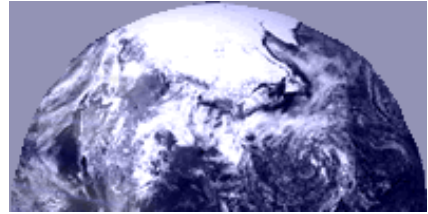


Thompson Immigration Law Associates

Providing U.S. & Global Immigration Solutions
to Businesses Around the World



J-1 "Exchange Visitor" Visa Portfolio

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“EXCHANGE VISITOR” VISAS (J-1 VISAS)

1.1 PROGRAM OVERVIEW

The J-1 "exchange visitor" visa program is designed to enhance the skills and expertise of foreign nationals (*i.e.*, "exchange visitors") in their academic or occupational fields through participation in structured or guided work-based training and mentorship programs; and to improve the participants' knowledge of American techniques, methodologies and expertise. The program is also intended to increase a participants' understanding of American culture and society, and to enhance Americans' knowledge of foreign cultures and skills through an open exchange of ideas between participants and their American associates. In a business context, the program allows companies to host interns or trainees to come to the United States to receive training in a particular occupational skill, in a particular companies' methods and techniques, or to introduce a foreign national to U.S. business or industrial techniques.

The J-1 "exchange visitor" visa program is managed entirely by the U.S. State Department. As such, the U.S. Citizenship and Immigration Services is not involved in the administration of this program. In order to sponsor a J-1 visitor an organization must be approved by the U.S. State Department. Because of this, most companies "host" an exchange visitor who is sponsored through an "umbrella" organization that has been pre-approved by the State Department. The umbrella organization approves a host companies' training program, oversees the program and reports to the State Department as to the appropriateness and effectiveness of each host companies' training program.

It is important to note that the J-1 program is not a means of bypassing the limitations imposed on the H1B visa program. As such, a J-1 program may not provide actual employment of an exchange visitor that may replace a full- or part-time U.S. worker. However, on-the-job training is permitted under the J-1 program so long as it is necessary to achieve the stated training goals of the program. "On-the-job training" is defined as "an individual's observation of and participation in given tasks demonstrated by experienced workers for the purpose of acquiring competency in such tasks". The principal beneficiary of a J-visa petition enters on a J-1 visa. Family members enter on a J-2 visa. Note that J-2 visa holders may work in the United States.

1.2 J-1 EXCHANGE VISITOR CATEGORIES

There are numerous exchange visitor categories available to U.S. organizations. However, the two main categories utilized by U.S. companies are the "trainee" and the "intern" categories.

To qualify as a "trainee", the candidate must have:

- A degree or professional certificate from a foreign post-secondary academic institution plus at least one year of prior related work experience outside of the United States in his or her occupational field; or
- Five years' of work experience outside of the United States in his or her occupational field.

The maximum duration of a training program is 18 months. An exception to this rule is the "Hospitality and Tourism" occupational category, where the maximum duration is 12 months.

To qualify as an "intern", a candidate must:

- Be enrolled or pursuing studies at a degree- or certificate-granting post-secondary institution outside the United States; or

- Be a recent graduate of a degree- or certificate-granting post-secondary academic institution outside of the United States. The date of graduation must be no more than 12 months prior to the proposed program start date.

The maximum duration of an internship program is 12 months.

All candidates must be interviewed either in person or by video/webconference by the umbrella organization to ensure their English language competency and that their qualifications are appropriate for the proposed program. All trainees and interns must also be able to demonstrate that they have sufficient finances to support themselves for their entire stay in the United States, including housing and living expenses.

1.3 J-1 OCCUPATIONAL CATEGORIES

Only those companies in the following occupational categories may utilize the J-1 training and internship programs:

- Agriculture, Forestry or Fishing.
- Arts and Culture.
- Aviation.
- Construction and Building Trades.
- Education, Social Sciences, Library Science, Counseling and Social Services.
- Health-Related Occupations.
- Hospitality and Tourism.
- Information Media and Communications.
- Management, Business, Commerce and Finance.
- Public Administration and Law.
- The Sciences, Engineering, Architecture, Mathematics and Industrial Occupations. This includes many IT occupational categories.

