

The ABC's of Immigration: J-1 Visas - Waivers of the Two-Year Home Residency Requirement

Over the past two newsletters, we've discussed both a [general overview of the J-1 visa](#), as well as [the procedures to establishing](#) such a visa program. This issue's installment continues by covering a stringent requirement that has become quite a dilemma for a large number of J-1 recipients. Many people who come to the US as J-1 Exchange Visitors are subject to a requirement that precludes them from changing to many other major non-immigrant visa categories or adjusting to permanent resident status unless they have spent two years after completing their stays in J-1 status in their home country, or country of last permanent residence.

The IAP-66 Form or SEVIS Form DS-2019 issued by a J-1 program sponsor provides for a consular or immigration official to make a preliminary determination regarding the applicability of the home residency requirement. This determination may also be stamped or written next to the visa stays in the passport. Note, however, that this determination is only preliminary and should not necessarily be relied on without carefully reviewing with an attorney whether the J-1 visa holder falls into one of three exclusion categories.

Am I subject to the home residency requirement?

Three categories of J-1 visa holders are subject to the home residency requirement. The first category is for J-1s whose field of training and expertise appears on a Skills List maintained by the State Department. The list is periodically revised by the State Department (most recently on March 17, 1997) and includes countries where various skills are in short supply. Most industrialized countries do not appear on the Skills List. A J-1 visitor is subject to the home residency requirement if his skill was on the Skills List at the time the J-1 entered the US, even if the skill is later removed.

J-1's who receive funding either from their home government or a US government agency for participating in their J-1 program are also subject to the home residency requirement. Any amount of funding triggers the requirements. Financing includes monetary payments, even in the form of loans, as well as other forms of financial aid such as covering expenses for tuition, books, insurance, etc.

Finally, any J-1 who enters the US to receive "graduate medical education or training" is subject to the two-year home residency requirement. Such education or training includes residency or fellowship programs involving health care services to patients. Programs involving observing, consulting, researching or teaching with no patient care are not considered "medical education or training." The Educational Commission on Foreign Medical Graduates sponsors J-1 medical education or training programs.

Am I eligible for a Waiver?

Waivers of the home residency requirement are available in a few situations:

- the requirement would result in exceptional hardship to a US citizen or permanent resident alien spouse or child,
- the requirement will result in persecution to the alien on the basis of race, religion or political opinion,
- the alien's home country government indicates no objection to the alien's remaining in the US (it is important to note that physicians cannot obtain a waiver with this method), or

- an interested government agency recommends the waiver as being in the national interest.

In order to demonstrate exceptional hardship to a US citizen or permanent resident spouse or child, the J-1 might try and document medical hardship, persecution of the US citizen or permanent resident if they go to the J-1's home country, as well as other unusual hardships. Lesser hardships such as spousal separation, separation from children and language problems by themselves may not be enough to prove hardship. Rather, the totality of hardship must be measured. A greater degree of hardship must be found in cases involving foreign medical graduates or those receiving U.S. government funding. Also, the hardship must arise both upon a separation of family members or if the family is together in the J-1's home country.

A waiver is available if the J-1 will face persecution in his or her home country due to race, religion or political opinion. The criteria are similar to asylum claims. However, the burden of proof in a persecution-based waiver claim is higher than for an asylum claim. Consequently, most people pursue asylum applications rather than a J-1 waiver based on persecution. Furthermore, asylum claims usually lead to permanent residency status while this is often not true for a J-1 waiver. One instance where a persecution-based waiver may be favored is when an asylum claim is unavailable due to the applicant waiting longer than a year after entering to apply.

Waivers may be granted if a J-1 visa holder obtains a "no objection" letter from the exchange visitor's country of nationality or last permanent residence. The "no objection" letter is a formal, diplomatic statement from the home country to the State Department. Most foreign embassies in Washington have officials designated to handle these statements. The procedures vary widely from country to country and may take up to a year or more. Note that a "no objection" letter is not a basis for a waiver when the exchange visitor came to the US to receive "graduate medical education or training."

A statement from a US government agency to the State Department that the granting of a waiver would be in the public interest and that two years of home residency would jeopardize the agency's interests is a basis for a waiver. This is usually available if the agency employs the J-1, but an agency may request a waiver even if it does not employ that individual. Waivers are almost always granted in these cases. One exception would be in the case of funding from an agency like the Fulbright Commission of U.S.A.I.D.

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Where can I find more information about J-1 Visas and other specific waivers?

Attorneys at Siskind Susser Bland made flowcharts to better understand different types of waivers and how to go about obtaining them. Links to these flowcharts follow:

[J-1 Flowchart Part I: Section 212\(e\)](#) - November 14, 2003

[J-1 Flowchart Part II: No Objection Letters](#) - November 25, 2003

[J-1 Flowchart Part III: Interested Government Agency Waivers for Non-Physicians](#) - December 2, 2003

[J-1 Flowchart Part IV: Persecution Waivers](#) - December 9, 2003

[J-1 Flowchart Part V: Hardship Waivers](#) - January 5, 2004

[J-1 Flowchart Part VI: J-1 Physician Waivers Overview](#) - January 12, 2004

[J-1 Flowchart Part VII: J-1 Physician Conrad State 30 Waivers](#) - January 19, 2004

[J-1 Flowchart Part VIII: J-1 IGA Physician Waivers](#) - January 26, 2004

Greg Siskind is also the author of the J-1 Visa Guidebook. The book can be purchased online at http://bookstore.lexis.com/bookstore/catalog?action=product&prod_id=12991&cat_id=T&pcat_id=31&pub_id=. The book was just released in its tenth edition and is now two volumes with more than 1500 pages.