

Complex Topics in J-1 Scholar Advising

Jannell Cook, Assistant Director, International Scholar Services,
Brown University

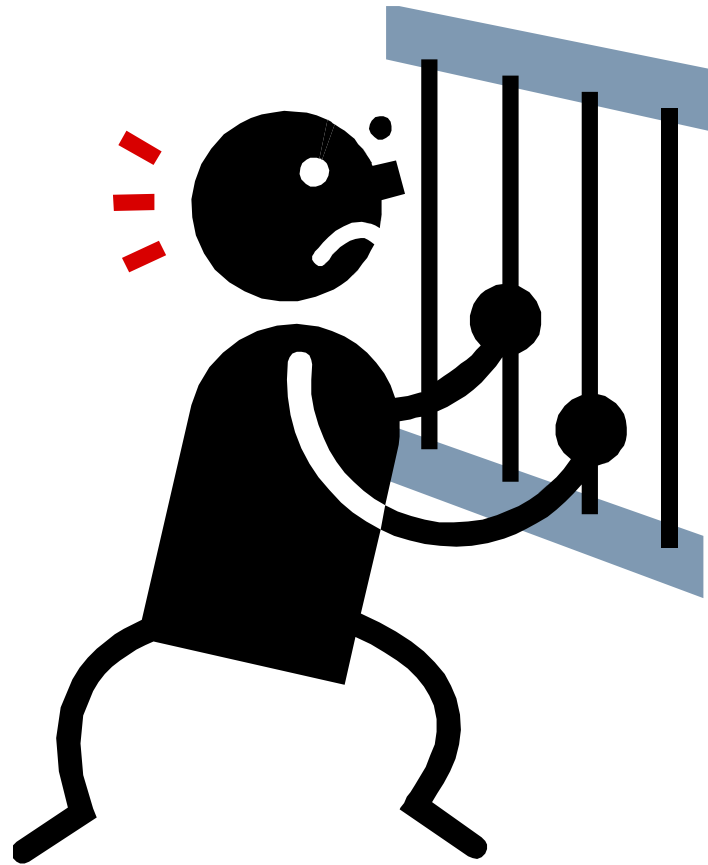
Fumiko Futai, Advisor to International Scholars, MIT

Elizabeth Capuano, Advisor to International Students and Scholars,
Harvard University

Topics to be discussed

- ▶ The 12 and 24 Month Bars
- ▶ Out of Country
- ▶ Repeat Visitors
- ▶ Two Year Home Residency Requirement (212(e))

The Bars



12 Month Bar

22 C.F.R. § [62.20\(d\)\(2\)](#)

establishes what is referred to as the "12-month bar." The general proposition of the 12-month bar is that an alien is **not eligible to begin an exchange program as a Professor or Research Scholar** based on a DS-2019 issued "to begin a new program" if he or she was **physically present in any J status (including J-2 status) for "all or part of" the "twelve month period immediately preceding the date of program commencement set forth on his or her Form DS-2019."**

- ▶ Not eligible for J-1 in the Research Scholar or Professor category if they were in the U.S. in J status in ANY J category for all or part of the 12 month period immediately prior to the DS-2019 start date

Exceptions to the 12 Month Bar

- ▶ Presence in the U.S. was less than 6 months
- ▶ In the U.S. under the Short Term Scholar category

Example

J-2 spouse of a J-1 student has been working as Postdoc with his EAD card. The J-1 student will be completing her program in May 2012 and will be returning to her home country for an employment opportunity. The J-2 wants his own J-1.

- ▶ J-2 will not be eligible for his own J-1 in the Research Scholar or Professor category until 12 months have passed since the J program end date.
- ▶ If Postdoc position will continue then would need to pursue another immigration option (most likely an H-1B).

24 Month Repeat Participation Bar

22 C.F.R. § [62.20\(i\)\(2\)](#)

(2) Repeat participation. Exchange participants who have entered the United States under the Exchange Visitor Program as a **professor or research scholar**, or who have acquired such status while in the United States, **and who have completed his or her program are not eligible for participation as a professor or research scholar for a period of two years** following the end date of such program participation as identified in SEVIS.

