



# H-2B Temporary Labor Certification Program Application Process and Helpful Filing Tips

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Office of Foreign Labor Certification  
Employment and Training Administration  
U.S. Department of Labor

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# Overview of the Immigration Process



## Step 1



Obtain a labor certification from the **Department of Labor (DOL)**  
– Requires conducting a labor market test with the State Workforce Agency (SWA) where work will be performed.

## Step 2



Obtain an approved petition from the **Department of Homeland Security (DHS) United States Citizenship and Immigration Services (USCIS)** for a specific number of workers under H-2B visa classification.

## Step 3



After receiving USCIS petition approval, workers apply with one of the **Department of State (DOS)** visa-issuing embassies or consulates abroad for an H-2B visa.

## Step 4



After receiving the visa from DOS, workers arrive at a port of entry where **DHS's Customs and Border Protection** officers verify eligibility for admission and length of stay.

# Department of Labor

## Office of Foreign Labor Certification - Overview



- OFLC *electronically* processes labor certification applications through the Foreign Labor Application Gateway (FLAG) at <https://flag.dol.gov> and the PERM Case Management System at <https://www.plc.doleta.gov>.
- OFLC programs are divided, by visa classification, into two major types:

### Immigrant

Permanent (PERM) Program

“Green Card”

### Immigrant and Non-Immigrant

Prevailing Wage Determination

### Non-Immigrant

H-1B, H-1B1, E-3 Skilled Occupations Visas

H-2A Temporary Agricultural Visa

H-2B Temporary Non-Agricultural Visa

CW-1 Temporary Non-Immigrant CNMI

# H-2B Visa Program

## *Current Regulatory Authority*



Departments of Labor and Homeland Security jointly published two regulatory actions effective on April 29, 2015

- Interim Final Rule (IFR): Temporary Non-Agricultural Employment of H–2B Aliens in the United States

<https://www.govinfo.gov/content/pkg/FR-2015-04-29/pdf/2015-09694.pdf>

- Final Rule: Wage Methodology for the Temporary Non-Agricultural Employment in the H–2B Program

<https://www.govinfo.gov/content/pkg/FR-2015-04-29/pdf/2015-09692.pdf>

# H-2B Visa Program

## *DOL Administrative Authority*



- A Temporary Labor Certification (TLC) granted by DOL serves as advice to DHS regarding whether . . .
  1. A qualified U.S. worker is available to fill the petitioning H–2B employer’s job opportunity; and
  2. A foreign worker’s employment in the job opportunity will not adversely affect the wages or working conditions of similarly employed U.S. workers
- DHS regulations also require DOL to “*determine the prevailing wage applicable to an application for temporary labor certification...*” 8 CFR 214.2(h)(6)(iii)(D)



## **Employment and Training Administration (ETA) Office of Foreign Labor Certification (OFLC)**

- TLC determinations are made by the OFLC Administrator within the ETA who, in turn, may delegate this authority to a designated National Processing Center (NPC) Certifying Officer (CO)

<https://www.dol.gov/agencies/eta/foreign-labor>

## **Wage and Hour Division (WHD)**

- Investigates and enforces the terms and conditions of employment in the H-2B temporary labor certification

<https://www.dol.gov/agencies/whd/immigration/h2b>

# H-2B Visa Program

## General Overview



- Enable U.S. employers to hire nonimmigrant workers to perform temporary nonagricultural labor or services
- The nature of the employer's need for the services to be performed must be temporary and qualify under one of the following standards defined by DHS:
  - One-time occurrence
  - Seasonal
  - Peakload
  - Intermittent

**Important Reminder:** Additional DHS guidance on temporary need is at <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-non-agricultural-workers/guidance-on-temporary-need-in-h-2b-petitions>



# H-2B Visa Program

## General Overview



- Major steps involved for an employer to obtain a TLC
  - STEP 1** Employer requests a prevailing wage determination (PWD) for the job opportunity and area of intended employment
  - STEP 2** Employer submits a job order to SWA serving the area of intended employment
  - STEP 3** Employer submits an H-2B application and all supporting documentation to OFLC for processing
  - STEP 4** OFLC reviews H-2B application and, where requirements are met, authorizes recruitment for U.S. workers
  - STEP 5** OFLC issues a TLC determination

