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How Do I Get A Waiver Of The Foreign Residence Requirement If I Am An Exchange Visitor?

What is the Foreign Residence Requirement?

A nonimmigrant temporarily enters the United States for a specific purpose. Exchange visitors are nonimmigrants (J-1 status) who participate in the Exchange Visitor Program. This program, which is administered by the Bureau of Consular Affairs, seeks to promote peaceful relations and mutual understanding with other countries through educational and cultural exchange programs. Accordingly, many exchange visitors entering the United States are subject to a requirement that they return to their home country to share with their countrymen the knowledge, experience and impressions gained during their stay in the United States. Unless USCIS approves a waiver for this requirement, exchange visitors must depart from the United States and live in their country of residence for two years before they are allowed to apply for an immigrant visa, permanent residence, or change to a new nonimmigrant status.

Where Can I Find the Law?

The Immigration and Nationality Act is a law that governs the admission of all foreign nationals to the United States. For the part of the law about the foreign residence requirement, please see INA § 212e and INA § 214. The Code of Federal Regulations [CFR] discusses the foreign residence requirement for exchange visitors at 8 CFR § 212.7 and 22 CFR § 514.

Who is Subject to the Foreign Residence Requirement?

You are subject to the foreign residence requirement if you are a (J-1 visa status) participant in the Exchange

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Cited in Popa v. Holder, No. 05-76307, archived on July 10, 2009

Visitor Program and:

Any part of your participation in the exchange program was paid for, directly or indirectly, by your government or the United States Government. Your program sponsor should have noted on your DS-2019 (previously the IAP-66) (Certificate of Eligibility for Exchange Visitor Status) if your program was paid for directly or indirectly by your government or the United States Government. You can also discuss this issue with officials from the Bureau of Consular Affairs. You are from a country which has been designated by Bureau of Consular Affairs as requiring your skills (please see the Exchange Visitor Skill List for more information); or

You arrived in the United States on or after January 10, 1977 to obtain graduate medical education or training.

If you fall into one of the above categories, your dependent spouse and child are also subject to the foreign residence requirement.

Who is Eligible to Apply for a Waiver?

You may be eligible to apply for a waiver for the foreign residence requirement if:

You have a U.S. citizen or lawful permanent resident spouse or child and you can provide evidence that returning to your country would impose exceptional hardship on your spouse or child.

You cannot return to your country because you would be subject to persecution because of your race, religion, or political opinion.

A U.S. government agency requests a waiver directly from the Bureau of Consular Affairs for you because you are engaged in a project of official interest to the agency.

Your country provides a written statement to the director of the Bureau of Consular Affairs stating that your country has no objection to a waiver. (If you came to the United States as an exchange visitor to receive graduate medical education or training, you are ineligible to receive a waiver on this ground.)

An interested Federal agency, any State Department of Public Health or its equivalent sponsors you to work full-time for three years as a nonimmigrant H-1B status (temporary worker in specialty occupation) physician in a geographic area designated as having a shortage of health care professionals. Waiver applicants sponsored by the Department of Veterans Affairs are not required to practice medicine in an area designated as having a shortage of health care professionals. If you are granted the waiver, you must agree to begin your employment within 90 days of receiving the waiver. The request of the interested State or Federal agency is submitted to the director of the Bureau of Consular Affairs.

*Cited in Popa v. Holder,
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How Do I Apply?

If you fall under the first two categories above, you must file a USCIS Form I-612 (Application for Waiver of the Foreign Residence Requirement) by mail with the USCIS office that serves that area where you live. Please read the entire application carefully and submit the right documents, photos, and fee. Forms are available by calling 1-800-870-3676, or by submitting a request through our forms by mail system. For further information on filing fees, please see USCIS filing fees, fee waiver request procedures, and the USCIS fee waiver policy memo. Please see our USCIS Field Offices Homepage for more information on USCIS office locations.

If your government, a U.S. government agency, or a U.S. state is applying for a waiver for you, the government body should apply directly to the Bureau of Consular Affairs for the waiver. The USCIS and the Bureau of Consular Affairs will consider your case, and notify you of their decision. For further information on application for waivers, go to the Department of State Bureau of Consular Affairs Website on this subject.

How Can I Check the Status of My Application?

To check the status of your application, please contact the USCIS office that received your application. You should be prepared to provide the USCIS staff with specific information about your application. Please click here for complete instructions on checking the status of your application.

How Can I Appeal?

If your application is denied by the Bureau of Consular Affairs or the USCIS, you will receive a letter that will tell you why the application was denied. You will also be told whether you have a right to appeal this decision and how you should appeal. For more general information on appealing USCIS decisions, please see How Do I Appeal the Denial of Petition or Application?

Can Anyone Help Me?

If advice is needed, you may contact the USCIS District Office near your home for a list of community-based, non-profit organizations that may be able to assist you in applying for an immigration benefit. Please see our USCIS field offices home page for more information on contacting USCIS offices. You should also contact the Bureau of Consular Affairs if you have questions.

Do you want further information? .

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Please see the State Department Website for more information on exchange visitors.

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