

Two-Year Home Residency Requirement (212e)

What is 212(e)?

The **two-year home residency requirement**, also known as **212(e)**, requires an Exchange Visitor (EV), “if” they are subject to 212(e), return to and reside in their home country of legal permanent residence for a period of two years (cumulative) before being eligible to return to the U.S. as a **1) Permanent Resident**, or **2)** on an **H-1B, K, or L visa**, unless they first obtain a **waiver**. The requirement also prevents anyone subject to 212(e) from “changing their immigration status” from within the U.S., unless they first obtain a **waiver**.

Note: This requirement does not prohibit an EV from returning to the U.S. in another J-1 visa category or in another non-immigrant status, except for when returning as a U.S. Permanent Resident, or on a H-1b, K, or L visa. For example, returning as a B-2 tourist or as an F-1 student without first fulfilling 212(e) or obtaining a waiver would be permissible.

General Guidelines Regarding 212(e):

- **Who is Subject to the Requirement?**

EVs and their dependents who meet **at least one** of the conditions listed below would be subject to the rule:

- **Government Funding** – Funding directly or indirectly from either your home country’s government or the U.S. Government. In some situations, funding through the University of Utah could count as government funding. Fulbright funding is considered U.S. government funding.
- **Funding from an International Organization or Binational Commission** – Funding from organizations that receive monies from government sources such, as the United Nations, NATO, etc.
- **Specialized Knowledge or Skill** – Having skills or expertise that **your country** has deemed essential and necessary to the country's development as identified on the [Exchange Visitor Skills List](#).
- **Graduate Medical Education (GME) or Training** – Visiting the U.S. to obtain graduate medical education or training.

Note: It is possible to be subject to the 212(e) in more than one of the above categories.

- **J-2 Dependents**

- Dependents of an EV who are subject to 212(e) are also subject to the requirement.
- Dependents must rely on the J-1 EV to apply for a waiver of 212(e), as dependents cannot apply for the waiver separately from the J-1 EV.

- **How to Know if You Are Subject to 212(e)**
 - The visa stamp in your passport and/or a US Consular annotation on your DS-2019 may indicate whether or not you are subject to the 212(e) requirement.
 - It is possible to be subject to 212(e) even if it is **not** indicated on your visa and/or DS-2019. It is also possible that the information on your DS-2019 or visa stamp may be inaccurate. If you have questions about whether you are subject, you can submit a request for an [Advisory Opinion](#) to the U.S. Department of State.

- **Fulfilling the 212(e) Requirement**

You may fulfill the requirement in **one of two ways**:

 - Return to your home country of citizenship or last legal permanent residence for a cumulative period of at least two years. Please keep good records of the time spent in your country of citizenship or last legal permanent residence, if needed for proof.
 - Request and be awarded a 212(e) Waiver.

- **Applying for a 212(e) Waiver**
 - Because the waiver process can vary depending on your country of legal permanent residence (LPR), and is quite complex, ISSS cannot advise on this matter. Therefore, we recommend you seek the advice of a qualified immigration attorney.
 - For more information, please consult the [U.S. Department of State](#) website related to requesting a waiver.

- **212(e) Waiver Approval/Denial Impacts**
 - Once the **Department of State** issues a **Favorable Waiver Recommendation**, OR after **USCIS** grants a **212(e) waiver**, you lose eligibility for an extension of your EV program, even if you have not met the maximum time limit of your J-1 category. You can complete the time remaining stated on your current DS-2019, but not eligible for a DS-2019 (EV) program extension.
 - Changes to your EV program **after** a Favorable Recommendation or **after** receiving a waiver from USCIS, could **re-subject** you to 212(e) since USCIS made their determination based on evidence provided at the time of adjudication, before said changes to your program was made.
 - A waiver of 212(e) approval could possibly result in a **denial** of an application of a J-1 **visa renewal** as it might appear to conflict with non-immigrant intent.
 - If USCIS denies a 212(e) waiver application, there is no process for an appeal. You must either fulfill the 212(e) requirement, or apply for a waiver on a different basis, if eligible.
 - If you are given a Favorable Recommendation by DOS or awarded a 212(e) waiver by USCIS, you would become ineligible for “**reinstatement**” of your J-1 status, if you were to fail to maintain J-1 visa “status” at some point in the future.

Frequently Asked Questions for those who are subject to the 212(e) home residency requirement:

1. Am I allowed to leave my home country during my two-year home residency?

Yes. Being subject to 212(e) does not prevent you from traveling **from** or spending time away from your country of citizenship or last legal permanent residence. **Remember**, 212(e) only prevents you from **returning to the U.S.** as a U.S. Permanent Resident, or on an H-1b, L, or K visa, unless you fulfill the requirement (by spending two cumulative years in your country of citizenship or last legal permanent residence), or obtaining a waiver.

2. Can I change my status from J-1 to F-1 while in the U.S.?

No. If you are subject to the 212(e), you are not eligible for a “change of status” to another visa status (such as F-1) while in the U.S.

3. Can I leave and come back to the U.S. on another J-1 visa, or on an F-1 visa?

Yes, you can depart the US and return on another non-immigrant visa type (such as J-1 or F-1). However, this does not eliminate the 212(e) requirement.

Remember, 212(e) only prevents you from **returning to the U.S.** as a U.S. Permanent Resident, or on an H-1b, L, or K visa, unless you fulfill the requirement (after spending two cumulative years there, or obtaining a waiver).

4. Is my J-2 dependent also subject to the 212(e)?

Yes. J-2 (dependent) status is directly related to the status of the J-1 Exchange Visitor principal. If the EV is subject to 212(e), then the J-2 dependent is also subject.

5. Am I eligible to apply for a 212(e) Waiver?

There are five different bases in which you can request a waiver of the 212(e) rule. Please review the [Waiver Eligibility Criteria](#) for more information.

Remember, the waiver process can vary depending on the rules and regulations in place in your country of citizenship or of last legal permanent residence, and is quite complex. Therefore, ISSS does not have the expertise to advise on this matter, and we recommend that you seek the advice of an experienced immigration attorney, should you decide to pursue a waiver.

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