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JOINT WORKING GROUP ON HIV REFUGEES

MEETING 8 NOVEMBER 1999

AGENDA

10:00 am – Overview of purposes of the meeting – Lavinia Limon, Director, Office of Refugee Resettlement, DHHS

10:15 am – Overview of the ORR-funded program for resettling HIV+ refugees and discussion – David B. Smith, Associate Director, International and Refugee Health, DHHS

11:00 am – Overseas medical screening, HIV+ waiver preparation, counseling on HIV/AIDS, transmission of medical information to the allocation process – Susan Cookson, CDC and Elise Kleinwaks, PRM

11:30 am – Allocation of HIV+ refugees – Jan Belz, Bureau of Population, Refugees and Migration, DOS and Lavinia Limon

12:30 pm – Lunch on your own

1:15 pm – Reporting on status and outcomes of HIV+ refugees – Marta Brenden, ORR

1:45 pm – The ORR technical assistance and coordination grant – Lavinia Limon

U.S. RESETTLEMENT FOR HIV+ REFUGEES

(Discussion Draft)

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INS will review rejected waiver applications for some reasonable period of time

to assure that policy is uniformly and correctly implemented.

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- assistance in identifying HIV/AIDS resources in communities where the refugee wishes to move and connecting the HIV+ refugee to them.

ORR has funded IRSA to provide technical assistance to the six funded sites and assist with monitoring the program

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HIV+ refugees will be resettled at the ORR-funded site nearest the family, if this is possible.

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DHHS and PRM agree with respect to these cases, that a case-by-case determination be made whether these HIV refugees should go to the sites where their relatives reside or to one of the sites funded specially to resettle HIV refugees. DHHS and PRM further agree that alternative sites must be able to provide for effective patient care and protection of the public health.

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The following should be in place at sites before they begin to receive HIV+ refugees for resettlement. As indicated above, DHHS would like this to apply to sites funded by ORR for special programs to resettle HIV+ refugees and to any other sites where HIV+ refugees might be resettled because they were assured before the new HIV+ refugee waiver policy was in effect.

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4. Accessible medical services in terms of transportation and overcoming language and cultural barriers

5. Procedures to monitor refugees' compliance with treatment regimens

6. Convenient and affordable housing that is accessible to HIV/AIDS services, and

that is suitable for physically disabled persons

7. Procedures to counsel HIV+ refugees about why it is important to remain in the designated site until he/she has learned to manage his/her disease

8. Procedures contacting the refugees' relatives in the U.S., in particular those who will not live in the same community, to provide orientation to HIV/AIDS and the circumstances of their infected relative.

9. Procedures that assure that the HIV+ refugee is economically viable and has access to free or affordable health care at the end of eight months.

10. An assessment process that determines that refugees have achieved adequate disease management practices.

11. Procedures for monitoring and reporting refugee progress and outcomes.

12. Cross training with the HIV/AIDS service providers

13. Procedures for identifying and gaining access to HIV/AIDS resources in other communities to which refugee may move.

Reporting on HIV Refugees

Reporting requirements related to the checklist above will be developed in collaboration with the funded sites.

Dear :

As indicated earlier by email from David Smith, I am convening the national VOLAGs, PRM, INS and CDC to discuss the new program ORR has funded for resettlement of refugees who are HIV+. The meeting will be held in my offices at 901 D Street, SW on the sixth floor on 8 November from 10:00 am till 2:00pm. I think this will give us time for a full discussion of the issues.

There has been some confusion about funded sites, phase-in of the sites and how the program will operate. I hope this meeting will be able to achieve a common understanding of the program, of where we are and where we are going.

Attached you will find: an agenda, a description of the program, a checklist used to determine whether sites are ready to begin receiving HIV+ refugees, a discussion of reporting on HIV+ refugee status and outcomes, copies of a draft letter to panel physicians and counseling materials for panel physicians prepared by CDC, and a brief report by David Smith on his visits to the proposed sites in September. Copies of the DOS/PRM cable to overseas missions and JVAs will be available at the meeting.

VOLAGs should bring with them to the meeting information on the number of HIV+ cases they have assured to date but have not yet received, the family composition of these cases, their nationalities, where they are located currently, and which local affiliate proposed to resettle them. Several VOLAGs already have shared some of this information with us and others have been earlier requested to pull this information together, so there should be no difficulty in assembling the data..

I know that many of you have been asking for a meeting like this and I look forward to seeing you next Thursday.

Sincerely yours,

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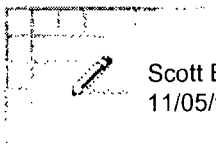


Scott Busby
11/05/99 04:13:05 PM

Record Type: Record

To: Todd A. Summers/OPD/EOP@EOP

cc:
Subject: Re: Materials for 8 Nov meeting on HIV refugees

FYI

---------- Forwarded by Scott Busby/NSC/EOP on 11/05/99 04:12 PM ----------

DBSmith@osophs.dhhs.gov (David B. Smith)
11/05/99 04:06:04 PM

Record Type: Record

To: See the distribution list at the bottom of this message

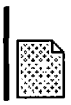
cc:
Subject: Re: Materials for 8 Nov meeting on HIV refugees

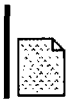
Thanks for holding the date. Attached are a letter of invitation (signed letter to follow), the Agenda and a draft discussion paper.

The meeting will be held in ORR's offices on the 6th floor of 901 D Street, SW., from 10 am to 2 pm. If you need to call, the number is 202 401 9246.

I join Lavinia in looking forward to seeing you on Monday

For the funded sites and Susan Cookson, who plan t0 join us by telephone, please call 202 484 8777, code: 6844

 - 118proce.doc

 - 108lette.doc

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Message Sent To:

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bhayes@lssmn.org
don@ircsf.org
e.kleinwaks@state.gov
ftinsley@dfms.org
ircbos@mindspring.com
j.belz@state.gov
janelle.j.jones@usdoj.gov
kay@intrescom.org
m.houze@state.gov
oplustil@worldnet.att.net
pmaloof@nccbuscc.org
rjc@intrescom.org
rmoser@ccdsd.org
Scott Busby/NSC/EOP
sgc0@cdc.gov
smohn@heartland-alliance.org
spreston@irsa-uscr.org
t.rusch@state.gov
rhogan@nccbuscc.org
gowens@nccusa.org
c.white@state.gov
LLIMON@ACF.DHHS.GOV (LAVINIA (ACFSMTP.LLIMON) LIMON)
mbrenden@ACF.DHHS.GOV (MARTA K (ACFSMTP.MBRENDEN) BRENDEN)
aportz@ACF.DHHS.GOV (ANNA MARY (ACFSMTP.APORTZ) PORTZ)
jmay@ACF.DHHS.GOV (JUDITH A (ACFSMTP.JMAY) MAY)
irene_bueno@opd.oep.gov
vakoch@ent.eract.com
eileenr@camba.org
DBSmith@osophs.dhhs.gov (David B. Smith)

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Reporting on HIV Refugees

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Centers for Disease Control
and Prevention (CDC)
Atlanta, GA 30333

November 1, 1999

Dear Panel Physician:

On June 16, 1999, the Immigration and Naturalization Service (INS) issued a memorandum providing additional guidance regarding documentation required for waivers for refugees with HIV infection, effectively eliminating one of the documentation requirements. The memorandum itemized the requirements for such waivers at that time, which called for supporting documentation 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 a government agency in the United States without the prior consent of that agency.

