



U.S. Citizenship and Immigration Services

H-2A and H-2B Nonimmigrant Worker Classifications

Introduction

- This presentation is given to provide an overview of the H-2A and H-2B Nonimmigrant Worker Classifications.

Topics of Discussion

- H-2A & H-2B Nonimmigrant Classifications
- Top Industries Utilizing H-2B Workers
- Program Process
- Petition Fees
- H-2B Numerical Limitation (the “H-2B Cap”)
- Extensions of Stay
- 2008 Final Rules and significant changes

H-2A Temporary Agricultural Nonimmigrant Classification

Allows U.S. employers to bring foreign nationals to the United States to fill seasonal and temporary agricultural jobs for which U.S. workers are not available.

- To qualify as seasonal, employment must be tied to a certain time of year by an event or pattern, such as a short annual growing cycle or specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations
- To qualify as temporary, the employer's need to fill the position will, except in extra-ordinary circumstances, last no longer than one year.

H-2B Temporary Non-Agricultural Nonimmigrant Classification

Allows U.S. employers to bring foreign nationals to the United States to fill temporary non-agricultural jobs for which U.S. workers are not available.

- To qualify as temporary, the petitioner's need for the foreign worker's services or labor shall be a:
 - Seasonal need for ≤ 1 year,
 - Peakload need for ≤ 1 year,
 - An intermittent need for ≤ 1 year, or
 - One-time occurrence for ≤ 3 years.

Top Industries Utilizing H-2B Workers

- Resort and Hospitality Services
- Retail Sales
- Landscaping
- Food Service and Processing, and
- Construction

H-2A and H-2B Program Process

1. The employer files a temporary labor certification (TLC) application with the U.S. Department of Labor (or Governor of Guam if H-2B worker will be employed in Guam).
2. After receiving an approved TLC, the employer files an I-129 petition with USCIS (multiple workers may be included on a single petition).
3. If the foreign worker is outside the U.S. and requires a visa, he or she applies for an H-2B visa with the U.S. Department of State at the consulate.

Petition Fees

H-2A required fees:

- \$325 base I-129 petition fee

Due to the nature of agricultural work, USCIS expedites the processing of H-2A petitions.

H-2B required fees:

- \$325 base I-129 petition fee
- \$150 fraud detection and prevention fee

Premium Processing Service is available for H-2B petitions for an additional fee.

H-2B Numerical Limitation

(the “H-2B cap”)

66,000 H-2B workers per year

Allocated semi-annually:

- 33,000 for 1st half of Fiscal Year
(Employment starting from 10/1 – 3/31)
- 33,000 for 2nd half of Fiscal Year
(Employment starting from 4/1 – 9/30)

Current exceptions to the H-2B Cap:

1. Fish Roe Processors
2. Workers employed in the Commonwealth of the Northern Mariana Islands (CNMI) and/or Guam

H-2B Cap History

Fiscal Year	Final Receipt Date	
	<u>1st Half</u>	<u>2nd Half</u>
• 2006	Dec 15, 2005	April 4, 2006
• 2007	Nov 28, 2006	Mar 16, 2007
• 2008	Sep 27, 2007	Jan 2, 2008
• 2009	July 29, 2008	Jan. 7, 2009*
• 2010	Cap not reached	Cap not reached

* Due to unexpectedly low visa issuance rates reported by the Department of State in July 2009, USCIS resumed accepting H-2B petitions for remainder of FY 2009 on August 6, 2009.

Extensions of Stay

- Extensions in H-2A or H-2B status may be granted for the maximum period of time authorized on the TLC (usually 1 year or less).
- A worker may extend status in H-2A or H-2B classification.
- For H-2B workers, employment with the same employer or a change of employer is not counted again against the H-2B Cap.
- Limitation of stay in H-2A or H-2B status = 3 years.
- After being in H-2A or H-2B status for three years, a worker must leave the U.S. for at least **90 days** before he or she is again eligible for H-2A or H-2B classification.

