

Global Immigration alert

December 2024

United States

Department of State updated Exchange Visitor Skills List

Executive summary

On 9 December 2024, the Department of State (DOS) announced publication of an updated Exchange Visitors Skills List (Skills List), the first such update since 2009. The Skills List is used by DOS and the Department of Homeland Security (DHS) to determine whether a foreign national who has been admitted into the United States as a “J” non-immigrant exchange visitor, or who acquired “J” status subsequent to admission, is subject to the two-year foreign residence requirement under Section 212(e) of the Immigration and Nationality Act (INA).

The announced update relates exclusively to which countries are included on the Skills List. DOS is not updating the lists of covered skills in this revision; for countries present on this revised Skills List, the skills remain the same as in the 2009 Skills List.

Current and former J-1 and J-2 non-immigrants who became subject to the two-year foreign residence requirement under INA Section 212(e), at the time of their admission or acquisition of “J” status, based on a previously published Skills List will no longer be subject to that requirement if their country has been removed from the revised Skills List.

Background

212(e) renders certain J-1 and J-2 exchange visitors ineligible to apply for an immigrant visa, for permanent residence, and for certain non-immigrant visas until they have resided and been physically present in their country of nationality or last residence for an aggregate of at least two

years following departure from the United States, or until they have received a waiver of this requirement. An exchange visitor and their dependents may become subject to 212(e) based on the Skills List, receiving graduate medical training in the United States, and/or receiving U.S. and/or home government funding in support of the exchange program.

The Skills List reflects those skills that DOS has identified as being in short supply in a given country.

Analysis

DOS is updating the countries included on its revised Skills List based on three elements: 1) per capita Gross Domestic Product (GDP), 2) country size, and 3) overall outbound migration rate. Where per capita GDP is less than \$7,500 (2023 dollars, PPP); per capita GDP is between \$7,500 and \$15,000, and the country is small; or per capita GDP is between \$7,500 and \$15,000, and the country has experienced significant outbound migration in the past decade, DOS has determined that including the country on the Skills List is consistent with U.S. goals for the development of foreign countries.

These criteria are meant to ensure countries with low levels of development, as well as those countries with higher levels of development but possessing other extenuating circumstances that stymie the development of a skilled workforce, will remain on the Skills List to support the development of that country. Further, the revisions are meant to ensure that the countries included in the updated

Skills List clearly require the services of persons engaged in designated fields of specialized knowledge or skills.

The DOS has removed a total of 37 countries from the new Skills List, which include, but are not limited to:

- ▶ Albania
- ▶ Brazil
- ▶ Columbia
- ▶ India
- ▶ Malaysia
- ▶ Peru
- ▶ South Korea
- ▶ Turkey
- ▶ Argentina
- ▶ China - Mainland
- ▶ Georgia
- ▶ Indonesia
- ▶ Oman
- ▶ South Africa
- ▶ Thailand
- ▶ United Arab Emirates

The countries which are currently subject to the Skills List are available here: <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/skill-list-by-country.html>. DOS intends to review the Skills List every three years.

What this means

“J” non-immigrant exchange visitors who were subject to the two-year foreign residence requirement at the time of their admission or acquisition of “J” status based on designations in a previously published Skills List will no longer be subject to that requirement if DOS has removed their country from the revised Skills List.

However, a “J” non-immigrant may still need to fulfill the two-year requirement, or obtain a waiver, if their program was government-funded or if they received graduate medical education or training in the United States. Exchange visitors who require a determination from the Department of State as to whether the two-year foreign residence requirement applies to them may [request an Advisory Opinion](#) from the Waiver Review Division.

We will continue to monitor and review future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP or Mehlman Jacobs LLP professional.

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EYG no. 010772-24Gb1

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