The memorandum indicated that; effective immediately, a refugee's categorical eligibility (as a refugee) for federally-funded programs is sufficient to meet the third requirement and that no documentation of individual eligibility will be required. This effectively eliminates the documentation requirement for item three above. Documentation to establish items one and two continues to be required.

Wavier requests must be supported by documentation that shows the refugee has been counseled to ensure that he or she understands how HIV is transmitted and is aware of the precautions that must be taken to prevent its spread. This counseling is done by using the enclosed form **"Information for the Refugee with HIV."** The information on the front of the form must be read to the refugee so that he or she understands it and an interpreter must be used when needed. Following counseling, each refugee with HIV infection and the attending panel physician must sign the attached form. A copy of the completed form must be given to the refugee for his/her own personal records and the original must be attached to the OF-157 Medical Examination form.

Thank you for your assistance. If you have additional questions regarding specific waivers you may contact Ms. Pamela Copelan at 001-404-639-8109, fax 001-404-639-2599.

Sincerely yours,

Susan Cochran
(404) 639-

Tony D. Perez
Acting Director
Division of Quarantine
National Center for Infectious Diseases

Enclosures

Statement by Panel Physician

I hereby certify that I have met with _____ and have given him/her information about HIV. I have counseled this patient with the information about the nature of the disease, how it is spread, and how to control its spread. I have advised this patient that he/she will need counseling, examinations, and medical regimens that may be appropriate for his or her condition.

_____ _____

(Panel Physician's Name) Panel Physician's signature

_____

(Date)

Statement by Waiver Applicant

I, _____ have met with this doctor and was told that I have HIV. I have been told how not to cause someone else to get HIV. I understand and agree to follow these instructions to keep from spreading HIV. When I get to the United States, I will see a doctor who will give me instructions, examinations, drugs, and medical care that I need, and I will continue to see that doctor.

_____ _____

(Applicant's signature) (Date)

Applicant's Waiver of Confidentially

I, _____ have no objections to the information and photographs contained in my file being used for the purpose of assisting me and my accompanying family in seeking resettlement or in resolving any issues facing us as refugees.

_____ _____

(Applicant's signature) (Date)

Information for the Refugee with HIV

In order for you to come to the United States, you need to understand your human immunodeficiency virus (HIV) infection, how it is spread, and how to keep it from being spread. The doctor will therefore provide you with the following information. Please ask any questions about the information that you do not understand.

Your test had shown that you have the human immunodeficiency virus. This virus is a very small germ that makes it hard for you to fight off many other infections. When you are infected with HIV, you can get other infections and diseases that other people do not get. This is the virus that causes AIDS. It is very important that you are under the care of a doctor and that you follow the doctor's instructions and take any medicines he or she gives you. HIV can be spread by sex, by blood or other fluids or liquids produced by the body, by sharing needles used to inject drugs, or from a mother to child.

HIV cannot be spread from one person to another by:

- Sharing cups, forks, knives, spoons, dinner plates, or other such items,
- Using the toilet,
- Swimming in a public swimming pool,
- Being next to somebody with HIV who is coughing,
- Being hugged by somebody with HIV, or
- Being bitten by an insect.

To keep you from giving HIV to someone else, you need to:

- Always use a condom when having sex (a condom is a thin rubber latex tube that fits over a man's erect penis before having sex). This includes vaginal, anal, or oral sex. Although a condom does not completely or totally protect you from giving HIV to someone else, it will help a lot if you use them right and every time you have sex,
- Tell your doctor if you are pregnant,
- Never share syringes or needles, and
- Never donate blood.

When using a condom, do not use a petroleum-based jelly, cold cream, or baby oil, or other oils, because they can cause the condom to be weak and break. If you must use some moisture or wetness with the condom, make sure it is made with water. When a woman infected with the HIV is pregnant, the germ can spread to the unborn child while the baby is still inside the mother or the baby may become infected with the disease while it is being born. There are drugs that can prevent pregnant women from giving the virus to her baby. An HIV-infected mother should not breast feed her baby, because she may give HIV to the baby through her milk.

Again, it is important that you see a doctor after you move to the United States and follow the doctor's instructions and take any drugs and care he or she gives you. When you sign this letter, you are agreeing to this and that you understand the information just given you.

Go to the next page

REPORT ON SITE VISITS TO PROPOSED RESETTLEMENT SITES FOR HIV+ REFUGEES

During the month of September, 1999, David Smith, Associate Director of International and Refugee Health (OIRH), at the request of the Office of Refugee Resettlement (ORR), visited 14 sites in eight cities, which had been proposed to ORR by five different national voluntary agencies (VOLAGs) that resettle refugees in the US. Proposals were made as amendments to existing Preferred Communities grants made by ORR and represented an interest on the part of the proposing VOLAGs in participating in a special program of resettlement for HIV+ refugees.

The International Rescue Committee (IRC) proposed sites in New York and San Francisco. Immigrant and Refugee Services of America (IRSA) proposed sites in New York, Boston, San Francisco, Chicago, and Minneapolis. United States Catholic Charities (USCC) proposed sites in Houston, Boston, Chicago, and Syracuse. Dr. Smith did not visit the USCC Chicago and Syracuse sites. Lutheran Immigration and Refugee Services (LIRS) proposed sites in Minneapolis, Washington, DC, and Jacksonville. Dr. Smith did not visit the Washington, DC site. Episcopal Migration Ministry (EMM) proposed sites in Houston and Jacksonville.

The purpose of the site visits was to discuss with the VOLAG local affiliates the strengths
and weaknesses of the proposed sites and to develop an estimate of when they would be able to begin to accept HIV+ refugees for resettlement. At each proposed site, local resettlemnet agencies were asked the following:

- Had HIV/AIDS services providers been identified? Were they willing to partner?
- What language capabilities did they have?
- Had they identified anyone who could do the case management, who had background in HIV/AIDS or who could be trained?
- Was housing available that would be accessible to HIV/AIDS services?
- What HIV/AIDS benefits does the State Medicaid program provide?
- What were local TANF benefits?
- How would issues of confidentiality be handled?
- What were local/State requirement on HIV/AIDS reporting?

