

The Challenges LGBT+ Asylum-Seekers and Refugees Face in the United States

By Yordanos Molla

Abstract. The discussion surrounding LGBT+ asylum-seekers and refugees is becoming more prominent as advocacy for LGBT+ rights increases around the world. LGBT+ asylum-seekers and refugees encounter unique challenges due to their identities that shape their journey to find sanctuary, such as history of discrimination, requirement to validate one's LGBT+ identity, and detrimental issues of mental health. Other problems regarding LGBT+ asylum-seekers and refugees involve mental health and active global legislation prohibiting homosexuality. These problems are analyzed throughout this research paper in order to provide solutions to improve the current resettlement process for LGBT+ refugees. Resolutions that assist LGBT+ asylum-seekers and refugees include LGBT+ training for employees of refugee agencies and informative handouts.

Defining LGBT+

Due to their sexual orientation or gender identity, LGBT+ individuals face aversion from their communities because they do not adhere to society's heterosexual and cisgender standards. LGBT+ individuals are often rejected as deviant relative to the social norms of heterosexual and cisgender identities in their home countries (Pfitsch, 2006). In the United States, sex assigned at birth is categorized as male or female and is typically based on a person's "anatomy and genetics" (Lerner, Lerner, & Lerner, 2006, p. 3), such as genitalia and chromosomes. However, a person may not

identify with the given sex of male or female and as a result be shunned from their community.

Defining Refugee and Asylum-Seeker

Refugee status became internationally recognized through the United Nations. In 1948, the UN General Assembly constructed the Universal Declaration of Human Rights to set standards of basic rights for all individuals in the world. This document was the first official affirmation of refugee rights recognized world-wide (United Nations High Commissioner for Refugees, 2005). In the Universal Declaration of Human Rights, Article 14 states, “Everyone has the right to seek and to enjoy in other countries asylum from persecution” (United Nations, 1948, art. 14). The recognition of this liberty led to the creation of programs, such as the UNHCR, that solely focus on addressing refugee issues. They also outlined the qualifications for refugee status in the document *1951 Convention Relating to the Status of Refugees*, which was used as a “foundation for international refugee law” (Inter-Parliamentary Union and United Nations High Commissioner for Refugees, 2001). According to this document, a refugee is one who is forced to flee one’s home country because of well-founded fear of persecution based on “race, religion, nationality, membership in a particular social group, or political opinion” (Inter-Parliamentary Union and United Nations High Commissioner for Refugees, 2001).

It is important to note the differences between asylum-seekers and refugees in order to understand the process of becoming a refugee. The difference between a refugee and an asylum-seeker is that a refugee has been officially approved by the UNHCR and is already living in another country. However, asylum-seekers’ application “has not yet been finally decided” (UNHCR, 2005, p. 13) by the country in which the asylum-seekers applied for resettlement. This period is considered the waiting stage for asylum-seekers as they anticipate the UNHCR to accept their application to seek sanctuary as an official refugee.

Brief History of Discrimination on LGBT+ Immigration

There has been a long history of discrimination against and exclusion of LGBT+ immigrants and refugees in the United States. Such discrimination can be traced all the way back to the Immigration and Naturalization Act of 1952, where immigrants who identified as LGBT+ were prohibited from entering the United States (Heller, 2009). Although there was no explicit prohibition against LGBT+ immigrants, such intent was implied through the process of excluding people with “psychopathic personalities” (Pfitsch, 2006, p. 62). Homosexuals and other sexual minorities were diagnosed with sexual psychopathy by the U.S. Public Health Service (Heller, 2009). Such individuals were undesirable, and thus would not be allowed to become a part of American society. The U.S. Congress continued its efforts to continue excluding LGBT+ individuals through the Immigration and Nationality Act of 1965, which “explicitly added ‘sexual deviation’” (Pfitsch, 2006, 62) as a reason for prohibiting immigrants from entering the United States. The U.S. Supreme Court also affirmed this exclusion in 1967 and “upheld the ban” to apply “to gay and lesbian immigrants” (Pfitsch, 2006, 62). These exclusions exemplify the discrimination the U.S. government practiced against LGBT+ immigrants.

As the U.S. government’s aversion towards LGBT+ individuals started to weaken with the lifting of the ban, more LGBT+ asylum-seekers began to apply for refuge in the United States during the 1990s. The landmark case initiating the acceptance of LGBT+ refugees entering the United States was the case of Fidel Toboso-Alfonso, who is a homosexual Cuban (Pfitsch, 2006). When the Cuban government became aware of his identity, it transferred him to “a forced labor camp for sixty days as punishment for being homosexual” (Pfitsch, 2006, p. 66). As a result, he sought refuge in the United States in 1990. However, the United States did not officially acknowledge sexual orientation as a reason for persecution until 1994. In 1994, former Attorney General

Janet Reno officially declared his case a “precedent for all immigration courts” (Heller, 2009, p. 300), allowing LGBT+ asylum-seekers to apply for refuge based on their sexual orientation. This action validated their identities and created a foundation for future LGBT+ refugees to migrate to the United States.

