



## **TO ALL HIV POSITIVE VISITORS COMING TO THE UNITED STATES TO ATTEND THE 2008 HIGH LEVEL MEETING ON HIV/AIDS FROM JUNE 6-12, 2008**

*The following advisory was prepared by Vishal Trivedi, Immigration Project Manager at Gay Men's Health Crisis (GMHC) – Legal Services Department, New York, NY.*

***The objective of this posting is to call your attention to the complexities of United States Immigration Law and Policy as it relates to HIV infection.***

*This posting is solely for informational purposes and should not be considered legal advice. We advise you to seek legal counsel as you consider traveling to the United States.*

### **I. United States Immigration Policy on HIV Positive Individuals**

- ∞ Section 212(a)(1)(A)(i) of the Immigration and Nationality Act provides that applicants for a visa or for admission to the United States are inadmissible if they have “a communicable disease of public health significance.”
- ∞ HIV infection is classified as “a communicable disease of public health significance.”
- ∞ The law provides waivers of inadmissibility for an HIV positive person in certain situations.
- ∞ The waivers are discretionary and granted on a case by case basis.
- ∞ The 2008 High Level Meeting on HIV/AIDS has been classified a “designated event” for which an HIV waiver will be available (“High Level Meeting HIV waiver”).
- ∞ The actual “High Level Meeting HIV waiver” policy text as issued by the U.S. Department of Homeland Security and the U.S. Department of State can be obtained by e-mailing Vishal Trivedi of GMHC at [vishalt@gmhc.org](mailto:vishalt@gmhc.org).

***HIV positive visitors attending the 2008 High Level Meeting on AIDS should be aware of the following:***

If you enter the United States pursuant to a “High Level Meeting HIV waiver,” your HIV status will become a matter of United States Government information.

## **II. If you apply for the High Level Meeting HIV Waiver**

- ∞ If the “High Level Meeting HIV Waiver” is granted or denied at the time of your B-1/B-2 visa application, you should bear in mind that your name may be entered and flagged in the Consular Lookout and Support System (CLASS) and/or the Treasury Enforcement Communications System (TECS) as being HIV positive.
- ∞ CLASS is a database system used by the U.S. Department of State to perform a “name check” when applying for a visa at a U.S. embassy or consulate outside the United States.
- ∞ The TECS is a computer-based index that links telecommunication terminals located in law enforcement facilities of the Department of the Treasury throughout the United States.
- ∞ TECS users include the U.S. Customs and Border Protection, the U.S. Citizenship and Immigration Services, the U.S. Department of State, and the U.S. Department of Justice.
- ∞ If your name is entered and flagged in CLASS and/or TECS as being HIV positive you may be barred from future entry into the United States.
- ∞ You may apply for an HIV waiver for another future visit/event. However, obtaining the waiver may be difficult.

## **III. If you do not apply for the High Level Meeting HIV Waiver**

If you are HIV positive but do not apply for a “High Level Meeting HIV Waiver” and you obtain a B-1/B-2 Visa (or enter on a Visa Waiver Program), the following may occur when entering the United States:

- ∞ If the United States Authorities at your particular port-of-entry are unaware of your HIV positive health status, they may admit you as a temporary visitor in the United States, in which case you may be allowed to remain for six (6) months or less.
- ∞ Visitors entering on the Visa Waiver Program will receive a form I-94W prior to arrival in the United States. The form will ask “Have you ever been afflicted with a communicable disease of public health significance.” HIV is considered a disease of public health significance by the United States Citizenship and Immigration Service.

If the United States Authorities at the port-of-entry suspect that you are HIV Positive (or if you answer “yes” to the question “Have you ever been afflicted with a communicable disease of public health significance” on form I-94W) you may be:

- ∞ Placed in Secondary Inspection<sup>i</sup> and questioned by an official of the U.S. Department of Homeland Security; and/or
- ∞ Placed in Deferred Inspection.<sup>ii</sup>; or
- ∞ Asked to withdraw your application for admission into the U.S.<sup>iii</sup>; or
- ∞ Placed in Expedited Removal Process<sup>iv</sup>; or

- ∞ Placed in an U.S. Department of Homeland Security Detention Center and detained until your case is heard by an Immigration Judge.

