

THE CASE FOR REMOVAL OF HIV-RELATED IMMIGRATION RESTRICTIONS

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INTRODUCTION

In 1998, persons suffering from Acquired Immune Deficiency Syndrome (AIDS) or infected with Human Immunodeficiency Virus (HIV) were explicitly listed as “prohibited immigrant[s]” under s 8(3)(ba) of Singapore’s *Immigration Act*¹ to protect Singapore’s public health in the wake of a global HIV epidemic.² This manifested in a ban on HIV-positive foreigners from entering the country. While the ban on foreigners on short-term visit passes was quietly lifted in 2015, persons with HIV or AIDS are still prohibited from long-term visits to Singapore – the official reason being that “the public health risk posed by long-stayers is not insignificant”.³ This article aims to study the reasons for s 8(3)(ba) and the existing HIV-related immigration restrictions, and submits that they should be repealed and removed respectively.

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A. The restrictions are an outdated model intended for an unpredictable epidemic

It is submitted that the restrictions on HIV-positive immigrants no longer serve their original purpose as a response to an unpredictable epidemic on a global scale. The context in which HIV-

¹ Cap 133, 2008 Rev Ed.

² Parliamentary Debates Singapore: Official Report, vol 69, col 939 (4 September 1998) (The Minister for Home Affairs (Mr Wong Kan Seng)).

³ The Straits Times, “Ban on entry into Singapore eased for foreigners with HIV”, online: <<http://www.straitstimes.com/singapore/ban-on-entry-into-singapore-eased-for-foreigners-with-hiv>>.

positive foreigners were listed as “prohibited immigrants” in 1998 concerned a dramatic increase in the number of HIV infected residents: Singapore had almost 200 reported cases, and more alarmingly, 42 new cases of HIV and AIDS were reported in 1991, *vis-à-vis* the 61 cases between 1985 and 1990. Against this backdrop of domestic increase in HIV infections was our large number of HIV-positive foreigners: 2,813 foreigners had been tested to be HIV-positive while in Singapore, 80% of whom were work permit holders and applicants.⁴ The “policy on the repatriation and permanent blacklisting of HIV-positive foreigners”⁵ was Singapore’s consequent response to that global crisis, as we were perceived to be “particularly vulnerable... [given] people coming into Singapore in far greater numbers, and Singaporeans [travelling] abroad even more frequently”.⁶

It is submitted that this policy is outmoded. Today, the rate of new HIV cases has generally been constant at about 450 new reported cases each year since 2008.⁷ The rate of HIV infection is generally maintained unlike in the past; treatment and control measures have made the disease much more predictable, and the heavy response we opted for decades ago is arguably inappropriate given the relatively moderate scale at which HIV spreads today.

Furthermore, immigration restrictions have become a disproportionate response to the severity of HIV, which today has reduced dramatically. The policy against HIV-positive foreigners was recommended when HIV was “new, fatal and no effective treatment was available”;⁸ HIV was considered a “death sentence”.⁹ This is no longer the case today as “more than 5,000 Singapore residents [live] with HIV” and there is “effective treatment for the disease”. In fact, HIV-positive persons on antiretroviral therapy may be “successfully virally suppressed”

⁴ Parliamentary Debates Singapore: Official Report, vol 70, col 24 (26 February 1999) (The Senior Minister of State for Health (Dr Aline K. Wong)).

⁵ *Supra* note 3.

⁶ Parliamentary Debates Singapore: Official Report, vol 70, col 31 (26 February 1999) (Mr Bernard Chen (West Coast)).

⁷ The Straits Times, “455 new cases of HIV reported in Singapore in 2015, most patients got virus through sex”, online: <<http://www.straitstimes.com/singapore/health/455-new-cases-of-hiv-reported-in-singapore-in-2015-most-patients-got-virus-through>>.

⁸ *Supra* note 3.

⁹ *Supra* note 6.

and “not infectious to other people”.¹⁰ In this vein, it is submitted that any prohibition on HIV-positive immigrants despite their non-infectiousness is disproportionate to the alleged “public health risk” they pose.

