

H-1B CAP-GAP EXTENSION

A cap-gap extension is a benefit of the F-1 program that extends an eligible F-1 student's status to bridge the gap between the end of any post-completion OPT work authorization and the start of H-1B status, thereby allowing the student to remain in the U.S. The cap-gap extension is available to F-1 students who were either on approved OPT or in their 60-day grace period **and** have a pending or approved change of status H-1B Petition with the USCIS.

ELIGIBILITY FOR CAP-GAP EXTENSION

F-1 students in all fields of study are eligible for the cap-gap extension as long as the student meets the following criteria:

- I-129 Petition for a Nonimmigrant Worker must be **timely filed*** for the student by the employer.
- The employer must be subject to H-1B CAP (check with your employer or immigration lawyer).
- The employment start date must be October 1.
- Student must receive a USCIS Receipt/Approval Notice or any other evidence as a proof of I-129 filing.
- Student must maintain their F-1 visa status and must not accrue more than 90 days of unemployment during the Post-Completion OPT.

***Timely filed:** An H-1B petition was filed during the H-1B acceptance period, while the student's authorized duration of status (D/S) admission was still in effect, including any period of time during the academic course of study, any authorized periods of post-completion OPT, and the 60-day departure preparation period, commonly known as the grace period.

OUTCOME OF CAP-GAP EXTENSION

A cap-gap extension will produce one of two outcomes, depending on your situation:

1. Extension of your OPT work authorization and F-1 visa status until September 30th

This happens if your OPT end date (on your EAD card) is April 1 or later. If your H-1B petition is rejected, denied or withdrawn, you will have the 60-day grace period *from the date of the rejection notice* to depart the U.S. However, if a denial is based on a discovered status violation, no such grace period exists and the student must leave the U.S. immediately.

2. Extension of your F-1 status until September 30th, without work authorization

This happens if your OPT expired before April 1. In this case, **you are not authorized to work until the H-1B petition is approved and goes into effect on October 1.** If your H-1B petition is rejected, denied, or withdrawn, you will have the 60-day grace period *from the date of the rejection notice* to depart the U.S. However, if a denial is based on a discovered status violation, no such grace period exists and the student must leave the U.S. immediately.

HOW TO APPLY

In order to receive an extended Form I-20 from the ISS, please submit the following:

- Copy of the U.S. Citizenship & Immigration Services Receipt/Approval Notice (I-797) or other evidence as a proof that your employer has filed H-1B Non-immigrant Petition;
- Proof from your legal representative who filed your H-1B Non-Immigrant Petition that your employer is subject to H-1B CAP;
- Copies of the following:
 - Passport name page expiration date (passport must be valid)

- Third page of your current Form I-20 reflecting 12 months of OPT
- Previous Employment Authorization Document (employment cards)

Your request will be reviewed within one week. ISS will notify you once your request has been processed. If you are in the San Antonio area, please visit the ISS to apply. Our office hours are 9 a.m. to 4 p.m., Monday - Friday.

If you are currently living and working outside of the San Antonio area, please mail your documents to International Student Services. Then arrange to use EShipGlobal (<https://study.eshipglobal.com>) to have the packet express mailed to you.

International Student Services does not accept applications sent by fax.

FAQ

Q: What happens if my H-1B is denied after receiving the cap-gap extension?

A: If the student's H-1B is denied, the student will have the standard 60-day grace period from the date of the rejection notice to depart the U.S. *However, if a denial is based on a discovered status violation, no such grace period exists and the student must leave the U.S. immediately.*

Q: What if my OPT expires before April 1? Will the cap-gap extension extend my OPT?

A: Although your F-1 status would be extended, your OPT employment period is expired, and the cap-gap does not serve to reinstate or retroactively grant employment authorization. You would be required to stop working until October 1 but you can remain in the U.S.

Q: How do I know if I have received a cap-gap extension?

A: When your request is approved, the outcome (either F-1 extension of stay or both employment eligibility and F-1 extension of stay) will be noted on page 3 of your Form I-20. The program end date listed on the first page of your Form I-20 will remain unchanged.

Q: Can I travel during the cap-gap extension?

A: It is recommended **that a student stay in the U.S.** and not travel to other countries during the cap-gap extension, as USCIS will consider a change-of-status application to be abandoned if the applicant leaves the country while the application remains pending.

Even after the H-1B change of status petition has been approved, but before October 1, it is recommended that a student not travel outside the U.S. during the cap-gap extension.