

Immigration Issues and Resources

*The complex system of rules and laws relating to United States immigration can be frightening and difficult for anyone to navigate—even more so for lesbian, gay, bisexual and transgender immigrants and people with HIV. LGBT and HIV-positive people may experience harassment or persecution in their home countries. At the same time, their sexual orientation or HIV status can also be a disadvantage in gaining or maintaining legal immigration status in the U.S. GLAD has developed this fact sheet to answer some of the most common questions. However, **the following is only intended to provide legal information, not legal advice, and you should consult with an immigration expert to discuss your specific situation.** You can call GLAD for a referral to an immigration attorney sensitive to the needs of LGBT and HIV-positive people. In addition, please see the list of resources at the end of this publication for a listing of legal services, and local, national, and international advocacy groups.*

Legal Status

How can an immigrant get a legal status to stay in the U.S.?

An immigrant can apply for legal permanent residency (LPR). This is the same thing as a “green card” or Alien Registration Card.

How can an immigrant obtain a green card?

There are various ways of obtaining legal permanent residency. Here are some of the most common:

- *Family-sponsored immigration*—if you are a different-sex spouse, parent, or unmarried child of a U.S. citizen.
- *Employment-based immigration*—if there is a demonstrated lack of U.S. workers for a specific position, generally a professional position requiring a university degree.
- *Diversity visa lottery*—there are only a limited number of these immigrant visas, and they are only available to immigrants from certain countries.
- *Asylum*—for people who fear persecution in their home countries and seek protection in the U.S.
- Other options may be available in unusual circumstances. To learn more about any of these options, you should consult with an immigration expert.

Same-Sex Partners

What if my partner and I legally marry in Massachusetts or another country? Will that allow me to sponsor my spouse for U.S. immigration?

No. A federal law, the so-called “Defense of Marriage Act” (DOMA) passed in 1996, states that the federal government will not respect same-sex marriages. Applying for legal permanent residence based on your marriage to a person of the same sex could lead to deportation if you are out-of-status. Simply getting married could cause problems if you are applying for a non-immigrant visa or status like a tourist or student visa. If you are married a U.S. immigration official may deny you entry to the U.S. on the ground that you intend to remain in the U.S. permanently rather than merely temporarily. Your marriage would be evidence of an intention to remain, i.e., that you are not merely a tourist or student. Also, if you are married and fail to disclose that information to custom officials, the misrepresentation can bar you from future immigration benefits or put you at risk for deportation. Before getting married, you should consult a qualified immigration attorney who is knowledgeable about LGBT issues for individualized advice about your situation.

If my partner and I enter into a civil union, will the government recognize it for immigration purposes?

No, entering in a civil union can pose the same problems for immigration that are listed above for marriage.

Do other countries recognize same-sex partnerships for immigration purposes?

Yes. 16 countries consider same-sex partners as families for immigration purposes: Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, South Africa, Sweden, and the United Kingdom.

What can be done to try to change the lack of recognition for same-sex couples for U.S. immigration purposes?

You can support the Uniting American Families Act (UAFSA) which would create government recognition of same-sex partnerships and allow U.S. citizens and residents to sponsor their permanent, same-sex partners for immigration benefits even if U.S. laws continue to prohibit marriage for same-sex couples. If you would like to find out how you can help secure passage of UAFSA, contact Immigration Equality at www.immigrationequality.org or 212-714-2904.

HIV/AIDS

Can I visit the US or get a green card if I am HIV positive?

Generally, people with HIV are barred from both entering the country and receiving Legal Permanent Resident status (a green card). However, some waivers are available that permit people to enter the country or change their status to LPR. Before applying for a green card, you may want to find out your HIV status ahead of time at a site that conducts anonymous testing. You can find such a site by calling the National AIDS Hotline at 1-800-342-AIDS.

What types of waivers are available?

HIV Waiver—Family: If you have an immediate family member that is a legal permanent resident or a citizen, they may obtain an HIV waiver on your behalf. To qualify, you must show that a close relative who is a U.S. citizen will sponsor you, that you will not be a danger to public health, that there is a minimum possibility of you spreading HIV, and that you will not become a “public charge.”

HIV Waiver—Humanitarian: See section on asylum below.

How does the government determine if you are a “public charge”?

The government may determine you are a “public charge” and deny you legal permanent residency or re-entry into the U.S. if you leave for a period of time. A “public charge” is a person who cannot support him- or herself without cash benefits such as Social Security Income (SSI). Public charge is not a barrier to obtaining citizenships, nor is it an issue for people granted asylum. To determine whether a person will become a public charge, the government looks at a number of factors including age, health, income, family size and education and skills.

If I am already a legal permanent resident and I discover I am HIV-positive, can I apply for naturalization to become a citizen?

