



# Characteristics of H-2B Nonagricultural Temporary Workers

Fiscal Year 2019 Report to Congress

Annual Submission

*April 29, 2020*



Homeland  
Security

*U.S. Citizenship and  
Immigration Services*



**Homeland  
Security**

## Foreword

April 29, 2020

On behalf of the Department of Homeland Security, I am pleased to present the Fiscal Year 2019 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 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 Jim Jordan  
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, appearing to read "Aaron L. Calkins".

AARON L. CALKINS  
Acting Assistant Secretary for Legislative Affairs

# Executive Summary

The Department of Homeland Security (DHS) has compiled this Fiscal Year (FY) 2019 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 2019.<sup>1</sup>

## *Highlights*

- A total of 98,819<sup>2</sup> aliens were issued H-2B visas or otherwise acquired H-2B status in FY 2019, with 97,431 H-2B visas issued by DOS.
- The top five H-2B visa issuance countries in FY 2019 were:
  - Mexico – 74.2 percent
  - Jamaica – 10.3 percent
  - Guatemala – 3.3 percent
  - South Africa – 1.9 percent
  - Serbia – 1.4 percent
- 146 requests for change of status to H-2B were approved by USCIS. In such cases, a new visa is not required.
- 1,242 crossings of visa-exempt H-2B workers were processed by CBP.<sup>3</sup>

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

<sup>2</sup> This number includes H-2B workers who are exempt from the H-2B cap and who were issued the additional H-2B visas available in accordance with section 105 of division H of the Consolidated Appropriations Act, 2019, Public Law 116-6 (FY 2019 Omnibus).

<sup>3</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) 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 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 19, 2019, the Secretary of Homeland Security determined, with the concurrence of the Secretary of State, that the Dominican Republic, Ethiopia and the Philippines should no longer be designated as an eligible country because they no longer meet the regulatory standards and that Mozambique and Samoa will be added to the list of countries eligible to participate in the H-2B visa program. Among DHS's concerns was that the Dominican Republic and the Philippines had a high H-2B overstay rate. In FY 2017, DHS estimated that nearly 30 percent of the H-2B visa holders from the Dominican Republic and 40 percent of H-2B visa holders from the Philippines overstayed their period of authorized stay. Ethiopia has been removed from eligibility after it was determined that the country's government has failed to sufficiently cooperate with issuing travel documents to its nationals with a final order of removal from the U.S. government. Mozambique and Samoa were designated as H-2B eligible because they now meet the regulatory standards. Samoa was added to the list of countries eligible to participate in the H-2B visa program because of increased cooperation with the U.S. regarding the return of their nationals with final orders of removal. Mozambique was added for eligibility because it demonstrated low overstay rates and because workers from Mozambique will benefit from relevant work experience in the U.S. *See* 84 FR 133.

### *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>4</sup>

In accordance with section 105 of division H of the Consolidated Appropriations Act, 2019, Public Law 116-6 (FY 2019 Omnibus), an additional 30,000 H-2B visas were made available for returning workers in FY 2019 to American businesses that attested they would likely suffer irreparable harm without the ability to employ all of their requested H-2B workers. The 30,000 supplemental H-2B visas were limited to returning workers who received an H-2B visa, or were otherwise granted H-2B status, during one of the last three fiscal years (FY 2016, 2017, or 2018). A total of 33,142 workers were approved under the FY2019 supplemental cap.<sup>5</sup> However, the actual number of H-2B workers that were issued a visa did not exceed the supplemental cap.

### ***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>4</sup> *See* 8 CFR 214.2(h)(8)(ii)(B).

<sup>5</sup> This number will typically exceed the actual cap to allow for petition withdrawals, denials, and approvals for which no visa is issued.

<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. 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 Fiscal Year 2019

Based on information provided by DOS, the nationalities of workers who were issued H-2B visas in FY 2019 are as follows:

Table 1. Number of H-2B workers who were issued H-2B visas by the Department of State, by Nationality, FY 2019

