





**Homeland  
Security**

December 23, 2019

## Foreword

On behalf of the U.S. Department of Homeland Security, I am pleased to present the Fiscal Year 2018 report, *Characteristics of H-2B Nonagricultural Temporary Workers*.

Pursuant to statutory requirements, this report is being provided to the following Members of Congress:

The Honorable Lindsey Graham  
Chairman, Senate Committee on the Judiciary

The Honorable Dianne Feinstein  
Ranking Member, Senate Committee on the Judiciary

The Honorable Jerrold Nadler  
Chairman, House Committee on the Judiciary

The Honorable Doug Collins  
Ranking Member, House Committee on the Judiciary

Please do not hesitate to contact us at (202) 447-5890 if we may be of further assistance.

Respectfully,

A handwritten signature in blue ink that reads "Christine M. Ciccone".

CHRISTINE M. CICCONE  
Assistant Secretary for Legislative Affairs

# Executive Summary

The U.S. Department of Homeland Security (DHS) has compiled this Fiscal Year (FY) 2018 report on H-2B nonimmigrants from information provided by the U.S. Department of State (DOS), U.S. 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 each half of FY 2018.<sup>1</sup>

## *Highlights*

- A total of 84,752<sup>2</sup> aliens were issued H-2B visas or otherwise acquired H-2B status in FY 2018, with 83,774 H-2B visas issued by DOS.
- The top five H-2B visa issuance countries in FY 2018 were:
  - Mexico – 74.2 percent
  - Jamaica – 9.9 percent
  - Guatemala – 3.9 percent
  - South Africa – 2.0 percent
  - Philippines – 1.5 percent<sup>3</sup>
- 276 requests for change of status to H-2B were approved by USCIS. In such cases, a visa is not required.
- 702 crossings of visa-exempt H-2B workers were processed by CBP.<sup>4</sup>

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<sup>1</sup> Some of the data referenced in the report is confidential visa record information, shared pursuant to the statutory requirements of Pub. L. 105-277. USCIS would request that receiving offices not share or otherwise make this information publicly available.

<sup>2</sup> This number includes H-2B beneficiaries who are exempt from the H-2B cap and who were issued the additional H-2B visas made available in accordance with Section 205 of the *Consolidated Appropriations Act, 2018* (Public Law 115-141).

<sup>3</sup> Effective January 19, 2019, the Secretary of Homeland Security determined, with the concurrence of the Secretary of State, that the Philippines should no longer be designated as an eligible country to participate in the H-2A and H-2B programs because they no longer meet the regulatory standards under 8 CFR 214.2(h)(5)(i)(F)(1)(i) and 8 CFR 214.2(h)(6)(i)(E)(1). Among DHS's concerns was that the Philippines had a high H-2B overstay rate. In FY 2017, DHS estimated that nearly 40 percent of H-2B visa holders from the Philippines overstayed their period of authorized stay. See 84 FR 133.

<sup>4</sup> For FY 2018, all 702 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. 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.

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# I. Legislative Requirement

This report was prepared in accordance with section 416(d)(2) of the *American Competitiveness and Workforce Improvement Act of 1998*, Pub. L. 105-277, tit. IV, 112 Stat. 2681-641, as amended by section 406 of the *REAL ID Act of 2005*, Pub. L. 109-13, div. B, 119 Stat. 302, enacted May 11, 2005, which requires that:

Beginning in fiscal year 2007, the Secretary of Homeland Security and the Secretary of State shall submit, on an annual basis, to the Committees on the Judiciary of the House of Representatives and the Senate –

- (A) information on the countries of origin of, occupations of, and compensation paid to aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act [(INA)] (8 U.S.C. 1101(a)(15)(H)(ii)(b)) during the previous fiscal year;
- (B) the number of aliens who had such a visa or such status expire or be revoked or otherwise terminated during each month of such fiscal year; and
- (C) the number of aliens who were provided nonimmigrant status under such section during both such fiscal year and the preceding fiscal year.

## II. Background

### *Overview*

The H-2B program allows U.S. employers to bring foreign 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 peakload need, or an intermittent need;
- qualified workers in the United States are not available to perform 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.

