Practice Advisory: Seeking Asylum for LGBT Children and Youth
Produced for Vera Institute of Justice DUCS Legal Access Project
By Immigration Equality

A. Introduction

Under United States immigration law, an applicant may win asylum if he or she can demonstrate a well-founded fear of persecution in his or her home country on account of his or her race, religion, nationality, membership in a particular social group, or political opinion. If an applicant wins asylum, he or she may remain in the United States indefinitely and ultimately apply for Lawful Permanent Resident status (“LPR status,” popularly known as a “green card”) and naturalization.2

The Board of Immigration Appeals (“BIA”) has interpreted “persecution” to mean threats to life, confinement, torture, and economic restrictions so severe that they constitute a threat to life or freedom.3 While persecution is a severe concept, courts have held that the BIA must view instances of persecution “in light of the [] pervasive background of harassment and threats endured” by asylum seekers.”4

Whether a lesbian, gay, bisexual, or transgender5 (“LGBT”) applicant is an adult or a

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2 Asylum is not the sole means of relief for aliens whose removal would jeopardize their life or safety. Withholding of Removal is a form of relief that allows foreign nationals in removal proceedings to remain in the United States, but unlike asylum, withholding does not provide an eventual avenue for the foreign national to adjust to LPR status or naturalize. A third, related form of relief, is relief under the Convention Against Torture (“CAT”). CAT relief is most important to applicants who have committed a “particularly serious crime” which bars them from asylum or withholding of removal. While asylum, withholding of removal, and relief under CAT are distinct legal concepts with different eligibility requirements, this practice advisory will focus primarily on asylum in the interest of brevity.


4 Kholyavskiy v. Mukasey, 540 F.3d 555, 571 (7th Cir. 2008). Other courts have also held that the cumulative impact of discriminatory events must be considered. See, e.g., See Korablina v. INS, 158 F.3d 1038, 1044 (9th Cir. 1998) (“A single isolated incident may not rise to the level of persecution, [but] the cumulative effect of several incidents may constitute persecution.” (internal quotation marks omitted); In re O-Z- & I-Z-, 22 I. & N. Dec. 23, 25-26 (BIA 1998) (holding that beatings, vandalism, threats, and humiliation, “in the aggregate, . . . rise to the level of persecution as contemplated by the Act”); Poradisova v. Gonzales, 420 F.3d 70, 79 (2nd Cir. 2005) (finding it erroneous for the immigration judge to “address[] the severity of each event in isolation, without considering its cumulative significance.”).

5 The terms “lesbian,” “gay,” “bisexual,” or “heterosexual,” refer to a person’s sexual orientation, that is whether a person is primarily romantically and sexually attracted to members of the same sex, both sexes, or members of the opposite sex. The term “transgender” refers to a person’s gender identity, that is whether or not a person feels that the sex he or she was designated at birth is in confluence with his or her current gender identity.
minor the applicant will be required to make a showing of a well-founded fear of persecution on account of their sexual orientation or gender identity. U.S. immigration law recognizes, however, that the harm a child fears or has suffered may be relatively less than that of an adult and still qualify as persecution for the purposes of asylum. Consequently, LGBT youth asylum seekers with little or no past persecution, or who possess little tangible, extrinsic proof of their LGBT identity, may benefit from a “modified” approach of adjudicating asylum applicants filed by minors that shifts focus to other elements within the minor’s claim to establish the minor’s eligibility for asylum.

Asylum seekers are also required to apply for asylum within one year of their last entry into the United States or to demonstrate an exception to the filing deadline. LGBT foreign nationals are often unaware of this deadline and may be ineligible for asylum as a result. However, LGBT youth may be more likely to qualify for exceptions to this rule than their adult counterparts.

By and large, LGBT youth may apply independently for asylum regardless of age or dependent status. This is important because unaccompanied LGBT youth asylum applicants are oftentimes fleeing persecution that includes mistreatment from parents who would not be supportive of the child’s asylum claim. In certain respects, however, American immigration law treats asylum applications filed by “unaccompanied minors” differently than those filed by minors who entered the U.S. with a parent or legal guardian. The most significant difference is that unaccompanied minors are not subject to the filing deadline that normally requires asylum applicants to submit their applications within one year of their entry to the U.S.

