

INTERIM MEMO FOR COMMENT

Posted: 10-21-2013

Comment period ends: 11-01-2013

This memo is in effect until further notice.

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000



U.S. Citizenship
and Immigration
Services

October 6, 2013**PM-602-0090**

Policy Memorandum

SUBJECT: 17-Month Extension of Post-Completion Optional Practical Training (OPT) for F-1 Students Enrolled in Science, Technology, Engineering, and Mathematics (STEM) Degree Programs

Purpose

The purpose of this policy memorandum (PM) is to clarify the eligibility requirements for a 17-month extension of Post-Completion OPT for F-1 students enrolled in STEM degree programs.

Scope

This PM applies to all USCIS employees.

Authority

8 CFR 214.2(f)(10)(ii)

Issue

Whether F-1 students engaging in post-completion OPT under 8 CFR 214.2(f)(10)(ii)(A) are eligible for the 17-month STEM extension under 8 CFR 214.2(f)(10)(ii)(C) if they have not yet completed their thesis requirement or equivalent for their STEM degree when applying for the STEM extension.

Summary Conclusion

F-1 students engaging in post-completion OPT are eligible for a 17-month STEM extension even if they have not yet completed the thesis requirement or equivalent for their STEM degree.

Applicable Law

8 CFR 214.2(f)(10)(ii)(A)(3) states:

(A) General. Consistent with the application and approval process in paragraph (f)(11) of this section, a student may apply to USCIS for authorization for temporary employment for optional practical training directly related to the student's major area of study.

* * *

(3) After completion of the course of study, or, for a student in a bachelor's, master's, or doctoral degree program, after completion of all course requirements for the degree (***excluding thesis or equivalent***). Continued enrollment, for the school's administrative purposes, after all requirements for the degree have been met does not preclude eligibility for optional practical training. A student must complete all practical training within a 14-month period following the completion of study, except that a 17-month extension pursuant to paragraph (f)(10)(ii)(C) of this section does not need to be completed within such 14-month period. [emphasis added]

8 CFR 214.2(f)(10)(ii)(C)(1) and (2) state:

(C) 17-month extension of post-completion OPT for students with a science, technology, engineering, or mathematics (STEM) degree. Consistent with paragraph (f)(11)(i)(C) of this section, a qualified student may apply for an extension of OPT while in a valid period of post-completion OPT. The extension will be for an additional 17 months, for a maximum of 29 months of OPT, if all of the following requirements are met.

(1) The student has not previously received a 17-month OPT extension ***after earning a STEM degree.*** [emphasis added]

(2) The degree that was the basis for the student's current period of OPT is a bachelor's, master's, or doctoral degree in one of the degree programs on the current STEM Designated Degree Program List, published on the SEVP website at <http://www.ice.gov/sevis>.

Policy Analysis

To be eligible for post-completion OPT under 8 CFR 214.2(f)(10)(ii)(A), F-1 students must have completed their course of study, or, for students in a bachelor's, master's, or doctoral degree program, the students must have completed all course requirements for their degree, *excluding* any applicable thesis requirement or equivalent. *See* 8 CFR 214.2(f)(10)(ii)(A)(3).

Pursuant to a narrow reading of 8 CFR 214.2(f)(10)(ii)(C)(1) and (2), one might conclude that F-1 students who have been granted post-completion OPT under 8 CFR 214.2(f)(10)(ii)(A) must have completed all course requirements for their STEM degree, *including* any applicable thesis requirement or equivalent, in order to be eligible for the 17-month STEM extension (i.e., only after "*earning a STEM degree*").

However, 8 CFR 214.2(f)(10)(ii)(C)(1) and (2) cannot be read in isolation; they must be read in conjunction with 8 CFR 214.2(f)(10)(ii)(A)(3), which states expressly that students need not necessarily have completed their thesis requirement or equivalent in order to be eligible for post-completion OPT. Because the 17-month STEM extension is merely an extension of a previously granted period of post-completion OPT, it is therefore logical to conclude that students who are applying for the STEM extension need not necessarily have completed their STEM degree thesis requirement or equivalent in order to be eligible for the extension. Such a reading is made even more

compelling from a policy perspective, given the nation's interest in attracting and retaining the world's best and brightest individuals.

Moreover, such a reading is consistent with the position taken by U.S. Immigration and Customs Enforcement (ICE), Student and Exchange Visitor Program (SEVP), in issuing the following policy guidance on this specific issue. Section 6.7 of Policy Guidance 1004-03 – Update to Optional Practical Training, states:

Can a student in a graduate-level program who has completed all program requirements, *aside from thesis or equivalent*, apply for either pre-completion OPT or post-completion OPT?

Yes, a student who only has the thesis or equivalent remaining may either apply for pre-completion OPT or post-completion OPT while completing the thesis/dissertation.

..., if a student in this situation applies for post-completion OPT, he or she:

- May work full time.
- Would be eligible for the cap gap extension.
- May ***apply for the 17-month extension if otherwise eligible.*** [emphasis added]
- Would be subject to the unemployment provisions.
- Would be unable to receive an extension of his or her course of study.

See: www.ice.gov/doclib/sevis/pdf/opt_policy_guidance_042010.pdf.

Therefore, in accordance with the above interpretation of 8 CFR 214.2(f)(10)(ii)(C)(1) and (2), F-1 students who are currently in a period of post-completion OPT while completing his or her thesis and has completed all other course requirements for his or her STEM degree, is eligible to apply for a 17-month STEM extension, notwithstanding the fact that the student has not yet completed the thesis requirement or equivalent for his or her STEM degree.

Use

This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Business and Foreign Workers Division of the Office of Policy and Strategy.