

9 FAM 41.62 EXCHANGE VISITORS

*(CT:VISA-1623; 02-07-2011)
(Office of Origin: CA/VO/L/R)*

9 FAM 41.62 RELATED STATUTORY PROVISIONS

(CT:VISA-970; 06-12-2008)

See INA 101(a)(15)(J) (8 U.S.C. 1101(a)(15)(J)), INA 212(e) (8 U.S.C. 1182(e)), INA 212(j)(1) (8 U.S.C. 1182(j)(1)), INA 214(l) (8 U.S.C. 1184(l)), and INA 248 (8 U.S.C. 1258).

INA 101(a)(15)(J)

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens

- (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 Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 212(j), and the alien spouse and minor children of any such alien if accompanying him or following to join him;

INA 212(e)

e. Educational visitor status; foreign residence requirement; waiver

No person admitted under section 101(a)(15)(J) of this title or acquiring such status after admission

- (i) whose 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,

- (ii) who at the time of admission or acquisition of status under section 101(a)(15)(J) of this title was a national or resident of a country which the Director of the United States Information Agency, 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, or
- (iii) who came to the United States or acquired such status in order to receive graduate medical education or training, 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) of this title 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 Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), 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 except that in the case of a waiver requested by a State Department of Public Health, or its equivalent, or in the case of a waiver requested by an interested United States Government agency on behalf of an alien described in clause (iii), the waiver shall be subject to the requirements of section 214(l) of this title: And provided further, That, except in the case of an alien described in clause (iii), the Attorney General may, upon the favorable recommendation of the Director, 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 Director a statement in writing that it has no objection to such waiver in the case of such alien.

INA 212(j)(1)

j. Limitation on immigration of foreign medical graduates

- (1) The additional requirements referred to in section 101(a)(15)(J) of this title for an alien who is coming to the United States under a program under which he will receive graduate medical education or training are as follows:
 - (A) A school of medicine or of one of the other health professions, which is accredited by a body or bodies approved for the purpose by the Secretary of Education, has agreed in writing to provide the graduate medical education or training under the program for which the alien is coming to the United States or to assume responsibility for arranging for the provision thereof by an appropriate public or nonprofit private institution or agency, except that, in the case of such an agreement by a school of medicine, any one or more of its affiliated hospitals which are to participate in the provision of the graduate medical education or training must join in the agreement.
 - (B) Before making such agreement, the accredited school has been satisfied that the alien
 - (i) is a graduate of a school of medicine which is accredited by a body or bodies approved for the purpose by the Secretary of Education (regardless of whether such school of medicine is in the United States); or
 - (ii)
 - (I) has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services),
 - (II) has competency in oral and written English,
 - (III) will be able to adapt to the educational and cultural environment in which he will be receiving his education or training, and
 - (IV) has adequate prior education and training to participate satisfactorily in the program for which he is coming to the United States. For the purposes of this subparagraph, an alien who is a graduate of a medical school shall be considered to have passed parts I and II of the National Board of Medical Examiners examination if the alien was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date.

INA 214(I)

I. Restrictions on waiver

- (1) In the case of a request by an interested State agency, or by an interested Federal agency, for a waiver of the 2-year foreign residence requirement under section 212(e) of this title on behalf of an alien described in clause (iii) of such section, the Attorney General shall not grant such waiver unless—
 - (A) in the case of an alien who is otherwise contractually obligated to return to a foreign country, the government of such country furnishes the Director of the United States Information Agency with a statement in writing that it has no objection to such waiver;
 - (B) in the case of a request by an interested State agency, the grant of such waiver would not cause the number of waivers allotted for that State for that fiscal year to exceed 30;
 - (C) in the case of a request by an interested Federal agency or by an interested State agency—
 - (i) the alien demonstrates a bona fide offer of full-time employment at a health facility or health care organization, which employment has been determined by the Attorney General to be in the public interest; and
 - (ii) the alien agrees to begin employment with the health facility or health care organization within 90 days of receiving such waiver, and agrees to continue to work for a total of not less than 3 years (unless the Attorney General determines that extenuating circumstances exist, such as closure of the facility or hardship to the alien, which would justify a lesser period of employment at such health facility or health care organization, in which case the alien must demonstrate another bona fide offer of employment at a health facility or health care organization for the remainder of such 3-year period); and
 - (D) in the case of a request by an interested Federal agency (other than a request by an interested Federal agency to employ the alien full-time in medical research or training) or by an interested State agency, the alien agrees to practice primary care or specialty medicine in accordance with paragraph (2) for a total of not less than 3 years only in the geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals, except that—

