

UPDATE – 23 June 2005

XVI International AIDS Conference (AIDS2006 Toronto)

Recent changes to visitor visa process affecting entry into Canada for people living with HIV/AIDS



Welcome changes in visa process for all short-term visitors

With the upcoming XVI International AIDS Conference being held in Toronto next year (August 13-18, 2006), Canadian immigration policy and practice is under an international spotlight. Several months ago, based upon an HIV-positive visitor's experience with Canada's application process for a visitor's visa, important questions were raised regarding potential difficulties for people living with HIV/AIDS entering Canada to attend the XVI International AIDS Conference (AIDS2006 Toronto).

Since that time, there have been ongoing discussions between Citizenship and Immigration Canada, other government departments, the organizations responsible for organizing AIDS2006 Toronto (led by the AIDS2006 Local Host) and others, including the Ministerial Council on HIV/AIDS and the Canadian HIV/AIDS Legal Network. As a result of that collaboration, Canada has recently changed the process for applying for a temporary resident visa such that it no longer requires people applying for visas as short-term visitors to disclose their HIV status on the application form.

This work is part of larger, ongoing efforts to ensure that people living with HIV/AIDS, and especially those from developing countries, do not encounter unnecessary barriers in seeking to visit Canada, whether for the 2006 Conference or other purposes.

Canadian immigration policy and HIV/AIDS: the basics

Canadian immigration law provides that a person may be denied a visa or entry to the country as "medically inadmissible" if:

- (a) they are "likely to be a danger to public health or public safety"; or
- (b) they "might reasonably be expected to cause excessive demand on health or social services" – and specifically, if they would add to waiting lists for services and thereby add to morbidity or mortality as a result of denial or delay of these services for Canadian citizens or permanent residents.

Generally, neither of these grounds applies to a person living with HIV/AIDS seeking to enter the country as a visitor on a short-term basis (i.e., under 6 months).

- HIV is not a casually communicable infectious disease (unlike tuberculosis). It is Canadian government policy that people living with HIV/AIDS do not represent a danger to public health or safety by virtue of their HIV status.
- Similarly, Canadian policy states that a person living with HIV/AIDS entering the country on a short-term basis "would not normally be expected to place a demand on health services". The policy further states that visa officers should only be concerned with assessing the likelihood that a person might need hospitalization during their visit. A visa officer always has the discretion to request a medical

examination (which currently includes an HIV test) if s/he has reasonable grounds to believe that a visitor may pose a risk to public health or pose an excessive demand on health or social services. Departmental instructions to visa officers state that it would be “rare” that a visa applicant living with HIV/AIDS might need to be referred for an “immigration medical examination” and “rarer still” that the person would be assessed as medically inadmissible.

So what was the issue?

Even though Canada does not bar people with HIV/AIDS from entering the country as short-term visitors, attention was drawn to the need to review and revise specific aspects of the process for applying for a temporary resident visa. Canadian immigration policy requires nationals from many countries to apply for a “temporary resident visa” if they want to enter the country as a short-term visitor. Before the recent change, the visa application form effectively required the applicant to disclose a diagnosis of HIV/AIDS (and other health conditions). The form asked:

Have you or any member of your family ever: (a) been treated for any serious physical or mental disorders or any communicable or chronic diseases? [...]

If the answer to any of the above is “yes”, give details.

This question was unnecessarily intrusive and overbroad, requiring people to disclose highly sensitive personal information such as their HIV status for no legitimate purpose. It presented a *de facto* barrier to people living with HIV/AIDS entering Canada, including for the 2006 International AIDS Conference.

The inclusion of this question on the visa application form primarily affected nationals of developing countries. The list of countries whose citizens require visas to enter Canada as tourists includes most countries/territories in Asia, Africa, Latin America and the Caribbean. The list is available at <http://www.cic.gc.ca/english/visit/visas.html>.

What steps were taken to address this issue?

