

END OF THE HIV TRAVEL AND IMMIGRATION BAN

HOW DOES IT AFFECT ME?

YOU HAVE QUESTIONS

WE HAVE ANSWERS

WHO IS HELPED BY THE REPEAL OF THE BAN?

Non-immigrants

Everyone who enters the US as a tourist, student, or business traveler is asked, "Do you have a communicable disease or have you ever been afflicted with a communicable disease of public health significance?" People with HIV/AIDS may now truthfully answer "no." Tourists and other visitors may now travel openly with their HIV medication. **Non-immigrants include:**

- Tourists and business travelers
- Students
- Skilled workers (e.g., H-1Bs)

Green card applicants

Before the law changed, all green card applicants were tested for HIV and only those with close American family members were eligible to apply for a waiver. **The following green card applicants may be helped by the end of the ban:**

- Brothers and sisters of U.S. citizens
- Adult, married children of U.S. citizens
- Employment-based green card applicants
- Current Diversity Visa Lottery winners (DV-2010 Lottery and later)
- Cubans
- Former green card applicants whose HIV waivers were denied

All of us

The repeal of the HIV ban ends a harmful and discriminatory policy. It proves that stigma and exclusion have no place in American immigration law.

AS OF JANUARY 4, 2010, HIV/AIDS IS NO LONGER CONSIDERED "A COMMUNICABLE DISEASE OF PUBLIC HEALTH SIGNIFICANCE."

For more than 15 years, the United States had one of the most restrictive immigration policies in the world regarding non-citizens with HIV — they were not allowed to enter the U.S. as short-term travelers or get a green card unless they qualified for a special waiver which was very difficult to get.

In July 2008, Congress passed a law that repealed the statutory HIV ban.

In November 2009, the Department of Health and Human Services (HHS) published final regulations removing HIV from its list of communicable diseases, meaning that as of January 4, 2010, being HIV-positive is no longer relevant to immigration applications. HHS also amended its rules for the green card medical exam, and HIV testing is no longer required as part of a green card application.

now

WHO IS PROBABLY NOT HELPED BY THE REPEAL OF THE BAN?

Most undocumented immigrants

Current immigration laws are very unforgiving of people who are in the U.S. without lawful status, meaning those who entered with a visa and overstayed, and those who entered without inspection (by crossing the border). With very limited exceptions (some spouses of U.S. citizens; some parents of adult U.S. citizens; some asylees; some people with applications pending before April 30, 2001), once someone is in the U.S. illegally, it is impossible to legalize their status. The end of the HIV ban does not change this situation for most HIV-positive people who don't have legal status.

Applicants for time-specific green cards

Some green card applications must be filed by a specific date or the application is automatically lost. Some of these categories include: past Diversity Visa Lottery winners; applicants under the Haitian Refugee Immigration Fairness Act (HRIFA); applicants under the Nicaraguan Adjustment and Central American Relief Act (NACARA); and applicants under the old legalization (amnesty) program.

LEGAL RESOURCES

If you have any questions about how the repeal of the HIV ban affects you or your family member, contact:

Immigration Equality

National Headquarters
40 Exchange Place, #1705
New York, NY 10005
USA
+1 (212) 714-2904
ImmigrationEquality.org

HIV TESTING AND TREATMENT RESOURCES

To find information about HIV testing, treatment, and prevention, visit:

The Access Project
ATDN.org

AIDSinfo
AIDSinfo.nih.gov

Asian and Pacific Islander HIV/AIDS Health/Social Services Directory
APIWellness.org/resourcedirectory

Latino HIV Testing
LatinoHIVtesting.org

National HIV/AIDS Treatment Hotline
1-800-822-7422 (M-F 10AM-4PM, Pacific Time)

National HIV and STD Testing Resources
HIVtest.org

The International AIDS Society
IASociety.org

YOU HAVE QUESTIONS

HIV TRAVEL AND IMMIGRATION

WE HAVE ANSWERS

I'M HIV+, AND I HAVE BEEN WAITING FOR YEARS TO FILE FOR LAWFUL PERMANENT RESIDENCE. Does this announcement mean I can now apply for a green card?

HIV is no longer a bar to applying for permanent residence. That being said, whether you are HIV-positive or not, you still must qualify for a green card through family sponsorship, an employer sponsor, the Diversity Visa Lottery, asylum, or some other means to apply.

Unfortunately, for many undocumented HIV-positive individuals, the biggest obstacle to obtaining a green card is that they have been living in the United States without lawful status. The repeal of the ban, by itself, does not change that.

DO THE NEW REGULATIONS MEAN that I don't have to qualify for an HIV waiver if I apply for a green card?

Yes. Now that being HIV-positive is no longer a reason to deny someone lawful permanent residence, there is no need to file a waiver.

I HAVE A WAIVER PENDING, what do I do?

