



January 27, 2015

Department of State, Department of Homeland Security
Attention: 79 FR 78458 Modernizing and Streamlining the U.S. Immigrant and Nonimmigrant Visa System for the 21st Century

Dear Sir/Madam:

We are pleased to have the opportunity to comment on modernizing the U.S. immigration system. In the fifty years since the Immigration and Nationality Act opened our immigration system to previously excluded populations, more remains to be done to recognize the changing demographics of people entering our immigration system and our country's needs. A population of particular concern to us is lesbian, gay, bisexual, and transgender (LGBT) immigrants. These individuals are doubly marginalized, often fleeing persecution by not only state actors but also by family members, friends, and community members. While the United States is quickly moving forward in protecting LGBT rights and recognizing LGBT families, this is not the case in much of the world. For this reason, it is critical that the Department of Homeland Security and the Department of State implement procedures to collect data on LGBT refugees and asylum seekers in order to provide information on the numbers seeking protection in the United States as well as better inform policies regarding LGBT migrants. The following recommendations are in response to Section III Question 17 on modernizing IT infrastructure.

Data on sexual orientation and gender identity should be collected by the State Department

LGBT people face persecution around the world on account of their sexual orientation and/or gender identity. The United Nations High Commissioner for Refugees (UNHCR) recognizes people fleeing persecution due to their sexual orientation and/or gender identity as refugees under the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol (1951 Convention) and has adopted protection guidelines that are inclusive of the particular vulnerabilities and needs of LGBT refugees.¹ Although voluntarily provided information on an individual's LGBT status is part of UNHCR status determinations, this information is not currently collected as part of the United States' resettlement process. This has resulted in LGBT refugees being resettled in programs that lack knowledge and training on how to provide services to this particularly vulnerable group, as well as resettlement in communities without LGBT inclusive

¹ UNHCR. Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees. HCR/GIP/12/09. October 23, 2009.

services and legal protections. Since data on sexual orientation and gender identity is not currently collected, we do not know exactly how many refugees in USRAP identify as LGBT. However, Heartland Alliance's Rainbow Welcome Initiative estimates 3,500 LGBT refugees arrive in the United States annually.²

We recommend including questions on sexual orientation and gender identity in status determination and biographical information collection to improve placement decisions of LGBT refugees. Not only do these questions help improve placement decisions by ensuring LGBT refugees with particular needs are placed in locations able to meet these needs, it also provides much needed data that is currently lacking on the number of LGBT refugees in our resettlement program. Collecting LGBT inclusive data will create a clearer picture of how many LGBT refugees are in the resettlement program and help to ensure they are placed in appropriate locations and programs. In addition to collecting data on LGBT refugees, we recommend creating a space to code these responses in the WRAPS system.

Data on sexual orientation and gender identity should be collected by USCIS

Although persecution on account of sexual orientation and gender identity are recognized as asylum claims under the particular social group category and USCIS conducts trainings of asylum officers on LGBT asylum claims, we do not know how many LGBT people seek asylum in the US, nor do we know how their cases are treated. We recommend including questions on sexual orientation and gender identity in I-589 forms and create a space for coding these responses in the ELIS system. The form currently asks for nationality, race, ethnic, or tribal group, and religion. Adding questions on sexual orientation and gender identity will provide much needed data that is currently lacking on the number of LGBT asylum seekers coming to the United States. Collecting LGBT inclusive data will create a clearer picture of how many LGBT people are seeking asylum.

While this information is vital to provide a clearer picture of who is seeking protection, it is also sensitive and potentially stigmatizing. We encourage collection of this data and also strongly encourage the development and implementation of protocols to protect the privacy of applicants. Many studies have been conducted on how to appropriately ask questions on sexual orientation and gender identity in a manner that does not discourage disclosure, such as providing a range of descriptions to choose from.³

² http://www.rainbowwelcome.org/uploads/pdfs/ORR%20Report%20MASTER%20COPY_01.2012.pdf

³ <http://williamsinstitute.law.ucla.edu/wp-content/uploads/SMART-FINAL-Nov-2009.pdf>;
<http://williamsinstitute.law.ucla.edu/wp-content/uploads/GenIUSS-Gender-related-Question-Overview.pdf>

We look forward to working closely the Department of Homeland Security and the Department of State to address these issues to improve and modernize our immigration system. Thank you for your continued efforts to ensure safety for people fleeing persecution. If you should have any questions regarding these comments, please contact Sharita Gruberg, Senior Policy Analyst, at (202) 745-5463, or by email at sgruberg@americanprogress.org.

Sincerely,

The Center for American Progress