



IMMIGRATION ALERT



USCIS Extends Grace Period for F-1 and J-1 Students

On July 23, 2004, U.S. Citizenship and Immigration Services (USCIS) announced in the *Federal Register* its solution to the so-called "Cap Gap" that resulted from the fiscal year (FY) 2004 depletion of the 65,000 annual H-1B visa availability. The *Federal Register* announcement makes it possible for certain foreign nationals to change status from that of F-1 or J-1 student to that of H-1B employee while remaining in the U.S. in lawful status, without the need to leave the United States.

Significance

Regardless of the newly announced grace period, J-1 and F-1 students are granted a 30 or 60 day grace period, respectively, to allow them to remain in lawful status after completion of their studies or optional practical training (OPT). The July 23rd announcement extends that grace period when the prospective employer of an F-1 or J-1 student files the I-129 Petition for Alien Worker "in a timely fashion." This means that the petition must be filed on or before July 30, 2004 with USCIS (note that this does not refer to the postmark date but rather the receipt date on the USCIS I-797 Receipt Notice), and the student must be in lawful status at the time of filing.

This extension will allow a number of students and prospective employers to breathe a sigh of relief. When the H-1B cap for FY 2004 was met, it left many students in a difficult position: their lawful stay would end prior to October 1, 2004, the earliest an H-1B visa could become available under the FY 2005 cap. In order to legally work for a U.S. employer, these students would be required to leave the U.S. and file for the H-1B visa at a U.S. consulate or embassy abroad, resulting in otherwise unnecessary expenses and possible delays.

Requirements

In order to benefit from the extended grace period, the prospective employer must file the H-1B petition on the student's behalf and obtain a USCIS receipt date of July 30, 2004 or earlier. The student must be in lawful status at the time of filing, and the petition must include a requested start date of October 1, 2004. If the petition is approved prior to October 1st, the student will



remain lawfully in the U.S. under the extended grace period; on October 1st, the student's H-1B status will automatically become effective. If the petition is denied prior to October 1st but after the initial grace period has expired, the student and his or her dependents must leave the U.S. immediately. If the petition is still pending after October 1, 2004, the student is authorized to remain in the U.S. under the extended grace period until the petition is adjudicated.



The dependents of J-1 and F-1 students are included in the extended grace period. Employment, however, is not authorized for the students or their dependents during the extended period. Travel outside of the U.S. is also prohibited. Note also that J-1 students who are subject to the two-year home residence requirement are not eligible for the extended grace period.

Additional Information

For the text of the *Federal Register* notice, see <http://frwebgate3.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=96322319006+1+0+0&WAIAction=retrieve>

For the USCIS news release regarding the extension, access http://uscis.gov/graphics/publicaffairs/newsrels/H1BExtend_07_23_04.pdf

For additional information regarding the H-1B annual cap, go to www.ImmSTAR.com, access *Immigration Updates*, then choose *Immigration News*. Recent alerts include "One Fourth of FY 2005 H-1B Visas Depleted," and "Managing the H-1B Cap."

Seyfarth Shaw's Business Immigration Group provides periodic information alerts about noteworthy developments in the business immigration field. The information that we provide is of a general nature and should not be interpreted as legal advice applicable to a specific factual situation. If you have questions about the information contained in this Immigration Alert or would like to know more about Seyfarth Shaw's Business Immigration Group and our inbound and outbound visa processing capabilities, please visit our website, www.immstar.com, or contact one of the Business Immigration Group Partners: Jim King (jking@sevfarth.com) in Atlanta; Russell Swapp (rswapp@sevfarth.com) or Dyann DelVecchio (ddelvecchio@sevfarth.com) in Boston; Ric Fischer (Rfischer@sevfarth.com) in Chicago; or Cris Weals (cweals@dc.sevfarth.com) in DC. If you would like to receive our Immigration Alerts, please contact Nici Kersey via e-mail at nkersey@sevfarth.com. Thank you.



Seyfarth Shaw LLP
55 East Monroe Street
Suite 4200
Chicago, IL 60603
ATTN: Client Relations
Seyfarthshaw@sevfarth.com