

Exchange Visitors: Two-Year Home Country Physical Presence Requirement

Purpose

This handout is designed for J-1 scholars (visiting professors and researchers) and students. It explains the two-year home-country residence requirement affecting some Exchange Visitors **and their J-2 dependents**.

Intent of the Requirement

The intent of the requirement is to have the home country benefit from the Exchange Visitor's experience in the United States. Exchange Visitors come to this country for a specific objective such as a program of study or a research project. The requirement is intended to prevent a participant who is subject from staying longer than necessary for the objective, and to ensure that he or she will spend at least two years in the home country before coming back to the United States for a long-term stay.

Terms of the Requirement

If you are subject to the requirement, then, until you have "resided and been physically present" for a total of two years in either your country of nationality or your country of legal permanent residence, you are not eligible for:

1. An H, L, or immigrant **visa**, or for H, L, or immigrant **status** in the United States. H includes temporary workers, trainees, and their dependents. L includes intracompany transferees and their dependents. An immigrant is the same as a permanent resident, or holder of a "green card."
2. A change of your status, inside the United States, from J to any other nonimmigrant classification except A or G. The A classification includes your home government's diplomats and representatives to the United States government, and their dependents. The G classification includes your government's representatives to international organizations, such as the United Nations, and their dependents.

You are subject to the Requirement if:

1. Your J-1 participation is or was funded in whole or in part, directly or indirectly, **for the purpose of exchange**, by your home government or the United States government;
2. As a J-1 Exchange Visitor, you are acquiring a skill that is in short supply in your home country, according to the United States government's "Exchange Visitor Skills List." (You may visit <https://travel.state.gov/content/visas/en/study-exchange/exchange/exchange-visitor-skills-list.html> to review the current list);
3. You have participated as a J-1 in a graduate medical education or training program, i.e. a residency, internship, or fellowship, sponsored by the Educational Commission for Foreign Medical Graduates;
4. You are the J-2 dependent of an Exchange Visitor who is subject to the requirement; **or**
5. You have ever been subject to the requirement in the past, and have neither obtained a waiver nor fulfilled it by spending two years in your country – even if a more current Form DS 2019 reflects no basis for such a requirement.

Preliminary endorsements

The visa stamp in your passport, or your Form DS 2019, or both, may show an indication, by a consular officer or an Immigration and Naturalization Service (INS) inspector, that you are or are not subject to the requirement. These indications, labeled "preliminary endorsement" on Form IAP-66, are usually accurate but are not legally binding. Even though these endorsements are not final, INS usually accepts indications that the Exchange Visitor *is* subject.

If you are unsure whether you are subject:

1. Consult your J-1 Responsible Officer. Be sure to take your passport, Forms DS 2019, your I-94 Departure Record card, and copies of prior I-94 cards if they are available. Your Responsible Officer or International Student Advisor can often tell from the source of funding, or the Exchange Visitor Skills List, whether the requirement applies or not. If you are still uncertain,
2. You might consult an attorney. Make sure that you talk to an immigration specialist, preferably a member of the American Immigration Lawyers Association. In selecting an attorney a personal recommendation is best, but if none is available, call the local chapter of the American Bar Association for a referral. If you prefer not to see a lawyer, or are still uncertain,
3. Write to the United States Information Agency (USIA), which is responsible for the administration of the Exchange Visitor program and the two-year requirement. Address your letter to Waiver Review Branch, United States Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547. Enclose photocopies of your forms DS 2019 and, in a cover letter, explain why you are uncertain whether you are subject or not, and ask for USIA's advisory opinion.

Waivers of the requirement

There are four grounds for waiver of the requirement:

1. **Exceptional hardship** to your spouse or a unmarried minor child who is a citizen or permanent resident of the United States. If, for example, you had a child who was born in the United States and was therefore a citizen of this country, and if the child had a serious medical condition that could not be treated in your country, you might obtain a waiver because the child would suffer a hardship by going there with you to live. You would apply to INS on Form I-612, "Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act, as Amended." (As you might imagine, this Form is commonly referred to as Form I-612).
2. **Fear of persecution.** If you can demonstrate that, because of your race, religion, political opinions, or nationality, you would face persecution by your home government if you went back to your country, you might qualify for a waiver. You would apply to INS on Form I-612.
3. **Interest of a United States government agency.** If your participation in research or a project sponsored by a United States government agency is of sufficient importance to that agency, *it* can apply to USIA for a waiver *for* you—in *its* interest, not yours.
4. **A "no-objection" statement** (not permitted for medical trainees). Your country's embassy in Washington can indicate in a direct letter to USIA that it has no objection to your receiving a waiver, or the foreign ministry in your capital at home can write to the United States embassy there. A "no-objection" statement will usually not lead to a waiver if the Exchange Visitor has received more than \$2,000 in funding from the United States government.

Disclaimer: KGI OISS has prepared this guide to provide you with general guidance. However, any advice provided to you by our office, as well as the information in this document, should not be construed as legal advice.