



THE TWO-YEAR HOME-COUNTRY PHYSICAL PRESENCE REQUIREMENT (Section 212(e) of the Immigration and Nationality Act) – Updated December 14, 2004

Intent of the Requirement

The two-year home-country physical presence requirement (often referred to as “212(e)”) is intended to enable the home countries of certain Exchange Visitors who come here for a specific objective, such as a program of study or a research project, to benefit from the Exchange Visitors’ experiences in the United States. The requirement is intended to prevent certain J-1 Exchange Visitors (and their J-2 family members) from staying in the U.S. longer than is necessary to complete their objective, and to ensure that they will reside in their home country for at least two years before returning to the United States for a long-term stay.

You are Subject to the Requirement if ...

- Your current J-1 program is or was funded, in whole or in part, by your home government or by the United States government, in order to promote educational exchange.
- The education, training or skill you are pursuing appears on the “Exchange Visitor Skills List.” (See *Federal Register*, January 16, 1997, pp. 2447-2516.)
- You are here for graduate medical education or training under the auspices of the Educational Commission for Foreign Medical Graduates (ECFMG).
- You are the J-2 dependent of an Exchange Visitor who is subject to the requirement.
- You have *ever been subject to the requirement*, and have neither obtained a waiver nor met the requirement by spending two years in your country--even if a more recent Form DS-2019 (or an old IAP-66) reflects no basis for the requirement or you are now in a different status (such as F-1 or B-1/B-2).

Terms of the Requirement

Until either fulfilling the requirement by returning home for two years or obtaining a waiver of the requirement (a “212(e) waiver”), an individual who is subject to the requirement is ineligible for:

- An H or an L nonimmigrant visa
- An immigrant visa (to enter the U.S. as a lawful permanent resident, or LPR)
- Adjustment of status (become an LPR, or “get a green card” from inside the United States)
- A change of status to any other nonimmigrant classification, except A or G (for diplomats and representatives of certain international organizations and their dependents)

Preliminary Endorsements

Your J visa or your current Form DS-2019 (or an old IAP-66) may show a “preliminary endorsement” by a consular official or a U.S. Citizenship and Immigration Services (USCIS) inspector, as to whether you are “subject to 212(e).” These indications are often accurate, but not always--**and they are never legally binding**. The Waiver Review Office of the State Department **always** makes the final determination.

If You Are Unsure Whether You Are Subject...

Make an appointment with an OISS adviser. Take to the appointment your passport, your current DS-2019, your I-94, and copies of any prior IAP-66 or DS-2019 forms you have received, if they are available. The adviser will probably be able to tell from your source(s) of funding, or from the Exchange Visitor Skills List, whether you are subject to 212(e).

If You Are Still Uncertain...

- You may request an **advisory opinion** from:
U.S. Department of State
CA/VO/L/W, Visa Services
2401 E Street, NW, (SA-1)
Washington, DC 20522-0106
- Consult an immigration attorney, preferably one on the OISS referral list or another member of the American Immigration Lawyers Association (AILA) who specializes in this area of immigration law.

Waivers of the Requirement

If you are subject to, but do not wish to comply with, the two-year home country residence requirement, you **may** be able to obtain a waiver of the requirement (a “212(e) waiver”) under one of the following five grounds provided by the Immigration and Nationality Act:

1. A “no objection” statement

Your government may be willing to indicate, in a “no objection” statement, that it has no objection to your receiving a 212(e) waiver. Some countries handle requests for “no objection” statements through their embassy in Washington, D.C., while others use a designated ministry or agency in the home country.

NOTE: Exchange Visitors sponsored by ECFMG (Educational Commission for Foreign Medical Graduates) are not eligible for waivers based on a statement of no objection. Also, a “no objection” statement usually will not lead to approval of a “no objection waiver” request if the Exchange Visitor has received more than \$2,000 in funding from the United States government.

2. Interested Government Agency (IGA)

If you are working on a project of interest to a U.S. government agency, that agency **may** determine that your continued stay in the U.S. is vitally important to it. If the agency makes that determination, the head of the agency or the duly appointed designee may recommend a waiver for you to the State Department.

Current IGAs include the U.S. Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Transportation and Veterans Affairs, as well as the Library of Congress, the Appalachian Regional Commission, the National Endowment for the Arts, NASA Headquarters, the National Science Foundation and the Smithsonian Institution.

3. Exceptional hardship to a USC/LPR spouse or child

If you can demonstrate that your departure from the United States would cause *exceptional hardship* to your United States citizen (USC) or lawful permanent resident (LPR) spouse or child (e.g., your U.S.-born child had a serious medical condition that could not be treated in your country), you might obtain a waiver because the child would suffer a hardship by going there with you to live.

4. Fear of persecution

If you can demonstrate that, because of your race, religion, or political opinions, you would face persecution by your home government if you returned to your country, you might qualify for a waiver.

5. Request by a designated State Department of Health, or its equivalent

If you are a medical doctor, you may be able to apply for a waiver on the basis of a bona fide offer of full-time employment for at least three years at a health facility in an area of the United States officially designated as having a shortage of health care professionals. No more than twenty such applications may be granted for each state for each federal fiscal year.

Visit http://travel.state.gov/visa/tempvisitors_info_waivers.html for the most reliable, current information about waiver applications.