



“Exchanging” Information: Considerations Exclusive to the J-1 Visa Exchange Program

DANIEL OLDENBURG, ESQ.
CLINE WILLIAMS

J-1 Background



Fulbright-Hays Act 1961

- ▶ UNITED STATES CODE TITLE **22: CHAPTER 33 MUTUAL EDUCATIONAL AND CULTURAL EXCHANGE PROGRAM** Sec. 2451. –
- ▶ The purpose of this chapter is to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries by means of **educational and cultural exchange**; to strengthen the ties which unite us with other nations by demonstrating the **educational and cultural interests, developments, and achievements** of the people of the United States and other nations, and the contributions being made toward a peaceful and more fruitful life for people throughout the world; **to promote international cooperation for educational and cultural advancement**; and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world

J-1 Sponsors

- ▶ The U.S. Department of State designates U.S. organizations such as government agencies, **academic institutions**, educational and cultural organizations, and corporations to administer exchange visitor programs.
- ▶ Sponsors screen and select prospective exchange visitors based on the criteria set forth in the governing regulations contained in the U. S. Code of Federal Regulations (22 CFR Part 62).

Note: Designated J-1 academic institutions are not able to advise and support those exchange visitors in the J-1 Waiver Process. Any assistance with J-1 Waiver procedures must be done independent of the sponsoring organization either by the exchange visitors themselves or by their legal counsel

Exchange Categories



- ▶ There are 15 different categories of exchange: Alien Physician, Au Pair, Camp Counselor, Government Visitor, International Visitor, Intern, Professor, **Research Scholar**, Short-Term Scholar, Specialist, Student-Secondary, Student-College/University, Summer Work Travel, Teacher, and Trainee. Specific regulations/requirements govern each exchange category.

J-1 Program Framework

- ▶ Duration of stay is set by type of program (*e.g.*, au pair, research, trainee) and sponsor.
- ▶ • Spouses and dependent children apply for J-2 status and may apply for EAD.
- ▶ • J-1/J-2 participants must have insurance to cover sickness and accidents.
- ▶ • J-1 participants must pay taxes on compensation but are exempt from FICA.

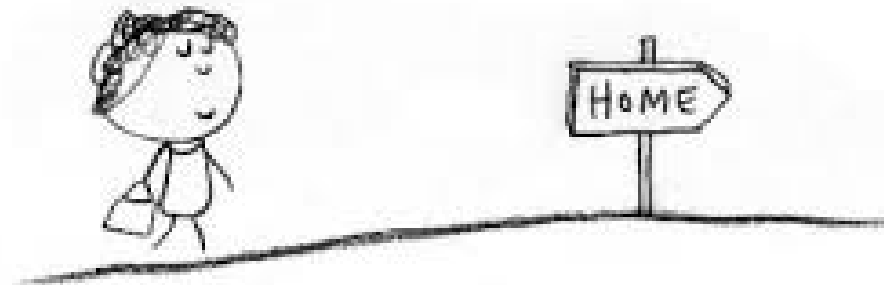
Two-Year Home Residence Requirement

- ▶ Key feature of J-1 status; intended to enforce the “exchange” part of the program.
- ▶ • Bars individual from:
 - ▶ – H visa
 - ▶ – L visa
 - ▶ – Permanent Residence
- ▶ • Compliance and Waiver Options to Overcome the Bar:
 - ▶ – Comply with two-year foreign residency requirement; or,
 - ▶ – Obtain a waiver of the two-year foreign residency requirement

