



HIV & AIDS Legal  
Services Alliance

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## COMMUNITY ADVISORY

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### To: Southern California HIV Immigrant Community and AIDS Service Organizations:

As the largest legal services provider to people living with HIV/AIDS in the western United States, HALSA is at the forefront of knowledge and current events in HIV-related law. In August, President Bush signed into law the President's Emergency Plan for AIDS Relief (PEPFAR). The law changed the Immigration and Nationality Act § 212(a) (1)(A)(i) by removing HIV infection as a ground of inadmissibility of tourists and those wishing to gain Legal Permanent Residency. HALSA was one of many organizations responsible for these changes to the PEPFAR legislation, and view it as an important and progressive step towards ending systemic discrimination of HIV positive immigrants. Since then, HALSA has been diligent in securing up-to-date and accurate information that this may have on immigrants living with HIV. It is our intent to prevent any misinterpretation of the law as it stands today as well as to educate the immigrant community on recent developments.

#### Misinformation Regarding PEPFAR

The passing of PEPFAR has lead to confusion and misinformation. In the last 6 weeks, many of HALSA's clients were under the impression that, because of their HIV status, they are now entitled to instantly receive legal permanent residency. This is not true. While the legislation removed the statutory ban, internal Department of Health and Human Services (DHHS) policy still remains a barrier. HALSA continues to work with a coalition of organizations to change this dated and discriminatory policy.

#### United States Citizenship and Immigration Services Advice for Immigrant Applicants Living with HIV

As per a recent memo issued by the United States Citizenship and Immigration Services (USCIS), USCIS continues to require I-601 HIV waivers because DHHS still lists HIV as a communicable disease of public health significance. This memorandum can be found at <http://www.ilw.com/immigdaily/news/2008.0829-scialabba.pdf>. Thus, at this time, HIV continues to be a ground of inadmissibility in the United States and the so-called "HIV ban" is still technically in place. As such, the DHHS is tasked with reviewing the medical exams of every applicant for Legal Permanent Residency, and therefore has the discretion to deny any applicant as a result of their HIV status. Consequently, at this point in time, all immigrant advocates have been instructed by DHHS to continue filing "HIV waivers" with Applications to Adjust Status.

Our greatest fear at HALSA is that a wave of misinformation will lead many individuals to visit the immigration offices in Downtown Los Angeles, expecting to instantly receive permanent residency. Instead, it is possible that these misinformed individuals will find themselves in removal proceedings.

Anyone who has questions regarding any of the information stated above should immediately seek the advice and counsel of an immigration attorney or contact HALSA at (213) 637-1690.