



H-2B Nonagricultural Temporary Worker Visa and Status

Fiscal Year 2021 Semiannual Report to Congress
Part 2: October 1, 2020 – September 30, 2021
March 11, 2022



Homeland
Security

*U.S. Citizenship and
Immigration Services*



**Homeland
Security**

Foreword

March 11, 2022

On behalf of the U.S. Department of Homeland Security, I am pleased to present the second of two semiannual reports for Fiscal Year 2021 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 Richard Durbin
Chairman, Senate Committee on the Judiciary

The Honorable Chuck Grassley
Ranking Member, Senate Committee on the Judiciary

The Honorable Jerrold Nadler
Chairman, House Committee on the Judiciary

The Honorable Jim Jordan
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 that reads "Alice Lugo".

Alice Lugo
Assistant Secretary for Legislative Affairs

Executive Summary

The U.S. Department of Homeland Security (DHS) has compiled this report on H-2B temporary nonagricultural workers from information provided by the U.S. Department of State (DOS), U.S. 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 from each half of Fiscal Year (FY) 2021.

Highlights

- The annual numerical limitation of 66,000 H-2B workers (the “regular H-2B cap”) was reached in FY 2021.¹
- USCIS estimated it received enough petitions to reach the semiannual numerical limitation of 33,000 H-2B workers for the first half of FY 2021 on November 16, 2020. A total of 42,991 workers² were issued H-2B visas or otherwise acquired H-2B nonimmigrant status during the first half of FY 2021.
- USCIS estimated it received enough petitions to reach the semiannual numerical limitation of 33,000 H-2B workers for the second half of FY 2021 on February 12, 2021. A total of 54,277 workers³ were issued H-2B visas or otherwise acquired H-2B nonimmigrant status during the second half of FY 2021.
- In accordance with section 105 of division O of the Consolidated Appropriations Act, 2021, Public Law 116-260 (FY 2021 Omnibus), on May 25, 2021, DHS and DOL published a [temporary final rule](#) increasing the numerical limit (or cap) on H-2B nonimmigrant visas by up to 22,000 additional visas through the end of FY 2021. These supplemental visas were available only to U.S. businesses that attested that they would likely suffer irreparable harm without the ability to employ all the H-2B workers requested in their petition.

¹ INA § 214(g)(1)(B), 8 U.S.C. § 1184(g)(1)(B), requires that the total number of noncitizens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year “may not exceed” 66,000.

² H-2B workers who are exempt from the regular H-2B cap are included in this number. This number may also include H-2B workers who were issued a visa by DOS but approved by USCIS with a start date in the preceding half fiscal year or up to 10 days after the relevant period.

³ H-2B workers who are exempt from the regular H-2B cap and those workers who were approved under the FY 2021 Supplemental Cap are included in this number. This number may also include H-2B workers who were issued a visa by DOS, but approved by USCIS with a start date in the preceding half fiscal year or up to 10 days after the relevant period.



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. 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 [(INA)] (8 U.S.C. 1101(a)(15)(H)(ii)(b)); or

(B) had such a visa or such status 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 Immigration and Nationality Act (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 peak load need, or an intermittent need;⁴
- there are not sufficient U.S. workers who are able, 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 (TLC) from the U.S. Department of Labor (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).

On May 25, 2021, DHS published a [temporary rule](#) to change certain H-2B requirements to reduce the economic impact of the coronavirus (COVID-19) public health emergency on H-2B employers.⁵ Under the H-2B temporary rule, for a period of 180 days after the publication of that rule in the Federal Register, all H-2B petitioners with a valid TLC were permitted to start employing certain foreign workers who were currently in the United States and in valid H-2B status immediately after USCIS received the H-2B petition filed by the new employer, but no earlier than the start date of employment listed on the H-2B petition.

The H-2B Cap

The *Immigration Act of 1990* limits the number of workers who may be issued an H-2B visa or otherwise provided H-2B nonimmigrant status in a fiscal year (the “regular 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

⁴ The National Defense Authorization Act for Fiscal Year 2018 (FY 2018 NDAA) created an exemption from the temporary need requirement for certain H-2B workers performing services or labor related to the military realignment on Guam and in the Commonwealth of the Northern Mariana Islands through September 30, 2023. *See* Section 1049 of the FY 2018 NDAA, [Pub. L. 115-91 \(PDF\)](#), 131 Stat. 1283, 1558 (December 12, 2017), as amended by Section 1045 of the FY 2019 NDAA, [Pub. L. 115-232 \(PDF\)](#), 132 Stat. 1636, 1959 (August 13, 2018) and as further amended by Section 9502 of the FY 2021 NDAA, [Pub. L. 116-283 \(PDF\)](#) (January 1, 2021).

