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Human Resources: J-1 Exchange Visitor Program: Two-year Home Residency Requirement (212(e))

The two-year home residency requirement, also referred to as 212 (e), obligates some exchange visitors to return to their home country or country of last residence for an aggregate of two years before they are eligible for certain immigration benefits.

Exchange Visitors who are subject to the requirement are not eligible for an immigrant visa (adjustment of status/green card), an H-1B (temporary worker) or L visa (intra-company transferees). They are not eligible to change their status within the U.S. to any other nonimmigrant status except A (Diplomatic) or G (International organization), until the requirement is satisfied or waived. Dependents (J-2) of the primary J-1 visa are also subject to the requirement.

Exchange Visitors who are subject remain eligible to extend their program up to the maximum time limit of their particular category and for program transfers.

The two-year home residency requirement applies:

- When the exchange visitor's program is funded by the U.S. government or their home country government.
- When the skill that the exchange visitor is coming to learn/exercise is on the Department of State Exchange Visitor Skills list. http://travel.state.gov/content/visas/english/study-exchange/exchange/exchange-visitor-skills-list.html
- When the exchange visitors comes to the U.S. to receive graduate medical education or training.

A preliminary determination as to whether the J-1 Exchange Visitor is or is not subject to this requirement is usually made at the port of entry by the U.S. Consular officer and/or the DHS officer. The determination is noted on the Exchange Visitor's DS-2019 and/or on the visa page of the individual's passport. It is important to realize that these notations are sometimes incorrect and that a final determination is made by the Department of State.

Advisory Opinions
If the Exchange Visitor is uncertain whether or not the requirement applies, an "Advisory Opinion" can be requested by writing a letter to the Department of State Waiver Review Division. Include all legible copies of your DS-2019/IAP-66's that were ever issued to you and include a self-addressed envelope. The Waiver Division will send you a letter which states if you are/are not subject to the requirement. Information regarding the process for requesting an Advisory Opinion can be found on the Department of State website at:

http://travel.state.gov/content/visas/english/general/advisory-opinions.html

Waivers
If the determination is made that you are subject to the two-year home residency requirement and you do not wish to comply, you can, under certain circumstances, apply for a waiver of the requirement.

There are several grounds on which the waiver request can be based. Instructions and eligibility requirements can be found on the Department of State website at:

http://travel.state.gov/content/visas/english/study-exchange/student/residency-waiver.html

It is important to note that the Waiver Review Division of the Department of State (DOS) makes the recommendation to waiver or not waive the requirement but, it is the Department of Homeland Security (DHS) that makes the final determination.

Once DOS notifies the program sponsor that a recommendation to waive the requirement has been made to DHS, no further extensions of stay can be granted to the exchange visitor beyond the duration of stay indicated on the form DS0-2019. If the waiver is denied, extensions can be processed in the usual manner.

An Exchange Visitor who is interested in applying for a waiver should consult with the Foreign National Office but, we cannot assist you in the completion of the waiver.

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