



April 21, 2008

Ronald A. Tschetter
Director, Peace Corps
1111 20th Street, NW
Washington, DC 20526

Re: Peace Corps Volunteers and Applicants with HIV

Dear Mr. Tschetter:

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
LESBIAN GAY BISEXUAL
TRANSGENDER &
AIDS PROJECT

PLEASE RESPOND TO:
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NEW YORK, NY 10004-2400
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1663 MISSION STREET
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SAN FRANCISCO,
CA 94103-2400

CHICAGO OFFICE:
180 NORTH MICHIGAN AVENUE
SUITE 2300
CHICAGO, IL 60601-7401

LOS ANGELES OFFICE:
1616 BEVERLY BOULEVARD
LOS ANGELES,
CA 90026-7511

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PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RICHARD ZACKS
TREASURER

We represent Jeremiah Johnson, a Peace Corps volunteer whose service was terminated because he is HIV positive. Mr. Johnson's termination appears based upon a Peace Corps policy to terminate volunteers who are HIV positive without an individualized assessment as to whether they are able to serve with reasonable accommodation. Such a policy is in violation of the Rehabilitation Act, 29 U.S.C. § 794 (2002), and the D.C. Circuit's recent ruling in *Taylor v. Rice*, 451 F.3d 898 (D.C. Cir. 2006). We urge you to change any such policy immediately to comply with the law. If that is not the policy, please clarify what is the policy with regard to Peace Corps applicants and volunteers with HIV.

By way of background, we understand that Mr. Johnson was inducted into the Peace Corps in December 2006, after two months of training in the Ukraine. For almost thirteen months, he volunteered in Rozdilna, Ukraine, teaching English to secondary students. Mr. Johnson performed without restriction all of the assignments given to him, and did not receive any negative feedback regarding his service.

On January 11, 2008, Mr. Johnson had his midservice medical examination, at which he learned he was HIV positive. A few days after learning that he was HIV positive, the Peace Corps country director for the Ukraine informed Mr. Johnson that Ukrainian law did not permit him to continue to work in the Ukraine with HIV. Mr. Johnson expressed his desire to serve, but the country director did not suggest the possibility of transferring to another country, even though the Peace Corps transfers volunteers for other reasons such as a volunteer's safety in an assigned country.

Pursuant to the country director's directive, Mr. Johnson left the Ukraine and flew back to Washington, D.C. on February 3, 2008. In Washington, Mr. Johnson received an end-of-service medical exam. During

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the examination, Mr. Johnson asked the Peace Corps nurse who conducted the exam if he could transfer to another country. Mr. Johnson was told that he could not because he was on “automatic medical separation.” Mr. Johnson received a “Home of Record Medical Separation Notification,” which claimed that, “[a]fter serious consideration and consultation with the Office of Medical Services, Peace Corps/Washington (OMS), we do not feel that you can safely continue to serve as a PCV in Ukraine.”

The exam did not include any determination that Mr. Johnson’s abilities to perform the functions of a Peace Corps volunteer were impaired as a result of HIV. Indeed, Mr. Johnson has no physical symptoms of HIV, let alone any conditions that would restrict his abilities to perform the functions of a Peace Corps volunteer.

The Notification, however, stated that Mr. Johnson was being “medically separated to your Home of Record” and had a check mark next to four grounds for the separation:

1. “The resolution of your condition(s) will take longer than the maximum-allowable 45 days.”
2. “We are unable to provide adequate follow-up for your condition overseas.”
3. “Your medical condition has a high risk of being aggravated by or recurring during Peace Corps service, which would jeopardize your health.”
4. “You would be medically unable to perform your Volunteer assignment.”

The Notification provided as the reason for the medical separation, “HIV-lab work positive.”

Based on the Notification as well as Mr. Johnson’s conversations with the Ukraine country director and the nurse who performed the end-of-service examination, it is clear that Mr. Johnson’s Peace Corps service was terminated because he tested positive for HIV. It is equally clear that the Peace Corps failed to make any individualized assessment as to whether Mr. Johnson could continue his Peace Corps service with a reasonable accommodation.

Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (2002), prohibits any “program or activity” receiving financial assistance – including the Peace Corps – from discriminating against an otherwise qualified individual on the basis of disability. The Peace Corps’ automatic

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termination of Mr. Johnson's volunteer service on the basis of HIV violates the Rehabilitation Act.

The United States Court of Appeals for the D.C. Circuit held in *Taylor v. Rice*, 451 F.3d 898 (D.C. Cir. 2006), that, under the Rehabilitation Act, a person with HIV cannot automatically be disqualified from serving abroad in the Foreign Service. *See id.* at 902. Instead, the court held that the Foreign Service must examine whether any reasonable accommodations could be made for a person with HIV. *See id.* at 908; *see also Smith v. Rice*, 2008 WL 281062, *6 (E.E.O.C. Jan. 3, 2008). As a result of that ruling, the State Department repealed its policy of automatic disqualification and now recognizes that individuals with HIV may work in the Foreign Service.

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Similarly, in *Mendez v. Gearan*, 956 F. Supp. 1520 (N.D. Cal. 1997), the United States District Court for the Northern District of California held that "when a decision-maker excludes an individual on the basis of his/her disability without relying on substantial evidence of whether the individual is otherwise qualified with, or without, reasonable accommodation, that decision-maker violates the Rehabilitation Act." *Id.* at 1527-28. After finding that the Peace Corps made no such individualized assessment of whether a reasonable accommodation existed for the *Mendez* plaintiff, the court held that the Peace Corps violated the Rehabilitation Act as a matter of law by automatically disqualifying the plaintiff on the basis of disability. *See id.* at 1528.

As in *Mendez*, the Peace Corps did not consider whether any reasonable accommodations could be made for Mr. Johnson. Indeed, the Peace Corps made *no* individualized assessment as to whether Mr. Johnson could continue his Peace Corps service in any country. Mr. Johnson has no physical symptoms of HIV that would restrict him from performing his duties and functions as a Peace Corps volunteer, and the medical evaluation conducted by the Peace Corps did not reveal any such restrictions. Instead of analyzing whether Mr. Johnson could volunteer in another country that did not have the Ukraine's restriction on foreigners who are HIV positive, the Peace Corps informed Mr. Johnson that his HIV status resulted in an "automatic" medical separation.

An automatic separation on the basis of HIV, without any individualized consideration of a reasonable accommodation, violates the Rehabilitation Act and is contrary to the D.C. Circuit's holding in *Taylor*. I urge you to change any such policy to ensure that Peace Corps applicants and volunteers with HIV are not automatically disqualified or medically separated. The policy should require the Peace Corps to consider, on an

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individualized basis, whether a reasonable accommodation can be made for that applicant or volunteer. Such reasonable accommodations could include assignment in a country that permits foreigners with HIV to work or, where necessary, in a location within a close vicinity of a medical treatment facility. *See, e.g., Taylor*, 451 F.3d at 907-10. If that is not the policy, please clarify what is the policy with regard to Peace Corps applicants and volunteers with HIV.

Please contact me at (212) 549-2605 or by e-mail at lgbt_rs@aclu.org to discuss the policy further.

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Very Truly Yours,

Rebecca Shore
Rebecca C. Shore
Staff Attorney

cc: Shirley Everest (American Diversity Program Manager, Peace Corps)
Tyler Posey, Esq. (General Counsel, Peace Corps)