

J-1 Scholar to H-1B Specialty Occupation Worker



J-1 Exchange Visitors in the Research Scholar or Professor Category may hold J Status for a maximum of 5 years. Scholars interested in changing their immigration status should reach out to their inviting department.

Who is Subject to the Two-Year Residency Requirement?

- If your J-1 participation is or was funded in whole or in part, directly or indirectly, for the purpose of exchange, by your home government or the United States government (this can include publicly-funded Universities and Organizations that receive governmental funding)
- If, as a J-1 Exchange Visitor, you are acquiring a skill that is in short supply in your home country, according to the United States government's "Exchange Visitor Skills List"
- If you have participated as a J-1 in a graduate medical education or training program, i.e. a residency, internship, or fellowship, sponsored by the Educational Commission for Foreign Medical Graduates
- If 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 fulfilled it by spending two years in your country, it still holds—even if a more current Form DS-2019 reflects no basis for such a requirement.

What are the consequences of being subject to the Requirement?

If you are subject to the requirement, then, until you have "resided and been physically present" for a total of two years in either your country of nationality or your country of legal permanent residence, **you are not eligible for:**

- An H, L, or immigrant visa (green card), or for H, L, or immigrant status in the United States. H includes temporary workers and their dependents
- A change of immigration status, inside the United States, from J to any other nonimmigrant classification except A or G (diplomats).

Exchange Visitors must have one of the following if they wish to change to H-1B status:

- Advisory Opinion indicating "not subject" to the 2 Year Home Residency Requirement
- Screenshot of a Favorable Recommendation from the US Department of State Required / Ideally a Form I-612 Approval Notice from USCIS as well
- Documents proving that the J Exchange Visitor fulfilled the Two-Year Home Residency Requirement in the J's country of last legal residence upon completion of most recent J program (applies to both J-1s and J-2s)

Why Apply for an Advisory Opinion?

- Immigration documents might state that a J-1 is not subject to the requirement, but it could be incorrect or outdated
- During the adjudication of an H-1B petition, USCIS can send a Request for Further Evidence asking for Proof that someone is not subject. Waiting for an Advisory Opinion can take weeks or months that would delay the adjudication of the H-1B petition

Applying for a Waiver of the 2 Year Home Residency Requirement

- If the J is subject to the requirement, Department should extend the J Program to the 5th year as soon as possible. The J-1 can then submit a Waiver Application to DOS. It cannot be done in the opposite order. **Waivers can take almost a year so do not wait until it is too late!**
- Do not submit a waiver application before contacting ISSS as we cannot extend or transfer a DS-2019 once DOS recommends a Waiver.
- Apply for a waiver online at <https://travel.state.gov/content/travel/en/us-visas/study/exchange/waiver-of-the-exchange-visitor/how-to-apply-waiver.html>

J-1 Scholars in the 3rd or 4th year of their J program who wish to remain in the US after completion of their J Program should request an [Advisory Opinion from the US Department of State \(DOS\)](#) to officially determine if they are subject. However, s/he will need to obtain new Advisory Opinion if new DS-2019 Forms are issued to the scholar.

SAMPLE TIMELINE

Years 1 & 2	Year 3	Year 4	3 Months Prior to J-1 Program End Date
Decide if the program is a good fit between J-1 Scholar and Department	If Dept extends DS-2019 to 5th Year Maximum, J-1 can apply for waiver once DS-2019 is extended. Do not apply for a waiver if DS-2019 is only extended through the 3rd or 4 th Year.	J-1 should apply for a waiver no later than 4th year but only after J program has been extended for full 5 years	Employer should submit H-1B Petition at least 3 months prior to the end of J Program but only if J-1 Residency Requirement has been satisfied or if J-1 has Advisory Opinion indicating s/he is not subject to the Requirement