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**IMMIGRATION
PROCEDURES HANDBOOK**
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CHAPTER 8

THE J-1 VISA CATEGORY

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Summary of Changes. The J-1 category has undergone several changes since publication of the 1998 Supplement to the *Immigration Procedures Handbook*. Note the following:

- *INS finalizes increase in filing fees.* J-2 family members must apply for INS-issued employment authorization on Form I-765. The INS has increased the filing fee for Form I-765 from \$70 to \$100. The INS has also increased the filing fee for Form I-539, the application to extend/change nonimmigrant status, from \$75 to \$120. The \$120 fee applies regardless of the number of co-applicants listed on the form. The filing fee for Form I-102, the application for a replacement I-94, increased from \$65 to \$85. Finally, the filing fee for Form I-612, application for waiver of the two-year foreign residence requirement, has increased from \$95 to \$170. The revised fee schedule is needed, according to the INS, to cover the actual costs of adjudicating these applications.
- *New fee for § 212(e) waivers.* The USIA has announced that it will begin charging a \$136 fee to recover the costs of processing requests for § 212(e) waivers. The fee went into effect for all waiver applications postmarked after July 27, 1998. The alien should not submit the processing fee with the application for a waiver. Instead, once the USIA receives the application from either the alien's home government (in the case of a no-objection waiver), from an IGA (in the case of IGA waivers), or from the INS (in the case of hardship and persecution waivers), the USIA will send a letter to the applicant indicating that the application has been received and requesting payment of the fee.
- **Work relief program established for certain J-1 students.** Effective June 24, 1998, college and university students who are in J-1 status and whose means of financial support, as reflected on their Form IAP-66, comes from Indonesia, South Korea, Malaysia, Thailand or the Philippines may be authorized to work on campus or off-campus full-time. The INS is allowing such employment because students whose means of support comes from these countries are experiencing severe economic hardship due to the rapid devaluation of their currencies against the United States dollar and the resulting reduction in financial support. To obtain this employment authorization, the student must demonstrate that his or her support has been disrupted, reduced or eliminated because of the economic crises taking place in one of the five specified countries. A responsible officer may certify the student's eligibility for authorization under the student relief program and endorse the student's IAP-66 with employment authorization under the program. Students authorized to engage in full-time employment under the student relief program are permitted to reduce their normal course of study in order to accept such employment without violating their status.
- *Relief for J-1 physicians subject to H-1B cap.* The USIA has established a policy allowing J-1 physicians granted waivers of the two-year foreign residency requirement to be reinstated to J-1 status in order to sit for medical board certification examinations. The new policy addresses the

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problem faced by J-1 physicians granted § 212(e) waivers and who are required to obtain H-1B status to engage in employment in the United States. Until the H-1B cap is lifted, the USIA is granting the ECFMG authority to reinstate alien physicians to valid program status, and to extend the program, beyond the normal seven-year limit, of those alien physicians whose sole purpose for remaining in the United States is to sit for an American Board of Medical Specialties (ABMS) certification examination. The ECFMG is authorized to sponsor alien physicians through the last day of the month in which the exam is administered, not to exceed six months. The policy covers only J-1 physicians granted § 212(e) waivers and who are awaiting adjudication of their H-1B petitions. Note that the cap will be lifted on October 1, 1998 (the start of the next fiscal year) but the fiscal year 1999 cap is expected to be reached soon thereafter unless Congress enacts legislation increasing the H-1B cap (several proposals to increase the H-1B cap are currently being considered).

The J-1 visa category is used by foreign students, scholars, experts, medical interns and residents, "international visitors," and industrial and business trainees to enter the United States as "exchange visitors," in U.S. government approved Exchange-Visitor Programs, for the purpose of gaining experience, studying, or doing research in their respective fields. This chapter presents the information needed to understand how the J-1 visa category can be used to bring aliens to the United States. For more detailed information, see Fragomen, Del Rey & Bernsen, *Immigration Law and Business*, § 2.4(c).

Special Group: Q Nonimmigrants. The 1990 Act created the Q nonimmigrant category for aliens participating in an international cultural exchange program. A designated program must provide practical training, employment, and the "sharing of the history, culture, and traditions of the country of the alien's nationality." Training is limited to 15 months, the trainees must be given the same wages as U.S. workers, and the alien may not bring his or her spouse or children to the United States with him or her. The INS must approve a Q petition filed by the employer. The program requirements have been interpreted narrowly by the INS, so that the program applies only to organizations like Disney World bringing aliens to the United States to work at Epcot Center. Because of the narrow application of the Q category, it is not discussed in this *Handbook*.

8.1. BASIC INFORMATION ABOUT THE J-1 CATEGORY

(a). Application Process

The U.S. sponsor must proceed through an Exchange-Visitor Program designated by the U.S. Information Agency (USIA), the government agency that oversees and approves all such programs. Sponsors may:

- Proceed through already-established programs within their own organizations
- Bring J visa holders to the U.S. through another organization's program, provided the eligibility requirements of that organization are met
- Establish their own exchange-visitor program by applying to the USIA

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The sponsor of an Exchange-Visitor Program is empowered by the USIA to issue a Certificate of Eligibility for each exchange visitor. USIA approval for each exchange visitor is not required. Once the Certificate of Eligibility is issued, the exchange alien must take the certificate to a U.S. consulate to apply for issuance of a J-1 visa.

There are eight types of programs through which sponsors may bring exchange visitors to the United States. Those program types cover students, short-term scholars, business trainees, teachers, professors, research scholars, specialists, foreign medical graduates, summer travel/work for students, au pairs, and other visitors (currently including international visitors, government visitors, and camp counselors). Application to be a program sponsor is limited to these types of programs, but an organization may sponsor more than one program type.

(b). Duration of Stay

The permissible period of stay for exchange visitors varies depending the exchange visitor category in which the visitor is admitted.

Note the following:

- *Students.* Secondary school students may be admitted for a one-year period. College and university students may be admitted for the anticipated length of their academic program. Students in degree programs below the doctoral level may also engage in 18 months of training after completion of their degree programs. Post-doctoral training is permissible for a period of 36 months following conferral of the degree. Non-degree college and university students are admissible for a two-year period.
- *Short-term scholars.* This new category permits entries for a six-month period, with no extensions allowed. Note that the usual three-week minimum stay requirement is waived for this category.
- *Trainees.* Business trainees may be admitted to the United States for an 18-month period. Trainees in flight training programs may receive a 24-month period of stay.
- *Teachers.* Primary and secondary school teachers may be admitted for a three-year period.
- *College and university professors and research scholars.* Admission in one of these categories is usually for a three-year period. Under a final rule issued in June 1996, this period may be extended an additional six months by the program sponsor, provided the extension is necessary in order to permit the alien to complete a specific project or research activity. In addition, an extension beyond the three-year period may be authorized by the USIA if: (1) the extension request is filed within sixty days prior to the expiration of the alien's three-year period of stay (late applications may be excused if extraordinary circumstances exist); (2) the request is justified due to "exceptional and unusual" circumstances and is necessary in order to permit the alien to complete a specific project or research activity. Under this standard, a foreign government's direct funding of a participant and that government's desire to have the participant continue in his or her project for an additional year would be considered sufficient to merit an extension. Other examples of "exceptional or unusual" circumstances include the illness or incapacity of a participant which prevent him or her from working on the project for an extended period of time, catastrophes involving the research

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experiment, or unforeseen delays in the research. Note that a designated sponsor may also request advance authorization from the USIA to design and conduct a program in excess of three years but less than six years. Involvement in such extended program is limited to J-1 professors and scholars who will receive direct financing from U.S. or foreign government sources.

- *Specialists.* This new category permits periods of stay up to one year.
- *Foreign medical graduates.* Foreign doctors participating in U.S. internships and residencies may be admitted for the length of their program, with a usual maximum of 7 years. Additional time may be conferred, however, under complex USIA rules.
- *Summer student work/travel programs.* USIA rules do not specify a maximum period of stay, but presumably the four-month period applicable to other summer programs applies as well to this category.
- *Au pairs.* Participation in the au pair programs is limited to one year.
- *International visitors.* One-year maximum period of stay.
- *Government visitors.* 18-month maximum period of stay.
- *Camp counselors.* This program has a four-month limit on stay.

Under USIA rules, extensions beyond the usual program maximum may be authorized by the USIA when adequate justification is given. Experience shows that such extensions are rarely granted.

(c). Special Limitations

Two-year Foreign Residence Requirement. A two-year foreign residence requirement is imposed on some categories of exchange aliens once their U.S. stay is completed. Any J-1 exchange visitor subject to the foreign residence requirement is ineligible for permanent residence or nonimmigrant visas in the H or L category until he or she spends two years—after completion of stay—in his or her home country or country of last residence. Some waivers of the requirement are available in special cases.

The issues of who is subject to the requirement and how to obtain a waiver of it are complex ones. Nevertheless, the foreign residence requirement is an important consideration in determining whether to use the J visa category, because the options for placement of an alien who is subject to the requirement after completion of training are limited.

For purposes of this discussion, note that business or industrial trainees are most often subject to the foreign residence requirement because their field of training and expertise appears on a **Skills List** maintained by the USIA. This list is a record of those skills in each country deemed to be in short supply. The rationale for imposing the foreign residence requirement in cases in which the field of training appears on the skills list for the alien's home country is that the alien should use his or her training in his or her home country before being permitted to bring those skills into use in the U.S. or elsewhere. Whether a country appears on the skills list depends on whether that country responded to a State Department survey to determine skills in short supply in each country. **In general, industrialized countries, such as those in Western Europe and Japan, do not appear on the skills list.**

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Aliens may also be subject to the two-year foreign residence requirement if they received U.S. or home government funding for their participation in an Exchange-Visitor Program. This situation most often arises in the case of students or research scholars. Note that any government funding, including loans which the exchange visitor is obligated to repay, may cause the exchange visitor to be subject to the foreign residence requirement. This situation has arisen with many nationals of the People's Republic of China (PRC) who received travel loans from their communes or work units; the U.S. government has concurred with the view of the Chinese government that these loans constitute government funding. Note: Because of developments in China in 1989, certain Chinese nationals were eligible for a special waiver of the foreign residence requirement. The application period for the special waiver and adjustment of status program ended on June 30, 1994. See § 8.13.

Bar on Participation as Professor or Scholar for Previous J-1 Visa Holders. A rule issued in April 1996 bars program participation as a professor or research scholar for aliens who have been physically present in the United States as a J-1 exchange visitor for all or part of the one-year period immediately preceding the commencement of such participation as set forth in the IAP-66 form. This bar was established to prevent the movement of J-1 students into the professor and research scholar category, and to prevent aliens who had completed a three-year period of J-1 status as a professor or research scholar from leaving the United States and reentering in a "new" research or professor program for an additional three years. As revised by a final rule issued in June 1996, this one-year bar does not apply to exchange visitors: (1) who participated in a exchange visitor program for six months or less; (2) whose previous J-1 stay was in the short-term scholar category; or (3) who is transferring to the sponsor's program. Note that the one-year bar also applies to J-2 spouses of the principal J-1 alien.

Employment Of J-2 Family Members: Family members of the exchange alien enter the U.S. in the J-2 visa category. The spouse and minor children can accept employment with INS authorization, but only if their compensation will be used for their own support—not to support the principal alien.

The INS has issued new procedures which must be followed by J-2 dependents for obtaining employment authorization. Those procedures are a part of the INS effort to institute a uniform Employment Authorization Document (EAD) to be issued to all nonimmigrant aliens who receive work authorization from the INS. Under the new procedures, the J-2 alien applies for employment authorization by mailing Form I-765, together with the \$100.00 filing fee, to the INS Service Center with jurisdiction of his or her U.S. residence. Form I-765, which was revised in 1995, is illustrated as Sample Form 2-5 in Chapter 2 of this *Handbook*. Economic necessity for employment authorization need not be shown, but the J-2 alien must demonstrate that the employment is not required for the support of the J-1 principal alien; therefore, evidence of the salary paid to the J-1 alien or the existence of sufficient means of support for that alien is required. Employment authorization, once received, is valid for employment with any employer, but limited to the period stated on the EAD. The EAD will be issued for the authorized period of stay, whichever is shorter; it can be renewed upon expiration.

The alien can obtain renewal of the authorization period by making a new application on Form I-765 to the INS. The INS has a 90-day period to rule on the employment authorization application; if it has not completed action on the application within the 90-day period, it must grant an interim period of employment authorization for 240 days. While the full ninety days for adjudication

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is unlikely to be needed, at least a delay of several weeks in adjudication can be anticipated. In order to avoid a gap in employment authorization, the alien should apply for a new period of authorization up to ninety days before the expiration of the current period. The validity date of the EAD is the date of issuance, and there is no provision for back-dating a new EAD to the expiration date of a prior EAD. As noted, if the application is not adjudicated within ninety days, INS rules provide that the alien must be given an interim authorization period of 240 days. The interim 240-day period of authorization must be explicitly granted to the alien and should be given to the alien at the time he or she goes to the INS office to seek it; it is possible, however, that there may be a delay of several days at some INS offices before the 240-day period is actually granted to the alien.

As an alternative to explicit employment authorization for the J-2 nonimmigrant, the employer can seek a different nonimmigrant status for the alien in which employment is permitted. The employer cannot commence employment of the alien until the alien has received approval of the change of status from the INS, as marked on Form I-797.

8.2. BASIC REQUIREMENTS FOR OBTAINING J-1 STATUS

(a). To enter the U.S., the alien must have plans to participate in a designated Exchange-Visitor Program.

An Exchange-Visitor Program may be sponsored by a government agency, educational institution, hospital, nonprofit association, business, or industrial concern. A group can sponsor its own Exchange-Visitor Program or it may bring aliens to the U.S. for training under an already-established program. Authority to approve or deny designation as an Exchange Visitor Program rests with the United States Information Agency.

NOTE: For several years, the USIA either denied or withheld adjudication of most applications to sponsor Exchange-Visitor Programs for the purpose of business training. Now that final rules governing the Exchange-Visitor Program were adopted in March 1993, the USIA has again started adjudicating applications for new program sponsors. Those applications are made on Form IAP-37, which is illustrated in this chapter.

(b). Certain categories of exchange visitors must spend an aggregate of two years following completion of their U.S. training program in the country of their nationality or last legal residence.

Aliens subject to this requirement are those who have participated in Exchange-Visitor Programs and

- whose programs have been financed in whole or in part by their governments or by the U.S. government, or
- who are nationals of countries that the Director of the USIA has determined clearly require the skills and services of people with the aliens' special training, or
- who are receiving graduate medical training in the U.S. (interns and residents).

