

Article: OPT and the STEM Extension: What you Need to Know! Szabo, Zelnick and Erickson, P.C.

If you're like most people who are involved in immigration, you may in some way play a role in the April 1, 2009 H-1B filings. No matter your role, be sure to keep in mind that some candidates for H-1B status will also be eligible to extend their employment authorization in the U.S. as a result of changes to the law implemented last year. This article is offered to provide an overview of the changes in the law, assist you in identifying individuals who are eligible for an extension of employment authorization, and provide you with some guidance in preparing the extension applications.

It's well known that undergraduate and graduate foreign students in F-1 status earning a degree from a U.S. university are eligible to request a 12 month period of Optional Practical Training ("OPT") upon completion of the degree program requirements. This period of OPT allows students to work in the U.S. to gain practical training that complements their studies. Many students use this period of OPT to work and search for a permanent position in the U.S. If a permanent position is found, a student is then faced with the challenge of changing status to another visa category that allows for longer periods of employment. The option most often selected is the H-1B non-immigrant visa category.

On April 8, 2008, the Department of Homeland Security published regulations to allow students receiving a degree in a Science, Technology, Engineering or Math ("STEM") field to apply for a 17-month extension of OPT. To be eligible, the student must provide evidence that a Bachelor's or higher degree in a STEM field was earned and that an offer of employment exists with an employer participating in the government's E-Verify system. It's then expected that the student will apply to change their status (i.e. to H-1B) within the total 29 months of OPT (initial 12 months + 17 month extension).

If you're involved in the process of filing an application for a STEM OPT extension, there are a number of issues that need to be considered. In general, the following must be considered prior to submitting an application to the U.S. Citizenship and Immigration Services ("USCIS") Nebraska Service Center:

- Is the application filed before the current standard OPT period expires, but no more than 120 days from the current standard OPT expiration date?
- Have all degree requirements been met?
- Have you included a copy of the current Employment Authorization Document?
- Have you included a copy of the Form I-94 Arrival/Departure Record?
- Have you included a copy of the SEVIS I-20 form?

Is the I-20 form endorsed within the last 30 days by the Designated School Official on pages 1 and 3?

Is the I-20 form signed by the student on page 1?

Is the start date listed on the form 1 day after the current standard OPT ends?

Is the end date listed on the form 17 consecutive months from the start date?

- Have you included a copy of the degree?
- Have you noted "C,3,C" on Line 16?
- Is the Classification of Instructional Programs ("CIP") code for the degree listed properly? CIP codes can be found at <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2002165>. The list of CIP codes eligible for STEM extensions can be found at <http://www.ice.gov/sevis/stemlist.htm>.
- Is the employer's name listed exactly how it is listed in the E-Verify registration?
- Is the E-Verify Identification Number listed properly? This number is 5-6 digits long and is not the employer's tax ID number.
- Have you included 2 passport-style photographs of the applicant?
- Have you included a check for the proper filing fee payable to "Department of Homeland Security"?

Most people will tell you, from experience, that it only takes one uncrossed "t" or undotted "i" to have an application rejected by USCIS. It's critical that the application be properly prepared and submitted. Mistakes can cause unnecessary delays in getting work authorization approved. Delays in work authorization approval can lead to missed employment opportunities or even financial distress. The checklist above will help you submit an organized application, making it easier for USCIS quickly turn around a decision.

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