



H-2B Nonagricultural Temporary Worker Visa and Status

Fiscal Year 2014 Semiannual Report to Congress
Part 2: October 1, 2013 – September 30, 2014



Homeland
Security

U.S. Citizenship and Immigration Services



**Homeland
Security**

February 11, 2015

Foreword

On behalf of the Department of Homeland Security, I am pleased to present the second of two semiannual reports for Fiscal Year 2014 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.

Respectfully,

A handwritten signature in black ink that reads "Brian de Vallance".

Brian de Vallance
Assistant Secretary for Legislative Affairs

Executive Summary

Department of Homeland Security (DHS) has compiled this report on H-2B nonagricultural temporary workers 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) 2014. The data contained in this report is accurate as of October 2014.

Highlights

- The numerical limitation of 33,000 H-2B workers for the first half of the fiscal year was reached in FY 2014, but the annual numerical limitation of 66,000 H-2B workers was not reached by the end of FY 2014.
- During the first half of FY 2014, a total of 34,575¹ workers were issued H-2B visas or otherwise acquired H-2B status.
- During the second half of FY 2014, a total of 34,106² 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 H-2B beneficiaries who are exempt from the H-2B cap are included in this number.



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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* 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. 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 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 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).

³ *See* 8 CFR 214.2(h)(6)(i)(E).

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. In addition, the following workers are exempt from the H-2B cap:

- fish roe processors, fish roe technicians, and supervisors of fish roe processing;⁴ 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.⁵

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 visa issuances to those who are exempt from the H-2B cap are included in the data provided in this report. With the inclusion of cap exempt cases, the total number of H-2B visa issuances exceeded the 66,000 cap for FY 2014.

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 status to H-2B granted by USCIS.

⁴ *See* Pub. L. No. 108-287, § 14006, 118 Stat. 951, 1014 (2004).

⁵ *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 – H-2B visas issued and status provided

First Half of FY 2014

During the first half of FY 2014 (the period from October 1, 2013, through March 31, 2014), 34,575 workers were issued H-2B visas or otherwise acquired H-2B status. This number includes:

- 34,370⁶ H-2B visas that were issued by DOS;
- 116 workers that USCIS approved for a change of status to H-2B classification; and
- 89 crossings of visa-exempt H-2B workers⁷ who were processed by CBP.

Second Half of FY 2014

During the second half of FY 2014 (the period from April 1, 2014, through September 30, 2014), 34,106 workers were issued H-2B visas or otherwise acquired H-2B status. This includes:

- 33,730⁸ H-2B visas issued by DOS;
- 242 workers that USCIS approved for a change of status to H-2B classification; and
- 134 crossings of visa-exempt H-2B workers⁹ that were processed by CBP.

Table 1: H-2B Workers Approved in FY 2014

	1st Half of FY 2014	2 nd Half of FY 2014	Total
Total H-2B Workers Approved	34,575	34,106	68,681
Visas Approved by DOS	34,370	33,730	68,100
Changes of Status Approved by USCIS	116	242	358
Visa-Exempt Admissions by CBP	89	134	223

⁶ H-2B beneficiaries who are exempt from the H-2B cap are included in this number.

⁷ For the first half of FY 2014, all 89 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.

⁸ H-2B beneficiaries who are exempt from the H-2B cap are included in this number.

⁹ For the second half of FY 2014, all 134 crossings of visa-exempt H-2B workers came from Canada. Please see Footnote 7 for additional information.

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

First Half of FY 2014

During the first half of FY 2014 (October 1, 2013 through March 31, 2014), USCIS revoked or otherwise terminated 8 approved petitions, which would have authorized the admission of 190 H-2B workers.

During this same period, CBP canceled the H-2B visas of 116 aliens who were found inadmissible at ports of entry, and ICE removed 10 H-2B aliens who were found removable after admission to the United States.

DOS reported that it initially refused a total of 4,465 H-2B visa applications in the first half of FY 2014. However, 1,657 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 2,808 aliens were refused H-2B visas by DOS in the first half of FY 2014.¹⁰

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 2014

During the second half of FY 2014, USCIS revoked or otherwise terminated 14 approved petitions, which would have authorized the admission of 197 H-2B workers. During that period, CBP canceled the H-2B visas of 119 aliens who were found inadmissible at ports of entry and ICE removed 13 H-2B aliens who were found removable after admission to the United States.

DOS reported that it refused a total of 6,068 H-2B visa applications. However, since 2,257 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 3,811 H-2B workers in the second half of FY 2014.

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

¹⁰ 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.

Table 2: H-2B Revocations and Terminations

Type of Revocation or Termination	1st Half of FY 2014	2nd Half of FY 2014	Total
DOS (visa refusals)	2,808	3,811	6,619
USCIS (beneficiaries of revoked petitions)	190	197	387
CBP (cancelled visas)	116	119	235
ICE (removals)	10	13	23