Nationality	Number	Nationality	Number
Albania	D	Israel	D
Antigua and Barbuda	D	Italy	105
Argentina	71	Jamaica	10,078
Australia	63	Japan	194
Austria	12	Korea, South	D
Barbados	D	Latvia	D
Belarus	D	Lithuania	D
Belgium	D	Malta	D
Belize	99	Mexico	72,284
Botswana	D	Moldova	D
Brazil	116	Mongolia	157
Bulgaria	327	Montenegro	12
Canada	D	Netherlands	18
Chile	14	New Zealand	23
China - Taiwan	372	Nicaragua	113
Colombia	127	North Macedonia	29
Congo, Dem. Rep. of the	D	Panama	62
Costa Rica	395	Paraguay	D
Croatia	17	Peru	36
Czech Republic	176	Philippines	980
Dominican Republic	101	Poland	168
Ecuador	28	Portugal	79
El Salvador	653	Romania	789
Estonia	D	Serbia	1,381
Fiji	D	Slovakia	59
France	D	Slovenia	D
Georgia	D	South Africa	1,830
Germany	D	Spain	D
Great Britain and Northern Ireland	390	Sweden	D
Greece	D	Switzerland	D
Grenada	D	Thailand	32
Guatemala	3,262	Turkey	46
Honduras	829	Ukraine	1,338
Hungary	86	Zambia	D
India	D	Zimbabwe	D
Ireland	199	<b>Total</b>	<b>97,431</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 2019

DOL posts occupational information on, and compensation paid to, workers who were issued H-2B visas or otherwise provided H-2B status 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 2019.

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

From October 1, 2018, through September 30, 2019, USCIS revoked or otherwise terminated 25 approved H-2B petitions covering a total of 407 H-2B positions.

Table 2. Number of H-2B petitions revoked by USCIS and corresponding beneficiaries by month, FY 2019

Month	Number of Petitions	Number of Beneficiaries	Month	Number of Petitions	Number of Beneficiaries
Oct. 2018	2	85	Apr. 2019	3	33
Nov. 2017	2	87	May 2019	1	D
Dec. 2018	1	D	Jun. 2019	3	51
Jan. 2019	4	21	Jul. 2019	4	56
Feb. 2019	2	25	Aug. 2019	0	0
Mar. 2019	1	35	Sep. 2019	2	D
			<b>Total</b>	<b>25</b>	<b>407</b>

During this same period, CBP denied admission to 43 aliens who were found inadmissible at ports of entry,<sup>10</sup> and ICE removed 226 aliens who were found removable after admission to the United States.

<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 number includes those beneficiaries who received a visa and those who are visa-exempt. However, no visa-exempt beneficiaries were found inadmissible in FY 2019. The countries of origin for inadmissible beneficiaries were: Belize, Costa Rica, Honduras, Jamaica, Mexico, Peru, Romania, and Turkey.

DOS initially refused 13,615 H-2B visas during FY 2019.<sup>11</sup> However, 5,315 of these workers subsequently overcame the reasons for the visa refusal, and the affected workers were granted H-2B visas. Therefore, during FY 2019, DOS refused the visa applications of a net total of 8,300 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 2019 and FY 2018

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>12</sup>

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>

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<sup>11</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.

<sup>12</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.

<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.

Appendix – Guam DOL chart displaying occupational and compensation data for all H-2B applicants in FY 2019

O*Net Code	Job Title	No. of Positions Certified	Rate of Pay on Cert	Unit of Pay on Cert
29-2032	Ultrasound Technician	1	\$35.19	Hour
29-2033	Nuclear Medicine Technologist	1	\$37.33	Hour
29-2034	MRI Technologist	1	\$33.89	Hour
29-2034	Radiologic Technologist	1	\$22.05	Hour
35-2012	Camp Cook	25	\$11.20	Hour
47-1011	Construction Supervisor	5	\$21.95	Hour
47-2031	Carpenter	879	\$14.51	Hour
47-2051	Cement Mason	552	\$14.27	Hour
47-2073	Heavy Equipment Operator	165	\$17.07	Hour
47-2111	Electrician	207	\$17.94	Hour
47-2141	Painter	26	\$14.16	Hour
47-2152	Pipefitter	16	\$16.68	Hour
47-2152	Plumber	98	\$16.68	Hour
47-2171	Reinforcing Metal Worker	445	\$14.71	Hour
47-2211	Sheet Metal Worker	40	\$16.16	Hour
47-2221	Structural Steel Worker	20	\$14.01	Hour
49-3031	Automotive Mechanic	14	\$16.91	Hour
49-3042	Construction Equipment Mechanic	20	\$17.81	Hour
49-3042	Heavy Equipment Mechanic	35	\$17.81	Hour
49-9021	Air Conditioning & Refrigeration Technician	4	\$17.69	Hour
49-9021	Air Conditioning & Refrigeration Mechanic	5	\$17.69	Hour
49-9021	HVAC & Refrigeration Mechanic	4	\$17.69	Hour
49-9098	Elevator Installer	10	\$10.66	Hour
51-3011	Baker	4	\$9.64	Hour
51-4121	Welder	74	\$17.63	Hour