

Technical Advisory No. 9

Foreign Guest Researcher & Special Volunteer Programs by NIH

I. DEFINITIONS

Guest Researcher:

Receives no compensation from the NIH but uses its facilities, equipment, and resources, otherwise unavailable to that person, to further his or her own research or training.

Special Volunteer

Performs services for the NIH, without compensation from the NIH, under the direction of a senior scientist. Also known as Adjunct Scientist.

II. VISA STATUS

A. J-1 (Exchange Visitor) Research Scholar Visa Status

1. In most instances a foreign Guest Researcher or Special Volunteer will require a J-1 visa in the **Research Scholar** category under the sponsorship of NIH's Exchange Visitor Program. The NIH J-1 **Research Scholar** Exchange Visitor Program is primarily for post-doctoral level, highly-qualified individuals. Those individuals without the equivalent of at least a Master's Degree are not eligible for this program.
2. A Research Scholar is subject to the two-year home country physical-presence requirement of the Exchange Visitor Program **if any of the following applies:**
 - the source of funding comes directly or indirectly from the United States government or from the scientist's home country government;
 - the scientist's professional or skills area is on the Country Skills List of the Department of State (DOS); or
 - the scientist (Special Volunteers only) is an alien physician sponsored by the Educational Commission for Foreign Medical Graduates (ECFMG)
3. Usually a foreign scientist receiving income from a U.S. source (e.g., a foundation or grant) will require sponsorship under NIH's own J-1 Exchange Visitor program. There are several other J-1 sponsoring arrangements also possible at NIH; however, the time limitation is three years, except for ECFMG sponsorship:
 - Sponsorship by the ECFMG of participants coming to NIH as alien physicians in accredited clinical training programs; all those so sponsored are automatically subject to the two-year home country physical-presence requirement. Only Special Volunteers are to be sponsored by ECFMG (see 4. below). ECFMG's J-1 (medical trainee) authority is valid for the length of



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- time required to complete the training program and become Board eligible in a specialty, or subspecialty, which can vary from three to seven years.
- Recipients of a World Health Organization (WHO) fellowship (for research training) are sponsored under WHO's J-1 program; transfer to NIH's J-1 program is not possible. WHO's J-1 authority is valid for a maximum length of three years with a possible six-month extension.
- WHO grantees (to conduct independent research) must be sponsored under NIH's J-1 program. NIH's J-1 authority is valid for a maximum length of three years with a possible six-month extension.
- Recipients of a Fulbright fellowship are sponsored for DOS by the Council on the International Exchange of Scholars (CIES). Through a special agreement between the Fulbright Program and NIH, transfer to NIH's J-1 program is possible only when there is sufficient time remaining in J-1 status (see Technical Advisory 6), and a Visiting Program award/appointment is requested. Fulbright **does not** honor transfers to other agencies, institutions or universities. CIES' J-1 authority is valid for a maximum length of three years, with a possible six-month extension.

4. Because a Guest Researcher works independently, he or she is not covered under the Federal Tort Claims Act against malpractice claims. A Guest Researcher cannot be sponsored under the ECFMG J-1 program nor should he or she have any patient contact. The suggested option is to sponsor such an individual as a Special Volunteer, who will be covered by the Federal Tort Claims Act.

5. The Division of International Services (DIS) provides full visa, immigration and related administrative support for J-1 Guest Researchers and Special Volunteers.

B. B-1 (Business) Visa Status

1. If a Guest Researcher/Special Volunteer is totally funded by the home country and the funds are not sent to the United States for disbursement, he or she **may** be eligible to conduct **independent** research under a B-1 Temporary Visitor's Visa for Business. The decision whether an individual is eligible for this status rests **entirely** with the U.S. Consul at the U.S. Embassy or Consulate General where the visa application is made. The DIS will furnish the individual a letter to facilitate entry into the U.S. in B-1 status. If the Consul finds the individual ineligible for this status, the IC must request J-1 visa assistance from the DIS.

