



Change Gender Markers on Passports

Issue

The Department of State's requirement that transgender people have completed gender reassignment surgery to receive a permanent gender marker change on their passport prevents transgender individuals from being able to travel freely in a manner consistent with their gender identities.

Short Answer

The Department of State should craft a policy that reflects the medical realities facing transgender individuals seeking to change their gender markers on their passports.

Background

The State Department determines what identifying biographical information is placed on passports. Under current policy, an individual can receive either a permanent gender marker change upon providing a detailed statement from a surgeon or hospital that gender reassignment surgery was completed, or a temporary one-year passport with a gender marker change if provided with a detailed statement from a physician regarding the individual's plans to complete surgery within one year.¹ The State Department has provided no definition of what either "gender reassignment surgery" or "completed" mean.

The current policy fails to consider the realities of gender transition. The medical aspects of gender transition can involve multiple surgeries, as well as mental health counseling, hormone therapy and other treatments. Furthermore, many transgender people choose not to undergo some—or any—medical intervention, some are medically unable to do so because of other health considerations, others may not be financially able to do so, and still others may be at an early stage of treatment precedes any surgery.

Many transgender individuals who must use passports for travel have not or cannot meet the burdensome "completion" standard. In such circumstances, to insist that an individual has failed to "complete" surgery is ethically objectionable and factually inaccurate. Furthermore, when the gender marker on a transgender person's passport does not match his or her appearance, he or she is likely to be subjected to further questioning. The resulting experience can lead to embarrassment, emotional trauma, harassment, and detainment. These experiences prevent transgender people from traveling freely.

A single identifier, such as gender, is not on its own necessary to identify an individual on a passport. A passport contains numerous other pieces of biographical information, including a recent photograph, which can serve to confirm an individual's identity. Furthermore, by permitting individuals, under current policy, to receive a temporary one-year passport in order to arrange for

¹ This requirement is not explicitly outlined in the Foreign Affairs Manual, but it is consistent with the provisions outlined for time-limited passports. See U.S. DEPT. OF STATE, 7 FAM 1340(a) App. F, *Time-Limited Passports That May Be Replaced* (Nov. 9, 2007), <http://www.state.gov/documents/organization/86784.pdf>.



gender transition surgery, the Department has acknowledged that it can maintain security while issuing passports to people who have not undergone surgery.

Other nations with national security concerns similar to those of the United States have adopted requirements for gender marker changes on a passport that better reflect the realities of transgender people's lives.² Through the Visa Waiver Program, Congress has vouched for the strong passport security measures in many of these countries.³ Thus, the United States is placing greater burdens to travel upon its own citizens who wish to leave the United States than it places upon visiting non-citizens.

Recommendation

The Assistant Secretary for Consular Affairs should direct the Deputy Assistant Secretary for Passports Services to permit an individual to change his or her gender marker on a passport if that individual provides proof that he or she has started medical treatment related to gender transition, has been advised by his or her physician against pursuing gender reassignment surgery or other medical treatment, or has made decisive steps to live his or her life fully and permanently as the gender other than that currently listed on a passport.

Authority

The Foreign Affairs Manual ("FAM") is the organizational directive of the Department of State as established by the Office of Directives Management in the Bureau of Administration. FAM establishes the responsibilities and duties of the many bureaus and departments within the Department of State. As stated in FAM, the Assistant Secretary for Consular Affairs "develops, establishes, revises, promulgates, and directs policies, procedures, and regulations relating to functions of the Bureau [of Consular Affairs], including the issuance of passports and related services."⁴ As the individual responsible for such policies and procedures, the Assistant Secretary for Consular Affairs has the authority to make the recommended policy change.

² In the United Kingdom, an individual may change the gender marker on his or her passport upon changing his or her name and providing documentation from a physician stating that the individual *intends* to live permanently in the gender other than that on his or her passport. This law does not require that an individual pursue any medical treatment. *See* Pub. Acts 2004, ch. 7. The Netherlands permits an individual to change his or her gender on federal documents upon showing documentation from a physician that the individual has permanently adapted to the gender consistent with his or her gender identity. *See* Dutch Civ. Code, art. 29.

³ *See* 8 U.S.C. § 1187. The Secretary of State consults with the Attorney General to grant approval in the Visa Waiver Program only to those countries that would not "compromise" American security interests. *See id.* at § 1187(c)(2)(C)(ii).

⁴ U.S. DEPT. OF STATE, 1 FAM 251.1(d), *Responsibilities* (Feb. 23, 2007), <http://www.state.gov/documents/organization/84178.pdf>.