- ▶ Cannot return in the J-1 Professor or Research Scholar category if they held J-1 status as a Professor or Research Scholar in the past 2 years.
- ▶ The clock starts ticking for the 24-month bar once the SEVIS records becomes inactive (the day following the end date on the DS-2019)

Example

A Visiting Professor completed a one year appointment on June 30, 2013. She returned home in June 2013. In November 2013, the Department submitted a Request for DS-2019 for a 1 year appointment from January – December 2014.

- ▶ Can't return as a J-1 Professor or Research Scholar for 24 months. The earliest she could return is July 1, 2015.
- ▶ Scholar postponed her visit and will come for 1 semester only as a Short Term Scholar from September to December 2014.

When Can an EV Return as RS/P?

J-Category in Previous J Program	Length of Previous Stay	When able to return as a RS/ P?
RS/P	Any length	After 24 months
Any category (Student, Specialist etc), excluding RS/P	More than 6 months	After 12 months
Any category (Short Term Scholar, Student Specialist etc.), excluding RS/P	6 Months or less	Immediately
J-2 of RS/P	Any length	After 24 months
J-2 of any EV (Student, Specialist etc), excluding RS/P	More than 6 months	After 12 months
J-2 of any EV (Short Term Scholar, Student Specialist etc.), excluding RS/P	6 months or less	Immediately

Advising on “the Bars”

- ▶ Ask questions relating to immigration history on your in-take forms
- ▶ If you see that a scholar is bringing a dependent you may want to ask about the dependent’s plans to work in the U.S. before issuing a DS-2019
- ▶ Ask about the scholar’s long-term plans to return to the U.S. before closing out the SEVIS record
- ▶ Know what alternatives exist if an EV is subject to one of the bars

If an EV is subject to one of the bars you might have to explore other options:

- ▶ J-1 (Short Term Scholar, Student Intern, Non-degree student)
- ▶ H-1B
- ▶ TN (Canadian and Mexican Citizens)
- ▶ E-3 (Australians)
- ▶ O-1
- ▶ B-1


Out of Country

- ▶ “Out of Country” functionality was added to SEVIS on April 18, 2008, for J-1 Research Scholar/Professor categories.
- ▶ Allows the J-1 exchange visitor to participate in his/her EV program for a particular period of time outside of the U.S.

This is not a Regulation, but can be used at the discretion of the program sponsor.



Background

- ▶ When the J-1 5-yr rule was implemented in November 2006 for the RSP category, it was accompanied by the regulatory 24-month bar on J-1 repeat participation.
 - ▶ The EV becomes subject to the 24-month bar once his/her J-1 program is completed no matter how long he/she has spent on the J-1 program.
 - ▶ NAFSA and the Program Sponsor community requested something that would allow EV to continue on the original J-1 program even with a gap during the program if he/she continues to participate in the same J-1 program.
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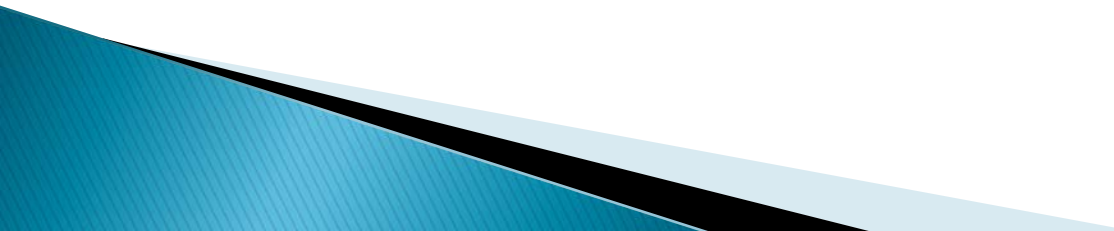
Out of Country

1. * Out of Country Begin Date:	<input type="text"/>	(MM/DD/YYYY)
2. * Out of Country End Date:	<input type="text"/>	(MM/DD/YYYY)
3. * Out of Country Location Name:	<input type="text"/>	
4. Out of Country Location Address:		
* Address 1:	<input type="text"/>	
Address 2:	<input type="text"/>	
* City:	<input type="text"/>	
* Country:	<input type="text" value="Select One"/>	
* Province/Territory:	<input type="text"/>	
* Postal Code:	<input type="text"/>	
5. * Remarks:	<input type="text"/>	

Making your institutional policy

- ▶ Things to consider.....
 - 1) Period of being outside the country.
 - 2) Will the EV's activity outside the U.S. be consistent with the purpose of the EV's J-1 program?
 - 3) How will EV be funded during the period outside the U.S. and will the EV's appointment remain unchanged at the J-1 sponsoring institution?
 - 4) Health insurance requirement for J-1 (and J-2)
 - 5) Monitoring the EV.