In addition, they were briefed on the expectations of the program.

<u>New York City - IRC</u>

Met with Kay Bellor, Resettlement Director, and Clifford Rames, NY Resettlement Director to discuss the readiness of IRC NY to begin receiving HIV+ refugees for resettlement. Rames estimates that it will take a minimum of six weeks for IRC to be ready. I would put it closer to two months.

IRC currently does not have a Health Coordinator. They are recruiting and will look for someone who knows about HIV/AIDS. IRC has worked in the past with the Spellman Clinic, a well-regarded provider of HIV/AIDS service provider in NY. However, while they have had conversations with Spellman, currently they have no formalized arrangement with them.

Rames has no experience with resettling HIV+ refugees, but is open to learn. He seems open to resettling HIV+ refugees but himself needs some training. He intends to have the current health coordinator work with two caseworkers for all HIV+cases. He plans to hire interpreters, who are not caseworkers, to assist caseworkers with translation. I tried to impress on him that the caseworkers, themselves, should be culture and language capable, as well as generally familiar with HIV/AIDS, and that confidentiality needed to be emphasized.

Rames assumed that initial orientation for HIV+ refugees would be the same as for all other refugees. After some discussion, he recognized that HIV+ refugees have special needs and what they are.

New York has excellent underlying welfare and Medicaid benefits, including special Medicaid benefits for HIV/AIDS patients.

<u>New York City – IRSA/CAMBA</u>

I met with the Executive Director, the Director of Resettlement, the Director of Health/HIV/AIDS Programs and the General Counsel.

CAMBA will be ready to receive HIV+ refugees by the beginning of next week. By then, they will have secured a furnished apartment near HIV/AIDS services providers

CAMBA has an active HIV/AIDS program and is a Ryan/White grantee. I am confident, after meeting with them, that CAMBA is well prepared to resettle HIV+ refugees. CAMBA has experience with foreign-born HIV+ cases. They have resettlement experience and all key staff have a good idea of what to expect and how they will deal with it, including public relations and press issues.

<u>Minneapolis/St. Paul – International Institute</u>

I met with the Director, Director of Resettlement and the MN Health Dept. The II has had extensive discussions with the MN Health Dept and has had exploratory conversations with several HIV/AIDS providers in M/STP. The II has no previous experience with HIV+ refugees but has a good idea of what is needed and how to craft a responsive program. As yet they have no formal relationships with any of the other potential partners. The MN Health Dept is a Ryan/White grantee and is eager to

become involved.

In my judgement, II/MN would need about three months to be ready to receive HIV+ refugees. II/MN has good resettlement experience and has recently resettled a lot of African cases.

Minnesota has adequate welfare and Medicaid benefits.

Housing is an issue. The rental market is tight. Existing Ryan White programs to find housing near services have a substantial waiting list.

Minneapolis/St Paul – Lutheran Social Services

I met with the Director of Resettlement. She is eager to have a program to work with HIV+ refugees, but hadn't thought much about how to do it. After being introduced to the various issues, she seemed to grasp what needed to be done and took careful notes. LIRS has had no discussions with the Health Dept or any local HIV/AIDS service providers. I think LIRS in Minneapolis is at least 3 months from having in place a suitable program for resettling HIV+ refugees.

Benefit and housing is as above.

Chicago – Heartland Alliance

I met with the Executive Director, the Director of Resettlement, the Health Director and the Director of the Ryan White HIV/AIDS program. Heartland could start receiving HIV+ refugees immediately. Heartland has active resettlement and Ryan White programs. Public benefits in Illinois and, especially in Chicago are excellent for HIV/AIDS cases. The HIV/AIDS clinic is excellent and will easily adapt to serving refugees. They plan to place language and culture capable case managers in the HIV/Aids clinic to avoid confidentiality issues that might arise if they were placed in the resettlement unit Although the rental housing market is tight, they believe that they will be able to acquire accessible housing for HIV+ refugees.

Boston – International Institute

The II has excellent ongoing relations with the Massachusetts Department of Health, which operate Ryan White-funded HIV/AIDS services programs in Boston and throughout the State. They have had preliminary discussions with the Health Dept., but have no formal agreement concerning an HIV/AIDS program for refugees. Accessible housing is difficult but feasible. The II is an excellent resettlement agency and broad language and culture capabilities. They would consider placing the language and culture competent caseworkers in the Health Dept. for confidentiality reasons. The site would be at least three months away from being ready.

State welfare and Medicaid benefits are on the high end and would be supportive of a

program in Boston.

Boston –IRC

IRC here also has ongoing relations with the Massachusetts Health Dept, but has done little planning with them for a HIV+ refugee resettlement program. They have broad language and culture capability but have not decided how they would deploy such capability for managing refugee HIV+ cases. They indicated that they would attempt to partner with the Health Dept for HIV/AIDS services. IRC in Boston would be at least three to Four months from being ready.

Boston – USCC

USCC has resettled a few HIV+ cases in the past. They turned those cases over to local HIV/AIDS providers and were not deeply involved themselves. Catholic doctrine prohibits them from counseling the use of condoms for prevention of transmission, but they do not attempt to interfere with such counseling by HIV/AIDS providers. They have do no planning to be a program site and were not told by USCC national that they were a candidate site being proposed.

Jacksonville – Lutheran Social Services

Lutheran Social Services was proposed as a program site by both LIRS and EMM and resettles refugees for LIRS, EMM and CWS. The agency has broad language and culture capabilities and good resettlement experience. They currently work with a Health Dept. clinic for health screening of refugees and have two staff outstationed at the Health Dept. The same Health Dept clinic that conducts refugee health screening is a Ryan White grantee and has a HIV/AIDS program in the same clinic. The HIV/AIDS clinic was enthusiastic about participating. Lutheran Social Services in Jacksonville could have an operational program for HIV+ refugees in a month or less.

Welfare and Medicaid benefits for HIV+ refugees in Florida are adequate.

San Francisco – IRSA International Institute

The San Francisco II is very active with health programs, although they no longer resettle many refugees. The II arranged a meeting with the Health Dept. and Ryan White providers.
Ryan White representatives were less than enthusiastic about HIV+ refugees coming to San Francisco. They were concerned about scarce Ryan White resources. They also worried that HIV+ refugees might become homeless because of lack of availability and high prices of rental housing. Ryan White in San Francisco provides housing vouchers but they are not of adequate value to pay for any available housing. As yet, the II has no partnership arrangements. The II would require at least three months to be operational.

Welfare and Medicaid benefits are good.

San Francisco – IRC

IRC was present at the meeting with the health people that was organized by the II. IRC had not met most of the potential partners from the HIV/AIDS services community. IRC has reasonable language and culture capacity. IRC thought that they would not be ready to receive HIV+ refugees until the beginning 2000.

