



H-2B Nonagricultural Temporary Worker Visa and Status

Fiscal Year 2017 Semiannual Report to Congress
Part 2: October 1, 2016 – September 30, 2017

Insert Date



Homeland
Security

*U.S. Citizenship and
Immigration Services*

[Date of Transmittal, Centered]

Foreword

On behalf of the Department of Homeland Security, I am pleased to present the second of two semiannual reports for Fiscal Year 2017 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 E. Grassley
Chairman, Senate Committee on the Judiciary

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

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

The Honorable Jerry Nadler
Ranking Member, House Committee on the Judiciary

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

Sincerely,

Benjamin L. Cassidy
Assistant Secretary for Legislative Affairs

Executive Summary

The Department of Homeland Security (DHS) has compiled this report on H-2B nonagricultural temporary workers from information provided by the 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) 2017.

Highlights

- The annual numerical limitation of 66,000 H-2B workers (the H-2B “cap”) was reached in FY 2017.
- In accordance with Section 543 of the Consolidated Appropriations Act, 2017 (Public Law 115-31), an additional 15,000 H-2B visas were made available in FY 2017 to American businesses that attested that they would likely suffer irreparable harm without the ability to employ all of their requested H-2B workers.
- During the first half of FY 2017, a total of 51,356 workers¹ were issued H-2B visas or otherwise acquired H-2B status.
- During the second half of FY 2017, a total of 32,681 workers² 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. This number may also include H-2B workers that were issued a visa by DOS but approved by USCIS with a start date in the preceding half of a fiscal year or up to 10 days after the relevant period.

² H-2B beneficiaries who are exempt from the H-2B cap are included in this number. This number may also include H-2B workers that were issued a visa by DOS but approved by USCIS with a start date in the preceding half of a fiscal year or up to ten days after the relevant period.



H-2B Nonagricultural Temporary Worker Visa and Status

Table of Contents

| | | |
|------|--|---|
| I. | Legislative Requirement | 1 |
| II. | Background | 2 |
| III. | Data Report and Analysis | 4 |
| | Section 3.1 – H-2B visas issued and status provided | 4 |
| | Section 3.2 – H-2B visas or status revoked or otherwise terminated | 5 |

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. One factor taken into account in designating countries as eligible is 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.³

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 peakload need, or an intermittent need;
- there are not sufficient U.S. workers who are 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.

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 (DOL) 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 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

³ *See* 8 CFR 214.2(h)(6)(i)(E).

⁴ *See* 8 CFR 214.2(h)(8)(ii)(B).

In accordance with Section 543 of the Consolidated Appropriations Act, 2017 (Public Law 115-31), on July 19, 2017, the Department of Homeland Security and DOL published a final rule 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. It will not affect the H-2B program in future fiscal years.

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 may be 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 Canadians and Bermudan citizens, Bahamian nationals, and residents of certain Caribbean islands;⁷ or
- change of status to H-2B or extension of H-2B status granted by USCIS.⁸

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).

⁷ *See* 8 CFR 212.1(a) for a list of aliens who are considered visa-exempt.

⁸ 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.

III. Data Report and Analysis

Section 3.1 – H-2B Visas Issued and Status Provided

First Half of FY 2017

During the first half of FY 2017,⁹ 51,356 workers were issued H-2B visas or otherwise acquired H-2B status. This number includes:

- 51,122 H-2B visas¹⁰ issued by DOS;
- 75 workers that USCIS approved for a change of status to H-2B classification; and
- 159 crossings of visa-exempt H-2B workers¹¹ who were processed by CBP.

Second Half of FY 2017

During the second half of FY 2017,¹² 32,681 workers were issued H-2B visas or otherwise acquired H-2B status. This includes:

- 32,478 H-2B visas¹³ issued by DOS;
- 38 workers that USCIS approved for a change of status to H-2B classification; and
- 165 crossings of visa-exempt H-2B workers¹⁴ that were processed by CBP.

