

## Amendment to 06-07-03

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend 8 United States Code section 1101 to read as follows:

1 § 1101

2 (a) As used in this chapter—

3  
4 [Subdivisions (a)(1) through (14) remain unchanged.]

5  
6 (15) The term "immigrant" means every alien except an alien who is within one of the  
7 following classes of nonimmigrant aliens—

8  
9 [Subdivisions (a)(15)(A) through (J) remain unchanged.]

10  
11 (K) subject to subsections (d) and (p) of section 1184 of this title, an alien who -

12 (i) is the fiancée or fiancée of a citizen of the United States and who seeks to enter the  
13 United States solely to conclude a valid marriage with the petitioner within ninety days after  
14 admission;

15 (ii) has concluded a valid marriage or permanent partnership with a citizen of the United  
16 States who is the petitioner, is the beneficiary of a petition to accord a status under section 1151  
17 (b)(2)(A)(i) of this title that was filed under section 1154 of this title by the petitioner, and seeks to  
18 enter the United States to await the approval of such petition and the availability to the alien of an  
19 immigrant visa; or

20 (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or  
21 following to join, the alien;

22  
23 [Subdivisions (a)(15)(L) through (a)(50) remain unchanged.]

24  
25 (51) The term "permanent partner" as used in this Act shall include any individual 18 years  
26 of age or older who has concluded a valid marriage, registered domestic partnership or civil union  
27 in any jurisdiction that recognizes, permits or allows any such relationship. Said term shall also  
28 include any individual 18 years of age or older who, in any jurisdiction that does not presently  
29 recognize the legitimacy of a same-sex marriage, registered domestic partnership or civil union,  
30 would qualify as being a civil union or domestic partnership if living in a United States jurisdiction  
31 that recognizes either such relationship.

32 (52) The term "marriage" as used in this Act shall be construed to include the relationship  
33 that exists between two permanent partners as defined in this Act.

34  
35 [Subdivisions (b) through (i) remain unchanged.]

(Proposed new language underlined; language to be deleted stricken.)

**RESOLUTION 6-07-2003**

**DIGEST**

Civil Rights: Immigration of Permanent Partners

Amends 8 United States Code section 1101 to define the term “spouse” to include the term “permanent partner” and to define “permanent partner.”

**RESOLUTIONS COMMITTEE RECOMMENDATION**

DISAPPROVE

History:

None known.

Reasons:

This resolution amends 8 United States Code section 1101 to define the term “spouse” to include the term “permanent partner” and to define “permanent partner.” This resolution should be disapproved because it will increase immigration abuse and may place certain applicants in danger.

The federal government occupies the field of immigration law. (*DiCanas v. Bica* (1976) 424 U.S. 351, 354.) Current immigration law allows citizens and permanent residents to sponsor spouses or fiancé(e)s for immigration purposes. The law looks to the *lex loci* of the foreign country to determine what constitutes a marriage. (*Cosulich Societa Triestina Di Navigazione v. Elting* (2nd Cir. 1933) 66 F.2d 534.) The state of “marriage” is fairly well defined, country to country. More importantly, declaration of the state of “marriage” is generally made by, verified by and monitored by a some combination of the country’s legal, social and cultural institutions. The state of “permanent partnership,” on the other hand, is still generally (and under this resolution) a self-declared status with little in the way of legal, social and/or cultural confirmation that the status exists. Such self-declaration, by the very people seeking to immigrate, will lead to significant abuse.

Another danger presented by this resolution is that, unfortunately, in a significant number of countries homosexuality is a crime. If a person states on his or her application that he or she is in a “permanent partnership” with a person of the same sex, he or she may be subject to persecution, death or criminal prosecution in his or her home country. Such prosecution might render the applicant ineligible for immigration into the United States under the crimes of moral turpitude provision. This is a “catch-22” that cannot be solved by legislation aimed solely at one side of the problem.

**TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend 8 United States Code section 1101 to read as follows:

- 1     § 1101
- 2             (a) As used in this chapter—
- 3
- 4             [Subdivisions (a)(1) through (14) remain unchanged.]
- 5
- 6             (15) The term "immigrant" means every alien except an alien who is within one of the
- 7     following classes of nonimmigrant aliens—
- 8
- 9             [Subdivisions (a)(15)(A) through (J) remain unchanged.]
- 10

11 (K) subject to subsections (d) and (p) of section 1184 of this title, an alien who -  
12 (i) is the fiancée or fiancée of a citizen of the United States and who seeks to enter the  
13 United States solely to conclude a valid marriage with the petitioner within ninety days after  
14 admission;  
15 (ii) has concluded a valid marriage or permanent partnership with a citizen of the United  
16 States who is the petitioner, is the beneficiary of a petition to accord a status under section 1151  
17 (b)(2)(A)(i) of this title that was filed under section 1154 of this title by the petitioner, and seeks to  
18 enter the United States to await the approval of such petition and the availability to the alien of an  
19 immigrant visa; or  
20 (iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or  
21 following to join, the alien;

22  
23 [Subdivisions (a)(15)(L) through (a)(50) remain unchanged.]

