



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

January 24, 2011

Mr. Patrick Kennedy
Under Secretary for Management
U.S. Department of State
2201 C Street NW
Washington, DC 20520
Via email: Kennedypf@state.gov

Mr. Harold Hongju Koh
Legal Advisor
U.S. Department of State
Via email: Kohhh@state.gov

Ms. Nancy Powell
Director General of the Foreign Service and Director of Human Resources
U.S. Department of State
Via email: Powellnj@state.gov

Ms. Christine Griffin
Deputy Director
Office of Personnel Management
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Via email: Christine.Griffin@opm.gov

Mr. Thomas Perez
Assistant Attorney General for Civil Rights
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530
Via email: Thomas.Perez@usdoj.gov

Dear Mr. Kennedy, Mr. Koh, Ms. Powell, Ms. Griffin, and Mr. Perez:

On behalf of the Rights Task Force and the International Task Force of the Consortium for Citizens with Disabilities, we write to raise our concerns regarding the State Department's

policy banning people with a variety of disabilities from foreign service officer positions. Such a blanket policy is medically inappropriate, overbroad, and violative of applicable federal antidiscrimination laws. Moreover, it is antithetical to the federal government's stated policy of increasing federal employment of people with disabilities, as expressed most recently in President Obama's July 26, 2010 Executive Order.

CCD is a coalition of more than 100 national disability-related organizations working together to advocate for national public policy that ensures full equality, self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. We have a strong interest in ensuring the exacting implementation of federal employment policy that maximizes the employment opportunities for Americans with disabilities.

We are concerned that the Department of State's requirement of Medical Clearance for "worldwide assignment" has been, and is continuing to be, applied to exclude people with disabilities from foreign service officer positions. This blanket policy has been applied to exclude foreign service officer candidates with cancer, diabetes, anxiety disorders, HIV, sickle cell disease, coronary artery disease, and others. These exclusions appear to be based on outdated understandings of the monitoring, treatment, and emergency needs of people with these disabilities. Section 501 of the Rehabilitation Act requires federal agencies to take reasonable affirmative steps to accommodate applicants for employment and employees, except where undue hardship would result, and prohibits disability-based employment discrimination against qualified individuals with disabilities. A person is qualified if he or she is able to perform the essential functions of the job at issue (the Americans with Disabilities Act standards are applied under Section 501). Courts have consistently held that blanket bans on employment of people with disabilities violate the Rehabilitation Act and the ADA, even in cases involving safety-sensitive jobs. Moreover, in order to exclude an individual on the basis of a "direct threat," an employer must demonstrate a significant risk of substantial harm that cannot be reduced or eliminated by the provision of reasonable accommodations. Such a demonstration must be based on individualized assessment based on objective scientific information.

A case is currently pending before an Administrative Judge at the Equal Employment Opportunity Commission (EEOC) challenging the Department of State policy.¹ This case, and the new broad definition of disability provided by the ADA Amendments Act of 2008, provide an opportunity for the Department to review and amend its policy to provide for individualized assessment of the capabilities and medical needs of people with disabilities. We hope the Department will take this opportunity to reassess its policies toward hiring, placement, and

¹ Meyer, et al. v. Clinton, EEOC Case No. 570-2008-00018X.

accommodation of foreign service officers with disabilities, to improve training and guidance to personnel responsible for hiring on the applicable disability rights laws, and to fully embrace the principles of inclusion and equality for employees and applicants with disabilities.

Thank you for your attention to this matter. We would be happy to meet with you to discuss these issues further.

Sincerely,

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Cc: Kareem Dale, Special Assistant to the President
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Judith Heumann, Special Advisor on International Disability Rights