**H-2B 101 Presentation Recording:** <https://www.youtube.com/watch?v=XJ-B3sJ5-VWw>

# H-2B Visa Program

## *Temporary Need Registration Process*



- H-2B regulations contain a separate registration process for DOL to determine an employer's temporary need, subject to review by DHS (*20 CFR 655.11 and 655.12*).
- Since DOL has not implemented this registration process via notice in the *Federal Register*, OFLC makes a temporary need determination during review of the H-2B application.
- However, on November 2, a court ordered DOL to take the following actions related to the H-2B registration process:
  - Propose to rescind the registration requirements in a future regulatory action (TBD); and
  - In the interim, use the Notice of Acceptance (NOA) procedures to inform an employer of OFLC's temporary need determination.

Visit the OFLC website to read the court order issued by the U.S. District Court for the Central District of California in *Padilla Construction Company*, No. 2:18-cv-1214 (C.D. Cal. Nov. 2, 2022) at <https://www.dol.gov/agencies/eta/foreign-labor>

# H-2B Visa Program

## *Temporary Need Registration Process*



- OFLC will continue to review the nature of the employer's temporary need during the application process.
- Provided regulatory requirements are met, OFLC will use the NOA procedures at 20 CFR 655.33 to inform the employer of the following (among other things):
  - The nature of its need for H-2B workers in the job opportunity is temporary, subject to DHS review as the final arbiter;
  - Provide a unique temporary registration number associated with the employer's job opportunity and period of need;
  - State the activation period for the temporary registration number, which shall be for up to 3 years; and
  - Provide notification that, in future H-2B applications, OFLC may use the Notice of Deficiency (NOD) procedures at 20 CFR 655.31 where the employer's temporary need is called into question.

# H-2B Visa Program

## Temporary Need Registration Process



- Effective for all applications filed on and after January 1, 2023.
- OFLC will issue the unique temporary need registration number, activation period, and all terms and conditions within the body of the email that also contains the official NOA as an attachment.

Sent: Friday, November 18, 2022 4:33 PM

To: **EMPLOYER-AGENT-ATTORNEY EMAIL ACCOUNT**

Subject: [DO NOT REPLY] OFLC Correspondence for Case H-400-22298-549014

### OFFICIAL GOVERNMENT NOTIFICATION

H-2B Temporary Nonagricultural Visa Program

#### Notice of Acceptance

This electronic communication serves as official notice that the H-2B Application for Temporary Employment Certification, H-400-22298-549014, seeking labor certification under the H-2B visa program has been reviewed and accepted for processing. Please carefully review the information contained in the Notice of Acceptance attached to this email and comply with all instructions and requirements applicable to the employer.

#### TEMPORARY NEED DETERMINATION INFORMATION

**Temporary Need Registration Number: H2B-REG-00000009**

**End Date of Activation Period: 11/17/2025**

# H-2B Visa Program

## *Temporary Need Registration Process*



- Please retain the temporary need registration number and activation period in the event future H-2B applications for the same job opportunity are filed by the employer.
- In a future H-2B application for the same job opportunity, employer should enter the temporary need registration number on Field B.8, Form ETA-9142B, during the activation period in lieu of providing a detailed statement of temporary need or other supporting documentation, unless otherwise notified by the CO.
- The CO will consider an active unique registration number as one piece of evidence that the employer has satisfied the temporary need requirement.
- The temporary need registration number cannot be transferred from one employer to another unless the employer to which it is transferred is a successor in interest to the employer to which it was issued.

# H-2B Visa Program

## *Temporary Need Registration Process*



- CO may use the NOD procedures in the following circumstances:
  - Temporary need registration number entered on a future application is inaccurate, inactive, or associated with a different employer or job;
  - Nature of the job classification, duties, number of workers needed, and/or period of need for the job opportunity has materially changed;
  - Nature of the employer’s need for temporary services or labor to be performed has materially changed, or
  - Other information or documentation before the CO suggest that the nature of the employer’s need may not be temporary.
- When a NOD is issued, the CO will **deactivate** the temporary need registration number. The employer has an opportunity to submit evidence for the CO to make a **new** determination of the temporary need. If the CO determines that the nature of the employer’s need is temporary, the temporary need registration number will be **reactivated** for another period of time, which shall be for up to 3 years.

