

AUGUST 20, 2015 BULLETIN TO ALL IMMIGRATION CLIENTS

Court Strikes Down DHS Rule Extending STEM OPT but Stays Action until February 2016

The U.S. District Court for the District of Columbia recently ruled that the U.S. Department of Homeland Security (DHS) did not follow required procedures when it promulgated regulations allowing for 17-month extensions of F-1 Optional Practical Training (OPT) employment authorization for eligible science, technology, engineering, and mathematics (STEM) students. The court vacated the DHS regulation but, recognizing the significant disruption that would be caused by an immediate vacatur, ordered a six-month stay (until February 16, 2016) to allow DHS time to submit the rule again with appropriate notice and comment.

Specifically, the court acknowledged that immediately vacating the new rule “would be seriously disruptive” to not only thousands of F-1 students working in the United States pursuant to STEM extensions who would have to quickly depart the United States, but also to employers, particularly in the technology sector, if their STEM employees must suddenly leave their employment.

Impact on F-1 Students with STEM OPT

Because the STEM OPT regulation will remain in place during the stay period (i.e., until February 2016), **F-1 students who have been granted a STEM OPT extension remain authorized to work.** USCIS should continue to adjudicate pending applications for STEM OPT extensions and accept new applications, though the Service will likely issue guidance in light of the court’s ruling.

F-1 students who filed a timely application for a STEM extension should remain authorized to work for an additional 180 days after their initial OPT EAD expires, in accordance with current program rules. This temporary extension of work authorization should remain in effect throughout the court’s stay of its ruling.

The Future of the STEM OPT Program

To comply with the court’s ruling, DHS must publish a STEM OPT regulation through the regular notice and comment procedures and is expected to do so by the February 12, 2016 deadline. The decision jeopardizes the current STEM OPT program, but does not invalidate the employment authorization for current STEM extension holders, nor does it preclude an individual from applying for and being granted a STEM extension up until February 12, 2016. With the six month vacatur, DHS should have sufficient time to issue the rule again for notice and comment and finalization prior to February 12, 2016. If DHS follows the Court’s direction, there should continue to be no impact on

STEM or “cap-gap” OPT extensions and students will be able to maintain their STEM/OPT status beyond February 16, 2016.

We will continue to closely monitor this issue and, as additional information becomes available, we will provide new updates.

Please contact any member of the Cohen & Grigsby Immigration Department at 412.297.4900 if you have any questions regarding this information. To receive future bulletins by e-mail, please send an e-mail to info@cohenlaw.com.

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