



H-2B Nonagricultural Temporary Worker Visa and Status

Fiscal Year 2009 Report to Congress

January 19, 2011



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Foreword

On behalf of the Department of Homeland Security, I am pleased to present the report for fiscal year 2009 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 Patrick J. Leahy
Chairman, Senate Judiciary Committee

The Honorable Jeff Sessions
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.

Respectfully,

A handwritten signature in black ink, appearing to read "Nelson Peacock".

Nelson Peacock
Assistant Secretary
Office of Legislative Affairs

Executive Summary

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

The data contained in this report is for the fiscal year (FY) 2009 and is accurate as of February 2010.

Highlights

- A total of **45,914** aliens were issued H-2B visas or otherwise acquired H-2B status in FY 2009.
- Mexican nationals received the vast majority of H-2B visas issued in FY 2009.
- The top five H-2B visa issuance countries in FY 2009 were:
 - Mexico – 66%,
 - Jamaica – 7%,
 - Guatemala – over 5%,
 - Philippines – over 3%, and
 - South Africa – 3%.

I. Legislative Requirement

This report was prepared in accordance with Section 416(d)(2) of the American Competitiveness and Workforce Improvement Act of 1998, as amended by Section 406 of the REAL ID Act of 2005, 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 the Immigration and Nationality Act (INA) 101(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,
- 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, the employer must have a single, valid temporary labor certification from the U.S. Department of Labor or, in the case where the workers will be employed on Guam, from the Governor of Guam.

The H-2B Cap

The Immigration Act of 1990 created a numerical limitation of 66,000 for the number of workers who may be granted H-2B classification in a fiscal year (aka the "H-2B Cap"). See INA 214(g)(1)(B).

Subsequently, section 405 of the REAL ID Act of 2005, Title IV, "Save Our Small and Seasonal Businesses Act of 2005 (SOS Act)," mandated that the H-2B cap be allocated semi-annually, allowing for 33,000 H-2B workers in the first half of the fiscal year (October 1 – March 31) and 33,000 H-2B workers for the second half of the fiscal year (April 1 – September 30).

Obtaining H-2B Status

After USCIS approves an H-2B petition, an alien beneficiary may be accorded H-2B status in three ways:

- admission by CBP at a port of entry as an H-2B nonimmigrant after issuance of an H-2B nonimmigrant visa by State;
- admission by CBP at a port of entry as an H-2B nonimmigrant without a visa, in the case of certain Canadian, Bermudan and Bahamian residents; or
- a change of status to H-2B nonimmigrant status granted by USCIS.

The data contained in this report is for FY 2009.

III. Data Report and Analysis

Section 4.1 – Countries of nationality for workers who were issued H-2B visas by the Department of State in FY 2009

Based on information provided by DOS, the nationality of workers who were issued H-2B visas in FY 2009 are as follows:

Nationality	Number	Nationality	Number
Albania	0	Antigua & Barbuda	0
Argentina	199	Armenia	0
Australia	243	Austria	2
Azerbaijan	1	The Bahamas*	0
Bangladesh	0	Belgium	3
Bermuda*	0	Bosnia-Herzegovina	1
Belize	188	Bolivia	172
Barbados	61	Burundi	0
Brazil	254	Bulgaria	121
Canada*	2	Chile	150
China	296	Cameroon	0
Colombia	22	Costa Rica	225
Cuba	0	Czech Republic	16
Denmark	1	Dominica	0
Dominican Republic	228	Ecuador	6
Egypt	2	El Salvador	308
Estonia	1	Ethiopia	0
Fiji	0	Finland	0
France	7	Germany	12
Ghana	9	Great Britain & Northern Ireland	842
Greece	0	Grenada	0
Georgia	0	Guatemala	2,428
Guyana	1	Haiti	154
Hong Kong, S.A.R.	0	Honduras	414
Croatia	4	Hungary	3
Iceland	0	Indonesia	339
India	16	Iran	0

* Citizens of, and certain landed immigrants in, Canada, Bermuda, and the Bahamas are exempt from the requirement to hold a visa for entry into the United States in H-2B classification.

