



Know Your Rights: The HIV Ban and Immigration
The Center for HIV Law and Policy

January 2010

I am living with HIV and want to file for lawful permanent residence. Does this announcement mean I can finally apply for a green card?

As of January 4, 2010, HIV is no longer a bar to applying for permanent residence. Now that being HIV-positive is no longer a reason to deny someone lawful permanent residence, there is no need to file a special HIV-waiver.

However, whether you are HIV-positive or not, you still must qualify for a green card through a family sponsorship, employer sponsor, the Diversity Visa lottery, asylum, or some other means to apply.

Unfortunately, for many undocumented HIV-positive individuals, the biggest obstacle to obtaining a green card has been because they were living in the United States without lawful status, not because they were HIV positive.

If I have a waiver pending, what should I do now?

You or your attorney should send a letter to USCIS explaining that the HIV ban has been lifted, that a waiver is no longer required in your case, and that they should adjudicate your green card application immediately.

Can I get a refund for the \$545 waiver fee I already filed before the ban was lifted?

Unfortunately, no. Immigration law changes all the time, and there is no refund available for fees that were appropriately paid at the time an application (or waiver) was filed. Because the fees were appropriately paid at the time the waiver was filed, you cannot get a refund.

If my case was denied because I'm HIV-positive, can I have it reopened?

Maybe. You must still qualify for the benefit that was denied.

For example, if you won the Diversity Visa lottery in 2006 but couldn't go forward with the legal permanent residence application because of your HIV status, unfortunately, you cannot reopen the case now because 2006 Diversity Visas are no longer available.

If your application was denied in the past because of your HIV status, we recommend you contact Immigration Equality (<http://immigrationequality.org/contactus.php> or 212.714.2904) to determine whether anything can be done.

Does this mean that HIV status is completely irrelevant to my immigration case?

No. All applicants for lawful permanent residence must demonstrate that they are not “likely to become a public charge.” If you are in relatively good health, being HIV-positive should not be an obstacle to getting a green card. However, in determining whether someone is likely to become a public charge, USCIS can look at all of the circumstances of someone’s life. If you have been in a nursing home or have been too disabled by your HIV to work, it is possible that your application could be denied if USCIS finds that you will not be able to support yourself. However, since the new regulations remove HIV testing from the medical examination, it is unlikely that your HIV status will come up at all.

I applied for asylum based on being HIV positive, will this change in the regulations affect my application?

No. To succeed in an application for asylum, people must prove that they have a well-founded fear of persecution based on being HIV-positive. The fact that the U.S. will soon end its discriminatory policy toward foreign nationals with HIV is not relevant to whether an asylum seeker would face persecution in his country of origin.

Will I be able to obtain a visa to come to the United States for a visit?

Maybe. The new regulations no longer prevent an HIV-positive person from obtaining a visa. However, you must still show that you qualify for a visa before it will be issued to you.

For example, if you are seeking to come to the United States as a tourist or a visitor, you must always prove that you intend to return to your country at the conclusion of your authorized stay in the U.S. If you cannot demonstrate an intent to return home, it is unlikely that you will be issued a visa.