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The requirement is that such aliens must, absent a waiver, return to the country of their nationality or last residence for an aggregate period of two years following completion of their U.S. training, before being able to return to the U.S. in the H or L nonimmigrant categories, or as a permanent resident. Time spent outside of the United States in a third country does not satisfy the two-year requirement. **Example:** A Zambian national spends two years in Canada as a research scientist after receiving his Ph.D. degree at a U.S. university in J status. The alien cannot return to the United States in H-1B status to work for a U.S. company because he has not spent two years in Zambia; the two-year period in Canada does not fulfill the requirement.

NOTE: When an exchange alien is subject to the two-year foreign residence requirement, his or her spouse and children are also subject to this requirement when they enter the U.S. in the J-2 visa category.

(c). The alien must maintain a foreign residence which he or she has no intention of abandoning.

The alien's intent to enter the U.S. for a temporary period of time is judged independently from the sponsor's intent not to keep the alien permanently in the United States. It is therefore necessary for the alien to maintain his or her foreign residence as evidence of an intention to return abroad.

8.3. BASIC QUESTIONS TO ANSWER BEFORE PROCEEDING WITH A J-1 CASE

(a). Is there an already established program through which you can proceed?

As noted, every exchange alien must enter the U.S. to participate in a designated **Exchange-Visitor Program**. An intending program sponsor must obtain from the Director of the USIA designation as an Exchange-Visitor Program and an assigned program number.

Various organizations and many U.S. companies have already applied for and received such program designation. For example, some organizations sponsor "umbrella programs" whereby they arrange for and facilitate the transfer of exchange aliens to the U.S. for practical training with different U.S. employers. In some instances, these organizations assist in placing aliens in on-the-job practical training programs. Two organizations—the **American Council on International Personnel (212-688-2437)** and the **Association for International Practical Training, Inc. (301-997-2200)**—have obtained designation as sponsors for such "umbrella programs" from the USIA. Various foreign chambers of commerce located in the United States have also obtained program designation and their programs can be used by members of those chambers and others. When a company brings a trainee to the U.S. under the sponsorship of one of these organizations, it need file nothing with the USIA. The sponsoring organization has already filed all necessary papers with the USIA and can issue the documentation needed to bring the employee to the U.S. under an Exchange-Visitor Program.

By proceeding through an "umbrella program," you also avoid the attendant responsibilities and reporting requirements of a program sponsor. These reporting requirements and the specific obligations that devolve on the designated program

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sponsor are somewhat burdensome and complex. Note that each "umbrella program" has its own paperwork requirements for participants. Each has an application procedure, and each requires that follow-up information be filed on the status of the exchange alien, including an evaluation of his or her training. The program sponsor then relays this information to the USIA.

In some instances, a company or organization may already have a USIA-designated, in-house Exchange-Visitor Program. Certainly, if it has its own Exchange-Visitor Program, the employer should seek eligibility for the alien under its own program. If, however, an employer does not want to proceed through an "umbrella program" and does not yet have an established in-house Exchange-Visitor Program, it will need to set up its own program and seek designation as a program sponsor from the USIA.

"Au Pair" Programs. The USIA has approved several organizations as sponsors of programs bringing aliens to the United States to work as au pairs for American families. Information concerning these sponsors may be obtained from the USIA. Authority for such programs was originally set to expire on September 30, 1997, but legislation enacted in 1997 extends the authorization for au pair programs permanently. Earlier legislation also required the USIA to open the program to exchange visitors from all countries; the prior program was limited to aliens from Western European countries. While numerical program limitations for individual au pair program sponsors were lifted, the USIA intends to impose an aggregate limitation of 22,720 total au pair participants per year.

The rules governing au pair programs were revised in 1997 to enhance the USIA's oversight of au pair programs. Generally the rules refine the selection and screening requirements. Note the following:

- au pair participants must now attend, rather than merely enroll, for six hours of academic credit at an institution of higher education
- host families must be provided with a report from the organizational representative who interviewed the au pair participants, as well as references
- au pairs must successfully complete a personality profile based on a psychometric test that compares applicants' characteristics with those considered most important for successful participation
- au pairs and host families must be provided with a USIA statement regarding the au pair program itself
- au pair participants who will care for children under two years of age must have at least 200 hours of documented infant child care experience
- au pairs must receive a pre-departure package that clearly describes their prospective child care responsibilities and enumerates unacceptable behavior
- au pairs must receive at least eight hours of child safety instruction and at least 24 hours of child development instruction (at least four hours of instruction must be devoted to infant-related care)
- au pairs must receive at least the federal minimum wage
- au pairs may not provide more than 10 hours of child care on any given day or more than 45 hours of child care in any given week

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Summer Travel/Work Programs Recognized. Summer Travel/Work programs permit foreign university students to enter the United States for the summer months to travel and pursue employment opportunities. Four organizations currently conduct Summer Travel/Work programs. The USIA has stated that it is satisfied with the administration of these programs. Accordingly, it will permit these four programs to expand the numbers of program participants, and the countries from which they are selected. Information concerning these four programs may be obtained by contacting the USIA.

(b). Is your organization eligible to sponsor its own Exchange-Visitor Program?

An organization that qualifies as a "U.S. citizen" may apply to sponsor its own Exchange-Visitor Program. Applications are made to the USIA on Form IAP-37, a copy of which is illustrated below.

Categories of Exchange-Visitor Programs. An organization may only be designated as an Exchange-Visitor program sponsor for one or more of the following types of participants:

- Students
- Short-term scholars
- Trainees
- Professors
- Research scholars
- Specialists
- Camp counselors
- Au pairs

Sponsorship of other categories of exchange visitors is limited by the USIA. For example, "international visitors" may only be sponsored by the USIA itself. Foreign doctors must be sponsored by the Educational Commission for Foreign Medical Graduates.

U.S. Citizenship Requirement. The USIA rules require that program sponsors be "citizens" of the United States. The rule provides that a sponsor is considered a U.S. citizen if the sponsor is:

- an individual who is a citizen of the United States or a lawful permanent resident alien
- a general or limited partnership created or organized under the laws of the United States, of which a majority of the partners are citizens of the United States
- a corporation, association, or other legal entity created or organized under the laws of the United States:
 - which has its principal place of business in the United States, and
 - its shares or voting interests are traded on a U.S. stock exchange, or
 - a majority of its officers, board of directors and shareholders or holders of voting interests are U.S. citizens

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- a non-profit corporation, association, or other legal entity created or organized under the laws of the United States which:
 - is qualified as a tax-exempt organization,
 - has its principal place of business in the United States, **and**
 - has a majority of officers and board of directors which are U.S. citizens
- an accredited college or university created under the laws of the United States
- an agency of the United States

In addition, the "responsible officer" for the program sponsor must be a U.S. citizen or permanent resident. A "responsible officer" is defined as the official of an exchange visitor program sponsor who has been listed with the USIA as being responsible for administering the program.

Other Requirements for Program Sponsors. Among other requirements, an applicant to sponsor an Exchange-Visitor Program must document that it is capable of meeting all **financial obligations** of a program sponsor and that it will devote **sufficient staff and resources** to meet its duties. In addition, a program sponsor must provide orientation for program participants as well as opportunities for **cross-cultural activities**.

Program sponsors are also supposed to provide for **reciprocity** in their programs, sending U.S. citizens abroad in exchange for foreign nationals coming to the United States. One-for-one reciprocity is not required, but some degree of reciprocity should be present in every program.

Note that every exchange program must meet two minimum requirements: at least **five exchange visitors** must participate in the program per calendar year, and each visitor's program must last at least **three weeks** (except for short-term scholars).

A full discussion of sponsor requirements and the application procedure to become a program sponsor are included in § 8.4, below.

(c). Is the exchange alien subject to the two-year foreign residence requirement?

Some J-1 exchange visitors are subject—following completion of their U.S. training—to a two-year residence requirement in the country of their birth or last legal residence. Any J-1 industrial trainee or other exchange visitor who is subject to the two-year foreign residence requirement is precluded from changing to the H or L nonimmigrant work visa categories or from applying for permanent residence—unless a waiver is obtained.

It is important for a company or organization to make a preliminary determination as to whether the alien will have to return to his or her home country for two years. This is because it will not be possible for the company to continue the alien's services on a temporary basis—or even to have the alien petition for INS approval to fill a new, permanent position—if this restriction applies.

The foreign residence requirement applies to three categories of exchange visitors:

1. **Exchange visitors who come to the U.S. to receive graduate medical education or training.**

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2. **Exchange visitors whose training program is financed in whole or in part by either an agency of the U.S. government or by the government of the alien's home country.**
3. **Exchange visitors who possess skills in short supply in their own countries.**

The applicability of the requirement is determined at the time when the alien applies for permission to remain in the U.S. as a permanent resident or as a temporary nonimmigrant worker in the H or L visa categories.

The Certificate of Eligibility for Exchange Visitor (J-1) Status—Form IAP-66 contains a section where the U.S. consular officer, to whom the alien applies for the J-1 visa, is to indicate whether the foreign residence requirement is applicable. The consular officer's determination in this matter, however, is not final. Rather, the final determination is made by the INS when the alien submits an application for change of status in the U.S. to a different nonimmigrant status or seeks permanent resident status. In order to clarify this issue, the newest version of Form IAP-66 has labeled this section of the form a "preliminary" determination on the foreign residence requirement.

The rules for determining whether a person is subject to the two-year foreign resident requirement and the scope of the requirement are discussed in § 8.15 of this chapter.

(d). If the alien is subject to the two-year foreign residence requirement, is a waiver obtainable?

Even though the exchange alien is subject to this requirement, the sponsor can still bring him or her to the U.S. for training, research, or education. In such a case, however, the sponsor and alien will want to know if the alien might be eligible for a waiver of the requirement.

A waiver of the two-year residence requirement may be granted to a J-1 exchange alien subject to its restriction under the following four conditions:

- **A waiver may be sought by an interested U.S. government agency on behalf of the exchange alien.**

This condition may occur, for example, in a case in which the alien is working on a special project for the U.S. agency or, if for a private organization, in which a U.S. agency is interested.

- **A waiver may be obtained when the exchange visitor's compliance with the foreign residence requirement would result in exceptional hardship to his or her U.S. citizen or permanent resident spouse or child.**

What constitutes "exceptional hardship" for purposes of obtaining such a waiver depends on the particular circumstances of each case. For example, economic reasons may constitute exceptional hardship but the evidentiary showing of severe economic distress that is needed to obtain the waiver may vary from case to case.

- **A waiver of the two-year foreign residence requirement also may be granted where the alien can demonstrate that he or she will be subject to persecution upon returning home.**

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Documentation of a well-founded fear of persecution on the basis of race, religion, political opinion, nationality, or membership in a particular social group must be made in such a case.

- **The final ground for waiving the two-year foreign residence requirement is on the basis of a "no-objection" letter issued by the alien's government to the USIA, stating that the foreign government has "no objection" to the alien remaining in the U.S.**

The "no-objection" letter must be sent to the Director of the USIA in the form of a diplomatic note from the country's head of mission in the U.S. or through the U.S. mission in a foreign country. If the exchange alien is subject to the foreign residence requirement because his or her occupation is on the Skills List for his or her country, or because of home government funding, a no-objection letter is often influential in obtaining a waiver. No-objection waivers are unavailable to foreign medical graduates participating in an internship or residence program in the United States in the J-1 category.

Note On Status Of Dependents Once Waiver Obtained: A J-2 spouse or child is not subject to the two-year home residence requirement when the J-1 principal has already obtained a waiver of that requirement.

A full discussion of the requirements and procedures for waiver of the two-year foreign residence requirement is included in § 8.15 of this chapter.

8.4. APPLICATION FOR EXCHANGE PROGRAM SPONSOR

For those parties that are not currently exchange program sponsors, applications may be submitted in one of the eight program categories permissible under the USIA rules:

- student
- short-term scholar
- trainee
- teacher
- professor
- research scholar
- specialist
- "other persons of similar description," including international visitors (for use only by USIA), government visitors (for use only by government agencies), and camp counselors

Note that although USIA rules list only these eight types of exchange visitors, it also permits the entry of exchange visitors in these groups: (1) foreign doctors undertaking U.S. internships and residencies (sponsored only by the Educational Commission on Foreign Medical Graduates); (2) students undertaking a summer travel/work program; and (3) "au pairs" undertaking a year of residence in a U.S. household. With regard to au pair programs, the USIA had refused until recently to approve additional program sponsors beyond those organizations already approved to sponsor au pairs. Legislation enacted in 1995, however, instructed the USIA to accept and adjudicate applications for au pair sponsorship from additional

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organizations. The USIA has now indicated that it will accept applications for sponsorship from other organizations seeking to establish au pair programs. Note that legislation enacted in 1997 extends the authority for these programs permanently. Only four programs are currently recognized to conduct summer travel/work programs.

Note also that designated sponsors currently authorized to use the professor and research scholar category may be authorized to use the short-term scholar category solely upon written request to the USIA. A formal application under the procedures described below is not required.

Because of the moratorium on program approvals that was lifted in March 1993, however, new applications may have to wait a substantial period of time for adjudication, until the USIA works through the backlog of applications already pending. The USIA itself has indicated that a six-month wait may occur between submission of application and approval.

Parties with applications that have been pending during the moratorium may also need to supplement those applications with documentation now required by the March 1993 rules. There is no clear guidance yet from the USIA as to whether parties with pending applications should await notification from the USIA about any additional required documentation or should move immediately to provide additional documents that appear to be necessary under the final rules.

Following as Sample Form 8-1 is an information sheet from the USIA about the exchange visitor program, including the purpose of the program, and information about sponsor requirements and application procedures. This information sheet is sent to parties inquiring about program sponsorship.

THE J-1 VISA CATEGORY

Sample Form 8-1: USIA General Information Sheet Regarding Exchange Program Sponsorship**United States
Information
Agency**

Washington, D.C. 20547

**EXCHANGE VISITOR PROGRAM INFORMATION SHEET
EXCHANGE VISITOR PROGRAM SERVICES
OFFICE OF THE GENERAL COUNSEL**

Under the Mutual Educational and Cultural Exchange Act of 1961 (Public Law 87-256, also known as the Fulbright-Hays Act), the Director of the United States Information Agency (USIA) is authorized to designate Exchange Visitor Programs under which foreign nationals may visit the United States temporarily as Exchange Visitors for the purpose of teaching, instruction, lecturing, studying, observing, conducting research, consulting, demonstrating special skills or receiving training. Reciprocity is an integral component of these programs. The purpose of the Act is to improve and strengthen the international relations of the United States through educational and cultural exchanges which further mutual understanding. As these objectives cannot be realized unless the foreign nationals who participate in the Exchange Visitor Program return abroad promptly upon completing the objective of their program, there are restrictions on the length of their stay in the United States, on their change of nonimmigrant classification, and on their subsequent eligibility for certain immigrant and nonimmigrant visas.

