

August 4, 2020

United States Citizenship and Immigration Services  
Texas Service Center  
[CONFIRM FILING ADDRESS ON USCIS WEBSITE]

**Re: I-589 Application for Asylum and for Withholding of Removal**  
**Principal:**  
**Derivative spouse:**

Dear Sir or Madam:

Please find the original and one copy of the documents described below for APPLICANT's application for Asylum and for Withholding of Removal. Please also find an additional copy of the complete application for Mr. A S' SPOUSE. SPOUSE is present in the United States and included in his application for asylum and withholding of removal.

**I. Mr. A S is eligible for asylum because he suffered past persecution on account of his sexual orientation as a gay man.**

To qualify for asylum, a non-citizen must show that he or she meets the definition of a "refugee."<sup>1</sup> A "refugee" is a person who is unable or unwilling to return to his country due to past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.<sup>2</sup> Mr. A S suffered past persecution and has a well-founded fear of future persecution in El Salvador based on his sexual orientation as a gay man, his HIV positive status, and the fact that he is married to another man.

[background and summary of the claim]

Because Mr. A S suffered persecution in the past on account of his sexual orientation, he is presumed to have a well-founded fear of persecution in the future on the same grounds. Indeed, Mr. A S will be at even more risk of El Salvador should he return there. He has been a visible participant in drag shows that have led to his photos being displayed in local publications. He is now HIV-positive and will face further discrimination on this basis should he return to El Salvador. Critically, he is now married to another man and the couple is at risk for abuse and violence by gang members or members of the police or government who in some cases are actively colluding with these groups. It is clear that Mr. A S is at grave risk of suffering future persecution should he be forced to return to El Salvador.

**II. Mr. A S is eligible for an exception to the one-year filing deadline in this matter**

An asylum applicant must file his application within one year of the date of his last entry into the United States or establish an exception to the one-year deadline. INA § 208(a)(2)(B). Mr. A S

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<sup>1</sup> See 8 U.S.C. § 1158(b)(1).

<sup>2</sup> 8 U.S.C. § 1101 (a)(42)(A).

does not contest that he failed to file for asylum within one year of his arrival to the country in July 2007. However, he asserts an applicable exception to this general rule, as an applicant may be excused from the one-year deadline bar if the asylum application was untimely due to changed or extraordinary circumstances. INA § 208(a)(2)(D).

In order to qualify for an exception to the one-year filing deadline, the applicant must establish (1) the existence of the changed or extraordinary circumstances; (2) that the circumstances were directly related to his failure to apply within the one-year deadline; and (3) that the delay in applying for asylum was reasonable under the circumstances. 8 C.F.R. § 208.4(a)(5).

Both exceptions are relevant to Mr. A S's case. First, Mr. A S asserts that his mental and physical health problems constitute extraordinary circumstances excusing the untimely filing of his application. Mr. A S has struggled with his mental health, particularly with anxiety and depression, springing from the abuse that he endured in El Salvador. [[further describe one year filing deadline exception]]

Mr. A S is filing for asylum just a month after his marriage, a time period which is presumptively reasonable. *Matter of T-M-H- & S-W-C-*, 25 I&N Dec. 193 (BIA 2010) (discussing that a delay of six months or less after a changed or extraordinary circumstance is generally reasonable).

Please find the following documents, in duplicate, in support of Mr. A S's application:

**Exhibit 1: Forms G-28 and I-589**

- Original Form G-28, Notice of Entry of Appearance as Attorney for principal applicant;
- Original Form I-589, Application for Asylum and for Withholding of Removal for principal applicant, with photograph attached;
- Additional copy of Form I-589, Application for Asylum and for Withholding of Removal for derivative spouse, with photograph attached;

**Exhibit 2: Supporting biographic documents:**

- Copies of Birth Certificate for Mr. A S in Spanish with translation;
- Copies of Marriage certificate for Mr. A S and Mr. GP, showing their marriage on July 20, 2020
- Copies of Birth Certificate for Mr. GP in Spanish with translation;
- Copy of passport for Mr. A S;
- Copy of passport for Mr. GP;
- Copy of death certificate for Mr. A's uncle,

**Exhibit 3: Sworn Statements and Supporting Letters**

- Sworn Statement of P A S: Mr. A S explains that he is afraid to return to El Salvador because of his sexual orientation. He suffered terrible mistreatment in El Salvador because of his sexual orientation.

