

J-1 Two Year Home Residence Requirement: Applying for a Waiver

Office of International Students and Scholars

Eastern Illinois University

Information for J-1 Exchange Visitors: Please visit the link on the Department of State's web site on the J-1 waiver: <http://travel.state.gov/content/visas/english/study-exchange/student/residency-waiver.html>

The Two-Year Home Country Physical Presence Requirement is also referred to as the "Home Residency Requirement," the "Two-Year Rule" or simply "212(e)." From this point forward, "Two-Year Rule" will be used in this document.

What is the "Two-Year Rule"?

Many, but not all, J-1 Exchange Visitors are subject to the "Two-Year Rule." Those that are subject to the rule must either be physically present in their home country for an aggregate of two years, or obtain a waiver of the "Two-Year Rule" before becoming eligible for:

H (Temporary Worker or dependent) and L (Intercompany Transferee or dependent) visas.

Change of Status applications (except to visa classifications A & G)

Adjustment to U.S. Permanent Resident ("green card") status.

In other words, the "Two-Year Rule" does not force individuals to return home; rather it limits options for U.S. immigration benefits for those who do not. It does not prohibit applications for other non-immigrant visas, provided all other eligibility criteria are met. Dependents (J-2's) of those who are subject to the two-year rule" are also subject.

Who is Subject to the "Two-Year Rule"?

J-1 exchange visitors and their dependents (J-2's) become subject to the "Two-Year Rule" if any one of the following three criteria are met:

- If the exchange program was financed directly or indirectly by the U.S. Government or a foreign government for the purpose of exchange.
- If the skills that the exchange visitor is coming to develop or exercise are in a field which the exchange visitor's "home" government requested be on the Department of State's Skills List.
- If the exchange visitor comes to the U.S. **to receive "graduate medical education or training."**

Are You Subject to the "Two Year Rule"?

It is not always clear whether an individual is subject to the "Two-Year Rule" or not. However before applying for a waiver, one should attempt to determine subjectivity. Preliminary determinations regarding subjectivity are made by Consular Officers when issuing visas. These preliminary determinations are not always correct. The Department of State (DOS) Bureau of Consular Affairs in Washington, D.C., is the final authority for determining whether one is subject. If there is a question about whether a preliminary determination is correct, the DOS will provide an advisory opinion upon request.

Grounds for Seeking a Waiver of the "Two-Year Rule"

No Objection: The exchange visitor's home country issues a letter that is sent directly to the US State Department, indicating that it has "no objection" to the exchange visitor's request for a waiver. The "no objection" method is the most common, but is not generally possible in the event that U.S. government funds were involved in the exchange visitor's program.

Interested United States Government Agency: If an exchange visitor is working on a project for or of interest to a U.S. Federal Government agency, and that agency has determined that the visitor's continued stay in the United States is vital to one of its programs, a waiver may be granted if the exchange visitor's continued stay in the United States is in the public interest. It is important to note that the employer of the exchange visitor must request such a waiver on the appropriate form. The request may not come from the exchange visitor.

Persecution: If the exchange visitor believes that he or she will be persecuted upon return to the home country due to race, religion, or political opinion, he or she can apply for a waiver.

Exceptional Hardship to a U.S. Citizen or Permanent Resident Spouse or Child if the alien returns home: If the exchange visitor can demonstrate that his or her departure from the United States would cause extreme hardship to his or her United States citizen or lawful permanent resident spouse or child, he or she may apply for a waiver. (Please note that mere separation from family is not considered to be sufficient to establish exceptional hardship.)

Physicians working in "Underserved Areas": Physicians who are subject to the "Two-Year Rule" may qualify for waivers based on employment in medically-underserved areas. The rules for this kind of waiver are complicated. For further information, consult an immigration attorney.

Additional Information:

Please visit the Department of State's web site which provides a great wealth of information on waiver policies and procedures. You will also find information on waiver procedures, advisory opinions, and the Skills List.

OISS Recommendation for Eastern Illinois University J-1 Exchange Visitors:

If you are a J-1 exchange visitor at Eastern Illinois University and plan to file for a waiver of the "Two-Year Rule", via the "no objection" route, it is strongly recommended that you make an appointment at the OISS to discuss timing issues involved in the application. Once an individual reaches a certain stage in the waiver process, no further extensions of J-1 status may be made; therefore, discussing timing before initiating a waiver request can be a critical component of any waiver application.