

Binational, same-sex couples face immigration problems

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Body

Shirley Tan's calm and happy life San Mateo County housewife, mother of twin 12-year-old boys, singing in the church choir blew up at 6:30 a.m. on Jan. 28, with a knock on the front door.

Within minutes, the **immigration** agent standing there had the 43-year-old Tan in handcuffs. She is scheduled to be deported to her native Philippines on Friday.

If Jay Mercado, Tan's partner of 23 years and the mother of her sons, were a different gender, it's highly unlikely that knock ever would have come. As a U.S. citizen, Mercado could have sponsored a wedded spouse for legal permanent residency. But although Mercado and Tan married in San Francisco in 2004, federal law limits the definition of marriage to a man and a woman, and **same-sex** partners of U.S. citizens don't have a route to legal permanent residence extended to straight married **couples**.

It might be too late for Tan and Mercado, but on behalf of thousands of similar **same-sex couples**, Congress is considering changing federal law to allow **same-sex** "permanent partners" the **same immigration** rights as opposite-**sex** married **couples**. U.S. Rep. Jackie Speier, D-San Mateo, who called Tan's situation "unacceptable," is among a group in Congress, including Democratic Sen. Barbara Boxer, who hope to change **immigration** law to mirror many countries in Europe that allow gays and lesbians to sponsor a **same-sex** partner for legal residency.

"I support gay marriage, but that's not the question here," said U.S. Rep. Jerrold Nadler, a Democrat from New York City leading the push for legislation to also allow **same-sex couples** access to permanent resident status. "The law shouldn't be gratuitously cruel "...That's what this does it's a gratuitous cruelty to keep making partners choose between their countries and their partners."

Mercado and Tan, who first appealed for political asylum for Tan in 1995 and thought their case was still pending, said they were completely unaware a deportation order had been issued in 2002. If Tan is deported this week, they will have to decide between separating two sons from one of their mothers, or moving the family to a country they have never known.

"It's hard when they are breaking up families," said a tearful Mercado, as she sat next to Tan in the house the **couple** owns overlooking the Pacific Ocean. "Why can't they just leave us alone? Just because I am not a man, that I cannot petition her (for a green card), they are punishing us."

"The thing is," Tan said, "it's not only me who they are punishing. It is mainly my kids, because they are innocent. They are the ones suffering."

Cultural limbo

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The federal Defense of Marriage Act, which limits marriage to a man and a woman, means gay couples in states that allow gay marriage, civil unions or domestic partnerships have no legal status for the purpose of international travel or immigration.

Some argue that extending immigration rights to same-sex partners would increase the risk of fraud and further tangle the nation's already controversial immigration system.

"It's always a bad idea to let the culture wars be played out in our immigration policy," said Steven A. Camarota, director of research for the Center for Immigration Studies, a Washington think tank that favors curbs on immigration.

With no way to obtain legal permanent residence, many gay couples exhaust years of temporary U.S. student or work visas. But ultimately, as with Los Angeles filmmaker Michelle Paymar and her French partner Veronique Martinaud, there comes a day of reckoning.

Paymar, 51, said an attorney bluntly told them: 'You can stay in the United States and fight this year by year, or you could apply to emigrate to Canada, and you can get on with your lives.' "

Paymar and Martinaud moved to Canada last year. Yet, many who leave the U.S. never feel comfortable with their decision.

Many Californians keep their 415, 310, or 408 area codes, which ring in foreign living rooms. Some still watch the Bay Area 10 o'clock news on satellite or cable TV. They have organized expatriate clubs that meet in cafes in Vancouver and Amsterdam, where they might gather to watch Election Night coverage, or just share tips for finding a good doctor in their new country. Watching from afar, many were stunned by the passage of Proposition 8, even though it didn't affect their immigration status.

They worry about aging parents back home. They struggle to relaunch careers in a new country. And they bridle when U.S. immigration officers won't recognize a spouse they legally married abroad, because in America, they aren't really married.

Some, like Martha McDevitt-Pugh, a former Silicon Valley software manager who fell in love with a Dutch citizen a decade ago and ultimately moved to the Netherlands, would be on the first flight home if they could. Even though she moved to a country where she speaks the language, and where her marriage entitles her to work legally and obtain citizenship, she still deeply misses her mother, two brothers, a sister, nieces and nephews, who live in Silicon Valley now an 11-hour plane ride away.

