

## Legal Pathways for HyLife Employees on Temporary Work Visas May 13, 2023

If HyLife closes or your contract is terminated, your temporary work visa will be cut short. It doesn't matter if your I-94 doesn't expire until December 2023 or October 2024 – your lawful status in the United States is connected to your employment at HyLife, not your I-94. If you have TN status, you have a 60-day grace period after your contract ends to find a new employer and get your new TN visa. If you have an H-2B, you have a 10-day grace period after your contract ends before you begin accruing unlawful presence in the United States. To avoid unlawful presence, you must either depart the United States in that 10-day window, or file an application for some other kind of immigration status or work visa.

TN status *can* transfer to new employers, so TN visa holders could apply for other engineering jobs with employers willing to file the necessary paperwork to get your TN status transferred to the new company. If you have conversations with a prospective employer who is uncertain how to file the TN transfer paperwork, I would be happy to answer questions and assist with that process.

It is a bit more challenging for H-2B visa holders to transfer employers. Technically, it is not possible for you to take your H-2B visa issued by HyLife and go get a job at a different employer. Instead, there are two qualifications that a new employer must meet in order to have permission from the US government to hire you on a new H-2B visa: 1) The employer must already be approved for a Temporary Employment Certification. 2) The employer must have job openings reserved specifically for H-2B workers. HyLife has provided H-2B employees with a list of employers who meet both criteria. The employers on the list can hire H-2B workers. If you are interested in staying in the United States and working for a new employer, you should update your resume, reach out to employers directly, and state clearly that you are in need of a new H-2B visa. The new employer would need to file paperwork for your new H-2B before your 10-day grace period expires.

Just so you are aware, most H-2B visas are valid for 6-9 months and are seasonal in nature. Most H-2Bs are not issued for three years. Your H-2B visas through HyLife are kind of special and unique in that regard. It is important to note that even if you get a new H-2B with a new employer, the time you've spent working at HyLife counts towards your three year maximum before you are required to spend three months outside the country. After spending three months outside the US, you would be eligible to return to the US on a new H-2B visa, perhaps with that same new employer if that turns out to be a good relationship.

If you would be interested in doing agricultural work on a temporary basis, you could also apply for an H-2A visa. The farmer would need to submit your H-2A visa application to the US government before your grace period expires. H-2A visas usually cover 6-9 months of seasonal farm work. To find job openings for H-2A workers, visit <https://seasonaljobs.dol.gov/>.

For those of you on H-2B visas who have your bachelor's degree, you could also consider applying for a job in the field of your degree and ask the employer to sponsor you on a TN visa. To be eligible for a TN visa, you must have a bachelor's degree and a job offer in the field of your study. If the TN visa application is submitted before your grace period ends, you would not need to leave the United States before starting your new job on a TN visa.

All of these options mentioned above require you finding a new employer willing and able to sponsor you for a new temporary work visa. The next opportunities described do not require finding a new employer, but have other limiting eligibility criteria.

**Family Based Immigration:** Do you have a US citizen child over age 21? Do you have a spouse who is a US citizen or lawful permanent resident? If so, your family member may be able to sponsor you for a family-based green card. Because you entered the US lawfully on a visa, it would not be necessary to leave the country in order to apply for the family-based green card. If you qualify for this option, you and your family member may contact me for more details about how to begin this process.

**Humanitarian Based Options:** If you're not able to get connected with a new employer, and you don't have a family member who can petition for you, listen carefully to learn about humanitarian-based opportunities for you to continue lawfully living in the United States. Each option has unique sets of eligibility with different pros and cons.

Asylum – Are you afraid of returning to your country of origin? Have you experienced persecution in your home country? Do you fear persecution if you returned? If your honest answer to these questions is “yes,” you may be eligible to apply for asylum. To win an asylum case, you must successfully explain to the US government that the persecution that you experienced or fear is based on your race, religion, national origin, political opinion, or some other piece of your identity that you cannot change – such as your sexual orientation or relationship to a particular family member. Second, you must explain that the government of your

country is unable or unwilling to protect you. Third, you must demonstrate that there is no place anywhere in your country where you will be safe. You are allowed to live in the United States while you wait for your asylum case to be processed. It takes several years for a decision to be made on an asylum case, so the US government allows asylum seekers to apply for work authorization and a social security card 150 days after the asylum application is submitted. Eventually, you will have an asylum interview with an asylum officer where you are asked details about the persecution you experienced and/or fear. If the officer approves your case, you will be able to apply for lawful permanent residency. If the officer does not approve your case, you will have a second chance to fight your case in front of an Immigration Judge. However, if the Judge does not approve your case, you would face an order of removal (aka deportation) or voluntary departure and be expected to leave the country.

U-visa – Have you ever had to report to the police something bad that happened to you here in the United States? If you or a family member has been a victim of a serious crime in the US and you reported it to law enforcement, you may be eligible for a U-visa. Qualifying crimes for a U-visa include things like sexual abuse, domestic violence, felonious assault, and others. Like asylum, you are not able to travel outside the United States while your U-visa application is processing. I would be happy to speak about U-visas or asylum in greater detail with anyone wanting to learn more about these types of application.

Deferred Action based on Labor Violations – Have you experienced or witnessed the violation of labor rights? If your employer has not been following labor laws, you may be eligible for a work permit and social security card so that you can lawfully live and work in the United States for at least two years. With Deferred Action, you are not allowed to leave the United States. You are only eligible for Deferred Action if the Department of Labor, Attorney General’s Office, or some other labor agency is investigating your employer for labor violations. To be clear: you cannot apply for Deferred Action until or unless the labor agency issues a Statement of Interest verifying that the employer is under investigation. If you were employed during the time period that the alleged labor violation mentioned in the Statement of Interest occurred, then you may apply for Deferred Action. As of today, I am unaware of any investigations occurring, but if that changes, please keep Deferred Action in mind as a good option to quickly obtain new authorization to legally live and work in the United States.

Special Immigrant Juvenile Status – if you are under age 21 and unmarried, we should talk about whether you might be eligible for Special Immigrant Juvenile Status. This is a special pathway to lawful permanent residence for those who experienced neglect, abuse, or abandonment by one or both of their parents when they were a minor child.

T-visa – A T-visa is one last visa type I’ll mention. A T-visa is available to individuals who are victims of labor trafficking or sex trafficking. This can appear in many different ways, but if you have received threats of abuse of the legal process, then please contact The Advocates for Human Rights or Immigrant Law Center of Minnesota for more information about T-visas.

If you are eager to remain in the United States after your temporary work visa expires, it is very important that you quickly take steps towards obtaining new lawful status through a new employer, family member, or form of humanitarian protection. If you do decide to explore one of these paths, please remember that it is very important to meet immigration deadlines: you must have a new status in place before your grace period expires. It is also important that you or your new employer seek guidance from an attorney who you trust. Do not work with a notorio.

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