B. Eligibility Issues Potentially Unique in the Context of LGBT Minor Asylum Applicants

i. Membership in a Particular Social Group

Of the five possible grounds on which to base an asylum claim, “membership in a particular social group” is generally the most open to interpretation and thus the most appropriate upon which to file an application based on sexual orientation and gender identity. While there is no uniform or fixed definition of what constitutes a “particular social group,” the Board of Immigration Appeals has described such groups as possessing

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6 Id.
8 See 6 U.S.C. § 279(g)(2) (defining the term “unaccompanied alien child” as a child who
   (A) has no lawful immigration status in the United States;
   (B) has not attained 18 years of age; and
   (C) with respect to whom--
     (i) there is no parent or legal guardian in the United States; or
     (ii) no parent or legal guardian in the United States is available to provide care and physical custody.).
a “common characteristic…that the members of the group cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.”  

At this point, it is well established under asylum law that being LGBT can constitute membership in a particular social group. Since 1994, the U.S. Immigration Service has recognized that being gay could constitute membership in a particular social group. Since then, federal courts have issued over thirty precedential decisions concerning LGBT applicants. None of these cases deals with an LGBT minor applicant. While it is clear that LGBT youth may constitute members of a particular social group for asylum purposes, cases for LGBT young applicants present particular challenges and there is little guidance from USCIS, the BIA or federal courts on these issues.

ii. Accompaniment by a Parent

Children are less likely than adults to have the financial resources and requisite knowledge to flee their home country, and subsequently are sometimes only able to do so when accompanied by an adult. Others, whether out of greater maturity or sheer desperation, may manage to flee their country alone. U.S. immigration law reflects this reality, and accordingly evaluates applications filed by “unaccompanied minors” differently from applications filed by “accompanied minors.” Most importantly, asylum applications submitted by unaccompanied minors are different in three primary ways: 1) the standard one year filing deadline requirement is tolled, 2) the legal possibility to relocate to a safe third country does not categorically exclude that child from eligibility for asylum, and 3) adjudicators are instructed to exercise heightened sensitivity to a child’s potential vulnerability and/or limited knowledge of adverse conditions in the child’s home country. Accompanied minors may still qualify for an “extraordinary circumstances” exception to the one year filing deadline based on legal disability.

a) Unaccompanied Minors

To qualify as an “unaccompanied minor,” the applicant must, at the time the asylum application is filed, be a child under the age of eighteen who has no parent or

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12 Matter of Toboso-Alfonso, 20 I. & N. Dec. 819 (BIA 1990). The Ninth Circuit has held that “all alien homosexuals” are members of a particular social group. Karouni v. Gonzales, 399 F.3d 1163 (9th Cir. 2005). The Ninth Circuit has also recognized the social group of “male to female transsexuals.” Morales v. Gonzalez, 478 F.3d 972 (9th Cir. 2007).
13 A list and brief description of these cases can be found on the Immigration Equality website at http://www.immigrationequality.org/template.php?pageid=204.
15 Id.
16 Id.
17 Asylum Officer Basic Training Course: Guidelines for Children’s Asylum Claims 33 (Revised September 21, 2009) (Hereafter Guidelines for Children’s Asylum Claim).
18 8 CFR § 208.4(a)(5); 8 CFR § 208.4(a)(4)(i)(C); See also Guidelines for Children’s Asylum Claims, at 46.
legal guardian in the U.S. available to provide care and physical custody. 19

Note that under this asylum-specific definition, children entering the U.S. who are “actually” accompanied by an adult they consider a primary caretaker may nonetheless remain legally classified as “unaccompanied minors” if the relationship is an informal one (e.g. minors separated from their parents who receive informal care and physical custody from either related or unrelated adults, or minors who entered the U.S. with a parent or other adult guardian but who subsequently left the parent’s or guardian’s physical care and custody).

The “unaccompanied/accompanied” minor distinction is particularly significant for LGBT young people given that many LGBT youth face rejection from their immediate families, or may even be fleeing from family-based harm. Rejected by their parents, such children may seek out alternative forms of guidance and support in the form of informal custodial relationships with brothers, sisters, aunts, uncles, or other adult acquaintances. At times, these informal custodians may accompany an LGBT minor to the U.S. who would otherwise lack the financial and logistical wherewithal to flee the country where he or she faces persecution; however such children are likely still considered “unaccompanied minors” in the context of an asylum application. 20

Other LGBT minor children, fearing antagonism from their parents, may enter the United States with their parents while remaining “in the closet” -- that is they may never have disclosed their LGBT status to anyone. These children may not inform their parents about their LGBT identity until they have arrived to the relative safety of the United States. Oftentimes, such children may face open hostility from their parents. If subsequently, such children leave the physical care and custody of their parents (i.e., are disowned, thrown out of the house, or have run away without any substantive attempts on the part of the parents to find their children) prior to filing for asylum, their applications will be filed as that of an “unaccompanied minor.”

