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Exclusive Reports

➤ From the June 8, 2001 print edition

Layoffs leave foreign workers in limbo

Martin Kady II Staff Reporter

He's got a doctorate in physics and has lived in the United States for 11 years as a student and technology worker. He's a Chinese national who had dreams of making it big in America's new economy.

But he's been laid off twice in the past six months, falling under the ax of corporate cost-cutting at Northern Virginia tech startups OneSoft and Cvent. He's got rent, tuition and a car loan to pay.

And technically, he's an illegal immigrant right now.

This is the dark side of the H-1B visa story. Last year, U.S. technology companies begged Congress to allow them to hire more foreign workers under H-1B visas, a program that allows technically skilled foreigners to be imported to meet worker shortages.

But with mass layoffs sweeping the tech industry, H-1B workers are losing their jobs -- and consequently their visa sponsors -- putting them in a legal and employment quandary that has caused headaches for lawyers, immigration officials and the workers themselves.

As more and more foreign tech workers are laid off, it becomes harder for them to quickly find new jobs. Under the letter of the law, these workers' visas are void when they lose their jobs, even

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though the Immigration and Naturalization Service says it's not going to deport H-1B workers.

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"The day you lose your job, you lose your status," says Rajiv Khanna, who runs a service called Immigration.com and an Arlington law firm dedicated to business-related immigration issues. "That day if you are caught on the street you could be deported. You are illegal the day you stop working."

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The laid-off worker described above doesn't want his name used because he still is searching for a job and he's worried about his immigration status. Like many highly skilled workers, this middle-aged native of China is nerve-racked over what to do with his future. If he doesn't find a job soon, he may have to leave the country and apply for another H-1B visa. So far, he's had little luck with online job boards.

"I've got to decide if I want to stay here my entire life," he says. "I'm not ready to go back to China. As time goes on, I get more nervous. We were looking at a really bright future here."

'Creative lawyering'

Just last year, D.C.-area tech companies lobbied Congress to increase the cap on H-1B visas. But in recent months, H-1B applications have dropped because companies have stopped hiring. In December, there were 53,000 total requests for H-1B visas. In January that dropped to 30,000, and in February the number plummeted to 16,000.

In the D.C. area, there are 15,000 to 20,000 workers on H-1B visas. Many may not last in the United States. By one estimate, at least 40,000 Indian tech workers are expected to return to their homeland by the end of the year. India accounts for about 40 percent of H-1B visas nationally.

"I've had a lot of people call me to see what can be done," says Shiv Krishnan, CEO of information technology firm Indus, which employs about 10 H-1B workers. "They are scared, really anxious, and a lot of them came here with big dreams. They've put their kids in school, taken on mortgages. The visa process has been hard to figure out."

Some critics blame tech companies for being too aggressive in hiring foreign workers and then laying them off. The H-1B workers often are the first laid off because they are considered temporary employees.

"If you're going to import a lot of labor, you need to be careful about the impact on families," says Rupal Kothari, an immigration attorney based in D.C. who represents both tech companies and individuals on H-1B matters. "What's frustrating to me is so many companies are unfamiliar with immigration law and don't

understand the impact on H-1B visas."

Kothari says layoffs have led to some "creative lawyering" to maneuver around H-1B laws that make workers illegal.

For instance, some companies will keep employees on the payroll for extended "unpaid leave" so that they are not technically unemployed. Other companies have paid out severance over extended periods so employees have pay stubs to prove employment to the INS. In other examples, fired foreign workers go to Canada, which has looser immigration rules, where they re-apply for H-1B visas through a U.S. embassy.

Setting the record straight

Nearly every major local technology company in the D.C. region has hired H-1B visa workers as the industry has boomed in recent years. Cvent, an event marketing firm, and OneSoft, a software firm, both have hired H-1B workers. MicroStrategy also has been an advocate for increasing the national quota on H-1B visas but has laid off several foreign workers.

A MicroStrategy spokesman declined to comment on the firm's H-1B visaholders but said those who were laid off received special legal advice.

Legal advice and opinions, however, have been confusing at best for foreign workers, according to several D.C.-area immigration lawyers. Some H-1B workers have been told they have a grace period between jobs where their H-1B status is not affected. This is not true.

"The way the regulations are now, once the employer/employee relationship has ended, the visa is no longer valid," says Eyleen Schmidt, a spokeswoman for the INS. "... INS hopes to put out guidelines that would give H-1B aliens a better sense of the timelines to get employment."

Workers are unlikely to be deported if they are out of work too long. Immigration attorneys say they don't know of any cases of H-1B visaholders being deported because they were laid off.

Still, hundreds of jobless D.C.-area H-1B workers remain in limbo as they look for jobs and try to find loopholes in the immigration laws.

"I get calls from people who say 'I've been laid off, my wife's eight months pregnant and I can't leave the country, what do I do?'" Khanna says. "The industry hired all these H-1B people and just chucked them overnight."

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