Questions and Answers

April 4, 2008

USCIS ANNOUNCES NEW RULE ALLOWING EXTENSION OF OPTIONAL TRAINING PROGRAM FOR QUALIFIED STUDENTS
Rule Expands "Cap-Gap" Relief for Students with Pending H-1B Petitions

PRIOR F-1 REGULATIONS RELATING TO PRACTICAL TRAINING:

What is optional practical training?

Optional Practical Training (OPT) is temporary employment that is directly related to an F-1 student's major area of study. Under existing rules, an F-1 student may be authorized to receive up to 12 months of practical training either pre- and/or post- completion of studies.

- Pre-completion OPT:

  An F-1 student may be authorized to participate in pre-completion OPT after he/she has been enrolled for one full academic year. The pre-completion OPT must be directly related to the student's course of study. Students authorized to participate in pre-completion OPT must work part-time while school is in session. They may work full time when school is not in session.

- Post-completion OPT:

  An F-1 student may be authorized to participate in post-completion OPT upon completion of studies. The post-completion OPT must be directly related to the student's course of study.

What is the application process to participate in pre- or post-completion OPT?

- Students must initiate a request by having their Designated School Official (DSO) recommend the OPT by endorsing Form I-20 and by making the appropriate notation in SEVIS, the system used to track F-1 academic students.

- Students then file Form I-765, Application for Employment Authorization Document (EAD), with USCIS. If approved, the student will be issued an EAD.

- The student may begin engaging in pre- or post-completion OPT once an application has been approved and an EAD has been issued.

How many students stand to benefit from today's announcement?

- There are approximately 26,000 students on OPT that have earned a bachelor's, master's, or doctorate in a STEM field. ICE and USCIS estimate that approximately 12,000 will take advantage of the STEM extension. Some of these students will be selected for an H-1B to start October 2009. Others may choose to continue their education, while some will depart the United States.

- We estimate another 10,000 students will benefit from the automatic "cap gap" extension.

What is the maximum duration of post-completion OPT?

- Under the new rule, certain students will be eligible to receive a 17 month STEM extension of post-completion OPT.

Do the periods of pre-completion OPT count against the available periods of post-completion OPT?

- Yes. All periods of pre-completion OPT are deducted from the available periods of post-completion OPT.

Are there fees associated with filing for extended OPT?
- Yes. USCIS charges $380.00 when an applicant files an I-765 for optional practical training.

CURRENT H-1B/CAP GAP REGULATIONS FOR F-1 ACADEMIC STUDENTS:

What is the H-1B cap?

- The cap is the Congressionally-mandated limit on the number of individuals who may be granted H-1B status during each fiscal year. For FY08, the cap is 65,000.

What is the cap-gap?

- Cap-gap occurs when an F-1 student's status and work authorization expire in the current fiscal year, before they can start their approved H-1B employment in the next fiscal year beginning on October 1. An F-1 student in a cap-gap situation would have to leave the United States and return at the time his or her H-1B status becomes effective at the beginning of the next fiscal year.

How does cap gap occur?

- Many employers file H-1B petitions on behalf of F-1 students after their post-completion OPT expires. An employer can not file, and USCIS could not approve, an H-1B petition submitted earlier than six months in advance of the date of actual need for the beneficiary's services or training.

  As a result, the earliest date that an employer can file an H-1B petition for consideration under the next fiscal year cap is April 1, for an October 1 employment start date. If that H-1B petition and the accompanying change of status request are approved, the earliest date that the student may start approved H-1B employment is October 1.

  Consequently, F-1 students who are the beneficiaries of approved H-1B petitions, but whose periods of authorized stay (including authorized periods of post-completion OPT and the subsequent 60-day departure preparation period) expire before October 1, must leave the United States, apply for an H-1B visa at a consular post abroad, and then seek readmission to the United States in H-1B status.

What are the current cap-gap regulations?

- Current regulations address the cap gap by authorizing an extension of the student's authorized stay, but they do not extend the student's employment authorization. This extension was not automatic, which meant that a notice had to be published in the Federal Register announcing the extension.

- When this Federal Register notice was published, the student's authorized stay was extended, but not the employment authorization. This means the student can remain in the United States until October 1, when the approved H-1B employment can begin, but cannot work until then.

