Talk to the Hand

Immigrants with HIV are losing benefits—or locked out for good.

December 1, 1998 By Dan Coughlin

“What is it that Immigration wants?” asks 40-year-old Dennis Bolt, a Nicaraguan-born immigrant who has lived in the United States since 1975. “I graduated from high school here, I’ve worked, paid my taxes and my dues,” says Bolt, a part-time administrator with the Miami City Ballet who lives here legally as an asylum applicant. But Bolt is different from millions of other noncitizens who have made it through the famed red tape of the U.S. Immigration and Naturalization Service (INS) to become lawful permanent residents. He’s a PWA, and like an estimated 40,000 to 55,000 other HIV positive noncitizens, he’s not welcome.

Since Congress passed the draconian Illegal Immigration Reform and Immigrant Responsibility Act of 1996, thousands of HIV positive immigrants have been barred from becoming legal U.S. residents. As of April 1997, the INS can stop noncitizens with HIV from returning to the United States if they leave or prevent them from upgrading their immigration status. And longtime residents of this country, including those who are HIV positive, can be arrested and expelled if they entered the country without permission. Advocates say that it has become virtually impossible for someone with HIV to become a “green card” holder—a lawful permanent resident. As for those who apply at U.S. consular offices abroad, federal statistics and anecdotal evidence suggest a vast increase in the number barred from coming to the United States solely because they are HIV positive. And most applicants are people with HIV in countries where treatment is poor or nonexistent.

“We’ve got clients sitting outside the United States waiting years for their HIV waiver,” says Gay Men’s Health Crisis (GMHC) legal director Robert Bank, whose experience is echoed by observers nationwide. “The consular officers aren’t processing the waivers. They just sit on them.” In 1997, the Department of State, whose offices abroad handle immigration processing, reported that 770 applicants for U.S. residency were turned down as medically inadmissible, in most cases due to their HIV status. Similar problems exist for immigrants inside the United States.

“Since the law passed, we haven’t been able to accept any new cases of people with HIV seeking permanent residency,” says Eileen Lopez, an attorney with the Florida Immigration Advocacy Center, a legal services agency. Lopez said that she turns away at least one HIV positive noncitizen a week from her legal clinic in Miami’s Little Havana because there are so few channels left through which they can become permanent residents. “Unless you have an immediate

relative, your chances of getting a green card are slim. So now people are panicking," she says, because they fear deportation.

Initiated by congressional Republicans and signed into law by President Clinton, the Immigration Reform Act and its welfare-reform partner, the Personal Responsibility Act, backed immigrants into a corner. The laws not only sought to keep out immigrants by beefing up border controls; for immigrants already here, the laws tied access to social services to permanent residency—or even full citizenship—and then made those statuses extremely difficult to achieve. There are an estimated 5 million undocumented immigrants in the United States, including those with HIV, and the new bills cut them off from virtually all federal benefits, including Supplemental Security Income (SSI) and Food Stamps. At the time, Republican members of Congress moved specifically to deny all noncitizens with HIV any federal benefits—even emergency medical care. Oklahoma Republican Rep. Tom Coburn, MD, a leader of the Congressional Family Caucus, was ahead of the pack in singling out PWAs: "We have created a class in this country," he said, "that does not feel that it should pay for its health care on a disease that at this point in time the vast majority of which is preventable." Democrats eventually blocked the measure, but the damage was done; noncitizens lost most federal benefits anyway. The difference between despair and survival can be found in the small handful of exemptions. Veterans, individuals who can prove they've worked and paid taxes for 40 quarters (10 years), political refugees and asylum seekers, or people granted "withholding of removal" can still usually get food stamps, SSI, Medicaid and Temporary Assistance to Needy Families.

The controversial HIV border-exclusion policy dates back to 1987, when Sen. Jesse Helms sponsored an initiative that barred HIV positive travelers and immigrants from entering the country. Congressional leaders deemed HIV a "communicable disease of public health significance," joining other illnesses like TB, syphilis and leprosy on the special exclusion list. Conservatives claimed that HIV positive noncitizens would sap health care services, but, as former Bush administration attorney general William Barr told Congress, by that logic, people with renal or heart disease would also have to be excluded. Despite an ongoing boycott of the United States by sponsors of the International AIDS Conference and public outcry over an HIV prison camp for Haitian refugees that stood at a U.S. Naval base from 1991 to 1993, the ban remains in place.

