

MAR 15 2006

Office of Legislative Affairs  
U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

The Honorable F. James Sensenbrenner, Jr.  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This report is the U. S. Citizenship and Immigration Services (CIS) response to the recommendations made by the CIS Ombudsman pursuant to Section 452(f) of the Homeland Security Act of 2002 (Public Law 107-296).

I appreciate your interest in the Department of Homeland Security, and I look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Legislative and Intergovernmental Affairs at (202) 205-4412.

Sincerely,

A handwritten signature in black ink, appearing to read "Pamela J. Turner".

Pamela J. Turner  
Assistant Secretary for Legislative and Intergovernmental Affairs  
U.S. Department of Homeland Security

Enclosure

MAR 20 2006

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The Honorable F. James Sensenbrenner, Jr.  
Chairman  
Committee on the Judiciary  
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Dear Mr. Chairman:

The purpose of this correspondence is to provide Congress with statistical information regarding the number of aliens who received H-2B nonimmigrant visas or who were otherwise provided H-2B nonimmigrant status during the 1-year period from October 1, 2004 through September 30, 2005. This correspondence also provides statistical information regarding the number of aliens who had their H-2B nonimmigrant status revoked or otherwise terminated during the 1-year period from October 1, 2004 through September 30, 2005.

This Semi-Annual H-2B Notification to Congress is statutorily required by Section 406 of Title IV of the REAL ID Act of 2005, which was included in the Emergency Supplemental Appropriations Act, Pub. L. 109-13 (May 11, 2005). The short title of Title IV of the REAL ID Act is the *Save our Small and Seasonal Businesses Act of 2005 (SOS Act)*. Section 406 of the SOS Act requires that, beginning not later than March 1, 2006 and on a semiannual basis, both the Secretary of Homeland Security and the Secretary of State shall notify 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 (8 U.S.C. 1101(a)(15)(H)(ii)(b)); or
- (B) had such a visa or such status be revoked or otherwise terminated.

This document includes reporting information from both Departments. Although Congress did not request statistical information on H-2B nonimmigrant status compiled over the course of a fiscal year, the U.S. Customs and Immigration Services (USCIS) has chosen to provide such information for FY 2005 (i.e. October 1, 2004 through September 30, 2005) to ensure the timeliness of this notification. USCIS will also include such fiscal year information in future semi-annual H-2B statistical notifications to Congress as well.

For clarity, the statistical information provided is prefaced below with a general description of the applicable numerical limits and the current H-2B process. Congress set the annual numerical limit on the number of aliens who may be issued an H-2B nonimmigrant visa or otherwise accorded H-2B status at 66,000. See 8 U.S.C. § 1184(g)(1). Certain categories of aliens are exempt or excluded from this limit, such as spouses and children of H-2B workers and workers

who previously held H-2B status and were counted against the cap in a preceding fiscal year (“returning workers”). Also, aliens who are currently in H-2B status and who seek to extend their stay or seek concurrent employment are not counted against the cap.

The H-2B process involves three agencies: the Department of Homeland Security, the Department of State, and the Department of Labor. Prospective employers seeking H-2B workers must first apply to the Department of Labor (DOL) for a temporary labor certification. DOL determines whether the prospective employer has established that hiring the prospective H-2B worker will not displace any qualified U.S. workers or adversely affect the wages and working conditions of such workers. Once DOL approves a temporary labor certification, the prospective employer may file a petition with USCIS (Form I-129, Petition for Nonimmigrant Worker) to classify the alien as an H-2B nonimmigrant. Such petitions may include both named and unnamed beneficiaries (in emergent circumstances). If USCIS approves an H-2B petition, an alien may be accorded H-2B status in one of three ways, through (1) issuance of an H-2B nonimmigrant visa by the Department of State (DOS) and an alien’s admission to the United States on that visa; (2) grant of a change of status to H-2B by USCIS; or (3) admission as an H-2B nonimmigrant at a port-of-entry by U.S. Customs and Border Protection (CBP).