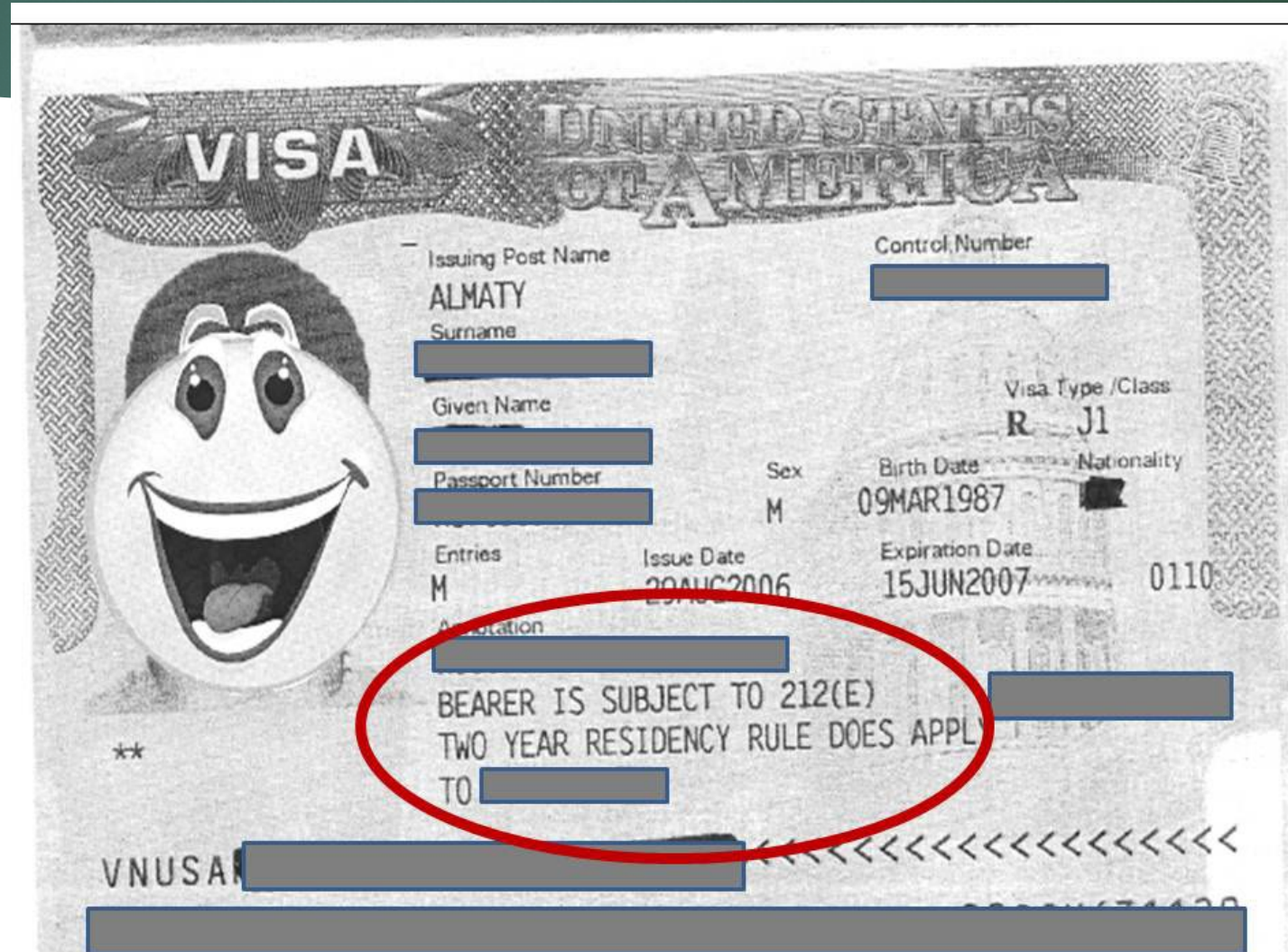
Immigration and Nationality Act (INA) Section 212(e) Two-year foreign residency requirement

▶ The Two-Year Home Rule

- ▶ Does it apply to me?
- ▶ Am I “subject?”
- ▶ How do I find out?



My J-1 Visa Stamps Says 212(e) applies?



So I **must** be subject to 212(e)

My DS 2019 Says 212(e) applies?