- If a Federal Register notice is not published, the student must leave the United States, apply for an H-1B visa, and seek readmission to the United States in H-1B status.

How is the cap-gap situation changed under the interim final rule?

- F-1 academic students on post-completion OPT maintain valid F-1 status until the expiration of their OPT. Once that OPT has ended, they are authorized to remain in the United States for up to 60 days to prepare for departure.

- This cap-gap extension automatically becomes effective when the H-1B cap has been reached and the student has an H-1B petition filed on his/her behalf during the acceptance period.

- If the H-1B petition filed on behalf of the student is not selected during the acceptance period, the automatic extension terminates when USCIS announces completion of the random selection on its public web site.

- If the H-1B petition filed on behalf of the student is selected during the acceptance period, the student may remain in the United States and continue working until the October 1 start date indicated on the approved H-1B petition. The student may benefit from this provision only if he/she has not violated his/her status.

What is covered and clarified under the interim OPT Rule?

- F-1 academic students may now apply for post-completion OPT 90 days before their academic programs end and no later than 60 days after their academic programs end.

- This allows F-1 students seeking post-completion OPT to apply during their 60-day departure preparation periods, in the same way that they are allowed to apply for H-1B status during their departure preparation periods.

- This allows students to ensure that they meet graduation requirements before applying for post-completion OPT.

Is there additional post-completion OPT available to students in the high-tech industry?

- F-1 academic students who receive science, technology, engineering, and mathematics (STEM) degrees and who receive an initial grant of post-completion OPT, may apply for a 17-month extension for a maximum of 29 months of post-completion OPT.

- This gives U.S. businesses two chances recruit these highly desirable graduates through the H-1B process.

Who is responsible for the development of the designated list of STEM degrees?

- The STEM Designated Degree Program List is based on the "Classification of Instructional Programs" developed by the U.S. Department of Education's National Center for Education Statistics.

What are the eligible STEM degrees?

- To be eligible for the 17-month OPT extension, a student must have received a degree in one of the following fields:
  - Computer Science Applications
  - Actuarial Science
  - Engineering
  - Engineering Technologies
  - Life Sciences
  - Mathematics
  - Military Technologies
  - Physical Sciences.
- The STEM degree list is posted on http://www.ice.gov/sevis.

What are the eligibility requirements for the 17-month extension of post-completion OPT?

- The student must have a bachelor's, master's or doctorate degree in a STEM field.

- The employer must be enrolled in E-Verify.

- The student must apply on time (at least 90 days before the current post-completion OPT expires).

What is the E-Verify program?

- The E-Verify program is an internet-based system operated by USCIS, in partnership with the Social Security Administration (SSA).

- The E-Verify program currently is the best means available for employers to determine employment eligibility of new hires and the validity of their Social Security Numbers.

- E-Verify electronically compares information contained on the Employment Eligibility Verification Form I-9 with records contained in SSA and DHS databases to help employers verify identity and employment eligibility of newly-hired employees.

Is there a cost associated with employers participating in the E-Verify program?

- No, E-Verify is a free, easy to use web-based system available to employers and in all 50 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

What is the application process for the 17-month STEM extension?

- The student files Form I-765 with USCIS, Form I-20 endorsed by the DSO, a copy of the STEM degree, and the required application fee.

- Form I-765 is being amended to require the student to indicate the degree and provide the employer's E-Verify information.

- Students who timely file their STEM extension applications with USCIS may continue working while their applications are pending for 180 days or the date of the decision, whichever date is earlier.

- This interim extension minimizes disruption in the student's employment and also ensures that employers will conduct the necessary employment eligibility re-verification.

What must a student do after being granted the 17-month STEM extension?

- The student must report to his or her DSO (by email, within 10 days) any change in:
  - Legal name;
  - Residential and mailing address;
  - E-mail address;
  - Employer name;
  - Employer address;
  - Job title or position;
  - Supervisor name and contact information;
  - Employment start-date; and
  - Employment end-date

- The student must also report to his or her DSO every six months (by email), confirming the information listed above; even if there have been no changes.

- The requirement to report continues if the student's 17-month STEM extension is extended further by the automatic cap-gap extension.

<center>– USCIS –</center>