

Desis can't get dependent visa for same-sex partners in US

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Highlights

- Immigration laws of the US do not recognise any non-marital relationships
- For countries like US, Indian couples have the option of getting married in a country where it is recognised



MUMBAI: Rohan (name changed), who was working in the USA on an H-1B visa, was shocked to learn that he could not sponsor his same-sex partner for an H-4 dependent visa. Immigration laws of the US do not recognise any non-marital relationships.

The Supreme Court of India has recently ended criminalisation of homosexuality + . However, marriage of same-sex couples is still not permitted in India. In this backdrop, other countries like Canada, Australia and the UK, which recognise conjugal co-habitation between same-sex partners, provided the couple has lived together for a certain number of years, prove friendlier from the immigration perspective. For countries like US, Indian couples have the option of getting married in a country where it is recognised.

WHERE 'I DO' IS NOT MUST Immigration laws of the US do not recognise non-marital same-sex relationships. Some countries where unwed gay couples are welcome on basis on conjugal cohabitation

| AUSTRALIA | CANADA | UNITED KINGDOM |
|-----------|-----------|----------------|
| ●●●●●●●● | ●●●●●●●● | ●●●●●●●●●● |
| 12 months | 12 months | 24 months |



Cyrus Mistry, Perth-based director of Easy Migrate Consultancy Services, told TOI: "Even before Australia legalised same-sex marriage, the immigration department had a special visa category called 'Interdependent Relationship' to meet the needs of same-sex partners. Today, both a married relationship or a 'de facto' relationship is recognised for immigration purposes." He added, "The same-sex couple could be 'married' if their country allows for it, or they can be a 'de facto' couple who have been living together for the last twelve months."

For those migrating to Australia for jobs, an employer-sponsored Temporary Skill Shortage (TSS) Visa is widely used. These visa holders can apply for their same-sex partner to join them in Australia. In fact, this option cuts across all kinds of visas, including student visas and even for those seeking permanent residency.

Toronto-based Michael H Niren, president and CEO of VisaPlace, an immigration law firm, shared with TOI the Canadian requirements: "As same-sex marriage is still illegal in India, the couple could register their marriage in another country where it is legal, or they can apply as 'common law partners'—as long as they meet the prescribed eligibility requirements." Thus, migrants to Canada whether under the Skilled Worker Program or Permanent Residency can sponsor their same-sex partner.

Niren adds, "A common-law partner is where two people have been living with each other for at least a year in a physical (conjugal) relationship. Cohabitation of having set up a home together needs to be proved, such proof includes shared ownership of residential property or joint lease agreements and bills for shared utility accounts."

In Australia, apart from proof of joint ownership or lease, Mistry adds that even joint mails coming to the same address, joint bank accounts, details of joint travel or even photographs of the couple together in a social context with family and friends can prove useful.

For Indians migrating to the UK on work, a Tier-2 visa is the commonly adopted route. The applicant can sponsor a same-sex partner as a dependent. Barry O'Leary, London-based partner with Wesley Gryk Solicitors, told TOI: "Two years of living together is mandatory if applying as a same-sex unmarried partner. The UK authorities want to see the post addressed to the couple jointly or individually at their address for the two-year period. This however is not written into the immigration rules and arguments can still be put forward if that evidence does not exist."

O'Leary also offers another solution. "If the applicants are married there is no requirement to have lived together for two years. As there is no same-sex marriage permitted in India, it may be possible for two foreign nationals to marry in the UK and then the non-Tier 2 partner can apply for a dependent visa on that basis. Alternatively, they could marry in a third country where it is recognized." The UK Lesbian & Gay Immigration Group, a not-for-profit, says, "Unmarried partners must produce as much evidence of cohabitation, as they can. They should use any document that shows their name, address and date."

A white paper by Berry Appleman & Leiden, a global firm specializing in immigration laws, points out that "as with unmarried opposite-sex couples, same-sex partners who have not tied the knot may only be eligible to have the dependent partner enter the US as a visitor in six-month increments without work authorization or other benefits. Otherwise, the dependent partner would need to come separately as an employee on an immigrant visa". Rajiv S Khanna, managing attorney of Immigration.com, adds that it may be possible for the H-1B holder to get married with the same-sex partner in a country where it is legal and then sponsor the spouse.

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