

Regulations Unique to the J Visa

The Tenure Bar

Employees in a tenure track or tenured position are not eligible for J-1 status.

The Two Year Home Residence Requirement

The two year home residence requirement is not an eligibility requirement for participation in the J-1 program. It is briefly discussed here because it may be easily confused with the 24 months bar. You may be subject to the two-year home residence requirement, as set out in Section 212(e) of the Immigration and Nationality Act, for one or more of the following reasons:

- *Foreign medical graduates*
- *Skills List (the education, skill, or training that you are pursuing in the United States appears on the Exchange Visitor Skills List for your home country)*
- *Government funding (You received funding from the United States government, your home government, or an international organization, specifically in connection with participation in the Exchange Visitor Program)*

You are subject during your initial entry as a J. Change of program and entry in different immigration status does not erase 212e. Accompanying J-2 dependents are subject to the requirement if you are subject. Notations on form DS 2019 or visa are occasionally wrong. If you believe you should not be subject, you may request an Advisory Opinion. If you are subject to 212e, you are not eligible for lawful permanent residence (green card) or for H or L visas, until you have been physically present in your home country for a total of at least two years following departure from the United States; OR until you have received a waiver of the requirement. Also, you are not permitted to change status in the United States, except to A or G. You may leave the United States and apply for any other non-immigrant visa types, except permanent residency, H, and L.

Fulfilling the 212e Requirement

As a general rule, you fulfill the requirement by physically staying in your home country for an aggregate period of two years.

Applying for Waiver of the two year requirement:

Only the J-1 principle can apply for waiver. In exceptional cases, such as in case of a death or divorce, or where a J-2 child turns 21, the J-2 can apply for waiver, with the Department of State acting as an “Interested Government Agency.” A waiver granted to the J-1 applicant covers J-2 dependents, unless a J-2 dependent had J-1 status him or herself and was subject to the requirement. Applications to waive the home residence requirement are considered on one of the following bases:

- *Statement of no objection from the home country*
- *Extreme hardship to a U.S. citizen or permanent resident spouse or child*

- *Fear of persecution*
- *Interest of a U.S. government agency*

A detailed procedure for filing a waiver application can be found on the Department of State website at http://travel.state.gov/visa/temp/info/info_1296.html.

Effect of Receiving a Waiver

Recommendation: When the Department of State completes reviewing your application, they will send a waiver recommendation letter to the United States Citizenship and Immigration Services, and a copy to you and your program sponsor. The USCIS makes the final decision on your waiver application. Once the waiver recommendation has been given, there can be no extension of Form DS-2019 beyond the end date on your form. Also, you may not transfer to a new J-1 program after the DOS waiver recommendation is issued.

The 12-Month Bar

You may not begin an exchange program as a PROFESSOR or RESEARCH SCHOLAR based on a DS 2019 “to begin a new program” if you were physically present in any J status (including J-2 status) for “all or part of” the 12 month period immediately preceding the start date on your DS-2019.

Exceptions:

- *Transfer of program*
- *Presence in J status for less than 6 months*
- *Presence in J status in the Short Term scholar category*

The 12- month bar applies to anyone who has been in any J-1 or J-2 status for 6 months or longer, in the 12 month period immediately preceding the proposed DS-2019 start date, unless the individual is transferring to a new program sponsor or his / her presence in the United States was as a J-1 Short Term Scholar. Exchange visitors who were previously in the Research Scholar or Professor Category, whose program ended on or after November 18, 2006 are considered under the rules of the 24 month bar, explained below. Persons subject to the 12 month bar are not eligible to start a new J-1 program in the Research Scholar / Professor category until they have been out of J status for at least 12 months from the end date of the previous DS-2019.

The 24-Month Bar

The Department of State increased the maximum duration of participation in the J program for the Professor and Research Scholar categories from 3 years to 5 years, effective November 18, 2006. Along with this good news, DOS also imposed a 24 month bar against “repeat program participation” for Research Scholars and Professors who “complete” their program on or after November 18, 2006.