⁵ Exercise of Time-Limited Authority To Increase the Fiscal Year 2021 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, [86 FR 28198](#) (May 25, 2021).

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 announces that it will no longer accept H-2B petitions upon determining that it has received a sufficient number of petitions to meet, but not exceed, the statutory caps. In making this determination, USCIS takes into account historical data related to approvals, denials, revocations, and other relevant factors.⁶

In accordance with the time-limited statutory authority in section 105 of division O of the Consolidated Appropriations Act, 2021, Public Law 116-260 (FY 2021 Omnibus), on May 25, 2021, DHS and DOL published a temporary final rule (TFR) increasing the H-2B cap by up to 22,000 additional visas through the end of FY 2021. These supplemental visas were available only to U.S. businesses that, among other things, attested that they would likely suffer irreparable harm without the ability to employ all the H-2B workers requested in their petition. Of the 22,000 additional visas, 16,000 were initially available only for returning workers (workers who received an H-2B visa or were otherwise granted H-2B status in FY 2018, 2019 and 2020). The remaining 6,000 visas were set aside for nationals of Honduras, Guatemala, and El Salvador. Under the TFR, workers from these countries were exempted from the returning worker requirement. The unused visas from the allocation for these countries were subsequently made available to returning workers.

Exemptions from the H-2B Cap

Generally, a worker in the United States 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 regular H-2B cap:

- 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;⁷ and
- From November 28, 2009, until December 31, 2029, certain workers performing labor or services in the Commonwealth of the Northern Mariana Islands or Guam.⁸

Spouses and children of H-2B workers fall under a separate visa classification (H-4) and are not counted against the regular 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 regular H-2B cap is reached, USCIS may only, during the relevant cap period, accept petitions for H-2B workers who are cap-exempt. H-2B petition approvals on behalf of workers who are exempt from the H-2B cap are included in the data provided in this report.

⁶ *See* 8 CFR 214.2(h)(8)(vii).

⁷ *See* Pub. L. No. 108-287, § 14006, 118 Stat. 951, 1014 (2004).

⁸ *See* 48 U.S.C. 1806(a)(2) as amended by sec. 3 of Pub. L. 115-218; 48 U.S.C. 1806(b).

Obtaining H-2B Status

Approval of an H-2B petition does not ensure that a foreign worker covered by the petition will actually be granted H-2B status. After USCIS approves an H-2B petition, a foreign worker, if eligible, may be granted H-2B status through:

- admission as an H-2B worker by U.S. Customs and Border Protection (CBP) at a port of entry after issuance of an H-2B nonimmigrant visa by the U.S. Department of State (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;⁹ or
- change of status to H-2B or extension of H-2B status granted by USCIS.¹⁰

III. Data Report and Analysis

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

First Half of FY 2021

During the first half of FY 2021,¹¹ 42,991 workers were issued H-2B visas or otherwise acquired H-2B status. This number includes:

- 41,769 H-2B visas¹² issued by DOS;
- 467 workers that USCIS approved for a change of status to H-2B classification; and
- 755 crossings of visa-exempt H-2B workers¹³ who were processed by CBP.

Second Half of FY 2021

During the second half of FY 2021,¹⁴ 54,277 workers were issued H-2B visas or otherwise acquired H-2B status. This number includes:

⁹ See 8 CFR 212.1(a) for a list of noncitizens who are considered visa-exempt.

¹⁰ 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 the H-2B classification will not be re-counted against the annual or semiannual cap.

¹¹ The first half of FY 2021 began on October 1, 2020 and ended on March 31, 2021.

¹² H-2B workers exempt from the H-2B cap are included in this number. This number may also include H-2B workers who were issued a visa by DOS but approved by USCIS with a start date in the preceding half of a fiscal year or up to 10 days after the relevant period.