The Exchange Visitor (J-1) visa is intended for foreign nationals participating in bona-fide educational and cultural exchange programs. The legislative history of the Fulbright-Hays Act indicates that the J-1 visa was created specifically for programs under this Act. Because of the unique nature of the J-1 visa, the USIA will not consider programs designed primarily to fill staff vacancies, to augment an organization's personnel complement, or to circumvent the necessary procedures to obtain proper visa classification. These organizations must use other legitimate avenues of immigration and temporary employment available under other provisions of the Immigration and Nationality Act. Information concerning other visas must be obtained from the local Immigration and Naturalization Service office.

I. STANDARDS FOR PROPOSED EXCHANGE VISITOR PROGRAMS

A. Only sponsors of bona fide educational and cultural exchange programs as described in the Mutual Educational and Cultural Exchange Act of 1961 (P.L. 87-256), as amended, may be considered for Exchange Visitor Programs.

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- B. The Agency reserves the right to require a six-month leadtime from the date of application until the first IAP-66 forms are issued to insure Exchange Visitor Program integrity.
- C. The minimum size for designation of an Exchange Visitor Program is five exchange visitors per year. Exchange programs are not intended to expedite the entry of one individual.
- D. Programs shall be reciprocal wherever possible.
- E. Sponsors are required to meet citizenship requirements.
- F. The minimum stay in the United States for most Exchange Visitors is three weeks.
- G. Nongovernment Exchange Visitor Program applicants are required to submit an audit with the application for designation.
- H. All Exchange Visitors are required to possess health/accident insurance coverage, repatriation costs for remains, and dismemberment coverage.
- I. The initial designation will be for a five year period and redesignation is required at five year intervals thereafter.

II. TYPES OF EXCHANGE VISITOR PROGRAMS**A. Government-sponsored Programs**

These are programs sponsored by Federal, State, or local government agencies and by international organizations.

B. Private Sector Programs

These are programs sponsored by private organizations, foundations, associations, institutions, or agencies. The four major types of privately sponsored programs are:

1. Academic Institutions: sponsors may include secondary schools, colleges, universities, seminaries, libraries, museums, and research laboratories affiliated with academic institutions. Programs are established to bring professors, researchers, short-term scholars, and students to these institutions.

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2. Medical Institutions: sponsors may include hospitals, medical centers and related institutions. Programs are established to bring certain medical trainees and research scholars to medical institutions. Foreign medical graduates entering the United States to pursue graduate medical education or training must be sponsored by the Educational Commission for Foreign Medical Graduates (ECFMG) for residencies, fellowships, or other types of clinical patient care.

Inquiries on residencies should be directed to the ECFMG at:

3624 Market Street
Philadelphia, PA 19104
TEL: (215) 386-5900

3. Nonprofit Organizations: sponsors may include teenage academic year/home stay organizations, summer camp counselor, student summer work/travel, research, and organizations.
4. Profit Making Organizations: sponsors may include banking and investment firms, manufacturing and industrial firms, and other organizations involved in establishing ongoing specialized training programs and research organizations.

III. APPLICATION FOR AN EXCHANGE VISITOR PROGRAM

An organization, institution or agency incorporated in the United States and interested in sponsoring an Exchange Visitor Program in accordance with the Fulbright-Hays Act of 1961 may apply for program designation to USIA. The application should be submitted in single copy on form IAP-37, using the "Checklist for Preparing Form IAP-37." Please carefully review the checklist to ensure that all the required information is included with the application. Incomplete applications will not be processed until all the necessary information is submitted.

Exchange Visitor Regulations (22 CFR 514.5) briefly describe how an application for designation as a program sponsor is filed. Applicants should read all applicable sections of the regulations regarding administration of a program. The signator of the application will be notified by letter whether the designation has been granted or denied.

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A six-month leadtime is necessary because of the high volume of applications. If a program is designated, the organization or institution will be supplied with a designation packet containing copies of Form IAP-66 (Certificate of Eligibility for Exchange Visitor Status), and other materials and information concerning the operation of an Exchange Visitor Program.

The application should be executed and signed by the official who will act for the organization as the Responsible Officer in administering the program. One or more Alternate Responsible Officers may also be named in the application. The Responsible Officer or the Alternate Responsible Officer must be a citizen or permanent resident of the United States. The Responsible Officer is obliged to carry out the responsibilities assumed by the sponsor of an Exchange Visitor Program. The Responsible Officer and Alternate Responsible Officer are the only officials with whom this office conducts any business regarding the Exchange Visitor Program.

The Responsible Officer's responsibilities are not to be taken lightly and a potential sponsor should select its Responsible Officer with care (See 22 CFR 514.11-12). We advise that the Responsible Officer be an official who will be directly involved in the operation of the Exchange Visitor Program and with whom our office can communicate directly. For this reason we advise appointing officials who are involved in the program on a day-to-day basis.

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Under the USIA rules, an application for exchange program sponsorship must be filed on Form IAP-37 with the USIA's Exchange Visitor Program Services. Form IAP-37 was revised in April 1993 to account for changes to program requirements in the March 1993 rules. The revised form, as published by the USIA, follows as Sample Form 8-2. The USIA also prepared an annotation for completing the newly revised form, and that annotation is reprinted with the form, as Sample Form 8-3. The USIA's annotation is extremely detailed and provides all of the necessary information for completing Form IAP-37.

Signature of Chief Executive Officer of the applicant. Note on Form IAP-37 that the CEO of the sponsor applicant must sign the form, certifying that the organization meets the U.S. citizenship standard and sufficient staff and resources will be devoted to the Exchange-Visitor Program. This requirement applies even to major corporations. Getting the CEO involved in an application to sponsor an Exchange-Visitor Program may prove difficult in some corporations, but must be done in order to complete the application.

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Sample Form 8-2: Form IAP-37: Exchange Visitor Program Application

UNITED STATES INFORMATION AGENCY
EXCHANGE VISITOR PROGRAM SERVICES
EXCHANGE VISITOR PROGRAM APPLICATION

FORM APPROVED OMB
No.3116-0210 (exp.3/96)
*Est. Burden Hrs: 1 Hr.

1. Name and Address of Sponsoring Organization		Serial No. (USIA USE)						
2. Name and Title of Responsible Officer	Telephone/Fax Number	4. Type of Application (check one) NEW _____ AMENDMENT _____ REDESIGNATION _____						
3. Name and Title of Alternate Responsible Officer	Telephone Number							
SECTION I - PROGRAM PARTICIPANT DATA								
5. Participation by Category (indicate total no. and approximate duration of participation in each category)								
Type	No.	Dur.	Type	No.	Dur.	Type	No.	Dur.
1. Student			3. Teacher			7. Gov't Visitor		
a) Coll/Univ			4. Professor			8. Research Scholar		
b) High School			5. Int'l Vsr			9. Short-term Schlr		
2. Trainee			6. Alien Phys			10. Specialist		
a) Specialty	(See 22 CFR 514.2, 22 CFR 514.4, 22 CFR 514.20-30 for Definitions, Categories and Duration of Participation)							
b) Non-specialty								
6. Method of Selection and Arrangements for Financial Support of Exchange Visitor while in the U.S. (specify source and amount of funding, as appropriate)								
SECTION II - PROGRAM DATA								
7. Purpose or Objective								
Outline of Proposed Activities (if training, see reverse side)								
9. Arrangements for Supervision								
10. Role of Other Organizations Associated with Program (if any)								
SECTION III - CERTIFICATION								
11. Citizenship Certification of Organization and Responsible Officer (see reverse side)								
12. I certify that the information given in this application is true to the best of my knowledge and belief and that I have completed appropriate information on reverse of this form, if applicable.								
Signature of Responsible Officer (also print name)								Date
Signature of Chief Executive Officer (also print name)								Date
ED's signature also certifies that the Responsible Officer will be provided sufficient staff and resources to fulfill his/her duties and obligations on behalf of the sponsor.								

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INSTRUCTIONS

If additional space is needed for answering any questions, use continuation sheets on plain white paper.

- 1-3. Name, address and telephone/fax numbers of organization.
4. Select type of application.
5. Select appropriate categories prior to filling out this data. (See 22 CFR 514.2, 22 CFR 514.6 and 22 CFR 514.20-30)
- 6-10. Complete information on program and program sponsor.

IF TRAINING PROGRAM. Identify appropriate fields and specialties/non-specialties: 01-Arts & Culture; 02-Information Media and Communications; 03-Education, Social Sciences, Library Science, Counseling and Social Services; 04-Management, Business, Commerce and Finance; 05-Health Related Occupations; 06-Aviation; 07-The Sciences, Engineering, Architecture, Mathematics, and Industrial Occupations; 08-Construction and Building Trades; 09-Agriculture, Forestry and Fishing; 10-Public Administration and Law; 11-Other (Specify).
11-12. Certification. Citizenship for new applicants requires certification below (#7).

REDESIGNATION

If your organization is applying for redesignation please certify to the following:
I hereby certify that as an officer of the organization making application for an exchange program under 22 CFR 514.7 that the following documents which have been submitted to the United States Information Agency, Exchange Visitor Program Services, remain in effect and not altered in any way:

- (1) Evidence of status as a legal entity, such as Articles of Incorporation and By Laws, and current certificate of good standing. Provide dates: _____
- (2) Evidence that sponsor is financially solvent. _____
- (3) Evidence of accreditation if a post-secondary educational institution. Provide date, type of accreditation, and State of accreditation: _____
- (4) Evidence of licensing. Provide date, type of license, and State of license: _____
- (5) Evidence of organization's tax-exempt status if applicable. Provide date: _____
- (6) Program categories and activities in which the organization has been engaged have not changed since original designation dated: _____
- (7) Citizenship. Provide the date of compliance with citizenship requirements: _____

If citizenship compliance is not current, please complete the following:

(a) **Organization:** I hereby certify that I am an officer of this program with the title of [specify]; that I am authorized by the [specify] to sign this certification and bind [name of organization]; and that a true copy certified by the [specify] of such authorization is attached. I further certify that [name of organization] is a citizen of the United States as that term is defined at 22 CFR 514.2. [Name of organization] agrees that its inability to substantiate its representation of citizenship made in this certification will result in the immediate withdrawal of its designation and the immediate return of or accounting for all IAP-66 forms transferred to it.

(b) **Responsible Officer or Alternate Responsible Officer:** I hereby certify that I am the responsible (or alternate) officer for this program, and that I am a citizen of the United States (or a person lawfully admitted to the United States for permanent residence). [Name of organization] agrees that my inability to substantiate my citizenship or status as a permanent resident will result in the immediate withdrawal of its designation and the immediate return of or accounting for all IAP-66 forms transferred to it (22 CFR 514.2).

CERTIFICATION OF REQUIREMENTS 1-7 or if new application 7 only (above)

I understand that false certification may subject me to criminal prosecution under 18 U.S.C. 1001, which reads: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact or makes any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both." Signed in ink by (Name) _____ (Print Name) _____

Title _____
Subscribed and sworn to before me this _____ day of _____, 19____. Notary Public

USIA USE ONLY

Type of program: _____ Please return form to:
Subtype if applicable: _____ Exchange Visitor Program Services - GC/V
No. Forms IAP-66: _____ United States Information Agency
Washington, D.C. 20547

Categories:

* Public reporting burden for this collection of information is estimated to average 1 hour per response, including time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to USIA Clearance Officer, W/ASP, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

IMMIGRATION PROCEDURES HANDBOOK**Sample Form 8-3: USIA Annotation to Form IAP-37****United States
Information
Agency**

Washington, D.C. 20547

**CHECKLIST FOR PREPARING FORM IAP-37**
APPLICATION FOR DESIGNATION OF EXCHANGE PROGRAM

This checklist accompanies the Form IAP-37 application for an exchange program (22 CFR 514.5). Every application is evaluated on its merits. Please be sure to answer all questions asked below, entering your response on the corresponding space on the IAP-37. If you need additional space, use plain white bond paper. Please write N/A if inapplicable and explain the reasons for nonresponse. Failure to complete the IAP-37 in its entirety will delay the processing of the application until all information is received. The application process can take as long as six months. One copy should be submitted to the following address and one copy retained for your files:

Program Designation Branch
Exchange Visitor Program Services-GC/V
United States Information Agency
Washington, D.C. 20547

Item 1. Give the exact name and correct mailing address of the institution or organization submitting the application. This address will be used by the Agency to contact the person whose name appears as the Responsible Officer. Include information regarding any previous experience which the institution or organization has had in the field of international educational exchange and documentation demonstrating that it has been operating successfully. If foreign nationals were brought into the U.S. by the institution or organization in the past, please specify the type of visas that were used. Include information on any organization or governments with whom you are cooperating in the exchange (22 CFR 514.5). If the program is a consortia, please list its members. Also, include letters from the members agreeing to participate in the consortia and indicating knowledge of the exchange visitor program and its regulations. Also indicate which institution/organization will have primary responsibility.

Item 2. Give the name of the person the institution/organization wishes to serve as the Responsible Officer for the Exchange Visitor Program (22 CFR 514.2 and 22 CFR 514.10-12). Please give the position title of that person within the institution/organization. Also provide the telephone number, using the direct-dial number when possible, and fax number.

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Item 3. Give the name of the person the institution/organization wishes to serve as the Alternate Responsible Officer for the Exchange Visitor Program. Alternate Responsible Officers assume the same duties as the Responsible Officer and may act as the Responsible Officer's deputy. Please give the position title of this individual within the institution/ organization. Give the telephone number, using the direct-dial number(s) when possible.

Item 4. Please check the purpose of the application.

Section I - PROGRAM PARTICIPANT DATA

Item 5. Note the number of participants for each category envisaged for the program on a yearly basis. See 22 CFR 514.2, 514.4 and 514.20-30 for information on numbers of participants, definitions of categories, and duration of stay. If trainee category is checked, please specify if specialty or non-specialty (22 CFR 514.22).

Item 6. Method of selection (22 CFR 514.10); financial support (22 CFR 514.9(e)); and insurance (514.14).

Screening and selection (22 CFR 514.10): Please provide a brief narrative describing the screening and selection process used for each category listed.

- a) How and by whom are participants selected? What criteria are used in the selection process?
- b) If the participant is being admitted to an educational institution, what are the admission requirements?
- c) How much previous education or training is required for each category selected?
- d) What method is used to test English language competency of the participants? Will additional English language training be a part of the program? Please note that participants are required to possess a proficient level of English to enable them to function effectively in an English-speaking environment.
- e) Are participants required to make a deposit with the sponsor to be able to participate in the program? If so, when and how is a refund made in the event of program cancellation? How much is refunded? When and for what reasons can a participant cancel?