The 5 year period is continuous, not aggregate. It begins on the initial program begin date documented in SEVIS at the time the SEVIS record is VALIDATED, and ends five years later. During the 5-year window, a Research Scholar or Professor may participate in one or more

programs. Program participation may be extended all the way through 5 years, as long as the SEVIS record is ACTIVE. If a program is “COMPLETED”, and the completion is effected in SEVIS, rendering the record INACTIVE, the 24 month bar is triggered. The scholar is then barred from participating in the Professor or Research Scholar category again at any institution for a period of 24 months following the end date of the program as identified in SEVIS, regardless of the length of time spent on the program.

FREQUENTLY ASKED QUESTIONS ABOUT THESE REGULATIONS

I have heard that there are three bars to participation in J-1 status as a Professor or Research Scholar. Please explain what the bars are.

First, a J-1 scholar in the Professor category must not be a candidate for tenure. Second, an individual coming back to the United States to begin a new program as an exchange visitor in the Professor or Research Scholar category must not have been physically present in any J status for all or part of the 12 month period immediately preceding the start date on his or her DS-2019; unless the individual is transferring to a different J-1 program sponsor; or the presence in J status was for less than 6 months; or the presence in J status was as a Short Term scholar. This rule is called the 12 month bar. Third, a rule popularly known as the 24 month bar came into effect on November 18, 2006. The rule applies to exchange visitors who were in the Research Scholar or Professor category and whose SEVIS (Student and Exchange Visitor Information System) record becomes inactive on or after November 18, 2006, as a result of program completion or for other reasons. The rule bars these scholars from repeating program participation or participating in a new program as Research Scholar or Professor, unless they have been out of the J Research Scholar or Professor Category for at least 24 months from the date their SEVIS record becomes inactive.

Please explain the difference between the 12 month and the 24 months bars.

While both the 12 and the 24 month bar affect individuals wishing to return to the United States to pursue J-1 programs in the Research Scholar or Professor category, the 24 month bar rule applies to an individual who has been in a J-1 status as a Research Scholar or Professor for any period of time within the past 24 months, and whose SEVIS record is inactive, on or after November 18, 2006. The 12 month bar rule applies to an individual who has been in any J status (except Short Term) for 6 months or longer, within the past 12 months. The 12 month bar does not apply if the individual is transferring to a new program sponsor.

Is the 24 month bar different from the two year home residence requirement?

Yes. The two year home-country physical presence requirement under section 212(e) of the Immigration and Nationality Act provides that exchange visitors whose programs are financed in whole or in part, directly or indirectly by either their government or by the U.S. government, are required to reside in their home country for two years following completion of their program before they are eligible for an immigrant visa or permanent residence status, H-1B visa, or L-1 visa. Furthermore, exchange visitors acquiring a skill which is in short supply in their home country (the skills are listed in the Exchange Visitors Skills List) will also be subject to the two

year home residence requirement. The requirement is also applicable to alien physicians entering the United States to receive graduate medical education or training. Exchange visitors who are subject to the two year home-country physical presence requirement are not eligible to change their status while in the United States to any other nonimmigrant category except that of official or employee of a foreign government (A) or an international organization (G), as applicable.

I am a Short Term scholar pursuing a five months J-1 program. When I finish this research program I would like to return to the U.S. to pursue a longer term project as a Research Scholar. Will I be subject to the 12 month or the 24 month bar?

Neither. The 12 month bar does not apply to an individual who was in a Short Term category. The 24 month bar applies to an individual who was in the Research Scholar or Professor category.

I was an exchange visitor in the Research Scholar category from August 4, 2006 to November 3, 2006 (three months). I would like to return to the U.S. for three more months of research in June 2007. I have heard about the 24 month bar. Does it apply to me? How about the 12 month bar?

The 24 month bar became effective on November 18, 2006. The Department of State has stated that it applies only to those who completed their program on or after the rule became effective. Therefore, the 24 month bar does not apply to you. Assuming you return as a Research Scholar or Professor, the 12 month bar does not apply to you because your previous program participation was for less than 6 months. Since you intend to return for less than 6 months, it is best for you to return as a Short Term scholar because as a Short Term scholar you will not be subject to the 24 months bar, upon completion of your program.

I taught a French seminar in the department of French and Francophone Studies for one semester last fall (August to December 2006) in the J-1 Professor category. The director of French Studies has asked me to teach again in the fall semester 2007. What bars am I subject to, if any?

