Transitioning from F-1 OPT to H-1B
Office of International Services and International Employment
Disclaimer

The information being presented is purely generic and should not be taken as legal advice. The presenters will not answer case specific questions. Any specific questions about the H-1B visa status should be directed to your employer or immigration attorney. Any specific questions about your F-1 visa status (for students sponsored by NC State University only) should be directed to OIS during the walk-in hours or an appointment with an advisor.
F-1 Post Completion Employment Options

• Optional Practical Training (OPT):
  http://internationalservices.ncsu.edu/optional-practical-training
  — 12 months of employment authorization that students may apply for pre or post completion of studies. Students file an application directly with USCIS with the assistance of OIS.

• Science, Tech., Eng., Mathematics (STEM) Extension:
  http://internationalservices.ncsu.edu/opt-stem-extension
  — Additional 24 months of OPT for students who complete a degree program in a STEM field and have employment with an E-verify employer.

• Cap Gap Extension: http://internationalservices.ncsu.edu/h-1b-cap-gap-extension
  — The H-1B Cap Gap is an automatic extension of OPT for F-1 students who are the beneficiary of a timely filed H-1B application for change of status that will be effective October 1st. The extension is intended to bridge the gap between the students last date of OPT and the effective date of the H-1B visa.
Optional Practical Training (OPT)

WHAT IS OPT?

• 12 months of employment authorization
• Can be used before or after completion of the degree program
  — Based on last semester of required enrollment.
• Can be used 1 time per degree level (Bachelors, Master, PhD)
Optional Practical Training (OPT)

WHAT IS THE OPT APPLICATION PROCESS?

• Must be recommended by OIS and academic department

• Approved by United States Citizenship and Immigration Service (USCIS), 90 day processing.

• Things to know while your OPT application is pending:
  
  — On-campus employment authorization ends on the last day of the last semester of required enrollment. Work at NC State after the end of the semester will require OPT, even unpaid work. Keep this in mind when selecting your start date for OPT.
FREQUENTLY ASKED QUESTIONS: THE APPLICATION PROCESS

• When should I apply for OPT?
  • You can apply for OPT up to 90 days before your program completion date but must submit your application within your 60 day grace period.

• Do I need a job offer to apply?
  • No.

• Can I change my OPT start date while my application is pending?
  • No… well, maybe.

• Can I expedite my application?
  • No.
Optional Practical Training (OPT)

OPT REGULATIONS TO KNOW

• All employment must be related to the field of study and commensurate to the degree level.
• Unemployment is limited to 90 days. (You must work at least 20 hours per week.)
• You continue to be an F-1 student during OPT. This means you are still required to report changes of your address in MyPack Portal and employment information using the OPT validation form at: http://internationalservices.ncsu.edu/opt-validation

• TYPES OF EMPLOYMENT PERMITTED
  — Regular paid employment.
  — Work for hire.
  — Employment through an agency.
  — Payment by multiple short-term employers.
  — Self-employed business owner.
  — Volunteer or unpaid work.
Employment vs. Volunteer Work

• Be careful with volunteer or unpaid work
  —Federal and State Labor laws may restrict what is considered allowable volunteer or unpaid work. Please check with an attorney if you have questions regarding this provision.
  —Do not confuse the ability to do volunteer or unpaid work during OPT with “volunteering” in lieu of work authorization. You still need work authorization in order to begin working, even if the work you are doing is unpaid or volunteer.

• You should get documentation of your unpaid or volunteer work from the employer to verify you worked at least 20 hours per week, with the dates of employment.
Travel While on OPT

• Travel after completion of your program and before mailing the OPT application:
  — No. If you travel after completion of your program and have not applied for OPT, you will forfeit your OPT eligibility and may not re-enter in F-1 status unless approved for a new degree program.

• Travel after completion of your program and while OPT is pending:
  — May be allowed. Must travel with I-20 endorsed for travel, I-765 receipt notice, and a valid F-1 visa stamp as well as an employment offer.

