

J-1 Visas — Summer Work Travel Interim Rules Released from the U.S. Department of State Overview and Key Issues Revised May 21, 2012

Interim Final Rules

In 2012, the U.S. Department of State (State Department) has released additional rules that impact camps and all organizations that utilize the J-1 Summer Work Travel (SWT) Cultural Exchange Visitor Program. The full text of the rules can be found in the May 22, 2012 issue of the Federal Register at: <http://j1visa.state.gov/wp-content/uploads/2012/05/2012-swt-ifr.pdf>.

The American Camp Association (ACA) provides the following information and suggestions to help camps and other organizations better understand the impact of these rules.

Background and Rationale

For nearly fifty years, the State Department has administered a SWT Program, which allows foreign post-secondary students to visit the United States for a maximum of four months to experience our culture, travel, and work in what is described as “unskilled jobs.” In the camp environment, SWT participants are those *servicing in support roles* such as kitchen and maintenance — not those serving as counselors. The State Department administers this program as an important part of their diplomacy efforts and recognizes its popularity as a way for foreign nationals to visit the U.S. and enjoy cultural exchange experiences while offsetting at least a portion of their costs through temporary employment. While more than one million students have participated in the program, the State Department asserts that “in recent years, the work component of the Summer Work Travel Program has too often overshadowed the core cultural component of the program”.¹ Because of well-publicized abuses of the program in 2011 (none of which occurred in a camp environment), the State Department determined that it needed to enhance its scrutiny of the SWT Program and decided to take additional steps to protect program participants.² Thus, the State Department released new rules in order to “further protect the health, safety, and welfare of Summer Work Travel Program participants and to reinforce the cultural exchange aspects of the program.”³

Key Changes

The most important changes to the program can be categorized into five areas:

1. **Documentation:** The nature of and type of documentation that a camp must provide in order to participate in the program has been expanded.
2. **Monitoring:** Monthly, the program sponsor (usually your placement agency) must communicate with the visa-holder to verify their location and well-being.
3. **Cultural Exchange Activities:** The types of cultural exchange programs that a SWT visa-holder must experience outside of the normal duties of their job have been expanded.
4. **Prohibited Jobs:** The list of jobs that participants cannot do has been expanded.
5. **Third-Party Involvement:** Rules on the involvement in the implementation of the program by third parties have been clarified and expanded.

Documentation

In order to protect the safety and well-being of visa-holders, the State Department has taken additional steps to ensure that participants are placed in jobs with legitimate, reputable American companies. Organizations must provide proof that they are a legal U.S. business. The new rules require that you [provide a copy of the following documents](#) to your placement agency:

1. Employer Identification Number (EIN)
2. Workers' compensation insurance policy (or a copy of your exemption from such)
3. Business license

Monitoring

Every month, the program sponsor (usually your placement agency) must check on the health, safety, welfare and physical location of visa-holders. The State Department requires that the program sponsor make [monthly personal contact](#) with each program participant. Moreover, the program sponsor must document each of these monitoring contacts — which could occur either in-person, by phone, or by e-mail. Participants must respond to these monthly communications or [risk being terminated](#) from the program. Termination from the program would be an egregious problem for the foreign national as the [possibility that they would ever be able to enter the U.S. again under any kind of visa would be extremely unlikely](#). The participant would be forever tagged as having been terminated from this program. The turn-around time for participants to respond will be very short — and they must respond themselves (you cannot respond on their behalf). Thus your camp can play a critical role in helping participants to understand the life-changing importance of responding to the monthly contact from the program sponsor.

Cultural Exchange Activities

Program sponsors must ensure that participants in the SWT Program engage in cultural exchange activities that are [not a regular part](#) of their job. The State Department has not indicated how many activities a participant must experience — only that visa-holders must participate in “a number” of these activities. In addition, while the State Department has not addressed this issue with regard to J-1 Visa Camp Counselors, you should assume that the same requirement might also apply to them in the future. Thus, ACA recommends including all of your cultural exchange visitors in these activities.

The State Department has offered the following examples of cultural exchange activities:

1. Non-work related activities that acquaint the participant with recognized features of U.S. culture and history (e.g., visiting national parks, state parks, historic sites, landmarks, scenic areas).
2. Activities that engage participants within the local communities in or near where they work and live. Sponsors are expected to identify these experiences, but can allow employers and the participants themselves to identify and organize these cultural exchange activities. Some examples to consider:
 - Attending sporting events
 - Touring historic sites
 - Participating in town hall / city council meetings
 - Attending musical performances
 - Visiting national parks, state parks, historic sites, landmarks, scenic areas
 - Attending political events and rallies
 - Visiting amusement venues (water parks, amusement parks)
 - Attending local summer fairs and festivals
 - Participating in activities at youth or senior centers
 - Participating in activities hosted by local volunteer organizations (Habitat for Humanity, Lions Club, Rotary Club, Urban League, etc.)

Prohibited Jobs

In order to protect the health, safety, and welfare of J-1 SWT visa-holders, the State Department has expanded the list of jobs into which participants cannot be placed. The two jobs most likely to impact camps are drivers and “night watch” positions. Specifically, participants may no longer fill positions as [drivers of vehicles or vessels](#) — regardless of whether or not they carry passengers. And they can no longer fill positions requiring work hours that fall predominantly between 10:00 p.m. and 6:00 a.m.

Third-Party Involvement

The State Department has granted forty-nine organizations the designation of “program sponsor” for the SWT Program. (View the list at <http://j1visa.state.gov/participants/how-to-apply/sponsor-search/?program=Summer%20Work%20Travel>.) Additionally, program sponsors can contract with third-party organizations to implement the program. Your placement agency may either be a program sponsor itself, or a third-party that has contracted to work with a program sponsor. The new rules clarify the roles of both the program sponsor and the third-party. While this is mainly an administrative issue, it is important that your camp understands the partnerships involved in the implementation of the SWT Program.

Review — What Your Organization Can Do to Comply with the New Rules

1. Provide all of the required documents (EIN, workers’ compensation policy or exemption, and business license).
2. Help program participants to understand that they must respond to the monthly monitoring contact from the program sponsor or risk being unable to enter the U.S. in the future.
3. Do not employ SWT participants as drivers of vehicles or vessels, or night watch positions.
4. Work with the program sponsor to provide and document a number of cultural exchange activities for your cultural exchange visitors.
5. Determine if the placement agency you are working with is a program sponsor or a third-party — and work in partnership with those organizations in order to provide a positive experience for the SWT participants and your camp.

Notes

1 U.S. Department of State, 2012 Interim Final Rule (2012 IFR), 77FR 27593-24612, <http://j1visa.state.gov/wp-content/uploads/2012/05/2012-swt-ifr.pdf>.

2 *Ibid.*

3 *Ibid.*

4 U.S. Department of State, *Summer Work Travel: Implementation of May 2012 Interim Final Rule*, Guidance Directive 2012-02, May 15, 2012.

For more information, contact the American Camp Association Public Policy Office
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