 U.S.C. 1325(c)) is amended by inserting 'or permanent partnership' after 'marriage'.

SEC. 19. REQUIREMENTS AS TO RESIDENCE, GOOD MORAL CHARACTER, ATTACHMENT TO THE PRINCIPLES OF THE CONSTITUTION.

Section 316(b) (8 U.S.C. 1427(b)) is amended by inserting 'or permanent partner' after 'spouse'.

SEC. 20. FORMER CITIZENS OF UNITED STATES REGAINING UNITED STATES CITIZENSHIP.

Section 324(a) (8 U.S.C. 1435(a)) is amended, in the matter following 'after September 22, 1922,' by inserting 'or permanent partnership' after 'marriage' each place the term appears.

END

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Site Index

Site Search

Forums

Archives

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March 23, 1999

Gay Couples Are Divided by '96 Immigration Laws



By ANDREW JACOBS

A dozen roses in hand and butterflies in his stomach, Kent McCoy stood in the arrivals area at Kennedy International Airport last summer waiting for his companion, Samer Yahya, to return from a monthlong visit with relatives in Italy.

But as the last passengers trickled out of the customs area that August evening, Mr. McCoy's anticipation turned to panic. Three hours later, with the terminal deserted and the roses wilting, an immigration agent appeared and told Mr. McCoy that his partner of four years had been detained for carrying a flawed visa. "We've got your friend," Mr. McCoy said the officer told him. "We're sending him back."

Mr. Yahya, 29, a theater major at Trinity College in Hartford, says he did not know that his student visa had been improperly issued in the United States when it should have been issued in Rome. Still, he said he was strip-searched, dressed in a prison jumpsuit and shackled to a bench overnight at the airport. He and Mr. McCoy were not allowed to speak, and the next day, he was put on a plane bound for Rome.

Seven months later, the two men are still separated. The American Embassy in Rome denied Mr. Yahya a new student visa, saying that although he was a legitimate student, he was likely to stay in this country illegally after finishing his studies.

Like thousands of gay Americans in relationships with foreigners, Mr. McCoy discovered that although he considered himself married, his relationship with Mr. Yahya had no legal standing and offered him no protection against deportation.

While heterosexuals in similar circumstances can marry and automatically gain residency rights for their spouses -- even if the spouse entered the country illegally -- gay men and women who would be willing to make a similar legal commitment to one another cannot.

Caught in Grip of Inflexible Law

And since 1996, when Congress passed a collection of new immigration laws, the few provisions that once were interpreted to allow gay partners to stay in this country have been eliminated. These laws were aimed, in general, at slowing the tide of illegal immigrants coming to this country, not in particular at this group. But gay couples have been caught up in its strict enforcement.

For example, judges, who previously had the discretion to waive a deportation on humanitarian grounds and might have allowed someone like Mr. Yahya to stay, are now obliged to deport such

illegal immigrants -- even when they and their partners share mortgages, businesses, homes and children.

As a result, immigration lawyers estimated, tens of thousands of relationships have been thrown in jeopardy or broken apart by the new deportation drive, which has sent nearly 290,000 immigrants back to their countries since 1997, more than double the number from the previous two years.

"It doesn't matter that we've been sharing a home and a life for years, that we're essentially married," said Mr. McCoy, 46, an architect who lives in Hartford. "We've been torn apart."

Elaine Komis, a spokeswoman for the Immigration and Naturalization Service, said there was nothing her agency could do. "We don't make the laws," she said. "Congress does. This would be a major change to the immigration preference system, one that requires an act of Congress."

But advocates of rights for gay people said a Congress that passed the 1996 Defense of Marriage Act, legislation that withholds Federal benefits from the partners of gay men and women, is unlikely to change immigration law to help couples like Mr. Yahya and Mr. McCoy.

Representative Bob Barr, a conservative Republican from Georgia, agreed that such legislation would stand little chance.

