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U.S. Department of Justice
Immigration and Naturalization Service

425 I Street NW
Washington, DC 20536

JUN 16 1999

MEMORANDUM FOR ALL OVERSEAS OFFICES

FROM: John W. Cummings
Deputy Director, Office of
International Affairs

SUBJECT: Guidance Regarding Waivers for HIV+ Refugees

This memorandum supplements the guidance you have already received regarding the filing and adjudication of waiver requests submitted by HIV+ approved refugee applicants who are inadmissible under section 212(a)(1)(A)(i). See attached memoranda issued on September 30, 1993 and April 6, 1994.

To file a waiver request, approved refugee applicants who test HIV+ must currently submit Form I-602, supported by documentation that establishes that:

(1) the danger to the public health of the United States created by his/her admission to the United States would be minimal;
(2) the possibility of the spread of the disease created by his/her admission to the United States would be minimal; and
(3) there would be no cost incurred by any level of government agency in the United States without the prior consent of that agency.

Effective as of this date, District Directors/Officers in Charge shall consider a refugee's eligibility for federally-funded programs such as Medicaid, Refugee Medical Assistance, and the variety of services provided under the Ryan White CARE Act as sufficient to meet the third of these filing requirements – i.e., proof that no cost will be incurred by any level of government agency in the United States without the prior consent of that agency. No documentation of individual eligibility for HIV+ treatment or health care coverage in the United States is required to supplement Form I-602. Waiver requests must, however, continue to be documented to show that the refugee has been counseled to ensure that he or she understands how HIV is transmitted and is aware of the precautions which must be taken to prevent its spread.

This change in the evidentiary requirements for HIV+ waiver requests made by refugees is based on a recent letter from the Surgeon General to Commissioner Meissner. In that letter, the Surgeon General states that the United States Government's provision of services to HIV+ individuals "provides adequate support for refugees who are HIV-positive upon their admission to the United States and during their transition to full participation in our society." The Service has determined that, with respect to refugees seeking a waiver, this commitment from the federal government to provide adequate support to HIV+ refugees meets the consent component of the waiver requirement.

The preceding guidance applies only to refugee cases. For individuals seeking admission to the United States as immigrants, the third prong may still be supported by such documentation as: proof of health insurance coverage under a plan held by a family member, evidence of financial resources necessary to cover projected medical costs of HIV treatment, statements from specific private/government health care and research facilities assuming responsibility for treatment, and statements of consent from local or state health care officials. For those applicants who will receive publicly funded medical treatment for HIV/AIDS from any local, state or federal agency, the head of the agency (or his or her designee) must issue the formal consent.

If you require additional guidance on specific HIV+ waiver requests filed by approved refugee applicants, please contact the Refugee Division at 202-305-2662.

Attachments

Memorandum

CO-100\8.3.2

Subject	Date
Waiver Requests from Refugees who Test Positive for Human Immunodeficiency Virus	SEP 30 1993

To: All INS Overseas Offices

From: Office of International Affairs

This memorandum is a reminder of the HIV+ waiver procedures currently in place and the documentation that must accompany an I-602 filed by an approved refugee applicant who tests positive for the human immunodeficiency virus. Form I-602 will continue to be used for refugee waivers until such time as the new waiver form, I-724, becomes available.

Responsibilities of the District Director/Officer in Charge in HIV+ Cases

Section 207(c)(3) of the Immigration and Nationality Act provides that the Attorney General, in her discretion, may waive certain grounds of inadmissibility for refugees, including section 212(a)(1)(A)(i) which excludes aliens who have been determined to have a communicable disease of public health significance. Waivers may be granted for humanitarian purposes, to assure family unity, or when it is in the public interest. In such cases, 8 CFR 207.3(b) specifies that an Application by Refugee for Waiver of Grounds of Excludability, Form I-602, is filed with the Officer in Charge before whom the application for refugee status (I-590) is pending.

The District Director/Officer in Charge must first weigh the facts in each case and determine whether humanitarian, family unity or public interest grounds exist. Once that determination has been made, the District Director/Officer in Charge will determine whether discretion is to be exercised. Under existing guidelines--wires of 7/6/87 (CO 234-P), 3/2/88 (CO 234-P, and 8/8/88 (CO 234-C)--Immigration and Naturalization Service (INS) officers may not exercise the discretionary authority of the Attorney General unless the approved refugee applicant is able to establish that:

(1) the danger to the public health of the United States created by his/her admission to the United States would be minimal;

(2) the possibility of the spread of the disease created by his/her admission to the United States would be minimal; and

(3) there would be no cost incurred by any level of government agency in the United States without the prior consent of that agency.

