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TO ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE
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TAGS: CVIS, CMGT, KFRD, OEXC, KPAO
SUBJECT: EXCHANGE VISITOR (J VISA) UPDATE

REFS: (A) 07 State 27556 (B) 07 Bucharest 126 (NOTAL)
C) 07 State 4104 D) 05 State 180015 E) 04 State
187635 F) 03 State 139997 (SOP 17)

FOR ALL VISA-ADJUDICATING OFFICERS FROM CA A/S HARTY

SUMMARY

1. SUMMARY: The summer season will be here before we know it. In preparation, here is an update on J visa issues, to supplement guidance in Ref. A. Please remember that you should not refuse a J visa applicant under 214(b) simply because of the nature of the program itself. You should also be certain that applicants possess sufficient proficiency in the English language to be able to successfully participate in and complete the program. Posts are reminded of the twelve-month and two-year bars on repeat participation for professors and research scholars. This cable also provides additional clarification on the Summer Work Travel (SWT) program begin dates and end dates. We urge posts to continue outreach to program sponsors and potential exchange visitors to make the visa process more efficient and transparent and to reinforce the importance of applying EARLY. End Summary.

J VISAS AND RESIDENCE ABROAD

2. As the SWT season kicks into gear, we wanted to remind posts of the proper application of the "residence abroad" requirement for J visas. 9 FAM 41.62 N5.2 states that "the context of the residence abroad requirement for exchange visitor visas inherently differs from the context for B visitor visas or other short-term visas. The statute clearly presupposes that the natural circumstances and conditions of being an exchange visitor do not disqualify that applicant from obtaining a J visa. It is natural that the exchange visitor proposes an extended absence from his homeland (see 9 FAM 41.11 N2). Nonetheless, the consular officer must be satisfied at the time of the application for a visa that an alien possesses the present intent to depart the U.S. at the conclusion of his or her program." It also reminds officers that they should not assume that a J visa holder would return home just because he/she is subject to the two-year residency requirement under INA 212(e). Ref E discusses residence abroad in the context of student visas, and may be helpful, as well.

J VISAS AND LANGUAGE ABILITY

3. You should be sure that a program participant possesses sufficient proficiency in the English language to participate in the program (see 9 FAM 41.62 N6.1). The amount of English language ability needed to complete a program successfully may vary by the type of program. It is appropriate to conduct interviews in English for program participants, but remember that an applicant does not have to be fluent. N6.2 also clarifies that participants in graduate medical training programs must provide proof of English competency.

PROFESSORS AND RESEARCH SCHOLARS

4. A reminder about the twelve-month bar and the recent two-year bar for J professors and research scholars, and their dependents:

TWELVE MONTH BAR

5. An applicant under consideration for a J research scholar or professor visa does not qualify if he/she has been in the United States on a J visa for more than six of the twelve months preceding the new program's start date. A participant in the short-term scholar category is exempt from this bar. See 9 FAM 41.62 N4.6, N4.7, and N11.3.

TWO-YEAR BAR

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6. As of May 2005, regulations governing the Professor and Research Scholar categories were amended (22 CFR 62.20) to extend the duration of program participation for professors and research scholars from three years to five years (and beyond five years for participants in federally-funded research programs - G-7). A participant is not eligible to return to the United States in the professor or research scholar category for a period of two years (24 months) immediately following completion of a five-year period. See 9 FAM 41.62 N4.6, N4.7, and N11.4.

SUMMER WORK AND TRAVEL (SWT) CLARIFICATIONS

PROGRAM LENGTH, END DATE, VISA EXPIRATION DATE

8. Ref C informed posts that final-year post-secondary students are now eligible for Summer Work and Travel (SWT) programs. Ref C also reminded posts of the regulations for SWT programs, i.e., that they be no longer than four months and only take place during a student's summer vacation. Please note that while the program may not be longer than four months, you are permitted to issue visas valid prior to the program start date.

SWT participants may not enter the United States more than 30 days before their program starts. BOTTOM LINE: Visas must expire on the program end date.

9. Many posts have already worked with local universities and Departments of Education to set reasonable program end dates. If you have not done this yet, how should you do it? Survey the most prominent educational institutions and your local Ministry of Education. Find out when students' summer vacation ends. For some schools, this may be the orientation dates or the official start of school; for others, it may be the start of classes.

10. Once you have enough information, you may set a uniform visa expiration date for all programs and communicate it to SWT sponsors. Posts have discretion to decide whether they want to allow exceptions to these uniform dates if certain universities, or certain individual university programs, have longer vacation periods. However, posts are NOT permitted to make exceptions for individual students who have individual permission to miss classes. Such a case-by-case process is difficult to verify and cumbersome for posts. Sponsors and recruiters have been warned not to pursue such exceptions.

WHEN WE SAY SUMMER, WE MEAN SUMMER

11. SWT programs are only permitted in the summer months (whatever those may be in your country). There should be no SWT participants taking part in SWT at any other time of year. Please notify the ECA Compliance Unit (JVISAS@STATE.GOV) if you believe a program sponsor is not following these regulations.

STUDENT RETURN DATE

12. A reminder for posts who have a regular validation study or other return date check for SWT participants: all J program participants are permitted to remain in the United States for 30 days past the end of their program. During this period, they are not permitted to work (see 9 FAM 41.62 N9.4). As a result, if you are asking students or sponsors to "report in" at the end of their program, a reasonable return date would be 30 days after the program end date. FPMs at posts wishing to check DHS exit records as part of such a validation process may consult with their FPP post liaison officers, who now have access to DHS ADIS data.

13. Embassy Bucharest (ref B) has a successful program whereby SWT coordinators report student return dates to the consular section. The Embassy performs a validation study each year to confirm that coordinators' information is accurate.

OUTREACH, OUTREACH, OUTREACH

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14. While most of the SWT regulations are not new, ECA and VO are more closely enforcing them and ECA is committed to following up with sponsors who are not compliant. We know that some sponsors are concerned that the rules will result in

reduced SWT participation or delays in the visa process if they are required to revise their DS-2019 forms to be compliant. We encourage posts to reiterate the above guidance to local partners or agents of U.S. sponsors and potential participants. Clear communication makes our process smoother and more transparent for all.

HELP?

15. ECA and VO appreciate your continued assistance in fulfilling the goals of the J visa program. The ECA Compliance Unit and your VO/F/P desk officer are ready to work with posts and sponsors to resolve the SWT program date issue or any other matters. FPP post liaison officers can assist in J visa validation studies. Please also remember that SEVP can answer many of your SEVIS-specific questions. You may reach them at SEVIS-SOURCE@ICE.GOV; additional contact information is posted at <http://www.ice.gov/sevis/contact.htm>.

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