The Problems of Verifying One’s Identity

As the number of LGBT+ asylum-seekers in the United States increased in the 1990s, such asylum-seekers were faced with new challenges because of their identities. A particular challenge involves the UNHCR disputing whether sexual orientation and gender identity should become protected classes for refugee status. A reoccurring problem that LGBT+ asylum-seekers specifically encounter is the questioning of the validity of their sexual orientation or gender identity. Since only “race, religion, nationality, membership in a particular social group, and political opinion” (Inter-Parliamentary Union and United Nations High Commissioner for Refugees, 2001) are protected classes, the UNHCR currently has to recognize sexual orientation and gender identity as social groups in order for LGBT+ asylum-seekers to gain refugee status (UNHCR, 2005). Since there is no universal nor national definition of a social group, there has been discrepancy between UN member states on whether or not sexual orientation and gender identity should be considered social groups at all. As a result, different U.S. circuit courts established their own definitions of social groups. The United States Court of Appeals for the Second Circuit required an “association test” (Pfitsch, 2006, p. 65), in which LGBT+ asylum-seekers have to demonstrate characteristics, such as effeminate behavior for gay males, that can distinguish them as a part of the LGBT+ community. However, this can be problematic, especially if their identity is not publicly known, because they are forced to out themselves to prove their identity with stereotypical behavior to gain asylum. The varying qualifications in the

United States for LGBT+ asylum-seekers to be recognized as part of a social group demonstrate the inconsistency among the U.S. circuits caused by the lack of guidelines from the UNHCR.

It remains difficult for LGBT+ asylum-seekers to prove their LGBT+ identity due to the requirement to obtain proof of persecution. Many of them do not immediately inform their caseworker or other refugee officials about their identity for fear of rejection or even more harm. Currently, there is a requirement for documentation of persecution, such as photos, hospital records, or police records, in order to gain refugee status. If such records are available, the LGBT+ asylum-seekers might not wish to retrieve the records because doing so may reveal their identity. They are often too afraid to seek help from the local police because of fear of more violence by the police or by others in the community. This predicament has left LGBT+ asylum-seekers to juggle the consequences of acquiring such documents in order to be granted refuge. Several have also previously been in heterosexual relationships and marriages, but those relationships should not negate their LGBT+ identity. Their individual experiences and thoughts should be utilized as proof rather than relying solely on physical evidence. Experiences can include “sexual feelings...relationships with other LGBT persons, and sexual behavior” (Ahola & Shidlo, 2013, p. 10). Allowing individuals to self-identify shifts the power back to them to have autonomy in expressing their own identity without the need for official documentation.

Current Discrimination

One of the sources of fear for LGBT+ individuals is the illegality of same-sex acts in their home countries. Aengus Carroll (2017), a researcher on human rights, and Lucas Ramón Mendos (2017), a human rights lawyer, developed a survey of the current state of LGBT+ rights around the world.

In the survey, they listed the current discriminatory laws against LGBT+ people, as well as proactive anti-discrimination laws. They found that as of May 2017, 72 countries criminalize homosexual acts (Carroll & Mendos, 2017). In the 2016 report, 13 of those countries permitted the death penalty for homosexual acts. One missing aspect from the survey is research on how social stigma plays a role in damaging pro-LGBT+ equality. Although the main scope of this research was to provide data on LGBT+ laws, the research does not cover the social impacts on LGBT+ individuals. Beliefs, such as the idea that homosexuality is unnatural, allow hate crimes and harassment against homosexuals to persist. The continuation of such beliefs exemplifies how social stigmas, not just enacted laws, contribute to violence against LGBT+ people and thus highlights the need for more research.

Mental Health

An obstacle that LGBT+ refugees face specifically is the prevalence of mental health issues stemming from social and political rejection of their identities. Mental illness is widespread among the refugee community due to the trauma many refugees face from persecution. They are reported to have higher levels of illness than the average population, “particularly depression and PTSD” (Tabak & Levitan, 2014, p. 38-39). LGBT+ refugees often endure violence from their communities, which adds trauma to their experience as a refugee. This causes concern because these refugees can commit harmful behavior towards themselves or others as a result of their traumatic experiences, including “suicidal tendencies, social withdrawal, self-neglect, and aggression” (Tabak & Levitan, 2014, p. 40). They can also re-experience trauma triggered by certain sights, sounds, or smells, and even by retelling their stories to mental health officials. Mental health officials have to be trained to “minimize the level of re-traumatization” (Ahola & Shidlo, 2013, p. 9). These

considerations need to be emphasized for the LGBT+ refugee population.

