



**CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW**

**LEGAL SERVICES MANUAL**

**THE RIGHTS OF LESBIAN, GAY, BISEXUAL, AND  
TRANSGENDER IMMIGRANTS UNDER THE  
IMMIGRATION AND NATIONALITY ACT**

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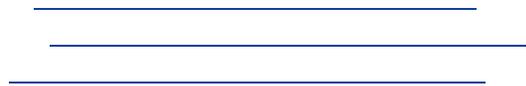
# CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW

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*DeLeon v. Napalitano*

*Adams v. Howerton,*

*DeLeon*



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**THE RIGHTS OF LESBIAN, GAY, BISEXUAL, AND  
TRANSGENDER IMMIGRANTS UNDER THE  
IMMIGRATION AND NATIONALITY ACT**

**I. INTRODUCTION**

*E.g*

*Windsor*

*United States v.*

*Windsor*

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## **II. Federal Defense of Marriage Act**

*Matter of Lovo-Lara*

*Bark v.*

*Immigration & Naturalization Service*

### **1. Statutory Language**

*codified at*

*Id.*

,

## **2. Legislative History**

*reprinted in*

*Id*

*Id*

*Id*

*In re Levenson*

*Levenson II accord*

*Massachusetts v. United States HHS supra*

*Windsor v. United States*

*Gill v. Office of Pers. Mgmt.*

*aff'd sub. nom Massachusetts v. United States HHS supra*

*In re Balas*

*Dragovich v. United States Dep't of the Treasury*

*Perry supra*

*Perry v. Schwarzenegger*

*aff'd*

*Lawrence, supra*

*See, e.g., Perry, supra*

*Levenson II*

*Massachusetts v. United States HHS, supra,*

*In re Balas supra*

*Dragovich, supra*

*Gill, supra*

*always*

*Plyler v. Doe*

*Shapiro v. Thompson*

*overruled in part on other grounds*

*by Edelman v. Jordan*

*See Levenson II*

*Massachusetts v. United States*

*HHS supra*

*Gill, supra,*

*Dragovich supra*

*In re Balas, supra*

*Golinski v. United States Office of Pers. Mgmt. supra*

**III. IMMIGRATION BENEFITS AVAILABLE TO ALIEN SPOUSE  
OF US CITIZEN OR LAWFUL PERMANENT RESIDENT AND  
CHILDREN IN OPPOSITE-SEX MARRIAGES AND SAME-SEX  
MARRIAGES RECOGNIZED BY STATE LAW**

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—————

26 I&N Dec. 158, 159 (BIA 2013).

**A. Spouse of a U.S. Citizen**

*See*

*See*

*The validity of a marriage is generally determined by the law of the place where the marriage was performed or celebrated*

**§ Sec. 204.1 General information about immediate relative and family-sponsored petitions. (Amended effective 8/15/11; 76 FR 28303. Amended 3/26/96; 61 FR 13061.)**

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**section 203(a)**

**61 FR**

**13061**

**204(a)(1)(A)(i)    204(a)(1)(B)(i)**

**section 201(b)**

**section 203(a)**

**204.2**

**§ Sec. 204.2 Petitions for relatives, widows and widowers, and abused spouses and children. (Amended 3/26/96; 61 FR 13061.)**

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*A visa becomes available to a preference category according to the priority date (the date the I-130 was properly filed) The family member's preference category will determine how long he or she will have to wait for an immigrant visa number*

**§ Sec. 204.1 General information about immediate relative and family-sponsored petitions. (Amended effective 8/15/11; 76 FR 28303. Amended 3/26/96; 61 FR 13061).**

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section 203(a)

61 FR

13061

204(a)(1)(A)(i)    204(a)(1)(B)(i)

section 201(b)

section 203(a)

204.2

**C. Child of an immigrant married to a USC or LPR**

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**201(b)**

**203(a)(2)**

**D. Accompanying Spouses of non-immigrants**

**1. U Nonimmigrant Status Visas**

4aa/

4aa/  
4aa1/

4aa1/

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2. **VAWA Applications for Adjustment of Status**

**spouse**

**parent**

**child**

- Spouses and former spouses of abusive U.S. citizens or lawful permanent residents
  
