



CIS Ombudsman Updates

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These periodic updates will share information on current trends and issues to assist individuals and employers in resolving problems with USCIS.

H-2B Petition RFEs

The H-2B non-agricultural worker program enables qualified U.S. non-agricultural employers that anticipate a shortage of domestic workers to bring temporary nonimmigrant foreign workers from certain designated countries to the United States. The Ombudsman is receiving reports that USCIS is issuing RFEs that question the claimed “temporary” nature of the employer’s business need for foreign labor. This update is designed to provide additional information on this issue.

What Is a “Temporary” Employment Need?

Employers seeking to participate in this program must establish to USCIS that their need for temporary non-agricultural services or labor is either seasonal, due to a peakload need, intermittent, or a one-time occurrence. While temporary needs of a significant length may be approved as a one-time occurrence, the petitioner’s business need must be temporary, such as 10 months or less. H-2B workers are commonly employed in the landscaping, hotel, recreation, and forestry industries based upon seasonal need.

To establish seasonal need, petitioners must show that the service or labor is related to a season of the year by an event or pattern that recurs annually. It is recommended that petitioners also specify the period(s) of time during each year in which they do not need the services or labor.

What Additional Information May Help USCIS Adjudicate the Petition?

H-2B petitions are by their nature time sensitive, and petitioners are on tight time schedules for filing their submissions with DOL and USCIS. Delays in submission or processing can have serious financial consequences for employer petitioners.

To minimize the likelihood of receiving a Request for Evidence, petitioners may want to support their initial submissions to USCIS with additional documentation that clearly demonstrates that a specific work need covered by the petition is temporary, tied to a predictable peakload period or is seasonal, and will reoccur annually on the same or similar cycle.

USCIS indicated to the Ombudsman that it also would be helpful to include with the H-2B petition:

- Signed work contracts, letters of intent from clients, and monthly invoices from previous calendar year(s) clearly depicting the type and regularity of work that was, or will be, performed during each month of the requested period of

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need.

- Summarized monthly payroll records/reports over the past two calendar years that clearly identify and separately distinguish the petitioner's permanent employee staff from its temporary H-2B staff in the requested occupation.
- Any other documentation (e.g., work schedules, company provided housing, transportation records, etc.) that evidences the cyclical trend of seasonal temporary hires, and that clearly reveals gap periods that fall between such seasons.

If you have further comments regarding this update, please contact cisombudsman.publicaffairs@dhs.gov. **ALLA InfoNet Doc. No. 11032467. (Posted 03/24/11)**