



## **Exchange Visitor Program** **Two Year Physical Presence Requirement**

The J-1 Exchange Visitor Program is a special program of the US Department of State intended to facilitate educational and cultural exchange between the citizens of the US and citizens of other countries. A US regulation of this program, known as the two-year home country physical presence requirement, may affect some exchange visitors and their J-2 dependents. All exchange visitors must understand this rule and be certain whether or not it applies to them. The information below explains this rule and who is affected by it.

<http://www.exchanges.state.gov/education/jexchanges/participation/waivers.htm>

***Two-Year Home-Country Physical Presence [212(e)].*** Some Exchange Visitor Program participants and family members who were admitted to the U.S. or who adjusted their visa status to J after admission must return home for a minimum of two years after completing their educational or cultural exchange program before they can change or adjust their status. This requirement applies to those whose:

- Exchange program was financed to some extent by the U.S. Government or your home country government;
- The skill you acquire appears that it is in short supply in your home country, according to the U. S. government's "Exchange Visitor Skills List".  
[http://exchanges.state.gov/education/jexchanges/participation/skills\\_list.pdf](http://exchanges.state.gov/education/jexchanges/participation/skills_list.pdf) or,
- Purpose in coming to the United States was to receive graduate medical education or training. For details, see [see CFR 62.44 (e)] or contact the Responsible Officers at the ISO of FGCU. Or,
- You are the J-2 dependent of an Exchange Visitor who is subject to the requirement.

If you have ever been subject to the requirement in the past and have neither obtained a waiver nor met the requirement by spending two years in your country, the original requirement still applies- even if a more current Form DS-2019 reflects no basis for the requirement. In other words, a subsequent J program that does not create a new two-year home country physical presence requirement does not erase the old requirement. Also, if you exit the United States and reenter under a different nonimmigrant status, such as F-1 student, you will still be subject to the original two-year home country physical presence requirement. Once you incur the requirement, you must either spend two years at home or obtain a waiver of the requirement before you can reenter the United States as an H, L, or permanent resident.

### **Intent of the Requirement**

The intent of the requirement is to enable the home country to benefit from the Exchange Visitor's experience in the United States. Exchange Visitors come to this country for a specific objective such as a program of study or a research project. Both the US Government and the home country government are interested in having the exchange visitor return to the home country following completion of his/her program in the U.S. The requirement is intended to prevent participants from staying longer than is necessary to complete their objective, and to ensure that they will spend at least two years in the home country before coming back to the United States for a long-term stay.

### **Terms of the Requirement**

Until you have "resided and been physically present" for a total of two years in your country of citizenship or your country of legal permanent residence, you are not eligible for:

- An H, L, or immigrant visa, or for H, L, or immigrant status in the United States. The H visa category includes temporary workers, trainees, and their dependents. The L category includes intra-company transferees and their dependents. An immigrant is the same as a permanent resident, or holder of a "green card."
- A change of your status, inside the United States, from J to any other nonimmigrant classification except A or G. The A classification includes your home government's diplomats and representatives to the United States government, and their dependents. The G classification includes your government's representatives to international organizations, such as the United Nations, and their dependents.

### **Preliminary Endorsements**

The visa stamp in your passport, your Form DS-2019, or both may show an indication, by a consular officer or an US Border and Customs Enforcement (Immigration) inspector, that you are or are not subject to the requirement. These indications, labeled "preliminary endorsement" on Form DS-2019, are usually accurate but are not legally binding. Even though these endorsements are not final, US immigration usually accepts indications that the Exchange Visitor is subject to the requirement.

### **If You Are Unsure Whether You Are Subject...**

Consult the J-1 Responsible Officers in the International Services Office at Florida Gulf Coast University. The Responsible Officers may need to see your passport, your I-94 Departure Record card, and copies of prior I-94 cards if they are available, and may review other documents to determine whether or not you are subject to this rule.

### **Waivers of the Requirement**

Program participants who are subject to the two-year home-country physical presence requirement, as established by Section 212(e) of the Immigration and Nationality Act, must apply for a waiver of that requirement if they seek to remain in the United States beyond the end date of their programs or if they seek to submit an application to the Immigration and Naturalization Service for a change in visa status.

You would apply to USCIS on Form I-612, “Application for Waiver of the Foreign Residence Requirement of Section 212 (e) of the Immigration and Nationality Act, as Amended.” A waiver may be requested for five statutory bases:

- 1) A claim of Exceptional Hardship to a U.S. citizen or legal permanent resident spouse or child of an exchange visitor if the exchange visitor is required to return to the country of residence;
- 2) A claim that the participant will be persecuted due to race, religion, or political opinions if he/she returns to the country of residence;
- 3) A request from an interested US Government Agency on the participant's behalf;
- 4) A “No Objection” Statement from your government (not permitted for medical trainees). A “no objection” statement usually will not lead to a waiver if the Exchange Visitor has received more than \$2,000 in funding from the United States government.
- 5) A request by a designated State Health Department or its equivalent.

Participants must file an application to receive a recommendation for a waiver with the Department of State. Please refer to the regulations for details. **[22 CFR 41.63]** Information about waivers may also be obtained from the Department of State's [Visa Office http://www.exchanges.state.gov/education/jexchanges/participation/waivers.htm](http://www.exchanges.state.gov/education/jexchanges/participation/waivers.htm) The public inquiry line for waivers is (202) 663-1225; fax (202) 663-3899.

#### **A word of Caution**

This information summarizes some very complex and sensitive issues. It is intended only to help you understand the nature of the requirement, not to serve as a legal reference. Do not assume, from reading this sheet, that you are or are not subject to the requirement. Consult with the Responsible Officers at the International Services Office at Florida Gulf Coast University, an attorney or the US Department of State, Bureau of Educational and Cultural Affairs.