

9 FAM 41.63 NOTES

(CT:VISA-1436; 05-28-2010)
(Office of Origin: CA/VO/L/R)

9 FAM 41.63 N1 INA 212(E)

(CT:VISA-1436; 05-28-2010)

INA 212(e) (*8 U.S.C. 1182(e)*) prohibits certain exchange visitors from applying for an immigrant visa or for adjustment of status to that of a legal permanent resident or from changing status or receiving a visa as a temporary worker, nonimmigrant fiance or intracompany transferree until the applicant has established that he or she has resided and been physically present in the country of nationality or last permanent residence for an aggregate of at least two years following departure from the United States.

9 FAM 41.63 N2 ALIENS SUBJECT TO INA 212(E)

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An alien admitted as an exchange visitor under INA 101(a)(15)(J) (*8 U.S.C. 1101(a)(15)(J)*) or who acquires such status after admission if:

- (1) The program in which the alien is participating was financed in whole or in part, directly or indirectly, by a U.S. Government Agency;
- (2) The program in which the alien is participating was financed in whole or in part, directly or indirectly, by the government of the country of the alien's nationality or last legal permanent residence;
- (3) The alien at the time of acquiring such status was a national or resident of a country designated as requiring the services of persons engaged in the field of specialized knowledge or skill as shown in the Exchange Visitor Skills List (see 9 FAM 41.62 Exhibit VI); *or*
- (4) The alien entered the United States to receive graduate medical education or training.

9 FAM 41.63 N3 WAIVER OF INA 212(E) REQUIREMENT

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An alien may seek a waiver of the two-year, home-country physical presence requirement provided:

- (1) The alien establishes exceptional hardship or probable persecution on account of race, religion or political opinion; (see also 9 FAM 40.202 N2.2 and 9 FAM 40.202 N2.3);
- (2) The alien establishes active and substantial involvement in a program sponsored by or of interest to a U.S. *Government Agency*; (see 9 FAM 40.202 N2.4);
- (3) The alien has received a statement of "no objection" from his or her country of nationality or residence; (see 9 FAM 40.202 N2.1); or
- (4) The alien is a graduate of a medical school for whom a request for a waiver has been granted to a State Department of public Health (see 9 FAM 40.202 N2.5).