Cultural Competency in Representing LGBTQ+ Asylum Seekers

Presented by Ari Jones, Staff Attorney & Outreach Coordinator

Pronouns They/Them
Agenda

- Terminology
- Tips for providers
- Major barriers to asylum
- Overcoming barriers
- Discussion & feedback
Oasis Legal Services: An Introduction

Our mission: Oasis Legal Services proudly provides quality legal immigration services to under-represented low-income groups with a focus on LGBT+ communities. By acknowledging, respecting, and honoring their struggles, we empower immigrants so that dignity grows and integrity blooms.

We are a nonprofit 501(c)(3) organization providing comprehensive legal services to assist LGBTQIA+ immigrants:

- Screening for immigration relief
- Affirmative asylum
- Residency
- Citizenship
- Family petitions
LGBTQ+ Terminology

HOW TO CORRECTLY ADDRESS & RESPECT YOUR CLIENTS
What does LGBTQ stand for?

L  Lesbian  A woman who is romantically and/or emotionally attracted to other women.
G  Gay  People who are attracted to other people of the same gender and/or sex.
B  Bisexual  People who can be attracted to people of the same and different gender and/or sex.
T  Transgender  An umbrella term for people whose gender does not align with their assignment at birth.
Q  Queer  People who do not identify as just heterosexual; do not use without consent.
+  Plus  Used to indicate that the acronym is inclusive of other identities and is expansive.
Some more terms to know...

**Intersex**

Someone born with reproductive or sexual anatomy and/or a chromosome pattern that doesn’t seem to fit typical binary definitions of male or female.

**Gender Nonconforming (GNC)**

Exhibiting behavioral, cultural, or psychological traits that do not correspond with the traits typically associated with one's sex: having a gender expression that does not conform to gender norms.

More resources:

GLAAD’s media guide: [https://www.glaad.org/reference](https://www.glaad.org/reference)

InterACT’s FAQs: [https://interactadvocates.org/faq/](https://interactadvocates.org/faq/)

National Center for Transgender Equality: [https://transequality.org](https://transequality.org)
Sexual Orientation vs. Gender

**Sexual Orientation:**

Describes a person's enduring physical, romantic, and/or emotional attraction to another person or persons.

**Gender:**

A collection of behavioral, cultural, or psychological traits associated with a particular way of being or sex.
Gender Identity vs. Gender Expression

**Gender Identity:**

A person's internal, deeply held sense of their gender. For transgender people, their own internal gender identity does not match the sex they were assigned at birth. Many people have a gender identity of man or woman (or boy or girl). For some people, their gender identity does not fit neatly into one of those two choices. Unlike gender expression, gender identity is not visible to others.

**Gender Expression:**

External manifestations of gender, expressed through a person's name, pronouns, clothing, haircut, behavior, voice, and/or body characteristics. Society identifies these cues as masculine and feminine, although what is considered masculine or feminine changes over time and varies by culture. Typically, transgender people seek to align their gender expression with their gender identity, rather than the sex they were assigned at birth.
Sex is a social construct TOO!?
“Trans women are not ‘biologically male’”
- Riley J. Dennis

https://youtu.be/eWVRzGMVXbM
Questions?

IT’S OKAY TO NOT KNOW EVERYTHING, BUT DO YOUR RESEARCH!
Tips to being a good LGBTQ+ provider

● FOLLOW your client - listen to what they say and then always do your best

● Give your client CHOICE and respect to that decision

● RESPECT their humanity - treat them as you would want to be treated

● EMPATHISE with the pain and trauma your client has experienced - They experienced harm, but they are not broken

● CELEBRATE their diversity - be open to learning from them
LGBTQ+ Asylum Claims

BARRIERS AND SOLUTIONS
Major Barriers

WHY IS IT HARD FOR LGBTQ+ FOLKS TO WIN ASYLUM?
**Major Barriers**

- One-year-bar filing deadline
- Police contact & participation in underground economies
- Alcohol/drug use and addiction
- Proving inchoate identity
Overcoming Barriers
SOLUTIONS & BEST PRACTICES FOR LGBTQ+ ASYLUM SEEKERS
Exceptions to One-year Bar

- **Extraordinary circumstances** within first year after entry + reasonable time
  - Serious illness or mental or physical disability
  - Lawful status
  - Legal disability
  - Ineffective assistance of counsel (with procedural hurdles)
  - Other circumstances

- **Changed circumstances** + reasonable time
  - Change in applicant’s country
  - Change in applicant’s personal circumstances (e.g. HIV diagnosis, transition, new laws)

- **Best Practices:**
  - Psychological evaluation and/or evidence/testimony RE: transition or other circumstances
Police Contact & Criminal Conduct

- Increased policing of trans people of color and immigrants
  - Intersecting identities at the greatest risk

- Participation in underground economies is common
  - Sex work, even when formally criminalized, is not a bar to asylum*
  - ”Expungement” is different from vacatur for immigration purposes

**Best Practices:**
- Make your client feel comfortable to tell you the truth
- Run FBI background check with fingerprints if any police or DHS contact
- Provide certified final court disposition or no-record letter
Alcohol, drug use, and addiction

- Substance use is a common coping mechanism
- Addiction is not a bar to asylum
  - May help to explain delay in filing for asylum
  - But asylum is a discretionary benefit

- Best Practices:
  - Tell the truth with a clear narrative
  - Emphasize rehabilitation and progress
  - Present evidence of good moral character
Proving SOGI Identity

- Particular Social Group (PSG) requires proving that you belong to the particular group

- Individuals use different terminology
  - Different languages and cultures prefer different terms
    - E.g. what is offensive/uncommon in English (transvestite, transsexual) may be affirming to a client
  - The same terms are defined differently
    - E.g. racism may be used to refer to all discrimination
    - E.g. gender expression may not match U.S. narratives of transition

- Best Practices:
  - Client-centered lawyering → affirm your clients’ statements/choices
  - Be prepared to answer questions/provide resources when clients are questioning
Questions & Suggestions

**What are some of your best practices?**

For more information, try out Oasis’s legal resources portal: [Oasislegalservices.org](http://Oasislegalservices.org)

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