"It never ceases to amaze me the off-the-wall things people come up with," he said. "How would immigration officials distinguish between life partners and sex partners? How would they even know who is homosexual and who isn't? There would be so much room for abuse."

For many couples, staying together requires a combination of luck, guile and, sometimes, a willingness to break the law.

Foreigners with special skills may qualify for work permits, but such visas are hard to get and last only six years. Some remain here on tourist visas, which allow them to come and go but are issued with the expectation that the visa holder will live in his or her home country and visit the United States occasionally. And so every few months, as a way of pretending that they do not actually live here, such people leave the country, hoping that a border agent will not turn them back on their return.

For a handful, there is asylum, but that option is available only to those who can prove that returning to their home country would expose them to some form of persecution.

There is also the "green card marriage," a fake union to someone of the opposite sex. Such an arrangement is a felony, however, with penalties of imprisonment, fines and a lifetime ban on re-entering the country.

Many who are desperate simply ignore the laws and remain here illegally when their proper documents expire.

And for many, moving to the partner's country, even if the American is willing to give up family and career, is impossible in the face of similar or even more severe immigration restrictions.

When all else fails, there is Canada, one of 10 countries that grant immigration rights to same-sex partners. A growing number of gay Americans are moving there, though many say they do so bitterly.

Bruce MacDonald, 48, a medical social worker in Seattle, has applied to the Canadian Government for immigrant status. If granted, he will have the right to bring in his partner, a Thai national who has been repeatedly denied a visitor's visa by the United States. So far the process has taken two years and cost Mr. MacDonald \$4,000 in legal fees.

"Imagine being forced by your government to leave behind family and friends because your relationship has no value," Mr. MacDonald said. "It's wrenching."

Sitting in the fluorescent glare of an Immigration Court waiting room in Newark last month,

Christiana Pacheco and Alexandra Sousa anxiously held hands while a Federal immigration judge decided their future. With a ticket to Lisbon in her pocket, Ms. Sousa was prepared for the worst.

For the last eight years, the two women have shared a modest ranch house in a Philadelphia suburb, where they have been raising Katie, Ms. Pacheco's 8-year-old daughter from her former marriage.

Born in Portugal, Ms. Sousa, 29, came to the United States with her family as a teen-ager. When her parents returned home several years ago, she was already involved with Ms. Pacheco and decided to stay, even though she was not here legally. "At that point, I had a family of my own," she said.

When the new immigration laws were passed three years ago, Ms. Sousa, a software designer, decided to deal with her undocumented status. On the advice of a lawyer, she filed an asylum claim, citing anti-gay persecution at home. She now realizes it was a mistake.

Isn't There Some State?

During a hearing last year, Judge Nicole Y. K. Kim found no grounds for asylum and suggested the women find another way to preserve their family. "Isn't there some state where you two can get married?" the judge asked. No, there is not, and even if there were, the 1996 Federal law denies gay couples any benefits of marriage under immigration rules.

On this February morning, Judge Kim was deciding whether Ms. Sousa should be deported immediately — which would have meant being barred from re-entry for up to 10 years — or allowed to leave and preserve her right to return someday. The judge granted her 120 days to leave, the maximum, and wished her good luck.

"I feel like I'm dying," Ms. Sousa said as the couple and their lawyers left the courtroom. The most harrowing thing, she said, was having to break the news to the child she had raised since infancy. "She won't understand that I don't have the proper papers, that I have to go far away," she said.

Representative Jerrold L. Nadler said he hoped to introduce legislation that would give same-sex partners immigration rights. But Mr. Nadler, a Democrat from New York, said he was not optimistic that such a bill would pass.

"In a Republican Congress, the chances are zero to none," he said. "Anything you do to help gay people deal with real-life problems they see as an affirmation of the gay life style."

