



H-2B Nonagricultural Temporary Worker Visa and Status

Fiscal Year 2014 Semiannual Report to Congress
Part 1: April 1, 2013 - March 31, 2014



Homeland
Security

*U.S. Citizenship and
Immigration Services*



**Homeland
Security**

August 15, 2014

Foreword

On behalf of the Department of Homeland Security, I am pleased to present the first of two semiannual reports for fiscal year 2014 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 Patrick J. Leahy
Chairman, Senate Committee on the Judiciary

The Honorable Charles Grassley
Ranking Member, Senate Committee on the Judiciary

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

The Honorable John 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 that reads "Brian de Vallance".

Brian de Vallance
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) 2013 and the first half of FY 2014. The data contained in this report is accurate as of May 2014.

Highlights

- The annual numerical limitation of 66,000 H-2B workers (the H-2B “cap”) was not reached in FY 2013.
- During the second half of FY 2013, a total of 25,243¹ workers were issued H-2B visas or otherwise acquired H-2B status.
- The semiannual numerical limitation of 33,000 H-2B workers was reached on March 14, 2014 for the first half of FY 2014. During the first half of FY 2014, a total of 34,575 workers² were issued H-2B visas or otherwise acquired H-2B status (including those not subject to the semi-annual cap).

¹ This report revises CBP data from the previous semiannual report to Congress. The previous report stated that 150 visa-exempt H-2B workers were admitted by CBP for the second half of FY 2013. However, as noted in Section 3.1 of this report, 153 visa-exempt H-2B workers were actually admitted by CBP for the second half of FY 2013. This revision is attributed to logistical delays in manually entering I-94 information into CBP’s computer system.

² This number includes beneficiaries that are visa-exempt.

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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. 2681-641, as amended by section 406 of the *REAL ID Act of 2005*, Pub. L. No. 109-13, div. B, 119 Stat. 231, 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 from the U.S. Department of Labor (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:

- Fish roe processors, fish roe technicians, and supervisors of fish roe processing;³ and
- From November 28, 2009, until December 31, 2014, workers performing temporary labor or services in the Commonwealth of the Northern Mariana Islands (CNMI) or Guam.⁴

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

⁴ *See* Section 6(b) of A Joint Resolution to Approve the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Pub. L. No. 94-241, 90 Stat. 263, 48 U.S.C. § 1801 note (1976), as added by section 702 of the Consolidated Natural Resources Act of 2008, Pub. L. No. 110-229, 122 Stat. 754, 856.

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. Even with the inclusion of exempt cases, the total number of H-2B visa issuances did not exceed the cap for the second half of fiscal year 2013. However, H-2B visa issuances exceeded the cap in the first half of fiscal year 2014.⁵

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.

⁵ This number includes beneficiaries that are cap-exempt.

III. Data Report and Analysis

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

Second Half of FY 2013

During the second half of FY 2013 (the period from April 1, 2013 through September 30, 2013), 25,243 workers were issued H-2B visas or otherwise acquired H-2B status. This number includes:

- 24,894 H-2B visas issued by DOS;
- 196 workers that USCIS approved for a change of status to H-2B classification; and
- 153 crossings⁶ of visa-exempt H-2B workers⁷ who were processed by CBP.⁸

First Half of FY 2014

During the first half of FY 2014 (the period from October 1, 2013 through March 31, 2014), 34,575⁹ workers were issued H-2B visas or otherwise acquired H-2B status. This number includes:

- 34,370¹⁰ H-2B visas issued by DOS;
- 116 workers that USCIS approved for a change of status to H-2B classification; and
- 89 crossings¹¹ of visa-exempt H-2B workers who were processed by CBP.

Table 1: H-2B Workers Approved from April 1, 2013 to March 31, 2014

	2 nd Half of FY 2013	1 st Half of FY2014	Total
Total H-2B Workers Approved	25,243	34,575	59,818
Visas Approved by DOS	24,894	34,370	59,264
Changes of Status Approved by USCIS	196	116	312
Visa-Exempt Admissions by CBP	153	89	242

⁶ As noted in Footnote 1, this statistic represents a revision from the previous semiannual report to Congress. The previous report stated that 150 visa-exempt H-2B workers were admitted by CBP for the second half of FY 2013. However, 153 visa-exempt H-2B workers were actually admitted by CBP for the second half of FY 2013.

⁷ For the second half of FY 2013, all 153 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.

⁸ 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.

⁹ This number includes beneficiaries that are cap-exempt.

¹⁰ This number includes beneficiaries that are cap-exempt.

¹¹ For the first half of FY 2014, all 89 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 2013

During the second half of FY 2013 (April 1, 2013 through September 30, 2013), USCIS revoked or otherwise terminated 16 approved petitions, which authorized the admission of 461 H-2B workers. During that period, CBP canceled the H-2B visas of 115 aliens who were found inadmissible at ports of entry, and ICE removed 12 H-2B aliens who were found removable after admission to the United States.

DOS reported that it initially refused a total of 5,487 H-2B visa applications in the second half of FY 2013. However, 2,713 of the persons whose applications for visas were refused subsequently overcame the reason for visa denial and ultimately were granted H-2B visas.¹² As a result, a net total of 2,774 aliens were refused H-2B visas by DOS in the second half of FY 2013.

First Half of FY 2014

During the first half of FY 2014 (the period from October 1, 2013 through March 31, 2014), USCIS revoked or otherwise terminated 8 approved petitions, which authorized the admission of 190 H-2B workers.

During this same period, CBP canceled the H-2B visas of 116 aliens who were found inadmissible at ports of entry, and ICE removed 10 H-2B aliens who were found removable after admission to the United States.

DOS reported that it initially refused a total of 4,465 H-2B visa applications in the first half of FY 2014. However, 1,657 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 2,808 aliens were refused H-2B visas by DOS in the first 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.

Table 2: H-2B Revocations and Terminations

Type of Revocation or Termination	2 nd Half of FY 2013	1 st Half of FY 2014	Total
DOS (visa refusals)	2,774	2,808	5,582
USCIS (beneficiaries of revoked petitions)	461	190	651
CBP (cancelled visas)	115	116	231
ICE (removals)	12	10	22

¹² When applying for a visa at a U.S. 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.