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CHAPTER 5

The Reading Practices of Immigration Judges

Intersectional Invisibility and the Segregation of Gender and Sexuality

In a *New York Times* story titled “Gays Seeking Asylum in U.S. Encounter a New Hurdle” published on January 29, 2011, journalist Dan Bilefsky alerted U.S. publics to the politics of reading sexuality and gender in U.S. asylum hearings. The story detailed the experiences of Brazilian-born Romulo Castro, who was in the process of claiming asylum for persecution relating to his sexuality. In Brazil, Castro explained to Bilefsky, “I was persecuted for being fruity, a boy-girl, a fatso, a faggot”; in applying for asylum in the United States, Castro was encouraged that “flaunting it was now his best weapon against deportation.” Bilefsky used Castro’s experiences to demonstrate that “homosexuals seeking asylum may risk being dismissed as not being gay enough.”¹ The story features comments by Human Rights First lawyer Lori Adams, who reiterates this point: “Judges and immigration officials are adding a new hurdle in gay asylum cases that an applicant’s homosexuality must be socially visible. . . . The rationale is that if you don’t look obviously gay, you can go home and hide your sexuality and don’t need to be worried about being persecuted.”² Legal Director of Immigration Equality Victoria Neilson was also cited, referencing the case of an Albanian lesbian who was first denied asylum for “not conforming to the officer’s stereotype of a lesbian.”³ Moving from this “new hurdle,” the reporter ended the story by implying that some claimants try to “fake” gayness in order to win asylum cases. A few immigration lawyers, Bilefsky noted, had even been convicted of setting up an asylum consulting business where they “coached

straight people on how to file gay asylum claims.” The “new hurdle,” readers learned, concerned what immigration judges expected to hear and see when a gay asylum applicant entered their chambers.

The immigration law experts cited in the story were understandably upset by the coverage. Not only had the journalist perpetuated the myth of “fraudulent” refugees, but he had also implied that immigration officials and judges—the same people to whom these two lawyers had to advocate for clients—might be reliant on gay stereotypes in evaluating LGBT cases. A week after the story ran, Victoria Neilson and Lori Adams published their response as a letter to the editor:

While we appreciate your coverage of lesbian, gay, bisexual and transgender asylum seekers, the article is not consistent with our experience in several ways. . . . In our experience, however, it is exceedingly rare for asylum seekers—whose families and home countries often stigmatize gay and transgender people—to present themselves falsely as lesbian, gay, bisexual or transgender to immigration officials. We have not seen an emerging trend of straight individuals claiming to be gay for immigration purposes. Indeed, asylum seekers undergo rigorous evaluation by immigration officials to ensure that their claims are authentic. Nor have we seen a “new hurdle” for L.G.B.T. asylum seekers having to prove that they are “socially visible.” While there have been a few cases where adjudicators have demonstrated a bias in L.G.B.T. cases, we have found that most United States officials do their jobs, and verify claims made in asylum applications while respecting an individual’s identity as an L.G.B.T. person. Until L.G.B.T. rights are respected around the world, asylum remains a lifeline for those fleeing persecution.⁴

Taken together these two comments illustrate that there is indeed awareness that immigration judges are guided by a sense of what a sexuality-related persecution narrative might look and sound like. These authors differ only in questions of the scale and the stickiness of the narrative genre conventions. The disagreement, in other words, is in how widespread and pervasive the reliance on these narratives is in immigration judges’ decisions. These articles also demonstrate the problem of making generalizing statements about something like inclusion of sexuality-related asylum seekers without looking at the nuances and details, or how subjects who differ dramatically from one another because of the intersections of their identities, geopolitical associations, and the particularities of their lives come to be evaluated against the rhetoric of the narrative conventions. Charting these nuances is the focus of this chapter.

Chapter 4 outlined the rhetoric and logic of immigration judges’ reading practices of sexuality-related asylum cases. This chapter takes up the narrative con-

ventions again to understand what happens to claimants whose experiences are not as easily legible in the rhetoric of the conventions codified through the male-assigned cis and trans sexuality cases. I see the reading practices of judges as a particular aspect of the process of audiencing that I describe in the introduction of this book. As we will see in this chapter, immigration judges base their reading of particular claims on the conventional sexuality-related persecution narrative that I outlined in chapter 4. Reading as a practice then involves looking for alignment between the signs and cues present in the conventional narrative and those evident in the specific claim. When there is not alignment, asylum seekers struggle in being audienced as eligible or bona fide political subjects who've been persecuted because of their sexuality. Due to the constraints of the archive, I will focus first on the claims of gay men who might be described as gender-conforming and then move to discuss the challenge of what Valerie Purdie-Vaughns and Richard Elback have called "intersectional invisibility"⁵ for lesbian asylum seekers. It is entirely possible that male-identifying trans applicants or gender nonbinary asylum applicants have sought and won asylum through affirmative asylum processes in the United States,⁶ but there are no defensive asylum cases to draw on in order to analyze the nuances of the reading practices of the judges in these cases, so any comment on these claimants' legibility and would be mere speculation. As we will see in this chapter, while gender-normative gay men experience challenges to their claims because of the way their styling strays from the conventions, they are ultimately incorporable as credible applicants on the basis of sexuality. Gay women⁷ often fail at being legible against all three narrative conventions—making their navigation of the refugee system infinitely more difficult. In both instances, I read the challenges against the one-sex, one-gender system and the racialization of gender violence to further understand the institutional life of the category of gender in U.S. law and politics.