B. The restrictions are ineffective in reducing the spread of HIV

Increasingly, it is clear that Singapore’s policy against HIV-positive immigrants does not reduce the type of public health risk it purports to.¹¹ Since 97% of HIV contraction in Singapore is through sexual intercourse,¹² the main persons at risk are sexual partners of infected persons, who only transmit HIV via certain kinds of sexual behaviour; no health risk is posed to the general public through casual contact. Persons infected with HIV are thus significantly different from persons infected by other contagious diseases that make their very “presence in Singapore dangerous to the community”,¹³ and should not warrant the same immigration restrictions they do. Most importantly, punitive measures such as immigration restrictions have been proven to be relatively ineffective in preventing transmission, and in fact “may limit the uptake of HIV voluntary testing and hinder adherence to HIV treatment”.¹⁴ In this vein, it is submitted that an HIV-positive person should not be banned from long-term stay in Singapore while a person suffering from a different type of sexually transmitted disease is not, since these are all ‘controlled’ diseases that are not effectively reducible by immigration restrictions.

Furthermore, concerns that foreigners (aware or unaware of their HIV status) may (intentionally or unintentionally) spread the disease would generally be well controlled under Singapore’s strict domestic laws against HIV infection.¹⁵ In particular, an immigrant who knows he has HIV,¹⁶ or for whatever reason does not know he has HIV but has reason to believe that he

¹⁰ *Supra* note 3.

¹¹ Parliamentary Debates Singapore: Official Report, vol 69, col 937 (4 September 1998) (The Minister for Home Affairs (Mr Wong Kan Seng)).

¹² *Supra* note 7.

¹³ s 8(3)(b), Immigration Act (Cap 133, 2008 Rev Ed).

¹⁴ UNAIDS Report 2013, page 92.

¹⁵ s 22 to 25A of the Infectious Diseases Act (Cap 137, 2003 Rev Ed).

¹⁶ *Ibid* at s 23(1).

has or has been exposed to a significant risk of infection, must disclose this risk to his sexual partner before engaging in sexual activity, or be liable to criminal charges as per s 23(2) of the *Infectious Diseases Act*.¹⁷

In any case, the risk of HIV spreading is greatly ameliorated by the availability of anonymous HIV testing, increasing public education about HIV in schools and workplaces, guidelines to manage HIV at the workplace,¹⁸ and advancements in public health practices¹⁹ – all of which would be readily available to both the HIV-negative populace and HIV-positive immigrants to mutually prevent infection.

In this vein, it is further submitted that the distinction between the public health risk posed by short-term visitors and long-term visitors is arbitrary; the duration of one's stay is much less a variable of a person's infectiousness, compared to more important factors such as one's knowledge, disclosure and treatment of the disease – all of which are generally well regulated in Singapore.

While it is acknowledged that HIV infection rates are still higher than before Singapore implemented its current HIV-related immigration restrictions in 1998, it is submitted that lifting our immigration restrictions would have negligible effect on the current domestic spread of HIV. Firstly, overall HIV infection rates among adults are stabilising worldwide;²⁰ Singapore's HIV infection rates are not out of the ordinary, and removing HIV-related immigration restrictions would not reasonably lead to an exceptionally large number of HIV-positive foreigners entering Singapore. Secondly, the spread of HIV carried by immigrants may be circumscribed, for

¹⁷ *Ibid* at s 23(2).

¹⁸ Parliamentary Debates Singapore: Official Report, vol 86, col 1969 (11 January 2010) (Mr Khaw Boon Wan).

¹⁹ This is similar to the considerations made by the United States in deciding that HIV infection is no longer a “significant public health risk”, as per the Department of Health and Human Services, “Medical Examination of Aliens – Removal of Human Immunodeficiency Virus (HIV) Infection From Definition of Communicable Disease of Public Health Significance”, online: <<https://www.gpo.gov/fdsys/pkg/FR-2009-11-02/html/E9-26337.htm>>.

²⁰ AVERT, “Global HIV and AIDS Statistics”, online: <<http://www.avert.org/global-hiv-and-aids-statistics>>.

instance, by continuing to require mandatory testing for long-term visitors²¹ and/or subjecting them to the same laws relating to HIV infection as those applying to all Singaporeans.

