

CHAPTER 20-30  
REQUESTS FOR WAIVER OF FOREIGN RESIDENCE REQUIREMENT  
EXCHANGE VISITOR PROGRAM

- 20-30-00 Background
  - 10 Authority of DHEW
  - 20 Exchange Visitor Waiver Review Board
  - 30 Policy
  - 40 Procedure
  - 50** Personal Hardship, Persecution and Visa Extension Considerations
  - 60 Release from Foreign Government

20-30-00 BACKGROUND

A. The Educational and Cultural Exchange Program

The Educational and Cultural Exchange Program is authorized by The Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256 (75 Stat. **527-538**), enacted by the 87th Congress on September 21, 1961, as amended by Public Law 91-225, (84 Stat. **116-117**), enacted by the **91st** Congress on April 7, 1970. This Act supersedes earlier legislation (The United States Information and Educational Exchange Act of 1948, and its amendment, P.L. 555, 1956).

The Exchange Visitor Program provide6 for educational and cultural exchange6 between the United States and other countries, including, among other things, visits to the United States by citizens and nationals of foreign countries, who are **students**, trainees, teachers, professors, or leader6 in field6 of specialized knowledge of skill.

The objective6 of the Act and program are stated **as follows:**

"Sec. 101. Statement of Purpose.--The purpose of this Act is to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments,

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and **achievements** of the people of the United States and other nations, and the contributions being made toward a peaceful and more fruitful life for people throughout the world; to promote international cooperation for educational and cultural advancement; and **thus** to assist in the development of **friendly, sympathetic,** and peaceful relations between the United States and the other countries of the world."

B. Provisions of P.L. 87-256, as mended, Regarding Foreign Residence and Waivers Thereof

1. Section **101(a)(15)(J)** of the Immigration and Nationality Act defines an exchange visitor as follows:

"(J) **an alien** having a residence in a foreign country 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 or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Secretary of State, for the purpose **of** teaching, instructing or lecturing, studying, observing., conducting research, consulting, **demonstrating** special skills, or receiving training," and the **alien** spouse and minor children of any such alien if accompanying him or following to join him."

2. Sec. 2. Section 212(e) of the Immigration and Nationality Act (8 **U.S.C.** 1182(b)) **is** amended to read as follows:

" No person admitted under section **101(a)(15)(J)** or acquiring such status after admission whose (i) participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency **of** the Government of the United States or by the government of the country of his nationality or his last residence, or (ii) who at the time of admission or acquisition of status under section **101(a)(15)(J)** was a national or resident of a country which the Secretary of State, pursuant to regulations

prescribed by him, had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under section **101(a)(15)(H)** or section **101(a)(15)(L)** until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States: Provided, That upon the favorable recommendation of the Secretary of State, pursuant to the request of an interested United States Government agency, or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien), or that the alien cannot return to the country of his nationality or last residence because he would be subject to persecution on account of race, religion, or political opinion, the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest: And provided further, That the Attorney General may, upon the favorable recommendation of the Secretary of State, waive such two-year foreign residence requirement in any case in which the foreign country of the alien's nationality or last residence has furnished the Secretary of State a statement in writing that it has no objection to such waiver in the case of such alien."

20-30-10 AUTHORITY OF DHEW

Under the authority of the Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 527) and the Immigration and Nationality Act as amended (84 Stat. **116**), the Department of Health, Education, and Welfare is an "interested United States Government agency" with the authority to submit **requests** through the Department of State to the Attorney General for a waiver of the two-year

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20-30-10 (continued)

foreign residence requirement for exchange visitors under the Mutual Educational and Cultural Exchange Program.

20-30-20 EXCHANGE VISITOR WAIVER REVIEW BOARD

- A. Establishment. The Exchange Visitor Waiver Review Board is established for the purpose of carrying out the Department's responsibilities under the Exchange Visitor Program.
- B. Functions. The Exchange Visitor Waiver Review Board is responsible for making thorough and equitable evaluations of applications for waiver submitted to the Department and for rendering recommendations to the Department of State on such applications on behalf of the Secretary.
- C. Membership. The Exchange Visitor Waiver Review Board consists of not less than five members, of whom no less than three shall consider any particular application. The Special Assistant to the Secretary for International Affairs is an ex officio member of the Board and serves as Chairman of the Board. He may designate a staff member of the Office of the Secretary to serve as member and Chairman in his absence. Two regularly assigned members are appointed by the Assistant Secretary for Health to consider applications concerning health and related fields and two regularly assigned members are appointed by the Assistant Secretary for Education to consider applications concerning education or training and related fields. The Board may be expanded to include members from other appropriate operating components of the Department when necessary in order to consider an application in other fields of interest to the Department (e.g., welfare, social security or rehabilitation). When, in the Board's judgment, it is required, the Board may obtain expert advisory opinion from other sources.

20-30-30 POLICYA. Criteria and Information Pertaining to Waivers.

