

# **AMERICAN IMMIGRATION LAW FOUNDATION**

## **PRACTICE ADVISORY**

### **UNDERSTANDING THE REGULATORY CHANGES FOR J-1 TRAINEE AND INTERN PROGRAMS Q & A**

Effective July 19, 2007 interim final rules will be effective for J trainee and intern programs. 22C.F.R. § 62 (2007) This rule splits the existing J Trainee category into Trainees and Interns. It establishes new eligibility criteria for both trainees and the companies that train them. It changes the maximum length of stay in some cases. The new rule also requires a placement plan, signed by trainee, training supervisor, and visa sponsor on government form DS-7002.

#### **Who can be an intern under the new rule?**

Interns are individuals who are either currently enrolled in and pursuing academic studies abroad, or who have graduated from an overseas institution no more than 12 months prior to the start date of his or her exchange visitor program.

#### **Who can be a trainee?**

Trainees are individuals who have either a degree or professional certificate from a post-secondary academic institution abroad and at least one year of related work experience acquired outside the United States, or have five years of related work experience acquired outside the United States.

#### **What about foreign nationals with degrees from the United States?**

U.S. based education or degrees cannot be used to establish eligibility for either J-1 training or intern programs.

#### **What other eligibility requirements does the new rule set for trainees or interns?**

English languages skills must be verified. Different sponsors will have different requirements for accomplishing this.

An internship must be in the intern's specific academic field.

A trainee program must be in the applicant's specific occupational field.

#### **Will sponsors screen applicants differently?**

The new rule requires sponsors to interview every applicant either in-person or by videoconference or web camera.

Officials at the Office of Education and Cultural Affairs (ECA), which oversees the J programs, have verbally agreed in the final rule to specify telephone interviews as a permissible means of screening. However, at this time there is no schedule for the posting of the final rule.

### **Who can be a host organization?**

A host organization conducts training or internship programs on behalf of ECA designated program sponsors (such as AILF). A host organization must sign a written agreement with the program sponsor.

Host organizations that have not successfully participated in the J visa sponsor's training or internship programs must be visited by a representative of the visa sponsor prior to approval of a DS-2019. Companies with 25 or more employees or with at least three million dollars in annual revenue are exempt from this mandatory visit.

The host organization must cover the intern or trainee under workers' compensation insurance.

The host organization must be able to provide a Dun & Bradstreet Identification Number and an Employer Identification Number (EIN).

Host companies must agree to contact the visa sponsor immediately in the event of an emergency involving trainee or interns.

### **Who can not be a host organization?**

Staffing or employment agencies may not be involved in a J intern or training program.

### **How will the training or placement plans be effected?**

All training or placement plans must be detailed on form DS-7002.

The trainee or intern, host organization supervisor, and responsible officer of the visa sponsor must sign the form prior to the issuing of the form DS-2019. Host organizations and J program participants should understand that, as with all government forms, providing false information can have serious legal ramifications.

Training or placement plans must be tailored to the individual skills and experience of the trainee or intern.

### **Are any occupations excluded from J intern or training programs?**

Trainee or interns may not be placed in unskilled or casual labor positions, positions involving more than 20 percent clerical work, positions requiring trainees to provide therapy, medication, or other clinical or medical care (e.g. sports or physical therapy, psychological counseling, nursing, dentistry, veterinary medicine, social work, speech therapy, or early childhood education).

In addition, no intern or trainee can be placed in a position that will displace full- or part-time, temporary or permanent American workers or serve to fill a labor need.

**What are the maximum lengths allowed for programs?**

An intern program has a maximum length of twelve months.

A trainee program has a maximum length of eighteen months, except;

Hospitality and Tourism<sup>1</sup>, which is limited to twelve months

If an agricultural program does not contain at least 6 months of classroom study, it is limited to twelve months.

**Can participants apply for additional intern or training programs after completing their original program?**

Yes.

Interns may participate in additional internship programs as long as they maintain post-secondary student status at an overseas institution or begin a new internship program within 12 months of graduation.

Repeat participation is allowed trainees provided that applicants spent at least two years outside of the United States between programs and otherwise meet the eligibility requirements.

Participants who have successfully completed internship programs, but are no longer enrolled in an overseas institution or within 12 months of graduation may participate in a training program after a two-year period of residency outside the United States following the end of their internship program.

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<sup>1</sup> Higher level management training may still last eighteen months, even at a hospitality facility.