



I ILLINOIS

Student Legal Services

STUDENT AFFAIRS

TRAVEL ISSUES FOR LGBT STUDENTS

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Nations where same sex marriage is legal or recognized as of September, 2019:



- Argentina
- Australia
- Austria
- Belgium
- Brazil
- Canada
- Colombia
- Denmark
- Ecuador
- England and Wales
- Finland
- France
- Germany
- Greenland
- Iceland
- Ireland
- Israel (*recognized, only*)
- Luxembourg
- Malta
- Mexico (*recognized throughout; legal to be married only in certain cities/states*)
- Netherlands
- New Zealand
- Norway
- Portugal
- Scotland
- South Africa
- Spain
- Sweden
- Taiwan
- United States of America
- Uruguay

Nations with other legal status for same sex couples, as of September, 2019:



<u>Country</u>	<u>Status</u>
Andorra	Civil Union
Chile	Civil Union
Croatia	Life partnership
Cyprus	Civil partnership
Czech Republic	Registered Partnership
Estonia	Registered partnership
Greece	Civil partnership
Hungary	Registered partnership
Italy	Civil Union
Liechtenstein	Registered partnership
Malta	Civil union
Slovenia	Registered Same-sex partnership
Switzerland	Registered partnership

Reciprocity of Recognition

- ▶ Where each nation recognizes or has legalized same sex marriage, the marriage is *prima facie* lawful in each country, but as in “all marriages”, there are possible challenges to legitimacy:
 - ❖ Countries and U.S. states have different levels of consanguinity for the validity of marriage. For example, where a nation forbids marriage between relatives closer than fourth cousins that nation does not have to recognize a foreign marriage between third cousins.
 - ❖ Plural marriages are lawful in many countries, but countries that do not recognize plural marriages are not required to recognize a foreign plural marriage.
 - ❖ This concept is equally true with same sex marriage. In law this is frequently called the doctrine of **Comity**, i.e., where policies/ laws are consistent or do not violate what a country deems to be fundamental, the marriage is likely to be deemed valid and therefore recognized.



High Risk Nations for LGBT:

- ▶ Same sex marriage is NOT lawful in a majority of nations; this remains overwhelmingly true as of September 15, 2019
- ▶ L.G.B.T as either a "status" or an "act" remains criminal in much of the world
- ▶ **Uganda: Anti-Homosexuality Act:** *A person who purports to contract a marriage with another person of the same sex commits the offense of homosexuality and shall be liable, on conviction, to imprisonment for life.*
- ▶ **Russian Federation: "Promoting non-traditional relationships"**
This act is ostensibly designed to protect children from all sorts of concerns such as pornography, offensive language, etc., but is actually a basis for suppression of L.G.B.T status, e.g., demonstrating on behalf of L.G.B.T issues could be "viewed" by children so is subject to sanction; "appearing" to be L.G.B.T could result in sanction, but perhaps more dangerously, police brutality and brutality by public that is ignored by authorities.
- ▶ Study Abroad? Traveling abroad?



The News Gazette, 10/24/2015

New law targets homosexual acts

BANDA ACEH, Indonesia (AP) — A law that makes gay sex punishable by public caning took effect Friday in a conservative Indonesian province.

The law in Aceh province stipulates that anyone caught having homosexual sex can face up to 100 strokes of a cane, a fine of up to 2.2 pounds of gold (about \$37,400) and imprisonment of up to 100 months. Adulterers are

Even Higher Risk Nations.....

