



H-2B Nonagricultural Temporary Worker Visa Program

Fiscal Year 2008 Report to Congress

Semiannual Submission

May 1, 2009



Homeland
Security

Foreword

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I am pleased to present the following report, "H-2B Semiannual Report for Fiscal Year 2008," which has been prepared by U.S. Citizenship and Immigration Services, Service Center Operations. The report has been compiled in accordance with Section 416(d)(1) of the American Competitiveness and Workforce Improvement Act of 1998 (title IV of division C of Public Law 105-277; 8 U.S.C. 1184 note), as amended by Section 406 of the REAL ID Act of 2005 (division B of Public Law 109-13).

The report provides the information on the number of aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) and that of aliens who had such a visa or such status revoked or otherwise terminated during the fiscal year 2008.

Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee

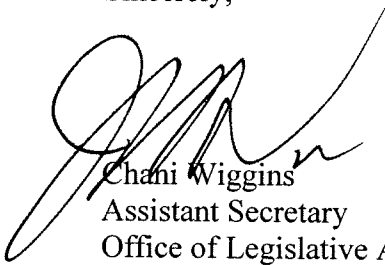
The Honorable Arlen Specter
Ranking Member, Senate Judiciary Committee

The Honorable John Conyers, Jr.
Chairman, House Judiciary Committee

The Honorable Lamar Smith
Ranking Member, House Judiciary Committee

Inquiries relating to this report may be directed to Department of Homeland Security Office of Legislative Affairs at (202) 447-5890.

Sincerely,



Chani Wiggins
Assistant Secretary
Office of Legislative Affairs

Executive Summary

Section 416(d)(1) of the American Competitiveness and Workforce Improvement Act of 1998, as amended by Section 406 of the REAL ID Act of 2005 (division B of Public Law 109-13), requires the Secretary of Homeland Security and the Secretary of State to submit, on a semiannual basis, information on the number of aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) and the number of aliens who had such a visa or such status revoked or otherwise terminated during the preceding one year period.

The data contained in this report is for the Fiscal Year 2008 and is accurate as of February 2009.

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I. Legislative Requirement

This report was prepared in accordance with Section 416(d)(1) of the American Competitiveness and Workforce Improvement Act of 1998, as amended by Section 406 of the REAL ID Act of 2005, which requires that:

Beginning not later than March 1, 2006, the Secretary of Homeland Security and the Secretary of State shall notify, on a semiannual basis, the Committees on the Judiciary of the House of Representatives and the Senate of the number of aliens who during the preceding 1-year period--

(A) were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)); or

(B) had such a visa or such status be revoked or otherwise terminated.

II. Background

To fulfill this requirement, the Department of Homeland Security (DHS) has compiled this report on H-2B nonimmigrants from information provided by the Department of State (DOS) and three components within DHS: U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and Immigration and Customs Enforcement (ICE).

Regarding the number of aliens who were issued H-2B visas or otherwise provided H-2B status, it should be noted that, upon approval by USCIS of an H-2B petition, an alien may be accorded H-2B status through:

- Admission by CBP at a port of entry as an H-2B nonimmigrant after issuance of an H-2B nonimmigrant visa by DOS;
- Admission by CBP at a port of entry as an H-2B nonimmigrant without a visa, in the case of certain Canadian, Bermudan and Bahamian residents; or
- Change of status to H-2B nonimmigrant status granted by USCIS.

The data contained in this report is for the fiscal year 2008.

III. Data Report

Section 3.1 – H-2B Visas Issued and Status Provided

During the period from October 1, 2007 through September 30, 2008, 95,849 aliens were issued H-2B visas or otherwise acquired H-2B status. This figure includes:

- A total of 94,304¹ H-2B visas issued by DOS;
- A total of 636 requests for change of status to H-2B approved by USCIS; and
- A total of 909 aliens admitted without visas by CBP (883 Canadians, 23 Bermudans, and 3 Bahamians).

Please note that the DOS visa-issuance totals include both aliens classified as new H-2B nonimmigrant workers (93,250) and aliens classified as returning workers² (1,054). Likewise, the number of H-2B aliens who were admitted to the United States without visas may include multiple admissions by the same individuals. None of these figures includes spouses and children of H-2B nonimmigrants, as such dependents fall under a separate visa classification (H-4). See 8 CFR 214.2(h)(8)(ii)(A) (H-4 spouses and children of H-2B nonimmigrants are not counted against the numerical limit).

¹ This number exceeds the annual statutory limit of 66,000 because some aliens already counted under the H-2B cap are simply obtaining visas to reflect their already approved H-2B status (i.e., multiple admissions).

² The “returning worker provisions” of the INA sec. 214(g)(9), 8 U.S.C. 1184(g)(9) (2007) expired September 30, 2007. Under these provisions, H-2B aliens who were already counted towards the H-2B numerical limit during one of the three fiscal years preceding the fiscal year of the requested employment start date were not counted again against the numerical limit. It is possible that these 1,054 individuals had a petition approved on their behalf prior to the sunset date of the returning worker provisions, but actually entered the U.S. with an H-2B visa after the sunset date.

Section 3.2 – H-2B Visas or Status Revoked or Otherwise Terminated

During the period of October 1, 2007 through September 30, 2008, USCIS revoked or otherwise terminated a total of 59 approved petitions, which would have authorized a total of 1,342 H-2B positions.

In addition, CBP cancelled the visas of 181 aliens who were found inadmissible at a port of entry and ICE removed 29 aliens who were found deportable after admission to the United States.

In addition to these visa petition revocations and visa cancellations, DOS reports that it refused the visa applications of 19,439 aliens who were the beneficiaries of H-2B petitions approved by USCIS. This number includes both those beneficiaries whose employers withdrew the petition after approval by USCIS and those beneficiaries who were denied visas for other reasons [e.g., on a ground of inadmissibility under section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a))].³ These visa refusals are not included in the figure for visas issued (94,304) reported above.

³ These visa denials do not necessarily mean that they involved matters that should have been caught during the adjudication of the petition. (The adjudication process focuses on the validity of the employer-employee relationship, the nature of the job being offered, etc. Issues involving inadmissibility of alien beneficiaries and possible waivers of inadmissibility are addressed as part of the consular visa-issuance process or the port of entry inspection process). Petitions may also be returned to DHS from DOS for revocation based on an error of law. After such revocation, DOS will refuse to issue the H-2B visa.