• Travel after completion of your program with approved OPT:
  — Yes. Must travel with I-20 endorsed for travel, **EAD card**, valid F-1 visa stamp, and letter from employer confirming offer or current employment.
STEM OPT Extension

WHAT IS IT?

• Additional 24-month extension of post-completion OPT authorization.
• Students in STEM fields are eligible (check the DHS STEM list).
• Allowed two times.
  – If a student completes all course requirements for another qualifying STEM degree at a higher degree level than the first STEM qualifying degree, the student may apply for a second 24-month STEM OPT extension while in a valid period of standard post-completion OPT. A student may not be authorized for more than two lifetime STEM OPT extensions
• Types of employment allowed...
  – Job must be paid. No self-employment allowed.
STEM OPT Extension

WHAT IS IT?

• Qualifying degree . . .
  — The STEM degree that serves as the basis for the student’s current, active post-completion OPT
  OR
  — A previously conferred STEM degree within the last 10 years

• Example:
  — Student received a BS in Chemistry. Student then completes an MBA. Student receives 12 months of post-completion OPT on the basis of the MBA. While the student is on the 12 months of OPT from the MBA, the student could then apply for a 24-month STEM OPT extension based on the prior BS in Chemistry, as long as the STEM OPT qualifying job is directly related to chemistry
STEM OPT Extension

HOW DO I APPLY?

• Like initial OPT, the STEM extension must be recommended by OIS and approved by USCIS.

• A completed I-983 training plan.

• You must apply to USCIS before your post-completion OPT (EAD) expires.

• You may apply as early as 90 days prior to your EAD expiration date.

• After applying in a timely manner, you may continue working up to 180 days while the application is pending if your standard OPT EAD expires.
WHAT ARE THE EMPLOYMENT REQUIREMENTS?

- Employment must be directly related to your major.
- Employment must exceed an average of 20 hours/week.
- There must be a "bona fide employer-employee" relationship.
  - Be careful with “temporary” or “staffing” agencies.
- All employers must be enrolled in E-verify.
- Students who are granted the 24-month STEM extension can have up to 150 cumulative days of unemployment during the 36-month OPT period (the original 12-month OPT plus the 24-month STEM OPT extension).
I-983 Training Plan

- Completed by student and employer.
  - The formal training plan must clearly articulate the STEM OPT student’s learning objectives and affirm the employer’s commitment to helping the student achieve those objectives.
- Cannot be recommended for the STEM Extension without a completed I-983 form.
I-983 Training Plan

- Must be updated with any materials changes...
  - EIN Number
  - Reduction of compensation
  - Increase or decrease of hours worked per week
  - Change in duties or learning objectives
ADDITIONAL STEM REPORTING REQUIREMENTS

• You must update OIS of any changes in:
  — Address or Name
  — Employer Name
  — Employer Address
  — Loss of employment

• 6-month validation report to OIS - Required
• Use OIS online validation form for reporting
• I-983 evaluations
Travel on the STEM Extension

• Follow the same rules for travel as standard OPT.
• You are still in F-1 status during standard OPT or the OPT STEM Extension — Visa renewals are possible, but keep in mind that you must continue to prove strong ties to your home country, and could be subject to security checks.
• Travel can be risky sometimes. OIS can never guarantee that you will not have issues when traveling; please contact OIS with any travel questions or concerns you may have before you depart the U.S.
Cap Gap Extension

WHAT IS THE “CAP?”

- The "Cap" refers to the limit that Congress has placed on the number of H-1B visas available each year. October 1 is the day the annual supply of H-1B’s become available, so October 1 is the employment start date used by most employers for a cap-subject individual.

WHAT IS THE “GAP?”

- The "Gap" refers to the gap in visa status that occurs when a student’s current F-1 visa status expires before the requested H-1B visa start date (Oct 1).
Cap Gap Extension

THE CAP-GAP EXTENSION

• An Automatic extension of F-1 status for students whose status will expire between April 1 and September 30.

• If the H-1B is filed while the student is on authorized OPT, the student’s status AND OPT authorization will be extended to September 30th.

