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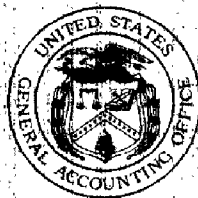
GAO

Fact Sheet for the Honorable  
Alan J. Dixon, U.S. Senate

July 1990

**U.S. INFORMATION  
AGENCY**

**Waiver of Exchange  
Visitor Foreign  
Residence Requirement**



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United States  
General Accounting Office  
Washington, D.C. 20548

National Security and  
International Affairs Division

B-234667

July 5, 1990

The Honorable Alan J. Dixon  
United States Senate

Dear Senator Dixon:

On March 15, 1990, we briefed your staff on the 2-year foreign residence and waiver provisions of the exchange-visitor (J-visa) program administered by the U.S. Information Agency (USIA). During that briefing, we agreed to provide you a fact sheet on the history of the foreign residence and waiver provisions, waiver application and review process, and statistics on waivers requested and granted. This fact sheet supplements information in our report U.S. Information Agency: Inappropriate Uses of Educational and Cultural Exchange Visas (GAO/NSIAD-90-61, Feb. 16, 1990).

Under the exchange-visitor (J-visa) program, about 175,000 participants come to the United States each year for educational and cultural purposes. Because some participants have not wanted to return to their home countries, as envisioned by the program, the Congress enacted a requirement that certain participants must return home for at least 2 years after completing their educational or cultural programs. This requirement applies to those (1) whose exchange-visitor programs have been financed to some extent by the U.S. government or their home governments, (2) whose skills are urgently needed by their home countries, or (3) whose purpose in coming to the United States is to receive graduate medical education or training. Before these participants are eligible to apply for immigrant, permanent residence, or H or L work visas in the United States, they must reside and be physically present in the countries of their nationalities or last residences for 2 years following their departure from the United States.

Participants may generally obtain waivers of the foreign residence requirement if (1) interested U.S. agencies can show that such waivers are in the national interest; (2) return to their home countries would create an exceptional hardship to their U.S. citizen spouses or children; (3) return would subject them to persecution because of race, religion, or political beliefs; or (4) their home countries do not object to such waivers.

Visitors who wish to receive graduate medical education or training face more stringent legislative conditions for participating in the exchange-

visitor program and for obtaining waivers of the foreign residence requirement than other participants. For example, they are not eligible for waivers on the basis that their home countries do not object to their remaining in the United States. They also have to submit annual affidavits to the Immigration and Naturalization Service (INS) attesting that they will return home after completing their programs in the United States.

The 2-year foreign residence requirement and the waiver provisions have evolved through a number of legislative changes since the exchange-visitor program was authorized in 1948. These changes are discussed in appendix I.

The INS grants a waiver of the foreign residence requirement based on USIA's recommendation. However, a participant's waiver application process and the U.S. government's review and approval process vary substantially for each of the four qualifying conditions.

The number of participants subject to the foreign residence requirement cannot be readily determined from available information. In 1989, USIA processed 2,235 applications for waivers and recommended to the INS that 2,043 of them (91.4 percent) be granted. Because requests for waivers based on hardship are reviewed by INS before they are forwarded to USIA for review, applications rejected by INS are not reflected in USIA's statistics, and no statistical record is kept of the number rejected by INS. Appendix II provides more information on the waiver application and review process and waiver statistics.

To obtain the information in this fact sheet, we interviewed officials of USIA and INS and reviewed pertinent documents and legislative history. We discussed the information in this fact sheet with responsible USIA and INS officials and incorporated their views where appropriate.

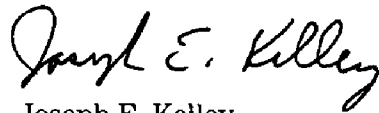
We are sending copies of this fact sheet to the Director, USIA, and other interested parties.

Staff members who made major contributions to this fact sheet were Jess T. Ford, Assistant Director; Roy F. Hutchens, Evaluator-in-Charge;

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and Lynda M. Kyte, Evaluator. I can be reached on (202) 275-4128 if you or your staff have further questions.