San Diego – USCC

USCC in San Diego has thought seriously about the issues they will face when they begin resettling HIV+ refugees. San Diego Catholic Charities (SDCC) performs all of the refugee health screenings in SD under contract with the Health Dept. It already has relationships with two of the major Ryan/White providers, although not in relation to serving HIV+ individuals. SDCC has excellent language capabilities in several languages and operates a medical interpreters language bank. I am confident that SDCC has a good grasp of the confidentiality issues and will put together a good program. They will have HIV/AIDS providers do prevention counseling including safe sex. It will take three months for SDCC have a program ready to receive HIV+ refugees.

Houston – Interfaith Ministries

Met with resettlement Director. Interfaith Ministries resettles refugees for CWS, LIRS, and EMM. The have capability in nine languages. There are good opportunities for partnerships with HIV/AIDS services providers, including a nearby Methodist Ryan White grantee. Accessible housing is available at reasonable cost. Interfaith Ministries is eager to resettle HIV+ refugees. There are good community attitudes toward towards persons with HIV/AIDS.

Welfare benefits are next to the lowest in the country. Although Medicaid drug coverage has recently been expanded, Texas has no medically needy program. Overall, the benefits available virtually rule out a program here.

Houston – USCC

There is little to say about the USCC as a potential site except they lack any real enthusiasm to take on the project.

UNCLASSIFIED

Printed By: Jan Belz 10/12/99 01:06:45 PM

STATE 191127

From: PRM MRN: 191127 Date/Time: 081851Z OCT 99
Subject: PPOLICY CHANGE AND GUIDANCE ON WAIVER PROCESSING FOR HIV POSITIVE RESETTLEMENT CASES ICNbr: TED0457 Precedence: PRIORITY

Cable Text:

TED0457
ORIGIN PRM-01

INFO	LOG-00	AGRE-00	AID-00	CIAE-00	INL-01	DODE-00	SRPP-00
	EAP-00	EB-00	UTED-00	FSI-00	H-01	TEDE-00	INR-00
	INSE-00	IO-00	L-00	ADS-00	NSAE-00	NSCE-00	OIC-02
	OPIC-01	PRS-00	P-00	SP-00	IRM-00	SS-00	STR-00
	TRSE-00	USIE-00	DRL-02	G-00	SAS-00	/008R	

191127
SOURCE: CBLEXCLS.004075
DRAFTED BY: PRM/PRP:WREITZ -- 10/08/99 202-663-1469
APPROVED BY: PRM:AJKRECZKO
PRM:MRHOUZE
PRM/PRP:AJURY
PRM/A:TRUSCH
PRM/A:EKLEINWAKS
INS:KTHOMPSON

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TO REFUGEE PROCESSING POSTS PRIORITY
AMEMBASSY HANOI PRIORITY
AMCONSUL HO CHI MINH CITY PRIORITY

UNCLAS STATE 191127

E.O. 12958: N/A
TAGS: PREF, PHUM
SUBJECT: PPOLICY CHANGE AND GUIDANCE ON WAIVER PROCESSING FOR HIV POSITIVE RESETTLEMENT CASES

REF: A. 99 STATE 12313
B. 99 BANGKOK 2742
C. 99 BELGRADE 669
D. 99 CAIRO 969
E. 99 FRANKFURT 1419
F. 99 HONG KONG 548
G. 99 MANILA 3469
H. 99 NAIROBI 2058
I. 99 RIYADH 387
J. 99 VIENNA 526
K. PENDERGRASS/REITZ FAS 2/19/99
L. KUNSMAN/REITZ E-MAIL 2/8/99

1. THIS IS AN ACTION MESSAGE FOR ALL ADDRESSEE POSTS IN COUNTRIES WHERE REFUGEE RESETTLEMENT CASES ARE PROCESSED. PLEASE SEE PARA. 3.

2. SUMMARY: AFTER SIGNIFICANT INTERAGENCY DELIBERATION, THE INS HAS ISSUED AMENDED GUIDANCE REGARDING THE FILING OF I-602 WAIVER REQUESTS BY APPROVED REFUGEE APPLICANTS WHO ARE FOUND TO TEST HIV POSITIVE. WHILE THE GUIDANCE DOES NOT ALTER CURRENT FILING REQUIREMENTS, IT DOES AMEND THE TYPES OF EVIDENCE NECESSARY TO MEET THE PRIOR CONSENT REQUIREMENT (THE SO-CALLED &THIRD PRONG8) OF THE WAIVER FILING CRITERIA. UNDER THIS GUIDANCE, HIV POSITIVE REFUGEES WILL NO LONGER NEED TO ESTABLISH INDIVIDUALLY PRIOR CONSENT BY GOVERNMENT AGENCIES WITH REGARDS TO HEALTH CARE. INS WILL CONSIDER A REFUGEE,S ELIGIBILITY FOR FEDERALLY-FUNDED HEALTH CARE PROGRAMS TO ESTABLISH PRIOR CONSENT. EFFECTIVE AS OF JUNE

16, 1999, I-602 WAIVER APPLICATIONS NEED ONLY BE ACCOMPANIED BY DOCUMENTATION SHOWING THAT THE REFUGEE HAS BEEN COUNSELED TO ENSURE UNDERSTANDING OF HOW HIV IS TRANSMITTED AND AWARENESS OF THE NECESSARY PRECAUTIONS TO PREVENT ITS SPREAD.

THIS CHANGE IN FILING REQUREMENTS SHOULD ALLOW ALL APPROVED REFUGEE APPLICANTS WHO TEST HIV POSITIVE AND WHO CAN ESTABLISH THAT THEY DO NO POSE A RISK TO THE PUBLIC HELATH TO SUBMIT WAIVER REQUESTS. HOWEVER, IT DOES NOT MEAN THAT INS WILL APPROVE ALL SUCH WAIVER REQUESTS. THE DECISION TO GRANT OR DENY THE WAIVER REMAINS DISCRETIONARY. STILL, WE ANTIICPATE THAT MANY MORE I-602,S WILL BE FILED AND APPROVED UNDER THE NEW GUIDANCE. END SUMMARY.

3. ACTION REQUEST: DEPARTMENT REQUESTS POSTS:

A. PASS THIS GUIDANCE TO ALL JOINT VOLUNTARY AGENCIES (JVAS) AND OTHER PROCESSING ENTITIES, INCLUDING INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM) OFFICES;

B. ENSURE THAT ALL RESETTLEMENT CASES ON RECORD THAT HAVE ONE OR MORE HIV POSITIVE FAMILY MEMBERS ARE CONTACTED, IF POSSIBLE, TO INFORM THEM OF THE AMENDED GUIDANCE AND THEIR OPTION TO FILE A WAIVER APPLCATION UNDER THE SIMPLIFIED PROCEDURE. THIS APPLIES TO CASES THAT WERE DENIED WAIVERS PREVIOUSLY AS WELL AS TO CASES THAT NEVER FILED OR TRIED TO FILE A WAIVER APPLICATION;

C. ENSURE THAT PROCESSING ENTITIES CHANGE THEIR STANDARD OPERATING PROCEDURES SUCH THAT NEW CASES IN WHICH SOMEONE IS FOUND TO BE HIV POSITIVE RECEIVE TIMELY COUNSELING AND ASSISTANCE IN FILING A WAIVER APLICATION IF THEY SO CHOOSE.

