

Procedures for dealing with J-1 visa holder's two-year residency requirement

Please read this material carefully

Statement of the problem

In many cases, J-1 visas are issued indicating that the visa holder is subject to Paragraph 212(e) – the two-year residency requirement. This requirement prevents the individual from obtaining any other legal US visa status without first returning to his or her home country for a period of at least two years.

In some cases the individual's home government and/or the US Government has paid money for the individual to come to the US to receive training or education for the purpose of returning to their home country and applying their newly gained knowledge for at least two years. Unfortunately some J-1 visas are erroneously issued indicating paragraph 212(e) applies when this may not be the case. In our experience teachers often fall into this category since rarely are there US Government or foreign government agencies involved in paying for the exchange visit.

When a J-1 visa holder desires to change to another non-immigrant visa category – most often the H-1B, the Citizenship and Immigration Services (CIS, formerly known as the INS) checks to ensure that paragraph 212(e) does **not** apply. Although inconsistently applied across CIS offices, this means that H-1B applications from J-1 visa holders (subject to 212(e)) must be accompanied by a formal CIS waiver **before** the CIS will approve them.

The process to obtain a waiver is lengthy and we fully explain it in following pages, but at this point it is sufficient to say that a **formal waiver is required**. Opinion Letters from the US Department of State, Letters of No Objection from the aliens home country, or letters of No Objection from the US Department of State are **insufficient** to ensure that the CIS will approve a Change of Status to H-1B or any other visa classification.

Moreover, even if the CIS does approve a Change of Status to H-1B without the formal CIS waiver (which can and does happen from time to time) should the alien return to his or her home country expecting to obtain a visa stamp in his or her passport, it is highly likely that the consular officer will **not** issue the H-1B without the formal CIS waiver – thus stranding the alien in that country until the formal waiver is approved. Since September 11, 2001, consular approval procedures are evolving (becoming more restrictive) and do vary from consulate to consulate.

Conclusion

All individuals who are subject to paragraph 212(e) **must first obtain** a formal CIS waiver before the CIS will approve a Change of Status to any other non-immigrant (e.g. H-1B) or immigrant visa (Green Card). The process to obtain a formal CIS waiver of paragraph 212(e) involves a number of governmental agencies and can take between 6 and 12 months to complete. Individuals, subject to this requirement, must plan ahead if they desire to Change Status to another visa classification (e.g. H-1B).

The Good News

In order to help you obtain two-year Residency waivers we are providing a detailed explanation of the process and the forms you will need to obtain the waiver. Initially it may appear a bit complicated but we assure you that if you follow these procedures Waivers are almost always granted –especially for teachers. Additionally we are ready to discuss any cases that may require special handling. J Visa Waiver Procedures

Standard **5-Step** Procedure for Obtaining a Waiver of the Two-Year Home Residence Requirement through “No Objection” Letters

STEP 1.

To apply for a waiver of the two-year home residency requirement (Paragraph 212(e)), applicants must complete form DS-3035 dated 4/02 (click [here](#) for a copy of the form). **Be sure to check “No Objection Statement” in item #5.**

Mail:

- a) the Data Sheet application,
- b) two self-addressed, stamped, legal-size envelopes (S.A.S.E) and
- c) a processing fee of US\$120 per application in the form of a cashier's check or money order payable to the U.S. Department of State to:

Postal Service

US Department of State
Waiver Review Division
P. O. Box 952137
St. Louis, MO 63195-2137

Courier Service

US Department of State
Waiver Review Division
1005 Convention Plaza
St. Louis, MO 63101-1200

Please Note:

- **ONLY REVISED DATA SHEET APPLICATIONS (dated April 2002) WILL BE ACCEPTED.** Applications with other versions of the Data Sheet will be returned to the sender without processing.
- Please do not fax or mail copies of your data sheet to the Waiver Review Division in Washington, D.C. The lock box in St. Louis (the above address) will forward your data sheet to the Waiver Review Division. If you fax or mail copies of your data sheet to the Waiver Review Division in DC, it will not be processed.
- Please write on the cashier's check or money order the applicant's full name, date of birth and Social Security Number, if any.
- Remittances must be drawn on a bank or other institution located in the U.S. and made payable in U.S. currency to the U.S. Department of State.
- If the applicant resides outside the United States at the time of application, remittance may be made by bank international money order or foreign draft drawn on an institution in the U.S. and made payable to the U.S. Department of State in U.S. currency.

STEP 2.

Once the Waiver Review Division of the US Department of State has received your Data Sheet application, they will use your self-addressed, stamped, legal-size envelopes, to send you a case number and instruction sheet on how to proceed with your application under the basis you designated on your Data Sheet application. This information will include a list of documents that you must submit to complete your waiver review application. After you have received your case number, **you must write the full case number on any documentation you submit as well as on the outside envelope of all future correspondence with this office.** If you do not write the case number on all correspondence and on the outside of the envelope, the documents you submit will be returned to you.

STEP 3.

Upon receiving your case number from the Waiver Review Division, you should contact the embassy of your home country in Washington D.C. and request a procedure or document list of items to be submitted to request a letter of "No Objection." Once you have received instructions on requesting a letter of "No Objection" from your home country, you should follow those instructions exactly in submitting your request.

If your home country does not object to the grant of a waiver, it will address a "No Objection" statement to the U.S. Department of State and send that letter directly to the Waiver Review Division. Remember to ask your home country's Embassy to write your Waiver file number on your Letter of No Objection and on the mailing envelope and send it directly to the Waiver Review Division.

It is your responsibility to submit all requested documents and required letters sent on your behalf. Once the Waiver Review Division has sent you the checklist of items necessary to complete the review of your application (Step 2 above), they will **NOT** follow up on documents that have not been received. Rather, it will be your responsibility to ensure that your file is complete. You may check on the status of your application by calling (202) 663-1600 or on the web at <http://63.70.23.80>. You must have your full case number in order to obtain the status of your case through this telephone number and/or website.

The Waiver Review Division recommends that you submit all the requested documents at the same time. Some letters (such as a "No Objection" statement from your government) must be submitted directly to the Waiver Review Division by the Embassy. In that case, you, as the applicant, must request that the Embassy write your full case number on the "No Objection" statement and also on the outside of the envelope to be sent to the Waiver Review Division. You may, if the third party agrees, have all of your documents forwarded to the Waiver Review Division through the third party. **Please note, however, that ALL documents sent to the Waiver Review Division must have your file number clearly visible on it and on the outside of the envelope or they will be returned to you.**

STEP 4:

At the conclusion of the review process, the Waiver Review Division will forward its recommendation directly to the USCIS and you will receive a copy of that recommendation at the address listed on your data sheet.

STEP 5:

If Waiver Review Division recommends approval and the CIS concurs, your waiver will be granted. You will receive, from the CIS, Form I-797, Notice of Action, granting the waiver. If the Waiver Review Division issues an unfavorable recommendation, the CIS cannot grant the waiver.



800-437-7313

A copy of the Form I-797 demonstrating the granting of the waiver will need to be filed with any request for a Change of Status (seeking another visa classification).

If you have further questions, please contact us.