



Working with LGBT Immigrant Youth

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Today's Training

- Basic concepts and terminology
- Special issues in working with the trans community
- Best practices to insure your office is LGBT friendly
- Barriers to accessing immigration services for LGBT youth
- Common immigration legal issues for LGBT noncitizens
- Conducting comprehensive screenings for LGBT youth



Basic LGBT Terminology

- **Sexual Orientation:** Describes an individual's emotional, physical, and/or romantic attraction to another person.
- **Gender Identity:** A person's deeply held internal sense of being male or female or somewhere else on the gender spectrum.
 - *Sexual Orientation ≠ Gender Identity*
 - Trans people can identify as straight, bisexual, or lesbian/gay
 - Some trans people may go through period of identifying as lesbian or gay before coming to terms with trans identity; others don't
- **Gender Expression or Gender Presentation:** How a person chooses to communicate their gender identity to others through clothing, hair, styles, mannerisms, and social interactions that are perceived as masculine, feminine, or somewhere else on the spectrum.

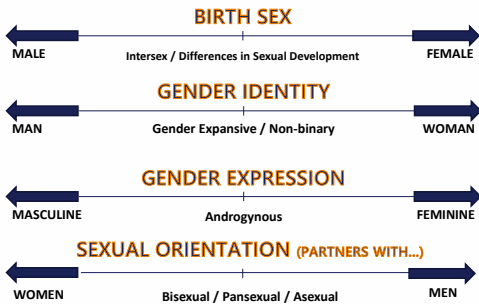


Gender-Related Terms

- **Sex Assigned at Birth:** A person's male or female assigned gender designation at birth.
- **Transgender Person:** Someone who knows that their gender identity is different from their sex assigned at birth
 - Gender identity concerns person's inner feelings about self
- **Cisgender Person:** Someone who knows that their gender identity aligns with their sex assigned at birth.
- **Intersex / Differences in Sexual Development:**
 - Conditions related to the development of genital function and secondary sex characteristics.
 - More commonly thought of as a medical condition and not inherently part of someone's identity.
- **Gender Transition:** The social, medical, and legal processes through which a person changes their gender expression and/or physical characteristics to better match their gender identity.

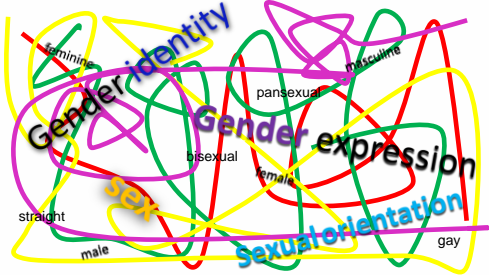


Identity Spectrum (In Theory)





Identity Spectrum (In Practice)



Trans Terminology

- “Transgender” or “Trans” – preferred, as adjective
 - Examples: Transgender woman, transgender man, transgender people, trans community
- “Transgendered” – avoid
- “Transsexual” – avoid, possibly offensive



Transition

- Process of beginning to live in the gender that feels appropriate to the transgender person is called “transition”
- This may or may not involve dressing in the chosen gender
- This may or may not involve medical interventions
- This may or may not involve changing legal documents and legal name
- Steps in transition happen in different order for each person



Medical Treatments

- Many (but not all) transgender individuals undergo some medical interventions as part of their transition.
- Involuntary medical interventions may rise to the level of persecution
- Medical processes *may* include:
 - Hormone therapy: Hormone Replacement Therapy (HRT), hormone blockers
 - Often this is not under the direction of a doctor
 - Surgeries:
 - "Top Surgeries," such as: mastectomy, breast augmentation
 - "Bottom Surgeries", such as: hysterectomy; phalloplasty; vaginoplasty; orchiectomy
 - Hip augmentation; voice surgery; facial feminization
 - Electrolysis, botox
 - Psycho-therapy



Intersex Condition

- A medical condition where a person's reproductive or sexual anatomy and/or chromosome pattern don't seem to fit typical definitions of male or female
 - Estimated 1 in 2000 babies born intersex
- Medical professionals often intervene at birth and "choose" one gender for the baby
- Cases may present similarly to transgender cases or may be very different
- UNHCR and USCIS Guidance is for LGBTI claims



Ensuring Office Is LGBT Friendly



- Don't make assumptions
- Ask same LGBT-related questions of every potential client
- Use gender neutral/inclusive terms on internal forms
- Be aware of bathroom dynamics

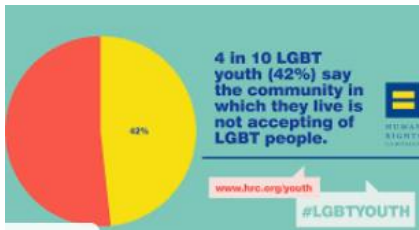


Establishing Client Rapport

- Meet with young person separately from parent(s) and/or sibling(s)
- Explain to every client why being LGBT may be relevant to the case
- Explain that everything client says is confidential
 - But be mindful of joint representation rules and potential conflicts
- Remember it takes time to develop trust
- When asking a client about their romantic partnerships, avoid pronouns or assumptions.
 - Ex: "Do you have a partner/¿Tienes pareja?" or "What is your marital status/ ¿Cuál es tu estatus civil?" instead of "Do you have a girlfriend/wife/¿Tienes novia/esposa?"



