H-2A Temporary Agricultural Workers

The H-2A program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary agricultural jobs. A U.S. employer, a U.S. agent as described in the regulations, or an association of U.S. agricultural producers named as a joint employer must file Form I-129, Petition for Nonimmigrant Worker, on a prospective worker’s behalf.

Who May Qualify for H-2A Classification?

To qualify for H-2A nonimmigrant classification, the petitioner must:

- Offer a job that is of a temporary or seasonal nature.
- Demonstrate that there are not sufficient U.S. workers who are able, willing, qualified, and available to do the temporary work.
- Show that the employment of H-2A workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.
- Generally, submit with the H-2A petition, a single valid temporary labor certification from the U.S. Department of Labor. (A limited exception to this requirement exists in certain “emergent circumstances.” See e.g., 8 CFR 214.2(h)(5)(x) for specific details.)

H-2A Program Process

- **Step 1**: Petitioner submits temporary labor certification application to the U.S. Department of Labor (DOL). Prior to requesting H-2A classification from USCIS, the petitioner must apply for and receive a temporary labor certification for H-2A workers with DOL. For further information regarding the temporary labor certification requirements and process, see the Foreign Labor Certification, Department of Labor page.
- **Step 2**: Petitioner submits Form I-129 to USCIS. After receiving a temporary labor certification for H-2A employment from DOL, the employer should file Form I-129 with USCIS. With limited exceptions, the original temporary labor certification must be submitted as initial evidence with Form I-129. (See the instructions to Form I-129 for additional filing requirements.)
• **Step 3:** Prospective workers outside the United States apply for visa and/or admission. After USCIS approves Form I-129, prospective H-2A workers who are outside the United States must:
  - Apply for an H-2A visa with the U.S. Department of State (DOS) at a U.S. Embassy or Consulate abroad, then seek admission to the United States with U.S. Customs and Border Protection (CBP) at a U.S. port of entry; or
  - Directly seek admission to the United States in H-2A classification with CBP at a U.S. port of entry, if a worker does not require a visa.

### H-2A Eligible Countries List

Except as noted below, H-2A petitions may only be approved for nationals of countries that the Secretary of Homeland Security has designated, with the concurrence of the Secretary of State, as eligible to participate in the H-2A program.

The Department of Homeland Security publishes the list of H-2A and H-2B eligible countries annually in a Federal Register notice. Designation of eligible countries is valid for one year from publication.

Effective Jan. 18, 2012, nationals from the following countries are eligible to participate in the H-2A program:

<table>
<thead>
<tr>
<th>Argentina</th>
<th>Ecuador</th>
<th>Jamaica</th>
<th>New Zealand</th>
<th>Solomon Islands</th>
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<tr>
<td>Australia</td>
<td>El Salvador</td>
<td>Japan</td>
<td>Norway</td>
<td>South Africa</td>
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<tr>
<td>Barbados</td>
<td>Estonia</td>
<td>Kiribati</td>
<td>Papua New Guinea</td>
<td>South Korea</td>
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<td>Belize</td>
<td>Ethiopia</td>
<td>Latvia</td>
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<td>Brazil</td>
<td>Fiji</td>
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<td>Philippines</td>
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<td>Bulgaria</td>
<td>Guatemala</td>
<td>Macedonia</td>
<td>Poland</td>
<td>Tonga</td>
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<td>Canada</td>
<td>Haiti</td>
<td>Mexico</td>
<td>Romania</td>
<td>Turkey</td>
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<td>Chile</td>
<td>Honduras</td>
<td>Moldova</td>
<td>Samoa</td>
<td>Tuvalu</td>
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<td>Costa Rica</td>
<td>Hungary</td>
<td>Montenegro</td>
<td>Serbia</td>
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<td>Croatia</td>
<td>Iceland</td>
<td>Nauru</td>
<td>Slovakia</td>
<td>United Kingdom</td>
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<td>Dominican Republic</td>
<td>Ireland</td>
<td>The Netherlands</td>
<td>Slovenia</td>
<td>Uruguay</td>
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<td></td>
<td>Israel</td>
<td>Nicaragua</td>
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<td>Vanuatu</td>
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A national from a country not on the list may only be the beneficiary of an approved H-2A petition if the Secretary of Homeland Security determines that it is in the U.S. interest for him or her to be the beneficiary of such a petition. (See 8 CFR 214.2(h)(2)(iii) and 8 CFR 214.2(h)(5)(i)(F)(1)(ii) for additional evidentiary requirements.)

Note: If you request H-2A workers from both eligible and non-eligible countries, USCIS suggests that you file two separate petitions. Filing one petition for workers from eligible countries and a separate petition for workers from non-eligible countries may help decrease delays.

**Period of Stay**

Generally, USCIS may grant H-2A classification for up to the period of time authorized on the temporary labor certification. H-2A classification may be extended for qualifying employment in increments of up to 1 year each. A new, valid temporary labor certification covering the requested time must accompany each extension request. The maximum period of stay in H-2A classification is 3 years.