Sincerely yours,



Joseph E. Kelley  
Director, Security and  
International Relations Issues

# Waiver of the Foreign Residence Requirement for Exchange Visitors

Under the Mutual Educational and Cultural Exchange Act of 1961,<sup>1</sup> the Director of the U.S. Information Agency (USIA) establishes programs intended to promote mutual understanding between the people of the United States and other countries by means of educational and cultural exchanges. Under these exchange-visitor (J-visa) programs, designated organizations sponsor nonimmigrant aliens' temporary visits to the United States for the purposes of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training. Participants return to their home countries after completing their programs to pass on the benefits attained.

Section 212(e) of the Immigration and Nationality Act<sup>2</sup> requires that certain J-visa participants reside at least 2 years in the countries of their nationalities or their last residences after leaving the United States. They must meet this requirement before they are eligible to apply for nonimmigrant visas (H and L) as temporary workers, for permanent residences in the United States, or as immigrants.

## History of the 2-Year Foreign Residence Requirement

The 2-year foreign residence requirement and its related waiver provisions evolved through a number of legislative changes after the exchange-visitor program was authorized in 1948.

There were no foreign residence or waiver provisions in the exchange-visitor program authorized with the passage of the U.S. Information and Educational Exchange Act of 1948.<sup>3</sup> The act required participants to depart the United States after completing their programs.

In 1956, the Congress amended the 1948 act to require that participants reside in and be physically present in their home countries or cooperating countries for at least 2 years after their departures from the United States before applying for immigrant visas, nonimmigrant H visas, or adjustments of status to permanent resident. In recommending this amendment, the Senate Committee on Foreign Relations stated that it was needed to counteract situations in which some participants were departing the United States as required, going to Canada or Mexico, and immediately returning to the United States on immigrant visas. The Committee stated that this defeated the primary objective of the

<sup>1</sup>Public Law 87-256, 75 Stat. 527 (1961).

<sup>2</sup>8 U.S.C. 1182(e).

<sup>3</sup>Public Law 80-402, 62 Stat. 6 (1948).

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exchange program, that is, to impart participants' experiences in the United States to their countrymen. It further stated, "the amendment would make perfectly clear to all concerned ... and, above all, the foreign nationals themselves—that the exchange program is not an immigration program and should not be used to circumvent the operation of the immigration laws."<sup>4</sup> The 1956 amendment also provided for a waiver of the foreign residence requirement based on a request from an interested U.S. government agency showing such waiver to be in the public interest.<sup>5</sup>

In commenting on waivers of the foreign residence requirement, a July 1961 House Judiciary Subcommittee report on Immigration Aspects of the International Educational Program stated:

"It is believed to be detrimental to the purposes of the program and to the national interests of the countries concerned to apply a lenient policy in the adjudication of waivers including cases where marriage occurring in the United States or the birth of a child or children, is used to support the contention that the exchange alien's departure from this country would cause personal hardship....It is axiomatic with this subcommittee that a person who has come to the United States to learn in order to give his countrymen the benefit of such education should not be permitted to evade the 'return home' rule."<sup>6</sup>

The Mutual Educational and Cultural Exchange Act of 1961, under which the exchange-visitor program now operates, enacted the foreign residence requirement as an amendment to section 212(e) of the Immigration and Nationality Act. Under that provision a participant could reside 2 years in a foreign country other than his or her home country. The act also provided for a waiver of the foreign residence requirement (1) upon the request of an interested U.S. government agency or (2) upon a determination that departure from the United States would impose exceptional hardship on the participant's U.S. citizen spouse or child.

An amendment to the foreign residence provision in 1970<sup>7</sup> removed the blanket application of the foreign residence requirement for exchange visitors and imposed it only on participants

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<sup>4</sup>S. Rep. No. 84-1608, March 1, 1956, pages 2 and 3.

<sup>5</sup>Public Law 84-555, 70 Stat. 241 (1956).

<sup>6</sup>H.R. Rep. No. 87-721, July 17, 1961, pages 121-22 (emphasis in original).

<sup>7</sup>Public Law 91-225, 84 Stat. 116 (1970).