The Lesbian and Gay Immigration Rights Task Force, which has about 7,000 members and seven branches nationwide, has started a lobbying campaign to change the law, but its leaders acknowledge that it might be years before the changes gain favor in Congress. It has been only a decade, they point out, since Congress repealed a law that barred gay men and women from entering the United States at all.

Despite the insecurity of holding a temporary student visa, Michel Buffet, a 29-year-old French national, bought a house this month in Montclair, N.J., with his American partner, Robert Mogel, a vice president of a medical supply company. The couple, who have been together for nine years, are also planning to adopt a child.

As he comes to the end of his doctoral program in organizational psychology at Columbia University, Mr. Buffet hopes to secure a work visa by persuading officials that he has skills that are needed in this country -- the only way he can stay here legally.

"I don't think either of us will ever feel relaxed," Mr. Buffet said, "until I have that paper in my hand."

Although he has no clear strategy for bringing him back, Kent McCoy still keeps Samer Yahya's voice on his answering machine's outgoing message. The two communicate several times a day by E-mail, and though Trinity College continues to hold Mr. Yahya's scholarship, Mr. McCoy says

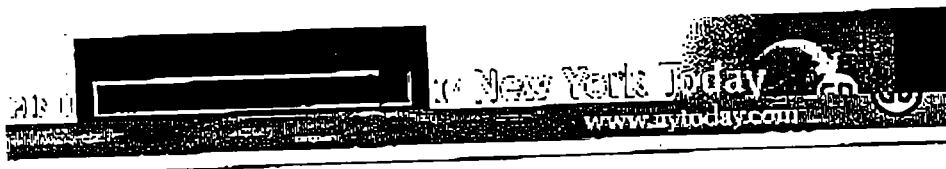
he is starting to lose hope.

At the moment, moving to Canada looks like the only viable option, but Mr. McCoy cringes at the thought of giving up his architectural practice, his friends and his home.

"I'm the third generation in Hartford," he said. "I have an elderly mother to look after. My whole life is here."

He mentioned a friend who recently met a woman during a vacation in Russia. After a brief romance, they were married, and six weeks later, she was living in the United States.

"I'm not asking for special rights," he said. "All I want is to be treated like everyone else."



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Elizabeth J. Potter
03/07/2000 11:43:30 AM

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Subject: Immigration: gay and lesbian

Washington Post, March 6, 2000

1150 15th Street NW, Washington, DC, 20071

(Online Mailer:

<http://www.washingtonpost.com/wp-srv/edit/letters/letterform.htm>)

'Family Values' Force Me to Live Far From My Home

By Jamie James

DENPASAR, Bali, Indonesia I was born and raised in Texas, studied in Massachusetts and lived my adult life in New York City, but now I must leave the United States. The reason I can't live in my own country is because the man I have chosen to make a home with is Indonesian, and my government will not allow him to visit me.

Citizens of certain rich nations don't need visas to come to the United States, but our law decrees that other foreigners seeking to visit are presumed to be intending to immigrate and must convince the State Department otherwise in order to get a visa. In Indonesia, the only way to do that is to produce a bank statement proving that you're wealthy with a wife and children.

My partner's name isn't Agus, but that will do. I met him four years ago when I was in Jakarta on assignment for the New Yorker magazine. He is financially self-sufficient and has traveled widely. The Australian, French, German and Swiss governments all have issued him visas, and he has traveled in those countries and then returned to Indonesia in timely fashion.

Yet when Agus appears for his one-minute interview at the American Embassy in Jakarta, it wouldn't matter if he had received visas from every nation on earth: A single man who isn't rich doesn't have a chance.

Rep. Jerrold Nadler (D-N.Y) has introduced a bill to bring American immigration law into conformity with that of the other English-speaking democracies and most of Western Europe by granting immigration rights to same-sex partners.

The number of gay bi-national couples is small, but the present law is cruel to us. Imagine having to choose between love and country. Whenever the subject of Agus's visa woes comes up in conversations with my friends from Western Europe or Australia or Canada, they say, "But why don't you just sponsor him?" And I must explain that unlike their countries, where a citizen's choice of life partner is respected, the United States makes it a policy to keep out foreigners from certain countries who "profile" gay.

