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J Two-Year Foreign Residence Requirement 212(e) and Waiver Information

General Information

The J Exchange Visitor Program was created to promote educational and cultural exchange between people in the US and other countries. In some cases, rules ensure that J Exchange Visitors will return to their home countries after completion of the US program so that the home country will benefit from the knowledge gained. Participants in a J program (students, scholars, professors, and researchers), as well as dependent family members may be subject to the two-year foreign residence requirement, also known as home-country physical presence or 212(e) of the Immigration and Nationality Act, for three reasons:

1. Funding from the home government or US government
2. The country-specific [Exchange Visitor Skills List](#)
3. Graduate medical education or training

The US consular officer generally notes whether the person is subject to 212(e) on the initial DS-2019 and on the J visa in the passport. This initial determination is usually correct but is not legally binding. Scholars may check the country-specific [Skills List](#) on the US Department of State (DOS) website for more information.

Scholars may wish to obtain an [advisory opinion](#) from DOS to verify whether or not they are likely subject to this requirement (this is preliminary, not official). Advisory opinions are also sought when it is unclear which country's Skills List is applicable (see note in next section). To determine whether you are subject, check the following documents:

- J visa sticker, if noted "Bearer is subject to Section 212(e). Two-year rule does apply", then you are subject
- DS-2019, Page 1, box in lower, left-hand corner. If box 2 is checked, you are likely subject.

If after review of both your DS-2019 and your visa, you believe the 212(e) rule was applied to you in error, you may request an advisory opinion. Instructions for the advisory opinion process can be found on the Department of State's [website](#).

If subject, there are two ways to fulfill the two-year foreign residence requirement:

- Return to the *home country* for a period of two years or more, or
- Request and receive a waiver

Note: The DOS considers the "home country" to be your country of citizenship or country of permanent residency at the time you begin J Exchange Visitor Program.

The 212(e) rule prevents a person from obtaining long-term work status such as H, L or permanent residency (i.e., green card). The rule does not prevent a person from returning to the US as a visitor, student or another non-immigrant status during the two-year period directly following the period of J status. The 212(e) rule also prevents a person from changing their non-immigrant status inside the US. However, application for a new visa outside the US is allowed.

J Exchange Visitors who are interested in obtaining a waiver of 212(e) must follow a formal process. [There are several basis on which to apply for the waiver](#) including:

- Statement of no objection
- Interested US government agency
- Fear of persecution
- Others

Critical Timing Issues

The timing of the waiver process is critical. Before applying for the waiver, consult with OIE. The process takes several months for most applicants. Typically, OIE receives a copy of the Statement of No Objection from the DOS; after this, **no further DS-2019 extensions or transfers may be authorized**. The waiver is required for an H-1B application - a process that can also take several months. You can meet with an OIE advisor to discuss and understand the specific timing issues of your situation.

Application Process for Waiver

A person who wishes to apply for a US work status such as H-1B or permanent residence, must fulfill 212(e) prior to *applying for such status*. To fulfill this requirement, some J participants apply for the waiver. There are several ways to apply for the waiver; the most common is that the scholar or student obtains a Statement of No Objection from the home country. Allow at least 6 months for the waiver process.

US Department of State Application. All applicable persons seeking a waiver must begin in the same way - by visiting the DOS website and completing the [J Visa Waiver Review Application \(DS-3035\)](#) online form and by mailing the correct [fee](#) and other supporting documents as directed. DOS will open a file on your case and notify you with your unique case number. Your case number should be used in all further correspondence with DOS and should be clearly marked on the outside of envelopes mailed to DOS.

Statement of No Objection. Most Carnegie Mellon J visitors who are subject to 212(e) based on home government funding or the Skills List use the Statement of No Objection method of applying for a waiver. In addition to completing the US DOS application (above), the J visitor must contact the home country Consulate for waiver instructions. Requirements vary by country and OIE does not have this specific information. Statements of No Objection from the home country are most common for persons who are subject to 212(e) based on the Skills List. It is widely understood that those who are subject based on home government funding are *unlikely* to be granted the necessary statement of no objection from the home government. J visitors who are subject based on US government funding will NOT receive a waiver, even if they obtain a statement of no objection from the home government, unless a case can be made on other grounds, such as interested government agency or hardship to a US citizen spouse/child.

Typical Process for Statement of No Objection Waivers. *This process usually takes several months.*

1. J visitor completes DOS Waiver Review Application.
2. J visitor receives unique file number from the DOS.
3. J visitor completes process as required by home country Consulate.
4. Home country communicates with DOS. If the home country issues a statement of no objection, DOS will typically agree.
5. DOS issues a waiver recommendation to the USCIS. Copies are forwarded to the J participant and current and prior J sponsors (such as Carnegie Mellon's OIE).
6. At this point, **no further DS-2019 extensions or transfer will be granted.**
7. US Citizenship and Immigration Services grants the Waiver Approval Notice to the scholar.
8. Once the waiver is received, the scholar may proceed with an H-1B application or other change of status application.

Interested US Government Agencies. If a J visitor is involved in research that is of particular interest to a US government agency (such as Department of Energy or Defense), that agency may support a waiver on the basis that granting the waiver would be in the public interest. If a waiver is required for a Carnegie Mellon sponsored employment position, the scholar's supervisor and required legal counsel will contact the potential interested government agency to determine the correct office, contact name and process for the agency's participation. Some agencies will not assist with waivers. The request must come from the institution, not the exchange visitor. Even in these cases, the J scholar must also proceed with the DOS application as described above.

Travel in J status after Receipt of Statement of No Objection

If you must (1) travel outside the US in J status after receipt of Statement of No Objection, and (2) need a *new* J visa entry sticker for reentry to the US in J status, make an appointment to meet with your OIE advisor. There is no clear indication from the USCIS or DOS about whether this action would subject you to the two-year home residence requirement again. While the consensus is "no" OIE advises against travel in this circumstance unless travel is unavoidable.