

National Coalition for Immigrant Women's Rights

August 17, 2009

Division of Global Migration and Quarantine
Centers for Disease Control and Prevention
U.S. Department of Health and Human Services
Attn: Part 34 NPRM Comments
1600 Clifton Road, NE, MS E-03
Atlanta, GA 30333

Re: Docket # CDC-2008-0001

Comments by the National Coalition for Immigrant Women's Rights in support of the Department of Health and Human Services proposed rule to remove HIV from the list of "communicable diseases of public health significance" and HIV testing requirement for medical examinations.

I. Introduction:

The National Coalition for Immigrant Women's Rights (NCIWR) and the undersigned organizations submit this comment in support of the Department of Health and Human Services' (HHS) proposed rule to remove the Human Immunodeficiency Virus (HIV) from the list of "communicable diseases of public health significance" and to remove the HIV testing requirement from the routine medical examinations of foreign nationals. NCIWR is comprised of over 40 grassroots and national advocacy organizations working together to defend and promote equality for all immigrant women and their families living and working in the United States. As a coalition committed to human rights and immigration equality, we believe the ban should be lifted as quickly as possible.

In 1987, HHS issued a final regulation making aliens infected with HIV ineligible to receive visas and excluded from admission in the U.S.¹ In 1993, Congress amended the Immigration and Nationality Act ("INA") to specify that "infection with the etiologic agent for acquired immune deficiency syndrome" is a "communicable disease of public health significance," thereby making it explicit in the INA that aliens with HIV are ineligible for admission into the U.S.² Section 232 of the INA authorizes medical examinations to determine immigrant health-related conditions. These provisions required HHS to determine that HIV infection was a ground of inadmissibility.

In July 2008, former President George W. Bush signed into law, as part of the reauthorization of the President's Emergency Plan for AIDS Relief (PEPFAR), a provision removing the HIV

¹ 8 U.S.C. 1182(a)(6)(1988).

² National Institutes of Health Revitalization Act of 1993, Public Law 103-43, Section 2007, 107 Stat. 122 (June 10, 1993).

travel and immigration ban enacted in 1993, effectively restoring HHS's authority to determine whether or not HIV should be on the list for inadmissibility. The actions of the President and Congress make clear that their intent is that the ban should be lifted.

We commend HHS for taking action now and proposing to remove the HIV travel and immigration ban. By ending the discriminatory ban, the proposed rule will bring United States practice into conformity with its commitment to fighting the HIV pandemic and realizing the human rights of those with HIV and AIDS. For these reasons, and the reasons set forth below, the HIV travel and immigration ban should be repealed immediately.

II. The Reason HIV Was Added to the List of Communicable Diseases of Public Health Significance Is No Longer True Today

HHS proposed and finalized the rule making HIV infection a ground for inadmissibility in 1986 at the height of the AIDS scare. This was a time when there was hysteria about HIV and AIDS, and a misunderstanding and lack of knowledge of how HIV is transmitted. It was believed that HIV could be spread through casual contact such as kissing and sharing towels. We know today, however, that HIV cannot be contracted by casual contact. In fact, HIV can only be transmitted by sexual intercourse or sharing needles with an infected person, or mother-to-child.

An arriving HIV-infected foreign national, therefore, does not pose an immediate public health risk to the general population as an individual with a disease such as tuberculosis would. Furthermore, HIV is more manageable today with the introduction of effective treatments that have given infected persons normal life expectancies. Since HIV infection is now known not to be a "communicable disease of public health significance," it should be removed from the list, and HIV-infected individuals should no longer be banned from admission in the U.S.

III. While a Waiver Exists, It is Insufficient and Highly Burdensome

Although it is possible for foreign nationals who apply for lawful permanent residence to seek a waiver of the HIV ground of inadmissibility, these waivers are difficult to obtain. To even qualify to apply for a waiver, a foreign national must have a spouse, child, or parent (if the applicant is unmarried) who is a U.S. citizen or lawful permanent resident. This means that other close family members, such as parents of married sons and daughters, and U.S. citizen siblings, who are considered close enough to sponsor a foreign national for residency, are not eligible to support an HIV waiver application.