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- f) Provide details regarding pre-departure, orientation, and cross-cultural activities.
- g) If consortia, provide details of input of the consortia members regarding selection, screening, admission to institution and monitoring of participants. Also, if members are already USIA-designated sponsors include letters from those institutions as to how the institution will maintain the integrity of each separate program and their respective activities, including responsibility for IAP-66 forms.

Financial support (22 CFR 514.2 and 514.10): Specify the amount of financial support provided by the sponsoring institution/organization for each category of participants.

- a) Cost: How much financial support is provided by the sponsor or the participant? Specify the amount of cost per individual; such as, administrative cost, room and board, transportation, salary. Will the participant be required to work outside of original program objective in order to meet expenses?

- b) Funding:

Does the institution/organization receive funding, directly, or indirectly, for the sole purpose of furthering international educational and cultural exchanges from any of the following:

- i) U.S. government or foreign government
- ii) an international organization (such as the United Nations) which receives funds from the U.S. Government or a foreign government
- iii) a private institution or organization which receives funds from the U.S. government or a foreign government.

Insurance (22 CFR Section 514.14): Provide information regarding how the sponsor will assure compliance with insurance requirements by the participants and dependents, if applicable. Also include information on compliance with repatriation and medical evacuation requirements. If the sponsor is insuring the participants, please provide a copy of the policy.

Section II - PROGRAM DATA

Item 7. Give detailed information regarding the program proposal and its objectives. Explain how the proposed program is expected to promote better mutual understanding and improve communications between people in the United States and other nations of the world through international educational and cultural exchange.

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Item 8. Outline proposed activities.NOTE FOR TRAINING PROGRAMS (22 CFR Section 514.22):

- a) Fields of training - Please provide the expected fields of training, identify whether specialty or nonspecialty or both, and provide a copy of each training plan: 01-Arts & Culture; 02-Information Media and Communications; 03-Education, Social Sciences, Library Science, Counseling and Social Services; 04-Management, Business, Commerce and Finance; 05-Health Related Occupations; 06-Aviation; 07-The Sciences, Engineering, Architecture, Mathematics, and Industrial Occupations; 08-Construction and Building Trades; 09-Agriculture, Forestry and Fishing; 10-Public Administration and Law; 11-Other.
- b) Competency - Please provide information regarding the competency to perform training of the individual or organization responsible for administering the training. Specify whether your organization or a third party will conduct the training. If there is a third party, describe how your organization will determine the competency of the third party to conduct the training. Please also include a copy of the third party agreement.
- c) Training plan - Indicate for each field of training the following: (i) objectives; (ii) skills to be imparted to the trainee; (iii) syllabus; (iv) justification for on-the-job training and the particular attributes of U.S. training which are unique for preparation in the field and how the skills obtained will translate upon return to the home country; (v) description of how trainee will be supervised and evaluated and the amount of time with or without supervision. Indicate any special components to which the trainee will be exposed, i.e., site visits, conference, etc.
- d) Certification - Certify that your organization has sufficient plant, equipment and personnel for the training, that the training is not designed to recruit and train aliens for employment in the U.S., and that the trainees will not displace full-time U.S. employees.

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Item 9. Give the following information regarding the supervision, direction, evaluation and monitoring of the program (22 CFR 514.10):

- a) What provisions have been made for the supervision, evaluation, and monitoring of the participants or host families, if applicable? TEEN PROGRAMS: Also include approximate ratio of sponsor representative to participants within the 150 mile radius required by regulations.
- b) Can participants contact the sponsor without difficulty in cases of emergency? Give details.
- c) Provide details regarding where participants will stay while in the U.S., including arrangements or procedures to be used to place prospective participants in private homes, if applicable.
- d) If there are written descriptive materials which define precisely the purpose and objectives of the program, as well as, the financial arrangements under which it is to be administered, please enclose a copy with the application.
- e) Explain how the sponsor will control and safeguard Forms IAP-66. If consortia, explain in detail how the IAP's will be disbursed to its members.

Item 10. List the names and addresses of other organizations, and the names of their key officers who will be associated in any way with the overall administration of the program.

Item 11-12. Certify compliance with citizenship requirements on the reverse side of the form IAP-37 (22 CFR 514.2). The Chief Executive Officer is also required to sign the IAP-37 as well as certify that adequate staff and resources are available to fulfill duties and obligations of the sponsor (22 CFR 514.5).

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ADDITIONAL DOCUMENTATION AND INFORMATION
TO BE FORWARDED WITH APPLICATION FOR DESIGNATION
(22 CFR 514.5)

1. A copy of the most recent audit report by an independent Certified Public Accounting firm, if your institution/organization is not supported by the Federal or state government.
2. A true copy of the Articles of Incorporation and By-Laws. Also provide certificate of good standing.
3. Provide copies of appropriate licenses required by the federal or state government.
4. Evidence of accreditation by an established accrediting agency, if applicable. NOTE: Flight training programs are required to have filed an application for accreditation at the time of applying for a program. Also required is a copy of FAA certification.
5. Evidence of tax exempt status under Section 501(c)(3) of the Internal Revenue Service Code, if applicable.
6. Please specify the categories requested and explain why the visitor visa (B), student visa (F), H1B & H2 (temporary work visas), L visa (intracompany transferee) or other visas are not adequate for the purpose (22 CFR 514.4). If the F visa has been used, please specify whether the institution has approval for use of the Form I-20 from the Immigration and Naturalization Service. Also, note whether the institution has a foreign student advisor.
7. Detailed information regarding the reciprocal component of the program.
8. Is your proposal expected to be on a continuing basis?

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IMMIGRATION PROCEDURES HANDBOOK**Preparing General Supporting Documentation for the Sponsor Application**

The application must be accompanied by several documents in all cases, with a few additional documents required in the case of business training programs. The documents required for all new applications include:

- Evidence of the applicant's legal status as a corporation, partnership, or other legal entity. This evidence may consist of the entity's charter, articles of incorporation, partnership agreement, or other legal proof of status.
- A current "certificate of good standing" for the applicant.
- Evidence of the applicant's "financial responsibility" to meet at all times the financial obligations of a successful exchange program. This evidence may consist of a corporation's annual report, a financial report, or an audited financial statement.
- Evidence of accreditation if the applicant is a post-secondary educational institution.
- Evidence of licensure, if a license is required by local, state, or federal law to carry out the activity for which the applicant is seeking exchange program designation.
- Evidence of tax-exempt status, if applicable.
- A statement from the sponsor applicant regarding why other nonimmigrant visa categories are inadequate for the purpose of the applicant's program. It is unclear why the inadequacy of other nonimmigrant visa categories should have any bearing on the applicant's eligibility for Exchange-Visitor Program sponsorship, but the application instructions direct that such a statement be submitted.
- Detailed information about reciprocity under the applicant's proposed program. The USIA rules state that the sponsor must make a good faith effort to achieve the fullest possible reciprocity in the exchange of persons between the United States and abroad. This rule does not require a one-for-one exchange of a U.S. citizen with a foreign national, but the most programs will be expected to facilitate some movement of U.S. citizens abroad for cultural exchange activities. The sponsor applicant must submit a statement with the application explaining how it will make good faith efforts to achieve reciprocity of exchange, with at least an estimate of the amount of reciprocal exchange that the program will achieve. If the particular circumstances of the program limit the amount of potential reciprocity, the sponsor applicant should explain those circumstances.

Program requirements for which documentation need not be submitted with the application. Note that there are several general program requirements that must be met by exchange program sponsors, but for which the rules do not require submission of evidence with the initial program application.

Cross-cultural activities. With regard to cross-cultural activities, the rules require that program sponsors make available a variety of appropriate activities and "encourage" exchange visitors to participate voluntarily in sharing their culture with Americans. The rules leave to sponsors the responsibility to determine the

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appropriate type and number of cross-cultural programs for their program participants. The supplementary information accompanying the rules state that sponsors will be required to offer "a reasonable amount" of such activities, which may include sports, cultural, and social events. The rules do not require an applicant to document its plans with regard to cross-cultural activities, but the issue should be considered by applicants prior to submission of a program sponsor application, and the applicant should be prepared to outline a typical program of cross-cultural activities that will be offered to exchange visitors participating in the program.

Other program requirements. Among other program requirements that need not be documented with the initial application, but which will be subject to later verification by the USIA during program audits and annual reports, are:

- **Use of the program by at least five exchange visitors per calendar year.** Exchange programs sponsored by federal government agencies are exempted from this rule, and the USIA may also reduce the requirement in its discretion based upon a showing of good cause.
- **Program duration of at least three weeks in the United States.** Again, federal government agency sponsors are exempted from the three-week minimum, as are programs in the short-term scholar category.
- **Provision of appropriate orientation for exchange program participants.** The applicant should have considered orientation plans before submitting the application to assure that orientation meeting the rule's standards can be provided, but documentation of orientation plans need not be submitted with the application.
- **Assurance that exchange program participants have medical insurance considered satisfactory under the rules.** The insurance requirement went into effect on September 1, 1994. The program sponsor must notify exchange visitors that they must obtain acceptable insurance coverage, and should inform them of alternatives that meet the requirements set by the rules. The sponsor may offer the exchange visitors insurance coverage, but it is not required to do so. If it comes to the sponsor's attention that an exchange visitor has not obtained the satisfactory insurance coverage, the sponsor has an obligation under the rules to terminate the visitor's program participation. The sponsor, however, does not have an affirmative duty to determine whether each individual exchange visitor has obtained satisfactory coverage and does not need to document such coverage for each exchange visitor.

Under USIA rules, only the following types of insurance meet acceptable standards. One of these types of insurance coverage must be obtained by every exchange visitor:

- insurance underwritten by an insurance corporation having an A.M. Best rating of "A-" or above, an Insurance Solvency International, Ltd. (ISI) rating of "A-i" or above, a Standard & Poor's Claims-paying Ability rating of "A-" or above, a Weiss Research, Inc. rating of B+ or above, or such other rating as may be specified by the USIA.
- insurance backed by the full faith and credit of the exchange visitor's home country.

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- insurance that is part of a health benefits program offered on a group basis to employees or enrolled students by a designated sponsor.
- insurance offered or underwritten by a federally qualified Health Maintenance Organization or eligible Competitive Medical Plan as determined by the Health Care Financing Administration of the U.S. Department of Health and Human Services.

The USIA has clarified that an exchange visitor may obtain the required insurance coverage in his or her home country provided the insurance policy meets the minimum levels of coverage set forth in the USIA rules. The insurance company underwriting such policies must meet certain minimum financial ratings set forth in the USIA rules. In addition, foreign insurance companies and their agents underwriting policies in the United States are required to be in compliance with the laws governing the business of insurance in the states in which such business is being conducted. Foreign insurance companies and their agents may not conduct business in a state where they are unauthorized, i.e., unlicensed or otherwise not meeting the requirements of the law in that state. Insurance coverage provided by companies in these circumstances will not serve to meet the medical insurance requirement under the USIA rules.

Preparing Special Supporting Documentation for Training Program Sponsor Applications

In addition to the basic materials submitted with a new application, additional documents must be submitted with an application in the training category. When the application is submitted for a training program, the applicant must designate on Form IAP-37 which training fields will be covered by the program.

The rules provide for **eleven different training fields**, and the applicant may offer training in any one or combination of those fields. The fields are:

- arts and culture
- information media and communications
- education, social sciences, library science, counseling and social services
- management, business, commerce, and finance
- health-related occupations
- aviation
- the sciences, engineering, architecture, mathematics, and industrial occupations
- construction and building trades
- agriculture, forestry, and fishing
- public administration and law
- other fields specified by the applicant

Within each field designated by the applicant, the applicant may offer training in either specialty occupations or skilled non-specialty occupations, or both. A specialty occupation is one for which a bachelor's or higher degree is the usual

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entry-level requirement. A skilled non-specialty occupation is one for which at least two years of experience is the normal entry-level requirement.

The applicant may not offer training in unskilled occupations. Unskilled occupations are those for which less than two years of experience is normally required for entry. The USIA rules adopt as an initial list of unskilled occupations the Department of Labor's Schedule B, which is a list of occupations for which a labor certification will not be granted. The list of unskilled occupations is included as Sample Form 8-4, below. Note that the USIA may add to the initial list after gaining experience in ruling on program applications.

IMMIGRATION PROCEDURES HANDBOOK**Sample Form 8-4: List of Unskilled Occupations for Which an Exchange Program Will Not Be Approved**

Assemblers	Hotel Cleaners
Attendants, Parking Lot	Household Domestic Service Workers
Attendants, Personal Service	Housekeepers
Amusement, Recreation	Janitors
Attendants, Gas Station	Key Punch Operators
Bartenders	Kitchen Workers
Bookkeepers, Level II	Laborers, Common
Caretakers	Laborers, Farm
Cashiers	Laborers, Mine
Charworkers and Cleaners	Loopers and Toppers
Chauffeurs and Taxi Drivers	Material Handlers
Cleaners, Hotel and Motel	Nurses' Aides and Orderlies
Clerks, General	Packers, Markers, Bottlers, and Related Porters
Clerks, Hotel	Receptionists
Clerks and Checkers, Grocery	Sailors and Deck Hands
Clerk Typists	Sales Clerks, General
Cooks, Short Order	Sewing Machine Operators and Handstitchers
Counter and Fountain Workers	Stock Room and Warehouse Workers
Dining Room Attendants	Streetcar and Bus Conductors
Electric Truck Operators	Telephone Operators
Elevator Operators	Truck and Tractor Drivers
Floorworkers	Typists, Lesser Skilled
Groundskeepers	Ushers, Recreation and Amusement
Guards	Yard Workers
Helpers, Any Industry	

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The best way to assure that the definition of specialty occupation does not limit the scope of a sponsor's training program, in cases in which there may be some borderline occupations in which program participants might be given training, is to seek approval for both specialty and skilled non-specialty occupations in the designated field, as permitted by USIA rules. As part of the application, the applicant must designate to the USIA the fields in which training will be offered from the eleven listed in the rules, and whether training in each designated field will be in specialty or non-specialty occupations, or both.

