



# H-2B Temporary Nonagricultural Worker Visa Petitions Semiannual Report

Fiscal Year 2023

Report to Congress

Part 2: October 1, 2022 – September 30, 2023

*February 20, 2024*



Homeland  
Security

*U.S. Citizenship and  
Immigration Services*

February 20, 2024



## Foreword

On behalf of the Department of Homeland Security, I am pleased to present the second of two semiannual reports for fiscal year (FY) 2023 called “H-2B Temporary Nonagricultural Worker Visa Semiannual Report.”

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

The Honorable Richard Durbin  
Chairman, Senate Committee on the Judiciary

The Honorable Lindsey Graham  
Ranking Member, Senate Committee on the Judiciary

The Honorable Jim Jordan  
Chairman, House Committee on the Judiciary

The Honorable Jerrold Nadler  
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 black ink, appearing to read 'Z. Buetow', with a stylized flourish at the end.

Zephranie Buetow  
Assistant Secretary for Legislative Affairs

## Executive Summary

This report presents the number of H-2B visas approved from October 1, 2022 to September 30, 2023. It also shows the number of H-2B visas refused, revoked, or terminated during this same time.

To create this report, the Department of Homeland Security (DHS) compiled data provided by the U.S. Department of State (DOS), U.S. 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).

The data is presented as: 1) first half of Fiscal Year (FY) 2023, and 2) second half of FY 2023.

### Highlights

- The annual numerical limitation of 66,000 H-2B visas (the “regular H-2B cap”) was reached in FY 2023.<sup>1</sup>
- USCIS received enough petitions to reach the semiannual numerical limitation of 33,000 H-2B visas for the first half of FY 2023 on September 12, 2022. A total of 65,852 workers were issued H-2B visas or otherwise acquired H-2B nonimmigrant status during the first half of FY 2023.<sup>2</sup>
- USCIS received enough petitions to reach the semiannual numerical limitation of 33,000 H-2B visas for the second half of FY 2023 on February 27, 2023. A total of 68,946 workers were issued H-2B visas or otherwise acquired H-2B nonimmigrant status during the second half of FY 2023.<sup>3</sup>

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<sup>1</sup> Immigration and Nationality Act (INA) § 214(g)(1)(B), 8 U.S.C. § 1184(g)(1)(B), requires that the total number of non-citizens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year “may not exceed” 66,000.

<sup>2</sup> H-2B workers who are exempt from the regular H-2B cap and those workers who were approved under the FY 2023 Supplemental Cap are included in this number. This number may also include H-2B workers who were approved by USCIS with a start date in the preceding half fiscal year but were not issued a visa by DOS until the relevant period; and H-2B workers who were approved by USCIS with a start date in the next half fiscal year but were issued a visa by DOS up to 10 days before such start date and during the relevant period.

<sup>3</sup> H-2B workers who are exempt from the regular H-2B cap and those workers who were approved under the FY 2023 Supplemental Cap are included in this number. This number may also include H-2B workers who were approved by USCIS with

- In accordance with Section 101(6) of Division A of Public Law 117-180, Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023, which extended the authorization previously provided in Section 204 of Division O of the Consolidated Appropriations Act, 2022, Public Law 117-103, on December 15, 2022, DHS and DOL published a temporary final rule (TFR) increasing the numerical limit (or cap) on H-2B nonimmigrant visas by up to 64,716 additional visas for the entirety of FY 2023. These supplemental visas were available only to U.S. businesses that attested they suffered irreparable harm or would suffer impending irreparable harm without the ability to employ all the H-2B workers requested in their petition.
- The FY 2023 TFR represented the first time DHS and DOL issued a single rule making available H-2B supplemental visas for several allocations throughout the entire fiscal year, including an allocation for the late second half. In contrast to previously issued H-2B supplemental visa rules, this rule authorized the maximum number of H-2B supplemental visas permitted by statute.
- For employers seeking nationals of El Salvador, Guatemala, Honduras, and Haiti, 20,000 visas were reserved for the entirety of FY 2023.
- For the first half of FY 2023 (Oct. 1, 2022 to Mar. 31, 2023), 18,216 visas were reserved for returning workers (those workers who were issued H-2B visas or held H-2B status in FY 2020, FY 2021, or FY 2022) regardless of country of nationality.
- For the early second half of FY 2023 (Apr. 1, 2023 to May 14, 2023), 16,500 visas were reserved for returning workers regardless of country of nationality.
- For the late second half of FY 2023 (May 15, 2023 to Sept. 30, 2023), 10,000 visas were reserved for returning workers regardless of country of nationality.