Even if a lawful permanent resident applicant has the qualifying relative to support a waiver application, it is still often impossible to meet the requirements of the HIV waiver. Some waiver applicants are subject to consular processing abroad and have to deal with a waiver administration processes such as paying astronomical bonds. Furthermore, many foreign nationals find it impossible to prove to a consular officer that they have private health insurance which will be accepted in the U.S. They have the impossible task of obtaining health insurance to prove that they will not be a public charge on the U.S., but often, in order to obtain such insurance, they must be present in the U.S., and yet they cannot be present in the U.S. without getting a waiver.

In addition, an HIV-infected foreign national who does not have a qualifying relative cannot even apply for a waiver. This has meant that highly skilled workers, whom the Department of Labor has determined will benefit the U.S. labor market, are completely ineligible to seek a waiver and permanent residence in the U.S. These individuals are likely to be highly educated and have private health insurance through their employers, yet the HIV ban needlessly excludes them from permanent residence here.

Even when waivers have a higher chance of approval, as for refugees and asylees, the lengthy and complicated process of accumulating the required documentation and applying for a waiver needlessly delays attainment of permanent residence status for individuals who cannot return to their countries of origin.

Moreover, the cost of applying for the waiver, if applicable, is extremely high. The fee for applying for a waiver of a ground of inadmissibility is \$545.³ The waiver is not only narrow and unduly burdensome, but also insufficient in addressing the human rights of HIV-infected travel and immigration applicants.

IV. The Ban Unjustly Keeps Families Separated

What is probably most troubling is that the HIV travel and immigration ban is keeping families apart. Not only are HIV-infected family members ineligible for seeking legal permanent residency or citizenship, the HIV ground of inadmissibility applies even to non-immigrant visa applicants. HIV-infected foreign nationals, therefore, cannot even visit their relatives in the U.S. The ban must be lifted to reunite and strengthen families.

V. The HIV Testing Requirement Should be Removed

Currently, foreign nationals are required to undergo medical examinations for U.S. immigration purposes, which include testing for HIV infection. This testing requirement is currently not required of the general U.S. population, but is recommended for those who are sexually active. Foreign nationals are robbed of their right to decide whether or not they want to get tested. Requiring only foreign nationals to be tested for HIV not only stigmatizes and discriminates against immigrants, but also further stigmatizes and discriminates against people who are HIV-infected. There is not mandatory testing of other serious health-related conditions such as hepatitis and malaria, as these are not listed as inadmissible health conditions. Therefore, when HIV is removed from the list, the HIV testing requirement should be removed with it. Leaving HIV testing as a requirement would unnecessarily differentiate HIV from other health-related conditions. For these reasons, the HIV testing mandate should be removed. HIV testing, however, should be made available to the foreign national upon request.

VI. Conclusion

The ban, which has been in place for over twenty years, is anachronistic and reflects a fundamental misunderstanding about HIV/AIDS and how it is spread. The public health

³ Form I-601.

community has long recognized that it is inappropriate to classify HIV as a “communicable disease of public health significance,” as that term is understood to apply to diseases that can be transmitted by casual contact.

As the U.S. seeks to fund HIV treatment abroad, educate individuals about modes of transmission, and decrease the stigma and discrimination that have long been associated with this virus, the U.S. has been burdened by a domestic policy which has undermined its position as a leader in the fight against the AIDS pandemic. It is time for the U.S. to end this harmful ban.

We applaud HHS for these proposed regulations and ask that you finalize them as quickly as possible.

Sincerely,

NCIWR Co-Chairs

National Asian Pacific American Women’s Forum
National Latina Institute for Reproductive Health

NCIWR Members

Center for Women Policy Studies
Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR)
Farmworker Legal Services of NY, Inc.
Law Students for Reproductive Justice
Migrant Health Promotion
SisterSong Women of Color Reproductive Health Collective
Southwest Women’s Law Center of Albuquerque

NCIWR Allies

Asian American Justice Center
Chicago Women's Health Center
Civil Liberties & Public Policy Program at Hampshire College
Illinois Caucus for Adolescent Health
Immigrant Rights Project, Boesche Legal Clinic, University of Tulsa College of Law
Kentucky Health Justice Network
National Association of Nurse Practitioners in Women's Health
Northwest Immigrant Rights Project
Our Bodies Ourselves
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SisterLove, Inc.
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