



## **Migration and Travel Information for Russian LGBTI Individuals and their Families**

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This guide is written for lesbian, gay, bisexual, transgender, and intersex (LGBTI) people and their families who are considering leaving their country on a temporary or permanent basis. Being in a new country can be difficult, especially if you are not financially, emotionally, or otherwise prepared. You should research your intended destination and realistically assess your ability to stay there legally and securely. This guide provides basic practical information that may help you in that process.

This guide provides general information for travel and immigration to common destination countries for Russian passport holders. This guide does not contain legal advice, which has to be tailored to every individual on a case-by-case basis. If at all possible, consult with a visa or immigration expert in your intended destination country for comprehensive and accurate advice.

### ***A note about seeking legal help with migration:***

The world's major cities are filled with immigration lawyers and consultants who promise to solve your immigration and visa needs for anywhere from a few hundred dollars to several thousand pounds. While many of these individuals are trustworthy and knowledgeable, many are not. Some are experienced in LGBTI migration cases, but most are not. Research your choices: be careful who you pick. Some of the most important questions you should ask are:

- What do friends or trusted organizations who have worked with this person say about him or her?
- How much experience does the person have in migration matters? In cases similar to mine?
- Is the person licensed to give advice or to represent me? By which authority?
- Exactly what legal status am I being offered? What are the precise eligibility requirements for this status?
- Based on what I already know, is the proposed approach realistic?
- Is the proposed fee reasonable? How does it compare with the rates charged by others for the same work?
- Do I feel completely comfortable being myself and working with this person?

When engaging immigration help, always insist on a written agreement that specifies the rate and time frame of the work, and describes exactly what the professional will do in your case, among other terms. In a few countries, there are trustworthy non-governmental organizations and community groups providing free information to immigrants in need. Most of these groups are LGBTI-friendly. If you can find one of these groups in your destination country, you are well-advised to seek out their advice first. An abbreviated list of such organizations in several countries is provided in *Section VII: Additional Resources*.

### **I. Just in Case: Advance Preparation**

Whether you're a seasoned activist or an ordinary citizen — and even if you have traveled or lived abroad before — seeking refuge from persecution involves a unique set of challenges.

If you are able, set aside the funds you and your family will need to travel and to survive during your transit and arrival at your destination. If at all possible, be ready to carry several hundred dollars or Euros in cash for each family member. Have more funds available for immediate withdrawal from your bank. Do not rely on being able to borrow from your friends or your family at the last minute.

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**Note:** If you are a LGBTI human rights defender, you may be able to access emergency support funds through these and other emergency funds:

- *Dignity for All* fund of Freedom House in Washington, D.C.:  
<http://www.freedomhouse.org/program/dignity-all-lgbti-assistance-program>
- US Department of State *Human Rights Defenders Fund*:  
<http://www.state.gov/j/drl/p/c46943.htm>
- The *emergency fund for human rights defenders at risk* managed under the European Instrument for Democracy and Human Rights:  
<http://www.eidhr.eu/side-panels/human-rights-defenders/small-grants>
- Urgent Action Fund for Women’s Human Rights Defenders, a nonprofit organization in San Francisco, US: <http://urgentactionfund.org>
- Front Line Defenders, a nonprofit organization in Ireland:  
[www.frontlinedefenders.org/emergency](http://www.frontlinedefenders.org/emergency)

Learn and practice basic English. English skills may be your most important asset – especially if you do not speak the language of your destination country. Language skills give you access to helpful members of your new community and make it easier to navigate critical government, non-governmental organization (NGO), and United Nations bureaucracies.

Reach out to friends, acquaintances, or other support systems in your destination country. If you do not know anyone there, find LGBT and/or immigrant community centers, community networks and support groups there to establish relationships in advance.

Know the laws, procedures, and requirements of your destination country as well as the social, political, and economic conditions you’ll face there. Discuss possible contingency plans with your family.

Remember, things can happen very quickly, leaving you little time to make informed decisions. The more you prepare now, the safer you and your family will be later.

## II. Personal Documents

Having all your documents in order will be essential both for travel and for obtaining proper legal status at your destination. Store important personal documents – for you and *all* members of your family – in a safe, easily accessible location, where you can gather them quickly. **Be sure to scan and back up important documents at a secure online location.** Popular online storage sites include the following:

- Box: <https://www.box.com>
- Dropbox: <https://www.dropbox.com>
- Google Drive: <https://drive.google.com>
- iCloud: <https://www.icloud.com>

If you do not have access to online document storage, save scanned copies of your documents as email attachments.

