



# Long, Chang & Associates, L.L.P.

## Immigration Attorneys

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IMMIGRATION ALERT

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## **Featured Article**

### **NEW F-1 OPTIONAL PRACTICAL TRAINING (OPT) RULE**

The Department of Homeland Security issued a new F-1 OPT (Optional Practical Training) rule on April 4, 2008. This new rule is effective immediately and makes two significant changes:

#### **Extension of OPT from 12 Months to 29 Months**

First, the new OPT rule extends the period of Optional Practical Training (OPT) for certain F-1 students by 17 months (from 12 months to a maximum of 29 months). To be eligible for the 29 months of OPT, the F-1 student must have a degree in the field of science, technology, engineering or mathematics (commonly referred to as "STEM") and the F-2 student must be accepting employment with an employer registered USCIS's E-Verify employment verification program. A list of STEM degrees has been published on the website of U.S. Immigration and Customs Enforcement (ICE), the agency in charge of the SEVIS program. To view the list, go to <http://www.ice.gov/sevis/stemlist.htm>. Again, to be eligible for the full 29 months of OPT, the F-1 student must have a STEM degree as designated on the ICE list. In addition, the F-1 student with a STEM degree must be working or going to work for an employer who is enrolled in the E-Verify program. Information on the E-Verify program can be found at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=4ee4be0cbcf90110VgnVCM1000000ecd190aRCRD&vgnnextchannel=75bce2e261405110VgnVCM1000004718190aRCRD>.

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### **THIS MONTH'S ARTICLES:**

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## **New F-1 OPT Rule (Continued from Page 1)**

As noted above, this change is effective immediately. As a result, the USCIS has revised the Form I-765 (Application for Employment Authorization Document) (the form used to request OPT employment authorization). On the new Form I-765, the F-1 student must list information regarding his STEM degree and the employer's E-Verify registration information.

Extending the OPT period from 12 to 29 months for certain F-1 students will allow these students to have a better chance of getting an H-1B visa. They essentially get 3 chances in the H-1B lottery. If they do not initially get an H-1B visa due to the annual numerical cap of 65,000, they can try in subsequent years.

While the new rule change has this obvious benefit, the major drawback is that an employer wishing to hire one of these students must first enroll in the E-Verify program. The E-Verify program is a computer-based program the Department of Homeland Security operates where enrolled employers can verify the employment eligibility of new hires by submitting new hire information into a computer database. Up until now, the E-Verify program (formerly known as the "Basic Pilot Program") has been completely voluntary. Now, an employer wishing to hire an F-1 student under the 29-month OPT employment authorization must register in the E-Verify Program. Unfortunately, the E-Verify Program has a number of significant flaws, including the fact that much of the information in the computer is not up to date or accurate. As such, there have been reports of certain naturalized U.S. citizens not being listed as employment eligible in the computer program. Such individuals cannot be hired by an employer enrolled in E-Verify unless the problem can be corrected. Needless to say, it can be both costly and time-consuming for both the employer and the potential employee to have to correct a situation where the E-Verify Program incorrectly states that a valid worker is not authorized for employment. As a result, there will likely be many employers faced with a very difficult decision: to enroll in the E-Verify Program with all its drawbacks and problems in order to hire certain F-1 students on the 29-month OPT, or to refuse to enroll in the E-Verify Program and lose out on the chance to hire certain skilled F-2 students.

### **Cap-Gap Relief for All F-1 Students with Pending H-1B Petitions**

The second major change is that the new OPT rule automatically extends the authorized period of stay and work authorization for all F-1 students with pending H-1B cases. The period of stay and work authorization for all F-1 students with pending H-1B cases will be extended until October 1, 2008 (in the event the H-1B case is approved) or until the H-1B case is denied. This cures the H-1B cap gap problem faced by so many F-1 students in the past and allows these F-1 students to continue working while their H-1B case remains pending. The H-1B cap gap was caused by the fact that the OPT work authorization of most F-1 students typically expires in either May or June (12 months after graduation) and H-1B employment cannot start until October 1. As a result, F-1 students seeking H-1B status for work beginning October 1 fall into a gap of several months where they did not have any authorized status or work authorization, and often had to stop working for the same employer who was sponsoring them for H-1B employment beginning October 1. As such, they either had to change to another status to bridge this gap or they had to depart the United States and re-enter in October when H-1B employment was authorized. The new rule takes care of this problem by extending the authorized period stay for all F-1 students the date their F-1 status was set to expire until either October 1, 2008 (assuming the H-1B case was approved) or until the date that the H-1B case is denied. As a result of this change, an F-1 student can have a change of status approved and not have to leave and re-enter the United States. This cap gap relief extends to all F-1 students with pending H-1B cases and is not limited to those only with STEM degrees.

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**New F-1 OPT Rule  
(Continued from previous page)**

There is, however, a problem caused by the fact that this new rule was not published until April 4, 2008 (after most H-1B petitions were already filed for the current year). Since at the time of filing the H-1B case this rule was not yet published, many F-1 students facing the "cap gap" problem did not select the "change of status" option on the H-1B Petition. Most would have opted for consular notification. How, then, can they now go back to elect the "change of status" option in light of this new rule? It is expected that USCIS will make an announcement in the near future explaining how this can be done. In the meantime, there are reports that the USCIS Premium Processing Units are accepting email request from attorneys to change their request from "consular notification" to "change of status".

\* \* \* \* \*

**Form I-765 Revised by U.S. Citizenship & Immigration Services**

Based on the new F-1 OPT rule, the Form I-765 (Application for Employment Authorization Document) has recently been revised by USCIS to allow F-1 applicants seeking the 29-month OPT to include required information on their STEM degree and their proposed employer's E-Verify registration. USCIS will accept the previous version of the Form I-765 only until May 1, 2008. All applicants who anticipate filing a Form I-765 in the near future should start using the new Form I-765 in order to avoid any delays.