And she misses her native California, and high tech's work culture. "I landed there, and thought, 'This should feel great,' " McDevitt-Pugh said of Holland. "And it didn't feel great at all."

Even visiting the U.S. can be stressful for same-sex binational couples.

When McDevitt-Pugh flew into the Bay Area from Amsterdam with her wife, Lin, she was nervous about her documents bearing their hyphenated married name. Her legal marriage in the Netherlands does not exist in the eyes of U.S. law.

"It's the U.S. government that won't recognize my marriage," said McDevitt-Pugh, relieved after successfully clearing customs on a visit this week to celebrate her mother's 80th birthday. "It's still my name."

Others say they have traveled such emotional distance that even if same-sex marriage were legalized, they wouldn't come back.

"That phrase 'liberty and justice for all' "? That's an empty promise for people like us," said ex-San Franciscan Tim Sally, who moved to Canada in 2007 with his German partner of 18 years, Bernd Vey.

Now living in Vancouver, the men will become Canadian citizens next year.

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"I was angry and somewhat bitter about having to make this choice," Sally said. "But sometimes fate deals you a different hand than what you were expecting, and it ends up being a kick in the pants that moves you to a different level in your life."

Not settled

If choosing between a partner and your country is difficult, children make the choices even more agonizing.

It's unclear whether Tan can avert deportation. At this point in the process, it may require an act of Congress. Tan fears for her safety in the Philippines as a girl, a relative who wanted her inheritance murdered her mother and a sister and shot Tan in the head.

Tan and Mercado are both the legal parents of their boys, who are citizens. Tan gave birth to the twins, who were conceived with eggs from Mercado, a naturalized citizen born in the Philippines.

The **couple** said their bid for political asylum was rejected because the threat came from a relative instead of a government. They appealed in federal court, and their former lawyer told them for years that the case was still pending.

"Always," Tan said, "we keep in our head that I am legal."

That lawyer, according to the **couple** and their current lawyer, never told Tan that her application had been rejected in 2002 throwing her into illegal status.

"We have a person who has never committed a crime, who believed her case was winding its way through the courts," said Phyllis Beech, the **couple**'s new lawyer. "And all of a sudden, she wakes up to the pounding at the front door."

Beech said the law is the villain. If Tan and Mercado were not gay, "none of this happens," because Mercado could have petitioned for permanent legal status for Tan. A spokeswoman for the Department of Homeland Security declined immediate comment on the case.

Tan would be banned from the U.S. for 10 years if she is deported. If that happens, Mercado is prepared to leave her job and their home in the Bay Area to keep the family together in the Philippines.

"The main priority is to keep us all together," Mercado said. "We fought our families for our relationship. We are both from very close Catholic families. We stood up for our lives and now, just because of this we will be separated?"

Tan said whatever happens, she cannot live without her sons.

"They are my life now," she said. "I cannot be apart from them."

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A study by the Williams Institute at the UCLA law school estimated there are about 36,000 **binational couples** living together in the United States, with nearly 30 percent of those **couples** in California. Much of Western Europe, along with Israel, South Africa and New Zealand, provides some form of "permanent partner" **immigration** status for **same-sex couples**.

Infobox1

Graphic

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During a visit to the United States Lin and wife Martha McDevitt-Pugh (not pictured), meet with a group called "The Love Exiles," to strategize getting laws passed in order to be allowed to live with their foreign born **same sex couple** in the United States. They are among the many **couples** comprised of an American and a non-American married and living abroad because they're unable to get legal status for their husband or wife. They live in Amsterdam, where their marriage is recognized. They have to travel to the United States several times a year to visit Martha's aging mother and visit her family. (Photo by Maria J. Avila Photography/Mercury News)

Shirley Tan and her twelve-year-old son Jashley Mercado solicit help from their Rev. Piers Lahey at the Church of the Good Shepherd in Pacifica on Saturday March 28, 2008. Tan, the mother of two boys, is scheduled to be deported to the Philippines on Friday April 3.

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