

The Legal Framework of the Mental Health Crisis amongst LGBT Refugees in Canada and the United States.

A Factsheet detailing the legislation and legal processes of asylum, refugee health care, and claiming the LGBT Refugee Identity

THE LEGAL PRECEDENT FOR LGBT ASYLUM

The UN Refugee Convention of 1951

Ratified by 145 states, it defines what Refugees are and places legal obligations on the ratifying states including the U.S. and Canada to protect them.

The US' Toboso-Alfonso case of 1994

Allowed for Refugees to be accepted on the basis of their social status as a Homosexual and the persecution of said status.

Sadeghi-Pari v Canada

Established that LGBT-related persecution is grounds for filing for asylum, and even the need to be discreet about one's own sexuality can count as a form of persecution.

What are the attitudes and realities of the fields of immigration and mental health?

According to the organization MentalHealth America, more than half of all Americans with mental Health Issues report not receiving care in the past year. *¹In America the largest detractors to Mental Healthcare access is cost, stigma, and a lack of providers.* Also in America's carceral culture, this lack of Mental Healthcare access is highly correlated with higher rates of incarceration.

IMMIGRATION IN THE U.S.

The vast majority of immigrants to the United States are from Mexico, China, and India, and they tend to be younger (15 - 34) bringing their families in tow. *Majority of Americans are against immigration, with 70% against increasing immigration quotas.* They largely relate immigration and illegal immigration to unemployment, despite that in reality immigrants add to the economy and create jobs. However, more recent events such as the election of Donald Trump, suggest that America may be moving towards a more isolationist society and anti-immigrant discrimination is running at an all-time high.

MENTAL HEALTH IN CANADA

Mental Health statistics for Canada is largely similar to the US, with 1 out of 5 adults having experienced a mental health crisis in their lifetime and a little less than half of all Canadians with a mental health issue not receiving care. ²The Canadian mental health Association cites that cost and stigma are the biggest barriers to access are stigma and cost.

IMMIGRATION IN CANADA

In a poll by CBC News, *80% of Canadians polled that they are proud of Canada's multicultural makeup*, and would employ an immigrant. Canada has the highest percentage foreign born population of the G8 countries at more than 20%. ³ Majority of Canada's immigrants come from the Philippines, India, and China. Most apply under the family reunification clause, but another 60,000 apply under the economic migrant clause. However, migrants can be denied admission if it's believed they would be a burden on any of Canada's social systems. Otherwise, Canada is staunchly pro-economic migrant with a naturalization process of about 6 months.

Of special note, with the implementation of the Affordable Care Act in

2010 insured Americans are provided Mental Health care coverage under all insurance plans as an Essential Health Benefit. *Meanwhile, most Canadian insurance plans only cover psychiatric care, barring many Canadians from visiting psychologist and social workers due to cost.*

What is the formalized Asylum-Process and what is the reality of it?

The Asylum Process in Canada starts with arriving at the border and 1) acquiring a lawyer, 2) filing a refugee **Basis-of-Claim** form and preliminary interview with the Canadian Border Services Agency or with the Citizenship and Immigration Canada Office, 3) an Immigration Officer will declare you eligible for a hearing or not and, finally, 4) 30 to 60 days later you are given a hearing where you must provide sufficient evidence that either a target of your country's government or that you will face persecution from your host country. If you disagree with the ruling you can make appeal in certain instances, requiring protection and escaping persecution is called "**Person-in-Need-of-Protection**" and "**Convention Refugee**" respectively.^{4,5}

Seeking Asylum in the U.S. can be either Affirmative or Defensive. In the Affirmative application process you must be physically present in the United States, where they 1) can file a **1-589 form**, after, if the application is accepted, 2) you must head to a USCIS field office for fingerprinting, background checks, and interview, you can choose to have an attorney during this process or not. After which 3) the Asylum officer will then declare if you do or do not fit the definition of a refugee.

However, 4) if your application is refused then an **I-862 form** or a notice to appear before a judge is filed and the deportation process may start. 5) This is when you can start the Defensive Asylum Process to prevent deportation, this also occurs if you are apprehended without legal documents at any time, you will be given a legal representative and trialed by an Immigration judge in an adversarial like fashion.⁶

In America, about 85,000 refugees were admitted last year and in Canada 57,000 refugees were admitted.^{7,8} *Most refugees stem from the middle-east and Asia.* In the U.S. instated refugees or denied can be removed if they appear dangerous, and in Canada refugees

can removed or denied under **Bill C-31** and refugee rulings are final.⁹ In Canada, rejected claims do not result in outright deportation as the refugee reserve the right to appeal. Also, the U.S. and Canada share the **Safe Third Country Agreement of 2004** which prevents refugees from

showing up at the U.S.-Canada Border and seeking asylum in the country cross from the one they're in, with a few exceptions.¹⁰

RIGHTS OF UNDOCUMENTED REFUGEES

The undocumented immigrants and refugees of America are protected under all rights of the constitution including due process, the right to sue, the right to defend oneself in court, and defend against unwarranted searches. Canada shares the same rights, except some states even allow for IDs for undocumented citizen. However in both states undocumented immigrants are barred from working, but if they do still find work they are



Pulitzer Prize Winning Photo from the Syrian Refugee Crisis

given all the same rights as a citizen as an employee.¹¹

For undocumented immigrants attempting to navigate the system can be difficult. In both Canada and the U.S. there is technical assistance and helping NGOs available, however, in America undocumented refugees have only a year to file a refugee claim. After which, *not only is the application guaranteed to fail but they will be deported upon submission.* Putting an unnatural burden on Canada to accept refugees from America who failed to put in an application. While many refugees find informal work and add to the economy in their own way, most refugees spend their daily life in fear of being stopped by the authorities for a minor infraction.

