



Court Allows DHS Until May 10, 2016, to Issue New STEM OPT Rule

Insights

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The U.S. District Court for the District of Columbia gave the Department of Homeland Security (DHS) until May 10, 2016, to correct the procedural defects to its STEM OPT rule. The prior deadline had been February 12, 2016, to get a new rule in place.

As background, the Washington Alliance of Technology Workers filed a lawsuit against DHS with the U.S. District Court for the District of Columbia challenging the agency's 2008 rule which allows the U.S. Citizenship and Immigration Services (USCIS) to grant 17-months of extended work authorization to graduating F-1 foreign students holding "STEM" (Science, Technology, Engineering, Math) degrees from U.S. colleges and universities. The Court agreed that the DHS STEM OPT rule was not properly subjected to public notice and comment. However, the judge permitted the rule to remain temporarily in effect until February 12, 2016, to give the agency time to cure the defects.

The Court granted the agency's request for additional time due to the significant hardship a regulatory gap would cause current and future participants in the STEM OPT program. DHS successfully argued that the STEM OPT program's approximate 23,000 participants, 2,300 dependents of participants, 8,000 pending applications for extensions, and 434,000 foreign students who will likely be STEM eligible would be adversely affected if the extension of time is not granted. The court agreed and stated that the request for additional time to May 10, 2016, was reasonable.

Based on the Court's recent order, applications by F-1 students for 17 months of extended Optional Practical Training benefits will continue to be accepted under the existing rule until a new rule becomes effective or until May 10, 2016, whichever is earlier.