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Two-Year Home Residency Requirement

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Submitted by Chief Editor on Nov 13th 2012

Let's say that a J-2 visa holder enters the United States as a derivative of a J-1 principal who is subject to the two-year home residency requirement of INA 212(e). Without leaving the United States, she later changes status from J-2 to J-1. The J-1 program in which she participates as the principal is also subject to INA 212(e). Thus, the person is independently subject to INA 212(e) based on two separate programs ? her husband's (as a J-2 derivative) and her own (as a J-1 principal). Please confirm that this person may file a single DS-3035 form that includes all DS-2019s from both programs and receive a single waiver covering both programs.

ANSWER:

In this situation, the applicant's J-1 waiver does not cover her period in J-2 status. 9 FAM 41.62 states that if an alien is subject to the two-year foreign residence requirement, the spouse and child of that alien are also subject to that requirement. Thus, the individual you have described would need a separate waiver to cover the time that she spent in J-2 status that subjected her to the two-year home residency requirement. Two separate DS-3035 applications would therefore be required in this circumstance.

Unless the context shows otherwise, all answers here were provided by Rajiv [2] and were compiled and reported by our editorial team from comments and blog on immigration.com [3]

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