

# INTERNATIONAL STUDENT & SCHOLAR SERVICES

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## J-1 EXCHANGE VISITORS 2-YEAR HOME RESIDENCY REQUIREMENT - 212(E)

### J-1 EXCHANGE VISITOR PROGRAM OVERVIEW

The J-1 Exchange Visitor program is administered by the U.S. Department of State (DOS) with the purpose of increasing “mutual understanding between the people of the United States and the people of other countries through educational and cultural exchanges.” The University of Connecticut (UConn) sponsors individuals in J-1 visa status as both students and scholars and their J-2 dependents as a certified Exchange Visitor sponsor by DOS.

### THE TWO-YEAR HOME RESIDENCY REQUIREMENT - 212(E)

This requirement is known by several names, including:

- The Two-Year Home Country Physical Presence Requirement
- 212(e) - shorthand for Immigration and Nationality Act, section 212(e), the main federal regulation that discusses this requirement.

The Two-Year Home Residency Requirement (“212(e)”) is intended to enable the home countries of certain Exchange Visitors who come to the U.S. for a specific objective, such as a program of study or a research project, to benefit from the Exchange Visitors’ experiences in the U.S.

212(e) is intended to prevent certain J-1 Exchange Visitors (and their J-2 family members) from staying in the U.S. longer than is necessary to complete their objective, and to ensure that they will reside in their home country for at least two years in order to contribute back to their home country what they learned through their educational and/or cultural exchange experiences in the U.S. before returning to the U.S. for a long-term stay.

#### *What are terms of 212(e)?*

Until either fulfilling 212(e) by returning home for two years or obtaining a waiver of the requirement (a “212(e) waiver”), an individual who is subject to 212(e) is ineligible for:

- An H or an L nonimmigrant visa
- An immigrant visa (to enter the U.S. as a lawful permanent resident, or LPR)
- Adjustment of status (become an LPR, or “get a green card” from inside the United States)
- A change of status to any other nonimmigrant classification, except A or G (for diplomats and representatives of certain international organizations and their dependents)

Note that 212(e) counts aggregate days of presence in the home country after the end of the J-1 program. Physical presence in the home country does not need to be continuous for two years. Although individuals who are subject to 212(e) are not eligible to apply to change their nonimmigrant status within the U.S., they may exit the U.S., apply for a new visa abroad (for any status other than H, L, or lawful permanent resident), and re-enter the U.S. in the new status.

#### *Who is subject to 212(e)?*

You are subject to 212(e) if ...

- Your current J-1 program is or was funded, in whole or in part, by your home government or by the United States government, in order to promote educational exchange.
- The education, training or skill you are pursuing appears on the “Exchange Visitor Skills List.” (The latest (2009) version of the Exchange Visitor Skills List can be found on DOS website at [http://www.travel.state.gov/visa/temp/types/types\\_4514.html](http://www.travel.state.gov/visa/temp/types/types_4514.html).) Please note that if your J-1

program began prior to March 17, 1997, a different version of the skills list applies to you. Consult a J International Advisor in International Student and Scholar Services (ISSS) for more information.

- You are here for graduate medical education or training under the auspices of the Educational Commission for Foreign Medical Graduates (ECFMG).
- You are the J-2 dependent of an Exchange Visitor who is subject to 212(e).
- You have *ever been subject to 212(e)*, and have neither obtained a waiver nor met the requirement by spending two years in your country--even if a more recent Form DS-2019 (or an old IAP-66) reflects no basis for 212(e) or you are now in a different status (such as F-1 or B-1/B-2).

#### *How do I know if I am subject to 212(e)?*

An individual who is currently in the U.S. in J-1 or J-2 status, or who has been in the past, can look on all Forms DS-2019/IAP-66 (current and historical) to determine whether he or she is subject to 212(e). There is a box on the lower left-hand side of the first page of the DS-2019 which contains information about 212(e). This information should also appear on the J-1 visa. If you are not sure, contact a J International Advisor in ISSS for more information.

