

J-1

2-Year Home Residency
Requirement

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A more straightforward way to figure this out

- Check your passport



On your J-1/J-2 visa page, there is a specific annotation that will tell you if you're subject/not subject to the 2-year residence requirement.

- Check your Form DS-2019

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A DS-2019 Form is a government form on which your invitation sender certifies to the U.S. Embassy that you are eligible to receive a J-1 visa. This form includes your SEVIS tracking number, your program, and duration of study.

If you are still not sure about it, you may contact your program supervisor or immigration specialist at school. You can also request that the Department of State, Waiver Review Division conduct an advisory opinion. They will review your exchange visitor program documents to determine if you are subject to the requirement.

If you need help with your J1 waiver, please contact us at contact@augustnetwork.com

2. What does it mean if I'm subject to the requirement?

It means you must return to your home country for a cumulative total period of at least two years. You are not prohibited from traveling to the United States with a valid visa. However, you cannot do any of the following until you fulfill this requirement:

- Change status in the United States to a non immigrant temporary worker (H) or intracompany transferee (L);
- Adjust Status in the United States to immigrant visa/lawful permanent resident status (LPR);
- Receive an immigrant visa at a U.S. Embassy or Consulate; or
- Receive an temporary worker (H), intracompany transferee (L), or fiancé (K) visa.

A couple of things to emphasize:

- You cannot receive H,L or K visa before you remove the requirements. It doesn't matter if it's change of status in the USA or Request a visa through consular processing at foreign countries. You will not be issued any of those visa before you fulfill the requirement or waive your J1.

Exception: USCIS generally takes the approach that if the previous J-1 holder is not in the U.S. in another status, then change of status to another nonimmigrant category (even H or L) is permitted. USCIS considers the regulation barring change of status to apply only to those who are currently holding J-1 status, so if you use F1 to enter the USA after your J-1 program, then you can get a H visa if there is sponsorship for you.

- You can apply for O visa. However, you won't be able to change your status in the USA. You need to leave USA and get a visa, then come back. This will not automatically remove your requirement. Sooner or later, you will have to get rid of the requirements before proceeding with other types of applications.
- You can also apply for F visa. Same as O visa, you won't be able to change your status in the USA. You can acquire the F visa through consular processing and come back to USA to attend school. This won't remove the requirement automatically,
- You may change your status to diplomatic and other government officials (A visa) or representatives to international organizations (G visa) even if you are subject to the residence requirement without removing it.

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In other words, in order to be eligible for any kinds of immigrant/non-immigrant in general, you have to either

- Stay at your home country for two years cumulatively or
- Apply for a waiver and get approved

There is a provision in U.S. law for a waiver of this requirement by the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS). The former exchange visitor must apply for the waiver. The Department of State, Waiver Review Division must recommend the waiver to USCIS. Learn more about requesting a waiver at item 4.

3. Is J-2 subject to the requirement?

As J-2 holder (the spouse or child of J-1 holder) will be subject to the requirement if J-1 holder is.

When the J-1 holders have successfully waived their visa, J-2 will be automatically included in the waiver recommendation application. J1 holder needs to list J2 when completing the application for waiver recommendation, Form DS-3035.

However, if J-1 holder chooses to stay at home country physically, J-2 holder most likely won't be able to apply for waiver unless

- J-1 spouse/ parent dies (a copy of your J-1 spouse/ parent's death certificate will be required);
- J-1 and J-2 divorce; (a copy of the divorce decree will be required);
- J-2 child reaches age 21; (birth certificate will be required)

When you apply for waiver, you should also submit a statement explaining

- Why you are applying for a waiver while the J-1 holder not
- Why your situation merits special consideration

If none of the situations above applies to you, you will have to physically follow the two-year requirement before you may change your status or proceed to other types of applications.

4. Can I apply for I-140/I-130

Even though you may not file for adjustment of status to another non-immigrant visa status if you are subject, filing either I-140 or I-130 won't be a problem. But you have to get your J-1 waived or met the residency requirement before you file I-485/consular processing.

5. Can HRR build up?

Yes. It might sound absurd, but each program may have their own residence requirement. If you used two different programs, you may have two J-1 to waive

I Waiver Eligibility

If you are subject to this requirement, but not able to fulfill it, you may apply for a waiver. Specifically, you may apply to the Department of State, Waiver Review Division for a recommendation that USCIS grant a waiver. Your waiver request must be under any one of the five applicable bases in U.S. immigration law at one time. Choose the one basis that you qualify for or applies to your situation. We will talk about J-1 waiver application in details in our next article. If you are interested in the preparation, please see our article about J1 waiver.

