Optional Checklist for Form I-129 H-2A Filings

Department of Homeland Security
U.S. Citizenship and Immigration Services

This is an optional checklist to assist petitioners with filing H-2A petitions on Form I-129.
Do not submit this checklist to USCIS.

NOTE: This optional checklist is provided to assist H-2A petitioners in completing Form I-129. It is not a substitution for or alteration of statutory or regulatory requirements. USCIS recommends that you review the relevant statutory and regulatory requirements, as well as the appropriate form instructions, before completing and submitting Form I-129.

General Petition Requirements

☐ A completed and properly signed USCIS Form I-129, Petition for a Nonimmigrant Worker. See www.uscis.gov for the most recent version of Form I-129 and its instructions.

1. Petitioners must provide their full names and addresses in Part 1 of Form I-129. The following are the only entities who may file Form I-129 with USCIS as H-2A petitioners:
   a. The employer listed on the U.S. Department of Labor's (DOL's) ETA Form 9142, Temporary Employment Certification;
   b. The employer's agent, as defined in USCIS regulations (8 CFR 214.2(h)(2)(i)(F)); or
   c. The association of U.S. agricultural producers named as a joint employer on ETA Form 9142.

2. Only the petitioner (named in Part 1 of Form I-129) may sign Part 7 of the form.

3. Any person assisting the petitioner to prepare Form I-129 must sign Part 8 of Form I-129.

   NOTE: Those who do not meet the requirements of agent-petitioners, but solely assist a petitioner in filling out Form I-129, are considered “preparers.” Preparers are not considered petitioners. Preparers' names and addresses should not be listed in Part 1 of Form I-129 (see General Petition Requirements, item number 4, on this checklist).

4. You may enter the name of the person collecting your mail, if any, in the "C/O: (In Care Of, if any)” field for Part 1, item number 3 to ensure that you receive communications from USCIS. However, petitioners must still provide the actual address of their primary office in Part 1, item number 3.

5. You may enter your email address in Part 1, item number 4, to receive email notifications of receipt and approval.

6. You do not have to provide the names of all workers you request. However, you must provide the workers' names if you:
   a. Require workers with specific education, skills, licenses, or other requirements (as indicated on ETA Form 9142);
   b. Request workers who are already in the United States; or
   c. Request workers who are from countries which are not on the H-2 Eligible Countries List. See www.uscis.gov/h-2a for the current list.

☐ A completed and properly signed H Classification Supplement to Form I-129.

1. Only the petitioner (named in Part 1 of Form I-129) can sign the H Classification Supplement in Section 2, Part A.

2. In some cases, an employer uses an agent who meets the requirements of an agent-petitioner to file Form I-129 on its behalf. In that event, the employer (who is not the petitioner named in Part 1) must sign the H Classification Supplement in Section 2, Part B. The agent-petitioner must still sign Part A in this situation.
3. In cases where there are multiple employers, each joint employer must sign Part C in Section 2 of the H Classification Supplement. If there are more than 4 joint employers, the additional signatures may be submitted on extra copies of the H Classification Supplement of Form I-129.

NOTE: Submitting a signed contract between an employer and the agent-petitioner does not replace the need for a signature from the employer in Part B or Part C of the H Classification Supplement.

4. Submit documentation to support any affirmative answers to item numbers 8, 9, or 10 in Section 2 of the H Classification Supplement, regarding collection of prohibited fees from workers.

☐ Payment of the base petition fee, currently $460. Check current fees at www.uscis.gov/forms/filing-fees.

☐ An approved ETA Form 9142 from DOL.
  1. Submit the original ETA Form 9142.
  2. If you are filing a subsequent petition using an ETA Form 9142 that was already submitted to USCIS in a previous petition, instead provide:
     a. A photocopy of the previously submitted ETA Form 9142;
     b. The receipt number of the petition containing the original ETA Form 9142; and
     c. One of the following:
        (1) A detailed explanation, if you are requesting an extension of stay for 2 weeks or less due to emergent circumstances;
        (2) A letter from DOL extending the validity of your ETA Form 9142, if you are requesting an extension of stay greater than 2 weeks due to emergent circumstances; or
        (3) A statement explaining why you were unable to submit the original ETA Form 9142, if neither of the above apply.