The exchange visitor program is not available for unskilled positions; positions that involve childcare or eldercare; positions that involve clinical work, patient care or contact; or positions that require licensure as a minimum qualification.

1.4 TRAINING/INTERNSHIP PROGRAM MINIMUM REQUIREMENTS

A host companies' training/internship program must include the following:

- The program must not duplicate the participants' prior work experience or training received elsewhere.
- The program must be a full-time program (a minimum of 32 hours a week).
- The host company must have sufficient resources, equipment and trained personnel available to provide the specified training.
- The exchange visitor must have continuous on-site supervision and mentoring by experienced and knowledgeable staff.
- The program must include structured and guided activities such as classroom training, seminars, rotation through several departments, on-the-job training, attendance at conferences and similar learning activities, as appropriate in specific circumstances. For Hospitality and Tourism programs of six months or longer, the program must include at least three departmental or functional rotations.
- The program must include periodic evaluations of the exchange visitor's progress.

- Host companies that have not previously participated in an exchange visitor program must be screened by the umbrella organization. On-site visits are required for host companies that have fewer than 25 employees or less than \$3 million in annual revenue.

1.5 “SPECIALIST” J-1 VISA CATEGORY

The second relevant J-visa category is for “specialists”. This category includes individuals who are experts in a field of specialized knowledge or skill, coming to the United States for observing, consulting, or demonstrating special skills. This category is utilized by the business community as a supplement to the trainee category. A specialist may enter the United States for up to one year.

1.6 TWO-YEAR FOREIGN RESIDENCY REQUIREMENT

The legislative intent behind the J-1 program, which was started in 1948, is to foster international relations by affording foreign nationals an opportunity to visit the United States and acquire skills that would be useful in their homelands. In line with this objective, Congress established a two-year foreign residence requirement to ensure that exchange visitors would return to their homeland to impart the skills and knowledge acquired in the United States. To fulfill the two-year foreign residence requirement, the exchange visitor must physically reside in his or her country of nationality or last residence for an aggregate period of two years.

Three categories of exchange visitors are subject to this foreign residence requirement. The relevant category in this instance is exchange visitors possessing skills particularly required by their own countries as determined by a list of such skills and countries established by the Secretary of State for each country (*i.e.*, those skills listed in the “skills list”). The skills list contains occupational skills, specified by country, that are considered to be in short supply in that country. For the most part, the countries of Western Europe are not included on the skills list.

The two-year foreign residence requirement constitutes the major hurdle exchange visitors must surmount in order to remain permanently in the United States upon the termination of their exchange visitor program. Under the J-visa program, exchange visitors are precluded from changing their nonimmigrant status to any other nonimmigrant status except “A” or “G” status, although they can obtain a new “E”, “F”, or “O” visa overseas. They cannot, however, apply for an “H” or “L” visa.

1.7 WAIVER OF TWO-YEAR FOREIGN RESIDENCY REQUIREMENT

If an exchange visitor is subject to the foreign residence requirement, a waiver of the requirement may be granted in certain situations. In this instance, the relevant situation is if a “no objection” letter is issued by the exchange visitor’s government to the U.S. Department of State, stating that the foreign government has “no objection” to the exchange visitor remaining in the United States even though the individual’s skills are on the Department of State’s skills list.

A “no-objection” waiver is the easiest to obtain and the most commonly sought waiver. When a no-objection statement based on a skills list foreign residency requirement is issued, the waiver is usually granted. This is because the home country does not object to the exchange visitor’s stay in the United States despite the fact that his or her skill area is listed in the country’s skills list. In essence, the home country is waiving the benefit it would receive if the exchange visitor were to return home.