

## **WARNING FOR SAME-SEX BINATIONAL COUPLES: Marriage May Not Fix Immigration Problems, May Cause New Ones**

*(Updated: December 2011)*

***Foreign nationals should not marry without consulting an immigration attorney experienced in LGBT issues.***

### **What you need to know:**

#### **1) Even if you marry, you cannot sponsor your spouse for legal permanent residence.**

Immigration is entirely a matter of federal law, not state law. Under a federal law passed in 1996, the Defense of Marriage Act (“DOMA”), for all federal purposes a “marriage” is between one man and one woman and a “spouse” is “a person of the opposite sex who is a husband or a wife.” So even if a binational same-sex couple does legally marry, the same-sex citizen spouse will not be able to sponsor her or his non-citizen spouse for legal permanent residence.

#### **2) Applying for legal permanent residence based on your marriage to a same-sex partner could lead to removal proceedings.**

#### **3) Simply getting married could create immigration problems.**

- **If you are “out of status”** – Depending on your individual circumstances, if immigration officials begin removal proceedings against you, being married to your same-sex partner could affect the proceedings, and, in some cases, in a positive way. Because of the high stakes involved, you should confer with an immigration attorney experienced in LGBT issues before getting married.
- **Anyone who is applying for or is in the U.S. on a visa where you need to demonstrate that you will not remain in the U.S. when your visa expires** (visas subject to section 214(b) of the Immigration and Nationality Act) should get the advice of an immigration attorney who is experienced in LGBT issues before getting married because being married to a U.S. citizen could have negative consequences. With such a visa, when a foreign national seeks to enter the U.S. or apply for/renew legal immigration status, he or she must prove that he or she does not intend to remain in the U.S. permanently. If the individual is forced to answer a question about marital status and tells a U.S. immigration official that he or she is married to an American, it may be impossible to convince the U.S. authorities that he or she does not actually intend to remain in the U.S. permanently. If the individual lies or misrepresents facts to hide the marriage, the lie could bar him or her from future immigration benefits or put him or her at risk for removal.

For more detailed information about whether you should get married, go to Immigration Equality’s website: <http://www.immigrationequality.org/issues/couples-and-families/should-we-marry/>.

**The bottom line is that before marrying consult an immigration attorney experienced in LGBT issues.**

# Immigration and GLAD's DOMA Lawsuits

GLAD's two DOMA lawsuits challenging the discrimination that married same-sex couples experience because of Section 3 of DOMA do not address the plight of same-sex binational couples. GLAD consulted with immigration organizations and immigration attorneys about whether we could make immigration part of these cases, and everyone agreed that it was too risky both politically and legally. GLAD believes that a victory in these lawsuits will eventually lead to an elimination of all of Section 3 of DOMA for the good of everyone, including binational couples, and these lawsuits will bring about that day earlier than if we had not filed. For more information about these lawsuits go to <http://www.glad.org/doma>.

Note: Immigration Equality ([www.immigrationequality.org](http://www.immigrationequality.org)) is deciding whether to file its own lawsuit around the discrimination that binational, same-sex married couples face.

## What You Can Do:

### 1) Advocate for the Uniting American Families Act (UAFSA)

The Uniting American Families Act (UAFSA) would create government recognition of same-sex partnerships and allow U.S. citizens and residents to sponsor their permanent, same-sex partners for immigration benefits even if U.S. federal and state laws continue to prohibit marriage for same-sex couples. This bill could pass before there is a ruling in GLAD's lawsuits or a repeal of DOMA Section 3. The Uniting American Families Act has more sponsors and supporters than ever, and so people should contact their congressional representatives and urge passage of this bill. For more information about how you can help secure the passage of UAFSA, please contact Immigration Equality at [www.immigrationequality.org](http://www.immigrationequality.org) or (212) 714-2904.

### 2) Tell Your Story

Sharing your story helps build awareness of the inequality binational same-sex couples face under current immigration law. It helps people learn about the importance of marriage rights for same-sex couples and fair immigration policy. GLAD is interested in hearing your story. You can either call the Legal InfoLine at 800-455-4523 or use this website link: <http://www.glad.org/help/share-your-story/>.

You can tell your story to friends, co-workers and neighbors. You can share it with the wider community through letters to the editor or op-ed pieces in your local newspaper.

If you have reason to be concerned about your current immigration status, you may want to tell your story anonymously. Even so, it can still have a powerful impact.

### 3) Have a Commitment Ceremony

Instead of being married by the government, you can celebrate your commitment to your partner in a non-governmental ceremony with friends and family.

## Resources:

Immigration Equality – [www.immigrationequality.org](http://www.immigrationequality.org), 212-714-2904

Gay & Lesbian Advocates & Defenders (GLAD) – [www.glad.org](http://www.glad.org), 800-455-GLAD (4523)