The Department of Health, Education, and Welfare has a stringent and restrictive policy with respect to requesting waivers for foreign visitors under the exchange visitor program. Each case is evaluated individually on the basis of the facts available. The general criteria which are applied are:

1. The program or activity of the applicant institution or organization in which the exchange visitor is employed must be of high priority and significance in an area of interest to the Department. The Waiver Review Board will not request a waiver when the documentation clearly demonstrates that the problem is primarily one of recruitment in order to overcome a local community or institutional manpower shortage, however serious.
2. The exchange visitor must be needed as an integral part of the program or activity, or of an essential component thereof. The Board will not request a waiver when the principal problem appears to be one of administrative or program inconvenience to the institution or other employer.
3. The exchange visitor must possess outstanding qualifications, training, and experience. The Board will not request a waiver simply because an individual has specialized training or experience or is occupying a senior staff position in a university, hospital, or other institution.

B. Waivers for Members of Exchange Visitor's Family

1. Where a decision is made to request a waiver for an exchange visitor, a waiver will **also** be requested for the spouse and children, if any, if they are also subject to the foreign residence requirement.

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20-30-30 (continued)

2. In cases of married couples where one spouse is an exchange visitor, the subject of a waiver application, and the other is a citizen of the United States or **resident** alien, a waiver will be requested for the exchange visitor if either spouse is found to meet the strict criteria given above.

20-30-40 PROCEDURE

A. Procedure for Submission of Application to DHEW

1. The applicant institution (educational institution, hospital, laboratory, corporation, etc.) should send a completed application (HEW Form 426, Exhibit X20-30-1) to the Executive Secretary, Exchange Visitor Waiver Review Board, Department of Health, Education, and Welfare, Washington, D.C. 20201. **Application** forms and information may be obtained from the Executive Secretary. The application must be signed by an authorized official of the applicant institution. The information given in the application should describe in detail the circumstances of the case involved. This should include but not be limited to:
  - a. A complete description of the program or activity in which the exchange visitor is engaged; including factual evidence of the way in which the program or activity serves the national or international public interest.
  - b. His or her relationship to the program, particular contribution, and other responsibilities, if any.
  - c. The probable future of the program if the waiver is not granted: including specific evidence showing how the loss of the exchange visitor's services would seriously restrain the initiation, continuation, completion, or success of the program or activity, or a major part thereof.

- d. The applicant institution's long-range plans for the exchange visitor, and ways in which the visitor will contribute in the future to the activities in which he or she is employed.
  - e. Specific evidence of a demonstrated unique capability of the exchange visitor to make essential contributions to the program or activity over a long period of time.
  - f. The exchange visitor's curriculum vitae, bibliography, date and place of birth, present citizenship, date and port of entry and current address.
  - g. Any other facts considered germane.
2. Since the formal filing of an application for waiver with the Immigration and Naturalization Service automatically terminates the applicant's exchange visitor status, it is permissible to **obtain the** decision of the Exchange Visitor Waiver Review Board before filing with the Immigration and Naturalization Service.

B. Procedure After Board Decision

- 1. If the Exchange Visitor Waiver Review Board disapproves an application, the applying institution is informed of the decision.
- 2. If the Board approves an application, the Chairman of the Board sends the Department of State a request for a waiver for the exchange visitor', and also for spouse and children if applicable. The applying institution is also informed of the decision. The Department of State reviews the request from the standpoint of policy, exchange **program**, and foreign relations implications. A favorable review results in a State Department recommendation to the appropriate District Office of the Immigration and Naturalization Service that it grant a waiver. If the District Office accepts the recommendation, it notifies the exchange visitor that the waiver is granted, and also informs the visitor of further steps which should be taken to clarify his/her status.

20-30-50 PERSONAL HARDSHIP, PERSECUTION AND VISA  
EXTENSION CONSIDERATIONS

- A. The Department is not responsible for considering applications for waivers based on:
1. Exceptional **hardship** to the exchange visitor's American or legally resident alien spouse or child; or
  2. The alien's unwillingness to return to the country of his/her nationality or last residence on the grounds that he/she or family members would be subject to persecution on account of race, religion or political opinion.
- B. Likewise, this Department is not responsible for considering requests for extension of visa.
- C. Inquiries concerning the above should be directed to the District Office of the Immigration and Naturalization Service which has jurisdiction over the exchange visitor's place of residence in the U.S.

20-30-60 RELEASE FROM FOREIGN GOVERNMENT

The Department of **State** has the responsibility to consider applications for waivers which are based on a notification from the exchange visitor's country that it has no objection to a waiver (22 CFR 63.31).

