

The Two-Year Home Country Residence Requirement

What is the two-year home country residence requirement?

Certain J-1 Exchange Visitors and their J-2 dependents are subject to the two-year home country residence requirement (also known as the Two-Year Home Country Physical Presence Requirement or The Two-Year Rule) and thus are obligated to return to their home country for at least two years before applying for an H-1B visa or becoming a permanent resident of the U.S.

The two-year home country residence requirement is defined by Section 212(e) of the Immigration and Naturalization Act (INA). J-1 exchange visitors "subject" to Section 212(e) must return to their country of last legal residence for two years or obtain a waiver of this requirement before they are eligible for an employment visa such as H-1B Nonimmigrant Worker or Permanent Residence (Green Card).

J-1 exchange visitors and their dependents (legal spouse and children under age 21) in J-2 immigration status are subject if they meet at least one of the criteria listed below.

-Home Government Funding. J-1 exchange visitors who receive funding directly from their home country's government are subject to the two-year rule. Regional government funding does not apply.

-U.S. Government Funding. J-1 exchange visitors who receive funding directly from the U.S. Government are subject to the two-year rule. Funding received as salary from University of California grants to the department are not considered government funding for this purpose. However, there are some exceptions which include grants that are specifically targeted for international exchange. Fulbright funding is U.S. government funding.

-Funding from an International Organization or Bi-National Commission. J-1 exchange visitors who receive funding from International Organizations or Bi-National Commissions (organizations that receive their funding from government sources), such as, United Nations, NATO, or the European Community, are subject to the two-year rule.

-The Exchange Visitor Skills List. J-1 exchange visitors whose area of specialization has been identified as being in short supply by her/his government of legal permanent residence are subject to the two-year rule. Countries and skills which are on the Skills may be found at the State Department website at http://exchanges.state.gov/education/jexchanges/participation/skills_list.pdf.

-Medical Education and Training. Any J-1 exchange visitor is subject to the two-year rule if he/she is a foreign medical graduate and came to the U.S. to obtain graduate medical education or training.

For further information the State Department has Frequently Asked Questions on their website at http://travel.state.gov/visa/temp/info/info_1294.html.

Are J-2 Dependents subject to the two-year rule also?

If you are a dependent of a J-1 exchange visitor who is subject to the 212(e) two-year home country residence requirement, you are also subject to this requirement. Please note that J-2 dependents must rely on the J-1 scholar to apply for a waiver of the requirement. J-2s may not apply for the waiver separately from the J-1.

If I am subject may I return to the U.S. within two years?

The two year rule does not prohibit a person from returning to the U.S. with some other visas. For example, if the visitor wishes to return as a tourist, student or on another J-1 program and meets the requirements for those visas, the two-year rule does not prohibit this.

When should I see an Adviser at International Scholar and Student Services (ISSS)?

If you have a question about whether you are subject to the 212(e) requirement, or when to apply for a waiver, you should make an appointment to speak with an adviser at ISSS. Note: Applying for waiver of the two-year rule is the personal responsibility of the J-1 scholar. ISSS does not do this on behalf of scholars.

j1 two year rule
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