

FOIA MARKER

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OA/ID Number: 8302
FolderID:

Folder Title:
[Immigration Policy Regarding HIV-Infected Persons] [loose]

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Office of the General Counsel
Washington, D.C. 20201

October 12, 1993

*for info @
HHS/DOJ or
immigration*NOTE TO NAN HUNTER

Re: INS Termination of Special 10-day and 30-day
Waiver Procedures for HIV-Infected Persons

CDC has just learned that, effective on August 19, 1993, the Immigration and Naturalization Service (INS) apparently instructed its district offices that it is stopping the special procedures for issuing waivers for nonimmigrants with HIV virus seeking to enter the United States. (See Attachment 1, INS cable of August 19, 1993 from Acting Associate Commissioner Lawrence J. Weinig.)

Of immediate concern are two significant procedural implications for HIV-infected persons seeking to visit the U.S.:

- (1) Under the new INS policy, it is unclear whether a person will be able to enter the U.S. to attend a scientific, professional, or academic conference without first answering whether or not he or she is infected with HIV.
- (2) Under the new INS policy, it is also unclear whether a person who obtains a waiver in accordance with the routine provisions contained in the INS law and regulations will have the conditions and limitations of such waiver noted in that person's passport.

In light of this development, it is suggested that appropriate officials at the Department of Justice (DOJ) be contacted immediately in order to review the situation. To the extent that INS's new instructions leave a great deal of discretion to individual district offices, there could well be significant disparity in handling of specific cases depending on the point of entry involved.

I. BACKGROUNDA. Waivers

Special waiver procedures were developed in 1989 and 1990 to respond to the difficulties arising when HIV-infected persons tried to visit the U.S. (See Attachment 2, INS Memorandum of May 9, 1990 and DOJ

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News Release dated April 13, 1990.) The Attorney General has relatively broad authority under 8 U.S.C. 1182(d)(3) to allow for temporary admission of nonimmigrants who would otherwise be ineligible to obtain a visa.

Thirty-day Waiver: As explained in Attachment 2, the special 30-day waiver was developed in 1989 to allow HIV-infected persons to attend conferences, receive medical treatment, visit close family members, or conduct temporary business activities. While persons applying for this 30-day waiver still had to answer the question about communicable diseases on the visa application form, the person could request that this special waiver notification be issued on a document separate from the passport, so that the individual's passport would not reveal his or her use of this special visit procedure.

Ten-day Waiver: In 1990 a special 10-day waiver was also developed for persons seeking to attend a scientific, professional, or academic conference which the Secretary of HHS advised was in the public interest. Under this procedure, a person was not even asked the question about communicable diseases, and no record of the special waiver notification was placed in the passport.

B. NIH Revitalization Act of 1993

On June 10, 1993, Public Law 103-43, Section 2007 amended 8 U.S.C. 1182(a)(1)(A)(i) by stipulating that a communicable disease of public health significance "...shall include infection with the etiologic agent for acquired immune deficiency syndrome." The enactment of this legislation is the reason given by INS for now changing the waiver procedures.

C. Legislative History

The only official legislative history of this last-minute legislative change is contained in the Conference Report of May 20, 1993. (See Attachment 3, H.Rep. 103-100 at p.118.) The entire statement on this immigration law provision is "[t]he Conferees have adopted provisions regarding the Immigration and Nationality Act and persons infected with HIV. The Conferees intend these provisions to be a codification of current administrative practice." (Emphasis added.)

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It is important to note that the administrative practice currently in effect at the time of this Congressional enactment included the 10-day and 30-day waiver provisions pertaining to HIV-infected persons. Any elimination of these special waivers would seem to be a significant departure from the administrative practices in effect at the time the Congress changed the law.

II. CONCURRENT DEVELOPMENTS

A. WHO Inquiry Letter from President Nakajima

On August 9, 1993, WHO President Nakajima wrote to the ASH requesting information on U.S. policy with respect to travel restriction on HIV-infected persons. (See Attachment 4, Nakajima letter dated August 9, 1993.) Apparently, WHO's soon-to-be-announced nondiscrimination policy prohibits WHO sponsorship, co-sponsorship, or financial support of international conferences or meetings on AIDS in a country with HIV/AIDS specific short-term travel restrictions. The tone of the letter seems to be seeking a rationale to justify not applying the WHO prohibition to the U.S. The PHS response to this inquiry was being drafted when the new INS policy was discovered. No reply has been sent.