C. Repealing s 8(3)(ba) would reduce stigma and better satisfy public conscience

It is submitted that removing HIV-related immigration restrictions would better achieve Parliament's underlying objective to promote inclusiveness and reduce stigma today. When Parliament crafted HIV-related laws, they were concerned with treating patients "humanely and with great compassion" as they and their loved ones undergo "great suffering and social stigma".²² However, this had to be balanced with "protecting innocent people" from contracting HIV,²³ which led to prohibitions on HIV-foreigners from entering the country while HIV-positive Singaporeans remained to seek treatment at home. Noticeably, this by implication seems to unfairly characterise HIV-positive immigrants as a group distinct from "innocent people" in society, even though HIV-positive persons are in many cases victims of circumstance. Given our many health and social support systems, as well as the treatability of HIV that may even render an infected patient 'risk-free', the protection of both HIV-positive and negative persons today is not a zero-sum game. It is thus submitted that Parliament's previous concern about balancing the interests of HIV-positive and negative persons today should be adjusted such that HIV-related immigration restrictions are removed.

Further, Parliament should repeal s 8(3)(ba) as a matter of public conscience. Since the late 20th Century, HIV-positive persons have ranged from married wives infected by their husbands, to children infected perinatally, to blood donees via transfusion, to health care workers via

²¹ Immigration & Checkpoints Authority, "Medical Examination for Successful Applicants of Employment Pass, Long-Term Immigration Pass and Permanent Residence", online: <https://www.ica.gov.sg/news_details.aspx?nid=4497>.

²² Parliamentary Debates Singapore: Official Report, vol 70, col 29 (26 February 1999) (The Senior Minister of State for Health (Dr Aline K. Wong)).

²³ Parliamentary Debates Singapore: Official Report, vol 70, col 34 (26 February 1999) (Dr Lily Neo (Kreta Ayer-Tanglin)).

clinical procedures.²⁴ 97% of HIV contraction in Singapore is through sexual intercourse,²⁵ and this is not limited to individuals engaging in high-risk sexual behaviour – often victims have sexual partners’ whose HIV status was either undisclosed or unknown. It therefore seems unjust that the HIV-positive foreigner is labelled a “prohibited immigrant” alongside charges on the public,²⁶ outlaws,²⁷ prostitutes,²⁸ procurers,²⁹ vagrants,³⁰ and persons seeking to overthrow the government by violence³¹ as our laws should seek treat them with compassion accordingly.

To this end, it is submitted that HIV-positive persons should be allowed to enter Singapore as ‘lawful’ immigrants and stay long-term should they choose to, without being ‘exceptionalised’ and ‘othered’ as a group whose mere presence is a danger to public health – a widespread perception that is taught as untrue, and would be better proven with the removal of s 8(3)(ba). Such a legal reform would enhance the inclusiveness of our whole community, which includes *both* HIV-positive and negative persons.

²⁴ Parliamentary Debates Singapore: Official Report, vol 70, col 25 (26 February 1999) (The Senior Minister of State for Health (Dr Aline K. Wong)).

²⁵ *Supra* note 7.

²⁶ Immigration Act (Cap 133, 2008 Rev Ed), s 8(3)(a).

²⁷ *Ibid* at s 8(3)(d).

²⁸ *Ibid* at s 8(3)(e).

²⁹ *Ibid* at s 8(3)(f).

³⁰ *Ibid* at s 8(3)(g).

³¹ *Ibid* at s 8(3)(i).

CONCLUSION

Removing HIV-related immigration restrictions would not be an unprecedented policy, and Singapore has the benefit of gleaning from the experience of many other countries that have done this. From 2000 to mid-2013, there was a more than 50% reduction in the number of territories with HIV-related travel restrictions – from 96 to 43.³² In particular, the United States had a similar experience to Singapore's: first applying a blanket ban on HIV-positive foreigners given its large influx of immigrants and the explosion of the AIDS epidemic in the 1980s, before removing the restrictions on short-term travellers in 2006, and eventually removing the ban entirely in 2010 – a process catalysed by vocal opposition from the international community.³³ Changing a law typically takes time and effort, and the process requires the community to voice its concerns and what it thinks is right. This article hopes to aid in this respect, as part of former and ongoing efforts by other members of the community to do the same.

³² Global Report UNAIDS report on the global AIDS epidemic 2013, page 92, online: <http://www.unaids.org/sites/default/files/media_asset/UNAIDS_Global_Report_2013_en_1.pdf>.

³³ National Institutes of Health, United States National Library of Medicine, "The Impact of Removing the Immigration Ban on HIV-Infected Persons", online: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3263303/>>.