Additional obstacles are ways in which mental health is defined and recognized differently in other countries. Consequently, it can be difficult for LGBT+ refugees to assess themselves for mental health treatment. Even when they do recognize a problem, they do not gain support from other people in their communities and instead face isolation (Ahola & Shidlo, 2013). LGBT+ asylum-seekers who have experience in detention centers suffer additional stressors that exacerbate mental illness. Some have been ostracized or harassed in detention centers because of their sexual orientation or gender identity. In one case in Santa Ana, California, 17 LGBT+ asylum-seekers “filed the first official multi-plaintiff complaint” based on the “abusive conditions in the US civil immigration detention” (Fialho, 2013, p. 50). They suffered from violence committed by guards and other detainees and were put in isolation as punishment. As a result of the class action, the Santa Ana City Jail developed the first program in the United States for protecting LGBT+ immigrants in detention centers. In this new plan, LGBT+ asylum-seekers are given their own space while in custody, which improves their living conditions in the detention center.

Safe Spaces for LGBT+ Refugees

This section provides examples on how the UNHCR should integrate more comprehensive training programs designed to provide a more inclusive environment for LGBT+ refugees. An eight-hour LGBT+ training is required by US Immigration and Customs Enforcement for employees in detention centers of immigrants. It includes “vulnerability to sexual abuse/assault and intervention approaches, sensitivity in search methods, and use of preferred pronouns” (Fialho, 2013, p. 50). However, there are a few critiques of this model. Eight hours is not enough time to fully encapsulate the history and disparities of LGBT+ people, in addition to

covering the challenges that LGBT+ people from other cultures endure. The training needs to be more comprehensive and broken out into parts in order to approach topics more deeply. Also, the training does not cover any discussion on intersex people or how to create more inclusive speech and behavior for them as well as other minorities included under the LGBT+ umbrella.

Practices refugee agencies can implement to create a sense of security for LGBT+ asylum-seekers and refugees include visual and verbal support. It is difficult for LGBT+ asylum-seekers to come out to their caseworkers and other officials for fear of further violence or discrimination (Rumbach, 2013). That is why it remains important for employees, such as caseworkers, to explicitly demonstrate their support of all sexual orientations and gender identities in order to reassure them. For example, to ensure safety, employees can display safe space signs stating their support and verbally assure all refugees that they can confide in them and their identity will remain confidential. This can create a comfortable environment and ease LGBT+ asylum-seekers' apprehension of disclosing their identity. If they do not feel at ease to express their identity in interviews or other face-to-face contact, LGBT+ asylum-seekers and refugees should have access to hotlines in every refugee organization as an alternative. This provides a more confidential option for those who do not want to expose their identity. In fact, a 24-hour hotline was introduced in Iraq after "widespread anti-LGBTI violence in 2012" (Rumbach, 2013, p. 41). This tactic can be useful to increase safety measures for LGBT+ victims of discrimination and violence globally.

Refugee organizations can help create an inclusive environment specifically for LGBT+ refugees by providing useful resources, including informative handouts and training programs. If employees from such organizations only give handouts on LGBT+ issues to refugees who publicly identify as LGBT+, then closeted refugees are neglected from that information. As a resolution, refugee agencies should provide those handouts to *all* refugee clients, regardless of

their identity, so those who do not openly identify as LGBT+ can still receive the information. Such a practice has the added benefit of communicating inclusiveness regarding all sexual orientations and gender identities to all clients. Information can include online LGBT+ communities, counseling resources, and “LGBTI-friendly health-care or psycho-social programs” (Rumbach, 2013, p. 42). In-depth training that promotes LGBT-inclusive behavior for staff in refugee agencies will also generate a more hospitable atmosphere. Training programs should help employees become more aware of their behaviors when talking to LGBT+ clients, such as using LGBT+ inclusive language in their interviews, being aware of signs of anxiety from potential LGBT+ asylum-seekers, and knowing what questions might be triggering. By applying these techniques, the staff can provide a welcoming space for LGBT+ asylum-seekers.

Conclusion

While research on LGBT+ asylum-seekers and refugees has been conducted within the past couple decades, immigration based on LGBT+ status can be traced back to the early twentieth century. Yet persecution against LGBT+ individuals continues today, and those individuals are forced to search for asylum as a result. Furthermore, LGBT+ asylum-seekers and refugees endure additional burdens during the resettlement process, such as the requirement to verify their identity and increased risks for mental health issues. Future research is also needed to focus on assisting LGBT+ asylum-seekers and refugees more efficiently with continuing the implementation and progression of LGBT+ inclusive programs.

Yordanos Molla is a 2018 graduate from the University of South Florida, with a Bachelor of Arts in International Studies and Women's and Gender Studies. As a daughter of a refugee, she became interested in merging her two majors together by dissecting how queer identities affect refugees. She will begin a master's program at American University in Ethics, Peace, and Human Rights this fall. Yordanos plans to concentrate her studies on human rights and social justice and hopes to work for a social justice organization in D.C. after graduation.

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