It is also important to be aware that the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) changed the asylum and immigration process in a way which may help unaccompanied minors. The TVPRA now provides asylum officers with initial jurisdiction over any application filed by a UAC. 21 This means that unaccompanied minors will have an opportunity to file for asylum with USCIS even if they have received a Notice to Appear, which is ordinarily the beginning


20 In summation, pursuant to the language of 6 U.S.C. § 279(g)(2), any inquiry as to whether a minor asylum applicant is accompanied or unaccompanied should consider as determinative factors:

• the age of the child;

• whether that child is under the physical care and custody of an adult; and if so,

•whether there exists a formally recognized parental or guardian relationship possessing legal or judicial status either within or outside the United States, between the child and that particular adult at the time the application is filed.

21 §235(d)(7)(B)
of removal proceedings. The unaccompanied minor can thus have his or her asylum application adjudicated in a non-adversarial setting in the asylum office, while Immigration and Customs Enforcement should generally agree to terminate, administratively close, or continue the removal proceedings until the Asylum Office has resolved the claim. However, ICE is not required to suspend the proceedings while the case is heard by the Asylum Office, and it has not issued guidance on when it will do so.

The TVPRA provides other protections for unaccompanied minors. The statute mandates that “to the greatest extent practicable, the Secretary of Health and Human Services will ensure that “[unaccompanied minors] have counsel to represent them in legal proceedings or matters… & shall make every effort to utilize the services of pro bono counsel who agree to provide representation to such children without charge.” While this language stops short of granting unaccompanied minors a right to counsel, it does articulate a strong position in favor of helping UACs to obtain counsel.

b) Accompanied Minors

In the LGBT context, perhaps more than any other category of asylum claim, a young applicant will often not find support from a parent; in fact, in many instances the applicant’s fear is of his or her family itself. While the policy behind treating “unaccompanied” and “accompanied” minors differently is the presumption that parents will look after the legal interests of their accompanied minor children, in the case of LGBT youth, this presumption should not apply. Many times parents are not aware that their children are LGBT and in many other cases, LGBT young people are desperately afraid of being disowned or cast out by their families.

A parent may also conceivably be unsupportive of his or her LGBT child’s asylum claim, yet wish to retain care or custody of that child. This may be under a misguided mindset that the parent may be able to “rehabilitate” the child from being LGBT, or so that the parent can inflict punishment or abuse on the child as the parent sees fit.

Although for the most part foreign nationals may apply independently for asylum irrespective of age or dependent status, there may be an exception when a minor’s application is directly against the wishes of his or her parent or legal guardian. When an “accompanied minor” files for asylum, USCIS may make an inquiry as to who has the legal right to speak for the child, and inform the parent of the child’s asylum

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22 DHS Form I-862. Notice to Appear (NTA), Form I-862. See also 8 USCS § 1229a (discussing removal proceedings).
23 Memorandum from Joseph E. Langois, Chief of USCIS Asylum Division, to All Asylum Office Staff, Implementation of Statutory Change Providing USCIS with Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children 2 (March 25, 2009), available at: http://uscri.refugees.org/site/DocServer/asylum_memo_on_uac_i-589_filings_3_1_25.09_signed.pdf?docID=381.
24 Id.
25 8 USCS § 1232(c)(6).
application. If the parent actively opposes the child’s application for asylum, USCIS retains discretion to refuse “applications if they reflect that the purported applicants are so young that they necessarily lack the capacity to understand what they are applying for or, failing that, that the applications do not present an objective basis for ignoring the parents’ wishes.”

C. Evidentiary Issues Unique to LGBT Minor Asylum Applicants

i. Proving LGBT Identity

While LGBT identity has been broadly accepted to constitute membership in a particular social group for asylum purposes, each individual applicant must still prove to an adjudicator that he or she is lesbian, gay, bisexual or transgender himself or herself. Relative to adults, LGBT minors may face unique difficulties in proving their gender or sexual identity. Asylum law essentially requires the LGBT young person to prove that his or her identity is immutable at precisely the moment in time that the applicant may have the most questions about his or her own identity. Minors often spend their adolescence questioning their gender identity and sexual orientation before fully accepting an LGBT self-identity or becoming sexually active. Even relatively well-adjusted minors who come to embrace an LGBT identity often remain “closeted,” for fear of rejection or violence by family or community members.