Normative Sexuality

While style is figured as a key element in the success of trans and gender non-normative sexuality cases, gender-normative cisgender gay men may experience challenges from the court for their genre (gender) failures. In these cases, gay men do not follow the logics of "inversion" through their style, and thus their eligibility for refugee protection is questioned. Judges in these cases do not doubt that the applicants are gay; rather, they push back on whether these gay male applicants are likely to be persecuted in the future because of their sexuality. The judge hearing Jorge Soto Vega's claim recognized that Soto Vega was gay but denied the claim. He said, "[I] didn't see anything in his appearance, his dress, his manner, his demeanor, his gestures, his voice, or anything of that

nature that remotely approached some of the stereotypical things that society assesses to gays, whether those are legitimate or not. I certainly would not be able to tell, just from his testimony and his appearance here in Court today that he was a homosexual.”⁸ This ruling came after Soto Vega testified to a childhood of abuse from his father and brother because he needed to “become ‘a man, not a joto,’”⁹ taunts and physical abuse at school for his “cullioni,” “girly behavior,”¹⁰ and the near-death beating he and a friend suffered at the hands of the police, who claimed that they were “ridding the streets of two more fags.”¹¹ Soto Vega ultimately won asylum on appeal, but the first immigration judge found his gender performance more persuasive than his past experiences of persecution in rendering a negative decision. His ability to pass as “heterosexual” through the way that he did gender enabled, in the judge’s mind, possibility of Soto Vega’s safe return to Mexico as a gay subject.

The judge evaluating Serbian Mladen Zeljko Todorovic’s case told him that he was not credible as a gay asylum seeker when Todorovic presented testimony in the court. The judge explained:

The Court would first note that the respondent says that he is singled out for persecution because he is gay in his home country. The Court studied the demeanor of this individual very carefully throughout his testimony in Court today, and this gentleman does not appear to be overtly gay. The Court does not know whether he is or not, his testimony is that he is overtly gay and has been since he was 17 years old. Be that as it may, it is not readily apparent to a person who would see this gentleman for the first time that, that is the case, since he bears no effeminate traits or any other trait that would mark him as a homosexual.¹²

As in Soto Vega’s case, the judge used the legibility of gender through an inversion logic, and in this instance a lack of audible, visible, or affective markers of femininity, to decide whether the claimant would be persecuted as a gay man. Similarly, Tarik Razkane of Morocco was questioned about his appearance as gay. The U.S. state lawyer cross examining him at his first asylum case asked Razkane whether people could identify him as gay “by the way he talked, dressed, and moved.”¹³ The lawyer asked a similar question to a Moroccan country-conditions expert testifying on behalf of Razkane. The expert retorted, “Ma’am, I’m sorry, I can’t help you with that. I just don’t know what it means to look like a gay.”¹⁴ The judge, however, seemed to have a very clear sense of what it meant to look gay. In his negative ruling the judge explained that the claimant’s “appearance does not have anything about it that would designate [him] as being gay. [He] does not dress in an effeminate manner or affect any effeminate mannerisms.”¹⁵ Drawing on the inversion logic once again, the judge decidedly articulated that difference, as sexuality was not legible in Razkane’s appear-

ance. While not as drastic as the cases demonstrating this method of reading above, Mexican nationals Jose Patricio Boer Sedano and Leonardo Magdaleno Comparan were similarly figured as ineligible because the courts saw them as “low-profile, non-transvestite gay [men]” who could feasibly walk through the streets of Mexico and not be identified as gay.¹⁶ Notably, each of these asylum claimants would later gain asylum on appeal as the appellate justices admonished the lower courts for relying primarily on stereotypes about gayness in their negative rulings. Yet it is these first instances of reading gender in the claimants’ public performances where we see the genre conventions of style play out as a persuasive resource (or deficit) in winning asylum. While each of these claimants offered other substantive content toward demonstrating their eligibility for asylum—past physical and sexual assault that is animated by their sexuality,¹⁷ and targeting as gay because of the places they frequent, people they associate with, and the way they live¹⁸—the claimants were first read as ineligible because of their inability to be legible against the rhetoric of style that shape judges’ imaginations of what proper sexual orientation persecution claims look and sound like. Related to this and in line with the genre convention about early awareness of homosexuality and the singular-direction of sexual orientation, when male-assigned sexuality claimants had a record of heterosexual sexual/marital union, doubt was cast on the veracity of their claim.¹⁹

Despite these challenges, the logic of male rape discussed in the previous chapter supersedes any resistance that these claimants receive from the judges in being credibly received as eligible for asylum. Soto Vega, for example, was told first that he did not appear gay before the court. Yet because his claim involved physical and sexual assault at the hands of police, his case was more easily legible as a matter of state violence and power, entitling him to political asylum in the United States. This dynamic is evident across the record of case law. Sexual assault between those assigned as male is so imaginable as an abhorrent overpowering of someone and as a violation of one’s sense of self that it can be nothing but political. This demonstrates the ways that intersections between gender and sexuality play out to privilege particular subjects who are closer to the norm because of their intersecting identities. In the next section of this chapter we will see the manifestations of the same intersections toward very different ends.