- ▶ At least thirteen nations have the Death Penalty for Homosexual Acts:

<p>Afghanistan (in areas still controlled by the Taliban)</p> <p>Brunei (No stoning since 1957, but Sharia law became effective in 2014 and allow it)</p> <p>Iran</p> <p>Iraq</p> <p>Mauritania</p> <p>Nigeria</p>	<p>Pakistan (under Sharia Law since 1990)</p> <p>Qatar</p> <p>Saudi Arabia</p> <p>Somalia</p> <p>Sudan</p> <p>United Arab Emirates</p> <p>Yemen</p>
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- ▶ L.G.B.T persons in the U.S. from these countries may have a basis to seek "asylum" under the Immigration Code.
 - ❖ Asylum generally must be sought within one year of arrival in U.S., and an applicant must "demonstrate actual mistreatment in home country" or "persistent actions/culture of persecution in home country".
 - ❖ If asylum is granted, a "green card" (permanent resident card) can be obtained one year later.
- ▶ Study Abroad? Traveling abroad?



The Dirty Little Secret of U.S. Immigration Law: “It is designed to Exclude not to Include.”

- One may seek admission to the U.S. in a number of ways, e.g., visitor visa, Student visa, investor visa, etc. A background check will **always** take place although these are “non-immigrant” visas.

- Immigrant Visas for L.G.B.T. persons for purpose of our discussion are:

K-1 Fiancé Visa:

- A. Intend to marry U.S. Citizen,
- B. Have met intended spouse within two years (waived for hardship/culture),
- C. Legally able to marry.

Must meet U.S. legal marriage standards:

1. Age
2. Consanguinity
3. Mental Capacity
4. Certified proof of decree if either party has been divorced.

- The U.S citizen/permanent resident will be the one who in effect becomes the sponsor of the Fiancé and will need to be able to prove U.S. citizenship/permanent resident status as part of the application process and financial support.



The Dirty Little Secret of U.S. Immigration Law: *"It is designed to Exclude not to Include."* continued

What can go wrong?



- ▶ The Fiancé may be excluded because of : Crimes of Fraud, Moral Turpitude, Tax Evasion, Perjury, Disease, etc.
- ▶ Crimes do not require an actual conviction, but merely sufficient factual basis to establish the elements of the offense. Police reports may be used, whereas they are generally not admissible as evidence in Courts.
- ▶ Immigration does not apply standards of "beyond a reasonable doubt" for purposes of exclusion or denial of entry.
- ▶ Immigration is highly "form" oriented and perfection in the application is required. A minor error such as forgetting a middle initial/name or leaving a space blank can lead to rejection.

U.S. Student has same sex marriage to International Student: Legal Ramifications



- ▶ An International Student in the U.S. is on a “non-immigrant” visa as a general rule. J-1 or F-1
- ▶ J-1 Visa holder will generally have to return for two years to home country despite being married to U.S. Citizen; U.S. spouse can file petition but waivers are possible: hardship, U.S. agency wants you to stay for work, hardship for spouse and the factors related to asylum which may be compelling for same sex couples.
- ▶ F-1 Visa holder can adjust visa status once lawfully married without leaving U.S. Use form 1-130 and permission to work 1-765.(Green Card) Initial goal is “permanent resident” status.
- ▶ **THERE IS NO SUCH THING AS AUTOMATIC CITIZENSHIP!**

Impact of Divorce



- Divorce alone does not, in and of itself, stop the investigation of the application for permanent residence status. If it was a “sham” marriage, both spouses could be subject to severe perjury penalties if they confess to the falsity of the marriage. Thus, there is an incentive **not** to tell the truth.
- Legitimacy of marriages are **always** investigated.
 - ❖ Was it a paid for deal? Or was it a bona fide personal relationship?
 - ❖ If the latter, then divorce will not destroy application for permanent residence and possible eventual citizenship.
- Interview by I.C.E. will usually mean at least a two year wait, thus divorce is possible as marriages are frequently of short duration.
 - ❖ Both former spouses must cooperate and appear at the interview, or success is less than likely.
 - ❖ A transcript of the divorce hearing may be needed as it may establish the personal relationship and therefore the bona fide marriage.

Other Power Point presentations with further information on the Student Legal Service website (odos.illinois.edu/sls):



- Changing Gender on ID Documents
- Name Change and Gender Change in Illinois



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Office Hours: Monday-Friday, 8:30 am-Noon and 1:00-4:30 pm

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