

Memorandum



CO 214j-P

<p>Subject Amended Policy Guidelines: Processing of J-1 Admissions, Extension of Stay, Change of Status, 212(e) Determination</p>	<p>Date 09 JUL 1993</p>
<p>To All Regions (SAFOS) All District Directors All Service Center Directors All Officers in Charge</p>	<p>From Office Of Operations</p>

The United States Information Agency (USIA) published new regulations at 22 CFR 514 on March 19, 1993 (Federal Register). This ruling makes significant changes to the administration of the international educational and cultural exchange visitor category (J). This includes the Service role in monitoring the authorized stay of program participants. USIA and the Service have agreed on the need to streamline control of the J program and to eliminate unnecessary, burdensome paperwork between our two agencies. Further, an agreement is being finalized regarding control of employment of J participants. The requirement for program sponsors and program participants to notify both INS and USIA of program changes is expected to be replaced with a single notification requirement to USIA and the development of an information exchange between our two agencies.

Pertinent regulations at 8 CFR 214.2(j) and Operations Instructions at 214.2(j) will be revised to comport with the following policy and procedural changes. The instructions set forth below, except for those pertaining to employment authorization, are effective upon receipt of this memorandum:

Admission/Period of Authorized Stay. Aliens admissible to the United States as exchange visitors [INA 101(a){15}(J)] shall be issued Form I-94 indicating admission for duration of status subject to the terms of participation for each exchange visitor category at 22 CFR 514. The symbol "D/S" shall be marked on the admission block of Form I-94.

Admission Procedures. As is currently the case, if a determination has not already been made by the consular official issuing the visa, the immigration officer granting admission shall be responsible for determining applicability of the INA 212(e) requirements and so endorsing Form IAP-66. Otherwise, where the J participant is required to present a valid, nonimmigrant visa for entry, the immigration officer shall verify the consular officer's determination of section 212(e) applicability as noted on Form IAP-66. Where the J participant is exempt from the visa requirement, the immigration officer shall determine section 212(e) applicability and so endorse Form IAP-66.

The immigration officer shall endorse the reverse side of the arrival portion of Form I-94 with the J participant's program number. This information shall be maintained in the Nonimmigrant Information System or "NIIS". Please note that the exchange visitor program number as it appears on the visa stamp may not necessarily match that on the IAP-66 (e.g., a J-1 alien who previously entered on one program sponsorship may have since transferred to another program).

Evidence of J Status. Authorized stay as a J-1 participant shall be evidenced by Form I-94 with "D/S" or an unexpired date and a valid, unexpired certificate of eligibility, Form IAP-66, properly endorsed and executed by the Responsible Officer. Authorized stay as a J-2 dependent shall be evidenced by Form I-94 with D/S or an unexpired date and either a valid unexpired Form IAP-66 or a copy of the principal's valid, unexpired Form IAP-66. Where the exchange visitor has been granted immigration status or program benefits based on a Form (or Forms) IAP-66 issued prior to the current one (e.g. for initial entry and participation prior to a change of program or category), the exchange visitor is required to retain copies of all previously issued Forms IAP-66.

Extension of J Program. USIA will assume responsibility for the control of all program extensions within the limits authorized for specific categories of exchange visitors at 22 CFR 514 (USIA supplementary information to the March 19 Federal Register notice notwithstanding (Vol. 58, No. 52, p. 15193)). Thus the J participant will generally no longer be required to file Form I-539, Application to Extend/Change Nonimmigrant Status, and Form IAP-66 with the Service to request an extension of stay. The J participant's I-94 endorsed "D/S" will entitle the J participant to remain lawfully in the United States upon program extension as

authorized by the Responsible Officer for the program. For J participants arriving at the port of entry with deficient documents, inspectors, at their discretion, shall continue to issue Form I-515 (Notice to Student or Exchange Visitor Admitted without I-20 or IAP-66) and I-94 for 30 days. In such cases of re-entry, inspectors may wish to check NIIS regarding a J alien's current record. In such cases where an I-515 is issued, J participants do not need to submit extension requests on Form I-539 (cf. Cable CO 214f-C dated 4 November 1992).

Conversion to D/S. Because there is no automatic conversion to D/S for J participants who are already in the United States, a request for extension to D/S may be filed with the Service on Form I-539 with fee at least fifteen but not more than sixty days before the expiration of the currently authorized stay (214.1(c)(2)). It is anticipated that all J exchange visitors will have D/S within three years (or will have departed the country without requiring an extension). A Form I-530, Report of Action - Nonimmigrant, must be completed for every I-539 adjudicated.

"Pipeline" Cases. All J extension and transfer of program applications currently pending in Service offices are to be adjudicated, and where approved, marked with D/S.