In addition to facing similar challenges to their gay, lesbian, and bisexual peers, transgender minors may face unique difficulties in beginning their “transition” Living with a family that does not accept the minor’s gender identity, may prevent him or her from transitioning, that is beginning to live openly in accordance with his or her gender identity. Moreover, minors may face legal hurdles in obtaining transition-related medical care such as hormone therapy or surgeries without parental consent and are unlikely to have the financial means to pay for transition-related expenses.

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26 See Polovchak v. Meese, 774 F.2d 731 (7th Cir. 1985).
27 Bo Cooper, INS General Counsel, Elian Gonzalez Memorandum 9 (Jan. 3, 2000). See also Gonzalez v. Reno, 212 F.3d 1338 (11th Cir. 2000) (holding that important to INS’s decision was the finding that Elian was not at risk of persecution or torture, that Elian’s father had Elian’s best interests in mind, and that the father did not have conflicts of interest that would prevent him from pursuing the child’s best interests.).
28 Hormone treatment, classified as medication rather than invasive surgery, (i.e. estradiol or testosterone pills) may in some states, be a notable exception to this general rule requiring parental consent. See, e.g., Morgan v. MacPhail, 704 A. 2d 617 (Pa. 1997). In some states, however, transgender minors unable to obtain consent from abusive or absent parents may be able to take advantage of a “mature minor” exception to the legal parental consent requirement. Several states, including Arkansas, Idaho, Illinois, Kansas, Mississippi, Nevada, New York, Ohio, Tennessee, and West Virginia, have expressly or impliedly adopted the mature minor doctrine by statute or through case law. See ARK. CODE ANN. § 82-363(g) (1987); IDAHO CODE ANN. § 39-4302(2002); MISS. CODE ANN. § 41-41-3(3) (2005); NEV. REV. STAT. ANN. § 129.030(2) (LexisNexis 2004); In re E.G., 549 N.E.2d 322 (Ill. 1989); Younts v. St. Francis Hosp. & Sch. of Nursing, Inc., 469 P.2d 330 (Kan. 1970); Bach v. Long Island Jewish Hosp., 267 N.Y.S.2d 289 (1966); Lacey v. Laird, 139 N.E.2d 25 (Ohio 1956); Cardwell v. Bechtol, 724 S.W.2d 739 (Tenn. 1987); Belcher v. Charleston Area Med. Ctr., 422 S.E.2d 827 (W. Va. 1992). But see Commonwealth v. Nixon, 761 A.2d 1151 (Pa. 2000)(rejecting the mature minor doctrine in Pennsylvania).” See also Carroll Maureen, Transgender Youth, Adolescent Decisionmaking, and Roper v. Simons, 56 UCLA L. REV. 725 (2009).
In cases for lesbian, gay, and bisexual adults, courts have required some corroboration of the applicant’s sexual orientation. For example, in the application by a man from Nigeria who claimed to be gay, the Court found him not credible when he made contradictory statements and failed to provide “letters, affidavits, photographs, or other forms of corroborative evidence; or establish that such evidence was not reasonably available to him.”

For young applicants, it may be especially difficult to corroborate a person’s sexual orientation. For example, in one of Immigration Equality’s cases, the Asylum Office referred to Immigration Court, the case of a young gay man from Eastern Europe who admitted that he had never been sexually involved with another man. The Asylum Office found that he had failed to establish his membership in a particular social group. The referral notice stated, “You could not give any explanation as to how anyone would know that you are a homosexual except that you like men. You have not had a relationship with a man. You could not convincingly show that your sexual orientation is toward men.” Fortunately, his case was later granted by the Immigration Judge.

In such cases, alternative forms of evidence may be helpful to producing a record establishing that the minor is indeed LGBT. The internet may provide a helpful source of evidence, given its increasingly common role as an outlet for LGBT teenagers to combat loneliness and communicate with peers with a modicum of privacy. Teenagers may have private profiles on social networking sites that indicate their sexual orientation or gender identity. Other LGBT teenagers, closeted in their communities, may use email to confide in others their concerns and fears about their sexual orientation or gender identity, or alternatively, as a channel for romantic or sexual expression. However, although the formal rules of evidence do not apply in immigration proceedings, the advocate should think about how much weight the adjudicator will give this evidence if it is difficult to substantiate when it was created or by whom.

