

The ABC's Of Immigration: J-1 Visas for Exchange Visitors

by Gregory Siskind

What is a J-1 Visa?

The J-1 visa is given to those who will be entering the US to participate in an approved educational or cultural program. It is one of the more complex types of visas, so we will be breaking our coverage of it into three articles. In this first article, we deal with the visas themselves, while later articles will address J-1 program designations and waivers of the two-year home residency requirement.

The J-1 non-immigrant visa category was created to promote educational and cultural exchange activities between the United States and other countries. First begun in 1948, the J-1 exchange visitor program is presently overseen by the State Department. The program went through a major overhaul in 2003 with the implementation of the Student and Exchange Visitor Program (SEVP). The program requires the J sponsors to track their exchange visitors and report certain changes in their program or personal information, as well as other activities, electronically. Also, the SEVP has implemented a new exchange visitor fee of \$100 for each J visitor, effective September 1, 2004. The exchange visitor program is credited with exposing millions of foreign visitors to the United States, its peoples, cultures, business techniques and educational institutions.

What is a J-1 exchange visitor?

The J-1 exchange visitor is broadly defined by the Immigration and Nationality Act (INA) as an alien having a residence abroad, which he has no intention of abandoning, who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge; who is coming temporarily to the United States as a participant in a program designated by the State Department for the purpose of teaching, instructing, lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training.

What type of exchange programs are available?

Exchange programs are available for the following individuals:

- o College and university students
- o Secondary school students
- o Short-term scholars
- o Trainees
- o Teachers
- o Professors and research scholars
- o Specialists
- o Alien physicians

- o International and government visitors
- o Camp counselors
- o Summer work/travel students
- o Au pairs
- o Special education exchange visitors

What are the specifications of each program?

The limits of a person's stay in each type of program, as well as the activities allowed in each program, are discussed below.

College and University Students

The J-1 student visa category is reserved to those who are pursuing a full-time formal course of study at a college or university, and to those who are receiving English language training at an accredited educational institution. J-1 students are eligible for two types of employment — academic training and student employment. For academic training, it must be related to the field of study, the student must be in good academic standing, and the school's responsible officer must approve it in writing. Part time (no more than 20 hours a week) student employment is allowed if it is part of a scholarship or fellowship, is on campus, or is off campus and necessary because of unforeseen economic circumstances. This employment authorization is valid until the course of study is over, or 12 months, whichever is less. Following the completion of studies, undergraduate and pre-doctoral students are eligible for up to 18 months of practical training, and post-doctoral students are available for up to 36 months of training.

Secondary School Students

Foreign students can attend secondary schools in the US for at least one but no more than two semesters on a J-1 visa. Along with providing a place at school for the visitor, the program sponsor must also secure a host family with whom the student will stay. The screening process for host families is a rigorous one. J-1 secondary students are not authorized to work, except for intermittent work such as babysitting.

Short-Term Scholars

This category encompasses professors, research scholars or persons with similar skills who are coming to the US to lecture, observe, consult or participate in workshops, seminars, conferences, and the like. The purpose of the short-term scholar category is to foster professional relationships between US and foreign scholars. The maximum period of entry for short-term scholars is six months, and no extensions are authorized. Unlike the others J-1 categories, there is no minimum period of stay in the US.

Trainees

This category is reserved for individuals seeking to enhance their skills in either "specialty" or "non-specialty" occupations. Training in unskilled occupations is not available. Under State Department rules, the following fields are eligible for training programs:

- o Arts and culture
- o Information media and communications
- o Education, social sciences, library science, counseling and social services
- o Management, business, commerce and finance
- o Health-related occupations
- o Aviation
- o Science, engineering, architecture, mathematics, and industrial occupations
- o Construction and building trades
- o Agriculture, forestry and fishing
- o Public administration and law
- o Other fields specified by the program sponsor

The training cannot duplicate training the alien has already received, and must provide training at the appropriate level. The maximum period of stay is 18 months, 24 months for aviation training programs.

Teachers

This category is available to individuals teaching full-time in a primary or secondary school. To be eligible for a J-1 teachers visa the person must meet the following requirements:

- o Be qualified to teach primary or secondary school in their home country
- o Meet the standards of the US state in which they will teach
- o Be of good reputation and character
- o Intend to teach full time at an accredited primary or secondary school
- o Have three years of teaching experience.

Professors and Research Scholars

Professors are aliens who have come to the US to teach, lecture, observe or consult at post-secondary educational institutions. They may also conduct research unless their program sponsor specifically forbids it. Research scholars are individuals who are in the US primarily to conduct research, observe or consult at research institutions, educational institutions and similar organizations. Unless specifically forbidden by the program sponsor, research scholars may teach and lecture. The position filled by the J-1 alien must be temporary. J-1 professors and research scholars may enter for a three-year period, initially, and the program sponsor may approve a six-month extension. After this extension, the person's stay can be extended another three years, with the approval of the State Department.

