

April 2, 2021

The Honorable Antony J. Blinken  
Secretary  
Department of State  
Washington, DC 20520

The Honorable Alejandro Mayorkas  
Secretary  
Department of Homeland Security  
Washington, DC 20528

Dear Secretary Blinken and Secretary Mayorkas:

We write to urge you to lift restrictions placed on certain LGBTQI+ and interfaith refugee couples due to the administration's current narrow interpretation of the term "spouse". As you are aware, Executive Order 14013 of February 4, 2021 instructs you to consider recognizing, for purposes of the United States Refugee Admissions Program (USRAP), individuals "who are in committed life partnerships but who are unable to marry or to register their marriage due to restrictions in the law or practices of their country of origin, including for individuals in same-sex, interfaith, or camp-based marriages."<sup>1</sup> Relatedly, President Biden's "Memorandum on Advancing the Human Rights of Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Persons Around the World of February 4, 2021" also directs your departments to "effectively identify and respond to the particular needs of LGBTQI+ refugees and asylum seekers."<sup>2</sup>

This letter provides background evidencing that the term "spouse" under immigration law is subject to interpretation by the Executive Branch and offers three concrete recommendations on how the Department of State (DOS) and the Department of Homeland Security (DHS) can more equitably interpret the term to address the unique challenges of certain refugee families as contemplated by President Biden.

### Background

Many LGBTQI+ and interfaith refugee couples are barred from marrying in their country of origin as well as in the country in which they are displaced (country of asylum).<sup>3</sup> In fact, LGBTQI+ and interfaith families often seek refugee status and resettlement precisely because they cannot live with their partner in their countries of origin or asylum. Refugees, including

---

<sup>1</sup> The White House, "Executive Order on Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration," (E.O. 14013 of February 4, 2021), Section 4(j), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/04/executive-order-on-rebuilding-and-enhancing-programs-to-resettle-refugees-and-planning-for-the-impact-of-climate-change-on-migration>.

<sup>2</sup> The White House, "Memorandum on Advancing the Human Rights of Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Persons Around the World, Sec. 2: Protecting Vulnerable LGBTQI+ Refugees and Asylum Seekers" (February 4, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/04/memorandum-advancing-the-human-rights-of-lesbian-gay-bisexual-transgender-queer-and-intersex-persons-around-the-world/>.

<sup>3</sup> The Human Rights Campaign Foundation, "Resources: Marriage Equality Around the World", <https://www.hrc.org/resources/marriage-equality-around-the-world>; The Law Library of Congress, "Prohibition of Interfaith Marriage" (September 2015), <https://www.loc.gov/law/help/marriage/prohibition-of-interfaith-marriage.pdf>.

those based in camps, often lack access to registering marriages due to discrimination or practical obstacles.<sup>4</sup>

The Immigration and Nationality Act (INA) defines the term “spouse” only in the negative,<sup>5</sup> and DHS’s U.S. Citizenship and Immigration Services (USCIS) policy states that “[i]n general, the legal validity of a marriage is determined by the law of the place where the marriage was celebrated.”<sup>6</sup> Thus, when refugee families face obstacles to legal marriage in their countries of origin or asylum, they can be excluded from resettling in the United States together as a family.

Since 2015, USCIS and DOS, through the Bureau of Population, Refugees, and Migration (PRM), have made at least three changes to its treatment of partners who are not able to gain legal recognition of marriage in the USRAP process. A review of these three changes, detailed below, reveals that DHS and DOS have the authority to allow these refugee families the ability to resettle together in the United States in safety.

- 1) **Priority 3 (P-3) and same-sex couples:** P-3 is used to grant refugees access to USRAP for purposes of reunification with family members already living in the United States. The Reports to Congress for the Proposed Refugee Admissions for FY 2016<sup>7</sup> and for FY 2017<sup>8</sup> expanded eligibility to the P-3 category to include people in committed relationships where “legal marriage was not an obtainable option due to social and/or legal prohibitions.” This expansion was focused on, but not limited to, barriers to marriage for same-sex couples in the country of origin or asylum. This policy was never explicitly revoked by the Trump administration, though it was omitted from President Trump’s proposed refugee admissions reports.<sup>9</sup> President Biden’s Proposed Emergency

