

OUR PRACTICE

Exchange Visitors

A large number of foreign nationals come to the U.S. as "exchange visitors" in the J-1 classification. The State Department has designated 13 different types of program categories of exchange programs. The State Department designates certain "program sponsors" to operate programs in one or more program categories. A program sponsor then oversees a qualified alien in obtaining and maintaining J-1 status as an exchange visitor under complex eligibility rules and procedures. Special rules apply to family members in J-2 status. Certain exchange visitors become subject to the dreaded two-year home residency rule and may seek to waive the requirement. We advise and assist clients in all aspects of exchange visitor programs.

Program Categories

The available J-1 program categories include the following. Each category has special rules associated with it discussed at other pages on this site or at State Department web pages, available through links on this list.

- College and University Student
- Secondary Student
- Teacher
- Professor and Research Scholar
- Short-Term Scholar
- Specialist
- Trainee (specialty and non-specialty)
- International Visitor
- Government Visitor
- Physician
- Camp Counselor
- Summer Student Travel/Work
- *Au Pair*

Program Approval and Operation

The State Department's web site sets forth the forms and procedures for an entity to apply for approval of an exchange program it will sponsor. A proposed sponsor must demonstrate its "U.S. citizenship" (under a special definition), legal and financial status, staffing ability to comply with government requirements, good-faith efforts to place U.S. participants in programs abroad, its readiness to engage participants cross-cultural activities. A sponsor must designate at least one person to be the "responsible officer" who will ensure the program's compliance with State Department rules, report to the State Department, and issue forms to participants. A sponsor must be prepared to arrange insurance for participants with special coverage not found in most employer-provided policies, which leads most programs to require targeted insurance at a cost of about \$500 per year. Because application for and maintenance of an exchange program is so cumbersome, sometimes a prospective employer without its own governmental approval may participate under the approval of an "umbrella" exchange program, particularly in the secondary school student or trainee categories.

All J-1 exchange programs must operate under the "SEVIS" tracking program by which the Bureau of Immigration and Customs Enforcement tracks each visitor's visa acquisition, entry, program participation, and departure.

Procedures for Alien Participant

A program sponsor issues to a participant it approves a copy of Form DS-2019 (formerly IAP-66), which the alien uses to make a J-1 [visa application](#) or to [change status](#) to J-1 within the U.S. Upon a reentry, a J-1 exchange visitor must present to the U.S. immigration inspector a J-1 visa and DS-2019 copy. The participant must be ready to convince the consulate and immigration inspector that she [intends to return to a home abroad](#). Someone who has enjoyed "optional practical training" in F-1 student status may not normally change to J-1 status.

When the alien enters or changes status within the U.S., the immigration inspector issues an I-94 card indicating an expiration of stay as "D/S," an abbreviation for "duration of status," which in essence means to look to the DS-2019 form and the program sponsor for the expiration of approved program, and thus of the stay. Before a program ends, a participant may obtain a new DS-2019 to change programs in the same category or in some cases extend the existing program. Other changes or extensions require State Department, and sometimes USCIS, approval at the sponsor's request. The alien can remain in the U.S. and even file an application to change to another classification (but not only in exceptional circumstances to transfer to another J-1 program) during a 30 day "grace period" following termination of his or her program.

A participant may not engage in employment not listed by the sponsor on Form DS-2019, and authority for employment varies by program category. A sponsor who learns that a participant has failed to follow program rules must terminate the participant and notify USCIS and or DOS, leading to deportability. A participant who through no fault of his own or excusable neglect has failed to maintain proper J-1 status and would suffer unusual hardship from departure may apply to the State Department for "reinstatement." However, some very common causes of violation of status are not susceptible to reinstatement. Some programs issue the alien an identification card in lieu of a Form DS-2019 copy.

Family members

The spouse and unmarried children under age 21 may obtain J-2 visas and status to accompany or follow the J-1 principal alien. Unlike dependents in most classifications, those who are of age may apply to USCIS on [Form I-765](#) for employment authorization by showing that the income is not needed to support the J-1 principal alien. If the principal alien is subject to the home residency rule, so is the J-2 dependent. If the principal alien is not, then neither are the dependents. If the principal alien has fulfilled the requirement by living abroad, the dependents are free of it even if they have not resided abroad. If the principal alien obtains a waiver, the waiver applies to the dependents.

Home residency rule

Certain J-1 aliens become subject to a requirement to return to and remain physically present for two years in their country of nationality or last legal permanent residence before obtaining H or L visas or status, changing to any other nonimmigrant classification, or obtaining permanent residence (the "home residency rule"). The sponsor notes on the DS-2019 and the consulate notes on the visa a non-binding indication whether the participant is subject to the requirement. The home residency rule applies in three situations:

- The alien's J-1 participation has been financed in whole or in part, directly or indirectly, by the U.S. or the alien's government.
- At the time the participant obtained J-1 status, his field of skill or specialized knowledge was one of the skills indicated by his country of nationality or residence as needed in that country. The "skills list" is available at the State Department's web site.
- The alien has received [graduate medical education or training](#) in the U.S. in J-1 status.

To remove the bar without satisfying the requirement, the J-1 alien must request a recommendation for waiver from the State Department's Waiver Review Division ("WRD") using forms and rigid procedures detailed at the

WRD's web pages. The WRD then forwards its recommendation to the USCIS, who technically makes the final decision. The bases for waiver are as follows:

- "No Objection Letter" from the home country's government. This basis is not sufficient for a foreign medical graduate.
- Exceptional Hardship to the participant's U.S. citizen or permanent resident spouse or child.
- Likely Persecution of the alien based on one of the grounds for asylum.
- Recommendation from an Interested Government Agency
- Impossibility of Performance, particularly in that the alien has lost both citizenship and the right even to obtain a nonimmigrant visa to accomplish two years of physical presence in the home country due to facts totally beyond the alien's control.

The timing of waiver applications in connection with any associated visa petitions or applications can be complex, and assistance from an immigration lawyer is often advisable.

How We Can Help

We assist institutions and employers to seek USCIS or State Department designations of students or exchange programs, to establish systems for compliance with complex government rules for such programs, and to defend programs in enforcement proceedings by the government. We also help students and exchange visitors know and comply with their rules and obtain work authorization and other benefits that may be available, and to work through the complex individualized problems that inevitably arise. We assist business, institutions, family and friends in clarifying arrangements for visitors' activities and financial support in order to obtain visas and entry. We help individuals document and clarify their nonimmigrant intent, financial support, and planned activities in making visa applications, seeking entry, and applying for change or reinstatement of status.

We provide advice about allowable activities and periods of stay, and we evaluate and pursue changes to other classifications and to permanent residence for those who wish to expand their range of activities and duration of stay. We evaluate whether the 2-year home residency requirement applies, and we help obtain waivers of that requirement, for the J-1 and/or J-2 dependents.

Important Links

- [SEVIS \(Use top menu for International Students\)](#)
- [Exchange Visitors](#)
- [The Exchange Visitor Program](#)
- [DOS Skills List \(amended 2009\)](#)