

**Special Immigration Alert:
Federal District Court Overturns Regulation
Permitting 17-Month F-1/OPT STEM Extensions**

On August 12, 2015, the U.S. District Court for the District of Columbia rendered its decision in *Washington Alliance of Technology Workers v. U.S. Department of Homeland Security*, Civil Action No. 14-529 (D.D.C. Aug. 12, 2015) (“*Washington Alliance*”). In this decision, the court found that the U.S. Department of Homeland Security (“DHS”) failed to satisfy procedural requirements when it issued the April 2008 interim final rule (“Rule”) that permits an extension of employment authorization for F-1 graduates with STEM degrees.^[1] Normally, all graduating F-1 students are given a 12-month period of optional practical training (“OPT”) as long as the employment is related to their course of study. In April 2008, however, DHS issued the Rule, which authorizes up to an additional 17 months of OPT work authorization for F-1 students who have STEM degrees and who work for employers registered with and using E-Verify.^[2] The purpose of the Rule was to allow U.S. employers to retain this high-tech workforce and use that talent to rebuild the United States during the economic downturn in 2008.

In the *Washington Alliance* decision, the court found that DHS had failed to follow proper procedural requirements when it issued the Rule in April 2008. However, the court realized that immediate implementation of its decision might force “thousands of foreign students with work authorizations . . . to scramble to depart the United States” and would “impose a costly burden on the U.S. tech sector if thousands of young workers had to leave their jobs in short order.” For this reason, *the court stayed its decision until February 12, 2016.*

The immediate impact of the *Washington Alliance* decision is unclear. DHS should have sufficient time between now and February 12, 2016, to cure the procedural problems that the court found and to reissue the Rule. DHS also could seek to reargue the decision or take an appeal to the U.S. Court of Appeals for the District of Columbia Circuit and request a stay of the district court’s order. Since the decision was just issued, however, it is hard to predict how DHS will respond.

The Immigration Law Group at Epstein Becker Green will continue to monitor this situation and provide additional information regarding any new developments as soon as they occur.

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ENDNOTES

[1] “STEM” is the acronym used by the government to describe degrees in science, technology, engineering, and mathematics.

[2] E-Verify is the DHS’s online database system that employers can use to verify the identity and work authorization of all new hires after completing the mandatory I-9 verification process. E-Verify is voluntary for most employers, although some states, such as Arizona, require all employers doing business within their state to use E-Verify, and it is also mandatory for certain government contractors.

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