Under the rules, the training program applicant must also submit to the USIA with its application the following documents, in addition to those documents required with all exchange program applications:

- Certification that: (1) sufficient physical plant, equipment, and trained personnel will be dedicated to provide the training specified; (2) the training program is not designed to recruit and train aliens for employment in the United States; and (3) trainees will not be placed in positions which displace full-time or part-time employees.
- Documentation of the applicant's competence to provide training in the designated fields, in the form of a **generalized training plan** illustrating the elements of the training to be offered in each designated field. The applicant may submit a structured training plan if one has already been designed for the program. It may alternatively submit a copy of a previously used training plan if the actual plan to be used for the training program has not yet been designed, but the applicant has previously engaged in the type of training that will be offered to exchange program participants. As a third alternative, the applicant may submit a hypothetical training plan which illustrates the training the applicant proposes to provide. It appears from the rules that submission of one of these alternatives is sufficient to meet the documentation requirement regarding the training competence of the applicant.

The training plan submitted with the application should include the following elements—

- a statement of the objectives of the training
- the skills to be imparted to the trainee
- a training syllabus or chronology
- justification for the utilization of on-the-job training to achieve stated training competencies
- a description of how the trainee will be supervised and evaluated

Some of this information is likely to be general, because it will not relate to a particular trainee and will be covering the potential training of a variety of trainees with the designated field. General statements should be acceptable because the training plan is only intended to be illustrative and to demonstrate that the applicant has competence to provide the training; actual, detailed training plans for each trainee or group of similarly-situated trainees, which may deviate from the general training plan, must be prepared by the program sponsor before actual training of each trainee or group of trainees commences. That detailed plan must be included in the file of each individual trainee, as discussed below.

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- If a third party is to be used to conduct part or all of the training, the application must include: (1) the forms and procedures to be used by the sponsor to assure third party fulfillment of the training goals and compliance with USIA rules; and (2) either a copy of an executed contract with the third party to provide the training or an illustrative copy of the type of agreement to be used with third parties.
- Evidence of accreditation in the case of flight-training programs.
- Evidence to demonstrate the ability of the applicant to meet the obligations of training sponsors set out in the USIA rules. It is not clear from the rules whether any additional documentation needs to be submitted with regard to those obligations.
 - The first obligation of the program sponsor listed in the rules is to assure that those conducting training possess and maintain demonstrable competence to provide the training; the training plan is cited elsewhere in the rules as documentation of that competence.
 - The second obligation is to assure that training takes place through a structured program of activities; again, the training plan submitted with the application would appear to be suitable documentation of this obligation.
 - The third obligation is to develop a detailed training plan prior to the start of training; although the training plan submitted with the application is not direct evidence that the applicant will develop a more detailed plan for each trainee, it is a good indication that the obligation will be met.
 - The fourth obligation is to ensure that continuous supervision and periodic evaluation of each trainee is provided; the information on this issue that is required as a part of the training plan submitted with the application should also be sufficient to document this obligation.
 - The fifth obligation is to ensure that sufficient plant, equipment, and trained personnel are available to provide the training; the certification, described above, which must be submitted with the application includes an affirmation regarding this obligation.
 - The last two obligations included in the rules are not to provide training in unskilled obligations and not to place trainees in positions which are filled or would be filled by full-time or part-time employees; the former obligation is implicit in the type of training designation sought by the applicant and the latter obligation is included in the certification cited above. Whether any additional documentation on the regulatory obligations needs to be submitted remains to be clarified by the USIA.

8.5. EXISTING PROGRAM SPONSOR REAPPLICATIONS OR REDESIGNATIONS

Although the USIA rules do not give direct guidance on the status of existing exchange visitor programs, the supplementary information to the rules included in the Federal Register states the agency's policy that every one of the approximately 1250 existing program sponsors must reapply for designation under the new rules. This redesignation will be for a five-year period, at the expiration of which the program must affirmatively seek redesignation for another five-year period. The

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program sponsor seeks redesignation by letter or by indicating its intention on its annual report to the USIA covering the fifth year.

Expansion of existing programs. Current exchange programs that want to sponsor exchange visitors in participant categories additional to those for which they are currently designated must do so at the time of their scheduled reapplication. This language does not preclude submitting an earlier application to be designated a sponsor in a new program category, e.g., an application by a training program sponsor for designation as a sponsor in the short-term scholar category or the specialist category.

Modifications to existing programs. Modifications to existing programs within a single participant category, e.g., a designated training program, do not require a reapplication and presumably do not need to await the scheduled reevaluation of the program, depending on the type of modification contemplated. For example, the supplementary information published with the March 1993 rules states that training programs may expand the breadth of their programs, i.e., include additional training areas from the list of eleven such areas included in the regulations, by requesting that the USIA amend its program designation rather than by filing a formal program reapplication. Even with regard to such modifications, however, it is unlikely that the USIA would be able to make the required program amendment quickly, and the sponsor might be better off simply awaiting its scheduled reevaluation. A request for an increase in the annual number of program participants is the type of modification in an existing exchange program that can likely be handled with relative dispatch.

Use of Form IAP-37. Reapplication for existing programs will require submission of the basic application form, Form IAP-37, which is illustrated above as Sample Form 8-2. Item #4 of the form requires that the applicant check which type of application is being made on the form, (a) new, (b) re-apply, or (c) re-designation. In addition, on the back of the form, a current sponsor that is reapplying must sign a certification that certain documents have been previously submitted to the USIA and remain in effect and unaltered.

Those documents include:

- legal status as a corporation (or other legal entity)
- accreditation (if appropriate)
- evidence of licensure (if appropriate)
- authorization of the applicant's governing body authorizing application
- evidence of compliance with the citizenship requirement for sponsors, responsible officers, and alternate responsible officers

If any of the listed documentation is not already in USIA hands, it needs to be submitted with the reapplication papers. The sponsor must also certify that the activities in which the organization has been engaged have not changed since the last application made by the sponsor.

If the information provided to the USIA regarding citizenship compliance is not current, two certifications must be completed on the back of the application form. The first certification, regarding the citizenship of the sponsor, must be signed by an officer of the sponsor and must be accompanied by a true copy of the authorization from the sponsor's board of directors or trustees to sign the

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authorization and bind the sponsor, certified by the board. The board of directors of a major corporation would rarely consider such a matter as authorization for an exchange visitor program, but Form IAP-37 clearly requires such authorization in this situation. The second certification regarding the citizenship of the responsible officer or alternate responsible officer must be signed by that officer.

One of the choices for "type of application" on Form IAP-37 is for "redesignation." Note, however, that the rules provide that a sponsor seeking redesignation after a five-year period of program designation need only submit a letter making the request or indicate that redesignation is requested on its annual report. The rules do not give any indication that Form IAP-37 needs to be used in the redesignation situation. The actual procedure for redesignation, which will not be used for at least the next five years in any event, needs to be clarified by the USIA.

8.6. INTERNAL RECORDKEEPING FOR TRAINING PROGRAM SPONSORS

The USIA rules set out a number of responsibilities for business training program sponsors, which inevitably will lead to an increase in the type of paperwork maintained by the sponsor with regard to each trainee. Increased paperwork will be needed to document sponsor compliance with its obligations under the rules in case of USIA audit of the sponsor's program and to prepare the **annual report** required to be submitted by the sponsor. Very little of the internal recordkeeping, however, will actually need to be submitted to the USIA. Some of the documentation is required for any exchange program participant, whether in the business training or other program category. Other documentation relates specifically to the business training program category. Not all documentation listed below is explicitly required by the rules; some of the documents evidence compliance with sponsor obligations enumerated in the rules.

The following documentation is required by the rules with regard to each exchange visitor in a training program:

- **The detailed training program undertaken by the business trainee**

Although every training program must have a general training plan, which is submitted to the USIA, the sponsor must be certain that an individualized plan is prepared for the trainee and maintained in the trainee's file. The detailed plan must include: (1) a statement of the training objectives; (2) a statement of the skills to be imparted; (3) a detailed syllabus or chronology of the training; (4) a statement justifying why on-the-job training is required; (5) a description of how the trainee will be supervised and evaluated; and (6) an affirmation that the trainee will not displace a full-time or part-time worker. The only case in which a detailed training plan need not be included in the trainee's file is when the trainee will undergo the precise training program submitted to the USIA as part of the exchange program's application for program sponsorship; in that case, reference in the trainee's file to the master program in the sponsor's general file is sufficient.

- **The trainee's qualifications to undertake the training program**

The file should include a copy of the trainee's resume and a statement by the sponsor regarding how the trainee was selected to participate in the program (including the program application, or internal memoranda documenting the selection process in the case of a company's own training program).

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- **The trainee's proficiency in English**

The file should include a statement from the sponsor affirming that it has evaluated the trainee's English language skills, if such proficiency is required for program participation. For a company's own training program, documentation might include internal company correspondence or memoranda affirming the trainee's language skills.

- **Required pre-arrival information was provided to the trainee**

The file should include a copy of a form letter sent to all program participants, and signed by the trainee to acknowledge receipt, with the following information: (1) the purpose of the sponsor's program; (2) explanation of the home-country physical presence requirement applicable to some exchange visitors under § 212(e) of the INA; (3) information regarding travel to and entry into the United States; (4) housing information; (5) fees payable to the sponsor, if any; (6) other costs that the trainee is likely to incur, such as living expenses in the United States; (7) information about required insurance coverage; (8) a statement of the stipend, salary, or other compensation, if any, to be paid to the trainee; (9) a summary of the training program, including the training objectives and all significant components of the program; (10) address of the program sponsor and the name and telephone number of the responsible officer; and (11) address and telephone number of the Exchange Visitor Program Services office of the USIA.

- **Orientation upon arrival in the United States was provided to the trainee**

A statement from the sponsor that the trainee completed its standard orientation program should be sufficient. The sponsor must maintain good documentation of its standard program to assure that it includes the elements required by USIA rules, see below.

- **Appropriate insurance coverage for the trainee and his or her family has been obtained**

A copy of the insurance policy may be included in the trainee's file. Although business training sponsors may find it a good idea to document that insurance has been obtained by the exchange visitor (and most corporate sponsors are likely to provide the insurance coverage), it is the position of the NAFSA: Association of International Educators that the sponsor does not need to maintain any documentation regarding whether the exchange visitor has obtained insurance coverage. In NAFSA's view, the sponsor's only obligations are to inform the exchange visitor of the insurance requirement and to terminate him or her from the program if it comes to the sponsor's attention that insurance coverage has not been obtained. The sponsor has no obligation, under this view, to make any inquiries about whether coverage has been obtained or to document such coverage.

The sponsor may provide the coverage (it is not required to do so) or may inform the trainee of companies providing suitable coverage. With regard to the latter option, the sponsor may provide to the trainee a list of companies selling suitable insurance coverage. If the sponsor provides its own coverage (as with companies sponsoring their own training programs), it can keep the master policy in the program file, and simply record in each trainee's file that he or she is covered by the policy.

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The insurance provision went into effect on September 1, 1994. Under USIA rules, only the following types of insurance meet acceptable standards. One of these types of insurance coverage must be obtained by every exchange visitor:

- insurance underwritten by an insurance corporation having an A.M. Best rating of "A-" or above, an Insurance Solvency International, Ltd. (ISI) rating of "A-i" or above, a Standard & Poor's Claims-paying Ability rating of "A-" or above, a Weiss Research, Inc. rating of B+ or above, or such other rating as may be specified by the USIA.
- insurance backed by the full faith and credit of the exchange visitor's home country.
- insurance that is part of a health benefits program offered on a group basis to employees or enrolled students by a designated sponsor.
- insurance offered or underwritten by a federally qualified Health Maintenance Organization or eligible Competitive Medical Plan as determined by the Health Care Financing Administration of the U.S. Department of Health and Human Services.

The USIA has clarified that an exchange visitor may obtain the required insurance coverage in his or her home country provided the insurance policy meets the minimum levels of coverage set forth in the USIA rules. The insurance company underwriting such policies must meet certain minimum financial ratings set forth in the USIA rules. In addition, foreign insurance companies and their agents underwriting policies in the United States are required to be in compliance with the laws governing the business of insurance in the states in which such business is being conducted. Foreign insurance companies and their agents may not conduct business in a state where they are unauthorized, i.e., unlicensed or otherwise not meeting the requirements of the law in that state. Insurance coverage provided by companies in these circumstances will not serve to meet the medical insurance requirement under the USIA rules.

- **Cross-cultural activities in which the trainee has participated**

One of the new requirements for program sponsors under the March 1993 rules is to "offer or make available" a variety of appropriate cross-cultural activities to program participants. Each sponsor is responsible to determine the type and number of activities offered. The activities may include sports, cultural, and social events intended to enhance the visitor's understanding of American life. A report on the activities in which the trainee has participated, prepared by the trainee or his or her supervisor prior to departure, should be included in his or her file.

- **Record of on-going sponsor monitoring of the trainee during his or her U.S. stay**

The sponsor is responsible under the USIA rules for monitoring the visitor's activities to assure that the visitor's problems are resolved and that his or her program is serving its purpose. Therefore, the file should include a record of contacts with the exchange visitor at regular intervals, including a description of any problems or other information on the visitor's stay in the United States.

- **Evaluations of the training by the trainee and his or her supervisor**

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Two evaluations must be included in the file, one completed at the program's midpoint and one at its conclusion. The evaluation must include reports from the trainee and his or her supervisor, and must be signed by both parties. The sponsor might have the trainee report on cross-cultural activities as a part of the evaluation process.

8.7. THE SPONSOR'S RECORDKEEPING FOR ANNUAL REPORT PURPOSES

The annual report requirement for sponsors, as revised by the March 1993 rules, did not go into effect until September 1, 1994. The requirement for an annual report by a program sponsor to USIA has been a longstanding one, however, and the sponsor should be prepared with internal records to put together the annual report and other information required by the USIA rules. Sponsors must use the annual report form provided by the USIA. That form requires a statistical report on the total number of exchange visitors admitted for the year under the program, as well as a reconciliation of the total number of Forms IAP-66 received from the USIA during the year and the use of all forms, whether by issuance, voiding, or destruction.

Program sponsors must complete annual reports for submission to the USIA, beginning after September 1, 1994. Those reports must be submitted in a format illustrated in the March 1993 rules, which requires that the sponsor provide program statistics and an accounting of all the certificates of eligibility, Form IAP-66, given to the program sponsor by the USIA. For purposes of this report, and to document compliance with general business training program requirements, the sponsor should maintain the following centralized data:

- **Reciprocity**

The annual report must include information about the program's "reciprocity"—how many U.S. citizens undertook foreign exchanges facilitated by the program sponsor. One-for-one reciprocity with the number of foreign nationals admitted in the sponsor's program is not required, but some reciprocity is expected in most programs. For business training programs, keep in mind that trainers may be sent abroad while trainees are brought to the United States.

- **Program of cross-cultural activities offered to trainees**

An ongoing record must be maintained of the cross-cultural activities offered or made available to the program's participants. A report on those activities must be submitted with the annual report. As noted above, those activities may include sports, cultural, and social events. Documentation that trainees were alerted to these activities should also be included, e.g., copies of notices sent to all program participants about a specific event.

