



H-2B Nonagricultural Temporary Worker Visa and Status

Fiscal Year 2016 Semiannual Report to Congress
Part 1: April 1, 2015 - March 31, 2016

June 21, 2016



Homeland
Security

*U.S. Citizenship and
Immigration Services*



**Homeland
Security**

Foreword

June 21, 2016

On behalf of the Department of Homeland Security, I am pleased to present the first 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 Patrick J. Leahy
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,

A handwritten signature in black ink, appearing to read "M. Tia Johnson".

M. Tia Johnson
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), the 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) 2015 and the first half of FY 2016.

Highlights

- The annual numerical limitation of 66,000 H-2B workers (the H-2B “cap”) was reached in FY 2015.
- During the second half of FY 2015, a total of 29,367¹ workers were issued H-2B visas or otherwise acquired H-2B status.²
- The semiannual numerical limitation of approving 33,000 H-2B workers for the first half of FY 2016 was reached on March 15, 2016. A total of 31,147³ workers were actually issued H-2B visas or otherwise acquired H-2B status during the first half of FY 2016.

¹This statistic represents a revision from the previous semiannual report to Congress. The previous report indicated that a total of 29,370 workers were issued H-2B visas or otherwise acquired H-2B status in the second half of FY 2015. The difference between the two numbers is attributed to updated USCIS data.

² During the first half of FY 2015, a total of 40,809 workers were issued H-2B visas or otherwise acquired H-2B status. Please see *H-2B Nonagricultural Temporary Worker Visa and Status, Fiscal Year 2015 Semiannual Report to Congress – Part 2: October 1, 2014 – September 30, 2015*.

³ This number does not include H-2B workers that were approved by USCIS but had not yet been issued a visa by DOS.

Table of Contents

I.	Legislative Requirement	1
II.	Background	2
III.	Data Report and Analysis	4
	Section 3.1 – H-2B visas issued and status provided	4
	Section 3.2 – H-2B visas or status revoked or otherwise terminated	5

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. No. 105-277, tit. IV, 112 Stat. 2681-655, as amended by section 406 of the *REAL ID Act of 2005*, Pub. L. No. 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 (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 alien workers to the United States to fill temporary nonagricultural jobs. *See* INA § 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 peak load 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 valid temporary labor certification from the DOL or, if the worker(s) will be employed in Guam, from the Governor of Guam. *See* 8 C.F.R. § 214.2(h)(6)(iii)(A), (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 semiannually, 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 meet the statutory caps, without exceeding them. In making this determination, USCIS takes into account historical data related to approvals, denials, revocations, and other relevant factors.⁴

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:

1. 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
2. H-2B workers in the United States or abroad who have been previously counted towards the cap in the same fiscal year;
3. Fish roe processors, fish roe technicians, and supervisors of fish roe processing;⁶ and
4. 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.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 C.F.R. § 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* (Public Law 114-113).

⁶ *See* Pub. L. No. 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 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 2015

During the second half of FY 2015 (April 1, 2015 through September 30, 2015), 29,367¹⁰ workers were issued H-2B visas or otherwise acquired H-2B status. This number includes:

- 29,209 H-2B visas issued by DOS;
- 47¹¹ workers that USCIS approved for a change of status to H-2B classification; and
- 111 crossings of visa-exempt H-2B workers¹² who were processed by CBP.¹³

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:

- 30,861 H-2B visas issued by DOS;
- 114 workers that USCIS approved for a change of status to H-2B classification; and
- 172 crossings¹⁴ of visa-exempt H-2B workers who were processed by CBP.

Table 1: H-2B Workers Approved from April 1, 2015 to March 31, 2016

	2 nd Half of FY 2015	1 st Half of FY 2016	Total
Total H-2B Workers Approved	29,367	31,147	60,514¹⁵
Visas Approved by DOS	29,209	30,861	60,070
Changes of Status Approved by USCIS	47	114	161
Visa-Exempt Admissions by CBP	111	172	283

¹⁰ This statistic represents a revision from the previous semiannual report to Congress. The previous report indicated that a total of 29,370 workers were issued H-2B visas or otherwise acquired H-2B status in the second half of FY 2015. The difference between the two numbers is attributed to updated USCIS data.

¹¹ This statistic represents a revision from the previous semiannual report to Congress. The previous report indicated that a total of 50 workers were approved for a change of status to H-2B classification by USCIS in the second half of FY 2015. The difference between the two numbers is attributed to updated USCIS data.

¹² For the second half of FY 2015, all 111 crossings of visa-exempt H-2B workers came from Canada. See 8 C.F.R. § 212.1 for a list of aliens who are considered visa-exempt.

¹³ This figure may include multiple admissions by the same individuals. Although an individual may cross the border numerous times (e.g., a Canadian residing in Windsor, Ontario and commuting daily to work in Detroit, Michigan), he or she only counts against the H-2B cap on his or her first admission based on an approved petition.

¹⁴ For the first half of FY 2016, all 172 crossings of visa-exempt H-2B workers came from Canada. See 8 C.F.R. § 212.1(a) for a list of aliens who are considered visa-exempt.

¹⁵ This total is combined from halves of two different fiscal years and, as such, is not reflective of the total H-2B Workers approved under the H-2B cap for a single fiscal year. See Footnote 2 above.

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

Second Half of FY 2015

During the second half of FY 2015 (April 1, 2015 through September 30, 2015), USCIS revoked or otherwise terminated seven (7)¹⁶ approved petitions which would have authorized the admission of 260¹⁷ H-2B workers. During this same period, CBP canceled the H-2B visas of 49 aliens who were found inadmissible at ports of entry, and ICE removed 30¹⁸ H-2B aliens who were found removable after admission to the United States.

DOS reported that it initially refused a total of 4,456 H-2B visa applications in the second half of FY 2015. However, 1,570 of the persons whose applications for visas were refused subsequently overcame the reason for visa denial and ultimately were granted H-2B visas.¹⁹ As a result, a net total of 2,886 aliens were refused H-2B visas by DOS in the second half of FY 2015.²⁰

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

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

¹⁶ This statistic represents a revision from the previous semiannual report to Congress. The previous report indicated that a total of six (6) approved petitions were revoked or otherwise terminated in the second half of FY 2015. The difference between the two numbers is attributed to updated USCIS data.

¹⁷ This statistic represents a revision from the previous semiannual report to Congress. The previous report indicated that a total of 210 approved H-2B workers were the beneficiaries of revoked or otherwise terminated petitions in the second half of FY 2015. The difference between the two numbers is attributed to updated USCIS data.

¹⁸ This statistic represents a revision from the previous semiannual report to Congress. The previous report indicated that, in the second half of FY 2015, ICE removed 28 H-2B aliens who were found removable after admission to the United States. (Note: Beginning in FY 2009, ICE began to “lock” removal statistics on October 5th at the end of each fiscal year and counted only the aliens whose removal or return was already confirmed. Aliens removed or returned in that fiscal year but not confirmed until after October 5th were previously excluded from the locked data and thus from ICE statistics.)

¹⁹ 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.

²⁰ 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.

overcame the reason for visa denial and ultimately were granted H-2B visas. As a result, a net total of 1,991 aliens were refused H-2B visas by DOS in the first 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	2 nd Half of FY 2015	1 st Half of FY 2016	Total
DOS (visa refusals)	2,886	1,991	4,877
USCIS (beneficiaries of revoked petitions)	260	190	450
CBP (inadmissable)	49	23	72
ICE (removals)	30	28	58