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H-1B Cap Petitions: Cap-Gap F-1 Status or F-1 Work Authorization is Valid Till September 30, 2018

Tiyalaw · Friday, September 28th, 2018



H-1B Cap Petitions: Cap-Gap F-1 Status or F-1 Work Authorization is Valid Till September 30, 2018

Immigration law provides that certain F-1 students with **pending or approved cap-subject H-1B Petitions** that have been **timely filed for the Fiscal Year (FY) 2019 for change-of-status for an October 1, 2018 H-1B start-date** will have their **F-1 status or F-1 work authorization automatically extended during the cap-gap period** (unless the F-1 status/work authorization is otherwise terminated).

Cap-gap is the gap period between the expiration of an F-1 status or F-1 work authorization until September 30, 2018. Cap-gap doesn't apply if such H-1B Petition is rejected or denied before October 1, 2018.

Cap-gap extension of an F-1 work authorization terminates automatically on October 1 2018. Any F-1 cap-gap beneficiaries whose H-1B Petitions are still pending would no longer be eligible to work starting October 1, 2018 and will

accrue unlawful presence if they continue working. However, they **may wait in the U.S. (unless** there is an immigration **violation** such as unauthorized employment). However, pending change-of-status H-1B beneficiaries whose F-1 work authorization remains valid independently (not pursuant to cap-gap; i.e. **I-765 card that is valid beyond September 30, 2018)** **may continue working.**

At this time, **premium processing** for certain H-1B Petitions including H-1B Petitions subject to FY 2019 Visa Cap are **temporary suspended** until February 19, 2019.

For additional information, please visit:

<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>

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This article is intended for informational purposes only, and should not be relied on as legal advice or attorney-client relationship. By Aik Wan Kok, Lawyer USA Immigration Services, at Tiya; Tel: [703-772-8224](tel:703-772-8224) & info at [tiyaimmigration dot com](http://tiyaimmigration.com)

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