Canada, Australia and New Zealand have had programs for same-sex sponsorship of foreign partners for years. In Great Britain, the waiting period for residency of foreign partners has just been reduced to two years. France recently created a similar program.

Opponents of Nadler's bill may say that it offends their morality, that

it is a threat to the institution of marriage. Is the United States more moral than Canada or New Zealand? Is the institution of marriage in a more parlous state here than in Australia or Great Britain? Or is it that the United States is more intolerant than those countries?

Last year I gave up. I resigned my post as an art critic for the New Yorker, informed the Times of London that I would no longer be able to cover cultural events in America for it, told my agent where to forward the royalty checks for my books and came to Indonesia to live with Agus.

We have a comfortable house with a garden in Bali. Life here is a bit dull after Manhattan, but it's a happy home. I keep up with the news from the States on the Internet, and almost every day there's another story that makes me feel less inclined to return.

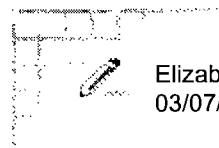
I don't rejoice in my exile. I've had to give up a lot. Most of all I miss my family, but my government, in the name of "family values," forces me to choose between them and my companion in life. I miss my friends in New York. How I'd love to take Agus to a Broadway show, show him the Berkshires after a good snowfall, let him taste real Texas barbecue. My nephew and niece could learn much from him. But none of that will happen until the law changes.

All my life, I've heard about the rights and freedoms and privileges I have as an American. How false all that sounds to me now, as my country denies me the most basic privilege of life: the right to make a home.

Jamie James is a writer.

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San Francisco Chronicle, March 5, 2000

A Legitimate Concern

Berndt and Tim had lived together as a couple for 6 years

Dave Ford, Chronicle Staff Writer

Until recently, Tim Sally and Berndt Schmidt, both 43, saw no reason to attempt to legitimize their nine-year relationship.

After all, they'd lived together six years in San Francisco. Sally had a thriving massage therapy practice. Schmidt, a native of Germany, taught his mother tongue at an East Bay private school during those years under the provisions of a once-renewed three-year work visa. Like many couples, they enjoyed a life lived well together. It was almost like they were married.

But, of course, they weren't. Legally, they couldn't be. Worse, for the couple, Schmidt (a pseudonym) was unable to get permanent resident alien status (or a "green card") before his work visa expired last month. So, he returned to Germany February 23, leaving Sally, their home, their friends, his students and, Sally says, the couple's dreams on hold.

"I'm feeling sad, of course, and angry," Schmidt said on the eve of his flight to Germany. "It feels like I'm being evicted."

Having heard friends who had undergone a similar course of action that the green card application process takes about a year, the couple in February 1999 sat down with a lawyer specializing in immigration law to begin applying.

But the lawyer told them the process now takes up to three years due to backlogs in labor certification required for green card approval. That meant they were way too late.

The couple, Sally said, went into "crisis mode." They registered as domestic partners in San Francisco and in California, although the registrations are not covered under federal law determining immigration status. Also, they brandished the rental agreement they both signed in 1993, proving their long-term cohabitation.

"We really never saw the need for legitimization of our relationship until we started getting into this situation with immigration issues," Sally said.

Their final hope, that Schmidt would be selected in the INS's annual lottery for permanent alien resident status (which is separate from the standard application process), were dashed last August.

Reluctantly, the couple prepared for their separation, during which Schmidt will teach at a Mannheim school as he struggles to return here under a new work visa.

Sally said they have endured emotional and financial hardship; Schmidt's

domestic-partner insurance has evaporated, for example, leaving Sally uninsured.

"I don't think anyone should have to experience this kind of forced separation by a government," Sally said.