- (i) in the case of a request by the Department of Veterans Affairs, the alien shall not be required to practice medicine in a geographic area designated by the Secretary;
 - (ii) in the case of a request by an interested State agency, the head of such State agency determines that the alien is to practice medicine under such agreement in a facility that serves patients who reside in one or more geographic areas so designated by the Secretary of Health and Human Services (without regard to whether such facility is located within such a designated geographic area), and the grant of such waiver would not cause the number of the waivers granted on behalf of aliens for such State for a fiscal year (within the limitation in subparagraph (B)) in accordance with the conditions of this clause to exceed 5; and
 - (iii) in the case of a request by an interested Federal agency or by an interested State agency for a waiver for an alien who agrees to practice specialty medicine in a facility located in a geographic area so designated by the Secretary of Health and Human Services, the request shall demonstrate, based on criteria established by such agency, that there is a shortage of health care professionals able to provide services in the appropriate medical specialty to the patients who will be served by the alien.
- (2)(A) Notwithstanding section 248(a)(2) of this title, the Attorney General may change the status of an alien who qualifies under this subsection and section 212(e) of this title to that of an alien described in section 101(a)(15)(H)(i)(b) of this title. The numerical limitations contained in subsection (g)(1)(A) of this section shall not apply to any alien whose status is changed under the preceding sentence, if the alien obtained a waiver of the 2-year foreign residence requirement upon a request by an interested Federal agency or an interested State agency.
- (B) No person who has obtained a change of status under subparagraph (A) and who has failed to fulfill the terms of the contract with the health facility or health care organization named in the waiver application shall be eligible to apply for an immigrant visa, for permanent residence, or for any other change of nonimmigrant status, 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 2 years following departure from the United States.

- (3) Notwithstanding any other provision of this subsection, the 2-year foreign residence requirement under section 214(e) of this title shall apply with respect to an alien described in clause (iii) of such section, who has not otherwise been accorded status under section 101(a)(27)(H) of this title, if—
 - (A) at any time the alien ceases to comply with any agreement entered into under subparagraph (C) or (D) of paragraph (1); or
 - (B) the alien's employment ceases to benefit the public interest at any time during the 3-year period described in paragraph (1)(C).

INA 248

- a. The Secretary of Homeland Security may, under such conditions as he may prescribe, authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully admitted to the United States as a nonimmigrant who is continuing to maintain that status and who is not inadmissible under section 212(a)(9)(B)(i) (or whose inadmissibility under such section is waived under section 212(a)(9)(B)(v)), except (subject to subsection (b)) in the case of-
 - (1) an alien classified as a nonimmigrant under subparagraph (C), (D), (K), or (S) of section 101(a)(15),
 - (2) an alien classified as a nonimmigrant under subparagraph (J) of section 101(a)(15) who came to the United States or acquired such classification in order to receive graduate medical education or training,
 - (3) an alien (other than an alien described in paragraph (2)) classified as a nonimmigrant under subparagraph (J) of section 101(a)(15) who is subject to the two-year foreign residence requirement of section 212(e) and has not received a waiver thereof, unless such alien applies to have the alien's classification changed from classification under subparagraph (J) of section 101(a)(15) to a classification under subparagraph (A) or (G) of such section, and
 - (4) an alien admitted as a nonimmigrant visitor without a visa under section 212(l) or section 217.
- b. The exceptions specified in paragraphs (1) through (4) of subsection (a) shall not apply to a change of nonimmigrant classification to that of a nonimmigrant under subparagraph (T) or (U) of section 101(a)(15).