END ACTION REQUESTS.

AMENDED INS GUIDANCE

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4. TO BE RESETTLED IN THE UNITED STATES, AN APPROVED REFUGEE APPLICANT MUST ALSO BE ADMISSIBLE. INDIVIDUALS WHO TEST HIV POSITIVE ARE INADMISSIBLE TO THE UNITED STATES UNDER SECTION 212 (A)(1)(A)(1) OF THE INA. THE INA AUTHORIZES THE ATTORNEY GENERAL TO WAIVE THIS GROUND OF INADMISSIBILITY FOR CERTAIN IMMIGRANTS, INCLUDING REFUGEES. INS POLICY FOR FILING HIV POSITIVE WAIVER REQUESTS REQUIRES ALL ELIGIBLE IMMIGRANTS WHO TEST HIV POSITIVE TO SUBMIT FORM I-602, WITH 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. IN THE PAST, HIV POSITIVE REFUGEES OFTEN FOUND IT DIFFICULT TO OBTAIN THE NECESSARY PRIOR CONSENT FROM OUTSIDE THE UNITED STATES. AS A RESULT, MANY PERSONS WHO WERE FOUND BY INS OFFICERS TO HAVE A WELL-FOUNDED FEAR OF PERSECUTION AND THEN TESTED HIV POSITIVE WERE UNABLE TO SUBMIT WAIVER REQUESTS.

5. ON JUNE 16, 1999, INS ISSUED AMENDED GUIDANCE TO ITS OVERSEAS OFFICES REGARDING THE FILING OF HIV WAIVER REQUESTS AND THE TYPES OF EVIDENCE NECESSARY TO MEET THE PRIOR CONSENT REQUIREMENT. WHILE THE NEW GUIDANCE DOES NOT ALTER CURRENT FILING REQUIREMENTS, IT DOES AMEND THE TYPES OF EVIDENCE NECESSARY TO MEET THE PRIOR CONSENT REQUIREMENT. UNDER THIS GUIDANCE, HIV POSITIVE REFUGEES WILL NO LONGER NEED TO ESTABLISH INDIVIDUALLY PRIOR CONSENT BY GOVERNMENT AGENCIES WITH REGARDS TO HEALTH CARE. INS DISTRICT DIRECTORS AND OFFICERS IN CHARGE ARE TO 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 FILING REQUIREMENT, I.E. THE PRIOR CONSENT REQUIREMENT.

6. INS WILL, HOWEVER, CONTINUE TO REQUIRE REFUGEES WHO TEST HIV POSITIVE TO PROVIDE INDIVIDUALIZED PROOF THAT THEIR ADMISSION TO THE UNITED STATES WILL NOT ENDANGER THE PUBLIC HEALTH. THE GUIDANCE SPECIFIES THAT WAIVER REQUESTS MUST 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. AT MOST POSTS, STANDARD FORMS FOR THIS PURPOSE ARE ALREADY IN USE BY THE PANEL PHYSICIAN WHO COMPLETES THEM AS PART OF THE COUNSELING OF HIV POSITIVE REFUGEES. FOR THE TIME BEING, THESE FORMS WILL CONTINUE TO MEET INS FILING REQUIREMENTS.

7. THERE ARE A HANDFUL OF WAIVER APPLICATIONS FILED UNDER THE OLD SYSTEM AND STILL AWAITING DECISION. PENDING WAIVER APPLICATIONS WILL BE PROCESSED UNDER THE AMENDED GUIDANCE. CASES WHICH FILED WAIVER APPLICATIONS PREVIOUSLY AND WERE DENIED, AND CASES WHICH FILED WAIVER APPLICATIONS MORE THAN SIX MONTHS AGO AND WHICH RECEIVED NO ANSWER, SHOULD FILE NEW APPLICATIONS NOW.
8. THE CHANGE IN WAIVER FILING REQUIREMENTS SHOULD ALLOW ALL APPROVED REFUGEE APPLICANTS WHO TEST HIV POSITIVE AND WHO CAN ESTABLISH THAT THEY DO NOT POSE A RISK TO THE PUBLIC HEALTH TO SUBMIT WAIVER REQUESTS. HOWEVER, IT DOES NOT MEAN THAT INS WILL APPROVE ALL SUCH WAIVER REQUESTS. THE DECISION TO GRANT OR DENY THE WAIVER REMAINS DISCRETIONARY. 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 DECISION WILL CONTINUE TO BE MADE ON A CASE-BY-CASE BASIS. STILL, WE ANTICIPATE THAT MANY MORE I-602,S WILL BE FILED AND APPROVED UNDER THE NEW GUIDANCE.

CASELOAD URGENCY
---

9. DEPARTMENT CONSIDERS THIS CASELOAD TO BE A PROCESSING PRIORITY SINCE MANY OF THE CASES INVOLVE SPLIT FAMILIES AND IN SOME CASES THERE ARE SERIOUS PROTECTION PROBLEMS IN FIRST ASYLUM. PROCESSING ENTITIES ARE THEREFORE REQUESTED TO GIVE THIS CASELOAD IMMEDIATE ATTENTION.

10. IN LOCATING CASES, PARTICULARLY THOSE THAT ARE MORE THAN A YEAR OLD, POSTS OR PROCESSING ENTITIES MAY NO LONGER KNOW THE WHEREABOUTS OF THE REFUGEES. DEPARTMENT RECOMMENDS SEEKING ASSISTANCE FROM UNHCR BUT CAUTIONS AGAINST ANY ACTIONS WHICH MAY DRAW ATTENTION TO THESE INDIVIDUALS OR THEIR CONDITION. AS NOTED REF A, THESE CASES CAN POSE A SPECIAL ARRAY OF PROTECTION PROBLEMS, WHETHER FROM THEIR LOCAL COMMUNITIES OR THE HOST GOVERNMENT.

