**U.S. Citizenship
and Immigration
Services**

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HQRAIO 120/12a

Memorandum

TO: All Asylum Office Staff

FROM: John Lafferty
           Chief, Asylum Division

SUBJECT: Interim Procedures for Adding Same-Sex Derivative Spouses to Asylum Applications

I.   Purpose

This memorandum provides interim guidance and procedures to U.S. Citizenship and Immigration Services (USCIS) Asylum Office personnel for adding same-sex derivative spouses to asylum applications.

II.   Background

In *United States v. Windsor*, 133 S. Ct. 2675 (June 26, 2013), the Supreme Court struck down Section 3 of the Defense of Marriage Act, Pub. L. No. 104-199, § 3(a), 110 Stat. 2419 (codified as amended at 1 U.S.C. § 7 (2000)) (DOMA), which had limited the terms "marriage" and "spouse" to opposite-sex marriages for purposes of all federal laws. As a result, USCIS may now interpret "spouse" in section 208 of the INA to include an applicant's same-sex spouse.

However, the Asylum Division case management system, the Refugees, Asylum, and Parole System (RAPS), currently does not allow data entry of cases involving same-sex marriages. Users attempting to enter cases involving same-sex marriages will receive an error message. Until the necessary change to RAPS is implemented, cases involving same-sex marriages will require a manual override that can only be performed on the back end by Asylum Division Headquarters.

III.   Field Guidance

When Asylum Office personnel encounter cases in which a principal applicant wishes to add his or her same-sex spouse to an asylum application, they should follow the procedures in Section III.E of the Affirmative Asylum Procedures Manual (AAPM) concerning adding a dependent to a case after a principal's initial filing or simultaneous filing as a principal and a dependent, depending on the circumstances.

In addition to the procedures in the AAPM, until the necessary change to RAPS to allow entry of cases involving same-sex marriages is implemented, Asylum Office personnel should take the following steps:

1. (a) If the same-sex spouse already has a record in RAPS as a principal applicant and the spouse will not receive a grant of asylum as a principal applicant, either because he or she does not wish to pursue his or her application as a principal applicant or because he or she does not qualify for asylum as a principal applicant, delete the spouse's record in RAPS as a principal applicant.
    i. *Before deleting the spouse's record in RAPS as a principal applicant*, print all relevant RAPS screens for the spouse, including case history screens, and add these to the non-record side of the spouse's A-file.
   (b) If the same-sex spouse does not already have a record in RAPS as a principal applicant, follow the instructions in step 2 below to add the same-sex spouse to RAPS as a derivative asylum applicant.
2. Add the same-sex spouse to the principal applicant's case as a derivative spouse of the *opposite* sex as the principal.
3. Cancel the derivative spouse's appointment for biometrics collection by using the "EXTERNAL SECURITY CHECK REQUEST (FREQ)" command.
4. Request a correction of the derivative spouse's sex by sending an e-mail to RAPS Program Manager Elizabeth Mura (Elizabeth.E.Mura@uscis.dhs.gov) indicating the affected A#s and who is the principal applicant on the case. The subject line of the e-mail should read: SAME-SEX MARRIAGE RAPS OVERRIDE REQUEST.

For cases involving same-sex marriages in which an applicant was found ineligible for a grant of asylum and requires referral to an immigration judge, in order to generate a Notice to Appear (NTA) from the OSC Generation Screen (OSCG), Asylum Office personnel will need to request an additional correction of the derivative spouse's sex by following step four above and indicating the override is for NTA generation.

The Asylum Division will notify Asylum Office personnel when the necessary change to RAPS has been successfully completed such that the manual override will no longer be required for data entry.

If you have any questions concerning the guidance contained in this memorandum, please contact Kimberly Sicard at 202-272-1623 or kimberly.r.sicard@uscis.dhs.gov.

Attachments (2):
1. Legomsky, Stephen H. General Guidance to the Field in Same-Sex Marriage Cases, Memorandum, 26 July 2013, 3p.
2. Lafferty, John. Interim Procedure for Same-Sex Marriage Asylum Applications for *Form I-589, Application for Asylum and for Withholding of Removal*, Memorandum to Donald Neufeld, Associate Director, Service Center Operations, 2 August 2013, 2p.