- **Orientation program**

The sponsor is required to offer orientation to its program participants that includes information about: (1) life and customs in the United States; (2) local community resources, such as public transportation, medical centers, schools, and banks; (3) available health care, emergency assistance, and insurance coverage; (4) a description of the exchange program; (5) rules that the participants are required to follow under the sponsor's program, including

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USIA rules; (6) information on how to reach the sponsor; and (7) information on how to reach the USIA. Sponsors with a standard orientation program should keep records of the program's contents. A written brochure including at least the USIA-required elements can be prepared by the program sponsor to assure that it is found in compliance with the rules. Many companies have orientation programs for international assignees that already cover all of the required information; in that case, written materials probably already exist, and preparation of special exchange program materials is not necessary.

A program sponsor must also submit a narrative statement evaluating the program's effectiveness, and this statement can be derived from the evaluations submitted by each exchange visitor. The annual report must also include a certification by the sponsor that the insurance requirement has been fulfilled for each exchange visitor, information that is also documented in the individual trainee files.

Information Collection on F-1 Students under the 1996 Act. The 1996 Act requires the Attorney General, in consultation with the Secretary of State and the Secretary of Education, to develop and conduct a program to collect from approved institutions of higher education and designated exchange programs certain information regarding F-1 students, M-1 vocation students, and J-1 exchange visitors. The program must commence no later than January 1, 1998 and must initially cover nationals from no less than five countries. The information which must be collected under the program includes:

- the identity and current U.S. address of the alien
- the nonimmigrant classification of the alien and the date on which a visa was issued or extended, or the date on which a change to such classification was approved by the Attorney General
- in the case of a student at an approved institution of higher education, the current academic status of the alien, including whether the alien is maintaining status as a full-time student or, in the case of a participant in a designated exchange visitor program, whether the alien is satisfying the terms and conditions of such program
- in the case of a student at an approved institution of higher education, any disciplinary action taken by the institution against the alien as a result of the alien's being convicted of a crime or, in the case of a participant in a designated exchange program, any change in the alien's participation as a result of the alien's being convicted of a crime

The INS has selected twenty two higher education institutions for the pilot tracking program which began in the fall of 1997. The INS expects to conduct the pilot program for one year, after which it will determine whether to expand the program. Exchange visitors will be issued new versions of the Form IAP-66 designated Form IAP-66P. The new form will include machine-readable data in a scannable bar code on the right-hand edge of the document. Exchange visitors who are part of the pilot program will present this form for visa issuance. In addition to the bar code, some of the information on the form has been modified. Note that separate forms will be generated for dependents of the student. Consular officer must process visa applications based on the IAP-66P like other J-1 visa applications. Another new feature being tested in the pilot program is an INS student identification card (Form I-868). An J-1 exchange visitor holding a valid visa who travels abroad will

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be able to present the card at the port of entry in lieu of an IAP-66. The pilot program is discussed in more detail in Chapter 2. above.

8.8. SELECTION OF EXCHANGE VISITOR TRAINEES AND ISSUANCE OF THE CERTIFICATE OF ELIGIBILITY

(a). Bringing an Exchange Alien to the U.S. Under an Established Umbrella Program

Umbrella programs are those which provide sponsorship for exchange visitors who will be placed with other organizations to engage in their activities. There are a number of business training programs that will sponsor trainees for training with a non-sponsor employer. By proceeding under an umbrella program, the employer seeking to train a foreign national can avoid the USIA application process for intending program sponsors. Under an umbrella program, the employer simply has to apply to the sponsor of the umbrella program for approval of the training candidate, and demonstrate that the proposed purpose of the training conforms to USIA regulations and meets any restrictions that the umbrella program may impose. The umbrella program sponsor will then:

- Issue a Certificate of Eligibility for Exchange Visitor (J-1) Status (Form IAP-66) directly to the foreign national.
- Help the employer arrange for and facilitate the transfer of the alien to the U.S. for business training with the employer.

Different umbrella programs have their own prerequisites to participation in the program. For example, the program sponsored by the American Council on International Personnel requires that the company providing training be a member of the organization; membership is restricted to companies and other organizations with at least 1,000 employees worldwide. The employer must check with the particular program sponsor to determine the prerequisites for participation in the umbrella program.

Following is Sample Form 8-5, the Certificate of Eligibility (Form IAP-66) issued by the program sponsor to a foreign national selected by the sponsor to participate in its exchange visitor program.

Special note regarding new IAP-66P form. The INS instituted a student tracking pilot program in the Fall of 1997. Exchange visitors of the institutions participating in the INS pilot program will be issued new versions of the Form IAP-66 designated Form IAP-66P. The new form will include machine-readable data in a scannable bar code on the right-hand edge of the document. J-1 exchange visitors who are part of the pilot program will present this form for visa issuance. In addition to the bar code, some of the information on the form has been modified. Separate forms will be generated for dependents of the student. Consular officer must process visa applications based on the IAP-66P like other J-1 visa applications.

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INSTRUCTIONS FOR AND CERTIFICATION BY the alien beneficiary named on page 1 of this Form:

Read and complete this page prior to presentation to a United States consular or Immigration official.

1. I understand that the following conditions are applicable to exchange visitors:
 - (a) *Extension of Stay and Program Transfer.* A completed form IAP-66 is required in order to apply for an extension or transfer and may be obtained from or with the assistance of the sponsor. It must be submitted to the appropriate office of the Immigration and Naturalization Service within fifteen to sixty days before the expiration of the authorized period of stay.
 - (b) *Limitation on Stay:* STUDENTS - as long as they pursue a substantial scholastic program leading to recognized degrees or certificate. Students for whom the sponsor recommends practical training may be permitted to remain for such purpose for an additional period of up to 18 months after receiving their degree or certificate. BUSINESS AND INDUSTRIAL TRAINEES - 18 months. TEACHERS, PROFESSORS, RESEARCH SCHOLARS, and SPECIALISTS - 3 years. INTERNATIONAL VISITORS - 1 year. MEDICAL TRAINEES: Graduate Nurses - 2 years, Medical Technologists, Medical Record Librarians, Medical Record Technicians, Radiologic Technicians, and other participants in similar categories - the length of the approved training program plus a maximum of 18 months for practical experience, not exceeding a total of 3 years. Medical Interns and Residents - the time typically required to complete the medical specialty involved but limited to 7 years with the possibility of extension if such extension is approved by the Director of the United States Information Agency.
 - (c) *Documentation Required for Admission or Readmission as an Exchange Visitor.* To be eligible for admission or readmission to the United States, an exchange visitor must present the following at the port of entry: (1) A valid nonimmigrant visa bearing classification J-1, unless exempt from nonimmigrant visa requirements; (2) A passport valid for six months beyond the anticipated period of admission, unless exempt from passport requirements; (3) A properly executed Form IAP-66. Copies one and two of Form IAP-66 must be surrendered to a United States immigration officer upon arrival in the United States. Copy three may be retained for re-entries within a period of previously authorized stay.
 - (d) *Change of Status:* Exchange visitors are expected to leave the United States upon completing their objective. An exchange visitor who is subject to the two-year home-country physical presence requirement is not eligible to change his/her status while in the United States to any other nonimmigrant category except, if applicable, that of official or employee of a foreign government (A) or of an international organization (G) or member of the family or attendant of either of these types of officials or employees.
 - (e) *Two-Year Home Country Physical Presence Requirement:* Any exchange visitor whose program is financed in whole or in part, directly or indirectly by either his/her own government or by the United States Government is required to reside in his/her own country for two years following completion of his/her program in the United States before he/she can become eligible for permanent residence (immigration) or for status as a temporary worker ("H") or as an intracompany transferee ("L"). Likewise, if an exchange visitor is acquiring a skill which is in short supply in his/her own country (these skills appear on the *Exchange Visitor Skills List*) he/she will be subject to this same two-year home country residence requirement as well as alien physicians entering the U.S. to receive graduate medical education or training (Section 202(e) of the Immigration and Nationality Act and Pl. 94-484, as amended).
 2. I seek to enter into, or remain temporarily in, the United States as an exchange visitor under Section 101(a)(15)(J) of the Immigration and Nationality Act, as amended, for a total maximum stay of _____ (months or years) for the purpose of (state type of degree, certificate, or other objective toward which your program participation will be directed. Doctors of medicine should indicate their medical specialty): _____
- and I understand that I shall be permitted to perform only those activities described in Item 2 and 4 on page 1 of this Form.
- I intend to return to (country) _____ where I am (check one) legal permanent resident citizen.
3. My passport numbered _____ issued by _____ (Country) expires on _____ (Mo./Day/Yr.)
 4. I have have not (check one) been in the United States previously as an exchange visitor. (If you have been in the United States previously as an exchange visitor, show total length of time: _____, and dates: _____).
 5. (To be completed only if application is being made for extension of stay or Program transfer. Use a continuation sheet if necessary.) I first entered the United States as an exchange visitor, or acquired exchange visitor status, on _____ (Mo./Day/Yr.) and have engaged in the following activities under the sponsorship of respective institutions listed for each activity (include program number): _____
6. I understand that a consular or Immigration Officer will make a preliminary determination on whether I am subject to the two year home country physical presence requirement described in Item 1(e) above. The United States Information Agency reserves the right to make a final determination. When determined subject, I will accept that determination and comply with the requirement.
 7. I certify that I have read and I understand the foregoing.

(Signature of Applicant)

(Place)

(Date: Mo., Day, Yr.)

IAP-66 (4-66)

IMMIGRATION PROCEDURES HANDBOOK**(b). Using an In-House Exchange-Visitor Program**

If a company or organization has already applied for and received program sponsorship, see § 8.4, above, the program's "Responsible Officer" may issue a Certificate of Eligibility on Form IAP-66 to the foreign national selected for program participation; no papers need be filed with the USIA or the INS.

A program's "Responsible Officer" must comply with USIA reporting requirements and all the other attendant responsibilities that devolve on a program sponsor, as described in § 8.6, above.

With regard to aliens seeking admission to the United States as trainees under the sponsor's training program, the program sponsor must:

- assure that **an individualized training program** meeting the USIA standards discussed in § 8.6, above, has been developed for the trainee
- secure sufficiently detailed information on **the alien's education and previous training or work experience** to be able to ensure that the business training experience in the United States is suitable and appropriate for the individual's level of career development
- ensure that the trainee has **sufficient knowledge of English** to enable him or her to function in his or her job duties
- inform the trainee that he or she must obtain suitable **health and accident insurance coverage** for himself or herself and his or her family (the program sponsor may offer its own insurance plan to the trainee and his or her family members)

Once the trainee is selected and has been issued Form IAP-66, illustrated above as Sample Form 8-5, the program sponsor must continue to monitor the exchange visitor and maintain the other records required for USIA audit and annual reporting purposes.

Each trainee's individual program file should contain:

- the detailed training program
- evidence of qualifications, (e.g., a resume)
- evidence of English proficiency
- evidence that the required pre-arrival information was given by the sponsor to the trainee
- evidence that the required financial and program information was given
- evidence that orientation was provided
- documentation of insurance coverage meeting USIA standards (some organizations take the position that they do not need to maintain documentation; under this view, the sponsor's only obligation is to inform the exchange visitor of the insurance requirement)
- a record of the cross-cultural activities in which the trainee participated
- a record of sponsor contacts with the trainee to demonstrate on-going sponsor monitoring
- evaluations of the training program by the employer and the trainee

THE J-1 VISA CATEGORY

8.9. OBTAINING THE J-1 VISA AND ADMISSION TO THE U.S.

In order to enter the United States in J-1 status, the exchange visitor must obtain a J-1 visa from a U.S. consulate located outside the United States. To do this, the alien takes the Certificate of Eligibility for Exchange Visitor (J-1) Status, Form IAP-66, along with the following documents to the U.S. consulate where he or she will be applying for the visa.

(a). Documents Required for a J-1 Visa

Foreign nationals who wish to enter the U.S. as J-1 exchange visitors must present the following documentation to a U.S. consulate:

1. Form OF-156 —the standard nonimmigrant visa application form. A separate form is required for each family member. (A completed sample of this form is illustrated as Sample Form 1-1 for B-1 business visitors and Sample Form 3-2 for E treaty aliens)
2. Form IAP-66 issued by the program sponsor (Copies 1 through 3).
3. The visa applicant's passport (and those of each family member).
4. A photograph of the visa applicant.
5. Application fee , if required (the fee requirement varies for nationals of each country on the basis of reciprocity with U.S. citizens seeking entry to the foreign national's country).
6. Machine-readable visa fee of \$45

Most of these elements are common to all nonimmigrant visa applications and are discussed in detail in Chapter 9A. That chapter also describes the procedures for submission of the applications, and guidelines for visa issuance and renewal. Issuance of Form IAP-66 is discussed in § 8.8, above. **NOTE:** The certification on the reverse side of Form IAP-66—Copy I—must be signed by the foreign national prior to or at the time he or she applies for the J-1 visa.

(b). Submission of the Application to the U.S. Consulate

Submission of the nonimmigrant visa application to a U.S. consulate is discussed in Chapter 9A. That chapter includes a discussion of the standard filing procedures that exist at most consulates as well as the special filing instructions of selected consulates. Guidelines governing the selection of consulates for filing are also discussed in Chapter 9A.

Visa applications regarding J-1 visas have been subjected to closer scrutiny in recent years, based on a view by some consular officers that the J visa is used by many persons to enter the United States to work in circumvention of normal requirements, such as the labor certification requirement for the H-2B visa, see Chapter 6. The visa applicant should be fully aware of the training aspects of his or her U.S. assignment if he or she is seeking a J-1 visa for a business training program. Telling the consular officer that the U.S. trip is for the purpose of employment rather than training is a certain route to a visa denial. A copy of the

IMMIGRATION PROCEDURES HANDBOOK

training program and a letter stating the purpose and goals for the training from the sponsor or employer may be useful in obtaining smooth issuance of the J-1 visa. The consular officer might "recommend" that the applicant seek a "more appropriate" visa, such as an H-1B or H-2B visa. If the alien is to engage in legitimate business training and the certificate of eligibility has been issued by the program sponsor on Form IAP-66, the alien has the right to apply for the J-1 visa over other types of visas, however, and the alien should therefore insist that the application for the J-1 visa proceed. If the consular officer declines to adjudicate the application, insisting that some other visa category is appropriate, the U.S. sponsor or employer may have to telephone the consular officer and discuss the situation directly. Legal assistance may be required if the consular officer continues to decline visa issuance.