The following documents, if available, are among those you may need for *all* members of your family:

- Passports or Travel Documents
  - Each family member should have an international passport or travel document valid for at least one year
  - Scan *all* pages of current and past passports (not only the photo page)
- Visas to destination country
  - Each family member should have a valid visa to enter the destination country, if needed and if available (note that some countries allow Russian passport holders to enter without visas)
- Driver's license, or international driver's license
- Marriage license or certificate
- Birth certificate
  - Have birth certificates for all family members, as well as copies of birth certificates for parents and grandparents
- DNA test results for biological children
- Adoption records and certificates for adopted children
- Proof of religious, cultural, or national heritage
  - *These documents are particularly important if you intend to seek permission to live in another country based on your lineage (see below)*
- Certificates of professional standing or accomplishment
- Labor/work records
- Complete university transcripts
- School degrees and other certificates of study or accomplishment
- Medical records, especially of immunizations and any serious or chronic illnesses or injuries
- Official police records
- Documentation of physical violence or other abuses if relevant/available.
  - If you apply for asylum, refer to the "Proving One's Asylum or Refugee Claim" section below for examples of this type of documentation.

### III. Options for Travel and Migration

Generally, a citizen of one country who wishes to enter another country, such as the United States, must first obtain a visa – either a nonimmigrant visa for temporary stay or an immigrant visa for permanent residence. The sections below discuss a wide variety of options for nonimmigrant or immigrant visas to several countries. These options include seeking citizenship in another country, permanent residency, or a nonimmigrant visa for the purpose of work, study, visit, or pleasure.

Bear in mind that no two countries have identical immigration or visitation laws, and that no two individual cases are the same. One of the first steps along your journey to safety will be familiarization with the immigration laws and procedures of your destination country.

#### A. Citizenship or Permanent Residence by Birth or Lineage

In most countries, citizenship can be obtained by birth or lineage. Most people are automatically considered citizens of the country in which they are born. However, citizenship can also be acquired based on ancestry or ethnicity. For example, if one or both of a person's parents are citizens of a given country, that person may have the right to be a citizen of that country as well, although an application

may be required. Other countries grant citizenship or residence based on grandparents' or even more distant lineage. Depending on your ethnic or religious background, you may be eligible for automatic citizenship or permanent residence in an LGBTI-safe country. Where this option is available, it is generally the fastest, most efficient, and least expensive.

The following countries are examples of countries that grant citizenship based on lineage:

- Germany
  - Ethnic Germans from the former Soviet Union are entitled to German citizenship: [http://www.bamf.de/EN/Migration/Spaetaussiedler/spaetaussiedler-node.html;jsessionid=CB3A5BAD93C5F339704778DF6109E6DD.1\\_cid294](http://www.bamf.de/EN/Migration/Spaetaussiedler/spaetaussiedler-node.html;jsessionid=CB3A5BAD93C5F339704778DF6109E6DD.1_cid294). In addition to proving their German lineage, these “returning Germans” are required to speak basic German. Germany recognizes same-sex couples for immigration purposes. <http://www.bamf.de/EN/Migration/Spaetaussiedler/spaetaussiedler-node.html>
- Israel
  - Having a Jewish grandparent may be sufficient for Israeli citizenship: <http://www.mfa.gov.il/mfa/aboutisrael/state/pages/acquisition%20of%20israeli%20nationality.aspx>. One must prove one’s Jewish lineage through voluminous documentation and sometimes through attestation by community leaders. Knowledge of Hebrew is not required. Certain converts to Judaism are also qualified to immigrate to Israel. <http://www.irac.org/userfiles//Guide%20to%20Conversion%20-%20Seeking%20Aliyah.pdf>. Israel recognizes same-sex couples for immigration purposes.
- Armenia
  - Ethnic Armenians and children of former Armenian citizens enjoy a simplified procedure for obtaining citizenship: <http://www.mfa.am/en/citizenship> (Note: Amnesty International has decried the lack of LGBTI protections in Armenia. <http://www.rferl.org/content/armenia-lgbt-dissent-lack-of-protection-amnesty-report/25083433.html>).

Lineage-based immigration always requires proving one’s ethnicity.

### **B. Formal Emigration**

The vast majority of migrants are not entitled to automatic citizenship or residence in another country and must pursue longer legal channels to immigration. With few exceptions, permanent immigration is a lengthy and expensive process.

Some countries, including Australia (see <http://www.immi.gov.au/skilled/general-skilled-migration/points-test.htm>) and Canada (see <http://www.cic.gc.ca/english/immigrate/skilled/apply-who.asp>) have “points-based” or similar systems to regulate their immigration. Under these systems, applicants are awarded a certain number of points for meeting various selection factors, including age, language ability, professional skills, and family members.

Advance planning and preparation for formal emigration are essential – particularly if children and unmarried partners are involved. This section discusses some considerations for immigration of same-sex partners, emigration with children, and employment-based immigration.

## 1. Immigration of Same-Sex Partners

While virtually all countries accept immigrants based on traditional opposite-sex marriage, few accept same-sex partners. Countries that recognize same-sex immigration include Australia, Canada, France, Germany, Israel, the Netherlands, and the US. Some countries, including Australia and the US, admit same-sex fiancé(e)s. It is essential to know the rules of your destination country, as informed by the facts of your particular case.