- Children of abusive citizens or lawful permanent residents who file before turning 25
- An immigrant parent of an immigrant child abused by his or her other US citizen or lawful permanent resident parent, even if the immigrant parent is not himself or herself abused
  
- Good faith marriage*
  - relationship to the abuser*
  - immigration status*
  
- Good moral character*
- Residence with the abusive family member*
-

**(1) Eligibility.**

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**(ii) Legal status of the marriage.**

**(iii) Citizenship or immigration status of the abuser.**

**(iv) Eligibility for immigrant classification.**

(v) **Residence.**

(vi) **Battery or extreme cruelty.**

(viii) **Extreme hardship.**

(ix) **Good faith marriage.**

(2) **Evidence for a spousal self-petition.**









### **3. Foreign Student Spouse**

3/

214(I)

3/

**3d/**

5. **Temporary Worker Spouse**













**v isa  
category**

**General description – About an individual in this category:**

**Q-1B**

**H-2A**

**H-2B**

**H-3**

**L**

**O**

**P-1**

**P-2**

**P-3**

**Q-1**

**E. Adjustment of Status**

*The purpose of Form I-485 is to apply to adjust status to that of a permanent resident of the United States*

*See*

**F. Waivers of Inadmissibility**

*In re Cervantes-Gonzalez*

*See*



#### **IV. THREE AND TEN YEAR BARS TO REENTRY**

**V. TEMPORARY IMMIGRATION BENEFITS AVAILABLE TO  
SPOUSES OF US CITIZENS OR LAWFUL PERMANENT  
RESIDENTS**

**A. Spouses and Children of U.S. citizens**



## **B. Spouses and Children of Permanent Residents**

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□

□

### **C. Advance Parole**









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**n**

**and**

**B. Rights of LGBT Persons and Asylum**

*Matter of Toboso-Alfonso*



*Immigration and Naturalization Service,*

*Geovanni Hernandez-Montiel v.*

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*Lim v. INS,*

*Li v. AG of US,*

*Marcos v. Gonzales*

*Pitcherskaia v. INS*

*Pitcherskaia*

*Lawrence v. Texas*

*Fisher v. INS*

*Bucur v. INS*

*Mikhailevitch v. INS*

*See also Kvartenko v. Ashcroft*

*NS v. Cardoza-Fonseca*

*Knezevic v. Ashcroft*

*Berrotera-Melendez v. INS*

*Knezevic v. Ashcroft*

*INS v.*

*Cardozo-Fonseca*

*Singh v.*

*INS,*

*Ngure v. Ashcroft*

*Lie v. Ashcroft*

*In Re A—,*

*See also Galicia v. Ashcroft*

*Matter of Mogharrabi*

*Matter of Toboso-Alfonso*

*Karouni v. Gonzales*

*INS v. Elias-Zacharias*

*Soto-Vega v. Gonzales*

*Soto-Vega*

*Escalating Persecution of Gays and Refugee*

*Protection: Comment on*



### **C. Rights of Transgender Persons and Asylum**



#### **D. Asylum Claims and International Law**

*See, e.g.*

*Escalating Persecution of Gays*

*and Refugee Protection: Comment on*

## VII. THE MORTON MEMO<sup>2</sup>

[Redacted text block]

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[Redacted footnote text]





## **VII. CHALLENGES TO DOMA**

*See*

**A. Unites States v. Windsor**

*See Windsor*

*Windsor*

*Id*

*Id*

*Windsor*



**UPDATE**

*Windsor*

*Windsor*

*citing*

*Williams North Carolina*

*Id quoting*

*Williams North Carolina*

*Id*

*Id*

*Windsor*

*Id*

*Id*

*Id*

*Id*

*Id* quoting *Romer* *Evans*  
quoting *Louisville Gas & Elec. Co.* *Coleman*

*Id*

*Id*

*Id*

*Id* *Department of Agriculture*

*Moreno*

*Id*

*Id*

*Id.*

*Id*

*Windsor*

*Id*

*Id*

---

*see*

*Id*

*Id*

*Id*

*citing*

*Bolling Sharpe*

**B. Aranas v. Napolitano**

Arenas/Deleon, et al. v. Janet Napolitano, Secretary of the Department of Homeland Security; et al. Case No. SACV12-1137-JVS(MLGx) (United States District Court for the Central District of California)



