

President Biden hands another win to H-1B holders and Indian students in the US

Synopsis

The OPT (Optional Practical Training) program provides one year of work authorization to students who finish their degrees. The law requires that the students must work in their own field for no less than 20 hours each week - paid or unpaid. Full time employment is permitted, but not required.



DOL has postponed the implementation of the wage hike regulation to May 14, 2021.

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Two developments in immigration law bring happy tidings: a court challenge to OPT and STEM OPT extension has failed; and the US Department of Labor (DOL) has delayed to May 14, 2021 (beyond the **H-1B** lottery deadlines) implementation of the regulations affecting disproportionate wage hikes for H-1B and green card petitions.

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The STEM (Science, Technology, Engineering, Mathematics) graduates can extend their OPT for another two years, giving them a total of three years to work in the USA. The rules for the extension are tougher and a lot more like H-1B visas.

In both types of OPT statuses, students can apply for the H-1B lottery.

These two programs have been doing the rounds in federal courts. Local employee organizations believed these programs to be beyond the authority of the government to promulgate. The government and other stakeholders including the National Association of Manufacturers, a prestigious organization, disagreed. The court ruled for the government. This case can still be appealed, but the reasoning of the decision is sound, and not likely to be reversed easily.

On the H-1B and green card subjects, the DOL regulation raising required wages to an unreasonable level was troublesome. Albeit, the hike would not have been an insurmountable hurdle for H-1B or green card petitions because employers could have relied upon certain third-party wage surveys. These surveys have the positive attribute of being considerably lower in salary figures than the DOL's, but they also have two basic problems. First, they are not available for all jobs in all geographical locations. Second, they are expensive (\$800-\$900 or more).

Now, DOL has postponed the implementation of the wage hike regulation to May 14, 2021, which brings us past the H-1B lottery times this year. DOL is inviting comments from the stakeholders and the public. They may rescind the regulation altogether if after consideration they find the regulation untenable factually or legally.

All in all, we are moving in the correct direction under President Biden in ensuring that our policies are made with due thought and deliberation. That is better than great news.

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