**Note:** The *Reference Guide for LGBT Employee Overseas Relocation* lists 24 countries, as of 2011, that recognize same-sex relationships for immigration purposes: <http://www.globalequality.org/storage/documents/pdf/oe2011-refguide-4page.pdf>.

Appendix B of *Family, Unvalued: Discrimination, Denial, and the Fate of Binational Same-Sex Couples under U.S. Law*, a 2006 report by Human Rights Watch and Immigration Equality, provides more detailed information about the relevant immigration laws in some of these countries: <http://www.hrw.org/reports/2006/us0506/10.htm>. These documents were accurate as of the dates of their publication. Immigration laws change frequently, and you are urged to obtain up-to-date advice for your destination country.

The following countries grant visas to same-sex spouses, partners, and/or fiancé(e)s of citizens:

- Australia
  - partners and fiancé(e)s: <http://www.immi.gov.au/migrants/family/family-visas-partner.htm>
- Belgium
  - spouses: <https://dofi.ibz.be/sites/dvzoe/EN/Application-guides/Pages/Spouses.aspx>
  - unmarried partners: <https://dofi.ibz.be/sites/dvzoe/EN/Application-guides/Pages/Partner.aspx>
  - fiancé(e)s: [https://dofi.ibz.be/sites/dvzoe/EN/Application-guides/Pages/Coming\\_to\\_Belgium\\_to\\_get\\_married.aspx](https://dofi.ibz.be/sites/dvzoe/EN/Application-guides/Pages/Coming_to_Belgium_to_get_married.aspx)
  - legal cohabitants: [https://dofi.ibz.be/sites/dvzoe/EN/Application-guides/Pages/Declaring\\_a\\_legal\\_cohabitation\\_in\\_Belgium.aspx](https://dofi.ibz.be/sites/dvzoe/EN/Application-guides/Pages/Declaring_a_legal_cohabitation_in_Belgium.aspx)
- Canada
  - spouses, common-law partners, and conjugal partners: <http://www.cic.gc.ca/english/immigrate/sponsor/spouse-apply-how.asp>
- France
  - spouses: <http://www.consulfrance-washington.org/spip.php?article470>
- Germany
  - domestic partners: <http://www.bamf.de/EN/Migration/Arbeiten/Familiennachzug/familiennachzug-node.html>
- United Kingdom
  - spouses, civil partners, and unmarried or same-sex partners: <http://www.ukba.homeoffice.gov.uk/visas-immigration/partners-families/citizens-settled/spouse-cp>
  - fiancé(e)s and proposed civil partners: <http://www.ukba.homeoffice.gov.uk/visas-immigration/partners-families/citizens-settled/fiancee-proposed-cp>
- United States
  - spouses and fiancé(e)s: [http://travel.state.gov/visa/immigrants/types/types\\_1315.html](http://travel.state.gov/visa/immigrants/types/types_1315.html)

## 2. Emigrating and Immigrating with Children

Traveling and immigrating with children poses serious practical challenges requiring intensive advance planning and support. It also raises serious legal questions. In most countries, children who are minors (typically under age 18 or 21) automatically receive the same immigration status as their parents. For LGBTI families, however, other complex legal issues often arise.

Russian children generally may exit the country with only one parent, but there are exceptions that may require special legal handling. A more serious problem is that virtually all destinations – including all 26 countries in the Schengen Area in Europe – require the consent of *both* legal guardians for entry of minor children. If you are not your child's legal guardian, your child may be unable to immigrate or travel with you.

Yet more issues arise for adopted children. For example, depending on the circumstances, a Russian adoption may not necessarily be recognized by the destination country. In the United States, for instance, the recognition of adoptions finalized in another country depends on the parents' state of residence. Some states may give full recognition to foreign adoption decrees, while others may require re-adoption, which may necessitate the consent of the child's legal or biological parents. Likewise, in Canada, recognition of the foreign adoption judgment depends on the province or territory where the parents reside. In Germany, foreign adoption orders require formal approval in order to be valid. Similarly, in Australia, foreign adoption orders are not recognized automatically.

When it comes to your children's status, you should take no chances. Conduct exhaustive background research. The *Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption* (or Hague Adoption Convention) may be a good starting point for your research.<sup>1</sup> If possible, consult an expert on adoption/family law for specific advice and information. If available, seek advice and referrals from a trustworthy LGBTI-friendly community organization. In some cities, you may be able to find an NGO to give you free legal advice.

