

Addressing Inequality in the Law for Permanent Partners

Testimony Submitted to U.S. Senate Committee on the Judiciary

Hearing: “The Uniting American Families Act: Addressing Inequality in Federal Immigration Law”

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Immigration Equality is a national organization that works to end discrimination in U.S. immigration law, to reduce the negative impact of that law on the lives of lesbian, gay, bisexual, transgender (LGBT) and HIV-positive people, and to help obtain asylum for those persecuted in their home country based on their sexual orientation, transgender identity or HIV-status. Immigration Equality was founded in 1994 as the Lesbian and Gay Immigration Rights Task Force. Since then we have grown to be a fully staffed organization with offices in New York and Washington, D.C. We are the only national organization dedicated exclusively to immigration issues for the LGBT and HIV-positive communities. Over 15,000 people subscribe to our monthly e-newsletter, and nearly 20,000 unique visitors consult our informational website each month. Our legal staff answers more than 1,500 queries annually from individuals throughout the entire U.S. and abroad via telephone, email and in-person consultations. In 2006, we collaborated with Human Rights Watch to publish a ground-breaking report on the plight of gay and lesbian binational couples, entitled *Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples under U.S. Law*.

We applaud Senator Leahy for convening this hearing today and for his leadership over many years as the original Senate sponsor of the Uniting American Families Act.

Although Immigration Equality works on many issues affecting the LGBT immigrant community, no issue is more central to our mission than ending the discrimination that gay and lesbian binational couples face. Because there is no recognition of the central relationship in the lives of LGBT Americans, they are faced with a heart-rending choice that no one should have to make: separation from the person they love or exile from their own country.

Family Unification

Family unification is central to American immigration policy because Congress has recognized that the fundamental fabric of our society is family. Family-based immigration accounts for roughly 65% of all legal immigration to the United States.^[1] Family ties transcend borders, and in recognition of this core value, the American immigration system gives special preference for the spouses of American citizens to obtain lawful permanent resident status without any limit on the number of visas available annually. Lesbian and gay citizens are completely excluded from this benefit.

The Scope of the Problem

An analysis of data from the 2000 Decennial Census estimated that approximately 36,000 same-sex binational couples live in the United States.[2] This number is miniscule compared to overall immigration levels: in 2008, a total of 1,107,126 individuals obtained lawful permanent resident status in the United States.[3] Thus, if every permanent partner currently in the U.S. were granted lawful permanent residence in the U.S., these applications would account for .03% of all grants of lawful permanent residence.

The couples reported in the census are, on average, in their late 30s, with around one-third of the individuals holding college degrees.[4] The average income level is \$40,359 for male couples and just over \$28,000 for females.[5] Despite policy disincentives for openly gay and lesbian individuals to join the military, 7% of citizen partners and 3% of non-citizen partners are military veterans.[6] Significantly, almost half, 46%, of all same-sex binational couples are raising children in the home.[7] Each of these statistics represents a real family, with real fears and real dreams, the most fundamental of which is to remain together.

The Human Toll

Every day Immigration Equality hears from individuals in same-sex binational couples who tell us painful tales of trying to maintain their families despite almost impossible odds. To understand the real human impact of the current law, I will recount just some of the real-life stories that illustrate the scope of this injustice.

Family Instability

Shirley Tan came to the United States from the Philippines after her mother and sister were brutally murdered by a family member; Shirley survived being shot in the head. Shirley came to the U.S. in 1986 and shortly thereafter met her life partner, Jaylynn ("Jay") who is a naturalized citizen. Shirley filed for asylum based on the violence she had suffered, but after several appeals, the case was denied. The last of the denial notices was sent to the wrong address by the Board of Immigration Appeals so Shirley did not know that her case was no longer pending. As a result, Shirley was ordered deported without being aware of the order. In January 2009, Immigration and Customs Enforcement agents arrested Shirley at the home she and Jay share with their family and took her away in handcuffs.

Shirley has been a stay-at-home mom for years, caring for the twin sons that she gave birth to twelve years ago using eggs donated by Jay. Shirley also looks after Jay's elderly mother. The family is a pillar of the community: Shirley is a Eucharistic minister in their Catholic church, and they both sing in the church choir. Their sons are model students at their local public school. The family cannot begin to imagine Shirley being deported at this point or having to start life anew for everyone in the Philippines. As Jay's 76-year-old mother says, "Why is this happening to them? It doesn't happen often that people find this kind of love." The family was unusually fortunate that Senator

Feinstein introduced a private bill on Shirley's behalf, staying her deportation for two years. Without a lasting solution like UAFPA, however, the private bill is just delaying Shirley's inevitable deportation.