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a start date in the preceding half fiscal year but were not issued a visa by DOS until the relevant period; and H-2B workers who were approved by USCIS with a start date in the next half fiscal year but were issued a visa by DOS up to 10 days before such start date and during the relevant period.

# H-2B Temporary Nonagricultural Worker Semiannual Report

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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 one-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 revoked or otherwise terminated.

## II. Background

### *H-2B Program Purpose*

The H-2B program allows U.S. employers to bring noncitizen 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).

To petition successfully for this nonimmigrant classification, employers 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;<sup>4</sup>
- there are not sufficient U.S. workers who are able, willing, qualified, and available 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.

*See* Title 8 Code of Federal Regulations (C.F.R.) § 214.2(h)(1)(ii)(D), (h)(6)(ii)(B) and (iv)(A). Generally, before filing a petition with USCIS for H-2B workers, employers must obtain a valid temporary labor certification (TLC) from the DOL or, if the worker(s) will be employed in Guam, from the Governor of Guam. *See* Title 8 § 214.2(h)(6)(iii)(A) and (C).

### *H-2B Visa Cap*

The *Immigration Act of 1990* limits the number of workers who may be issued an H-2B visa or otherwise provided H-2B nonimmigrant status in a fiscal year (the “regular 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 semiannually, 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).

If USCIS determines that it has received a sufficient number of petitions to meet, but not exceed, the statutory caps, USCIS will announce that it will no longer accept H-2B petitions. In making this determination, USCIS takes into account historical data related to approvals, denials, revocations, and other relevant factors.<sup>5</sup>

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<sup>5</sup> The National Defense Authorization Act for Fiscal Year 2018 (FY 2018 NDAA) created a time-limited exemption from the temporary need requirement for certain H-2B workers performing services or labor related to the military realignment on Guam and in the Commonwealth of the Northern Mariana Islands. *See* Section 1049 of the FY 2018 NDAA, [Pub. L. 115-91 \(PDF\)](#), 131 Stat. 1283, 1558 (December 12, 2017), as amended by Section 1045 of the FY 2019 NDAA, [Pub. L. 115-232 \(PDF\)](#), 132 Stat. 1636, 1959 (August 13, 2018), Section 9502 of the FY 2021 NDAA, [Pub. L. 116-283 \(PDF\)](#) (January 1, 2021), and Section 5901 of the FY 2023 NDAA, [Pub. L. 117-263 \(PDF\)](#) (December 23, 2022).

<sup>5</sup> *See* 8 C.F.R. 214.2(h)(8)(vii).

### ***Supplemental Visas for FY 2023***

In accordance with Section 101(6) of Division A of Public Law 117-180, Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023, which extended the authorization previously provided in Section 204 of Division O of the Consolidated Appropriations Act, 2022, Public Law 117-103, on Dec. 15, 2022, DHS and DOL jointly published a TFR increasing the cap on H-2B nonimmigrant visas by up to 64,716 additional visas for FY 2023.<sup>6</sup>

In contrast to previously issued H-2B supplemental visa rules, this rule authorized the maximum number of H-2B supplemental visas and made them available for all of FY 2023. The 64,716 supplemental visas were distributed in several allocations to assist U.S. businesses that need workers to begin work on different start dates.

- 18,216 H-2B visas were made available for returning workers (workers who received an H-2B visa or were otherwise granted H-2B status in FY 2020, FY 2021, or FY 2022) with start dates from October 1, 2022, to March 31, 2023;
- 16,500 H-2B visas were made available for returning workers with start dates from April 1, 2023, to May 14, 2023;
- 10,000 H-2B visas were made available for returning workers with start dates from May 15, 2023, to September 30, 2023; and,
- 20,000 visas were set aside for nationals of El Salvador, Guatemala, Honduras, and Haiti, who were exempt from the returning worker requirement, and were available for the entirety of FY 2023.<sup>7</sup>

These supplemental visas were available only to U.S. businesses that attested they suffered irreparable harm or would suffer impending irreparable harm without the ability to employ all the H-2B workers requested in their petition. The TFR also contained provisions that required U.S. businesses to conduct additional recruitment of U.S. workers dependent on the filing date for the supplemental visa(s) and to comply with document retention requirements to demonstrate irreparable harm and to verify that additional recruitment was conducted upon an audit.