• If the H-1B is filed while the student is in F-1 status, but NOT on authorized OPT (e.g. “grace period”), the F-1 status will be extended but with NO employment authorization.
Cap Gap Extension

WHO IS ELIGIBLE?

• Students in F-1 status who are the beneficiary of an H-1B petition that:
  — Has been timely filed (during H-1B acceptance period and student’s D/S)
  — Requests an employment start date of Oct. 1
  — Requests a change of status

• Student must not have violated F-1 status, including terms of OPT and/or STEM extension

• Students whose H-1B has been filed by an employer not subject to the H-1B Cap (e.g. Higher Education, non-profit or governmental research institutions) do not benefit from “cap gap” extensions.
Travel with Pending H-1B

- Travel on F-1 OPT, STEM, or cap gap with pending or approved H-1B, prior to H-1B effective date:
  - International travel during Cap Gap Extension period is not recommended.
    - May be considered abandonment of Change of Status petition.
    - Cannot re-enter in F-1 status during the cap gap extension period.

- There are certain points in the H-1B application process and transition to H-1B that are more sensitive than others.

- Please seek the advice of the employer or attorney filing your case before making travel plans if you have an H-1B pending or approved.
OIS Resources for Students

• Program Completion:
  – http://internationalservices.ncsu.edu/program-completion

• Optional Practical Training Page:
  – http://internationalservices.ncsu.edu/optional-practical-training
  – http://internationalservices.ncsu.edu/faqs-optional-practical-training

• STEM Extension:
  – http://internationalservices.ncsu.edu/opt-stem-extension
  – https://studyinthestates.dhs.gov/stem-opt-hub

• Cap Gap Extension:
  – http://internationalservices.ncsu.edu/h-1b-cap-gap-extension
Transition to H-1B Status

Presentation with OIS
February 24, 2017
International Employment

Human Resources
Administrative Services II
2711 Sullivan Drive, CB 7210
Raleigh, NC 27695

Jill Blitstein, IE Manager: 515-4518, jill_blitstein@ncsu.edu
Stephanie Hines, IE Specialist: 513-7525, stephanie_hines@ncsu.edu
Paige Garriques, IE Specialist: 515-4304, lpgarriq@ncsu.edu
Jamarcus Squire, IE Program Assistant: 513-0200, jtsquire@ncsu.edu

https://ie.hr.ncsu.edu/
Specialty Occupation: H-1B

For “specialty occupation” positions:
- Professional position requiring at least a bachelor’s degree or equivalent in related field
- Employee must have degree (or higher degree) or equivalent
- Degree must be related to the position
- 6 year maximum limit
  - Certain exceptions related to the permanent residence process
  - Can ONLY be requested in 3 year (or less) increments
- Dual intent: can pursue permanent residence from H-1B status
Specialty Occupation: H-1B

• Employer, location and occupation specific!
  – No working for another employer unless you also have an H-1B petition approved for that employer (and both positions are part-time) or have another authorization
  – No moving to another physical location without posting the a new LCA wage notice and/or filing an amended H-1B petition with USCIS
  – No changing jobs without filing an amended H-1B petition
  – If there are ANY changes in the terms and conditions of employment (salary, duties, title, location, hours), employer may be required to file amended petition with USCIS

• No “benching”: employer can’t stop paying H-1B employee for lack of work, and is obligated to pay wage as indicated on LCA wage form
Specialty Occupation: H-1B

• Labor Condition Application (LCA): wage application that must be certified by U.S. Dept. of Labor (DOL) before any H-1B petition can be filed with USCIS
  – Employer files LCA form on DOL website and must wait up to 7 business days for a response – NO expedite possible!
  – Employer must pay:
    • Prevailing wage for position, as determined by the DOL for the occupation and location, or
    • Position’s actual wage (wage being offered by employer),
    • Whichever is HIGHER
    • Unless employer can find an alternate wage survey that DOL will accept
Specialty Occupation: H-1B