## 3. Employment-Based Immigration

Several countries allow for permanent immigration or residence based on employment; extraordinary ability in the arts, sciences, or other fields; inter-company transfer; or investment. Information is available at the following websites:

- Australia: <http://www.immi.gov.au/skilled>
- Belgium: [http://www.belgium.be/en/work/coming\\_to\\_work\\_in\\_belgium/work\\_permit](http://www.belgium.be/en/work/coming_to_work_in_belgium/work_permit)
- Canada: <http://www.cic.gc.ca/english/work/permit.asp>
- Czech Republic: <http://best-citizenships.com/czech-residence.htm>
- France: requires a long-stay visa: [http://www.diplomatie.gouv.fr/en/coming-to-france/getting-a-visa/article/what-type-to-apply-for#sommaire\\_2](http://www.diplomatie.gouv.fr/en/coming-to-france/getting-a-visa/article/what-type-to-apply-for#sommaire_2)

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<sup>1</sup> Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May, 29, 1993, 32 I.L.M. 1134, available at <http://www.refworld.org/docid/3ddcb1794.html>. The Hague Adoption Convention is an international agreement that was developed in an effort to protect adopted children from abuse and exploitation that sometimes accompanies international adoption. Most LGBTI-friendly destination countries are likely parties to the Convention.

- Germany: <http://www.bamf.de/EN/Migration/Arbeiten/BuergerDrittstaat/buerger-drittstaat-node.html>
- Hungary: <http://www.hungary-immigration.com/hungary-immigration-easy-immigration-to-europe>
- Israel: <http://mfa.gov.il/MFA/ConsularServices/Pages/Visas.aspx>
- Latvia: <http://www.baltic-legal.com/immigration-eng.htm>
- Lithuania: <http://www.baltic-legal.com/immigration-eng.htm>
- United Kingdom: <http://www.ukba.homeoffice.gov.uk/visas-immigration/working>
- United States: <http://www.uscis.gov/working-united-states/working-us>

### C. Temporary Travel

Most people do not want to leave their countries. Many will want to leave temporarily — for a few months or years until the worst of a sociopolitical backlash against LGBTI people is gone — and then return later if possible. Common grounds for temporary travel visa include:

- Tourism
- Business — obtaining a short-term business visa usually requires that the applicant's employer send the employee to the country for work-related purposes, and that there be a corresponding recipient in the destination country
- Short-term employment, site visits, or consultancies
- Study and trainings
- Attendance or presentation at events and conferences

There are many countries Russian citizens can visit without obtaining a visa in advance. These countries include most of the former Soviet republics (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Ukraine, Uzbekistan), Israel, and Turkey, as well as most countries in Latin America. Before traveling, you should consult the visa requirements for your intended destination country. You might start your research at this website: [http://en.wikipedia.org/wiki/Visa\\_requirements\\_for\\_Russian\\_citizens](http://en.wikipedia.org/wiki/Visa_requirements_for_Russian_citizens). Note that the information on this website may not be accurate or up-to-date. If available/possible, turn to a specific country's embassy, consulate or immigration web site for verification of visa requirements.

**Important:** Most LGBTI-friendly destination countries *presume* that foreign nationals seeking a temporary visa actually intend to remain in those countries permanently. As such, most consular officer or border officials do their best to identify and filter out persons who might overstay their visas or apply for asylum. The consulates and border officials of these countries typically require that prospective visitors prove they intend to return home after their visit. When seeking a visa to one of these countries, if your ties to your home country are not strong enough (i.e., if you are young, unmarried, or unemployed), or if it appears that you will want to stay in the destination country, the consul will likely deny your visa request.



Information on specific countries can be found at the following websites:

- Australia: <http://www.immi.gov.au/visawizard>
- Belgium: <https://dofi.ibz.be/sites/dvzoe/EN/Pages/home.aspx>
- Canada: <http://www.cic.gc.ca/english/visit/visas.asp?country=Russia>
- France: <http://www.diplomatie.gouv.fr/en/coming-to-france/getting-a-visa>
- Germany: [http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/Visabestimmungen\\_node.html](http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/Visabestimmungen_node.html)
- Israel: no visa required for 90 days:  
[http://www.mfa.gov.il/MFA\\_Graphics/MFA%20Gallery/Consular%20forms/VisaRequirements.pdf](http://www.mfa.gov.il/MFA_Graphics/MFA%20Gallery/Consular%20forms/VisaRequirements.pdf);  
<http://www.mfa.gov.il/mfa/consularservices/pages/visas.aspx>
- Kazakhstan: no visa required for 90 days:  
[http://mfa.gov.kz/en/#!/consular\\_issues/visa\\_regime\\_of\\_kazakhstan\\_with\\_other\\_countries](http://mfa.gov.kz/en/#!/consular_issues/visa_regime_of_kazakhstan_with_other_countries);  
[http://mfa.gov.kz/en/#!/consular\\_issues/information\\_about\\_the\\_new\\_visa\\_rules\\_of\\_the\\_republic\\_of\\_kazakhstan](http://mfa.gov.kz/en/#!/consular_issues/information_about_the_new_visa_rules_of_the_republic_of_kazakhstan)
- Ukraine: no visa required for entry: <http://mfa.gov.ua/en/consular-affairs/entering-ukraine/visa-requirements-for-foreigners>
- United Kingdom: <http://www.ukba.homeoffice.gov.uk/visas-immigration>
- United States: <http://travel.state.gov/visa>

#### **IV. Seeking Asylum and Refugee Status**

Persons who fear persecution often flee to another country where they seek refugee status or asylum. All LGBTI-friendly countries and authorities recognize that sexual orientation and gender identity constitute grounds for asylum and refugee protection. Western countries approve large numbers of asylum applications from people belonging to groups persecuted in Russia.