The Ampersand Problem

Gay women have been seeking asylum in the United States since at least the early 1990s, when Alla Pitcherskaia of Russia filed an asylum petition exclaiming that it was likely she would be further tortured or killed because of her lesbianism if she returned to Russia.²⁰ Pitcherskaia experienced early challenges

to her claim for eligibility, including first being denied asylum and having the immigration judge tell her that the forced institutionalization and electroshock therapy she endured was done in an attempt to “cure,” not persecute her. In 1997 the Ninth Circuit reversed this decision and granted her asylum in accordance with Janet Reno’s then-recent declaration in *Matter of Toboso Alfonso* that gays and lesbians constituted recognized social groups in U.S. asylum law.²¹

Despite this early individual success, lesbian asylum seekers face numerous hurdles in gaining access to refuge in the United States on account of their sexual orientation.²² First, gay women, as a whole, file fewer asylum claims under the *Toboso-Alfonso* ruling than gay men do. As Cynthia Cooper reports, between 1994 and 2007, “62 lesbians [were] permitted to stay in the United States out of 435 inquiries, compared to 643 gay men among 4,134 inquiries. In other words, only one lesbian applies for every 10 gay men.”²³ This disparity in who files for asylum is in the context of already deep gender disparities wherein women account for only 37 percent of all asylum claimants in the United States despite persistent identification as the largest category of displaced persons around the world by refugee aid agencies.²⁴ Even arrival in a country of asylum that recognizes sexual orientation as a basis for refuge, however, does not mean that lesbian asylum seekers will be hospitably welcomed.²⁵ Gay women also struggle to win asylum claims because, as Victoria Neilson explains, “sexual orientation-based jurisprudence has been built on a male model of public activities resulting in public persecution, a paradigm that the facts of lesbian asylum claims do not often follow.”²⁶ This falls in line with what Cheshire Calhoun, nearly twenty years ago, articulated as the problematic reception of lesbians from around the world *as* lesbians.²⁷ Gay women are sometimes recognized as women, and sometimes as gay, but rarely both at the same time. The institution of U.S. law is particularly guilty in producing what Elizabeth Spelman refers to as the “ampersand problem,” where gender and sexuality (or any other intersection for that matter) cannot be seen as mutually informing one’s experiences and identity.²⁸ While some are successful in demonstrating their need for refuge as gay women, for many the logics enforcing the genre conventions position gender and sexuality as discrete categories while still invisibly reading these claimants’ applications for their gendered significance. This means that gay women’s requests for refuge *as* gay are either interpreted as not gay enough or “too woman” (read: gendered) to warrant incorporation as sexuality-based asylum seekers.

LESBIANS WITH STYLE

Where style is overtly present as an inventional resource for some sexuality applicants and as a method of reading for immigration judges, in the cases of

lesbian asylum seekers, style is virtually absent in the archive. This absence is strange, given the record in asylum cases that evidences immigration judges' often near obsession with determining whether asylum claimants are publicly recognizable as the vulnerable subjects they say they are.²⁹ This absence is further marked when read against the corpus of scholarship about lesbian migration that finds similar strange vacancies. In her historical work on the monitoring and exclusion of gays and lesbians through U.S. immigration processes, Eithne Luibhéid could find only one case of a woman being excluded from entrance at U.S. borders as a "sexual deviate" because she "looked, spoke, and acted 'like a lesbian.'"³⁰ This singular instance stands alongside a historical record ripe with evidence that the Immigration and Naturalization Service targeted men for exclusion as "sexual deviates" because of their bodily comportment and style. While we might read this stark difference in the record of immigration policing as demonstrative of more lax regulation around lesbian identity and subjectivity, Luibhéid calls on readers to consider the different modalities of policing used to target men and women. She writes, "We should not treat this dearth of court cases as further evidence that lesbians were unaffected by immigration policing; instead, we need to remain attuned to the ways that women are historically excluded/unrepresented within official documents but were present historically and had an impact."³¹ In building on this important insight, I read the paucity of discussion of lesbian style in asylum cases not as evidence that their appearance was not evaluated, monitored, and regulated, but rather that lesbians' outward style *as* lesbians frequently disappears under the sign of "normal" heterosexual femininity.

This disappearance is most evident in reading what is silent and absent in these cases as moments rich with rhetorical significance. At age fourteen, Yesenia Marisol Maldonado Lopez of El Salvador was forced by her parents into marriage with a man fifty-four years her senior to "'cure' her of her lesbianism and masculine appearance";³² the marriage continued from 1996 until 2009, when the man died of old age. Over the course of these thirteen years, the man drugged, beat, and raped Maldonado Lopez, resulting in two pregnancies. She fled numerous times—at one point living with a woman with whom she had a romantic relationship—but her husband always found her. In 2006 she fled to the United States as an undocumented migrant; she was returned to El Salvador in 2010, and then, upon a violent attack in her hometown by four women who "punched and kicked her," "called her 'lesbian' and shouted vulgarities at her,"³³ she again fled to the United States. This time, when apprehended by U.S. border officials, Maldonado Lopez explained that she "feared being attacked and murdered if she were to return to El Salvador."³⁴ Her asylum bid thus commenced.

