



H-2B Nonagricultural Temporary Worker Visa and Status

Fiscal Year 2015 Annual Report to Congress
Part 2: October 1, 2014 – September 30, 2015

February 19, 2016



Homeland
Security

*U.S. Citizenship and
Immigration Services*



**Homeland
Security**

February 19, 2016

Foreword

On behalf of the Department of Homeland Security, I am pleased to present the second of two semiannual reports for Fiscal Year 2015 on “H-2B Nonagricultural Temporary Worker Visa and Status.”

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

The Honorable Charles Grassley
Chairman, Senate Committee on the Judiciary

The Honorable Patrick J. Leahy
Ranking Member, Senate Committee on the Judiciary

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

The Honorable John Conyers, Jr.
Ranking Member, House Committee on the Judiciary

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

Sincerely,

A handwritten signature in black ink, appearing to read "M. Tia Johnson".

M. Tia Johnson
Assistant Secretary for Legislative Affairs

Executive Summary

Department of Homeland Security (DHS) has compiled this report on H-2B nonagricultural temporary worker visa and status 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 Fiscal Year (FY) 2015. The data contained in this report is accurate as of October 2015.

Highlights

- The annual numerical limitation of 66,000 H-2B workers was reached for FY 2015.
- During the first half of FY 2015, a total of 40,809¹ workers were issued H-2B visas or otherwise acquired H-2B status.²
- During the second half of FY 2015, a total of 29,370³ workers were issued H-2B visas or otherwise acquired H-2B status.

¹ H-2B beneficiaries who are exempt from the H-2B cap are included in this number.

² This statistic represents a revision from the previous semiannual report to Congress. The previous report indicated that a total of 40,896 workers were issued H-2B visas or otherwise acquired H-2B status in the first half of FY 2015. The difference between the two numbers is attributed to updated CBP data. Additional information is located in Footnote 12.

³ H-2B beneficiaries who are exempt from the H-2B cap are included in this number.



H-2B Nonagricultural Temporary Worker Visa and Status

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I. Legislative Requirement

This report was prepared in accordance with section 416(d)(1) of the *American Competitiveness and Workforce Improvement Act of 1998*, Pub. L. No. 105-277, tit. IV, 112 Stat. 2681-655, as amended by section 406 of the REAL ID Act of 2005, Pub. L. No. 109-13, div. B, 119 Stat. 231, 320, which requires that:

Beginning not later than March 1, 2006, the Secretary of Homeland Security and the Secretary of State shall notify, on a semiannual basis, the Committees on the Judiciary of the House of Representatives and the Senate of the number of aliens who during the preceding 1-year period –

- (A) 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)); or
- (B) had such a visa or such status be revoked or otherwise terminated.

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 Immigration and Nationality Act (INA)*, as amended, § 101(a)(15)(H)(ii)(b), 8 U.S.C. § 1101(a)(15)(H)(ii)(b). U.S. employers may bring foreign workers to the United States who are nationals of countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, have designated as eligible. Factors taken into account in designating countries to include on the list include the country's cooperation with respect to issuance of travel documents for citizens, subjects, nationals, and residents of that country who are subject to a final order of removal. U.S. Citizenship and Immigration Services (USCIS) may, however, approve H-2B petitions for nationals of countries *not* on the list if such approval is determined to be in the interest of the United States.⁴

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;
- there are not sufficient U.S. workers available who are willing and qualified to do 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.

Generally, before filing a petition with USCIS for H-2B workers, the employer must obtain a single, valid temporary labor certification from the Department of Labor or, if the worker(s) will be employed in Guam, from the Governor of Guam. *See* 8 C.F.R. § 214.2(h)(6)(iii)(A) and (C).

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

⁴ *See* 8 CFR 214.2(h)(6)(i)(E).

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.⁵

Exemptions from the H-2B Cap

Generally, a worker seeking an extension of stay in H-2B classification will not be counted against the H-2B cap. *See* 8 C.F.R. 214.2(h)(8)(ii)(B). In addition, the following workers are exempt from the H-2B cap:

- fish roe processors, fish roe technicians, and supervisors of fish roe processing;⁶ 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.⁷

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 not subject to the cap.

H-2B visa issuances to those who are exempt from the H-2B cap are 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 U.S. Customs and Border Protection (CBP) at a port of entry after issuance of an H-2B nonimmigrant visa by the Department of State (DOS);
- admission as an H-2B worker by CBP at a port of entry without a visa, in the case of certain Canadian and Bermudian citizens, Bahamian nationals, and British subjects resident in certain islands;⁸ or
- change of status to H-2B granted by USCIS.⁹

⁵ *See* 8 CFR 214.2(h)(8)(ii)(B).

⁶ *See* Pub. L. No. 108-287, § 14006, 118 Stat. 951, 1014 (2004).

⁷ *See* 48 U.S.C. 1806(a)(2) as amended by sec. 10 of Pub. L. 113-235; 48 U.S.C. 1806(b).

⁸ *See* 8 CFR 212.1(a).

III. Data Report and Analysis

Section 3.1 – H-2B visas issued and status provided

First Half of FY 2015

During the first half of Fiscal Year (FY) 2015 (the period from October 1, 2014, through March 31, 2015), 40,809¹⁰ workers were issued H-2B visas or otherwise acquired H-2B status. This number includes:

- 40,474¹¹ H-2B visas that were issued by DOS;
- 178 workers that USCIS approved for a change of status to H-2B classification; and
- 157¹² crossings of visa-exempt H-2B workers¹³ who were processed by CBP.

