

Removal of HIV Infection from the CDC List of Communicable Diseases of Public Health Significance – Questions and Answers (Q&As)

Qs and As

Q: Why has it taken the United States so long to implement changes for non-U.S. citizens who are HIV-positive to visit or live in the United States?

-- On July 30, 2008, President Bush signed the United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008, which amended the Immigration and Nationality Act (INA) to eliminate language that specified HIV infection as a public health condition that can prevent non-U.S. citizens from entering the United States with HIV without first obtaining a waiver from the Department of Homeland Security (DHS).

-- The Act did not change the regulatory framework under which HIV is handled for visa purposes. Because HIV was still on the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention's (HHS/CDC) list of communicable diseases of public health significance, HIV-positive applicants who applied for United States visas or entry into the United States remained inadmissible and still required waivers from DHS.

Q: Why is the CDC removing HIV infection from both the definition of communicable disease of public health significance and the scope of the medical examination for visa purposes?

-- On July 2, 2009, CDC proposed a rule change to amend Title 42 of the Code of Federal Regulations (CFR), Part 34, by removing HIV from the list of communicable disease of public health significance and from the scope of the medical examination for aliens, which was published in the Federal Register as a Notice of Proposed Rulemaking (NPRM) for a 45-day public comment period.

-- The CDC reviewed all public comments it received and published a Final Rule in the Federal Register on November 2, 2009, which contains no changes from the NPRM. The final rule is effective January 4, 2010, and it removes HIV from the definition of a communicable disease of public health significance and references to HIV from the scope of medical examinations for aliens.

-- The CDC determined that while HIV infection is a serious health condition, it is not a communicable disease that is a significant public health risk for introduction, transmission, and spread through casual contact.

-- We refer you to the CDC for further guidance.

Q: How does this new regulation change the visa application process for applicants who are HIV-positive?

-- Until the final rule goes into effect on January 4, 2010, non-U.S. citizens who are HIV-positive cannot be admitted to the United States unless granted a waiver by the Department of Homeland Security (DHS). Certain nonimmigrants may qualify for issuance of visas from consular officers without applying to DHS for waivers under a streamlined process established by DHS in its HIV Waiver Final Rule.

-- Effective January 4, 2010, visa applicants required to receive medical examinations will not be tested for HIV, and HIV-positive visa applicants will not be found ineligible for visas under Section

212(a)(1)(A)(i) of the INA and will not need waivers from the Department of Homeland Security (DHS) prior to being issued visas, if otherwise qualified.

-- Although applicants with HIV cannot be found ineligible for visas under Section 212(a)(1)(A)(i) of the INA starting on January 4, 2010, they still must overcome INA Section 212(a)(4), public charge, by demonstrating to consular officers that they will have means of support in the United States and that they, therefore, will not need to seek public financial assistance.

Q: How will this change affect HIV-positive applicants who have previously been refused a visa?

-- Effective January 4, 2010 applicants who were previously refused visas only under INA Section 212(a)(1)(A)(i) and only because they were HIV positive may be eligible for a visa. These applicants may reapply for a visa. A consular officer will then determine whether or not the applicant is qualified.

Q: How will this change affect how applicants complete their visa applicant forms?

The DS-156 Nonimmigrant Visa Application, DS-160 Online Nonimmigrant Application, and DS-230 Application for Immigrant Visa and Alien Registration forms contain the following question: "Have you ever been afflicted with a communicable disease of public health significance or a dangerous physical or mental disorder, or ever been a drug user or addict?" Effective January 4, 2010, HIV-positive visa applicants will no longer have to answer "Yes" to this question based solely on their HIV status. Applicants who are HIV-positive, and can otherwise answer "No" to the question, should answer "No" beginning on January 4, 2010.

Q: Are there any restrictions under this new rule?

-- No. After the final rule goes into effect on January 4, 2010, HIV-positive visa applicants will no longer be ineligible to receive visas under Section 212(a)(1)(A)(i) of the Immigration and Nationality Act (INA.)

Q: How will non-US citizens with HIV find out about this new change?

-- All U.S. embassies and consulates will disseminate information on the final rule to the general public as necessary.

-- Consular officers will inform any visa applicants with HIV infection who apply for and are found ineligible for visas between now and January 4, 2010 about the final rule. Until January 4, 2010, visa applicants with HIV may still apply for waivers of ineligibility under Section 212(a)(1)(A)(i) of the INA from DHS. Certain nonimmigrants may qualify for visas without first applying to DHS for waivers under a streamlined process established by DHS in its HIV Waiver Final Rule. Alternatively, applicants previously refused visas under Section 212(a)(1)(A)(i) of the INA may opt to wait to apply for visas until January 4, 2010, when they will no longer be ineligible.

-- Additional guidance is available on CDC's website (http://www.cdc.gov/ncidod/dq/laws_regs/fed_reg/remove-hiv/final-rule-hiv.htm).

Q: Before the effective date of January 4, 2010, what changes will take place for non-U.S. citizens with HIV infection who wish to enter the United States?

-- Until the final rule goes into effect on January 4, 2010, non-U.S. citizens who have HIV cannot be admitted to the United States without waivers granted by the Department of Homeland Security (DHS). Certain nonimmigrants may qualify for issuance of visas from consular officers without first applying to DHS for waivers under a streamlined process established by DHS in its HIV Waiver Final Rule.

Q: Who is affected by the rule change?

-- Effective January 4, 2010, all non-U.S. citizens with HIV who apply for visas or who apply for entry to the United States will be affected by the final rule because they will no longer be ineligible under Section 212(a)(1)(A)(i) of the INA.

-- Additionally, all immigrant visa applicants and refugees and some nonimmigrant visa applicants are required to have medical examinations prior to entrance into the United States. Effective January 4, 2010, they will be affected by the final rule because it removes HIV from the scope of medical examinations for visa applicants, including HIV testing.

Q: Will the rule change increase the risk that average Americans will contract HIV?

-- The CDC has determined that allowing non-U.S. citizens with HIV infection to enter the United States will not pose a health risk to the American public because HIV is preventable and not spread through casual contact or day-to-day activities.

-- We refer you to the CDC's website (http://www.cdc.gov/ncidod/dq/laws_regs/fed_reg/remove-hiv/final-rule-hiv.htm) for further information.