



Characteristics of H-2B

Nonagricultural Temporary Workers

Fiscal Year 2017 Report to Congress

Annual Submission



Homeland
Security

*U.S. Citizenship and
Immigration Services*



Homeland
Security

June 1, 2018

Foreword

On behalf of the Department of Homeland Security, I am pleased to present the Fiscal Year 2017 annual submission on the “Characteristics of H-2B Nonagricultural Temporary Workers.”

Pursuant to statutory requirements, this report is being provided to the following Members of Congress:

The Honorable Charles E. Grassley
Chairman, Senate Committee on the Judiciary

The Honorable Diane Feinstein
Ranking Member, Senate Committee on the Judiciary

The Honorable Robert W. Goodlatte
Chairman, House Committee on the Judiciary

The Honorable Jerrold Nadler, Jr.
Ranking Member, House Committee on the Judiciary

Inquiries relating to this report may be directed to me at (202) 447-5890.

Respectfully,

A handwritten signature in blue ink, appearing to read "D. Wonnenberg", with a long, sweeping flourish extending to the right.

David Wonnenberg
Acting Assistant Secretary for Legislative Affairs

Executive Summary

The Department of Homeland Security (DHS) has compiled this Fiscal Year (FY) 2017 report on H-2B nonimmigrants from information provided by Department of State (DOS), 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 for each half of FY 2017¹.

Highlights

- A total of 84,037² aliens were issued H-2B visas or otherwise acquired H-2B status in FY 2017, with 83,600 H-2B visas issued by DOS.
- The top five H-2B visa issuance countries in FY 2017 were:
 - Mexico – 76.9 percent
 - Jamaica – 9.2 percent
 - Guatemala – 4.6 percent
 - South Africa – 1.8 percent
 - Honduras – 1.1 percent
- 113 requests for change of status to H-2B were approved by USCIS. In such cases, a visa is not required.
- 324 crossings of visa-exempt H-2B workers were processed by CBP.³

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¹ Some of the data referenced in the report is confidential visa record information, shared pursuant to the statutory requirements of Pub. L. 105-277. USCIS would request that receiving offices not share or otherwise make this information publicly available.

² This number includes H-2B beneficiaries who are exempt from the H-2B cap and who were issued the additional H-2B visas made available in accordance with Section 543 of the Consolidated Appropriations Act, 2017 (Public Law 115-31).

³ For FY 2017, all 324 crossings of visa-exempt H-2B workers came from Canada. See 8 C.F.R. 212.1(a) for a list of aliens who are considered visa-exempt. This figure may include multiple admissions by the same individuals. Although an individual may cross the border numerous times (e.g., a Canadian residing in Windsor, Ontario, and commuting daily to work in Detroit, Michigan), he or she only counts against the H-2B cap on his or her first admission based on an approved petition.

Section 3.4 – Number of aliens who were provided H-2B nonimmigrant status during FY 2017 and FY 20166

Appendix – Guam DOL chart displaying occupational and compensation data for all H-2B applicants in FY 20177

I. Legislative Requirement

This report was prepared in accordance with section 416(d)(2) of the *American Competitiveness and Workforce Improvement Act of 1998*, Pub. L. 105-277, tit. IV, 112 Stat. 2681-641, as amended by section 406 of the *REAL ID Act of 2005*, Pub. L. 109-13, div. B, 119 Stat. 302, enacted May 11, 2005, which requires that:

Beginning in fiscal year 2007, the Secretary of Homeland Security and the Secretary of State shall submit, on an annual basis, to the Committees on the Judiciary of the House of Representatives and the Senate –

- (A) information on the countries of origin of, occupations of, and compensation paid to aliens who 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)) during the previous fiscal year;
- (B) the number of aliens who had such a visa or such status expire or be revoked or otherwise terminated during each month of such fiscal year; and
- (C) the number of aliens who were provided nonimmigrant status under such section during both such fiscal year and the preceding fiscal year.

II. Background

Overview

The H-2B program allows U.S. employers to bring foreign workers to the United States to fill temporary nonagricultural jobs. *See* INA section 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;
- qualified workers in the U.S. are not available to perform 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.