Ireland	39	Israel	381
Italy	14	Côte d'Ivoire	0
Jamaica	3,161	Jordan	0
Japan	256	Kazakhstan	0
Kenya	0	Kosovo	0
Korea – South	15	Latvia	0
Lebanon	0	Lithuania	3
Macau	1	Mali	0
Malawi	0	Mexico	30,008
Macedonia	10	Malaysia	3
Mauritius	1	Moldova	22
Mongolia	0	Serbia and Montenegro	13
Namibia	2	Nepal	36
Netherlands Antilles	0	Netherlands	8
Nicaragua	67	Norway	1
Nigeria	0	New Zealand	134
Panama	33	Paraguay	0
Peru	39	Philippines	1,707
Pakistan	0	Poland	45
Portugal	1	Qatar	0
Romania	323	Russia	3
South Africa	1,387	Singapore	1
St. Lucia	4	Spain	10
Sri Lanka	0	Serbia	122
St. Kitts and Nevis	0	St. Vincent and the Grenadines	1
Slovakia	24	Slovenia	8
Sweden	9	Switzerland	2
Tanzania	0	Thailand	17
Trinidad and Tobago	0	Turkey	97
Taiwan	1	Ukraine	101
Uruguay	2	Uzbekistan	4
Venezuela	1	Vietnam	0
Samoa	0	Unknown POB or Stateless	0
Zambia	0	Zimbabwe	1

Section 4.2 – Occupational information on and compensation paid to workers who were issued H-2B visas or provided H-2B status in FY 2009

This information is available on the U.S. Department of Labor (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).¹

Section 4.3 – H-2B visas or status revoked or otherwise terminated

During the period from October 1, 2008 through September 30, 2009, USCIS revoked or otherwise terminated 62 approved H-2B petitions covering a total of 1,788 H-2B positions.

USCIS Monthly Breakdown of Revocations

Month	Number of Petitions	Number of Beneficiaries	Month	Number of Petitions	Number of Beneficiaries
Oct 2008	8	305	Nov 2008	1	60
Dec 2008	2	46	Jan 2009	2	21
Feb 2009	0	0	Mar 2009	14	185
Apr 2009	6	69	May 2009	4	23
Jun 2009	5	335	Jul 2009	6	184
Aug 2009	8	483	Sep 2009	6	77

During this same period, CBP canceled the visas of 116 aliens who were found inadmissible at ports of entry and ICE removed 20 aliens who were found deportable after admission to the United States. The cancellation or termination information from CBP and ICE is not available on a month-to-month basis.

Additionally, DOS revoked 118 H-2B visas during FY 2009.

¹ It should be noted that, currently, unlike DOL, USCIS does not specifically capture this type of information in its databases. Such information is nevertheless included, together with the underlying H-2B nonimmigrant petition, as part of each individual alien's immigration file.

Section 4.4 – Number of aliens who were provided H-2B nonimmigrant status during FY 2009 and FY 2008

In FY 2009, the period from October 1, 2008 through September 30, 2009, a total of 45,914 aliens were issued H-2B visas or otherwise acquired H-2B status. This figure includes:

- 44,897 H-2B visas issued by DOS;
- 415 requests for change of status to H-2B approved by USCIS; and
- 602 crossings of visa-exempt H-2B workers processed by CBP (601 Canadians, 1 Bermudan, and 0 Bahamians).²

In FY 2008, the period from October 1, 2007 through September 30, 2008, a total of 95,849 aliens, including 1,054 returning workers, were issued H-2B visas or otherwise acquired H-2B status. This figure includes:

- 94,304 H-2B visas issued by DOS (1,054 returning workers)³;
- 636 requests for change of status to H-2B approved by USCIS; and
- 909 aliens admitted without visas by CBP (883 Canadians, 23 Bermudans, and 3 Bahamians).⁴

² This figure may include multiple admissions for the same individuals.

³ This number exceeds the annual statutory limit of 66,000 because some aliens already counted under the H-2B cap were simply obtaining visas to reflect their already approved H-2B status (i.e., multiple admissions).

⁴ This figure may include multiple admissions for the same individuals.