

The current economy is giving sleepless nights to many. More precariously placed are the H-1 or L-1 employees for whom an involuntary situation, like a layoff, may mean their world turning topsy turvy all of a sudden.

I have received several calls from concerned clients who are laid off or afraid of being laid off and wanting to explore their different options. This article explores the different options H-1 and L-1 employees have to preserve their legal immigration status and continue staying in the United States legally, but this article should not be construed as legal advice and cannot replace the value of an individual consult with an experienced immigration attorney who is able to conduct a complete analysis based on an individual's circumstances.

A layoff or "benching" is a period of non-productive status for which an employer is responsible. In general, a H-1 or L-1 employee who is laid off is considered immediately out of status and there is NO grace period, not even a single day. However, in certain limited circumstances, such as where an employee continues to be paid a salary, an employee who is laid off may be considered to be maintaining status with the same employer.

Termination on the other hand, differs from lay-off, and means a clean break in the employer-employee status, thereby resulting in immediate loss of a H-1 or L-1 visa status.

Being out of status does not by itself immediately mean unlawful presence or impose drastic penalties, but being out of status for 180 days or more bars you from entering USA for 3 years and an unlawful presence of one year raises that bar to 10 years. Instances of unlawful presence include expiration of your I-94 or revocation of your H-1 status by your employer.

Options to consider if you intend to maintain your status in the US:

1. Derivative Visa (Spouse Visa):

If you have a spouse on a valid non-immigrant visa, such as a H-1, L-1, F-1 visa, you can apply for the relevant dependant visa. Although, you may not be able to work on a dependant visa, it will give you the opportunity to look for another job while continuing to maintaining your legal status in the US.

2. Apply for a B-1/B-2 visa (Business/Visitors visa):

This is a catch all visa status for those wanting to stay in the US. You can apply for a 6 month change of status to a B1/B-2 visa so that you are either able to find another job or then wind up your affairs in the US, if intending to return to your home country. It should be noted that you are not authorized to work on a B1/B-2 visa and that to apply for a B1/B-2 visa you will have to show that you have the means to support yourself.

Therefore, even during these trying and difficult times, it is of essence that you keep your immigration status legal and file a change of status right away, if necessary, so as not to be adversely impacted in your future immigration applications.

Further, most recent processing times released by the United States Citizenship and Immigration Services (USCIS) (on July 16, 2009) indicate that an application for Change of Status is taking approximately 2.5 months to process by the Vermont Service Center, which means you have at least 2.5 months to look for another job, and possibly more (if you change of status is approved).

Once again, I cannot stress enough that maintaining a legal immigration status is crucial and should not be neglected.

If you would like to see a particular topic/issue covered in future issues please send me an email at ISW_e-Sandesh@mithraslaw.com with "ISW e-Sandesh" as the subject.

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