



Approved for Release
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5/20/16
Date

**DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT**

HUMAN RESOURCES (HR) BULLETIN #208, FY16

SUBJECT: Waiver of Exchange Visitors' 2-Year Home-Country Physical Presence Requirement

EFFECTIVE DATE: Upon release of this HR Bulletin

EXPIRATION DATE: Effective until superseded or revoked

SUPERSEDES: None

PURPOSE: This bulletin provides the process of waiving the 2-year home-country physical presence requirement for certain exchange visitors and clarifies the involvement of the Department of Commerce (Department) as an "interested government agency."

BACKGROUND: Certain exchange visitors (J-1) are subject to a 2-year home-country physical presence requirement, which requires an exchange visitor to return to his or her home country for at least 2 years at the end of their exchange visitor program. This is also known as the foreign residence requirement under the Immigration and Nationality Act, section 212(e). If an exchange visitor is unable to return to his or her home country to fulfill the 2-year requirement, he or she must obtain a waiver approved by the Department of State prior to changing status in the United States, or before being issued a visa in certain categories for travel to the United States. One way an exchange visitor may submit this request is through the Department as an interested U.S. Federal Government agency.

COVERAGE: This HR Bulletin applies to certain exchange visitors seeking a waiver of the 2-year home-country physical presence requirement.

POLICY: A Bureau Head/Operating Unit Director may request a waiver to the 2-year home-country physical presence requirement for certain exchange visitors, from the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA) through the Office of Human Resources Management (OHRM). Upon CFO/ASA approval, OHRM will submit the request to the Department of State.

In order for a request from an exchange visitor to be considered, the exchange visitor must be actively and substantively engaged in a program or activity sponsored by, or of interest to, the Department, in accordance with Title 22, Code of Federal Regulations (CFR) § 41.63(c). In addition, it must be explained why granting a waiver is in the public's best interest, as well as the detrimental effect that would result to the program or activity of interest to the Department if the exchange visitor is unable to continue his or her involvement.

PROCESS:

- 1) Bureau Head/Operating Unit Director submits a written request to the CFO/ASA, through the OHRM.
- 2) After a preliminary compliance review, the OHRM will submit the request to the Office of Security (OSY).
- 3) The OSY will conduct a threat assessment, and will provide the OHRM with a recommendation.
- 4) The OHRM will review the recommendation and submit a package to the CFO/ASA that contains: a decision memo for the CFO/ASA; the written request from the Bureau Head; the OSY threat assessment and recommendation; and a "request for consideration" letter to the Department of State for CFO/ASA signature, if appropriate.¹
- 5) Upon approval by the CFO/ASA, OHRM will submit the signed "request for consideration" letter directly to the Department of State's Waiver Review Division, along with all IAP-66 or DS-2019 forms issued to the exchange visitor, his or her current address, and his or her country of nationality or last legal permanent residence.

INSTRUCTIONS FOR THE APPLICANT:

The online application can be found at: <https://j1visawaiverrecommendation.state.gov/>.

The steps for application (below) are illustrated on the Department of State's website: <http://travel.state.gov/content/visas/english/study-exchange/student/residency-waiver/ds-3035-instructions.html>.

Step 1 – Complete the Online J Visa Waiver Recommendation Application

Step 2 – Mail Waiver Application and Fee Payment

Step 3 – Submit Supporting Documents (include all copies of the IAP-66 or DS-2019 forms, current address, country of nationality, or last legal permanent residence) to the Department for consideration as an interested government agency

Step 4 – Check Waiver Request Status and Update Contact Information

Step 5 – If the Waiver Review Division Needs More Information (they contact the applicant)

Step 6 – Processing Times (processing times vary)

Step 7 – Department of State Recommendation and Final Determination by the U.S. Citizenship and Immigration Services (USCIS)

¹ The letter is submitted only if OHRM is recommending approval. The letter must explain why the Department would like to act as an interested government agency.

Information on an interested government agency request on behalf of a foreign physician who agrees to serve in a medically under-served area can be found under step 3 of the application instructions: <http://travel.state.gov/content/visas/english/study-exchange/student/residency-waiver/ds-3035-instructions.html>.

In the case that the waiver recommendation is denied by the Department of State, there cannot be a request for reconsideration or appeal of the decision under an interested government agency basis. An applicant may reapply using another basis for waiver if another basis is pertinent to the situation.

REFERENCES: <http://travel.state.gov/content/visas/english/study-exchange/student/residency-waiver.html>; Title 22, CFR § 41.63(c); Immigration and Nationality Act, section 212(e); <https://j1visawaiwerrecommndation.state.gov/>; <http://travel.state.gov/content/visas/english/study-exchange/student/residency-waiver/ds-3035-instructions.html>.

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