



H-2B Nonagricultural Temporary Worker Visa and Status

Fiscal Year 2017 Semiannual Report to Congress
Part 1: April 1, 2016 – March 31, 2017
July 20, 2017



Homeland
Security

*U.S. Citizenship and
Immigration Services*



**Homeland
Security**

July 21, 2017

Foreword

On behalf of the Department of Homeland Security, I am pleased to present the first of two semiannual reports for Fiscal Year 2017 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

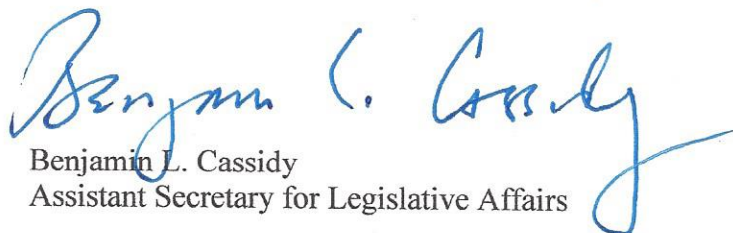
The Honorable Dianne Feinstein
Ranking Member, Senate Committee on the Judiciary

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.

Sincerely,


Benjamin L. Cassidy
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 the second half of Fiscal Year (FY) 2016 and the first half of FY 2017.

Highlights

- The annual numerical limitation of 66,000 H-2B workers (the H-2B “cap”) was reached in FY 2016.
- During the second half of FY 2016, a total of 54,055¹ workers were issued H-2B visas or otherwise acquired H-2B status.
- The semiannual numerical limitation of 33,000 H-2B workers for the first half of FY 2017 was reached on January 10, 2017. A total of 51,356² workers were issued H-2B visas or otherwise acquired H-2B status during the first half of FY 2017.

¹ H-2B beneficiaries who are exempt from the H-2B cap, including H-2B Returning Workers, are included in this number.

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



H-2B Nonagricultural Temporary Worker Visa and Status

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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. 2681-655, as amended by section 406 of the *REAL ID Act of 2005*, Pub. L. 109-13, div. B, 119 Stat. 231, 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). U.S. employers may bring foreign workers to the United States who are nationals of eligible countries, as designated by the Secretary of Homeland Security with the concurrence of the Secretary of State. Factors taken into account in designating countries to include on the list include the country's cooperation with respect to issuance of travel documents for citizens, subjects, nationals, and residents of that country who are subject to a final order of removal. USCIS may, however, approve H-2B petitions for nationals of countries not on the list if such approval is determined to be in the interest of the United States.³

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 on 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* divided the 66,000 cap by providing that USCIS may grant petitions for up to 33,000 H-2B workers in the first half of the fiscal year (October 1 – March 31), and, for up to the remaining 33,000 numbers (plus any unused first half of the fiscal year H-2B numbers) during the second half of the fiscal year (April 1 – September 30). *See* INA § 214(g)(10), 8 U.S.C. § 1184(g)(10). Accordingly, in implementing these numerical limits, 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 ensure that the statutory caps will not be exceeded. In making this determination, USCIS takes into account historical data related to approvals, denials, revocations, and other relevant factors.⁴

³ *See* 8 CFR 214.2(h)(6)(i)(E).

⁴ *See* 8 CFR 214.2(h)(8)(ii)(B).

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:

- 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;⁵
- 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;⁶ and
- From November 28, 2009, until December 31, 2019, workers performing temporary labor or services in the Commonwealth of the Northern Mariana Islands or Guam.⁷

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;
- admission as an H-2B worker by CBP at a port of entry without a visa, in the case of certain Canadians and Bermudan citizens, Bahamian nationals, and residents of certain Caribbean islands;⁸ or
- change of status to H-2B or extension of H-2B status granted by USCIS.⁹

⁵ *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).

⁶ *See* Pub. L. 108-287, § 14006, 118 Stat. 951, 1014 (2004).

⁷ *See* 48 U.S.C. 1806(a)(2) as amended by sec. 10 of Pub. L. 113-235; 48 U.S.C. 1806(b).

⁸ *See* 8 CFR 212.1(a) for a list of aliens who are considered visa-exempt.

⁹ 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

Second Half of FY 2016

During the second half of FY 2016 (April 1, 2016, through September 30, 2016), 54,055 workers were issued H-2B visas or otherwise acquired H-2B status. This number 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 crossings of visa-exempt H-2B workers¹¹ that were processed by CBP.

First Half of FY 2017

During the first half of FY 2017 (the period from October 1, 2016, through March 31, 2017), 51,356 workers were issued H-2B visas or otherwise acquired H-2B status. This includes:

- 51,122¹² H-2B visas issued by DOS;
- 75 workers that USCIS approved for a change of status to H-2B classification; and
- 159 crossings of visa-exempt H-2B workers¹³ that were processed by CBP.

Table 1: H-2B Workers Approved from April 1, 2016 to March 31, 2017

	2 nd Half of FY 2016	1 st Half of FY 2017	Total
Total H-2B Workers Approved	54,055¹⁴	51,356	105,411
Visas Approved by DOS	53,765	51,122	104,887
Changes of Status Approved by USCIS	166	75	241
Visa-Exempt Admissions by CBP	124	159	283

¹⁰ H-2B beneficiaries who are exempt from the H-2B cap, including H-2B Returning Workers, are included in this number.

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 are included in this number.

¹³ For the first half of FY 2017 all 159 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.

¹⁴ H-2B beneficiaries who are exempt from the H-2B cap, including H-2B Returning Workers, are included in this number.

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

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, 2,460 of these visa applicants subsequently overcame the reason for visa denial and were granted H-2B visas, for example, the alien was granted a waiver of inadmissibility or the applicant overcame a refusal under INA 221(g). DOS refused a net total of 5,546 visa applications of H-2B workers in the second half of FY 2016.¹⁵

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

First Half of FY 2017

During the first half of FY 2017, USCIS revoked or otherwise terminated 10 approved petitions, which would have authorized the admission of 172 H-2B workers. During that period, CBP canceled the H-2B visas of 31 aliens who were found inadmissible at ports of entry, and ICE removed 46 H-2B aliens who were found removable after admission to the United States.

DOS reported that it refused a total of 4,724 H-2B visa applications. However, 1,367 of these visa applicants subsequently overcame the reason for visa denial and were granted H-2B visas. DOS refused a net total of 3,357 visa applications of H-2B workers in the first half of FY 2017.¹⁶

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

Table 2: H-2B Revocations and Terminations

Type of Revocation or Termination	2 nd Half of FY 2016	1 st Half of FY 2017	Total
DOS (visa refusals)	5,546	3,357	8,903
USCIS (beneficiaries of revoked petitions)	143	172	315
CBP (cancelled visas)	58	31	89
ICE (removals)	39	46	85

¹⁵ DOS workload actions are reported separately for the date range in which it occurs and are not linked by applicant/case status. As such, the total number of H-2B workers refused during a particular date range do not necessarily correspond to the same number of workers who overcome refusals during that same date period.

¹⁶ Ibid.