(c). Visa Issuance

Guidelines governing visa issuance and denial are covered in detail in Chapter 9A. Visas can be issued for any number of entries—anywhere from one authorized entry to "multiple" entries. The visa's period of validity can also vary up to a maximum period of validity coinciding with the expiration of the period specified in the Certificate of Eligibility (a full period of eighteen months for business trainees). The number of entries and the period of validity depend on the country from which the visa applicant comes because the maximum available period of validity and number of entries are set on the basis of reciprocity between the U.S. and the foreign state.

Copies one through three of the Certificate of Eligibility (Form IAP-66) are then returned to the visa applicant after issuance of the visa. **The visa applicant must be certain to get these copies of Form IAP-66 back from the consulate as the form has to be presented to the immigration officer when seeking admission to the U.S.**

Prior to issuing the J-1 visa and returning Form IAP-66, however, the consular officer approving the visa will determine whether the alien will be subject to the two-year foreign residence requirement and, if so, the country in which two years' residence must be satisfied. Note that the lower left corner of the front page of Form IAP-66 provides for the consular officer's endorsement of his or her determination in this matter. **NOTE:** The consular officer's determination is not binding. The binding determination of whether or not a foreign national is subject to the two-year foreign residence requirement is not made until the foreign national seeks to remain in the United States as a permanent resident or seeks to work temporarily in the U.S. in the H or L visa category.

(d). Procedures at the Border

For J visa holders, an application for admission to the United States is made at the border upon arrival at a U.S. port of entry. The immigration officer has the authority to deny admission to a foreign national even though a visa has been issued to him or her. Hence, the immigration officer can deny a J visa holder entry to the U.S. if the officer does not feel that the visa holder is a bona fide nonimmigrant—that is, that the alien really intends to remain in the U.S. indefinitely or permanently. The procedures at the border are as follows:

Documents to Be Carried by the Applicant for Admission
--

THE J-1 VISA CATEGORY

The alien seeking admission must have his or her:

- **Passport with valid J visa**
- **Form IAP-66 (Copies 1 through 3), which were returned to the alien by the consulate**

Procedures upon Admission

If the immigration officer decides to admit the visa holder, the officer will place a stamp in the visa holder's passport noting his or her admission in J status and the period of authorized stay. The officer will also endorse the three copies of Form IAP-66 in the block marked "6. I.N.S. USE." Here will be shown:

- Date of the visa holder's entry to the U.S.
- Location code of the INS admitting office
- Date of expiration of the exchange visitor's authorized period of stay

One copy ("Copy 3") of Form IAP-66 will be returned to the exchange alien for use in visa revalidation or reentry to the U.S. in the event that the alien should leave the country temporarily during his or her authorized period of stay. The immigration officer will retain the other two copies of the form.

NOTE: Canadians and landed immigrants with common nationality (those from Commonwealth countries) do **not** obtain a visa. Rather, they present themselves at the border—either at a land crossing point or at an international airport—and document to the immigration officer questioning them there that they are eligible for admission to the U.S. in J-1 status.

The immigration officer, upon a decision to admit the exchange visitor, issues Form I-94 to the entering alien. This form is the entry record that all foreign nationals must keep with them throughout their stay in this country. Also, they must surrender it upon their departure (see Appendix 3 for a sample of the form).

Form I-94 lists the status in which the foreign national is admitted to the U.S. (J-1, in this case) and the date to which his or her stay is authorized. The period of stay is routinely given for the period of validity of the IAP-66, although periods of stay may be shorter for nationals of some countries, based on reciprocity.

Procedures if Admission to the U.S. is Questioned

If the immigration officer at the border has serious questions about the admissibility of the alien, he or she can parole the alien into the United States for further inspection at the immigration headquarters. This is called a deferred inspection, and usually takes place several days later. Alternatively, he or she can refuse admission, in which case the visa holder has several choices:

- Withdraw the application for admission and return to his or her own country on the next flight at the visa holder's own expense.
- Insist on a hearing on the issue of his or her admissibility.

If the visa holder insists on a hearing, the usual procedure is for the immigration officer to "parole" the visa holder into the United States—that is, to permit the visa

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holder to continue on to his or her destination—and then to require the visa holder to appear at a local INS office for further examination of the case. In rare instances, a hearing is held immediately at the border, and, in even rarer instances, the foreign national is held in detention pending a hearing on his or her application for admission.

If the J-1 visa holder is paroled into the U.S. for further examination and an exclusion hearing, his or her situation is a difficult one, and requires legal assistance.

Cancellation of Visa for Period of Overstay

The 1996 Act permits an immigration officer to cancel a nonimmigrant visa when the alien was admitted on the basis of a nonimmigrant visa, remained in the United States beyond the period of stay authorized by the INS and seeks readmission using that same visa. The alien will only be allowed readmission based on a new visa issued by a consulate located in the alien's country of nationality or based on a new visa that has been annotated by a third country consulate to indicate that the Department of State has issued it under extraordinary circumstances.

INS guidelines interpreting the new provision state that if an overstay occurred while using the alien's current visa and the alien attempts to reenter the United States with that visa, he or she will be denied admission and the visa will be canceled by the immigration inspector at the port of entry. The INS has stated that it will cancel a visa under the new law provision only if the overstay occurred after September 30, 1996. An alien admitted for duration of status is considered to have remained beyond a period authorized stay in the following situations: (1) the INS finds a status violation while adjudicating a request for an immigration benefit, or (2) an immigration judge finds a status violation in proceedings against the alien. Merely falling out of status, therefore, will not trigger the overstay provision.

Once the overstay provision is triggered, it is possible that in exceptional cases the INS may grant a waiver of the nonimmigrant visa requirement and admit the alien after a visa is canceled under the new law. In most cases, however, the alien will be permitted to withdraw the application for admission and depart the United States. Generally, if the withdrawal option is offered to the applicant, he or she should accept it and apply for a nonimmigrant visa abroad to avoid issuance of a removal order. If the alien is ordered removed (e.g., for lack of proper entry documentation), he or she will be ineligible for issuance of a nonimmigrant or immigrant visa for a period of five years from the date of the removal order unless permission is granted by the INS to apply for readmission prior to the end of the five year period. It is possible that in some cases the INS will not permit withdrawal of the application for admission and will decide instead to institute removal proceedings. Competent legal assistance should be sought in these circumstances.

If the alien is permitted to withdraw his or her application for admission, a new visa must be obtained at a consulate located in the country of his or her nationality or at a third country consulate if the alien can demonstrate extraordinary circumstances. A cancellation of the visa should not affect the issuance of a new nonimmigrant visa but will alert a third country consulate that the provision is applicable and, the third country consulate will refuse to process the application unless the applicant can demonstrate extraordinary circumstances. Persons who are granted nonimmigrant visas under extraordinary circumstances must ensure

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that the third country consulate annotates the new visa accordingly. The new visa should contain the following annotation: "INA section 222(g) Overcome Under Extraordinary Circumstances." If the visa is not annotated in this manner, the immigration inspector at the port of entry may cancel the new visa and deny admission.

Further guidance on the 1996 Act provision, including situations which are considered "overstays" and situations in which a third country consulate will process an application under "extraordinary circumstances," is included in § 9A.2.

8.10. EXTENSIONS OF STAY AND VISA RENEWALS

A business trainee is authorized to enter the U.S. for the full period of his or her program—a total of eighteen months. As discussed in § 8.1(b), above, other categories of exchange visitors have other maximum permissible periods of stay. Although the exchange visitor may be granted initial admission to the United States for the maximum period of stay for that program category, occasions arise when the original Certificate of Eligibility, Form IAP-66, is issued for less than the program category maximum. If a decision is later made for the exchange visitor to remain for the maximum permissible period of stay, certain steps must be taken.

Prior to the USIA's new rules issued in March 1993, a J nonimmigrant was issued an arrival document, Form I-94, listing a valid period of stay through the date listed on Form IAP-66 for the end of the alien's program. If an additional period of stay up to the program's maximum permissible period of stay was sought, an extension of stay application to the INS was required.

Under the March 1993 rules, exchange visitors are admitted by the INS for "duration of status," as indicated by the exchange program sponsor on Form IAP-66. The I-94 form issued to the exchange visitor will be marked "D/S," the same notation currently given to foreign students in the F student category. If the exchange visitor's period of stay is to be extended beyond the period of time indicated on the original IAP-66, the program sponsor simply completes a Form IAP-66 with the new expiration date and notifies the USIA of the change. A separate application for extension of stay does not need to be filed with the INS. Note that the total period of stay may not exceed the maximum period permissible for that category of exchange program (e.g., eighteen months for trainee programs).

Extensions for professors and research scholars. Admission in the professor or research scholar categories is usually for a three-year period. Under a final rule issued in June 1996, the program sponsor may extend this period an additional six months, provided the extension is necessary in order to permit the alien to complete a specific project or research activity. In addition, the USIA may authorize an extension beyond the three-year period if: (1) the extension request is filed within sixty days prior to the expiration of the alien's three-year period of stay (late applications may be excused if extraordinary circumstances exist); (2) the request is justified due to "exceptional and unusual" circumstances, and is necessary in order to permit the alien to complete a specific project or research activity. Under this standard, a foreign government's direct funding of a participant and that government's desire to have the participant continue in his or her project for an additional year would be considered sufficient to merit an extension. Other examples of "exceptional or unusual" circumstances include the illness or incapacity of a participant which prevents him or her from working on the project for an

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extended period of time, catastrophes involving the research experiment, or unforeseen delays in the research. Note that a designated sponsor may also request advance authorization from the USIA to design and conduct a program in excess of three years but less than six years. Involvement in such extended program is limited to J-1 professors and scholars who will receive direct financing from U.S. or foreign government sources.

Extensions while waivers applications are pending. The USIA has clarified that when the J-1 alien is within the maximum period of duration for that program category, the program sponsor may issue an extension even if the alien has filed a request for a waiver of the two-year foreign residence requirement. Once the USIA notifies the sponsor that it has made a favorable recommendation to the INS regarding the waiver request, however, the participant is longer considered a bona fide J-1 exchange visitor and he or she is longer eligible for an extension although the participant may complete the period shown on the current IAP-66 form.

USIA guidelines on reinstatement requests by overstayers. The USIA has issued guidelines which set forth the procedures under which it will reinstate to lawful status an exchange visitor who remains in the United States beyond the period of stay authorized by the Attorney General and is, therefore, unlawfully present in the United States. In the case of an exchange visitor who is admitted for duration of status, the period of stay authorized by the Attorney General ends when the INS or an immigration judge determines that the alien violated his or her status or that the alien's status expired.

The USIA will consider reinstating to lawful status a J-1 exchange visitor who makes a request for reinstatement through his or her program sponsor. The program sponsor must make the request in writing and send it to the USIA's Exchange Visitor Program Services office. The letter must contain the following:

- an explanation that the violation of status resulted from circumstances beyond the control of the exchange visitor or from administrative oversight, inadvertence, or neglect on the part of the program sponsor or the exchange visitor and that failure to receive reinstatement to lawful status would result in unwarranted hardship to the exchange visitor
- a declaration that the exchange visitor is pursuing the exchange program activity for which he or she was admitted to the United States

The request for reinstatement must also include copies of all of the exchange visitor's Forms IAP-66 issued to date and a new complete Form IAP-66 which indicates the date to which reinstatement is sought (i.e., the program end date).

If the USIA determines that reinstatement is warranted, Box 6 on the new Form IAP-66 will be stamped to indicate that reinstatement has been granted, effective as of the date that the request for reinstatement was received by the agency. Presumably, reinstatement generally will not be granted beyond the maximum period permissible for that category of exchange program (e.g., eighteen months for trainee programs). Current regulations provide that an extension in excess of the period of time authorized for a specific program category is available only if approved by the USIA. As a result, if the exchange visitor has already reached this maximum period for the program category, the reinstatement request should specifically request such an extension and explain why it is warranted.

An exchange visitor who willfully fails to maintain the health and accident insurance required by USIA regulations and who is terminated from the exchange

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visitor program is not eligible for reinstatement. In addition, an exchange visitor who engages in unauthorized employment and is terminated from participation for unauthorized employment is not eligible for reinstatement.

Reinstatement will not affect a provision of the 1996 Act which permits an immigration officer to cancel a nonimmigrant visa when the alien was admitted on the basis of a nonimmigrant visa, remained in the United States beyond the period of stay authorized by the INS and seeks readmission using that same visa. The alien will only be allowed readmission based on a new visa issued by a consulate located in the alien's country of nationality, or based on a new visa that has been annotated by a third country consulate to indicate that the Department of State has issued it under extraordinary circumstances. With regard to nonimmigrants who are admitted for duration of status, i.e., students and exchange visitors, such persons are considered to have remained beyond a period of authorized stay if the INS or an immigration judge finds that the alien has violated his or her status or that the alien's status has expired. In these circumstances, the J-1 exchange visitor is subject to the overstay provision whether or not he or she is subsequently reinstated. As a result, they cannot be readmitted with the same nonimmigrant visa and must apply for a new nonimmigrant visa at their home consulate or at a third country consulate if they can demonstrate extraordinary circumstances. Further guidance on the 1996 Act provision, including situations which are considered "overstays" and situations in which a third country consulate will process an application under "extraordinary circumstances," is included in § 9A.2.

On the other hand, reinstatement will affect the counting of unlawful presence for purposes of determining inadmissibility under new exclusion grounds added by the 1996 relating to prior periods of unlawful presence in the United States. Under the new ground for inadmissibility, aliens unlawfully present in the United States for periods of more than 180 days are inadmissible for a period of three years or ten years from the date of their departure (depending on the length of their unlawful presence in the United States). With regard to nonimmigrants who are admitted for duration of status, i.e., students and exchange visitors, such persons do not begin to accrue unlawful presence until the INS or an immigration judge finds that the alien has violated his or her status or that the alien's status has expired. Once the reinstatement request is approved, however, the alien is considered to be restored to lawful status. The more complicated issue, however, is whether reinstatement breaks the period of unlawful presence for purposes of the new exclusion grounds or merely tolls the counting of the period of unlawful presence. The issue is significant because if reinstatement breaks the period of unlawful presence then a subsequent period of unlawful presence cannot be aggregated with the period of unlawful presence accumulated prior to reinstatement for purposes of determining whether the exchange visitor has accumulated a period of unlawful presence of more than 180 days. On the other hand, if the reinstatement merely tolls the counting of the period of unlawful presence then aggregation would be permissible. The USIA guidelines state that the period of unlawful presence is tolled as of the date the request for reinstatement was received by the agency. The INS has not directly addressed the issue, however. The only clear guidance given by the INS as of September 15, 1998 is that a departure will break a period of unlawful presence so that a new period of unlawful presence begins to run after the alien departs the United States, is readmitted to the United States and again falls out of status. The new inadmissibility grounds are discussed in detail in Chapter 12.

