



U.S. Citizenship  
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Services

# H-2A Nonagricultural Workers



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**USCIS Service Center Operations  
Directorate**

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# General Overview of DHS and USCIS

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# General Overview of DHS and USCIS



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The Department of Homeland Security (DHS) is comprised of 15 operational and support components, including:

- U.S. Customs and Border Protection (CBP),
- U.S. Coast Guard (USCG),
- Federal Emergency Management Agency (FEMA),
- U.S. Immigration and Customs Enforcement (ICE),
- Transportation Security Administration (TSA),
- U.S. Secret Service (USSS), and
- U.S. Citizenship and Immigration Services (USCIS).

# U.S. Citizenship and Immigration Services



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USCIS is the government agency that oversees lawful immigration to the United States. USCIS is funded primarily by fees charged to applicants and petitioners seeking immigration and naturalization benefits.

USCIS is divided into directorates and program offices, including:

- Field Office Directorate (FOD)
- Refugee, Asylum, and International Operations Directorate (RAIO)
- Service Center Operations Directorate (SCOPS)

# USCIS Service Center Operations Directorate (SCOPS)



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SCOPS consists of five service centers that provide immigration benefits for a broad range of petitions and applications that do not require interviews.

These five centers are:

- California Service Center
- Nebraska Service Center
- Potomac Service Center
- Texas Service Center
- Vermont Service Center



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# Introduction to the H-2A Petition

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# H-2A Classification



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**The 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.

# H-2A Process Overview



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- 1. The employer or its agent (as defined in USCIS regulations) files a temporary labor certification (TLC) application with the U.S. Department of Labor (DOL).**
- 2. The employer submits the approved TLC with Form I-129, Petition for a Nonimmigrant Worker, with USCIS.**

# H-2A Process Overview



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3. **Once USCIS approves Form I-129, H-2A workers who are outside the United States must:**
  - apply for an H-2A visa with U.S. Department of State (DOS) at a U.S. Embassy or Consulate abroad and then seek admission to the United States with U.S. Customs and Border Protection (CBP) at a U.S. port of entry, or
  - where a visa is not required, directly seek admission to the United States in H-2A classification with CBP at a U.S. port of entry.

# Growth in the H-2A Program



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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 coming close to tripling between FY 2012 and FY 2018.

In each of the two most recent fiscal years, USCIS has approved more than 200,000 H-2A beneficiaries.

# Form I-129 H-2A Petitions



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All Form I-129 petitions seeking the H-2A classification are filed and adjudicated at the California Service Center.

H-2A petitions are only permitted to be filed with USCIS by direct paper filing, but petitioners may choose to use regular or express mail.

Once an H-2A petition arrives at the officer's desk, it is adjudicated in the order in which it was received.

H-2A petitions are typically processed on an expedited basis due to the time-sensitive nature of agricultural work.

# H-2A Joint Employers



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An H-2A petition may be filed by an association of U.S. agricultural producers named as a joint employer on the TLC.

Where a TLC shows joint employers, the H-2A petition must show that each employer has agreed to the conditions of H-2A eligibility.

There are shared responsibilities and the potential for shared liabilities in joint employment of H-2A workers.

# Multiple Beneficiaries



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You may file for more than one worker on a single H-2A petition if:

- all of the beneficiaries will perform the same services or labor for the same period of time and in the same location; and
- the total number of workers you request does not exceed the number of positions indicated on the corresponding temporary labor certification.

# Beneficiary Requirements



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Beneficiaries can generally be **unnamed** if they seek consular processing, but not when they are already in the United States.

For petitions with **unnamed** beneficiaries:

- No evidence is required with the petition to show that beneficiaries meet the minimum requirements on the TLC, if any.
- Instead, beneficiaries must present such evidence, if applicable, at the time of a visa application or, if a visa is not required, at the time they seek admission into the United States.



# Beneficiary Requirements



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If the beneficiary is in the United States, then he or she **must** be named on Form I-129.

For petitions with **named** beneficiaries:

- evidence accompanying the petition must show that the beneficiary meets the minimum employment, education, or training requirements on the TLC, if any, as of the TLC filing date.