*Id*



*et seq*

*uniformly*



*Id*

*Id*

*Id*

*If they cannot work  
or are forced to give up work because of their immigration status,  
they cannot afford the basic necessities of life including food, rent,  
and medicine*

*Id*

*Parenthood of S.E. Pa. v. Casey*

*Planned*

*Id*

*See, e.g., Moore*

*v. City of East Cleveland*

*quoting Cleveland Bd. of Educ. v. LaFleur*

*Stanley v. Illinois*

*id*

*Lawrence v. Texas*

*Planned Parenthood of Southeastern Pa. v. Casey supra*

*Aranas*

*Lawrence v. Texas*

*Lawrence*

*See*

*Id*

*Nordlinger v. Hahn*

*Baxtrom v.*

*Herold*

*Plyler, supra*

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*See Bolling v. Sharpe*

*Buckley v. Valeo*

*Id*

*Id*

*Clark v. Jeter*

*Id*

*E.g., Orr v.*

*Orr*

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*City of*

*Cleburne v. Cleburne Living Center*

*Id*

*Plyler, supra*

*E.g., Tapia-Acuna v. INS*

*Francis v. INS*

*United States v.*

*Virginia, supra*

*Massachusetts v. United States HHS*

*supra*

*accord, Pedersen v. Office of*

*Pers. Mgmt.*

*Id*

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*E.g., United States v. Virginia supra*

*Mississippi Univ. for Women v. Hogan*

*Feenstra*

*Druggists Mut. Ins. Co.*

*Kirchberg v.*

*Wengler v.*

*Frontiero v. Richardson*

*Id.* accord *Windsor v. United States supra*

*Co.*

*Weber v. Aetna Casualty & Surety*

*Plyler supra*

*See, e.g., Perry v. Brown, supra,*

“

*Gill supra*

*Lawrence supra*

*See also Windsor v. United States supra*

*Gill supra*

*accord*



*Adams v. Howerton*

[Redacted]

[Redacted] *Windsor*

*Windsor*

**C. Hollingsworth v. Perry (Prop 8)**



## VIII. OBAMA ADMINISTRATION POSITION ON DOMA

*OPM Windsor v. United States*

*Pedersen v.*





*Aranas*

*et al.*

*codified at*

**IX. CONSEQUENCES OF SUPREME COURT FINDING THAT  
DOMA IS UNCONSTITUTIONAL IN WINDSOR**

**X. RIGHTS UNDER INTERNATIONAL LAW**

*Marriage Equality*

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*Helper addresses evolution of international law and  
LGBT human rights,*

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*Born Free and Equal: Sexual Orientation and Gender  
Identity in International Human Rights Law*

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**Universal Declaration of Human Rights Article 2:**

**Universal Declaration of Human Rights Article 7:**

**International Covenant on Civil and Political Rights Article 2(1):**

**International Covenant on Civil and Political Rights Article 26:**

**International Covenant on Economic, Social and Cultural Rights  
Article 2:**

**Convention on the Rights of the Child Article 2:**

colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status

International human rights law prohibits discrimination on the basis of sexual orientation and gender identity. Sexual orientation and gender identity are impermissible bases for distinction. International law defines discrimination as any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on a prohibited ground of discrimination and that has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of rights guaranteed under international law.

Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law. UN Office of the High Commissioner for Human Rights. No. 40. Available at <http://www.ohchr.org/Documents/Publications/BornFreeAndEqualLowRes.pdf>.

Differences in treatment based on prohibited grounds are considered discriminatory, unless a State can show that there is a justification for the difference in treatment that is reasonable and objective. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights all include lists of prohibited grounds of discrimination in their nondiscrimination guarantees. These lists do not explicitly include "sexual orientation" or "gender identity", but they all conclude with the words "other status." The use of the phrase "other status" shows that the lists were intended

*Id.*

*Id.*

*Id.*

**Recognition of relationships**

*Id.*