---

<sup>4</sup> UNHCR, “Rohingya refugee crisis: Registration of the marriages and divorces of refugees” (January 29, 2019), <https://reliefweb.int/report/bangladesh/rohingya-refugee-crisis-registration-marriages-and-divorces-refugees>; International Human Rights Clinic (Harvard Law School) and the Norwegian Refugee Council, “Registering Rights: Syrian refugees and the documentation of births, marriages, and deaths in Jordan” (October 2015), <https://hrp.law.harvard.edu/wp-content/uploads/2015/11/Registering-rights-report-NRC-IHRC-October20151.pdf>.

<sup>5</sup> INA § 101(a)(35) (excluding from that definition those married by proxy where the marriage has not been consummated); *See also Matter of Lovo-Lara*, 23 I. & N. Dec. 746, 748 (B.I.A. 2005) (“The [INA] does not define the word ‘spouse’ in terms of the sex of the parties.”).

<sup>6</sup> U.S. Citizenship and Immigration Services, “Policy Manual, Volume 12, Part G, Chapter 2: Marriage and Marital Union for Naturalization”, <https://www.uscis.gov/policy-manual/volume-12-part-g-chapter-2>. Certain marriages, such as polygamous or incestuous marriages, that are recognized in the place of celebration may not be recognized for U.S. immigration purposes because they have been deemed “repugnant” to U.S. public policy (Restatement of Foreign Relations § 482(2)(d)).

<sup>7</sup> U.S. Department of State, Bureau of Population, Refugees, and Migration, “Proposed Refugee Admissions for Fiscal Year 2016” (October 1, 2015), <https://2009-2017.state.gov/j/prm/releases/docsforcongress/247770.htm>.

<sup>8</sup> U.S. Department of State, Bureau of Population, Refugees, and Migration, “Proposed Refugee Admissions for Fiscal Year 2017” (September 15, 2016), <https://2009-2017.state.gov/j/prm/releases/docsforcongress/261956.htm>.

<sup>9</sup> E.g., U.S. Department of State, Bureau of Population, Refugees, and Migration, “Proposed Refugee Admissions for Fiscal Year 2019” (September 17, 2018), <https://www.state.gov/wp-content/uploads/2018/12/Proposed-Refugee-Admissions-for-Fiscal-Year-2019.pdf>.

Refugee Admissions for FY 2021 proposes to return the explicit language extending P-3 to couples who cannot legally marry.<sup>10</sup>

- 2) **Recognition of camp-based marriages for refugees accompanying a principal refugee applicant:** In 2015, USCIS expanded recognition of marriage such that “refugee applicants who entered into an informal or unregistered marriage in their host country, and were unable to perfect the marriage, could be recognized as having a valid marriage for immigration purposes where the refugee was unable to access host country institutions due to host country policies or conditions, or because of discriminatory governmental policies or practices in either the host country or the country of flight.”<sup>11</sup>
- 3) **Under the Trump administration, USCIS halted recognition of camp-based marriages** in 2018 and set forth that “a marriage must be valid under the law of the jurisdiction where it was celebrated in order to be recognized for immigration purposes.”<sup>12</sup>

### Recommendations

These previous changes demonstrate that the interpretation of “spouse” is subject to interpretation by the Executive Branch. With that context, there are three actions your agencies can take to foster a more inclusive policy towards all refugee families, in line with the directives laid out by President Biden’s executive actions:

#### **1. PRM and USCIS should ensure that USRAP policy recognizes the harms that refugee families face in host countries, as well as countries of origin.**

USRAP should be accessible to families who are unable to marry--and should not perpetuate the harms and discrimination that refugee families face in their countries of asylum or origin. Executive Order 14013 (EO) allows recognition of families who cannot marry based on “restrictions in the law or practices of their country of origin.”<sup>13</sup> PRM and USCIS policy should also recognize families who cannot marry based on restrictions in the country of asylum, as well. The EO itself acknowledges that restrictions on access to marriage can impact “camp-based marriages”; camp-based marriages are a challenge for many refugees who are in camps outside their country of origin. Thus, the EO can be understood to support the recognition of families who face restrictions on access to marriage, whether in the country of origin or the country of asylum, and including restrictions faced by interfaith or LGBTQI+ couples.