Specialists

Specialists are experts in a field of specialized knowledge or skill. They may come to the U.S. to observe, consult or demonstrate special skills. The category specifically excludes short-term scholars, professors and research scholars, and alien physicians in graduate medical training. The maximum authorized stay in the US is one year.

Alien Physicians

Graduates of foreign medical schools may enter the United States to pursue graduate medical training or education. This category is highly regulated. The program sponsor for foreign medical graduate students who will be involved in more than incidental patient contact is the Educational Commission for Foreign Medical Graduates (ECFMG). Other programs can sponsor alien physicians so long as there will be little or no patient contact, and the program involves observation, consultation, teaching or research. When other programs than the ECFMG sponsor J-1 physicians, they must include a special certification regarding the amount of patient care that will be provided. The duration of authorized stay is generally limited to the time necessary to complete the program or seven years. Caution: Individuals participating in this category are automatically subject to the two-year home country physical presence requirement of INA §212(e).

International and Government Visitors

This category is reserved for the exclusive use of US federal, state or local government agencies. International visitors are those selected by the State Department for consultation, observation, training or demonstration of special skills in the US. Government visitors are essentially the same, only they are selected by governmental agencies. The maximum period of stay for international visitors is 12 months, and for government visitors it is 18 months.

Camp Counselors

A foreign national who is at least eighteen-years of age and either a bona fide youth worker, student, teacher or an individual with a special skill may qualify as a summer camp counselor. This category is limited to a four-month stay.

Summer Work/Travel Students

This category allows sponsors to bring foreign university students to the US during their summer vacations to travel and work in the US. Sponsors are encouraged to select visitors who, because of their distance from the US, would most likely not be able to afford to come to the US without temporary work authorization. This is the only J-1 category in which the number of foreign nationals the sponsor helps enter the US must be the same as the number of US students it sends abroad.

Au Pairs

The au pair program is one of the most closely monitored of the exchange visitor programs. The category allows the entry of individuals between the ages of 18 to 26, who are coming to perform childcare services for a US host family while attending a post-secondary school. The foreign national must be proficient in English and a high-school graduate. Prospective au pairs are extensively screened, including a background investigation, criminal check, physical and psychological exams. The screening process for

host families is almost as demanding. The host family must pay the au pair at least the minimum wage, and cannot request the au pair to provide more than 45 hours of childcare a week. The au pair must also be provided with a private bedroom. An au pair cannot be placed in the following situations: there is a child under three months in the home, unless a parent is home as well, or in a family where there are children under 2, unless the au pair has over 200 hours of prior infant care experience. The program sponsor must provide the au pair with at least eight hours of child safety instruction, and at least 24 hours of child development instruction.

Special Education Exchange Visitors

This category is limited to fifty individuals per year and permits an alien to enter the US for up to 18 months to obtain practical training and experience in the education of children with physical, mental or emotional disabilities.

How does the exchange visitor program work?

Each exchange visitor must be sponsored. The sponsor of the J-1 visa program is a legal entity designated by the State Department to conduct an exchange visitor program. The following entities are eligible to apply for designation as a sponsor:

- o United States federal, state and local government agencies;

- o International organizations of which the U.S. is a member and which have an office in the United States; or

- o Reputable organizations that are citizens of the United States.

The sponsoring entity is required to submit an application (DS-3036) to the State Department through the Student and Exchange Visitor Information System (SEVIS) and to comply with all provisions of 22 CFR Part 514. Once the program is approved, it receives notification through the SEVIS system. Alternatively, if State Department has not designated the organization as a sponsor, the organization may participate in the program through an intermediary, known as an umbrella organization, which acts as the sponsoring agency.

How do I know if I am subject to the two-year home country physical presence requirement?

An alien admitted in J-1 status may be subject to a two-year foreign (home country) residence requirement. Without a waiver of this requirement, the alien is not eligible to apply for a change within the US to a non-immigrant visa, any change to permanent residence, or any change to an H or L non-immigrant visa. This two-year period must be spent in the alien's home country, or the country in which they last permanently resided before coming to the US. An alien is subject to the home residence requirement if:

- o The alien's participation in an exchange visitor program was financed by the

government of the country of his or her last residence;

- o At the time of admission, the alien was a national or resident of a country which the Department of State had designated as clearly requiring the services of individuals with the alien's special skills or knowledge; or
- o The alien came to the United States to receive graduate medical education or training.

Limited waivers of the two-year foreign residence requirement are available in certain situations. The ways in which a waiver can be obtained will be discussed in a future article.I-485.

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