• H-1B “cap” for industry
  – Limit of 65,000 new H-1B ‘visas’ per government fiscal year
    • FY: October 1 to September 30
    • FY 2017 began on Oct. 1, 2016 and ends Sept. 30, 2017
  – 20,000 extra new H-1B visas for U.S. advanced degree holders
  – TOTAL is 85,000
    • BUT 6,800 H-1B visas are set aside for H-1B1 nationals of Chile and Singapore, leaving a real total of between 78,200 – 85,000 new H visas available for people from all other countries (depends upon how many of 6,800 H-1B1s set aside are used)
  – As soon as up to 85,000 new H-1B petitions are received, USCIS stops accepting H-1B petitions and the “cap” is reached
Specialty Occupation: H-1B

• H-1B “cap” for industry
  – Employer can file H-1B petition up to 6 months in advance of start date (initial or extension petition)
  – For an October 1 start date, when the new 78,200+ H-1B visas will be available, employer can file the petition on April 1 (6 months in advance of start date)
  – The “H-1B cap” can be reached any time after April 1, meaning that all 78,200+ visas can be gone well before October 1 arrives
    • Cap was reached on April 7, 2016 for FY 2017 (which started on October 1, 2016)
Specialty Occupation: H-1B

• Summary of cap situation for “FY 2017”:
  – 1st day to file cap H-1B petitions: April 1, 2016
  – Last day to file cap H-1B petitions: April 7, 2016
    • USCIS received more than 85,000 petitions within 5 business (7 calendar) days [approximately 236,000!]
  – Actual start date of employment: October 1, 2016 (or later)
  – USCIS ran random lottery for cases received when filing period was open (April 1-7, 2016)
    • Lottery process chose ~85,000 and the rest were rejected
    • Just making it into the lottery is no guarantee of success!
  – No new H-1B employment could begin until October 1, 2016
• Universities and nonprofits are exempt from cap limit
Specialty Occupation: H-1B

- Employee **cannot** change from “exempt” employer to “cap subject” employer whenever she/he wants to – NO portability!
  - Employee for cap subject employer must be counted against cap even though s/he previously held exempt H-1B status
  - New cap subject employer must file new H-1B petition for employee on April 1, and hope it gets chosen to be effective on/after October 1
  - The **earliest** that new employee can start with the cap subject new employer is October 1 of that year
- But, employee can go from “cap subject” employer to “exempt” employer any time during the year after USCIS receives and/or approves the petition
  - Portability does apply here. Also applies if both employers are cap subject or both are cap exempt – only need to be counted once!
Specialty Occupation: H-1B

• USCIS Filing fees:
  – $460 to file I-129 (nonimmigrant) form: DOL says employer must pay this fee, but USCIS does not specify who must pay
  – $1,500 education and training fee – must be paid by employer, but educational institutions and not-for-profit entities are exempt
  – $500 anti-fraud fee – must be paid by employer for all initial H-1B petitions filed by that employer (including universities)
  – $1,225 optional premium processing fee: USCIS reviews petition within 15 calendar days – can be paid by anyone

• Regular USCIS processing is currently taking approximately 6-8 months; is always subject to change and never exact

• H-1B worker must meet all requirements at time the petition is filed – keep this in mind with April 1st filings for cap subject employers
  – If you haven’t earned the required degree for the position by April 1, then that employer cannot file an H-1B petition for you then, even though you will have it before actual future start date
Specialty Occupation: H-1B

- If employer terminates H-1B worker before the end of the H-1B validity period, employer must offer “reasonable costs of return transportation abroad”

- NEW!! Effective January 17, 2017, there is a new official grace period to leave U.S. or change employer or status after H-1B petition expires or worker is terminated
  - For up to 60 consecutive days or until the end of the authorized validity period, whichever is shorter, once during each validity period
  - No work is allowed during this grace period!!
  - H-1B rules require that a person be working and receiving payment in order to maintain valid H-1B status. If either of those two things stop, person is violating status, regardless of end date on H-1B approval notice
  - Severance pay does not continue H-1B status, because the person is not working while collecting severance payments
Specialty Occupation: H-1B

