
H-1B Cap Season, Denial of STEM OPT Rule, Amendments to Visa Waiver Program, March Visa Bulletin

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Internationally Recognized Immigration Attorney Thomas Ragland Joins Clark Hill

Thomas K. Ragland joined the firm's Immigration practice in the Washington, D.C. office as a Member. Recognized by Chambers USA, Super Lawyers and Best Lawyers, Thomas has practiced immigration law for more than 20 years.

Thomas guides individuals and companies through the complex U.S. immigration system. He handles legal matters including litigation of immigration cases in federal court, advice on the immigration consequences of criminal activity, obtaining U.S. citizenship or permanent residence, avoiding deportation, obtaining visas for employees or family members, and challenging security-related bars to admission. Prior to private practice, Thomas worked for 10 years in the U.S. Department of Justice.

"We are excited to add Thomas and his team to our growing immigration practice in Washington, DC," said Michael Nowlan, Clark Hill's nationwide Immigration Practice Group Co-leader. "Thomas has worked on both sides of the immigration system and now uses that significant court and counseling experience as a tireless advocate for his clients."

Thomas received his Bachelor of Arts from the University of Virginia and Juris Doctor from Boston College Law School. He is admitted to practice in Maryland and the District of Columbia. Visit the Clark Hill website for more information about [Thomas](#).

Immigration Attorney Patrick Taurel Joins Clark Hill

Joining Thomas is associate attorney, Patrick Taurel. Patrick has been practicing immigration law for over five years, having worked in both the private and non-profit sectors. Patrick's practice focuses on federal court litigation and removal defense, as well as affirmative benefits before United States Citizenship and Immigration Services (USCIS) and U.S. Consulates abroad.

Prior to joining Clark Hill, Patrick was a legal fellow with the American Immigration Council where he became an expert in Deferred Action for Childhood Arrivals (DACA). At the Council, Patrick authored several practice advisories on DACA and related topics. He has participated in numerous webinars, panels and podcasts, and was often a resource for journalists covering DACA and other immigration prosecutorial discretion programs.

Patrick earned his Bachelor of Arts from Brown University and Juris Doctor from Brooklyn Law School. He is admitted to practice in New York. Visit the Clark Hill website for more information about [Patrick](#).

H-1B Cap Season is Right Around the Corner - Immigration Considerations for Companies Interested in Sponsoring New H-1B Workers

1. Who Qualifies for an H-1B? - A foreign national qualifies for H-1B status if he/she holds at least a U.S. Bachelor's Degree (or equivalent) relevant to the field in which he/she will be working, and the position normally requires at least a Bachelor's Degree as an entry-level requirement to perform the job. The H-1B Visa is usually granted in three years, and can be extended up to a maximum of six years total. Another six years of H-1B Visa time may be available once the foreign national spends at least one full year outside the U.S. Additionally, extending H-1B Visas beyond the six year limit is possible in some circumstances. For more information on H-1B visas, see the [Clark Hill website](#).

2. The H-1B Lottery - The U.S. Government places a numerical limit (or "cap") on the number of new H-1B Visas issued each fiscal year to 65,000. An additional 20,000 new H-1Bs are available to foreign nationals who have a Master's Degree, or advanced degree, from a U.S. college or university. Once this cap is reached, H-1B Visas will be issued until the next fiscal year. In 2015, approximately 232,000 new H-1B Visa petitions were filed. When more H-1B Visas are requested than the numerical limits, the U.S. Government holds a random lottery.

Foreign nationals who currently hold H-1B status and are either extending or amending their status are not subject to this cap. Additionally, foreign nationals who will be employed at and in furtherance of the basic or applied research of a governmental or non-profit research organization, or an institution of higher learning (college or university), are not subject to the cap.

3. Employer's Pay Obligations - The employer must pay the H-1B worker the wage it pays similarly experienced U.S. workers for the same job in the same location, or the wage as determined by a required wage survey, whichever is higher. H-1B workers generally must be paid from the employer's U.S. payroll. H-1B workers should not pay for any H-1B costs or attorney fees.

4. Employer's Compliance Obligations - Prior to filing an H-1B petition, employers are responsible for filing a Labor Condition Application (LCA) with the U.S. Department of Labor (DOL) and obtaining the DOL's approval of the LCA. The LCA puts the DOL on notice of the proposed wage, work location, and job category. The LCA also imposes a number of responsibilities on the employer, including maintaining a Public Disclosure File for all H-1B employees. Clark Hill provides employers with a Public Disclosure File, as well as guidance on maintaining this file.

