



H-2B Nonagricultural Temporary Worker Visa and Status

Fiscal Year 2015 Semiannual Report to Congress
Part 1: April 1, 2014 - March 31, 2015



Homeland
Security

*U.S. Citizenship and
Immigration Services*



August 20, 2015

Foreword

On behalf of the Department of Homeland Security, I am pleased to present the first of two semiannual reports for fiscal year 2015 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 Charles E. Grassley
Chairman, Senate Committee on the Judiciary

The Honorable Patrick J. Leahy
Ranking Member, Senate Committee on the Judiciary

The Honorable Robert W. Goodlatte
Chairman, House Committee on the Judiciary

The Honorable John J. Conyers, Jr.
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, appearing to read "Sue Ramanathan", written over a horizontal line.

Sue Ramanathan
Deputy Assistant Secretary for Legislative Affairs

Executive Summary

The Department of Homeland Security (DHS) has compiled this report on H-2B nonagricultural temporary workers 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 U.S. Immigration and Customs Enforcement (ICE).

This report includes data for the second half of fiscal year (FY) 2014 and the first half of FY 2015.

Highlights

- The annual numerical limitation of 66,000 H-2B workers (the H-2B “cap”) was not reached in FY 2014.
- During the second half of FY 2014, a total of 34,107 workers¹ were issued H-2B visas or otherwise acquired H-2B status.
- The semiannual numerical limitation of 33,000 H-2B workers for the first half of FY 2015 was reached on January 26, 2015. A total of 40,896 workers² were issued H-2B visas or otherwise acquired H-2B status during the first half of FY 2015.

¹ This number includes beneficiaries who are not subject to the H-2B cap.

² This number includes beneficiaries who are not subject to the H-2B cap.

Table of Contents

I. Legislative Requirement	1
II. Background	2
III. Data Report and Analysis	4
Section 3.1 – H-2B visas issued and status provided	4
Section 3.2 – H-2B visas or status revoked or otherwise terminated	5

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 (8 U.S.C. 1101(a)(15)(H)(ii)(b)); or

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

II. Background

Overview

The H-2B program allows U.S. employers to bring alien workers to the United States to fill temporary nonagricultural jobs. *See* INA § 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 peak load need, or an intermittent need;
- there are not sufficient U.S. workers who are 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, before filing a petition with USCIS for H-2B workers, the employer must obtain a valid temporary labor certification the DOL or, if the worker(s) will be employed in Guam, from the Governor of Guam. *See* 8 C.F.R. § 214.2(h)(6)(iii)(A), (C).

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 § 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).

Exceptions to the H-2B Cap

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

1. H-2B workers in the United States or abroad who have been previously counted towards the cap in the same fiscal year;
2. Current H-2B workers seeking a change of employer or terms of employment;
3. Fish roe processors, fish roe technicians, and supervisors of fish roe processing;³ and

³ *See* Pub. L. No. 108-287, § 14006, 118 Stat. 951, 1014 (2004).

4. From November 28, 2009 until December 31, 2019, workers performing temporary labor or services in the Commonwealth of the Northern Mariana Islands (CNMI) or Guam.⁴

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 accept petitions for H-2B workers who are cap-exempt.

H-2B petition approvals on behalf of aliens who are exempt from the H-2B cap may be included in the data provided in this report. The total number of cap subject H-2B visa issuances did not exceed the cap for the second half of fiscal year 2014. Additionally, H-2B visa issuances exceeded the cap in the first half of fiscal year 2015.⁵

Obtaining H-2B Status

After USCIS approves an H-2B petition, a worker 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 Canadians and Bermudan citizens, Bahamian nationals, and residents of certain Caribbean islands; or
- change of status to H-2B or extension of H-2B status granted by USCIS.

⁴ *See* 48 U.S.C. § 1806(a)(2) as amended by sec. 10 of Pub. L. 113-235; 48 U.S.C. § 1806(b).

⁵ This number includes beneficiaries who are not subject to the H-2B cap.