Documentation Required to Accompany Form I-602

Before accepting an HIV+ waiver request for adjudication, a District Director/Officer in Charge should determine whether the refugee has met the preceding requirements. Waiver requests submitted without documentation that addresses each of these requirements are not properly filed and should be returned to the applicant or his/her representative.

While there are no uniform documentation requirements, the supporting materials for an I-602 should establish to the Officer in Charge's satisfaction that the refugee has been medically counseled, i.e., understands how HIV is transmitted and is aware of the precautions which must be taken to prevent its spread. It is expected that such counseling would be conducted and documented by panel physicians working with the U.S. refugee program at refugee processing posts.

Proof that no cost would be incurred by any government agency without its consent could include, but not be limited to 1) health insurance coverage under a plan held by a family member already in the United States; 2) evidence of financial resources commensurate with the projected medical costs of HIV+ treatment such as letters from a family member's employer, bank statements, recent pay stubs, or recent tax forms; 3) statements of consent from local or state health care officials with responsibility for the area in which the HIV+ applicant, if admitted, would resettle; and 4) statements from specific private or government health care and research facilities assuming responsibility for treatment.

Once the waiver application has been properly documented and filed, the District Director/Officer in Charge must put his/her decision regarding the waiver request in writing. This decision, whether an approval or denial, is to be certified to the Office of Administrative Appeals (AAU) using Form I-290C. Please note that the applicant must be afforded the appropriate period of time to respond to the certification before the entire record of proceeding (application, documentation, decision, and response of the applicant) is forwarded to the AAU.

When AAU has made a final decision, the record of proceeding will be returned to the District Director/Officer in Charge for preparation of the approval notice, if appropriate, and final processing.

If you require additional guidance on specific HIV+ waiver requests, you should contact the Refugee Division of the Office of International Affairs. As needed, Refugee Division staff will contact AAU for their guidance.

John W. Cummings
Acting Director

Memorandum

Subject	Date
Additional Guidance Regarding Waiver Requests from Refugees who Test Positive for Human Immuno-deficiency Virus	APR 6 1994

To All INS Overseas Offices From HQIAO

As stated in my memorandum to you of September 30, 1993 (copy attached), an Immigration and Naturalization Service (INS) officer may not exercise the discretionary authority of the Attorney General to waive the exclusion of an HIV+ approved refugee applicant unless the applicant is able to establish:

(1) the danger to the public health of the United States created by his/her admission to the United States would be minimal;

(2) the possibility of the spread of the disease created by his/her admission to the United States would be minimal; and

(3) there would be no cost incurred by any level of government agency in the United States without the prior consent of that agency.

It has come to my attention that there may be some confusion regarding the documentation needed to meet the third of these requirements for the submission of a waiver request. The following guidance restates the types of evidence that INS Headquarters has determined will satisfy the consent requirement.

Proof that no cost would be incurred by any government agency without its consent can include, but is not limited to:

(1) health insurance coverage under a plan held by a family member already in the United States;

(2) evidence of financial resources commensurate with the projected medical costs of HIV+ treatment such as letters from a family member's employer, bank statements, recent pay stubs, or recent tax forms;

(3) statements of consent from local or state health care officials with responsibility for the area in which the HIV+ applicants, if admitted, would resettle; or

(4) statements from specific private or government health care and research facilities assuming responsibility for treatment.

An applicant meeting any one of these criteria or providing similar materials/documentation will be viewed as having satisfied the third requirement for the submission of an I-602 waiver request.

It is our understanding that some voluntary agencies believe that INS requires a Form I-134, Affidavit of Support, to be submitted with an I-602 from an HIV+ approved refugee applicant. We ask that you advise the agencies with which you deal that it is INS policy in HIV+ waiver cases to accept documentation in th forms just described. The submission of an I-134 is not required. Individuals or organizations wishing to submit an I-134 as proof of "financial resources commensurate with the projected medical costs of HIV+ treatment" may, of course, do so, but should be advised that an I-134 is not the only evidence that will satisfy th requirement that no cost be incurred by any government agency without its prior consent.

Should you have any questions regarding the preceding discussion, please contact the Refugee Division of the Office of International Affairs. As needed, the Refugee Division staff will contact the Administrative Appeals Unit for their guidance.

John W. Cummings
Acting Director

Attachment

cc: Administrative Appeals Unit

CO-100\8.3.2

Subject	Date
Waiver Requests from Refugees who Test Positive for Human Immunodeficiency Virus	SEP. 30 1993

To: All INS Overseas Offices

From: Office of International Affairs

This memorandum is a reminder of the HIV+ waiver procedures currently in place and the documentation that must accompany an I-602 filed by an approved refugee applicant who tests positive for the human immunodeficiency virus. Form I-602 will continue to be used for refugee waivers until such time as the new waiver form, I-724, becomes available.