After being evaluated as possibly eligible for refuge during her reasonable-fear interview, Maldonado Lopez's case went before an immigration judge for review. She explained to the judge that "in addition to the psychological harm and social isolation she was subjected to as a lesbian in El Salvador—including being drugged and raped as a child by the 68-year-old man who her family forced her to marry—she continues to fear physical harm from individuals in her home country who do not accept lesbians."³⁵ The judge found Maldonado Lopez credible, but he ultimately denied the claim, explaining that one assault (by the women on the streets) did not constitute persecution, that the claimant could not verify her attackers' motivations, and that there was not evidence that El Salvador was unable or unwilling to secure her safety. The Board of Immigration Appeals affirmed this ruling, explaining that her record neither showed past persecution nor supported the belief that she would be persecuted as a lesbian in El Salvador. Toward the former point, the BIA "characterized her assault in March 2011 as 'minor' and said that her 'arranged' marriage to Pineda was not persecution because it lasted 'for about 13 years, until his death in 2009'";³⁶ they also refused to acknowledge the rape as rape. Arguing that the immigration judge and BIA missed the clear intersections between gender-based violence (forced marriage and sexual assault) and sexual orientation violence (harassment and physical assault by strangers for being a lesbian), the Ninth Circuit Court agreed that her case should be re-opened and re-evaluated.³⁷

Maldonado Lopez was identified as having a "masculine mannerism" from an early age that prompted her parents' abuse and community's castigation, yet the adjudicators failed to consider whether this "style" as a lesbian heightened her fear of persecution, as they had often considered in male assigned sexuality cases.³⁸ To the contrary, the early courts decided that Maldonado Lopez did not have an adequate fear of future persecution. Similarly, Belinda Burog-Perez told the judge that she faced economic discrimination in the Philippines because of her "appearance as a lesbian," which meant that clients avoided coming to her for their dental-work needs.³⁹ It is left to the reader to surmise what it means to "look like a lesbian" in this instance. The judge never took the question up as a process of applying the genre conventions to read her style. In similar fashion, Roxanne Angela Isaacs of Guyana was denied immigration relief despite testifying that "people would assume she was a lesbian because of her appearance," likely leading to arrest, detainment, and physical abuse by Guyanese authorities.⁴⁰ In affirming the previous two negative rulings in Isaacs's bid, in their final appeal the Second Circuit justices admonished Isaacs, explaining that she may not gain relief "merely by stringing together a series of suppositions to show that it is more likely than not that torture will result where the

evidence does not establish that each step in the hypothetical chain of events is more likely than not to happen.”⁴¹ Burog-Perez and Isaacs tried to use style to demonstrate their need for immigration relief. Immigration judges refused to apply the rhetoric to read lesbian asylum seekers in the courtroom. Rather, the women’s “appearance as lesbian[s]” was a moot point in the judges’ rulings.

This silence could signal the irrelevance of lesbians’ styling in the courtroom. I argue, as a counterpoint, that the inverted convention of reading style in sexual orientation is immaterial when applied to female-assigned bodies and subjects. Style is already associated in the popular U.S. imagination with femininity, such that when the female-assigned subjects appear before the courts, the judges see first, and foremost, a woman enacting femininity. Additionally, there is arguably a wider range of gendered performances that are permissible as heterosexual femininity for cisgender female-assigned subjects than are available for male-assigned subjects enacting masculinity. This means that visible, audible, and affective differences that appear so stark in the cases of gender nonconforming subjects are negligible when lesbians “appear” as lesbians in their asylum cases. Based on the invisible intersections of gendered norms and the way gender becomes a privileged sign over sexuality in the court’s reading practice of cisgender women, those “appearances” as lesbians may still be readable as a form of femininity. Lesbian, in other words, disappears under the sign of woman. And, as we will see in the next section, any potential to be legible as a lesbian is cast in further doubt when the content of gay women’s claims is interpreted against the genre conventions that frame what immigration judges expect to hear as the details of one’s life as a sexuality-related asylum seeker. These genre conventions, when read in relation, re-fashion gay women as both not gay enough and “too woman,” or too similar to cisgender (presumed heterosexual) women’s gendered claims to be intelligible as sexuality-related asylum claims.

SEXUAL AWARENESS

In the same way that male-assigned sexuality claimants must navigate expectations about awareness of sexuality, lesbian asylum seekers are also expected to have a history, a story that neatly fits Western biological constructs of sexual awareness. It is important to note that gay women’s narratives of awareness often differ dramatically from the genre conventions present in cisgender and trans male sexuality persecution narratives. This difference in awareness instigates the doubt that immigration officials express regarding whether lesbian asylum seekers are actually gay and also whether their gayness is so fundamental that it cannot be changeable or hidden. The immigration judge evaluating

her case told Zeng Qing Chang of China that “she had not ‘established to the satisfaction of the Court that she is, in reality, a lesbian.’”⁴² Toward this point he said that he “found it ‘extremely important’ that Zheng did not provide a letter from her ex-husband in China corroborating her claim that she is a lesbian.”⁴³ Chang’s former union with a man cast doubt in the judge’s mind, and he went a step further to insist on evidence from that man about her sexual orientation. While in a post-REAL ID Act era the judge has the right to ask for such forms of evidence, the notion that the ex-husband, whom she feared, would somehow produce evidence of her lesbianism on behalf of her asylum claim seems to be a rather rigorous burden of proof to expect from the claimant.⁴⁴

There were so many complex twists and turns in the case of Ingrida Mockeviciene from Lithuania that the judge went so far as to question whether she was, in fact, a lesbian.⁴⁵ In reviewing her case the immigration judge noted that he doubted her lesbian identity. First, he cited her heterosexual marriage and children in Lithuania as evidence to support his assertion. He also created the following list of reasons supporting his doubt:

