

Obama to Recognize Same Sex Couples in Deportation Changes

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It's not just DREAMers that are getting a reprieve under the Obama administration's revised deportation policies. When the Department of Homeland Security announced last week that in the coming months it will review its roughly 300,000 open deportation cases with the aim of closing low-priority cases, the agency indicated that for the purposes of deportation policy, it will recognize same-sex couples and families as real families.

The news means that queer families facing deportation may win the right to stay in the country under DHS criteria of who constitutes a high priority for removal. The guiding document for who merits the use of prosecutorial discretion is a June 17 memo written by Immigration and Customs Enforcement director John Morton. Morton advised ICE agents and attorneys to consider those who met any of the following characteristics were a low priority for deportation: those who were victims of crime, especially domestic violence or trafficking; those who are long-time lawful permanent residents; those who are veterans or active-duty military personnel and those with strong family ties in the U.S.

Under the Defense of Marriage Act, federal agencies are forbidden from recognizing the partnerships of same-sex couples, and that's extended to the world of federal immigration policy. According to the American Immigration Council there are currently 36,000 bi-national same-sex couples in the country, and DOMA has provided the legal justification for the routine denial of same sex couple's applications for permanent residence, and other immigration benefits like deportation relief, that straight couples are eligible for.

There are encouraging signs that the Obama administration is, at least in some highly publicized cases, attempting to follow through on its policy changes. California couple Doug Gentry and his husband Alex Benshimol, who'd been fighting Benshimol's deportation to Venezuela, will not be separated anytime soon, after a San Francisco immigration judge moved to close Benshimol's removal order in early August, their attorney Lavi Soloway announced today.

Benshimol, who came to the U.S. in 1999 on a visitor visa that expired two years ago, and Gentry got married in 2005 in Connecticut, but under DOMA their marriage was not considered legal and therefore not a consideration in Benshimol's removal proceedings. While the Obama administration and Congress grapples with the constitutionality of DOMA, Benshimol and many other same-sex binational couples have been fighting to stay together in the country.

Benshimol and Gentry are the first same-sex couple to win a deportation stay since the release of the June 17 memo, according to their attorney.

"We are cautiously optimistic after the announcement this week by Secretary Napolitano that all 300,000 pending deportation cases will be reviewed for possible closure, including those impacting LGBT families," Soloway said in a statement. Soloway urged caution though, as advocates wait for the particulars of the policy change, including more information on DHS's timeline and process for evaluating all the deportation cases.

"In the meantime, we must continue to fight for each couple and for an end to DOMA deportations across the board."

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