☐ Optional: A cover letter from the petitioner or employer on official letterhead describing:
  1. The nature of the employer's business;
  2. Any additional locations or mailing addresses used by the employer;
  3. The duties to be performed in the position offered;
  4. The nature of the employer's need for workers, including why the job is temporary, along with independent documentation to support the claimed need; and
  5. The qualifications of the requested workers, if applicable.

☐ Optional: Evidence of the petitioner's continued business operations under either the actual business name or trade-name/doing business as (DBA) (if applicable), such as, but not limited to, copies of the most recent:
  1. State business registration for the petitioner (including registration of actual business name and trade-name/DBA);
  2. Valid local, state, or federal government business licenses;
  3. IRS Form 1120 - U.S. Corporation Income Tax Return;
  4. IRS Form 1040 - Schedule C, Profit or Loss From Business;
  5. IRS Form 1040 - Schedule F, Profit or Loss From Farming;
  6. IRS Form 1040 - Schedule J, Income Averaging for Farmers and Fishermen;
  7. IRS Form 943 - Employer's Annual Federal Tax Return for Agricultural Employees; or
Additional Documentation to Show the Worker Qualifies for H-2A Employment

☐ You may file for more than one worker on a single petition if:

1. All of the beneficiaries will perform the same services for the same period of time and in the same location;
2. The total number of H-2A workers you request does not exceed the number of positions indicated on the corresponding ETA Form 9142; and
3. You request the same action for all beneficiaries included on the petition. The requested action must be one of the following:
   a. Notification of a U.S. Embassy or U.S. Consulate, Port of Entry (POE), or Pre-Flight Inspection (PFI);
   b. Extension in H-2A classification;
   c. Change of status; or
   d. Amended stay.

☐ If ETA Form 9142 states the workers require certain education, training, experience, or other special requirements, you must:

1. Name the workers on the petition; and
2. Provide documentation to show that each worker qualifies for the job offered.

☐ If you are requesting a change of status or extension of stay, provide evidence of each worker's previous nonimmigrant classification and maintenance of status. This evidence may include, but is not limited to:

1. Copies of each worker's most recent paystubs;
2. Copies of each worker's Form I-94, Arrival-Departure Record;
3. Copies of the biographic information pages from each worker's passport or travel document; and
4. Documents showing how long the workers have been present in the United States.

☐ If you are filing an amended petition requesting substitution due to the unavailability of H-2A workers you originally requested, provide:

1. A copy of the original H-2A petition approval notice;
2. A photocopy of the previously submitted ETA Form 9142;
3. A statement explaining why the substitution is necessary;
4. Evidence that the total number of workers will not exceed the number of H-2A workers authorized on ETA Form 9142; and
5. Evidence of the qualifications of the newly identified beneficiaries, if applicable.

H-2 Eligible Countries List Requirements

Are you requesting workers from a country that is included on the H-2 Eligible Countries List? See [www.uscis.gov/h-2a](http://www.uscis.gov/h-2a) for the current list.

☐ Yes You are only required to provide the names and biographical information on Attachment 1 of Form I-129 for requested workers who are currently in the United States. You do not have to provide the names of requested workers who are outside the United States, but you must provide their countries of citizenship in Section 2, Item 4 of the H Classification Supplement so that USCIS may verify that the countries are included on the H-2 Eligible Countries List.
You must provide the names and biographical information on Attachment 1 of Form I-129 for all requested workers - including workers who are outside the United States. Additionally, you must establish that employment of the worker is in the U.S. interest. When determining whether the U.S. interest requirement has been met in an H-2A petition, USCIS considers the following:

1. Evidence that a worker with the required skills is not available either from among U.S. workers or from among foreign workers from a country on the H-2 Eligible Countries List;

2. Evidence that the requested worker has been admitted to the United States previously in H-2A status;

3. The potential for abuse, fraud, or other harm to the integrity of the H-2A program through the potential admission of workers from a country not currently on the list; and

4. Other factors that serve the U.S. interest, if any.

NOTE: If you are requesting H-2A workers from both eligible and non-eligible countries, USCIS recommends that you file two separate petitions - one with eligible country workers and one with the non-eligible country workers - to avoid possible processing delays.