



Guide to Filing a Defensive Asylum Claim for LGBTQ People and People Living with HIV

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 Immigration Equality

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I. Important Immigration Terms

Immigration law often uses many technical words. Some are explained in the list below:

ASYLUM

Asylum is an immigration status that the U.S. gives people who are afraid to return to their country because they have been seriously harmed or may be seriously harmed in the future.

AFFIRMATIVE ASYLUM

Affirmative asylum is how people who are not currently in removal proceedings in immigration court can apply for asylum. An affirmative asylum application is reviewed by an asylum officer, not a judge in an immigration court.

DEFENSIVE ASYLUM

Defensive asylum is for people who are applying for asylum in front of an immigration judge. This process is usually for people who are or were detained in immigration detention, or who are already in removal proceedings. This guide is meant for people who are applying for defensive asylum.

ASYLUM OFFICER

An asylum officer is the U.S. government representative who reviews an *affirmative* asylum application.

CONVENTION AGAINST TORTURE

The *Convention Against Torture* (or CAT for short) is another type of immigration relief that is related to asylum. It is for extremely serious cases and is generally difficult to get. For CAT, you must show that it is more likely than not that the government will torture or kill you in your home country.

GOVERNMENT ATTORNEY

The lawyer who represents ICE when you go to your court hearings. This lawyer sits at the table next to you and also talks to the judge. Government attorneys should see that justice is done. Usually they ask the judge to order to deport you.

I-589 APPLICATION FOR ASYLUM

The *Form I-589, Application for Asylum and for Withholding of Removal*, is the official government form to apply for asylum, withholding of removal, or CAT, in both affirmative and defensive cases.

IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE)

The agency that has put you in deportation proceedings and may have detained you. ICE is part of the Department of Homeland Security, or DHS.

IMMIGRATION JUDGE (JUDGE)

The person who will decide your case. Judges hold hearings in the courtroom and wear black robes. They should look at the facts of your case and apply the law fairly. Judges do not work for ICE.

REMOVAL OR DEPORTATION PROCEEDINGS

ICE has put you in deportation proceedings, which are also called removal proceedings. If the judge orders you deported or “removed” from the United States, officials will send you back to the country where you are a citizen.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS)

USCIS is the part of the U.S. government that considers affirmative asylum applications.

WITHHOLDING OF REMOVAL

Withholding of Removal is an immigration relief similar to asylum, where the applicant must still show the judge that they are at risk of serious harm if they go back to their home country, but the risk of harm that they must show is much higher than it is for asylum.

II. Is this guide for you?

This guide can help you file a **defensive application for asylum** if you are in removal proceedings.

If you are afraid to return to your home country because your government or someone your government cannot or will not control may harm you, the United States has created laws to help. But different rules apply to different types of cases. This guide was created to help you learn the basics about these laws and how you might be able to use them to stop your deportation.

The guide will tell you about how to apply and what kind of evidence you need to build a strong case. Generally, people can apply to stay in the United States through laws for:

- Asylum,
- Withholding of Removal, or
- Withholding or Deferral of Removal
Under the Convention Against Torture (or CAT for short).

You would use the same Form I-589 to apply under any of these laws. You may file the form if you are physically present in the United States, and you are not a U.S. citizen.

If you are not in immigration court proceedings, you can file an affirmative application. **Affirmative** asylum cases are processed by the U.S. Citizenship and Immigration Services (USCIS), not the immigration court. If you need help to file an *affirmative* asylum application, please look at our guide for filing *affirmative* applications on our website at immigratorequality.org.

This guide is for people seeking asylum because they are LGBTQ.

This guide is for people who fear of harm in their home country because of their **sexual orientation** or **gender identity**. There are many terms for the great diversity of people who fear harm based on their sexual orientation or gender identity, including, people who are gay, lesbian, bisexual, transgender, intersex, queer, non-binary, and gender non-conforming. Here, we refer to all of these various terms together as **LGBTQ**.

This guide is for people seeking asylum because they are living with HIV.

This guide is also for people who fear that they will be harmed in their home country because they are living with **human immunodeficiency virus (HIV)** or **acquired immunodeficiency syndrome (AIDS)**. If you are living with HIV, you can use this guide even if you are not also LGBTQ.

For short, sometimes we will talk about LGBTQ and people living with HIV together in this guide as “LGBTQ/H” people.

This guide is for people seeking asylum because others think they are LGBTQ/H.

Even if you are not LGBTQ/H, but you were harmed or fear harm because people *think* that you are LGBTQ/H, you may be able to seek asylum or withholding of removal on that basis.

III. What is asylum?

“Asylum” is a way to stop your deportation and become a refugee. If you win asylum, you will also have the chance to eventually become a permanent resident in the U.S. If you include your spouse or children on your application, they may also be able to become refugees and permanent residents through you.

However, not everyone can apply for asylum. For example, if you have been previously deported you will not be able to apply for asylum, but you may be eligible for other forms of relief like Withholding of Removal.

If you are not currently in immigration court removal proceedings, you should refer to our affirmative asylum guide instead, which you can find on our website.

How to Win Asylum?

To win an asylum case, you must show that there is at least a 10% chance that the government or someone that the government cannot or will not control in your home country will harm you. In other words, you must show that there is a serious chance that you will be harmed, but you do not need to show that it will happen for sure.

You must apply for asylum within 1 year after you enter the U.S.

You must apply for asylum within one year of entering the U.S. However, if you have a good reason for missing this deadline, you can try to show that an exception to this deadline should apply. For example, if you very recently came out as LGBTQ, learned that you are HIV-positive, or the conditions for LGBTQ people in your home country have gotten much worse recently. Please note, however, that the one-year filing deadline is very strictly enforced so you should make every effort to apply on time and your asylum claim will be denied just for missing the deadline unless an exception applies.

To win your case, you must show that:

- **The harm you faced or will face in your home country is serious.** The legal term for that harm is *persecution*. Persecution means things like beatings, rape, kidnapping, death threats, or similarly serious harms.
- **The government itself or someone who the government cannot or will not control will harm you.** The government is the police, the army, or any official who will harm you as part of their job. You could also show that the government cannot or will not protect you from other people harming you. For example, you might be able to show that you reported to the police that you were beaten and threatened because you are LGBTQ and the police did nothing to help you.
- **People are harming you because of your race, religion, nationality, political opinion, or membership in a “particular social group.”** This Asylum Guide focuses on cases where a person was harmed because they are LGBTQ/H. Your LGBTQ/H status is a “particular social group.” This is explained in more detail in section VI.
- **You would not be able to move to another part of your home country where you would be safe.** The asylum officer will ask if you could move to avoid the people who want to harm you. When you prepare your case, think about reasons you could not move, including that it may not be safe anywhere in your home country for LGBTQ/H people, as well as the cost, where your family is living, and where you could get a job.
- **You have not been deported in the past.** If you have been deported, you generally cannot apply for asylum, but you may be able apply for other types of immigration relief. (Remember, voluntary departures or returns are not deportations.) You should consult with a qualified immigration attorney to evaluate your options.
- **You have not committed certain crimes.** Certain criminal convictions can complicate your application for asylum or make it impossible for you to get asylum.