What is the Current Mechanism of Healthcare for Refugees and Asylum Seekers?

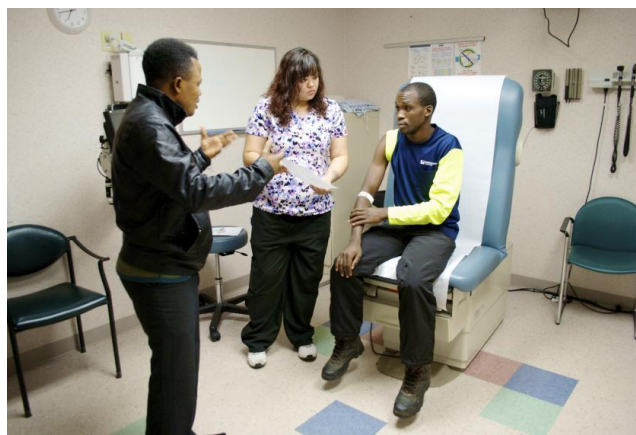
The Story of Healthcare regarding Refugees in North America is a positive one. As most refugee are covered under some sort of program in both the U.S. and Canada. The Affordable Care Act expanded Medicaid to allow for eligible Refugees and there are state programs for impoverished families especially.¹²¹³ Meanwhile in Canada, Refugees are protected under the **Interim Federal Health Program** which doesn't cover mental therapy with a psychologist.¹⁴ Under Title VI of the **Civil Rights Act of 1964** Health Care centers that receive federal funding must provide translation in America.¹⁵ *However even with Medicare, transportation and cost remain an issue.* In Canada, there is no legal mandate for interpreter services in the hospitals, however many hospitals have this

service to varying degrees.¹⁶ So, translation along with cost and transportation pose large issues.

HEALTHCARE OF THE UNDOCUMENTED

Applying for Healthcare insurance while Undocumented can be fraught with peril, but it can be fruitful. As many student, employee, and low-cost private programs do not check immigration status. However, if caught their own application can be used against them as evidence for their deportation.¹⁷ Primary care is usually undertaken at Community Health Center that can be understaffed and underfunded, and unable to handle complex, specialized issues. *So many Undocumented immigrants only pursue*

care when extremely ill and requiring emergency attention costing both Canada and the U.S. millions each year. However in Canada, after a precedent setting decision **Nell Toussaint v. Attorney General of Canada** in 2011, it has been established that illegal immigrants have no



Ugandan Refugee receiving care in Cleveland, Ohio

right to health care legally.¹⁸

What are the unique challenges of LGBT Asylum Seekers and Refugees

It is estimated that less than 5% of incoming refugees or 4,000 of America's 80,000 applying refugees are LGBT identifying, however only 500 disclose their sexuality. Sexual Orientation is accepted as a legal premise for refugee status in both Canada and the U.S., however,¹⁹ the application process can pose special challenges for LGBT Refugees:

The process of coming out can be complex enough, not factoring the fact that many refugees come very violently homophobic

countries. It is not until they are situated in a safe country for several months on end before many refugees come to truly accept themselves.²⁰ However this directly conflicts with Canada's need for Refugees to prove their sexuality and sexuality based persecution.²¹ *In Canada, ill-equipped adjudicators and interviewers may attempt to relegate refugees stories into familiar and narrow-minded western narratives of "coming out" and reject those who do not match this narrative.* The Canadian government may even require that the LGBT refugee get mental Health evidence prove his/her/their sexuality. Which can be extremely difficult in a third world country and even in Canada itself.²²

In America, the complex legal climate can make coming as an LGBT refugee especially difficult. Following the Immigration act of 1990 the ban on the "Sexually Deviant" has been overturned, but following the legal precedent established in the Toboso-Alfonso in United States refugee Homosexuals were established as a particular social group²³. Meaning, to be accepted on the basis of sexuality there must be *immutability, association, and recognizability* between the refugee and the homosexual identity. None of which would exist for a closeted gay male or female.²⁴ *This special focus on the homosexual on identity over sexual acts, since homosexual acts are still taboo, means that gay men from countries that behead homosexuals have had their asylum application rejected just for looking too masculine at court.*

BISEXUALS NEED NOT APPLY

Also, both Immigration committees have no provisions for Bisexual applicants. *The Bisexual identity is notoriously invisible and those of it may struggle to produce evidence of their sexuality and fulfill the particular social group clause.* Leading to Bisexual applicants being disproportionately rejected for asylum.²⁵

LGBT MENTAL HEALTH

Studies find that Refugees have a higher propensity to have Mental Health illnesses like PTSD and Depression, and to have experienced traumatic physical and sexual violence. Studies also find the LGBT individuals encounter bias and stigma within the healthcare system as well, and present with a disproportionate number of mental health illnesses like Depression.²⁶ *While data evaluating the mental health challenges of LGBT refugees is lacking, it is safe to say that face the same if not more stigma and mental health challenges.* However some proponents argue that the process of seeking asylum may reopen these old wounds and inflict new ones as Refugees navigate untrained, possibly homophobic, systems. With the many complex and unwieldy legal provisions and social biases around the issue it is possible to see how the process and structure of Asylum can prevent LGBT individuals in Canada and the U.S. from getting Healthcare. However question such as: what mechanism prevents LGBT refugees from getting healthcare, how does that present itself, the ramifications of this, the valuations behind such a legal mess, and possible interventions and failed interventions will only be evaluated later in a write-up on the issue.

Esosa Ohonba BS

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