Russia is one of the top countries of origin of asylum seekers in the European Union, particularly in Poland, France, Germany, and Austria.<sup>2</sup> Russians were the largest national group granted protection in France and Poland (more than 2,000 people). In Austria, more than 1,000 Russians received protection in 2012.<sup>3</sup> Many Russians also request protection in the US and Canada.<sup>4</sup> No statistics are available specifically on applications by Russians based on sexual orientation and gender identity, but informal sources of data indicate that LGBTI applicants feature prominently in these numbers. In 2012, approval rates for asylum applications in some countries are much higher than they are in others. In 2012, the overall approval (“grant”) rates for initial requests for asylum and “subsidiary protection” were approximately 28% in Austria, 27% in Germany, 14% in France, and 9% in Poland.<sup>5</sup> While we do not know how many of these asylees were LGBTI, anecdotal information indicates that the grant rates among LGBTI cases are higher than the average. Of the cases which are denied, many are ultimately granted on appeal.

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<sup>2</sup> EUROSTAT, ASYLUM APPLICANTS AND FIRST INSTANCE DECISIONS ON ASYLUM APPLICATIONS: 2012, 9 (2013), available at [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-QA-13-005/EN/KS-QA-13-005-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-QA-13-005/EN/KS-QA-13-005-EN.PDF).

<sup>3</sup> *Asylum Decisions in the EU27: EU Member States Granted Protection to More than 100 000 Asylum Seekers in 2012*, EUROSTAT NEWS RELEASE (Eurostat Press Office), June 18, 2013, at 4, available at [http://epp.eurostat.ec.europa.eu/cache/ITY\\_PUBLIC/3-18062013-AP/EN/3-18062013-AP-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-18062013-AP/EN/3-18062013-AP-EN.PDF).

<sup>4</sup> UN HIGH COMMISSIONER FOR REFUGEES, UNHCR ASYLUM TRENDS 2012: LEVELS AND TRENDS IN INDUSTRIALIZED COUNTRIES 25, 27-28 (2013), available at <http://www.unhcr.org/5149b81e9.html>.

<sup>5</sup> EUROSTAT, *supra* note 2, at 12.

In some countries outside the EU, grant rates on initial applications for asylum are even higher. In 2012, the grant rate in the United States was 72% in asylum claims filed affirmatively (*i.e.*, where applicants were not in “deportation proceedings”) and 35% in “defensive” claims (where the deportation process had already begun).<sup>6</sup> The initial asylum grant rate in Norway was approximately 32%.<sup>7</sup> Canada had a 38% grant rate in 2011.<sup>8</sup> In Australia, the initial grant rate between 2011 and 2012 was approximately 25%.<sup>9</sup> In these countries, too, it is expected that grant rates in LGBTI cases are higher than the average.

### **A. Asylum, Refugee Status, and Refugee Resettlement**

The 1951 Convention Relating to the Status of Refugees (and its 1967 Protocol), to which most LGBTI-friendly countries including the United States, United Kingdom, and Australia are signatories, defines a refugee as any person who:

“ . . . owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country. . . . ”<sup>10</sup>

In order to qualify as a refugee:

- 1) the person has to be outside their country of origin;
- 2) the reason for his/her flight has to be a fear of persecution;
- 3) this fear of persecution has to be well-founded (*i.e.* s/he has to have experienced persecution or be likely to experience persecution if returned to the country of origin);
- 4) the persecution has to result from one or more of the five grounds listed in the refugee definition [race, religion, nationality, membership of a particular social group – like LGBTI – or political opinion]; and
- 5) s/he has to be unwilling or unable to seek the protection of the authorities in the country of origin.

The United Nations body responsible for protecting refugees and ensuring compliance with the Refugee Convention is the United Nations High Commissioner for Refugees (UNHCR).

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<sup>6</sup> Office of Planning, Analysis, & Technology, U.S. Dep’t of Justice, Executive Office for Immigration Review, FY 2012 STATISTICAL YEAR BOOK, at K2 (2013), available at <http://www.justice.gov/eoir/statspub/fy12syb.pdf>. Defensive asylum claims arise when the applicant is in removal proceedings in immigration court and requests asylum as a defense against removal. In affirmative asylum, the applicant is not in removal proceedings but rather applies affirmatively, through a non-adversarial process, for asylum.

