AIDS 2012 Fact Sheet: Travel to the United States -
Former and current sex workers and people who use drugs

The information provided in this fact sheet is intended to help guide current and former sex workers and people who use drugs through the U.S. nonimmigrant visa processes.

Please note that it is the responsibility of each individual to review website of the U.S. embassy or consulate in country, to determine application requirements and to ultimately obtain his or her visa.


The questions

Both the DS-160 visa application form and the Visa Waiver Program (VWP)'s ESTA application include questions about communicable diseases, drug use, arrests (no conviction necessary), crimes, the use of controlled substances, and “prostitution” activity, among others. The application questions of particular note are:

1. Are you or have you ever been a drug abuser or drug addict?
2. Are you coming to the United States to engage in prostitution or unlawful commercialized vice or have you been engaged in prostitution or procuring prostitutes within the past 10 years?

If an individual answers “YES” to any of these questions they may be found to be inadmissible to the U.S. and therefore the visa application or application to the VWP would be denied. If the visa application is denied there is no refund of the application fees (US$140 plus additional costs).

If an individual answers these questions untruthfully and this is discovered by authorities then they risk deportation from the U.S. Various methods, including internet searches, may be used by government officials to research travellers’ backgrounds.

A drug abuser or addict may include individuals who use drugs, a casual user, a recreational user, a person in recovery and a person in treatment.

Delegates who are on Opioid substitution therapy, such as methadone, should note that this will be considered a dependence on drugs and therefore the visa or VWP’s ESTA application might be denied on this ground.

The process

For individuals who answer affirmatively to one or more of the above questions the interviewing consular officer may wish to recommend a waiver of grounds of inadmissibility.
This is at the discretion of the officer and will be based on the nature, recency, and severity of the offense(s) and each application is assessed on an individual basis.

The request for a waiver is submitted on the applicant’s behalf to U.S. Customs and Border Protection’s Admissibility Review Office (ARO) within the Department of Homeland Security (DHS) in the United States. The applicant does not need to pay any fee for this waiver.

Timeline
Approval of a waiver can take up 60 days or more, and the applicant will need to provide details of eligibility for the waiver in the form of court records (if relevant) and other documents.

Decision
If granted, both the visa will be issued with an annotation noting the waiver. If denied, there is no refund of the visa application fee.

Consequences

Validity
Waivers are given for a short-term period and are linked to the validity of the visa, for a maximum of one year. However, when the waiver is granted it is recorded and will show up in the visa system permanently.

At the border
The waiver placed in the passport gives the reason with the reference (e.g., “212 a 2 d”). At the U.S. border, staff will take the individual aside into another room for secondary processing. The secondary processing should not unduly prolong the passenger as U.S. Customs and Border Protection has already approved the waiver during the original process. However if there is additional information or concerns regarding the individual it may take longer.

Confidentiality
Statutory law ensures that visa information is confidential and is only used for a narrow and specific set of reasons (and some narrowly defined exceptions) and privacy laws restrict the sharing of personal data between governments.

If You Are Unable to Attend the Conference

Conference organizers realize that these U.S. immigration laws will exclude certain individuals and groups, key to the HIV/AIDS response, from being able to attend the conference in person. Such individuals are encouraged to view sessions online through the programme at a glance (http://www.aids2012.org/Default.aspx?pageId=453) and/or organize a conference hub in their city/town. More information is available at: http://www.aids2012.org/Default.aspx?pageId=397.

Additional Advice or Assistance

Unfortunately the conference secretariat is not in a position to provide legal advice to potential delegates, however if you would like further information regarding these issues please contact the U.S. embassy in your country or visa@aids2012.org.