*See* Title 8 Code of Federal Regulations (8 C.F.R.) § 214.2(h)(6)(ii)(B) and (iv)(A). Generally, before filing a petition with USCIS for H-2B workers, the employer must obtain a valid temporary labor certification from DOL or, if the worker(s) will be employed on Guam, from the Governor of Guam. *See* 8 C.F.R. § 214.2(h)(6)(iii)(A) and (C). H-2B petitions may request multiple workers if the workers will be performing the same service, for the same period of time, and in the same location. *See* 8 C.F.R. § 214.2(h)(2)(ii). An H-2B worker must also be from a list of “Eligible Countries,” as designated by DHS in a notice published in the Federal Register, unless it is determined to be in the U.S. interest that a foreign worker from any country not on this list be granted H-2B status. *See* 8 C.F.R. § 214.2(h)(6)(i)(E).

### *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 semi-annually, 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). USCIS will announce that it will no longer accept further H-2B petitions upon determining that it has received a sufficient number of petitions to ensure that the statutory caps will not be exceeded. In making this determination, USCIS takes into account historical data related to approvals, denials, revocations, and other relevant factors.<sup>5</sup>

In accordance with Section 205 of Division M of the *Consolidated Appropriations Act, 2018* (Public Law 115-141), on May 31, 2018, DHS and DOL published a temporary final rule, 83 Fed. Reg. 24905, increasing the H-2B cap by up to 15,000 additional visas through the end of FY 2018. These visas were available to U.S. businesses that attested that they would likely suffer irreparable harm without the ability to employ all the H-2B workers requested in their petition. This increase was based on a time-limited statutory authority and expired on September 30, 2018.

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<sup>5</sup> *See* 8 C.F.R. 214.2(h)(8)(ii)(B).

### ***Exemptions from 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. Additionally, the following workers are exempt from the H-2B cap:

- H-2B workers in the United States or abroad who have been previously counted toward the cap in the same fiscal year;
- Fish roe processors, fish roe technicians, and supervisors of fish roe processing;<sup>6</sup> and
- From November 28, 2009 until December 31, 2029, workers performing temporary labor or services in the Commonwealth of the Northern Mariana Islands (CNMI) or Guam.<sup>7</sup>

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 are generally included in the data provided in this report.

### ***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 Canadian and Bermudan citizens, Bahamian nationals, and British subjects resident in certain islands; or
- change of nonimmigrant status to H-2B granted by USCIS.

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<sup>6</sup> *See* Pub. L. No. 108-287, § 14006, 118 Stat. 951, 1014 (2004).

<sup>7</sup> *See* 48 U.S.C. 1806(a)(2) as amended by sec. 10 of Pub. L. 113-235; 48 U.S.C. 1806(b), and by the *Northern Mariana Islands U.S. Workforce Act of 2018* (July 24, 2018).

### III. Data Report and Analysis

#### Section 3.1 – Countries of nationality for workers who were issued H-2B visas by the Department of State in FY 2018

Based on information provided by DOS, the nationalities of workers who were issued H-2B visas in FY 2018 are as follows:

Nationality	Number	Nationality	Number
Albania	D	Jamaica	8,293
Antigua and Barbuda	D	Japan	210
Argentina	55	Korea, South	D
Australia	39	Latvia	D
Austria	D	Lithuania	68
Bangladesh	D	Macedonia	20
Barbados	D	Mexico	62,162
Belarus	D	Moldova	D
Belgium	D	Mongolia	D
Belize	51	Montenegro	D
Brazil	135	Netherlands	20
Bulgaria	218	New Zealand	27
Canada	D	Nicaragua	66
Chile	14	Norway	D
China-Taiwan	560	Panama	58
Colombia	115	Peru	34
Costa Rica	467	Philippines	1,296
Croatia	14	Poland	122
Czech Republic	149	Portugal	64
Denmark	D	Romania	433
Dominican Republic	128	Serbia	757
Ecuador	36	Slovakia	54
El Salvador	595	Slovenia	D
Estonia	D	South Africa	1,641
France	D	Spain	D
Germany	D	Sweden	D
Great Britain and Northern Ireland	562	Switzerland	D
Greece	12	Thailand	D
Guatemala	3,296	Turkey	13
Honduras	816	Ukraine	823
Hungary	52	Uruguay	D
India	D	Zambia	D
Ireland	193	Zimbabwe	D
Italy	25	<b>Grand Totals</b>	<b>83,774</b>

Per USCIS best practices, units of less than 10 beneficiaries are masked so as to limit the possibility of the de-anonymization of data. “D” represents data withheld to protect privacy. However, the Grand Total includes the values of all fields including those marked ‘D’.



