



H-2B Temporary Nonagricultural Worker Visa and Status

Fiscal Year 2022 Semiannual Report to Congress
Part 2: October 1, 2021 – September 30, 2022
February 14, 2023



Homeland
Security

*U.S. Citizenship and
Immigration Services*



**Homeland
Security**

Foreword

February 14, 2023

On behalf of the U.S. Department of Homeland Security, I am pleased to present the second of two semiannual reports for Fiscal Year 2022, on “H-2B Temporary Nonagricultural Worker Visa and Status.”

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

The Honorable Richard Durbin
Chairman, Senate Committee on the Judiciary

The Honorable Lindsey Graham
Ranking Member, Senate Committee on the Judiciary

The Honorable Jim Jordan
Chairman, House Committee on the Judiciary

The Honorable Jerrold Nadler
Ranking Member, House Committee on the Judiciary

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

Sincerely,

A handwritten signature in black ink that reads "Bryn McDonough". The signature is written in a cursive style and is contained within a thin black rectangular border.

Bryn McDonough
Acting Assistant Secretary for Legislative Affairs

Executive Summary

The U.S. Department of Homeland Security (DHS) compiled this report on H-2B temporary nonagricultural workers from information provided by the U.S. Department of State (DOS), U.S. Department of Labor (DOL), and 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).

This report includes data from the first and second half of Fiscal Year (FY) 2022.

Highlights

- The annual numerical limitation of 66,000 H-2B visas (the “regular H-2B cap”) was reached in FY 2022.¹
- USCIS estimated it received enough petitions to reach the semiannual numerical limitation of 33,000 H-2B visas for the first half of FY 2022 on September 30, 2021. A total of 59,858 workers were issued H-2B visas or otherwise acquired H-2B nonimmigrant status during the first half of FY 2022.²
- USCIS estimated it received enough petitions to reach the semiannual numerical limitation of 33,000 H-2B visas for the second half of FY 2022 on February 25, 2022. A total of 66,568 workers were issued H-2B visas or otherwise acquired H-2B nonimmigrant status during the second half of FY 2022.³
- In accordance with Public Law 117-70, extending the authority provided in section 105 of Division O of the Consolidated Appropriations Act, 2021, Public Law 116-260 (FY 2021 Omnibus), on January 28, 2022 DHS and DOL published a temporary final rule increasing the numerical limit (or cap) on H-2B nonimmigrant visas by up to 20,000 additional visas for positions with start dates in the first half of FY 2022. These supplemental visas were available only to U.S. businesses that attested they suffered irreparable harm, or would suffer impending irreparable harm, without the ability to employ all the H-2B workers requested in their petition.
- In accordance with section 204 of Division O of the Consolidated Appropriations Act, 2022, Public Law 117-103 (FY 2022 Omnibus), on May 18, 2022, DHS and DOL published a temporary final rule increasing the numerical limit (or cap) on H-2B nonimmigrant visas by up to 35,000 additional visas for positions with start dates in the second half of FY 2022. These supplemental visas were available only to U.S. businesses that attested they suffered

¹ Immigration and Nationality Act (INA) § 214(g)(1)(B), 8 U.S.C. § 1184(g)(1)(B), requires that the total number of non-citizens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year “may not exceed” 66,000.

² H-2B workers who are exempt from the regular H-2B cap and those workers who were approved under the first half FY 2022 Supplemental Cap are included in this number. This number may also include H-2B workers who were issued a visa by DOS but approved by USCIS with a start date in the preceding half fiscal year or up to 10 days after the relevant period.

³ H-2B workers who are exempt from the regular H-2B cap and those workers who were approved under the second half FY 2022 Supplemental Cap are included in this number. This number may also include some H-2B workers who were approved under the first half FY 2022 Supplemental Cap and H-2B workers who were issued a visa by DOS but approved by USCIS with a start date in the preceding half fiscal year or up to 10 days after the relevant period.

irreparable harm or would suffer impending irreparable harm without the ability to employ all the H-2B workers requested in their petition.



H-2B Temporary Nonagricultural Worker Visa and Status

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I. Legislative Requirement

This report was prepared in accordance with section 416(d)(1) of the *American Competitiveness and Workforce Improvement Act of 1998*, Pub. L. No. 105-277, tit. IV, 112 Stat. 2681-655, as amended by section 406 of the *REAL ID Act of 2005*, Pub. L. No. 109-13, div. B, 119 Stat. 231, 320, which requires that:

Beginning not later than March 1, 2006, the Secretary of Homeland Security and the Secretary of State shall notify, on a semiannual basis, the Committees on the Judiciary of the House of Representatives and the Senate of the number of aliens who, during the preceding 1-year period –

(A) were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act [(INA)] (8 U.S.C. 1101(a)(15)(H)(ii)(b)); or

(B) had such a visa or such status revoked or otherwise terminated.