¹³ For the first half of FY 2021, all 755 crossings of visa-exempt H-2B workers came from Canada. See 8 CFR § 212.1(a) for a list of noncitizens who are considered visa-exempt. This figure may include multiple admissions by the same workers.

¹⁴ The second half of FY 2021 began on April 1, 2021 and ended on September 30, 2021.

- 53,423 H-2B visas¹⁵ issued by DOS;
- 268 workers that USCIS approved for a change of status to H-2B classification; and
- 586 crossings of visa-exempt H-2B workers¹⁶ who were processed by CBP.

Table 1: H-2B Workers Approved from October 1, 2020 to March 31, 2021

	1 st Half of FY 2021	2 nd Half of FY 2021	Total
Total H-2B Workers Approved¹⁷	42,991	54,277	97,268
Visas Issued by DOS	41,769	53,423	95,192
Changes of Status Approved by USCIS	467	268	735
Visa-Exempt Admissions by CBP	755	586	1,341

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

First Half of FY 2021

During the first half of FY 2021, USCIS revoked or otherwise terminated 39 approved petitions, which had authorized the classification of 1,162 beneficiaries as H-2B workers.¹⁸ During that period, CBP canceled the H-2B visas of five individuals who were found inadmissible at ports of entry, and ICE removed 59 H-2B workers who were found removable after admission to the United States.¹⁹

DOS reported that it refused a net total of 4,166 visa applications of H-2B workers in the first half of FY 2021.

Second Half of FY 2021

During the second half of FY 2021, USCIS revoked or otherwise terminated 13 approved petitions, which had authorized the classification of 191 beneficiaries as H-2B workers.²⁰ During that period, CBP canceled the H-2B visas of 16 workers who were found inadmissible at

¹⁵ H-2B workers exempt from the H-2B cap and those workers who were approved under the FY 2021 Supplemental Cap are included in this number. This number may also include H-2B workers who were issued a visa by DOS but approved by USCIS with a start date in the preceding half of a fiscal year or up to 10 days after the relevant period.

¹⁶ For the second half of FY 2021, all 586 crossings of visa-exempt H-2B workers came from Canada. See 8 CFR § 212.1(a) for a list of noncitizens who are considered visa-exempt. This figure may include multiple admissions by the same workers.

¹⁷ H-2B workers exempt from the H-2B cap are included in these figures. These figures may also include H-2B workers who were issued a visa by DOS but approved by USCIS with a start date in the preceding half of a fiscal year or up to 10 days after the relevant period.

¹⁸ This figure may include revocations or terminations after the approved validity of the H-2B petition and after the beneficiaries' authorized admission had already expired.

¹⁹ ICE defines removed H-2B workers as those individuals removed with a most recent admission class code of "H2" or "H-2B." As such, this figure may include individuals admitted in the H-2A classification as temporary or seasonal nonagricultural workers who could also have a most recent admission class code of "H2." ICE also indicates that admission class code is not a mandatory field, so this figure could be incomplete.

²⁰ This figure may include revocations or terminations after the approved validity of the H-2B petition and after the beneficiaries' authorized admission had already expired.

ports of entry, and U.S. Immigration and Customs Enforcement (ICE) removed 16 H-2B workers who were found removable after admission to the United States.²¹

DOS reported a total of 56,709 H-2B visa applications in the second half of 2021. There were 53,423 H-2B visas issued. There were 7,276 H-2B applications initially refused in the second half of 2021, of which 3,286 applications remained in a refused status at the end of the second half of 2021. The remaining 3,990 initially refused applications overcame the basis for refusal, and received an issuance during this time period.

Table 2: H-2B Revocations and Terminations

Type of Revocation or Termination	1st Half of FY 2021	2nd Half of FY 2021	Total
DOS (visa refusals)	4,166	3,286	7,452
USCIS (beneficiaries of revoked petitions)	1,162	191	1,353
CBP (cancelled visas)	5	16	21
ICE (removals)	59	16	75

²¹ ICE defines removed H-2B workers as those individuals removed with a most recent admission class code of “H2” or “H-2B.” As such, this figure may include individuals admitted in the H-2A classification as temporary or seasonal nonagricultural workers who could also have a most recent admission class code of “H2.” ICE also indicates that admission class code is not a mandatory field, so this figure could be incomplete.