RESPONSIBLE OFFICER THAT A NOTIFICATION COPY OF THIS FORM HAS BEEN PROVIDED TO THE U.S. DEPARTMENT OF STATE (INCLUDE DATE)

DEPARTMENT OF HOMELAND SECURITY BORDER PROTECTION 13 0470

JUN 23 2006

Class Until J-1 D-3

Name of Official Preparing Form
Room 568, SA-44
301 4th Street, SW
Washington, DC 20547

Signature of Responsible Officer or Alternate Responsible Officer
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Signature of Responsible Officer or Alternate Responsible Officer

8. Statement of Responsible Officer for Releasing Sponsor (FOR TRANSFER OF PROGRAM)
Effective date (mm-dd-yyyy): _____, Transfer of this exchange visitor from program number _____ sponsored by _____ to the program specified in item 2 is necessary or highly desirable and is in conformity with the objectives of the Mutual Educational and Cultural Exchange Act of 1961, as amended.

Signature of Responsible Officer or Alternate Responsible Officer

PRELIMINARY ENDORSEMENT OF CONSULAR OR IMMIGRATION OFFICER REGARDING SECTION 212(e) OF THE IMMIGRATION AND NATIONALITY ACT AND PL 94-484, AS AMENDED (see item 1(a) of page 2).

The Exchange Visitor in the above program:

1. Not subject to the two-year residence requirement.

2. Subject to two-year residence requirement based on:

A. Government financing and/or

B. The Exchange Visitor Skills List and/or

(ALL USAID PARTICIPANTS G-2-0263 AND ALL ALIEN PHYSICIANS SPONSORED BY P-3-4510 ARE SUBJECT TO THE TWO-YEAR HOME RESIDENCE REQUIREMENT)

TRAVEL VALID (Maximum)

*EXCEPT: Maximum v Scholars and four months

(1) Exchange Visitor is

So I must be subject?

AM I SUBJECT TO 212(e) ?

- ▶ There are three reasons a J-1 visitor may be subject to the 212(e):
 - J-1 program is funded in part or wholly by the United States government, the visitor's government, or an international organization.
 - the J-1 program is engaged in one or more of the skills listed on the [Exchange Visitor Skills List](#) (1997 Amendment) for his/her country.
 - the J-1 visa holder is receiving graduate medical education or training. N/A.

Skills List and Funding

▶ Funding:

- ▶ If your program was funded in whole or in part by a **U.S. Government agency, your home country's government, or an international organization that received funding from the U.S. Government or your home country's government**, you will be subject to the 2 year rule based on Government Financing. The **Fulbright** and **FLEX** programs often involve substantial U.S. Government Funding and are the reason one is subject. There is no designated amount of funding that would make one subject or not subject (but the amount may be relevant when seeking waiver options).

▶ Skills List:

- ▶ J1 exchange program involving a **field of specialized knowledge** that has been designated as **"in demand"** by the **government of your home country** and if this field appears on State Department's [Exchange Visitor Skills List](#) for your home country, then you are subject to the 2 year rule based on the skills list.
- ▶ If your country does not appear on this list, you cannot be subject to the 2 year rule based on the skills list.

DUELING 212(E) DESIGNATIONS



Subject to
212(e)

Not Subject to
212(e)

U.S. DOS Advisory Opinion

- ▶ If you do not know whether the two-year home-country physical presence requirement applies to you, after having reviewed the Eligibility Information webpage, you can request that the Department of State, **Waiver Review Division** conducts an **Advisory Opinion**. An Advisory Opinion is a review of your exchange visitor program documents to determine if you are subject to this requirement.



United States Department of State

Washington, D.C. 20520

Re: DoS# [REDACTED] DOB: [REDACTED] COB: EI
Salvador COR: El Salvador

Subject: Finding of the two-year foreign residence requirement of Section 212(e)

Dear Mr. [REDACTED]:

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

The Department has determined that the exchange visitor is **not subject** to the requirement, based on the following data:

DS-2019 (IAP-66): [REDACTED] (au pair program: [REDACTED])

Program Numbers: [REDACTED]

It appears there were no government funds involved in the program and the Skills List is not applicable in this case, therefore it is not necessary to process a waiver on the exchange visitor's behalf.

