

Waiving the J-1 Two-year Home Residency Requirement

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Many scholars, researchers and physicians who enter the United States on J-1 (Exchange Visitor) visas are subject to the two-year home residency requirement under Section 212(e) of the Immigration and Nationality Act. This policy prevents “brain drain” and furthers the mission of U.S. government-funded international exchange. J-visa holders who are subject to the two-year rule must spend two years in their country of last foreign residence prior to receiving H, L, or permanent resident status. The fulfillment of the two-year residency may be completed over many years.

There are four options for an exchange visitor (“EV”) to obtain a waiver of the two-year home residency requirement in order to pursue H, L or permanent resident status in the United States.

1. No Objection Statement:

The EV’s home country government issues a No Objection Statement through its Embassy in Washington, D.C., directly to the Waiver Review Division (“WRD”) of the U.S. Department of State (“USDOS”), in which it states that it has no objection to the EV not returning to his/her home country to satisfy the two-year foreign residence requirement and that it does not object to the EV becoming a resident of the U.S.

Federal law precludes the use of this option by foreign medical physicians who acquired J-1 status on or after January 10, 1977 for the purpose of receiving graduate medical education or training.

This option generally is not available to an individual who has received U.S. government funding or who has received funding from his/her home government, unless the home government’s funding source consents to the waiver.

2. Request by an interested government agency (“IGA”):

If an EV is working on a project for or of interest to a U.S. federal government agency, and that agency has determined that the visitor’s departure for two years to fulfill the 212(e) requirement will be detrimental to its interest, that agency may request an interested government agency waiver on

behalf of the EV for the sake of public interest. The IGA request must be signed by the head of the agency or its designee and submitted directly to the WRD. Several government agencies have prescribed processes and contacts for the recommendation of IGA waivers. However, any government agency can act as an IGA, even if they do not have a ready procedure available.

Several IGA waiver programs exist exclusively for foreign physicians seeking J-1 waivers. **Foreign physicians who agree to serve in medically under-served areas may apply for IGA waivers either through a state health department, under the “Conrad State 30 Program,” or through a federal agency with a physician waiver program.**

3. Persecution:

If an EV believes that he/she will be persecuted based on his/her race, religion, or political opinion if he/she were to return to his/her home country, the EV may apply for a persecution waiver. This waiver requires the EV to submit Form I-612 directly to the U.S. Citizenship and Immigration Services (“USCIS”). Only if USCIS makes a finding of persecution will the WRD proceed with the waiver case under this basis. If the WRD approves the waiver, it goes back to USCIS for final processing. The source of J-1 funding and “brain drain” are not considerations in persecution cases.

4. Exceptional hardship to a U.S. citizen or permanent resident spouse or child:

If an EV can demonstrate that his/her U.S. citizen or legal permanent resident spouse or child would suffer exceptional hardship either by residing in the EV’s home country for two years or as a result of the EV’s departure from the U.S. for two years, he/she may apply for an exceptional hardship waiver. Mere separation from family is not considered sufficient to establish exceptional hardship. This waiver basis requires that the EV submit Form I-612 directly to USCIS. Only if USCIS makes a finding of exceptional hardship will the WRD proceed with a waiver case under this basis. If the WRD approves the waiver, it goes back to USCIS for final processing. The source of J-1 funding and “brain drain” are not considerations in hardship cases.

After Waiver Approval

If the J waiver is approved by all appropriate parties and an I-612 approval is received from USCIS, the EV is then eligible to apply to change status to any nonimmigrant visa or to apply for an adjustment of status to permanent resident in the United States. The waiver itself does not give the EV an immigrant or nonimmigrant status.

Further information about J waivers can be found at <https://travel.state.gov/content/?visas/en/study-exchange/student/residency-waiver.html>.

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