

Federal Court Vacates STEM Extension Program

Article By:

Eleanor Pelta

Eric S. Bord

Current **STEM OPT** holders not affected until February 2016. A federal judge's ruling earlier this month invalidated the 17-month extension of optional practical training (OPT) for international students in the *science, technology, engineering, and mathematics (STEM)* fields but stayed the decision until February 12, 2016 to give the US **Department of Homeland Security (DHS)** time to submit the rules for the program for public comment.

Created in 2008, the STEM extension allows F-1 students who were not selected in the H-1B lottery an additional period of 17 months to continue working under OPT. This extra time allows them to continue to work in the United States and to seek H-1B status again the following year.

The Washington Alliance of Technology Workers brought suit against the OPT program, arguing that the DHS had created the STEM OPT program improperly because proper notice was not given. In her ruling for the US District Court for the District of Columbia, Judge Ellen Segal Huvelle determined that the original 2008 rule to extend the duration of the OPT program for STEM students from 12 to 29 months was issued without appropriate public notice and comment.

This decision affects thousands of F-1 students who currently use the STEM extension. Judge Huvelle indicated in her ruling that vacating the 2008 rule would cause “substantial hardship” for these students (who would have to leave the United States immediately), in addition to causing “major labor disruption” for technology-related industries. For this reason, she delayed the decision’s effective date until February 2016. What does this mean for F-1 students who rely on STEM OPT work authorization? Because the 2008 STEM OPT regulations are still in effect until February 2016, the status of current students who hold STEM OPT will not be affected. The US Citizenship and Immigration Services (USCIS) will continue to adjudicate pending applications, and new STEM OPT extension applications will be accepted at least through February 2016. Furthermore, it is anticipated that the DHS will issue new guidance and new regulations for this program after the appropriate notice and comment period, which will allow for continued employment by STEM graduates during this 17-month extension period. Because this is an important issue for both students and a large number of employers that depend on high-tech workers in the STEM fields, we expect that the new guidance will be issued before the February 12, 2016 deadline.

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