

## 2 (TWO)-YEAR HOME COUNTRY PHYSICAL PRESENCE REQUIREMENT

This page provides information on the 2-year home country physical presence requirement that applies to many J-1 Students, Professors, Short-term Scholars, Research Scholars, *and* their J-2 dependents. Whether or not you are required to spend 2 years in your home country after your visit in the U.S. will depend on very complex and sensitive issues; this page explains the basics of the requirement but should not serve as a legal reference.

### **Intent of the 2-year home stay requirement:**

The intent of the requirement is to have your home country benefit from your Exchange Visitor experience in the United States. Exchange Visitors come to the U.S. for a specific objective such as a program of study or a research project. The requirement is intended to prevent a participant from staying longer than is necessary to complete the objective and to ensure that he or she will spend at least two years in the home country before coming back to the U.S. for a long-term stay.

### **You are subject to the 2-year requirement if:**

- 1) Your participation is or was funded in whole or in part, directly or indirectly, for the purpose of the exchange, by your home government or the United States government; or
- 2) You are acquiring a skill (as a J-1 Exchange Visitor) that is in short supply in your home country, according to the U.S. government's "Exchange Visitor Skills List;" or
- 3) You are the J-2 dependent of an Exchange Visitor subject to the requirement.

**Note:** If you have ever been subject to the requirement in the past and have not fulfilled it by spending two years in your country (or obtained a waiver), you must still fulfill the requirement, even if your current DS-2019 does not show a present basis for the requirement.

### **Terms of the 2-year requirement:**

Until you have "resided and been physically present" in your home country for two years, you are not eligible for:

- 1) An H, L, or immigrant visa, or for H, L, or change to immigrant status while residing in the United States. H includes temporary workers, trainees, and their dependents. L includes intra-company transferees and their dependents. An immigrant is the same as a permanent resident, or "green card" holder.
- 2) A *change* of your status, inside the United States, from J to any other nonimmigrant classification except A or G.

### **Can I rely on the notations on my DS-2019 or on the visa stamp in my passport?**

The visa stamp in your passport, your Form DS-2019, or both, may show an indication (by a consular officer or an Immigration Inspector) that you are or are not subject to the requirement. These indications, labeled "preliminary endorsement," are generally accurate *but are not legally binding*. Even though these notations are not final, if they state that the Exchange Visitor *is* subject to the requirement, Immigration usually accepts it.

### **If you are unsure whether the 2-year homestay applies to you . . .**

Consult your J-1 Responsible Officer at the University of Alaska Fairbanks. Be sure to take your passport, your DS-2019, and a copy of your electronic I-94 DHS Arrival/Departure Record. The Responsible Officer can often tell from the source of funding, or the Exchange Visitor Skills List, whether or not the requirement applies to you. Another option would be for you to request an advisory opinion from the U.S. Department of State.

**Waiver of the requirement:**

Five grounds exist for waiving the 2-year homestay requirement:

- 1) Exceptional hardship to your spouse or unmarried minor child who is a citizen or permanent resident of the United States. If, for example, you had a child who was born in the U.S. and was therefore a citizen of the U.S., and if the child had a serious medical condition that could not be treated in your country, you might obtain a waiver because the child would suffer a hardship if forced to go to your home country.
- 2) Fear of persecution. If you can demonstrate that, because of your race, religion, political opinions, or nationality, you would face persecution by your home government if you went back to your country, you might qualify for a waiver.
- 3) Interest of a United States government agency. If your participation in research or a project sponsored by a U.S. government agency is of sufficient importance to that agency, the agency can apply to the Department of State for a waiver for you – in its interest, not yours.
- 4) A “no objection” statement. Your country’s embassy in Washington can indicate in a direct letter to the Department of State that it has no objection to you receiving a waiver, or the foreign ministry in your capital at home can write to the U.S. embassy there. A “no objection” statement will usually **not** lead to a waiver **if** the Exchange Visitor has received more than \$2,000 in funding from the U.S. government. (Information on the application of a waiver of the 2-year home-country physical presence requirement may be found on the U.S. Department of State website at: [http://travel.state.gov/visa/temp/info/info\\_1296.html](http://travel.state.gov/visa/temp/info/info_1296.html).)
- 5) A request by a designated State Health Department or its equivalent.