II. Background

Overview

The H-2B program allows U.S. employers to bring non-citizen workers to the United States to fill temporary nonagricultural jobs. *See Immigration and Nationality Act (INA)*, as amended, § 101(a)(15)(H)(ii)(b), 8 U.S.C. § 1101(a)(15)(H)(ii)(b).

To petition successfully for this nonimmigrant classification, employers must establish:

- 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 peak load need, or an intermittent need;⁴
- 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.

See Title 8 Code of Federal Regulations (C.F.R.) § 214.2(h)(1)(ii)(D), (h)(6)(ii)(B) and (iv)(A). Generally, before filing a petition with USCIS for H-2B workers, employers must obtain a valid temporary labor certification (TLC) from the U.S. Department of Labor (DOL) or, if the worker(s) will be employed in Guam, from the Governor of Guam. *See* Title 8 § 214.2(h)(6)(iii)(A) and (C).

DHS and DOL jointly published a temporary final rule on January 28, 2022, and another temporary final rule on May 18, 2022, to change certain H-2B requirements to help U.S. employers address challenges related to the H-2B numerical limitation (or cap), and the ongoing disruptions caused by the coronavirus (COVID-19) pandemic. Under the portability provisions of these rules, all H-2B petitioners with a valid TLC were permitted to start employing certain non-citizen workers who were currently in the United States and in valid H-2B status immediately after USCIS received the H-2B petition filed by a new petitioning employer. These provisions are similar to the portability provision that had been implemented in FY 2021 and was available to petitioners and H-2B nonimmigrant workers initiating employment from May 25, 2021, through the end of November 22, 2021.⁵ Beginning again with the January 28, 2022 temporary final rule, and further extended by the May 18, 2022 temporary final rule, this employer flexibility was made available to petitioners and H-2B nonimmigrant workers initiating employment through the end of January 24, 2023.

⁴ The National Defense Authorization Act for Fiscal Year 2018 (FY 2018 NDAA) created a time-limited exemption from the temporary need requirement for certain H-2B workers performing services or labor related to the military realignment on Guam and in the Commonwealth of the Northern Mariana Islands. *See* Section 1049 of the FY 2018 NDAA, [Pub. L. 115-91 \(PDF\)](#), 131 Stat. 1283, 1558 (December 12, 2017), as amended by Section 1045 of the FY 2019 NDAA, [Pub. L. 115-232 \(PDF\)](#), 132 Stat. 1636, 1959 (August 13, 2018) and as further amended by Section 9502 of the FY 2021 NDAA, [Pub. L. 116-283 \(PDF\)](#) (January 1, 2021).

⁵ Exercise of Time-Limited Authority To Increase the Fiscal Year 2021 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, [86 FR 28198](#) (May 25, 2021).

The H-2B Cap

The *Immigration Act of 1990* limits the number of workers who may be issued an H-2B visa or otherwise provided H-2B nonimmigrant status in a fiscal year (the “regular H-2B cap”) to 66,000. *See* INA § 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 semiannually, 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). *See* INA § 214(g)(10), 8 U.S.C. § 1184(g)(10). If USCIS determines that it has received a sufficient number of petitions to meet, but not exceed, the statutory caps, USCIS will announce that it will no longer accept H-2B petitions. In making this determination, USCIS takes into account historical data related to approvals, denials, revocations, and other relevant factors.⁶

In accordance with Public Law 117-70, extending the authority provided in section 105 of Division O of the Consolidated Appropriations Act, 2021, Public Law 116-260 (FY 2021 Omnibus), on January 28, 2022, DHS and DOL published a temporary final rule (TFR) increasing the H-2B cap by up to 20,000 additional visas for positions with start dates in the first half of FY 2022.⁷ These supplemental visas were available only to U.S. businesses that attested that they were suffering irreparable harm, or would suffer impending irreparable harm, without the ability to employ all the H-2B workers requested in their petition. The January 28, 2022 TFR also contained provisions that required U.S. businesses to conduct additional recruitment of U.S. workers dependent on the filing date for the supplemental visa(s) and to comply with document retention requirements to demonstrate irreparable harm and to verify that additional recruitment was conducted upon an audit. Of the 20,000 additional visas, 13,500 were available only for returning workers (workers who received an H-2B visa or were otherwise granted H-2B status in FY 2019, 2020 and 2021). The remaining 6,500 visas were set aside for nationals of Haiti, Honduras, Guatemala, and El Salvador. Under this TFR, workers from these countries were exempted from the returning worker requirement. In contrast to the preceding FY 2021 supplemental cap TFR, the unused visas from this allocation were not subsequently made available to the general returning workers supplemental cap to provide H-2B employers ample time, should they choose, to petition for, and bring in, workers under the allocation for nationals of these countries. By the end of FY 2022, there were 2,481 visas issued for the countries of Haiti, Honduras, Guatemala, and El Salvador, and 11,308 visas issued to returning workers under the FY 2022 first half supplemental cap.

