

J-1 Visa Waivers

212(e), The Two Year Home Residence Requirement

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What is 212(e)?

- Every J-1 has to have an **intent** to return home
- Certain J-1's are **required** to return home at the end of their J program.
- Known as:
 - 212(e)
 - two-year rule
 - two-year residence requirement
 - foreign residence requirement
 - two-year home country physical presence requirement
- Applies to J-1's:
 - Who are medical students and residents
 - Whose field is listed on their country's Skill's List
 - Who receive government funding

Are you subject to 212(e)?

- Skill's List: <https://www.govinfo.gov/content/pkg/FR-2009-04-30/pdf/E9-9657.pdf>
 - Country of citizenship or legal permanent residence
- Government funding: "wholly or partially financed, directly or indirectly, by the U.S. Government or by the government of the alien's last legal permanent residence"
 - Swiss National Science Foundation, Japan Society for the Promotion of Science, ORAU/USRA
- Where can you look?
 - Not determinative: visa notation, endorsement on DS-2019
 - Source information
 - Does your country have a Skills List?
 - Is your Subject/Field Code on your country's Skills List?
 - Where is your funding coming from?
- Unsure? Ask DOS for an Advisory Opinion:
<https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/advisory-opinions.html>

What is the impact of 212(e)?

- If subject to 212(e), the J-1 **prohibited** from:
 - Changing nonimmigrant status inside the United States
 - Applying for a green card (U.S. permanent residence)
 - Receiving an H-1B, L, or K visa at a U.S. Consulate abroad
- If subject to 212(e), the J-1 is **permitted** to:
 - Extend J status for the full duration of a J program
 - 5 years for Research Scholars
 - Transfer to a new J program
 - Start a new J program (if eligible)
 - Enter the United States in other visa categories
 - ESTA/visa waiver, B-1/B-2, O-1, TN, E-3, etc.

2 Years in Home Country or 212(e) Waiver

- Fulfill 212(e)
 - Reside and physically present
 - In the country of nationality or last residence
 - For at least two years after the end of the J program
- Apply for a Waiver of 212(e)
 - <https://travel.state.gov/content/travel/en/us-visas/study/exchange/waiver-of-the-exchange-visitor.html>

212(e) Waiver Basis

- No Objection Statement
- Interested Government Agency (IGA)
- Conrad State 30 (Physicians)
- Exceptional Hardship
 - U.S. citizen or permanent resident spouse or child
- Fear of Persecution
 - race, religion, or political opinion

212(e) Waiver Process

- Review information on <https://travel.state.gov/content/travel/en/us-visas/study/exchange/waiver-of-the-exchange-visitor/how-to-apply-waiver.html>
- Meet with International Office advisor to confirm timing is OK
- Steps for No Objection Statement Waiver
 - Initiate waiver with Dept. of State (DS-3035, application, fee, etc.)
 - Initiate waiver application with home country embassy
 - Submit supporting documents to Dept. of State
 - Home country government sends NOS letter directly to Dept. of State
 - Check your online account and follow instructions if any additional documentation is needed
 - Dept. of State issues Letter of Recommendation and forwards to USCIS
 - USCIS issues I-612 Waiver Approval Notice

Timing

- Once the waiver process is initiated, we do not extend J programs
- Dept. of State is currently taking a long time to
 - Issue Advisory Opinions: 2+ months
 - Acknowledge receipt of waiver applications: 3+ months
 - Adjudicate waiver applications: 6+ months
- Home country NOS letters may also be backlogged
- Current estimation is that a waiver application is going to take 9-12 months

Roles

- International Office advisors are Alternate Responsible Officers
 - Administering the Caltech J program on behalf of the Dept. of State
 - Cannot provide direct advice for waiver applications
- Your waiver is your responsibility
 - Consult with International Office advisors about timing before you start the waiver application
 - Inform International Office advisors when you submit a waiver application
- IGA waivers at JPL
 - NASA process for individuals critical to NASA mission
 - JPL line management has to support
 - Only applicable when NOS is not possible
- Attorney support?
 - Most scholars apply for No Objection Statement waivers without immigration attorneys
 - Generally, scholars who apply for IGA or Extreme Hardship waivers use immigration attorneys

Discussion

- What questions do you have?