See Title 8 Code of Federal Regulations (8 C.F.R.) § 214.2(h)(6)(ii)(B) and (iv)(A). Generally, before filing a petition with USCIS for H-2B workers, the employer must obtain a valid temporary labor certification from DOL or, if the worker(s) will be employed on Guam, from the Governor of Guam. *See* 8 C.F.R. § 214.2(h)(6)(iii)(A) and (C). H-2B petitions may request multiple workers if the workers will be performing the same service, for the same period of time, and in the same location. *See* 8 C.F.R. § 214.2(h)(2)(ii). An H-2B worker must also be from a list of “Eligible Countries,” as designated by DHS in a notice published in the Federal Register, unless it is determined to be in the U.S. interest that a foreign worker from any country not on this list be granted H-2B status. *See* 8 C.F.R. § 214.2(h)(6)(i)(E).

The H-2B Cap

The *Immigration Act of 1990* limits the number of workers who may be granted H-2B classification in a fiscal year (the 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 semi-annually, 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 will announce that it will no longer accept further H-2B petitions upon determining that it has received a sufficient number of petitions to ensure that the statutory caps will not be exceeded. In making this determination, USCIS takes into account historical data related to approvals, denials, revocations, and other relevant factors.⁴

In accordance with Section 543 of the Consolidated Appropriations Act, 2017 (Public Law 115-31), on July 19, 2017, DHS and DOL published a final rule, 82 Fed. Reg. 32987, increasing the H-2B cap by up to 15,000 additional visas through the end of fiscal year 2017. These visas were available to American businesses that attested that they would likely suffer irreparable harm without the ability to employ all the H-2B workers requested in their petition. This was a one-time increase based on a time-limited statutory authority and expired on September 30, 2017.

⁴ *See* 8 CFR 214.2(h)(8)(ii)(B).

Exemptions from the H-2B Cap

Generally, a worker 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;⁵ and
- From November 28, 2009, until December 31, 2019, workers performing temporary labor or services in the Commonwealth of the Northern Mariana Islands (CNMI) or Guam.⁶

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 C.F.R. § 214.2(h)(8)(ii)(A). Once the H-2B cap is reached, USCIS may only accept petitions for H-2B workers who are cap-exempt. H-2B petition approvals on behalf of aliens who are exempt from the H-2B cap are generally included in the data provided in this report.

Obtaining H-2B Status

After USCIS approves an H-2B petition, a worker may be granted H-2B status through:

- admission as an H-2B worker by CBP at a port of entry after issuance of an H-2B nonimmigrant visa by DOS;
- admission as an H-2B worker by CBP at a port of entry without a visa, in the case of certain Canadian and Bermudan citizens, Bahamian nationals, and British subjects resident in certain islands; or
- change of nonimmigrant status to H-2B granted by USCIS.

⁵ *See* Pub. L. No. 108-287, § 14006, 118 Stat. 951, 1014 (2004).

⁶ *See* 48 U.S.C. 1806(a)(2) as amended by sec. 10 of Pub. L. 113-235; 48 U.S.C. 1806(b).

III. Data Report and Analysis

Section 3.1 – Countries of nationality for workers who were issued H-2B visas by the Department of State in Fiscal Year 2017

Based on information provided by DOS, the nationalities of workers who were issued H-2B visas in FY 2017 are as follows:

Nationality	Number	Nationality	Number
Antigua and Barbuda	D	Italy	29
Argentina	34	Jamaica	7,728
Australia	38	Japan	223
Austria	12	Korea, South	D
Barbados	D	Latvia	D
Belgium	D	Lithuania	140
Belize	287	Macedonia	14
Brazil	108	Mexico	64,305
Bulgaria	134	Moldova	D
Canada	D	Montenegro	D
Chile	16	Netherlands	D
Colombia	79	New Zealand	29
Congo, Democratic Republic of the	D	Nicaragua	111
Costa Rica	233	Nigeria	D
Croatia	11	Norway	D
Cyprus	D	Panama	63
Czech Republic	66	Peru	29
Denmark	D	Philippines	767
Dominican Republic	124	Poland	41
Ecuador	16	Portugal	39
El Salvador	626	Romania	311
Estonia	D	Russia	D
Fiji	31	Serbia	238
France	D	Slovakia	55
Germany	12	Slovenia	D
Great Britain & Northern Ireland	678	South Africa	1,538
Greece	12	Spain	25
Grenada	D	Switzerland	D
Guatemala	3,808	Turkey	40
Haiti	D	Ukraine	295
Honduras	889	Zambia	D
Hungary	60	Zimbabwe	D
Ireland	243	Grand Totals	83,600

