



J-1 EXCHANGE VISITORS

Information on Restrictions on Your Stay in the U.S.

Overview

The J-1 Exchange Visitor program is administered by the U.S. Department of State with the purpose of increasing “mutual understanding between the people of the United States and the people of other countries through educational and cultural exchanges.” The University of Pittsburgh sponsors individuals in J-1 visa status as both students and scholars, and the Pitt community also includes numerous J-2 dependents – the spouse or child (under the age of 21) of a J-1 Exchange Visitor.

The J program is quite versatile as compared to many other visa statuses in the U.S., but it also comes with restrictions that could affect your future in the U.S. This document is meant to explain the restrictions and help you determine how they affect you. You can also contact your Immigration Specialist for information specific to your situation.

There are three restrictions that will be discussed in this document – the Two-Year Home Residency Requirement – also called 212(e), the 24-Month Bar and the 12-Month Bar.

The Two-Year Home Residency Requirement – 212(e)

This restriction is known by several names, including:

- The Two-Year Home Country Physical Presence Requirement
- 212(e) – shorthand for Immigration and Nationality Act, section 212(e), the main federal regulation that discusses this requirement.

Any international visitor in any J status (including J-2 Dependents) **may be** subject to the Two-Year Home Residency Requirement, also called the Two-Year Home Country Physical Presence Requirement, or 212(e) after the federal regulation which discusses it.

What is the Two-Year Home Residency Requirement?

The Two-Year Home Residency Requirement specifies that an individual who is subject must spend an aggregate total of two years in his or her home country before being eligible for the following visa statuses:

- Any H status (including H-1B or H-4)
- Any L status (including L-1 or L-2)
- U.S. lawful permanent residence

In addition, individuals who are subject to 212(e) **may not apply to the USCIS for a change of status to any status** (including F, B, or any other status). Individuals who are subject to 212(e) may exit the U.S., apply for a new visa abroad (for any status other than H, L, or lawful permanent resident), and re-enter the U.S. in the new status.

Who Is Subject to the Two-Year Home Residency Requirement?

International visitors may be selected for the two-year home residency requirement based on three criteria:

- If the exchange visitor's funding comes all or partially, directly or indirectly, from the U.S. government or a foreign government for the purpose of the J-1 program.
- If the field of the J-1 activities are on the skills list specific to his or her home country – the list of fields that the home country government requested to be included.
- The purpose of the J-1 program is for the exchange visitor to receive “graduate medical education or training.”

J-2 Dependents become subject to 212(e) if their primary status-holder, the J-1 Exchange Visitor, is subject.

Individuals who are subject to 212(e) remain subject until either the home-residency requirement is satisfied or the individual obtains a waiver. A J-2 Dependent is no longer subject to 212(e) if his or her primary status holder is granted a waiver.

Note that 212(e) counts aggregate days of presence in the home country after the end of the J-1 program. Physical presence in the home country does not need to be continuous for two years.

How do I know if I am subject to 212(e)?

An individual who is currently in the U.S. in J-1 or J-2 status, or who has been in the past, can look on all Forms DS-2019 (current and historical) to determine whether he or she is subject to 212(e). If the J-1 is subject to 212(e) then the J-2 is automatically subject as well. There is a box on the lower left-hand side of the first page of the DS-2019 which contains information about 212(e). This information should also appear on the J-1 visa.

If you are not sure, contact your Immigration Specialist in OIS for more information.

What if I believe that I should not be subject?

If you believe that you have been selected to be subject to 212(e) by mistake (for instance, if you have been selected because of government financing, but you haven't received government financing), consult your Immigration Specialist. If your Immigration Specialist believes that a mistake has been made, you can apply to the Department of State for an Advisory Opinion on whether you should be subject.

What is my home country for the purpose of 212(e)?

Your “home country” for the purpose of 212(e) is your country of legal permanent residence at the time that you obtained J-1 or J-2 status.

Is my field of specialty on the Exchange Visitor Skills List for my home country?

The most current version of the Exchange Visitor Skills List is available on the web at:

<http://travel.state.gov/content/visas/english/study-exchange/exchange/exchange-visitor-skills-list.html>

The 2009 Skills List applies to exchange visitors who receive their J-1 visa on or after June 28, 2009, and whose country is on the 2009 Skills List. Exchange visitors who entered the U.S. prior to June 28, 2009 continue to be governed by the skills list that was in effect when they received their J-1 visa. Exchange visitors whose countries were removed from the 2009 Skills List, are, retroactively, not subject to the two-year home residence requirement based on the Exchange Visitor Skills List, even if they entered the United States prior to the effective date.