B. June 1994 Gay Games IV in New York

As mentioned in the INS cover memorandum contained in Attachment 1, the INS and HHS have been having discussions recently about the HIV policy to apply for persons planning to attend the June 1994 Gay Games IV in New York. CDC has been in contact with Alexandria Milonas of Patsy Flemming's staff on this matter.

III. PROPOSED MEETING WITH DOJ OFFICIALS

In view of these developments, it seems important that a meeting be scheduled with appropriate Department of Justice representatives to sort out a comprehensive policy on this matter. Among the issues to be discussed are:

- The continuing need for a procedure like the "10-day waiver" that allows certain short term visitors to avoid being asked to disclose their HIV status.
- The continuing need for a procedure that allows visitors to avoid documentation in their passport of their use of the waiver option.

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- Review of the criteria to be applied uniformly by INS in evaluating waiver requests. (Note that the instructions contained in the INS cable in Attachment 1 articulate four new criteria for waiver determination in HIV cases.)
- The need for a timely response to WHO.
- The need for a coordinated response to anticipated waiver requests pertaining to the Gay Games IV.

Please advise if you wish additional assistance or information on this matter.

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Richard J. Riseberg
Associate General Counsel
for Public Health

Attachments

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**HQINS QUICK NOTE & MEMORANDUM
FACSIMILE COVER SHEET**

Date: 10/ 6/93

Wednesday, 4:10pm (Eastern)

TO: Nancy McQueen
Centers for Disease Control
Atlanta, Georgia

FAX: 404-639-2599

FM: Tom Graber
Assistant Chief Inspector
Headquarters INS
Washington, DC

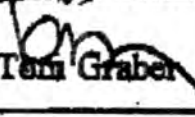
FAX: 202-514-8345
TEL: 202-616-7496

SUBJECT: 212(d)(3) Waivers for NIV applicants with HIV or AIDS

Nancy, as we discussed a few minutes ago, attached is a copy of the wire from INS Headquarters to District Directors and other INS officials in field offices stateside and abroad related to 212(d)(3) waivers and the authority of INS district offices to grant or concur in HIV waivers as of 19AUG93. I hope you find this helpful. If I can be of further assistance, please give me a call.

I will keep in touch with you periodically as the official INS position on HIV waivers takes shape. I realize that the Gay Games IV are scheduled for June, 1994 in New York City. I anticipate 212(d)(3) waiver applications to surface in about January 1994 as individuals planning to attend begin making NIV applications abroad.

I hope to have the HIV policy related to the Gay Games ready by that time. I would also appreciate any information that you might have which would assist me in my efforts.

Thanks,  Tom Graber

TOTAL NUMBER OF SHEETS SENT, INCLUDING THIS SHEET = 4

IMMIGRATION AND NATURALIZATION
SERVICE
WASHINGTON DC

ROUTINE

UNCLAS

1257/31CE 112./U30

HQ 235-C

DIANE HIRCKLEY

19 AUG 1993

SUBJECT: HEADQUARTERS PROGRAM RESPONSIBILITY FOR WAIVERS OF INADMISSIBILITY

THROUGH: JAMES A. PULSO

IN THE EXAMINATIONS PROGRAM, RESPONSIBILITIES FOR POLICY AND PROCEDURES FOR WAIVERS OF INADMISSIBILITY HAVE BEEN DIVIDED BETWEEN THE OFFICES OF ADJUDICATIONS AND INSPECTIONS. THE OFFICE OF INSPECTIONS HAS RESPONSIBILITY FOR ALL WAIVERS GRANTED UNDER §212(D)(3) OF THE ACT, PERTAINING TO NONIMMIGRANTS; THE OFFICE OF ADJUDICATIONS HAS RESPONSIBILITY FOR ALL OTHER WAIVERS OF INADMISSIBILITY. QUESTIONS REGARDING 212(D)(3) WAIVERS MAY BE DIRECTED TO DIANE HINCKLEY, CHIEF INSPECTOR, TELEPHONE 202-514-3275 OR FAX 202-514-8345. QUESTIONS REGARDING ANY OTHER WAIVER MAY BE DIRECTED TO: SOPHIA COX, SENIOR IMMIGRATION EXAMINER, TELEPHONE 202-514-5014 OR FAX 202-514-0198.

