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

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

USCIS
Form M-1097
Internal Form

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 the temporary labor certification.
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 except in limited circumstances when petitioners permit preparers to receive their correspondence (see General Petition Requirements, item number 4, on this checklist).
4. You may enter the name and address of the person collecting your mail, if any, in the "C/O: (In Care Of, if any)" field in response to **Part 1** to ensure that you receive communications from USCIS. However, USCIS discourages the practice of entering another person's address for mailing purposes. Petitioners **must** still provide their actual address in **Part 1**.
5. 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 the temporary labor certification);
   - **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 C** of the *H Classification Supplement*.

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

☐ Payment of the base petition fee, currently **$325**. Check current fees at **www.uscis.gov/fees**.

☐ An approved temporary labor certification.

1. Submit the original temporary labor certification.
2. If you are filing a subsequent petition using a temporary labor certification that was already submitted to USCIS in a previous petition, instead provide:
   - **a.** A photocopy of the previously submitted temporary labor certification;
   - **b.** The receipt number of the petition containing the original temporary labor certification;
   - **c.** If a worker from the previous petition was terminated or has absconded, include a statement giving the terminated or absconded worker's name, date and country of birth, termination date, and reason for termination, and the date that USCIS was notified that the alien was terminated or absconded;
   - **d.** 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; you do not need to submit a new temporary labor certification or a letter from DOL when making this request;
     - **(2)** A letter from DOL extending the validity of your temporary labor certification, 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 temporary labor certification, if neither of the above applies.

☐ 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. **A detailed description of** the nature of the employer's need for workers, including why the job is temporary, along with documentation to support the claimed need. (Please note that in all cases, H-2A petitioners **must** also provide a statement describing the temporary need for agricultural services in **Section 2, Question 3** of the H Classification Supplement. Additional detail in an optional cover letter, however, may provide support for the statement of need.); and
5. The qualifications of the requested workers, if applicable, together with their names and country of citizenship.

☐ 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
8. Business bank statements.

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 locations described in the approved temporary labor certification;
2. The total number of H-2A workers you request does not exceed the number of positions indicated on the corresponding temporary labor certification; 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 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 the temporary labor certification 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 and in what nonimmigrant status, if any.

☐ If you are filing an amended petition 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 temporary labor certification;
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 the temporary labor certification; and
5. Evidence of the qualifications of the newly identified beneficiaries and their names, 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** 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 birth and citizenship so that USCIS may verify that the countries are included on the *H-2 Eligible Countries List*.

☐ **No** 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.

Duplicate Copy

You must include copies of all communications with USCIS. This includes:

☐ Form I-129 and all supporting documentation at the time of filing.

☐ All documents sent in response to a Request for Evidence (RFE), Notice of Intent to Deny (NOID), or Notice of Intent to Revoke. USCIS will **not** make duplicate copies for you.

NOTE: Submitting a duplicate copy that will be sent to the Department of State is strongly recommended because it may prevent a delay in visa issuance at the U.S. Embassy or U.S. Consulate.