Yes. You do not have to take an HIV test when you apply for naturalization, and the rules that exclude applicants from legal permanent residency or from entry into the country do not apply in this case. However, you should speak to an immigration attorney who can advise you on any other HIV-related issues that may arise in the naturalization application process.

Asylum Based on Sexual Orientation or HIV/AIDS Status

Some immigrants have been granted asylum in the U.S. based on extreme persecution in their home countries. In such cases, the government of that home country is usually either the perpetrator of the persecution, or unwilling or unable to stop the persecution.

In order to qualify for asylum, you must be physically present in the U.S. or at an airport or border crossing of the U.S. You must prove you either cannot or will not return to your country because you have a “well founded fear of persecution” based on your race, religion, nationality, political opinion, or membership in a particular group (such as LGBT or HIV-positive people). Although you may apply for asylum regardless of your immigration status, if you entered the country illegally, you have just one year to apply. There are also some risks involved in applying for asylum if you are undocumented: the application may be used as evidence in removal proceedings. To prove your claim for asylum, you must provide corroborating evidence of the specific conditions in your country for gays and lesbians, or people with HIV/AIDS. Documentation may take a variety of forms including expert witness testimony, reports by human rights organizations and academic research papers.

For legal advice about a specific situation, you must consult an immigration attorney or a legal clinic, such as those on the following list of resources. For a referral to an immigration attorney in New England, please call GLAD's Legal InfoLine at 800-455-GLAD from 1:30-4:30 pm Monday-Friday to access our Lawyer Referral Service.

Immigration Resources

Local Resources

Legal Clinics/Representation

These organizations have attorneys on staff and can provide comprehensive services, including advice about immigration options, execution of a variety of applications, representation in asylum and deportation proceedings, consultations on complex cases.

Greater Boston Legal Services (GBLS)

Main Office: (617) 371-1234, 197 Friend St., Boston, MA 02114

Cambridge/Somerville Office: (617) 603-2700, 60 Gore Street, Suite 203, Cambridge, MA, 02141

www.gbls.org

Immigration clinic that focuses on political asylum proceedings, cases involving battered women, unaccompanied minors, and language access issues. They have experience with same-sex immigration issues. Attorneys will represent people in deportation/removal proceedings. GBLS's immigration unit includes a Battered Immigrant Women's Project. GBLS also has a Health & Disabilities unit that can help people navigate public benefits and an Asian Outreach Program. Services are provided in several languages. Free.

International Institute of Boston

(617) 695-9990, One Milk St., Boston, MA 02109

Email: beacon@iiboston.org

www.iiboston.org

Legal clinic provides help with asylum, HIV waivers, deportation/removal hearings, family visas, work authorization, temporary protected status, adjustment of status, naturalization. Services are provided in a variety of languages.

PAIR Project (Political Asylum Immigration Representation)

(617) 742-9296, 14 Beacon St., Boston, MA 02108

www.pairproject.org

Pro-bono representation in political asylum claims and for people convicted of crimes and facing deportation proceedings as a result. Also provide information and referrals for low-income legal permanent residents with criminal records in deportation proceedings. Services provided in a variety of languages.

Immigration Law Center

(781) 598-4886, 145 Munroe St., Suite 300, Lynn, MA 01901

Consults with individuals and helps prepare applications for various immigration statuses. They handle deportation cases. They do not do asylum cases. Fees vary depending on application.

Boston College Immigration & Asylum Project (BCIAP)

(617) 552-0593, 885 Centre St., Newton, MA 02159

The BCIAP is a resource for people convicted of crimes and facing deportation proceedings as a result. A full-time attorney works with students from BC Law School to advise, counsel, and represent immigrants who are incarcerated either in criminal facilities or in INS detention and have no money for legal fees.

Catholic Charitable Bureau of Boston

(617) 482-5440, 75 Kneeland St., 8th Floor, Boston, MA 02111

www.ccab.org

Handles immigration applications & asylum screening; represents clients before the Citizenship and Immigration Services and the Immigration Court. Staff and attorneys speak Spanish. Also provides refugee resettlement services and community interpreter services of hearings. They are able to refer people to other support services in the area. Catholic Charities is the parent organization of the Haitian Multi-Service Center (617-506-6600), in Dorchester, which provides culturally-specific services, including HIV services and naturalization assistance.

Consultation/Application Assistance

These organizations may or may not have attorneys on staff. However, they do not provide direct legal services, such as representation in immigration proceedings or filing applications for new immigration status. They consult with people about existing applications, advise individuals about their immigration options, assist with supplementary paperwork, and make referrals to legal clinics and immigration lawyers.

