

110TH CONGRESS
1ST SESSION

S. 2486

To remove a provision from the Immigration and Nationality Act that prohibits individuals with HIV from being admissible to the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 14, 2007

Mr. KERRY (for himself, Mr. SMITH, and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To remove a provision from the Immigration and Nationality Act that prohibits individuals with HIV from being admissible 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 Congress makes the following findings:

8 (1) Under Federal immigration law, prospective
9 immigrants, foreign students, refugees, and tourists

1 who are infected with the Human Immunodeficiency
2 Virus (HIV) are prohibited from entering the United
3 States. Applicants for permanent residence and ref-
4 ugee status are required to be tested for HIV infec-
5 tion.

6 (2) Applicants for temporary admission as non-
7 immigrants, such as tourists and foreign students,
8 are required to disclose their HIV status when ap-
9 plying for a visa. If questioned, such applicants may
10 be required to undergo an HIV test.

11 (3) The Secretary of Homeland Security may
12 issue a waiver to the HIV prohibition, on a case-by-
13 case basis, only to any HIV-positive individual
14 who—

15 (A)(i) applies for permanent admission as
16 an immigrant;

17 (ii) is the parent, spouse, unmarried son or
18 daughter, or minor adopted child of a United
19 States citizen or a permanent resident, or a ref-
20 ugee or asylee adjusting to immigrant status;
21 and

22 (iii) can establish that—

23 (I) the danger to the public health of
24 the United States created by the appli-
25 cant'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)(i) applies for admission as a refugee;

9 (ii) is eligible for admission for humani-
10 tarian purposes or to assure family unity, or
11 whose admission is otherwise in the public in-
12 terest; and

13 (iii) meets the requirements described in
14 subclauses (I) and (II) of subparagraph (A)(iii);
15 or

16 (C) applies for a short-term nonimmigrant
17 visa, including—

18 (i) a tourist who meets the require-
19 ments described in subclauses (I) through
20 (III) of subparagraph (A)(iii) and intends
21 to remain in the United States for less
22 than 30 days; and

23 (ii) a participant in a designated
24 event, such as a conference or inter-
25 national sporting event and intends to re-

1 main in the United States for less than 10
2 days.

3 (4) The travel and immigration ban on HIV-
4 positive individuals—

5 (A) was implemented in 1987 by regula-
6 tions issued through the Public Health Service
7 of the Department of Health and Human Serv-
8 ices; and

9 (B) requires HIV screening for all persons
10 over 14 years of age who apply for an immi-
11 grant or nonimmigrant visa.

12 (5) Section 212(a)(1)(A)(i) of the Immigration
13 and Nationality Act (8 U.S.C. 1182(a)(1)(A)(i)) au-
14 thorizes the Secretary of Health and Human Serv-
15 ices to prescribe regulations to determine which dis-
16 eases are considered “communicable diseases of pub-
17 lic health significance” that would exclude nonciti-
18 zens with such diseases from entering the United
19 States.

20 (6) In 1991, the Secretary of Health and
21 Human Services, after conducting a public health
22 analysis, proposed ending the HIV travel and immi-
23 gration ban by removing HIV from the list of com-
24 municable diseases of public health significance. The

1 proposal was eventually dropped due to opposition
2 from the Congress.

3 (7) In 1993, Congress revoked the authority of
4 the Secretary of Health and Human Services to
5 make a public health determination regarding HIV
6 status as grounds for inadmissibility for potential
7 foreign students, tourists, refugees, and immigrants
8 to the United States by specifically designating “in-
9 fection with the etiologic agent for acquired immune
10 deficiency syndrome” as a communicable disease of
11 public health significance under section
12 212(a)(1)(A)(i) of the Immigration and Nationality
13 Act.

14 (8) The United States is 1 of 13 countries with
15 a law that bans travel and immigration for persons
16 with HIV. The other countries are Armenia, Brunei,
17 China, Iraq, Qatar, South Korea, Libya, Moldova,
18 Oman, the Russian Federation, Saudi Arabia, and
19 Sudan.

20 (9) The HIV travel and immigration ban im-
21 pacts thousands of prospective HIV-positive foreign
22 students, tourists, refugees and immigrants who may
23 be denied entry into the United States due solely to
24 their HIV status.

1 (10) The HIV travel and immigration ban may
 2 discourage some foreign students, refugees, and non-
 3 permanent residents who are in the United States
 4 and who may be at risk of infection from seeking
 5 testing, treatment, or care for HIV/AIDS.

6 (11) The United Nations, the Joint United Na-
 7 tions Programme on HIV/AIDS (UNAIDS), and the
 8 World Health Organization oppose any restrictions
 9 on travel and immigration for people living with
 10 HIV/AIDS. The 2006 Consolidated Version of the
 11 United Nation’s International Guidelines on HIV/
 12 AIDS and Human Rights, produced jointly by the
 13 Office of the United Nations High Commissioner for
 14 Human Rights and UNAIDS, states “There is no
 15 public health rationale for restricting liberty of
 16 movement or choice of residence on the grounds of
 17 HIV status. According to current international
 18 health regulations, the only disease which requires a
 19 certificate for international travel is yellow fever.
 20 Therefore, any restrictions on these rights based on
 21 suspected or real HIV status alone, including HIV
 22 screening of international travellers, are discrimina-
 23 tory and cannot be justified by public health con-
 24 cerns. . . . Where States prohibit people living with
 25 HIV from longer-term residency due to concerns

1 about economic costs, States should not single out
2 HIV/AIDS, as opposed to comparable conditions, for
3 such treatment and should establish that such costs
4 would indeed be incurred in the case of the indi-
5 vidual alien seeking residency. In considering entry
6 applications, humanitarian concerns, such as family
7 reunification and the need for asylum, should out-
8 weigh economic 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.

1 **SEC. 3. AMENDMENT TO THE IMMIGRATION AND NATION-**
 2 **ALITY ACT.**

3 Section 212(a)(1)(A) of the Immigration and Nation-
 4 ality Act (8 U.S.C. 1182(a)(1)(A)) is amended—

5 (1) in clause (i), by striking “which shall in-
 6 clude infection with the etiologic agent for acquired
 7 immune deficiency syndrome,”; and

8 (2) by striking “is inadmissibility” and insert-
 9 ing “is inadmissible”.

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

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

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

23 (2) a 60-day public comment period initiated
 24 after sufficient public notice in the Federal Register.

25 (b) REPORT.—Not later than 90 days after initiating
 26 the review under subsection (a), the Secretary of Health

1 and Human Services, in consultation with the Secretary
2 of Homeland Security, shall—

3 (1) make a determination regarding the contin-
4 ued listing of HIV as a communicable disease of
5 public health significance under section
6 212(a)(1)(A)(i) of such Act;

7 (2) submit a report to Congress containing the
8 results of such review, including—

9 (A) the determination reached by the re-
10 view process;

11 (B) the rationale for the determination;

12 (C) the anticipated public health impact of
13 the determination in relation to other commu-
14 nicable diseases;

15 (D) the estimated costs of implementing
16 the determination;

17 (E) the names and affiliations of members
18 of the review panel; and

19 (F) a brief summary of the public com-
20 ments; and

21 (3) make the report described in paragraph (2)
22 available to the public.

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