

Immigration Law Library

**IMMIGRATION
PROCEDURES HANDBOOK**

1999 Edition

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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