

H-1B Cap Gap and OPT Extension

What is the Cap-Gap?

If you are reading this article on the “Cap-Gap” rule, then you most likely are familiar with terms such as H1B, F-1, and OPT. If you are not familiar with these terms, explanations can be found elsewhere on this site.

The “cap gap” generally refers to the period of time between when your optional practical training (OPT) ends and your H-1B takes effect. In the past, it was quite common for your OPT to expire more than 60 days before October 1st, the date that the H1B takes effect, and therefore left you with unlawful presence during that period. The “cap” on the limited number of H-1B visa numbers issued each year created a “gap” in the prospective employee’s status; thus we have the term Cap-Gap. The new cap-gap regulations fix this.

How does the new Cap Gap regulation help?

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. This rule does not apply to all F-1 students, only those with F-1 OPT status and work authorization incident to status while an H-1B application is filed and pending. For example, if a student’s OPT expires on 6/15/09 (and his or her EAD card expires accordingly), and if the student has a valid H-1B application that has been accepted and is pending with USCIS, his or her status and work authorization is automatically extended until USCIS makes a decision on the H1B.

What happens to the cap-gap if USCIS denies the H-1B?

If the H-1B application is rejected or denied on the merits, the status and work authorization would end on the date of rejection and/or denial. If approved however, the student’s OPT status and work authorization is valid until the beginning of the next FY, which always begins on October 1 of each year.

Extended OPT for 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.

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, Life Sciences, Actuarial Science, Mathematics, Engineering, Military Technologies, Engineering Technologies, Physical Sciences, Biological and Biomedical Sciences, and possibly others.

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