

H-2A and H-2B Nonimmigrants

October 2017



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Services

General H-2A and H-2B Process Overview



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H-2A and H-2B Program Process Overview

1. The employer files a temporary labor certification (TLC) application with the U.S. Department of Labor (DOL), or Guam DOL for H-2B workers to be employed on Guam.
2. After receiving an approved TLC, the employer signs and submits it with a Form I-129, Petition for a Nonimmigrant Worker, to U.S. Citizenship & Immigration Services (USCIS).
3. After the petition is approved, if the foreign worker is outside the U.S. and requires a visa, he or she applies for it with the U.S. Department of State at a Consulate or Embassy abroad.



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H-2A Temporary Agricultural Nonimmigrants



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H-2A Classification

Allows U.S. employers to bring foreign nationals to the United States to fill seasonal and temporary agricultural jobs for which U.S. workers are not available.

- To qualify as seasonal, employment must be tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations.
- To qualify as temporary, the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than one year.



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H-2A Classification

There is no numerical limitation (or “cap”) on the number of foreign nationals who may be issued visas as H-2A agricultural workers in a fiscal year (FY).

- The H-2A program has seen persistent growth, with the number of approved H-2A beneficiaries more than doubling between FY 2011 and FY 2016.



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H-2A Classification

Top Industries

General Farm Worker

Tobacco

Hay and Straw

Oranges

Cotton

Corn

Nurseries

Onions

Sheep

Tomatoes

Top States

Florida

North Carolina

Georgia

Louisiana

California

Arizona

South Carolina

Arkansas

Idaho

Kentucky



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H-2B Temporary Non- Agricultural Nonimmigrants



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H-2B Classification

Allows U.S. and certain foreign employers to bring foreign nationals to the United States to fill temporary non-agricultural jobs for which U.S. workers are not available.

As a general rule, to qualify as temporary, the petitioner's need for the foreign worker's services or labor shall be:

- A seasonal need for ≤ 1 year,
- A peakload need for ≤ 1 year,
- An intermittent need for ≤ 1 year, or
- A one-time occurrence for ≤ 3 years.



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Top Industries Utilizing H-2B Workers

Landscaping and Grounds Keeping Workers

Amusement and Recreation Park Attendants

Forest and Conservation Workers

Maids and Housekeeping Cleaners

Meat, Poultry, and Fish Cutters and Trimmers

Construction Laborers

Coaches and Scouts

Nonfarm Animal Caretakers

Waiters and Waitresses

Lifeguards, Ski Patrol, and Other Recreational



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H-2B Numerical Limitation (the “H-2B cap”)

There is a numerical limitation (“cap”) of 66,000 H-2B workers per year.

Allocated semi-annually:

- 33,000 workers for the 1st half of the fiscal year
(Employment starting from 10/1 – 3/31)
- 33,000 workers for the 2nd half of the fiscal year
(Employment starting from 4/1 – 9/30)
- Unused 1st half numbers are available for use in the 2nd half of the fiscal year



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H-2B Numerical Limitation (the “H-2B cap”)

- USCIS regularly publishes updates on the current H-2B Cap Count at www.USCIS.gov.
- Current exceptions to Workers not Counted Against the H-2B Cap:
 - Current H-2B workers in the U.S. who are beneficiaries of petitions to extend their stay and, if applicable, change the terms of their employment or change their employers;
 - Fish roe processors, fish roe technicians or supervisors of fish roe processing; and
 - Workers performing labor or services in the Commonwealth of Northern Mariana Islands (CNMI) or Guam, from November 28,



U.S. Citizenship and Immigration Services, 2019.

H-2B Returning Workers

- Effective December 18, 2015, H-2B workers certified and confirmed as “returning workers” who had been counted against the cap in one of the preceding three fiscal years were exempted from the H-2B cap for FY 2016 only. The returning worker exemption from the H-2B cap had previously been in place for FYs 2005 through 2007.
- The H-2B returning worker provisions of the 2016 Consolidated Appropriations Act expired on September 30, 2016. Congress did not reauthorize the program for FY 2017.



