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Can a J-2 holder get a HRR 212(e) waiver without J-1?

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Submitted by Chief Editor on Oct 13th 2015

My wife is working here in the US on J-1 visa as a Post Doctoral Fellow and She is subject to 2HRR requirement. I came to United States last year on J-2 visa from India and after few month I applied and got the EAD card and now I am also working for XYZ IT company here in the USA and I am subject to two HRR requirement as well. My employer wants to file H-1B visa for me but my wife does not have an offer for H-1B visa so in that case Can I (J-2 visa holder) file a waiver petition independently of the J-1 Principal?

ANSWER:

See clip from Attorney Rajiv S. Khanna's conference call video that addresses this question.

<https://youtu.be/XAfykYM-cUQ?t=89>^[2]

FAQ Transcript:

The question asked is can a J-2 holder obtain a waiver of the Home Residency requirement without the J-1 holder being involved and the answer is, the last time I looked into this issue it is a "No". The exemption was if there was some sort of impossibility associated with the J-1 holder conferring the benefits of a waiver for instance if they were divorced or there was a death of the J-1 spouse. In those cases certainly this was a possibility. But otherwise you cannot as a J-2 holder obtain a waiver by yourself. Your disqualification for the Home Residency requirement came into being because of the J-1 holders status. So the theory of the law is that J-1 holder must apply for a waiver.

Nonimmigrant Visas:

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[Home Residency Requirement](#) ^[5]

[Waiver](#) ^[6]

Unless the context shows otherwise, all answers here were provided by [Rajiv](#) ^[7] and were compiled and reported by our editorial team from comments and blog on immigration.com ^[8]

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