OBAMA-BIDEN TRANSITION PROJECT

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Issue Embassy ID Cards and Compound Access for Same-sex Partners Equivalent to Treatment of Other Eligible Family Members of Foreign Service Officers

Issue

The Department of State ("DoS")'s failure to treat domestic partners on the same basis as different-sex spouses in issuing embassy ID cars and compound access burdens gay and lesbian FSOs by not denying them from being part of the community and access to activities, events, and programs.

Short Answer

DoS should amend the definition of "eligible family member" in the Foreign Affairs Manual ("FAM") to include domestic partners.[1]

Background

DoS determines the issuance of Embassy ID cards and compound access granted to spouses of FSOs. Overall, domestic partners of gay and lesbian FSOs only receive a small portion of the benefits provided to different-sex spouses. Of these benefits, the issuance of Embassy ID cards and granting of compound access is one of the most crucial considering that FSOs will want to have their spouse considered as part of the community and have the same access to the rest of the compound as different-sex spouses of FSOs. Indeed, eligible family members may attend specific activities, events, and programs.[2] However, as it currently stands based on 14 FAM 511.3, domestic partners are not included as "eligible family members" unlike different-sex spouses of FSOs and thus may be denied such access.

First, this means that the domestic partners of FSOs are treated as second-class citizens, not even considered as a family member, let alone a spouse. Unlike other partners of FSOs, they may be denied access to certain activities and events in the compound. This inequity in not issuing embassy ID cards and compound access for domestic partners is part of a larger message of inequality which has led Department employees to actively avoid FSO service[3] and impaired the DoS's ability to attract and retain a qualified workforce. This second-class treatment of the domestic partners of gay and lesbian FSOs is a disincentive for qualified employees to become or remain as FSOs.

Whether the partner of an FSO is a different-sex spouse or a same-sex domestic partner should make no difference as to whether they are issued ID cards and compound access during the FSO's service to their country. FSOs with domestic partners should be entitled to parity in benefits.[4] Serving as

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[1] The Defense of Marriage Act (DOMA), Pub. L. No. 104-199, §3, *codified at* 1 U.S.C. § 7 (1997), does not dictate the meaning of "family," and thus the proposed change would not violate DOMA.

[2] It is true that Members of Households (MOH), of which SSDPs may be considered a part, are allowed to have ID cards, but according to 12 FAM 442, only after records checks and other investigative actions may photo ID permit MOHs to attend activities, events, and programs open to eligible family members.

[3] *See* Ajit Joshi, *Speaking Out: Achieving Full Diversity in the Foreign Service*, FOREIGN SERV. J., Nov. 2004, at 13, 17.

[4] Whether parity in specifically FSO benefits would necessarily be costly to the government is uncertain at this time. However, a 2004 Congressional Budget Office study on the budgetary impact of Federal government recognition of same-sex marriages suggests that relationship recognition would actually lead to a net reduction in Federal expenditures overall. *See* CONG. BUDGET OFFICE, *The Potential Budgetary Impact of Recognizing Same-Sex Marriages* (June 21, 2004) http://www.cbo.gov/ftpdocs/55xx/doc5559/06-21-SameSexMarriage.pdf. A state level study suggests similar results.

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an FSO is difficult enough and is crucial to our nation's interests. Distracting these FSOs with unfair treatment and extra burdens by ostracizing their partners within the post is poor policy. Thus, the failure to issue ID cards and compound access to the domestic partners of FSOs singles out and burdens gay and lesbian FSOs while impeding the ability of the DoS to retain and recruit these FSOs.

Recommendation

The Under Secretary for Management of the Department of State should direct the Assistant Secretary for Administration, the Director General of the Foreign Services, and the Director of Human Resources to amend the definition of "eligible family member" in 14 FAM 511.3 to include domestic partners.

Authority

The Under Secretary for Management "prescribes rules and regulations pursuant to authority vested in the Secretary [of State]" unless authority has been delegated otherwise.[5] The Assistant Secretary for Administration, who reports to the Under Secretary for Management, chairs the Standing Committee on Directives which guides and annually reviews the State Department's Directives Program, including the FAM. The Director General of the Foreign Service and Director of Human Resources reports directly to the Under Secretary for Management, coordinates human resources polices, and is responsible for the operation of the Foreign Service.[6] As the individual in charge of the relevant personnel, policies, and procedures, the Under Secretary for Management has the authority to implement the recommendation.

See, e.g., M.V. LEE BADGETT, ET AL., THE IMPACT OF THE COLORADO DOMESTIC PARTNERSHIP ACT ON COLORADO'S STATE BUDGET 1 (The Williams Institute ed. 2006) (predicting a net benefit to Colorado of $1.2 million largely from decreasing use of public benefits and increased tax revenues).

[5] 1 FAM 044.1. *See also* 3 FAM 1312(b) (stating that by Delegation of Authority No. 148, dated Aug. 4 1981, the Secretary delegated all of his functions under the Foreign Service Act to the Under Secretary for Management except for enumerated reserved functions).

[6] *See* 1 FAM 231.1 (2005).