

U.S. Citizenship and Immigration Services (USCIS) today reopened the fiscal year 2009 H-2B petition filing period and will immediately accept new H-2B petitions.

Although on Jan. 7, 2009, USCIS announced it accepted and approved a sufficient number of H-2B petitions to meet the congressionally mandated annual cap of 66,000, the Department of State received far fewer than expected requests for H-2B visas and as a result, has issued only 40,640 H-2B visas for fiscal year 2009 to date. This means that there are approximately 25,000 visas that may go unused, as they have not been granted. Because of the low visa issuance rate, USCIS is reopening the filing period to allow employers to file additional petitions for qualified H-2B temporary foreign nonagricultural workers.

The normal (non-premium processing) adjudication time frame for H-2B petitions is 60 days. USCIS will make visa numbers available to petitions in the order in which the petitions are filed. However, because H-2B petitions (Form I-129) for fiscal year 2009 visas must be received, evaluated, and adjudicated on or before the fiscal year 2009 deadline of Sept. 30, 2009, USCIS cannot guarantee approval of any H-2B petition on or before the Sept. 30, 2009 deadline. Employers therefore are encouraged to file as soon as possible and to request premium processing by filing a Form I-907 and submitting the \$1000 premium processing fee, which will allow for expedited adjudication. See "Premium Processing Service" in the related links on the right of this page.

To qualify for a fiscal year 2009 H-2B cap number, employers must:

- Submit the Form I-129 Petition for a Nonimmigrant Worker to USCIS with all required documents, including an approved Alien Employment Certification from the U.S. Department of Labor that is valid for the entire employment period stated on the petition.

The petitioner must also indicate an employment start date before Oct. 1, 2009.

Petitions received on or after Oct. 1, 2009, and/or requesting a starting date on or after Oct. 1, 2009, will be considered towards the fiscal year 2010 H-2B cap and are subject to all eligibility requirements for fiscal year 2010 H-2B filings, including 8 CFR 214.2(h)(6)(iv)(D), which requires that the start date listed on the petition be the same as the starting date authorized on the temporary labor certification.

The H-2B program allows U.S. employers to bring foreign nationals to the United States to fill temporary nonagricultural jobs for which there is a shortage of available U.S. workers. Typically, H-2B workers fill labor needs in occupational areas such as education, construction, health care, landscaping, manufacturing, food service/processing, and resort/hospitality services.