Barriers to Accessing Immigration Legal Services for LGBT Youth





2015 U.S. Transgender Survey

- In the 2015 national survey of 27,000 trans/non-binary people:
- 31% experienced mistreatment in places of public accommodation
 - 15% were unemployed (National average 5%)
 - 29% were living in poverty
 - 30% reported homelessness at some point in their lives
 - 47% were sexually assaulted at some point in their lives
 - 39% reported severe psychological distress in the month before completing the survey
 - 40% attempted suicide at least once in their lifetime
- "Undocumented respondents were also more likely to face severe economic hardship and violence than other respondents."
- 24% were physically attacked,
 - 50% have experienced homelessness in their lifetime, and
 - 68% have faced intimate partner violence.



Barriers to Services

- Many LGBT individuals report being turned away from medical, social, and legal services because of their identity
 - Shelters are very gender-segregated, often aren't very LGBT-friendly
 - A lot of resources, hospitals and organizations are religiously-affiliated, which don't always feel like safe spaces for LGBT survivors
- Access to children threats: inadequate laws protecting same-sex parental rights for a "non-biological" parent



Common Immigration Legal Issues

- Special Immigrant Juvenile Status
- U visa
- T visa
- Marriage-based petitions/VAWA
- Asylum
- Correcting gender markers for transgender clients



Special Immigrant Juvenile Status

8 U.S.C. § 1101(a)(27)(J): SIJ is immigrant **present in U.S.**

(i) who has been declared **dependent** on a juvenile court or **committed to/in custody of state agency or individual/entity appointed by state/juvenile court** AND whose reunification with one or both parents is **not viable due to abuse, neglect, abandonment**, or a similar basis found under state law.

(ii) for whom it has been determined that it is **not in the child's best interest to be returned to child's or parents' country of nationality/last habitual residence**; and

(iii) in whose case DHS **expressly consents** to the dependency order; except that no juvenile court has jurisdiction to determine such status of a minor in federal custody unless HHS **specifically consents** to such jurisdiction.



U Visa

- U Nonimmigrant Status (commonly known as the “U Visa”) conveys lawful status to victims of certain criminal activities (that occurred in the United States or violated the laws of the United States) who:
- Have information about the criminal activity;
- Were helpful, are helpful, or are likely to be helpful in the investigation or prosecution of the crime (outcome of investigation/prosecution does not matter); and
- Have suffered substantial physical or mental abuse as a result of the crime.



T Visa

TVPA Defines Severe Forms of Trafficking:

- Sex trafficking - in which a commercial sex act is induced by *force, fraud or coercion* or in which the victim is under 18
- Labor trafficking - the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of *force, fraud, or coercion* for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.



Barriers for LGBT Survivors

- Fear of discrimination or abuse by police
- Abuser using threat of “outing” them
- Reluctant to come forward against someone else in the LGBT community
 - LGBT folks even more isolated and insular within the immigrant community – potential support networks may also know abuser
 - Fear of perpetuating stereotypes, being pushed out of community
- Don't forget about T Visa exceptions to law enforcement agency cooperation based on trauma and for minors under 18



Screening for U and T Visas

- Not all clients will recognize or acknowledge that they've been trafficked or have been the victim of a crime
 - Mistreatment often feels normalized or part of status quo for LGBT community
 - Clients experience high levels of rejection from their own families and communities, more vulnerable to traffickers or abuse
 - Smugglers may target LGBT clients for “housework” or harm because of identity
 - Abusers or traffickers may be seen as “trusted” individuals within the LGBT community, doesn't seem like abuse if person has “good intentions”



Screening for U and T Visas (Cont'd)

- For T visas, family rejection may also be an argument for why your client is physically present in the U.S. “On Account Of” the trafficking
 - Ex: escaped from trafficker but was subsequently kicked out of family home – became homeless and no resources to return
- Ask specific questions about harm:
 - Have they ever been threatened, have they ever had any problems at work, what happened during journey, etc.
 - For individuals with record of sex work, ask questions about how they got involved, who kept money, who organized clients, etc.