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- whose participation was financed in some way by the United States or their home countries or
- whose home countries clearly needed their services.

Also, participants could no longer meet the 2-year foreign residence requirement by residing in other "foreign countries" but had to reside in the countries of their nationalities or their last foreign residences before coming to the United States. This requirement still applies.

Also, the 1970 act established two additional bases for waivers: persecution because of race, religion, or political opinion and statements by the participants' home countries that they had no objection to the grant of waivers. These bases also still apply.

According to USIA, these changes were motivated in part because in some instances the United States had an urgent need for the participant's skills and the home country did not object if the participant did not return. USIA also indicated that because the Congress was sensitive to the problem of "brain drain" in developing countries, the Congress added the no-objection statement as a basis for waiver. Also, it added persecution as a condition for waiver because individuals were required to return to their home countries rather than to foreign countries of their choice.

While the 1970 act removed the blanket coverage of the 2-year foreign residence requirement, the House Committee on the Judiciary report stated that those subject to it should be given ample notice at the time they acquire J-visa status that they will have to fulfill the foreign residence requirement. Further, in making a J-visa participant ineligible to apply for a newly created L (intracompany transferee) visa unless he or she fulfilled the foreign residence requirement, the Committee stated that "this safeguard is deemed advisable to protect the integrity of the exchange visitor visa category and prevent evasion of the foreign residence requirement."<sup>8</sup>

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**Participants in Graduate  
Medical Education or  
Training Face More  
Stringent Conditions**

After 1970, changes to the foreign residence and waiver provisions primarily strengthened restrictions on participants coming to the United States for graduate medical education or training. According to USIA, one effect of the 1970 modifications was to remove almost all restrictions that had impeded physicians who wished to convert their J visas to

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<sup>8</sup>H.R. Rep. No. 91-851, February 24, 1970, pages 7 and 8.



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immigrant visas. USIA noted that the Congress found an increasing influx of immigrant doctors to the United States, a majority of whom had entered as postgraduate trainees under the exchange-visitor program.

In 1976, the Congress imposed restrictions on medical graduates' participation in the exchange-visitor program. In the 1976 act, the Congress noted

“that there is no longer an insufficient number of physicians and surgeons in the United States such that there is no further need for affording preference to alien physicians and surgeons in admission to the United States under the Immigration and Nationality Act.”<sup>9</sup>

The Congress also tightened immigration laws for foreign doctors and strengthened requirements affecting J-visa participants who were coming to the United States for graduate medical education or training. They were

- made subject to the 2-year foreign residence requirement whether or not their programs were financed by a government;
- made ineligible to apply for waivers on the basis of no-objection statements from their home countries;
- limited to 3-year stays in the United States;
- required to make a commitment to return to their home countries after completing their training; and
- required to provide written assurance by their home countries that after completing their training and returning home, they would be appointed to positions in which they would fully use the skills acquired in their education or training.<sup>10</sup>

According to USIA, as a result of these restrictions, the number of foreign medical graduates who participated in the program decreased drastically between 1977 and 1980. The 3-year limitation permitted enough time to complete a medical residency in only three specialty areas—internal medicine, general practice, and pediatrics.

In 1981, USIA asked the Congress to extend the limit up to 7 years for medical doctors to encourage them to study in the United States rather than in a communist country. The House Committee on the Judiciary questioned USIA officials regarding the likelihood that doctors would be

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<sup>9</sup>Public Law 94-484, 90 Stat. 2243 (1976).

<sup>10</sup>90 Stat. 2301-2 (1976).

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willing to return home after 7 years, during which time they may have raised families in the United States. The Congress increased the usual permissible duration of stay to 7 years, but it imposed additional requirements.<sup>11</sup>

- Graduate medical education or training participants were required, as a continuing reminder, to furnish annual affidavits to the Immigration and Naturalization Service (INS) attesting that they would return to their home countries upon completion of the education or training for which they came to the United States.
- U.S. officials were required to issue an annual report to the Congress on participants who had submitted affidavits, including their names and addresses, the programs in which they are participating, and their status in the programs.