<sup>7</sup> Norwegian Directorate of Immigration, ASYLUM DECISIONS, FIRST INSTANCE, BY OUTCOME AND NATIONALITY 2012, available at <http://www.udi.no/Global/UPLoAD/!%20Fellessider/Statistikk/Engelsk/Asylum/2012/Asylum%20decisions%20des%202012.htm>.

<sup>8</sup> The Refugee Forum, Human Rights Research and Education Centre, University of Ottawa, IRB REFUGEE STATUS DETERMINATIONS (1989-2011 CALENDAR YEARS) 8 (2012), available at <http://www.cdp-hrc.uottawa.ca/projects/refugee-forum/projects/documents/REFUGEEESTATSCOMPREHENSIVE1999-2011.pdf>.

<sup>9</sup> Australian Government, Department of Immigration and Citizenship, ASYLUM TRENDS: AUSTRALIA: 2011-2012 ANNUAL PUBLICATION 12 (2012), available at <http://www.immi.gov.au/media/publications/statistics/asylum/files/asylum-trends-aus-annual-2011-12.pdf>.

<sup>10</sup> Convention Relating to the Status of Refugees, Art. 1, July 28, 1951, 189 U.N.T.S. 137, 152 (entered into force Apr. 22, 1954), available at <http://www.refworld.org/docid/3be01b964.html>.

The terms *asylum seeker* and *refugee* are often used interchangeably but are not the same. An asylum seeker is someone who claims to be a refugee but whose claim has not yet been assessed.

Some countries have implemented national asylum systems in order to decide which asylum seekers actually qualify for international protection. Most of the major Western LGBTI-friendly countries, like the US, Canada, Australia, UK, France, Belgium, Germany, Austria, and Switzerland, have such independent asylum systems. Thus, for example, if an asylum seeker who has reached the United States is found to be a refugee, the United States government is obligated under international law to offer protection to that individual and to ensure that the person is not sent back to a country in which he or she risks being persecuted. Individuals who are granted asylum typically can stay and work in the country indefinitely.

Refugees also can reach LGBTI-friendly destination countries through an off-shore refugee program. Many countries have refugee or special humanitarian programs that allow for a certain number of refugees to be admitted from abroad. In most cases, UNHCR officials in the countries of transit identify and refer refugees to these programs.

Obtaining refugee status through UNHCR generally protects individuals from being returned to the country where they were persecuted. Only one percent of UNHCR refugees are resettled in a given year. Those who are resettled typically wait years in countries of passage. The treatment of LGBTI people differs vastly among UNHCR offices. While some UNHCR officials are sympathetic to sexual and gender minorities, many lack basic knowledge, and some may appear callous or homophobic. Regardless of individual staff attitudes, remember the agency's policy is to protect LGBTI people. If you seek refugee status in a place where UNHCR has been charged with conducting refugee status determination, assert and follow up on your claim knowing that the agency's policy and guidelines mandate your protection.

### 1. Resettlement in the United States, Australia, Canada, and Sweden

Of the 60,000 to 70,000 refugees resettled in any given year, most end up in the US. The US accepts more refugees than any other country. In 2012, it accepted approximately 53,000 refugees. However, the US program can be slow. Other resettled refugees largely end up in Australia, Canada, and Sweden. In 2012, Australia resettled just over 5,000 refugees, Canada resettled approximately 4,800, and Sweden resettled about 1,500. (Most of the major destination countries for LGBTI people -- including France, the UK, Germany and Austria --do not have formal refugee resettlement programs for Russians.)

In a small number of cases, individual refugees are identified and referred directly to the US Refugee Admissions Program, bypassing the UN High Commissioner for Refugees (UNHCR). These referrals are made by US embassies or by designated non-governmental organizations. Russian citizens can be referred for US resettlement while still in Russia. In other words, they do not need to have left Russia in order to be considered "refugees."

**Important:** By applying for refugee status, you indicate your intent to remain in the country of destination permanently. As a result, you may no longer be able to apply for most temporary visas.

### 2. Asylum

Another option for those fleeing persecution is to seek asylum in a safe country. Each country has its own procedures for accepting and handling asylum claims. If you are granted asylum, you typically will be able to reside permanently and eventually attain citizenship in that country.

**Important:** Some countries require that one apply for asylum within a reasonable period of time after arrival there. For example, in the United States, one generally must file for asylum within one year of arriving in the country. Other countries do not have specific deadlines for applying for asylum, but delayed filing can have serious consequences. Authorities look skeptically upon claims that are not filed as early as possible and may reject them on credibility grounds. EU Member States may accelerate the examination of a claim if “the applicant has failed without reasonable cause to make his/her application earlier, having had opportunity to do so.”<sup>11</sup> Such “acceleration” is seldom positive, as it leaves little or no time to prepare one’s claim. Failure to apply for asylum as soon as possible also may limit one’s access to asylum services and support.

