

NO GRACE PERIOD FOR H-1B BETWEEN EMPLOYERS

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Byline: JESSIE MANGALIMAN AND EDWIN GARCIA, MERCURY NEWS

Body

Q

I am an American citizen, and my fiancée is originally from South Korea. Her current **H-1B visa** is due to expire Oct. 1.

She was laid off in February and has been unable to find a new **employer**.

Since she is on an **H-1B** from her original **employer**, is this visa transferable to a new **employer**? Is there any way to extend the **H-1B**?

Michael Friedman

San Jose

A

There is **no "grace period"** that allows your fiancée to remain lawfully in the United States. The Bureau of Citizenship and Immigration Services would consider her to be "out of status" since February, when she was laid off from her **H-1B employer**, according to Kelly McCown, an immigration lawyer with Tafapolsky Smith Evans & McCown in San Francisco.

And, since **H-1B** status is **employer**-specific, she will need a new **employer** sponsor to lawfully work in the United States or to extend her status beyond Oct. 1, McCown said. Should she find a job by then, the best strategy is for the new **employer** to file a new **H-1B** petition and request premium processing, which generally will be resolved within 15 calendar days, McCown said.

This strategy is safer than filing a request to extend her **H-1B** status with the new **employer**, McCown said.

Also, if she has not worked without authorization since her last U.S. entry, she may be able to take advantage of a provision called "**H-1B** portability" while awaiting approval of the **H-1B** petition filed by the new company, McCown said.

H-1B portability allows someone with valid **H-1B** status to begin working for a new company upon filing of a new **H-1B** petition, McCown said.

The temporary work authorization under portability lasts only until the **H-1B** petition is approved, however. At that point, she would need to travel out of the United States to obtain her new I-94 card, McCown said.

Finally, although your fiancée has been living in the United States on a work visa, that does not necessarily count toward the length of time required to establish permanent residency. However, should you decide to marry, she

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would immediately be eligible for permanent residency based on your filing of an I-130, or immediate relative petition, on her behalf. If she resides in Santa Clara County, her I-130 petition and permanent residency application should be approved within six to eight months, McCown said.

Q

I'm a minor, and single. My father is a U.S. citizen who requested residency for my sister and me. She has since received her green card, but I haven't. I missed an interview with immigration officials because I never received an appointment letter they sent, after I moved to a new address. Now my work permit has expired. Someone told me I should start the paperwork all over again. What should I do?

Federico

Union City

A

If you miss an appointment, contact the BCIS as soon as possible to try to reschedule, said Hazel Marinero, an immigration attorney in Campbell. However, if you missed the appointment because you forgot to report your latest address to the BCIS, you could automatically forfeit your application for residency, Marinero said.

At this point, your father could file the residency petition again, or you can submit a "motion to reopen" the case, Marinero said. Either way, you should consult an attorney, because being a minor and single could help your case, Marinero said.

Notes

Immigrant Experience

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