IV. What is **Withholding of Removal**?

Withholding of Removal is similar to asylum, but the requirements are somewhat different.

For Withholding of Removal, you must still show the judge that you are at risk of serious harm if you go back to your home country on account of your race, religion, nationality, political opinion, or membership in a particular social group (such as your LGBTQ/H status), just like asylum. But the BIG difference is that the risk of harm that you must show is much higher than it is for asylum.

You must show that it is “**more likely than not**” that you will be harmed in your home country. **That means that there is at least a 51% chance that the government will harm you.** In other words, you need to show the judge that you will probably be harmed in your home country.

To win your case for Withholding of Removal, you must show that:

- **There is a great risk that the government in your country of origin will harm you.** Remember, for Withholding of Removal, that risk must be “more likely than not,” or a 51% chance.
- **The harm you would face or have faced in your home country is very serious.** The legal term for that harm is *persecution*. Persecution means things like beatings, rape, kidnapping, death threats, or similarly serious harms. You must prove that harm.
- **The government is harming you because of your race, religion, nationality, political opinion, or membership in a “particular social group.”** Just like with asylum, it is not enough to say that a police officer beat you. You must show that the police officer beat you because of a protected characteristic, like membership in a particular social group. Your LGBTQ/H status is a “particular social group.” This is explained in more detail in section VI below.

How Are Asylum and Withholding of Removal Different from Each Other?

Asylum and Withholding of Removal are different in several important ways:

- Through Withholding of Removal, **you cannot get permanent residency.** That means you cannot get a green card. Winning a case for Withholding of Removal only means that the U.S. government will not send you back to your country of origin, and you can be authorized to work in the U.S. But if another country is willing to accept you, Immigration and Customs Enforcement (ICE) may try to send you there instead.
- For Withholding of Removal, **your application is only for you. You cannot apply for your family.** If you win your case, you win only for yourself. Your family members must apply for themselves.
- **Even if more than 1 year has passed since you entered the U.S., you can apply for Withholding of Removal.** This is different from asylum. With an asylum claim you must apply within 1 year after you enter the U.S.
- **Even if you have a previous deportation order, you can still apply for Withholding of Removal.**
- **If you have a criminal history, you MAY be able to apply for Withholding of Removal.** But usually, you cannot apply if you have been convicted for a really serious crime.

V. What is the Convention Against Torture, or “CAT”?

■ The Protection Under the Convention Against Torture is for extremely serious cases.

As an LGBTQ/H person, you should apply for Convention Against Torture relief (“CAT” for short) if you can show that it is more likely than not that the government will torture or kill you in your home country.

■ In some ways, a CAT case is similar to asylum and Withholding of Removal:

- You must show **that that the government will torture or kill you or that the government will ignore it if someone else tries to torture or kill you. You must show that the person who will harm you is a government official**, for example, someone in the police, army, or working as an official. Or, if the person who will harm you does not work for the government, you will need to show that the government will ignore it if other people want to hurt you.
- Like Withholding of Removal, **you will have to show a 51% chance that you will be tortured**, or that it is “more likely than not” to happen.
- **Criminal convictions can affect whether you can apply for CAT.** If you have very serious criminal history, you will only be able to apply for one part of the CAT called deferral of removal.

■ How Is the Convention Against Torture Different?

A CAT case is different from asylum and Withholding of Removal in some ways:

- **You must show that you will be tortured, not just harmed.** *Torture* means that someone uses horrible mental or physical pain to punish you or to force you to do something.
- Winning a CAT case only means that **the U.S. government will not send you back to your home country. But if another country is willing to accept you, ICE may try to send you there instead.** Also, if you are given Deferral of Removal under CAT and conditions in your country change, ICE may try to deport you later.
- Unlike asylum and Withholding of Removal, **you do not need to show that this harm is because of your race, religion, nationality, political opinion, or particular social group.** CAT might be the best option for you if, for example, you cannot to show that the reason you were severely harmed was because you are LGBTQ/H.

VI. What is a “Particular Social Group”?

- Remember, to win asylum or withholding of removal based on being LGBTQ/H, you need to show that you are part of a “particular social group” and that you were or would be harmed because of it.

A “**particular social group**” (or “**PSG**” for short) is a legal term to describe a group of people that share things in common that they cannot change. It is a group that is recognized in your home community.

Some examples of PSGs are:

- sexual minorities in Uganda
- gay Russian men
- people living with HIV or AIDS in Honduras
- transgender women in El Salvador
- women in Guatemala that people in the community think are lesbians

- Most LGBTQ/H asylum claims** are based on the harm you have suffered or fear you will suffer **because of your membership in a PSG**. The legal term for that harm is “persecution.”

Even if you are not LGBTQ/H, you may be able to qualify for asylum if you have been harmed or fear harm in the future because people *think* you are LGBTQ/H. This is called an “**imputed**” **PSG**.

For example, if you are not gay but were forced to have sexual relations with a man and then were attacked by community members who think you are gay, you may be able to prove to the court that you have been harmed because of your imputed membership in a PSG.

Or if, for example, you are HIV-positive and people assumed you were gay because they view HIV as a “gay disease,” you may be able to prove you were harmed because you are HIV-positive as well as “imputed” to be gay.

VII. Do LGBTQ/H people also have “political opinion” claims?

- If you are LGBTQ/H, you may also be able to show harm because of your political opinion, in addition to your PSG.

In particular, LGBTQ/H people who are involved with LGBTQ or HIV/AIDS rights group may use political opinion as a ground for asylum claims. In that case, for example, your political opinion could be your belief that LGBTQ/H people must be treated fairly, or that everyone with HIV should have good medical treatment.

Even if you do not hold a political opinion, but people harm you because they *think* you have certain political opinions, you may be able to get asylum on this basis. This is called an “imputed” political opinion. As with PSG claims discussed above, you will have to show that you were harmed (or fear harm in the future) *because* of your actual or “imputed” political opinion.

- However, for most LGBTQ/H applicants the law gives the strongest support for claims based on membership in a PSG, so even where you are claiming persecution based on your political opinion, **be sure to also base your asylum claim on your membership in a PSG.**

VIII. Nexus: you must prove you were harmed or fear harm **because you are LGBTQ/H.**

■ To prove your case, you will have to prove something called “**nexus.**”

That is a legal term which simply means that you must prove to the asylum officer that the harm you suffered in the past or harm you fear in the future is *caused by* your LGBTQ/H status.

For example, you will have to provide evidence that you were severely beaten by police *because* you are a gay man, or that you were attacked by a family member *because* you are a transgender woman.

If you are also claiming asylum because of your political opinion, you will have to show that you were harmed *because* of that political opinion too.