9 FAM 41.62 RELATED REGULATORY PROVISIONS

(CT:VISA-1623; 02-07-2011)

See 22 CFR 41.62

41.62 Exchange visitors.

- (a) *J-1 classification.* An alien is classifiable as an exchange visitor if qualified under the provisions of INA 101(a) (15) (J) and the consular officer is satisfied that the alien:
- (1) Has been accepted to participate, and intends to participate, in an exchange visitor program designated by the Bureau of Education and Cultural Affairs, Department of State, as evidenced by the presentation of a properly executed Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status;
 - (2) Has sufficient funds to cover expenses or has made other arrangements to provide for expenses;
 - (3) Has sufficient knowledge of the English language to undertake the program for which selected, or, except for an alien coming to participate in a graduate medical education or training program, the sponsoring organization is aware of the language deficiency and has nevertheless indicated willingness to accept the alien; and
 - (4) Meets the requirements of INA 212(j) if coming to participate in a graduate medical education or training program.
 - (5) *Electronic verification and notification.* An exchange visitor's acceptance documentation and payment of any applicable fees must be verified by a consular official's review of the SEVIS database or via direct access to SEVIS or ISEAS prior to the issuance of a J-1 or J-2 visa. Evidence of the payment of any applicable fees, if not presented with other documentation, may also be verified through the Consolidated Consular Database or direct access to SEVIS. Upon issuance of a J-1 or J-2 visa, notification of such issuance must be entered into the SEVIS database.
- (b) *J-2 Classification.* The spouse or minor child of an alien classified J-1 is classifiable J-2.
- (c) Applicability of INA 212(e).

- (1) An alien is subject to the 2-year foreign residence requirement of INA 212(e) if:
 - (i) The alien's participation in one or more exchange programs was wholly or partially financed, directly or indirectly, by the U.S. Government or by the government of the alien's last legal permanent residence; or
 - (ii) At the time of the issuance of an exchange visitor visa and admission to the United States, or, if not required to obtain a nonimmigrant visa, at the time of admission as an exchange visitor, or at the time of acquisition of such status after admission, the alien is a national and resident or, if not a national, a legal permanent resident (or has status equivalent thereto) of a country which the Secretary of State has designated, through publication by public notice in the Federal Register, as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien will engage during the exchange visitor program; or
 - (iii) The alien acquires exchange visitor status in order to receive graduate medical education or training in the United States.
 - (2) For the purposes of this paragraph the terms *financed directly* and *financed indirectly* are defined as set forth in section §514.1 of chapter V.
 - (3) The country in which 2 years' residence and physical presence will satisfy the requirements of INA 212(e) in the case of an alien determined to be subject to such requirements is the country of which the alien is a national and resident, or, if not a national, a legal permanent resident (or has status equivalent thereto).
 - (4) If an alien is subject to the 2-year foreign residence requirement of INA 212(e), the spouse or child of that alien, accompanying or following to join the alien, is also subject to that requirement if admitted to the United States pursuant to INA 101(a) (15) (J) or if status is acquired pursuant to that section after admission.
- (d) *Notification to alien concerning 2-year foreign residence requirement.* officer must inform the alien whether the alien will be subject to the 2-year residence and physical presence requirement of INA 212(e) if admitted to the United States under INA 101(a) (15) (J) and, if so, the country in which 2 years' residence and physical presence will satisfy the

requirement.

[52 FR 42597, Nov. 5, 1987, as amended at 67 FR 58695, Sept. 18, 2002; 68 FR 28132, May 23, 2003; 72 FR 10061, Mar. 7, 2007]

See also 22 CFR 62.2 Definitions in Part

Financed directly means financed in whole or in part by the United States Government or the exchange visitor's government with funds contributed directly to the exchange visitor in connection with his or her participation in an exchange visitor program.

Financed indirectly means:

(1) Financed by an international organization with funds contributed by either the United States or the exchange visitor's government for use in financing international educational and cultural exchanges, or

(2) Financed by an organization or institution with funds made available by either the United States or the exchange visitor's government for the purpose of furthering international educational and cultural exchange.