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THE TIMES OF INDIA

A 60-day grace period to remain in US after a layoff is no longer sacrosanct for H-1B workers

TNN | Jul 23, 2025, 11:10 PM IST



Several laid-off H-1B workers are receiving notices to appear (NTAs)– the first step in the deportation proceedings, even while the 60-day grace period of authorised stay has not expired. Sameer Khedekar, immigration attorney and founder of Vanguard Visa Law explained, “Upon lay-off a 60-day grace period is available to an H-1B visa holder who either transfers the H-1B status to a new employer or applies to change his/her visa status (say to a dependent visa) before the grace period ends. However, increasingly the Department of Homeland Security is sending NTAs in immigration courts. This is happening even when the laid-off H-1B worker has a change of status application pending.”

The notice points out to the date of withdrawal of the H-1B visa by the erstwhile employer and states that the individual has stayed in the US for longer than is permitted, he explains.

Rajiv S. Khanna, managing attorney at Immigration.com points out that a policy memo issued on Feb 28, states that NTAs should generally be sent "upon issuance of an unfavourable decision on a benefit request" where the individual is not lawfully present. However, recent cases demonstrate USCIS improperly issuing NTAs to individuals who remain in ‘authorized periods of stay’ (such as during the 60-day grace period for H-1B visa holders) including those with pending change of status applications.

To illustrate: An H-1B worker, who timely filed an I-539 application to change status to B-2 visitor within their 60-day grace period, received an NTA before a decision was made on the I-539.

“This contradicts guidance issued by the US Citizenship and Immigration Services (USCIS). In other words, if you have a properly filed, non-frivolous application pending, you should be considered in ‘authorized stay’ for unlawful presence purposes. Despite this, we are seeing a significant volume of NTAs," states Khanna.

According to USCIS's recent release their screening and vetting efforts have led to approximately 1,840 NTAs a

week since Feb 2025. Many of these appear to be issued in circumstances that raise serious questions about adherence to stated policy, adds Khanna.

USCIS under the Biden administration had issued guidelines for laid-off workers, which included changing status during the 60-day grace period. It had pointed out that status can be changed to that of a dependent if the spouse holds an H-1B or L-1 visa. Other possible non-immigrant options include change of status to that of a student visa holder (F-1) or obtaining visitor status (B-1 or B-2 visas). This guidance has been achieved and no fresh guidance has been issued.

When an NTA is filed with the immigration court, removal proceedings commence and unlawful presence is triggered which has serious consequences. For now, in addition to the loss of a job, laid off H-1B workers have the looming threat of deportation proceedings.