



# H-2B Temporary Nonagricultural Worker Visa and Status

Fiscal Year 2022 Semiannual Report to Congress  
Part 1: April 1, 2021 – March 31, 2022



Homeland  
Security

*U.S. Citizenship and  
Immigration Services*



**Homeland  
Security**

August 12, 2022

## Foreword

On behalf of the U.S. Department of Homeland Security, I am pleased to present the first of two semiannual reports for Fiscal Year 2022 on “H-2B Temporary Nonagricultural 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 cursive script 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 the second half of Fiscal Year (FY) 2021 and the first half of FY 2022.

## Highlights

- The annual numerical limitation of 66,000 H-2B visas (the “regular H-2B cap”) was reached in FY 2021.<sup>1</sup>
- USCIS estimated it received enough petitions to reach the semiannual numerical limitation of 33,000 H-2B visas for the second half of FY 2021 on February 12, 2021. A total of 54,277 workers were issued H-2B visas or otherwise acquired H-2B nonimmigrant status during the second half of FY 2021.<sup>2</sup>
- USCIS estimated it received enough petitions to reach the semiannual numerical limitation of 33,000 H-2B visas for the first half of FY 2022 on September 30, 2021. A total of 59,858 workers were issued H-2B visas or otherwise acquired H-2B nonimmigrant status during the first half of FY 2022.<sup>3</sup>
- 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](#) (TFR) increasing the numerical limit on H-2B nonimmigrant visas by up to 22,000 additional visas through the end of FY 2021. These 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.
- In accordance with Public Law 117-70 (Further Continuing Appropriations Act, 2022), extending the authority provided in section 105 of the FY 2021 Omnibus, on January 28, 2022 DHS and DOL published a [temporary final rule](#) increasing the numerical limit on H-2B nonimmigrant visas by up to 20,000 additional visas for positions with start dates in the first half of FY 2022. These supplemental visas were available only to U.S. businesses that attested that they suffered irreparable harm, or would suffer impending irreparable harm, without the ability to employ all the H-2B workers requested in their petition for the first half of the fiscal year.

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<sup>1</sup> Immigration and Nationality Act (INA) § 214(g)(1)(B), 8 U.S.C. § 1184(g)(1)(B), requires that the total number of non-citizens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year “may not exceed” 66,000.

<sup>2</sup> 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.

<sup>3</sup> 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.



# H-2B Temporary Nonagricultural Worker Visa and Status

## Table of Contents

I.	Legislative Requirement .....	1
II.	Background .....	2
III.	Data Report and Analysis .....	5
	Section 3.1 – H-2B visas issued and status provided .....	5
	Section 3.2 – H-2B visas or status revoked or otherwise terminated .....	6

# 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 non-citizen 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;<sup>4</sup>
- 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 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 and DOL jointly published a [temporary final rule, which](#) authorized an increase of up to 20,000 additional H-2B visas for employers that are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H-2B workers requested under the cap increase and changed certain H-2B requirements to reduce the economic impact of the coronavirus (COVID-19) public health emergency on H-2B employers.<sup>5</sup> Under the H-2B temporary final 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 non-citizen 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. This employer flexibility was available to petitioners and H-2B nonimmigrant workers initiating employment through the end of November 22, 2021.

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<sup>4</sup> 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 in 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).

<sup>5</sup> 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).

On January 28, 2022, DHS and DOL jointly published an additional [temporary rule](#), that authorized an increase of up to 20,000 additional H-2B visas for employers that are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H-2B workers requested under the cap increase and additional protections for U.S. workers, among other provisions.<sup>6</sup> 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 again permitted to start employing certain non-citizen 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. This employer flexibility was available to petitioners and H-2B nonimmigrant workers initiating employment through the end of July 27, 2022.

### ***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 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.<sup>7</sup>

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 joint [temporary final rule](#) increasing the H-2B cap by up to 22,000 additional visas through the end of FY 2021.<sup>8</sup> 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 temporary final rule, 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. There were 3,078 visas issued for the FY 2021 supplemental cap for the countries of Honduras, Guatemala, and El Salvador. There were

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<sup>6</sup> Exercise of Time-Limited Authority To Increase the Fiscal Year 2022 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, [87 FR 4722](#) (Jan. 28, 2022).

<sup>7</sup> See 8 CFR 214.2(h)(8)(vii).

<sup>8</sup> 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).

17,754 visas issued to returning workers under the FY 2021 supplemental cap, which includes the unused visas from the country cap above.