If your SEVIS record is inactive, you are subject to the 24 month bar. Check with the Responsible Officer in the International Services office to see if your SEVIS record is active. You will have to wait for 24 months from the date that your record became inactive, before you can return to LSU or any other institution as a Professor or Research Scholar. Check with the RO to see if you may be eligible to return to lecture, in the Short Term scholar category.

My husband is a Postdoctoral fellow conducting research in oceanography. He is a Research Scholar in J-1 status. I am his J-2 dependent and have been in this status for one year (December 15, 2005 to December 14 2006). I have been working on my Ph.D. thesis for the past year. Recently, I went to my home university in Melbourne and successfully defended my thesis. I have been offered a faculty position to teach at LSU starting this coming fall. Can I return in a J-1 status of my own?

If this is a tenure track position, you are not eligible for J-1. The law provides that a J-1 scholar shall not be a candidate for tenure. If you are not subject to the two year home residence requirement, the appropriate visa classification for you is an H-1B1. Check your visa and DS-2019 to make sure that you are not subject to 212(e). If your husband is subject to the requirement and has not obtained a waiver, you are subject too. Since Australia is not on the Exchange Visitor Skills List, the reason you could be subject is if your husband received funds (regardless of how little the amount) from the US or Australian government to pursue his J-1 program. If you are subject, talk to the International Services office to see if you may be eligible to return with an E-3 visa for Australians. Getting an E-3 visa will not wipe out the 212(e) requirement for you. You will still need a waiver of the requirement or evidence of fulfillment in order to change to almost any status within the United States or to obtain an H-1B1, L-1 or immigrant visa at the consulate abroad. If the position is an instructorship which does not lead to tenure, you may return as a J-1 Professor, if the 12 month bar does not apply to you. We will need to establish whether you will have been in the J-2 status or other applicable J status for 6 or more months of the 12 months period immediately preceding the intended start date of your new program as J-1 Professor.

Must I fulfill the 12 month and 24 month bar in my home country?

No, unlike the two year home residence requirement which requires that you fulfill the requirement by physically residing in your home country, the 12 and 24 month bars do not require you to return to your home country. Residence in a third country will suffice. In fact, you do not have to be outside the country at all. You just need to be out of the J classification for the appropriate period. For example, if you were a Research Scholar for one year and then changed status to F-1 and pursued studies for one year, the 12 months bar would not apply to you if you wanted to return to research in the J-1 Research Scholar category. However, you would be barred from participating as Research Scholar by the 24 month bar. You will need to wait for one more year before you can be eligible for repeat participation.

I was in a J-1 status for one year. Then my department sponsored me for H-1B1 status for one year. Unfortunately, my contract will not be renewed and I must change back to J-1 as I need about 8 more months to complete related aspects of my research. I can personally fund myself for this research program.

Your SEVIS record must have been completed as a result of the change of status to H-1B; if your SEVIS record is inactive, you may be eligible for another J-1 in the Research Scholar category only after 24 months from the effective date of your change of status. However, you may be eligible for a J-1 in the Short Term Scholar category without any waiting period, if you can complete your research in 6 months rather than 8, and if your program sponsor is agreeable to the idea of changing back to a J-1 status.

I was a J-1 scholar in the Research Scholar category for 6 months (from June 15 2006 to December 15 2006) in the department of Food Science. I had to return to my home institution to teach, but I planned to return to LSU in the fall of this year to continue the collaborative research with Dr. Octopi. Dr. Octopi knows this. You can ask him. In fact, I have been gathering more data here in Thailand to use in our research when I return.

However, I have been told that my SEVIS record was completed and I cannot return to my research earlier than two years from the date of completion. This research is very important and urgent. Please send me a new DS-2019 so that I can apply for a visa.

Unfortunately, we will not issue a new DS-2019 in the Research Scholar category under these circumstances. It is very important that you communicate your research plans not only with your colleagues or supervisor, but also with the International Services Office, as well as the human resource representative in your department. We received a separation form from your departmental human resource representative indicating that you completed your research; and neither you nor Dr. Octopi informed us of your plans for continued collaboration. We regret this communication breakdown. We may, however issue a new DS-2019 for you in the Short Term scholar category. Please confirm whether you will be able to complete your research in six months or less.