



H-2B or not 2B?

Change in visa legislation makes hiring process more competitive

Kristina Eastham, Of the Record staff
The Park Record

Article Launched: 12/07/2007 04:52:16 PM MST

Don't expect the restaurants at Deer Valley to employ the same foreign staff this season, as they have in the past. Due in part to a change in legislation, 100 of the resort's applications to hire foreign workers were denied.

The process for H-2B visas for foreign, non-agricultural, seasonal workers was more competitive this year due to Congress's failure to re-approve an act, exempting returning employees from the total, before it expired. This made an already competitive and unsure process more difficult for foreign workers.

"It's a frightening process, and it's risky. And we take the risk every year," said Kim Mayhew, Director of Human Resources at Deer Valley. "We took the risk again to file for those people. And the folks who say yes, they are taking a risk too."

Michael Whitnall and his wife Shelagh Moore are two foreigners who said yes. They are instructors at Deer Valley resort, and while they're married, they feel that the visa process is so complicated that they make separate plans to come to the U.S.

"We usually do arrive in the country on different dates just because we don't know how long interviews and processing and all that [will take]," said Whitnall, who manages and teaches at the Deer Valley Ski School.

Because he is Australian and his wife is Canadian they must go through different procedures to work in the U.S. Fortunately their petitions were approved, and they will spend their 12th season at Deer Valley. But no matter how many years they deal with the visa process, year after year they still face uncertainties.

"It's always an unknown," Whitnall said. "There's never any guarantee."

He says the process is very uncertain and the government can hold up the process for any number of reasons. Whitnall says that he can't relax until he steps out of the airport in Salt Lake City.

"One year I was held up for about two hours [at LAX] while they went through my approval, even though I had the visa approval in my passport, and I had successfully completed the interview, and they had approved the visa," Whitnall said.

Returning employees like Whitnall were not counted in the 66,000 H-2B visas allotted to foreign seasonal workers across the country this year, if they had counted in one of the three previous seasons. This was a result of 2005's Save Our Small and Seasonal Businesses Act, which was not renewed before it expired this September. The act "exempts from the annual cap aliens granted an H-2B visa that counted against the cap during any of the three years prior to approval of the alien's H-2B petition."

Half of the total number of visas is allocated for summer and half for winter workers, meaning that winter industries such as ski resorts are competing for 33,000 visas for their foreign workers. And now, returning

workers are being counted in that total too, making the process even more competitive. Because of this change, the number of visas ran out earlier than usual.

"We weren't even thinking about a cap happening in September," said Kim Mayhew, Director of Human Resources at Deer Valley.

The cap was reached on Sept. 30. Deer Valley had some of their petitions denied, unexpectedly as last year's cap was not met until Nov. 30, according to Mayhew.

"We missed out on two of our petitions," Mayhew said. "One of them is a cook helper petition and the other is for our restaurant attendants. Both of those did not get in before the legislation ran out at the end of September."

Each petition, one for cooks and one for restaurant attendants, was for 50 workers. The 100 petitions amounted to one third of the 300 foreign petitions Deer Valley submitted to the U.S. Citizenship and Immigration Services (USCIS).

The Canyons and Park City Mountain were not as heavily affected by the change. Twenty-six of PCMR's 40 foreign restaurant worker applications were denied. But out of PCMR's approximately 250 H-2B visa workers, the proportion was not quite as devastating. The Canyons filed for 340 foreign workers and had them all approved.

Petitioning for foreign workers is a complex, multi-part process that begins long before skiers have their first thoughts of hitting the slopes for the season.

It begins in the summer, when ski resorts and other businesses petition for General Labor Certifications. During this process, resorts must prove to the U.S. Department of Labor that they are in need of seasonal workers and cannot fill the demand with domestic workers.

According to Mayhew, this involves providing past work history of the demand and showing that they are actively searching for domestic workers to fill those spots.

"Once those have been approved through the Department of Labor, we can petition USCIS [U.S. Citizenship and Immigration Services] for the actual people that we would like to sponsor. And those petitions usually go in about 90 days before the start date that the Department of Labor has approved for us," Mayhew said.

Because filing dates are linked to start dates, Mayhew believes that their later opening date is the reason they were more heavily affected than PCMR or The Canyons.

Deer Valley filed six separate petitions, one for each department. The categories included experienced ski instructors (into which Whitnall and Moore fall), apprentice ski instructors, cooks, restaurant attendants, ski area utility workers or guest services, and snowmakers.

For foreign employees like Whitnall the process involves a lot of waiting. And as he waits and time drags on, more complications arise. Once the approval comes through from the USCIS, which can take up to two months, foreigners must schedule an interview with their consulate.

"The difficult part for employees from overseas is that most of the consulates have five- to six-week wait times for interviews," Whitnall said. "You're not supposed to apply for an interview before you've received the approval notice, so if the approval notice is very late arriving, you have the five weeks to wait to get your interview which stretches things further."

Other issues like increasingly expensive airfare and housing uncertainties further complicate the situation. Because they return year after year, Whitnall and his wife are homeowners in Park City. But they still face uncertainties with the visa process. And while they were fortunate enough to get their visas approved this year, if the act is not re-approved, their status as returning employees will mean nothing in the future. That means resorts may have an even tougher time filling openings in future seasons.

All of Park City's resorts know that this could end up affecting them. Representatives from the resorts have been encouraging Senators Bob Bennett and Orrin Hatch to expedite the re-approval of the act, which will be included in the Commerce, Justice and Science appropriations bill. Sen. Bennett was one of the 17 original co-sponsors of 2005's Act introduced by Sen. Mikulski (D-MD).

Deer Valley has not lost hope that the legislation will pass in time for them to fill some of this season's remaining openings for foreign employees; and neither have the Senators.

"Senator Bennett is still hopeful that we can get this done by the end of the ski season," said Emily Christensen, Spokesperson for Senator Bennett who was a co-sponsor of the original legislation.

"He understands the burden that is placed on the businesses in Park City," Christensen said.

The fact that the legislation affects returning workers also is a concern for other resorts. At PCMR alone, 65 percent of employees here on H-2B visas are returning.

"We always try to recruit returning workers," Linda Cooley, the Recruiting Manager at PCMR said. She said PCMR prefers returning employees "because of the experience that they have with the resort [and] their knowledge base."

"And we're like a family here," she said. "There's an important piece to have a team of workers that come back year after year."