# H-2B Visa Program



## **Section I**

### **Application Filing Process**

# H-2B Visa Program

## *Application Filing Process*



- The application filing window opens on January 1, 2023, at 12:00 a.m. Eastern Time
- On January 1, 2, and 3, 2023, the Office of Foreign Labor Certification (OFLC) will accept all timely filed applications containing an April 1, 2023, or later start date of need (i.e., three-day filing window)



# H-2B Visa Program

## *Application Filing Process*



- On January 4, OFLC will randomize **all** applications with April 1 start date and received in this three-day filing window using the procedures published in the Federal Register on March 4, 2019
- Randomized applications will be assigned to groups:
  - Group A will include a sufficient number of applications (about 35,000 worker positions) to fill the statutory visa cap.
  - Each subsequent group will total no more than 20,000 worker positions.

# H-2B Visa Program

## *Application Filing Process*



- Once randomization is completed:
  - ✓ Employers (and their agent/attorney) will be notified in writing of their group assignment
  - ✓ Group A applications will be assigned to analysts for review and issuance of first action decisions
  - ✓ After all first actions are issued for Group A applications, Group B applications will be assigned to analysts for review and issuance of first action decisions
  - ✓ Applications will be processed as each successive stage in the labor certification process is completed
  
- OFLC will publish the list of applications received and their group assignment within five business days after the randomization process has been completed

# H-2B Visa Program

## *Application Filing Process and FLAG System*



- Employers and their authorized representatives can set up FLAG system accounts at <https://flag.dol.gov>
- Registered users are able to complete profiles, manage network users, and access other helpful tools to allow differentiated levels of access for point of contacts and other authorized users
- All communications regarding the processing of applications, supporting documentation, and case status updates are updated real-time in the FLAG system account
- The FLAG system also maintains a dedicated webpage that provides employers with up-to-date processing times for each immigrant and nonimmigrant visa program administered by OFLC at <https://flag.dol.gov/processingtimes>
- Continuously enhance functionality to improve customer service and application processing

# H-2B Visa Program

## Processing Times Report



- Updates will be available through the FLAG System every **Monday, Wednesday, and Friday** until the visa cap is met
- The first posting will be on January 9, 2023

### Sample

Filing Window	STEP 1	STEP 2		STEP 3	STEP 4
	Total Cases Submitted <sup>3</sup> & Positions Requested	Total Cases Issued First NOA or NOD	Percent Issued NOA or NOD	Total Cases Pending – Post NOA or NOD Issued <sup>4</sup>	Total Cases Issued Final Decision & Workers Certified
Jan 1-3 Group A <sup>5</sup>	2,007 (34,868 Workers)	2,007	100.0%	7 (89 Workers)	2,000 (33,908 Workers)
Jan 1-3 Group B <sup>6</sup>	1,086 (19,104 Workers)	1,086	100.0%	5 (54 Workers)	1,081 (18,353 Workers)
Jan 1-3 Group C <sup>6</sup>	1,059 (18,997 Workers)	1,059	100.0%	23 (307 Workers)	1,036 (17,911 Workers)
Jan 1-3 Group D <sup>6</sup>	1,088 (18,589 Workers)	1,088	100.0%	107 (1,677 Workers)	977 (16,405 Workers)
Jan 1-3 Group E <sup>6</sup>	236 (4,154 Workers)	236	100.0%	77 (1,252 Workers)	158 (2,847 Workers)
Jan 1 – 3 <sup>6</sup>	2 (30 Workers)	2	100.0%	2 (30 Workers)	--

# H-2B Visa Program

## Application Filing Process – What to File



Employer will submit the following documents:

- Form ETA-9142B
  - (including valid Prevailing Wage Determination [PWD] Tracking Number)
  - Appendix A – Additional work site locations (if applicable)
  - Appendix B – Signed, initialed and dated copy of the original form (required)
  - Appendix C – Foreign labor recruiter information (if applicable)
  - Appendix D – Job contractor employer-client information (if applicable)
- Copy of the job order concurrently submitted to the State Workforce Agency (SWA)
- Agent agreement/documentation demonstrating authority to represent the employer (if applicable)
- Copies of all contracts/agreements with any agent and/or recruiter engaged in international recruitment of H-2B workers (if applicable)

**Important Reminder:** Employers should provide certified translations of any contracts or agreements which are not in English to assure timely processing.

