Immigration and HIV Positive Individuals: Common Questions and Answers

Who is this publication for?
This publication answers common questions about immigration laws and how they impact HIV positive persons who are:

- undocumented;
- in the process of applying for legal status; or
- who already have legal immigration status in the U.S.

This publication provides general information only. If you are HIV positive and are planning to submit an immigration application, or if you already have legal status and plan to travel outside the U.S., consult with a qualified immigration attorney or legal services office about your specific situation.

People in my country who are HIV positive are often treated very badly. The government will not protect them. Do I qualify for asylum in the U.S.?

Maybe. You will need to show that you are unable or unwilling to return to your home country due to past persecution or a well-founded fear of future persecution due to your HIV status (as well as your membership in any other groups that are targeted for persecution in your country, such as persons who are persecuted because of their sexual orientation.)

Persecution refers to harm that is more serious than discrimination or hardship, but can include a variety of acts including threats, physical harm, or extreme economic deprivation. You must submit your application for asylum within one year of entering the U.S., with very limited exceptions. If you have just learned that you are HIV positive and fear returning to your country, you may qualify for an exception to the one-year filing rule.

Asylum law is extremely complicated. If you do not apply within legal deadlines, you may lose eligibility. If you think you may qualify for asylum, talk to a qualified immigration attorney or legal services office as soon as possible.

I am an undocumented immigrant. I am very ill right now. Can the U.S. government still try to deport me?

Unfortunately, yes. Illness itself is not a defense to deportation. However, there are some forms of discretionary relief from deportation (or “removal,” as it is now called) that may be available to you. Immigration law is very complicated. Talk to a qualified immigration attorney or legal services office to find out if you might be eligible for some form of relief from deportation.
I am applying for lawful permanent residence in the U.S. Will I have to take an HIV antibody test?

Yes. All applicants for lawful permanent residence must take a medical examination, which includes an HIV test, whether you are applying for an immigrant visa at a consulate abroad or for adjustment of status to lawful permanent residence with U.S. Citizenship and Immigration Services (“USCIS,” formerly the immigration benefits division of the Immigration and Naturalization Service) in the U.S. The examination must be performed by a doctor (known as a “civil surgeon”) who has been approved by USCIS. A list of USCIS approved doctors will be included in the packet of forms that USCIS or the State Department will send you when it is time for you to apply for adjustment of status or consular processing.

The results of your HIV test will be given to you in a sealed envelope, which you must submit with your application for adjustment of status or consular processing. You will not be allowed to see the results of the test, so you should learn your HIV status before submitting any immigration application.

If the test shows I am HIV-positive, can I still become a lawful permanent resident?

U.S. immigration law says that anyone who is HIV-positive is “inadmissible” to the U.S. This means that such person is barred from entering or obtaining lawful permanent resident status in the U.S. However, the law also provides for a waiver of the HIV ground of inadmissibility in certain cases. If you are HIV-positive, your application for permanent residence status will be denied unless USCIS grants you an HIV waiver.

What will I need to do to get an HIV waiver?

You will need to show the following three things:

- **The danger to the public health of the United States created by your admission is minimal.** The best way to prove this is by submitting letters from your treating physician and other medical service providers stating that your health is stable and that you have gotten counseling about how HIV is spread.

- **The possibility of the spread of the infection created by your admission to the U.S. is minimal.** The best way to prove this is by submitting your own sworn statement that you have had HIV counseling, you understand how HIV is spread, and that you do not engage in high risk behavior. If you can, you should also submit statements from counselors or medical providers agreeing that in their opinion you display an understanding of how HIV is spread and a commitment not to engage in high risk behavior.

- **There will be no cost incurred by any level of government agency of the U.S. for treatment of your condition without the prior consent of that agency.** The best way to prove this is by submitting proof of private insurance, either through an employer or through a family member. In some cases it is possible to get free treatment through medical trial programs. Proof of this may be enough to meet this requirement. It is always better to
I can meet the requirements of the HIV waiver. Will I also have to show that I am not likely to become a “public charge?”

If you are applying for permanent residence on the basis of a visa petition filed by a family member or because you have legalized under the 1986 Immigration Reform and Control Act (“IRCA”), you will also need to show that you are not likely to become a public charge (that is, you will not need to rely on government cash benefits or institutionalized medical care as your primary source of income). Our publications called “Will Using Benefits Hurt My Chances of Getting a Green Card or Becoming a Citizen?” and “USCIS Guidance on ‘Public Charge’” at www.washingtonlawhelp.org have more information.

If you are applying for permanent residence on the basis of having been granted refugee or asylee status, you will not have to show that you are unlikely to become a public charge. You will have to show that no U.S. government agency will incur any costs in treating your condition without the prior consent of that agency in order to get an HIV waiver.

If you are undocumented and will not be eligible to adjust your immigration status at any time in the foreseeable future, do not worry about whether you might be considered a public charge.

I am a lawful permanent resident who is HIV positive. I am planning to travel outside the U.S. Will I have a hard time getting back in to the U.S. after my trip?