Responsibilities of the District Director/Officer in Charge in HIV+ Cases

Section 207(c)(3) of the Immigration and Nationality Act provides that the Attorney General, in her discretion, may waive certain grounds of inadmissibility for refugees, including section 212(a)(1)(A)(i) which excludes aliens who have been determined to have a communicable disease of public health significance. Waiver may be granted for humanitarian purposes, to assure family unity, or when it is in the public interest. In such cases, 8 CFR 207.3(b) specifies that an Application by Refugee for Waiver of Grounds of Excludability, Form I-602, is filed with the Officer in Charge before whom the application for refugee status (I-590) is pending.

The District Director/Officer in Charge must first weigh the facts in each case and determine whether humanitarian, family unity or public interest grounds exist. Once that determination has been made, the District Director/Officer in Charge will determine whether discretion is to be exercised. Under existing guidelines--wires of 7/6/87 (CO 234-P), 3/2/88 (CO 234-P, and 8/8/88 (CO 234-C)--Immigration and Naturalization Service (INS) officers may not exercise the discretionary authority of the Attorney General unless the approved refugee applicant is able to establish that:

(1) the danger to the public health of the United States created by his/her admission to the United States would be minimal;

If you require additional guidance on specific HIV+ waiver requests, you should contact the Refugee Division of the Office of International Affairs. As needed, Refugee Division staff will contact AAU for their guidance.

John W. Cummings
Acting Director

Talking Points: Change in HIV Waiver Filing Requirements for Refugees
June 16, 1999

- To be resettled in the United States, an individual who has been determined to qualify for classification as a refugee under section 101(a)(42) of the INA also must be otherwise admissible. For refugees, the INA permits the Attorney General to waive many grounds of inadmissibility for humanitarian reasons, to assure family unity, or for other reasons in the public interest.

- An approved refugee applicant who tests positive for HIV is inadmissible to the United States under section 212(a)(1)(A)(I) of the INA. The INA authorizes the Attorney General to waive this ground of inadmissibility for certain immigrants, including refugees.

- The INS policy for filing waiver requests requires all eligible immigrants who test HIV+ to submit documentation establishing that their admission to the United States will not endanger the public health and that no cost will be incurred by any level of government agency without the prior consent of that agency. These requirements also extend to refugees.

- The filing requirements, set out in 1987, were based directly on guidelines issued by the INS for the consideration of waiver requests made by HIV+ legalization applicants. For legalization applicants, who were already living in the United States, the prior consent requirement was not necessarily difficult to establish. For refugees, however, it was often difficult to obtain the necessary prior consent from outside the United States.

- Only the few refugees who individually could show proof of coverage under health insurance held by family members already in the United States or who could document their eligibility for HIV treatment programs could meet the prior consent prong of the INS waiver filing requirements. As a result, many persons who were found by INS officers to have a well-founded fear of persecution and then tested HIV+ were unable to submit waiver requests.

- Some of these refugees are separated from family members who are resettled in the United States. Others are at increased risk in their host countries because of their medical condition.

- These concerns, along with changes in the treatment of HIV+ individuals, led to a reevaluation of INS' filing requirements for HIV waiver requests.

- On June 16, INS Headquarters issued amended guidance to our overseas offices regarding the filing of HIV waiver requests and the types of evidence necessary to meet the prior consent requirement. The new guidance does not alter the current requirements.

- This means that the INS will continue to ask refugees who test HIV+ to provide individualized proof that their admission to the United States will not endanger the public health but will no longer require these refugees to establish *individually* prior consent by government agencies with regard to health care. The INS instead will consider a refugee's eligibility for federally-funded health care programs to meet the prior consent filing requirement.

- These programs include Medicaid, Refugee Medical Assistance and the variety of services provided under the Ryan White CARE Act.

- This procedural change is based on a recent letter from the Surgeon General to Commissioner Meissner. In his letter, the Surgeon General states that the U.S. Government's provision of services to HIV+ individuals "provides adequate support for refugees who are HIV-positive upon their admission to the United States and during their transition to full participation in our society."

- This change in the filing requirements should allow all approved refugee applicants who test HIV+ and who can establish that they do not pose a risk to the public health to submit waiver requests and have those requests decided by INS.

- The decision to ultimately grant or deny the waiver remains discretionary, however, and is unaffected by the new guidance. Under section 207 of the INA, a refugee's inadmissibility may be waived only for humanitarian purposes, to assure family unity or for reasons in the public interest. Waiver decisions will continue to be made on a case-by-case basis.

If asked:

INS estimates that there are between 200-300 approved refugee applicants worldwide who have tested HIV+ following their refugee determinations over the last several years. Over this period, INS has approved over 80,000 refugees each year.

