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## **J-1 Visa waiver of two-year residency requirement**

### **Overview**

Some J-1 visa holders are subject to a 2-year foreign residency requirement. Such visa holders are ineligible for an immigrant visa, adjustment of status, change of status, or to be granted H or L visas unless the visa holder returns and physically resides in his/her home country for 2 years.

### **Reasons for 2-year requirement**

- J visa holders participating in an exchange program that is financed in whole or in part, directly or indirectly, by an agency of the government of the U.S. or by the government of his/her nationality or last residence; or
- J visa holder's admission was to engage in a field which was on the DOS skills list

### **Waivers of 2-year requirement**

- Possible Persecution
  - On account of race, religion, or political opinion.
- Exceptional Hardship (direct or indirect)
  - Economic, physical, and emotional hardship; loss of employment, educational, and health opportunity.
  - Hardship to spouse/children: emotional, financial, or educational career.
  - More liberal approach:
    - Alien imparted some benefit to U.S.
    - Alien participated in program at his/her own expenses.
    - Program of short duration (disproportional, i.e. 90 days for 2-year residency)
- No Objection Waiver
  - If J visa holder's home country issues a no objection statement regarding J's decision not to return home;
  - A no objection statement from the home country is generally held insufficient if U.S government provided direct or indirect funding for the purpose of participating in an educational or cultural program.
  - Application procedure: apply through country's embassy in the U.S.
- Request by U.S. Agency
  - Initiated by U.S. agency that has interests.
  - Must show granting of waiver is in public interest and compliance with 2-year residency requirement would be "clearly detrimental" to a program or activity of official interest to agency.
- International Medical Graduate
  - A foreign medical graduate may obtain a waiver through recommendation issued by an interested state or federal agency interested in facilitating the physician's employment in a designated medically underserved area.

### **Procedures**

USCIS can grant a waiver only after DOS makes a favorable recommendation to USCIS. DOS procedure to obtain waiver is a four-part process:

1. Applicant must first submit a Data Sheet to DOS/Waiver Review Division with two self-addressed legal-size envelopes and a fee (currently \$230.00). Send Data Sheet and fees to St. Louis, MO.

2. DOS then sends case number and instruction sheet for waiver application to applicant.
3. For persecution and hardship waiver requests, the applicant will then file I-612 with the appropriate USCIS Service Center. For the interested U.S. agency and no-objection types of waiver, the individual or agency will then submit a waiver application to DOS.
4. DOS will then review the application and then forward its recommendation to USCIS, applicant and J-1 sponsor.

If the waiver request is denied, the applicant may seek administrative review or judicial challenge.