Gays and lesbians have long been accustomed to hardships caused by not having the rights accorded legally sanctioned relationships. In recent decades, the assumption that they should be denied the benefits of marriage has begun to crumble.

Hence the bitter battle over Proposition 22, the initiative on Tuesday's ballot that states, "Only marriage between a man and a woman is valid or recognized in California."

"If a state did open up marriage laws to include gay and lesbian couples," Sally said, "then that would be a legitimate way to go through the immigration system and petition for a green card for your spouse."

Sally and Schmidt spent their last evening at home, quietly discussing their lives. Sally was to drive Schmidt the next morning to San Francisco International Airport.

"Up until today, (the impending separation) really hasn't been real," Sally said. "Today I'm starting to get these knots in my stomach. It's like my whole world comes screeching to a halt after I take him to the airport."

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Gay Couples Are Divided by '96 Immigration Laws

Commitments Have No Legal Standing

By ANDREW JACOBS

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Caught in Grip Of Inflexible Law

And since 1996, when Congress passed a collection of new immigration laws, the few provisions that once were interpreted to allow gay partners to stay in this country have been eliminated. These laws were aimed, in general, at slowing the tide of illegal immigrants coming to this country, not in particular at this group. But gay couples have been caught up in its strict enforcement.

For example, judges, who previously had the discretion to waive a deportation on humanitarian grounds and might have allowed someone like Mr. Yahya to stay, are now obliged to deport such illegal immigrants — even when they and their partners share mortgages, businesses, homes and children.

As a result, immigration lawyers estimated, tens of thousands of relationships have been thrown in jeopardy or broken apart by the new deportation drive, which has sent nearly 290,000 immigrants back to their countries since 1997, more than double the number from the previous two years.

"It doesn't matter that we've been sharing a home and a life for years, that we're essentially married," said Mr. McCoy, 46, an architect who lives in Hartford. "We've been torn apart."

Elaine Komis, a spokeswoman for the Immigration and Naturalization Service, said there was nothing her agency could do. "We don't make the laws," she said. "Congress does. This would be a major change to the immigration preference system, one that requires an act of Congress."

But advocates of rights for gay people said a Congress that passed the 1996 Defense of Marriage Act, legislation that withholds Federal benefits from the partners of gay men and women, is unlikely to change immigration law to help couples like Mr. Yahya and Mr. McCoy.

Representative Bob Barr, a conservative Republican from Georgia, agreed that such legislation would stand little chance. "It never ceases to amaze me the off-the-wall things people come up with," he said. "How would immigration officials distinguish between life partners and sex partners? How would they even know who is homosexual and who isn't? There would be so much room for abuse."

For many couples, staying together requires a combination of luck, guile and, sometimes, a willingness to break the law. Foreigners with special skills may qualify for work permits, but such visas are hard to get and last only six years. Some remain here on tourist visas, which allow them to come and go but are issued with the expectation that the visa holder will live in his or her home country and visit the United States occasionally. And so every few months, as a way of pretending that they do not actually live here, such people leave the country, hoping that a border agent will not turn them back on their return.

For a handful, there is asylum, but that option is available only to those who can prove that returning to their home country would expose them to some form of persecution.

There is also the "green card marriage," a fake union to someone of the opposite sex. Such an arrangement is a felony, however, with penalties of imprisonment, fines and a lifetime ban on re-entering the country.

Many who are desperate simply ignore the laws and remain here illegally when their proper documents expire.

And for many, moving to the partner's country, even if the American is willing to give up family and career, is impossible in the face of similar or even more severe immigration restrictions.

When all else fails, there is Canada, one of 10 countries that grant immigration rights to same-sex partners. A growing number of gay Americans are moving there, though many say they do so bitterly.

Bruce MacDonald, 48, a medical social worker in Seattle, has applied to the Canadian Government for immigrant status. If granted, he will have the right to bring in his partner, a Thai national who has been repeatedly denied a visitor's visa by the United States. So far the process has taken two years and cost Mr. MacDonald \$4,000 in legal fees.