Program Transfer. USIA will assume responsibility for the control of program transfers. The J participant will not be required to file Form I-539 and Form IAP-66 with the Service to request a program transfer. The J participant's I-94 endorsed "D/S" and a properly executed IAP-66 for the new program will serve as evidence of lawful nonimmigrant status.

Change of Category. USIA will assume responsibility for the control of change of exchange visitor category. The J participant will not be required to file Form I-539 and Form IAP-66 with the Service to request a change of category. The J participant's I-94 endorsed "D/S" and a properly executed IAP-66 indicating the new exchange visitor category shall serve as evidence of lawful nonimmigrant status.

Notification Requirements. The revised USIA regulations amend the program sponsors' notification requirements such that program sponsors shall notify USIA of an alien's change in participation in the exchange visitor program [22 CFR 514.13(c)].

Notification Regarding Participants. Notification shall be required in the event of:

1. completion or withdrawal from program, or
2. termination for cause

Program sponsors shall no longer be required to provide notification of the above directly to the Service. USIA shall provide notice to the Service when it becomes known that an exchange visitor fails to maintain status.

Notification Regarding Program Designation. USIA will assume responsibility to notify the Service of changes in program designations in the event of:

1. suspension of designation;
2. cancellation of designation; or
3. revocation of designation

HQADN will disseminate all information regarding participants and program designations received from USIA to field offices.

Control of Employment of J Participants. Responsive to statutory requirements enacted under the Immigration Reform and Control Act of 1986, the Service mandate to enforce employer sanctions, and the Service commitment to simplify the employer verification requirements through the reduction in number of acceptable employment authorization documents, the following agreement has been reached with USIA and will become effective upon final regulatory changes to 8 CFR 214.2(j) and 274(a), and 22 CFR 514:

Employment of J participants incident to status with program sponsor. Participants whose employment in the United States is incident to the J classification (for example: professors, research scholars, teachers, and camp counselors) with a specific employer (the program sponsor) shall continue to evidence employment authorization for purposes of section 274A of the Immigration and Nationality Act (Act) with Form I-94 a valid, unexpired Form IAP-66 indicating the type of employment inherent in the exchange program. In the case of research scholars or professors whose programs involve more than one employer or place of employment (for example: research conducted in multiple laboratories or

professors lecturing at more than one institution), all known employers shall be stated on Form IAP-66.

Employment of J participants incident to status with other employers. Occasional lectures and/or consultations for entities other than the program sponsor may be considered incident to status provided that the criteria and procedures set forth in 22 CFR 514.20(g)(1) and (2) are satisfied and the occasional lecture and/or consultation is within the guidelines of the program approved by USIA as set forth on the Form IAP-66 issued to the visitor, and the exchange visitor qualifies as an "independent contractor" pursuant to 8 CFR 274a.1(j).

Other authorized employment of J participants. J participants seeking authorization for employment not already indicated on the IAP-66, such as practical training or economic necessity, shall be required to apply to the Service for authorization on Form I-765. These participants shall be issued Form I-6888 (EAD) as evidence of employment authorization without regard to employer.

Employment of dependents of J participants. Dependent spouses and children of J participants shall apply to the Service on Form I-765 for authorization.

Applicability of 212(e). Requests for immigration benefits (INA 245, 248, etc.) filed by aliens who have participated in international exchange programs shall, unless otherwise exempted, be supported by evidence indicating that the alien is not subject to the two year foreign residence requirement of section 212(e) of the Act. Such evidence shall include: Forms IAP-66 indicative of all past or present participation in J programs; and, where applicable, evidence of waiver(s) granted by the Service, or evidence of satisfactory completion of two years of physical presence in the country of the alien's nationality or last residence. The immigration officer adjudicating the benefit request shall bear responsibility to confirm the applicability of section 212(e) requirements. Although the burden of proof lies with the alien to establish that section 212(e) does not apply or has been waived or satisfied, the adjudicating officer may contact USIA to verify initial program participation, current J status, changes to other J programs, current skills lists, etc. USIA and the Service have agreed to develop a verification procedure whereby an adjudicating officer may request confirmation from

USIA records of information submitted by the alien.
Confirmation should be requested only in those cases where the information submitted by the alien is inconclusive or the veracity of the information is at question.

Confirmation requests should be directed, in writing, to:
United States Information Agency

Attn: Ms. Mary Hitt
Exchange Visitor Program
200 FEMA Building
Washington, D.C. 20547
(Tel: 202-475-6869)

Use of Form I-644. Pursuant to PL 97-116, each J exchange visitor participating in a program of graduate medical education or training is required to certify that he or she is subject to the two year foreign residence requirement of section 212(e) of the Act. Therefore, such exchange aliens shall continue to be required to file Form I-644, Supplementary Statement for Graduate Medical Trainees, on an annual basis. Until further notice, Form I-644 shall be filed with the Program Sponsor.

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James A. Puleo
Acting Executive Associate Commissioner