



H-2B Nonagricultural Temporary Worker Visa and Status

Fiscal Year 2016 Semiannual Report to Congress
Part 2: October 1, 2015 – September 30, 2016



Homeland
Security

*U.S. Citizenship and
Immigration Services*



**Homeland
Security**

February 22, 2017

Foreword

On behalf of the Department of Homeland Security, I am pleased to present the second of two semiannual reports for Fiscal Year 2016 on “H-2B Nonagricultural Temporary Worker Visa and Status.”

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

The Honorable Charles E. Grassley
Chairman, Senate Committee on the Judiciary

The Honorable Dianne Feinstein
Ranking Member, Senate Committee on the Judiciary

The Honorable Robert W. Goodlatte
Chairman, House Committee on the Judiciary

The Honorable John Conyers, Jr.
Ranking Member, House Committee on the Judiciary

Inquiries relating to this report may be directed to me at (202) 447-5890.

Respectfully,

A handwritten signature in blue ink, appearing to read "Susan Corbin".

Susan Corbin
Acting Assistant Secretary for Legislative Affairs

Executive Summary

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

This report includes data for each half of Fiscal Year (FY) 2016.

Highlights

- The annual numerical limitation of 66,000 H-2B workers (the H-2B “cap”) was reached in FY 2016.
- During the first half of FY 2016, a total of 31,147¹ workers were issued H-2B visas or otherwise acquired H-2B status.
- During the second half of FY 2016, a total of 54,055² workers were issued H-2B visas or otherwise acquired H-2B status.

¹ This number does not include H-2B workers that were approved by USCIS but had not yet been issued a visa by DOS.

² H-2B beneficiaries who are exempt from the H-2B cap, including H-2B Returning Workers, are included in this number.



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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, Pub. L. 105-277, tit. IV, 112 Stat. 2681-641, as amended by section 406 of the REAL ID Act of 2005, Pub. L. 109-13, div. B, 119 Stat. 302, 320, 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 [(INA)] (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

Overview

The H-2B program allows U.S. employers to bring foreign workers to the United States to fill temporary nonagricultural jobs. *See* INA, as amended, § 101(a)(15)(H)(ii)(b), 8 U.S.C. § 1101(a)(15)(H)(ii)(b).

To petition successfully for this nonimmigrant classification, the employer must establish that:

- its need for the prospective worker’s labor or services is temporary in nature—that is, based on a one-time occurrence, a seasonal need, a peakload need, or an intermittent need;
- there are not sufficient U.S. workers who are willing, qualified, and available to do the temporary work; and
- the employment of the H-2B nonimmigrant worker will not adversely affect the wages and working conditions of similarly employed U.S. workers.

Generally, before filing a petition with USCIS for H-2B workers, the employer must obtain a single, valid, temporary labor certification from DOL or, if the worker(s) will be employed in Guam, from the Governor of Guam. *See* 8 CFR § 214.2(h)(6)(iii)(A) and (C).

The H-2B Cap

The Immigration Act of 1990 limits the number of workers who may be granted H-2B classification in a fiscal year (the H-2B “cap”) to 66,000. *See* INA § 214(g)(1)(B), 8 U.S.C. § 1184(g)(1)(B). Subsequently, section 405 of the *REAL ID Act of 2005* mandated that the H-2B cap be allocated semi-annually, allowing for up to 33,000 H-2B workers in the first half of the fiscal year (October 1 – March 31), and for the remaining H-2B visas to be allocated to workers during the second half of the fiscal year (April 1 – September 30). *See* INA § 214(g)(10), 8 U.S.C. § 1184(g)(10). USCIS will announce that it will no longer accept further H-2B petitions upon determining that it has received a sufficient number of petitions to reach the statutory caps. In making this determination, USCIS takes into account historical data related to approvals, denials, revocations, and other relevant factors.³

Exemptions from the H-2B Cap

Generally, a worker whose stay in H-2B status is extended will not be counted against the H-2B cap again. Additionally, the following workers are exempt from the H-2B cap:

³ *See* 8 CFR 214.2(h)(8)(ii)(B).

- Beginning December 18, 2015, and for FY 2016 only, workers certified and confirmed as “returning workers” who were previously counted against the annual H-2B cap during FYs 2013, 2014, or 2015;⁴
- H-2B workers in the United States or abroad who have been previously counted toward the cap in the same fiscal year;
- Fish roe processors, fish roe technicians, and supervisors of fish roe processing;⁵ and
- From November 28, 2009 until December 31, 2019, workers performing temporary labor or services in the Commonwealth of the Northern Mariana Islands (CNMI) or Guam.⁶

Spouses and children of H-2B workers fall under a separate visa classification (H-4) and are not counted against the H-2B cap. *See* INA § 214(g)(2), 8 U.S.C. § 1184(g)(2); 8 CFR § 214.2(h)(8)(ii)(A). Once the H-2B cap is reached, USCIS may only accept petitions for H-2B workers who are cap-exempt.

H-2B petition approvals on behalf of aliens who are exempt from the H-2B cap may be included in the data provided in this report.

Obtaining H-2B Status

After USCIS approves an H-2B petition, a worker may be granted H-2B status through:

- admission as an H-2B worker by CBP at a port of entry after issuance of an H-2B nonimmigrant visa by DOS;
- change of status to H-2B or extension of H-2B status granted by USCIS.⁷

⁴ *See* INA § 214(g)(9)(a), 8 U.S.C. 1184(g)(9)(a), as revised by Consolidated Appropriations Act of 2016 (Pub. L. 114-113).