Questions regarding Guidance on Waiver Procedures for Refugees Who Test HIV+

Background: Refugees are subject to the medical grounds of inadmissibility listed in section 212 (a)(1)(A) of the INA, including HIV infection, a communicable disease of public health significance. In 1987, INS first issued guidance on filing requirements for waiver requests of refugees who test HIV+. On June 16, INS issued additional guidance.

Q. What is the current INS policy for refugees who test HIV+?

A. To submit an application for a waiver of grounds of inadmissibility due to HIV infection, INS guidance requires that an approved refugee applicant submit documentation establishing that:

(1) the danger to the public health of the United States created by his/her admission to the United States would be minimal;
(2) the possibility of the spread of the disease created by his/her admission to the United States would be minimal; and
(3) there would be no cost incurred by any level of government agency in the United States without the prior consent of that agency.

Properly filed waiver applications are decided on a case-by-case basis and may be approved for humanitarian or public interest reasons or to assure family unity.

Q. What exactly is the change in procedure?

A. In the past, the third requirement only could be met through documentation of individual eligibility for HIV+ treatment or health care coverage in the United States. Effective June 16, INS will consider the federally-funded programs and services available to refugees who test HIV+ to be sufficient to satisfy the third filing requirement – i.e., proof that no cost will be incurred by any level of government agency in the United States without the prior consent of that agency.

INS will continue to require individual evidence that the first 2 filing requirements have been met. These must be satisfied through documentation demonstrating that the refugee has been counseled to ensure that he or she understands how HIV is transmitted and has understood and agrees to undertake all precautions necessary to prevent its spread.

This procedural change relates to waiver filing requirements only. The waiver adjudication procedures remain unchanged. As provided by statute, the Attorney General has the discretionary authority to grant a waiver for humanitarian purposes, to assure family unity or when it is otherwise in the public interest.

Q. Why is INS making this change now?

A. In 1987, when INS initially drafted the waiver filing requirements for approved refugee applicants who test HIV+, less was known about the nature and effective treatment of the disease. Over the past 12 years, HIV treatment programs have multiplied and the Department of Health and Human Services now believes that a nationwide HIV healthcare network is in place. The Surgeon General has advised the INS that the United States' provision of services to HIV+ individuals "provides adequate support for refugees who are HIV-positive upon their admission to the United States and during their transition to full participation in our society."

Q. Do we know now how many refugees who have been screened for refugee status by the United States have tested positive for HIV?

A. We estimate that a total of between 200 and 300 approved refugee applicants have tested HIV+ following their refugee determinations over the past several years. In each of these years, we estimate that more than 80,000 refugees were preliminarily approved for resettlement and then underwent medical screening.

Q. Does this mean that all HIV+ immigrants can now come to the United States?

A. No. The June 16 guidance applies only to waiver filing requirements in refugee cases. For individuals seeking admission to the United States as immigrants, waiver filing requirements remain unchanged. The INS will continue to adjudicate all waiver requests on a case-by-case basis.

Q. Why does the new guidance apply only to refugees and not to other HIV+ immigrants?

A. The new guidance applies only to refugees because they are eligible for the federal health programs identified in the Surgeon General's letter. Other categories of immigrants are not necessarily eligible for these programs. The INS may adopt other changes to the HIV+ waiver rules for non-refugees in future guidance.

Q. What are the federally-funded treatment programs available to refugees who test HIV+?

A. According to the Department of Health and Human Services (HHS), a variety of programs are available to refugees who test positive for HIV.

The Refugee Medical Assistance (RMA) program provides for the health care of low-income refugees not covered by Medicaid (primarily single adults and couples without children) upon their admission to the United States. This coverage includes primary health care and some ancillary support services and is substantially equivalent to those services provided by Medicaid.
Some refugees will be immediately eligible for Medicaid. All states extend Medicaid eligibility to individuals meeting certain financial and categorical criteria (i.e., a member of a group such as pregnant women, dependent children, disabled persons and the aged).

In addition to RMA and Medicaid, refugees also may be eligible for a variety of services supported through the Ryan White CARE Act, which is administered by HHS. These services include primary care, prescription drug benefits, case management, and translation services. A basic level of HIV related care is available to refugees in most communities through CARE Act funded services.

(Any additional questions on availability of services and funding should be referred to HHS.)