To prove this, you will have to present evidence to the judge on how you know that you were harmed because you are LGBTQ/H or because of your political opinion. For instance, you might submit a statement (also called a declaration) along with your asylum application about being brutally attacked in the past. However, it is not enough to simply say that you were attacked because you are gay. Instead, you also must explain why you believe this to be true. For example, if you were attacked by a group of men that were waiting outside of a gay club, who beat you after seeing you kiss your boyfriend and who yelled insults against gay people as they hurt you, explain this. This information is helpful to show the judge why you were harmed and that it was at least in part because you are gay.

■ Keep in mind that the fact that you are LGBTQ/H does not have to be the *only* reason that you were harmed, but you need to show that it was one of the *main* reasons you were harmed.

For instance, in the example above, if you were also robbed by the men who attacked you outside of the gay bar, they may have had more than one reason for attacking you. But you need to prove to the judge that your LGBTQ/H status was one of the main reasons they hurt you. You can do that by showing what happened in the attack. Maybe the men continued to beat you even after they took your wallet. Maybe they yelled anti-gay insults throughout the attack. Even though it is difficult, think about how you can show the judge that they attacked you because you are LGBTQ/H.

IX. What Can You Expect in Court and How Can You Apply for asylum?

Learn about your court hearings.

First, learn the basics about immigration court so that you know who will be in court and what will happen in your first hearings.

- **The judge will be at the front of the room and will ask you questions.** The judge will decide your case, so it is important to be respectful, polite, and prepared.
- **A lawyer representing ICE will be there.** This lawyer is the government attorney who represents ICE. The government attorney is usually trying to get you deported.
- Do not worry if you do not speak English. **An interpreter will be there in person or on the phone.** Just make sure you speak up. Tell the judge that you do not speak or understand English well and need an interpreter.

When you go to court, the judge will ask you if you want time to get a lawyer. Remember that immigration law about asylum and withholding of removal is complex. You have a right to have your own lawyer at an asylum interview and during immigration proceedings. **But there are no public defenders and almost no free lawyers in immigration court.** So, the judge is really asking if you want to hire an attorney that you pay for yourself.

Next, the judge will look at your file and ask you if you want to admit or deny the charges against you. That means that the judge wants to know if you want to force the government attorney to prove the charges against you.

If the government attorney says that you should be deported because of your criminal convictions, asking the attorney to prove the charges against you can be an important step. If you have certain types of criminal convictions, even for minor crimes, you may not be able to apply to asylum, withholding of removal, and CAT.

To learn more about denying the charges against you, read the Florence Project's guide on that topic. Go to <https://firrp.org/resources/prose/>

Tell the judge that you want to apply for asylum, withholding of removal, or CAT.

If the judge decides that at least some of the charges against you are correct, the judge will then ask you if you are afraid to return to your country. It is very important to explain to the judge that you are afraid of returning home. If you do not say that, you may not be able to apply for asylum, withholding of removal, or CAT.

The judge will ask questions to make sure you meet the requirements to apply for asylum, withholding of removal, and CAT. If the judge agrees that you may apply, you will fill out a form called the I-589, Application for Asylum and for Withholding of Removal.

IX. What Can You Expect in Court and How Can You Apply for asylum? (cont.)

You will use the same form to apply for asylum, withholding of removal, or withholding of removal Under the Convention Against Torture. You may file this application if you are physically present in the United States, and you are not a U.S. citizen.

Remember, just because the judge says that you may apply, that does not mean that you have won your case! It means that the judge thinks that you have met the basic requirements. You have a chance to show the judge that you would be harmed if you went home.

You will fill out and turn in the application. Before your final hearing, you must “file” your application for asylum, withholding of removal, and Convention Against Torture.

There are different ways to file your application depending on your circumstances:

- **Option 1: At a hearing.** If you have filled out the form before your hearing, you can hand the judge your application at that hearing. When you have completed the application, make 2 extra copies. Bring them to court with you. The original will go to the judge. Another copy will go to the government attorney. You will keep a copy for yourself. ***Remember**, you need to file your application within one year of your arrival to the United States, so if your hearing is after that one-year timeframe, you should not wait until then to file. You must file one of the other ways listed below. If you are in detention, this is most likely the way you will file your application.
- **Option 2: By Mail.** You can mail your application to the immigration court, and a copy to the government attorney (remember to also keep a copy for yourself). Use USPS Priority Mail or Fedex, so that you can get a tracking number to make sure it is delivered. Put a piece of paper with your name and A-number on top of your application, and add a “certificate of service” at the bottom. You can see an example of a certificate of service at the end of this packet. Then put the application packet in two separate envelopes.
 - On the envelope with the original, write the address of the Immigration Court (find your court address here: <https://www.justice.gov/eoir/eoir-immigration-court-listing>).
 - On the other copy, write, the address of the government attorney (find the address of the government attorney in charge of your case at <https://www.ice.gov/contact/field-offices?state=All&office=12&keyword=>).
- **Option 3: Going in Person.** You can file your application in person at the “filing window” at the court. However, you should call the court ahead of time to make sure they are open. You should bring your own copy and ask the court’s clerk to stamp it so you have proof that you filed it.

No matter which way you file your application, you must also give an exact copy to the government attorney in the same way, and include a “certificate of service” (found at the end of this packet). For example, if you mail your application to the court, you must also mail an exact copy to the government attorney.(find the address of the government attorney in charge of your case at <https://www.ice.gov/contact/field-offices?state=All&office=12&keyword=>). If you submit your application in person, you should be able to submit a copy to the government attorney in the same trip, as they are usually located on a different floor in the same building as the court. If you can’t leave a copy for the government attorney at the courthouse, you need to mail them a copy.

IX. What Can You Expect in Court and **How Can You Apply for asylum?** (cont.)

Next, get your fingerprints taken. Once you have successfully submitted your application to the court, and given an exact copy to the government attorney, you should follow the below instructions to get your fingerprints taken as part of the required background checks.

If you are currently in detention, the government will collect your fingerprints and you do not have to follow this procedure. But if you were never in detention, or you were released, you should:

- **Make a copy of the first three pages of your Form I-589 (make sure that your mailing address on the form is still correct)**
- **Print a copy of these instructions:** <https://www.uscis.gov/sites/default/files/document/legal-docs/Pre%20Order%20Instructions%20EOIR.pdf>
- Mail the above to:

USCIS Nebraska Service Center
Defensive Asylum Application with Immigration Court
P.O. Box 87589
Lincoln, NE 68501-7589

Usually 15 days before the final hearing, you will present all of your additional evidence. Section XI contains details on how to compile and deliver additional evidence.

It is important that you fill out the application completely so that the judge can accept it and schedule a final hearing. ***In the next section, we have provided detailed guidance on completing that form.***

The above describes how to file for asylum with the immigration court. However, sometimes an applicant is not allowed to file their application with the immigration court (which is sometimes called “EOIR”). In that case, an applicant should file with the government agency “USCIS.” To check if you need to file with USCIS, you can go to the “Where to File” section of this web page: <https://www.uscis.gov/i-589>.

Remember, if ICE issued you a Notice to Appear or a Hearing Notice that includes a court date and a court location, you should make sure to go to court on that day. Similarly, if you check the EOIR Automated Case Information website and it reveals you have a court date, you should make sure to go to court on that day.