#### *What if I believe that I should not be subject?*

If you believe that you have been selected to be subject to 212(e) by mistake (for instance, if you have been selected because of government financing, but you haven't received government financing),

- You may request an **advisory opinion** from:
  - INA 212(e) Advisory Opinion Request
  - Waiver Review Division, CA/VO/L/W
  - U.S. Department of State
  - 2401 E Street, NW, (SA-1, L-603)
  - Washington, DC 20522-0106
- Consult an immigration attorney who specializes in this area of immigration law.

#### *What is my "home country" for the purpose of 212(e)?*

Your "home country" for the purpose of 212(e) is your country of legal permanent residence at the time that you obtained J-1 or J-2 status.

### **APPLYING FOR A 212 (E) WAIVER**

If you are subject to 212(e) and you do not wish to satisfy the requirement by spending an aggregate total of two years in your home country, you may apply to DOS for a waiver under one of the following five grounds provided by the Immigration and Nationality Act:

#### **1. A "no objection" statement**

Your government may be willing to indicate, in a "no objection" statement, that it has no objection to your receiving a 212(e) waiver. Some countries handle requests for "no objection" statements through their embassy in Washington, D.C., while others use a designated ministry or agency in the home country.

**NOTE:** Exchange Visitors sponsored by ECFMG (Educational Commission for Foreign Medical Graduates) are not eligible for waivers based on a statement of no objection. Also, a "no objection" statement usually will not lead to approval of a "no objection waiver" request if the Exchange Visitor has received more than \$2,000 in funding from the United States government.

#### **2. Interested Government Agency (IGA)**

If you are working on a project of interest to a U.S. government agency, that agency may determine that your continued stay in the U.S. is vitally important to it. If the agency makes that determination, the head of the agency or the duly appointed designee may recommend a waiver for you to the State Department. Current IGAs include the U.S. Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Transportation and Veterans Affairs, as well as the Library of Congress, the Appalachian Regional Commission, the National Endowment for the Arts, NASA Headquarters, the National Science Foundation and the Smithsonian Institution.

3. *Exceptional hardship to a USC/LPR spouse or child*

If you can demonstrate that your departure from the United States would cause *exceptional hardship* to your United States citizen (USC) or lawful permanent resident (LPR) spouse or child (e.g., your U.S.-born 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.

4. *Fear of persecution*

If you can demonstrate that, because of your race, religion, or political opinions, you would face persecution by your home government if you returned to your country, you might qualify for a waiver.

5. *Request by a designated State Department of Health, or its equivalent*

If you are a medical doctor, you may be able to apply for a waiver on the basis of a bona fide offer of fulltime employment for at least three years at a health facility in an area of the United States officially designated as having a shortage of health care professionals. No more than twenty such applications may be granted for each state for each federal fiscal year.

**IMPORTANT NOTE!!!** If you are thinking of applying for a 212(e) waiver, speak to a J International Advisor in ISSS first. There are implications of applying for a 212(e) waiver that you should understand first. In particular, you will be unable to extend your J-1 or J-2 status or apply for a reinstatement to J-1 or J-2 status after acquiring the waiver.

**PROCEDURES FOR 212(E) WAIVER APPLICATION**

**Step 1:**

To apply for a recommendation for a waiver of the two-year foreign residence requirement, applicants must complete Form DS-3035 online:

<https://j1visawaiverrecommendation.state.gov/accessController.asp?page=7&handler=true>. Upon completing the form online, your information will be downloaded into a barcode and you will be issued immediately a waiver case number and further instructions.

Along with your DS-3035 you will need to send the following supporting documents:

- a. Application fee of \$215 (NON-REFUNDABLE) per J-1 applicant payable to THE U.S. DEPARTMENT OF STATE. Only cashier's check or money order is accepted (personal checks are not accepted: cashiers checks may be better to use, since it is very difficult to trace the cashing of a money order in case there is ever a question of receipt of fee). Include your full name, date of birth and Social Security Number on your form of payment. Be sure to put your waiver case number on the check.
- b. Statement demonstrating why you are eligible to receive a 212(e) waiver of the Exchange Visitor Program. Be sure to include the waiver case number on this letter.
- c. Copies of all Forms DS-2019/IAP-66.
- d. Copy of the data page of the Exchange Visitor's current passport containing name and birth date.
- e. Two self-addressed, stamped envelopes.