PLEASE NOTE ONE GENERAL CHANGE IN PROCEDURE FOR 212(D)(3) WAIVERS, EFFECTIVE ON THE DATE OF THIS WIRE. PROCEDURES AND RULES FOR GRANTING OR CONCURRING IN 212(D)(3) WAIVERS ARE CONTAINED IN 8 CFR 212.4. AN EXCEPTION TO THESE PROCEDURES HAS BEEN IN EFFECT FOR GRANTING OR CONCURRING IN WAIVERS FOR NONIMMIGRANTS WITH HUMAN IMMUNODEFICIENCY VIRUS (HIV).

THESE CASES WERE REFERRED TO HEADQUARTERS INSPECTIONS FOR A DECISION BECAUSE WHETHER HIV POSITIVE PERSONS WERE INADMISSIBLE DEPENDED ON THE POLITICAL DECISION OF WHETHER ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) WAS TO BE CONSIDERED A COMMUNICABLE DISEASE OF PUBLIC HEALTH SIGNIFICANCE, AND THE DECISION WAS SUBJECT TO CHANGE.

THIS UNCERTAINTY CEASED WHEN PUBLIC LAW 103-43 AMENDED 212 (A) (1) (A) (I) OF THE ACT AND INCLUDED HIV AS A DISEASE OF PUBLIC HEALTH SIGNIFICANCE, SO THAT ALL PERSONS WHO ARE HIV POSITIVE ARE STATUTORILY EXCLUDABLE. SINCE HIV POSITIVE PERSONS ARE CLEARLY EXCLUDABLE, THEIR CASES FALL UNDER THE POLICIES AND PROCEDURES ALREADY IN PLACE FOR GRANTING 212 (D) (3) WAIVERS. AUTHORITY FOR GRANTING OR CONCURRING IN HIV WAIVERS WILL NOW RETURN TO THE APPROPRIATE DISTRICT OFFICES, AS SET OUT IN 8 CFR 212.4.

CHARACTERISTICS OF CASES IN WHICH THE OFFICE OF INSPECTIONS READILY CONCURRED IN AN HIV WAIVER ARE: THE PERSON IS NOT CURRENTLY AFFLICTED WITH SYMPTOMS OF THEIR DISEASE; HE OR SHE

IS COMING TO THE UNITED STATES FOR A SHORT VISIT; HE OR SHE HAS INSURANCE OR ASSETS THAT WILL ENABLE THEM TO PAY FOR MEDICAL CARE SHOULD THEY BECOME ILL; AND THERE IS NO REASON TO BELIEVE THEIR VISIT WILL POSE A DANGER TO PUBLIC HEALTH IN THE UNITED STATES. THE OFFICE OF INSPECTIONS WILL BE HAPPY TO DISCUSS INDIVIDUAL CASES WITH DISTRICTS TO HELP RESOLVE ANY PROBLEMS THAT ARISE.



LAWRENCE J. WEINIG
ACTING ASSOCIATE COMMISSIONER, EXAMINATIONS

FILENAME HIVWIRE
FILENUMBER DR285

CC:OFFICIAL FIRE
INSPECTIONS LOG
READING FILE:HINCKLEY:KAE:514-1796:8/17/93
KIMS OPS LOG

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Immigration and Naturalization Service, Justice

and/or circumstances which the applicant knows or believes apply to the grounds of excludability or deportability must be described. The applicant must also submit all available documentation relating to such grounds.

(c) *Decision of the District Director.* A district director may grant or deny an application for advance permission to return to an unexpired domicile. The exercise of discretion by paragraph (1) or (2) of this section shall be no-voided if the decision and, if the applicant is denied, of the reasons for denial is denied. No appeal shall lie from denial of the application, but the application may be renewed before an immigration judge as provided in paragraph (e) of this section.

(d) *Validity.* Once an application is approved, that approval is valid indefinitely. However, the approval covers only those specific grounds of excludability or deportability that were described in the application. An applicant who failed to describe any other grounds of excludability or deportability, or failed to disclose material facts existing at the time of the approval of the application, remains excludable or deportable under the previously undenied grounds. If at a later date, the applicant becomes subject to exclusion or deportation based upon these previously undenied grounds or upon new grounds, a new application must be filed with the appropriate district director.

(e) *Filing or renewal of applications before an immigration judge.* (1) An application for the exercise of discretion under section 212(c) of the Act may be renewed or submitted in proceedings before an immigration judge under sections 235, 236, or 242 of the Act, and under this chapter. Such application shall be adjudicated by the immigration judge, without regard to whether the applicant previously has made application to the district director. (2) The immigration judge may grant or deny an application for advance permission to return to an unexpired domicile under section 212(c) of the Act, in the exercise of discretion.