2. Under a B-1 visa an individual may not receive funding, compensation, honoraria, etc., from any U.S. source except for reimbursement of incidental travel expenses (i.e. travel and per diem) only. For further details about the B-1 visa see Technical Advisory 5.

Note: DOS is in the process of revising regulations governing the B-1 visa. The final regulations may be more restrictive and less applicable to Guest Researcher/Special Volunteer programs than the current regulations. Supervised individuals such as those in the Special Volunteer category may not qualify for this status in the future.



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3. An individual on a B-1 visa is usually at NIH for a three- to six-month period. Extensions may be requested of the U.S. Citizenship and Immigration Services (USCIS) in up to six-month increments. There is no appeal to the USCIS regarding in adverse decision.

Note: DIS provides the B-1 applicant a letter to facilitate application for the visa and entry into the U.S. under B-1 status. In addition, the DIS must see each individual at the time of arrival at NIH to review documents, record immigration data, and provide advice about visa status. These are requirements established within NIH to comply with other agencies' statutes and regulations.

C. Visa Waiver Program

An alien classifiable as a B-1 visitor can be admitted without a visa under the terms of the Visa Waiver Program, in WB (waiver for business) status. The following countries currently participate in the Visa Waiver Program: Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, Netherlands, New Zealand, Norway, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, United Kingdom, Uruguay. Individuals admitted under the Visa Waiver Program may enter the U.S. for visits of 90 days or less. They are **not** eligible for extensions of stay, **nor** for change to another nonimmigrant status.

D. J-1 (Exchange Visitor) College and University Student Visa Status

A nonimmigrant, full-time student at a local university on a J-1 "Student" Visa may be at NIH as a Special Volunteer or Guest Researcher (if he or she meets NIH's requirements) **provided** specific written permission to be at NIH is received from the J-1 Responsible Officer at the university.

Permissible activities outside the university environment are limited, however a J-1 student may participate in academic training programs during his or her studies, **without wages or other remuneration**, with the approval of the academic dean or advisor **and** the J-1 Responsible Officer.

A J-1 Student may be authorized to participate in academic training programs **for wages or other remuneration** during his or her studies, if the criteria, time limitations, procedures, and evaluations listed below are satisfied:

1. Criteria

The student:

- is primarily in the U.S. to study rather than engage in academic training;
- is participating in academic training that is directly related to his or her major field of study at the institution listed on his or her Form DS-2019;
- is in good academic standing with the educational institution; and,
- receives written approval in advance from the J-1 Responsible Officer for the duration and type of academic training.



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2. *Time Limitations*

The student is authorized to participate in academic training for the length of time necessary to complete the goals and objectives of the training, provided that the amount of time for academic training:

- is approved by the academic dean or advisor and approved by the J-1 Responsible Officer;
- does not exceed eighteen months, inclusive of any prior academic training in the U.S., or the period of the full course of study in the U.S., whichever is less; except, additional time for academic training is allowed to the extent necessary for the Exchange Visitor to satisfy the mandatory requirements of his or her degree program in the U.S.;
- for postdoctoral training, does not exceed a total of thirty-six (36) months, inclusive of any prior academic training in the U.S. as an Exchange Visitor, or the period of full course of study in the U.S., whichever is less. A new Form DS-2019 must be issued by the educational institution for each eighteen-month period.

Note: Post degree academic training may be granted for up to eighteen months, provided the individual has not used previously any portion of this allowance.

3. *Procedures*

To obtain authorization to engage in academic training, the Exchange Visitor must present to the Responsible Officer of the educational institution a letter of recommendation from the student's academic dean or advisor setting forth:

- the goals and objectives of the specific training program;
- a descriptions of the training program, including its location, the name and address of the training supervisor, number of hours per week, and dates of the training;
- how the training relates to the student's major field of study; and
- why it is an integral or critical part of the academic program of the Exchange Visitor student.

4. *Evaluations*

The educational institution must evaluate the effectiveness and appropriateness of the academic training in achieving the stated goals and objectives in order to ensure the quality of the academic training program.



