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Asylum protection for LGBTQ individuals: an asylum applicant should not be forced to change, suppress, or conceal something so fundamental to their identity and conscience simply to avoid persecution.

The Board of Immigration Appeals (BIA) recently issued a significant decision regarding asylum law, offering further clarity on how asylum seekers can demonstrate that a government is either “unable or unwilling” to protect them from harm inflicted by private individuals. This ruling, known as *Matter of C-G-T-* (28 I&N Dec. 740, BIA 2023), stems from an appeal brought by a gay, HIV-positive man from the Dominican Republic and provides an interesting legal framework for LGBTQ individuals seeking asylum.

During the proceedings, the individual testified that he endured physical and verbal abuse from his father starting from a very young age due to his sexual orientation. Despite never explicitly revealing his sexual orientation to his father while residing in the Dominican Republic, the respondent recounted instances where his father disparaged him, referring to him as a girl, and subjected him to particularly severe mistreatment.

In *Matter of C-G-T-*, the BIA ruled that the respondent should not be forced to avoid harm by hiding his sexual orientation. This decision also recalls other procedural principles that may apply generally to any asylum seeker. The BIA also emphasizes the importance of considering all evidence, such as the conditions in the country or provided testimonies, when determining whether the government of the country in question could not or did not intend to protect an individual from persecution. Furthermore, the BIA insists on the necessity to consider all circumstances justifying the decision NOT to report abuses to the authorities, such as the age of the applicant at the time of the incidents, or the fear of retaliation. In other words, the BIA contends that asylum seekers are not required to conceal fundamental aspects of their identity, such as their sexual orientation, to avoid persecution in their home country.

This decision sets an important precedent for future cases where other asylum seekers may not have reported abuses due to their sexual orientation. The BIA reminds that not reporting abuses does not necessarily disqualify an asylum claim, provided it can be proven that reporting to government authorities would have been futile. It should also be noted that this criterion is not limited only to cases of sexual orientation but applies to other asylum claims such as those based on political or religious persecution.

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Link to the decision: https://www.justice.gov/eoir/page/file/1594626/dl