Asylum applicants are entitled to submit witness testimony on behalf of their claim, without regard to the number, age, or immigration status of the witnesses. While such testimony is most commonly submitted in affidavit form, LGBT minor asylum applicants who have begun to build ties to local LGBT communities within the U.S. may bring friends and acquaintances to testify that the individual is indeed LGBT.

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29 Eke v. Mukasey, 512 F.3d 372, 381 (7th Cir. 2008).
30 The applicant in this case was in his early 20s at the time of his decision, but the case is still instructive as to the types of hurdles that young LGBT asylum seekers face.
31 Internet caches often include a history of websites that a user has visited, which may include LGBT themed sites. Submitting this and similar evidence to accompany the minor’s asylum claim may be useful to corroborate the child’s assertion that he or she is in fact, LGBT. In approaching these subjects with their clients, advocates for young asylum applicants should remember that their clients may be understandably embarrassed or reluctant to disclose that they have a “secret life” on the internet, particularly if it involves a sexual element.
33 Guidelines for Children’s Asylum Claims, at 35. “Apart from the child’s verbal testimony, the asylum officer may consider other evidence where available, including: 1. Testimony or affidavits from family
Sometimes, however, it may be the case that little or no physical evidence may be available to help prove a minor’s LGBT identity. While the Board of Immigration Appeals has issued rulings emphasizing the applicant’s burden to produce all accessible documents, current law provides that the applicant’s testimony alone can still be sufficient to establish a claim where the applicant credibly testifies that he or she is unable to procure documents.\textsuperscript{34}

\section*{D. The Role of Past Persecution in LGBT Minor Asylum Claims}

Both advocates and adjudicators often focus much of their inquiry on episodes of past persecution in the applicant’s home country. In part, this is because an applicant who provides sufficient evidence of past persecution establishes a legal presumption that he or she possesses a well-founded fear of future persecution.\textsuperscript{35} Also, as a practical matter, it is easier to prove that something happened in the past than that it will happen in the future.

LGBT youth are more likely to present claims based solely or primarily on fear of future persecution than their adult counterparts. As many LGBT young people are still coming to terms with their sexual orientation or gender identity, they are less likely to seek out other LGBT people and thus may avoid being targeted for harm. Moreover, local laws would probably prohibit an underage gay person from entering gay bars, and parents might understandably forbid their gay child from going unaccompanied to urban areas with a more visible gay presence. On the other hand, while an LGBT 45 year old who had not experienced past harm may have great difficulties explaining to an adjudicator why he or she fears harm now after living for two decades as an LGBT person, lack of past harm would be more readily understandable in the case of a young LGBT asylum seeker.

Notwithstanding a lack of evidence of past persecution in their home country, LGBT minor asylum applicants may nonetheless establish their eligibility for asylum using a modified analysis of the “well-founded fear” requirement.\textsuperscript{36} Under this modified approach, adjudicators give more weight to objective factors, recognizing that the harm a child fears or has suffered may be relatively less than that of an adult and still qualify as members or members of the child’s community: 2. Evidence from medical personnel, teachers, social workers, community workers, child psychologists, and others who have dealt with the child. Example: A report from a child psychologist who has interviewed the child may indicate that the child suffers from post-traumatic stress, a conclusion that could support the asylum officer’s determination regarding past or future persecution. 3. Documentary evidence of persons similarly situated to the child (or his or her group), physical evidence, and general country conditions information.”

\textsuperscript{34} See generally 8 CFR 208.13(a) for regulations regarding an applicant’s burden of proof for establishing eligibility for asylum. Asylum Officer Basic Training Course: Guidelines for Children’s Asylum Claims at 34. “A child, like an adult, is not required to provide corroborating evidence in all cases, and may rely solely on testimony when that testimony is credible, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis of the child’s alleged fear.” See also Matter of M-D-, Int. Dec. 3339 (BIA 1998); Matter of S-M-J-, Int. Dec. 3303 (BIA 1997); Matter of Dass,20 I&N Dec. 120, 124 (BIA 1989); 8 CFR 208.13(a).

\textsuperscript{35} 8 C.F.R. §§ 208.13(b)(1)(ii), 1208.13(b)(1)(ii).

