

110TH CONGRESS
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H. R. 3337

To remove from the Immigration and Nationality Act a provision rendering individuals having HIV inadmissible to the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2007

Ms. LEE (for herself, Mr. GRIJALVA, Mr. WAXMAN, Mrs. CHRISTENSEN, Ms. NORTON, Ms. MCCOLLUM of Minnesota, Mr. McDERMOTT, Mr. FATTAH, Mr. KUCINICH, Mr. BERMAN, Mr. DAVIS of Illinois, Mr. HASTINGS of Florida, Mr. BLUMENAUER, Ms. SOLIS, and Mr. RUSH) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To remove from the Immigration and Nationality Act a provision rendering individuals having HIV inadmissible to the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “HIV Nondiscrimina-
5 tion in Travel and Immigration Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

(1) Under current immigration law and policy, infection with the Human Immunodeficiency Virus (HIV) is grounds for barring prospective immigrants, foreign students, refugees, and tourists from entry into the United States. Applicants for temporary admission as nonimmigrants, such as tourists and foreign students, are required to disclose their HIV status when applying for a visa and, if questioned, may be required to undergo an HIV test. Applicants for permanent residence and refugee status must be tested for HIV infection. Waivers may be issued by the Secretary of Homeland Security on a case-by-case basis only to—

(A) HIV-positive individuals applying for permanent admission as immigrants who are the parents, spouse, unmarried son or daughter, or minor adopted child of either a United States citizen or a permanent resident, or are refugees or asylees adjusting to immigrant status and who can establish that—

(i) the danger to the public health of the United States created by the applicant's admission would be minimal;

1 (ii) the possibility of the spread of the
2 infection created by the applicant's admis-
3 sion would be minimal; and

4 (iii) there would be no cost incurred
5 by any level of government agency of the
6 United States without the prior consent of
7 that agency;

8 (B) HIV-positive individuals applying for
9 admission as refugees for humanitarian pur-
10 poses, to assure family unity, or when it is oth-
11 erwise in the public interest who also meet the
12 requirements in clauses (i) and (ii) of subpara-
13 graph (A); or

14 (C) HIV-positive individuals applying for
15 short-term nonimmigrant visas, including—

16 (i) tourists for up to 30 days, who
17 also meet the requirements in clauses (i)
18 through (iii) of subparagraph (A); or

19 (ii) participants in certain designated
20 events such as conferences or international
21 sports events for up to 10 days.

22 (2) The HIV travel and immigration ban was
23 originally implemented in 1987 by regulations issued
24 through the Public Health Service of the Depart-
25 ment of Health and Human Services and required

1 HIV screening for all persons over 14 years of age
2 applying for immigrant and nonimmigrant visas.

3 (3) The Immigration Act of 1990 (Public Law
4 101–649) authorized the Secretary of Health and
5 Human Services to decide which diseases should be
6 considered as grounds for excluding noncitizens from
7 entering the United States based on a determination
8 that such diseases were “communicable diseases of
9 public health significance”.

10 (4) In 1991, the Department of Health and
11 Human Services conducted a public health analysis
12 and proposed ending the HIV travel and immigra-
13 tion ban by delisting HIV as a communicable disease
14 of public health significance. The proposal was even-
15 tually dropped due to opposition from the Congress.

16 (5) In 1993, as part of the National Institutes
17 of Health Revitalization Act (Public Law 103–43),
18 the Congress revoked the authority of the Secretary
19 of Health and Human Services to make a public
20 health determination regarding HIV status as
21 grounds for inadmissibility for potential foreign stu-
22 dents, tourists, refugees, and immigrants to the
23 United States by specifically including “infection
24 with the etiologic agent for acquired immune defi-

1 ciency syndrome” as a “communicable disease of
2 public health significance” under the statute.

3 (6) HIV/AIDS is the only condition perma-
4 nently listed by statute as a communicable disease of
5 public health significance. In contrast, the Secretary
6 of Health and Human Services has the authority to
7 add or remove all other diseases on the commu-
8 nicable disease list.

9 (7) The United States is one of 13 countries
10 that maintain by law both a travel and immigration
11 ban for persons with HIV, including Armenia,
12 Brunei, China, Iraq, Qatar, South Korea, Libya,
13 Moldova, Oman, the Russian Federation, Saudi Ara-
14 bia, and Sudan.

15 (8) The HIV travel and immigration ban im-
16 pacts thousands of prospective HIV-positive foreign
17 students, tourists, refugees and immigrants who may
18 be denied entry into the United States due solely to
19 their HIV status.