In reporting on this legislation, the House Committee on the Judiciary “notes the flagrant abuse of the exchange program during the past decade and seeks to alleviate possible ‘brain drain’ from various countries.” It said that the affidavits were to ensure that the doctors comply with the terms of their agreement.<sup>12</sup>

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<sup>11</sup>Public Law 97-116, 95 Stat. 1612 (1981).

<sup>12</sup>H.R. Rep. No. 97-264, October 2, 1981, page 16.

# Waiver Application and Review Process

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The INS approves a request for a waiver based on USIA's recommendation. A participant's waiver application process and the U.S. government's review and approval process, however, vary substantially for each of the four qualifying conditions.

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## Exceptional Hardship

Participants apply directly to INS for waivers of the 2-year foreign residence requirement on the basis of exceptional hardship to their U.S. citizen or lawful resident spouses or minor children. INS determines whether the hardship claim is meritorious. If the claim is not meritorious, INS denies the waiver. If the claim is meritorious, INS submits the application to USIA for weighing the hardship in relation to U.S. program, policy, and foreign relations considerations. USIA considers each application on a case-by-case basis and has no published criteria that it uses in making its recommendation to INS.

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## Persecution

Participants also apply directly to INS for waivers if they believe that they will be subject to persecution because of race, religion, or political opinion. INS does not make a determination on such applications, however, but acts on determinations made by the Department of State, which are usually routed through USIA.

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## Interested U.S. Government Agency

Applicants make direct requests to interested U.S. government agencies for sponsorship to remain in the United States. If interested, agencies apply to USIA for waivers on behalf of the participants. Agencies' requests are based on their direct interests in participants' programs or projects and their determinations that participants' remaining in the United States is in the national interest. USIA submits its recommendations to INS, which in turn informs the agencies of its decisions.

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## No Objection by Home Country

When participants apply for waivers based on statements by their home countries that they have no objections to such waivers, the statements are directed to USIA through official channels, such as the countries' foreign offices or embassies. USIA considers the waiver applications and submits its recommendations to INS. INS notifies USIA of the final decisions.

## USIA Review

USIA estimates that about 175,000 participants enter the United States each year. The number of participants subject to the 2-year home residence requirement cannot be readily determined from available information. Participants' visa application forms contain a preliminary determination of whether they are subject to the foreign residence requirement, but statistics are not kept on this information.

USIA provided us information on the number of waiver cases it processed for 1988 and 1989. As shown in table I.1, USIA recommended to INS that waivers be granted in about 90 percent of the cases. Information is not available on the number of hardship cases rejected by INS and not submitted to USIA.

Table I.1: Waiver Applications Processed by USIA

Type of application	1988			1989		
	Waivers processed	Granted <sup>a</sup>		Waivers processed	Granted <sup>a</sup>	
		Number	Percent		Number	Percent
No-objection statement	1,212	1,110	91.6	1,571	1,463	93.1
Exceptional hardship	153	98	64.0	221	163	73.8
Interested U.S. government agency	328	321	97.0	397	397	100.0
Persecution <sup>b</sup>	33	19	57.6	46	20	43.5
<b>Total processed</b>	<b>1,726</b>	<b>1,548</b>	<b>89.7</b>	<b>2,235</b>	<b>2,043</b>	<b>91.4</b>

<sup>a</sup>USIA recommendations to INS that waivers be granted.

<sup>b</sup>USIA forwarded Department of State advisory opinions to INS.

USIA's Waiver Review Branch reviews the program, policy, and foreign relations aspects of waiver cases. Three GS-12 waiver review specialists whose experience ranges from 2 to 10 years do the reviews. When their decisions differ from those of other U.S. government entities, cases are referred to a Waiver Review Board whose decisions are final. The Board, which is part of USIA's internal administrative decision-making process, is an ad hoc panel comprising three USIA officials who are selected as the need arises. The Board is composed of an attorney assigned on a rotating basis, a person representing the geographic area of the participant's home country, and a person in USIA's Education and Cultural Affairs Bureau.