\textsuperscript{36} Guidelines for Children’s Asylum Claims, at 40-41.
persecution for the purposes of asylum. Indeed, the guidelines advise that “children’s testimony should be given a liberal ‘benefit of the doubt’ with respect to evaluating a child’s alleged fear of persecution.” While relevant USCIS memos stop short of creating a bright line rule, they include language suggesting that this modified analysis is presumptively applicable for children under the age of 16 who lack the maturity of adults.

A child who fears that he or she will be subject to “rehabilitative” therapy in his or her home country to change his or her LGBT identity may have a well-founded fear of persecution, even if his or her persecutors do not conceive of their actions as ill-intentioned.

E. Asylum Applications by Family Members of an LGBT Minor

In some circumstances, it may be possible for a non-LGBT minor to seek asylum if a member of his or her family is LGBT and the applicant fears persecution as a result. Both the Ninth Circuit and the Third Circuit have recently issued non-precedential decisions addressing an asylum claim based on having a gay family member.

In Barrios-Aguilar v. Holder, the Ninth Circuit remanded the case of a gay Guatemalan applicant whose life had been threatened on account of his homosexuality when he was fifteen. In that case, the applicant’s family members suffered more severe physical harm than the applicant himself and were subsequently granted asylum in Canada. Here the Court considered the applicant’s sexual orientation as the reason for the attack and seemed to also consider the harm to his family members as adding to his own persecution. In this case, the young son was identified as gay and was thus targeted along with his family, but it is possible to imagine different fact patterns, such as children being targeted based on having LGBT parents or siblings.

Indeed, in Valcu v. Attorney Gen. of U.S., the Third Circuit found that the applicant, a heterosexual young man from Romania, had suffered beatings in high school because his brother was gay. Despite this nexus between a protected characteristic and harm suffered, the Court upheld the Board of Immigration Appeals’ determination that any presumption of future persecution had been rebutted because the applicant’s brother had won asylum in the U.S. and would not be returning to Romania. However, the court did

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37 Id.
38 Id. at 26; see also Abay v. Ashcroft, 368 F.3d 634, 640 (6th Cir. 2004) (giving “the benefit of the doubt” to a child “testifying in court about an extremely personal matter.”).
39 “Minors under 16 years of age…may have fear and a will of their own, but these may not have the same significant as in the case of an adult...(A) minor’s mental maturity must normally be determined in the light of his [or her] personal, family, and cultural background.” Id. at 41 (quoting United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees ¶ 216).
40 Pitcherskaia v. INS, 118 F.3d 641 (9th Cir. 1997).
41 See Aguirre-Cervantes v. INS, 242 F.3d 1169, 1175 (9th Cir. 2001) (“A pattern of persecution targeting a given family that plays a prominent role in a minority group that is the object of widespread hostile treatment supports a well-founded fear of persecution by its surviving members.”)
42 Barrios-Aguilar v. Holder, 386 F. App’x. 587 (9th Cir. 2010).
recognize that the heterosexual brother’s “familial relationship [to his gay brother] was the basis for the attacks” and could provide a ground for asylum if a not for the fact that there was “no evidence that as an adult [the heterosexual brother] will suffer the same level of persecution that he did as a child.” This suggests the outcome would be different in other contexts.

In a case where Immigration Equality was successful at the Asylum Office, the mother of an intersex child was successful in her asylum claim. Although the child himself was a citizen who had born in the United States and thus had no asylum claim on his own behalf, his West African mother was able to put forward a claim for herself that she would be considered a witch for having given birth to a child with ambiguous genitalia.

**Conclusion**

Essentially like their adult counterparts, LGBT minor asylum applicants must demonstrate a nexus between their well-founded fear of persecution and their LGBT identity. However, LGBT minors may encounter distinctive challenges given that LGBT identity is not always readily apparent to the world at large, or even to family members closest to them. In presenting such claims, advocates should endeavor to educate adjudicators that coming to terms with an LGBT identity is a multifaceted process which every individual will experience differently and with which many individuals do not fully come to terms even well into adulthood. In environments where LGBT individuals are vilified or mistreated regularly, internalized homophobia or transphobia may exert effects on LGBT minors that are every bit as real and as traumatizing as bigotry-based persecution from external sources. As advocates it is important that we educate the adjudicators about the enormous hurdles that LGBT asylum seekers face during the application process, and remind them of their duty to adjudicate the cases accordingly.

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44 *Id.* at 3.