



Characteristics of H-2B Nonagricultural Temporary Workers

Fiscal Year 2011 Report to Congress

Annual Submission



Homeland
Security

*U.S. Citizenship and
Immigration Services*



**Homeland
Security**

August 2, 2012

Foreword

On behalf of the Department of Homeland Security, I am pleased to present the Fiscal Year 2011 annual submission on the “Characteristics of H-2B Nonagricultural Temporary Workers.”

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

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee

The Honorable Charles Grassley
Ranking Member, Senate Judiciary Committee

The Honorable Lamar Smith
Chairman, House Judiciary Committee

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



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

Sincerely,

A handwritten signature in black ink, which appears to read "Nelson Peacock". The signature is fluid and cursive.

Nelson Peacock
Assistant Secretary for Legislative Affairs

Executive Summary

The Department of Homeland Security has compiled this Fiscal Year (FY) 2011 report on H-2B nonimmigrants from information provided by the Department of State, Department of Labor, and three components within DHS: U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement.

The data in this report are accurate as of February 2012.

Highlights

- A total of 57,484 aliens were issued H-2B visas or otherwise acquired H-2B status in FY 2011.
- Mexican nationals received the vast majority of H-2B visas issued in FY 2011.
- The top five H-2B visa issuance countries in FY 2011 were:
 - Mexico – 71.2%
 - Jamaica – 9.6%
 - Guatemala – 5.7%
 - South Africa – 2.5%
 - Great Britain & Northern Ireland – 2.1%

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I. Legislative Requirement

This report was prepared in accordance with section 416(d)(2) of the American Competitiveness and Workforce Improvement Act of 1998, Pub. L. No. 105-277, tit. IV, 112 Stat. 2681-641, as amended by section 406 of the REAL ID Act of 2005, Pub. L. No. 109-13, div. B, 119 Stat. 231, which requires that:

Beginning in fiscal year 2007, the Secretary of Homeland Security and the Secretary of State shall submit, on an annual basis, to the Committees on the Judiciary of the House of Representatives and the Senate--

(A) information on the countries of origin of, occupations of, and compensation paid to aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) during the previous fiscal year;

(B) the number of aliens who had such a visa or such status expire or be revoked or otherwise terminated during each month of such fiscal year; and

(C) the number of aliens who were provided nonimmigrant status under such section during both such fiscal year and the preceding fiscal year.

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 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b). 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 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.

Generally, before filing a petition with U.S. Citizenship and Immigration Services (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 CFR 214.2(h)(6)(iii)(A) and (C).

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, Bermudan, and Bahamian nationals; or
- change of status to H-2B granted by USCIS.

III. Data Report and Analysis

Section 3.1 – Countries of nationality for workers who were issued H-2B visas by the Department of State in Fiscal Year 2011

Based on information provided by DOS, the nationality of workers who were issued H-2B visas in Fiscal Year (FY) 2011 are as follows:

Nationality	Number	Nationality	Number
Antigua & Barbuda	3	India	1
Argentina	93	Indonesia	53
Australia	180	Ireland	75
Austria	10	Israel	1
Barbados	1	Italy	5
Belize	77	Jamaica	4,874
Bolivia	5	Japan	292
Brazil	79	Korea – South	103
Bulgaria	219	Latvia	1
Canada	2	Lithuania	19
Chile	66	Macedonia	7
Costa Rica	300	Mauritius	4
Croatia	2	Mexico	36,172
Czech Republic	6	Moldova	32
Denmark	1	Monaco	1
Dominican Republic	151	Morocco	9
Ecuador	10	Nepal	1
El Salvador	448	Netherlands	18
Estonia	1	New Zealand	139
Ethiopia	1	Nicaragua	77
Finland	1	Norway	1
France	5	Panama	56
Germany	5	Peru	48
Ghana	2	Philippines	1,039
Great Britain & Northern Ireland	1,070	Poland	34
Greece	1	Portugal	3
Guatemala	2,907	Romania	281
Honduras	252	Russia	8
Hungary	26	Serbia	180

Slovakia	30	Thailand	2
Slovenia	8	Turkey	24
South Africa	1,264	Ukraine	20
Spain	7	Venezuela ¹	-2
Sweden	2	Zambia	1
Switzerland	1	Zimbabwe	2

Section 3.2 – Occupational information on, and compensation paid to, workers who were issued H-2B visas or provided H-2B status in FY 2011

This information is available on the DOL website at <http://www.flcdatacenter.com/CaseH2B.aspx>. The DOL database provides information on the total number of labor certification applications issued, denied, and partially issued. Accordingly, because an approved labor certification is, with limited past exception, a prerequisite to approval of an H-2B petition, only occupational information and compensation figures from the DOL database for persons on whose behalf a labor certification was actually or partially issued should be considered (i.e., data relating to denied labor certifications should not be included in the analysis).

Section 3.3 – H-2B visas or status revoked or otherwise terminated

From October 1, 2010, through September 30, 2011, USCIS revoked or otherwise terminated 53 approved H-2B petitions covering a total of 1,586 H-2B positions.

USCIS Monthly Breakdown of Revocations

Month	Number of Petitions	Number of Beneficiaries	Month	Number of Petitions	Number of Beneficiaries
Oct 2010	5	164	Apr 2011	4	128
Nov 2010	5	97	May 2011	4	9
Dec 2010	7	252	Jun 2011	3	164
Jan 2011	7	441	Jul 2011	7	50
Feb 2011	5	28	Aug 2011	3	154
Mar 2011	1	30	Sep 2011	2	69

During this same period, CBP canceled the visas of 260 aliens who were found inadmissible at ports of entry and Immigration and U.S. Immigration and Customs Enforcement (ICE) removed 64 aliens who were found deportable after admission to the United States.

¹ Reasons for a negative number of visa issuances may include spoiled visas (i.e., visas that need to be canceled because of inaccurate information), revocations, or close-out of year-end cases.

DOS refused² 12,771 H-2B visas during FY 2011. However, whereas 5,842 of these visa refusals subsequently overcame the reason for the visa refusal, and the affected aliens were granted H-2B visas, DOS refused the visa applications of a net total of 6,929 H-2B workers.

The cancelation, termination, and visa refusal data from CBP, ICE, and DOS are not available on a month-to-month basis.

Section 3.4 – Number of aliens who were provided H-2B nonimmigrant status during FY 2011 and FY 2010

In FY 2011, a total of **57,484** aliens were issued H-2B visas or acquired H-2B status absent issuance of an H-2B visa. This includes:

- 56,659 H-2B visas issued by DOS;
- 376 requests for change of status to H-2B approved by USCIS; and
- 449 crossings of visa-exempt H-2B workers processed by CBP (449 Canadians, 0 Bermudans, and 0 Bahamians).³

In FY 2010, a total of **48,131** aliens were issued H-2B visas or acquired H-2B status absent issuance of an H-2B visa. This includes:

- 47,396 H-2B visas issued by DOS;
- 474 requests for change of status to H-2B approved by USCIS; and
- 261 crossings of visa-exempt H-2B workers processed by CBP (261 Canadians, 0 Bermudans, and 0 Bahamians).

² Reasons for a visa refusal may include matters outside of the scope of USCIS adjudication. The USCIS adjudication process focuses primarily on the validity of the employer-employee relationship, the nature of the job being offered, and the petitioner's temporary need. Issues involving admissibility of alien beneficiaries and possible waivers of inadmissibility are addressed on an individual basis during 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 visas associated with the revoked petition.

³ This figure may include multiple admissions by the same individuals. Although some individuals 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 upon an approved petition.