



TOPICS

FORMS

RESOURCES

LAWS

NEWS

ABOUT US

- Public Releases by Topic
- News Releases
- Updates
- Questions and Answers
- Fact Sheets
- Media Contacts
- Alerts
- Outstanding Americans by Choice

Home > NEWS > Questions and Answers

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Human Immunodeficiency Virus (HIV) Infection Removed from CDC List of Communicable Diseases of Public Health Significance

Introduction

These questions and answers only provide information about the change in law made by the Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC) that removed HIV infection from the list of communicable diseases of public health significance.

Background

Section 212(a)(1)(A)(i) of the Immigration and Nationality Act (the Act), bars the admission to the United States any foreign national who has been diagnosed with certain specific illnesses. The Department of Health and Human Services (HHS), on Nov. 2, 2009, published a final rule in the Federal Register, removing Human Immunodeficiency Virus (HIV) infection from the list of illnesses that make a foreign national inadmissible. This rule takes effect on Jan 4, 2010. As of Jan. 4, 2010, therefore, having HIV infection will no longer make a foreign national inadmissible to the United States.

For more information about HIV infection in general, please visit the Centers for Disease Control and Prevention (CDC), Web site <http://www.cdc.gov>.

Questions and Answers

Q. I am HIV positive and I have an application pending with USCIS. How will the rule that removes HIV as a ground of inadmissibility affect my application?

A. Until the final rule goes into effect on Jan. 4, 2010, an approved waiver is still required to grant an immigration benefit for HIV positive applicants. USCIS issued a policy memorandum dated Nov. 24, 2009, instructing officers to continue to hold in abeyance any immigration benefit application, which would be denied under current law solely based on HIV infection. However, if the benefit application is pending, and the applicant has already filed a waiver application which is approvable, the memorandum instructs USCIS officers to grant the waiver so that the case can be adjudicated.

On or after Jan. 4, 2010, when HIV is no longer a medical ground of inadmissibility, all cases that were held in abeyance because of HIV infection will be adjudicated according to the new law. Furthermore, HIV infection will no longer be a medical ground of inadmissibility for any application for immigration benefits pending on or after Jan. 4, 2010.

Q. I am scheduled for a medical examination before Jan. 4, 2010. Will I be tested for HIV?

A. Since civil surgeons and panel physicians must follow CDC's regulations and Technical Instructions for the Medical Examination of Aliens in effect at the time of examination, they must include HIV testing as part of any medical examination conducted on or before Jan. 3, 2010. A civil surgeon must also include the results of this HIV testing on any Form I-693 signed on or before Jan. 3, 2010. Beginning Jan. 4, 2010, the civil surgeon, or panel physician should no longer test an individual for HIV during a foreign national's medical examination.

Q. I scheduled for a medical examination prior to Jan. 4, 2010 and the HIV screening showed that I am HIV positive. What will happen to my adjustment application if it is adjudicated on or after Jan. 4, 2010?

A. USCIS has advised officers to disregard any diagnosis of HIV infection when determining admissibility on or after Jan. 4, 2010. This means that for any final adjudication made on or after Jan. 4, 2010, you will not be found inadmissible for medical reasons just because your record shows that you have HIV infection. Infection with HIV is no longer considered a reason for medical inadmissibility to the United States.

Q. I am HIV positive and I am not eligible for a waiver. Does this change mean I can enter the United States or be granted adjustment of status without a waiver?

A. Beginning Jan. 4, 2010, you will not be required to file a waiver just because you are HIV positive. If your case is pending on or after Jan. 4, 2010, a waiver for HIV is not required, even though your medical examination showed that you have HIV infection. Civil surgeons will not test for HIV after Jan. 4, 2010.

Q. I filed a waiver application because I have HIV infection. If USCIS has not adjudicated my case by Jan. 4, 2010, will I receive a refund of my fee for the waiver application?

A. No. Because you were inadmissible at the time you filed the waiver application, your waiver was correctly filed. On Jan. 4, 2010, USCIS will administratively close any waiver application pending, because that individual is no longer inadmissible to the United States. Administrative closure of the waiver application does not justify refunding the fee.

Q. HIV screening is still shown on the I-693, Report of Medical Examination and Vaccination Record. Have the civil surgeons been notified that this is no longer required as of Jan. 4, 2010?

A. USCIS notified civil surgeons through local points of contact, an update on our Web site, and through updates on the CDC Web site.

Q. How are panel physicians, who conduct medical examination of foreign nationals planning to enter the United States, notified of this change?

A. The U.S. Department of State (DOS) regulates panel physicians. For more information about notification of panel physicians, please contact DOS. Contact information is on DOS' Web site at www.state.gov. CDC also provides information to panel physicians on CDC's Web site at www.cdc.gov/ncidod/dq/panel.htm.

Q. My application was denied prior to Sept. 15, 2009, due to failure to file a waiver for HIV infection. Can I file a motion to reopen or reconsider because a waiver is no longer needed?

A. In general, a motion to reopen or reconsider must be filed within 30 days of the final adjudication. However, if your application was denied solely based on HIV infection, on or after July 2, 2009, the date of the proposed HHS rule, USCIS will waive the 30 day deadline. USCIS will accept the filing of your motion to reopen or reconsider along with the filing fee.

Q. My application for adjustment of status was denied prior to July 2, 2009, due solely to HIV

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infection. What should I do?

A. You may reapply for adjustment of status, if eligible, once the new rule takes effect on Jan. 4, 2010. USCIS will make a new decision in light of the final HHS rule.

Q. My HIV-positive spouse is processing the immigrant visa through the U.S. consulate overseas. How will the rule change affect my spouse's immigrant visa application abroad?

A. As of Jan. 4, 2010, testing for HIV infection is not required as part of the U.S. immigration medical screening process. For more information on consular processing, visit DOS' Web site, <http://www.state.gov>.

Q. Where can I find information about the HHS rule regarding HIV, and the Technical Instructions for the Medical Examination of Aliens?

A. For more information about the new rule, or to view the rule in its entirety, please visit http://www.cdc.gov/ncidod/dq/laws_regs/fed_reg/remove-hiv/final-rule-hiv.htm
If you want to look at the Technical Instructions for the Medical Examination of Aliens, either for the panel physicians abroad, or the civil surgeons in the United States, please visit CDC's Web site at <http://www.cdc.gov/ncidod/dq/technica.htm>.

Q. Where can I find information about the civil surgeon program, the completion of Form I-693, or adjustment of status?

A. If you have any questions about the civil surgeon program, the completion of Form I-693, or the adjustment of status application, please visit USCIS' Web site at www.uscis.gov, or call USCIS' National Customer Service Center at 1-800-375-5283 (TTY 1-800-767-1833).

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