Should the exchange visitor wish to request a change in visa status, an application may be made directly to the District Office of the United States Citizenship and Immigration Services having jurisdiction over the exchange visitor's temporary place of residence in the United States.

We hope this information is helpful.

Sincerely,

[REDACTED]

Waiver Review Division

Challenging the Advisory Opinion

Generally this accomplished in conjunction with some kind of waiver application. 1) You argue to the WRD and USCIS that the WRD's Advisory Opinion is wrong and you are NOT Subject.

2) If you are ultimately found to be subject, here's your waiver argument, asking WRD to make the appropriate recommendation to USCIS and proceed with the Waiver.



Complying with 212(e)

- ▶ Which country?
- ▶ • What does it mean to “reside” in the home country or country of last residence?

The 212(e) requirement mandates that the exchange visitor return to the country of last residence or nationality (depending upon which skills list or financing caused the visitor to be subject to the requirement). Residence in a third country does not satisfy the rule, whether or not it meets or exceeds the required two-year period. A narrow exception to this rule may exist where an exchange visitor is engaged in services by the government of his or her home country and is assigned abroad (even in the United States) in connection with that government employment.

- ▶ • Documentation is important
- ▶ • No deadline to comply.

J-1 Waiver Options for Post-docs and Research Scientists

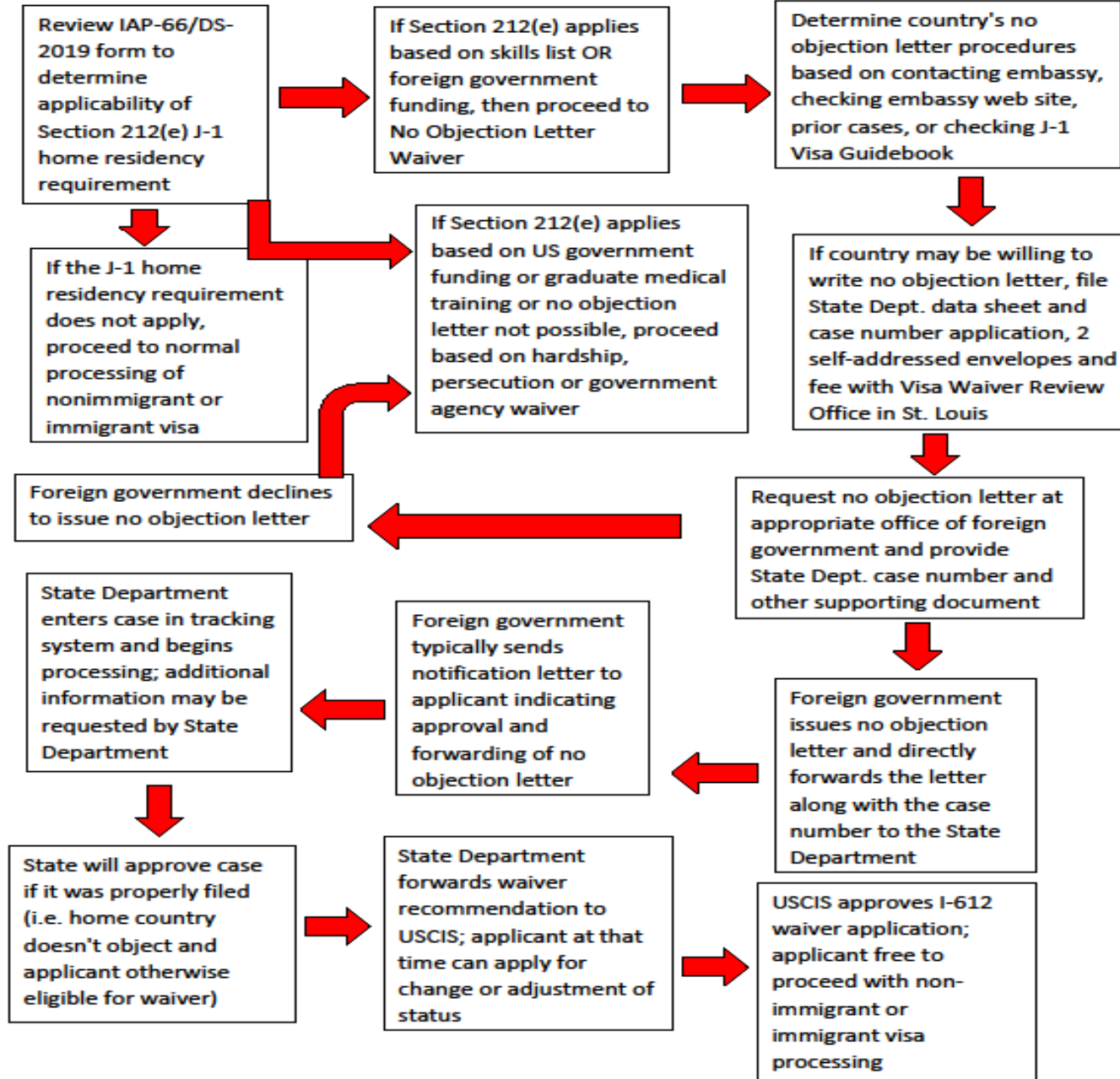
- ▶ No Objection Waiver
- ▶ Persecution Waiver
- ▶ Hardship Waiver
- ▶ Interested Government Agency Waiver