Many people who are put into Secondary Inspection refuse to make or sign an admission that they are HIV positive. At this point it is advisable to ask for an attorney. **If you are placed into Secondary Inspection, a Detention Center, or Deferred Inspection, you have the right to contact an attorney for legal assistance.**

Not providing information about your HIV Status to the U.S. Department of Homeland Security can be considered misrepresentation or visa fraud.

#### **IV. HIV Positive Travelers Carrying Medication into the United States**

The written policy of the Immigration Service with respect to any visitor entering with a B-1/B-2 visa is as follows<sup>v</sup>:

1. A visitor will not be asked during “primary inspection” if they are inadmissible under any medical inadmissibility grounds (including HIV/AIDS).
2. A visitor will not be detained for medical exclusion grounds merely on the basis of responses to questions asked by an Immigration Inspector pertaining to the purpose of the visitor’s trip to the United States, e.g., if you state that you are coming to the United States to attend an HIV/AIDS conference.
3. A visitor cannot be detained on the basis of any literature relating to the medical inadmissibility grounds that may be in the visitor’s possession, e.g. carrying prescriptions for medication, prevention material, etc.

***Please note:*** Despite this policy, Immigration Inspectors routinely detain HIV positive visitors to the United States upon finding clearly labeled prescription bottles containing HIV medication.

#### **V. Grounds of Inadmissibility for Visa Applicants, Including HIV**

The following questions are all listed on the Visa Application Form DS-156. **If you answer “Yes” to any of these questions, you may be denied a Visa to enter the United States.**

You may be inadmissible to the United States if you:

1. Have ever been afflicted with a communicable disease of public health significance, a dangerous physical or mental disorder, or been a drug abuser or addict.
2. Have ever been arrested or convicted for any offense or crime, even if you were later pardoned, received amnesty or other similar relief.
3. Have ever unlawfully distributed or sold a controlled substance (drug), or been a prostitute or procurer for prostitutes.
4. Are seeking to enter the United States to engage in export control violations, subversive or terrorist activities, or any other unlawful purpose; are a member or representative of a terrorist organization as currently designated by the United States Secretary of State; have participated in persecutions directed by the Nazi government of Germany; or have participated in genocide.

5. Have ever been refused admission to the United States, are the subject of a deportation/removal hearing, or sought to obtain for yourself or others a visa or any other United States immigration benefit by fraud or willful misrepresentation; have attended a United States public elementary school on student (F) status or public secondary school without reimbursing the school (after November 30, 1967).
6. Have ever departed or remained outside the United States to avoid military service.
7. Have ever violated the terms of a United States visa or been unlawfully present in or deported/removed from the United States.
8. Have ever withheld custody of a United States citizen child outside the United States from a person granted legal custody by a United States Court, voted in the United States in violation of any law or regulation, or renounced United States citizenship for the purpose of avoiding taxation.

***Gay Men's Health Crisis (GMHC)** is a not-for-profit, volunteer-supported and community-based organization committed to national leadership in the fight against AIDS. Our mission is to reduce the spread of HIV disease, help people with HIV maintain and improve their health and independence, and keep the prevention, treatment and cure of HIV an urgent national and local priority. In fulfilling this mission, we will remain true to our heritage by fighting homophobia and affirming the individual dignity of all gay men and lesbians.*

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<sup>i</sup> Secondary Inspection is when you are pulled from the "Primary Inspection" line where you are initially being processed for admission into the United States for further questioning.

<sup>ii</sup> Deferred Inspection is when you are "physically" let into the United States, but have not been "officially admitted" for Immigration Purposes. You are told to report back to a U.S. Customs and Border Protection Office for an interview with an Officer to determine your "admission eligibility".

<sup>iii</sup> If you withdraw your application for admission into the U.S., you will be returned to your home country immediately.

<sup>iv</sup> Expedited Removals were authorized by the U.S. Congress in 1996 which allows Immigration Inspectors to issue "Expedited Removal Orders" against people seeking admission into the U.S. who are deemed to be in blatant violation of the law. An "Expedited Removal Order" will bar you from reentering the U.S. for a period of five years.

<sup>v</sup> See Immigration Commissioners memorandum issued on September 18, 1990 "Inspections Regarding Medical Exclusion Grounds".