In total, 60,163 additional H-2B visas were issued under the supplemental cap in FY 2023. This includes 16,770 H-2B visas for nationals of El Salvador, Guatemala, Honduras, or Haiti, and 43,393 H-2B visas for returning workers.

### ***Portability Rules***

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<sup>6</sup> Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2023 for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, [87 FR 76816](#) (December 15, 2022).

<sup>7</sup> The number of approved workers exceeded the number of additional visas authorized for FY 2023 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States.



A portability provision in the FY 2023 TFR allows H-2B workers to begin work immediately with a new H-2B employer through the end of January 24, 2024.<sup>8</sup> Under this provision, all H-2B petitioners with a valid TLC are permitted to start employing certain noncitizen workers currently in the United States and in valid H-2B status immediately after USCIS received the H-2B petition filed by a new petitioning employer, but no earlier than the start date of employment listed on the H-2B petition.

These provisions are similar to the portability provision implemented in prior H-2B TFRs and have generally been available to petitioners and H-2B nonimmigrant workers initiating employment since May 25, 2021.

### ***Exemptions from the H-2B Statutory Cap***

Generally, a worker in the United States 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 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;<sup>9</sup> and,
- Certain workers performing labor or services in the Commonwealth of the Northern Mariana Islands or Guam<sup>10</sup> from November 28, 2009, to December 31, 2029.

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, during the relevant cap period, accept petitions for H-2B workers who are cap-exempt. H-2B petition approvals on behalf of workers who are exempt from the H-2B cap are generally included in the data provided in this report.

### ***Obtaining H-2B Status***

Approval of an H-2B petition does not ensure that a noncitizen worker covered by the petition will be granted H-2B status. To receive H-2B status, a worker must have an approved petition and be eligible through the following means:

- admission as an H-2B worker by CBP at a port of entry after issuance of an H-2B nonimmigrant visa by DOS;

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<sup>8</sup> The portability provided under the FY 2023 TFR provision has since been extended to January 24, 2025. *See Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2024 for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers*, 88 FR 80394 (Nov. 17, 2023).

<sup>9</sup> *See* Pub. L. No. 108-287, § 14006, 118 Stat. 951, 1014 (2004).

<sup>10</sup> *See* 48 U.S.C. 1806(a)(2) as amended by sec. 3 of Pub. L. 115-218; 48 U.S.C. 1806(b).

- admission as an H-2B worker by CBP at a port of entry without a visa, in the case of certain Canadians, Bermudan citizens, Bahamian nationals, and British subjects residents in certain islands;<sup>11</sup> or,
- a change of status to H-2B or extension of H-2B status granted by USCIS.<sup>12</sup>

### III. Data Report and Analysis

#### *Section 3.1 – H-2B Status Acquired*

##### *First Half of FY 2023*

During the first half of FY 2023, 65,852 workers were issued H-2B visas or otherwise acquired H-2B status.<sup>13</sup> This number includes:

- 65,062 H-2B visas issued by DOS.<sup>14</sup>
- 212 workers that USCIS approved for a change of status to H-2B classification; and,
- 578 crossings of visa-exempt H-2B workers who were processed by CBP.<sup>15</sup>

##### *Second Half of FY 2023*

During the second half of FY 2023, 68,946 workers were issued H-2B visas or otherwise acquired H-2B status.<sup>16</sup> This number includes:

- 68,276 H-2B visas issued by DOS;<sup>17</sup>
- 195 workers that USCIS approved for a change of status to H-2B classification; and,

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<sup>11</sup> See 8 C.F.R. 212.1(a) for a list of noncitizens who are considered visa-exempt.

<sup>12</sup> 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 the H-2B classification will not be re-counted against the annual or semiannual cap.

<sup>13</sup> The first half of FY 2023 began on October 1, 2022, and ended on March 31, 2023.

<sup>14</sup> H-2B workers who are exempt from the regular H-2B cap and those workers who were approved under the FY 2023 Supplemental Cap are included in this number. This number may also include H-2B workers who were approved by USCIS with a start date in the preceding half fiscal year but were not issued a visa by DOS until the relevant period; and H-2B workers who were approved by USCIS with a start date in the next half fiscal year but were issued a visa by DOS up to 10 days before such start date and during the relevant period.

<sup>15</sup> For the first half of FY 2023, all 578 crossings of visa-exempt H-2B workers came from Canada. See 8 C.F.R. § 212.1(a) for a list of noncitizens who are considered visa-exempt. This figure may include multiple admissions by the same workers.

