



F-1 to H-1B and Beyond

SPRING 2024

Presented by: Elizabeth James

How to Contact Us

- **Location:** 111 Lampe Dr. Suite 320
- **Hours:** M – F, 8AM -12PM, 1PM-5PM phones
 - Physical office 9AM-12PM, 1PM-4PM
 - <https://internationalservices.ncsu.edu>
 - (919) 515-2961
 - ois@ncsu.edu
- **Open Advising Hours (5-minute questions):**
 - Conducted via Zoom
 - Monday, Tuesday, 10:00 AM – 11:45 AM
 - Thursday & Friday, 1:00 PM – 2:45 PM
- Schedule appointment at “Contact Us” link



Processing Times

Email response: up to 3 business days
Travel signature: up to 5 business days
New document: up to 10 business days

Agenda

- J-1 Employment
 - AT (Academic Training)
- F-1 Employment
 - CPT (Curricular Practical Training)
 - OPT (Optional Practical Training)
 - Pre-Completion OPT
 - Post-Completion OPT
 - STEM 24 Month Extension
- Application process
- Beyond Student Status
- Questions

A note about J-1s

- J-1 post-completion employment is called “Academic Training”
- It may be used up to 18 months or the length of your program whichever is shorter, which means that you will have ~10 months of eligibility
- Can only be approved by your DS-2019 program sponsor, so all questions on procedures need to be directed to them
- NEW: may be possibility for extension beyond 10 months- please inquire w Elizabeth directly

F-1 Employment

F-1 status is a student status – academic in nature – employment benefits are secondary to the academic mission

Students have limited employment options

- Status maintenance is required at all times
- Authorization is required if off-campus
- Period of employment is limited
- Both academic & immigration requirements must be met prior to application for the benefit

OPT Process

- <https://internationalservices.ncsu.edu/student-employment/optional-practical-training/>
- After completing Steps 1-3 on the website you can submit the application to OIS
- For questions regarding your submissions, you may attend an OPT Q&A session via zoom on Tuesdays at 1:00 pm or Thursdays at 10:00am (zoom link on website)
- **OIS is accepting OPT applications for Spring 2024 grads now, for filing w USCIS on or after 2/4/2024**

OPT (Optional Practical Training)

- Must have been enrolled full-time as student for one academic year & in F-1 status at time of application
- No job offer needed but apply early
- Employment is not employer specific
- Employment must be directly related to field of study
- Employment must be authorized by USCIS
 - OIS recommendation is required prior to application
 - Approximately 90 days to process, not permitted to work until authorized & card is received **Earliest date to file is February 4th**
 - **Premium Processing** is available but shouldn't be needed if you apply early
- Eligible for initial 12 month period per educational level (e.g. Bachelors, Masters, PhD)

Post-Completion OPT

- Post-completion OPT is an extension of your F-1 status. You are still an F-1 student although you have completed your degree
- Must continue to comply with reporting requirements to OIS (after you graduate, you will submit address changes via GlobalHome rather than through MyPack), changes of employer through the SEVP Portal
- Starting a full-time degree program or transferring to another school will end your OPT
- Cannot exceed 90 days of unemployment in 12 months of OPT

SEVP Portal

- You will get an email regarding access to your SEVP Portal when your EAD is ACTIVE (not just approved).
- Email will come from do-not-reply.sevp@ice.dhs.gov to the address you have marked as “preferred” in your MyPack account (generally speaking your NCSU email)
- Check our website for information on what to do if you do not receive an email to start your portal account

OPT 90 Day Unemployment Clock

- While OPT is valid students are limited to 90 days of unemployment in the 12 month OPT period
- In order to stop this clock, employment must be
 - At least 20 hours per week
 - Can be multiple employers (e.g. independent contractor) adding up to 20 hours/week
 - Self-employed
 - Employed through staffing agency (if work is in field of study)
 - Volunteers or Un-Paid Interns*

NOTE: SEVP tracks unemployment days and is cracking down on compliance, so reporting your employment through the SEVP Portal within 10 days of beginning a job is critical!