X. Filling Out your Form I-589, Application for asylum

As mentioned above, **you will need to submit a Form I-589** in order to apply for asylum.

You can obtain the most up to date Form I-589 at:
<https://www.uscis.gov/i-589>.

We have included some tips for filling out key parts of the Form I-589 application below, but **please note that we do not address every question**. There are detailed instructions for filling out the Form I-589 available here: [Form I-589, Application for Asylum and for Withholding of Removal \(uscis.gov\)](https://www.uscis.gov/i-589). You must follow the instructions exactly and answer every single question or your application may be rejected. If you do not read English, have someone who is fluent in English go through the instructions with you. Note that the form may have been updated since we published this guide. Carefully check the current form and its instructions.

Before you begin:

- **You must use a black pen, computer or typewriter to fill out the form.** Do not use a pencil.
- **Your answers must be in English.** They will not accept your form if you answer in another language.
- **Answer all of the questions.** If you do not know how to answer a question, do not worry. Write down as much as you know. If you do not know an answer, write, unknown. If a question does not apply to you, just write not applicable or none.
- **If you do not have not enough room to answer any question completely, you can continue your answer on the Supplement B found at the end of the Form I-589.** For each Supplement B, you must fill in your name, the date, your signature, and identify the exact question you are answering at the top of the form. If you forget to do this, your application may be rejected. You may print out additional Supplement B pages if you need extra space.

X. Filling Out your Form I-589, Application for Asylum (cont.)

Tips for filling out the Form I-589, Application for Asylum and for Withholding of Removal

- **Note at the top of the first page regarding “withholding of removal under the Convention Against Torture.”** Many asylum applicants may also qualify for relief under the Convention Against Torture (CAT) if it is more likely than not that the government will torture or kill you in your home country. There is more information on CAT in Section V above. If you think that you qualify, be sure to check the box at the top of the first page that says “Check this box if you also want to apply for withholding of removal under the Convention Against Torture.”

Part A.I. Information About You

- **Questions 8 and 9.** Residence and Mailing address in the U.S.: Use the address where you currently reside. If you cannot receive mail there, you still need to list the address where you reside, but under “mailing address,” you may list an alternate address where you might receive and access mail safely.

8. Residence in the U.S. (where you physically reside)			
Street Number and Name		Apt. Number	
City	State	Zip Code	Telephone Number ()
9. Mailing Address in the U.S. (if different than the address in Item Number 8)			
In Case Of (if applicable):			Telephone Number ()
Street Number and Name		Apt. Number	
City	State	Zip Code	

- **Question 14.** Present nationality: Your nationality and citizenship are usually the same, but if you do not think this is true for you, you should make this clear in the application.

- **Question 15.** Nationality at birth: If you have moved to another country permanently and received citizenship there, your nationality at birth may be different from your nationality now.

14. Present Nationality (Citizenship)	15. Nationality at Birth	16. Race, Ethnic, or
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- **Question 16.** Race, Ethnic, or Tribal Group: Do you belong to a certain cultural group in your home country? For example, people from Iran may be Assyrian or people from Guatemala may be K’iche.

- **Question 17:** Religion: Do you practice a religion? If so, write it here. This question asks you about both your main religion (such as Jewish, Christian, Buddhist, Muslim, etc.) and also any particular part of that religion you belong to (such as Orthodox, or Coptic Christian).

- **Question 18.** Check box “a”, “b”, or “c” as applicable. (This question is about Immigration Court proceedings.) Check the box b. that says you are now in Immigration Court proceedings. If you have ever been in deportation proceedings before, check that box, too.

18. Check the box, a through c, that applies: a. I have never been in Immigration Court proceedings.
b. I am now in Immigration Court proceedings. c. I am not now in Immigration Court proceedings, but I have been in the past.

- **Question 19 (a-c):** (This question is about the last time you left your country and all of the times that you entered the U.S.) Write which type of visa or status you had upon entry. If you entered without permission or illegally, write *no status* and put *not applicable* where it asks for “I-94 number.” List all the other times that you entered the U.S., even when you took trips to other countries. If you cannot remember exact dates, put approx. (for approximately) to indicate that you are not sure.

19. Complete 19a through c.			
a. When did you last leave your country? (month/year)		b. What is your current I-94 Number, if any?	
c. List each entry into the U.S. beginning with your most recent entry. List date (month/year), place, and your status for each entry. (Attach additional sheets as needed.)			
Date	Place	Status	Date Status Expires
Date	Place	Status	
Date	Place	Status	

X. Filling Out your **Form I-589, Application for Asylum** (cont.)

- **Questions 23-25 are about the languages you speak.** If you speak a particular dialect of your language, note that. Only if you are 100% comfortable speaking to the asylum officer in English should you check Yes on Question 24.

Part A.II. Information About Your Spouse and Children

- Only fill out this part if you are married or if you have children.
- If you do not have enough room to include all of your children, use *Supplemental Form A*, at back of the Form I-589 to complete all of the information. You can use multiple Supplement A forms if you need to list more children.

Part B. Information About Your Application

This is one of the most important parts of your application. This part asks specific questions to decide if you are eligible for asylum (or if your case ends up in immigration court if you are eligible for Withholding of Removal, or relief under the Convention Against Torture). Clearly describe any of your experiences.

Before filling out this part, you should review all of the material below about important issues in LGBTQ/H cases. This will help you decide what is important to include in your answers.

Also, you might want to write out your story separately as a declaration. If you write a separate declaration, then answer questions in Parts B and C of the Form I-589 with a short summary and write, “Please see declaration,” so that the judge knows that your whole story is in the declaration. If you cannot remember a detail, use phrases like, “to the best of my memory,” or “it happened around....”

Remember, you must tell the truth and tell your story. We’ve included sample language below of what a particular applicant might write. Do not copy information and examples from us or others. This will result in your application being denied. Be sure to tell your own story.

- **Question 1.** This is where you check the box as to why you are applying for asylum. It is very important that you check each box that applies. Remember that most LGBTQ/H asylum claims are based on “membership in a particular social group,” so be sure to check that box if it applies. Many asylum applicants may also qualify for relief under the Convention Against Torture (CAT) if it is more likely than not that the government will torture or kill you in your home country. There is more information on CAT in Section V above. Be sure to check the “Torture Convention” box if you think that you qualify.
- **Question 1A. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?** This is where you should describe any of the harm or persecution that you suffered because you are LGBTQ/H or because people believed you to be LGBTQ/H, such as beatings, death threats, sexual assault, or other mistreatment. Be sure to include: (1) what happened, (2) when the harm or mistreatment or threats occurred, (3) who caused the harm or mistreatment or threats, and (4) why you believe the harm or mistreatment or threats occurred. Remember, in order to get asylum, you have to show that the harm was because you are LGBTQ/H, so you should describe this when answering why the harm or mistreatment or threats occurred. For instance, an applicant might say:

I am a lesbian who has been beaten, abused, raped, and tortured at the hands of my family, community members, and the police because of sexual orientation. In one incident, around May

X. Filling Out your Form I-589, Application for Asylum (cont.)

2019, I was raped by a group of men because I am a lesbian, even though I tried to hide my sexual orientation. They attacked me as I was leaving my girlfriend's apartment. I think they assumed I am a lesbian because of my mannerisms, the way I dress, and also because I often spent the night at my girlfriend's apartment. They dragged me into another apartment in her complex and called me homophobic slurs as they raped me. I tried reporting this to the police, but they did not do anything to help. In fact, they further abused me and told me that I got what I deserved. Please see my declaration for more information.