Q. Why should U.S taxpayers have to pay for the treatment of refugees who test HIV+?

A. It is consistent with our humanitarian traditions and our international obligations for the United States to offer refuge to many of the world's persecuted people. Prospective medical costs are not a consideration when determining eligibility for refugee status in the United States. In fact, by law refugees are exempt the public charge restrictions that other immigrants face.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary
Office of Public Health and Science

Assistant Secretary for Health
Surgeon General
Washington, D.C. 20201

MAY 21 1999

The Honorable Doris Meissner
Commissioner
Immigration and Naturalization Service
425 I Street, N.W.
Washington, D.C. 20536

Dear Ms. Meissner:

On behalf of the Secretary of Health and Human Services Donna Shalala, let me thank you for your attention to the health needs of refugees seeking entry to the United States. I understand that you are interested in obtaining information related to the programs that refugees who test positive for the human immunodeficiency virus (HIV), are eligible to receive including the Medicaid program, the Refugee Medical Assistance (RMA) program, and the Ryan White CARE Act (RWCA).

RMA provides for the health care of low-income refugees during their first eight months in the United States for those individuals not covered by Medicaid (primarily, single adults and couples without children). This coverage includes primary health care and some ancillary support services and is substantially equivalent to these services provided by Medicaid.

All States extend Medicaid eligibility to pregnant women with incomes below 185 percent of the Federal poverty level; children less than age 6 in families with income below 133 percent of the Federal poverty level; children between ages 6 and 15 in families with income below 100 percent of the Federal poverty level; and, by 2002, children between ages 16 and 18 in families with income below 100 percent of the Federal poverty level. Many States currently provide coverage to all children under age 19 and to a higher percent of the Federal poverty level than required under Federal law.

In addition to the groups eligible for Medicaid described in the preceding paragraph, an individual may be eligible for Medicaid if aged or determined to be disabled. To be determined disabled, the individual must at a minimum meet the disability definition used by Social Security Administration for the Supplemental Security Income program. This definition requires that the applicant be unable to work because of a physical or mental condition which has lasted or is expected to last for 12 months or result in death. An individual who is HIV-positive but without specific manifestations of AIDS or evidence that because of his/her condition is unable to work will not be found disabled.

Once an individual is found to meet the Medicaid financial and categorical criteria (i.e. a member of a group such as pregnant women, dependent children, disabled persons and the aged), the applicant, if an alien, must meet the restrictions on eligibility of aliens. All aliens entering the United States on or after August 22, 1996, are barred from receipt of Medicaid, except for treatment of an emergency medical condition, for five years after entry. Refugees and certain other groups are exempt from this bar for seven years after entry to the United States. Therefore, a Medicaid eligible refugee may receive full Medicaid benefits.

In addition to RMA and Medicaid, refugees may also be eligible for a variety of services supported through the Ryan White CARE Act (RWCA), which is administered by the Health Resources and Services Administration of the Department of Health and Human Services. These services include primary care, prescription drug benefits, case management, and translation services. Though the range and availability of CARE Act funded services varies from area to area, we are confident that a basic level of HIV-related care is available in most communities. Ryan White CARE Act funds are not restricted from serving refugees or immigrants.

Our Office of Refugee Resettlement is working with your staff and those from other agencies of HHS to develop a pilot program for serving HIV-positive refugees. This prospective initiative may include training of private resettlement agency staff in HIV-related issues, support for accessing community-based HIV resources, and other components to improve awareness of and access to the broad array of publicly and privately supported programs for individuals living with HIV and AIDS. We look forward to developing this pilot and jointly assessing the benefits of an enhanced service program that will utilize service providers and materials that are linguistically and culturally appropriate for the refugee populations.

In our view, the country's commitment to providing services to HIV-positive individuals provides adequate support for refugees who are HIV-positive upon their admission to the United States and during their transition to full participation in our society.

Thank you again for your continuing efforts to provide for those individuals most in need. We stand ready and willing to continue our work together on their behalf.

Sincerely yours,

David Satcher, M.D., Ph.D.
Assistant Secretary for Health and
Surgeon General

Immigration & Naturalization Service

Refugee Division

Union Labor Life Insurance Building (ULLICO)
111 Massachusetts Avenue N.W. 3rd Fl.
Washington, DC 20536
Phone: (202) 305-2662; Fax: (202) 514-0560

To: Todd Summers *Date:* 6/2

Fax No: 456-2438 *Total # of pages:* 3
(Including cover)

From:	✓*Kathleen Thompson*	*Janelle Jones*
	Ralph Foelster	*Ross Anderson*
	Karen McCoy	*Jim Lassiter*
	Todd Gardner	*Robyn Brown*

Comments:
Talking points on #IV refugee waivers

Office of International Affairs

[redacted]

Change in HIV Waiver Filing Requirements for Refugees

- To be resettled in the United States, an individual who has been determined to qualify for classification as a refugee under section 101(a)(42) of the INA also must be otherwise admissible. An approved refugee applicant who subsequently tests positive for HIV is inadmissible to the United States under section 212(a)(1)(A)(i) of the INA. However, as is the case with most of the grounds of inadmissibility that affect refugees, a waiver is available.