# H-2B Visa Program

## Application Filing Process – What to File



### Required documents (continued)

- Occupations involving special procedures must submit other required documents (e.g., work itinerary on Appendix A)
- Copy of Migrant and Seasonal Agricultural Worker Protection Act (MSPA) registration for the employer or agent, (if applicable)



### Additional documents for **H-2B job contractors**

- Appendix D – Identifying the one employer-client associated with the job opportunity
- Appendix B – Signed and dated copy of the original form employer-client
- A separate statement of temporary need for the employer-client on the Form ETA-9142B Section B.8 (include only one attachment)
- Copy of an executed contract with employer-client



# H-2B Visa Program



## Section II

# Helpful Hints and Reminders

# H-2B Visa Program

## *Helpful Hints and Reminders*



### **Form ETA-9142B (H-2B Application)**

- Employers must complete all required fields and upload all required and relevant supporting documentation (e.g., *Appendix B*, MSPA registration i.e. Farm Labor Contractor/Employee (FLC/E) documents, job contractor agreement/contract, etc.)
- Both the signature on the *Appendix B* must be a wet (pen/ink) signature, as well as the initials on each attestation
- Section A of *Appendix B* should not be completed if the employer is not represented by an agent or attorney

#### **Good Practice:**

- The employer's signature on the Appendix B should be **original** and dated concurrently with an application.



# H-2B Visa Program

## *Helpful Hints and Reminders*

### **Form ETA-9142B, Temporary Need**

- Statement of Temporary Need must be included in Section B.8
- An attachment should only be included if additional space is needed
- “See Attached” with no explanation in Section B.8 will result in a Notice of Deficiency (NOD)

#### **Good Practice:**

- Be attentive to type of need requested so that it aligns with the description of the employer’s need, e.g. seasonal need, peakload need, intermittent need, or one-time occurrence

# H-2B Visa Program

## *Helpful Hints and Reminders*



### Multiple Filings

- If multiple filings are identified, the application filed first in time will be the one permitted to proceed
- Example: Employer files an application on January 1, 2023 at 12:05 a.m. and files a 2<sup>nd</sup> application on January 2, 2023 at 10:00am. Once randomization is conducted, the 1st application is assigned Group C and the 2<sup>nd</sup> application is assigned Group A. When Group A cases are being processed, the employer will receive a NOD to withdraw this application filed second in time. The OFLC will consider the **first application filed in timestamp order** - irrespective of randomization group assignments
- Employer may not separate filings according to whether they are intended for cap-subject workers and cap-exempt workers. If the jobs are the same, there may only be one filing

# H-2B Visa Program

## *Helpful Hints and Reminders*



### **Multiple Filings After a Certification**

- An employer who receives a certification and employs any number of H-2B workers pursuant to that certification may not submit a subsequent application for the same need
- Any new filing must demonstrate a new need and a need for additional workers over and above those already certified
- An employer who receives a certification but does not employ any H-2B workers pursuant to that certification may “return” the completely unused certification and file a new application (with a later start date) to cover the same need

# H-2B Visa Program

## *Helpful Hints and Reminders*



## Returning a Labor Certification

The employer can return a temporary labor certification that is no longer needed using the following procedures:

- Email the Chicago NPC at [TLC.Chicago@dol.gov](mailto:TLC.Chicago@dol.gov)
- Include the phrase “H-2B Cert Return Notification” followed by the full case number in the email subject line
- Include the full case number and employer name in the body of the email and a brief explanation as to the certification return

### *Good Practice:*

- Good example of email language: “Acme Company will not use the certification for H-400-1234-56789 due to the H-2B cap being reached”.

