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F-1 ?Cap-gap? Status and Work Authorization Extension Only Valid Through Sept. 30, 2018

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Submitted by Chief Editor on Sep 29th 2018

F-1 students who have an H-1B petition that remains pending on Oct. 1, 2018, risk accruing [unlawful presence](#) ^[2] if they continue to work on or after Oct. 1 (unless otherwise authorized to continue employment), as their ?cap-gap? work authorization is only valid through Sept. 30. Due to increased demand for immigration benefits, resulting in higher caseloads as well as a significant surge in premium processing requests, USCIS may not be able to adjudicate H-1B change of status petitions for all F-1 students by Oct. 1.

USCIS regulations allow an F-1 student who is the beneficiary of a timely filed H-1B cap-subject petition requesting a change of status to H-1B on Oct. 1, to have his or her F-1 status and any current employment authorization extended through Sept. 30. This is referred to as filling the ?[cap-gap](#) ^[3]?, meaning the regulations provide a way of filling the ?gap? between the end of F-1 status and the beginning of H-1B status that might otherwise occur. The ?cap-gap? period starts when an F-1 student?s status and work authorization expire, and they are extended through Sept. 30, with Oct. 1 being the requested start date of their H-1B employment, unless otherwise terminated or the H-1B petition is rejected or denied prior to Oct. 1.

While the temporary suspension of premium processing of certain types of H-1B petitions has allowed USCIS to allocate additional resources to prioritize the adjudication of these cap-gap cases, if a cap-gap H-1B petition remains pending on or after Oct. 1, the F-1 student is no longer authorized to work under the cap-gap regulations. However, the F-1 student generally may remain in the United States while the change of status petition is pending without accruing unlawful presence, provided they do not work without authorization. If an F-1 student with a pending change of status petition has work authorization (such as an I-765 with valid dates) that extends past Sept. 30, they may continue to work as authorized.

USCIS is committed to adjudicating all petitions, applications, and requests fairly and efficiently on a case-by-case basis to determine if they meet all standards required under applicable laws, regulations, and policies.

Team Notes:

Nonimmigrant Visas:

[Change of status](#) ^[4]

[Extension](#) ^[5]

[F Visa](#) ^[6]

[F-1 Visa](#) [7]

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[General Nonimmigrant Visa](#) [9]

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Links:

[1] <https://immigration.com/news/f-1-%E2%80%9Ccap-gap%E2%80%9D-status-and-work-authorization-extension-only-valid-through-sept-30-2018>

[2] <https://www.uscis.gov/legal-resources/unlawful-presence-and-bars-admissibility>

[3] <https://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/extension-post-completion-optional-practical-training-opt-and-f-1-status-eligible-students-under-h-1b-cap-gap-regulations>

[4] <https://immigration.com/visa/nonimmigrant-visas/change-status>

[5] <https://immigration.com/visa/nonimmigrant-visas/extension>

[6] <https://immigration.com/visa/nonimmigrant-visas/f-visa>

[7] <https://immigration.com/visa/nonimmigrant-visas/f-visa/f-1-visa>

[8] <https://immigration.com/visa/nonimmigrant-visas/h-visa/h-1-visa>

[9] <https://immigration.com/visa/nonimmigrant-visas/general-nonimmigrant-visa>