<sup>16</sup> The second half of FY 2023 began on April 1, 2023 and ended on September 30, 2023.

<sup>17</sup> H-2B workers who are exempt from the regular H-2B cap and those workers who were approved under the FY 2023 Supplemental Cap are included in this number. This number may also include H-2B workers who were approved by USCIS with a start date in the preceding half fiscal year but were not issued a visa by DOS until the relevant period; and H-2B workers who were approved by USCIS with a start date in the next half fiscal year but were issued a visa by DOS up to 10 days before such start date and during the relevant period.

- 475 crossings of visa-exempt H-2B workers who were processed by CBP.<sup>18</sup>

**Table 1: H-2B Visas Approvals, (October 1, 2022 - September 30, 2023)**

	<b>First Half of FY 2023</b>	<b>Second Half of FY 2023</b>	<b>Total</b>
Visas Issued by DOS	65,062	68,276	133,338
Changes of Status Approved by USCIS	212	195	407
Visa-Exempt Admissions by CBP	578	475	1,053
<b>Total<sup>19</sup></b>	<b>65,852</b>	<b>68,946</b>	<b>134,798</b>

## ***Section 3.2 – H-2B Revocations, Terminations, Cancellations, Refusals, and Removals***

### ***First Half of FY 2023***

During the first half of FY 2023, USCIS revoked or otherwise terminated 13 approved petitions, which had authorized the classification of 254 beneficiaries as H-2B workers.<sup>20</sup> During that period, CBP canceled the H-2B visas of 26 individuals who were found inadmissible at ports of entry, and ICE removed 49 H-2B workers who were found removable after admission to the United States.<sup>21</sup>

DOS reported that it refused a net total of 3,193 H-2B visa applications in the first half of FY 2023.

### ***Second Half of FY 2023***

During the second half of FY 2023, USCIS revoked or otherwise terminated 20 approved petitions, which had authorized the classification of 318 beneficiaries as H-2B workers.<sup>22</sup> During that period, CBP canceled the H-2B visas of 39 individuals who were found inadmissible at ports of entry, and ICE removed 46 H-2B workers who were found removable after admission to the United States.<sup>23</sup>

<sup>18</sup> For the second half of FY 2023, all 475 crossings of visa-exempt H-2B workers came from Canada. See 8 C.F.R. § 212.1(a) for a list of noncitizens who are considered visa-exempt. This figure may include multiple admissions by the same workers.

<sup>19</sup> H-2B workers who are exempt from the regular H-2B cap and those workers who were approved under the FY 2023 Supplemental Caps are included in these figures. These figures may also include H-2B workers who were approved by USCIS with a start date in the preceding half fiscal year but were not issued a visa by DOS until the relevant period; and H-2B workers who were approved by USCIS with a start date in the next half fiscal year but were issued a visa by DOS up to 10 days before such start date and during the relevant period.

<sup>20</sup> This figure may include revocations or terminations after the approved validity of the H-2B petition and after the beneficiaries' authorized admission had already expired.

<sup>21</sup> ICE defines "removed H-2B workers" as those individuals removed with a most recent admission class code of "H2" or "H-2B." As such, this figure may include individuals admitted in the H-2A classification as temporary or seasonal agricultural workers who could also have a most recent admission class code of "H2." ICE noted that admission class code is not a mandatory field, so this figure could be incomplete.

<sup>22</sup> This figure may include revocations or terminations after the approved validity of the H-2B petition and after the beneficiaries' authorized admission had already expired.

<sup>23</sup> ICE defines removed H-2B workers as those individuals removed with a most recent admission class code of "H2" or "H-2B." As such, this figure may include individuals admitted in the H-2A classification as temporary or seasonal agricultural workers

DOS reported that it refused a net total of 5,949 H-2B visa applications in the second half of FY 2023.

**Table 2:** H-2B Visas Refused, Revoked, and Terminated (October 1, 2022 - September 30, 2023)

	<b>First Half FY 2023</b>	<b>Second Half FY 2023</b>	<b>Total</b>
DOS (visa refusals)	3,193	5,949	9,142
USCIS (beneficiaries of revoked or terminated petitions)	254	318	572
CBP (canceled visas)	26	39	65
ICE (removals)	49	46	95
Totals	3,522	6,352	9,874

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who could also have a most recent admission class code of "H2." ICE also indicates that admission class code is not a mandatory field, so this figure could be incomplete.