The Conference Organizing Committee – which consists of AIDS2006 Toronto Local Host, International AIDS Society (IAS), International Council of AIDS Service Organizations (ICASO), Global Network of People Living with HIV/AIDS (GNP+), International Community of Women Living with HIV/AIDS (ICW), Canadian AIDS Society and UNAIDS – expressed concerns to the Canadian government. Citizenship and Immigration Canada (CIC) recognized the overly broad nature of the question in relation to what Canadian law requires, and undertook a review, working with other government departments, the Local Host, IAS, the Ministerial Council on HIV/AIDS and the Canadian HIV/AIDS Legal Network. The City of Toronto Public Health department and other medical, public health and immigration law experts also provided valuable input.

Canadian advocates stressed that it was necessary to secure a permanent change to the policy; an ad hoc exception for the 2006 AIDS Conference would not suffice. CIC agreed that any change would be a permanent one, and would affect not only people with HIV/AIDS but people with other health conditions. CIC focused upon collecting only the information needed to meet legislative requirements.

What change has been made to immigration policy in relation to HIV/AIDS?

Canada has amended its application form for a “temporary resident visa” to change the health-related questions posed to visa applicants. In May 2005, the new visa application form was implemented by CIC. The following are the new medical questions on the visa application form:

Within the past two years, have you or a family member had tuberculosis of the lung or been in close contact with a person with tuberculosis of the lung?

Do you or an accompanying family member have any physical or mental disorder for which that person will require social and/or health services, other than medication, during the stay?

The form has also been amended to remove the section where visitors are asked to disclose details of their medical condition. The new questions more directly and narrowly address the specific statutory considerations of protecting public health and preventing excessive demand on health services, without requiring that a visa applicant disclose their HIV status. The new “Application for a Temporary Resident Visa Made Outside of Canada” is available on-line at www.cic.gc.ca/english/applications/visa.html.

It should be noted that a visa officer always retains discretion to order a medical examination for any visa applicant if s/he decides the answers to these questions warrant one. Currently, such an examination automatically includes an HIV test, regardless of the reason for requiring the exam. We anticipate this requirement will be reviewed in the near future.

What else will be done?

In addition to amending its visa application form, CIC has provided interim guidance on the changes to visa offices worldwide. This includes instructions to immediately remove the old forms from use. The government is in the process of amending the operational guidelines and operating manuals for visa offices, to assist them in implementing the revised medical questions. The government has committed to further consultations with the AIDS2006 Local Host and others on the guidelines, which will be distributed to all visa offices for implementation. Officials of the Canada Border Services Agency (CBSA), who are responsible for border security, will also be provided with the guidelines to ensure information for ports of entry into Canada corresponds to that at visa offices abroad.

What comes next?

CIC is engaged in the next steps to ensure that the positive change to the visa application form is complemented by necessary changes to operational guidelines and training for visa officers. The Canadian HIV/AIDS Legal Network will continue to work with the AIDS2006 Local Host, the Ministerial Council on HIV/AIDS and others to support these efforts and also to identify and work on other potential barriers to participation in AIDS2006 by people with HIV/AIDS and others.

So what is Canada's immigration policy now in relation to visitors with HIV/AIDS?

- As a result of the recent change, Canada does not require people applying for a visa to enter Canada as a short-term visitor to disclose known HIV infection on the visa application form.
- Canada does not routinely impose mandatory HIV testing on short-term visitors, nor does it categorically bar visitors based on their HIV-positive status.
- HIV-positive status does not prevent a person from visiting Canada, nor should a diagnosis of AIDS, but for the rare and exceptional circumstance where the person's health condition is such that they are assessed as likely to require health and social services, during their stay in Canada, that will create an excessive demand on Canada's public system (e.g., hospitalization). This is the same standard applicable to all persons.

For more information see “Canada's immigration policy as it affects people living with HIV/AIDS: questions & answers” and other resources available on the Canadian HIV/AIDS Legal Network's website www.aidslaw.ca/Maincontent/issues/immigration.htm, or contact us at info@aidslaw.ca.