

LGBT Couples Facing Increased Immigration Tensions

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CHICAGO—According to the Immigration Policy Center, there are approximately 36,000 same sex, bi-national couples living in the United States. These couples have to reach out to alternative methods such as student visas or other legal resources in order to remain together.

Kevin Goodman is associate dean at St. James Cathedral, in Chicago. He met Anton Pulung-Hartanto, who is originally from Indonesia, at Disney world in 2000.

“I went to Disney with a youth group, to try to show them that one could have a religious experience in a place like that, and that’s where I met my partner”, said Goodman at a forum on LGBT Immigrant Rights held at the Adler School of Professional Psychology on September 27th.

Pulung-Hartanto worked at Disney, in Florida, as a cultural host with a Q-1 visa, which is provided specifically for cultural exchange programs.

They have been together for 12 years and plan on marrying next spring in Vermont, said Goodman.

The Final Option

Goodman is from New Orleans and grew up tied to the All Saints’ River Ridge Episcopal church. He studied communication and worked as a television producer. But he’s always been interested in Asian cultures, which is why he traveled to Xi’an in the Republic of China and has taken Asian Studies courses. He also studied in the theological seminary in New York, where his work with indigent youth and people with HIV began.

When he arrived in Chicago he worked with The Night Ministry program, specifically with indigent youth in the Lakeview neighborhood. He was also working with the St. Matthew church in Evanston through the Ravenswood Community Services agency and now with St. James Cathedral.

When Pulung-Hartanto’s Q-1 Visa expired, he applied for a Student I-20 visa which allowed him another 10 years in this country. He studied culinary arts at Saint Augustine College.

When asked why they don’t move to Indonesia, Goodman explains that there they would be even further marginalized for both being gay, and him being White and a Christian pastor in a country which is mainly Muslim. The couple has concerns over their safety especially during a time in which the environment for the LGBT community over there can be increasingly challenging.

The couple decided to recruit the help of a lawyer from the National Immigrant Justice Center (NIJC) in Chicago and last year petitioned for asylum. Currently, the case is in process but Pulung-Hartanto has received authorization to work while they wait.

Goodman and Pulung felt it necessary to follow through with this final option. “Under the DOMA (Defense of Marriage Act), the idea that the federal government will recognize our relationship is something very, very far off”, expressed Goodman.

Back and Forth

The law known as DOMA (Defense of Marriage Act), approved in 1996 impedes the federal government from recognizing same sex marriages.

While a citizen can request his/her husband or wife and solicit legal residency under the immigration

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laws, this is not possible for same sex couples even if they were “Legally” married in the United States. This year DOMA has begun to lose its footing.

In mid February president Barack Obama determined that DOMA was unconstitutional and ordered the Department of Justice to stop enforcing it in the courts. The Attorney General Eric Holder later announced the decision in a letter addressed to congress.

However, President Obama said that although the law would not be enforced in courts, it should still be applied until it is over-turned by Congress or the judicial system.

In March, Immigration Equality, a gay rights advocacy group, asked immigration authorities to suspend deportations of immigrants in bi-national same sex marriages and in cases that involved same sex couples until there has been a final declaration on whether or not DOMA is in fact unconstitutional.

At the end of the month, the spokesman for United States Citizen and Immigration Services (USCIS), Chris Bentley, confirmed in a public announcement that cases involving same sex marriage have been suspended.

Couples with Benefits

A few days after that announcement Bentley said “No policy changes have been implemented as of yet and the agency plans to follow the president’s directive and continue to uphold the law”. Bentley added that they have only suspended the cases for a brief period of time while lawyers cleared up a “legal issue” but that the agency would probably renew the actions in these cases and would continue to deny the legal status to immigrants in same sex marriages.

One of the couples benefitting from the suspension was in the case of Argentinian Monica Alcota and US Citizen Cristina Ojeda, from Queens, New York. The couple married three years back in Connecticut. In July of 2003 the couple took the bus from Buffalo to New York and during a routine check by immigration authorities they were asked for their papers and then held Alcota for having over stayed with her visa.

Early March, however, a New York Judge suspended Alcota’s deportation until the issue regarding DOMA’s constitutionality had been decided and she would not have to return to court until December.

But after the USCIS announcement, the lawyers recommended couples to be caution . Gay rights and immigration activist, Lavi Soloway said that same sex couples should be careful when applying to immigration benefits as they could put themselves in risk of being deported.

Prosecutorial Discretion

On the other hand, the federal government’s promise of reviewing close to 300,000 deportation cases, announced as a new policy this past August, could facilitate the cancelation of deportations for immigrants in bi-national same sex couples.

In August, the government promised to form a work group between the Department of Justice and the Department of Homeland Security so that they may review all the cases, one by one, in which there are individuals that are now in deportation process and all those that come in thereafter.

According to Fred Tsao, from the Illinois Coalition for Immigrant and Refugee Rights (ICIRR), “the group tasked with reviewing the supposed 300,000 cases has yet to be formed, the cases are still in court and the possibility of fighting for discretion exists”.

According to a memo from the Department of Homeland Security (DHS) regarding the prosecutorial discretion of undocumented immigrants, these are some of the factors considered: the period of time they have been in the country; the circumstances through which they arrived, the way they entered in particular if they were brought as a child; if they graduated from highschool and/or from a college

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or university during their time here; has the person or a family member served in the armed forces; or if they have a husband or wife, child or family member that is a citizen.

LGBT Families

During last week's forum in Chicago, federal representative Mike Quigley emphasized: "we want Homeland Security and the Department of Justice to consider LGBT family ties in their policies regarding discretion guidelines."

But for Karen Zwick, lawyer at the LGBT Rights Initiative in NIJC, the lawyers that handle this type of case say that there has always been prosecutorial discretion, so essentially this "doesn't change anything".

However, Zwick added that it is possible that the person qualifies for a U Visa, asylum or legal residence under other criteria.

Federal Congressman Luis Gutierrez said "according to the White House, the definition of family includes LGBT families".

Gutierrez said that soon he would be meeting with immigration authorities in Chicago to "test the memorandum on 45 cases".

"This way we can learn whether or not it's working. I urge them to test it", he added.

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