



Fact Sheet: Streamlined Process Announced for Otherwise Eligible HIV-Positive Individuals to Enter the United States

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The U.S. Department of Homeland Security (DHS) has issued the Human Immunodeficiency Virus (HIV) Waiver Final Rule, a regulation that will streamline the issuance of certain short-term non-immigrant visas for non-U.S. citizens who are HIV-positive.

Streamlining the Process

- Under the new regulation, U.S. Department of State consular officers overseas will now have the authority to grant non-immigrant visas to otherwise eligible HIV-positive people who meet certain requirements, instead of waiting for a special waiver from DHS.
- In fiscal year 2007, the average processing time for DHS to make decisions on such consular recommendations (for the issuance of non-immigrant visas and authorization for temporary admission) was 18 days. The final rule streamlines this process, and will make visa authorization and issuance available to many otherwise eligible HIV-positive travelers on the same day as their interview with a U.S. Consular officer.
- The final rule applies only to foreigners who are HIV-positive and seek to enter the United States as visitors for up to 30 days; these individuals still must meet all of the other normal criteria for the granting of a U.S. visa. The issuance of visas under the rule will also be subject to certain criteria designed to ensure an HIV-positive person's activities while in the United States do not present a risk to the public health.
- Visas issued under this final rule will not publicly identify any traveler as HIV-positive.

Previously, the U.S. Department of State had to make individual recommendations on HIV-positive travelers to DHS, which then conducted a case-by-case evaluation to determine an applicants temporary admission to the United States. The State Department would occasionally recommend, and DHS approve, group waivers for events at the United Nations or other international gatherings in the United States.

Alternative Procedure

- The HIV Waiver Final Rule will speed up the application process by making it easier for those HIV-positive individuals who meet the requirements to get a short-term, non-immigrant visa.
- However, those who do not meet the specific requirements of the rule, or who choose not to use the streamlined process, may elect the existing procedure for a case-by-case determination of their eligibility for a visa and admission authorization.

Background

- Since 1952, U.S. law and regulation have made persons "who were afflicted with any dangerous contagious disease" ineligible to receive a visa to enter the United States. People infected with HIV have been inadmissible to the United States since 1987, when Congress directed the U.S. Department of Health and Human Services (HHS) to add HIV to its list of diseases of public health significance.
- Accordingly, foreigners infected with HIV have been ineligible to receive U.S. visas without a waiver by the U.S. Government.

- The United States Global Leadership Against HIV/AIDS, Tuberculosis and Malaria Reauthorization Act of 2008, which President Bush signed on July 30, 2008, removed the statutory requirement that mandated the inclusion of HIV on the list of diseases of public health significance that made any person infected with those conditions ineligible for admission to the United States. The legislation did not, however, automatically change the existing regulations, administered by HHS, that continue to list HIV as a “communicable disease of public-health significance.” HHS is currently beginning the rulemaking process to remove HIV from the list.
- In the meantime, the DHS HIV Waiver Final Rule fulfills the President’s promise to create a streamlined process for otherwise eligible HIV-positive individuals to gain temporary admission to the United States. On Dec. 1, 2006, President Bush directed the Secretaries of State and Homeland Security to initiate a rulemaking that proposed a categorical waiver for otherwise eligible foreigners who are HIV-positive and who seek to enter the United States on short-term visas.
- DHS published a notice of proposed rulemaking on Nov. 6, 2007, and welcomed public comments for 30 days thereafter. The final rule adopts the proposed amendments to the regulations, and simplifies the process for the authorization of admission, with some modifications, in light of the public comments received.

For more information on the HIV Waiver Final Rule, including the published regulation, please visit <http://www.dhs.gov/xprevprot/laws/>.

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