(f) *Applications for the exercise of discretion under section 212(d)(3).* (1) Applications for the exercise of discretion under section 212(d)(3) shall be filed with the district director, Washington, D.C., has jurisdiction in such cases recommended to the Service at the seat-of-government level by the Department of State. When a consular officer or other State Department official recommends that the benefits of section 212(d)(3)(A) of the Act be accorded an alien, neither the Act be accorded an alien, neither

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8 CFR Ch. I (1-1-93 Ed.)

an application nor fee shall be required. The recommendation shall specify:

- (i) The reasons for inadmissibility and each section of law under which the alien is inadmissible;
- (ii) Each intended date of arrival;
- (iii) The length of each proposed stay in the United States;
- (iv) The purpose of each stay;
- (v) The number of entries which the alien intends to make; and
- (vi) The justification for exercising the authority contained in section 212(d)(3) of the Act.

If the alien desires to make multiple entries and the consular officer or other State Department official believes that the circumstances justify the issuance of a visa valid for multiple entries rather than for a specified number of entries, and recommends that the alien be accorded an authorization valid for multiple entries, the information required by items (ii) and (iii) shall be furnished only with respect to the initial entry. Item (ii) does not apply to a bona fide crewman. The consular officer or other State Department official shall be notified of the decision on his recommendation. No appeal by the alien shall lie from an adverse decision made by a Service officer on the recommendation of a consular officer or other State Department official.

(3) *Authority of consular officers to approve section 212(d)(3)(A) recommendations pertaining to aliens inadmissible under section 212(a)(2)(C).* In certain categories of visa cases defined by the Secretary of State, United States consular officers assigned to visa-issuing posts abroad may, on behalf of the Attorney General pursuant to section 212(d)(3)(A) of the Act, approve a recommendation by another consular officer that an alien be admitted temporarily despite visa ineligibility solely because the alien is of the class of aliens defined at section 212(a)(2)(C) of the Act, as a result of presumed or actual membership in, or affiliation with, an organization described in that section. Authorizations for temporary admission granted by consular officers shall be subject to the terms specified in § 212.4(c) of this chapter. Any recommendation which

is not clearly approvable shall, any recommendation may, be presented to the appropriate official of Immigration and Naturalization Service for a determination.

(b) *Applications under section 212(d)(3)(B).* An application for exercise of discretion under section 212(d)(3)(B) of the Act shall be submitted on Form I-192 to the director in charge of the applicant's intended port of entry prior to the applicant's arrival in the United States. (For Department of State procedure when a visa is required, see 22 CFR 41.95 and paragraph (a) of this section.) If the application is made because the applicant may be inadmissible due to present or past membership in or affiliation with any Communist or other totalitarian party or organization, there shall be attached to the application a written statement of the history of the applicant's membership or affiliation, including the period of such membership or affiliation, whether the applicant held any office in the organization, and whether his membership or affiliation was voluntary or involuntary. If the applicant alleges that his membership or affiliation was involuntary, the statement shall include the basis for that allegation. When the application is made because the applicant may be inadmissible due to disease, mental or physical defect, or disability of any kind, the application shall describe the disease, defect, or disability. If the purpose of seeking admission to the United States is for treatment, there shall be attached to the application statements in writing to establish that satisfactory treatment cannot be obtained outside the United States; that arrangements have been completed for treatment, and where and from whom treatment will be received; what financial arrangements for payment of expenses incurred in connection with the treatment have been made, and that a bond will be available if required. When the application is made because the applicant may be inadmissible due to the conviction of one or more crimes, the designation of each crime, the date and place of its commission and of the conviction thereof, and the sentence or other judgment of the

Immigration and Naturalization Service, Justice

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court shall be stated in the application; in such a case the application shall be supplemented by the official record of each conviction, and any other documents relating to commutation of sentence, parole, probation, or pardon. If the application is made at the time of the applicant's arrival to the district director at a port of entry, the applicant shall establish that he was not aware of the ground of inadmissibility and that it could not have been ascertained by the exercise of reasonable diligence, and he shall be in possession of a passport and visa, if required, or have been granted a waiver thereof. The applicant shall be notified of the decision and if the application is denied of the reasons therefor and of his right to appeal to the Board within 15 days after the mailing of the notification of decision in accordance with the Provisions of part 3 of this chapter. If denied, the denial shall be without prejudice to renewal of the application in the course of proceedings before a special inquiry officer under sections 235 and 238 of the Act and this chapter. When an appeal may not be taken from a decision of a special inquiry officer excluding an alien but the alien has applied for the exercise of discretion under section 212(d)(3)(B) of the Act, the alien may appeal to the Board from a denial of such application in accordance with the provisions of § 236.5(b) of this chapter.

