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# USCIS's 17-Month Optional Practical Training Extension Rule, DOL Expects to Reduce PERM Audit Times, September 2015 Visa Bulletin, 2016 H-1B CAP Update

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## IMMIGRATION LAW UPDATE

### US District Judge Invalidates USCIS's 17-Month Optional Practical Training Extension Rule

On August 13, 2015, in the case of *Washington Alliance of Technology Workers v. US Department of Homeland Security*, US District Court Judge Ellen Segal Huvelle invalidated USCIS's 17-month Optional Practical Training (OPT) extension rule. The rule was published in 2008 as an emergency rule to allow thousands of skilled individuals, educated in the US, who would have otherwise been forced to depart, to stay in the US. The rule allowed F-1 students with degrees in Science, Technology, Engineering, or Math (STEM) fields to extend their OPT work authorization period from 12 to 29 months.

Judge Hevelle's decision does not take effect until February 12, 2016. As of this date, sources say F-1 STEM work authorizations will stop being valid unless USCIS issues a new OPT STEM extension rule via notice-and-comment rulemaking. For more information regarding the F-1 Visa, see the [Clark Hill website](#).

### DOL Expects to Reduce PERM Audit Times

Clark Hill has learned that the US Department of Labor (DOL) expects to see a considerable reduction in the PERM audit processing queue. A percentage of PERM applications are selected for auditing. The audit selection process is generally random. The major issue with the PERM audit process is the timing. The DOL is currently reviewing PERM applications with a priority date of March 2014, which is about one and a half years from the date of the initial filing of the PERM application. At this time, if a PERM receives an audit, the total processing time for the PERM process is almost two years. A PERM application is usually the first stage of the green card process. For more information regarding the green card process, see the [Clark Hill website](#).

### September 2015 Visa Bulletin

The [September Visa Bulletin](#) has been posted. EB-1 and EB-2 Worldwide are expected to remain current for the foreseeable future. The priority date for employment-based second cases (EB-2) for China is at January 1, 2006 and EB-2 India is also at January 1, 2006. Priority dates for employment-based third cases (EB-3) for China is at December 22, 2004. EB-3 India is also at December 22, 2004. For a summary of priority dates, retrogression, and how these dates impact US green card processing, please visit the [Clark Hill website](#).

### 2016 H-1B CAP Update

United States Citizen and Immigration Services (USCIS) announced on their webpage that nearly 233,000 H-1B petitions were received for the 2016 fiscal year H-1B CAP, exceeding the 65,000 general-category cap and the 20,000 master's cap. Our firm monitored the number of regular cap cases and master's cap cases we filed, and what percentage of those cases were accepted in the fiscal year 2016 H-1B CAP. As of September 3, 2015, 30% of the general-category cap cases filed by our firm were accepted, and 56% of the master's cap cases filed by our firm were accepted.

We continue to see longer processing times for H-1B petitions than what is posted on the [USCIS website](#). The USCIS website currently has figures from June 2015 listed. The website shows H-1B processing times at two months for both the California and Vermont service centers; however, we are seeing USCIS take approximately three to four months to process H-1B petitions. USCIS will not file a service request for H-1B cases that are outside normal processing times until the case is 30 days outside normal processing times.