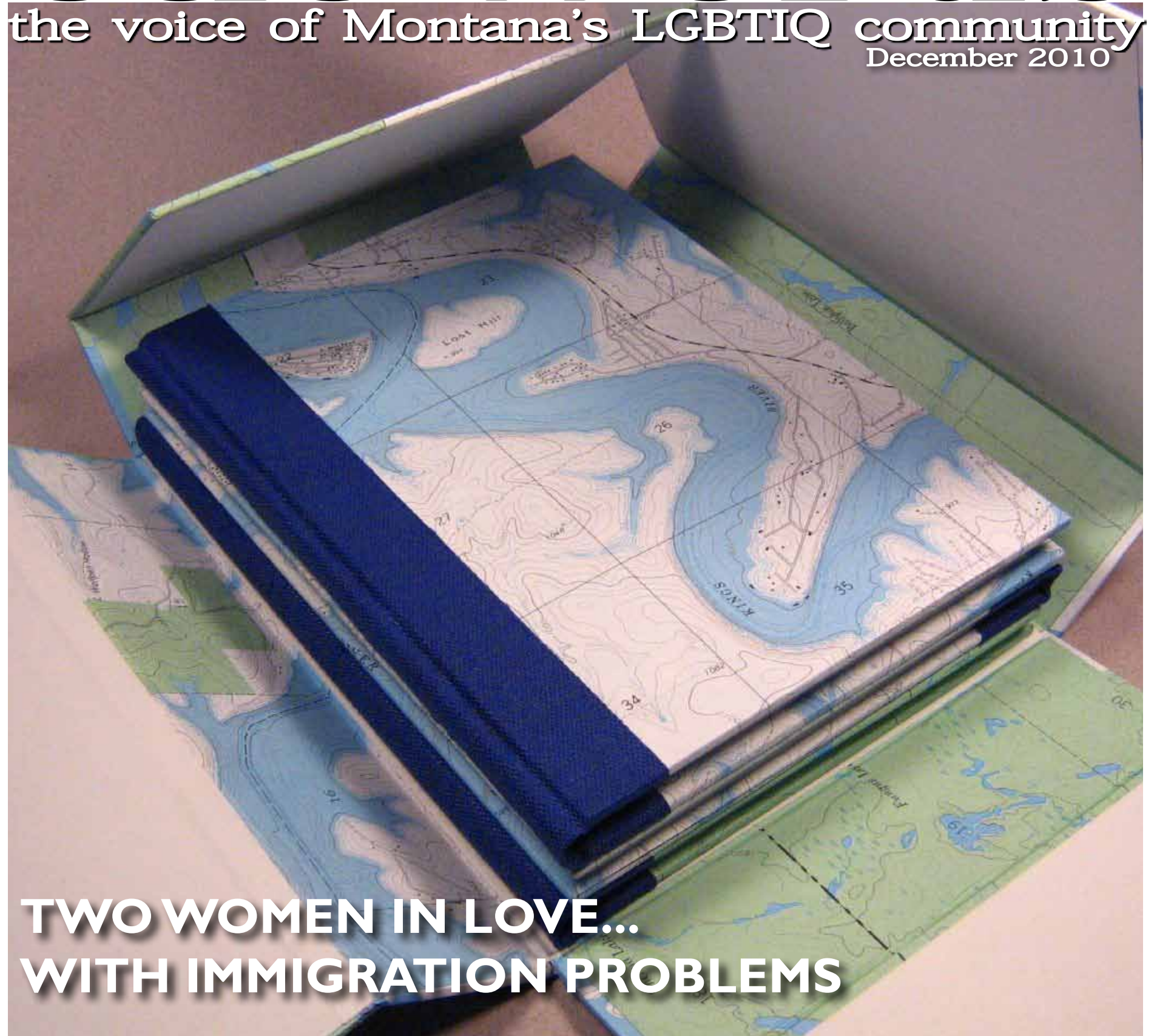


out words

the voice of Montana's LGBTIQ community
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**TWO WOMEN IN LOVE...
WITH IMMIGRATION PROBLEMS**

US IMMIGRATION LAWS AND LGBTIQ FAMILIES

by Shahid Haque-Hausrath, Esq.

