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States reaching limits on temporary work visas earlier each year



By: [Perla Trevizo](#)

During the past few years the cap on temporary work visas granted nationwide has been reached earlier and earlier in the year, limiting the number of employers who can hire those workers, local attorneys and business owners agree.

“The demand (for temporary work visas) is building up and up,” said Robert Divine, Chattanooga-based chairman of the immigration group for the Baker Donelson law firm.

For fiscal year 2008, which runs from October 2007 to September of this year, the cap for professional, or H-1B, visas was reached on April 3, 2007, the first day applications to apply were accepted.

For fiscal 2007, the cap for H-1 B visas was reached on May 26, 2006, and for fiscal 2006 on Aug. 10, 2005.

“Last year they received about 130,000 applications,” Mr. Divine said. “The chances of being randomly selected to have the cases (considered and decided on) was a little over 50 percent.”

The process to accept or deny the applications is random. First the Department of Labor certifies the applications and then the USCIS selects enough applications to reach the congressionally mandated caps.

The current annual cap for H-1B visas is 65,000, minus 6,800 set aside for Chile and Singapore under a trade agreement.

Although the professional visa is mainly for people who work in the technology sector, Mr. Divine said he has seen engineers with certain abilities — such as car designers and people who use specialized machinery — come to the United States under this visa. Most H-1B visa holders now come from India, he said.

Mr. Divine, also a former chief counsel with U.S. Citizenship and Immigration Services, said he helped develop the random selection process used to determine which petitions are selected for consideration because “it became apparent that the demand for those numbers was exceeding the supply more and more.

AVAILABILITY OF VISAS

Terry Olsen, a local immigration attorney, said the number of temporary work visas available has decreased considerably in the last decade.

The Immigration Act of 1990 established a cap for H-1B visas of 65,000, which first was reached in 1997, according to U.S. Citizenship and Immigration Services.

In October 1998, because of demand, the cap was raised to 115,000 for fiscal years 1999 and 2000, and to 195,000 for fiscal years 2001-03. But it was cut back to 65,000 for fiscal year 2004.

“This year I made the decision I was not going to accept new H-1Bs because it’s just so hard getting inside the number they’re going to accept,” Mr. Olsen said.

Walter Dawson, owner of Dawson Lawn Service Inc. in Chattanooga, has used the H-2B program for about eight years. The program allows U.S. companies to host foreign workers for seasonal nonagricultural labor once they prove there is a labor shortage they can’t fill with American employees.

The cap on seasonal nonagricultural workers is 66,000, which is divided into 33,000 for each half of the fiscal year.

For the first half of fiscal year 2008, the cap was reached on Sept. 27, 2007, and for the second half on Jan. 2, 2008.

Mr. Dawson said this year he was fortunate to make it through the process before the cap was reached.

"I was really sweating it. It would have been a big loss if we hadn't made it," he said.

Mr. Dawson, who has been in the landscaping business since 1980, has not always been so fortunate. He said that a couple of years ago he didn't make the cut and lost about 20 percent of his business.

"It took me two years to fully recover," he said.

Labor shortage

According to the Tennessee and Georgia departments of labor, the industries that primarily request the H-2B visas are landscaping, tree planting, construction and, more recently, hotel resorts.

"The (landscaping) industry has changed a lot," Mr. Dawson said. "Before I used to be able to find local employees, but it kept getting harder and harder to get people."

Janet Phillips, owner of Landscape Arts Inc., doesn't use the program, but she said a labor shortage has been a problem in the landscaping industry for some time now.

"I hear from friends in the construction industry that labor shortage is also a problem there ... it's not limited to the landscaping industry," she said.

But the Federation for American Immigration Reform, a nonprofit organization that seeks to stop illegal immigration, argues there is no labor shortage but "rather a shortage of employers willing to pay competitive wages."

The organization also contends that there is no job an American won't do, in contrast to the argument that undocumented workers do the work no one else wants to do.

In a report released last year on President Bush's proposal to expand the guest worker program, the federation said, "In areas where there are no concentrations of illegal alien workers, construction and service sector jobs are done by Americans. Even in areas with concentrations of illegal workers, there are Americans and immigrants working alongside them."

The organization report stated, however, that those "Americans and immigrants are earning much less than if (immigrant) workers had not depressed the wages in those areas."

TYPES OF TEMPORARY WORK VISAS

* H-1B: Applies to specialty occupations admitted on the basis of professional education, skills and/or equivalent experience. Valid for increments of up to three years with a limit of six years. The current congressionally mandated cap is 65,000 visas plus 20,000 for applicants with a master's degree or higher from an American university.

* H-2A: Applies to temporary or seasonal agricultural workers. Can be issued in increments of up to one year, with a limit of three years. There is no cap.

* H-2B: applies to temporary or seasonal nonagricultural workers. Can be issued in increments of up to one year, with a limit of three years. The current cap is 66,000.

TEMPORARY WORK VISAS

TENNESSEE

* H-2A: From October 2006 to September 2007, the Tennessee Department of Labor and Workforce Development received 228 applications. Over the past three years, the department has experienced an 8.5 percent increase.

* H-2B: From October 2006 to September 2007, the department received 127 applications. This type of visa has not experienced any increases over the last three years.

Source: Tennessee Department of Labor & Workforce Development

GEORGIA

* H-2A: 89 applications received in 2007 (no available data for previous years)

* H-2B: 113 applications received in 2005, compared with 207 in 2006 and 200 in 2007

Source: Georgia Department of Labor