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5. Part-time employment opportunities for J-1 students

Exchange Visitor students may engage in part-time employment when the student employment:

- is pursuant to the terms of the scholarship, fellowship, or assistantship;
- occurs off-campus when necessary because of serious, urgent and unforeseen economic circumstances which have arisen since acquiring Exchange Visitor status.

Exchange Visitor students may engage in part employment if the:

- student is in good academic standing at the educational institution;
- student continues to engage in a full course of study, except for official school breaks and the student's annual vacation;
- employment totals no more than 20 hours per week, except during official school breaks and the student's annual vacation; and
- the J-1 Responsible Officer has approved the specific employment in advance and in writing. Such approval may be valid up to twelve months, but is automatically withdrawn if the student's Exchange Visitor program is terminated.

E. J-2 (Dependent of J-1 Visa Holder) Status

As a general rule, an individual in J-2 visa status is eligible to participate in the Guest Researcher and Special Volunteer programs; however, he or she must obtain employment authorization from the U.S. Citizenship and Immigration Services (USCIS) before they can begin. DIS will supply the employment authorization application packet with all necessary instructions upon request; however, the individual must apply independently.

F. F-1 (Student) Visa Status

F-1 Students can be granted a maximum of twelve months of post-completion practical training after graduation, provided the student has not exhausted all training opportunities prior to graduation. Under some circumstances, the Designated School Official (DSO) [or Foreign Student Advisor (FSA) at some universities] may authorize the student to be at NIH in conjunction with his or her degree program. Students must personally pursue such arrangements directly with the DSO or FSA. Written permission by the DSO or FSA is mandatory and must accompany requests for Guest Researcher/Special assignments.

G. B-2 (Tourist) Visa or Visa Waiver for Tourists (WT) Status

A Guest Researcher/Special Volunteer may not conduct research at the NIH in B-2 (Tourist) or WT status (under the Visa Waiver Program). There are no exceptions to this rule.



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H. Collaborative Research and Development Agreements (CRADA)

A U.S. organization (e.g., research institution, company) that has a CRADA arrangement with the NIH occasionally may hire a nonimmigrant who spends time at the NIH as a Guest Researcher/Special Volunteer. This individual is an employee of the organization, not of the NIH. The CRADA **employer** may petition for an H-1B (Temporary Alien Worker in a Specialty Occupation) visa for the employee to perform a specific service at a specific location. IC staff **may not** sign any immigration-related documents to assist the company in applying for this status.

The CRADA organization **may not** list the NIH, the individual IC, the laboratory, not the sponsor as the employer or petitioner on the H-1B petition.

Note: NIH employees and other individuals present at NIH in related capacities **may not** sign any documents to assist foreign scientists with immigration-related matter. This includes letters to the Department of State or the U.S. consul abroad, the U.S. Citizenship and Immigration Services (USCIS), or any other agency, academic institution, U.S. Congress, or foreign government. Only DIS is authorized to communicate with these entities on immigration-related issues.

I. Permanent Resident Status

Permanent Residents of the United States are eligible to participate in the Guest Researcher and Special Volunteer programs and need not be processed through the DIS.

J. Other Visa Categories

For other infrequently occurring visa categories, contact DIS for further information relating to eligibility to participate in the Guest Researcher/Special Volunteer programs. Other visa categories occasionally encountered at NIH are:

- A-1 and A-2 (Dependents of diplomatic officials)
- G-4 (Dependent of Employee of an International Organization)
- TN [North American Free Trade Agreement (NAFTA)]. Available to Canadian and Mexican citizens only. (Refer to Technical Advisory 14)

III. IC PROCESSING SUPPORT

A. Guest Researcher/Special Volunteers with J-1 Status

1. Submit request to DIS 90 days in advance of expected start date of Guest Researcher/Special Volunteer assignment if individual is coming from abroad, 120 days if individual is already in the U.S., or is a Special Volunteer sponsored by ECFMG.
2. Supporting Documentation for Non-NIH Visiting Program Participant must be completed for all NEW and RENEWAL requests. This memorandum covers all information and documents necessary to process a request, and is to be forwarded to DIS with NIH Form 590.