- Until recently, to file a waiver request for INS consideration, HIV+ refugees were required to submit documentation that established that their admission to the United States would not endanger the public health and that " no cost would be incurred by any level of government agency without the prior consent of that agency."

- When the filing requirement for HIV+ refugee waivers was drafted in 1987, the language used was taken directly from the requirements, which had been imposed, on HIV+ legalization applicants. However, although the prior consent language worked well in the legalization context, where individuals were already in the United States, it proved problematic for refugees attempting to meet the filing requirements from a third country.

- Only the few refugees who could show proof of coverage under health insurance held by family members already in the United States or who had the financial resources needed to meet the cost of HIV treatment could meet the prior consent prong of INS' waiver filing requirements. As a result, many persons who were found by INS officers to have a well-founded fear of persecution and then tested HIV+ were unable to submit Waiver requests.

- As a result, some refugees have had to stay behind when the other members of their family traveled to the United States. In other approved cases, no one has been able to travel, as the individual who tested HIV+ was the principal member of the case. In several instances, countries of first asylum, upon learning of the HIV+ status of a refugee case, have returned the members of

that case to their home country or have imprisoned the individual who tested HIV+.

- These outcomes, particularly the protection concerns raised by the return of refugees to countries where they have been determined to face persecution, have resulted in a reevaluation of INS' filing requirements for HIV waiver requests.

- On June xx, INS Headquarters issued guidance to our overseas offices regarding the filing of HIV waiver requests. Under the new guidance, INS will require refugees who submit waiver applications to establish that their admission to the United States will not compromise the public health. HIV+ refugees will no longer be required to establish individually that "no cost would be incurred by any level of government agency without the prior consent of that agency" to submit a waiver application, Form I-602.

- This change is based on a recent letter from the Surgeon General to Commissioner Meissner. In his letter, the Surgeon General states that the U.S. Government's provision of services to HIV+ individuals "provides adequate support for refugees who are HIV-positive upon their admission to the United States and during their transition to full participation in our society." INS officers have, therefore, been instructed to consider a refugee's eligibility for federally-funded health care programs (Medicaid, Refugee Medical Assistance and the variety of services provided under the Ryan White CARE Act) to meet the prior consent filing requirement.

- This change in the filing requirements will allow all approved refugee applicants who test HIV+ to submit waiver requests and have those requests considered by INS.

- The decision to grant or deny the waiver, is a discretionary one and is unaffected by the June xx guidance. Under section 207 of the INA, a refugee's inadmissibility may be waived only for humanitarian purposes, to assure family unity or for reasons in the public interest. Waiver decisions will continue to be made on a case-by-case basis.

DEPARTMENT OF HEALTH & HUMAN SERVICES
Chief of Staff
Washington, D.C. 20201

FACSIMILE

DATE: 6/7/99

TO: Todd Summers

FAX#: 1256-2438

FROM: Elizabeth Summy
Deputy Chief of Staff

Phone: 202/690-7431 Fax: 202/401-5783

COMMENTS:

Health needs of Refugees entering the United States

3 **Pages [including this cover]**

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of the Secretary
Office of Public Health and Science

Assistant Secretary for Health
Surgeon General
Washington, D.C. 20201

MAY 21 1999

The Honorable Doris Meissner
Commissioner
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425 I Street, N.W.
Washington, D.C. 20536

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In addition to the groups eligible for Medicaid described in the preceding paragraph, an individual may be eligible for Medicaid if aged or determined to be disabled. To be determined disabled, the individual must at a minimum meet the disability definition used by Social Security Administration for the Supplemental Security Income program. This definition requires that the applicant be unable to work because of a physical or mental condition which has lasted or is expected to last for 12 months or result in death. An individual who is HIV-positive but without specific manifestations of AIDS or evidence that because of his/her condition is unable to work will not be found disabled.

Once an individual is found to meet the Medicaid financial and categorical criteria (i.e. a member of a group such as pregnant women, dependent children, disabled persons and the aged), the applicant, if an alien, must meet the restrictions on eligibility of aliens. All aliens entering the United States on or after August 22, 1996, are barred from receipt of Medicaid, except for treatment of an emergency medical condition, for five years after entry. Refugees and certain other groups are exempt from this bar for seven years after entry to the United States. Therefore, a Medicaid eligible refugee may receive full Medicaid benefits.

In addition to RMA and Medicaid, refugees may also be eligible for a variety of services supported through the Ryan White CARE Act (RWCA), which is administered by the Health Resources and Services Administration of the Department of Health and Human Services. These services include primary care, prescription drug benefits, case management, and translation services. Though the range and availability of CARE Act funded services varies from area to area, we are confident that a basic level of HIV-related care is available in most communities. Ryan White CARE Act funds are not restricted from serving refugees or immigrants.

