BACKGROUND

Among the earliest and the most enduring responses to the HIV/AIDS epidemic has been the imposition by governments of entry, stay, and residence restrictions for non-nationals living with HIV and AIDS. 70 of the 197 countries in the world for which data are available currently have some form of restriction in place. In 23 countries restrictions cannot be ruled out due to contradictory or imprecise information.

Restrictions on stay and residence based on HIV status not only deny equal freedom of movement to HIV-positive people, they also affect their health and development, and impact people who cross borders for short and long stays. 9 countries declare all people living with HIV inadmissible for any reason or length of time; additional 5 countries deny visas for short-term stays; 28 countries deport individuals once their HIV-positive status is discovered. 107 countries have no HIV-specific restrictions.

How are people with HIV affected?

A variety of rules and regulations affecting entry or stay of people with HIV/AIDS are in place. Health related questions are part of the visa application form. Medical examination is performed by immigration officers at the port of entry. Mandatory HIV testing is carried out at borders, before or after entry. Recruitment agencies may require HIV testing when contracting people. Regular HIV testing is required by foreigners who are already in the country (at extension of permit to stay). A health certificate is required for work and study permits, making HIV testing mandatory. Health related questions are part of the visa application form. HIV-positive people are seen as a burden for society and health care budgets (medical migration, poor health care system). People with HIV are seen as a danger to public health. People with HIV are perceived as not contributing to society. People with HIV are seen as having a short life expectancy and perceived as not contributing to society. People with HIV have no rights.

Scope of the problem

- 33'000'000 people are living with HIV/AIDS worldwide (2007, UNAIDS).
- 12'000'000 international arrivals/departures (2008, UNCTAD).
- 92'000'000 migrant workers live and work abroad (2008, IOM).
- 22'000'000 forcibly displaced people, refugees & asylum seekers worldwide (2008, UNHCR).

The overall impact on people with HIV is unclear, based on estimates and anecdotal reports. There is no systematic case reporting system in place.

Results – 197 countries

14 States deny entry or require status disclosure even for short-term stay. 28 countries deport HIV+ foreigners.

METHODOLOGY

The Deutsches AIDS-Hilfe (DAH) conducted 2 surveys at German embassies abroad and foreign embassies in Germany. The last survey was carried out in 2007/2008. A questionnaire with the following questions was sent to 37 countries:

- Are there HIV specific entry/residency regulations, and if yes, do they affect short or long term stays?
- ST defines as <90 days of stay.
- Does the country require compulsory medical examinations, including an HIV antibody test from entry visa or residency permit applicants?
- Will a positive HIV test result affect an entry or residency permit?
- What is the legal practice, how is the law being implemented?
- Does the law target particular groups (Tourists, students, foreign staff (specific professions)), immigrants, refugees?
- Are there controls at the port of entry?
- Are there any rules on controlling or deporting people with HIV?
- Is the import of HIV medication allowed for personal use?

UNAIDS provided additional data. The database is online at www.hivtravel.org. It is continuously being updated with user feedback and from online resources.

RECENT DEVELOPMENTS

People’s Republic of China

End of 2007, China has promised lifting its entry bar until 2008. The health declaration at port of entry has been abolished. The new visa policy requires tourists and short term visitors to declare HIV status on the visa application form. No HIV test result is required. Officially, the form states that an HIV-positive status won’t have any impact on granting the visa. However, we never heard of anybody entering the country after having declared a positive status.

Chinese public health officials are in discussion with 5 ministries on repealing the restrictions. This seems to be a difficult process, as in public perception, infectious diseases are associated with SARS. Today, the entry bar is still in place, and deportations are still being performed.

United States of America

The U.S. entry ban is in place since 1987 (Jesse Helms deal). The restrictions apply to immigrants and non-immigrant visitors. In 2007, President Bush requested the Secretary of Homeland Security to develop a categorical waiver for HIV+ people seeking to enter USA on short-term visas. In July 2008, US Congress removes HIV from the NIH Reauthorization Act within the legislative PPPAR reauthorisation. On September 29 2008, U. S. immigration officials announce moves to ease and speed up visa-processing for HIV+ positive visitors to USA. As a result, a new process has been put in place to enter the USA.

The new process requires applicants to demonstrate that

- (1) danger to public health from admission of the non-immigrant alien is minimal;
- (2) the possibility of HIV transmission is minimal;
- (3) no cost will be incurred by any level of a governmental agency in the USA (local, State or federal) without prior consent of that agency.

Consular officers do not have expertise to assay the medical conditions/cause. Foreign entry denial is reported. Applicants have no right to appeal against a negative decision.

HIV-positive visitors to the United States have the choice of entering the country by lying, or of exposing themselves to a discriminatory process with an unrealizable outcome. Once this route of entering the U.S.A. has been selected, there is no other way of entering.

Czech Republic

June 1, 2009, the Minister of Foreign Affairs of the Czech Republic, Mr. Jan Kohout, announced to journalists that Czech visa applicants from Congo, Kenya, Moldova, Mongolia, Nigeria, Pakistan, Tajikistan, Turkmenistan, Uganda and Vietnam are required to present health certificates stating absence of tuberculosis, syphilis and HIV infection with immediate effect, when applying for work or residency permits.

INTERNATIONAL TASK TEAM ON HIV RELATED TRAVEL RESTRICTIONS CONVEYED BY UNAIDS, 2008

Among its recommendations:

- The International Task Team on HIV Related Travel Restrictions urges all States with HIV-specific restrictions on entry, stay and residence, in the form of laws, regulations, and practices, including waivers, to review and to eliminate them, and ensure that all people living with HIV are not subject to stigmatization, stigmatization, or exclusion on the basis of their HIV status.

- The International Task Team on HIV Related Travel Restrictions urges all States to ensure the full protection of the human rights of people living with HIV in the context of mobility, under the international human rights framework.