

The Two-Year Home-Country Physical-Presence Requirement

Intent of the Requirement

The intent of the requirement is to have the home country benefit from the Exchange Visitor's experience in the United States. 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 a participant who is subject from staying longer than necessary for the objective, and to ensure that he or she will spend at least two years in the home country before coming back to the United States for a long-term stay. If a participant is found subject to the requirement, their J-2 dependents will be subject as well.

Terms of the Requirement

If you are subject to the requirement, then, until you have "resided and been physically present" for a total of two years in either your country of nationality or your country of legal permanent residence, you are not eligible for:

1. An H, L, or immigrant visa, or for H, L, or immigrant **status** in the United States. H includes temporary workers, trainees, and their dependents. L includes intracompany transferees and their dependents. An immigrant is the same as a permanent resident, or holder of a "green card."
2. A change of your status, inside the United States, from J to any other nonimmigrant 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 participation 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;
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. (see I SSS for more information about the skills list).

1. If you have participated as a J-1 in a graduate medical education or training program, i.e. a residency, internship, or fellowship, sponsored by the Educational Commission for Foreign Medical Graduates; or
2. 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 fulfilled it by spending two years in your country, it still holds even if a more current Form DS-2019 (formerly known as the I AP-66) reflects no basis for such a requirement.

Preliminary Endorsements

The visa stamp in your passport, or your Form DS-2019, or both, may show an indication, by a consular officer or a US Citizenship and 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.

If you are Unsure whether you are Subject . . .

Consult your J-1 Responsible Officer or the International Office at this school. Be sure to take your passport, all of the copies you have of your form DS-2019, your I-94 Departure Record card, and copies of prior I-94 cards if they are available. Your Responsible Officer or international adviser can often tell from the source of funding, or the Exchange Visitor Skills List, whether the requirement applies or not. If you are still uncertain . . .

1. You might consult an attorney. Make sure that you talk to an immigration specialist, preferably a member of the American Immigration Lawyers Association. In selecting an attorney a personal recommendation is best, but if none is available, call the local chapter of the American Bar Association for a referral. If you prefer not to see a lawyer, or are still uncertain, . . .

Write to the United States Department of State, which is responsible for the administration of the Exchange Visitor program and the two-year requirement. Enclose photocopies of all of your forms DS-2019 and, in a cover letter, explain why you are uncertain whether you are subject or not, and ask for USIA's advisory opinion.

Waivers of the Requirement

There are four grounds for waiver of the requirement.

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." (As you might imagine, this Form is commonly referred to as Form I-612).

1. 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 went back to your country, you might qualify for a waiver. You would apply to USCIS on Form I-612.

Interest of a United States 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 USIA for a waiver for you in its interest, not yours.

A "no-objection" statement (not permitted for medical trainees). Your country's embassy in Washington can indicate in a direct letter to USIA that it has no objection to your receiving a waiver, or the foreign ministry in your capital at home can write to the United States embassy there. A "no-objection" statement will usually not lead to a waiver if the Exchange Visitor has received more than \$2,000 in funding from the United States government.

A Word of Caution

This handout summarizes some very complex and sensitive issues. It is intended only to help you understand the nature of the requirement, not to serve as a legal reference. Do not assume, from reading this page, that you are subject to the requirement, or that you are not. Consult a