Five Bases for Recommendation of a Waiver

1. No Objection Statement

The most common basis for J-1 waiver. Your home country government may issue a No Objection Statement, through its **embassy in Washington, DC**. The embassy must send the No Objection Statement to the Waiver Review Division. It must state your government has no objection to you not returning to your home country to satisfy the two-year home-country physical presence requirement and no objection to the possibility of you becoming a lawful permanent resident of the United States.

Alternatively, a designated ministry in your home government may issue the No Objection Statement. The ministry would then send it to the U.S. Chief of Mission, Consular Section at the U.S. Embassy within that country. The U.S. Embassy would then forward it to the Waiver Review Division.

***Important Notice:** U.S. law does not permit foreign medical physicians who acquired exchange visitor (J-1) visa status on or after January 10, 1977, to receive **graduate medical education or training** to use this option. For more information about the relevant U.S. law, see References – U.S. Laws, number 1.

2. Request by an Interested US Federal Government Agency:

Are you working on a project for or of interest to a U.S. federal government agency? And has that agency determined your departure for two years would be detrimental to its interest? If so, that agency may request an Interested Government Agency Waiver on your behalf. The head of the agency or his or her designee must sign the Interested Government Agency request and submit it to the Waiver Review Division.

Any U.S. federal government agency may request a waiver under this basis. It is a list of interested government agencies and names of their designated officials. (NOTE: This list does

not contain information for all U.S. federal agencies. It contains information only from agencies that provided the Waiver Review Division with individuals authorized to sign letters for waivers under this basis.)

3. Persecution:

Do you believe you will be persecuted based on your race, religion, or political opinion if you return to your home country? If so, you may apply for a persecution waiver. You must **submit Form I-612, Application for Waiver of the Foreign Residence Requirement**, to USCIS. USCIS will forward its decision to the Department of State's Waiver Review Division. The Waiver Review Division will proceed with the waiver recommendation under this basis only if USCIS makes a finding of persecution.

4. Exceptional Hardship to a U.S. citizen (or lawful permanent resident) spouse or child of an exchange visitor:

Can you show that your departure from the United States would cause exceptional hardship to your U.S. citizen or lawful permanent resident (LPR) spouse or child? If so, you may apply for an exceptional hardship waiver. Mere separation from family is not sufficient to establish exceptional hardship. You must submit **Form I-612, Application for Waiver of the Foreign Residence Requirement**, to USCIS. USCIS will forward its decision to the Department of State's Waiver Review Division. The Waiver Review Division will proceed with the waiver recommendation under this basis only if USCIS makes a finding of exceptional hardship.

5. Request by a designated State Public Health Department or its equivalent

Are you a foreign medical graduate who obtained exchange visitor status to pursue graduate medical training or education? If so, you may request a waiver based on the request of a designated State Public Health Department or its equivalent., You must meet the following criteria. (This waiver category is also known as the Conrad State 30 Program.) You must:

- have an offer of full-time employment at a health care facility in a designated health care professional shortage area or at a health care facility which serves patients from such a designated area.
- agree to begin employment at that facility within 90 days of receiving a waiver; and
- sign a contract to continue working at that health care facility for a total of 40 hours per week and for not less than three years.

Review the listing of **State Public Health Departments**. Each department can request 30 such waivers per federal fiscal year. 10 of the 30 requests may be for exchange visitor physicians who will serve at facilities not located in a designated health care professional shortage area, but

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serve patients who live in a designated area. The state public health department will send its request to the Waiver Review Division if it agrees to sponsor you for a waiver. For information about the U.S. laws that created this waiver category, see **References – U.S. Laws**, numbers 4 and 5.

August Network is a professional educational and legal consulting boutique firm. Since 2015, we have successfully helped over 1,200 clients with their academic and career placement, and immigration needs. We owe this success to our passion for equipping people with the skills and knowledge they need to advance forward. If you are interested in Green Card or Visa evaluation, please send us your CV for an inquiry to **contact@augustnetwork.com**

Sources: <https://travel.state.gov/content/travel/en/us-visas/study/exchange/waiver-of-the-exchange-visitor/eligibility.html>

<https://www.uscis.gov/visit-the-united-states/change-my-nonimmigrant-status>