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H-1B Status and the Cap-Gap Extension

The H-1B immigration status in the U.S. provides temporary employment authorization for a nonimmigrant who performs services in a specialty occupation. An employer may petition [United States Citizenship and Immigration Services \(USCIS\)](#) for H-1B status on behalf of an employee/prospective employee if the candidate holds “theoretical or technical expertise in specialized fields.” USCIS is the government agency responsible for adjudicating H-1B petitions and granting H-1B status. In general, the position must require, at a minimum, a Bachelor’s degree in a specialty field, and the employee must hold that degree.

There is a limit, or “cap,” on the number of individuals who can receive H-1B status every fiscal year. For purposes of the cap, each fiscal year begins on Oct. 1 of the prior calendar year. For more information on the H-1B cap, visit USCIS’s [H-1B Fiscal Year Cap Season](#) page.

Each year USCIS receives far more applications for H-1B visas than are available. Regulations prohibit employers from filing H-1B petitions until six months before the date of actual need for the employee. This means that once USCIS reaches the cap in one fiscal year, employers must wait until April 1, which is six months before the start of the next fiscal year, before filing H-1B petitions again.

F-1 Status Gap

Many F-1 students complete a program of study or post-completion OPT in mid-spring or early summer. Per federal regulations, after completing their program or post-completion OPT, F-1 students have only 60 days to take the steps necessary to maintain legal status or depart the United States. However, because the change to H-1B status does not occur until October 1, an F-1 student previously had two or more months following the 60-day period with no legal status.

Prior to 2008, in these instances, an F-1 student would have to leave the United States or apply for H-1B status at a U.S. consulate or embassy, and then seek readmission to the United States.

Cap Gap Extension

To deal with this situation, the U.S. Department of Homeland Security established regulations that automatically extend F-1 status and, if applicable, post-completion OPT employment authorization from April 1 to September 30 for eligible F-1 students. We call this the “cap-gap extension”.

The cap refers to the limit on the number of individuals who can receive H-1B status every fiscal year. The gap is the period between the end of an individual’s F-1 status and the beginning of the individual’s H-1B status. The cap-gap extension allows for some F-1 students to extend their F-1 status and/or authorized period of post-completion OPT until they transition to the H-1B status on October 1.

Cap Gap Extension Eligibility

An F-1 student filing for H-1B status on April 1 with a benefit start date of Oct. 1 may qualify for an extension of status and/or employment authorization. The general eligibility requirements for the cap-gap extension are listed below, individual cases may be different and students should always talk with their

designated school official (DSO) about whether they qualify for a cap gap extension. Additionally, students should always maintain regular contact with their potential employer to receive updates on the status of the H-1B petition, if they have filed one for the student.

F-1 students may be eligible for an extension of F-1 status through September 30 if you meet the following requirements:

- The potential employer files an H-1B petition in a timely manner with USCIS with an employment start date of October 1.
- The petition is selected for processing through USCIS's lottery system, and a Receipt notice for the petition is issued.
- The student is maintaining F-1 status on the date the employer files the H-1B petition.

You may be eligible for an extension of your F-1 status **AND** authorized period of post-completion OPT (including [the science, technology, engineering and mathematics \(STEM\) OPT extension](#)) in the following circumstances:

- The potential employer files an H-1B petition in a timely manner with USCIS with an employment start date of October 1.
- The petition is selected for processing through USCIS's lottery system, and a Receipt notice for the petition is issued.
- The student is maintaining F-1 status on the date the employer files the H-1B petition, AND is in an authorized period of post-completion OPT (including the STEM OPT extension) on the date the potential employer files the H-1B petition.

If a student is eligible for the cap-gap extension, the proof that they are still in F-1 status and may continue OPT (if applicable) is a note on the Form I-20, "Certificate of Eligibility of Nonimmigrant Student Status." Students should obtain an updated Form I-20 from the DSO when the cap-gap extension begins with a note indicating that F-1 status and, if applicable, the OPT authorization will continue, typically until September 30.

If the H-1B petition is denied, withdrawn, revoked or not selected, an F-1 student will have the standard 60-day grace period from the date of the rejection notice or their program or OPT end date, whichever is later, to depart the United States.

Please contact Immigration Services at UGA with any questions. Students may set up an appointment with an Immigration Advisor to discuss the case further by calling the front desk (706) 542-2900, or emailing immigration@uga.edu.

Source: [Study in the States – H-1B Status and the Cap Gap Extension](#)