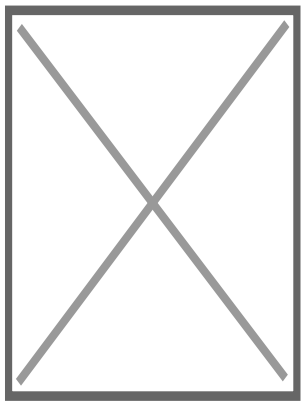
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USCIS REMINDER: F-1 "CAP-GAP" STATUS AND WORK AUTHORIZATION EXTENSION ONLY VALID THROUGH SEPTEMBER 30

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On September 28, 2018, the U.S. Citizenship and Immigration Services ("USCIS") issued a reminder that F-1 students who have an H-1B petition that remains pending on Oct. 1, 2018, risk accruing unlawful presence if they continue to work on or after Oct. 1 (unless otherwise authorized to continue employment), as their "cap-gap" work authorization is only valid through Sept. 30. Due to increased demand for immigration benefits, resulting in higher caseloads as well as a significant surge in premium processing requests, USCIS may not be able to adjudicate H-1B change of status petitions for all F-1 students by Oct. 1.

USCIS regulations allow an F-1 student who is the beneficiary of a timely filed H-1B cap-subject petition requesting a change of status to H-1B on Oct. 1, to have his or her F-1 status and any current employment authorization extended through Sept. 30. This is referred to as filling the "cap-gap", meaning the regulations provide a way of filling the "gap" between the end of F-1 status and the beginning of H-1B status that might otherwise occur. The "cap-gap" period starts when an F-1 student's status and work authorization expire, and they are extended through Sept. 30, with Oct. 1 being the requested start date of their H-1B employment, unless otherwise terminated or the H-1B petition is rejected or denied prior to Oct. 1.

While the temporary suspension of premium processing of certain types of H-1B petitions has allowed USCIS to allocate additional resources to prioritize the adjudication of these cap-gap cases, if a cap-gap H-1B petition remains pending on or after Oct. 1, the F-1 student is no longer authorized to work under the cap-gap regulations. However, the F-1 student generally may remain in the United States while the change of status petition is pending without accruing unlawful presence, provided they do not work without authorization. If an F-1 student with a pending change of status petition has work authorization (such as an I-765 with valid dates) that extends past Sept. 30, they may continue to work as authorized.

USCIS is committed to adjudicating all petitions, applications, and requests fairly and efficiently on a case-by-case basis to determine if they meet all standards required under applicable laws, regulations, and policies.

For more information about the H-1B program or other temporary work visas, please contact the author Adriana Kostencki, on the firm's Government and Regulatory Team.

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