

Friday, April 7, 2008

**Important New Rule Regarding Optional Practical Training/H-1B Visas**

The Department of Homeland Security (DHS) has issued an advance copy of their new interim final rule regarding optional practical training (OPT) for students.

For the most part, we are very pleased with this new regulation and hope it will significantly alleviate some of the H1B cap problems that we currently face.

By way of background, students in F-1 nonimmigrant status who have been enrolled on a full-time basis for at least one full academic year are eligible to receive up to 12 months of optional practical training (OPT) to work for a US employer in a job directly related to the student's major area of study.

The first major part of the interim final rule allows certain F-1 students already in a period of approved post-completion OPT to apply to extend that period by up to 17 additional months (for a total period of 29 months of OPT). Only students with degrees in the sciences, technology, engineering and math (STEM degrees) are qualified to apply for this extension. In addition, the student's employer must be participating in the DHS' E-Verify program in order for the student to qualify for this benefit. The E-Verify program

is an internet-based system operated by USCIS, in partnership with the Social Security Administration (SSA), which electronically compares information contained on the Form I-9 with records contained in SSA and DHS databases to help employers verify identity and employment eligibility of newly-hired employees.

There is an E-Verify User Manual on the USCIS website to help you learn how to enroll in the program and understand how it works.

If you have an employee currently working for you pursuant to F-1 OPT, with a STEM degree, we recommend that you speak with us or the employee's DSO (Designated School Official) to discuss the extension process. In addition to the requirement that the company must register for the E-Verify program, there are also certain reporting requirements.

One great benefit of the new rule is that if you have applied for an H1B visa for this employee and he/she is not chosen in the H1B lottery, or if you were unable to file by the April 7 deadline, this may help him/her (and the company) significantly by keeping him/her in working status until the next annual H1B filing period.

The second major part of the interim final rule applies to ALL F-1 students in OPT with pending H-1B petitions (not

just with STEM degrees and no E-Verify requirement). The rule will automatically extend the OPT status of students with pending H1B petitions, thereby allowing them to remain employed in the US while waiting to see if they are chosen in the H1B lottery and finding out if their H1B petition is approved.

For example, if you have an employee with an EAD valid until June 1, 2008 and he/she is chosen for the H1B lottery, prior to this new rule, he/she would have to terminate employment on June 1, 2008 and depart the US by August 1, 2008 (60 days later). Under the new interim rule, he/she could continue working with no gap in employment until the H1B status commences on October 1, 2008.

However, this would only apply to change of status petitions - if the petition was filed as a "new petition" seeking consular notification, the employee would have to leave the US to apply for the H1B visa or we would have to file an amended petition, now or once we are notified that the H1B petition has been approved.

The rule contains several other changes to OPT requirements, including when a student can apply, the effects of periods of unemployment, and working while an extension is pending. This new rule will become effective immediately upon publication in the Federal

Register. If anyone would like a complete copy, please go to our website's News Alerts.

We will also notify you when

the new Form I-765 (application for employment authorization to apply for the extension) is available in a future GG&W Immigration

News Update.