**NOTE:** The beneficiary must be named if he or she is a national of a country that is not designated as eligible to participate in the H-2A program.

# Background Checks



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As part of the adjudication process, USCIS conducts security and background checks on all named workers. While an H-2A petition may be filed on behalf of multiple workers, when petitioning for named workers, any security-related issues for one beneficiary may result in delays for every other beneficiary of that same petition.

# Limitation of Stay



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H-2A status may be granted for the maximum period of time authorized on the TLC (usually 1 year or less).

A worker's status in H-2A classification may be extended.

The limitation of stay in H-2A status is 3 years (which also includes time spent in other "H" or "L" classifications).

After being in H-2A 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 classification.

# Eligible Countries List



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H-2A petitions may generally only be approved for nationals of countries that the Secretary of Homeland Security, with concurrence from the Secretary of State, has designated as participating countries. This is known as the “Eligible Countries List.”

On a regular basis, DHS publishes a Federal Register Notice that lists the countries whose nationals are eligible to participate in the H-2A program. This list is also available at [www.uscis.gov/H-2A](http://www.uscis.gov/H-2A).

# Eligible Countries List



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USCIS may approve H-2A petitions for nationals of countries not on the list if it is determined to be in the interest of the United States.

To request workers who are nationals of countries that have not been designated as eligible to participate in the H-2A program, you must:

- name each beneficiary on the H-2A petition who is not from an eligible country; and
- provide evidence to show that it is in the U.S. interest for the alien to be the beneficiary of such a petition.

# Eligible Countries List



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USCIS's determination of what constitutes the U.S. interest takes into account certain factors, including but not limited to:

1. Evidence demonstrating that a worker with the required skills is not available among U.S. workers or among foreign workers from a country currently on the eligible countries list;
2. Evidence that the beneficiary has been admitted to the United States previously in H-2A status;
3. The potential for abuse, fraud, or other harm to the integrity of the H-2A visa program through the potential admission of a beneficiary from a country not currently on the eligible countries list; and
4. Such other factors as may serve the U.S. interest.

# Filing Multiple Petitions



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If you decide to file more than one petition with the same temporary labor certification, you may only do so if:

- each petition is accompanied by a copy of the valid temporary labor certification; and
- the total number of beneficiaries on your petitions does not exceed the total number of workers approved by the U.S. Department of Labor on the temporary labor certification.

# Filing Multiple Petitions



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In cases where filing a separate petition is not required, it may still be advantageous to file more than one H-2A petition. This can occur when you petition for multiple workers, some of whom may not qualify for part or all of the validity period you request. This most frequently occurs when:

- some of the workers you request are nationals of a country not on the eligible countries list;
- you request interrupted stays for workers; or
- at least one worker is nearing the 3-year maximum stay limit.



# Prohibited Fees



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Fees, including any type of compensation and/or salary deductions, that are imposed as a condition of the H-2A worker's employment or recruitment are prohibited.

By regulation, USCIS has the authority to deny or revoke a petition on notice when a worker pays, directly or indirectly, fees that are a condition of H-2A employment.

Please see regulations and guidance issued by the U.S. Department of Labor for more information on what costs (or salary deductions), if any, may be passed to the H-2A worker.

# Prohibited Fees



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Fees paid for **by the employer** to a recruiter, facilitator, or similar employment service are NOT considered prohibited fees. However, if USCIS determines that the worker paid the petitioner prohibited fees after the filing of the H-2A petition, the petition will be denied or revoked on notice, even if the employer subsequently reimburses the worker for such payments.

Petitioners **must** notify USCIS of an H-2A worker's payment or agreement to pay prohibited fees to a recruiter, facilitator, or similar employment service within 2 workdays of gaining knowledge of such payment or agreement.

Notification to USCIS may be by standard/express mail or email. For addresses, see [www.uscis.gov/H-2A](http://www.uscis.gov/H-2A).