You should also include information here about others you know who may have been harmed because they are LGBTQ/H. For instance, if your partner or a friend was beaten or killed because they are LGBTQ/H, you would want to describe that in your application.

- **Question 1B.** Say why you are afraid to return to your country. For LGBTQ/H applicants, this is where you describe what you are afraid will happen to you in your home country because you are LGBTQ/H. For example, an applicant might say:

I am afraid that I will be beaten, assaulted, tortured, and even killed because I am gay, by members of my family, other people in the community, and also the police, if I return to Jamaica. I was hurt in the past because of my sexual orientation, even when I was closeted, but now I am even more of a target since I have been living openly as a gay man in the U.S. for several years and people in the Jamaican community here know that I am gay. In fact, after my brothers heard rumors from someone in the U.S. that I am gay, they sent me text messages threatening to kill me if I return. I am terrified that they, or someone else in my community, will carry out these threats and the police will do nothing to stop them.

- **Question 2.** Arrests in your home country. List any arrests by the police, including those that were part of any police abuse or harassment against you. If the arrests were part of police abuse or harassment against you, be sure to explain that here or in your declaration.
- **Question 4.** Fear of torture. Identify specifically what you are afraid of and what will happen to you if you return to your home country. For example, an applicant might say:

I am afraid that I will be beaten, imprisoned, abused, raped, tortured, or even killed, by my family, community members, the police, and other government officials, because of my gender identity. The police detained me before because I am transgender. They often round up transgender people and falsely imprison them on fake charges. At the police station, they severely beat me and then threatened to rape me. Additionally, when I was beaten by a crowd of transphobic people, the police officers at the scene just watched it happen and laughed.

Part C.

- **Question 5.** You must file your asylum application **within 1 year of your last arrival in the United States**. However, if you have a good reason for missing this deadline, you can try to explain here that an “exception” to this deadline should apply. For example, if you very recently came out as LGBTQ, learned that you are HIV-positive, or the conditions for LGBTQ people in your home country have gotten much worse recently. Also, if you have had serious medical or mental health issues, like Post Traumatic Stress Disorder, that may be a reason that you were unable to file your application within a year. Other factors may include that you were previously in lawful status or you were under 18. For many people, you may have several reasons for filing late. You should include all of these. But keep in mind that even if you have a good reason or reasons for filing your application late, you must still

X. Filling Out your **Form I-589, Application for Asylum** (cont.)

file the Form I-589 within a “reasonable” period of time after the circumstances arose that caused the delay. What is “reasonable” will depend on the circumstances of your case, but keep in mind that this is generally a very short period of time.

Please note that the one-year filing deadline is *very strictly* enforced so you should make every effort to apply on time and your asylum claim will be denied just for missing the deadline unless an “exception” applies.

Part D. Your Signature.

- This is where you sign and swear that everything you wrote is true and correct. Remember, if you know you lied on your application, you will not have any kind of relief from deportation.
- Review your application to make sure that it is complete.
- You will also need to include identification documents with your application, such as passports. This is explained in more detail in the Form I-589 instructions.

Part E. Declaration of Person Preparing Form, if Other Than Applicant, Spouse, Parent, or Child.

Only fill out this part if someone else helped you complete the application.

Part G. To Be Completed at Removal Hearing, if Applicable. This part will be completed in front of the judge.

When you have completed the application, make 2 extra copies and you are ready to file! Remember from section IX above — there are different ways to “file” your application depending on your circumstances, either: 1) at a hearing, 2) by mail, or 3) in person. Look at section IX above for details on how to file.

Remember to take the steps explained in section IX to get your fingerprint appointment!

After you turn in your application, the judge will give you a date for a final hearing. This may happen very quickly (especially if you are in detention) or the hearing may not happen for several years. You want to be prepared, so you should start gathering your evidence immediately in case you get a hearing quickly. This hearing will be your opportunity to present your case to the judge. Before your hearing, you should submit any additional evidence that you have in your case. **The next section describes possible evidence that you might include.**

XI. Evidence for LGBTQ/H asylum cases

- **To win asylum, you will have to submit evidence to prove your story.** The first important step is to fill out the application form “I-589, Application for Asylum and for Withholding of Removal” (or I-589 Form), as discussed in detail in section X above.

In addition, you should also submit other evidence to support your claim, meaning documents and statements showing that what you say in your I-589 Form is true. Below is some of the evidence you should provide.

- **A Declaration.** A declaration is your story in writing that explains to the judge that you are LGBTQ/H and why you are afraid to return to your country. In general, it should include the following:

The truth. The most important thing to put in your declaration is the truth. If you lie in the declaration, the judge will likely find out and will reject your application. If you cannot remember a detail, use phrases like, “to the best of my memory,” or “it happened around....”

The reasons why you should win your case for “asylum,” “withholding of removal,” and “CAT.” Your job is to make the judge understand why you are afraid to return to your home country and why the judge should grant your application for asylum, withholding of removal, and CAT. Think about the requirements for each type of case before you start writing your declaration!

In addition to the requirement that all applicants must prove for their case, LGBTQ/H applicants must also prove to the judge that they are LGBTQ/H and that the harm they experienced (or that they fear in the future) is because they are LGBTQ/H.

Below are things you should be sure to include in your declaration – use these prompts to help you organize your thoughts.

- **Information about your childhood and teenage years.** You should include information on how you were treated as a child and teenager by your family, other children, school, religious or other authority figures because they thought you might be LGBTQ/H. If you experienced problems or harm, describe these problems. Add details about who hurt you, what they did, when, where it happened, and why you think people were harming you. You should also describe the effect the harm had on you. Although you may not have been aware of your sexual orientation or gender identity during your childhood and even teenage years, you may have already felt “different” or preferred the company or activities of the opposite sex. LGBTQ children are sometimes targeted and sexually

XI. Evidence for LGBTQ/H asylum cases (cont.)

abused because they are perceived as LGBTQ. If this is the case for you, be sure to explain this in your declaration.