⁵ *See* Pub. L. No. 108-287, § 14006, 118 Stat. 951, 1014 (2004).

⁶ *See* 48 U.S.C. 1806(a)(2) as amended by sec. 10 of Pub. L. 113-235; 48 U.S.C. 1806(b).

⁷ Certain workers who have already been granted H-2B status are also eligible for an extension of stay. Note that an extension of stay in H-2B classification will not be re-counted against the annual or semiannual cap.

III. Data Report and Analysis

Section 3.1 – H-2B visas issued and status provided

First Half of FY 2016

During the first half of FY 2016 (October 1, 2015 through March 31, 2016), 31,147 workers were issued H-2B visas or otherwise acquired H-2B status. This number includes:

- 30,861⁸ H-2B visas issued by DOS;
- 114 workers that USCIS approved for a change of status to H-2B classification; and
- 172 crossings⁹ of visa-exempt H-2B workers who were processed by CBP.

Second Half of FY 2016

During the second half of FY 2016 (the period from April 1, 2016 through September 30, 2016), 54,055 workers were issued H-2B visas or otherwise acquired H-2B status. This includes:

- 53,765¹⁰ H-2B visas issued by DOS;
- 166 workers that USCIS approved for a change of status to H-2B classification; and
- 124 crossings¹¹ of visa-exempt H-2B workers that were processed by CBP.

Table 1: H-2B Workers Approved in FY 2016

	1st Half of FY 2016	2 nd Half of FY 2016	Total
Total H-2B Workers Approved¹²	31,147	54,055	85,202
Visas Approved by DOS	30,861	53,765	84,626
Changes of Status Approved by USCIS	114	166	280
Visa-Exempt Admissions by CBP	172	124	296

Section 3.2 – H-2B visas or status revoked or otherwise terminated

⁸ H-2B beneficiaries who are exempt from the H-2B cap, including H-2B Returning Workers, are included in this number. This number does not include H-2B workers that were approved by USCIS but had not yet been issued a visa by DOS.

⁹ For the first half of FY 2016, all 172 crossings of visa-exempt H-2B workers came from Canada. See 8 CFR § 212.1(a) for a list of aliens who are considered visa-exempt.

¹⁰ H-2B beneficiaries who are exempt from the H-2B cap, including H-2B Returning Workers, are included in this number. This number does not include H-2B workers that were approved by USCIS but had not yet been issued a visa by DOS.

¹¹ For the second half of FY 2016 all 124 crossings of visa-exempt H-2B workers came from Canada. See 8 CFR § 212.1(a) for a list of aliens who are considered visa-exempt.

¹² H-2B beneficiaries who are exempt from the H-2B cap, including H-2B Returning Workers, are included in this number.

First Half of FY 2016

During the first half of FY 2016 (October 1, 2015 through March 31, 2016), USCIS revoked or otherwise terminated 10 approved petitions, which would have authorized the admission of 190 H-2B workers. During this same period, CBP canceled the H-2B visas of 23 aliens who were found inadmissible at ports of entry, and ICE removed 28 H-2B aliens who were found removable after admission to the United States.

DOS reported that it initially refused a total of 3,369 H-2B visa applications in the first half of FY 2016. However, 1,378 of the persons whose applications for visas were refused subsequently overcame the reason for visa denial and ultimately were granted H-2B visas.¹³ As a result, a net total of 1,991 aliens were refused H-2B visas by DOS in the first half of FY 2016.¹⁴

The visa refusals cited in this section are not included in the figure for total H-2B visas issued reported in Section 3.1.

Second Half of FY 2016

During the second half of FY 2016, USCIS revoked or otherwise terminated 16 approved petitions, which would have authorized the admission of 143 H-2B workers. During that period, CBP canceled the H-2B visas of 58 aliens who were found inadmissible at ports of entry and ICE removed 39 H-2B aliens who were found removable after admission to the United States.

DOS reported that it refused a total of 8,006 H-2B visa applications. However, since 2,460 of these visa refusals subsequently overcame the reason for visa denial and the affected aliens were granted H-2B visas, DOS refused the visa applications of a net total of 5,546 H-2B workers in the second half of FY 2016.

The visa refusals cited in this section are not included in the figure for total H-2B visas issued reported in Section 3.1.

Table 2: H-2B Revocations and Terminations

Type of Revocation or Termination	1st Half of FY 2016	2 nd Half of FY 2016	Total
DOS (visa refusals)	1,991	5,546	7,537

¹³ When applying for a visa at a U.S. embassy or consulate abroad, an applicant may be refused initially by DOS but may return with more information and have his or her visa subsequently approved by DOS.

¹⁴ Reasons for visa refusal may include matters outside of the scope of USCIS adjudication. The USCIS adjudication process focuses on, among other things, the validity of the petitioner-beneficiary relationship, the nature of the job being offered, whether prohibited fees were assessed to the prospective H-2B worker, and the petitioner's temporary need. Issues involving admissibility of alien beneficiaries and possible waivers of inadmissibility are addressed on an individual basis as part of the consular visa-issuance process or the port of entry inspection. Additionally, in instances when DOS believes there is an error of law or derogatory information affecting the approvability of an underlying petition, DOS may return the approved petition to USCIS for additional review and possible revocation. In the event USCIS revokes the petition, DOS will refuse to issue the H-2B visa.

USCIS (beneficiaries of revoked petitions)	190	143	333
CBP (canceled visas)	23	58	81
ICE (removals)	28	39	67