"Imagine being forced by your government to leave behind family and friends because your relationship has no value," Mr. MacDonald said. "It's wrenching."

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1/2

Sitting in the fluorescent glare of an Immigration Court waiting room in Newark last month, Christiana Pacheco and Alexandra Sousa anxiously held hands while a Federal immigration judge decided their future. With a ticket to Lisbon in her pocket, Ms. Sousa was prepared for the worst.

For the last eight years, the two women have shared a modest ranch house in a Philadelphia suburb, where they have been raising Katie, Ms. Pacheco's 8-year-old daughter from her former marriage.

Born in Portugal, Ms. Sousa, 29, came to the United States with her family as a teen-ager. When her parents returned home several years ago, she was already involved with Ms. Pacheco and decided to stay, even though she was not here legally. "At that point, I had a family of my own," she said.

When the new immigration laws were passed three years ago, Ms. Sousa, a software designer, decided to deal with her undocumented status. On the advice of a lawyer, she filed an asylum claim, citing anti-gay persecution at home. She now realizes it was a mistake.

'Isn't There Some State?'

During a hearing last year, Judge Nicole Y. K. Kim found no grounds for asylum and suggested the women find another way to preserve their family. "Isn't there some state where you two can get married?" the judge asked. No, there is not, and even if there were, the 1996 Federal law denies gay couples any benefits of marriage under immigration rules.

On this February morning, Judge Kim was deciding whether Ms. Sousa should be deported immediately — which would have meant being barred from re-entry for up to 10 years — or allowed to leave and preserve her right to return someday. The judge granted her 120 days to leave, the maximum, and wished her good luck.

"I feel like I'm dying," Ms. Sousa said as the couple and their lawyers left the courtroom. The most harrowing thing, she said, was having to

break the news to the child she had raised since infancy. "She won't understand that I don't have the proper papers, that I have to go far away," she said.

Representative Jerrold L. Nadler said he hoped to introduce legislation that would give same-sex partners

immigration rights. But Mr. Nadler, a Democrat from New York, said he was not optimistic that such a bill would pass.

"In a Republican Congress, the chances are zero to none," he said. "Anything you do to help gay people deal with real-life problems they see as an affirmation of the gay life style."

The Lesbian and Gay Immigration Rights Task Force, which has about 7,000 members and seven branches nationwide, has started a lobbying campaign to change the law, but its leaders acknowledge that it might be years before the changes gain favor in Congress. It has been only a decade, they point out, since Congress repealed a law that barred gay men and women from entering the United States at all.

Despite the insecurity of holding a temporary student visa, Michel Buffet, a 29-year-old French national, bought a house this month in Montclair, N.J., with his American partner, Robert Mogel, a vice president of a medical supply company. The couple, who have been together for nine years, are also planning to adopt a child.

As he comes to the end of his doctoral program in organizational psychology at Columbia University, Mr. Buffet hopes to secure a work visa by persuading officials that he has skills that are needed in this country — the only way he can stay here legally. "I don't think either of us will ever feel relaxed," Mr. Buffet said, "until I have that paper in my hand."

Although he has no clear strategy for bringing him back, Kent McCoy still keeps Samer Yahya's voice on his answering machine's outgoing message. The two communicate several times a day by E-mail, and though Trinity College continues to hold Mr. Yahya's scholarship, Mr. McCoy says he is starting to lose hope.

At the moment, moving to Canada looks like the only viable option, but Mr. McCoy cringes at the thought of giving up his architectural practice, his friends and his home.

"I'm the third generation in Hartford," he said. "I have an elderly mother to look after. My whole life is here."

He mentioned a friend who recently met a woman during a vacation in Russia. After a brief romance, they were married, and six weeks later, she was living in the United States.

"I'm not asking for special rights," he said. "All I want is to be treated like everyone else."

2/2