

The ABC's of Immigration: J-1 Visas – Establishing a J-1 Exchange Visitor Program

In our last issue of the Siskind's Immigration Bulletin, you'll remember that we covered the different activities one can participate in with a J-1 visa. As noted in the article, a J-1 visa holder can only come to the US with the sponsorship of an approved J-1 Exchange Visitor Program ("EVP"). This article describes procedures related to establishing such a program as well as maintaining the program.

What exactly is considered a J-1 Exchange Visitor Program?

An EVP can be established by a government agency (be it a federal, state, or local agency or an international organization). More frequently, however, EVPs are private sector programs. There are four basic types of private sector programs:

- Academic institutions - sponsors may include secondary schools, colleges, universities, seminaries, libraries, museums, and research laboratories affiliated with academic institutions. Programs are established to bring professors, researchers, short-term scholars, and students to these institutions.
- Medical Institutions - sponsors may include hospitals, medical centers and related institutions. Programs are established to bring certain medical trainees and research scholars to medical institutions. The Educational Commission for Foreign Medical Graduates (ECFMG) must sponsor foreign medical graduates entering the US to pursue graduate medical education or training.
- Nonprofit Organizations - sponsors may include teenage academic year/home stay organizations, summer camp counselor programs, au pair programs, student summer work/travel programs and research programs.
- Profit Making Organizations - sponsors may include banking, investment, manufacturing, industrial and other business organizations as well as other organizations involved in establishing ongoing specialized training and internship programs and research organizations.

Who can sponsor an EVP?

Program sponsors are expected to be US "citizens." This means an individual sponsor must be a citizen or lawful permanent resident and organizational or institutional sponsors should be created and operating under the laws of the United States. The responsible officer for an EVP must also be a citizen or permanent resident.

How do I go about becoming an EVP?

The main application form to become an EVP is Form DS-3036 and must be filed through the SEVIS system. Additional documents, dependent upon the EVP category requested, must be forwarded directly to the DOS for the initiation of the review process. Current EVP application fee is a non-refundable \$1748. Sponsors must meet a number of other additional requirements including the

following:

- A demonstration that the EVP has the financial capacity to meet its program obligations (such as annual reports, financial statements, tax returns, etc.)
- Document how the EVP will ensure that J-1 visitors have adequate medical insurance
- A statement explaining why other visa programs are insufficient to meet the EVP's objectives
- Evidence of appropriate licensure or accreditation
- Documentation that the EVP will make available to visitors cross-cultural activities such as sports, cultural and social events
- Documentation that the program has reciprocity with programs that allow Americans to go abroad to be exchange visitors. The reciprocity need not be for a one-for-one exchange, but should make it generally easier for Americans to have access to the culture of other countries.

Other program requirements are that the number of visitors must be greater than five each year (unless the EVP gets a reduction approved by the State Department), the program must last longer than three weeks (except for short-term scholar programs) and the program must have a sufficient orientation program.

What is the difference between an EVP and a training/internship program?

Training and internship programs have a number of additional rules. Such programs can be in any of the following categories: arts and culture; information media and communications; education, social sciences, library science, counseling and social services; management, business, commerce and finance; health-related occupations; aviation (not allowed for internship programs); the sciences, engineering, architecture, mathematics and industrial occupations; construction and building trades; agriculture, forestry and fishing; public administration and law; and hospitality and tourism. Training programs for unskilled workers will not be approved.

In the aftermath of September 11, the aviation training requirements became much more stringent.

Training and internship program applications must be accompanied by certification that the EVP has adequate physical facilities, equipment and personnel for the program, that the program is not designed to train employees to work in the US and it is not designed to displace American workers. The EVP must also submit a generalized training plan containing a statement of the training and/or internship program's objectives, the skills to be taught, a summary of the supervision and evaluation process, the program syllabus and an explanation of why any on-the-job training may be used. If a third party will be conducting the training, the application must be accompanied by documents showing how the EVP intends to assure the third party meets State Department rules as well as the actual executed contract with the third party.

Training and internship program sponsors also must meet additional recordkeeping requirements.

Among the items that must be kept in the files:

- A customized training/internship plan for each visitor
- The trainee/intern's resume and an evaluation of why the visitor was selected for the program
- Documentation that the trainee/intern has sufficient English skills
- Documentation that the trainee/intern has received the necessary information about the program (the trainee should sign the document explaining the rules)
- A statement that the orientation program has been completed
- Documentation that cross-cultural activities were offered or made available to the visitor
- Mid-term and final evaluations of the visitor
- A record of contacts with the visitor to check whether any problems arose for the visitor

What follow-up must an EVP do?

All EVPs must prepare and submit an annual report that accounts for all DS-2019 forms issued to visitors, data on the actual number of visitors that participated in the program, documentation of efforts to provide reciprocity, a record of cross-cultural offerings, and documentation relating to the orientation program. The SEVIS program keeps track of this information and has made the annual report procedure much easier.

How long does it take before an application is processed and/or approved?

The State Department recommends allowing six months for processing of an application, though one would be wise to plan on it taking even longer than this. Especially with private training, internship and work-study programs, the period is taking much longer.

Programs are approved in five-year increments, with the exception of the au-pair programs, which must be redesignated every two years. The DOS normally approves expansions of EVPs to include new types of participant categories when the programs come up for renewal. However, a request can be made earlier. Redesignation application must be made via the SEVIS Form DS-3036. Documents do not need to be resubmitted if they have not changed since the first application. However, in lieu of the document, a statement that the document has not changed should be submitted.

A list of approved programs can be found on the Department of State website at the following link: <http://exchanges.state.gov/jexchanges/>.