- **When you realized that you are LGBTQ.** You should describe how and when you realized or came to understand your sexual orientation, or gender identity. What reactions did this cause in you and others and why? What changes did you make in your life because of this realization or understanding? If your understanding of your sexual orientation and/or gender identity has changed over time, you should explain this in your declaration. For instance, some transgender women initially identify as gay men.
- **Information about your romantic relationships.** You should include information and details about your current and past romantic relationships including details about how you met and how you felt about your partners. Including this information is important because it shows that your LGBTQ status is an important part of your life. Even if you feel embarrassed or uncomfortable talking to a judge about your romantic feelings, you need to do so openly and honestly in order for the judge to grant your application on the basis of your sexual orientation or gender identity. You do not need to describe specific sexual acts or show pictures of yourself in sexual situations in order to show the judge that you are LGBTQ, but do provide information about the relationships you have been in and why they were important to you.
- **Information about adulthood.** You should include information on how you were treated as an adult by your family, others in your community, religious or other authorities like the police and military, etc., because of your LGBTQ/H identity. If you experienced problems or harm, describe these problems including: who hurt you, what they did, when and where it happened, and why you think people were harming you. You should also describe the effect the harm had on you. You should include any harm that you suffered directly from the government (such as police, military or other authorities). In addition, you should also include any harm you experienced from family or community members including any violence, sexual assault or threats, as well as being fired from work, called names, or denied medical treatment because of your LGBTQ/H status.
- **Your HIV/AIDS status.** If you are HIV-positive and that is part of your claim, you should explain to the judge when and how you discovered that you are HIV-positive and any mistreatment you suffered because of your health conditions, such as being denied employment or being prevented from receiving healthcare. If people in your country believed you to be LGBTQ because of your HIV and you suffered or feared persecution because of this “imputed” LGBTQ identity, be sure to include these facts in your declaration as well.
- **Did you report abuse to the police?** You should explain to the judge if you reported any incidents of harm you experienced because you are LGBTQ/H to the police and what they did about it. If the police refused to help or otherwise mistreated you because you are LGBTQ/H, be sure to include information about that. If you did not go to the police because you were afraid because of your LGBTQ/H status or thought that the police would not help you, provide details about why you thought so.

Include details. The judge needs to understand what you fear will happen to you. Try to use descriptive words in your declaration. Remember, the judge does not know anything about you and probably has never been to your country. When you describe an important event in your life—for example, when you discuss a time when you were threatened, detained, tortured, or hurt or that someone made you feel afraid — you want to make the judge feel, see, smell, and hear what you saw, smelled, and heard.

XI. Evidence for LGBTQ/H asylum cases (cont.)

What should your **declaration** look like?

- You can handwrite or print your declaration or you can type it. It must be long enough to hold all the important information about your case.
- If you use blank sheets of paper, put your name, A-number, the date, and your signature on each page. Also, write Declaration at the top. Sign the last page.
- If possible, you should bring the declaration to a notary public so that they can notarize your declaration. You should also include page numbers at the bottom of each page in the declaration. Like all of the rest of your evidence, your declaration must be in English or have an English translation. There is more about this below.

Your declaration can also be very helpful if, for example, you are very nervous when you go to court and have problems remembering what you want to tell the judge. Sometimes in court the judge might interrupt you as you talk or you might feel as if you do not have the chance to explain everything. The written declaration is your chance to say everything without being interrupted.

Remember, though, that if you submit a declaration to the judge, the judge will still ask you to testify and will compare your testimony with your declaration. He could think that differences between your declaration and your testimony suggest that you cannot be believed and could deny your case for that reason.

Supporting Evidence. It is very important to collect other evidence to show the judge that what you say in your application and declaration is true. Each person asking for asylum has a different case, so the evidence you need depends on your own case.

For example, you might include:

- **Letters or declarations from current and/or past romantic partners who can support your claim.** These letters should include information on your relationship and also any other information about the harm you may have experienced or fear. If you are not able to get letters from people that you mention in your declaration, you will need to explain why you were not able to get letters from those people.
- **Other letters or declarations from people who can support your claim of why you are afraid to return to your country.** Did a friend or family member see people threaten you or beat you? If so, a letter from that person will help you prove your claim.
- **Perhaps you identify as LGBTQ, but have never had a same-sex relationship.** This situation is more common than you might think, as many people from countries where being LGBTQ is dangerous are not free to engage in relationships that would provoke suspicion of their sexual orientation. You can still prove your sexual orientation through other means, such as through a declaration or letter from anyone in your life who knows your sexual orientation like a friend, co-worker, medical professional, or anyone in your life that you have confided in. You can still prove your sexual orientation through other means, such as through a declaration or letter from anyone in your life who knows your sexual orientation like a friend, co-worker, medical professional, or anyone in your life that you have confided in.

XI. Evidence for LGBTQ/H asylum cases (cont.)

- **Social media and dating profiles** showing that you are LGBTQ.
- **Photographs** of you attending LGBTQ events or documents or pictures showing membership in LGBTQ organizations.
- **Police reports** (if you reported an incident to the police). If you cannot get a copy of a police report, be sure to explain why to the judge.
- **Medical records** (if you were injured and treated at a hospital or clinic or are HIV-positive and are applying based on your HIV-status). If you cannot get a copy of your medical records, be sure to explain why to the judge.
- **Medical records or psychological evaluations that help prove your case.** For example, if you were raped because you are transgender and you told a therapist about it while you were detained, you may want to include the medical records from the therapist.
- **Photographs that help prove your story.** For example, pictures of you with people who have been killed, or pictures of you participating in groups or activities that put you in danger. Remember that you will need to be able to prove who the people in the pictures are.
- **Newspaper articles** about the issue that makes you afraid to return to your country, or about things that have happened to people you know.
- **Country Conditions.** Reports from national and international human rights organizations and governmental organizations (such as Human Rights Watch and Amnesty International) showing that conditions in your country are very bad for LGBTQ/H people. These reports along with the news articles are often called “country conditions.” Immigration Equality has many country conditions indexes available on its website here: <https://immigrationequality.org/legal/legal-help/resources/country-conditions-index/>.

Many documents will take time for your family to find and to mail to you. Ask a trusted family member or friend to help you gather these documents.

All documents must be in English. If you receive documents in another language, you must translate them (or have someone translate them for you). Just put your translation in with the original document and fill out and attach a signed copy of the “Certificate of Translation” that is included at the end of this guide.

Organize and Submit your Documents. When you have gotten all your documents together, follow these tips for organizing and submitting them:

- Make a list of everything you have and then put that list on top.
- Attach a signed and dated copy of “Certificate of Service” (found at the end of this packet) to the last page of all your evidence.
- Then make two copies of all your evidence (just like you did for your asylum application earlier, discussed in section IX). The original will go to the judge, a copy will go to the government attorney, and

XI. Evidence for LGBTQ/H asylum cases (cont.)

you will keep a copy for yourself. You should make sure that you deliver the evidence to the judge and government attorney so they receive it at least 15 days before your final hearing. Remember, you can submit your evidence to the court and the government attorney in a few different ways – return to section IX for a reminder on those options.

- Put a piece of paper with your name and A-number on top. Then put the packets in envelopes. On the envelope with the original, write the address of the Immigration Court. On the other copy, write, the address of the government attorney. You can find the address of the government attorney in charge of your case at <https://www.ice.gov/contact/field-offices?office=12>.
- You should then mail these envelopes using USPS Priority Mail or Fedex, so that you can get a tracking number to make sure they are delivered. Remember your materials should reach the immigration court at least 15 days before your final court date.