- (1) Mockeviciene “defined” being a lesbian as “a woman who wants to be around other women and . . . it does not necessarily involve sexual relationships”; (2) although she had been in the United States for four years, she had not had a lesbian partner, so that she was “[a]t best . . . a non-practicing lesbian”; (3) she had “no documents to establish that she is a lesbian,” and the letters or notes she did submit were not originals and did not “mention with any degree of specificity the lesbian relationships of [Mockeviciene], only addressing the conclusion that [Mockeviciene] is indeed a lesbian”; (4) she had “not joined any groups while being here in the United States for four years that involve[d] lesbian activities”; (5) she did not produce any witnesses to “attest to the fact that she is indeed a lesbian.”⁴⁶

Similarly, Olha Lyashchynska’s narrative of awareness was complicated by the fact of her sexual and relational history. Lyashchynska claimed that she was persecuted because of her sexual orientation but had, while living in Ukraine, dated a man who, along with his friends, raped her to reportedly teach her “‘how to be a real woman.’”⁴⁷ Also, after arriving in the United States, Lyashchynska “married a man, despite her sexual orientation, because the guy ‘was like really nice’ to her.”⁴⁸ The judge denied her asylum claim, deciding that her credibility as a lesbian was no longer intact after the two marriages. Similarly, Latvian Margarita Michulena came to the United States as a student with her Latvian girlfriend after they both experienced physical assault, harassment, and vandalism of their personal property in Latvia. Michulena explained to the court

“she was bi-sexual” but that she thought of herself “more as a lesbian.”⁴⁹ This explanation confused the court because Michulena had not only been married to a man in Latvia (who raped her), but shortly after she broke up with her girlfriend, she married a man who was a U.S. citizen, a marriage that immigration authorities found to be fraudulent. When asked why she “as a lesbian decided to be married” in the United States, Michulena responded that she wanted to “live a normal life” and to have children.⁵⁰ The immigration judge and BIA took both heterosexual unions as the basis for finding her claim to be a lesbian not credible. Indeed, the immigration judge believed that her two heterosexual unions “were so fundamentally inconsistent with her claimed social group that it shatters her credibility before the court.”⁵¹ In each of these cases the courts ignored the possibility that heterosexual relationality might be a question of force or convenience rather than desire. The courts also refused to consider that sexual desire may be oriented in multiple directions or may change over the course of one’s life. When read through non-intersectional, heterosexual logics, it is hard to dispute that these women’s relationships with men cast doubt on their sexual-orientation claims. Yet, when read against the scholarly record documenting lesbian sexuality, these claimant’s experiences strongly resonate as *gay women’s* experiences of *sexuality*. Not only does this scholarship demonstrate that gay women often come to an awareness of their homosexual desire much later in life than gay men, but they often do so after being in relationships with men or having children.⁵² The courts’ reading practices also gender the claimants as “too woman” by reading the claimants into discourses about rape culture that frame women’s claims of sexual assault in the context of heterosexual unions or relationships as impossible, false, or fake.⁵³ Instead of understanding the complexity of gay women’s awareness and experience of sexuality and the complexities of the cultures of violence that play out in women’s lives, judges are doubtful of the immutability of their claims. Gender and sexuality intersect invisibly in the reading practices of the judges who evaluate gay women’s relational and sexual histories. Read against the genre conventions that establish immutability as awareness early in one’s life that does not change in orientation, these claimants are legible as, at most, “fake” or “non-practicing” lesbians.

Racializing discourses of suspicion also creep into the evaluations of Baltic, Central, and Eastern European gay women in these cases. One need not look too hard to find U.S. representations of Baltic, Central, and Eastern European women as subjects who use their femininity and sexuality for material exchanges. Popular U.S. media is rife with what Elza Ibroscheva calls “porno-chic” representations of these women with beautiful, eroticized, sexualized, and commodified bodies in the current post-Socialist moment—a sharp contrast to

the Socialist representations of these same women.⁵⁴ Indeed, Baltic, Central, and Eastern European women have taken center stage in U.S. media as “fashion models, flooding the Western catwalks, and [as] top athletes, gracing the covers of magazines,”⁵⁵ and as prostitutes and “femme fatales” in television and film. These representations pair in the U.S. imagination with messages about Central and Eastern European women’s use of sexuality and beauty (willingly or not) as a means to immigration through methods such as “mail-order brides,” “prostitution rings,” and “sex trafficking.”⁵⁶ The pairing implies that Baltic, Central European, and Eastern European women might do anything—including the exchange of their bodies and sex—to accumulate material resources such as money, immigration status, and goods that might improve their social standing. These racialized gendered discourses linger in the background of the performative scene of the courtroom when Baltic, Central European, and Eastern European women make claims to asylum on the basis of their sexuality, casting doubt and suspicion on the veracity of their accounts about sexuality that already stray from the narrative convention of a sexuality-related persecution narrative.

One interpretation of this failure to conform to the convention is that gay women, when read against this convention, are gendered as “too woman” to be recognized as gay. Indeed, evidence of heterosexual unions, boyfriends, and children potentially position these claimants back into narratives of heterosexual femininity, making it hard for immigration judges to recognize the *gayness* in their experiences. This, I believe, partially explains the failure. Against this intersectional axis of gender and sexuality, though, lesbian asylum seekers are also read as not gay enough to meet the standard of immutability assumed by the court. Here, a male model is presumed for homosexuality and gay women necessarily fall short. As Adrienne Rich articulated, this exclusion happens because lesbians are often offered “inclusion” in political life “as female versions of male homosexuality.” She writes: “To equate lesbian existence with male homosexuality because each is stigmatized is to erase female reality once again.”⁵⁷ Here it is not that gay women are completely unimaginable but that the rhetoric of gayness used by the courts does not provide ample discursive maneuverability for a range of experiences of sexual desire and practice. What this creates is an intersectional invisibility for lesbian asylum seekers whereby lesbians can’t be intelligible in the language of the law as both gay and women but are rather always audienceed invisibly through the essentializing discourses about gender and sexuality that circulate in the judges’ reading practices of gay women.⁵⁸ In this instance, gay women fail to meet the standard of the model of gayness and, at the same time, are read as “too woman” to be seen as persecuted

because of their sexuality. As we see in the next section, the genre conventions for sexuality-based persecution position gay women as “too woman” yet again, rendering the complexities of their experiences as gay women triply invisible.