You or your attorney should send a letter to Immigration explaining that the HIV ban has been lifted, that a waiver is no longer required in your case, and that they should adjudicate your green card application immediately.

CAN I GET A REFUND for the \$545 waiver fee I already filed?

Unfortunately, no. Immigration law changes all the time, but they don't refund fees that were appropriately paid at the time an application (or waiver) was filed.

MY CASE WAS DENIED BECAUSE I'M HIV+, can I reopen it?

Maybe. Sorting through which cases can be reopened is one of the most difficult legal aspects of the end of the HIV ban. In general, you probably still need to qualify for the benefit that was denied. For example, if you won the Diversity Visa (DV) Lottery in 2006 but couldn't go forward with the legal permanent residence application because of your HIV status, you cannot do so now because 2006 DV visas are no longer available.

A FAMILY MEMBER PETITIONED FOR ME IN THE PAST, but when I learned I was HIV+, I didn't file for my green card. Can I do so now?

If you have been in the U.S. since December 21, 2000, and your family member filed the visa petition (I-130) for you prior to April 30, 2001, you should now be able to apply to adjust status (if there is a visa available).

If you were in your home country when the visa petition (I-130) was filed, the visa may have been terminated.

MY EMPLOYER PETITIONED FOR ME IN THE PAST, but when I learned I was HIV+, I didn't file for my green card. Can I do so now?

Maybe. Employer-based visa petitions (I-140s) are valid indefinitely unless they are revoked or withdrawn. If you are still in lawful status in the U.S. and your employer is still willing and qualifies to sponsor you, you should now be able to file to adjust. If, however, your employer filed for labor certification, but did not file the visa petition (I-140), the employer will probably have to begin the process again.

MY GREEN CARD INTERVIEW IS COMING UP. Will I be tested for HIV as part of my medical exam?

No. The regulations eliminate HIV testing from the green card medical exam. Immigration is in the process of changing the medical examination form (I-693) to remove the HIV testing box. Until the new form is issued, doctors have been instructed NOT to perform an HIV test, and to fill in "no longer required" in this box. If you are worried that a doctor may still think the HIV test is required, you should print the new instructions and bring them to your medical examination. http://www.uscis.gov/USCIS/Green%20Card/Civil_Surgeon_hiv_vaccination_ltr.pdf

DOES THIS MEAN THAT HIV STATUS is completely irrelevant to my immigration case?

No. All applicants for lawful permanent residence must demonstrate that they are not "likely to become a public charge." If you are in relatively good health, being HIV-positive should not be an obstacle to getting a green card. However, in determining whether someone is likely to become a public charge, Immigration can look at all of the circumstances of someone's life. If you have been in a nursing home or have been too disabled by your HIV to work, it is possible that your application could be denied if Immigration finds that you will not be able to support yourself.

However, since the new regulations remove HIV testing from the medical examination, it is unlikely that your HIV status will come up at all.

I APPLIED FOR ASYLUM BASED ON BEING HIV+. Does the end of the HIV ban affect my application?

It shouldn't. To succeed in an application for asylum, someone must prove that they have a well-founded fear of persecution based on being HIV-positive. The fact that the U.S. has ended its discriminatory policy toward foreign nationals with HIV is not relevant to whether an asylum seeker would face persecution in her country of origin.

CAN MY HIV+ PARTNER obtain a visa to come to the United States for a visit?

Probably. The new regulations no longer prevent an HIV-positive person from obtaining a visa. However, as with a permanent residence application, your partner still has to show that he qualifies for a visa. For example, if your partner wants to come to the United States as a tourist or a visitor, he must always prove that he intends to return to his country at the end of his authorized stay in the U.S. If he cannot demonstrate that he intends to return home, it is unlikely that he will be issued a visa.

Although immigration officials should no longer ask about HIV for short-term visitors, if a person's HIV status was previously known to Immigration, an official might count this against his visa application, reasoning that someone with HIV would be more likely to remain in the U.S. to receive treatment here.

IF COMPREHENSIVE IMMIGRATION REFORM (CIR) PASSES, will it help me?

No one can say for sure at this point what form immigration reform will eventually take. However, the repeal of the HIV ban means that when Congress creates a path to legalization, HIV will not prevent you from legalizing your status.

I AM NOT A CITIZEN AND I HAVE BEEN AFRAID TO GET HIV MEDICAL TREATMENT for fear that I'd be placed in deportation proceedings. Is it now safe for me to get treatment?

Yes. Being HIV-positive was actually never a ground to begin deportation proceedings against a non-citizen. HIV care and medication is available regardless of immigration status through the Ryan White Program and the AIDS Drug Assistance Program (ADAP). If you need to access emergency care, hospitals in some states do inquire about immigration status before providing services.

I'M STILL CONFUSED about how the repeal of the ban affects me, what should I do?

Immigration law is very complicated and this pamphlet just provides the basics. If you have questions about your own legal situation, please contact Immigration Equality.