## Section 3.2 – Occupational information on, and compensation paid to, workers who were issued H-2B visas or provided H-2B status in FY 2018

DOL posts this information for the latest quarter and for previous fiscal years on its website at <http://www.foreignlaborcert.doleta.gov/performance/cfm>.<sup>8</sup> The data also includes information about the certification, partial certification,<sup>9</sup> withdrawal, and denial of temporary employment certification applications.

Guam Department of Labor (Guam DOL) collects similar information but does not routinely publish this information on its website. Please see the Appendix for a chart displaying occupational and compensation data for all H-2B applicants in FY 2018.

## Section 3.3 – H-2B visas or status revoked or otherwise terminated

From October 1, 2017 through September 30, 2018, USCIS revoked or otherwise terminated 15 approved H-2B petitions covering a total of 138 H-2B positions.<sup>10</sup>

USCIS Monthly Breakdown of Revocations:

Month	Number of Petitions	Number of Beneficiaries	Month	Number of Petitions	Number of Beneficiaries
Oct. 2017	1	7	Apr. 2018	0	0
Nov. 2017	1	3	May 2018	1	1
Dec. 2017	0	0	Jun. 2018	2	2
Jan. 2018	3	8	Jul. 2018	4	107
Feb. 2018	3	10	Aug. 2018	0	0
Mar. 2018	0	0	Sep. 2018	0	0

During this same period, CBP denied admission to 47 aliens who were found inadmissible at ports of entry,<sup>11</sup> and ICE removed 251 aliens who were found removable after admission to the United States.

DOS initially refused 10,218 H-2B visas during FY 2018.<sup>12</sup> However, 3,533 of these workers subsequently overcame the reasons for the visa refusal and the affected workers were granted

<sup>8</sup>The legislative requirement described in Section I calls, in part, for occupation information on and compensation paid to aliens. The occupational information includes the position being petitioned for and the corresponding compensation information. DHS relies on DOL to electronically capture such data, including compensation paid to H-2B workers. DOL routinely publishes such information online at the link provided.

<sup>9</sup>A “partial certification” occurs when the DOL Certifying Officer who issues the temporary labor certification (TLC) reduces either the period of need and/or the number of H-2B workers being requested. The employer will then receive an amended ETA Form 9142 and a Final Determination letter that includes the reasons for the partial certification.

<sup>10</sup> This statistic represents a revision from the *H-2B Nonagricultural Temporary Worker Visa and Status, Fiscal Year 2018 Semiannual Report to Congress, Part 2*. That report indicated that a total of 16 H-2B petitions consisting of 142 workers were revoked or otherwise terminated during FY 2018. The difference with these figures is attributed to updated USCIS data.

<sup>11</sup> This number includes those beneficiaries who received a visa and those who are visa-exempt. However, no visa-exempt beneficiaries were found inadmissible in FY 2018. The countries of origin for inadmissible beneficiaries were: Costa Rica, Guatemala, Jamaica, Mexico, Philippines, Poland, Serbia, and United Kingdom.

<sup>12</sup> Reasons for a visa refusal typically include matters outside of the scope of USCIS petition adjudication, such as determinations of inadmissibility, findings of immigrant intent under section 214(b) of the INA, or findings that the petitioning employer or an agent, facilitator, recruiter, or similar employment service required the prospective H-2B worker to pay a prohibited fee at any time as a condition of employment.

H-2B visas. Therefore, during FY 2018, DOS refused the visa applications of a net total of 6,685 H-2B workers.

The cancellation, termination, and visa refusal data from CBP, ICE, and DOS are not available on a month-to-month basis.