# Employment-Related Notification Requirement



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H-2A petitioners **must** notify USCIS within 2 work days if the following occur:

- **No-show:** An H-2A worker fails to report to work within 5 workdays of the employment start date on the petition or within 5 workdays of the start date established by the petitioner, whichever is later;
- **Absconder:** An H-2A worker fails to report for work for a period of 5 consecutive workdays without the consent of the employer;
- **Termination:** An H-2A worker is terminated prior to the completion of agricultural labor or services for which he/she was hired; or
- **Early Completion:** The agricultural labor or services for which the H-2A worker was hired was completed more than 30 days earlier than the employment end date stated on the H-2A petition.

# Employment-Related Notification Requirement



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Petitioners may send notifications to USCIS via standard / express mail, or email. The appropriate addresses are located at [www.uscis.gov/H-2A](http://www.uscis.gov/H-2A).

Although not required, email notification is strongly recommended to ensure timely notification.

Petitioners must retain evidence of such notification and make it available for inspection by DHS officers for a 1-year period beginning on the date of the notification.

# H-2A Substitutions



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An amended H-2A petition, with fee, may be filed to replace H-2A workers:

- whose employment was terminated earlier than the end date stated on the H-2A petition and before the completion of work;
- who fail to report to work within five days of the employment start date on the H-2A petition or within five days of the start date established by his or her employer, whichever is later; or
- who abscond from the worksite.

# H-2A Substitutions



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To replace H-2A workers on an amended H-2A petition, you should provide:

- a copy of the original petition approval notice and TLC;
- a statement providing each former worker's name, date and country of birth, termination date, the reason for termination, and the date USCIS was notified of the termination or abscondment;
- evidence that the total number of beneficiaries will not exceed the number of workers authorized on the TLC; and
- evidence of the qualifications of the newly identified beneficiaries, if the beneficiary is named.

# H-2A Substitutions



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Filing an amended petition for H-2A substitution does not fulfill the petitioner's notification requirements. Without proper notification to USCIS of your former worker's termination or abscondment, your petition for replacement workers will not be approved.

# Period of Admission



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An H-2A worker shall be admitted for the period of the approved petition, plus up to one week before the beginning of the approved period for the purpose of travel to the worksite.

An H-2A worker will also be provided a 30-day period following the expiration of the H-2A petition for the purpose of departure or to seek an extension based on a subsequent offer of employment.

Except in certain circumstances, an H-2A worker is only authorized for employment during the validity period of the approved petition.



# H-2A Extensions of Stay



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Under certain **emergent circumstances**, as determined by USCIS, an H-2A petition requesting a continuation of employment with the same employer for a period not to exceed 2 weeks may be filed without an additional TLC. Such petitioners should submit a detailed explanation of the emergent circumstances and a copy of the previously submitted TLC.

Any petition requesting a continuation of employment longer than 2 weeks or a change of employer will require a new TLC from the Department of Labor.

# H-2A Extensions of Stay



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Regulatory provisions authorize continued employment for certain H-2A workers whose petitions requesting an extension of stay were timely filed during the period of admission.

H-2A workers continuing employment **with the same employer** are authorized up to 240 days of continued employment while a timely filed petition remains pending.

This employment authorization automatically terminates upon notification that the petition or underlying request for extension of stay has been denied.

# H-2A Extensions of Stay



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Current H-2A workers may also start work for a **new employer** beginning on the date their Form I-129 extension of stay request is received **if** the petitioner/employer is a participant in good standing in the E-Verify program, as determined by USCIS in its discretion. Such work authorization continues for a period of up to 120 days while the H-2A extension of stay request is pending with USCIS.

This employment authorization automatically terminates if the employer fails to remain a participant in good standing in the E-Verify program or upon 15 days after the date of any denial decision.

# About E-Verify



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E-Verify is an Internet-based system that compares information entered by an employer from an employee's Form I-9, Employment Eligibility Verification, to records available to DHS and the Social Security Administration to confirm employment eligibility.



For more information or to enroll, please see [www.e-verify.gov](http://www.e-verify.gov).

# The VIBE System



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The Web-based Validation Instrument for Business Enterprises (VIBE) is a tool designed to enhance USCIS's adjudications of certain employment-based immigration petitions and applications.

VIBE uses commercially available data to validate basic information about companies or organizations petitioning to employ certain foreign nationals, including H-2A workers.