Common scenarios

- ▶ The EV is visiting a foreign university to conduct a specific experiment or for collaborative research.
 - ▶ The EV is conducting field research outside the U.S.
 - ▶ The EV is appointed on a teaching or research position in a special joint program with a foreign university that requires switching the location of work by semester/year.
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Sample "Out of Country" intake form



Massachusetts Institute of Technology
77 Massachusetts Avenue
Building E38-219
Cambridge, MA 02139

Tel: 617-253-2851
Fax: 617-253-6624
Email: iso@mit.edu
http://web.mit.edu/scholars



Out of Country Notification Form

Submit this form to request continuation of J-1 visa sponsorship while you engage in MIT-related, collaborative research or other activity outside the US. This information will be used to update your SEVIS record, which will remain "active" during your absence. If your travel dates or any other information changes, you must notify us in advance so we can update your SEVIS record.

Please Note: U.S. Department of State's health insurance requirements for J-1 exchange visitors continue to apply to you.

Part I: To Be Completed by the J-1 Scholar

Name: _____
(LAST) (First) (Middle)

SEVIS ID #: _____ E-mail: _____

Phone Number: _____

MIT Department/Lab/Center: _____

Period of activity outside the US: Start* _____ End* _____
(Month/Day/Year) (Month/Day/Year) * Start Date is the date you will leave the US. End Date is the date you plan to return.

Describe the research, teaching or other activity you will be doing while outside the US: _____

Out of Country Work Location (Name of Institution): _____

Out of Country Work Address: _____
(Street Address) (City)

(Province/Territory) (Postal code) (Country)

Out of Country Residential Address: _____
(Street Address) (City)

(Province/Territory) (Postal code) (Country)

Will you return to the same MIT Department/Laboratory/ Center? Yes _____ No _____

If No, which D/L/C will you join upon return? _____

Name of supervisor in new DLC upon return: _____

Please sign on the reverse and obtain signatures from your MIT Department ... OVER→



Massachusetts Institute of Technology
77 Massachusetts Avenue
Building E38-219
Cambridge, MA 02139

Tel: 617-253-2851
Fax: 617-253-6624
Email: iso@mit.edu
http://web.mit.edu/scholars



I will continue to participate in MIT's J-1 Exchange Visitor Program during the designated "out of country" period and I will continue to comply with the J-1 health insurance requirements. I will inform the ISchO if any of the terms of my "out of country" activity or my return date changes.

Signature of Exchange Visitor _____ Date _____

Part II: To Be Completed by the Department/Lab/Center

We understand that this J-1 scholar will be out of the US for the purpose of exchange, that his/her SEVIS record will remain "active" and that he/she is expected to return by _____. While under MIT J-1 visa sponsorship, international scholars must be on academic appointment. This scholar will continue to hold an appointment on the following terms during the designated "out of country" period:

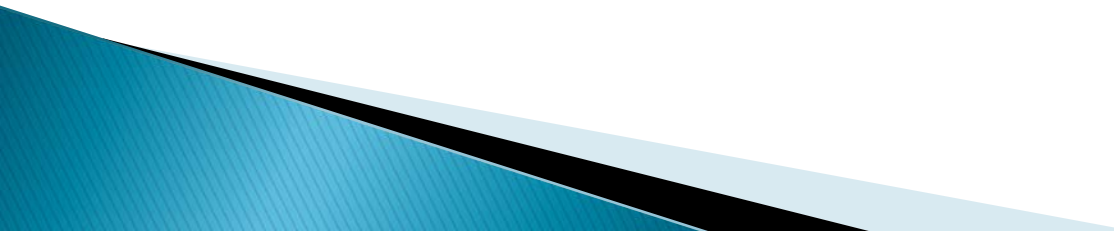
Title: _____ % Effort: _____ Salary: _____

Signature of PI/Supervisor _____ Name _____ Date _____

Signature of AO/Personnel Administrator _____ Name _____ Date _____

Signature of PI/Supervisor in new DLC (if DLC will change upon return) _____ Name _____ Date _____

Cases where “Out of country” is typically not used

- ▶ Going on vacation.
 - ▶ Attending a week-long international conference.
 - ▶ Leaving the U.S. for extended period of time for personal reasons.
- 

Choosing the right category:

- ▶ The EV will not become subject to 24-month bar.
- ▶ The EV may participate in the J-1 program for more than 6 months.
- ▶ The EV must keep participating in the same J-1 program.
- ▶ RO/ARO must keep monitoring the EV.
- ▶ The EV can get a visa stamp with the same duration as his/her DS-2019.