Although HIV waivers are still available on a number of grounds, such as family unity, they've proved difficult to get. The National Commission on AIDS has fought the ban, arguing that HIV exclusion worsens the epidemic by "reaffirming inordinate and inappropriate fear of HIV-infected persons and inciting discrimination against these individuals." And with more than 40 million visitors to the United States this past year, the regulation is wildly impractical.

"People with HIV and gay men are particularly affected by the 1996 changes," notes Gail Pendleton of the National Lawyers Guild's National Immigration Project (NIP). With most federal and state benefits now linked to citizenship or legal permanent residence, getting a green card is a question of survival. Almost every green card seeker must take an HIV test, and the new law has almost eliminated options for those who test positive. Prior to 1996, for instance, immigrants, including those with HIV, could stay in the United States if they had lived here for seven years and

could show that they would suffer “extreme hardship” if returned home. The 1996 law changed these criteria. Today, the same applicant must have lived here for 10 years and show that a lawful permanent family member, such as a spouse or child, will suffer “exceptional and extremely unusual” hardship if she or he is sent back home. Scrapping the personal hardship exemption severely imperiled people with HIV, and worse, the 1997 Defense of Marriage Act limited the definition of “spouse” to a heterosexual marriage. HIV positive immigrants also lost the ability to apply for “voluntary departure,” which allowed people to stay and receive benefits on humanitarian grounds. GMHC’s Bank says that hundreds of people living in New York City had benefited from that provision. “The 1996 law took away the best remedies,” says Bank. “Basically, immigrants with HIV have lost almost everything.”

Clearly, getting a green card is now a longshot. First, noncitizens have to secure an HIV waiver through a legal spouse or child (a domestic partner won’t do). Second, applicants must show that they will not use public benefits, a difficult standard that many people with HIV can’t meet—many have trouble getting private insurance because of “pre-existing condition” exclusions or money problems; others have inadequate insurance that leaves them dependent, in part, on public benefits like the AIDS Drug Assistance Program. Accurate numbers on immigrants with HIV applying for green cards are difficult to come by since the INS says it doesn’t collect those figures. But the Centers for Disease Control and Prevention (CDC) reviewed 177 HIV waiver applications in 1997, down 29 percent from the previous year. The vast majority were filed by noncitizens already in the United States. The CDC estimates that 40 percent were successful.

At least, notes Ignatius Bau of the Asian and Pacific Islander American Health Forum in San Francisco, HIV positive immigrants are not being rounded up and deported simply because of their health. “If people are here in the United States, there are enough administrative appeals to keep the case alive,” says Bau. Those outside the United States lack even these meager legal tools. (At presstime, at least 40 HIV positive refugees languish in camps in Thailand because they have not been able to overcome the “public charge” provisions in the 1996 immigration law, according to a CDC official.) Yet immigration law now requires that most immigrants who have overstayed a visa or entered the country without permission return to their home countries to apply for legal residency. Once there, says NIP’s Pendleton, a three-year ban on reentering or getting a green card kicks in, and “you’ll probably get stranded for some time.”

With loss of benefits or even deportation likely for those lacking a green card, HIV testing rackets have sprung up in the United States and elsewhere, according to several HIV positive immigrants. Not only are certain clinics rumored to sell negative tests, but some doctors in Third World countries are reportedly extorting patients—whether positive or negative—to issue a clean HIV test. And Bau worries that the anti-immigrant bile that fueled the 1996 bills could easily resurface, eliminating noncitizen access even to federally funded programs at community organizations: “A senator can come along and say, ‘We’re not giving HIV positive immigrants Medicaid, why give them Ryan White funds?’” For many HIV positive legal immigrants, such as Miami’s Dennis Bolt, time is short and anger growing. Many have started to organize openly against the new laws. Bolt, who has lobbied officials in Florida and nationally, says, “I really want my case to become a precedent, so it helps me and others in my position.”

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