US employers recruit domestic workers for agricultural jobs, and if enough qualified domestic workers are not found, allows for recruiting of foreign workers.

The foreign workers may only work full-time (35 hrs/wk), and 10 months or less - special visa.

The purpose of the H-2A program is to assure employers a legal and adequate labor force on the one hand and to protect the jobs and wages of US workers on the other.
Any employee who works in the occupation for which an H-2A application has been made, both domestic, and foreign.

This means that the terms and wages of the H-2A contract apply to domestic workers in the H-2A occupation.
WHAT ALIENS ARE ELIGIBLE TO PARTICIPATE IN THE PROGRAM?

- Seasonal jobs only. This program can not be used to legalize year-round employees.

- The alien must be an “intending non-immigrant”. They must be residents of the foreign country and intending to return to their home country.

- Employers must file H-2A application no later than 60 days before the date of need.
There are multiple governmental agencies involved with the H-2A program.

- **USDOL**
  - Employment Training Administration (Certification)
  - Wage and Hour Division (enforcement)

- **USCIS**
  - Visa application and approval

- **State Department**
  - Consular interviews
  - Issue visas
PRACTICAL FEATURES OF THE H-2A PROGRAM

- Allows employers to find workers who would not otherwise be available.
- Allows for legal entry of employees recruited out of the country
- More scrutiny by enforcement and labor advocates
- Higher wages and costs of employment for employers
- Lots of rules and regulations to understand and follow - may be restrictive
ADVANTAGES FOR EMPLOYEES

- Cross legally – no smugglers or border danger
- Free transportation
- More enforcement and oversight by state and federal government agencies
- Guaranteed contract
- Housing provided free of charge
DOMESTIC RECRUITMENT

- Key concept throughout the contract period: Valid test of the labor market

- Recruitment report through 50% of contract period. Employer must account for total dispensation of all applicants and employees.
WHO CAN MAKE AN H-2A APPLICATION?

- Any agricultural employer or group of employers who need workers to perform labor of a temporary or seasonal nature may apply.

- Agricultural Associations

- Farm Labor Contractors
WHAT IS EXPECTED OF THE GROWER?

- Recruit domestically as instructed by USDOL.
- Pay all visa, consulate and foreign recruiting fees
  - Employees may not be charged for anything.
- Provide free transportation to foreign employees
  - From place of recruitment to worksite and back
  - From housing to worksite and back daily
  - For shopping and other needs weekly
- Provide free housing to foreign H-2A employees
- Follow hiring and recordkeeping requirements
  - Guarantee ¾ of contracted hours
  - Give preference to domestic workers in hiring
- Pay higher wages required by USDOL
Keep accurate payroll records.

Keep records of all applicants and if hired and if not hired the reason why; employees who are hired, fired, quit. Send an initial recruitment report to USDOL. Continue to keep records which are subject to USDOL audit.

Provide a wage statement each payday.

Workers must be paid weekly or (bi-weekly if it’s a prevailing practice).

Provide workers a copy of the work rules and agricultural work agreement (in a language native to the worker)