- Spouses and children in H-4 dependent status:
  - **Kids are NOT work authorized:** NO services allowed for money or other compensation
    - Once child turns 21, can no longer be in H-4 status
  - **CERTAIN** H-4 spouses can apply for EAD card: *if* H-1B worker has an approved I-140 or is beyond 6th year of status
  - H-4 dependents cannot get Social Security numbers
    - Exception: spouse with H-4 EAD card can get SSN
  - Parents (or other relatives) are NOT eligible for H-4 status, even if they are dependent upon the H-1B worker for support
  - If in the U.S., spouse and kids will need to file I-539 form to request change of status from F-2 to H-4
    - NEVER put YOUR personal information on the I-539 form – it is ONLY for your spouse and/or kid(s), for their H-4 status
Specialty Occupation: H-1B

• Talk to your new employer about your H-1B petition!
  – **Change of status petition**: your status is changed while you are in the U.S. and you receive a new approval notice that has a new I-94 card attached in the bottom right corner.
  – **Consular notification petition**: your status is NOT changed to H-1B until you leave the U.S. With your new approval notice (which does NOT have a new I-94 card attached to it) you must obtain a new H-1B visa in your passport. Once you re-enter the U.S. with your new H-1B visa, you will be in H-1B status and can work for your sponsoring employer.
  – Will the employer (H-1B sponsor) help prepare and/or pay for the I-539 petition for spouse and kids?
    • If they are outside of the U.S., no I-539 petition is needed.
Receipt Number: NAC-17-009

Name: J. Smith

Date of Filing: 12/01/2016

Department: United States Citizenship and Immigration Services

Petitioner: NC State

Notice of Action: Approval Notice

Valid from 12/01/2016 to 11/30/2019

Additional Information:

This form is not a visa and may not be used in place of a visa.

California Service Center
U.S. Citizenship & Immigration Services
P.O. Box 10011
Laguna Niguel, CA 92677-0111

Customer Service Telephone: (800) 375-5283

Detachable Par for Personal Records

Receipt Number: NAC-17-009

Name: J. Smith

Date of Filing: 12/01/2016

Department: United States Citizenship and Immigration Services

Petitioner: NC State

Notice of Action: Approval Notice

Valid from 12/01/2016 to 11/30/2019

Additional Information:

This form is not a visa and may not be used in place of a visa.

California Service Center
U.S. Citizenship & Immigration Services
P.O. Box 10011
Laguna Niguel, CA 92677-0111

Customer Service Telephone: (800) 375-5283

Detachable Par for Personal Records

Receipt Number: NAC-17-009

Name: J. Smith

Date of Filing: 12/01/2016

Department: United States Citizenship and Immigration Services

Petitioner: NC State

Notice of Action: Approval Notice

Valid from 12/01/2016 to 11/30/2019

Additional Information:

This form is not a visa and may not be used in place of a visa.

California Service Center
U.S. Citizenship & Immigration Services
P.O. Box 10011
Laguna Niguel, CA 92677-0111

Customer Service Telephone: (800) 375-5283

Detachable Par for Personal Records

Receipt Number: NAC-17-009

Name: J. Smith

Date of Filing: 12/01/2016

Department: United States Citizenship and Immigration Services

Petitioner: NC State

Notice of Action: Approval Notice

Valid from 12/01/2016 to 11/30/2019

Additional Information:

This form is not a visa and may not be used in place of a visa.

California Service Center
U.S. Citizenship & Immigration Services
P.O. Box 10011
Laguna Niguel, CA 92677-0111

Customer Service Telephone: (800) 375-5283

Detachable Par for Personal Records

Receipt Number: NAC-17-009

Name: J. Smith

Date of Filing: 12/01/2016

Department: United States Citizenship and Immigration Services

Petitioner: NC State

Notice of Action: Approval Notice

Valid from 12/01/2016 to 11/30/2019

Additional Information:

This form is not a visa and may not be used in place of a visa.

California Service Center
U.S. Citizenship & Immigration Services
P.O. Box 10011
Laguna Niguel, CA 92677-0111

Customer Service Telephone: (800) 375-5283

Detachable Par for Personal Records

Receipt Number: NAC-17-009

Name: J. Smith

Date of Filing: 12/01/2016

Department: United States Citizenship and Immigration Services

Petitioner: NC State

Notice of Action: Approval Notice

Valid from 12/01/2016 to 11/30/2019

Additional Information:

This form is not a visa and may not be used in place of a visa.