The process of seeking asylum can be risky and challenging, both financially and emotionally. Asylum claims can take a very long time to be processed. For example, in the United Kingdom, the Home Office aims to reach initial decisions within two months, but decisions can take up to 13 months in practice. In Canada, the processing of asylum cases takes an estimated eight months. While the claim is being processed, asylum seekers may be housed in closed refugee housing centers, or even detention centers or prisons. There is no guarantee of being granted asylum. If you are denied, you may be deported and forcibly returned to your home country. Depending on the country and your circumstances, you may or may not be able to appeal a denial.

Asylum seekers also may have limited rights and public assistance in the country where they are seeking asylum. For example, in the United States, asylum seekers cannot apply for work authorization until at least 150 days have passed since they filed their asylum application. They also do not receive any government support while their claim is being processed. Similarly, in the United Kingdom, most asylum seekers do not have the right to work, and minimal cash support is available for those requiring such assistance.

Moreover, family members usually have no right to join asylum seekers in the country of asylum until the claim is granted. This wait can take a number of years.

#### B. Proving One’s Asylum or Refugee Claim

As stated previously, to be granted asylum or refugee status, you must prove that you have a well-founded fear of persecution on the basis of your race, religion, nationality, membership in a particular social group, or political opinion. Being lesbian, gay, bisexual, transgender or intersex generally qualifies as “membership in a particular social group.”

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<sup>11</sup> Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status, art. 23(4)(i), 2005 O.J. (L326) 24.

Persecution is harm of a *serious* nature, inflicted either by the state or by non-state actors that the state is unable or unwilling to protect you against. Threats to life or freedom, serious physical harm, and sexual assault are acts of persecution. Lesser physical harms may not entitle one to asylum. For example, in a 2011 US case, a lesbian asylum applicant from Russia claimed she suffered “bruising to her arms, hands, and body as a result of three isolated incidents over a period of several years.”<sup>12</sup> The US Court of Appeals held that these acts did not meet the threshold for persecution, even when considered cumulatively.<sup>13</sup> Discrimination alone is generally not enough to meet the standard of persecution. However, discrimination may be deemed “persecution” if it seriously restricts your ability to earn a livelihood.

Coercive or discriminatory family planning policies that restrict a person’s right to family life may constitute persecution if you hold strong political or religious beliefs in opposition to those policies.<sup>14</sup> Punishment for violating a coercive family planning policy may also be persecutory. Forced abortion and forced sterilization are widely viewed as acts of persecution. Homophobic discrimination may or may not constitute persecution, depending on how serious the acts and their impact.

Supporting documentation can often lend credibility to and help prove the different elements of your refugee or asylum claim. This documentation generally includes:

- Proof of membership in LGBTI groups
- Records of communication with others, such as copies of letters or e-mails
- Photographs
- Arrest warrants
- Proof of previous arrests
- Proof of threats received
- Medical records
- Media articles
- Supporting letters and affidavits of others

### **C. Asylum Procedures**

Procedures in applying for asylum vary widely among countries. Typically, the initial application is filed with the administrative government office charged with asylum applications. Waiting times can vary from several weeks in some countries to years in others. In most countries, if the initial application is denied, appeal is possible. All the major destination countries have sophisticated asylum systems that include such procedures. Where possible and affordable, being represented by an attorney is always recommended.

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<sup>12</sup> *Korenchenkova v. United States Att’y Gen.*, 453 F. App’x. 908 (11th Cir. 2011).

<sup>13</sup> *Id.*

<sup>14</sup> UNHCR, UNHCR NOTE ON REFUGEE CLAIMS BASED ON COERCIVE FAMILY PLANNING LAWS OR POLICIES ¶ 10 (2005), available at <http://www.refworld.org/pdfid/4301a9184.pdf>. The UNHCR has recognized that “a coercive family planning law or policy which restricts an individual’s right to found a family and to decide freely and responsibly on the number and spacing of their children is not in conformity with international standards.” *Id.* ¶ 16.

### V. Non-Asylum Emergency Interventions

Individuals who do not qualify for asylum may nevertheless be allowed to stay temporarily in a country in cases of true emergency. For example, in the United States, humanitarian parole may be granted to allow a person who is otherwise ineligible for an immigrant visa to enter the country temporarily. Humanitarian parole is granted only for urgent humanitarian reasons, or if there is a significant public benefit to having that person in the country. Those granted humanitarian parole can stay in the United States only for the duration of the emergency or humanitarian situation. Norway also grants temporary and residence permits on humanitarian grounds, or if the person has a special connection to the country. European Union guidelines encourage member states to issue emergency visas to human rights defenders at risk, although many European Union member states do not have a stated policy on issuing emergency visas.

### VI. Getting By and Integrating

Whether you intend to stay temporarily or seek permanent status, surviving in a country of transit and integrating into a final destination country can be very difficult. The processing of your claim is likely to take a very long time.

Before leaving home, you should assess your options for – among other life needs – employment, healthcare, housing, and schooling for you and your family in your intended country of destination.

