



Characteristics of H-2B Nonagricultural Temporary Workers

Fiscal Year 2010 Report to Congress

Annual Submission

August 1, 2011



Homeland
Security

*U.S. Citizenship and
Immigration Services*

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**Homeland
Security**

Foreword

On behalf of the Department of Homeland Security, I am pleased to present the fiscal year 2010 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.

Respectfully,

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

Nelson Peacock
Assistant Secretary
Office of Legislative Affairs

Executive Summary

The Department of Homeland Security (DHS) has compiled this fiscal year (FY) 2010 report on H-2B nonimmigrants from information provided by 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) as well as the Department of State (DOS) and the Department of Labor (DOL).

Highlights

- A total of 48,131 aliens were issued H-2B visas or otherwise acquired H-2B status in FY 2010.
- Mexican nationals received the vast majority of H-2B visas issued in FY 2010.
- The top five H-2B visa issuance countries in FY 2010 were:
 - Mexico – 69.3%
 - Jamaica – 7.2%
 - Guatemala – 5.9%
 - Philippines – 3.2%
 - South Africa – 2.4%

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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 fill temporary nonagricultural jobs with foreign workers. *See* Immigration and Nationality Act (INA), as amended, section 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, the employer must obtain a single, valid temporary labor certification from the U.S. DOL or, in the case where the workers will be employed in Guam, from the Governor of Guam.

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 section 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).

Exceptions to the H-2B Cap

Generally, an H-2B worker whose stay in H-2B status is extended will not be counted against the H-2B cap again. Additionally, the following workers are exempt from the H-2B cap:

- Fish roe processors, fish roe technicians and supervisors of fish roe processing;¹ and
- From November 28, 2009 until December 31, 2014, workers performing temporary labor or services in the Commonwealth of the Northern Mariana Islands (CNMI) or Guam.²

¹ *See* Pub. L. No. 108-287, § 14006, 118 Stat. 951, 1014 (2004).

² *See* Section 6(b) of A Joint Resolution to Approve the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Pub. L. No. 94-241, 90 Stat. 263, 48 U.S.C. § 1801 note (1976), as added by section 702 of the Consolidated Natural Resources Act of 2008, Pub. L. No. 110-229, 122 Stat. 754, 856.

Spouses and children of H-2B workers fall under a separate visa classification (H-4) and, therefore, are not counted against the H-2B cap. *See* 8 CFR § 214.2(h)(8)(ii)(A).

Once the H-2B cap is reached, USCIS may only accept petitions for H-2B workers who are exempt from the H-2B cap.

Obtaining H-2B Status

After USCIS approves an H-2B petition, a worker, if eligible, 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, Bermudan and Bahamian residents; or
- change of status to H-2B granted by USCIS.

The data contained in this report is for FY 2010.

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 FY 2010

Based on information provided by DOS, the nationality of workers who were issued H-2B visas in FY 2010 are as follows:

Nationality	Number	Nationality	Number
Albania	0	Antigua & Barbuda	1
Argentina	133	Armenia	0
Australia	189	Austria	4
Azerbaijan	0	The Bahamas*	0
Bangladesh	0	Belgium	1
Bermuda*	0	Bosnia-Herzegovina	0
Belize	130	Bolivia	5
Barbados	0	Burundi	0
Brazil	119	Bulgaria	163
Canada*	261	Chile	132
China	2	Cameroon	0
Colombia	0	Costa Rica	308
Cuba	0	Czech Republic	9
Denmark	2	Dominica	0
Dominican Republic	179	Ecuador	6
Egypt	0	El Salvador	443
Estonia	2	Ethiopia	0
Fiji	0	Finland	0
France	12	Germany	7
Ghana	1	Great Britain & Northern Ireland	886
Greece	0	Grenada	1
Georgia	0	Guatemala	2850
Guyana	0	Haiti	0
Hong Kong, S.A.R.	0	Honduras	317
Croatia	4	Hungary	0
Iceland	1	Indonesia	410
India	13	Iran	0

* Citizens of and certain landed immigrants in Canada, Bermuda, and the Bahamas are exempt from the requirement to hold a visa for admission to the United States in H-2B classification. Data on these workers is provided by CBP.

Ireland	39	Israel	283
Italy	2	Côte d'Ivoire	0
Jamaica	3468	Jordan	0
Japan	279	Kazakhstan	0
Kenya	0	Kosovo	0
Korea – South	20	Latvia	0
Lebanon	0	Lithuania	13
Macau	1	Mali	0
Malawi	0	Mexico	33,366
Macedonia	0	Malaysia	9
Mauritius	2	Moldova	45
Mongolia	0	Serbia and Montenegro	0
Namibia	0	Nepal	4
Netherlands Antilles	0	Netherlands	9
Nicaragua	53	Norway	0
Nigeria	0	New Zealand	114
Panama	32	Paraguay	0
Peru	16	Philippines	1518
Pakistan	1	Poland	46
Portugal	3	Qatar	0
Romania	295	Russia	8
South Africa	1150	Singapore	0
St. Lucia	0	Spain	3
Sri Lanka	0	Serbia	140
St. Kitts and Nevis	0	St. Vincent and the Grenadines	0
Slovakia	11	Slovenia	11
Sweden	7	Switzerland	3
Tanzania	0	Thailand	6
Trinidad and Tobago	0	Turkey	36
Taiwan	0	Ukraine	70
Uruguay	1	Uzbekistan	0
Venezuela	0	Vietnam	0
Samoa	0	Unknown POB or Stateless	0
Zambia	0	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 2010

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).³

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

From October 1, 2009 through September 30, 2010, USCIS revoked or otherwise terminated 84 approved H-2B petitions covering a total of 1,868 H-2B positions.

USCIS Monthly Breakdown of Revocations

Month	Number of Petitions	Number of Beneficiaries	Month	Number of Petitions	Number of Beneficiaries
Oct 2009	9	313	Nov 2009	7	232
Dec 2009	3	18	Jan 2010	9	89
Feb 2010	2	221	Mar 2010	18	201
Apr 2010	8	174	May 2010	10	197
Jun 2010	7	131	Jul 2010	6	80
Aug 2010	3	208	Sep 2010	2	4

During this same period, CBP canceled the visas of 135 aliens who were found inadmissible at ports of entry and ICE removed 39 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 27 H-2B visas during FY 2010.⁴

³ 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.

⁴ Reasons for post-issuance visa revocation, like visa refusal, may include matters outside of the scope of USCIS adjudication. The USCIS adjudication process focuses on the validity of the employer-employee relationship, the nature of the job being offered, the petitioner's temporary need, and factors other than the beneficiary's admissibility to this country. Issues involving admissibility of alien beneficiaries and possible waivers of inadmissibility are addressed on a face-to-face basis as part of the consular visa issuance process or the port-of-entry inspection process. 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 of the petition.

Section 3.4 – Number of aliens who were provided H-2B nonimmigrant status during FY 2010 and FY 2009

In FY 2010 (October 1, 2009 through September 30, 2010), a total of 48,131 aliens were issued H-2B visas or otherwise acquired H-2B status. This includes:

- 47,396 H-2B visas issued by DOS;
- 474 requests for change of status to H-2B approved by USCIS; and
- 261 aliens admitted without visas by CBP (261 Canadians, 0 Bermudans, and 0 Bahamians).⁵

In FY 2009 (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 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).

⁵ 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.