



# Characteristics of H-2B Nonagricultural Temporary Workers

Fiscal Year 2020 Report to Congress  
Annual Submission



Homeland  
Security

*U.S. Citizenship and  
Immigration Services*



**Homeland  
Security**

February 22, 2021

## Foreword

On behalf of the Department of Homeland Security, I am pleased to present the Fiscal Year 2020 annual submission on the “Characteristics of H-2B Nonagricultural Temporary Workers.”

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

The Honorable Dick Durbin  
Chairman, Senate Committee on the Judiciary

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

The Honorable Jerrold Nadler  
Chairman, House Committee on the Judiciary

The Honorable Jim Jordan  
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, appearing to read "Harlan Geer". The signature is stylized and written in a cursive-like font.

HARLAN GEER  
Acting Assistant Secretary for Legislative Affairs

# Executive Summary

The Department of Homeland Security (DHS) has compiled this Fiscal Year (FY) 2020 report on H-2B nonimmigrants from information provided by Department of State (DOS), 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 2020.

## *Highlights*

- A total of 65,716<sup>1</sup> aliens were issued H-2B visas or otherwise acquired H-2B status in FY 2020, with 61,865 H-2B visas issued by DOS.
- The top five H-2B visa issuance countries in FY 2020 were:
  - Mexico – 74.7 percent
  - Jamaica – 8.9 percent
  - Guatemala – 2.7 percent
  - Ukraine – 2.6 percent
  - South Africa – 2.2 percent
- 346 requests for change of status to H-2B were approved by USCIS. In such cases, a new visa is not required.
- 3,505 crossings of visa-exempt H-2B workers were processed by CBP.<sup>2</sup>

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<sup>1</sup> This number includes H-2B workers who are exempt from the H-2B cap.

<sup>2</sup> For FY 2020, all 3,505 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. 320, 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 peak load need, or an intermittent need;
- qualified workers in the U.S. 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 (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 in Guam, from the Governor of Guam. *See* 8 C.F.R. § 214.2(h)(6)(iii)(A) and (C). H-2B petitions may include 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).

Effective January 17, 2020, the Secretary of Homeland Security determined, with the concurrence of the Secretary of State, that all 81 countries previously designated to participate in the H-2B program in the January 18, 2019 notice continue to meet the regulatory standards for eligible countries and therefore should remain designated as countries whose nationals are eligible to participate in the H-2B program. *See* 85 FR 3067.

### *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>3</sup>

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<sup>3</sup> *See* 8 CFR 214.2(h)(8)(ii)(B).

Congress gave DHS, in consultation with DOL, the authorization to grant supplemental visas for cap fiscal year 2020 under section 105 of Division I of the Consolidated Appropriations Act, 2020, Public Law No: 116-94 (FY 2020 Omnibus). DHS, in consultation with DOL, planned to issue a temporary final rule authorizing up to an additional 35,000 H-2B visas for FY 2020 to American businesses that attested they would likely suffer irreparable harm without the ability to employ all of their requested H-2B workers. Due to economic circumstances and the corresponding high U.S. unemployment levels arising from the coronavirus 2019 (COVID-19) public health emergency, a temporary final rule was never published authorizing the supplementary cap visas.

### ***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 who extend their stay, change employers, or change the terms and conditions of employment;
- H-2B workers 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>4</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>5</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>4</sup> *See* Pub. L. No. 108-287, § 14006, 118 Stat. 951, 1014 (2004).

<sup>5</sup> *See* 48 U.S.C. 1806(a)(2) as amended by sec. 3 of Pub. L. 115-218; 48 U.S.C. 1806(b).

