



Immigration Solutions  
 For Today's Challenging  
 Environment

**USCIS Reaches H-1B Cap  
 & Completes Lottery  
 Selection**

The United States Citizenship & Immigration Services (USCIS) announced on April 8, 2008, that it received enough H-1B petitions to meet the congressionally mandated cap for fiscal year (FY) 2009. USCIS received approximately 163,000 H-1B petitions during the first five days of the eligible filing period for FY 2009 (April 1 to April 7, 2008) more than 31,200 of the H-1B petitions received were for advance degree exempt. On April 14, 2008, USCIS conducted the computer-generated random selection process to select which H-1B petitions for fiscal year 2009 (FY 2009) would continue to full adjudication. If approved these H-1B petitions will be eligible to receive an H-1B visa number.

USCIS conducted two random selections, first on petitions qualifying for the 20,000 "master's or higher degree" (advanced degree) exemption, and second on the remaining advance degree petitions together with the general H-1B pool of petitions, for the 65,000 cap.

The approximately 163,000 petitions received on the first five days were labeled with unique numerical identifiers. USCIS has notified the appropriate service centers which numerical identifiers have been randomly selected, so each center may continue with final processing of the petitions associated with those numerical identifiers.

Petitioners whose properly filed petitions have been selected for full adjudication should receive a receipt notice dated no later than June 2, 2008. USCIS will return unselected petitions with the fee(s) to petitioners or their authorized representatives, and duplicate filings by the same petitioner will be returned without the fee(s). The total adjudication process is expected to take approximately eight to ten weeks.

For cases selected through the random selection process and initially filed for premium processing, the 15-day premium processing period begins on April 14, 2008, the day of the random selection process.

USCIS has "wait-listed" some H-1B petitions, meaning they may possibly replace petitions chosen to receive an FY-2009 cap number, but that subsequently are denied, withdrawn, or otherwise found ineligible. USCIS will retain these petitions until a decision is made whether they will replace a previously selected petition. USCIS will send a letter to the wait list petitioners to inform them of their status. USCIS expects that for each of these wait-listed petitions, it will either issue a receipt notice or return the petition with fees within six to eight weeks. ♦

The announcement that the H-1B cap has been reached is available at [www.uscis.gov](http://www.uscis.gov)



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## DHS Extends Optional Practical Training for F-1 Students

The Department of Homeland Security (DHS) announced that it would extend the period of Optional Practical training (OPT) from 12 months to 29 months for qualified F-1 nonimmigrant students.

The extension became effective as of April 8, 2008, and is available to F-1 students with degrees in science, technology, engineering, or mathematics (STEM) degrees and have accept employment with employers enrolled in U.S. Citizenship and Immigration Services' (USCIS) E-Verify employment verification program. Currently, F-1 students who have been enrolled on a full-time basis for at least one full aca-

ademic year in a Student and Exchange Visitor Program (SEVP)-certified college, university, conservatory, or seminary are eligible for 12 months of OPT to work for a U.S. employer in a job directly related to the student's major area of study. ♦

The rule is available at <http://edocket.access.gpo.gov/2008/pdf/E8-7427.pdf>.

A 30-page SEVP policy guidance document on post-completion OPT has been posted at [http://www.ice.gov/doclib/sevis/pdf/opt\\_policy\\_guidance.pdf](http://www.ice.gov/doclib/sevis/pdf/opt_policy_guidance.pdf).

Information about E-Verify is at <http://www.dhs.gov/e-verify>



## USCIS Issues Revised Guidance on Child Status Protection Act (CSPA)

U.S. Citizenship and Immigration Services announced on May 6, 2008 issued guidance that will modify its earlier interpretation of the Child Status Protection Act (CSPA) which permits applicants for certain immigration benefits to retain classification as a child even if he or she has reached the age of 21.

The guidance, changes how USCIS interprets the applicability of the CSPA to aliens who had aged out prior to the enactment of the CSPA on August 6, 2002.

Under prior policy guidance, USCIS considered an alien beneficiary of a visa

petition that was approved before August 6, 2002 to be covered by the CSPA only if the beneficiary had filed an application for permanent residence (either adjustment of status or an immigrant visa) on or before August 6, 2002, and no final determination had been made on that application prior to August 6, 2002. This new policy extends CSPA coverage to aliens who had an approved visa petition prior to the enactment of CSPA but who did not have a pending application for permanent residence on the date of enactment of the CSPA.

Aliens who were ineligible under the prior policy and who subsequent to the

enactment of the CSPA never filed an application for permanent residence may file an application for permanent residence to take advantage of this new interpretation. Aliens who filed an application for permanent residence after the enactment of the CSPA and who were denied solely because they had aged out may file motions to reopen or reconsider without a filing fee.

