



# USCIS Update

Aug. 6, 2009

## USCIS to Accept New H-2B Fiscal Year 2009 Petitions

### *Employers Encouraged to Use Premium Processing – Need to File with Labor Certification*

WASHINGTON – U.S. Citizenship and Immigration Services (USCIS) today reopened the fiscal year 2009 H-2B petition filing period and will immediately accept new H-2B petitions.

Although on Jan. 7, 2009, USCIS announced it accepted and approved a sufficient number of H-2B petitions to meet the congressionally mandated annual cap of 66,000, the Department of State received far fewer than expected requests for H-2B visas and as a result, has issued only 40,640 H-2B visas for fiscal year 2009 to date. This means that there are approximately 25,000 visas that may go unused, as they have not been granted. Because of the low visa issuance rate, USCIS is reopening the filing period to allow employers to file additional petitions for qualified H-2B temporary foreign nonagricultural workers.

The normal (non-premium processing) adjudication time frame for H-2B petitions is 60 days. USCIS will make visa numbers available to petitions in the order in which the petitions are filed. However, because H-2B petitions (Form I-129) for fiscal year 2009 visas must be received, evaluated, and adjudicated on or before the fiscal year 2009 deadline of Sept. 30, 2009, USCIS cannot guarantee approval of any H-2B petition on or before the Sept. 30, 2009 deadline. Employers therefore are encouraged to file as soon as possible and to request premium processing by filing a Form I-907 and submitting the \$1000 premium processing fee, which will allow for expedited adjudication. See <http://www.uscis.gov/premiumprocessing>.

To qualify for a fiscal year 2009 H-2B cap number, employers must:

- Submit the Form I-129 *Petition for a Nonimmigrant Worker* to USCIS with all required documents, including an approved *Alien Employment Certification* from the U.S. Department of Labor that is valid for the entire employment period stated on the petition.

The petitioner must also indicate an employment start date before Oct. 1, 2009.

Petitions received on or after Oct. 1, 2009, and/or requesting a starting date on or after Oct. 1, 2009, will be considered towards the fiscal year 2010 H-2B cap and are subject to all eligibility requirements for fiscal year 2010 H-2B filings, including 8 CFR 214.2(h)(6)(iv)(D), which requires that the start date listed on the petition be the same as the starting date authorized on the temporary labor certification.

The H-2B program allows U.S. employers to bring foreign nationals to the United States to fill temporary nonagricultural jobs for which there is a shortage of available U.S. workers. Typically, H-2B workers fill labor needs in occupational areas such as education, construction, health care, landscaping, manufacturing, food service/processing, and resort/hospitality services.

For more information about this reopening of the H-2B fiscal year 2009 filing period, please see the related list of questions and answers. More information about the H-2B visa program is available in the USCIS guide, "*How Do I Hire a Foreign National for Short-Term Employment in the United States*," (<http://www.uscis.gov/files/article/E1eng.pdf>) or by calling USCIS' National Customer Service Center at 1-800-375-5283.

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# Questions and Answers

Aug. 6, 2009

## USCIS Reopens Fiscal Year 2009 H-2B Petition Filing Period

### **Introduction**

U.S. Citizenship and Immigration Services (USCIS) today reopened the fiscal year 2009 H-2B petition filing period and will immediately accept new H-2B petitions that meet specific criteria explained below.

### **Background**

Although on Jan. 7, 2009, USCIS announced it accepted and approved a sufficient number of H-2B petitions to meet the congressionally mandated annual cap of 66,000, the Department of State reports it unexpectedly received far fewer requests for H-2B visas and as a result, has issued only 40,640 H-2B visas in fiscal year 2009 to date. This means that there are approximately 25,000 visas that may go unused, as they have not been granted to any H-2B temporary foreign workers. Due to the unexpectedly low visa issuance rate, USCIS is reopening the filing period, as a courtesy to the public, to allow employers to file petitions for qualified H-2B temporary foreign nonagricultural workers.

### **Questions and Answers**

#### **Q. What is the deadline for USCIS to receive and approve these new H-2B petitions?**

A. USCIS must *receive and approve* the Form I-129 petition before Oct. 1, 2009.

#### **Q. What should the employer do to meet this deadline?**

- A. The petitioner must indicate an employment start date before Oct. 1, 2009.
- Petitioners are also encouraged to mark clearly in red ink that the petition is requesting a fiscal year 2009 employment start date.
  - The petition must be accompanied by a valid temporary labor certification issued by the Department of Labor indicating an employment start date commencing in fiscal year 2009 and valid for the entire period of requested employment.
  - Since the current processing time for H-2B petitions is two months, petitioners are encouraged to request *Premium Processing Service* by filing a Form I-907, to increase the likelihood that USCIS will be able to adjudicate the petition before Oct. 1, 2009. USCIS provides 15-calendar day processing to those who use the premium processing service.  
(<http://www.uscis.gov/premiumprocessing>)

#### **Q. What should employers include with the H-2B petition to meet the deadline?**

A. Petitions must include a valid temporary labor certification issued by the Department of Labor with the petition, which indicates an employment start date beginning in fiscal year 2009 and covers the requested employment period. While processing times may vary, the Department of Labor advises employers to file requests for temporary labor certifications at least 60 days before the need for the employee.

#### **Q. Which petitioners are likely to benefit?**

A. USCIS believes that reopening the filing period will provide a potential benefit to petitioners that may have previously been excluded from the fiscal year 2009 cap, but have already received a temporary labor certification that is still valid, and that covers the requested employment period. Employers submitting a previously approved temporary labor certification must establish to the satisfaction of USCIS that the

original job offer was bona fide and provide a clear explanation as to why the original stated need remains the same, notwithstanding the changed employment start date. Failure to do so initially may result in a *Request for Evidence* and delay or render impossible timely adjudication of the H-2B petition.

**Q. If USCIS receives a petition on or after Oct. 1, 2009 that is requesting a start date before October 1, 2009, will it be counted towards the fiscal year 2010 cap?**

A. No. Any petitions filed too late in fiscal year 2009 that cannot be approved before the change in fiscal years (and new corresponding cap), or that are not approvable within FY 2009 because required information is missing, will be subject to denial. Any petition requesting a start date within fiscal year 2009 that is received on or after Oct. 1, 2009, will be rejected.

**Q. If the petition requests a start date for fiscal year 2010, will it be counted towards the fiscal year 2010 cap?**

A. Yes. Petitions requesting a starting date on or after Oct. 1, 2009, will be placed in the fiscal year 2010 H-2B cap until such time as the cap is reached. These petitions are subject to all eligibility requirements for fiscal year 2010 H-2B filings (including 8 CFR 214.2(h)(6)(iv)(D), which requires that the start date listed on the petition be the same as the starting date authorized on the temporary labor certification).

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