

Statutory and Regulatory Bases for Bar Against HIV-Positive Visitors and Immigrants

Section 212(a)(1)(A)(i) of the Immigration and Nationality Act (8 U.S.C. § 1182(a)(1)(A) (“Inadmissible aliens”)), was modified by the Tom Lantos and Henry J. Hyde U.S. Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (“PEPFAR II”), signed by President Bush on 7/30/08, to read in pertinent part:

(a) Classes of aliens ineligible for visas or admission

Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) Health-related grounds

(A) In general

Any alien--

(i) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, ~~which shall include infection with the etiologic agent for acquired immune deficiency syndrome;~~

(ii) except as provided in subparagraph (C), who seeks admission as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence, and who has failed to present documentation of having received vaccination against vaccine-preventable diseases, which shall include at least the following diseases: mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, influenza type B and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee for Immunization Practices,

(iii) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General)--

(I) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others, or

(II) to have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior, or

(iv) who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to be a drug abuser or addict,

is inadmissible.

8 U.S.C. § 1182(a)(1)(A) (emphasis added)

HOWEVER, despite passage of PEPFAR II, the following regulation remains in effect until further action is taken by the appropriate federal agency (HHS):

Public Health; Public Health Service, Department of Health and Human Services; Medical Care and Examinations; Medical Examination of Aliens; Definitions:

...

(b) Communicable disease of public health significance. Any of the following diseases:

- (1) Chancroid.
- (2) Gonorrhea.
- (3) Granuloma inguinale.
- (4) Human immunodeficiency virus (HIV) infection.**
- (5) Leprosy, infectious.
- (6) Lymphogranuloma venereum.
- (7) Syphilis, infectious stage.
- (8) Tuberculosis, active.

42 C.F.R. § 34.2 (emphasis added); *see also* 42 C.F.R. § 34.3 (requiring serologic tests for HIV for immigrant visas, aliens outside the U.S. who apply for refugee status, applicants in the U.S. who apply for adjustment of status and “other applicants for a nonimmigrant visa who are required by a consular authority to have a medical examination”)