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F-1 Student to H-1B Strategy (Including Startup Scenarios)

his document explains strategic planning considerations for F-1 students seeking H-1B status — including those working for or forming their own startup.

1. Understanding the H-1B Cap and Cap-Gap

Most H-1B petitions are subject to the annual cap.

- Registration typically occurs in March
- If selected, start date is usually October 1

Cap-Gap Protection

If:

- Your H-1B is timely filed
- You are selected
- Your OPT expires before October 1

Then:

- Your F-1 status and work authorization may extend automatically through September 30

Important:

- If H-1B is denied or withdrawn, Cap-Gap ends immediately
- You must maintain valid F-1 status at filing

Timing is critical.

2. Working for Your Own LLC During OPT/STEM OPT

You may work for your own startup during OPT if:

- Work is directly related to your degree
- Duties are documented
- Company is properly formed and active

For STEM OPT:

- Company must use E-Verify
- A formal training plan is required

- You cannot purely self-supervise
- A board member or manager should provide oversight

USCIS scrutinizes founder-owned companies carefully.

3. Transitioning from Startup to H-1B

If your startup sponsors you:
You must show:

- Bona fide employer-employee relationship
- Independent authority to hire/fire/supervise
- Specialty occupation tied to your degree
- Ability to pay prevailing wage

Best practices:

- Establish a board of directors
- Document corporate governance
- Separate ownership from employment control where possible

4. Strategic Timing

Students should begin planning:

- 6–9 months before OPT expiration
- Corporate structure finalized before H-1B registration
- Business plan prepared early
- Governance documents completed before filing

Last-minute structuring creates significant risk.

5. Alternative Planning if Not Selected

If not selected in the H-1B lottery:
Possible options:

- Continue STEM OPT (if eligible)
- Explore cap-exempt H-1B through university affiliation
- Consider O-1 or other employment-based categories (if qualified)

Advance planning reduces uncertainty.