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Immigration Law Partners, LLP
Everything You Need to Know About J-1 Waivers
William A. Stock • Lana Spaic • Nigel D. James
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The J-1 Visa
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• Exchange visa program
• Common for post-doctoral research
• Biggest consideration is the two-year home residency requirement and whether this will apply in a given case

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# J-1 Two-Year Home Residency Requirement

- Two-year foreign residence requirement applies to some (not all) J Exchange Visitors
- Before a J Exchange Visitor who is subject to 212(e) may obtain certain immigration benefits, they must:
  - Reside in home country or country of last permanent residence for aggregate of at least 2 years following termination of exchange visitor status; OR
  - Obtain a waiver of the foreign residency requirement
- Contribution to the nation of international "exchange"
- Helps prevents "brain drain"

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# Who is Subject to 212(e)?

- Only subject if:
  - Exchange Visitor Skills List
    - Creative advocacy opportunity
    - Country of last residence vs. home country
  - Government financing (home country or U.S. funding)
  - Graduate medical education training
- J-2 dependent is subject to 212(e) if the J-1 is subject

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## What Can't You Do if Subject?

- Not eligible for immigrant visa or adjustment of status to lawful permanent resident
- Not eligible for H, L, or K nonimmigrant visa stamp
- Not eligible to change nonimmigrant status within the U.S. from J to any other nonimmigrant category, except:
  - A (diplomatic);
  - G (international organization); OR
  - U (victims of qualifying criminal activity)

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## J-1 Waiver Types

- No objection statement
- Exceptional hardship to qualifying relatives
- Persecution
- Interested government agency

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# No Objection Statement

- Quickest and easier waiver
- Usually not helpful if U.S. or international organization funding
- Attitudes of different countries
- Process:
  - File DS-3035 online and pay fee
  - Request home government statement (each country's process is different). Statement sent directly to Department of State (DOS)
  - When DOS recommends, they forward to USCIS with copy to applicant
  - USCIS issues approval

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# Persecution Waiver

- Individualized persecution
- Similar to asylum
  - Fear of persecution based on race, religion, political opinion if return to home country
- Process:
  - File DS-3035 online and pay fee
  - File I-612 with USCIS
  - If USCIS grants the I-612, it will forward to DOS
  - When DOS recommends, they forward to USCIS with copy to applicant
  - USCIS issues approval

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# Exceptional Hardship Waiver

- Hardship to U.S. citizen or LPR spouse or child
- Hardship must be "exceptional"
- Very difficult
- Process:
  - File DS-3035 online and pay fee
  - File I-612 with USCIS
  - If USCIS grants the I-612, it will forward to DOS
  - When DOS recommends, they forward to USCIS with copy to applicant
  - USCIS issues approval

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# Interested Government Agency Waiver – Non-Physicians

- Agencies with formal application processes
  - Identifying agencies with interest in your research
  - General Process
  - DOD, DOA, HHS, DOE, NASA, NSF
- Creative advocacy for other agencies

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# Interested Government Agency Waiver - Physicians

- Research track
  - Usually through HHS
  - Peer review process – unlike USCIS filings
  - Importance of research program, essentiality and uniqueness of foreign national, future of program and future of foreign national
- Clinical track
  - Federal agencies (VA, DRC, ARC, etc) or "Conrad 30" by state
  - Must be Health Professional Shortage Area (HPSA), Medically Underserved Area (MUA), or Medically Underserved Population (MUP), or serving patients who reside in a HPSA, MUA, or MUP
  - Conrad 30 / Flex 10
    - Each state is allowed to sponsor up to 30 physicians each year

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# Interested Government Agency Waiver - Physicians

*Cont'd*

- Process for Conrad 30:
  - Admitted to U.S. to receive graduate medical training
  - "50 ways to 50 waivers" (every state has own process and criteria)
  - File DS-3035 online and pay fee
  - Enter into bona fide, full-time employment contract to practice medicine in H-1B nonimmigrant status for at least 3 years at a qualifying health care facility
  - Obtain no objection statement from home country (if required owing to government funding)
  - Agree to begin employment at health care facility within 90 days of grant of waiver

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Other Strategies for Those Subject to 212(e)
• O-1 Extraordinary Ability
• Status of Spouse
• Canadian “Loop-Hole”
• Accumulate time abroad
• State Department as Interested Government Agency

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Questions?

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