NO OBJECTION WAIVER PROCESS

Fairly Straight forward request
Consider the amount of involved in this process
Consider your home country
Other Considerations



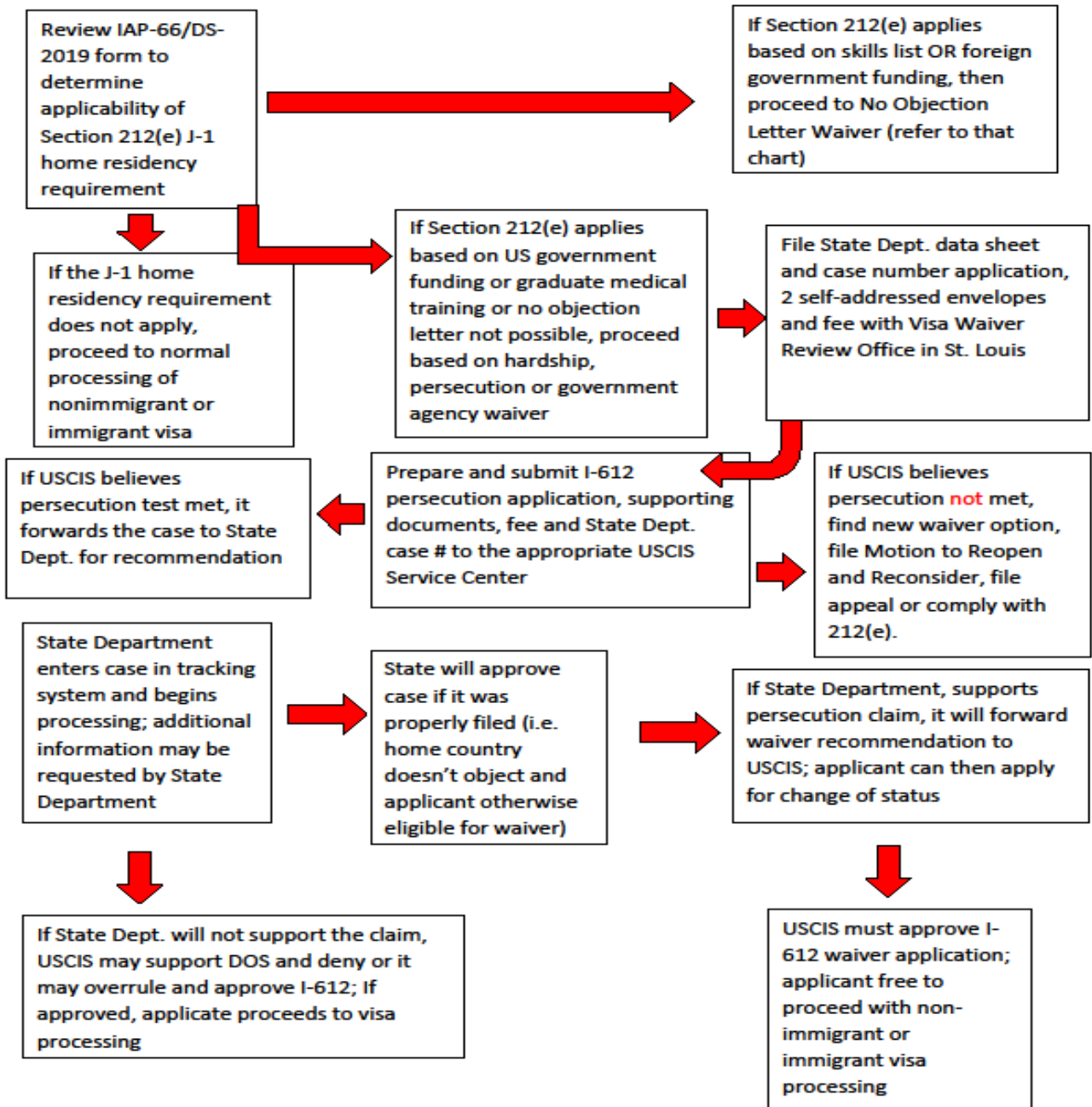
J-1 NO OBJECTION WAIVER FLOW CHART



Persecution Waiver Process

More difficult than the No Objection
Very lengthy adjudication timeframe
Requires very detailed documentation
Careful Analysis of your persecution claim
Back it up with evidence
Country Conditions
Treat it as if you are applying for asylum