Second Half of FY 2015

During the second half of FY 2015 (the period from April 1, 2015, through September 30, 2015), 29,370 workers were issued H-2B visas or otherwise acquired H-2B status. This includes:

- 29,209¹⁴ H-2B visas issued by DOS;
- 50 workers that USCIS approved for a change of status to H-2B classification; and
- 111 crossings of visa-exempt H-2B workers¹⁵ that were processed by CBP.

⁹ Certain workers who have already been granted H-2B status are also eligible for an extension of stay. Note that an extension of stay in H-2B classification will not be re-counted against the annual or semiannual cap.

¹⁰ This statistic represents a revision from the previous semiannual report to Congress. The previous report indicated that a total of 40,896 workers were issued H-2B visas or otherwise acquired H-2B status in the first half of FY 2015. The difference between the two numbers is attributed to updated CBP data. Additional information is located in Footnote 12.

¹¹ H-2B beneficiaries who are exempt from the H-2B cap are included in this number.

¹² This statistic represents a revision from the previous semiannual report to Congress. The previous report indicated that, in the first half of FY 2015, CBP processed 244 crossings of visa-exempt H2B workers, all of whom were Canadian.

¹³ For the first half of FY 2015, all 157 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.

¹⁴ H-2B beneficiaries who are exempt from the H-2B cap are included in this number.

¹⁵ For the second half of FY 2015, all 111 crossings of visa-exempt H-2B workers came from Canada. Please see Footnote 13 for additional information.

Table 1: H-2B Workers Approved in FY 2015

	1st Half of FY 2015	2 nd Half of FY 2015	Total
Total H-2B Workers Approved	40,809	29,370	70,179
Visas Approved by DOS	40,474	29,209	69,683
Changes of Status Approved by USCIS	178	50	228
Visa-Exempt Admissions by CBP	157	111	268

Section 3.2 – H-2B visas or status revoked or otherwise terminated

First Half of FY 2015

During the first half of FY 2015 (October 1, 2014 through March 31, 2015), USCIS revoked or otherwise terminated 9 approved petitions, which would have authorized the admission of 89 H-2B workers. During this same period, CBP canceled the H-2B visas of 80 aliens who were found inadmissible at ports of entry, and U.S. Immigration and Customs Enforcement (ICE) removed 7¹⁶ H-2B aliens who were found removable after admission to the United States.

DOS reported that it initially refused a total of 4,732 H-2B visa applications in the first half of FY 2015. However, 1,496 of the persons whose applications for visas were refused subsequently overcame the reason for visa denial and ultimately were granted H-2B visas. As a result, a net total of 3,236 aliens were refused H-2B visas by DOS in the first half of FY 2015.¹⁷

The visa refusals cited in this section are not included in the figure for total H-2B visas issued reported in Section 3.1.

Second Half of FY 2015

During the second half of FY 2015, USCIS revoked or otherwise terminated 6 approved petitions, which would have authorized the admission of 210 H-2B workers. During that period, CBP canceled the H-2B visas of 49 aliens who were found inadmissible at ports

¹⁶ This statistic represents a revision from the previous semiannual report to Congress. The previous report indicated that, in the first half of FY 2015, ICE removed 6 H-2B aliens who were found removable after admission to the United States. (Note: Beginning in FY 2009, ICE began to “lock” removal statistics on October 5th at the end of each fiscal year and counted only the aliens whose removal or return was already confirmed. Aliens removed or returned in that fiscal year but not confirmed until after October 5th were previously excluded from the locked data and thus from ICE statistics.)

¹⁷ Reasons for visa refusal may include matters outside of the scope of USCIS adjudication. The USCIS adjudication process focuses on, among other things, the validity of the petitioner-beneficiary relationship, the nature of the job being offered, whether prohibited fees were assessed to the prospective H-2B worker, and the petitioner’s temporary need. Issues involving admissibility of alien beneficiaries and possible waivers of inadmissibility are addressed on an individual basis as part of the consular visa-issuance process or the port of entry inspection. Additionally, in instances when DOS believes there is an error of law or derogatory information affecting the approvability of an underlying petition, DOS may return the approved petition to USCIS for additional review and possible revocation. In the event USCIS revokes the petition, DOS will refuse to issue the H-2B visa.

of entry and ICE removed 28 H-2B aliens who were found removable after admission to the United States.

DOS reported that it refused a total of 4,456 H-2B visa applications. However, since 1,570 of these visa refusals subsequently overcame the reason for visa denial and the affected aliens were granted H-2B visas, DOS refused the visa applications of a net total of 2,886 H-2B workers in the second half of FY 2015.

The visa refusals cited in this section are not included in the figure for total H-2B visas issued reported in Section 3.1.

Table 2: H-2B Revocations and Terminations

Type of Revocation or Termination	1st Half of FY 2015	2 nd Half of FY 2015	Total
DOS (visa refusals)	3,236	2,886	6,122
USCIS (beneficiaries of revoked petitions)	89	210	299
CBP (cancelled visas)	80	49	129
ICE (removals)	7	28	35