



AS "BRAIN GAIN" REPLACES "BRAIN DRAIN" STATE DEPARTMENT REMOVES MANY COUNTRIES INCLUDING CHINA AND INDIA FROM THE TWO-YEAR HOME COUNTRY REQUIREMENT

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The Department of State (DOS) announced an [update](#) of the countries on the Exchange Visitors Skills List, effective December 9, 2024. This update supersedes the most recent update in 2009. DOS has [removed China and India](#), among 34 countries, from the list. This means that J nonimmigrant exchange visitors from those countries who were subject to the two-year foreign residence requirement based on designations in the previously published Skills List [no longer need to return](#) to their countries for two years after their studies in the United States if their country is not on the revised list. DOS is not updating the skills on the list.

The notice explains that the Skills List is a list of countries designated as clearly requiring the services of persons engaged in certain fields of specialized knowledge or skills. Criteria for designation include overall economic development (per capita Gross Domestic Product), country size, and overall outbound migration rate, the notice states. In addition to China and India, Saudi Arabia, South Korea, the United Arab Emirates, and others were removed from the list.

Since the Skills List was first issued in the 1970s, the fields designated for the home residency rule have been primarily by requests from foreign governments, and this has contributed to setting visa requirements that are arbitrary and opaque.

The share of workers covered by the list actually rises with a country's income level, according to a [report](#) from the Institute for Progress. For example, countries with similar levels of development can have vastly different representation of fields on that list. Mali imposes the home return requirement on almost all fields, for example, while Gambia doesn't impose it on any.

The original rationale behind the list—that immigration creates a “brain drain” effect in their countries of origin—has also been complicated by new evidence showing that skilled immigration can increase development in home countries. Brain drain is an outdated concept and the emigration of people has given way to brain gain “because international flows of technology, entrepreneurship, trade, and investment typically flow through networks of *people*, networks that depend on skilled migration, and because the prospect of emigrating induces more people to invest in acquiring skills.”

The J-1 Research Scholar program is poised for greater impact following the revision to the Skills List. The Exchange Visitor Program, as described in 22 C.F.R. § 62.20(b), aims to foster the exchange of ideas between Americans and foreign nationals while encouraging international collaboration in teaching, lecturing, and research. By facilitating the exchange of professors and research scholars, the program promotes intellectual enrichment, shared research efforts, and stronger connections between academic and research institutions in the United States and abroad. It provides foreign scholars and professors the opportunity to work with American colleagues, engage in cross-cultural activities, and share their experiences and enhanced expertise with their home countries, benefiting both their communities and their fields of study.

22 C.F.R. §§ 62.3(a)(1)–(3) outlines the types of entities eligible to apply for designation as a sponsor of a J-1 program, including companies that meet the requirements set forth in 22 C.F.R. § 62.3(b). Once authorized, these companies can issue DS-2019 forms as specified in 22 C.F.R. § 62.12. A company can also partner with an organization such as the [American Immigration Council's \(AIC\) J-1 Research Scholar program](#), which is also authorized by the State Department to assist eligible foreign nationals by connecting them with qualifying U.S. host organizations, ensuring that academic enrichment and mutual understanding remain central to the program's goals. According to AIC's requirements, which align with 22 C.F.R. § 62.20(d), applicants must hold a Bachelor's, Master's, or PhD degree and possess a background as a research scholar, professor, scientist, or with similar expertise, along with the ability to

showcase academic credentials, relevant experience, and contributions in their specific field of research interest. Applicants must not be pursuing a tenure-track position nor intending to stay in the United States beyond the duration of the five-year program.

Under 22 C.F.R. § 62.4(f), a foreign national can qualify as a research scholar if their primary purpose is conducting research, observing, or consulting on a research project at research institutions, corporate research facilities, museums, libraries, accredited academic institutions, or similar organizations. While J-1 research scholars may engage in activities similar to H-1B visa holders, such as research and teaching, the J-1 visa is specifically designed for cultural exchange and professional development, not for ordinary employment. However, unlike the regulations for training and internship programs under 22 C.F.R. § 62.22, which explicitly state that they must not displace American workers, this condition is not applied to research scholars. This is because the activities of research scholars are inherently academic and collaborative, focusing on the exchange of knowledge and skills rather than filling roles typically occupied by U.S. workers.

The Exchange Visitor Program for Research Scholars promotes the interchange of knowledge between foreign and American scholars, emphasizing mutual learning and expertise sharing. This ensures the program aligns with its mission of fostering international collaboration and understanding, rather than addressing employment gaps in the U.S. labor market. Although the primary focus of the J-1 visa is cultural exchange, research scholars can receive remuneration for their work, which aligns with the academic and research nature of their activities, distinguishing it from ordinary employment roles.

While the update to the Exchange Visitors Skills list does not change how the J-1 visa functions for research scholars, it has a significant impact on its appeal. [Postdoctoral researchers](#), for example, might have been hesitant to accept J-1 positions if doing so required them to return to their home country for two years. The updated policy, by lifting the home residency requirement for scholars from countries removed from the list, creates greater flexibility for both [STEM and other talent](#) to engage in high-level research and build successful careers without the constraint of spending two early career years abroad. This policy shift is expected to encourage more scientists to pursue J-1 opportunities, benefitting U.S. institutions eager to attract global talent.

Employers can also explore using the J-1 visa for entry-level positions in [the trainee or intern categories](#), providing foreign nationals with opportunities to gain experience and training. This approach could enable employers to assess long-term potential or equip workers with skills they can take back to their home countries. However, while the home residency requirement has been lifted for many, the fundamental rules of the J-1 visa remain unchanged. Thus, those whose participation in the J-1 program is funded by the US government or by the government of the home country continue to be subject to the two year home country requirement as well as those who receive graduate medical education or training.

The State Department's decision to apply the updated policy retroactive holds further significance. Individuals who previously entered the U.S. on a J-1 visa and whose plans have shifted may now explore options such as [H-1B or L](#) visas without first needing to fulfill the two-year residency requirement or obtain a waiver. This added flexibility enhances the J-1 visa's value as a tool for advancing STEM research and fostering international talent exchange.

Overall, the change to the Skills List supports the exchange of expertise across borders, strengthening the U.S.'s global influence, fostering international collaboration, and [reinforcing American soft power](#) through the sharing of knowledge and ideas. Ultimately, the update ensures the U.S. remains a leader in global talent exchange and development.

Exchange visitors who seek a definitive determination from DOS of whether the two-year foreign residence requirement applies to them may request an Advisory Opinion from the Waiver Review Division, the notice says.

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