Our Office of Refugee Resettlement is working with your staff and those from other agencies of HHS to develop a pilot program for serving HIV-positive refugees. This prospective initiative may include training of private resettlement agency staff in HIV-related issues, support for accessing community-based HIV resources, and other components to improve awareness of and access to the broad array of publicly and privately supported programs for individuals living with HIV and AIDS. We look forward to developing this pilot and jointly assessing the benefits of an enhanced service program that will utilize service providers and materials that are linguistically and culturally appropriate for the refugee populations.

In our view, the country's commitment to providing services to HIV-positive individuals provides adequate support for refugees who are HIV-positive upon their admission to the United States and during their transition to full participation in our society.

Thank you again for your continuing efforts to provide for those individuals most in need. We stand ready and willing to continue our work together on their behalf.

Sincerely yours,

David Satcher, M.D., Ph.D.
Assistant Secretary for Health and
Surgeon General

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary
Office of Public Health and Science

Assistant Secretary for Health
Surgeon General
Washington, D.C. 20201

MAY 21 1999

The Honorable Doris Meissner
Commissioner
Immigration and Naturalization Service
425 I Street, N.W.
Washington, D.C. 20536

Dear Ms. Meissner:

On behalf of the Secretary of Health and Human Services Donna Shalala, let me thank you for your attention to the health needs of refugees seeking entry to the United States. I understand that you are interested in obtaining information related to the programs that refugees who test positive for the human immunodeficiency virus (HIV), are eligible to receive including the Medicaid program, the Refugee Medical Assistance (RMA) program, and the Ryan White CARE Act (RWCA).

RMA provides for the health care of low-income refugees during their first eight months in the United States for those individuals not covered by Medicaid (primarily, single adults and couples without children). This coverage includes primary health care and some ancillary support services and is substantially equivalent to those services provided by Medicaid.

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In addition to the groups eligible for Medicaid described in the preceding paragraph, an individual may be eligible for Medicaid if aged or determined to be disabled. To be determined disabled, the individual must at a minimum meet the disability definition used by Social Security Administration for the Supplemental Security Income program. This definition requires that the applicant be unable to work because of a physical or mental condition which has lasted or is expected to last for 12 months or result in death. An individual who is HIV-positive but without specific manifestations of AIDS or evidence that because of his/her condition is unable to work will not be found disabled.

Once an individual is found to meet the Medicaid financial and categorical criteria (i.e. a member of a group such as pregnant women, dependent children, disabled persons and the aged), the applicant, if an alien, must meet the restrictions on eligibility of aliens. All aliens entering the United States on or after August 22, 1996, are barred from receipt of Medicaid, except for treatment of an emergency medical condition, for five years after entry. Refugees and certain other groups are exempt from this bar for seven years after entry to the United States. Therefore, a Medicaid eligible refugee may receive full Medicaid benefits.

In addition to RMA and Medicaid, refugees may also be eligible for a variety of services supported through the Ryan White CARE Act (RWCA), which is administered by the Health Resources and Services Administration of the Department of Health and Human Services. These services include primary care, prescription drug benefits, case management, and translation services. Though the range and availability of CARE Act funded services varies from area to area, we are confident that a basic level of HIV-related care is available in most communities. Ryan White CARE Act funds are not restricted from serving refugees or immigrants.

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In our view, the country's commitment to providing services to HIV-positive individuals provides adequate support for refugees who are HIV-positive upon their admission to the United States and during their transition to full participation in our society.

Thank you again for your continuing efforts to provide for those individuals most in need. We stand ready and willing to continue our work together on their behalf.

Sincerely yours,

David Satcher, M.D., Ph.D.
Assistant Secretary for Health and
Surgeon General

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary
Office of Public Health and Science

Assistant Secretary for Health
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Assistant Secretary for Health and
Surgeon General

Office of HIV/AIDS Policy

Office of Public Health and Science
U.S. Public Health Service/DHHS
200 Independence Avenue, S.W.
Washington, D.C. 20201
Tel. (202) 690-5560

☐ Room 736-E
Fax. (202) 690-6584

☐ Room 736-E
Fax. (202) 690-7560

TO: Todd Summers
(202) 456-2438

FROM: Glen E. Harelson

(This fax contains **2 pages + cover**)

IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION PLEASE CALL Terrie Alvarez at 202-690-5560

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary
Office of Public Health and Science

Assistant Secretary for Health
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Assistant Secretary for Health and
Surgeon General

