

H-2B AT A GLANCE

What are H-2B Visas?

- **Temporary *nonimmigrant*** classifications that allow noncitizens to come to the United States to perform temporary or seasonal work that is nonagricultural (such as hospitality or resort work) if persons capable of performing such a service or labor cannot be found in this country. Up to 66,000 new visas are available each year in this category. The number has been reached increasingly earlier every year. In Fiscal Year 2007, the first half of the cap was reached 3 days before the year began and the second half was met 4 months before the period began. From March of 2005 through September of 2007, returning workers were exempt from counting toward that cap due to the lack of temporary workers. Congress is considering renewing this popular policy.
- **Employer's need must be temporary:** Visas are only authorized if the employer can demonstrate a "temporary" need, that is, less than one year, and that the need is either a "one-time occurrence," a "seasonal need," a "peakload need" or an "intermittent need." The employer cannot use this category for permanent and long-term labor needs.
- **Employee's intent must be temporary:** The nonimmigrant worker must intend to return to his or her country upon expiration of his or her authorized stay. The worker may be required to prove ties to his or her home country.

Why Do Employers Hire H-2Bs?

- **Temporary Labor Shortages:** Employers hire H-2B workers in skilled, nonprofessional or entry level positions because they cannot find available, qualified workers in the U.S., despite good faith efforts to recruit U.S. workers at the current prevailing wage for that occupation.

What Must Employers Do?

- **Protect wages:** Employers must pay a wage to every H-2B worker that is at least as much as what is typically paid in the area of intended employment for that type of work ("prevailing wage").
- **Protect working conditions:** Employers cannot use H-2B workers to break a strike, and must post the job opening at the employer's place of business as part of their recruitment efforts. Employers cannot make H-2B nonimmigrants work under conditions different from their U.S. counterparts, including hours, shifts and benefits. Employers must recruit in the U.S. and not displace U.S. workers.
- **Demonstrate Unsuccessful Domestic Recruitment:** The employer must participate in a recruitment program overseen by the Department of Labor and show that no U.S. workers are available.

Is the H-2B Classification for all Employers?

- **No.** The H-2B classification is only good for employers who can establish that their need for foreign workers is temporary, that is, **seasonal, a one-time occurrence, or a peakload or intermittent need**. If the employer's need is year-round or does not fall into one of the definitions used by the Department of Labor or Immigration Service, the employer cannot use the H-2B classification to fill its labor needs.

What Type of Visa Can Employers Use To Fill Positions Which Do Not Fall Within the H-2B Category?

- **None.** A nonimmigrant visa category does not exist for employers who need workers for more than one year or for employers who cannot demonstrate that their need is temporary. This is particularly onerous for employers, for example in the construction and hospitality industries or for those involved in elder and childcare. Although a permanent immigrant category exists for non-professionals in occupations that require less than two years' experience, the backlog is so extraordinary as to render the category meaningless. As a result, employers are often forced to send their work overseas, cut back, or close their doors.