Additionally, in accordance with section 204 of Division O of the Consolidated Appropriations Act, 2022, Public Law 117-103 (FY 2022 Omnibus), on May 18, 2022, DHS and DOL jointly published a TFR increasing the H-2B cap by up to 35,000 additional visas for positions with start

⁶ *See* 8 C.F.R. § 214.2(h)(8)(vii).

⁷ Exercise of Time-Limited Authority To Increase the Fiscal Year 2022 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, [87 FR 4722](#) (Jan. 28, 2022).

dates in the second half FY 2022.⁸ The May 18, 2022 TFR also contained provisions that required U.S. businesses to conduct additional recruitment of U.S. workers dependent on the filing date for the supplemental visa(s) and to comply with document retention requirements to demonstrate irreparable harm and to verify that additional recruitment was conducted upon an audit. These supplemental visas were available only to U.S. businesses that attested that they were suffering irreparable harm they suffered or would suffer impending irreparable harm, without the ability to employ all the H-2B workers requested in their petition. Of the 35,000 additional visas, 23,500 were available only for returning workers (workers who received an H-2B visa or were otherwise granted H-2B status in FY 2019, FY 2020, or FY 2021). The remaining 11,500 visas were set aside for nationals of Haiti, Honduras, Guatemala, and El Salvador who were exempted from the returning worker requirement. Like the January 28, 2022 TFR, the unused visas from this allocation were not subsequently made available to the general supplemental cap for returning workers. As of September 30, 2022, there were 7,304 visas issued for the countries of Haiti, Honduras, Guatemala, and El Salvador, and 20,696 visas issued to returning workers under the FY 2022 second half supplemental cap.

Exemptions from the H-2B Cap

Generally, a worker in the United States 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:

- H-2B workers in the United States or abroad who have been previously counted toward the cap in the same fiscal year;
- Fish roe processors, fish roe technicians, and supervisors of fish roe processing;⁹ and
- From November 28, 2009, until December 31, 2029, certain workers performing labor or services in the Commonwealth of the Northern Mariana Islands or Guam.¹⁰

Spouses and children of H-2B workers fall under a separate visa classification (H-4) and are not counted against the H-2B cap. *See* INA § 214(g)(2), 8 U.S.C. § 1184(g)(2); 8 C.F.R. § 214.2(h)(8)(ii)(A). Once the H-2B cap is reached, USCIS may only, during the relevant cap period, accept petitions for H-2B workers who are cap-exempt. H-2B petition approvals on behalf of workers who are exempt from the H-2B cap are generally included in the data provided in this report.

Obtaining H-2B Status

Approval of an H-2B petition does not ensure that a non-citizen worker covered by the petition will actually be granted H-2B status. After USCIS approves an H-2B petition, a worker, if eligible, may be granted H-2B status through:

⁸ Exercise of Time-Limited Authority To Increase the Numerical Limitation for Second Half of FY 2022 for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers, [87 FR 30334](#) (May 18, 2022).

⁹ *See* Pub. L. No. 108-287, § 14006, 118 Stat. 951, 1014 (2004).

¹⁰ *See* 48 U.S.C. 1806(a)(2) as amended by sec. 3 of Pub. L. 115-218; 48 U.S.C. 1806(b).

- 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 U.S. 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 Canadians, Bermudan citizens, Bahamian nationals, and British subjects resident in certain islands;¹¹ or
- change of status to H-2B or extension of H-2B status granted by USCIS;¹² or
- a worker already in the United States that is approved for an extension of stay.

III. Data Report and Analysis

Section 3.1 – H-2B Visas Issued and Status Provided

First Half of FY 2022

During the first half of FY 2022, 59,858 workers were issued H-2B visas or otherwise acquired H-2B status.¹³ This number includes:

- 58,746 H-2B visas issued by DOS;¹⁴
- 227 workers that USCIS approved for a change of status to H-2B classification; and
- 885 crossings of visa-exempt H-2B workers who were processed by CBP.¹⁵

Second Half of FY 2022

During the second half of FY 2022, 66,568 workers were issued H-2B visas or otherwise acquired H-2B status.¹⁶ This number includes:

- 65,941 H-2B visas issued by DOS;¹⁷
- 295 workers that USCIS approved for a change of status to H-2B classification; and

¹¹ See 8 C.F.R. § 212.1(a) for a list of non-citizens who are considered visa-exempt.

