

H-1B CAP GAP

2009

INFORMATION FOR F-1 STUDENTS

Summary

The cap-gap extension is a period in which an eligible F-1 student's status is automatically extended to bridge the gap between the end of F-1 status and the start of H-1B status. If the student is in a period of authorized post-completion OPT on or after the date the H-1B petition is received by USCIS, the student's post-completion OPT is also automatically extended.

To Qualify for the H-1B Cap-Gap Extension

The student must be the beneficiary of an H-1B petition that:

- Has been timely filed;
- Requests an employment start date of October 1 and
- Requests a change of status (instead of consular notification)

The student must not have violated terms or conditions of his/her F-1 status. The cap-gap extension applies to all F-1 students regardless of their major.

Other Guidance

1. The cap-gap extension starts when the student's current period of F-1 status ends, regardless of whether the student was in a period of OPT.
2. The extension is granted automatically at no cost.
3. Although the extension is granted automatically, SEVIS may not automatically update.
4. It is the student's responsibility to check with ISSS to verify their SEVIS record has been updated with the extension and to request a new I-20.
5. Cap-gap extension is terminated if the H-1B petition is rejected, denied, or revoked. However, the student would have a grace period after the termination during which he/she is authorized to remain in the U.S. for up to 60 days to prepare for departure from the U.S., change degree level, transfer, change status, etc., as long as the student has not otherwise violated status. Employment is not permitted during the 60-day grace period if the application is rejected or revoked. Employment is only permitted for 10 days after the date of a denial or withdrawal.
6. Students will not be personally notified by DHS when an H-1B is withdrawn or denied. The student must remain in contact with the sponsoring employer to check regularly on the status of the H-1B application.
7. The 90-day limitation on unemployment continues during the cap-gap extension for those granted an extension of OPT.
8. During the cap-gap extension, all students must continue reporting requirements for any change of address, name, or interruption of employment (as appropriate) at <http://www2.ku.edu/~issfacts/opt>.
9. Duration of status also extends to F-2s.

Length of Extension for 2009		
If I-129 is	OPT Extension Until	F-1 Status Extension Until
Properly Filed	June 1	August 1
Rejected (not selected for lottery)	None	None
Waitlisted	July 27	September 26
Selected and Received	September 30	September 30
Denied or Withdrawn	10 days after date of withdrawal or denial	60 days after date of withdrawal or denial

Action Required by Student	
If I-129 is	Student Must
Properly Filed	Send ISSS proof of proper filing with a request for a cap-gap extension I-20 (only necessary if current OPT ends BEFORE June 1, 2009). Proof could be a statement from the employer that the student is the beneficiary listed on a properly filed H-1B petition or proof of delivery to a USCIS Service Center showing the date of receipt.
Rejected (not selected for lottery)	No action necessary
Waitlisted	Send ISSS a copy of the wait list letter (from USCIS to the employer) with a request for a cap-gap extension I-20 (only necessary if current OPT ends BEFORE July 27).
Selected and Received	Send ISSS a copy of the receipt (Form I-797) or the receipt number and request a cap-gap extension I-20.
Denied or Withdrawn	Terminate OPT on proper date and leave U.S. upon expiration of grace period or take other steps to maintain status

Travel Outside the U.S. During Cap-Gap Extension

SEVP strongly recommends that students do not travel outside the U.S. during the cap-gap extension. USCIS may consider the change of status application to H-1B abandoned and could deny the application.

Note: This is direct opposite of advice we received in 2008. At that time, the government said travel as an F-1 would be okay. Since travel is currently not recommended by the government, ISSS is strongly recommending against travel during the cap-gap extension period.

Reference 8 CFR 214.2(f)(5)(vi) and SEVP Policy Guidance 0801-02