(C) *Terms of authorization.* Each authorization under section 212(d)(3) (A) or (B) of the Act shall specify:

(1) Each section of law under which the alien is inadmissible;

(2) The intended date of each arrival;

(3) The length of each stay authorized in the United States;

(4) The purpose of each stay;

(5) The number of entries for which the authorization is valid;

(6) The dates on or between which each application for admission at ports of entry in the United States is valid; and

(7) The justification for exercising the authority contained in section 212(d)(3) of the Act. If the consular officer has recommended under section 212(d)(3)(A), or an applicant

under section 212(d)(3)(B) seeks, the issuance of an authorization valid for multiple entries rather than for a specified number of entries, and it is determined that the circumstances justify the issuance of the authorization valid for multiple entries, the information required by items (2) and (3) shall be specified only with respect to the initial entry. Item (2) does not apply to a bona fide crewman. Authorizations granted to crewmen may be valid for a maximum period of 3 years for application for admission at U.S. ports of entry and may be valid for multiple entries. An authorization issued in conjunction with an application for a nonresident alien border crossing card shall be valid for a period not to exceed the validity of such card for applications for admission at U.S. ports of entry and shall be valid for multiple entries. A multiple entry authorization for a person other than a crewman or applicant for a border crossing card may be made valid for a maximum period of 1 year for applications for admission at U.S. ports of entry, except that a period in excess of 1 year may be permitted on the recommendation of the Department of State. A single entry authorization to apply for admission at a U.S. port of entry shall not be valid for more than 6 months from the date the authorization is issued. All admissions pursuant to section 212(d)(3) of the Act shall be subject to the terms and conditions set forth in the authorization. The period for which the alien's admission is authorized pursuant to item (3) shall not exceed the period justified, subject to the limitations specified in part 214 of this chapter for each class of nonimmigrants. Each authorization shall specify that it is subject to revocation at any time. Unless the alien applies for admission during the period of validity of the authorization, a new authorization is required. An authorization may not be revalidated.

(d) *Admission of groups inadmissible under section 212(a)(28) for attendance at international conferences.* When the Secretary of State recommends that a group of nonimmigrant aliens and their accompanying family members be admitted to attend inter-

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national conferences notwithstanding their inadmissibility under section 212(a)(3) of the Act, the Deputy Commissioner, may enter an order pursuant to the authority contained in section 212(d)(3)(A) of the Act specifying the terms and conditions of their admission and stay.

(a) *Inadmissibility under section 212(a)(1)*. Pursuant to the authority contained in section 212(d)(3) of the Act, the temporary admission of a nonimmigrant visitor is authorized notwithstanding inadmissibility under section 212(a)(1) of the Act, if such alien is accompanied by a member of his/her family, or a guardian who will be responsible for him/her during the period of admission authorized.

(f) *Action upon alien's arrival*. Upon admitting an alien who has been granted the benefits of section 212(d)(3)(A) of the Act, the immigration officer shall be guided by the conditions and limitations imposed in the authorization and noted by the consular officer in the alien's passport. When admitting any alien who has been granted the benefits of section 212(d)(3)(B) of the Act, the immigration officer shall note on the arrival-departure record, Form I-94, or crewman's landing permit, Form I-95, issued to the alien, the conditions and limitations imposed in the authorization.

(g) *Authorizations issued to crewmen without limitation as to period of validity*. When a crewman who has a valid section 212(d)(3) authorization without any time limitation comes to the attention of the Service, his travel document shall be endorsed to show that the validity of his section 212(d)(3) authorization expires as of a date six months thereafter, and any previously-issued Form I-184 shall be lifted and Form I-95 shall be issued in its place and similarly endorsed.

(h) *Revocation*. The Deputy Commissioner or the district director may at any time revoke a waiver previously authorized under section 212(d)(3) of the Act and shall notify the nonimmigrant in writing to that effect.

(39 FR 19253, Nov. 13, 1964, as amended at 30 FR 12120, Sept. 28, 1965; 31 FR 10413, Aug. 3, 1966; 23 FR 15489, Nov. 7, 1967; 39 FR 2055, Feb. 17, 1970; 46 FR 7637, May 16,

1970; 40 FR 30470, July 21, 1975; 51 FR 22295, Sept. 10, 1986; 53 FR 40867, Oct. 1988)

§ 212.5 Parole of aliens into the United States.

