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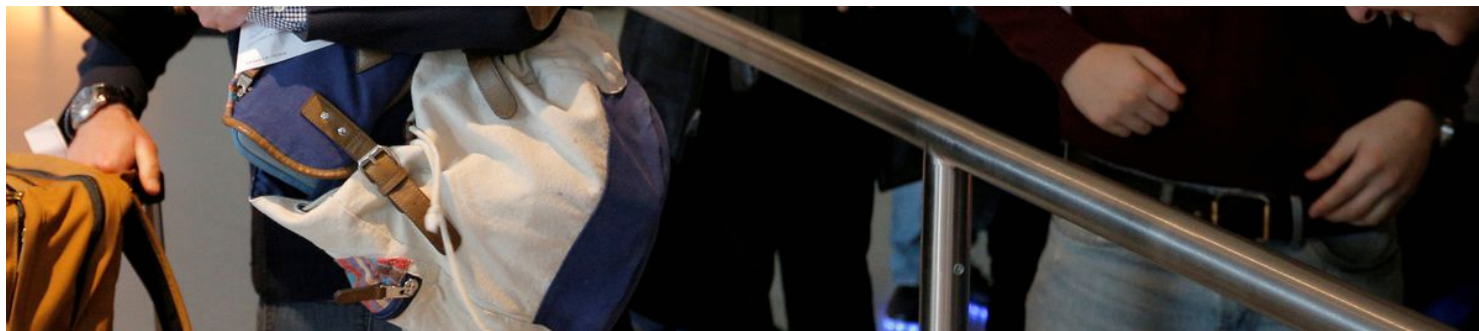
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# FRI Case to Watch: Biz groups look to save foreign student work permits

Daniel Wiessner

5 minute read





REUTERS/Brian Snyder



Summary



Law firms



## Group representing U.S. tech workers say longstanding foreign work-permit program is illegal

### A judge found that temporary work complemented foreign students' education

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(Reuters) - Business groups including the U.S. Chamber of Commerce have joined the Biden administration in urging a U.S. appeals court to uphold the federal government's decades-old practice of granting work permits to student-visa holders after graduation, which an advocacy group claims displaces American tech workers.

The Washington Alliance of Technology Workers, or Washtech, is **asking** the U.S. Court of Appeals for the D.C. Circuit to revive its lawsuit claiming the Optional Practical Training (OPT) program is beyond the government's authority and flouts a federal law that sets limits on the number of visas that can be issued to foreign workers each year.

Some version of OPT has existed since 1947, and Washtech is challenging a 2016 U.S. Department of Homeland Security **rule** that allows F-1 student visa holders' work permits to be extended for up to two years. The group is represented by the conservative Immigration Reform Law Institute (IRLI).

U.S. District Judge Reggie Walton in Washington D.C. allowed the Chamber, National Association of Manufacturers, and other groups to intervene in defense of the program in 2016. He said businesses' interest in OPT was distinct from that of the government.

In a **brief** filed on June 11, the groups told the D.C. Circuit that Walton was right to **toss out** the case last year. They said that temporary employment in student-visa holders' fields of study is a natural extension of their education, and allows companies to tap entry-level talent when there are no U.S. workers available with the proper skills for certain jobs.

"If Washtech's broad claims were to succeed, scores of other immigration programs — including, for example, work authorization for H-4 spouses, would crumble too," wrote the groups' lawyers, led by Paul Hughes of McDermott Will & Emery.

The U.S. Department of Justice made similar arguments in a separate June 15 [brief](#). DOJ also says Washtech lacked standing to bring the case because it failed to identify a single member who faced an ongoing or imminent injury caused by the 2016 rule.

Hughes and the business groups did not respond to requests for comment. Nor did Washtech and its lawyers at IRLI.

DHS in 2008 tweaked the OPT program's regulations to extend the 12-month limit on work permits by as many as 17 months for some students. Washtech sued, and a federal judge in Washington D.C. in 2015 blocked the rule, finding that DHS had improperly adopted it without first seeking public comment.

The agency in 2016 adopted a new rule allowing students enrolled in OPT to have their work permits renewed for up to two years.

Washtech sued DHS that year, [arguing](#) that the Immigration and Nationality Act does not allow individuals to retain F-1 student visa status when they are no longer students, and does not authorize them to work in the U.S. The group said the OPT program had created more competition for tech jobs, often freezing out American workers.

Walton last year said the INA was ambiguous on whether F-1 status encompasses post-graduate practical training. But he ultimately found that the criteria that must be met to receive student visas were essentially entry requirements, and did not dictate the duration of a foreign individual's stay in the U.S.

Washtech in a May brief said that conclusion was "nonsensical." Under Walton's reading of the INA, the group said, the government could, for example, issue temporary work permits to individuals who receive tourist visas once they enter the U.S.

"Adopting the district court's novel interpretation ... would create absurdity in the entire immigration system," Washtech's lawyers wrote.

The case is Washington Alliance of Technology Workers v. U.S. Department of Homeland Security, U.S. Court of Appeals for the D.C. Circuit, No. 21-5028.

For Washtech: John Miano of the Immigration Reform Law Institute