

TO ALL HIV POSITIVE VISITORS

**COMING TO THE UNITED STATES TO ATTEND THE
2006 HIGH LEVEL MEETING ON AIDS**

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

- The Immigration & Nationality Act -in Section 212(a)(1)(A)(i)- makes applicants for a visa or for admission to the United States 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.
- These waivers are discretionary and granted on a case by case basis.
- The Attorney General of the United States has named the 2006 High Level Meeting on AIDS 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^[1] and the U.S. Department of State can be obtained by e-mailing Vishal Trivedi of GMHC at vishalt@gmhc.org.

HIV positive visitors attending the 2006 High Level Meeting on AIDS should be aware of the following:

While the “High Level Meeting HIV waiver” permits you to enter the United States if you are HIV positive and will not be recorded permanently in your passport itself, as you will see from the discussion below, any application for entry into the United States asks for disclosure of HIV status and 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 an 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 entries 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 and you do not apply for an “High Level Meeting HIV Waiver” and you obtain a B-1/B-2 Visa (or enter on a Visa Waiver Program), the following possibilities may occur when entering the United States:

- If the United States Authorities at the port-of-entry are unaware of your HIV positive health status, you may be admitted as a temporary visitor in the United States and may be allowed to remain for six (6) months or less.
- For visitors entering on the Visa Waiver Program: you will receive a form I-94W prior to your 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 you to be HIV Positive (or 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 into Secondary Inspection^[2] and questioned by an official of the U.S. Department of Homeland Security; and/or

Placed into Deferred Inspection.^[3]; or

Asked to withdraw your application for admission into the U.S.^[4]; or

- Placed into Expedited Removal Process^[5]; or
 - Placed into 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 and should ask 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

- It has long been the written policy of the Immigration Service, with respect to any visitor entering with a B-1/B-2 visa that^[6]:
 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

Please note: The following questions are all listed on the Visa Application Form OF-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 though (it was the) subject of a pardon, amnesty or other similar legal action. Have ever lawfully distributed or sold a controlled substance (drug), or been a prostitute or procurer for prostitutes.
3. 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. Have participated in genocide.
4. Have ever been refused admission to the United States, or are the subject of a deportation hearing, or sought to obtain, or assisted others to obtain a visa, entry into the United States, or sought to obtain 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.
5. Have ever departed or remained outside the United States to avoid military service.
6. Have ever violated the terms of a United States visa or been unlawfully present in, or deported from the United States.
7. 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.

Please note: In the past, it has been known that “Sex Workers” have been denied entry into the United States when they stated their profession on the Visa applications, or when questioned by the U.S Department of Homeland Security Agents at the ports-of-entry.

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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^[1] On March 1, 2003, the immigration functions of the Immigration and Naturalization Service (INS) in administering and enforcing the Immigration and Nationality Act were transferred to the new Department of Homeland Security (DHS) created by the Homeland Security Act of 2002. The responsibilities of INS have been assumed by three organizations within DHS – U.S. Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CPB).

^[2] 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.

^[3] 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”.

^[4] If you withdraw your application for admission into the U.S., you will be returned to your home country immediately.

^[5] 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.

^[6] *See* Immigration Commissioners memorandum issued on September 18, 1990 “Inspections Regarding Medical Exclusion Grounds”.