

## US' OPT programme for int'l students challenged in court

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TNN

Representational photo. (Reuters)

America's optional practical training program (OPT), which enables international students to work in the US for a period of up to three years, has come under the cloud of a court battle. The development adds to the worries of such students who already face delays in processing of their OPT applications.

An alliance of American workers hailing from the science, technology, engineering and mathematics (STEM) sector will now be able to move forward with their lawsuit—which contends that the US Department of Homeland Security (DHS) had exceeded its authority by introducing the OPT program.

As of March 2019, as TOI had pointed out in its report of May 2, nearly 2 lakh-odd active students in the US were from India, the majority of them enrolled for a Masters' degree. They constituted 18% of the total number of the 11.68 lakh international students.

Under a 1992 regulation, the OPT program enables international students on F-1 (academic study) visas to work for one year in the US post their studies. Subsequently, a regulation introduced in 2016 enabled STEM students to get a further OPT extension of up to 24 months, in effect increasing the OPT tenure to three years.

Judge Reggie B Walton, of the district court of Columbia, recently denied the US government's plea to dismiss a petition filed by the Washington Alliance of Technology Workers (WashTech), an organization representing American STEM workers.

### OPT approvals based on country of citizenship

Country	Fiscal 2015	Fiscal 2016	Fiscal 2017	Yr-on-yr 2015-2016 (% growth)	Yr-on-yr 2016-2017 (% growth)
India					17%
China					(-) 1%

(Source: Paper by Pew Research Center)

"The order of the court permits the lawsuit to go forward in attacking both the one-year OPT and the two-year STEM OPT extension. However, it also permits three organizations: National Association of Manufacturers, the US Chamber of Commerce and the Information Technology Industry Council (ITI Council) to argue the case on behalf of the students. An underlying concern in this lawsuit has been that the government under the Trump administration, is not likely to defend the lawsuit vigorously.

"Having these three organizations to intervene in the case is a good development for students," says Rajiv Khanna, managing attorney at Immigration.com. For instance, ITI Council counts as its members large tech companies like Microsoft and Google. OPT has been frowned upon in some sections, as creating a flow of 'cheaper' labour that impacts local hiring. Pew Research Center, a US-based think-tank, points out that "in recent years, the OPT program has surpassed the H-1B visa program as the country's largest source of new temporary high-skilled immigrant workers". It also states, "In 2017, a record 2.76 lakh foreign graduates received work permits under the OPT program, up from 2.57 lakh in 2016 (a rise of 7%)."

Pew obtained the data from the US Immigration and Customs Enforcement (ICE) through a public records request. According to this data, 1.22 lakh Indian students had obtained an OPT in fiscal 2017, a rise of 17% over the previous year. However,

the year-on-year growth has been on the decline over the past three years.

“The order enables the lawsuit, which had been previously dismissed, to move forward in addressing the heart of the case,” Emily Neumann, partner at immigration law firm of Reddy and Neumann, told TOI.

The genesis of the lawsuit dates back to 2014, when WashTech sued DHS. Their petition was dismissed in 2016 and the alliance appealed. Later, a portion of the lawsuit that dealt with DHS's lack of authority to set up an OPT program was sustained. The Trump administration filed a motion last October, to dismiss it, but this has been recently set aside.

Neumann adds, “The order, creates a new round of uncertainty for international students. Students may be left wondering if their studies in the US was worth it, in case there is no OPT at the end of it. The continued doubt created by so many actions being targeted towards international students (

including the memo relating to unlawful presence

) will surely cause international students in the future to look to other countries, which in turn will impact the university budgets and the US economy.”

Cyrus Mehta, founder of a NY-based law firm specialising in immigration laws, told TOI: “Since OPT has existed for decades, it may be difficult for a court to hold that the DHS has no authority even though there is no explicit provision for practical training in the Immigration and Nationality Act. Federal courts always give deference to a government's interpretation of ambiguous provisions in a statute.”

“However, if WashTech prevails and OPT is eliminated, the result would be catastrophic, as OPT is one of the main attractions for international students” Mehta added. **Khanna holds that if WashTech wins, appeals will be filed—there will be no quick resolution.**