OFFICE OF NATIONAL AIDS POLICY

EXECUTIVE OFFICE OF THE PRESIDENT
THE WHITE HOUSE

FACSIMILE TRANSMITTAL SHEET

TO: Barbara Stuck FROM: Todd Summers

COMPANY: DATE:

FAX NUMBER: 305-0134 TOTAL NO. OF PAGES INCLUDING COVER:

PHONE NUMBER:

RE:

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Latest — they're ready to sign and send if this works for you. Please advise —

Todd

736 Jackson Place
Washington, DC 20503
(202) 456-2437
(202) 456-2438 (fax)

The Honorable Doris Meissner
Commissioner
Immigration and Naturalization Service
425 I Street, N.W.
Washington, D.C. 20536

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Assistant Secretary for Health and
Surgeon General

Office of HIV/AIDS Policy

Office of Public Health and Science
Office of the Secretary
200 Independence Avenue, S.W., 736E
Washington, D.C. 20201

Deliver To: Todd

Fax: ( ) 456-2438

Phone: ( )

From: Deborah von Zinkernagel
Deputy Director for Policy
Phone: (202) 690-5560
Fax: (202) 690-6584
E-mail: (202) DvonZinkernagel@osophs.dhhs.gov

Date: ___/___/___

This fax contains 8 page(s) plus cover

If transmission problems occur, please call: Shellie Abramson @(202) 690-5560

Comments: Draft letter to be signed - I'll ok Disregard draft

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary
Office of Public Health and Science

Assistant Secretary for Health
Surgeon General
Washington, D.C. 20201

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Assistant Secretary for Health and
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Office of HIV/AIDS Policy

Office of Public Health and Science
Office of the Secretary
200 Independence Avenue, S.W., 736E
Washington, D.C. 20201

Deliver To: Todd S.

Fax: ( ) 456-2438

Phone: ( )

From: Deborah von Zinkernagel
Deputy Director for Policy
Phone: (202) 690-5560
Fax: (202) 690-6584
E-mail: (202) DvonZinkernagel@osophs.dhhs.gov

Date: ____/____/____

This fax contains 8 page(s) plus cover

If transmission problems occur, please call: Shellie Abramson @(202) 690-5560

Comments:

United States Department of Justice
Immigration and Naturalization Service
Office of the Executive Associate Commissioner
Policy and Planning
425 I Street, N.W.
Washington, D.C. 20536

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There is a restriction on Medicaid coverage for non-citizens. However, that restriction is waived for all refugees for their first five years after arrival; for those that qualify for Medicaid because they are elderly or disabled, this restriction is waived for seven years (an additional two years). Additionally, States may, at their option, extend these waiver periods.

In addition to RMA and Medicaid, refugees may also be eligible for a variety of services supported through theRWCA, which is administered by the Health Resources Services Administration of Department of Health and Human Services. These services include primary

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In our view, the country's commitment to providing services to HIV+ upon their admission to the United States and during their transition to full participation in our society.

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Assistant Secretary for Health and
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Hmn Doris Meissner

Commissioner, INS

425 I St NW

DC 20536

United States Department of Justice
Immigration & Naturalization Service
Office of the Executive Associate Commissioner
Policy and Planning
425 I Street, NW
Washington, D.C. 20536
Phone: 202-514-3242 / Fax: 202-305-0134

Fax Cover Sheet

To: Todd Summers **From:** B. Strack

Fax: **Pages:** 2

Phone: **Date:** 5/12

Re:

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:**

Sorry – I'm stuck in meetings.
We feel HHS still needs a stronger statement of assessment + conclusion like the attached. Pls. feel free to call Janelle or Mary to discuss, or I'll call later today.

INS Proposed Revisions to Draft HIV+ Refugee Letter
5/6/99

First paragraph, second sentence: Revise to read "I understand that you are interested in obtaining information related to our assessment of the health care available to refugees positive for the human immunodeficiency virus (HIV), including programs that they are eligible to receive, such as the Medicaid program, ..."

Insert a new paragraph before the closing paragraph: "In my [our?] view, the country's commitment to providing services to HIV+ individuals provides adequate support for refugees who are HIV+ upon their admission to the United States and during their transition to full participation in our society."

OFFICE OF NATIONAL AIDS POLICY

EXECUTIVE OFFICE OF THE PRESIDENT
THE WHITE HOUSE

FACSIMILE TRANSMITTAL SHEET

TO: Barbara Stark FROM: 5/13/99

COMPANY: DATE:

FAX NUMBER: TOTAL NO. OF PAGES INCLUDING COVER:

PHONE NUMBER:

RE:

☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Revised

Call me -

Todd

736 Jackson Place
Washington, DC 20503
(202) 456-2437
(202) 456-2438 (fax)