

Deportation threat lifted from S.F. gay spouse

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Washington --

Bradford Wells and Anthony John Makk have been together for 19 years. They're married and live in the Castro, but have been living under the threat of separation because Wells is a U.S. citizen and Makk a citizen of Australia.

That threat ended Wednesday, when they won a two-year stay of Makk's deportation.

"We're still dizzy from the news," said Makk, 49. "We are elated."

Because the 1996 Defense of Marriage Act bars all federal marital rights and responsibilities to same-sex couples, Makk was denied consideration for a green card based on his marriage to Wells, who suffers from severe AIDS-related illnesses. Makk is his primary caregiver.

"I'm relieved, really excited and relieved," said Wells, 56. "I am so grateful I don't have to worry about Anthony being taken out of the country."

The couple's plight, first covered by The Chronicle in June, triggered international media attention.

On Wednesday, the Department of U.S. Citizenship and Immigration Services issued a letter to Makk saying he has been granted "deferred action" on his case for two years. The agency said the stay is "an exercise of prosecutorial discretion" that allows the agency not to pursue deportation for a specific period.

Political intervention

House Minority Leader [Nancy Pelosi](#), a San Francisco Democrat, personally intervened in their case, aided by Sen. Dianne Feinstein, D-Calif., and state Sen. Mark Leno, an openly gay Democrat who represents parts of San Francisco.

Pelosi broke the news to the couple herself Wednesday. She issued a statement calling the stay "a personal victory for Bradford and Anthony and keeps this loving couple together."

Pelosi also credited the [Obama](#) administration's new immigration guidelines, issued last year, that ordered government agents to prioritize deportation cases. Makk met multiple conditions of the new guidelines, including family ties, status as a primary caregiver, lack of criminal record and his long period of legal residence without any immigration violations.

The letter from the immigration agency said Makk is also eligible to apply for work authorization. The deferral is also renewable, so that Makk could request that it be extended when it expires in two years.

"Although this is not a permanent fix, it is a very significant fix for them, and ensures that at least for the near term, they do not have to worry about separation," said Steve Ralls, a spokesman for Immigration Equality, the advocacy group that championed their case. "Anthony will be able to remain with Bradford and care for him."

Visa requirements

After meeting Wells in Australia nearly two decades ago, Makk gave up his career there, started a business in San Francisco and invested in rental property to meet visa requirements that allowed him to remain with Wells. The couple were legally married in Massachusetts on July 22, 2004.

But last year, Makk's final visa expired. The Department of Homeland Security denied his application for permanent residence, citing the Defense of Marriage Act. That left the couple little recourse but to move to Australia, an option they said would be a last resort given Wells' medical condition and uncertainties about their prospects in Australia. Makk was insistent that he not remain in the United States illegally.

"I am grateful to have Nancy Pelosi as my member of Congress," Wells said. "She selflessly put herself in to help every way she could and she succeeded. Sen. Dianne Feinstein and Mark Leno also stepped up to the plate to do whatever they could to support us."

A November study by the Williams Institute, a pro-gay think tank based at UCLA, estimated that there are 28,500 same-sex couples living in the United States in which one member is a citizen of another country. More than 7,100 of those couples live in California, more than any other state. Not all are married.

Same-sex marriage

Six states and the District of Columbia permit same-sex marriage, and several thousand couples were married in California in 2008 before voters passed [Proposition 8](#), which banned same-sex marriage in the state.

Given the growing number of same-sex couples legally married under state laws, conflicts with the Defense of Marriage Act are increasing. In addition to prohibiting binational couples from pursuing permanent resident status as accorded to heterosexual couples, the law affects taxes, Social Security and other issues legally linked to marriage.

<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2012/01/05/MNM61ML0I7.DTL>