

J-1 EXCHANGE VISITOR: TWO-YEAR HOME RESIDENCY REQUIREMENT

Intent of the Requirement

The purpose of the two year home residency requirement is to enable the home country to benefit from the Exchange Visitor's experience in the U.S. 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 participants from staying longer than is necessary to complete their objective, and to ensure that they will spend at least two years in the home country before coming back to the United States for a long-term stay.

Who is subject?

Those who (1) have received government funding, directly or indirectly, for the purpose of exchange, or (2) worked in a field that appears on the Exchange Visitor Skills list, or (3) participated in a graduate medical training program in the United States sponsored by the Educational Commission for Foreign Medical Graduates.

If you are subject to the requirement (as indicated on your visa and Form DS-2019), you must "reside and be physically present" for a total of two years in your country of citizenship or your country of legal permanent residence, before you become eligible for:

- An H, L, or immigrant visa, or for H, L, or immigrant status in the United States. The H visa category includes temporary workers, trainees, and their dependents. The L category includes intracompany transferees and their dependents. An immigrant is the same as a permanent resident, or holder of a "green card."
- A change of your status, inside the United States, from J to any other non-immigrant 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 your J-1 program 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. Funding includes loans and coverage of expenses such as tuition, books, insurance etc.
- If, 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." The list, originally appearing in 1972, was last revised in the Federal Register January 16, 1997,



pp.2447-2516. You are subject to the home residency requirement if your skill was on the Skills List at the time that you entered the U.S., even if the skill is later removed.

- If you have participated as a J-1 Exchange Visitor in a graduate medical education or training program; that is a residency, internship, or fellowship, sponsored by the Educational Commission for Foreign Medical Graduates. Programs involving observing, consulting, researching or teaching with no patient care are not considered “medical education or training.”
- If you are the J-2 dependent of an Exchange Visitor who is subject to the requirement.

If you have ever been subject to the requirement in the past and have neither obtained a waiver nor met the requirement by spending two years in your country, the original requirement still applies even if a more current Form DS-2019 reflects no basis for the requirement. In other words, a subsequent J program that does not create a new two-year home country physical presence requirement does not erase the requirement. Also, if you exit the United States and reenter under a different nonimmigrant status, such as F-1 student, you will still be subject to the original two-year home country physical presence requirement. Once you incur the requirement, you must either spend two years at home or obtain a waiver of the requirement before you can reenter the United States as an H, L, or permanent resident.

Preliminary Endorsements

The visa stamp in your passport, your Form DS-2019, or both may show an indication by a consular officer or a United States Citizenship & Immigration Services (USCIS) inspector that you are or are not subject to the requirement. These indications, labeled “preliminary endorsement” on Form DS-2019, are usually accurate but are not legally binding. Even though these endorsements are not final, USCIS usually accepts indications that the Exchange Visitor is subject to the requirement.

If You Are Unsure Whether You Are Subject...

- Consult the International Student & Scholar Advisor (ISSA) at Babson. Be sure to bring your passport, Forms IAP-66/ DS-2019, your Form I-94 Departure Record card, and copies of prior Form I-94s if they are available. Your Responsible Officer or ISSA can often tell from the source of funding, or from the Exchange Visitor Skills List, whether the requirement applies to you or not.

If You Are Still Uncertain...

- You may request an “Advisory Opinion” from the U.S. Department of State Waiver Review Division. Contact the Waiver Review at 202-663-1225, Fax 202-663-3899. Also, check http://travel.state.gov/visa/tempvisitors_info_waivers.html
- Consult an attorney, preferably one who is an immigration specialist.

Waivers of the Requirement

There are four grounds for a waiver of the requirement:

- A “no objection” statement (not permitted for medical trainees) from your home country. Your country’s embassy in Washington can indicate in a direct letter to U.S. DEPARTMENT OF STATE that it has no objection to your receiving a waiver, or the foreign ministry in your capital at home can send a similar letter to the United States embassy

there. A “no objection” statement usually will not lead to a waiver if the Exchange Visitor has received more than \$2000 in funding from the United States government.

- Interest of a U.S. 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 U.S. DEPARTMENT OF STATE for a waiver for you-in its interest, not yours.
- Exceptional hardship to your spouse or an 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 USCIS on Form I-612, “Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act, as Amended.”
- 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 returned to your country, you might qualify for a waiver. You would apply to USCIS on Form I-612.

Basic Waiver Application Procedures

A waiver application may be made on-line at <https://j1visawaiverrecommendation.state.gov/> or by mail.

- Complete the Form DS-3035 J Visa Waiver Review Application
- Pay a processing fee of \$215 (cashier’s check or money order)
- Include two self addressed stamped envelopes

Mail the above items to:

U.S. Department of State
Waiver Review Division
P.O. Box 952137
St. Louis, MO 63195-2137

Upon receiving the complete request, the Waiver Review Division will then assign a case number and forward instructions to the exchange visitor for further processing. All applicants will be asked to provide complete biographic and contact information and to include legible copies of Form I-94 and all current and past Form IAP-66s or DS-2019s

For status inquiries: call 202-663-1600/1225, or view online at: <http://169.253.2.79/>

* Please keep in mind delays in processing times due to security checks*