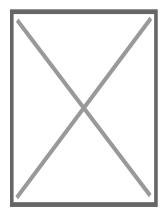


USCIS REMINDER: F-1 "CAP-GAP" STATUS AND WORK AUTHORIZATION EXTENSION ONLY VALID THROUGH SEPTEMBER 30

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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 "capgap" 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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