Maybe. You should avoid travel outside of the U.S. if you are HIV positive. You may have problems with U.S. Immigration and Customs Enforcement (“ICE,” formerly the immigration enforcement division of the Immigration and Naturalization Service) when you try to return. Being HIV positive is a reason the U.S. government can use to find you inadmissible and to bar you from re-entering the U.S. If you must travel outside the country, you may have an easier time on your return if your trip takes less than 180 days. Even so, talk to a qualified immigration attorney or legal services office before leaving the U.S. Do so even if you are leaving to go to an immigrant visa interview at a U.S. consulate abroad.

You should become a naturalized U.S. citizen if you intend to reside in the U.S. permanently. Most immigrants can apply for after five years of lawful permanent residence in the U.S. If you do so, do so, you will be able to travel freely without any risk of being barred from the U.S.

I am HIV positive. Can I still become a naturalized U.S. citizen?

Yes. Being HIV positive is no reason for the USCIS to deny your application to become a citizen.

Before you begin to apply for naturalization, talk to an immigration attorney. Our publications called “Seek Legal Help before
Applying for Citizenship” and “Some Common Questions About Naturalization” at www.washingtonlawhelp.org have more information about the naturalization process.

I am HIV positive person. I am not a U.S. citizen. What government benefits am I eligible for?

It depends on a number of things:

• your immigration status,
• when you arrived in the United States, and
• how long you have been here.

In some cases, it will also depend on:

• whether you or a family member is in the US armed services or a veteran,
• whether you are a victim of domestic violence,
• whether you, your spouse or your parents have worked in the United States a certain number of years, and
• whether someone signed an affidavit of support on your behalf.

Following is just a brief summary. We have more detailed publications on each subject.

Undocumented Immigrants: Generally, if you are undocumented, you will not be eligible for cash or food assistance (except a once a year emergency cash grant for families). You may be able to get some medical treatment under the Alien Emergency Medical Program (apply at DSHS) or under the Hospital Charity Care Program (apply at the hospital). Our publication called I am Undocumented. Am I Eligible for Public Assistance? has more information.

“Qualified” Immigrants: This term includes the following groups:

• Refugees;
• Amerasians entrants;
• Asylees;
• Persons granted withholding of deportation/removal;
• Victims of Trafficking;
• Hmong and Highland Lao;
• Special Immigrants from Iraq and Afghanistan;
• Persons granted conditional entry (a term used prior to 1980 to describe refugee status);
• Cuban and Haitian entrants;
• Battered spouses or children approved or with application pending (abused spouses and/or child of U.S. citizen or lawful permanent resident, who can self-petition for residence);
• Persons paroled into the U.S. for at least one year; and,
• Lawful Permanent Residents (green card holders).

Generally, those in the first seven groups are eligible for federal benefits the same as citizens. The federal benefits include TANF (cash assistance for families), SSI (cash assistance for persons who are 65 and above, blind or disabled), Food Assistance, and medical programs. (SSI has some special rules. If you came to the US on or after 8/22/96, you will probably have to
become a citizen within seven years to keep getting your SSI.)

If you are a member of the other three groups and came to the US on or after 8/22/96, you may be ineligible for federal benefits during the first five years after you got your status. Some exceptions apply. Read more at www.washingtonlawhelp.org or check with an attorney.

You may also read the publication that applies to your situation:

- **Washington Public Assistance for “Lawfully Present” Non-Citizens**
- **Washington Public Assistance for Immigrant Victims of Domestic Violence**
- **Washington Public Assistance for Refugees and Humanitarian Entrants**
- **Washington Public Assistance for Public Interest Parolees**
- **Washington Public Assistance for Family Visa Beneficiaries**
- **Washington Public Assistance for Victims of Trafficking**

Before you apply for benefits, check to see whether the information on public charge applies to you. (See the section above called “I can meet the requirements of the HIV waiver. Will I also have to show that I am not likely to become a “public charge?”) Also check to see if you will need to get an HIV waiver. (See the section above called “What will I need to do to get an HIV waiver?”)

### What if I need Legal Help?

Try contacting the Northwest Immigrants Rights Project in Western Washington at 800-445-5771, or in Eastern Washington at 888-756-3641 (if you live in Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Walla Walla, Whitman & Yakima counties) or 866-271-2084 (if you live in Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane & Stevens counties.)

Or

- Apply online with CLEAR*Online - [http://nwjustice.org/clear-online](http://nwjustice.org/clear-online)
- Call CLEAR at 1-888-201-1014

CLEAR is Washington’s toll-free, statewide intake, advice and referral service for low-income people looking for free legal help with civil legal problems.

- **Outside King County**: Call 1-888-201-1014 weekdays from 9:10 a.m. until 12:25 p.m. CLEAR works with a language line to provide free interpreters as needed. If you are deaf or hard of hearing, call 1-888-201-1014 using your preferred TTY or Video relay service.
• **King County**: Call 211 for information and referral to a legal services provider Monday through Friday from 8:00 am – 6:00 pm. Or call (206) 461-3200, or the toll-free number 1-877-211-WASH (9274). 211 works with a language line to provide free interpreters as needed. If you are deaf or hard of hearing, call 1-800-833-6384 or 711. You will be connected to a relay operator at no cost, who will then connect you with 211. You may also find information on King County legal service providers on 211’s website: [www.resourcehouse.com/win211/](http://www.resourcehouse.com/win211/).

• **If you are age 60 or Over**: Call CLEAR*Sr. at 1-888-387-7111, regardless of your income.

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This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of the date of its printing, March 2012.

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