Since a single H-2B petition may contain multiple, unidentified employees, USCIS is only able to count the number of authorized H-2B petitions, and slots requested in those petitions, that the agency approves. DHS does not have authority to issue visas. Only the Department of State (DOS) is authorized to issue H-2B nonimmigrant visas to qualified aliens following a visa interview abroad. DOS has advised USCIS that it tracks the issuance of visas subject to and exempt from the bi-annual H-2B cap, and that visas issued to aliens that are counted against the cap are issued using the H-2B symbol, while aliens who are exempt from the cap are issued visas with an H-2R symbol. Traditionally, employers request a greater number of H-2B slots than actually needed and the number of aliens actually hired by the employer and thus obtaining an H-2B visa or nonimmigrant status is much lower. Therefore, to determine when USCIS has received sufficient petitions to reach the annual numerical limit for a given fiscal year, USCIS uses projections based on the number of H-2B slots requested and the number of visas DOS has actually issued. Typically, USCIS’ experience and methodology has followed an approximate 62 percent visa issuance rate in relation to number of petitions approved.

In light of this background, USCIS presents the following statistical information. For the period from October 1, 2004 through September 30, 2005, USCIS approved a total of 9,664 nonimmigrant petitions authorizing a potential total of 141,488 H-2B positions for visa issuance abroad. Once again, this does not mean that all of the authorized H-2B positions were in fact used because although an employer may request and receive authorization for multiple H-2B workers in a single petition, the employer may ultimately not hire an alien for each authorized position. During the period from October 1, 2004 through September 30, 2005, USCIS approved a total of 390 petitions authorizing a change to H-2B nonimmigrant status on behalf of 1,667 aliens who were already present in the United States in another nonimmigrant status.

The Department of State has indicated that it issued 87,492 H-2B nonimmigrant visas during the period from October 1, 2004 through September 30, 2005. As mentioned, 62 percent of the H-2B petitions approved by USCIS resulted in the issuance of visas. Applying this relationship,

USCIS determined that a sufficient number of petitions had been received by early January that the visa cap would be reached. As a result, USCIS stopped accepting petitions. Due to an outcry from the small businesses community, Congress provided authority in May under the "Save Our Small and Seasonal Business Act" of 2005, to issue an additional 35,000 H-2B visas and/or change of status, effectively raising the FY 2005 cap to 101,000.

During the period from October 1, 2004 through September 30, 2005, USCIS revoked or otherwise terminated the H-2B nonimmigrant status of 80 foreign workers present in the United States.

During the period from October 1, 2004 through September 30, 2005, USCIS revoked or otherwise terminated a total of 111 approved petitions, which would have authorized a total of 1,514 H-2B positions. It is important to note that although USCIS may issue a Notice of Revocation or a Notice of Termination either revoking or terminating an approved H-2B petition filed on behalf of aliens who remain abroad, it is the responsibility of the Department of State to ensure that no H-2B nonimmigrant visas are issued based upon a revoked or terminated petition once USCIS issues a revocation or termination notice.

Most of the Notices of Revocation issued by USCIS are based on withdrawal requests from the petitioning employer. As noted previously with regard to the H-2B program, most petitions request multiple workers and the petitioning employers only want to withdraw (and subsequently revoke) a finite number of the beneficiaries on the petition. Once USCIS issues the Notice of Revocation for the beneficiaries indicated, those individuals are removed from USCIS' Computer Linked Application Information Management System. At that point, USCIS sends out the Notice of Revocation letter to the petitioner, and concurrently faxes the Notice of Revocation and the withdrawal request (if applicable) to the Department of State Kentucky Consular Center. If the H-2B petition was previously approved and sent to a U.S. port-of-entry, these same documents are faxed to the appropriate U.S. port-of-entry.

I appreciate your interest in the Department of Homeland Security, and I look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Legislative and Intergovernmental Affairs at (202) 205-4412.

Sincerely,



Pamela J. Turner  
Assistant Secretary for Legislative and Intergovernmental Affairs  
U.S. Department of Homeland Security