XII. Testimony at your individual hearing

- At your final hearing, you will have an opportunity to tell the judge why you are afraid to return to your home country. It is important to practice your testimony in the weeks before your hearing so that you feel comfortable and will remember to tell the judge about the most important parts of your case.

It is normal to feel nervous or scared about presenting your case to the judge, especially if you will be talking about frightening things that have happened to you or that may happen to you. Below are some helpful tips in getting ready for your testimony:

■ Be Prepared

- Think about examples that show what you are afraid of in your home country. For instance, think of the examples of times you were harmed because you are LGBTQ/H and also specific reasons you will suffer harm or persecution if you are sent back. Write them down on a piece of paper to get your thoughts organized and so you do not forget. But don't bring the piece of paper into the hearing with you.
- It is important to practice telling your story in the weeks before your hearing so that you feel comfortable and remember to tell the judge about the most important parts of your case. Do not just say things like, "I think that someone will hurt me" or "I don't want to go back." That will not help very much —almost all people applying for asylum feel that way. **Think about the specific reasons you have or will suffer harm in your home country because you are LGBTQ/H. Explain those reasons to the judge.**
- **Start gathering evidence early to help support your case.** Give the judge as much evidence as possible to think about. Look at section XI in this manual to help you think of the types of evidence to submit and start gathering this evidence as soon as possible.

■ Speak from the heart

- Judges see a lot of people every day. You can make your testimony stand out if you speak sincerely.
- It is sometimes difficult to talk to strangers about very personal experiences, especially if they are related to your sexual orientation, gender identity, or HIV status. But it is important that the judge knows as much about your case as possible — even if it is scary, embarrassing, or painful to talk

XII. Testimony at your **individual hearing** (cont.)

about. Do not worry if you become nervous or emotional in the hearing. It happens to most people. If you need to take a break, just tell the judge.

Be honest

- Your job is to tell the judge about your life. Do not lie. Lying will just make things worse. The judge and the government attorney often have ways to figure out if you are lying.

Turn negatives into positives

- If you had a problem in the past and the judge asks you about it, explain how you have overcome those problems. For example, did you go to AA meetings? Did you complete a rehabilitation program? Tell the judge about all of those things.

Do not be defensive

- Admitting that you made mistakes, even if that mistake was just coming to the U.S. without the proper documentation, can show the judge that you are sorry. It can also show the judge that you will not repeat those mistakes in the future.

Ask your family members, friends or other witnesses to testify in court

- Your family/friends can come and tell the judge about the reasons you should stay in the United States. If you have a romantic partner, family member, or friend who thinks that you will be harmed in your home country, or another witness who supports your case, ask that person to testify in court. Make sure that your witness tells the judge why they think you would be harmed in your home country.
- Just like with your testimony, make sure that your witness gives the judge very specific examples of how and why you would be harmed in your home country. Help your witness practice and prepare.

Answer the judge's questions

- The judge may want to ask you some specific questions. Remember, be respectful when the judge speaks. Refer to the judge as, "Your Honor," "Ma'am," "Sir," or "judge."

XIII. Important issues in LGBTQ/H asylum cases

There are some important facts that often need to be explained in LGBTQ/H asylum cases.

Immigration judges and government attorneys often look for these issues and may ask you questions about them so it is best to think about these difficult issues first so that you can fully explain the circumstances.

Fear of talking about your sexual orientation or gender identity

Sometimes LGBTQ asylum seekers are afraid to talk to a judge about their LGBTQ identity. Some people feel ashamed about being LGBTQ because of how people or the government in their home country treated them. Some people are afraid that the judge will think badly of them because they are LGBTQ. Being LGBTQ is something to be proud of and you deserve to live a life where you are free to be yourself. Remember, if you can prove that you have been severely harmed in your home country or that you will be harmed in the future because you are LGBTQ, the United States must protect you.

You may have had an initial interview with an immigration officer just after you entered the U.S., where they asked you why you came to the U.S. and if you fear return to your home country. This is called a “credible fear interview” and is the first step in the asylum process. Some LGBTQ asylum seekers are afraid to mention their sexual orientation or gender identity and fear of returning to their home country in that interview. If this is the case for you, you will need to explain to the judge why you did not mention your LGBTQ status in that initial conversation.

For example, if you were afraid to tell an official because you were abused by officials in your home country because you are gay, you need to make that clear to the judge. Or maybe you had to complete the interview in a place where others could hear you and you felt afraid to disclose your identity. Think about what happened that prevented you from explaining your situation.

Marriage

What if you were or are married to someone of a different sex? Will this hurt your application? The answer is maybe. For bisexual applicants, marriage to an opposite-sex partner is, of course, perfectly consistent with your sexual orientation. However, you may need to remind the judge of this fact. There is a section below about bisexual claims with more information. For others who are not bisexual, you will need to explain your marriage and be prepared to talk to the judge about it honestly.

Marriage in your home country

In some cases, you may have gotten married in your own country to someone of the opposite sex because your family forced you into the marriage. Perhaps they were hoping the marriage would work and would “cure” you of your sexual orientation. Maybe you got married because you believed the marriage would provide you with a “cover” allowing you to continue seeking same-sex relationships. Whatever the reason, you will need to explain this to the judge.

XIII. Important issues in LGBTQ/H asylum cases (cont.)

In situations where you tried to be married to someone of a different sex and the marriage failed because of your sexual orientation, the marriage (and possible divorce) itself can become part of the evidence of your sexual orientation. Whatever the situation is it is important, if possible, to provide evidence of the failure of the marriage. For example, you could file:

- a letter from the (ex-)spouse,
- a letter from a friend or family member that you confided in, and/or
- a letter from a therapist who tried to help save the marriage.

The longer the marriage lasted, the deeper the commitment will appear to the judge. For example, if you have children, you will need to give the judge an explanation why. Did your partner or family pressure you to have children? Did you want to appear to your community like someone who was not LGBTQ? Have you always wanted children, and think of this as separate from your sexual orientation? It is important to remember that the judge may not understand sexual orientation or gender identity and may need to be educated about how complicated sexual orientation and gender identity, and coming to terms with it, can be.

Marriage in the United States

If you married a person of the opposite sex in the United States, it may be even harder to explain this to the judge, so you will need to provide good evidence about why you got married. It may be that you did it in hope of “overcoming” your same-sex attraction or the hope that you could please your family. Of course, without the extreme societal pressures in your country of origin, it is more difficult to explain why you would feel the need to marry in the United States. You will need to explain this to the judge. If you have a counselor or social worker you worked with, they may be able to provide a letter about the coming out process and your motivations for getting married.

An even more difficult situation arises if you married a United States citizen or legal permanent resident solely to get legal residency without truly intending the marriage to be real. It is important to remember that you need to be truthful at all times. If the judge catches you in a lie, they may choose not to believe anything else you say and may deny your claim entirely as a result. Please note that if you committed immigration fraud by having a fake marriage to get legal residency, this may have serious consequences for your asylum claim and a judge may determine you are ineligible for asylum and only allow you to apply for withholding of removal/CAT.