Per USCIS best practices, units of less than 10 beneficiaries are masked so as to limit the possibility of the de-anonymization of data. "D" represents data withheld to protect privacy.

Section 3.2 – Occupational information on, and compensation paid to, workers who were issued H-2B visas or provided H-2B status in FY 2017

DOL posts this information for the latest quarter and for previous fiscal years on its website at <http://www.foreignlaborcert.doleta.gov/performance/cfm>.⁷ The data also includes information about the certification, partial certification,⁸ withdrawal, and denial of temporary employment certification applications.

Guam Department of Labor (Guam DOL) collects similar information but does not routinely publish this information on its website. Please see the Appendix for a chart displaying occupational and compensation data for all H-2B applicants in FY 2017.

Section 3.3 – H-2B visas or status revoked or otherwise terminated

From October 1, 2016, through September 30, 2017, USCIS revoked or otherwise terminated 15 approved H-2B petitions covering a total of 200 H-2B positions.⁹

USCIS Monthly Breakdown of Revocations:

Month	Number of Petitions	Number of Beneficiaries	Month	Number of Petitions	Number of Beneficiaries
Oct. 2016	2	2	Apr. 2017	3	114
Nov. 2016	2	2	May 2017	1	1
Dec. 2016	3	53	Jun. 2017	0	0
Jan. 2017	1	15	Jul. 2017	2	11
Feb. 2017	0	0	Aug. 2017	0	0
Mar. 2017	0	0	Sep. 2017	1	2

During this same period, CBP denied admission to 54 aliens who were found inadmissible at ports of entry,¹⁰ and ICE removed 129 aliens who were found removable after admission to the United States.

⁷The legislative requirement described in Section I calls, in part, for occupation information on and compensation paid to aliens. The occupational information includes the position being petitioned for and the corresponding compensation information. DHS relies on DOL to electronically capture such data, including compensation paid to H-2B workers. DOL routinely publishes such information online at the link provided.

⁸A “partial certification” occurs when the DOL Certifying Officer who issues the temporary labor certification (TLC) reduces either the period of need and/or the number of H-2B workers being requested. The employer will then receive an amended ETA Form 9142 and a Final Determination letter that includes the reasons for the partial certification.

⁹ These statistics include a revision to the *H-2B Nonagricultural Temporary Worker Visa and Status Fiscal Year 2017 Semiannual Report to Congress, Part 1* that was explained in detail in *Part 2*. The statistics in this report reflect the most recent and accurate information.

¹⁰ This number includes those beneficiaries who received a visa and those who are visa-exempt. However, no visa-exempt beneficiaries were found inadmissible in FY 2017. The countries of origin for inadmissible beneficiaries were: Guatemala, Jamaica, Mexico, Nicaragua, Romania, Serbia, South Africa, and South Korea.

DOS initially refused 9,915 H-2B visas during FY 2017.¹¹ However, 4,225 of these workers subsequently overcame the reasons for the visa refusal, and the affected workers were granted H-2B visas. Therefore, during FY 2017, DOS refused the visa applications of a net total of 5,690 H-2B workers.

The cancellation, termination, and visa refusal data from CBP, ICE, and DOS are not available on a month-to-month basis.