Our nation's immigration laws have been designed to reflect the government's ever-changing views of who is "deserving" to enter the country. Unfortunately, gay men and women continue to be on the losing end of this analysis. Despite the fact that family reunification is one of the major goals of our immigration system, gay couples still have few options to be together with loved ones in this country.

As the United States began to regulate immigration in the early 1900's, LGBTIQ immigrants were denied admission to the country based on supposed "mental defects" and "psychopathic personalities." In the 1960's, a law was enacted to specifically deny entry based on "sexual deviation." Many gay couples were tragically refused admission or deported as a result, and the U.S. Supreme Court upheld these actions. Most laws that denied entry for purported medical reasons were repealed in 1990, but other laws continue to preclude most gay couples from taking part in our immigration system.

The fastest and most common way that immigrants obtain permanent residence is through marriage to a U.S. citizen. However, this option is not available to same-sex couples. Even though gay marriages are legal in Connecticut, Iowa, Massachusetts, New Hampshire, Vermont, and Washington, D.C., our immigration laws do not accept these marriages. The Defense of Marriage Act of 1996, as well as court and agency interpretations of this law, prevents the federal government from recognizing same-sex marriages regardless of their legal validity.

Because the law looks to one's gender as determined by a medical doctor, transgender immigrants may have options that are not available to gay couples. Trans immigrants who are not in same-sex relationships can apply for marriage visas. There have also been cases where trans applicants have been able to sponsor their partners after sex reassignment surgery. This is a developing area of the law and trans immigrants should be prepared for difficulties with their applications.

The arbitrary limitations on immigration benefits for same-sex couples must be changed. There are about twenty countries that recognize at least some immigration rights for same-sex couples, including Australia, Belgium, Brazil, Canada, the Czech Republic, Denmark, Finland, France, Germany, Iceland, Israel, Netherlands, New Zealand, Norway, South Africa, Spain, Sweden, and the United Kingdom. A bill has been proposed to bring the U.S. in line with other nations, but so far it has not been successful.

The Uniting American Families Act, sponsored by Senator Patrick Leahy, would allow permanent residents and citizens to sponsor their "permanent partners" for admission to the U.S. just like any other spouse. Unfortunately, this bill has never advanced to

for anyone who doesn't have a Master's degree or higher. Therefore, many immigrants seek temporary work visas. For visas of any meaningful duration, an immigrant has to have a bachelor's degree or higher, and an employer who is willing to navigate a complex and expensive process to sponsor them. In the present recession, employment-based applications have decreased significantly, and the Department of Labor has also made the process more difficult through added red tape. Sometimes the stars can align to allow a gay couple to be united, in a roundabout way, through this employment process. However, this isn't a viable option for most LGBTIQ immigrants.

Some immigrants who have suffered severe persecution in their home countries on account of their gender identity or sexual orientation may apply for refugee or asylum status. This is a difficult process that is limited to those who have a genuine fear that they will be harmed or tortured if they return home. An asylum application can only be filed if you are already in the United States, and it has to be filed within one year of arrival in the U.S. The decision to apply for asylum should not be taken lightly. There is a high burden of proof, and even meritorious asylum applications are often denied.

Opponents of immigration reform often admonish immigrants to simply "wait in line." However, there is no "line" or clear path to citizenship for most gay immigrants. The time has come for the United States to stop tearing gay families apart and apply the same principles of family unity to all marriages and partnerships — regardless of gender. To accomplish this, it is important for the LGBTIQ community to take

part in the push to achieve fair immigration reform for all immigrants. After all, gay rights and immigrant rights are intertwined in the fight for basic human rights.

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THE FASTEST AND MOST COMMON WAY THAT IMMIGRANTS OBTAIN PERMANENT RESIDENCE IS THROUGH MARRIAGETHIS OPTION IS NOT AVAILABLE TO SAME-SEX COUPLES.

a floor vote despite being in existence in one form or another since 2000. Based on the current makeup of Congress, it is unlikely that the bill will move until at least 2012.

Without any realistic family-based options for obtaining immigration status, many LGBTIQ immigrants pursue employment-based visas. Only applicants with graduate degrees can usually get a permanent employment visa within a reasonable time. Permanent visas are backlogged for years