

## REPEAL THE HIV BAN

**The Issue:** The United States currently has one of the world's harshest immigration policies for individuals who are HIV-positive. Under section 212(a)(1)(A)(i) of the Immigration and Nationality Act ("INA"), foreign nationals who are HIV-positive are statutorily inadmissible, preventing them from obtaining lawful permanent residence, or even visiting the United States unless they meet strict rules for an HIV waiver. The result of this policy has been to needlessly deny applications for lawful permanent residence for applicants with established lives in the U.S., to prevent employers from retaining qualified workers, and to harm business without serving any legitimate government interest.

**AILA's Position:** AILA strongly supports amending the INA to remove the statutory conclusion that HIV is a "communicable disease of public health significance." Prior to 1993, and continuing today for all illnesses other than HIV, the determination of what diseases should affect a foreign national's admissibility to the United States has been a question of public health which is legitimately left to the realm of the Department of Health and Human Services ("HHS"). Singling out HIV as the only statutory medical ground of inadmissibility serves no legitimate purpose, stigmatizes those who are living with this treatable disease, and diminishes the international legitimacy of the United States as it leads the global fight against HIV/AIDS.

**The HIV ban does not protect public health.** At the time the HIV ban was codified in 1993, the general public still did not understand how HIV was transmitted, and there were virtually no treatment options. The situation is much different today.

- Now that it is clear that HIV is not spread by casual contact and that it can be a treatable, chronic illness, there is no reason to treat it differently under immigration law from all other medical conditions.
- While the INA technically excludes even visitors who are HIV-positive from entering the U.S., as a practical matter, it is likely that hundreds if not thousands of HIV-positive individuals enter the U.S. every year because Department of Homeland Security or Department of State officials generally learn that a prospective visitor is HIV-positive only if he or she self-discloses. There is no evidence that these HIV-positive visitors have created any danger to U.S. public health.
- Many HIV-positive foreign nationals who are now in the United States as permanent residents or citizens of the United States were HIV-negative when they first came to the United States. Their contributions to this country's economic, scientific and cultural welfare have in no way been minimized by their medical condition. Similarly, many non-

immigrants contract the virus after their arrival in the United States. To deprive them, when they are otherwise eligible, from filing for adjustment of status to permanent residence simply because they are now HIV-positive has no rational basis given that they are already here

**The HIV ban does not protect the American public against high public health expenditures on behalf of foreign nationals.** Another primary argument used to justify the HIV ban is the high cost associated with HIV medication but this argument is not supported by the facts.

- With very limited exceptions, foreign nationals who are visiting the United States on short term visas or under the Visa Waiver Program are not eligible for publicly-funded health benefits.
- Virtually all applicants for lawful permanent residence must prove that they are not likely to become a public charge. Likewise, an adjudicating officer already has the power to deny an application for admission as a non-immigrant if the officer believes the applicant could pose a financial burden on the United States.

**Requiring that applicants for lawful permanent residence have close relatives to apply for an HIV waiver bears no relationship to protecting public health.**

- Under current law, only applicants who are the spouse or unmarried son or daughter of a U.S. citizen or lawful permanent resident; the minor unmarried lawfully adopted child of a U.S. citizen; the parent of a son or daughter who is a U.S. citizen or lawful permanent resident; or certain humanitarian applicants (such as refugees, asylees, and those eligible for VAWA) are even eligible to apply for an HIV waiver.
- This requirement bears no relationship to any possible public health justifications for the HIV ban and disqualifies many highly skilled, fully insured workers from ever obtaining residence in the United States.

**Current Legislation:** The “HIV Nondiscrimination in Travel and Immigration Act of 2007” (H.R. 3337 /S.2486) was introduced in the House by Representative Barbara Lee (D-CA) in August 2007 and by Senators John Kerry (D-MA) and Gordon Smith (R-OR) in December 2007. The bill would amend the INA to remove HIV as a statutory ground of inadmissibility, leaving the determination of whether or not HIV is a “communicable disease of public health significance” to be made by HHS, as it is for all other illnesses. HIV is currently on the HHS list, so passing the bill would not immediately end the HIV ban, but it is an important first step in doing so. AILA strongly supports passage of this bill, and the removal of HIV from the HHS list.