Latin-American Health Institute (LHI)

(617) 350-6900 x135, 95 Berkeley St., Boston, MA 02116

www.lhi.org

LHI can provide advice and assistance with family petitions, asylum, adjustment of status, suspension of deportation, temporary protected status, safe-haven programs (NACARA, HRIFA), work authorization, options for immigrants with HIV. They can also assist with naturalization. LHI provides culturally-specific services, including HIV services and GLBT support. Services are free, but there is often a waiting list.

Centro Presente

(617) 497-9080, 54 Essex St., Cambridge, MA 02139

www.cpresente.org

Centro Presente is a community cultural center working with Central Americans in Massachusetts. Their legal immigration services focus on special safe haven programs for Central Americans (ABC, NACARA), assistance with deportation/removal hearings, family visas, and work authorization. They will also refer clients to private attorneys.

Irish Immigration Center (IIC)

(617) 542-7654, 59 Temple Place, Suite 1010, Boston, MA 02111

Email: immigration@iicenter.org

www.iicenter.org

IIC provides confidential counseling, support, immigration assistance, and referral services to ALL immigrants. They also provide information and referrals over the phone, at the Drop-In Center, or by appointment. They focus on the following areas: visa applications, applications for adjustment of status, spousal petitions, and criminal/deportation proceedings. Can help people determine what public assistance and health care is available to them and safe to access. IIC also operates a Legal Advice Clinic.

East Boston Ecumenical Community Council (EBECC)

(617) 567-2750, 50 Meridian St., Suite B1, East Boston, MA 02128

www.ebecc.org

EBECC is a community social service organization. They are unable to do direct legal work, but can consult on immigration issues and assist in preparing a variety of supporting documentation for asylum applications and suspension of deportation/cancellation of removal. Can assist with family petitions, temporary protected status (ABC, NACARA), work authorization, applications for legal permanent residency, Freedom of Information Act requests. Services are provided in Spanish and Portuguese.

Community Legal Services and Counseling Center (CLSACC)

(617) 661-1010, One West St., Cambridge, MA 02139

www.clsacc.org

CLSACC consults with individuals about political asylum and naturalization issues, and assists battered immigrant women under the Violence Against Women Act. Services also provided in Spanish, Haitian Creole, and Portuguese.

Legal Services Center (Jamaica Plain)

(617) 522-3003, 122 Boylston St., Jamaica Plain, MA 02130

www.law.harvard.edu/academics/clinical/lsc/

Can help HIV-positive undocumented immigrants assess their ability to access benefits. Fee for service.

Asian American Civic Association (AACA)

(617) 426-9492, 87 Tyler St., Boston, MA 02111

<http://aaca-boston.org/main.php>

The AACA is a community cultural organization that provides education and assistance in a variety of areas. Their immigration services include consultation with individuals about their immigration options, assistance with adjustment of status, affidavits of support, visas, naturalization paperwork, and translation services. Fees for additional services. Can discuss asylum as an option and refer to attorneys for representation.

Support

Boston Immigration Group for Lesbians and Gays (BIG FLAG)

(617) 499-9433

Email: bigflag_team@yahoo.com

This is a local volunteer group providing support and referrals for gays, lesbians, bisexuals, and transgender individuals on visa and immigration issues. This is an affiliate of the national Immigration Equality (see below).

New England/Outside Greater Boston

International Institute of Greater Lawrence

(978) 687-0981, 125 Amesbury St., Lawrence, MA 01840

They provide educational services to immigrants (literacy, ESL, job skills, citizenship classes), interpreter and translation services, and fee-based help with preparation of immigration paperwork (citizenship, affidavits of support, spousal petitions, and other documents). Also provides services in Spanish.

International Institute of Lowell

(978) 459-9031, 144 Merrimack St., Suite 202, Lowell, MA 01852

www.iiboston.org/iilowell.htm

They provide assistance with citizenship, applications for employment, translation or preparation of documents, applications for adjustment of status, affidavits of support, re-entry permits, and family reunification. Consultation fee. Services provided in English, Spanish, and Portuguese.

Catholic Charities of Worcester--Refugee Resettlement Program

(508) 798-0191, 10 Hammond St., Worcester, MA 01610

www.ccworc.org

They provide assistance with asylum applications, naturalization education, and paperwork for sponsorship, work authorization, adjustment of status. Donation requested. Services provided in Spanish, Vietnamese, and Polish.

Immigrants' Assistance Center (IAC)

(508) 996-8113, 58 Crapo St., New Bedford, MA 02740

www.immigrantsassistancecenter.com

The IAC provides translation, interpretation, naturalization, referral, counseling and advocacy services to immigrants in the New Bedford area. They also run an HIV educational program, provide testing and counseling, and are familiar with the concerns particular to HIV-positive immigrants. Services provided in Spanish and Portuguese Creole.