(a) In determining whether or not aliens who have been or are detained in accordance with § 235.3 (b) or (c) will be paroled out of detention, the district director should consider the following:

(1) The parole of aliens who have serious medical conditions in which continued detention would not be appropriate would generally be justified by "emergent reasons";

(2) The parole of aliens within the following groups would generally come within the category of aliens for whom the granting of the parole exemption would be "strictly in the public interest", provided that the aliens present neither a security risk nor a risk of absconding:

(i) Women who have been medically certified as pregnant;

(ii) Aliens who are defined as juveniles in 8 CFR 242.24. The district director shall follow the guidelines set forth in § 242.24(b) in determining under what conditions a juvenile should be paroled from detention.

(iii) Aliens who have close family relatives in the United States (parent, spouse, children, or siblings who are United States citizens or lawful permanent resident aliens) who are eligible to file, and have filed, a visa petition on behalf of the detainee;

(iv) Aliens who will be witnesses in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States;

(v) Aliens whose continued detention is not in the public interest as determined by the district director.

(3) Aliens subject to prosecution in the United States who are needed for the purposes of such prosecution may be paroled to the custody of the appropriate responsible agency or prosecuting authority.

(b) In the cases of all other arriving aliens except those detained under § 235.3(b) or (c), and paragraph (a) of this section, the district director in charge of a port of entry may, prior to examination by an immigration off-

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Memorandum

CO 234-P

Subject --

Admission of Individuals Who are HIV
Positive

Date

MAY -9 1990

To

All Regional Commissioners
All District Directors (Include Foreign)
All Officers in Charge (Include Foreign)

From

Office of the
Commissioner

This is to supplement previous cables (File CO 234-P of March 2, 1988, and May 25, 1989) and existing guidelines on the Service's position regarding admission of HIV infected aliens. The existing policy authorizes waivers to those individuals who state that they are infected with HIV. This policy remains in effect, except that special procedures shall be available to all individuals seeking short-term entry to attend a conference, as described below, to allow them to enter the United States without being subject to questions regarding their HIV status. These special procedures are not limited to individuals infected with HIV, and any alien seeking to enter the United States to attend a short-term conference designated by the Secretary of Health and Human Services (HHS) may elect to use the procedures outlined below.

The Attorney General has determined that a waiver of the applicability of section 212(a)(6) with respect to HIV may be granted under the provision of section 212(d)(3) of the INA, whenever the Secretary of HHS advises that attendance at a scientific, professional, or academic conference in the United States is in the public interest, and the alien establishes that:

- 1) The alien's visit to the United States will be for 10 days or less, and
- 2) The alien is seeking admission to the United States to attend such a designated conference.

As required by statute, the Department of State has recommended that the Attorney General exercise his discretionary waiver authority under section 212(d)(3) of the INA. The Attorney General has accepted this recommendation and therefore is exercising such discretionary waiver authority for visa applications made abroad at a consular office. Consular officers will issue visas to such aliens without the waiver notation. Upon the request of the applicant, the State Department shall issue the

ATTACH. 2

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visa on the OF-232. Additionally, in these cases, the alien is not required to answer question 35 on the visa application (OF-156) insofar as it relates to HIV infection. Applicants may be asked to provide evidence of their intent to attend a designated conference. Consular officers shall attach to the application an addendum which states the following:

"Aliens who are seeking to enter the United States for 10 days or less for the purpose of attending a scientific, professional, or academic conference, as designated by the Secretary of Health and Human Services, are not required to answer question 35 of this form as it relates to infection with HIV."

An applicant who presents evidence indicating an intent to participate in one of the referenced conferences and to remain in the United States for 10 days or less, may be admitted under the above-stated provisions for a period of 10 days, if otherwise eligible for admission. An applicant for admission under these procedures shall be processed for admission as quickly and unobtrusively as possible. There should be no questioning or inquiry as to the applicant's HIV status.

