Introduction

- This presentation is given to provide an overview of the H-2A and H-2B Nonimmigrant Worker Classifications.
Topics of Discussion

- H-2A & H-2B Nonimmigrant Classifications
- H-2B Cap History
- Top Industries Utilizing H-2B Workers
- Program Process
- Petition Fees
- Extensions of Stay
- 2008 Final Rules
- Eligible Countries List
- Requirements for Beneficiaries from Non-List Countries
- Employment-Related Notification to USCIS
H-2A Temporary Agricultural Nonimmigrant 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 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 will, except in extra-ordinary circumstances, last no longer than one year.
H-2B Temporary Non-Agricultural Nonimmigrant Classification

Allows U.S. employers to bring foreign nationals to the United States to fill temporary non-agricultural jobs for which U.S. workers are not available.

• To qualify as *temporary*, the petitioner's need for the foreign worker’s services or labor shall be a:
  – Seasonal need for ≤ 1 year,
  – Peakload need for ≤ 1 year,
  – An intermittent need for ≤ 1 year, or
  – One-time occurrence for ≤ 3 years.
Top Industries Utilizing H-2B Workers

- Resort and Hospitality Services
- Retail Sales
- Landscaping
- Food Service and Processing, and
- Construction
H-2B Numerical Limitation
(aka “H-2B cap”)

66,000 H-2B workers per year
Allocated semi-annually:

- 33,000 for 1st half of Fiscal Year
  (Employment starting from 10/1 – 3/31)

- 33,000 for 2nd half of Fiscal Year
  (Employment starting from 4/1 – 9/30)

Current exceptions to the H-2B Cap:
1. Fish Roe Processors
2. Workers employed in the Commonwealth of the Northern Mariana Islands (CNMI) and/or Guam
## H-2B Cap History

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Final Receipt Date</th>
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<tbody>
<tr>
<td></td>
<td><strong>1st Half</strong></td>
<td><strong>2nd Half</strong></td>
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<tr>
<td>2006</td>
<td>Dec 15, 2005</td>
<td>April 4, 2006</td>
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<tr>
<td>2009</td>
<td>July 29, 2008</td>
<td>Jan. 7, 2009*</td>
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<tr>
<td>2010</td>
<td>Cap not reached</td>
<td>Cap not yet reached</td>
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* Due to unexpectedly low visa issuance rates reported by the Department of State in July 2009, USCIS resumed accepting H-2B petitions for remainder of FY 2009 on August 6, 2009.
H-2A and H-2B Program Process

1. Employer files a temporary labor certification (TLC) application with the U.S. Department of Labor (or Governor of Guam if H-2B worker is employed in Guam)

2. After receiving an approved TLC, Employer files an I-129 petition with USCIS (multiple workers may be included on a single petition).

3. If foreign worker is outside the U.S. and requires a visa, worker applies for an H-2B visa with Department of State at the consulate.
Petition Fees

H-2A required fees:
• $320 base I-129 petition fee

Due to the nature of agricultural work, USCIS expedites the processing of H-2A petitions.

H-2B required fees:
• $320 base I-129 petition fee
• $150 fraud detection and prevention fee

Premium Processing Service is available for H-2B petitions for an additional fee.
Extensions of Stay

- H-2A and H-2B status may be granted for the maximum period of time authorized on the labor certification (usually 1 year or less)

- A worker may extend status in H-2A or H-2B classification

- For H-2B workers, employment with the same employer or a change of employer is not counted again against the H-2B Cap

- Each extension may be granted a max period of time authorized on the labor certification submitted with the petition requesting an extension.

Limitation of stay in H-2A or H-2B status = 3 years.

Once 3 years have been reached the worker must leave the U.S. for at least 90 days before he or she is again eligible for H-2A or H-2B classification
2008 Final Rules

In December 2009, USCIS published final rules for both the H-2A and H-2B classifications that were effective January 2009.

Highlights of changes in the H-2A and H-2B final rules:
- Allow both H-2A and H-2B petitions to be filed for unnamed workers
- Reduced period of time for aliens to re-enter the U.S. from 6 to 3 months
- Requires an approved temporary labor certification for both H-2A and H-2B classifications.
- For H-2B petitions, the starting date on the I-129 petition must be the same as the starting date on the temporary labor certification.
- Prohibits employers from charging H-2A and H-2B workers job placement fees
- Requires “Employment-Related Notification” to USCIS
DHS publishes a list of countries whose nationals are eligible to participate in the H-2A and H-2B program regularly. Currently, this list includes the following countries:

- Argentina
- Australia
- Belize
- Brazil
- Bulgaria
- Canada
- Chile
- Costa Rica
- Croatia
- Dominican Rep.
- Ecuador
- El Salvador
- Ethiopia
- Guatemala
- Honduras
- Indonesia
- Ireland
- Israel
- Jamaica
- Japan
- Lithuania
- Mexico
- Moldova
- The Netherlands
- New Zealand
- Nicaragua
- Norway
- Peru
- The Philippines
- Poland
- Romania
- Serbia
- Slovakia
- South Africa
- South Korea
- Turkey
- Ukraine
- United Kingdom
- Uruguay
Additional Requirements for Beneficiaries from “Non-List” Countries

All beneficiaries from non-list countries must be identified:
- Full name;
- Date of birth;
- Country of birth; and
- Country of citizenship.

Additionally, the petitioner must submit evidence to establish that it is in the U.S. Interest to grant the alien H-2A or H-2B status. Determination of such a U.S. interest will take into account factors, including but not limited to:

(i) Evidence from the petitioner demonstrating that a worker with the required skills is not available from among foreign workers from a country currently on the list;

(ii) Evidence that the beneficiary has been admitted to the United States previously in H-2A or H-2B status;

(iii) The potential for abuse, fraud, or other harm to the integrity of the H-2B visa program through the potential admission of a beneficiary from a country not currently on the list; and

(iv) Such other factors as may serve the U.S. interest.
Employment-Related Notification to USCIS

Petitioners must notify USCIS within 2 workdays if an H-2A or H-2B worker is a:

- **No show**: An alien who fails to report to work within 5 work days of the employment start date on the H-2A or H-2B petition or within 5 work days of the start date established by the petitioner, whichever is later;
- **Absconder**: A worker who fails to report for work for a period of 5 consecutive workdays without the consent of the employer;
- **Termination**: A worker who is terminated prior to the completion of labor or services for which he/she was hired; or
- **Early Completion**: A worker who completes the labor or services for which he/she was hired more than 30 days earlier than the date specified in the H-2A or H-2B petition.
Notification should be made to the USCIS Service Center that approved the petition. Email notification is *strongly* recommended.

### H-2A Notification

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<tr>
<th>California Service Center</th>
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<tbody>
<tr>
<td><em>By email:</em> <a href="mailto:CSC.H2AFee@dhs.gov">CSC.H2AFee@dhs.gov</a></td>
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</table>
| *By mail:* California Service Center  
  Attn: Div X/BCU ACD,  
  P.O. Box 10695,  
  Laguna Niguel, CA 92607–1095 |

### H-2B Notification

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<td><em>By email:</em> <a href="mailto:VSC.H2BABS@dhs.gov">VSC.H2BABS@dhs.gov</a></td>
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</tbody>
</table>
| *By mail:* California Service Center  
  Attn: Div X/BCU ACD,  
  P.O. Box 30050,  
  Laguna Niguel, CA 92607–3004. | *By mail:* Vermont Service Center,  
  Attn: BCU ACD,  
  63 Lower Welden St.,  
  St. Albans, VT 05479. |
QUESTIONS?