You are bisexual

If you suffered past persecution because of your bisexuality, you should be sure to talk about this in your application and declaration. In many countries, there is not the same differentiation between being gay or bisexual as there is in the United States and so anyone viewed as outside of societal norms because of their sexuality is targeted for abuse. If this is the case in your country, make sure you explain this.

Judges often want the issues in cases to be black and white. It is not hard to imagine a judge taking the position that if you are attracted to both sexes, you should simply “choose” to be with members of the opposite sex to avoid future persecution. Although this is improper, and a judge should not take this position, not all judges understand bisexual identities. You will need to help them to understand that bisexual individuals do not “choose” whether to fall in love with men or women any more so than anyone else “chooses” whom they fall in love with. If your case is based on bisexual identity, you should consider including testimony or evidence from a mental health expert who can explain bisexual identities to the judge.

XIII. Important issues in LGBTQ/H asylum cases (cont.)

You may be married now or may have married in the past because you identify as bisexual rather than gay or lesbian. This is perfectly consistent with your sexual orientation and you need to explain this to the judge. However, your case may be more difficult if you are currently married to a different-sex partner who would return with you to your country if you are removed. The government will try to show that this means that you will not be harmed since people will not perceive you as LGBTQ. In this case, you should be sure to explain whether you were known to have had same-sex relationships in your country in the past and will be presumed to be gay or lesbian and face future persecution as a result.

You don't "look" LGBTQ

Sometimes judges have their own ideas of what being LGBTQ looks like. This is not supposed to influence the judge's decision, but it sometimes does. If you do not fit what the judge thinks a gay man or a lesbian woman should look like, or you are not presenting in a way that the judge recognizes as transgender, it may be harder to prove your case. One of the reasons for this is because the judge may not think people in your country will think you are LGBTQ and so you will not be harmed.

If this is true for you, you need prove that you would be recognized as LGBTQ in your country of origin and will be harmed as a result. If you have already been harmed in the past because you are LGBTQ or people thought you are LGBTQ, you should emphasize this. Also, if what makes someone appear LGBTQ in your country is different than in the United States, you should make sure to describe this to the judge and include any additional evidence on this, such as statements and letters from others who can talk about why you are perceived as LGBTQ.

You should also include other evidence of how your sexual orientation or gender identity would become known. For example, in many cultures it is unusual for a 30-year-old man to be unmarried. In other societies, the fact that two adults of the same gender are living in the same household would immediately make their neighbors and the government suspicious. If you can find newspaper articles or reports talking about this, you should also include these in your evidence.

You were not "out" in your country

Sometimes LGBTQ people avoid harm for a time in their countries by hiding their LGBTQ status. For example, some people marry or date someone of the opposite sex or do not engage in romantic relationships at all. If this is the case for you, you can explain this to the judge. You should also be sure to explain why hiding your sexual orientation or gender identity is harmful to you and why you cannot continue to do it. For example, if you have been depressed or suicidal because you cannot be who you are, you should describe this in your declaration and to the judge. If you have talked to a psychologist or social worker about this, they may be able to provide a letter on your behalf.

If you have come out since being in the United States, you should explain this to the judge as that fact may put you in greater danger upon return to your country. For example, if you were outed on social media or elsewhere and now people are aware of your LGBTQ status, or if you have gotten married to someone of the same sex, you should submit evidence of this to the judge showing how you are now in greater danger.

If you are transgender and have begun transitioning or presenting as your true gender since coming to the United State, you should submit evidence of this to show how you are now more visible in your country. However, because being transgender is something you feel on the inside, you can still claim asylum based on your transgender status even if you have not taken steps to transition. However, you will still have to provide evidence that you will be harmed on account of being trans. Many transgender people are harmed in their country because they are perceived as gay or lesbian. If this is the case for

XIII. Important issues in LGBTQ/H asylum cases (cont.)

you, you need to provide evidence of this harm and explain that you are transgender, but that in your country people thought you were gay or lesbian and harmed you because of it (or that you fear that they will harm you in the future because of this perception).

Your country has some laws that protect LGBTQ/H people

As mentioned above, you will need to submit “country conditions” evidence in the form of reports from national and international human rights organizations like Human Rights Watch, Amnesty International, and news outlets showing that conditions in your country are very bad for LGBTQ/H people. Notably, many countries are very dangerous for LGBTQ/H people, even though there are laws there that are supposed to protect LGBTQ/H people. For example, some Latin American countries have laws recognizing LGBTQ rights.

The judge may view this as evidence that your country is willing and able to protect you. If so, you must explain that there is still widespread homophobia in your country and you are likely to be persecuted because of it. You can do this by pointing to violence, abuse, and harm experience by LGBTQ people in your country because of their LGBTQ status and the government’s failure to take action against it. For example, you can point to instances where you or people you know were harmed because they are LGBTQ and the police refused to help or contributed to the abuse. You may also be able to point to country condition evidence showing that violence against LGBTQ people is rarely, if ever, investigated or prosecuted. In some instances, violence has actually gotten worse after laws recognizing LGBTQ rights were passed. If this is the case in your country, be sure to point this out to the judge.

XIV. The judge's decision

- In some cases, the judge will decide your case at the end of your final hearing. Other times, the judge may give you a written decision after your final hearing. If so, you will receive the decision through mail a few weeks after the hearing. **The decision will explain the reasons why the judge is approved or denied your case.**
- **If the judge denies your case, you may appeal that decision.** If the judge issued your decision on the day of the hearing, you should tell the judge at your hearing that you want to appeal. Be sure to write down everything that the judge says about why your case was denied. You will need this for your appeal. The judge will give you some paperwork that you must mail to the Board of Immigration Appeals within 30 days of the decision. To file an appeal, you can check out the Florence Project's guide on appealing your case, available at <https://firrp.org/resources/prose/>.

XV. Final Thoughts

- **Asylum, withholding of removal, and CAT cases are complicated.** It is normal to feel nervous or scared about presenting your case to the judge, especially if you will be telling her about frightening things that have happened to you or may happen to you because of your LGBTQ/H identity.

As we discussed above, start gathering evidence early to help support your case. Ask your family and friends for help gathering evidence in your home country. Think carefully about the legal requirements for your case. Practice your testimony and give the judge as much evidence as possible to think about. And remember to be consistent. If you misspoke or something in an affidavit was wrong, explain to the judge why there was an inconsistency.

We wish you the
best of luck with
your case!

(Name of alien(s) in proceedings)

(A-Number of alien(s) in proceedings)

CERTIFICATE OF SERVICE

On _____, I, _____,
(date) (printed name of person signing below)

served a copy of this _____
(type of document)

and any attached pages to _____
(name of party served)

at the following address: _____
(address of party served)

(address of party served)

by: _____
(method of service – for example, overnight courier, hand-delivery, first-class mail, ICE
OPLA eService)

(signature)

(date)

Certificate of Translation

I, _____ (name of translator), certify that I am competent to translate this document from its original language into English and that the translation is true and accurate to the best of my abilities.

Printed Name of Translator

Signature of Translator

Date

Address of Translator

Telephone Number of Translator