

# The Mercury News

## **H-1B: Foreign-student work permit OPT, often a visa steppingstone, upheld in court**

**Google, Apple, Facebook among tech giants that joined fight for program**

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A federal judge has ruled that a controversial work-permit program for foreign students will survive a challenge from a union representing U.S. technology workers that wanted it killed.

A who's who of Bay Area tech giants including Google, Apple, Facebook, Uber, Tesla, HP, Oracle and Salesforce had joined the fight, seeking to protect the Optional Practical Training program — which is often used as a path to an H-1B visa. In a court filing last year, they argued that the program, which gives foreign students and graduates up to three years to live and work in the U.S., expands job opportunities for American workers by spurring economic activity.

The Washington Alliance of Technology Workers sued the U.S. Department of Homeland Security in 2014. It claimed the agency used the OPT program to get around the numerical cap on H-1B visas, which are intended for jobs requiring specialized skills, and that OPT workers gained an unfair advantage because employers don't have to pay Medicare and Social Security taxes for them. The lawsuit sought a court order declaring the program illegal and ending OPT work immediately.

On Monday, Washington, D.C. U.S. District Court Judge Reggie Walton ruled against the union, also known as WashTech, saying he would provide reasons within 60 days.

Optional Practical Training has been in place in various forms since 1947, and in 2008 and 2016, the federal government added extensions for students and recent graduates in Science, Technology, Engineering and Math fields, allowing employment for up to three years.

In fiscal year 2019, U.S. Citizenship and Immigration Services approved a record 223,284 OPT applications, according to the Cato Institute, a libertarian think tank. The number of OPT approvals nearly tripled between 2003 and 2019, with a steady rise from 2009 to 2017, and a small drop in 2018, [Cato reported](#) in May.

Walton noted that his order disposed of the matter before him, but would not become final until he issued his reasons. Any appeal would have to follow the final order, he said.

WashTech's lawyer John Miano said the union planned to appeal after the final order.