### Section 3.4 – Number of aliens who were provided H-2B nonimmigrant status during FY 2018 and FY 2017

In FY 2018, a total of **84,752** aliens were issued H-2B visas or acquired H-2B status absent issuance of an H-2B visa. This includes:

- 83,774 H-2B visas issued by DOS;
- 276 requests for change of status to H-2B approved by USCIS, which are cases in which a visa is not required; and
- 702 crossings of visa-exempt H-2B workers processed by CBP.<sup>13</sup>

In FY 2017, a total of **84,037** aliens were issued H-2B visas or acquired H-2B status absent issuance of an H-2B visa. This includes:

- 83,600 H-2B visas issued by DOS;
- 113 requests for change of status to H-2B approved by USCIS, which are cases in which a visa is not required; and
- 324 crossings of visa-exempt H-2B workers processed by CBP.<sup>14</sup>

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<sup>13</sup> For FY 2018, all 702 crossings of visa-exempt H-2B workers came from Canada. See 8 C.F.R. 212.1(a) and (b) for a list of aliens who are considered visa-exempt. This figure may include multiple admissions by the same individuals. Although an individual may cross the border numerous times, he or she only counts against the H-2B cap on his or her first admission based on an approved petition.

<sup>14</sup> For FY 2017, all 324 crossings of visa-exempt H-2B workers came from Canada. See 8 C.F.R. 212.1(a) and (b) for a list of aliens who are considered visa-exempt. This figure may include multiple admissions by the same individuals. Although an individual may cross the border numerous times, he or she only counts against the H-2B cap on his or her first admission based on an approved petition.

Appendix – Guam DOL chart displaying occupational and compensation data for all H-2B applicants in FY 2018

O*Net Code	Job Title	No. of Positions Certified	Rate of Pay on Cert	Unit of Pay on Cert
25-3021	Scuba Instructor	1	\$20.75	Hour
29-1141.03	Cardiac Catheterization Registered Nurse	3	\$27.00	Hour
29-1141.03	Emergency Registered Nurse	5	\$27.00	Hour
29-1141.03	Intensive Care Unit Registered Nurse	5	\$27.00	Hour
29-1141.03	Intensive Maternal Unit Registered Nurse	5	\$27.00	Hour
29-1141.03	Labor & Delivery/Obstetrics-Gynecology (OB-GYN) Registered Nurse	6	\$27.00	Hour
29-1141.03	Medical Telemetry Unit Registered Nurse	5	\$27.00	Hour
29-1141.03	Neonatal Intensive Care Unit Registered Nurse	4	\$27.00	Hour
29-1141.03	Operating Room Registered Nurse	5	\$27.00	Hour
29-1141.03	Pediatric Intensive Care Unit Registered Nurse	3	\$27.00	Hour
29-1141.03	Pediatrics Registered Nurse	3	\$27.00	Hour
29-1141.03	Post-Anesthesia Care Unit Registered Nurse	5	\$27.00	Hour
29-2033	Nuclear Medicine Technologist	1	\$36.52	Hour
29-2034	Radiologic Techologist	3	\$20.43	Hour
35-2014	Camp Cook	2	\$11.20	Hour
37-3011	Landscape Gardener	20	\$10.02	Hour
47-2031	Carpenter	754	\$14.51	Hour
47-2051	Cement Mason	417	\$14.27	Hour
47-2073	Heavy Equipment Operator	41	\$17.07	Hour
47-2111	Electrician	100	\$17.94	Hour
47-2152	Plumber	70	\$16.68	Hour
47-2171	Reinforcing Metal Worker	384	\$14.71	Hour
47-2211	Sheet Metal Worker	4	\$16.16	Hour
47-2221	Structural Steel Worker	12	\$14.01	Hour
49-1011	Crew Leader	1	\$24.21	Hour
49-3031	Automotive Mechanic	7	\$16.91	Hour
49-3042	Construction Equipment Mechanic	9	\$17.81	Hour
49-3042	Heavy Equipment Mechanic	8	\$17.81	Hour
49-9021	Air Conditioning & Refrigeration Technician	23	\$17.69	Hour
49-9071	Air Conditioning Maintenance Technician	6	\$13.77	Hour
51-3011	Baker	4	\$9.54	Hour
51-4121	Welder	47	\$17.63	Hour
51-4121	Welder	10	\$18.32	Hour