¹² Certain workers who have already been granted H-2B status are also eligible for an extension of stay. Note that an extension of stay in the H-2B classification will not be re-counted against the annual or semiannual cap.

¹³ The first half of FY 2022 began on October 1, 2021 and ended on March 31, 2022.

¹⁴ H-2B workers exempt from the H-2B cap and those workers who were approved under the first half FY 2022 Supplemental Cap are included in this number. This number may also include H-2B workers who were issued a visa by DOS but approved by USCIS with a start date in the preceding half of a fiscal year or up to 10 days after the relevant period.

¹⁵ For the first half of FY 2022, all 885 crossings of visa-exempt H-2B workers came from Canada. See 8 C.F.R. § 212.1(a) for a list of non-citizens who are considered visa-exempt. This figure may include multiple admissions by the same workers.

¹⁶ The second half of FY 2022 began on April 1, 2022 and ended on September 30, 2022.

¹⁷ H-2B workers exempt from the H-2B cap and those workers who were approved under the second half FY 2022 Supplemental Cap are included in this number. This number may also include some H-2B workers who were approved under the first half FY 2022 Supplemental Cap and H-2B workers who were issued a visa by DOS but approved by USCIS with a start date in the preceding half of a fiscal year or up to 10 days after the relevant period.

- 332 crossings of visa-exempt H-2B workers who were processed by CBP.¹⁸

Table 1: H-2B Workers Approved from October 1, 2021 to September 30, 2022

	First Half of FY 2022	Second Half of FY 2022	Total
Total H-2B Workers Approved¹⁹	59,858	66,568	126,426
Visas Issued by DOS	58,746	65,941	124,687
Changes of Status Approved by USCIS	227	295	522
Visa-Exempt Admissions by CBP	885	332	1,217

Section 3.2 – H-2B Visas or Status Revoked or Otherwise Terminated

First Half of FY 2022

During the first half of FY 2022, USCIS revoked or otherwise terminated 21 approved petitions, which had authorized the classification of 378 beneficiaries as H-2B workers.²⁰ During that period, CBP canceled the H-2B visas of 16 individuals who were found inadmissible at ports of entry, and U.S. Immigration and Customs Enforcement (ICE) removed 18 H-2B workers who were found removable after admission to the United States.²¹

DOS reported that it refused a net total of 3,609 H-2B visa applications in the first half of FY 2022.

Second Half of FY 2022

During the second half of FY 2022, USCIS revoked or otherwise terminated 17 approved petitions, which had authorized the classification of 194 beneficiaries as H-2B workers.²² During that period, CBP canceled the H-2B visas of 37 individuals who were found inadmissible at ports of entry, and ICE removed 26 H-2B workers who were found removable after admission to the United States.²³

¹⁸ For the second half of FY 2022, all 332 crossings of visa-exempt H-2B workers came from Canada. See 8 C.F.R. § 212.1(a) for a list of non-citizens who are considered visa-exempt. This figure may include multiple admissions by the same workers.

¹⁹ H-2B workers exempt from the H-2B cap and those workers who were approved under the FY 2022 Supplemental Caps are included in these figures. These figures may also include H-2B workers who were issued a visa by DOS but approved by USCIS with a start date in the preceding half of a fiscal year or up to 10 days after the relevant period.

²⁰ This figure may include revocations or terminations after the approved validity of the H-2B petition and after the beneficiaries' authorized admission had already expired.

²¹ ICE defines "removed H-2B workers" as those individuals removed with a most recent admission class code of "H2" or "H-2B." As such, this figure may include individuals admitted in the H-2A classification as temporary or seasonal agricultural workers who could also have a most recent admission class code of "H2." ICE also indicates that admission class code is not a mandatory field, so this figure could be incomplete.

²² This figure may include revocations or terminations after the approved validity of the H-2B petition and after the beneficiaries' authorized admission had already expired.

²³ ICE defines removed H-2B workers as those individuals removed with a most recent admission class code of "H2" or "H-2B." As such, this figure may include individuals admitted in the H-2A classification as temporary or seasonal agricultural workers who could also have a most recent admission class code of "H2." ICE also indicates that admission class code is not a mandatory field, so this figure could be incomplete.

DOS reported that it refused a net total of 4,351 H-2B visa applications in the second half of FY 2022.

Table 2: H-2B Revocations and Terminations

Type of Revocation or Termination	First Half of FY 2022	Second Half of FY 2022	Total
DOS (visa refusals)	3,609	4,351	7,960
USCIS (beneficiaries of revoked petitions)	378	194	572
CBP (canceled visas)	16	37	53
ICE (removals)	18	26	44