SPECIAL HANDLING IN THE U.S.
---

11. DEPARTMENT IS WORKING CLOSELY WITH HHS,S OFFICE OF REFUGEE RESETTLEMENT (ORR) AND THE VOLUNTARY AGENCIES TO ENSURE THAT HIV POSITIVE REFUGEES ARRIVING IN THE U.S. WILL RECEIVE THE CARE THEY NEED. ORR PLANS TO PROVIDE SUPPLEMENTAL FUNDING TO VOLUNTARY AGENCIES IN A LIMITED NUMBER OF COMMUNITIES WHERE NECESSARY CARE WILL BE READILY AVAILABLE. FOR SOME OF THE HIV CASES, THIS WILL MEAN THAT THEY WILL BE ASKED TO SETTLE INITIALLY APART FROM FAMILY MEMBERS ALREADY IN THE UNITED STATES. ORR,S PROGRAM WILL FUND VISITATION AND MOVING COSTS FOR FAMILY MEMBERS IF THEY CHOOSE, BUT WILL ENCOURAGE REFUGEES TO STAY WHERE INITIALLY PLACED TO ENSURE PROPER COUNSELING AND TREATMENT TO STABILIZE THEIR CONDITION. ONCE STABLE, VOLUNTARY AGENCIES WILL ASSIST THE CASES TO JOIN FAMILY ELSEWHERE.

12. DEPARTMENT WANTS TO ACTIVATE THE CASELOAD AS QUICKLY AS POSSIBLE AND APPRECIATES POSTS, HELP IN DOING SO.
ALBRIGHT
NNNN

End Cable Text

Printed By: Jan Belz 10/12/99 01:06:45 PM

Training of panel physicians
- counseling + testing
- triage care

NATIONAL SECURITY COUNCIL

OFFICE OF MULTILATERAL AND HUMANITARIAN AFFAIRS

FAX COVER SHEET

NATIONAL SECURITY COUNCIL

17th & Penn, N.W.
Washington, D.C.
20504

Did you get a complete, clear transmission? If not, please call:

(202) 456- 9141

From: Scott Busby 456-9141 (phone) /456-9140 (fax)

To: Todd Summers FAX 6243 F
Irene Bueno 6555 F1

Date/Time:

No. of pages to follow: 2

RE:

TPs on HIV

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.

NATIONAL SECURITY COUNCIL

OFFICE OF MULTILATERAL AND HUMANITARIAN AFFAIRS

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From: Scott Busby 456-9141 (phone) /456-9140 (fax)

To:		**FAX**
	Irene Bueno	65581
	Todd Summers	62438

Date/Time:

No. of pages to follow: 6

RE:

newest draft of TPI + Q + As. Give me your comments + I will relay to INS.

DRAFT

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, Congress has provided the Attorney General with the authority to waive this excludability.

- INS' policy for the filing of HIV waiver requests requires HIV+ refugees to submit documentation that establishes 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.

- When the filing requirements for HIV+ refugee waivers were drafted in 1987, the language used was taken directly from the guidelines which INS had developed for 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.

- Having tested HIV+, some refugees have stayed 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 7, INS Headquarters issued amended guidance to our overseas offices regarding the filing of HIV waiver requests. The new guidance does not alter the current requirements that HIV+ refugees must meet to submit a waiver request. INS will continue to require HIV+ refugees to meet both the public health and prior consent requirements of existing policy.

- However, while INS will continue to ask HIV+ refugees to provide individualized proof that their admission to the United States will not endanger the public health, we will no longer require these individuals to establish individually that no government agency will be burdened without its prior consent. INS will, instead, 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 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+ 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 7 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 currently between 200-300 approved refugee applicants who have tested HIV+ following their refugee determinations.

Questions regarding Guidance on Waiver Procedures for HIV+ Refugees

DRAFT

Q. Why is INS making this change now?

A. When INS initially drafted the waiver filing requirements for approved refugee applicants who test HIV+, no reliable, nationwide healthcare network existed for the treatment of those infected with HIV. In the absence of such a network, requiring proof of individual eligibility for HIV treatment programs, private health insurance or personal financial resources was reasonable.

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, with refugees eligible to apply for a range of means-tested programs, including Medicaid and Refugee Medical Assistance(RMA), and the services supported through the Ryan White CARE Act which provide a basic level of HIV-related care in most U.S. communities. The Surgeon General has stated 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."

In light of the increased availability of HIV treatment programs and refugees' eligibility for these programs under U.S. law, INS has amended its policy regarding the filing of HIV waiver requests. A refugee's eligibility for federally-funded healthcare programs is sufficient to meet the prior consent condition of the waiver filing requirements.

Q. What exactly is the change in procedure?

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 admittion 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.

In the past, the third requirement could only be met through documentation of individual eligibility for HIV+ treatment or health care coverage in the United States. Effective June XX, INS will consider the federally-funded programs and services available to HIV+ refugees 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 is aware of the precautions which must be taken 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. Do we know now how many refugees who have tested positive for HIV are out there?

A. We estimate that, over the last several years, between 200 and 300 approved refugee applicants have tested HIV+ following their refugee determinations.

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

A. No. The June XX guidance applies only to waiver filing requirements in refugee cases. The guidance for the adjudication of waiver requests—as opposed to the filing requirements—is

unaffected by the guidance. For individuals seeking admission to the United States as immigrants, waiver filing requirements remain unchanged.

Q. What are the treatment programs available to HIV+ refugees and who pays for them?

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 during their first 8 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.

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 may also 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 inmost communities through CARE Act funded services.

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

Fax Cover Page

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DATE: Wednesday, May 26, 1999

PAGES (including cover page): 7

FROM: Ignatius Bau, Policy Director

TO: Todd Summers/Office of National AIDS Policy

FAX#: 202/456-2483

MESSAGE: Excerpts from my chapter on Immigration Law in Webber, ed. AIDS and the Law (3d ed. 1997).

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§ 11.11 HIV Waiver Procedures

Despite the distinct statutory requirements for the various HIV waivers, the INS has applied its own criteria to adjudicate all HIV waivers.[121] Under the INS criteria, the applicant must demonstrate that:

> 1) the danger to the public health of the United States created by his or her admission is minimal; 2) the possibility of the spread of the infection created by his or her admission to the United States is minimal; and 3) there will be no cost incurred by any level of government agency of the United States without the prior consent of that agency.[122]

The INS generally treats the first two prongs together, requiring that the applicant receive counseling about HIV and make a commitment to avoid the transmission of HIV. A 1995 INS memorandum on HIV waivers states that evidence of "the applicant's awareness of the nature and severity of his or her medical condition," "the applicant's willingness to attend educational seminars and counseling sessions," and "the applicant's knowledge of the modes of transmission of the disease" would be sufficient to meet the first two prongs.[123]

The third prong of the INS criteria has proven problematic in many cases. Generally, the INS requires proof of private health insurance for the applicant. Of course, it is extremely difficult for many individuals, especially those who are HIV-infected, to purchase private health insurance. Many health insurance policies still include disqualifications based on preexisting conditions, such as HIV infection, or include limits on the amount of health care coverage available in a single year or over the insured's lifetime. Although an applicant for an HIV waiver may also demonstrate prior consent from a government agency, it is unclear how such consent is to be obtained or documented. Some waiver applicants have submitted evidence of the current receipt of benefits with the knowledge of

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[121] Except for the regulations relating to HIV waivers for legalization applicants, 8 C.F.R. § 245a.3(d)(4), the INS has failed to promulgate any regulations establishing its three-prong test as its administrative interpretation of the various statutory waiver provisions. This failure may violate the Administrative Procedure Act, 5 U.S.C. § 553. *See* American Fed'n of Gov't Employees v. Block, 655 F.2d 1153 (D.C. Cir. 1981) (exceptions to requirement of notice and comment narrowly construed). The failure to promulgate regulations is especially critical for refugee applicants and for refugees and asylees seeking adjustment of status because the third prong appears to be in violation of the statutory waiver of the public charge exclusion 8 U.S.C. §§ 1157(c), 1159(c).