California Service Center
U.S. Citizenship & Immigration Services
P.O. Box 10011
Laguna Niguel, CA 92677-0111

Customer Service Telephone: (800) 375-5283

Detachable Par for Personal Records

Receipt Number: NAC-17-009

Name: J. Smith

Date of Filing: 12/01/2016

Department: United States Citizenship and Immigration Services

Petitioner: NC State
Specialty Occupation: H-1B

- As long as H-1B extension petition is filed before the current H-1B status expires, worker can legally continue to work for another 240 days
  - Travel could be a problem if old H-1B approval notice has expired and new H-1B approval notice hasn’t been issued yet
    - Need new approval notice to get a new H-1B entry visa stamp
    - Might need to use Premium Processing if travel can’t be avoided around the time the H-1B petition is expiring
- NC Drivers License: will expire when H-1B and H-4 status expires
  - Extensions: in NC, can now get a new license using receipt notice to prove the extension was filed before H-1B expires
Specialty Occupation: H-1B

• Travel
  – Once in H-1B status, worker will need a valid H-1B visa (in most situations) to re-enter the U.S. in lawful H-1B status after travel outside of the U.S.
  – If a “change of status” petition from F-1 to H-1B has been filed with USCIS and person travels, the H-1B ‘change of status’ part of the petition will be abandoned and denied (because have to stay in the U.S. for a ‘change of status’ petition, per USCIS)
  • Person will be required to travel (again!) to get H-1B visa stamp in passport before returning to U.S. and being admitted in valid H-1B status to being working
Specialty Occupation: H-1B

• Changes of Status from F-1 to H-1B
  – Foreign national can continue to work in F-1 status until it expires, depending upon the requested start date for the H-1B status in the petition
    • Can only be in ONE nonimmigrant status at a time
    • Prior status will be automatically terminated upon validity of new status (can’t still use OPT card if H-1B status has already started)
  – There may be a gap in employment if the F-1 status expires before the H-1B petition is approved
    • Check to see if Cap Gap provision might apply!
    • If not, no “volunteering” – at NC State, must stop working without any type of compensation
    • If OPT EAD expires, must stop working even if still have grace period, unless have timely filed for STEM OPT
Specialty Occupation: H-1B

• What you will need to provide for H-1B petition:
  – Copy of your CV (make sure it is up-to-date!)
  – Copy of your immigration documents (I-20s, I-94 cards or print-outs, copies of OPT EAD cards, any other approval notices or employment cards, copies of all prior visas, clear copy of passport ID page, etc.)
  – Copy of education credentials
    • If in a foreign language, must obtain a certified English translation (YOU should not do it, USCIS will not accept it)
    • If degree is foreign, must be evaluated for U.S. equivalency by a professional credential evaluation service
STEM OPT employment

• If NC State is the employer, IE (me) must sign I-983 Training Plan in Section 4 as the “employer official with signatory authority.”
  – Note that the PI signs as the “employer official with signatory authority” in Section 6

• Process as NC State:
  – Student must complete Section 1, sign in Section 2, and complete Section 3 (basic employer information is pre-filled with NC State info at https://ie.hr.ncsu.edu/)
  – PI must complete Section 5 and sign in Section 6
  – Student gives signed plan to IE for review and signature in Section 4. Can take up to 5 business days for IE’s review.
  – IE returns signed plan to student, for student to submit to sponsoring school (OIS, for NC State students) for endorsement and eventual submission to USCIS with I-765 application and $410 filing fee
Additional Resources

• International Employment office within HR
  – IE office can ONLY answer specific questions if they relate to NC State University as the H-1B employer

• New H-1B Employer
  – If you have specific questions about H-1B status with a different employer (not NC State University), then you need to ask THAT EMPLOYER your questions

• https://ie.hr.ncsu.edu/h-1b-status/
• http://www.uscis.gov
Questions?