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One-Time Increase for FY 2017

- The FY 2017 Consolidated Appropriations Act delegated authority to the Secretary of Homeland Security, after consultation with the Secretary of Labor, to increase the total number of aliens who may receive an H-2B visa in FY 2017 by not more than the highest number of H-2B returning workers during any fiscal year in which they were exempt from the cap.
- After considering the needs of American businesses and other factors, including the impact on U.S. workers and the integrity of the H-2B program, the then-Secretary decided to increase the cap by 15,000 additional visas. These visas were available only to businesses attesting that they would likely suffer irreparable harm without the ability to employ all the requested H-2B workers.



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General H-2A and H-2B Petition Information



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Beneficiary Requirements

- An H-2A or H-2B petition may include more than one beneficiary if the beneficiaries will be performing the same service for the same period of time in the same location.
- The total number of beneficiaries approved on an H-2A or H-2B petition cannot exceed the number of positions indicated on the relating TLC.
- Beneficiaries can be unnamed on the H-2A or H-2B petition if they seek consular processing, but not when they are already in the United States.

NOTE: A beneficiary must be named if he or she is not from a country on the “Eligible Countries List.”



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Beneficiary Requirements

- **Limitation of stay:** After being in H-2A or H-2B status for 3 years, a worker must leave the U.S. for at least 3 months before he or she is again eligible for H-2A or H-2B classification.
- **“Eligible Countries List”:** H-2A and H-2B petitions may generally be approved only for nationals of countries that the Secretary of Homeland Security, with concurrence from the Secretary of State, has designated as participating countries. USCIS may approve petitions for nationals of countries not on this list if it is determined to be in the interest of the United States.



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Petitioner Responsibilities

- **Prohibited fees:** Fees imposed as a condition of the H-2A or H-2B worker's employment or recruitment are generally prohibited.
- Petitioners must notify USCIS of an H-2A or H-2B worker's payment or agreement to pay prohibited fees to a recruiter within 2 workdays of gaining knowledge of such payment or agreement.
- Petitioners must also notify USCIS within 2 work days under the following circumstances:
 - No show: The worker fails to report to work within 5 work days of the approved start date.
 - Absconder: The worker fails to report to work for 5 consecutive work days without consent.
 - Termination.
 - Early Completion.



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Want to Know More?

- For more information about the H-2A program, visit: www.uscis.gov/H-2A.
- For more information about the H-2B program, visit: www.uscis.gov/H-2B.



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Working in the United States

H-2A Temporary Agricultural Workers

The H-2A program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary agricultural jobs. A U.S. employer, a U.S. agent as described in the regulations or an association of U.S. agricultural producers named as a joint employer must file Form I-129, Petition for Nonimmigrant Worker, on a prospective worker's behalf.

Who May Qualify for H-2A Classification?
H-2A Program Process
H-2 Eligible Countries List
Period of Stay
Family of H-2A Workers
Employment-Related Notifications to USCIS
Fee-Related Notifications to USCIS

Who May Qualify for H-2A Classification?

To qualify for H-2A nonimmigrant classification, the petitioner must:

- Offer a job that is of a temporary or seasonal nature.
- Demonstrate that there are not sufficient U.S. workers who are able, willing, qualified, and available to do the temporary work.
- Show that the employment of H-2A workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.
- Generally, submit with the H-2A petition, a single valid temporary labor certification from the U.S. Department of Labor. (A limited exception to this requirement exists in certain "emergent circumstances." See e.g., 8 CFR 214.2(h)(5)(x) for specific details.)

Working in the United States

Temporary Workers

- OW-1: CNMI-Only Transitional Worker
- E-1 Treaty Traders
- E-2 CNMI Investor
- E-2 Treaty Investors
- E-3 Certain Specialty Occupation Professionals from Australia
- H-1B Specialty Occupations and Fashion Models
- H-1C Registered Nurse
- H-2A Agricultural Workers**
- H-2B Non-Agricultural Workers
- H-3 Nonimmigrant Trainee
- I Representatives of Foreign Media
- L-1A Intra-company Transferee Executive or Manager

Questions?



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