People with long-term or special medical needs – for example those requiring sex-assignment surgery or hormone therapy, or HIV-positive individuals – should carefully evaluate the healthcare systems in their intended destination countries. Some countries make free healthcare available to asylum seekers, asylees, and refugees. These programs may cover the costs of medical visits and may subsidize medicines and other care. In other countries, like the US, public healthcare may be difficult to access, and private health insurance can be prohibitively expensive.

You also should consider the cost of living at your destination. Major LGBTI-friendly cities can be very expensive to live in. For example, in large LGBTI-friendly cities like New York City, San Francisco, and London, the median rental price of a one-bedroom apartment is over US\$2,400 per month. Many smaller cities have a lower cost of living yet are still LGBTI-friendly.

Lastly, learn how supportive your destination city and country are for LGBTI individuals and families. Among other indicators, does the city/country recognize basic LGBTI rights? Does the country or state recognize same-sex marriage or same-sex parent adoption? What is the employment environment there; are there legal protections against workplace discrimination based on sexual orientation or gender identity? Are there support groups and community organizations for LGBTI persons? Moving to a new location is always a challenge, not least when you are moving across countries and cultures. Support networks at your destination can be invaluable for easing the transition.

### VII. Additional Resources

In many LGBTI destination countries, refugee and immigrant assistance organizations are sensitive to the special needs of LGBTI people seeking claims. Many offer free advice and representation to asylum seekers, and some are particularly receptive to LGBTI applicants. In the United States and Canada, tens

of law schools have immigration clinics where law students handle asylum cases for free under close supervision by law professors. In a few countries, there are LGBTI community NGOs and groups dedicated to representing LGBTI asylum applicants.

This section lists a few of the resources in Russia, the United States, Canada, France, Israel, and the United Kingdom for LGBTI Russians seeking additional information about travel, migration, and/or seeking asylum and resettlement.

### A. Russia

Russian LGBT Network

Website: <http://lgbtnet.ru/en>

Email: [info@lgbtnet.ru](mailto:info@lgbtnet.ru)

Phone: +7-812-454-6452

### B. United States

U.S. Citizenship and Immigration Services

Website: <http://www.uscis.gov>

Email: [moscow.dhs@dhs.gov](mailto:moscow.dhs@dhs.gov) (Moscow field office)

Phone: +7-495-728-5236 (Moscow field office)

Heartland Alliance, National Immigrant Justice Center's LGBT Immigrant Rights Initiative

Website: <https://www.immigrantjustice.org/programs/lgbt-immigrant-rights-initiative#.Up2YJcQW0bg>

Email: [immigrantlegaldefense@heartlandalliance.org](mailto:immigrantlegaldefense@heartlandalliance.org)

Phone: +1-312-660-1370

HIAS

Website: <http://hias.org>

Email: <http://www.hias.org/en/pages/contact>

Phone: +1-212-967-4100

Helpline: +1-800-HIAS-714 (+1-800-4427-714)

Human Rights First

Website: <http://humanrightsfirst.org>

Phone: +1-212-845-5200

Immigration Equality

Website: <http://immigrationequality.org>

Email: <http://immigrationequality.org/contact-us>

Phone: +1-212-714-2904

ORAM — Organization for Refugee, Asylum & Migration

Website: <http://oraminternational.org>

Email: <http://oraminternational.org/en/contact-us>

Phone: +1-415-399-1701

**C. Canada**

Canada Border Services Agency

Website: <http://www.cbsa-asfc.gc.ca/noncan-eng.html>

Email: [contact@cbsa.gc.ca](mailto:contact@cbsa.gc.ca)

Phone: +1-204-983-3500 / +1-506-636-5064

LEGIT — Canadian Immigration for Same-Sex Partners

Website: <http://www.legit.ca>

Email: [legitvancouver@gmail.com](mailto:legitvancouver@gmail.com)

Phone: +1-416-392-6874

Rainbow Refugee Canada

Website: <http://www.rainbowrefugee.ca>

Email: [info@rainbowrefugee.ca](mailto:info@rainbowrefugee.ca)

**D. France**

ARDHIS - Association pour la reconnaissance des droits des personnes homosexuelles et transsexuelles à l'immigration et au séjour

Website: <http://ardhis.org/WP3>

Email: [contact@ardhis.org](mailto:contact@ardhis.org)

Phone: +33-(0)-6 19-64-03-91

**E. Israel**

Israel Religious Action Center

Website: <http://www.ira.org/LegalAidCenters.aspx?SubheadingID=21>

Email: <http://www.ira.org/ContactUs.aspx>

Phone: +972-2-620-3323

**F. United Kingdom**

UKLGIG – UK Lesbian & Gay Immigration Group

Website: <http://www.uklgig.org.uk>

Email: [admin@uklgig.org.uk](mailto:admin@uklgig.org.uk)

Phone: +44-(0)20-7922-7812

Helpline: +44-(0)20-7922-7811