5. Timing - New H-1B visa petitions must be filed with U.S. Citizenship and Immigration Services (USCIS) in the first five business days of April. Employers

interested in sponsoring a foreign national for a new H-1B Visa should contact Clark Hill as soon as possible. Lottery results are released between April and June. New H-1Bs cannot start until October 1, 2016.

6. Fees - To file a new H-1B visa petition, most employers must pay \$2,325 in filing fees (\$325 Base Filing Fee, \$500 Fraud Prevention and Detection Fee, and \$1500 American Competitiveness and Workforce Improvement Act (ACWIA) Fee), attorney fee, and FedEx costs. Generally, all fees must be paid by the employer.

The District Court Stays the Denial of the STEM OPT Rule Until May 10, 2016

In October 2015, the Department of Homeland Security (DHS) released a proposed regulation for F-1 nonimmigrant students on Optional Practical Training (OPT) with degrees in science, technology, engineering, or mathematics (STEM) from U.S. institutions of higher education. The planned expansion of the OPT program was first announced in November 2014 as part of the President's executive action on immigration. The DHS's proposed rule is also in response to U.S. District Court Judge Ellen Segal Huvelle's order on August 13, 2015, which invalidated the 17-month OPT extension rule. The judge gave the government until February 2016 to produce a new rule. See [Clark Hill's September 2015 Immigration Update](#) for more information regarding the judge's ruling. On January 23, 2016, Judge Huvelle ordered the vacature of the 17-month STEM OPT extension be stayed until May 10, 2016. Clark Hill expects the new legislation to start before the new deadline.

Amendments to the Visa Waiver Program

On December 18, 2015, Congress passed a bill which included amendments to the Visa Waiver Program (VWP). The relevant portion of the bill is titled, "Terrorist Travel Prevention and the Visa Waiver Program." These amendments were largely based off of the November 2015 terrorist attacks in Paris.

The VWP allows individuals of certain pre-approved countries to enter the U.S. without first obtaining a visitor visa. The VWP is limited to temporary visitors who intend to visit the U.S. for up to 90 days. The VWP is a highly regarded tool that allows for quick trips and encourages tourism. Individuals who wish to use the VWP must first seek approval from U.S. Customs and Border Protection (CBP) via the Electronic System for Travel Authorization (ESTA) Portal. The ESTA Portal will inform the traveler, usually within 1-2 days, if their application has been approved. If approved, the traveler is authorized to come into the U.S. for up to 90 days per trip. For more information regarding ESTA, see the [Clark Hill website](#).

Under the new Act, there will be two changes to the current VWP program. First, all VWP applicants must have machine readable passports and beginning April 1, 2016, passports must be electronic and fraud resistant and contain relevant biographic and biometric information. Second, and more significant, the following individuals are ineligible for VWP:

- Any individual who is a dual citizen of Iran, Iraq, Sudan (but not south Sudan), or Syria.
- Any individual who has visited Libya, Somalia, Yemen, Iran, Iraq, Sudan (but not south Sudan), or Syria since March 1, 2011 (with limited exceptions for travel for diplomatic or military purposes in the service of a VWP country).

For more information on the Act and exceptions to the physical presence related bar, see the [U.S. Customs and Border Protection's website](#).

What should employers do?

- E-mail company employees and let them know about this new rule.
- Be willing to provide assistance for R-1 visa applications, and
- Contact Clark Hill with any questions.

March Visa Bulletin

The [March Visa Bulletin](#) has been released. The priority date for *filing* an Adjustment of Status (AOS) Application in the employment-based second category (EB-2) China advances forward to June 1, 2013 and EB-2 India remains the same at July 1, 2009. The final action date for employment-based second category (EB-2) China advances forward to August 1, 2012. The final action date for EB-2 India advances forward to October 15, 2008.

The priority date for *filing* an AOS in the employment-based third category (EB-3) China advances forward to May 1, 2015 and EB-3 India remains the same at July 1, 2005. The final action date for employment-based third (EB-3) China advances forward to June 1, 2013. The final action date for EB-3 India advances forward to July 15, 2004.

The priority date for *filing* an AOS for EB-2 cases included in the worldwide limit remains current. The final action date for EB-2 cases included in the "worldwide" limit remain current. See the [Clark Hill website](#) for more information on priority dates.