A person who has held H-2A nonimmigrant status for a total of 3 years must depart and remain outside the United States for an uninterrupted period of 3 months before seeking readmission as an H-2A nonimmigrant. Additionally, previous time spent in other H or L classifications counts toward total H-2A time.

*Exception:* Certain periods of time spent outside of the United States may “interrupt” an H-2A worker’s authorized stay and not count toward the 3-year limit. See [Calculating Interrupted Stay for H-2 Classifications](#) for additional information.

**Family of H-2A Workers**

An H-2A worker’s spouse and unmarried children under 21 years of age may seek admission in H-4 nonimmigrant classification. Family members are not eligible for employment in the United States while in H-4 status.

**Employment-Related Notifications to USCIS**

Petitioners of H-2A workers must notify USCIS within 2 workdays if any of the following occur:

- **No show:** The H-2A worker fails to report to work within 5 work days of the latter of:
  - The employment start date on the H-2A petition, or
  - The start date established by the employer;
- **Abscondment:** The H-2A worker leaves without notice and fails to report for
work for 5 consecutive workdays without the consent of the employer;

- **Termination**: The H-2A worker is terminated prior to the completion of the H-2A labor or services for which he or she was hired; or

- **Early Completion**: The H-2A worker finishes the labor or services for which he or she was hired more than 30 days earlier than the date specified in the H-2A petition.

Petitioners must include the following information on the employment-related notification:

1. The reason for the notification (for example, explain that the worker was either a “no show,” “absconder,” “termination,” or “early completion”);
2. The reason for untimely notification and evidence for good cause, if applicable;
3. The USCIS receipt number of the approved H-2A petition;
4. The petitioner’s information, including:
   - Name
   - Address
   - Phone number
   - Employer identification number (EIN)
5. The employer’s information (if different from that of the petitioner):
   - Name
   - Address
   - Phone number
6. The H-2A worker’s information:
   - Full Name
   - Date of birth
   - Place of birth
   - Last known physical address and phone number

Additionally, to assist USCIS with identification of the H-2A worker, submit the following for each H-2A worker, if available:

- Social Security Number
- Visa Number

**Failure to Notify USCIS**: A petitioner who fails to comply with these employment notification requirements, or fails to demonstrate good cause for untimely notification, may be required to pay $10 in liquidated damages for each instance of noncompliance.

**Note**: USCIS defers to DOL’s definition of “workday.” According to the Fair Labor Standards Act (FLSA), this generally means the period of time on any particular day when an employee begins and ends his or her “principal activities.”

**How do I notify USCIS?**

Notification should be made via email or mail to the California Service Center at the
following addresses. Although not required, email notification is strongly recommended to ensure timely notification.

**California Service Center**

By email: CSC-X.H-2AAbs@dhs.gov

By mail:

California Service Center
Attn: Div X/BCU ACD
P.O. Box 30050
Laguna Niguel, CA 92607–3004

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**Fee-Related Notifications to USCIS**

A petitioner, agent, facilitator, recruiter, or similar employment service is prohibited from collecting a job placement fee or other compensation (either direct or indirect) at any time from an H-2A worker as a condition of employment.

Petitioners are provided with the opportunity to avoid denial or revocation (on notice) of their H-2A petition if they notify USCIS that they obtained information concerning the beneficiary’s payment (or agreement to pay) a prohibited fee or compensation to any agent, facilitator, recruiter, or similar employment service *only after* they filed their H-2A petition. This narrow exception does not apply, however, where a petitioner knew or should have known at the time of filing of its H-2A petition that the prospective worker had paid (or agreed to pay) such recruitment-related fees to any such persons or entities.

Petitioners must notify USCIS of an H-2A worker’s payment or agreement to pay prohibited fees to a recruiter, facilitator or similar employment service within 2 workdays of gaining knowledge of such payment or agreement.

Petitioners must include the following information in their fee-related notification:

1. The reason for the notification;
2. The USCIS receipt number of the approved H-2A petition;
3. The petitioner’s information:
   - Name
   - Address
   - Phone number
4. The employer’s information (if different from that of the petitioner):
   - Name
   - Address
5. Information about the recruiter, facilitator, or placement service to which the beneficiaries paid (or agreed to pay) the prohibited fee:
   - Name
   - Address

Fees not prohibited are:

- The lesser of the fair market value or actual costs of transportation and
- Any government-mandated passport, visa, or inspection fees to the extent that the payment of such costs and fees by the alien H-2A worker is not prohibited by statute or other laws. This includes, but is not limited to, the FLSA, DOL regulations, case law, and DOL interpretations of the FLSA and other relevant labor laws.

How do I notify USCIS?

Notification should be made to the California Service Center via email or mail at the following addresses. Although not required, email notification is strongly recommended to ensure timely notification.

California Service Center

By email: CSC.H2AFee@dhs.gov

By mail:

California Service Center
Attn: H-2A Fee
P.O. Box 10695
Laguna Niguel, CA 92607–1095

Find this page at: http://www.uscis.gov/h-2a

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