One of the striking features of the statistical analysis performed of the 2000 census is how many same-sex binational couples are raising children together. Almost 16,000 of the couples counted in the census – 46% of all same-sex binational couples – report children in the household.[8] Among female couples, the figure is even more striking, 58% of female binational households include children. The vast majority of children in these households are U.S. citizens.[9]

Behind each of these statistics is a real family, with real children who have grown up knowing two loving parents. In each of these households, there is daily uncertainty about whether the family can remain together, or whether they will have to move abroad to new schools, new friends, and even a new language.

Mark and Frederic have been partners for 19 years. They have a beautiful home in Pennsylvania and are the proud parents of John (8) and Claire (4). In the years before they adopted their children they lived abroad, and over the past decade Frederic has been able to stay in the U.S. through student and work visas. When his last visa came to an end without the possibility of renewal, they faced dire choices.

Frederic, a French citizen, was on a student visa for many years, and Mark's salary supported the entire family. The cost of Frederic's schooling was so high that the couple sold their house to pay for the tuition that enabled Frederic to keep his student visa. Leaving the U.S. would take the children away from their grandparents, and it would leave Mark's seriously ill sister without one of her primary caretakers. Mark says of their situation: "We are running out of money and options. We have built a beautiful family and would like to adopt again, but if the law doesn't change, we will be forced to uproot the children in order to stay together."

The situation for children of gay and lesbian binational couples can grow even more dire if the couple separates. For many same-sex couples, the only way to safeguard their rights in the event one partner dies, becomes disabled, or the couple separates is by entering into a series of legal documents. These documents can include living wills, health care proxies, and second-parent adoptions. Binational couples may be unable or reluctant to create these documents, for fear they could be seen as evidence of "immigrant intent," which might cost the foreign partner her work or student visa. If the foreign partner has fallen out of lawful status, it is even less likely that she will take any steps to formalize the legal rights and obligations in her relationship. When there are children in the household, the lack of clarity of legal rights among the family members can create a horrific situation for the children. If the relationship ends badly, and the couple took no steps to formalize the relationship between the foreign partner and the children, the children can lose all contact with a parent who raised them.

Lee came to New Jersey from South Africa for one year to work as a nanny when she was 19. When her year ended, she didn't want to return to South Africa in the age of Apartheid. Her decision to remain in the U.S. was further fueled by the fact that she was

in the early stages of “coming out” and she knew that her sexual orientation could be grounds for arrest in her country. Lee is now in her mid-thirties. Four years ago, she and her American partner decided to have children. Her partner gave birth to twin boys, one of whom has developmental delays, and Lee has been their primary caretaker. Because she is undocumented, however, Lee never completed a second-parent adoption, fearing any contact with the American court system. After more than ten years together, the couple is now separating. Not only does Lee have no legal right to be in the U.S., she has no formal legal ties to the boys, and may be cut out of their lives entirely.

Extended Family, Unvalued

The severe impact of the discrimination faced directly by these couples is self-evident. They live under the constant stress of separating, often subject to the whims of the U.S. immigration system or an immigration system abroad. Equally important to the stress and pressure on the couples themselves, is the effect that these laws have on their extended families. When an American is forced to choose exile over separation from her partner, she is simultaneously exiling herself from her own family. This means that aging American parents must make due without the support of grown children to care for them. It also means that adult children and grandchildren are forced to have limited and long-distance relationships with their loved ones.

Likewise, when an American has no choice but to live abroad, she can no longer be a daily part of her own parents' lives. In some circumstances, when her parents are older, this may mean that the U.S. government has to pay for nursing home care because the parent loses this vital support system.

Eleanor Batchelder is an American citizen and Fumiko Ohno is Japanese. The two have been a couple for over twenty years and are both in their mid-sixties. In the early days of their relationship they traveled back and forth between Japan and the U.S. while Eleanor completed her PhD and Fumiko completed her bachelor's degree. They tried to make a life together in New York City, where Eleanor lived and cared for her nonagenarian mother. However, with Fumiko only able to get a short-term visa, this eventually became unworkable. Finally, two years ago, they decided to immigrate to Canada, a country to which neither of them had prior ties, so they could finally have a home together. In order to move to Canada, Eleanor had to move her mother out of her own apartment, where she had lived independently with Eleanor's daily assistance, and into a nursing home; she passed away last year. Eleanor's adult daughter lives in Yonkers, NY and recently gave birth to her first child. Eleanor has to make due with a long distance relationship with her new grandson and occasional visits.

In many situations, the foreign national partner cannot even obtain a visa to visit the U.S. and thus the American partner's extended family may never even get to meet his life partner.