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE  
WASHINGTON, D.C.  
APPLICATION FOR WAIVER OF THE TWO-YEAR FOREIGN  
RESIDENCE REQUIREMENT OF THE EXCHANGE VISITOR PROGRAM

SECTION 1. APPLYING INSTITUTION AND PROGRAM

1. NAME OF INSTITUTION	2. TELEPHONE, AREA - NUMBER
3. COMPLETE ADDRESS	
4. NAME AND POST OF RESPONSIBLE ADMINISTRATIVE OFFICER WHO CERTIFIES THIS APPLICATION AND THE DATA IT CONTAINS	
5. PROGRAM (Department or Division) IN WHICH EXCHANGE VISITOR IS ENGAGED	
6. PRINCIPAL PROGRAM OFFICER, RANK AND POSITION	
7. SOURCE OF PROGRAM FUNDS (If supported by HEW or other public funds, identify grants by source, title, number, and amount and terminal dates.)	
ON a separate sheet of paper please provide detailed and specific information about the program and its essentiality.	

SECTION 2. RELATION OF EXCHANGE VISITOR TO INSTITUTION AND PROGRAM

8. PRESENT POSITION CLASSIFICATION AND SALARY
(1) HOW LONG HAS HE BEEN EMPLOYED IN THE INSTITUTION? (2) IN THE PROGRAM?
(3) WHAT EFFORTS HAVE BEEN MADE TO REPLACE HIM? (4) AT WHAT SALARY? (5) WITH WHAT RESULTS?
ON a separate sheet please specify the activities of the exchange visitor as they support the program. What are his unique related functions? How would his departure affect the program?
9. IF WAIVER IS GRANTED: (1) WHAT WILL BE HIS STATUS IN THE PROGRAM AND IN THE INSTITUTION? (2) HOW LONG DO YOU BELIEVE HE WILL REMAIN WITH THE PROGRAM?

SECTION 3. EXCHANGE VISITOR FOR WHOM WAIVER IS REQUESTED

10. NAME (Surname) (Given names) (Maiden name, if married female)		
11. RESIDENTIAL ADDRESS (No., Street, City, State or Province, Country)		
12. CURRENT ADDRESS OF SPOUSE, IF DIFFERENT		
13. OCCUPATION TITLE		
14. DATE OF BIRTH (Month, Day, Year)	15. BIRTHPLACE (City, State, Country)	
16. SEX: MALE <input type="checkbox"/> FEMALE <input type="checkbox"/>	17. MARITAL STATUS: MARRIED <input type="checkbox"/> SINGLE <input type="checkbox"/>	
18. CITIZENSHIP	19. COUNTRY OF LAST RESIDENCE BEFORE ENTERING U.S.A.	20. IF NO LONGER IN U.S.A., STATE LAST PLACE OF U.S. RESIDENCE (City & State)
21. ALIEN REGISTRATION NO.	22. LOCAL IMMIGRATION OFFICE WHERE REGISTERED	23. DATE OF ENTRY INTO U.S.A. AS EXCHANGE VISITOR
		24. EXPIRATION DATE OF CURRENT PERMIT (1-94)
25. WHAT FUNDS WERE USED TO FINANCE THE EXCHANGE VISIT? U.S. GOV'T. <input type="checkbox"/> U.N. OR AFFILIATE <input type="checkbox"/> PRIVATE AGENCY <input type="checkbox"/> VISITOR'S GOV'T. <input type="checkbox"/> VISITOR'S PERSONAL <input type="checkbox"/> OTHER <input type="checkbox"/> (If government agency, please identify)		

26. OTHER APPLICATIONS, IF ANY, FOR FOREIGN RESIDENCE WAIVER FOR THIS VISITOR

DATE OF APPLICATION	TO FEDERAL AGENCY	BY INSTITUTION

27. FAMILY (If married, list dependents)

NAME	BIRTHDATE	BIRTHPLACE	VISA TYPE
(Spouse)			
(Children)			

28. EDUCATION (College, postgraduate, other)

NAME AND LOCATION OF INSTITUTION	DATES ATTENDED		YEARS COMPLETED	DEGREES RECEIVED	EXCHANGE VISITOR PROGRAM # (If any)
	FROM	TO			

29. EXPERIENCE

NAME AND LOCATION OF ORGANIZATION	PERIOD OF SERVICE		NATURE OF ASSIGNMENT (Start with current assignment and work back)	EXCHANGE VISITOR PROGRAM # (If any)
	FROM	TO		

If additional space is needed, use separate sheets. Attach a list of publications, if any, as well as letters of recommendation. Extracts or reprints of publications may also be submitted.

SECTION 4. CERTIFICATION OF ACCURACY OF INFORMATION AND APPLICATION

Signature of Principal Program Officer \_\_\_\_\_ DATE \_\_\_\_\_

Signature of Responsible Administrative Officer \_\_\_\_\_ DATE \_\_\_\_\_

Note: Where the main ground for a waiver application is the work of the exchange visitor's spouse who is a U.S. citizen or resident alien, all of the information listed in sections 1 through 4 should be given for the spouse and also for the exchange visitor, to the extent possible. In such cases, use two separate forms. Where both husband and wife are exchange visitors in their own right (i.e., each has J-1 visa status and neither has J-2 status), a separate application should be submitted for each of them.