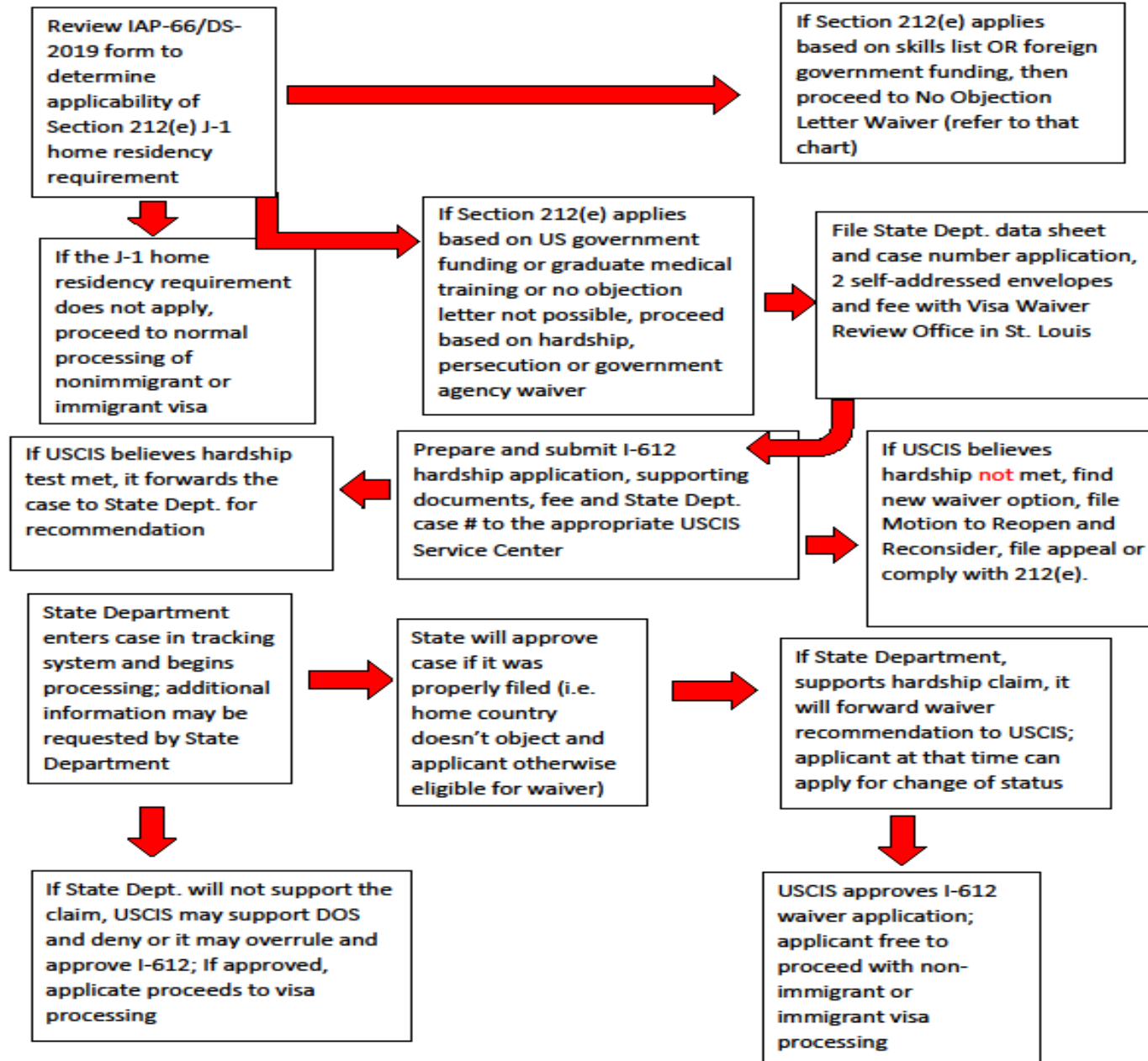
J-1 PERSECUTION WAIVER FLOW CHART



Hardship Waiver Process

More difficult than the No Objection
Perhaps less difficult than the persecution
Very lengthy adjudication timeframe
Requires very detailed documentation
Careful Analysis of hardship to your U.S. Citizen or Lawful
Permanent Resident spouse and children
Back it up with evidence
Country Conditions, Spouse's employment, health and
cultural considerations etc.

J-1 HARDSHIP WAIVER FLOW CHART



Interested Government Agency (IGA) Waiver Process

Request by an Interested U.S. Federal Government Agency

A U.S. federal government agency may request waivers of the two-year home-country physical presence requirement for exchange visitors subject to this requirement. Each federal agency head must approve an individual to sign letters requesting waivers. Each agency waiver request must have that individual's signature.

An agency must determine it is in the public interest that you remain in the United States. ,
Next, the agency must submit a Request by an Interested U.S. Federal Government Agency.

The letter must explain why granting a waiver of the two-year home-country physical presence requirement is in the public interest of the United States and why it would be detrimental to the agency if you must return to your home country to fulfill the requirement. Any U.S. federal government agency may request a waiver under this basis.

J-1 INTERESTED GOVERNMENT AGENCY (IGA) (NON-PHYSICIAN) WAIVER FLOW CHART



Storytime

Change of Status from J-1

- ▶ If subject, a J-visa holder will have to physically reside within their last country of legal permanent residence for two years before s/he may return to the U.S. as an H-1B visa holder, L visa holder, K visa holder or as a Permanent Resident.
- ▶ Be the recipient of a J-1 Waiver. (Receive Form I-612 Approval Notice).
- ▶ Can apply for a Change of Status in the U.S. while subject, but COS options are limited and the 212(e) requirement remains in place regardless of the change of status. (Note Exceptions).
- ▶ If subject, J-visitors are unable to apply for a change of status within the USA. Being "subject" to this regulation **does not** prevent a visitor from returning to the U.S. in another visa status, such as F-1 (student), B1/B2 (tourist/business) or under the visa waiver program.

Adjustment of Status for J-1s

- ▶ Need to have obtained some kind of waiver first.
- ▶ Can use Employment based, Self-Petition or family-based pathways to permanent residency.



Questions





Daniel W. Oldenburg, Attorney

233 South 13th Street

Suite 1900

Lincoln, NE 68508

T-(402) 479-7125

doldenburg@clnewilliams.com

Thank you!