# H-2B Visa Program

## *Helpful Hints and Reminders*



## Returning a Labor Certification, Cont'd

- The Chicago NPC Help Desk will issue a confirmation that the return has been processed and notify U.S. Citizenship and Immigration Services of the returned certification
- If the employer receives a certification and files a second application for the same worker positions with a later start date (e.g., the portion of need after the next visa cap release), the employer can return the certification as a part of the new filing. It should be clearly marked as its own PDF attachment

### *Caution!*

- This option is only available for **unused** temporary labor certifications.
- If a partially used temporary labor certification is returned and a subsequent application is submitted for the same job opportunity, the application will be considered a duplicate filing.

# H-2B Visa Program

## *Helpful Hints and Reminders*



## **Changing Dates of Need**

- A peak within a peak is potentially acceptable
  - A single period of need now being split into multiple periods of need, such as a peak within a peak
- A change in the requested period of need after a filing history demonstrating a different period of need may result in a NOD
  - The employer must explain and demonstrate, through supporting documents, the change in business that necessitated a change to its established period of need
  - If successfully supported, for repeating needs, the new period of need will be expected to be the new norm and must be supported by contracts/payroll in future seasons
- Such a change to filing patterns simply as an accommodation to the cap will not be acceptable

# H-2B Visa Program

## *Helpful Hints and Reminders*



### **Job Order (JO)**

- The employer must concurrently submit the JO to the SWA when the H-2B application is filed with OFLC (90-75 calendar days before the start Date of Need)
  
- Information submitted on ETA-9142B and JO must match:
  - Dates of need, Number of workers, Daily Transportation, Overtime Available, On-the-Job Training, Employer-Provided Tools, Board/Lodging, Special requirements, Named multiple worksites on *Appendix A*

# H-2B Visa Program

## *Helpful Hints and Reminders*



## Appendix A

- *Appendix A* must be complete, particularly in applications with additional work sites for occupations such as carnival, brush clearing, and forestry
- A separate itinerary is not acceptable
  - If a separate itinerary is submitted, the employer will receive a NOD and the Chicago NPC will be required to conduct the data entry in order to obtain a complete and accurate *Appendix A*. This will take time and will delay further processing of the case.
  - Incorrect wages listed on *Appendix A* and incorrect start dates of need (dates / year).



# H-2B Visa Program

## *Helpful Hints and Reminders*



### **Appendix A, Cont'd**

- City field must be completed; this field may not be blank
- Employer should enter “multiple cities and towns” in the *Appendix A* when there are multiple locations within one county

#### **IMPORTANT!**

Unanticipated worksites are not permissible; all worksites (MSA/county) must be identified in the filing and must be supported by a PWD

# H-2B Visa Program

## *Helpful Hints and Reminders*



- Upload NOD responses and Recruitment Reports to the "My Cases" table in the employer's FLAG System account using the "NOD Response" document category
- DO NOT send a duplicate response to the OFLC Chicago NPC Help Desk via email, as this might create delays with processing your application
- Monitor case processing dates on the OFLC website; OFLC Chicago NPC will not respond to case status inquiries on cases that are within normal timing parameters

# H-2B Visa Program

## *Helpful Hints and Reminders*



## **Recruitment Report Requirements**

- The name of each recruitment activity or source
- The name and contact information of each U.S. worker who applied or was referred to the job opportunity up to the date of the preparation of the recruitment report, and the disposition of each worker's application.
- Clear indication whether the job opportunity was offered to the U.S. worker and whether the U.S. worker accepted or declined
- Confirmation that former U.S. employees were contacted, if applicable, and by what means
- Confirmation that the bargaining representative was contacted, if applicable, and by what means, or that the employer posted, for 15 consecutive business days, the job opportunity to all employees in the job and area in which the work will be performed by the H-2B workers
- If applicable, for each U.S. worker who applied for the position but was not hired, the lawful job-related reason(s) for not hiring the U.S. worker