- No applicant shall be asked in primary inspection if he or she is inadmissible under section 212(a)(6) for HIV infection. Primary inspectors must realize that the discussion of the particulars of any medical exclusion ground is inappropriate in primary inspection.
- No applicant will be referred to secondary inspection merely on the basis of the applicant's response to questions regarding the purpose of his or her trip, nor on the basis of any literature in the applicant's possession relating to HIV infection.
- Secondary inspection shall be conducted in a discreet and professional manner. Questioning concerning medical conditions shall be conducted privately, if at all possible, and always out of the range of other applicants for admission.
- It is inappropriate either in primary or secondary inspection to conduct a search under section 287 of the INA of an applicant's person or belongings for the purpose of seeking evidence to establish ineligibility under any medical exclusion ground. However, it is possible that, during the normal course of inspection, an officer may discover medical equipment or medication related to one or several of the medical exclusion grounds. It must be established that the importation of the equipment or medication is in compliance with the regulations of the U.S. Customs Service. The proper

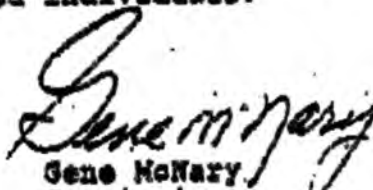
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Importation of any medical equipment or medication will not be a reason for the inspecting officer to initiate a line of questioning of any individual who has been granted a waiver of medical exclusion grounds.

In cases where an applicant, who initially invoked the foregoing procedures, indicates an intent to extend his or her stay more than 10 days, the requirements of the waiver provisions of section 212(a)(5), as described in our previous directives, shall apply with respect to HIV-infected individuals.


Gene McNary
Commissioner

10:00 10:15 AM

11/16/93 10:16 202 638 5331

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202/603

U.S. Department of Justice
Immigration and Naturalization Service
Washington, D.C. 20536

Contact: Visa Service or Data Admin
Press Information Office
Phone (202) 681-6648

News Release

FOR IMMEDIATE RELEASE
FRIDAY, APRIL 13, 1990

The Administration today announced that a new, short-term visa will be available for persons scheduled to attend professional, scientific or academic conferences in the United States which the Secretary of Health and Human Services determines to be in the public interest.

Secretary Louis W. Sullivan has certified the first two conferences to qualify for this new visa procedure--the Sixth International Conference on AIDS to be held June 20-24 in San Francisco, and the Nineteenth International Congress of the World Federation of Hemophilia to be held August 14-19 in Washington, D.C.

These special 10-day visas, an alternative to current policy, will be provided without requiring individuals to identify whether they are HIV-positive. They must meet all other requirements for admission into the United States.

Persons wishing to avail themselves of this visa should contact their nearest U.S. consulate office abroad, or the Department of State.

In addition, the 30-day waiver policy adopted last year by the Immigration and Naturalization Service will remain in effect. That procedure allows persons infected with the HIV-virus to

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enter the United States for up to 30 days to attend educational or medical conferences, to receive medical treatment, to visit close family members or to conduct temporary business activities, as long as that individual is otherwise admissible.

In order to obtain such a waiver, the individual must respond to questions regarding grounds for possible medical exclusion. Upon request, the State Department will issue the waiver notification on a form separate from the passport so that an individual's passport will not reveal his or her use of the special visit procedure.

The Administration is committed to ensuring that persons seeking admission to the United States are treated with fairness and compassion.

####

90-158

103d Congress
1st Session

HOUSE OF REPRESENTATIVES

REPORT
103-100NATIONAL INSTITUTES OF HEALTH REVITALIZATION ACT
OF 1993

MAY 20, 1993.—Ordered to be printed

Mr. DINGELL, from the committee of conference,
submitted the following

CONFERENCE REPORT

(To accompany H. R. 1)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (H. R. 1) to amend the Public Health Service Act to revise and extend the programs of the National Institutes of Health, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the "National Institutes of Health Revitalization Act of 1993".

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I.—GENERAL PROVISIONS REGARDING TITLE IV OF PUBLIC HEALTH SERVICE ACT

Subtitle A.—Research Freedom

PART I.—REVIEW OF PROPOSALS FOR BIOMEDICAL AND BEHAVIORAL RESEARCH

Sec. 101. Establishment of certain provisions regarding research conducted or supported by National Institutes of Health.

PART II.—RESEARCH ON TRANSPLANTATION OF FETAL TISSUE

Sec. 111. Establishment of authorities.

Sec. 112. Purchase of human fetal tissue; collection or acceptance of tissue as directed donation for use in transplantation.

53-004

ATTACH. 3

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IMMIGRATION

The Conferees have adopted provisions regarding the Immigration and Nationality Act and persons infected with HIV. The Conferees intend these provisions to be a codification of current administrative practice.

