Top Three Things I Wish My Immigration Lawyer Had Told Me: Several Key Concepts for Temporary Foreign Workers and their U.S. Employers

After practicing in the field of immigration law for close to fifteen years, I know how much misinformation and misunderstanding there is on the immigration grapevine. I decided to write this article with the goal of clearing up some of the most frequently confused (and confusing) concepts in the field of immigration law that I hear about in my practice. Although there are obviously far too many topics to possibly touch on here, this article is designed to help foreign temporary workers and their employers understand some very frequently misunderstood issues in the very complex and ever-changing world of immigration law.

1. There is no such thing as a "grace period" after a termination, layoff or separation from employment. Unfortunately, this is an issue that matters right now and is one of the most frequently misunderstood subjects that I have seen. The confusion appears to stem from the "grace period" referenced in the H-1B regulations, which permits an H-1B professional worker to remain in the U.S. for ten days after his status has ended. However, this regulation applies only to those H-1B workers who are actually in a valid H-1B status at the time that their I-94 card expires. In other words, if an H-1B worker has been issued an I-94 card that expires on March 15 and he remains working for the employer who sponsored him through March 15, he is authorized to remain in the U.S. for an additional 10 days after March 15 -- without working – and he would not be considered to have violated his status during this period. However, if this same H-1B worker is terminated from employment for cause or laid off on March 1, his status normally ends on March 1. There is no "grace period" in this situation. That worker must take immediate steps to depart the U.S. and/or obtain an alternative immigration status in order to lawfully remain in the U.S. (This also applies to any dependent family members who are here with the worker.)

2. A Visa is Not an I-94 and Vice Versa. Visas and I-94 cards play very different roles in the U.S. immigration system. Visas (which are issued by U.S. Consulates around the world) allow someone to enter the U.S. in a particular immigration status (for example, H-1B status) for as long as the visa is valid. I-94 cards, which are issued by U.S. Customs and Border Protection (CBP) when a foreign national arrives in the U.S. or by U.S. Citizenship and Immigration Services (CIS) after a foreign national has applied for an extension of his or her immigration status while still in the U.S., determine how long someone is authorized to remain in the U.S. on a particular trip. With very limited exceptions, once a visa has expired, it may no longer be used for entry to the U.S. in that visa status and a new visa must be obtained in order to travel in that status. If a foreign national is already in the U.S. and his I-94 card has not expired or he has obtained an extension or change of status that permits him to remain in the U.S., however, he is allowed to stay through the new authorized period. In this case, the fact that his visa has expired has no impact on his ability to lawfully remain in the U.S. However, if he wants to travel internationally and return to the U.S. in that status, that is a different story.

Laura Edgerton is a Raleigh immigration lawyer and the founder of Edgerton Immigration Law, PLLC, a North Carolina law firm focusing exclusively on immigration and naturalization law. To learn more or to contact a Raleigh immigration attorney, visit us at www.edgertonimmigration.com or call 1-919-301-0055.

3. The approval of an extension or change of status petition does not give someone the right to travel in the newly-approved or extended status. As mentioned, foreign workers whose employers file an extension for them while they are in the U.S. may legally remain in the U.S. up through the date of the petition extension. However, in almost every case (Canadians on TN status being one of the notable exceptions), that extension or change of status petition approval does not give the employee the right or ability to travel abroad and return to the U.S. in a particular work-authorized status. Instead, if the worker's existing visa in that classification has expired, the worker must use the petition approval notice to apply at a U.S. Consulate abroad for a new visa. In other words, the visa is the document that allows the foreign worker to return to the U.S. in a particular work-authorized status (for example, H-1B, L-1, E-2); the CIS petition approval notice is the document that allows the foreign worker to apply for the visa.

In short, the U.S. immigration system is confusing and complex. Most employers and their foreign employees need and seek out legal representation to help them navigate the system. However, aside from hiring competent representation, the key to getting good advice is providing full communication with your immigration attorney and ensuring that your attorney has the information he or she needs for all people (workers and family members) involved in a particular matter, including:

- Information relating to immigration history in the U.S.
- Current and future travel plans
- Ultimate goals for residence or citizenship in the U.S.
- Prior immigration and criminal violations (if applicable)

And, of course, you should continually ask questions. A competent, experienced immigration attorney will appreciate the opportunity to advise you and should have the answers you need to make important decisions.