Good Faith Marriage for Adjustment of Status or VAWA

- “A sham marriage has been defined by the BIA as a marriage which may comply with all the formal requirements of the law but which the parties entered into with no intent, or “good faith”, to live together and which is designed solely to circumvent the immigrations laws. Sham marriages are not recognized for immigration purposes.” See *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988).
 - Address and explain if currently or previously marriage to a different-sex spouse appears inconsistent with client's identified sexual orientation – does not mean that it's not in good faith
- May have not have as much traditional good faith evidence:
 - Many couples may not be “out,” reluctant to mingle finances or open joint accounts
 - Religious discrimination: some companies don't allow same-sex partners to be included on insurance, benefits, lease
- Be on alert for inappropriate questioning by officers



LGBTI Asylum



DVP

Asylum INA Definition – 101(a)42(A)

- Any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion

DVP

LGBTI RAIO Lesson Plan

- All Asylum officers trained on LGBTI issues
- Important resource for One Year Filing Deadline exceptions
- Old (2015) version online
- https://www.uscis.gov/sites/default/files/files/nativedocuments/LGBTI_Claims_LP_RAIO.pdf

DVP

RAIO Guidance for Interviewing

- o Setting the right tone
 - Non-judgmental, affirming
 - Respecting identities extends beyond the client interaction
- o Presence of family members / interpreters
- o Balance between information gathering and sensitivity
- o Use similar language / Be mindful of language and terminology
 - Talk about identity and what it means to the client
- o Questions should be relevant to the case
 - When did they know they were ____
 - What does it mean to them to be ____
 - Who knew
 - How did people react / how were they perceived
 - Relationships
 - Steps related to transitioning



Transgender Do's

- Do refer to the applicant by their chosen name and/or pronoun
- Do ask when they first realized they were transgender
 - Bear in mind that many (but not all) trans people may identify as gay or lesbian before they come to realize that they are transgender
- Do ask when they began to transition or whether they plan to do so



Transgender Don'ts

- Don't assume that the applicant wants or will have surgery
 - Transition is different for everyone
- Don't impose your opinion of the applicant's gender on how you address him or her (i.e. if a transwoman looks masculine but considers herself female, use her female name)
- Don't assume that a trans person who "passes" well as his or her gender won't have problems in his or her country
- Don't assume that a transgender person who uses different terminology is not trans (i.e. a transgender woman may simply refer to herself as a woman.)



Possible One Year Exceptions– Changed Circumstances

- Recent “coming out”
 - Not out in country, only afraid to return now
 - “Outed” to family members in home country
 - Marriage to same-sex or trans partner
- Recent “transition” for transgender applicants
- Recent HIV diagnosis
- Changed country conditions
 - Ex: President of the Gambia stating gays should be killed, new anti-LGBT laws, etc.



Extraordinary Circumstances

- Mental Health Issues
 - PTSD
 - Long time to “come out”
 - Long time to accept identity
- Severe Family Opposition
- Severe Isolation within Community
- HIV dx often leads to depression
 - May expand “reasonable period of time”
- Legal disability
- Loss of lawful immigration status



Reasonable Timeframe

- Do NOT get a new 1-year filing window - must file within a “reasonable period” of any changed or extraordinary circumstance. 8 CFR 208.4(a)(4)(ii).
- More than 6 months = considered per se unreasonable
 - Asylum Procedures, 65 Fed. Reg. 76121, 76123-24 (Dec. 6, 2000) (Supplementary Information): “waiting six months or longer after expiration or termination of status would not be considered reasonable”
- Under 6 months = per se reasonable?
- Helpful to make a chart or timeline of dates documenting circumstances for when this calculation should start
 - Particularly helpful to explain impact of various steps in gender transition



Matter of A-B- & Matter of L-E-A

- Every PSG is decided on case-by-case basis
- Matter of M-E-V-G, 26 I&N Dec. 227, 237 (BIA 2014). PSGs are:
 - (1) composed of members who share a common immutable characteristic,
 - (2) defined with particularity, and
 - (3) socially distinct within the society in question."
- Also consider:
 - Pro LGBT political opinion
 - Religion (if LGBT identity goes against norms)
 - Imputed claims



Updating Transgender Name and Gender Markers





Updating Name

- Name Change petition process through state courts or N-400
 - Minors usually require parental consent
- Unless client has a court order granting a name change, immigration forms should list the person's legal name with the preferred name included as an "other name used"
 - Prepare the client of the possibility of adjudicator using their birth name & pronouns
 - During preliminary matters at hearing or at start of interview, request that client's gender pronouns and preferred name be used during proceedings
- Where your client has legally changed their name, provide evidence of the name change and ask that the record be amended
 - Reach out to OCC to request they correct the name on the NTA
 - Push back on IJs who do not think they can amend the name in the record. At a minimum, request the legal name to be listed as an AKA
 - If granted relief, can bring the AFM 10.22 docs to InfoPass when requesting I-94 or I-551



Gender Marker Change

USCIS Adjudicator's Field Manual Chapter 10.22 – Change of Gender Designation on Documents Issued by USCIS

- Court order of gender change.
- Govt.-issued ID reflecting the requested gender designation or
- Letter from a licensed healthcare professional which contains:
 - The health care professional's full name, address, and telephone number;
 - The health care professional's license number and the issuing state, country, or other jurisdiction of the professional license;
 - Language stating that the health care professional has treated or evaluated the individual in relation to the individual's gender identity; and
 - The health care professional's assessment of the individual's gender identity.
 - See AFM Appendix 10-22 for Sample Language for Health Care Certification template



Resources

- Practice Advisory: LGBTI DACA Recipients and Options for Relief under Asylum Law
<https://cliniclegal.org/resources/lgbti-daca-recipients-and-options-relief-under-asylum-law>



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