Section 3.4 – Number of aliens who were provided H-2B nonimmigrant status during FY 2017 and FY 2016

In FY 2017, a total of **84,037** aliens were issued H-2B visas or acquired H-2B status absent issuance of an H-2B visa. This includes:

- 83,600 H-2B visas issued by DOS;
- 113 requests for change of status to H-2B approved by USCIS, which are cases in which a visa is not required; and
- 324 crossings of visa-exempt H-2B workers processed by CBP.¹²

In FY 2016, a total of **85,202** aliens were issued H-2B visas or acquired H-2B status absent issuance of an H-2B visa. This includes:

- 84,626 H-2B visas issued by DOS;
- 280 requests for change of status to H-2B approved by USCIS, which are cases in which a visa is not required; and
- 296 crossings of visa-exempt H-2B workers processed by CBP.¹³

¹¹Reasons for a visa refusal typically include matters outside of the scope of USCIS petition adjudication, such as determinations of inadmissibility, findings of immigrant intent under section 214(b) of the INA, or findings that the petitioning employer or an agent, facilitator, recruiter, or similar employment service required the prospective H-2B worker to pay a prohibited fee at any time as a condition of employment.

¹²For FY 2017, all 324 crossings of visa-exempt H-2B workers came from Canada. See 8 C.F.R. 212.1(a) and (b) for a list of aliens who are considered visa-exempt. This figure may include multiple admissions by the same individuals. Although an individual may cross the border numerous times, he or she only counts against the H-2B cap on his or her first admission based on an approved petition.

¹³For FY 2016, all 296 crossings of visa-exempt H-2B workers came from Canada. See 8 C.F.R. 212.1(a) and (b) for a list of aliens who are considered visa-exempt. This figure may include multiple admissions by the same individuals. Although an individual may cross the border numerous times, he or she only counts against the H-2B cap on his or her first admission based on an approved petition.

Appendix – Guam DOL chart displaying occupational and compensation data for all H-2B applicants in FY 2017

O*Net Code	Job Title	No. of Positions Certified	Rate of Pay on Cert	Unit of Pay on Cert
29-1141.03	Cardiac Catheterization Registered Nurse	3	\$27.00	Hour
29-1141.03	Emergency Registered Nurse	5	\$27.00	Hour
29-1141.03	Hemodialysis Registered Nurse	3	\$27.00	Hour
29-1141.03	Intensive Care Unit Registered Nurse	5	\$27.00	Hour
29-1141.03	Intensive Maternal Unit Registered Nurse	5	\$27.00	Hour
29-1141.03	Labor & Delivery/Obstetrics-Gynecology (OB-GYN) Registered Nurse	6	\$27.00	Hour
29-1141.03	Medical Telemetry Unit Registered Nurse	5	\$27.00	Hour
29-1141.03	Neonatal Intensive Care Unit Registered Nurse	4	\$27.00	Hour
29-1141.03	Operating Room Registered Nurse	5	\$27.00	Hour
29-1141.03	Pediatric Intensive Care Unit Registered Nurse	3	\$27.00	Hour
29-1141.03	Pediatrics Registered Nurse	3	\$27.00	Hour
29-1141.03	Post-Anesthesia Care Unit Registered Nurse	5	\$27.00	Hour
35-2012	Camp Cook	3	\$10.54	Hour
35-2014	Specialty Cook	8	\$9.78	Hour
47-1011	Post Tensioning Iron Worker Foreman	1	\$22.83	Hour
47-2031	Carpenter	570	\$14.20	Hour
47-2051	Cement Mason	376	\$14.33	Hour
47-2073	Heavy Equipment Operator	38	\$15.40	Hour
47-2111	Electrician	117	\$18.83	Hour
47-2141	Painter	6	\$14.33	Hour
47-2152	Plumber	85	\$17.41	Hour
47-2152	Pipefitter	10	\$17.41	Hour
47-2171	Reinforcing Metal Worker	696	\$13.62	Hour
47-2211	Sheet Metal Worker	18	\$15.92	Hour
49-3042	Construction Equipment Mechanic	18	\$17.63	Hour
49-3042	Heavy Equipment Mechanic	1	\$17.63	Hour
49-9021	Air Conditioning & Refrigeration Technician	14	\$16.76	Hour
49-9021	Air Conditioning & Refrigeration Mechanic	12	\$16.76	Hour
49-9071	Maintenance Mechanic	1	\$13.64	Hour
51-3011	Baker	3	\$9.26	Hour
51-4121	Welder	21	\$17.92	Hour