Dean, a native of Cedar Rapids, Iowa, met his partner Wesley while visiting South Africa six years ago. Two years ago, they married in South Africa, and their marriage is now recognized in Iowa as well. Not only is Dean unable to sponsor Wesley for lawful permanent residence in the U.S., Wesley has not even been able to obtain a visitor's visa to the U.S.

Because Wesley has never been permitted to enter the United States, he has not been able to meet Dean's family and friends. With the support of his employer, a defense contractor, Dean takes a month to two months off every winter to visit Wesley. Dean is considering permanently relocating to Ireland, where he holds dual citizenship and could sponsor Wesley for immigration benefits.

Same Love, Different Result

In other cases, the pain of forced separation ripples well beyond the immediate pain felt by the couple itself. Just as an American should never have to leave the country he loves to be with the partner he loves, his parents should never have to witness the joy of their son finding his soul mate, only to watch him move thousands of miles away.

Janet Dagley is the mother of two grown children, a gay son and a straight daughter. Her daughter recently married a man from Ireland; she sponsored him for a green card and they are living near Janet in New Jersey. Janet's son fell in love with a man from the Czech Republic; American law forbids him from sponsoring his partner, and the couple is moving abroad in order to be together. While Janet is happy that her son has found someone to spend his life with, she still can't believe that a country like the United States would deny him the basic right to remain in the U.S. with his partner.

Janet says, "If you want to make a mother angry, give one of her children a right that you deny the other. And if you want to break a mother's heart, force one of her children to move far away from her in order to keep his household together. That's what the U.S. government has done to our family, and thousands of others in similar circumstances."

Loss to the Community

There are many costs associated with exile which simply cannot be quantified. These costs are not necessarily a matter of lost revenue or taxes, but rather the loss that our entire society bears when American citizens, many of whom have roots in our country dating back generations, are forced to leave. The U.S. loses the very fabric of our society, and its citizens who have so strongly believed in the ideals our country stands for, lose their beliefs. Ironically, some Americans are forced to relocate to countries that are neither democracies nor tolerant of same-sex couples.

N.J. and A.O. have been together for over two decades. N.J. is an American citizen whose family arrived in the United States in 1620. His brother is a former faculty member at West Point, and he is a graduate of Harvard College and Harvard law school. His life partner, A.O., is also Harvard educated. Says N.J., "My family has fought in every war America has ever fought, yet I cannot live in my own country with the person with whom I have shared my life for 22 years." In spite of N.J.'s clear love for his country and strong family ties, the couple lives in the Middle East, in A.O.'s country of origin, in order to stay together.

"I am American to the core," says N.J.. "It is a great privilege to be a United States

citizen and taxpayer, yet I am a second-class citizen. Every day I am forced to make a 'Sophie's Choice' between my family and my country. I always will choose my family. But we are not getting any younger and we dream of coming home."

Impact on Business

The lack of recognition of same-sex relationships affects not only the individual family, but the larger community as well. In many instances, large companies are unable to retain talented workers who are forced to leave the United States to maintain their relationships. That is why a growing number of businesses have endorsed the Uniting American Families Act. In 2003, Intel Corporation wrote a letter to Sen. Dianne Feinstein about the legislation, then referred to as the Permanent Partner Immigration Act, stating:

"We would like to register our strong support for Permanent Partner Immigration Act of 2003 ... [Current law] has forced several key Intel employees to make tough choices, including separating from their partners or leaving the United States to be with their loved ones."

Non-recognition for gay and lesbian families drives out talented employees, especially highly skilled workers whose talents would be welcome elsewhere.

Jesus Gomez-Navarro and his partner "Ernesto" are Spanish citizens who have been in a committed relationship since 1989. Jesus came to the U.S. in 1996 to complete a postdoctoral fellowship at the University of Alabama. He is now the Senior Director of Clinical Research & Development in Oncology at Pfizer, where he works on a cancer vaccine imitative. In 2005, Jesus obtained lawful permanent residence in the U.S. However, he cannot sponsor Ernesto to stay here with him.

Instead, Ernesto cannot work in the U.S. and must remain enrolled in school to be here lawfully. He hopes to enter a Masters Degree program this year, but when he graduates in 2011, he will likely be out of options to remain in the U.S. Jesus says, "Ernesto and I are determined to remain together. If I have to, I will leave the US and end my R&D career with Pfizer Oncology."

The effects of this discriminatory law may be even greater on small businesses. If a business owner decides that she must go into exile rather than leave her partner, she may leave American workers without jobs, and the U.S. government without valuable tax revenue.