\* \* \* \* \*

**H-1B Lottery Results**

USCIS conducted the H-1B lottery on April 14, 2008. The results are posted at [http://www.uscis.gov/files/article/Update\\_USCIS\\_Runs\\_H1-B\\_Random\\_Selection%20Process.pdf](http://www.uscis.gov/files/article/Update_USCIS_Runs_H1-B_Random_Selection%20Process.pdf). The lottery was conducted in two stages. First, USCIS ran the lottery for the 20,000 "advanced degree" exemption slots. Those cases filed as "advanced degree" cases but which were not selected in the lottery were then put with all other filings in the 65,000 cap. Then, USCIS ran the lottery for the "regular" filings. USCIS has been notifying lottery winners by email that their cases have been selected. Being selected in the lottery simply means that USCIS will accept the filing and adjudicate the case.

\* \* \* \* \*

**Medical Exam Updated**

USCIS has revised the Form I-693 Medical Exam form used by applicants in adjustment of status (green card) cases. The new form can be found online at <http://www.uscis.gov/files/form/I-693.pdf>. The prior version of the form will be accepted by USCIS only until May 1, 2008. As a result, those of you who are in the process of getting your medical exams completed should be sure that the USCIS-designated physician is using the new version of the Form I-693 (with a revision date of 04/02/2008 on the bottom of the form). If you have already had your medical exam completed but have not yet submitted it, you should be sure to submit your case before May 1, 2008 or have the physician fill out the new version of the form. Submitting a medical on the prior version of the form I-693 after May 2, 2008 could delay your case.

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**About Us**

*Long, Chang & Associates, L.L.P. is a full-service immigration law firm concentrating in the areas of employment-based and family-based immigration law. Our law firm has successfully represented individuals and employers through the immigration process with the Immigration and Naturalization Service (INS), Bureau of Citizenship and Immigration Services (BCIS), United States Citizenship and Immigration Service (USCIS) and at U.S. consulates and embassies in order to obtain both non-immigrant (temporary) visas and immigrant (permanent) visas on behalf of individuals or employees.*

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**Kristen Aekyung Chang** is a founding partner of Long, Chang & Associates, L.L.P. She practices exclusively in immigration law and is a member of the American Immigration Lawyers Association (AILA) and the North Carolina State Bar.

*Born in Seoul, South Korea, Ms. Chang attended the University of North Carolina at Chapel Hill where she received a Bachelor of Arts degree in Psychology. While achieving academic success at the undergraduate level, Ms. Chang devoted much of her time to volunteerism. She served as the Chairperson on the Planning Committee for the University's Bicentennial Class celebration and served as a Research Assistant in the University's Psychology Department where she performed valuable research in the area of cognitive memory. Ms. Chang also volunteered in the school's International Department as an English language assistant for international students and faculty members and at a local psychiatric hospital. In addition to her numerous public-service efforts during her undergraduate career at the University of North Carolina at Chapel Hill, Ms. Chang studied abroad at the prestigious London School of Economics where she achieved the top academic ranking in International Business Strategy and Human Resource Management.*

*Ms. Chang received her J.D. (law) degree from the Wake Forest University School of Law. During law school, Ms. Chang was selected as a member of the Law School's Moot Court Board based on her performance in the school's trial court competition. She was one of three members on the school's nationally-recognized and award-winning National Moot Court Evidence Team. During law school, Ms. Chang studied Labor and Employment Law at the law school's summer program in Italy.*

*Following law school, Ms. Chang opened her own immigration law practice in Greensboro, North Carolina, and subsequently joined Mr. Long in founding Long, Chang & Associates. As a naturalized citizen of the United States, Ms. Chang understands the immigration practice not just as an immigration lawyer but as an immigrant herself who has gone through the immigration process. Based on her personal experiences, Ms. Chang has a remarkable way of relating with her clients and perceiving their anxieties and concerns.*



**David J. Long** founded Long, Chang & Associates, L.L.P. in 1998. He has been recognized by the North Carolina State Bar as a Board-Certified Specialist in Immigration Law. Mr. Long is a member of the American Immigration Lawyers Association (AILA) and the North Carolina State Bar. Mr. Long serves as a Mentor for other immigration attorneys through AILA.

*Prior to founding Long, Chang & Associates, L.L.P., Mr. Long worked as an attorney with the law firm of Kilpatrick Stockton in Winston-Salem, North Carolina. Mr. Long practices in the areas of immigration law, corporate law and real estate.*



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*Born in Philadelphia, Pennsylvania, Mr. Long attended the University of North Carolina at Chapel Hill where he studied in the Honors Program and received a Bachelor of Arts degree in Political Science. In addition, Mr. Long studied the Korean Language at Duke University for a semester while attending UNC-CH. Mr. Long graduated magna cum laude and in the top 1% of his class.*

*Mr. Long graduated with highest honors and received his J.D. (law) degree from the Wake Forest University School of Law. During law school, Mr. Long was selected as a member of the Law Review based on his academic standing. He was one of three members on the school's nationally-recognized Gabrielli Family Law Moot Court Team. Mr. Long also studied Labor and Employment Law at the law school's summer program in Italy. Following law school, Mr. Long worked as an attorney in the commercial real estate department of Kilpatrick Stockton LLP in Winston-Salem, NC, one of largest law firms in the United States. After two years of working at a large law firm, Mr. Long desired the opportunity to assist clients on a more personal basis. As a result, he joined Ms. Chang in forming Long, Chang & Associates, L.L.P. Most recently, Mr. Long served as an adjunct faculty member at Handong International Law School in Pohang, South Korea where he taught U.S. Immigration and Naturalization Law.*

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