24  
25 (51) The term “spouse” as used in this Act shall be construed to include the term “permanent  
26 partner”. The term “permanent partner” means an individual 18 years of age or older who is—

27 (A) in a committed, intimate relationship with another individual 18 years of age or older in  
28 which both parties intend a lifelong commitment;

29 (B) financially interdependent with that other individual;

30 (C) not married to or in a permanent partnership with anyone other than that other  
31 individual;

32 (D) unable to contract with that other individual a marriage cognizable under this Act; and

33 (E) is not a first, second or third degree blood relation of that other individual.

34 (52) The term “marriage” as used in this Act shall be construed to include the term  
35 “permanent partnership”. The term “permanent partnership means the relationship that exists  
36 between two permanent partners.

37  
38 [Subdivisions (b) through (i) remain unchanged.]

(Proposed new language underlined; language to be deleted stricken.)

PROPOSER: Bay Area Lawyers for Individual Freedom

#### STATEMENT OF REASONS

Existing Law: Under the federal Immigration and Nationality Act (INA), United States citizens and legal permanent residents may sponsor their spouses (and other immediate family members) for immigration purposes. But same-sex partners of United States citizens and permanent residents are not considered “spouses” and their partners cannot sponsor them for family-based immigration.

This Resolution: Would include “permanent partners” in the qualifying family member category under United States immigration law, such that permanent partners would have the same immigration benefits and restrictions as spouses currently do. This resolution would define a permanent partner as any person 18 or older who is: (a) in a committed, intimate relationship with another adult 18 or older in which both parties intend a lifelong commitment; (b) financially interdependent with that other person; (c) not married to, or in a permanent partnership with, anyone other than that other person; and (d) unable to contract with that person a marriage cognizable under the Immigration and Nationality Act.

The Problem: Currently, an American who marries an alien may sponsor his or her opposite-sex spouse for immigration to the United States. Also, spouses can potentially stop the deportation of an alien by proving that removal would cause extreme hardship to the family. Lesbian and gay bi-national couples who are in committed, permanent relationships with each other cannot enjoy these protections because

their relationships are not recognized under federal immigration law. Often, committed same-sex couples are kept apart, torn apart, or forced to stay together illegally, with one partner in constant fear of deportation. Americans in committed same-sex relationships are forced to choose between the person they love and their country. This resolution would grant same-sex permanent partners the protections and responsibilities currently available to opposite-sex spouses for immigration purposes. It recognizes that, in the area of immigration, it is unfair to deny two people the basic human right to be together simply because they are of the same sex. Fifteen countries—including most of our key allies and trading partners—provide immigration benefits to same-sex couples: Australia, Belgium, Canada, Denmark, Finland, France, Germany, Iceland, Israel, the Netherlands, New Zealand, Norway, South Africa, Sweden, and the United Kingdom. The Conference of Delegates should urge the United States Congress to join its allies in providing these basic protections to United States citizens and their partners.

#### **IMPACT STATEMENT**

This resolution would impact 8 U.S.C. § 1151, 8 U.S.C. § 1152, 8 U.S.C. § 1153, 8 U.S.C. § 1154, 8 U.S.C. § 1157, 8 U.S.C. § 1158, 8 U.S.C. § 1159, 8 U.S.C. § 1182, 8 U.S.C. § 1184, 8 U.S.C. § 1186, 8 U.S.C. § 1227, 8 U.S.C. § 1229, 8 U.S.C. § 1255, 8 U.S.C. § 1325, 8 U.S.C. § 1427, 8 U.S.C. § 1435, and Pub. L. 106-554.

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RESPONSIBLE FLOOR DELEGATE: Jody Hoenninger

#### **COUNTERARGUMENT**

##### **ORANGE COUNTY BAR ASSOCIATION**

The proposed resolution is not germane to the mission and goals of the CDCBA, since it affects only federal law, and does not affect or concern the administration of justice within the state of California. The CDCBA has no legislative liaison in Washington D.C., and would have no means of implementing this resolution. The resolution would equate “permanent partnership” with “marriage” on a national level, whereas, the status of the relationship between private individuals should be left for determination by the individual states.