III. Data Report and Analysis

Section 3.1 – H-2B visas issued and status provided

Second Half of FY 2014

During the second half of FY 2014 (the period from April 1, 2014 through September 30, 2014), 34,107 workers were issued H-2B visas or otherwise acquired H-2B status. This number includes:

- 33,731 H-2B visas issued by DOS;
- 242 workers that USCIS approved for a change of status to H-2B classification; and
- 134 crossings of visa-exempt H-2B workers⁶ who were processed by CBP.⁷

First Half of FY 2015

During the first half of FY 2015 (the period from October 1, 2015 through March 31, 2015), 40,896⁸ workers were issued H-2B visas or otherwise acquired H-2B status. This number includes:

- 40,474⁹ H-2B visas issued by DOS;
- 178 workers that USCIS approved for a change of status to H-2B classification; and
- 244 crossings¹⁰ of visa-exempt H-2B workers who were processed by CBP.

Table 1: H-2B Workers Approved from April 1, 2014 to March 31, 2015

	2 nd Half of FY 2014	1 st Half of FY 2015	Total
Total H-2B Workers Approved	34,107	40,896	75,003
Visas Approved by DOS	33,731	40,474	74,205
Changes of Status Approved by USCIS	242	178	420
Visa-Exempt Admissions by CBP	134	244	378

⁶ For the second half of FY 2014, all 134 crossings of visa-exempt H-2B workers came from Canada. See 8 C.F.R. § 212.1(a) for a list of aliens who are considered visa-exempt.

⁷ This figure may include multiple admissions by the same individuals. Although an individual 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 on an approved petition.

⁸ This number includes beneficiaries who are not subject to the H-2B cap.

⁹ This number includes beneficiaries who are not subject to the H-2B cap.

¹⁰ For the first half of FY 2015, all 244 crossings of visa-exempt H-2B workers came from Canada. See 8 C.F.R. § 212.1(a) for a list of aliens who are considered visa-exempt.

Section 3.2 – H-2B visas or status revoked or otherwise terminated

Second Half of FY 2014

During the second half of FY 2014 (April 1, 2014 through September 30, 2014), USCIS revoked or otherwise terminated 14 approved petitions which consisted of 197 H-2B workers. During that period, CBP found 119 aliens inadmissible at ports of entry, and ICE removed 13 H-2B aliens who were found removable after admission to the United States.

DOS reported that it initially refused a total of 6,068 H-2B visa applications in the second half of FY 2014. However, 2,257 of the persons whose applications for visas were refused subsequently overcame the reason for visa denial and ultimately were granted H-2B visas.¹¹ As a result, a net total of 3,811 aliens were refused H-2B visas by DOS in the second half of FY 2014.

The visa refusals cited in this section are not included in the figure for total H-2B visas issued reported in Section 3.1 above.

First Half of FY 2015

During the first half of FY 2015 (the period from October 1, 2014 through March 31, 2015), USCIS revoked or otherwise terminated 9 approved petitions which consisted of 89 H-2B workers. During this same period, CBP found 80 aliens inadmissible at ports of entry, and ICE removed 6 H-2B aliens who were found removable after admission to the United States.

DOS reported that it initially refused a total of 4,732 H-2B visa applications in the first half of FY 2015. However, 1,496 of the persons whose applications for visas were refused subsequently overcame the reason for visa denial and ultimately were granted H-2B visas. As a result, a net total of 3,236 aliens were refused H-2B visas by DOS in the first half of FY 2015.

The visa refusals cited in this section are not included in the figure for total H-2B visas issued reported in Section 3.1 above.

Table 2: H-2B Revocations and Terminations

Type of Revocation or Termination	2 nd Half of FY 2014	1 st Half of FY 2015	Total
DOS (visa refusals)	3,811	3,236	7,047
USCIS (beneficiaries of revoked petitions)	197	89	286
CBP (inadmissible)	119	80	199
ICE (removals)	13	6	19

¹¹ When applying for a visa at a U.S. embassy or consulate abroad an applicant may be refused initially by DOS but may return with more information and have his or her visa subsequently approved by DOS.