For detailed information on this issue, see the guidance issued to USCIS field leadership at [http://www.uscis.gov/files/nativedocuments/CSPA\\_30Apr08.pdf](http://www.uscis.gov/files/nativedocuments/CSPA_30Apr08.pdf) or call the National Customer Service Center at (800) 375-5283 ♦

## USCIS to Allow F-1 Students Opportunity to Request Change of Status

U.S. Citizenship and Immigration Services (USCIS) announced on April 18, 2008 that it would allow F-1 students who are the beneficiaries of selected H-1B petitions for fiscal year (FY) 2009 to request a change of status in lieu of consular notification.

Since the rule was announced after the filing period had closed for new FY 2009 H-1B petitions, many petitioners of F-1 students did not include a request for a change of status with the H-1B petition. Instead, most petitioners re-

quested consular notification based on the assumption that F-1 students would have been required to leave the United States in order to obtain an H-1B visa at a consular office abroad. USCIS has determined it will allow petitioners of F-1 students whose H-1B petitions were randomly selected to receive an H-1B visa number to now request a change of status on behalf of qualified beneficiaries.

To request a change of status in lieu of consular notification, petitioners should send an e-

mail with the request to the USCIS service center where their petition is pending within 30 days of the issuance of the receipt notice. Special email addresses for each service center have been established specifically for this purpose. These addresses are listed on USCIS' website. The requests should include the receipt number and both the petitioner's and beneficiary's name, date of birth, I-94 (Arrival/Departure Record) number, and Student and Exchange Visitor Information System (SEVIS)

number. This rule applies to all students regardless of their field of study and all employer H-1B petitions. Students whose H-1B petitions were not selected in the H-1B lottery will not receive the benefit.

Please Note: USCIS asks that petitioners, beneficiaries and attorneys refrain from contacting the service center about requesting a change of status until after receiving the receipt notice ♦

## USCIS Announces a Proposal to Increase Periods of Stay for TN Professional

U.S. Citizenship and Immigration Services (USCIS) announced on May 5, 2008 that it is publishing a Notice of Proposed Rulemaking (NPRM) to increase the maximum amount of time a Trade-NAFTA (TN) professional worker from Canada or Mexico can remain in the United States before seeking readmission or obtaining an extension of stay. The proposal will extend the maximum period of admission for TN workers from one year to three years, the same term that USCIS currently may grant to H-1B specialty occupation workers.

The proposed rule will further

allow eligible TN nonimmigrants to be granted an extension of stay in increments of up to three years, as opposed to the current maximum of one year. TN nonimmigrants are not subject to a maximum period of stay and thus may seek multiple readmissions or extensions, provided their intended professional activity continues and they remain otherwise eligible. Current regulations require that TN workers seek readmission or apply for an extension of stay each year.

Canadian and Mexican citizens seeking temporary entry to the United States as profes-

sionals may come into the country as TN nonimmigrants under the North American Free Trade Agreement (NAFTA). TN status is available to Canadian and Mexican citizens with a minimum of a bachelor's degree, or appropriate professional credentials, who work in professions listed in Appendix 1603.D.1 to Annex 1603 of the NAFTA and under DHS regulations at 8 CFR 214.6(c). Eligible TN professions include, but are not limited to, accountants, engineers, attorneys, pharmacists, scientists, and teachers.

The NPRM, once implemented as a final rule, will

ease administrative burdens and costs on TN nonimmigrants and will benefit U.S. employers by increasing the period of time beneficiaries are allowed to remain in the United States under a TN visa. The proposed changes would also apply to spouses and unmarried, minor children of TN nonimmigrants in their corresponding non-immigrant classifications as NAFTA dependents. ♦

For more information on the TN nonimmigrant visa program, call the National Customer Service Center at (800) 375-5283 or visit [www.uscis.gov](http://www.uscis.gov)

## USCIS Revises I-765 To Add F-1 Eligibility Codes

U.S. Citizenship and Immigration Services (USCIS) announced on April 24, 2008, that it has revised the Application for Employment Authorization (EAD) form I-765, to include additional eligibility codes under the Department of Homeland Security's interim final rule regarding Optional Practical Training (OPT), published on April 8, 2008. The rule modifies the conditions and duration of OPT for qualified F-1 nonimmigrant students.

USCIS will accept the July 30, 2007, edition of the form through July 8, 2008. As of July 9, USCIS will only accept the revised Form I-765, dated April 4, 2008, and will reject all requests using previous editions of the form. ♦

USCIS's announcement is available at [http://www.uscis.gov/files/article/I-765\\_24Apr08.pdf](http://www.uscis.gov/files/article/I-765_24Apr08.pdf).



## What is the E-Verify program?

The E-Verify program is an Internet-based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA).