International Institute of Rhode Island

(401) 461-5940, 645 Elmwood Ave., Providence, RI 02907

www.iiri.org

Accredited to represent immigrants in asylum proceedings and provides referrals to attorneys. Fee for service. Provides services in a variety of languages and can get access to interpreters.

International Institute of Connecticut (IIC)

(203) 336-0141, 670 Clinton Ave., Bridgeport, CT 06605

(860) 520-4050, 330 Main St., 3rd Floor, Hartford, CT 06106

(203) 965-7190, 22 Grove St., P.O. Box 1090, Stamford, CT 06902

www.iiconn.org

IIC provides a variety of educational programming and technical assistance to immigrants. They will assist in the preparation and filing of applications for adjustment of status. Represents immigrants in exclusion, deportation, or asylum proceedings, and refers to local attorneys. Fee for service. Does not represent immigrants with criminal histories, but can consult and refer to other attorneys. Services are available in all major world languages.

Jerome N. Frank Legal Services--Yale University Law School

(203) 432-4800, P.O. Box 209090, New Haven, CT 06520-9090

Attorneys and students work together to provide assistance to asylum seekers, by preparing applications for work authorization and asylum, preparing clients for INS asylum interviews, presenting cases before judges. Also represent clients in deportation proceedings. Provide referrals to other attorneys when unable to represent clients themselves. Services are provided in a wide variety of languages.

Massachusetts (Policy/Education/Advocacy)

Massachusetts Immigrant & Refugee Advocacy Coalition (MIRA)

(617) 350-5480, 105 Chauncy St., #901, Boston, MA 02111

www.miracoalition.org

Education and advocacy (lobbying) organization, focused on Massachusetts immigration and public assistance policy. A good resource for local providers who want help understanding what benefits their clients can safely access, and for all immigrant activists.

Massachusetts Law Reform Institute (MLRI)

(617) 357-0700, 99 Chauncy St., Suite 500, Boston, MA 02111

www.mlri.org

Immigration is only one component of MLRI's education and policy work. MLRI's lawyers work on legislative issues and class action suits of importance to low income people, and rarely represent individuals. MLRI can provide advice for legal advocates and providers on immigration and benefits issues, though it is not their primary focus.

Health Care For All/Health Law Advocates (HCFA)

(617) 350-7279, 30 Winter St. 10th Floor, Boston, MA 02108

Helpline: (800) 272-4232

www.hcfama.org

HCFA is an health care consumer advocacy organization that can provide immigrants and providers with information about eligibility for public health care programs, assistance in accessing services, resolution of conflicts with providers, advocacy/representation. Initial contact can be made through HCFA's helpline and further assistance may be provided by Health Law Advocates, HCFA's internal public interest law project. In partnership with MIRA, HCFA spearheads the Mass Immigrant Health Access Coalition, a policy-oriented task force comprised of health care institutions, social service agencies, and individuals.

National and International (LGBT/HIV Advocacy)

International Gay and Lesbian Human Rights Commission (IGLHRC)

Headquarters: (212) 268-8040, 80 Maiden Lane, Suite 1505, New York, NY 10038, iglhrc@iglhrc.org

Asylum Project: (415) 398-2759, 1360 Mission St., Suite 200, San Francisco, CA 94103,

Email Dusty Araujo at daraujo@heartlandalliance.org

www.iglhrc.org

IGLHRC runs an Asylum Program to help protect people seeking immigration status in response to persecution based on sexual orientation, gender identity, or HIV status. They provide documentation for asylum claims and legal support services to asylum-seekers and their advocates.

Immigration Equality

(212) 714-2904, 40 Exchange Place, 17th Floor, New York, NY 10005

Email: info@immigrationequality.org

www.immigrationequality.org

Immigration Equality (formerly Lesbian and Gay Immigration Rights Task Force) provides information, support, and advocacy regarding equal immigration rights for lesbian and gay people.

National Immigration Project of the National Lawyers Guild

(617) 227-9727, 14 Beacon St., Suite 602, Boston, MA 02108,

Email: nip@nlg.org

www.nationalimmigrationproject.org

The Project works to help clarify the intersection of HIV and immigration law. They have produced a comprehensive manual for service providers. They can assist AIDS service providers, but not individual clients.

Lambda Legal Defense and Education Fund

(212) 809-8585, 120 Wall St., Suite 1500, New York, NY 10005-3904,

Email: lambda@lambdalegal.org

www.lambdalegal.org

Lambda is a legal organization working to protect the rights of gay men, lesbians, bisexuals, and people with HIV on many fronts. Lambda initially founded Immigration Equality, which is now an independent organization. Lambda has five regional offices around the U.S. and can serve as a referral source for immigrants in various locations.

Updated: February 2008