Note: If package is incomplete or late, processing may be delayed.



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- If critical documents and/or information are missing, the case will be returned by DIS to the IC, accompanied by a checklist indicating the items and/or documents that must be supplied.
- If a NEW case is received late and cannot be processed in sufficient time, it will be returned to the IC for start-date adjustment.

3. Ensure that the Guest Researcher/Special Volunteer reports to the DIS upon arrival at NIH.

4. **Special Volunteers only:** Include a "Four-Point" memorandum if the IC is requesting incidental patient contact for a foreign medical graduate (See Technical Advisory 4a for further information). A change from "no patient contact" to "incidental patient contact" should not be requested during an assignment period.

Note 1: A Four-Point memorandum is not required for renewal of an appointment if there is no change in the research program.

Note 2: An applicant who is being sponsored by ECFMG does not need a Four-Point memorandum.

5. Submit a termination memorandum to DIS when the Guest Researcher/Special Volunteer leaves NIH. This enables NIH to provide the requisite information to the Department of State if the individual is in J-1 status, and to properly "close" the case.

B. Guest Researchers/Special Volunteers in B-1 and WB Status

1. **B-1 Visa:** The sponsoring scientist sends a letter to the candidate Guest Researcher/Special Volunteer inviting him or her to visit the IC to conduct independent research. It is very important to emphasize that:

- **no funds** will be provided from NIH or elsewhere in the U.S., and
- the visit is in a **non-work** capacity. **Only** the U.S. Consul at the U.S. Embassy or Consulate General can determine the applicant's eligibility for this status.

2. **WB Status:** The above mentioned letter should be presented to the Department of Homeland Security (DHS) official at the port of entry into the U.S.

3. Ensure that the Guest Researcher/Special Volunteer reports to the DIS upon arrival at NIH.

4. Submit a termination memorandum to DIS when the Guest Researcher/Special volunteer leaves NIH.



C. Guest Researchers/Special Volunteers with Other Immigration Status (including F-1, J-2, A-1, A-2, G-4, TN)

1. Procedure for F-1 Visa Holder:

- To request post-completion Optional Practical Training (OPT), the F-1 student submits U.S. Citizenship and Immigration Services (USCIS) Form I-538, "Notification by Designated School Official for Nonimmigrant Student Program Extension, School Transfer, or to Accept or Continue Employment," and his or her current Form I-20 ID, "Certificate of Eligibility for nonimmigrant (F-1) Student Status," to the DSO.
- OPT must be approved by the DSO, who certifies on Form I-538 that the proposed employment is directly related to the student's major area of study and commensurate with the student's educational level.
- The DSO endorses the date on Form I-20 IS to show that OPT is recommended and lists the name of the employer.
- The student submits USCIS Form I-766 and the DSO's recommendation on Form I-20ID to USCIS to request an Employment Authorization Document (EAD).
- USCIS adjudicates the application. If it is approved, USCIS issues employment authorization visa the EAD for OPT not to exceed 12 months.

2. For all visa categories, IC staff must ensure that (a) Guest Researcher/Special Volunteer reports to the DIS upon arrival at NIH, and that (b) a termination memorandum is submitted to DIS when the individual leaves NIH.

Note: If the individual is on a J-2, A-1, A-2, or G-4 visa (or, in certain circumstances, on another type of visa) and is supported by personal funds, a letter from him or her stating that fact also must be attached to Form NIH 590.

IV. IC GENERAL INFORMATION FOR SPONSORS OF GUEST RESEARCHERS AND SPECIAL VOLUNTEERS

IC Key Contacts are encouraged to send current and future sponsors the following information concerning Guest Researchers and Special Volunteers.

