LGBTQ IMMIGRATION: ENSURING EQUALITY FOR ALL $\mathbf{1}^{\mathrm{ST}}$ EDITION

TABLE OF CONTENTS

Chapter 1	Introduction to LGBTQ Immigration				
§ 1.1 § 1.2	A Note from the ILRC Regarding Language & the LGBTQ Acronym History and Background of LGBTQ Immigration	1-1			
§ 1.3	Introduction to This Manual	1-3			
Chapter 2	Working with LGBTQ Immigrants				
§ 2.1	The ABC's of LGBTQ: Terminology in Context	2-1			
§ 2.2	Creating a Welcoming Environment for LGBTQ Clients	2-6			
§ 2.3	Best Practices for Working with LGBTQ Immigrant Clients				
§ 2.4	Working with Victims of Violence and Trauma	2-12			
§ 2.5	Special Considerations for Transgender Immigrants: Identity				
	Documents	2-15			
§ 2.6	Helpful Resources	2-20			
Chapter 3	Marriage-Based Immigration for Same-Sex Binational Couples				
§ 3.1	Introduction	3-1			
§ 3.2	Overview of the Family Immigration Process: A Two-Step Process				
§ 3.3	The Legal Standard for a Same-Sex Marriage				
§ 3.4	Proving That a Same-Sex Marriage Is Bona Fide				
§ 3.5	Revocation of a Visa Petition				
§ 3.6	Immigrating Children	3-16			
§ 3.7	Protection for the Foreign Spouse and the Children When				
	the Petitioner Dies	3-25			
§ 3.8	General Overview of Adjustment of Status	3-26			
§ 3.9	Consular Processing with Special Considerations				
	for Same-Sex Couples	3-30			
§ 3.10	The Green Card Interview in Same-Sex Marriage Cases				
§ 3.11	The K-1 Nonimmigrant Visa for Same-Sex Fiancées of USC's				
§ 3.12	Inadmissibility and Waivers				
§ 3.13	What Is Conditional Resident Status				
§ 3.14	The I-751 Joint Petition to Remove the Conditions on Residence	3-52			
§ 3.15	The I-751 Waivers of the Requirement for a "Jointly Filed" I-751	3-54			
§ 3.16	Domestic Violence in the Context of LGBTQ Relationships	3-55			
§ 3.17	VAWA Protections for LGBTQ Spouses of U.S. Citizens				
	and Lawful Permanent Residents				
§ 3.18	Eligibility Requirements of a VAWA Self-Petition	3-57			

Chapter 4	Asylum Protection for LGBTQ Immigrants	
§ 4.1	Introduction	4-1
§ 4.2	Identifying Persecution in the LGBTQ Context	
§ 4.3	Identifying the Persecutor: State vs. Non-State Actors	4-13
§ 4.4	The Well-Founded Fear Standard and Past Persecution	4-15
§ 4.5	Well-Founded Fear: the Subjective and Objective Elements	4-19
§ 4.6	LGBTQ Identities as Particular Social Groups & the Nexus	
	Requirement	4-24
§ 4.7	The One-Year Deadline	4-33
§ 4.8	Credibility and Frivolous Applications	4-41
§ 4.9	Other Bars to Asylum	4-45
§ 4.10	Withholding of Removal and the Convention Against Torture	4-50
§ 4.11	A Note about Asylum Procedure	4-53
§ 4.12	Resources	4-55
Chapter 5	U Nonimmigrant Status & Other Options for Vulnerable LGBTQ)
F	Immigrants	-
§ 5.1	The U Visa and LGBTQ Immigrants	5-1
§ 5.2	U Nonimmigrant Status Eligibility Requirements	
§ 5.3	Qualifying Criminal Activity	
§ 5.4	Hate Crimes	5-8
§ 5.5	Victim Definitions	5-12
§ 5.6	Suffered Substantial Physical or Mental Abuse	5-17
§ 5.7	Helpful, Has Been Helpful, or Is Likely to Be Helpful	
	in the Criminal Investigation or Prosecution	5-19
§ 5.8	The Victim's Helpfulness Must Be Certified by a Government	
	Agency with Authority to Detect, Investigate, or Prosecute the	
	Qualifying Criminal Activity	5-20
§ 5.9	Inadmissibility and the U Visa Waiver	5-22
§ 5.10	Introduction to Other Form of Relief for Vulnerable	
	LGBTQ Immigrants	5-24
Chapter 6	Advocating for LGBTQ Immigrants in Immigration Detention	
§ 6.1	Detention and LGBTQ Immigrants	6_1
§ 6.1 § 6.2	How DHS Places an Individual in Detention	
§ 6.2 § 6.3	Release from Immigration Detention	
§ 6.4	Relief for LGBTQ Detainees While in Custody	
§ 6.5	Resources and Technical Assistance	
5 0.5	resources and reclinical rissistance	0-22

INDEX OF APPENDICES

- Appendix A
 Appendix B

 List of Resources
 USCIS Policy Memorandum, "Adjudication of Immigration Benefits for
 Transgender Individuals; Addition of Adjudicator's Field Manual (AFM)
 Subchapter 10.22 and Revisions to AFM Subchapter 21.3 (AFM Update AD12-02)," April 10 2012.
- Appendix C State Department Procedure for Requesting a Gender Change: Foreign Affairs Manual at 7 FAM 1300 Appendix M, "Gender Change." December 12, 2014.
- Appendix D USCIS Frequently Asked Questions Regarding Same-Sex Marriages, Statement from Secretary of Homeland Security Janet Napolitano on July 1, 2013, last updated on April 3, 2014.
- Appendix E State Department, "U.S. Visas for Same-Sex Spouses: FAQs for Post-Defense of Marriage Act"
- Appendix F List of LGBTI-Related Case Law, excerpt from USCIS Refugee, Asylum and International Operations (RAIO) Directorate -- Officer Training "Guidance for Adjudicating Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Refugee and Asylum Claims." November 28, 2011, pgs. 57-59.
- Appendix G United Nations High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 9: Claims to Refugee Status Based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 23 October 2012, HCR/GIP/12/01.
- Appendix H UNHCR "Guidelines on Claims to Refugee Status based on Sexual Orientation and/or Gender Identity," October 2012.
- Appendix I Amici from LGBT and Immigrant Rights Organizations in case of *Castro-Martinez v. Holder*, 641 F.3d 1103, 1108 (9th Cir. 2011).
- Appendix J Amici of LGBT and Immigrant Rights Organizations in case of *Samuel Leyva-Ruiz v, Holder*, Case No. 13-74497.
- Appendix K Administrative Appeals Office decision regarding issue of felonious assault in application for U Nonimmigrant classification. March 19, 2015.
- Appendix L Decision of the Board of Immigration Appeals regarding persecution based on sexual orientation and HIV-status; establishment of well-founded fear through past persecution; exceptions to the one-year deadline; and question of persecution perpetrated by private actors.
- Appendix M Jeh Charles Johnson, Secretary of the Department of Homeland Security, "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants," November 20, 2014.
- Appendix N ICE's Policy Directive No. 11002.1, "Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture," December 8, 2009.