### 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 2020

Based on information provided by DOS, the nationalities of workers who were issued H-2B visas in FY 2020 are as follows:

Table 1. Number of H-2B workers who were issued H-2B visas by the Department of State, by Nationality, FY 2020

Nationality	Number	Nationality	Number
Argentina	55	Italy	55
Australia	40	Jamaica	5,504
Austria	D	Japan	170
Barbados	D	Korea, South	D
Belize	D	Latvia	D
Brazil	76	Lithuania	55
Bulgaria	156	Mexico	46,201
Canada	D	Moldova	D
Chile	D	Mongolia	79
China – Taiwan	39	Montenegro	D
Colombia	34	Netherlands	D
Congo, Dem. Rep. of the (Kinshasa)	D	New Zealand	19
Costa Rica	212	Nicaragua	65
Croatia	10	North Macedonia	55
Czech Republic	57	Panama	52
Denmark	D	Peru	29
Dominican Republic	10	Philippines	867
Ecuador	D	Poland	42
Egypt	D	Portugal	58
El Salvador	149	Romania	548
Estonia	D	Serbia	939
Fiji	D	Slovakia	10
France	D	Slovenia	D
Georgia	D	South Africa	1,346
Germany	D	Spain	D
Great Britain and Northern Ireland	273	Sweden	D
Greece	10	Switzerland	1
Guatemala	1,682	Thailand	10
Honduras	1,018	Turkey	137
Hungary	66	Ukraine	1,585
Ireland	67	Zimbabwe	3
Israel	D	<b>Grand Total</b>	<b>61,865</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 total includes the values of all countries, 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 2020

DOL posts H-2B application data with occupational information and wages for temporary labor certifications issued for H-2B visas by the most recently available fiscal year quarter and cumulative data for previous fiscal years on its website.<sup>6</sup> In addition to certification and partial certification data,<sup>7</sup> the DOL data also includes information about the withdrawal and denial of H-2B temporary labor 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 2020.

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

From October 1, 2019, through September 30, 2020, USCIS revoked or otherwise terminated 14 approved H-2B petitions covering a total of 248 H-2B positions.

Table 2. Number of H-2B petitions revoked by USCIS and corresponding beneficiaries by month, FY 2020

Month	Number of Petitions	Number of Beneficiaries	Month	Number of Petitions	Number of Beneficiaries
Oct. 2019	1	8	Apr. 2020	0	0
Nov. 2019	2	14	May 2020	2	11
Dec. 2019	1	11	Jun. 2020	1	12
Jan. 2020	2	100	Jul. 2020	1	22
Feb. 2020	1	25	Aug. 2020	2	39
Mar. 2020	0	0	Sep. 2020	1	6
			<b>Total</b>	<b>14</b>	<b>248</b>

During this same period, CBP denied admission to 53 aliens who were found inadmissible at ports of entry,<sup>8</sup> and ICE removed 201 aliens who were found removable after admission to the United States.

<sup>6</sup> See <https://www.dol.gov/agencies/eta/foreign-labor/performance>.

<sup>7</sup> A “partial certification” occurs when the DOL Certifying Officer issues the temporary labor certification (TLC) with a reduction to the employer’s period of need and/or the requested number of H-2B workers. The employer receives an H-2B Form ETA-9142B approval and Final Determination letter explaining the reason(s) for the partial certification.

<sup>8</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 2020. The countries of origin for inadmissible beneficiaries were: Costa Rica, Guatemala, Honduras, Indonesia, Ireland, Jamaica, Mexico, Nicaragua, Republic of South Africa, and United Kingdom.

DOS initially refused 11,404 H-2B visas during FY 2020.<sup>9</sup> However, 3,743 of these workers subsequently overcame the reasons for the visa refusal, and the affected workers were granted H-2B visas. Therefore, during FY 2020, DOS refused the visa applications of a net total of 7,661 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 2020 and FY 2019

In FY 2020, a total of **65,716** aliens were issued H-2B visas or acquired H-2B status absent issuance of an H-2B visa. This includes:

- 61,865 H-2B visas issued by DOS;
- 346 requests for change of status to H-2B approved by USCIS, which are cases in which a visa is not required; and
- 3,505 crossings of visa-exempt H-2B workers processed by CBP.<sup>10</sup>

In FY 2019, a total of **98,819** aliens were issued H-2B visas or acquired H-2B status absent issuance of an H-2B visa. This includes:

- 97,431 H-2B visas issued by DOS;
- 146 requests for change of status to H-2B approved by USCIS, which are cases in which a visa is not required; and
- 1,242 crossings of visa-exempt H-2B workers processed by CBP.<sup>11</sup>

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<sup>9</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 in violation of 8 CFR 214.2(h)(6)(i)(B).