[122] INS Cable No. CO-234-P (Jul. 6, 1987), *reprinted in* 64 Interp. Rel. 888–89 (1987), INS Cable No. CO-234-P (Mar. 2, 1988), *reprinted in* 65 Interp. Rel. 239 (1988); INS Cable Nos. CO-234-P & CO-212.25-P (May 25, 1989), *reprinted in* 66 Interp. Rel. 625–26 (1989); INS, Mem. No. HQ 212.3-P, Immigrant Waivers for Aliens Found Excludable under Section 212(a)(1)(A)(i) of the Immigration and Nationality Act (Sept. 6, 1995), *reprinted in* 72 Interp. Rel. 1347–54 (1995).

[123] INS, Mem. No. HQ 212.3-P, Immigrant Waivers for Aliens Found Excludable under Section 212(a)(1)(A)(i) of the Immigration and Nationality Act at 5 (Sept. 6, 1995), *reprinted in* 72 Interp. Rel. at 1351.

the government agency of their pending immigration status. It is unlikely that any official of any governmental agency would sign a document ensuring future health care coverage for anyone.

Although the 1995 INS memorandum clarifies some procedures and criteria for HIV waivers for immigrants, it also raises new issues that will affect the future adjudication of HIV waivers. The memorandum does not address the failure to promulgate regulations and repeats the three-prong INS criteria for HIV waivers. The memorandum also attempts to distinguish between the public charge exclusion and the third prong of the HIV waiver but ultimately combines the two issues. The memorandum first notes:

> Examiners should make it clear in their decisions that a separate finding on the ground of public charge will be made Although both findings (eligibility for a waiver under section 212(g) of the Act and excludability under section 212(a)(4) relating to public charge) may be contained in the same decision, they should be written up as separate and distinct adjudications to show that each ground of inadmissibility was reviewed and considered on its own merits.[124]

The 1995 INS memorandum then states:

> Examiners should note that HIV infection does not automatically result in a finding that an applicant is likely to become a public charge, however, in reviewing each case, a reasonable calculation of the applicant's future ability to pay the expected costs of the illness should be made. In addition to the medical expenses, a reasonable calculation of the applicant's ability to meet basic living expenses also should be made.[125]

However, the consideration of an applicant's future ability to pay for the costs of future illnesses is a significant expansion of the public charge exclusion. The usual public charge inquiry is limited to whether the household income exceeds the poverty guidelines, or whether there is current employment. To add consideration of actual or estimated medical or living expenses goes beyond the agency's practice and is unreliably dependent on the untrained speculation of the adjudicating official.

Ultimately, the 1995 INS memorandum confuses and combines the public charge exclusion and eligibility for the HIV waiver issues in the following paragraph titled "Determining Public Charge":

> Examiners should note that publicly-funded medical treatment for HIV infection does not automatically render the applicant excludable under the public charge provision. If the applicant has received or intends to receive HIV-related treatment

[124] *Id.* at 5–6, *reprinted in* 72 Interp. Rel. at 1351–52.

[125] *Id.* at 3. This instruction is consistent with Department of State instructions to consider that "aliens infected with the HIV virus are more likely to be subject to the public charge provision because of the relatively high costs of treating this disease." Department of State Cable No. 92-State-093280 (Mar. 25, 1992), *reprinted in* 69 Interp. Rel. 516–17 (1992).

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> at a government-financed facility, the applicant must submit evidence that such treatment is available and that the appropriate government agency has consented to the treatment.[126]

Thus, despite the INS memorandum's disclaimer that it is not changing any substantive eligibility standards,[127] this last paragraph combines the public charge and HIV exclusion grounds to create a new test: an HIV-infected applicant otherwise excludable on public charge grounds because of a likelihood that he would require publicly-funded medical care can overcome both the public charge exclusion and meet the third prong of the INS criteria for an HIV waiver if he can obtain prior consent from the funding government agency. This is a significant change, because the public charge exclusion has never been overcome simply with government agency consent. Of course, how consent of the "appropriate government agency" is obtained and documented remains highly problematic. Thus, although this latest INS memorandum seems to expand the public charge exclusion by considering an applicant's ability to pay medical and living expenses, it also seems to limit the exclusion by combining it with the third prong of the INS HIV waiver criteria. Monitoring of actual INS adjudications of HIV waivers under the new memorandum will be required to resolve these eligibility issues.

§ 11.12 —Documentation to Support HIV Waivers

As a practical matter, applicants for HIV waivers will need to assemble two types of evidence in support of the waiver. First, letters from doctors, nurses, AIDS service organizations, mental health workers, or social workers that attest to the knowledge and understanding of the applicant about HIV and its transmission will be required to satisfy the first two prongs of the INS criteria. A declaration from the applicant including the applicant's commitment to avoid transmission of HIV also would be helpful. If the applicant is participating in any support groups or engaging in any HIV prevention education efforts, those activities should be emphasized as positive contributions from the applicant above and beyond his own self-awareness and care.

Second, evidence must be collected to satisfy the third prong of the INS criteria. Proof of enrollment in a private health insurance plan, with copies of the scope of benefits, is sufficient. If the applicant has a regular health care provider who already is aware of the individual's HIV status, it also may be helpful for that provider to write a letter stating that health care will be available and reimbursable through the applicant's health insurance plan without any governmental costs.

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[126] INS, Mem. No. HQ 212.3-P (Sept. 6, 1995) at 6

[127] *Id.* at 2.

If the applicant does not have private health insurance, affidavits of support from relatives promising to pay the health care costs of the applicant may be submitted. Those affidavits, however, will be of limited use, given the extremely high costs of health care for persons living with AIDS. Both the Department of State and the INS have estimated the average cost of care for an HIV-infected person at $85,000.[128] In addition, relatives of the applicant may be unwilling or financially unable to make a sufficient commitment of resources to satisfy the INS.