2008 Final Rules

In December 2008, USCIS published final rules for both the H-2A and H-2B classifications that became effective in January 2009.

Highlights of the final rules:

- Allow both H-2A and H-2B petitions to be filed for unnamed workers.
- Reduce period of time for aliens to re-enter the U.S. from 6 to 3 months.
- Require an approved TLC for both H-2A and H-2B classifications.
- For H-2B petitions, the starting date on the I-129 petition must be the same as the starting date on the TLC.
- Prohibit employers from charging H-2A and H-2B workers job placement fees.
- Create an “Eligible Countries List” for the H-2A and H-2B classifications.
- Require “Employment-Related Notification” to USCIS.

Eligible Countries List

DHS publishes a list of countries whose nationals are eligible to participate in the H-2A and H-2B program regularly. Currently, this list includes the following countries:

Argentina, Australia, Barbados, Belize, Brazil, Bulgaria, Canada, Chile, Costa Rica, Croatia, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, Fiji, Guatemala, Honduras, Hungary, Ireland, Israel, Jamaica, Japan, Kiribati, Latvia, Lithuania, Macedonia, Mexico, Moldova, Nauru, The Netherlands, Nicaragua, New Zealand, Norway, Papua New Guinea, Peru, Philippines, Poland, Romania, Samoa, Serbia, Slovakia, Slovenia, Solomon Islands, South Africa, South Korea, Tonga, Turkey, Tuvalu, Ukraine, United Kingdom, Uruguay, and Vanuatu.

Additional Requirements for Beneficiaries from “Non-List” Countries

An employer may still import an H-2A or H-2B worker from a non-list country, but to do so, the petitioner must state the beneficiary's:

- Full name;
- Date of birth;
- Country of birth; and
- Country of citizenship.

In addition, the petitioner must meet the following regulatory requirements:

Additional Requirements for Beneficiaries from “Non-List” Countries (Cont’d)

In order for USCIS to consider approval of a beneficiary from a non-list country, the petitioner must submit evidence to establish that it is in the U.S. interest to grant the alien H-2A or H-2B status. Determination of such a U.S. interest will take into account factors, including but not limited to:

- (i) Evidence from the petitioner demonstrating that a worker with the required skills is not available from among foreign workers from a country currently on the list;
- (ii) Evidence that the beneficiary has been admitted to the United States previously in H-2A or H-2B status;
- (iii) The potential for abuse, fraud, or other harm to the integrity of the H-2 visa program through the potential admission of a beneficiary from a country not currently on the list; and
- (iv) Such other factors as may serve the U.S. interest.

Employment-Related Notification to USCIS

Petitioners must notify USCIS within two workdays if an H-2A or H-2B worker stops working earlier than expected.

- **No show**: An alien who fails to report to work within five work days of the employment start date on the H-2A or H-2B petition or within five work days of the start date established by the petitioner, whichever is later.
- **Absconder**: A worker who fails to report for work for a period of five consecutive workdays without the consent of the employer.
- **Termination**: A worker who is terminated prior to the completion of labor or services for which he or she was hired.
- **Early Completion**: A worker who completes the labor or services for which he or she was hired more than 30 days earlier than the date specified in the H-2A or H-2B petition.

Employment-Related Notification (cont.)

Notification should be made to the USCIS Service Center that approved the petition.

E-mail notification is strongly recommended.

H-2A Notification
California Service Center
<i>By email:</i> CSC.H2AFee@dhs.gov
<i>By mail:</i> California Service Center P.O. Box 10695 Laguna Niguel, CA 92607–1095

H-2B Notification	
California Service Center	Vermont Service Center
<i>By email:</i> CSC-X.H-2BAbs@dhs.gov	<i>By email:</i> VSC.H2BABS@dhs.gov
<i>By mail:</i> California Service Center Attn: Div X/BCU ACD, P.O. Box 30050, Laguna Niguel, CA 92607–3004.	<i>By mail:</i> Vermont Service Center, Attn: BCU ACD, 63 Lower Welden St., St. Albans, VT 05479.

QUESTIONS?



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