

Work Visa for Seasonal Workers – The H2B Visa Immigration

Immigration Lawyers of Minnesota at www.cundyandmartin.com representing companies with H-2B visas nationwide.

Seasonal industries often find it difficult to find seasonal workers due to the short duration of the jobs and the tasks involved. This is where the H-2B visa category can help. Common industries that utilize the H2B program to supplement their workforce include, but are not limited to: nurseries, golf courses, carnivals and fairs, lawn and landscaping, resorts and hotels, tourist attractions, theme parks, and snow removal. But the H-2B visa program is not limited to any particular industry. However, the H-2B visa cannot be used for agricultural work.

H2b visas are also not limited to any particular country. Workers may come from Mexico, South Africa, China, Russia or any other country where they are located. In order to simplify the process and keep costs down, it is best to get all of the workers from the same location. If all of the workers are coming from the same place to do the same job, they may all be included on one petition.

Work Visa Application

Temporary Labor

The first criteria is that the need for the workers and the job must be seasonal; the employer cannot use the H-2B visa to fill an ongoing need. Almost all seasonal jobs, by definition, meet this criteria because the services or labor are traditionally tied to a season of the year by an event or pattern and is of a recurring nature.

Department of Labor

Before filing a petition with the immigration service - U.S. Citizenship & Immigration Services (USCIS), the employer must first get labor certification from the U.S. Department of Labor (DOL). This generally requires that the employer prove the seasonal nature of the job and that it cannot find any qualified and willing U.S. workers.

The procedure for getting certification changes almost yearly and therefore, it is recommended that you seek the assistance of an experienced H-2B immigration lawyer to advise on the current practices.

While it may seem obvious, it is nevertheless worth noting that the employer must be a U.S. company. There are instances in which foreign companies operate in the United States and it must be the U.S. entity that files the petition.

U.S. Citizenship & Immigration Services – USCIS

After DOL grants certification, the employer can petition USCIS for the H-2B visas. The proof required at this stage is somewhat duplicative with the process undertaken with DOL, but USCIS nevertheless must grant the petition before the visas can be issued.

U.S. Consulate / Embassy

If USCIS approves the H-2B petition, it will forward the case to the U.S. consulate where the temporary workers are located. The workers then go to the consulate to apply individually for their visas. It is helpful at this stage to use an agency in the foreign country familiar with the H-2B procedures at the consulate to assist in gathering the workers and applying for the visas.

How long can the workers stay in the United States?

The regulations allow for H-2B workers to hold this status for up to one year, but in practice, 8-10 months is more realistic. Also, The employer will be liable for the reasonable costs of return transportation of the worker if the worker is dismissed from employment for any reason by the employer before the end of the visa period. If the worker voluntarily terminates his or her employment prior to the expiration of the validity of the petition, the worker has not been dismissed and therefore, the employer is not responsible for return transportation.

Is there a limit on H-2B visas?

While there is no limit on the number of H-2B visas that a particular employer may acquire, assuming the number can be justified, there is an annual limit on the number of H-2B visas issued nationwide. This limit is commonly referred to as the H2b visa cap. At the writing of this article, that limit is 66,000. Once the limit is reached, no more new visas will be issued until the following year. However, it is important to note that this visa cap does not apply to H-2B workers currently in the U.S. who wish to change employers.

Can you help find the workers?

Our office has established relationships with employment agencies in various countries who can locate workers that fit your needs. These agencies are not affiliated with our law firm and are referred to you merely as a courtesy and not part of our legal representation.

Can the worker get a Green Card?

The H2B visa does not lead to permanent residence or green card. It is only a temporary work permit that is linked to the specific employer and job.

Vincent Martin is a partner at Cundy & Martin, LLC, in Bloomington, MN, and practices exclusively in the area of U.S. immigration law. www.cundyandmartin.com