<sup>10</sup> For FY 2020, all 3,505 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>11</sup> For FY 2019, all 1,242 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 2020

<b>FY 2020 H-2B Characteristics Report - Guam</b>				
<b>O*Net Code</b>	<b>Job Title</b>	<b>No. of Positions Certified</b>	<b>Rate of Pay on Cert</b>	<b>Unit of Pay on Cert</b>
29-1141-03	Registered Nurse - Hospital Medical-Surgical Unit	10	\$28.38	Hour
29-1141-03	Registered Nurse - Hospital Medical-Telemetry Unit	10	\$28.38	Hour
35-2012	Camp Cook	26	\$11.78	Hour
37-3011	Landscape Gardener	<b>20 **</b>	\$10.51	Hour
43-5061	Planning Clerk	2	\$21.50	Hour
45-2021	Electric Motor Rewinder	2	\$17.60	Hour
47-2031	Carpenter	162	<b>\$14.51 *</b>	Hour
47-2031	Carpenter	931	\$15.48	Hour
47-2031	Carpenter	<b>15 **</b>	\$15.48	Hour
47-2051	Cement Mason	76	<b>\$14.27 *</b>	Hour
47-2051	Cement Mason	560	\$14.92	Hour
47-2051	Cement Mason	<b>15 **</b>	\$14.92	Hour
47-2073	Heavy Equipment Operator	34	<b>\$17.07 *</b>	Hour
47-2073	Heavy Equipment Operator	181	\$16.58	Hour
47-2111	Electrician	36	<b>\$17.94 *</b>	Hour
47-2111	Electrician	147	\$18.52	Hour
47-2111	Electrician	<b>6 **</b>	\$18.52	Hour
47-2141	Painter	65	\$12.86	Hour
47-2141	Painter	<b>6 **</b>	\$12.86	Hour
47-2152	Pipefitter	4	<b>\$16.68 *</b>	Hour
47-2152	Pipefitter	13	\$16.52	Hour
47-2152	Plumber	26	<b>\$16.68 *</b>	Hour
47-2152	Plumber	117	\$16.52	Hour
47-2152	Plumber	<b>4 **</b>	\$16.52	Hour
47-2171	Reinforcing Metal Worker	21	<b>\$14.71 *</b>	Hour
47-2171	Reinforcing Metal Worker	445	\$15.61	Hour

47-2171	Reinforcing Metal Worker	2 **	\$15.61	Hour
47-2211	Sheet Metal Worker	14	<b>\$16.16 *</b>	Hour
47-2211	Sheet Metal Worker	22	\$16.73	Hour
47-2211	Sheet Metal Worker	2 **	\$16.73	Hour
47-2221	Structural Steel Worker	29	\$14.90	Hour
49-3023	Mechanic	3 **	\$14.71	Hour
49-3031	Automotive Mechanic	7	\$17.43	Hour
49-3042	Construction Equipment Mechanic	35	\$18.32	Hour
49-3042	Heavy Equipment Mechanic	2	<b>\$17.81 *</b>	Hour
49-3042	Heavy Equipment Mechanic	62	\$18.32	Hour
49-3051	Marine Mechanic	3	\$20.35	Hour
49-9021	Air Conditioning & Refrigeration Technician	2	\$18.43	Hour
49-9021	Air Conditioning & Refrigeration Mechanic	7	\$18.43	Hour
49-9021	HVAC & Refrigeration Mechanic	3	<b>\$17.69 *</b>	Hour
49-9021	HVAC & Refrigeration Mechanic	46	\$18.43	Hour
49-9062	Field Service Technician	2	\$15.85	Hour
49-9098	Elevator Installer Technician	5	\$10.97	Hour
51-3011	Baker	4	\$9.96	Hour
51-4121	Welder	5	<b>\$17.63 *</b>	Hour
51-4121	Welder	86	\$18.49	Hour
51-4121	Welder/Fitter	11	\$18.49	Hour
51-9122	Preservation Foreman	1	\$16.75	Hour
51-9061	Quality Control Inspector	3	\$15.34	Hour

\* Rate on certification was valid from 11/20/2017 to 12/13/2019.

\*\* Occupations are pending Governor's certification as of 11/13/2020.