

#17-26 Two-year rule

Exchange visitors and their J-2 dependents may be subject to Section 212(e) of the Immigration and Nationality Act, commonly referred to as the two-year rule, two-year home residency requirement, or 212(e). Exchange visitors subject to the rule must fulfill the physical presence requirements (physically present in their home country for an aggregate of two years or obtain a waiver) before becoming eligible for H visas, changes of status applications, or adjustments to US permanent resident status.

Introduction

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Part 1 Subjectivity

Part 2 Fulfillment (how to satisfy)

Part 3 Evidence (how to find out)

Part 4 Advisory opinions

Part 5 Waiver

Part 6 Important remarks

Before they fulfill the two-year rule requirement, they may return to the US with a new visa (other than H, K, L, and immigrant/permanent residence visas). This means that they can rejoin the exchange program or be admitted as an F-1/M-1 student before fulfilling the requirements.

For assistance, contact FUSIA at +1 718 643 0311 ext. 11 (office) or +1 917 244 2600 (WhatsApp chat).

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J-1 Visa Application & US Entry > #17-26 Two-year rule

Page 2 of 7

Part 1 Subjectivity

Two-year rule

Exchange visitors may be subject to Section 212(e) or a two-year home-country physical presence requirement if they:

- Receive funding from the government of their nationality
- Receive funding from the government of their last residency
- Receive funding from the US government
- Intern in a field that the subject/field code that appears on the [Exchange Visitor Skills List*](#)
- Participate in a graduate medical education or training program sponsored by the [ECFMG](#)
- Are a J-2 dependent of an exchange visitor who is subject to the requirement

*List of areas and fields identified by foreign governments as having a short supply of workers in that country

Subjectivity means exchange visitors and their accompanying J-2 dependents must spend at least two years in their home country (or the last country of legal permanent residency, if applicable) following their exchange program before they become eligible to apply for:

- H-1B (temporary worker) visa
- L (intra company transferee) visa
- K (fiancé/e) visa
- Adjustment of Status to permanent residence
- A change of status inside the US to any other non-immigrant classification except A (diplomats and dependents) or G (representative to international organizations)

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J-1 Visa Application & US Entry > #17-26 Two-year rule

Page 3 of 7

Part 2 Fulfillment

Two-year rule

The Section 212(e) requirement applies to exchange visitors until the requirement is satisfied or waived.

As an example, an exchange visitor who is subject to the requirement left and returned to the US using another type of visa (e.g., F-1, J-1). The requirement would still apply to them even after completion of their second program.

To satisfy this requirement, exchange visitors who are subject to Section 212(e) must be physically present in their country of nationality (or last legal permanent residency, if applicable) for an **aggregate** of at least two years after departing the US at the end of their exchange program or obtain a waiver from the USCIS.

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J-1 Visa Application & US Entry > #17-26 Two-year rule

Page 4 of 7

Part 3 Evidence

Two-year rule

Generally, it is not clear whether an exchange visitor is subject to the two-year rule until the consular officer makes a preliminary determination regarding subjectivity when issuing the visa. Evidence of whether or not an exchange visitor is subject to the two-year rule may be found in the exchange visa or Form DS-2019.

- Refer to the line "Bearer (is/is not) subject to section 212(e) or Two-year rule (does/does not) apply" on the exchange visa
- Refer to the lower left-hand corner of Form DS-2019 (next to the consular officer's stamp)

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J-1 Visa Application & US Entry > #17-26 Two-year rule

Page 5 of 7

Part 4 Advisory opinions

Two-year rule

As errors on the 212(e) notation on the visa stamp or Form DS-2019 are common and an individual's circumstances may change after arrival to the US, the preliminary determinations as stated on the exchange visitor's visa stamp can be subject to the final ruling by the Bureau of Consular Affairs in Washington, DC.

Possible allowances include:

- Extend or transfer current J-1 status within the maximum duration allowed
- Return under the temporary visitor program (e.g., B-1/B-2)
- Return to study (e.g., F-1) or work in certain employment statuses (e.g. O-1)
- Return or change to a A (diplomatic) or G (international organization) status
- Return under a new J-1 program (restrictions apply, e.g., a limit on repeat participation)

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J-1 Visa Application & US Entry > #17-26 Two-year rule

Page 6 of 7

Part 5 Waiver

Two-year rule

If participants cannot fulfill the requirement, they may apply for a waiver of 212(e) from USCIS. Possible grounds for a waiver include the following:

Request a “No Objection Statement” from the exchange visitor’s home government. Generally not possible when US government funds are involved or for foreign medical graduates.

- Step 1 Obtain a waiver case number
- Step 2 Contact the exchange visitor’s consulate or embassy in the US
- Step 3 Have the letter be sent directly to the DOS
- Step 4 The DOS will then make a recommendation to the USCIS
- Step 5 The USCIS will then make the final determination

Fear of prosecution. If the exchange visitor can demonstrate that the exchange visitor will be persecuted upon return to their home country due to race, religion, political opinion, membership in a particular social group or nationality.

- Step 1 Submit an application for waiver directly to the USCIS
- Step 2 The USCIS will then forward the decision to the Waiver Review Division

Exceptional hardship to the spouse or child who is a US citizen or legal permanent resident. If the exchange visitor demonstrates that returning to the home country would result in extreme hardship to spouse or child who is a US citizen or legal permanent resident.

- Step 1 Submit an application for waiver directly to the USCIS
- Step 2 The USCIS will then forward the decision to the Waiver Review Division

The interest of a US government agency. If an exchange visitor is working on a project for or of interest to a US federal government agency and that agency has determined that the visitor’s continued stay is of sufficient importance to its programs,

- Step 1 Have the agency prepare an Interested Government Agency (IGA) signed by the head of the agency or its designee
- Step 2 Apply directly to the Waiver Review Division
- Step 3 The DOS will then make a recommendation to the USCIS
- Step 4 The USCIS will then make the final determination

Medically underserved areas. Along with a request of a designated State Public Health Department or its equivalent, a physician who is subject to the two-year rule may qualify for the waiver based on employment in medically underserved areas.

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J-1 Visa Application & US Entry > #17-26 Two-year rule

Page 7 of 7

Part 6 Important remarks

Two-year rule

- 1 Whether or not an exchange visitor is subject to the two-year rule is determined by the specialization and their country of nationality (or last permanent residency, if applicable).
- 2 The two years of physical presence may be aggregated. As such, there is no need to reside in the country of nationality or legal permanent residency in a single, continuous two-year period.
- 3 Be sure to keep all documents to prove that the applicant has resided and was physically present in the required country for an aggregate period of two years after their exchange program has ended.
- 4 FUSIA does not assist participants in applying for a waiver of 212(e). Participants should seek assistance from experienced immigration attorneys.
- 5 The waiver can only be applied using only one waiver basis. Applicants cannot file more than one waiver applications at a time. Keep the Form DS-2019 as it will be required to apply for a waiver.

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