



# H-1B Status and Cap Gap Extension Guide

The H-1B status is 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.

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 \(FY\) 2018 Cap Season](#) page.

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.

## **International Students and H-1B Status**

Each year, some F-1 students seek to switch nonimmigrant classification from F-1 student status to H-1B temporary employment status after completing a program of study or post-completion optional practical training (OPT). An F-1 student’s current or prospective employer may petition USCIS for H-1B status on their behalf by filing Form I-129, “Petition for a Nonimmigrant Worker.”

If you are an M-1 student, your prospective employer may petition H-1B status on your behalf if your employment does not relate to your M-1 program of study. For more information on H-1B status eligibility, visit USCIS’s [H-1B Eligibility Criteria page](#).

## **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 Oct. 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 Sept. 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 Oct. 1.

### **Cap Gap Extension Eligibility**

This means 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, but please understand that your individual case may be different and you should always talk with your designated school official (DSO) about whether you would qualify for a cap gap extension. Additionally, always maintain regular contact with your potential employer to receive updates on the status of your H-1B petition, should they file one for you.

As an F-1 student, you may be eligible for an extension of your F-1 status through Sept. 30 if you meet the following requirements:

- Your potential employer files an H-1B petition in a timely manner with USCIS with an employment start date of Oct. 1.
- You are maintaining your F-1 status on the date your potential employer files your H-1B petition.
- USCIS receives the H-1B petition in a timely manner and issues a receipt for it.

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:

- Your employer files an H-1B petition in a timely manner with USCIS with an employment start date of Oct. 1.
- You are maintaining your F-1 status on the date your potential employer files your H-1B petition.

- You are in an authorized period of post-completion OPT (including the STEM OPT extension) on the date your potential employer files your H-1B petition.
- USCIS receives the H-1B petition in a timely manner and issues a receipt for it.

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

If your 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.

### **Traveling on the Cap Gap Extension**

Under certain circumstances, an F-1 student on the cap gap extension may travel abroad and seek readmission to the United States. However, if an F-1 student travels abroad before USCIS approves their H-1B change of status (COS) petition, USCIS will deem the petition abandoned. The student's F-1 status will expire per the program end date listed on their Form I-20. Meaning, if a student leaves the United States before USCIS approves their H-1B COS petition, that student will not be able to re-enter the United States as an F-1 student pursuant to the cap gap extension provisions.

Specifically, you may travel abroad and seek readmission into the United States if you are an F-1 student on the cap gap extension and meet the following criteria:

- Your H-1B petition and request for change of status has been approved by USCIS.
- You seek readmission before your H-1B employment begins (normally such employment begins at the start of the fiscal year, i.e., Oct. 1).
- You are otherwise admissible (e.g., you have all proper documentation including a valid, signed Form I-20 and an F-1 visa).

You will not need to provide an Employment Authorization Document (EAD). This requirement does not apply because during the cap gap period your EAD card will have already expired, and USCIS will not renew the EAD card during the interim period.

As with all other international arrivals at a U.S. port of entry, the final decision on whether to grant admission into the United States lies with U.S. Customs and Border Protection (CBP) officers. Visit our Getting to the United States page and CBP's website for more information regarding the appropriate travel documents and supporting evidence required for entry into the United States.

Resource: <https://studyinthestates.dhs.gov/students/h-1b-status-and-the-cap-gap-extension>