# The VIBE System



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Currently, the independent information provider for the VIBE program is Dun and Bradstreet (D&B). A U.S.-based privately held company or organization may view, at no cost, the basic elements contained in its D&B report at <http://fedgov.dnb.com/webform>.

Contacting D&B from this link will allow U.S.-based privately held USCIS petitioners to create, update, and view their company's or organization's D&B record without being subjected to direct marketing from D&B.

You may choose to contact D&B to update the record to prevent questions and Requests for Evidence (RFEs) regarding the company.



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# Recent Processing Enhancements

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# H-2A Visa Program Modernization



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On May 24, 2018, then-Secretary of Homeland Security Kirstjen Nielsen joined with the Secretaries of State, Agriculture, and Labor in stating their commitment to modernizing the H-2A visa program rules by clarifying and improving the regulations governing the program.

These agencies are working in coordination to propose streamlining, simplifying, and improving the H-2A visa program. Options are also being considered for further incentivizing farmers' use of the E-Verify program to ensure their workforce is authorized to work in the United States.



# Email Notifications to H-2A Petitioners



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Due to the highly time-sensitive nature of H-2A petitions, on January 22, 2018, USCIS began sending electronic notifications of receipt and approval to the email address provided by H-2A petitioners in Part 1 of Form I-129 and to any email address provided for their attorney or accredited representative on a valid Form G-28.

There is no charge for this service with H-2A petitions. USCIS continues to send receipt and approval notices by postal mail and update Case Status Online.

# Pre-Paid Mailers



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Also on January 22, 2018, USCIS began allowing H-2A petitioners to submit two pre-paid mailers to expedite the delivery of both the final decision notice and any Request for Evidence (RFE) issued for the petition.

Until further notice, USCIS will:

- use a pre-paid mailer to send an RFE if the petitioner provided only one pre-paid mailer;
- send the final decision notice in a pre-paid mailer only if no RFE was issued or the petitioner provided a second pre-paid mailer

# e-Approval for H-2A Petitions



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Since May 2016, USCIS has been sending approval information for H-2A petitions to DOS by the end of the next business day. DOS accepts this electronic information in place of a Form I-797 approval notice and allows its consular posts to proceed with processing an H-2A nonimmigrant visa application, including conducting any required interview.

Employers are not charged any additional fees for the USCIS/DOS e-Approval process.

# Inquiring on a Pending H-2A Petition



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USCIS provides expedited processing of Form I-129 for H-2A petitions. You can check the status of your case using [Case Status Online](#). If your petition has been pending for more than 15 days and we have not sent you a decision or request for more evidence, you may call the [USCIS Contact Center](#) at **800-375-5283** to ask about the status of your case.

Note: We can only provide case-specific information to authorized individuals (for example, petitioners and attorneys of record). For H-2A petitions, the petitioner is the petitioning individual or company. We cannot provide case-specific information to unauthorized third parties, such as the beneficiary (the temporary worker).



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# H-2A Filing Tips

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# H-2A Filing Tips and Reminders



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As stated in the Form I-129 Instructions, you must provide the address of the petitioner's primary office as the mailing address in Part 1 of Form I-129.

Because of potential delays in the processing of background checks for named beneficiaries, USCIS recommends that H-2A petitioners limit a single petition to requesting no more than 25 named workers.

It may also be advantageous to file multiple petitions based on a single temporary labor certification when some beneficiaries are nationals of countries not on the Eligible Countries List or have other eligibility concerns.

# H-2A Filing Tips and Reminders



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Provide a valid email address for the petitioner in Part 1 of Form I-129. This address, along with any provided for the attorney or designated representative on a valid Form G-28, will be used for the electronic notifications of receipt and approval.

If the H-2A workers will be performing services or labor in more than one location, the petition **must** include a detailed itinerary with the dates and locations where the services or labor will take place.

# Want to Know More?



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For more information about the H-2A program, visit: [www.uscis.gov/H-2A](http://www.uscis.gov/H-2A)

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## Working in the United States

### Temporary Workers

- CW-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 Intracompany Transferee Executive or Manager

## 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.

### Topics

- 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.)

H-2 Petitioner's Employment Related or Fee Related Notification

AILA Doc. No. 19051505. (Posted 5/15/19)