Table 1: H-2B Workers Approved in FY 2017

| | 1st Half of FY 2017 | 2nd Half of FY 2017 | Total |
|---|--------------------------------|---|---------------|
| Total H-2B Workers Approved¹⁵ | 51,356 | 32,681 | 84,037 |
| Visas Approved by DOS | 51,122 | 32,478 | 83,600 |
| Changes of Status Approved by USCIS | 75 | 38 | 113 |
| Visa-Exempt Admissions by CBP | 159 | 165 | 324 |

⁹ The first half of FY 2017 began on October 1, 2016 and ended on March 31, 2017.

¹⁰ H-2B beneficiaries who are exempt from the H-2B cap are included in this number. This number may also include H-2B workers that were issued a visa by DOS but approved by USCIS with a start date in the preceding half of a fiscal year or up to ten days after the relevant period.

¹¹ For the first half of FY 2017, all 159 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.

¹² The second half of FY 2017 began on April 1, 2017 and ended on September 30, 2017.

¹³ H-2B beneficiaries who are exempt from the H-2B cap are included in this number. This number may also include H-2B workers that were issued a visa by DOS but approved by USCIS with a start date in the preceding half of a fiscal year or up to 10 days after the relevant period.

¹⁴ For the second half of FY 2017, all 165 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.

¹⁵ H-2B beneficiaries who are exempt from the H-2B cap are included in these figures. These figures may also include H-2B workers that were issued a visa by DOS but approved by USCIS with a start date in the preceding half of a fiscal year or up to 10 days after the relevant period.

Section 3.2 – H-2B Visas or Status Revoked or Otherwise Terminated

First Half of FY 2017

During the first half of FY 2017, USCIS revoked or otherwise terminated eight approved petitions,¹⁶ which would have authorized the admission of 72 H-2B workers.¹⁷ During that period, CBP canceled the H-2B visas of 31 aliens who were found inadmissible at ports of entry, and ICE removed 51 H-2B aliens¹⁸ who were found removable after admission to the United States.

DOS reported that it refused a total of 4,724 H-2B visa applications. However, 1,367 of these visa applicants subsequently overcame the reason for visa denial and were granted H-2B visas. DOS refused a net total of 3,357 visa applications of H-2B workers in the first half of FY 2017.

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

Second Half of FY 2017

During the second half of FY 2017, USCIS revoked or otherwise terminated seven approved petitions, which would have authorized the admission of 128 H-2B workers. During that period, CBP canceled the H-2B visas of 23 aliens who were found inadmissible at ports of entry, and ICE removed 78 H-2B aliens who were found removable after admission to the United States.

DOS reported that it refused a total of 5,191 H-2B visa applications. However, 2,858 of these visa applicants subsequently overcame the reason for visa denial and were granted H-2B visas. DOS refused a net total of 2,333 visa applications of H-2B workers in the second half of FY 2017.

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

¹⁶ This statistic represents a revision from the previous semiannual report to Congress. The previous report indicated that a total of 10 approved petitions were revoked or otherwise terminated in the first half of FY 2017. The difference between the two numbers is attributed to updated USCIS data.

¹⁷ This statistic represents a revision from the previous semiannual report to Congress. The previous report indicated that a total of 172 approved H-2B workers were the beneficiaries of revoked or otherwise terminated petitions in the second half of FY 2017. The difference between the two numbers is attributed to updated USCIS data.

¹⁸ This statistic represents a revision from the previous semiannual report to Congress. The previous report indicated that, in the first half of FY 2017, ICE removed 46 H-2B aliens who were found removable after admission to the United States. (Note: Starting in FY 2009, ICE began to “lock” removal statistics 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 the end of that fiscal year were excluded from the locked data and thus from ICE statistics.)

Table 2: H-2B Revocations and Terminations

| Type of Revocation or Termination | 1st Half of FY 2017 | 2nd Half of FY 2017 | Total |
|--|--------------------------------|---|--------------|
| DOS (visa refusals) | 3,357 | 2,333 | 5,690 |
| USCIS (beneficiaries of revoked petitions) | 72 | 128 | 200 |
| CBP (cancelled visas) | 31 | 23 | 54 |
| ICE (removals) | 51 | 78 | 129 |