From the Committee on Energy and Commerce, for consideration of the Senate bill, and the House amendment, and modifications committed to conference:

JOHN D. DINGELL,
HENRY A. WAXMAN,
RON WYDEN,

As additional conferees from the Committee on Education and Labor, for consideration of section 3013 of the Senate bill, and modifications committed to conference:

WILLIAM D. FORD,
MATTHEW G. MARTINEZ,

As additional conferees from the Committee on the Judiciary, for consideration of section 2011 of the Senate bill, and modifications committed to conference:

JACK BROOKS,
R. MAZZOLI,
BILL MCCOLLUM,

Managers on the Part of the House.

EDWARD M. KENNEDY,
PAUL SIMON,
HOWARD M. METZENBAUM,
JIM JEFFORDS,

Managers on the Part of the Senate.

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WORLD HEALTH ORGANIZATION



ORGANISATION MONDIALE DE LA SANTE

Rec'd 9/

Telephone Central/Exchange: 791.21.11
Direct: 791.4671

The Assistant Secretary for Health
Department of Health and Human Services
Washington, D.C. 20201

In reply please refer to: QPA-450282

9 August, 1993

Polite de supplier la attente :

Sir,

I have the honour to refer to a decision taken by the World Health Organization that it will not sponsor, cosponsor or financially support international conferences or meetings on AIDS in a country with HIV/AIDS-specific short-term travel restrictions. Furthermore, it will not send representatives to attend international conferences on AIDS in countries with such restrictions unless such attendance is deemed essential for promoting WHO's policy of non-discrimination in relation to HIV-infected people and people with AIDS. The adoption of this Policy on short-term travel restrictions, which is about to be announced formally, should not be taken to imply that WHO condones discrimination against HIV-infected persons in relation to longer term travel or other situations.

The phrase "short-term travel" is defined in the Policy as travel by persons to a host country for 30 days or fewer without prejudice to WHO's broader policy against discriminatory restrictions on any traveller, irrespective of duration of visit.

The Policy defines "HIV/AIDS-specific short-term travel restrictions" as HIV/AIDS-specific legislation, regulations and/or written policies requiring any or all of

cc: The Secretary of State, Attention: IO/T, Department of State, Washington, D.C. 20520

The Director, Office of International Health, Department of Health and Human Services, Washington, D.C. 20201

United States Mission to the United Nations Office and other International Organizations at Geneva, Attention: International Health Attaché, 1292 Chambésy

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TRACER

ATTACH. 4

HOA 79922

The Assistant Secretary for Health, Washington, D.C.
GFA-A20222/2

the following in relation to short-term travellers: HIV testing, self-declaration of HIV status, or exclusion of persons known or suspected of having HIV infection or AIDS.

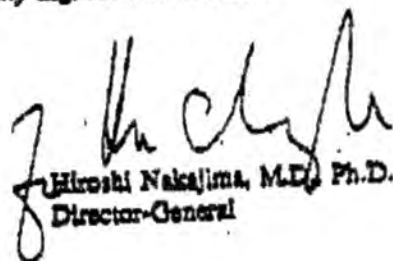
Prior to announcing the WHO Policy formally to Member States, I am bringing its provisions to the attention of governments whose policies appear not to conform. It is our understanding that legislation and regulations of the United States of America are contrary to the WHO Policy.

I understand that the United States Immigration and Nationality Act (section 212 (a) (1) (A) (I)), as amended to take effect from mid-July 1993, prohibits issue of a visa or entry to any alien "determined to have a communicable disease of public health significance, which shall include infection with the etiologic agent for AIDS". However, I also understand that Section 212 (g) of the same legislation permits the Attorney-General to authorize a waiver of this prohibition in certain limited circumstances relating to family reunion. I should be grateful for your advice as to whether our understanding of the amended United States legislation is correct and, if so, how it is envisaged that a "determination" will be made by the Secretary of Health and Human Services under section 212 (a) (1) (A) (I) in practice.

Moreover, under subsection (d) of section 212, the Attorney-General retains discretion to admit ineligible aliens temporarily. The Attorney-General is required to prescribe conditions to control the temporary entry of aliens under this provision. I should thus also be grateful for your advice as to the conditions applying at present in the case of such temporary entry and whether such conditions will continue to apply in the future.

It is particularly important for us to know the details of United States laws, regulations and practice so as to ensure that the WHO Policy referred to above is not applied incorrectly. Thus any other information you can provide in this respect, as at July 1993, would be most useful.

Please accept, Sir, the assurance of my highest consideration.


Hiroshi Nakajima, M.D., Ph.D.
Director-General