

Drug Abuse Findings

Aliens who are active drug abusers are inadmissible to the United States¹. The policy seems perfectly reasonable in light of the well-documented relationship between drug abuse and criminal activity². On the other hand, not everyone who experiments with drugs goes out and commits crimes. According to the Office of National Drug Control Policy, over half the American population between the ages of 18 to 35 has experimented with illicit drugs³. In fact two of our last three presidents have openly admitted to past drug experimentation⁴ and the third is widely believed to have experimented⁵. There is a difference between someone who experiments with drugs and someone whose drug problem endangers the public.

The Centers for Disease Control (CDC), which has the task of regulating medical exams for visa applicants, recognizes that there is a difference between experimentation and abuse in their “Technical Instructions for Medical Examination of Aliens”. It states that an abuser is a nonmedical ‘user’ of an illegal/illicit drug and that nonmedical use “is considered to be more than experimentation with the substance (e.g., a single use of marijuana ...). When a clinical question is raised as to whether the use was experimental or part of a **pattern of abuse**, a physician with experience in the medical evaluation of substance abusers should be consulted to assist in making this determination.”⁶ (emphasis added) It is unfortunate that the CDC used the term “single use” in its example as many physicians administering medical exams to immigrants have taken this to mean that only one use in a lifetime qualifies as experimentation. This interpretation is especially prevalent with the panel physicians who perform medical exams for visa applicants at the US consulate in Ciudad Juarez⁷, the largest US immigrant visa processing center in the world⁸. Completely ignored is the other key phrase in the sentence: “pattern of abuse”.

The definition of “pattern of abuse” is elusive in any government literature. However in the 2007 National Survey on Drug Use and Health, the Substance Abuse and Mental Health Services Administration (SAMHSA) defines drug abuse as the use of the drug on **six** or more days in the

¹ INA §212(a)(1)(A)(iv)

² Executive Office of the President, Office of National Drug Control Policy, Drug Policy Information Clearinghouse, Fact Sheet: Drug-Related Crime, March 2000, <http://www.whitehousedrugpolicy.gov/publications/factsht/crime/index.html>

³ Executive Office of the President, supra, Fact Sheet: Drug-Related Crime, Drug Use Trends, October 2002, <http://www.whitehousedrugpolicy.gov/publications/factsht/druguse/index.html>

⁴ *Effect of Obama’s Candor Remains to Be Seen*, Lois Romano, The Washington Post, Jan 3, 2007, http://www.washingtonpost.com/wp-dyn/content/article/2007/01/02/AR2007010201359_2.html

⁵ *Bush Gets Stoned by the World Media*, Jefferson Morley, The Washington Post, Feb 24, 2005, <http://www.washingtonpost.com/wp-dyn/articles/A48042-2005Feb23.html>

⁶ Technical Instructions for Medical Examination of Aliens, CDC, 1991, Page III-14 <http://www.cdc.gov/ncidod/dq/pdf/ti-alien.pdf>

⁷ According to a 2006 Practice Alert published to members of the American Immigration Lawyers Association (AILA), not available to the public

⁸ Statement by Ambassador Antonio Garza, Nov 14, 2008, US Consulate Ciudad Juarez website, <http://ciudadjuarez.usconsulate.gov/wwwhpressinauguracion.html>

past twelve months.⁹ Regardless of the government definition, from a layman's perspective, a person does not invariably become a drug abuser the second time he uses a drug. By allowing panel physicians to find 'abuse' when the behavior clearly qualifies as 'experimentation', the CDC are certainly not following the spirit of their own guidelines and possibly not following the letter of the guidelines.

The impact of this policy can be severe. Consider a US citizen who is petitioning for her new husband to immigrate to the US. He has been denied a visa because he admitted to trying marijuana twice in college. This scenario is not merely hypothetical, nor is it rare. I have been contacted by many couples in this position. Here is a couple who is trying to do everything the right way by applying for a visa to enter legally, but when the visa applicant is honest in his medical exam and admits to doing something more than half the American public has done – *something our presidents have done* – he is denied a visa and his US citizen wife is denied her husband. He will continue to be inadmissible with no immigrant visa waiver available until three full years from the date of his last reported use¹⁰ regardless of the hardship to his US citizen wife, even if she is pregnant. The policy is unreasonable because the negative impact on the US citizen wife far exceeds any potential benefit or protection to the US public.

The government's current policy of denying visas to those who have experimented with drugs on more than a single occasion is the height of hypocrisy in our immigration laws. We are requiring immigrants to live up to a standard that we ourselves have been unable to achieve.

⁹ National Survey on Drug Use and Health, 2007, Appendix C, <http://www.oas.samhsa.gov/nsduh/2k7nsduh/AppC.htm>

¹⁰ Technical Instructions for Medical Examination of Aliens, *supra*, page III-14