---

<sup>10</sup> U.S. Department of State, “Report to Congress on the Proposed Emergency Presidential Determination on Refugee Admissions for Fiscal Year 2021” (February 12, 2021), <https://www.state.gov/proposed-emergency-presidential-determination-on-refugee-admissions-for-fy21/>.

<sup>11</sup> U.S. Citizenship and Immigration Services, “Response to Query: Guidance for the treatment of refugee cases that include an RE-2 derivative spouse,” February 14, 2019, [https://immpolicytracking.org/media/documents/2019.02.14\\_Guidance\\_for\\_the\\_treatment\\_of\\_refugee\\_cases\\_that\\_include\\_an\\_RE-2\\_de\\_zOyTFld.pdf](https://immpolicytracking.org/media/documents/2019.02.14_Guidance_for_the_treatment_of_refugee_cases_that_include_an_RE-2_de_zOyTFld.pdf).

<sup>12</sup> Id.

<sup>13</sup> E.O. 14013, Section 4(j).

**2. PRM and USCIS should ensure that people in committed life partnerships are able to resettle together through any USRAP pathway, including through the I-730 program.<sup>14</sup>**

A return to a broader P-3 category and recognition of camp-based, but unregistered marriages, would undo some Trump-era harms to refugee families, but is insufficient to protect all refugee families because in some situations they will require the primary applicant to travel alone and wait for years of processing to reunite with their partners. P-3 processing requires both partners to have independent refugee claims (meaning that an LGBTQI+ refugee who meets a non-refugee partner in the country of asylum cannot be reunited through P-3). Even if both partners are refugees, one partner must resettle, then file an Affidavit of Relationship (AOR) to pursue P-3. P-3 is notoriously backlogged, with processing times exceeding 5 years just at the Refugee Access Verification Unit (RAVU) stage. To address this, USCIS and PRM must ensure that refugee families with demonstrated life commitments, but who cannot marry, are adjudicated and processed together as families without family separation. The policies to recognize families who cannot access legal marriage processes and recognition of camp-based marriages should apply in all USRAP pathways, including through the refugee I-730/follow-to-join process.

As a limited alternative, PRM could designate an additional priority category to include partners of refugees in USRAP. In this category, an individual with access to USRAP who cannot register their marriage could secure USRAP access for their partner by demonstrating to their Refugee Support Center (RSC) that they are in a committed life partnership. After this showing, the family could be adjudicated and processed as a family without requiring one partner to travel alone, file an AOR, and endure an extended family separation. Such a policy must explicitly include in-country processing so that partners are not forced to flee from their countries. This option does not fully resolve the challenges listed above, and so is less desirable than recognition of refugee families in all refugee pathways. Notably, this option would fail to preserve family unity for partners who do not have independent refugee claims.

**3. USCIS should also expand its 2015 policy, for camp-based marriages, to include other situations where individuals can demonstrate a committed relationship.**

USCIS has already evidenced its authority to reconsider its interpretation of the term “spouse.” While evidence of having children in common, sharing a residence, and merging finances should suffice, USCIS and PRM should adopt flexible standards that reflect that families may not be able to live together safely. Other evidence, including phone and social media records and personal testimony, should also be considered, and when it is the only evidence reasonably available, it should be considered sufficient. PRM also should permit the United Nations refugee agency (UNHCR) to make referrals for such families as a family unit.

\* \* \*

---

<sup>14</sup> Although we are focused here on “spouses” reuniting through USRAP, given the nearly identical statutory language in INA § 207 and INA § 208, and to ensure equitable access for refugees and asylees, we would urge USCIS to grant similar access for the asylee I-730/follow-to-join process.

These recommendations are immediate and implementable steps that you can take to alleviate the inequitable burdens placed on many refugee families. We welcome President Biden's signal towards a fairer and more inclusive refugee policy and hope your agencies can take these actions to fulfill those goals. If you have any questions or would like to discuss this further, please contact the International Refugee Assistance Project at [policy@refugeerights.org](mailto:policy@refugeerights.org).

Respectfully submitted,

International Refugee Assistance Project

Council for Global Equality