A few HIV waiver applicants successfully have submitted evidence of participation in HIV-related clinical trials that include general health care to meet the third INS prong. Although such clinical trials might involve some governmental funding, the INS has seemed to overlook the issue of prior government consent. There also is a persuasive argument that the applicant's participation in the clinical trials is in the "public interest," one of the statutory criteria for several of the HIV waivers. Finally, the applicant may attempt to obtain some documentation of "consent" by a governmental agency for future costs of health care.[129]

§ 11.13 —INS Office Procedures

There are some critical differences in the processing and adjudication of HIV waivers at INS offices in the United States and at U.S. embassies and consular offices jointly staffed by the INS and the Department of State abroad. An applicant's ability to gather evidence and documentation as well as the applicant's rights to administrative and judicial review are severely limited outside the United States. Accordingly, it is vital that applicants for HIV waivers obtain legal advice and assistance prior to traveling abroad for any overseas processing of their HIV waivers.

Applicants for permanent residence who are adjusting their immigration status to permanent residence at INS offices in the United States must bring the sealed medical examination results from their civil surgeons with them to the INS interview. The INS should discover upon opening the results of the medical examination that the applicant is subject to the HIV exclusion. The INS should

[128] INS, Mem. No HQ212.3-P (Sept. 6, 1995) at 3; Department of State Cable No. 92-093280 (Mar. 25, 1992), *reprinted in* 69 Interp. Rel. 516–17 (1992). In a comparative study of long-term health costs involving Canadian immigrants, however, one study found that the costs associated with coronary heart disease over a 10-year period would be nearly $5 million more than those costs associated with HIV infection. Hanna Zowall et al., *Economic Impact of HIV Infection and Coronary Heart Disease in Immigrants to Canada*, 147 Can. Med. Ass'n J. 1163 (1992). All these cost estimates may be outdated with the new but expensive treatment alternatives with protease inhibitors.

[129] *See generally* Robert S. Hilliard, *Getting Residency when You've Got HIV: Waivers of HIV-Related Grounds of Exclusion under the 1990 Act*, Immigr. Newsl. (Nat'l Immigr. Project, Nat'l Law Guild, Boston, Mass.), Aug. 1992, at 3–9.

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then advise the applicant that he or she may seek a waiver of the HIV exclusion by filing INS form I-601. The INS also is required to notify the CDC and request that the CDC open a file on the case. The INS waits for CDC's acknowledgment, accompanied by a CDC form that the waiver applicant must complete. The INS sends the CDC form to the waiver applicant to obtain the required signatures. The CDC form is adapted from exclusion cases involving tuberculosis, requiring signatures of local public health officials acknowledging that an immigrant with an excludable contagious or communicable disease will be residing in their jurisdiction and ensuring that there will be local monitoring and followup. All this makes sense for tuberculosis, in which there is tracking of infectious cases and a specific treatment protocol that must be followed for a certain period of time. It does not make sense for an HIV-infected individual, especially one who is asymtomatic. There obviously are serious disclosure and confidentiality issues in notifying and obtaining signatures from local public health officials. The INS waits for the applicant to return the I-601, the completed CDC form, and any supporting evidence before adjudicating the waiver request.

One of the advantages of obtaining legal representation and assistance is that an attorney or advocate can bypass this cumbersome procedure. There is no assurance that all the government agencies involved will respond in a timely manner to complete each of the many steps in this process. Meanwhile, the applicant is waiting simply to submit a waiver request. The applicant already knows the result of the medical examination, so the applicant can prepare the I-601 and the supporting evidence to submit immediately at the INS interview. An attorney also can obtain a copy of the blank CDC form and obtain the required signatures prior to the INS interview. At the interview, the attorney can present all the required forms and evidence for the HIV waiver and ask that the INS official adjudicate the waiver request as quickly as possible. The attorney may have to explain to the INS official that the need to wait for a response from CDC can be bypassed. The INS still must notify CDC to open a file on the case but can otherwise proceed to adjudicate the HIV waiver.

Overseas Procedures

HIV waiver procedures at U.S. embassies and consulates overseas are generally the same as at INS offices.[130] The critical difference between adjudications of HIV waivers by INS and Department of State officials submitted by applicants outside the United States is the absence of any administrative or judicial review of such decisions.[131] In addition, the further complication of overseas communication

[130] Department of State Cable No. 91-State-211456 (Jun. 27, 1991), *reprinted in* 68 Interp. Rel. 969–71 (1991). Department of State Cable No. 92-227815 (Jul 16, 1992), *reprinted in* 69 Interp. Rel. 1097–98 (1992); INS Cable No. HQ 212.25-P (June 3, 1993), *reprinted in* 70 Interp. Rel. 873 (1993).

[131] The 1995 INS memorandum ended the practice of certifying all HIV waiver decisions to the INS central office for review and final decision making. This certification process might have

between the embassy or consulate, the INS, and the CDC may result in additional delays. If the applicant is waiting to enter or return to the United States, the delay in adjudication can be for over a year. Under a 1994 change in immigration law, individuals who otherwise are ineligible to complete their adjustment of immigration status at an INS office in the United States now have the option of paying an additional INS fee of $780 to avoid overseas processing.[132] Given the risks of leaving the United States and the long delays in adjudicating HIV waivers, applicants should consider taking advantage of this change if, of course, they can afford the additional fee.[133]

§ 11.14 HIV Testing Requirements and Waiver Availability

Table 11–1 indicates whether HIV testing is required for various categories of U.S. immigrants and whether waivers are available. All immigrants who test HIV positive should obtain confirmatory testing and seek health and legal counseling.

Table 11–1

HIV Testing Requirements for Immigrants

	Immigration Status	HIV Test Required	Waiver Availability if HIV+	Comments/Remedies
1	Applicant for permanent residence ("green card") based on family relationship (spouse, unmarried child, or parent of U S citizen, or spouse or minor child of permanent resident).	Yes	Yes	If HIV+ get confirmatory testing, health counseling and legal representation to apply for waiver.

created venue in the United States for either administrative or judicial review, because the final decisions regarding HIV waivers would be made by INS officials in Washington, DC. Without certification, decisions by INS and Department of State consular officers abroad will be furthered insulated from administrative or judicial review.

[132] 8 U.S.C. § 1255(i).

[133] Another important change under the 1994 law is that individuals who do decide to complete their adjustment process abroad must first reside in that country, usually their country of birth, for at least ninety days prior to the adjustment interview. Applicants need to anticipate this additional delay and make arrangements for their health care while abroad.

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."

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
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RESENDING

Fax Cover Sheet

To: Todd Summers **From:** Barbara Stack

Fax: **Pages:** 2

Phone: **Date:** 5/6

Re:

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

• **Comments:**

Proposed revisions to the draft HHS letter.

6:45 pm: Todd, I couldn't find a confirmation sheet on this from this morning, so I'm sending it again.