*\*\*\* It is your responsibility to submit all requested documents and ensure that required documents are sent on your behalf by third parties. DOS will NOT follow up on documents that have not yet been received. It will be your responsibility to make sure your file is complete.*

It is recommended that you submit ALL of the requested documents at the same time. Some letters (such as "No Objection" statement from your government and applications by a Conrad /State Health agency or Interested Government Agency) must be submitted directly to DOS by the Embassy or each respective agency. In that case, you, as the applicant, must request that the third party agency write your full case number on any documentation and on the outside of the envelope to be sent to DOS.

Send your documents to the following:

*By Regular Mail or USPS express mail:*

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

*By Courier Service:*

U.S. Department of State  
Waiver Review Division  
(Box 952137)  
1005 Convention Plaza  
St. Louis, MO 63101-1200

**Step 2:**

Once you have your waiver case number, you should check on the status of your application by visiting the J Visa Waiver Status Check website: <http://j1visawaiverstatus.state.gov/>.

Exchange visitors applying for a waiver on the basis of persecution or exceptional hardship to a U.S. citizen or legal permanent resident spouse or child MUST complete and submit Form I-612, Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act, as amended, directly to the United States Citizenship and Immigration Services (USCIS).

**Step 3:**

At the conclusion of the review process, the Waiver Review Division/DOS will forward its recommendation directly to the United States Citizenship and Immigration Services (USCIS) in the Department of Homeland Security (DHS). You will receive a copy of that recommendation at the address you listed on your Form DS-3035 or the most current address we have for you if you reported a change of address. USCIS has the responsibility for making the final determination on your waiver request. USCIS will notify you directly, whether your waiver application is denied or approved.

**Important Things to Consider:**

- **\$215 Application Fee:** Remittances must be drawn on a bank or other institution located in the U.S. and made payable in U.S. currency to the U.S. Department of State (DOS). If the applicant resides outside the United States at the time of application, remittance may be made by bank international money order or foreign draft drawn on an institution in the U.S. and made payable to the U.S. Department of State in U.S. currency.
- It is recommended that the J-1 should try to apply before leaving the U.S. If this is not possible, then either have someone send them legal-sized envelopes from the U.S. with the appropriate postage attached that would allow DOS to return the envelopes to a foreign country (DOS only sends you one page - *FYI in order to determine the return postage*) or use a U.S. friend's address for receipt of all paperwork from DOS.
- If at a later time the exchange visitor changes the basis for the waiver request, then another fee is not required. For instance, if the J-1 submits a Data Sheet saying he/she will apply for a waiver on the basis of a "No Objection Letter," and he/she must later change to the "Interested Government Agency" process, another fee is not required.
- Any time there has been an address change, notify DOS of the change (<https://j1visawaiverrecommendation.state.gov/accessController.asp?page=3&handler=true>). If DOS does not have your most current address, they may not be able to contact you in case they need additional information from you to proceed with your case or you may not receive the results of the waiver request.

Visit [http://travel.state.gov/visa/temp/info/info\\_1296.html](http://travel.state.gov/visa/temp/info/info_1296.html), [http://travel.state.gov/pdf/J\\_WaiverFAQ21-DEC-06.pdf](http://travel.state.gov/pdf/J_WaiverFAQ21-DEC-06.pdf) and <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=36a0194d3e88d010VqnVCM10000048f3d6a1RCRD> for the most reliable, current information about waiver applications.

**\*\*IMPORTANT NOTICE\*\***

*The above information on the waiver application is courtesy information for your convenience. As the Exchange Program sponsor, the University or ISSS is not allowed to advise or assist you in your waiver application.*