

9 FAM 40.11 Exhibit I IMPORTANT INFORMATION FOR IMMIGRANT VISA APPLICANTS WHO ARE HIV-POSITIVE

(TL:VISA-206; 05-22-2000)

Ineligibility Under U.S. Law

Section 212(a)(1)(A)(i) of the Immigration and Nationality Act prohibits the issuance of an immigrant visa to any person who has a communicable disease of public health significance. Human immunodeficiency virus (HIV), which may lead to acquired immune deficiency syndrome (AIDS), is such a disease. During the immigrant visa medical examination, the physician tests all applicants over the age of 15 for HIV infection. In cases in which the physician has reason to believe that a child under age 15 might be HIV-positive, he or she may require that the child undergo a blood test. In any case in which the applicant is found to be HIV -positive, the consular officer is required by U.S. law to deny the visa.

Overcoming the Ineligibility

An HIV -positive applicant who is the spouse, unmarried son or daughter (regardless of age), or child of a U.S. citizen or legal permanent resident (green card holder), or who has a son or daughter who is a U.S. citizen or legal permanent resident, may apply for a waiver of ineligibility to overcome this ground of exclusion. The consular officer will determine whether a qualifying relationship exists. If so, the officer will assist the applicant in applying for the waiver. It is important to remember that the U.S. Immigration and Naturalization Service (INS), not the consular officer, decides whether a waiver may be granted.

How to Apply for a Waiver

If an applicant is eligible to apply for a waiver, the consular officer will give him a packet of information containing Form I-601. The applicant will be asked to complete page 1 of the form and return it to the consular officer. The consular officer will send the form to the U.S. Centers for Disease Control and Prevention (CDC) in Atlanta, Georgia. CDC will record the necessary information and return the Form I-601, plus a supplemental form (affixed to the back of the Form I-601), to the consular officer. The consular officer will give the supplemental form to the applicant. The applicant must complete statement A of the form and send the form to his or her sponsor in the United States. The sponsor must have statement B completed by the medical practitioner who will care for the applicant in the United States. If statement B is completed by a private physician, the

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sponsor must then have the form endorsed by a local or state health officer. When these steps are completed, the sponsor should return the form to the consular officer. The applicant must also pay a U.S. Immigration Service waiver fee, currently \$90 U.S. dollars. The consular officer will either request a cashier's check for the amount payable to the INS or will collect the fee in cash and provide the applicant with a receipt. The officer will then send the waiver application to INS. INS will notify both the consular officer and the applicant of its decision on whether the waiver may be granted. If INS grants the waiver and the applicant has no other ineligibilities, the consular officer will contact the applicant and arrange to issue the immigrant visa.

Other Ineligibilities

Some immigrant visa applicants who are HIV-positive also have other grounds of visa ineligibility. While any HIV-positive applicant who has a qualifying relative may apply for a waiver, the consular officer may apply for a waiver. The consular officer may not recommend that the waiver be approved until all other grounds of ineligibility have also been addressed. Sometimes the applicant can apply for several waivers at the same time; sometimes the applicant has another ineligibility that cannot be overcome, making it impossible for the officer to issue a visa even if the HIV ineligibility is waived. The consular officer can advise an applicant whether the applicant is eligible to apply for waivers of any other ineligibility he or she may have.

Public Charge

Under section 212(a)(4) of the Immigration and Nationality Act, an immigrant visa applicant must demonstrate that he or she has a means of support in the United States and that he or she, therefore, will not need to seek public financial assistance. It may be difficult for HIV-positive applicants to meet this requirement of the law because the cost of treating the illness is very high and because the applicant may not be able to work or obtain medical insurance. The consular officer must be satisfied that the applicant has access to funds sufficient for his or her support. The officer will consider the family's income and other assets, including medical insurance coverage for any or all HIV-related expenses, availability of public health services and hospitalization for which no provision for collecting fees from patients are made, and any other relevant factors in making this determination. There is no waiver possible for this ineligibility; however, if the applicant is able to demonstrate that he or she has acquired additional insurance or funds which would be sufficient to overcome the ineligibility, the consular officer may determine that the ineligibility no longer applies.

For information about treatment and care of persons who are HIV-positive, consult a physician or public health service official in your country.