



H-2B Temporary Labor Certification Program

Application Process and Helpful Filing Tips

December 2023

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”

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

Immigrant and Non-Immigrant

Prevailing Wage Determination

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)

H-2B Visa Program

DOL Administrative Authority



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-Ww>

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, 2022 DOL agreed in a court order to take the following actions related to the H-2B registration process:
 - Rescind the registration process 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/news>

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 all program requirements are met, OFLC will use the NOA procedures at 20 CFR 655.33 to inform the employer of the following:
 - 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 may last 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 (if not previously issued), 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 will link 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.
- 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.

Important Tip: Employers should not “paste” in the temporary need registration number. If the FLAG system does not allow linking, and the employer pastes in the number, the employer will receive a notice of deficiency asking to remove the temporary need registration number from the application.



Temporary Need Registration Linking in Flag

The following is a list of criteria that must match between the original case to link a registration number:

1. The original registration number status must be active
2. The originating case which issued the initial registration number must match the following values on the current 9142B
 1. Type of Need (field B.7)
 2. Employer FEIN (field C.12)
 3. Primary Worksite MSA (field F.b7)
3. The current case must not have a total number of workers that is more than 20% of the total workers in the original registration case number. If the number of works is greater than or equal to 10 workers (e.g. original registration case is for 100 workers, they can request up to 120 workers)



4. The current case must not have a total number of workers that is more than 50% of the total workers in the original registration case. If the number of workers is less than 10 workers (e.g. original registration case number is for 8 workers, they can request up to 12 workers).
5. The current case must not have changed by more than a total of 30 calendar days for the entire period of need compared to the original case registered.

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
 - CO receives information or documentation suggesting that the nature of the employer's need may not be temporary.

- 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 of up to 3 years.

H-2B Visa Program

Temporary Need Registration Linking in FLAG



If you cannot link a registration number to a 9142B, please do the following:

- Ensure there are not any material changes within the application.
- Make sure the correct registration number is being used.
- Re-review the application data to ensure everything is correct.

Below is a link to the FLAG user guide:

https://flag.dol.gov/sites/default/files/2023-11/Final_OFLC%20Application%20Modernization_How%20To%20Submit%20A%20ETA-9142B%20Application%20User%20Guide.Draft%20Update10.30.pdf

H-2B Visa Program



Demonstration of Temporary Need Registration Linking in FLAG System

H-2B Visa Program



Section I

Application Filing Process

H-2B Visa Program

Application Filing Process



- The application filing window opens on January 2, 2024, at 12:00 a.m. Eastern Time
- On January 2, 3, and 4, 2024, the Office of Foreign Labor Certification (OFLC) will accept all timely filed applications containing an April 1, 2024, or later start date of need (i.e., three-day filing window)

H-2B Visa Program

Application Filing Process



- On January 5, 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 [Processing Times | Flag.dol.gov](https://ProcessingTimes|Flag.dol.gov)
- 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 10, 2024

Sample

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



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 **OR** a hyperlinked registration number must be in Section B.8
- An attachment should only be included if additional space is needed **AND** there is no hyperlinked registration number
- “See Attached” with no explanation in Section B.8 will result in a Notice of Deficiency (NOD)

H-2B Visa Program

Helpful Hints and Reminders



Form ETA-9142B, Temporary Need

Note: If the employer hyperlinks its registration number AND also submits a statement of temporary need narrative, it will slow down processing. If there are no material changes to the application, only the hyperlinked registration number in Section B.8 is acceptable

H-2B Visa Program

Helpful Hints and Reminders



Multiple Filings

- In accordance with Departmental regulations at 20 CFR 655.15(f), only one Application for Temporary Employment Certification may be filed for worksite(s) within one area of intended employment for each job opportunity with an employer for each period of employment.
- If multiple filings are submitted during the three-day filing window, all applications will receive a NOD requesting that the employer demonstrate that the job opportunities are not the same.
- Employers 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
- 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.
- 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
 - For example, 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 submit a copy of the JO concurrently placed with the SWA when the H-2B application is filed with OFLC
- 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*

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 provide the names and legal status of employers licensed or registered in the state.

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.
 - Please watch out for 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" or "Recruitment Report" document categories, do not use other document categories as this will delay case processing.
- 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 during the backlog period. Employers can check status at the following website: [Processing Times | Flag.dol.gov](https://processing.times.flag.dol.gov)

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, Continued

- 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, Continued

- 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
- 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, Continued

- 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.
- OFLC may identify additional recruitment requirements depending on the job (e.g., job search websites)
- Recruitment report **cannot** be submitted until the employer has completed all recruitment steps

H-2B Visa Program

Helpful Hints and Reminders



Recruitment Report, Continued

- 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

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

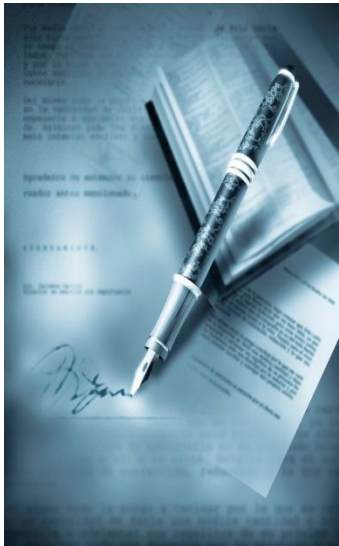
H-2B Visa Program

Helpful Hints and Reminders



Recruitment Report, Continued

- 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.