- Sworn Statement of EG S, husband of Mr. A S. Mr. G S explains his own suffering that he endured in Guatemala as a gay man, specifically the years of childhood sexual abuse that he suffered.
- Supporting Letters

#### **Exhibit 4: Medical Documents**

- Asylum Psychological Report, prepared by licensed independent clinical social worker. Ms. O writes that Mr. A S presents with clinically-significant symptoms of anxiety, depression, and PTSD.
- Medical records for Mr. S.

#### **Exhibit 5: Country Conditions Evidence**

- “El Salvador 2019 Human Rights Report,” Country Reports on Human Rights Practices for 2019, United States Department of State; Bureau of Democracy, Human Rights and Labor. This report states that although the law prohibits discrimination based on sexual orientation or gender identity and includes these categories in the criminal code provisions on hate crimes, nongovernmental organizations (NGO’s) indicated that police and other public officials engage in violence and discrimination against sexual minorities. In addition, the National Civil Police and the Attorney General’s Office harass transgender and gay individuals who report cases of violence affecting them. Impunity persists despite government steps to dismiss and prosecute officials who carry out abuse. In addition, organized criminal elements commit acts of violence and intimidation against vulnerable populations. Id. Finally, there is discrimination in employment and occupation based on sexual orientation or gender identity, which are not included in the constitution or labor laws.
- “No Safe Place: LGBTI Salvadorans, Guatemalans and Hondurans Seeking Asylum in Mexico,” Amnesty International, November 27, 2017. According to this summary report, LGBTI individuals from violence-ridden El Salvador, Guatemala and Honduras suffer increased risk because authorities in their countries fail to protect them. As a result, they have no choice but to flee their countries but then face further dangers in Mexico. Amnesty International says gay men (and trans women) are fleeing “rocketing levels” of discrimination and gender-based violence from criminal gangs and members of security forces. It calls people fleeing Central America because of their gender identities “some of the most vulnerable refugees in the Americas.” The summary report includes a link to a report by Amnesty International based on interviews with 20 asylum seekers and refugees primarily from El Salvador and Honduras who identify as gay men or trans women and with human rights and international organizations. This more complete report states, “In the countries of the Northern Triangle, where high levels of impunity are common, LGBTI people very rarely obtain justice when they report the serious attacks they have suffered.”
- Uniformed Injustice: State Violence against LGBT People in El Salvador, Georgetown Law Human Rights Institute Fact-Finding Project, Georgetown University Law Center, April 21, 2017. <https://www.law.georgetown.edu/human-rights-institute/wp-content/uploads/sites/7/2017/07/2017-HRI-Report-Uniformed-Injustice.pdf>. This report indicates that El Salvador has legal obligations under international and domestic law to protect LGBT persons, as well as human rights defenders. P. 13. Nevertheless, LGBT Salvadorans “regularly

experience discrimination and violence perpetrated by State actors.” P. 10. In particular, members of the police and military while engaged in law-enforcement activities commit violence, often of a sexual nature, against LGBT persons. Id. Moreover, there is limited access to justice, as well as inadequate accountability by the police and military, marked by the prevention of LGBT victims from filing complaints and the prosecution of few cases. P. 11. Finally, law enforcement officials harass and dismiss concerns of human rights defenders and organizations. P. 10.

- Human Rights Watch World Report 2020: Events of 2019. This report states that LGBT individuals face discrimination and violence, which causes internal and cross-border displacement. In addition, LGBT individuals are targets of homophobic and transphobic violence by police and gang members. Finally, although El Salvador included hate crimes in its penal code in September 2015, Human Rights Watch indicated it is not aware of any bias-related murders of known LGBT individuals that have resulted in conviction.
- Human Rights First, Issue Brief on Violence Against LGBT People in El Salvador, January 2017. The report describes that 2014 saw a four hundred percent increase in hate crimes over the previous ten years and noted that there was evidence of torture in many cases of murders of LGBT people. The report also describes the grave deficiencies that exist in the country’s justice system, as LGBT individuals face particular difficulties in reporting crimes that are committed against them.

Thank you for your consideration of this application. Additional supporting evidence may be supplied to your office prior to the interview date. Please contact me if you have any questions.

Sincerely,