# H-2B Visa Program

## *Helpful Hints and Reminders*



## **Recruitment Report Requirements, Cont'd**

- The employer must prepare, sign, and date the recruitment report. OFLC will accept electronic signatures that comply with the standards contained in the E-Sign Act, accessible here: <https://www.govinfo.gov/content/pkg/PLAW-106publ229/pdf/PLAW-106publ229.pdf>
- Where recruitment was conducted by a job contractor or its employer-client, both joint employers must sign the recruitment report
- The Recruitment Report must be submitted by the date specified in the NOA
- The Recruitment Report must indicate the name of the employer as indicated on the Form ETA 9142B

# H-2B Visa Program

## *Helpful Hints and Reminders*



## **Recruitment Report, Cont'd**

- Employers should verify with the SWA that the JO was opened by the SWA in the area of intended employment, and obtain the JO Number

### **IMPORTANT – PLAN AHEAD!**

Employers might need to register with the SWA in the state where the work will be performed. Some states (e.g. LA) require out-of-state employers to be “registered” with state authorities to access the SWA’s website. Some states (e.g. MD) have public websites which provides the names and status of employers licensed or registered in the state.

# H-2B Visa Program

## *Helpful Hints and Reminders*



### **Recruitment Report, Cont'd**

- An employer should act timely in contacting U.S. applicants and allow a reasonable period of time for the U.S. applicants to respond to the employer before submitting a recruitment report
- Submission of the recruitment report to OFLC can only occur after the job opportunity has been posted for 15 consecutive business days after the date of the NOA. Delays in adjudication are caused by employers who submit recruitment reports earlier. In these situations, OFLC will reject the recruitment report and the employer must refile the recruitment report timely.

# H-2B Visa Program

## *Helpful Hints and Reminders*



## **Recruitment Report, Cont'd**

- If an employer seeks to electronically post the notice of the job opportunity as an upload to a website, it should be accessible by the employer's employees; and, contain typical employee notices, e.g. wage and hour notices, complaints for discrimination
- An employer should act timely in contacting U.S. applicants, and allow a reasonable period of time for the U.S. applicants to respond, before submitting a recruitment report

### **IMPORTANT!**

- The employer must continue to update the recruitment report throughout the recruitment period. In a joint employment situation, either the job contractor or the employer-client may update the recruitment report
- The updated report must be signed, dated and must be made available upon request by DOL.
- The report must be maintained for three years post-certification



## **Recruitment Report, Cont'd**

- A Recruitment Report Checklist can be located at end of the H-2B Program page under Additional Resources – See <https://www.dol.gov/agencies/eta/foreign-labor/programs/h-2b>
- This is a tool to help employers correctly complete their recruitment reports.
- The Recruitment Report Checklist is intended for use as guidance only; it should not be submitted to the OFLC CO; and it DOES NOT absolve the employer from complying with all regulatory requirements.