**J-1 Research Scholar/Professor
using “out of country”**

- ▶ Each visit should be 6 months or less
- ▶ The EV will not become subject to 24-month bar.
- ▶ RO/ARO does not need to monitor the EV and keep the J-1 record active.
- ▶ The EV can have a different J-1 objective on each J-1 STS program.

**J-1 SHORT TERM
SCHOLAR**

Great NAFSA Resources about “Out of Country”

<http://www.nafsa.org/resourcelibrary/default.aspx?id=19874>

Two Year Home Residency Requirement– 212 (e)

- ▶ Some (not all) J-1s may be subject
- ▶ If the J-1 is subject the J-2 is as well

How does a J-1 become subject?

- ▶ EV Skill's List– Last updated 4/30/2009, effective 6/28/2009
<http://travel.state.gov/content/visas/english/study-exchange/exchange/exchange-visitor-skills-list.html>
- ▶ Government Funding (direct or for international exchange)
- ▶ Graduate Medical Education (ECFMG)

What does being subject mean for our J Scholars?

- ▶ Must return to their home country for 2 years after the completion of their J program
- ▶ Cannot obtain H, K, L visa
- ▶ Cannot adjust to permanent residency
- ▶ Cannot change status in the U.S. from J to any other status

Effects of Applying for a Waiver of 212 (e)

- ▶ Extensions– depending on program policy and application process
- ▶ Transfers– depending on program policy
- ▶ No Applying for a J-1 visa
- ▶ If the EV travels, they might get questioned at the POE or become re-subjected if they already received a waiver

Advisory Opinion

Waiver Review Division, CA/VO/L/W
U.S. Department of State
2401 E Street, NW, (SA-1)
Washington, DC 20522-0106
INA 212(e) Advisory Opinion Request

Date

Re: Request for Information

Name
Citizen of Country

Could you please give an advisory opinion for ****. She/he was made subject when s/he received his/her visa in ****. We believe this was an error because- (not on exchange visitors list or no government funding. Give information here.

Sincerely,

Name of Advisor
Alternate or Responsible Officer
Program # *****

Enclosure:

- Copy DS2019 form
- Copy visa page in passport
- Can include copy of funding source if necessary
- Copy appropriate page in Skills list

How to apply for a waiver

- ▶ No Objection Statement
- ▶ Persecution and Exceptional Hardship
- ▶ Interested Government Agency and State Public Health Department (Conrad State 30 Program)
- ▶ <http://travel.state.gov/content/visas/english/study-exchange/student/residency-waiver.html>

Current Advisory Opinion/Waiver Delays



United States Department of State
Washington, D.C. 20520

Memorandum

Date: March 06, 2014

To: Responsible Officer of Program Harvard University, Holyoke Center

From: FROM: CA/VO/L/W:
TERESA MARSHALL^{AM}
Waiver Review Officer

Regarding: See attached DS-2019 .

Subject: [REDACTED] United States of America

This is in response to a request for () a waiver or () an advisory opinion as to whether the referenced Exchange Visitor is subject to the two-year foreign residence requirement of Section 212(e) of the Immigration and Nationality Act.

Please reply to this request indicating for which of the below purposes funding was provided by **Harvard University, Holyoke Center** as indicated on the Exchange Visitor's DS-2019 form. The bottom section of this letter is provided for your response.

If additional space is needed, please attach separate page(s) and return.

In all correspondence related to this request, please reference Item No.

2470645

Attachments: As stated.

The above-named Exchange Visitor received governmental funding for the purpose of:

___ An institutional grant for research (Participant is not subject).

___ For the specific purpose of furthering international exchange (Participant is subject).

Responsible Officer's Signature: _____

Date: _____ (DOS Case #1041817)

Questions