PERSECUTION

Unlike the previous genre conventions wherein there were also examples of gender-conforming gay men who experienced difficulties of fitting the convention, all male-assigned sexuality claimants I found in my archive described past physical or sexual violence as the basis for their claims. Read against the severity of violence that these claimants discuss, gay women’s experiences are often interpreted as not severe enough to meet the standard of persecution necessary for winning asylum. For example, Zeng Qing Chang “testified that she and her girlfriend were once picked up by local village officials and dragged by their hair to a ‘local office,’ detained for the night” because they were lesbians.⁵⁹ The courts evaluating this case agreed that an “isolated incident of harassment does not rise to the level of persecution, which is defined as including ‘threats to life, confinement, torture, [or] economic restrictions so severe that they constitute a real threat to life or freedom.’”⁶⁰ Burog-Perez, introduced earlier, did not experience threats to her life, but she did argue that her experiences in the Philippines were enough to warrant asylum on the basis of economic persecution. Not only did her patients leave her dentistry practice because she was a lesbian, but “she would not be able to find a job given her appearance as a lesbian” were she to return to the Philippines.⁶¹ As the court explained in denying her case, “When persecution based on purely economic harm is alleged, we have required a showing of ‘a probability of *deliberate* imposition of *substantial* economic disadvantage’” (emphases in original).⁶² The evidence in Burog-Perez’s case, the court continued, demonstrated that “some private individuals chose to bring their business to another dentist,” but did not showcase deliberate and widespread harm.⁶³ They denied her claim. Unclear in the record is what exactly “private individuals” means in the court’s logic as one might think of all patients of a dentist as “private individuals.” Regardless of this, Burog-Perez’s experience of economic disenfranchisement seems small or inconsequential when read against the record of sexual orientation persecution articulated in gay men’s cases. Against this genre convention, Burog-Perez’s experiences most logically read as “discrimination,” not persecution.

Doris de la Inmaculad Tavera Lara also claimed to experience economic persecution in Colombia when she was fired after coming out as a lesbian to her co-workers. Tavera Lara had children earlier in her life and first started seeing a woman romantically when she was an adult working at the university.

One evening at a holiday party, her supervisor asked why she was never seen with men. He insinuated that she might be gay, and Tavera Lara responded affirmatively that she was a lesbian. After that night Tavera Lara reported that her co-workers were no longer friendly to her at work, and after a few months her supervisor let her know that her contract would not be renewed. When she asked why, he explained that “she was being fired because of her sexual preferences.”⁶⁴ Not only was she fired from her job, but in looking for a new job she went around to the different architectural firms and no one would hire her (despite previous job offers at these firms). One potential employer explained to her over the phone that she “would not find a job in her specialization because she was a lesbian.”⁶⁵ The judge ruled negatively against these points regarding persecution, citing that there was insufficient evidence to verify that she was fired because she was gay.⁶⁶

Tavera Lara’s reasons for leaving Colombia, though, did not only concern economic persecution. Not long after being fired, she began to receive threatening phone calls at home, and when she changed her phone number, she began to receive threatening notes at her home: “The notes included newspaper clippings about social cleansing and homosexuals along with handwritten ‘vulgaries and threats.’ She testified that the notes said ‘[she] was a dirty lesbian,’ ‘was expendable,’ ‘had no right to have children,’ that it was shameful to be a lesbian with children, and that they ‘could talk to the welfare institute’ and have her children taken away, especially her daughter.”⁶⁷ She went to the police with the notes but the officers laughed at her and ridiculed her. Then, in 2001 “she was attacked on the street by two men as she was returning home . . . one of them took her arms and the other started touching her ‘privates’ . . . they called her by name and said, in a vulgar manner, that a woman did not exist in order to be with another woman.”⁶⁸ She reported the incident to the police, but again they refused to do anything because the assailants did not physically harm her or steal anything. Shortly after this Tavera Lara heard that one of her lesbian friends was found murdered. Having had enough, she left Colombia because she, too, feared for her life. In evaluating these elements of persecution, the judge also ruled negatively, explaining that Tavera Lara’s experiences neither rose to the level of persecution nor proved that she had a reasonable fear of future persecution.

The BIA and federal court agreed with the immigration judge, explaining that “harassing or threatening calls and notes ‘do not rise to the level of past persecution that would compel reversal of the IJ’s decision.’”⁶⁹ Male-assigned cis and trans gay cases illustrate that sexual violence is the primary mode of violence imagined as sexual-orientation persecution, for sexual assault and torture are used as admonishments, repudiations against a person’s nonheterosexual desires. Interpreted against the prevalence of sexual assault in male-assigned

gay cases, lesbians' experiences of harassment and economic disenfranchisement seem hardly capable of rising to the level of persecution expected in sexual orientation cases. Instead, lesbians' experiences are seen as harassing or discriminatory, but not persecution.