Rita Boyadjian is a first-generation American whose parents immigrated to the U.S. in the 1960's from Cairo, Egypt, to escape religious persecution as Christian Armenians. Her parents wanted to raise their family in the U.S. where they could practice their Christian faith without fear of government persecution. Rita has been with her German partner, "Margot" for over six years. The couple met in Los Angeles while Margot was studying on a student visa. The couple has a young child and is expecting a second child this August.

Rita is co-owner of a successful entertainment marketing company which employs 20 people and generates nearly \$3 million in annual tax revenue. Margot's student visa will expire this summer and she does not want to break any immigration rules. The family thus feels it has no choice but to relocate to Germany, where Margot will be legally able to sponsor Rita for immigration status. Because the entertainment industry is centered in Los Angeles, Rita intends to return to California for two week periods every two months in order to keep her business from collapsing.

Rita explains, "I cannot begin to describe the daily anxiety I feel about leaving my business 6,000 miles away to run weeks at a time without me physically present. I fear my employees and my movie studio clients will tire of my inaccessibility due to the nine-hour time difference. At the same time, I also worry about leaving my family in Germany every time I have to go to Los Angeles without them. What if something bad happens, and I'm 6,000 miles away?"

For many couples there is simply no option for the foreign national to remain in the U.S. lawfully and, rather than separate, the couple chooses to move abroad.

The Brain Drain

In addition to the loss an American citizen and his extended family may feel personally when he is forced to leave his country behind, he also leaves behind a hole in the American labor market and talent pool. Every time that an American and his partner make the gut-wrenching decision to leave the U.S., our country loses a contributing member of our society. As these stories illustrate, that person may be providing invaluable psychiatric services to an under-served community, or the couple may both provide specialized health care services, or the person may even be researching the cure for cancer. In each of these instances what is clear is that the losses suffered because of the inequality of our laws go well beyond the losses of the individual couple.

Stephanie Woodworth is an American who met her African partner Maritha over ten years ago. They are both in their mid-40s and are both health care professionals. Shawn is a senior respiratory therapist and Maritha is a registered nurse. Their medical skills have allowed them to get jobs in the United Arab Emirates and be in the same country, but it is a country in which neither woman has any family ties. Stephanie was living in the UAE when her father died. Because the UAE is a Muslim country, there is no gay community for them to be a part of.

Maritha has "played by all the rules." She has a job offer and sponsorship for an immigrant visa from a hospital in Gainesville, Florida. In anticipation of Maritha's imminent green card, Stephanie returned to the U.S., accepted a job at a Gainesville hospital, bought a car, and put down a deposit on a house to rent. However, because of the problems in the employment-based immigration system, just after Maritha's priority date became current (giving her the legal right to apply for permanent residence), her priority date retrogressed meaning she would be forced to wait several more years to apply for her "green card." Stephanie spent months alone undoing all of the planning for their lives together in Gainesville, and rejoined Maritha in the UAE, where they

continue the indefinite wait for Maritha's visa to become current.

For other couples, "being together" means learning how to maintain a relationship while being separated by thousands of miles. Long distances place incredible strains on relationships and often make it impossible for the American partner, who is forced to travel regularly, to keep a demanding job.

Michael Upton was born in Burlington, Vermont on January 29, 1964, and grew up in a small town just south of Rutland. His father is a retired neurosurgeon, and his mother trained as a nurse. Michael attended medical school at the University of Vermont, and has practiced psychiatry (mostly in the Burlington, VT area) since finishing his residency in 1998.

Last year, Michael met Jandui, a Brazilian journalist, and the two fell in love. When Jandui completed his degree in journalism, he decided to come to the U.S., live with Michael and study English. He was accepted at St Michael's College in Vermont, but his application for a visa was denied because he was unable to "prove" that he would return to Brazil after his course of study. Despite the visa rejection, Michael and Jandui are determined to remain together. Michael resigned his job as a mental health counselor and team leader at the Veterans Administration in order to be able to travel to be with Jandui. His position remains vacant.

The Uniting American Families Act Solution

All of the above complications, stresses, and uncertainties would be unnecessary if Congress would pass the Uniting American Families Act. The bill would give gay and lesbian binational couples the same opportunity to prove the bona fides of their relationship that opposite-sex couples currently enjoy. Under the law, an American citizen or lawful permanent resident could petition for her same-sex "permanent partner" if their relationship qualifies under the Act. The bill defines "permanent partner" as any person 18 or older who is:

1. In a committed, intimate relationship with an adult U.S. citizen or legal permanent resident 18 years or older in which both parties intend a lifelong commitment;
2. Financially interdependent with that other person;
3. Not married to, or in a permanent partnership with, anyone other than that other person;
4. Unable to contract with that person a marriage cognizable under the Immigration and Nationality Act; and
5. Not a first, second, or third degree blood relation of that other individual.

