United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued November 3, 2021 Decided October 4, 2022

No. 21-5028

WASHINGTON ALLIANCE OF TECHNOLOGY WORKERS,
APPELLANT

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, ET AL.,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:16-cv-01170)

John M. Miano argued the cause and filed the briefs for appellant. *Dale L. Wilcox* entered an appearance.

Julie Axelrod and *Richard P. Hutchison* were on the brief for *amici curiae* Landmark Legal Foundation, et al. in support of appellant.

Joshua S. Press, Senior Litigation Counsel, U.S. Department of Justice, argued the cause for appellees. With him on the brief were *Brian M. Boynton*, Acting Assistant Attorney General, and *Glenn M. Girdharry*, Assistant Director.

Paul W. Hughes argued the cause for intervenor appellees. With him on the brief were *Andrew A. Lyons-Berg*, *Daryl Joseffer*, *Paul Lettow*, and *Jason Oxman.*

Leslie K. Dellon was on the brief for *amici curiae* American Immigration Council and American Immigration Lawyers Association in support of appellees.

Sean H. Donahue, *Andrew D. Silverman*, and *Elizabeth R. Cruikshank* were on the brief for *amici curiae* FWD.us, et al. in support of appellees.

Ishan K. Bhabha was on the brief for *amicus curiae* The President's Alliance on Higher Education and Immigration in support of appellees.

Megan C. Gibson was on the brief for *amicus curiae* Niskanen Center in support of appellees. *Ciara W. Malone* entered an appearance.

Before: HENDERSON, TATEL,* and PILLARD, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* PILLARD.

Opinion concurring in part and dissenting in part by *Circuit Judge* Henderson.

PILLARD, *Circuit Judge*: Since before Congress enacted the Immigration and Nationality Act of 1952 (INA), the Executive Branch under every President from Harry S. Truman onward has interpreted enduring provisions of the immigration

* Judge Tatel assumed senior status after this case was argued and before the date of this opinion.

laws to permit foreign visitors on student visas to complement their classroom studies with a limited period of post-coursework Optional Practical Training (OPT). A 1947 Rule allowed foreign students "admitted temporarily to the United States . . . for the purpose of pursuing a definite course of study" to remain here for up to eighteen months following completion of coursework for "employment for practical training" as required or recommended by their school. That program has persisted and been continually updated across the ensuing seventy years.

Today, over one million international students come to the United States each year on student visas, and over one hundred thousand of them complete a period of practical training. *See* U.S. Immigration and Customs Enforcement: Student and Visitor Exchange Program, 2021 SEVIS By the Numbers Report 2, 4-5 (April 6, 2022). The current Department of Homeland Security (DHS) OPT Rule authorizes up to one year of post-graduation on-the-job practical training directly related to the student's academic concentration, with up to 24 additional months for students in science, technology, engineering and mathematics (STEM) fields. The OPT Rule requires an applicant for practical training to be enrolled on a full-time basis at an authorized academic institution that requires or recommends it as directly related to the student's coursework. The practical training must be approved by both the school and DHS, the student must be registered with DHS as an OPT participant, and the student's practical training must be overseen by both the employer and the school.

The Secretary of Homeland Security promulgated the challenged OPT Rule pursuant to the Executive's longstanding authority under the INA to set the "time" and "conditions" of nonimmigrants' stay in the United States. 8 U.S.C. § 1184(a)(1). The Rule is an exercise of that authority over

foreign students authorized to enter the country on nonimmigrant F-1 student visas. 8 U.S.C. § 1101(a)(15)(F)(i). The time-and-conditions authority and the foreign student visa category were both already on the books when Congress conducted its in-depth review and synthesis of immigration law to enact the 1952 INA. Congress knew that the statutory powers it chose to preserve in that Act had long been used by the Executive to permit foreign students who had entered the United States in order to attend school to stay after graduation for a period of practical training as required or recommended by their school. Lawmakers have closely scrutinized the immigration laws many times since then. Congress has repeatedly amended the pertinent provisions. But it has never once questioned the statutory support for the Optional Practical Training program.

Washington Alliance of Technology Workers (Washtech) argues that the statutory definition of the F-1 visa class precludes the Secretary from exercising the time-and-conditions authority to allow F-1 students to remain for school-recommended practical training after they complete their coursework. But that argument wrongly assumes that, beyond setting terms of entry, the visa definition itself precisely demarcates the time and conditions of the students' stay once they have entered. Congress gave that control to the Executive. The F-1 definition tethers the Executive's exercise of that control, but by its plain terms does not exhaustively delimit it. We hold that the statutory authority to set the time and conditions of F-1 nonimmigrants' stay amply supports the Rule's OPT program.

The practical training opportunities the Rule permits reasonably relate to the terms of the F-1 visa. The INA's text and structure make clear that Congress intended the Secretary's time-and-conditions authority to be exercised in a manner

appropriate to the types of people and purposes described in each individual visa class—a constraint that the Secretary's overarching administrative-law obligations confirm. To be valid, the challenged post-graduation OPT Rule, including its STEM extension, must reasonably relate to the distinct composition and purpose of the F-1 nonimmigrant visa class. We hold that they do. The Rule closely ties students' practical training to their course of study and their school. OPT is time-limited, and the extension period justified in relation to the visa class. The record shows that practical training not only enhances the educational worth of a degree program, but often is essential to students' ability to correctly use what they have learned when they return to their home countries. That is especially so in STEM fields, where hands-on work is critical for understanding fast-moving technological and scientific developments.

Finally, Washtech sees another lack of statutory authority for the Rule: In its view, the Executive cannot authorize any employment at all, including for Optional Practical Training. That argument fails, too. As Congress itself has recognized, the Secretary's statutory authority to set the "conditions" of nonimmigrants' stay in the United States includes the power to authorize employment reasonably related to the nonimmigrant visa class. Authorizing foreign students to engage in limited periods of employment for practical training as their schools recommend according to the terms set out in the Rule is a valid exercise of that power.

As further explained below, we affirm the judgment of the district court sustaining the OPT Rule's authorization of a limited period of post-coursework Optional Practical Training, if recommended and overseen by the school and approved by DHS, for qualifying students on F-1 visas.

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