Even when lesbians include experiences of sexual assault in evidencing their need for asylum, they still struggle to be received in U.S. courts as eligible. Tsogzolmaa Densmaa fled Mongolia because "she and her partner, Chimgee, were arrested and imprisoned because they are lesbians." As explained, "the police falsely charged them with prostitution as a pretense for the arrest. During their detention, the women were raped and beaten. Chimgee died as a result of the beatings."⁷⁰ Furthermore, "during her interrogation, the inspector accused her of being a 'lesbian pervert,' and told her that she would be released to a psychiatric hospital if she admitted it."⁷¹ The judge in Densmaa's case did not believe the story because prostitution was legal in Mongolia and her arrest papers indicated that she was arrested for "risk of recidivism and fugitive evasion."⁷² The judge denied her claim. Notably, the police assault in Chimgee's case was not mentioned in the judge's decision, but the fact of the denial demonstrates that the assault was either not political or violent enough to warrant considering an asylum grant.

Mockeviciene, discussed earlier, also reported being physically assaulted by police officers who broke into her home after they learned that she was gay. Later, her then-husband raped her with the help of his friends. As the court record notes, she told her husband and children she was gay, and her husband "beat and raped her while his friends held her down." In evaluating these experiences, the judge ruled that "the incidents that Mockeviciene testified about did not constitute a threat to her life or freedom, and the incidents perpetrated by one police officer were insufficient to establish that, even if she suffered persecution, that the persecution was caused by the government."⁷³ The judge's decision completely ignored Mockeviciene's report of being gang raped by her husband and his friends; it centered instead on the police harassment as her primary evidence.⁷⁴ Though the judge never explicitly stated it, the omission demonstrates, perhaps, that the judge didn't see the rape *as* rape, allowing the marital contract to exclude the possibility that sexual assault happened, and that the violation was politically motivated.⁷⁵ When marital rape is excluded from the record, Mockeviciene's experiences with the police assaulting her and breaking in to her mother's house to look for "homosexual literature" may be harassing, yet they do not seem to rise to the severity of persecution evidenced in male-assigned gay cases that constitute what judges expect to hear and read in a sexuality-related asylum claim.

Similarly, the sexual assault that Olivia Nabulwala of Uganda experienced was evaluated as personal in nature by the judge hearing her claim. Nabulwala came to consciousness of her lesbian identity when she was in high school. She told her family, and they decided to send her to a co-ed school, “hoping she would stop being a lesbian.”⁷⁶ Instead of turning straight, she joined a lesbian-rights activist group and protested for the rights of sexual minorities in her country. Homophobic protesters besieged one of the group’s meetings, and Nabulwala was physically assaulted and hospitalized. After this incident, Nabulwala returned to her family, and they consequently realized that she was still a lesbian. Her father then proceeded to assault her and “two relatives forced her to have sex with a stranger. She was then expelled from her clan. Disowned by her family, she moved into the YMCA.”⁷⁷

In reviewing the case the judge noted that it was a difficult case to decide but ultimately gave the case a negative ruling. Regarding the incident with the lesbian organization, he cited that the event was “isolated and did not arise to that level of persecution.” And of the physical and sexual assault: it was “private family mistreatment,” he said, asserting that the Ugandan government was in no way involved.⁷⁸ The BIA affirmed this decision, but the Eighth Circuit judges took issue with the prior ruling concerning the Ugandan government’s involvement and remanded the case to the BIA in 2007.

Proving persecution in the lesbian cases is so challenging because these cases are read against the precedent set through male-assigned sexuality cases, where sexual assault is not only prevalent but is often perpetrated by state officials such as the police and military who fit easily into the frame of political persecution that is necessary in winning asylum claims. Against this genre convention, gay women are “too woman,” such that their experiences of violence are reordered into heterosexual scripts that frame the violence as personal in nature because it involves either male desire for a woman or male power over a woman. The assault positions the claimants back into heterosexuality and therefore along the intersectional axis as “too woman” to be persecuted on account of their sexuality. Indeed, gay women’s experiences of violence sound too similar to those of their heterosexual counterparts who more frequently cite sexual assault by family members and intimate partners in evidencing their cases.⁷⁹ Such discursive alignments position gay women’s experiences of violence as more personally motivated (for example, individual heterosexual sexual desire, or family members’ punishment for breaking familial/social mores) than politically instigated (to dominate or overpower, or because of a hatred of gay people). Thus, while the claimants may experience violence because of their gendered identities, the courts struggle to recognize how their fears emanate from their sexuality. Gender erases the difference that sexuality makes, thus making gay

women's intersectional experiences invisible once again; specifically, sexuality ceases to be legible as a primary modality of identity for gay women. Instead, against the genre conventions of sexuality-based persecution, these claimants are seen first and foremost as women.

CONTEXT

A final constraining factor for lesbian asylum seekers is a lack of information about geographical and cultural contexts to serve as supporting evidence in warranting gay women's claims. Quite simply, lesbian applicants are often denied asylum because there is not enough contextual evidence to affirm the veracity of their bids, and immigration judges frequently mandate such proof for gay women. Producing evidence of a context of persecution to fit the genre conventions for the situation is often nearly impossible for lesbian asylum seekers due to the almost complete radio silence about lesbian-targeted laws, abuse, and violence.