Volunteer & Unpaid internships

- USCIS (adjudicates OPT) & SEVP (runs SEVIS) have different interpretations regarding volunteer & unpaid internships & whether or not they qualify to stop the unemployment clock
- “Students may work as volunteers or unpaid interns, *where this practice does not violate any labor laws*”
- Unpaid opportunities that do not comply with labor laws
 - Will not stop the 90 day unemployment clock
 - May expose the employer to wage/hour law penalties, such as having to pay back wages
- OIS cannot advise on whether your unpaid internship violates labor laws

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24 Month STEM Extension

- May be used a second time after completion of higher degree level
- Student must have completed a STEM degree (Science, Technology, Engineering, Math), and work must be in STEM field
 - CIP codes - www.ice.gov/sevis/stemlist.htm
- Student must be on Post-Completion OPT
- Requires completion of a Training Plan – all work must be PAID work under STEM OPT
- Unemployment - 150 total days (between OPT & the STEM)
- Requires additional application to OIS (& USCIS)
- Must have application **received** by USCIS prior to expiration of your Post-Completion OPT end date

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24 MONTH STEM EXTENSION (CONT.)

- Employer must be an E-Verify employer
- While STEM extension is pending, student is able to continue to work for up to 180 days after the expiration of the original EAD by using receipt notice
- Student has additional reporting requirements during STEM. In addition to the normal change of address, students on STEM extensions must complete a 'Validation Report' every six months
- Students must complete evaluation with supervisor at 12 and 24 months, or any time that employment ends.
- Any change of employer or material change in employment with the same employer requires notification to OIS and completion of a new Training Plan within 10 days of start

OPT Application Process

- Plan ahead! OPT & STEM require USCIS authorization. Standard 90 day processing time- not unusual for this to get longer than 90 during Spring and Summer
- Be careful with 'volunteering' prior to receiving authorization-you cannot begin work as unpaid or as a 'volunteer' while you are waiting for approval. You must be work-authorized
- Consider the timing – completing your academic program, travel, etc.
- Travel requirements vary depending on where your application is in the process. Check with OIS prior to travel

Beyond Practical Training

- Note that this session is not legal advice & is only meant to provide you with general information about employment visas & the permanent residency process
- Any questions you have particular to your situation will need to be addressed to a competent immigration attorney

H1-B Specialty Worker

- Is an employer-based petition
 - Employer specific
 - Job specific
- The job has to qualify for H1-B
 - Minimum requirement of bachelor's degree
- Allows for dual intent

H1-B SPECIALTY WORKER(CONT.)

- Issued in 3 year increments
- Processing times are normally 3-6 months
- Premium processing is available – 15 days
- Annual cap—65,000 “regular” (minus Free Trade for Chile/Singapore); 20,000 for U.S. Master’s & higher
- H-1B employers must now submit an H-1B registration and submit their registration prior to March 20. If registration selected for lottery, employer can file H-1B after April 1.****
- Universities, government & some non-profit employers are exempt from the quota

“Cap-Gap”

- Automatically extends OPT through September 30 as long as:
- H-1B is filed/receipted prior to OPT expiration date
- Start date on H-1B petition is October 1 of that year

H-1B Nonimmigrants – 6 Year Limit

- General Limit of Stay in U.S. is 6 Years
- Extensions beyond the 6 year maximum are possible at certain points in the Green Card process:
 - Where the labor certification or the I-140 has been pending 365+ days from the initial filing
 - OR
 - Where the I-140 is approved but an immigrant visa number is not currently available

H1-B SPECIALTY WORKER

- Less security in volatile job market-you lose your job, you lose your status with only very short grace period
- Spouses cannot work in most cases*
- Change of status within U.S. does NOT give you H1-B entry visa
- Proposed rule will change the way cap-subject petitions are counted (shifting it from counting employer to counting beneficiary) but whether the rule can be approved and a system implemented in time for this filing season is uncertain.
- Some proposed changes to the way a 'specialty occupation' is defined are worrisome and were largely opposed by the immigration bar.

E-3 Visas

- For Australian nationals
- Much in common with the H-1B
 - Specialty Occupation
 - Cap of 10,500 per year
 - Employer has certain obligations concerning wages
- Key differences from the H-1B
 - Cheaper for the employer
 - Spouses can work
 - 2 year increments of stay
 - No maximum period of stay (however unclear whether or not it is a true 'dual intent' visa)

Trade NAFTA: TN Visas

- For citizens of Canada & Mexico only
- Cheap for the employer, & quick for the applicant
- Good for 3 year increments, renewable indefinitely (though unclear whether a true 'dual intent' visa)
- Only for certain occupations- Analytics not on list

Resources

- Greg Siskind (twitter and blog)
<https://www.visalaw.com/category/siskinds-immigration-bulletin/> (newsletter) and <http://www.visalaw.com/blog-post/> (blog)
- Fragomen Law Firm <https://www.fragomen.com>
- Cyrus Mehta law blog: <http://blog.cyrusmehta.com/>