Applying for a Waiver of 212(e)

If you are subject to the Two Year Home-Residency Requirement – 212(e) – and you do not wish to satisfy the requirement by spending an aggregate total of two years in your home country, you may apply to the Department of State for a waiver.

Important Note: If you are thinking of applying for a waiver of the Two-Year Home Residency Requirement, speak to your Immigration Specialist first. There are implications of applying for a waiver of 212(e) that you should understand first. *In particular, you will be unable to extend your J-1 or J-2 status after acquiring the waiver.*

For more information about applying for a waiver of 212(e), visit this web site:

<http://travel.state.gov/content/visas/english/study-exchange/student/residency-waiver.html>

The 24-Month and 12-Month Bars

The two other restrictions that apply to J-1 Exchange Visitors and their dependents are the 24-Month Bar and the 12-Month Bar. Both of these restrictions share some elements in common:

- They prevent an individual from becoming a **J-1 Research Scholar** or **J-1 Professor**. These restrictions have no effect on any other J category, or any visa status other than J-1.
- They are activated by previous stays in the U.S. in J-1 or J-2 status. If you have never been in the U.S. in J-1 or J-2 status, neither of these restrictions apply to you (though they may in the future if you are currently in J-1 or J-2 status).
- There is **no waiver procedure** for these restrictions.
- Unlike 212(e), there is **no physical presence requirement** for these restrictions. You can spend the 24 months or 12 months of the restriction either in the U.S. or outside the U.S.

The 24-Month Bar

Federal regulations stipulate that there must be a 24-month gap between an individual's stays in J-1 Research Scholar or J-1 Professor status. If you have been in the U.S. in J-1 Research Scholar or J-1 Professor status in the past 24 months, and your program ended (either because you changed to a different visa status or because you ceased your J-1 activities and departed the U.S.), then you may not begin another J-1 Research Scholar or J-1 Professor program.

Examples:

- Alan was in the U.S. as a J-1 Research Scholar from January 1, 2007 through June 30, 2007. At the end of June, Alan's research project was over and he departed the U.S. His record in the SEVIS database was deactivated. Now Alan cannot re-enter the U.S. as either a J-1 Research Scholar or J-1 Professor until July 1, 2009 – 24 months after his previous J-1 Research Scholar program ended.
- Bo was in the U.S. as a J-1 Professor from December 1, 2005 through November 30, 2006, at which time he changed status to H-4. Starting on December 1, 2008 – 24 months after his J-1 Professor program ended – Bo will be eligible to start a new J-1 Research Scholar or J-1 Professor program.
- Ciara was in the U.S. as a J-1 Research Scholar from November 1, 2007 through February 28, 2008, working on a joint research project between the University of Pittsburgh and her home institution in Italy. From March 1, 2008 through June 30, 2008, she will continue her work on the research

project from Italy. Because she notified her Immigration Specialist of this plan before departing the U.S., Ciara's SEVIS record was never deactivated. She is eligible to use her valid DS-2019 to re-enter the U.S. as a J-1 Research Scholar on July 1, to continue work on the research project here at Pitt, because her J program never ended and the 24-month bar was never activated.

The 12-Month Bar

- Federal regulations stipulate that after completion of any J program or time in J status that **exceeded 6 months**, one may not start a J-1 Research Scholar or Professor program for 12 months.

Examples:

- Deepti is currently in the U.S. in J-2 status and is the spouse of an individual in J-1 status. She is offered a position as a post-doc, and her employer wants her to change status to J-1 Research Scholar. However, Deepti is not eligible to change status from J-2 to J-1 Research Scholar if she has been in J-2 status for more than 6 months. She cannot become a J-1 Research Scholar or J-1 Professor within 12 months of having held J-2 status in the U.S. (However, Deepti can certainly get J-2 work authorization to work as a post-doc).
- Eamon was in the U.S. as a J-1 Student from August 15, 2003 through July 15, 2007, at which time he left the U.S. Now he is working as a researcher at a university in Ireland and his home institution would like to pay him to come do research at the University of Pittsburgh as a J-1 Research Scholar. However, Eamon will not be eligible to become a J-1 Research Scholar until July 16, 2008 – 12 months after his previous J program ended.
- Feng came to the U.S. as a J-1 Short-Term Scholar from June 1, 2007 through December 31, 2007 and then left the U.S. He impressed his supervisor at the University of Pittsburgh so much that he's been invited back as a J-1 Professor, with an intended start date of August 25, 2008. It's perfectly ok for him to enter the U.S. as a J-1 Professor on August 25, because J-1 Short-Term Scholar is the only category of J status that does not activate the 12-month bar.