A number of LGBT-specific human rights groups have emerged in the last few decades. These organizations investigate and document the experiences of LGBT persons around the world, creating reports and archives of homophobic and transphobic peril, what I talk about in chapter 1 as transnational publicity, that serve as vital sources of evidence for asylum claimants in demonstrating a credible and justified need for refuge. Most of this work continues to focus on the experiences of male-assigned gay men and to some extent trans experiences, leaving lesbian and bisexual claimants largely in the lurch without documented evidence of abuse when they go to make their claims.⁸⁰ A search for the words "lesbian and gay" on Refworld, the leading database for information relating to refugees, pulled almost six thousand documents; doing the same search while excluding the word "gay" extracted fewer than three hundred sources. While this search's methods were by no means systematic or complete, it gives a rough sense of how infrequently lesbians are the sole focus of news media and investigative human rights reports.

Even when this contextual information is available, it is often interpreted as irrelevant to women's sexuality-related claims. As we saw in chapter 4, the universal recognition of male-male rape as a violation of one's self and as political renders need for corporeal or geographical specificity about persecution largely irrelevant in making a sexuality-related asylum case. No matter the continent, country, region, or political theater, male-male rape is imagined as a heinous act of power and control. For gay women, gender invisibly intercedes again to make the specificities of places and types of persecution they flee relevant. Burog-Perez, introduced earlier, included news reports about the persecution of gays throughout regions of the Philippines. The court evaluating her claim saw

this evidence as pertaining mostly to men and consequently not persuasive in demonstrating her credible fear. Though Burog-Perez filed a sexuality-related claim, her gender invisibly intersected in the evaluation of her claim, making available contextual information unusable to her as evidence. Densmaa, also introduced above, struggled in proving a context of persecution in Mongolia. As the court wrote, “Densmaa failed to provide any evidence of a pattern or practice of persecution against homosexuals in Mongolia. Although, as noted above, she did submit a newspaper article that reflects some amount of societal discrimination against lesbians, this article does not establish a pattern or practice of persecution.”⁸¹ The judge evaluating the case of Egyptian national Salama Rababa Badawy told Badawy that she may experience discrimination, but evidence in the country reports did not indicate that she would be persecuted. The court explained,

The State Department Country Reports indicate that there is discrimination and violence against women in Egypt, and that in the past the police have targeted homosexuals using “Internet-based ‘sting’ operations.” The record also contains documents indicating that tattooing is prohibited by Islam, an article about the dangers faced by a homosexual man in an Egyptian prison, and a report describing increased punishments for drug violations. While this evidence suggests that an individual with Badawy’s characteristics may face discrimination or harassment, it does not compel the conclusion that it is likely that she will be tortured if removed to Egypt.⁸²

In each of these instances, the judges rely on the genre conventions as their primary method of reading, which functions to render the lesbian claimants as too-woman or not-gay-enough to be making eligible sexuality-related asylum claims. This means that when women do make sexuality-related claims, their narratives of fear are often diminished in importance. With their experiences of persecution relegated to discrimination and harassment, gay women are legible through gendered narratives that infantilize them or render them as hysterical and over-reactive in their fears.

Even the presence of homophobic laws in a gay woman’s country of citizenship, such as anti-sodomy laws and buggery laws, do not guarantee that these claimants will be seriously received. Ellen Andreasian of Armenia was denied asylum relief because she could not provide evidence that the Armenian state supported or condoned the persecution of lesbians: “Although she presents evidence of the lack of acceptance of lesbians and enforcement of anti-sodomy laws in Armenia, she offers no evidence that lesbians are being persecuted, or that the situation is worse now than it was several years ago.”⁸³ Here the court

interpreted the anti-sodomy laws in Armenia as pertaining only to sex between men, discounting without justification how the presence of these laws within a country might also influence how gay women express their sexual desire and identity. While there certainly are state laws that affect women, such as wide-reaching anti-homosexuality laws, the buggery and sodomy laws that are frequently discussed are colonial-state architectures that figure male (read: public) subjects as those intended for surveillance and exclusion.

Together these cases demonstrate the difficulty of proving the context of persecution in asylum cases. Quite simply, there are no journalistic or human rights accounts to draw on in building cases about the persecution of gay women in these countries. Even when there is evidence of homophobic laws or social mores, the laws and practices are recognized as targeting men, thus excluding women from using such country-specific evidence to their advantage. In these instances, it is not so much that lesbians are not gay enough or “too woman” to be credibly received as lesbian asylum seekers, but it is the context that is gendered to reflect and privilege gay male experiences. What we know about context is always, already gendered to reflect a male model of sexuality. This male model for context is then assumed to reflect the experiences of women who may also experience persecution in that context. Here, gay women are both not gay enough and “too woman” to find representation in the record that articulates the context of persecution, thus rendering their experiences *as gay women* invisible. In this instance, there is an intersection, but the intersection leaves gay women frightfully without representation on the international stage of human rights advocacy for gays and lesbians.

Conclusion

This chapter illuminated the ways gender and sexuality invisibly interact for lesbian and gender-conforming gay male asylum seekers, shaping the possibilities for refuge that these claimants have in accordance with what I theorized in chapter 4 as the one-sex, one-gender system. While gender-conforming gay men experience challenges to their claims through this rhetoric and logic, gay women often fail at being legible through all three narrative conventions; their cases fall into the divide between gender and sexuality. Here, too frequently, gay women are either figured as not gay enough or as “too woman,” against the genre conventions of sexual orientation persecution claims, to be recognized as worthy of asylum relief because of their sexuality.

