

## NEW H-1B CAP GAP LEGISLATION FOR F-1 AND J-1 NONIMMIGRANTS

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by

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A notice is expected to be published in the Federal Register on Friday, July 23, 2004 to address the problem created by the H-1B cap for certain F and J nonimmigrants. The notice states, in part, that the Secretary of Homeland Security will exercise his authority to allow that "any F-1 or J-1 student . . . continuing to maintain status whose prospective employer timely files an H-1B petition on his or her behalf prior to July 30, 2004, that contains an employment start date of no later than October 1, 2004, will continue to be in valid F-1 or J-1 status until October 1, 2004. Essentially, this rule will mean that F-1 or J-1 nonimmigrants who meet these requirements will be considered as maintaining lawful nonimmigrant status, as opposed to falling out of status as a result of any gap in time between the date their F-1 or J-1 status would have expired (prior to this rule) and October 1, 2004 (the earliest H-1B employment can start for new cases subject to the H-1B cap). Unfortunately, this late notice only gives individuals who have not yet had an H-1B filed on their behalf one week to do so. The good news is that those individuals who have already had an H-1B filed on their behalf and who meet the requirements of this new rule will likely be able to remain in the United States and change their status to H-1B rather than return to their home country and obtain a new H-1B visa. For information on how this new law may benefit you, please contact our office by telephone at (333) 855-5700 or by email at [info@longchangoonline.com](mailto:info@longchangoonline.com).

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