20 (9) In some cases the HIV travel and immigra-
21 tion ban may discourage foreign students, refugees,
22 and nonpermanent residents who are already in the
23 United States and who may be at risk of infection
24 from seeking testing, treatment or care for HIV/
25 AIDS.

1 (10) The United Nations, including the Joint
2 United Nations Programme on HIV/AIDS
3 (UNAIDS) and the World Health Organization, op-
4 pose any restrictions on travel and immigration for
5 people living with HIV/AIDS. Travel and immigra-
6 tion restrictions based on a public health or eco-
7 nomic cost rationale are addressed in the United
8 Nation’s “International Guidelines on HIV/AIDS
9 and Human Rights, 2006 Consolidated Version”,
10 produced jointly by the Office of the United Nations
11 High Commissioner for Human Rights and
12 UNAIDS, which state the following: “There is no
13 public health rationale for restricting liberty of
14 movement or choice of residence on the grounds of
15 HIV status. According to current international
16 health regulations, the only disease which requires a
17 certificate for international travel is yellow fever.
18 Therefore, any restrictions on these rights based on
19 suspected or real HIV status alone, including HIV
20 screening of international travelers, are discrimina-
21 tory and cannot be justified by public health con-
22 cerns”.

23 (11) Such guidelines also state the following:
24 “Where States prohibit people living with HIV from
25 longer term residency due to concerns about eco-

1 nomic costs, States should not single out HIV/AIDS,
2 as opposed to comparable conditions, for such treat-
3 ment and should establish that such costs would in-
4 deed be incurred in the case of the individual alien
5 seeking residency. In considering entry applications,
6 humanitarian concerns, such as family reunification
7 and the need for asylum, should outweigh economic
8 considerations.”.

9 (12) On World AIDS Day, December 1, 2006,
10 the President proposed streamlining the current
11 waiver process for HIV-positive individuals seeking
12 to enter the United States on short-term business or
13 tourist visas for up to 60 days by granting them a
14 “categorical waiver”. If implemented, the President’s
15 proposal would only affect the waiver process for
16 short-term visitors, and would not affect HIV-posi-
17 tive individuals seeking permanent residence or non-
18 tourist visas.

19 (13) There is no scientific evidence to support
20 the claim that the HIV travel and immigration ban
21 is an effective way to prevent the spread of HIV or
22 that it provides any economic benefit by reducing
23 costs to the public health care system.

24 (14) The Secretary of Health and Human Serv-
25 ices should have the authority to determine which

1 diseases should be included on the list of commu-
2 nicable diseases of public health significance, and in-
3 fection with HIV should not be required by law to
4 be included on such a list.

5 **SEC. 3. AMENDMENT TO THE IMMIGRATION AND NATION-**
6 **ALITY ACT.**

7 Section 212(a)(1)(A)(i) of the Immigration and Na-
8 tionality Act (8 U.S.C. 1182(a)(1)(A)(i)) is amended by
9 striking “which shall include infection with the etiologic
10 agent for acquired immune deficiency syndrome,”.

11 **SEC. 4. REVIEW OF TRAVEL AND IMMIGRATION REGULA-**
12 **TIONS REGARDING HIV.**

13 (a) REVIEW.—Not later than 15 days after the date
14 of the enactment of this Act, the Secretary of Health and
15 Human Services, in consultation with the Secretary of
16 Homeland Security, shall convene a panel of public health
17 experts, including non-governmental experts, to review all
18 policies regarding HIV as a “communicable disease of
19 public health significance” under section 212(a)(1)(A)(i)
20 of the Immigration and Nationality Act (8 U.S.C. 1182
21 (a)(1)(A)(i)) and which shall include—

22 (1) the results of the last analysis of the policy
23 conducted by the Public Health Service; and

24 (2) a 30-day public comment period initiated
25 after sufficient public notice in the Federal Register.

1 (b) REPORT.—Not later than 90 days after initiating
2 the review required under subsection (a), the Secretary of
3 Health and Human Services, in consultation with the Sec-
4 retary of Homeland Security, shall make a determination
5 regarding the continued listing of HIV as a “commu-
6 nicable disease of public health significance” under section
7 212(a)(1)(A)(i) of the Immigration and Nationality Act
8 (8 U.S.C. 1182(a)(1)(A)(i)) and shall provide a report to
9 the Congress, and make available to the public, the results
10 of such review, including—

11 (1) the determination reached by the review
12 process;

13 (2) the rationale for the determination;

14 (3) the anticipated public health impact of the
15 determination in relation to other communicable dis-
16 eases;

17 (4) the estimated costs of implementing the de-
18 termination;

19 (5) the names and affiliations of members of
20 the review panel; and

21 (6) a brief summary of the public comments.

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