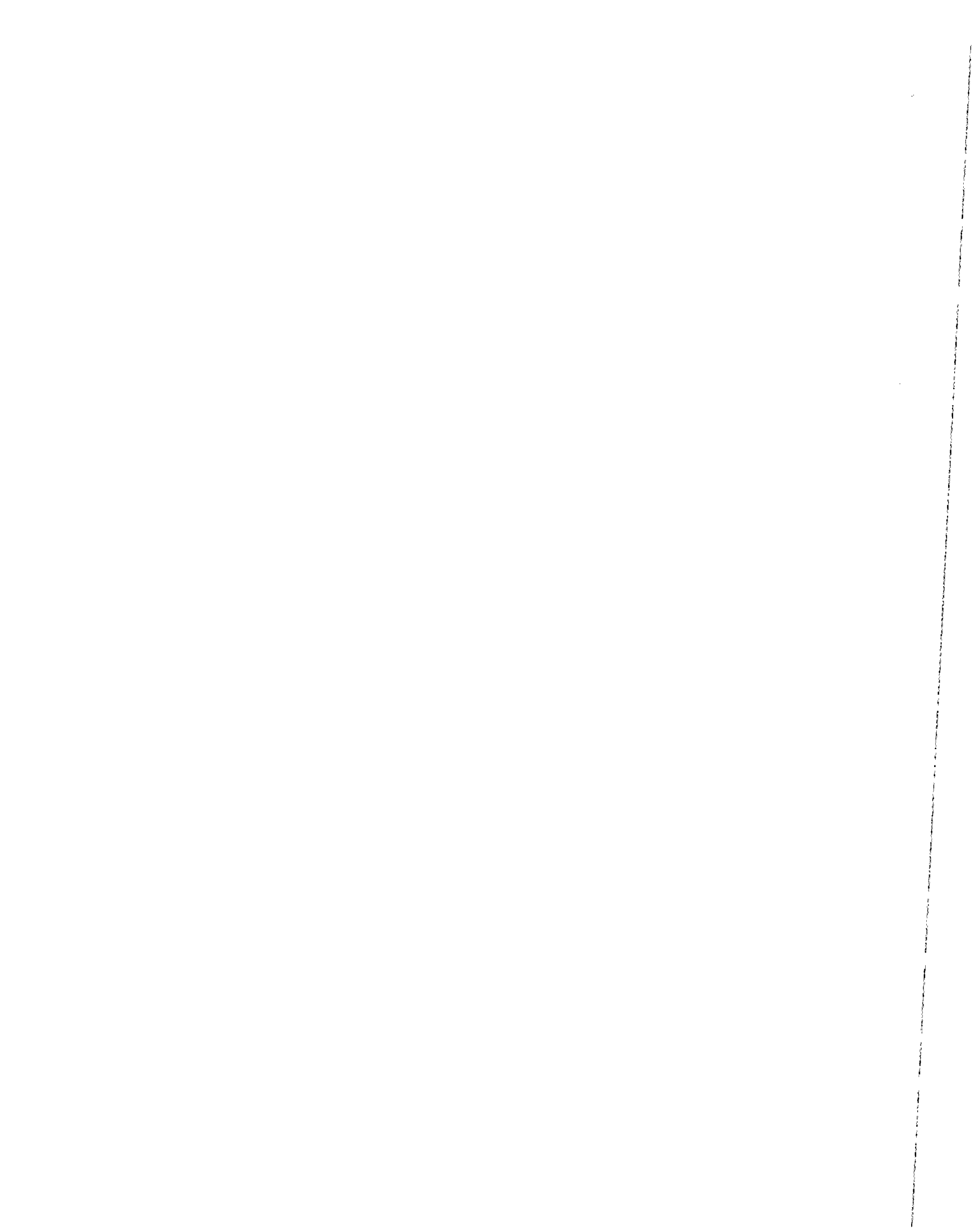
According to USIA information, 128 cases had been assigned to the Waiver Review Board since the first case in early 1987 through January 1990. Six cases were withdrawn from consideration, and information was not presented on the disposition of 21 cases. Of the remaining

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**Appendix II**  
**Waiver Application and Review Process**

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101 cases, the Board recommended that waivers be granted in 68 (or 67 percent) of the cases.



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