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Extensions for persons with definite expiration dates on Form I-94. Exchange visitors admitted prior to the effective date of the March 1993 rules were given a definite expiration date for their periods of stay on Form I-94. Those exchange visitors must still apply to the INS for an extension of stay under the old procedures if additional periods of stay are required. The new procedure only applies to those J nonimmigrants granted "D/S" under the new rules. Note, however, that an exchange visitor who was given an I-94 card with an expiration date will receive a new I-94 marked "D/S" if he or she travels abroad and returns to the United States before the expiration of his or her current period of stay. In that case, if additional time is sought for completion of the exchange visitor's program, that time may be granted by the program sponsor through issuance of a new Form IAP-66, and an extension application to the INS is not necessary.

Only if an exchange visitor is in the United States with an I-94 card that has an expiration date does an extension of stay application need to be filed with the INS. Those extension applications are filed under procedures recently revised by the INS. The extension of stay for J nonimmigrants must now be filed on Form I-539 with the INS Service Center with jurisdiction over the alien's place of residence in the United States. Form I-539, with a revision date of 12/2/91, consists of two pages on which the principal J-1 applicant is included, plus a supplement to include the J-2 family members. For a J-category extension, a fourth page must also be submitted, which includes an address label, so that the I-94 form can be returned to the applicant annotated with the extended period of stay. Sample Form 8-6 illustrates Form I-539 used for a J extension request; analysis of the form follows the sample. **Note that a filing fee must be submitted with the J extension request.**

The extension request is submitted to the INS Service Center with jurisdiction over the alien's place of temporary residence in the United States. *See Chapter 15 for the INS Service Center addresses.* Processing of Form I-539 extension of stay applications can take a number of months.

The instructions indicate that the request should be filed at least 45 days before the authorized period of stay expires; it can be filed up to the date of expiration of stay, however, and the instructions even set forth the reasons which can be used for filing the extension request late: (1) the delay was due to extraordinary circumstances beyond the alien's control; (2) the length of the delay was reasonable; (3) there is no other violation of status; (4) he or she is still a bona fide nonimmigrant; and (5) he or she is not involved in deportation proceedings.

Extension requests must be filed with the following documents:

1. Form I-539 (Application to Extend/Change Nonimmigrant Status)
2. Form IAP-66 , issued by the program sponsor to indicate the extended period of stay requested
2. Form I-94 (copies may be submitted for J extensions, see Appendix 3 for sample)
3. Filing fee of \$120.00
4. Sponsor letter or other supporting documentation, including:

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- the reason for the extension request
- the nature of the additional training, including an affirmation that the additional training is a continuation of the original training and furthers the goals of the original training
- affirmation that the trainee will leave the United States upon completion of the training

Family members are included in the same extension application by listing them on the I-539 supplement. The original I-94 forms for each family member must be included. If I-94 forms are missing for any of the persons included in the I-539 application, Form I-102, for replacement of a lost or missing I-94 form, must be submitted with the extension request, with a filing fee of \$85.00. Form I-102 is illustrated as Sample Form 1-6 in Chapter 1 of this *Handbook*. A separate Form I-102 and filing fee must be filed for each missing Form I-94.

Review Sample Form 8-6, which follows. An annotation of the sample form follows the sample that covers its use both for an extension of stay and for a change of status to the J category.

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Sample Form 8-6: Application for Extension of Stay (Form I-539)

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0093
Application to Extend/Change Nonimmigrant Status

START HERE - Please Type or Print

Part 1. Information about you.

Family Name Smith	Given Name John	Maiden Initial
Address - in Care of: New York Hotel		
Street # and Name 0 Fifth Avenue	Apt. #	
City New York	State N.Y.	
Zip Code 10000		
Date of Birth (month/day/year) 1/1/50	Country of Birth Norway	
Social Security # (if any) 000-00-0000	As (if any) N/A	
Date of Last Arrival into the U.S. 6/30/91	I-94 # 0000-00000000	
Current Nonimmigrant Status J-1	Expires on (month/day/year) 6/30/92	

Part 2. Application Type.

(See instructions for fee.)

- I am applying for: (check one)
 - an extension of stay in my current status
 - a change of status. The new status I am requesting is: _____
- Number of people included in this application: (check one)
 - I am the only applicant
 - Members of my family are filing this application with me. The total number of people included in this application is (complete the supplement for each co-applicant) 2

Part 3. Processing information.

- Will you request that my/our current or requested status be extended until (month/day/year) 12/30/92
 - Is this application based on an extension or change of status already granted to your spouse, child or parent?

No Yes (receipt # _____)
 - Is this application being filed based on a separate petition or application to give your spouse, child or parent an extension or change of status?

No Yes, filed with this application Yes, filed previously and pending with INS
 - If you answered yes to question 3, give the petitioner or applicant name: _____
- If the application is pending with INS, also give the following information:
- Office filed at _____ Filed on _____ (date)

Part 4. Additional information.

- For applicant #1, provide passport information:

Country of Issuance Norway	Valid to (month/day/year) 1/1/95
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- Foreign address:

Street # and Name 1 Fjord Street	Apt #
City or Town Oslo	State or Province
Country Norway	Zip or Postal Code

Form I-539 (Rev. 12-2-91)

Continued on back.

FOR INS USE ONLY

Returned Date	Receipt
Resubmitted Date	
Rec'd Sent Date	
Rec'd Rec'd Date	
<input type="checkbox"/> Applicant Interviewed	
<input type="checkbox"/> Extension Granted to (date): _____	
<input type="checkbox"/> Change of Status/Extension Granted New Class: _____ To (date): _____	
If correct: <input type="checkbox"/> Still within period of stay <input type="checkbox"/> V/D to: _____ <input type="checkbox"/> S/D to: _____ <input type="checkbox"/> Place under docket control	
Remarks	
Action Block	
<p>To Be Completed by Attorney or Representative, if any</p> <input type="checkbox"/> Fill in box if G-28 is attached to re-submit this application.	
VOLAC#	
ATTY State License #	

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Part 4. Additional Information. (continued)

3. Answer the following questions. If you answer yes to any question, explain on separate paper.	Yes	No
a. Are you, or any other person included in this application, an applicant for an immigrant visa or adjustment of status to permanent residence?		X
b. Has an immigrant person ever been filed for you, or for any other person included in this application?		X
c. Have you, or any other person included in this application ever been arrested or convicted of any criminal offense since last entering the U.S.?		X
d. Have you, or any other person included in this application done anything which violated the terms of the nonimmigrant status you now hold?		X
e. Are you, or any other person included in this application, now in exclusion or deportation proceedings?		X
f. Have you, or any other person included in this application, been employed in the U.S. since last admitted or granted an extension or change of status?	X	

If you answered YES to question 3f, give the following information on a separate sheet: Name of person, name of employer, address of employer, weekly income, and whether specifically authorized by INS.

See attached Form IAP-66

If you answered NO to question 3f, fully describe how you are supporting yourself on a separate paper. Include the source and the amount and basis for any income.

Part 5. Signature. Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.

I certify under penalty of perjury under the laws of the United States of America that this application, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit. I am signing.

Signature _____ Print your name _____ Date _____

Please Note: If you do not completely fill out this form, or fail to submit required documents listed in the instructions, you cannot be found eligible for the requested document and this application will have to be denied.

Part 5. Signature of person preparing form if other than above. (Sign below)

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature _____ Print Your Name _____ Date _____

Firm Name and Address _____

(Please remember to enclose the mailing label with your application)

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Supplement-1

Attach to Form I-539 when more than one person is included in the petition or application. (List each person separately. Do not include the person you named on the form.)

Family Name	Smith	Given Name	Jane	Middle Initial		Date of Birth (month/day/year)	1/1/52
Country of Birth	Norway	Social Security No.	000-00-0000	AP		N/A	
IF IN THE U.S.	Date of Arrival (month/day/year)	6/1/91		I-94#	0000-00000000		
THE U.S.	Current Nonimmigrant Status:	J-2		Expires on (month/day/year)	6/1/92		
Country where passport issued		Norway		Expiration Date (month/day/year)		6/1/95	
Family Name		Given Name		Middle Initial		Date of Birth (month/day/year)	
Country of Birth		Social Security No.		AP			
IF IN THE U.S.	Date of Arrival (month/day/year)			I-94#			
THE U.S.	Current Nonimmigrant Status:			Expires on (month/day/year)			
Country where passport issued				Expiration Date (month/day/year)			
Family Name		Given Name		Middle Initial		Date of Birth (month/day/year)	
Country of Birth		Social Security No.		AP			
IF IN THE U.S.	Date of Arrival (month/day/year)			I-94#			
THE U.S.	Current Nonimmigrant Status:			Expires on (month/day/year)			
Country where passport issued				Expiration Date (month/day/year)			
Family Name		Given Name		Middle Initial		Date of Birth (month/day/year)	
Country of Birth		Social Security No.		AP			
IF IN THE U.S.	Date of Arrival (month/day/year)			I-94#			
THE U.S.	Current Nonimmigrant Status:			Expires on (month/day/year)			
Country where passport issued				Expiration Date (month/day/year)			
Family Name		Given Name		Middle Initial		Date of Birth (month/day/year)	
Country of Birth		Social Security No.		AP			
IF IN THE U.S.	Date of Arrival (month/day/year)			I-94#			
THE U.S.	Current Nonimmigrant Status:			Expires on (month/day/year)			
Country where passport issued				Expiration Date (month/day/year)			
Family Name		Given Name		Middle Initial		Date of Birth (month/day/year)	
Country of Birth		Social Security No.		AP			
IF IN THE U.S.	Date of Arrival (month/day/year)			I-94#			
THE U.S.	Current Nonimmigrant Status:			Expires on (month/day/year)			
Country where passport issued				Expiration Date (month/day/year)			

THE J-1 VISA CATEGORY**Notes on Sample Form 8-6**

Note regarding use of Form I-539. Form I-539 is used for an extension of stay or change of status with regard to principal applicants (and their family members) in the A, B, F, G, I, J, M, and N nonimmigrant categories. Form I-539 is also used to extend stay or change status for family members of principal aliens in the E, H, L, O, P, R and TN nonimmigrant categories; the principal aliens in those categories use Form I-129 for extensions of stay or changes of status.

Part 1. Information about you.

Family Name. The information provided here should be for the principal alien; family members should be included on Supplement-1 to Form I-539. The name should match the alien's name as listed on Form I-94, the alien's arrival record which he or she was given at the time of admission to the United States.

Address. The address requested is the alien's temporary address in the United States, not his or her foreign address. This address will be used to communicate with the applicant (unless the alien's attorney or representative has attached Form G-28, Notice of Appearance, to the application).

Date and Country of Birth. This information should be found in the alien's passport. Note that the "country of birth" is requested; that country might be different from the current country of citizenship, which is listed by the applicant on Form I-94. Therefore, check the passport rather than Form I-94 for the alien's country of birth.

Social Security #. Many applicants will not have social security numbers because they have never worked in the United States. Aliens who have received work permission will usually have a social security number. Some aliens may have a social security number because of previous periods of U.S. stay with work permission (e.g., the alien was previously here in H-1B status). In addition, even aliens who have never had work authorization might have received a non-work social security number for purposes of opening a bank account, enrolling in school, etc. If the applicant does not have a social security number, type "none" here.

A#. This number is the alien registration number, most commonly assigned to aliens who become U.S. permanent residents. An alien might have an A# if he or she was previously a permanent resident, has previously been placed in exclusion or deportation proceedings, or has otherwise been involved with the INS in some type of investigation or proceeding in which an A# was assigned. If the applicant does not have an A#, type "none" here.

Date of Last Arrival. The alien's date of last arrival in the United States will be listed on the most recent I-94 card issued to the alien. It will appear in the stamp placed on the I-94 card by the INS inspector at the port of entry.

I-94 #. This number appears on the I-94 card in the upper left corner.

Current nonimmigrant status. Place the letter designation for the current nonimmigrant category here, i.e., J-1 or J-2.

Note that if the alien is no longer in valid nonimmigrant status because his or her period of authorized stay has already expired, he or she is not eligible to apply for an extension of stay or a change of nonimmigrant status and must

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apply for a J visa abroad. Note also that legislation enacted in 1996 requires a nonimmigrant visa applicant who was issued a nonimmigrant visa in the past, was admitted on the basis of that nonimmigrant visa, and remained in the United States beyond the period of stay authorized by the INS, to submit their visa applications at the consulate located in the country of the alien's nationality. The applicant cannot be readmitted into the United States unless a new visa is issued by the consulate located in the country of the alien's nationality. If the person attempts to seek readmission using the same visa, he or she will be denied admission and, if ordered removed (e.g., for lack of proper entry documentation), will be ineligible for a nonimmigrant (or immigrant) visa for a period of five years from the date of the removal order unless permission is granted by the INS to apply for readmission earlier. The 1996 legislation is discussed in detail in § 4.6(f), above. Note also that prior periods of unlawful presence in the United States may also render the alien inadmissible and ineligible for a nonimmigrant visa (see Chapter 12).

Expiration of status. The expiration date of the alien's current nonimmigrants status will be handwritten on the I-94 card, in the appropriate space in the stamp placed on the card by the INS inspector at the port of entry. If the alien has previously changed or extended his or her status since initial admission, the new expiration date may be endorsed on the back of the I-94 card under "Record of Changes." It might also be reflected on a replacement I-94 card given to the alien at the time that the prior extension was approved, or it might even be marked instead on Form I-797, the notice of approval, rather than on the I-94 card.

Part 2. Application Type.

Box 1.a. should be checked for an extension of stay in the current nonimmigrant category. Box 1.b. should be checked if the alien is seeking to change to a different nonimmigrant category, e.g., from a B-2 tourist to a J-1 student.

Number of applicants. Either Box 2.a. or 2.b. should be checked depending on whether the applicant's family members are included in the application. The total number of persons included in the application (the principal applicant and family members) should be listed if Box 2.b. is checked. The filing fee for the application is \$120.00.

Part 3. Processing Information.

Part 3, Item 1. Indicate the date through which the extension of stay is requested. If a change of status is being sought to a different nonimmigrant category, list the date through which the stay is being requested in that category.

Changes of status to the J nonimmigrant category will be approved for the duration of valid status, as indicated on the certificate of eligibility (Form IAP-66) issued by the exchange program sponsor; the applicant should list in Item 1 the date for completion of the exchange program listed by the exchange program sponsor on the certification of eligibility.

Extensions of stay are not sought on Form I-539 for J nonimmigrants if they were initially admitted for "duration of status" or "D/S." In that case, the exchange program sponsor may grant the J nonimmigrant an extension of stay up to the maximum permissible period for that program, without any

