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**This Immigration Update<sup>®</sup> from FosterQuan, LLP contains important information regarding the following:**

**CIS REGULATIONS ALLOW AUTOMATIC EXTENSIONS OF F-1 OPTIONAL PRACTICAL TRAINING (OPT) EMPLOYMENT AUTHORIZATION FOR CERTAIN BENEFICIARIES OF H-1B PETITIONS**

Under CIS regulations, F-1 students who hold Optional Practical Training (OPT) employment authorization expiring between April 1, 2011 and October 1, 2011, are eligible for an automatic extension of OPT employment authorization so long as an H-1B petition requesting a *change of status* with an effective start date of *October 1, 2011*, is filed *before* their OPT employment authorization expires.

U.S. Citizenship & Immigration Services (CIS) recently released a [Q&A](#) document addressing the automatic extension of F-1 student status and employment authorization for certain students with pending or approved H-1B petitions with a requested start date of October 1, 2011, the first day of Fiscal Year 2012. Although the first business day of the Fiscal Year is Monday, October 3<sup>rd</sup>, CIS has confirmed that petitions filed on behalf beneficiaries in need of the automatic extension of F-1 OPT employment authorization must request a start date of October 1<sup>st</sup> in order to benefit from the automatic extension.

Once a timely filing has been made requesting a change of status to H-1B effective October 1<sup>st</sup>, the automatic cap-gap extension of employment authorization will apply and will continue until the H-1B petition adjudication process is complete. If the student's H-1B petition is approved, the student's extension will continue through September 30<sup>th</sup> unless the petition is withdrawn or revoked. Under CIS regulations, a student whose employment authorization would ordinarily expire in July 2011 will benefit from an automatic extension of that authorization through September 30<sup>th</sup>, in order to maintain continuity of employment authorization until the October 1<sup>st</sup> effective date of the approved H-1B petition.

To obtain proof of continuing status, a student covered under the cap-gap extension should request evidence from his or her Designated School Official (DSO) that a timely H-1B petition requesting a change of status was filed on his or her behalf with a requested start date of October 1<sup>st</sup>. The student should present initial evidence of the filing to the DSO, such as a FedEx, UPS, or USPS Express/Certified Mail receipt so that the DSO may issue a preliminary cap-gap Form I-20 showing an extension of status and employment authorization. Once the student receives the Form I-797 Notice of Action/Receipt Notice for the H-1B petition filing, the student should return to the DSO to secure a new cap-gap determination letter indicating coverage and the continued extension of status. U.S. CIS encourages students to remain in "close communication" with their petitioning employers during the cap-gap extension period.

For more information concerning the automatic extension of status and employment authorization during the cap-gap period, or to initiate a timely H-1B petition filing to secure the benefits of cap-gap coverage, contact your FosterQuan immigration attorney.