The E-Verify program currently is the best means available for employers to determine employment eligibility of new hires and the validity of their Social Security Numbers.

E-Verify electronically compares information contained on the Employment Eligibility Verification Form I-9 with records contained in SSA and DHS databases to help employers verify identity and employment eligibility of newly-hired employees.

There is no cost associated with employers participating in the E-Verify program.

E-Verify is a free, easy-to-use web-based system available to employers and in all 50 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

For more Information please visit USCIS at: [http://www.nilc.org/immsemplymnt/ircaempverif/E-Verify\\_Fact\\_Sheet\\_2007-08-09.pdf](http://www.nilc.org/immsemplymnt/ircaempverif/E-Verify_Fact_Sheet_2007-08-09.pdf)

## HELPFUL HINTS

### Travel - AP vs. H-1B

1. It is better to have an H1B visa petition approved and visa stamped on the passport for travel? If stamped visa has expired in the passport, one should have Advance Parole (AP) in hand before travel starts from USA.
2. Even if H1B or H4 visa is delayed or denied (for reasons other than criminal) at the foreign US consulate and also the H1B visa on the passport has expired, still one can travel using AP and the 485 applicant or beneficiary will not be held at the port of entry for lack of visa approval stamped on the

*(Continued on Page 4)*

## AR-11 Change of Address Now On-Line

The Department of Homeland Security has now made it possible to update a foreign national's address instantly on-line. This is a notable improvement to the prior, mail-based system, which can still be utilized when lack of internet access is an issue. As you know, all foreign nationals are required to notify USCIS within ten days of any address change. Failure to do so can trigger future inadmissibility issues. Accordingly, we urge you to make use of this new, on-line system. When updating your address, we suggest you keep a print-out of the completed form, and a written notation directly on the face of your print out confirming the date and time the electronic transmission was made. Please let us know if you have any questions on this procedure. ♦

For more information, go to: [www.uscis.gov/AR-11](http://www.uscis.gov/AR-11)

*(Helpful Hints cont'd from p. 3)*

passport or for the reason that visa approval process is on hold at the foreign consulate and as long as valid passport and AP are with the traveler.

3. Even with denial of H1B or H4 visa at the consulate, the GC process will not be affected for that underlying reason for visa denial or refusal at the consulate, except for criminal mistake by the applicant or beneficiary.

4. The AP can be applied even without applying for EAD.

5. The AP can be used and renewed without going for consulate visa stamping until 485 is approved.

6. The AP can be used for travel and H1B status petition approval can be used for working for the same employer.

### Resource Links on the Web

United States Citizenship & Immigration Services  
<http://www.uscis.gov>

U.S. Immigration & Customs Enforcement  
<http://www.ice.gov>

U.S. Department of Labor  
<http://www.dol.gov>

Department of Homeland Security  
<http://www.dhs.gov/index.shtml>

U.S. Embassies, Consulates, & Diplomatic Missions  
<http://www.usembassy.gov>

Visa Bulletin  
[http://travel.state.gov/visa/frvi/bulletin/bulletin\\_1360.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html)

US. Department of Travel  
<http://www.travel.state.gov/>

## Filing Procedures for Renewal EAD

The U.S. Citizenship & Immigration Services (USCIS) recently released information regarding the renewal of an Employment Authorization Document (EAD). In order to renew an EAD, one must submit Form I-765, Application for Employment Authorization. Form I-765 should not be filed earlier than 120 days prior to the expiration of an original EAD. Any EAD extension application that is filed more than 120 days prior to the date of expiration will be denied as filed too early.

This restriction does not apply to applications to replacement EAD's that have been lost, stolen, mutilated, or that contain incorrect information; such applications may be filed at any time. ♦

USCIS's announcement is available at:

[http://www.uscis.gov/files/article/I-765\\_24Apr08.pdf](http://www.uscis.gov/files/article/I-765_24Apr08.pdf)

## VISA BULLETIN FOR JUNE 2008

	All Chargeability Areas Except Those Listed	CHINA Mainland Born	INDIA	MEXICO	PHILIPPINES
<b>Employment Based</b>					
1 <sup>st</sup>	C	C	C	C	C
2 <sup>nd</sup>	C	01Apr04	01Apr04	C	C
3 <sup>rd</sup>	01Mar06	22Mar03	01Nov01	01Jul02	01Mar06
<b>Other Workers</b>	01Jan03	01Jan03	01Jan03	01Jan03	01Jan03
4 <sup>th</sup>	C	C	C	C	C
<b>Certain Religious Workers</b>	C	C	C	C	C
5 <sup>th</sup>	C	C	C	C	C
<b>Targeted Employment Areas Regional Centers</b>	C	C	C	C	C



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