In accordance with Public Law 117-70, extending the authority provided in section 105 of the FY 2021 Omnibus, on January 28, 2022, DHS and DOL published a TFR increasing the numerical limit on H-2B nonimmigrant visas by up to 20,000 additional visas for positions with start dates in the first half of FY 2022.<sup>9</sup> These supplemental visas were available only to U.S. businesses that attested that they were suffering irreparable harm, or would suffer impending irreparable harm, without the ability to employ all the H-2B workers requested in their petition. Of the 20,000 additional visas, 13,500 were available only for returning workers (workers who received an H-2B visa or were otherwise granted H-2B status in FY 2019, 2020 and 2021). The remaining 6,500 visas were set aside for nationals of Haiti, Honduras, Guatemala, and El Salvador. Under this TFR, workers from these countries were exempted from the returning worker requirement. In contrast to the preceding supplemental cap TFR, the unused visas from this allocation were not subsequently made available to returning workers in order to provide H-2B employers ample time, should they choose, to petition for, and bring in, workers under the allocation for the Northern Triangle countries and Haiti. As of March 31, 2022, there were 1,047 visas issued for the countries of Haiti, Honduras, Guatemala, and El Salvador, and 8,667 visas issued to returning workers under the FY22 supplemental cap.

### ***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 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;<sup>10</sup> 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.<sup>11</sup>

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, 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.

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<sup>9</sup> Exercise of Time-Limited Authority To Increase the Fiscal Year 2022 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, [87 FR 4722](#) (Jan. 28, 2022).

<sup>10</sup> *See* Pub. L. No. 108-287, § 14006, 118 Stat. 951, 1014 (2004).

<sup>11</sup> *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 non-citizen worker covered by the petition will actually be granted H-2B status. After USCIS approves an H-2B petition, a 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;<sup>12</sup> or
- change of status to H-2B or extension of H-2B status granted by USCIS.<sup>13</sup>

## **III. Data Report and Analysis**

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

#### ***Second Half of FY 2021***

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

- 53,423 H-2B visas issued by DOS;<sup>15</sup>
- 268 workers that USCIS approved for a change of status to H-2B classification; and
- 586 crossings of visa-exempt H-2B workers who were processed by CBP.<sup>16</sup>

#### ***First Half of FY 2022***

During the first half of FY 2022, 59,858 workers were issued H-2B visas or otherwise acquired H-2B status.<sup>17</sup> This number includes:

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<sup>12</sup> See 8 CFR 212.1(a) for a list of non-citizens who are considered visa-exempt.

<sup>13</sup> 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.

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

<sup>15</sup> 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.

<sup>16</sup> 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 non-citizens who are considered visa-exempt. This figure may include multiple admissions by the same workers.

<sup>17</sup> The first half of FY 2022 began on October 1, 2021 and ended on March 31, 2022.

- 58,746 H-2B visas issued by DOS;<sup>18</sup>
- 227 workers that USCIS approved for a change of status to H-2B classification; and
- 885 crossings of visa-exempt H-2B workers who were processed by CBP.<sup>19</sup>

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<sup>18</sup> H-2B workers exempt from the H-2B cap and those workers who were approved under the FY 2022 Supplemental Cap for the first half of the fiscal year 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.

<sup>19</sup> For the first half of FY 2022, all 885 crossings of visa-exempt H-2B workers came from Canada. *See* 8 CFR § 212.1(a) for a list of non-citizens who are considered visa-exempt. This figure may include multiple admissions by the same workers.

**Table 1:** H-2B Workers Approved from April 1, 2021 to March 31, 2022

	<b>Second Half of FY 2021</b>	<b>First Half of FY 2022</b>	<b>Total</b>
<b>Total H-2B Workers Approved<sup>20</sup></b>	54,277	59,858	114,135
Visas Issued by DOS	53,423	58,746	112,169
Changes of Status Approved by USCIS	268	227	495
Visa-Exempt Admissions by CBP	586	885	1,471

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

### *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.<sup>21</sup> During that period, CBP canceled the H-2B visas of 16 individuals who were found inadmissible at 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.<sup>22</sup>

DOS reported that it refused a net total of 3,286 H-2B visa applications in the second half of FY 2021.

### *First Half of FY 2022*

During the first half of FY 2022, USCIS revoked or otherwise terminated 21 approved petitions, which had authorized the classification of 378 beneficiaries as H-2B workers.<sup>23</sup> During that period, CBP canceled the H-2B visas of 16 individuals who were found inadmissible at ports of entry, and ICE removed 17 H-2B workers who were found removable after admission to the United States.<sup>24</sup>

DOS reported that it refused a net total of 3,609 H-2B visa applications in the first half of FY 2022.

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<sup>20</sup> H-2B workers exempt from the H-2B cap and those workers who were approved under the Supplemental Caps 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.

<sup>21</sup> 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.

<sup>22</sup> 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 agricultural 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.

<sup>23</sup> 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.

<sup>24</sup> 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 agricultural 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.

**Table 2:** H-2B Revocations and Terminations

<b>Type of Revocation or Termination</b>	<b>Second Half of FY 2021</b>	<b>First Half of FY 2022</b>	<b>Total</b>
DOS (visa refusals)	3,286	3,609	6,895
USCIS (beneficiaries of revoked petitions)	191	378	569
CBP (canceled visas)	16	16	32
ICE (removals)	16	18	34