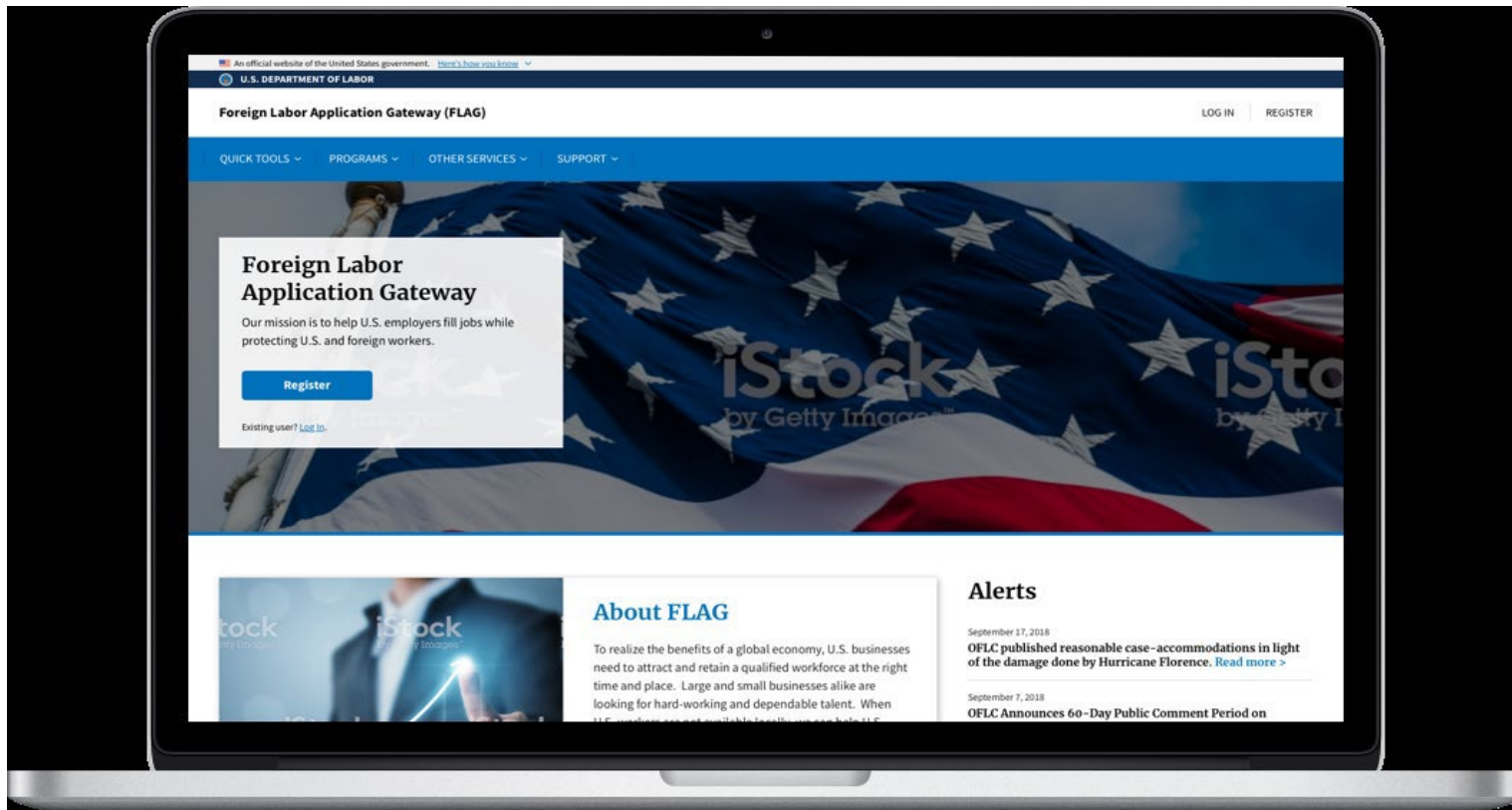


# H-2B Visa Program

## *How Can We Help You?*



Access additional help and resources via the FLAG webpage <https://flag.dol.gov>, where users can get help, access videos and tutorials, set up an account, and report technical problems.



# H-2B Visa Program

## *How Can We Help You?*



- FLAG System Support
  - Contact Login.gov at <https://www.login.gov> for technical issues with account creation, signing in, or changing Login.gov settings.
  - Contact DOL FLAG Helpdesk for any technical problems filing applications at <https://flag.dol.gov/support/contact>
  
- H-2B Prevailing Wage Support
  - Contact OFLC NPWC Helpdesk for any questions related to processing prevailing wage requests at [fic.pwd@dol.gov](mailto:fic.pwd@dol.gov)
  
- H-2B Program Support
  - Contact OFLC H-2B Program Helpdesk for any questions related to the processing of H-2B applications at [tlc.chicago@dol.gov](mailto:tlc.chicago@dol.gov)

# H-2B Visa Program

## How Can We Help You?



Visit the OFLC website and “Subscribe” for e-mail updates  
<https://www.dol.gov/agencies/eta/foreign-labor>

A screenshot of the OFLC website. At the top, there is a navigation bar with the U.S. Department of Labor logo and the text "U.S. DEPARTMENT OF LABOR". Below this is the "Employment and Training Administration" header. A blue navigation menu contains links for "PROGRAM AREAS", "POLICY AND DIRECTIVES", "RESOURCES", "NEWS", "ABOUT", and "CONTACT US". Below the menu, the breadcrumb "ETA &gt; Foreign Labor Certification" is visible. The main content area features a large image of the American flag with a dark grey overlay containing the text "Foreign Labor Certification". At the bottom, there are two buttons: "Programs" and "Announcements".