A. New Assignments

In order for a foreign scientist to come to the NIH as a Guest Researcher or Special Volunteer under a J-1 visa classification, DOS requires verification that the individual will have sufficient funds for personal support during the entire length of stay in the U.S. Thus, you must indicate on Form NIH 590, "Special Volunteer and Guest Researcher Assignment," the amount of yearly funding (converted into U.S. dollars, if in a foreign currency) the foreign scientist will have, the period of time funding will be provided, and all sources of that funding. The minimum funding established by NIH for J-1 visa holders is \$25,000. It also is necessary to indicate whether the source of funding is in part or entirely from a government source (i.e., the United States, the individual's home



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country, or a multinational organization). Proof of the funding must be provided by the source of funding and be attached to Form NIH-590. It is acceptable to list the spouse's name, with U.S. salary or stipend as a source of support for a proposed Guest Researcher/Special Volunteer (for example, if at NIH as a Visiting Fellow or Visiting Scientist). If "self-supported" is indicated, proof of funding such as bank statements, and a personal letter confirming this fact, must be submitted. All proofs of funding must be translated into English, if necessary.

DOS regulations further require that the individual have the necessary qualification(s) for any program, therefore, a copy of the professional degrees (with English translations) must be attached to Form NIH 590. A Master's level degree is the minimum qualification.

Because most case processing involves action with other agencies, including the U.S. Citizenship and Immigration Services (USCIS) and U.S. Department of State (DOS), the DIS should receive new assignment requests 90 days in advance of the start date for those individuals coming from abroad, and 120 days in advance if individuals are transferring from another U.S. institution (or is under ECFMG sponsorship-- Special Volunteers only). This lead time includes the time needed by the foreign scientists to obtain the proper visa classification and make travel arrangements. Therefore, proposed start dates of "ASAP," dates that have already passed, or that do not allow the DIS sufficient time to complete and mail the necessary immigration documents to the foreign scientists, are unacceptable.

The DIS may change the requested start date on the Form NIH 590 if it does not conform to the stated guidelines and the start date is impossible to meet. In these circumstances, the Key Contact will be notified of the change in the proposed start date.

B. Renewals

To process renewals in a timely manner, requests must be submitted to DIS 120 days prior to the expiration date of the current assignment. In addition, it is necessary that all sources and amounts of funding be re-verified. Therefore, documentation for the new period of funding must be attached to the renewal request.

C. Terminations

DIS must receive a notification of termination before the end of the Guest Researcher/Special Volunteer assignment.

D. Transfers and extensions of stay for scientists already in the United States:

In this situation, additional lead time will be required if the candidate does not have the notation "D/S" (duration of status) noted on his or her Form I-94. If there is a specific expiration date on the Form I-94, the transfer case must be adjudicated by the USCIS prior to the start of the NIH assignment. USCIS frequently takes as much as 12 weeks to process a transfer or extension of stay request. If the "D/S" notation is on the Form I-94, the Responsible Officers of the J-1 programs involved can adjudicate the transfer between the two institutions, provided the transfer will not exceed the basic three years of Research Scholar eligibility under the J-1 visa. It is essential that copies of all visa documents (relevant pages of passport, any Forms DS-2019, Department of Homeland Security (DHS) Form I-94, including dependents' forms, etc.) be



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submitted with the completed Form NIH 590. Cases of this type should not be forwarded to DIS until all information is complete.

Note: The individual legally cannot be in the laboratory until the appropriate authorities have approved the transfer to NIH (and, if necessary, the extension of stay in the U.S.).

E. Tourist (B-2) Visas or Visa Waiver for Tourists (WT).

Foreign Scientists who enter the U.S. on a B-2 (tourist) visa cannot work or legally be present in the laboratory. Such scientists must first have their tourist visa changed to one that will permit them to be in the laboratory.

This change of status (from tourist to a different nonimmigrant visa that will permit the individual to perform research) may take up to 12 weeks to be processed by USCIS, if approved. Therefore, it is critical that individuals not enter the United States as visitors for pleasure (B-2 visa) with the expectation that the situation can be corrected once they arrive at NIH.

Note: WT status can never be changed or extended.



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