The UAFA would treat same-sex couples the same way it treats opposite-sex couples. U.S. citizens would be permitted to sponsor permanent partners as "immediate relatives," meaning they would not be subject to numerical quotas. Lawful permanent residents could sponsor their permanent partners under the family preference system. Additionally, the UAFA would grant derivative status to the permanent partners of asylees, refugees, and certain employment-based non-immigrants.

The UAFA is by no means a free pass to lawful permanent residence. As with any opposite-sex married couple, permanent partners would need to prove that they are in a long-term committed relationship and that they are financially interdependent. The couple would have to provide the same types of proof of the relationship's genuineness as opposite-sex married couples must provide at their "green card" interview: joint leases; proof of co-ownership of property; proof that they are raising children together; joint bank accounts; joint credit cards; naming one another as beneficiaries of wills and insurance; affidavits from extended family members; photos with extended family, etc. If the immigration official has any questions about the validity of the relationship, the couple may be called back for a second interview, separated, and grilled on the details of their relationship, just as U.S. Citizenship and Immigration Services currently does with opposite-sex couples. If the petition is denied, the foreign partner would face deportation if he was here without lawful status.

As with cases involving opposite-sex couples, the American partner would be required to provide evidence that he could support the household at above 125% of the poverty level and sign a binding affidavit of support for the foreign partner. The affidavit would remain in effect until the foreign partner naturalized, worked at least ten years, or died. The affidavit permits the U.S. government to sue the American if the foreign partner seeks public assistance.

As with the current laws regarding marriage fraud, anyone who seeks immigration benefits based on a fraudulent permanent partnership will face up to five (5) years imprisonment and a fine of up to \$250,000.

Bringing the U.S. in Line with the Rest of the World

There are currently at least 19 countries that allow their citizens to sponsor long-term, same-sex partners for immigration benefits. These countries include Australia, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, Portugal, South Africa, Spain, Sweden Switzerland, and the United Kingdom. Among these countries, only seven have laws granting equal marriage rights. In many others, notably the United Kingdom and Australia, immigration benefits were granted independent of other rights for same-sex couples due to the particularly grievous harm caused by separation.

Allowing American citizens and permanent residents to sponsor their same-sex partners for immigration benefits would not confer any rights on the couple outside of the limited scope of immigration law.

Comprehensive Immigration Reform

There is a strong consensus that the U.S. that the immigration system is "broken" and needs a top to bottom overhaul. There are millions of undocumented individuals in the country with no path to legalization and there are backlogs of decades for some categories of family-based immigration. Congress should address the overall problems within the immigration system and, when it does so, it is vital that immigration reform includes relief for families headed by same-sex couples. As this testimony has illustrated, thousands of Americans and their foreign partners are unable to make stable lives for themselves and their families in the U.S. They have been

failed by the current immigration system, and this system cannot be fully “reformed” without addressing this issue.

Conclusion

The family unit is at the heart of American society and as such, the fundamental tenet of our immigration system is to keep families together. For too long, gay and lesbian American citizens, their children, their parents, and their partners, have been unable to live the American dream because the U.S. immigration system does not value their families. The result has been a “brain drain” of talented workers and taxpayers; it has meant lives of instability and fear for children who don’t know whether their parents can stay together; and it has meant that Americans have been forced to make terrible choices between the loves of their lives and the country they love. This problem can be remedied once and for all with passage of the Uniting American Families Act.

[1] In 2008, family-based immigration accounted for 716,244 grants of lawful permanent resident status, Department of Homeland Security, Annual Flow Report, March 2009, Table 2, at 3 available at HYPERLINK

"http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2008.pdf"
http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2008.pdf.

[2] *Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples Under U.S. Law*, joint report by Human Rights Watch and Immigration Equality, 2006, at 17,3 available at <http://www.hrw.org/en/reports/2006/05/01/family-unvalued>.

[3] Department of Homeland Security, Annual Flow Report, March 2009, available at HYPERLINK "http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2008.pdf"
http://www.dhs.gov/xlibrary/assets/statistics/publications/lpr_fr_2008.pdf.

[4] *Family, Unvalued*, at 176.

[5] *Id.* at 177.

[6] *Id.*

[7] *Id.* at 176.

[8] *Family, Unvalued*, p. 176.

[9] *Id.* In female binational households, 87% of the children were U.S. citizens; in male households, 83% were U.S. citizens