

## **WARNING FOR SAME-SEX BINATIONAL COUPLES: Marriage Will Not Fix Immigration Problems, May Cause New Ones** (Updated: November 2009)

*Foreign nationals should not marry without consulting an experienced immigration attorney. Marrying your partner will not help fix immigration problems. In fact, marrying your same-sex partner or applying for a change in immigration status based on a marriage to a same-sex partner could lead to deportation or future denials of visa applications.*

### **What you need to know:**

#### **1) Even if you marry, you cannot sponsor your spouse for legal permanent residence.**

Immigration is entirely a matter of federal law, not state law. Under a federal law passed in 1996, the Defense of Marriage Act ("DOMA"), for all federal purposes a "marriage" is between one man and one woman and a "spouse" is "a person of the opposite sex who is a husband or a wife." So even if a binational same-sex couple does legally marry, the same-sex citizen spouse will not be able to sponsor her or his non-citizen spouse for legal permanent residence.

#### **2) Applying for legal permanent residence based on your marriage to a same-sex partner could lead to deportation.**

#### **3) Simply getting married could create immigration problems.**

- **If you are "out of status"** – Marrying your same-sex partner may expose your immigration status and open you up to deportation.
- **Applying for non-immigrant visa or status** – This includes things like tourist, worker, and student visas. Generally, when a foreign national seeks to enter the U.S. or apply for/renew legal immigration status, he or she must prove that he or she does not intend to remain in the U.S. permanently. If the individual is forced to answer a question about marital status and tells a U.S. immigration official that he or she is married to an American, it may be impossible to convince the U.S. authorities that he or she does not actually intend to remain in the U.S. permanently. If the individual lies or misrepresents facts to hide the marriage, the lie could bar him or her from future immigration benefits or put him or her at risk for deportation.

#### **4) Litigation will hurt the cause, not help.**

Litigation attempting to obtain immigration benefits based on marriage to a same-sex partner could have disastrous consequences. Congress has virtually limitless power to make decisions about who can immigrate to the U.S. and it is extremely difficult to win more rights for immigrants in the courts. Such a case could lead to deportation for the non-US citizen involved. Moreover, a negative ruling in such a case could create a damaging precedent and set back the equal marriage movement for years.

**BEFORE ENTERING INTO MARRIAGE WITH A SAME-SEX PARTNER  
OR TAKING ANY LEGAL STEPS RELATED TO SUCH A MARRIAGE,  
ALL NON-CITIZENS AND PARTNERS SHOULD FIRST  
CONTACT A COMPETENT IMMIGRATION ATTORNEY.**

## **Immigration and GLAD's DOMA Lawsuit**

The lawsuit that GLAD filed in federal court on March 3, 2009 challenging the discrimination that married same-sex couples experience because of Section 3 of DOMA does not address the plight of same-sex binational couples. GLAD consulted with immigration organizations and immigration attorneys about whether we could make immigration part of the case, and everyone agreed that it was too risky both politically and legally. The March 3, 2009 blog entry on Immigration Equality's website, [www.immigrationequality.org/blog](http://www.immigrationequality.org/blog), provides further information. GLAD believes that a victory in this lawsuit will eventually lead to an elimination of all of Section 3 of DOMA for the good of everyone, including binational couples, and this lawsuit will bring about that day earlier than if we had not filed.

### **What You Can Do:**

#### **1) Advocate for the Uniting American Families Act (UAF)**

The Uniting American Families Act (UAF) 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. federal and state laws continue to prohibit marriage for same-sex couples. There is a good chance that this bill could pass before there is a ruling in GLAD's lawsuit or a repeal of DOMA Section 3. The Uniting American Families Act has more sponsors and supporters than ever, and so people should contact their congressional representatives and urge passage of this bill. For more information about how you can help secure the passage of UAF, please contact Immigration Equality at [www.immigrationequality.org](http://www.immigrationequality.org) or (212) 714-2904.

#### **2) Tell Your Story**

Sharing your story helps build awareness of the inequality binational same-sex couples face under current immigration law. It helps people learn about the importance of marriage rights for same-sex couples and fair immigration policy. GLAD is interested in hearing your story. You can either call the Legal InfoLine at 800-455-4523 or use this website link: <http://www.glad.org/help/share-your-story/>.

You can tell your story to friends, co-workers and neighbors. You can share it with the wider community through letters to the editor or op-ed pieces in your local newspaper.

If you have reason to be concerned about your current immigration status, you may want to tell your story anonymously. Even so, it can still have a powerful impact.

#### **3) Have a Commitment Ceremony**

Instead of being married by the government, you can celebrate your commitment to your partner in a non-governmental ceremony with friends and family.

### **Resources:**

Immigration Equality – [www.immigrationequality.org](http://www.immigrationequality.org), 212-714-2904

Gay & Lesbian Advocates & Defenders (GLAD) – [www.glad.org](http://www.glad.org), 800-455-GLAD