

Deportation tide changing for gay couples

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Body

OAKLAND -- When a judge last week closed a deportation case against Filipino immigrant Raul Sinense, he and his husband, Peter Gee, celebrated by having coffee together on Berkeley's Solano Avenue.

The low-key celebration suited the low-key couple, who married on a Big Sur beach during the six-month window in 2008 when same-sex marriage was legal in California.

The occasion, however, also marked a turning point: The Oakland pair is one of just three gay couples nationwide to benefit from a new Obama administration policy that orders immigration officials to reconsider deporting illegal immigrants who have strong community and family ties.

"This is a really pivotal case," Gee said. "It seems like the tide is changing in the U.S. toward inclusion, toward equality, toward human."

Immigration Judge Tue Phan-Quang ordered the case against Sinense closed on Aug. 16 because the immigration service said a few days earlier it was no longer seeking to deport Sinense to the Philippines. The problems are not over for Sinense -- his case is not decisively terminated, just on indefinite hold -- but the action means the couple won't be separated and Sinense can reapply for a work permit.

"San Francisco right now is really the center of this policy shift," said Camiel Becker, the couple's lawyer. "We have judges who don't want to deport people if they're in a same-sex marriage. It's not just by chance. The trial attorneys and the judges understand this is a human right. If we were in the Harlingen, Texas, court, this would not be happening. This is all discretionary."

A June 17 memorandum from John Morton, the head of Immigration and Customs Enforcement, was the first sign of major changes happening within the nation's complicated immigration enforcement apparatus, which deported a record 393,000 people last year.

Morton listed new guidelines for agents to use "prosecutorial discretion" when deciding whom to deport, and said special consideration should be made for students and other upstanding immigrants, especially when their removal from the country would split a family apart. For much of the summer, however, lawyers across the country remained

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unclear about whether the agency would show same-sex spouses the same discretion it shows opposite-sex spouses and other immediate family members.

Six states allow same-sex marriages but the federal government does not recognize them.

On June 29, a federal immigration judge in New Jersey was the first to halt the deportation of a gay spouse, a Venezuelan man who had married a U.S. citizen in Connecticut.

On July 13, San Francisco-based immigration Judge Marilyn Teeter halted the deportation of another Venezuelan man, Alex Benshimol, who had married his Southern California partner in Connecticut. Teeter gave immigration officials two months to contest her decision.

The answer came Aug. 11, when Aaron Keesler, a lawyer for Immigration and Customs Enforcement, wrote back that the agency was dropping its case against Benshimol.

On the same day, Keesler said the deportation case against Sinense was being dropped, and a judge formally closed that case Aug. 16.

That made Sinense, 46, and Gee, 49, one of the first three binational gay couples to be spared from separation as a result of the new policy.

"I see myself growing old with Peter," Sinense said. "It would have been difficult starting my whole life over again."

White House officials and Homeland Security Secretary Janet Napolitano made the new discretionary policy more explicit Aug. 18 when they announced they would begin a case-by-case review of the nation's 300,000 pending deportation cases and close those against many illegal immigrants who are not criminals or repeat violators of immigration laws. The White House also made clear, for the first time, that same-sex marriages would be treated as a family tie.

Gee said the reprieve brought closure to a difficult time for the couple, who moved to East Oakland from Southern California less than two years ago.

"We were so naive about the whole process, what the options were, what to do," Gee said. "We don't have O.J. Simpson's legal budget."

Sinense has lived in California for about 15 years and had been working to get a green card. An insurance company agreed to sponsor him for an employment-based visa, he said, and he was able to get a legal work permit as he waded through the application process. In the meantime, he also met Gee, a native Californian and professional artist, and fell in love.

At their wedding ceremony in 2008, Sinense told guests of Gee's "gentle aura." Gee described how he was immediately connected by Sinense's smile that put him at ease, and talked of their journey into a "most ordinary and simple life" together.

They learned the next year that it wouldn't be so simple. The work visa plans fell through in the recession and Sinense received a deportation notice in 2009. They talked about what would happen if Sinense was forced to leave.

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For Becker, their lawyer, keeping the **couple** together wasn't just a matter of legal prowess. It was also personal.

A decade ago, Becker fell in love with a Salvadoran man while he was working in El Salvador. The pair wanted to move together to the United States, but the federal Defense of Marriage Act, which bans same-sex marriage, made it impossible for Becker to apply for a green card on his partner's behalf, as he could have done if he married a Salvadoran woman. The same law made it impossible for Gee to apply for a green card for Sinense, though their marriage is considered legally valid in California.

Becker wrote about his experience last year in an essay for a local news outlet. Gee and Sinense read that essay and, after having contacted dozens of lawyers, decided it was Becker they wanted helping them.

Months after he took on their case, Becker began to sense that the Defense of Marriage Act was cracking when the Justice Department announced in February that it would stop defending it because it considered the act unconstitutional.

"At that point, I felt there was no way I was going to let Raul be **deported**. I just wasn't going to let that happen," Becker said.

He argued in court that the Constitution requires the **couple**'s same-sex marriage license to be recognized under immigration law. He encouraged Oakland Mayor Jean Quan, a friend of the **couple**, to write a letter on their behalf, which she did.

Gee and Sinense said they began to see their legal battle as a civil rights cause.

"I just see it as a right and I feel like it's happening, it's going to happen, it has to happen," Gee said.

Graphic

Married **couple** Raul Sinense, left, and Peter Gee, right, are seen here, in Oakland, Calif., on Thursday, Aug. 25, 2011. The **couple** are one of the first in the nation to benefit from a new Obama administration **deportation** policy, that directs immigration officers to use discretion in choosing whom to **deport** giving priority to criminals and not people with strong family ties. Sinense, a Filipino national, has lived in the U.S. for 15 years but was placed on **deportation** proceedings in 2009. (Anda Chu/Staff)

Married **couple** Raul Sinense, left, and Peter Gee, right, are seen here in a photo at a friends wedding, in Oakland, Calif., on Thursday, Aug. 25, 2011. The **couple** are one of the first in the nation to benefit from a new Obama administration **deportation** policy, that directs immigration officers to use discretion in choosing whom to **deport** giving priority to criminals and not people with strong family ties. Sinense, a Filipino national, has lived in the U.S. for 15 years but was placed on **deportation** proceedings in 2009. (Anda Chu/Staff)

Married **couple** Raul Sinense, left, and Peter Gee, right, pose in Oakland, Calif., on Thursday, Aug. 25, 2011. The **couple** are one of the first in the nation to benefit from a new Obama administration **deportation** policy, that directs immigration officers to use discretion in choosing whom to **deport** giving priority to criminals and not people with strong family ties. Sinense, a Filipino national, has lived in the U.S. for 15 years but was placed on **deportation** proceedings in 2009. (Anda Chu/Staff)

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Married **couple** Peter Gee, left, and Raul Sinense, right, pose in Oakland, Calif., on Thursday, Aug. 25, 2011. The **couple** are one of the first in the nation to benefit from a new Obama administration **deportation** policy, that directs immigration officers to use discretion in choosing whom to **deport** giving priority to criminals and not people with strong family ties. Sinense, a Filipino national, has lived in the U.S. for 15 years but was placed on **deportation** proceedings in 2009. (Anda Chu/Staff)

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