

## **U.S. CITIZENSHIP & IMMIGRATION SERVICE NO LONGER BANS ADMISSION OF HIV POSITIVE ALIENS TO THE UNITED STATES**

Beginning on January 4, 2010 HIV is no longer going to be a ground of inadmissibility. For a long time under Section 212(a)(1)(A)(i) of the INA, aliens with HIV were inadmissible to the United States. On November 2, 2009, the Department of Health and Human Services removed HIV from the list of the communicable diseases of public health significance.

The main beneficiaries of the new rule are aliens who are eligible for lawful permanent residence but for their HIV status, and those aliens who do not have a qualifying relative for an HIV waiver. Beneficiaries of approved I-140 Petitions, winners of the Diversity Lottery, siblings of the United States citizens and adult, married sons and daughters of the United States citizens are the main beneficiaries of the new rule.

**Family based applicants.** Siblings of United States citizens, as well as adult married sons and daughters who received prior denials for lack of qualifying relative for an HIV waiver are able to reapply after January 4, 2010, provided they are still eligible to apply for lawful permanent resident status.

**Employment based applicants.** Beneficiaries of the approved I-140 whose applications for green card on Form I-485 were denied for lack of a qualifying relative or their HIV waiver applications were denied may reapply after January 4, 2010 assuming they are still eligible to apply for lawful permanent resident status.

**Diversity visa lottery.** Recent diversity visa lottery applicants with a prior denial on the grounds of an HIV status are not eligible to reapply because their applications for lawful permanent resident status must have been approved by the end of the relevant fiscal year.

### **Public charge and HIV issues.**

Currently HIV applicants gaining admission to the United States must show that U.S. government will not incur any HIV and/or treatment related expenses after admittance of the alien into the United States. Aliens must show proof of having private health insurance. After January 4, 2010 no such proof will be required. This does not mean, however, that a United States consulate abroad will not scrutinize the HIV status closely for public charge determination. Similarly, USCIS will deny an adjustment of status application if a U.S. based applicant has been sick for a while or spent too much time in a nursing facility and is not able to take care of himself.

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