



## REPEAL OF THE HIV IMMIGRATION BAN

*Posted on August 22, 2008 by Cyrus Mehta*

On 7/30/08 President George W. Bush signed into law the United States Global Leadership Against HIV/AIDS, Tuberculosis and Malaria Reauthorization Act (H.R.5501/S.2731).

The bill includes a provision that repeals the HIV travel/immigration ban by amending the current health-related ground of inadmissibility in the Immigration and Nationality Act to exclude any reference to HIV. This provision returns the authority to the Department of Health and Human Services (HHS) to determine whether individuals with HIV should be permitted to travel to the US. CDMA welcomes the repeal of the discriminatory ban and urges the HHS to remove HIV from its list of communicable diseases.

We alert our readers that while this legislation eliminates the verbiage that HIV shall be included as a communicable disease of public health significance, the ground of inadmissibility for those that are HIV positive has yet to be repealed. INA §212(a)(1)(A)(i) renders inadmissible any individual "who is determined (in accordance regulations prescribed by the Secretary of HHS) to have a communicable disease of public health significance." Specifically, the language "which shall include infection with the etiologic agent for acquired immune deficiency syndrome" has been eliminated in §212(a)(1)(A)(i). By deleting this language, HHS now has discretion to remove HIV from its list of communicable diseases of public health significance.

If a foreign national is found inadmissible based on a health related ground, the availability for a waiver is limited. INA §212(g)(1) allows a foreign national, to apply for waiver provided there is a qualifying relative. Qualifying relatives include the spouse, the unmarried son or daughter, the minor unmarried lawfully adopted child of a US citizen, or of a lawful permanent resident, or of an alien who has been issued an immigrant visa. Other qualifying relatives for

the §212(g)(1) waiver include the son or daughter who is a US citizen or a lawful permanent resident, or an alien who has been issued an immigrant visa. Note that battered self petitioners under the Violence Against Women Act (VAWA) do not need qualifying relatives for the waiver.

Hence, under current law, if a foreign national with HIV is found inadmissible but otherwise qualifies for legal permanent residence, he or she is only eligible to apply for a waiver if one of the above mentioned qualifying relatives exist. Many are therefore unable to apply for green cards because they do not have a qualifying relative.

Until HIV is taken off the list by the Department of Health and Human Services, HIV continues to be listed as a communicable disease of public health significance and HIV positive foreign nationals continue to remain inadmissible to the US unless they can qualify for the waiver. This legislation has not yet changed the requirements for the waiver of inadmissibility, and it is hoped that the Department of Health and Human Services (DHHS) swiftly removes HIV from the list of "communicable diseases of public health significance."

CDMA also signed on to a letter dated August 12, 2008, requesting DHHS Secretary, Mike Leavitt, to remove HIV from the list of "communicable diseases of public health significance." The letter was signed by 185 organizations including CDMA. The text of the letter is provided below:

Dear Secretary Leavitt,

Last week, President Bush signed a historic piece of legislation, the reauthorization of the President's Emergency Plan for AIDS Relief. This legislation solidifies the United States' position as the world leader in the fight against the AIDS pandemic. It also will remove an anachronistic provision of the Immigration and Nationality Act ("INA") which statutorily declared all non-citizens with HIV inadmissible to the United States. With the end of the statutory ban on HIV, the Department of Health and Human Services ("HHS ") now has the authority to end the HIV ban on travel and immigration.

We write to urge you to act swiftly to remove HIV from the list of "communicable diseases of public health significance." As you are no doubt aware, in 1991 and again in 1993, HHS issued proposed regulations seeking to remove HIV along with all other illnesses except for active tuberculosis from its list. HHS was poised to issue final regulations to this effect when Congress amended the INA in 1993 to revoke HHS's discretion to remove HIV from the list.

As HHS determined fifteen years ago, HIV is not transmitted through casual contact and as such there is no public health reason to exclude non-citizens who carry the virus. Recent years have seen extraordinary advances in the treatment of HIV that have transformed HIV disease to a manageable, chronic illness for many.

As the President stated before signing the bill, "I want to speak directly to those around the world who have, or think they may have, HIV: A positive diagnosis does not have to be a reason for shame. So don't let shame keep you from getting tested or treated."

We could not agree more. It is time for the United States to end this vestige of discrimination and stigma against people living with HIV and we call on HHS to carry out the will of Congress and the President and remove HIV from the list immediately.

Sincerely