Section III

Post-Certification

Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2024 for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers

<https://www.federalregister.gov/documents/2023/11/17/2023-25493/exercise-of-time-limited-authority-to-increase-the-numerical-limitation-for-fy-2024-for-the-h-2b>



**Attestation for Employers Seeking to Employ H-2B
Nonimmigrant Workers Under Section 303 of Division O of
the Consolidated Appropriations Act, 2023, Public Law 117-
328, as extended by sections 101(6) and 106 of Division A of
the Continuing Appropriations Act, 2024 and Other
Extensions Act, Public Law 118-15 Form ETA-9142-B-CAA-8
U.S. Department of Labor (DOL)**

In accordance with Federal Regulations at 8 CFR 214.2 and 20 CFR 655.64, an eligible employer must prepare and file a completed Form ETA-9142-B-CAA-8 directly with DHS' USCIS in order to employ H-2B workers - in FY 2021. NOTE: An attorney or agent should not sign Section (L) unless the attorney or agent is an employee of the employer and has authority, as an employee of the employer, to sign as the employer.

H-2B Visa Program

Form ETA-9142-B-CAA-8, Attestations



Attestation (A): The employer must verify that it received a certified Form ETA-9142B, H-2B Application for Temporary Employment Certification and Final Determination: H-2B Temporary Labor Certification Approval, including all appendices, issued by DOL.

Attestation (B): The employer must verify that the approved Form ETA-9142B, H-2B Application for Temporary Employment Certification and Final Determination: H-2B Temporary Labor Certification Approval, including all appendices, issued by DOL contains a completed footer indicating the H-2B Case Number, Case Status, Determination Date, and validity period (i.e., certified start and end dates of work) and that the certified start date of work occurs on or after October 1, 2023 through September 30, 2024, and the certified end date of work has not elapsed.

H-2B Visa Program

Form ETA-9142-B-CAA-8, Attestations



Attestation (C): The employer must attest that it ***is suffering irreparable harm or will suffer impending irreparable harm (that is, permanent and severe financial loss)*** without the ability to employ all of the H-2B workers requested on the Form I-129 petition filed pursuant to 8 CFR 214.2(h)(6)(xiv) in the job opportunity certified by DOL. Additionally, the employer must agree to provide all documents and records, as described below, in the event of an audit, investigation, or other request by DOL and/or DHS. The documents and records must provide evidence establishing that the employer met its burden to demonstrate that if the employer's business is unable to employ all of the H-2B workers requested on the Form I-129 petition filed with DHS USCIS, it is suffering irreparable harm or will suffer impending irreparable harm. While the employer need not submit supporting documents with this attestation and H-2B petition, the employer must retain and be able to provide, at the time of filing the Form I-129 petition or upon request from DHS and/or DOL, all applicable type(s) of evidence

H-2B Visa Program

Form ETA-9142-B-CAA-8, Attestations



Attestation (C) continued: establish that the employer meets the irreparable harm standard, and mark each box that corresponds to these applicable type(s) of evidence. Providing only one form of evidence will not necessarily meet the irreparable harm standard. Such evidence may include, but is not limited to:

- Executed work contracts
- Work orders, reservations or other business arrangements
- Financial records
- Payroll records or earnings statements
- Evidence of reliance on a certain number of workers to operate, based on the nature and size of the business
- Other types of evidence demonstrating irreparable harm

H-2B Visa Program

Form ETA-9142-B-CAA-8, Attestations



Important Note: If an audit, investigation, or other request for documentation occurs, DOL will review all evidence to confirm that the employer properly attested and established to DHS its business needs. The attestation, however, only constitutes prima facie evidence that the employer satisfies the eligibility requirements for petitions filed under 8 CFR 214.2(h)(6)(xiv). If DHS subsequently finds that the evidence does not support the employer's attestations, **DHS may deny the petition** or, if the petition has already been approved, **revoke the petition** at any time consistent with existing regulatory authorities. In addition, where the employer has not shown sufficient proof of irreparable harm, **DOL may independently take enforcement actions**, including, among other things, **debaring the employer from the H-2B program for 1 to 5 years** from the date of the final agency decision, which also disqualifies the debarred party from filing any labor certification applications or labor condition applications with DOL for the same period set forth in the final debarment decision.

H-2B Visa Program

Form ETA-9142-B-CAA-8, Attestations



Attestation (D): The employer must attest that it has prepared a detailed written statement that it will provide upon request from DHS and/or DOL describing how its business is suffering irreparable harm or will suffer impending irreparable harm (that is, **permanent and severe financial loss**) without the ability to employ all of the H-2B nonimmigrant workers requested on the Form I-129 petition, and how each type of evidence that it will maintain (as identified in the checkboxes provided in Attestation C of the form) demonstrates that its business is suffering irreparable harm or will suffer impending irreparable harm.

Attestation (E): The employer must attest that it has a bona fide temporary need for the total number of H-2B worker positions certified on its certified Form ETA-9142B, *Final Determination: H-2B Temporary Labor Certification Approval*.

H-2B Visa Program

Form ETA-9142-B-CAA-8, Attestations



Attestation (F): If the employer submits a Form ETA-9142B-CAA-8 and I-129 petition to DHS USCIS, reflecting a start date of need 30 or more days after the certified start date of work, as shown on the approved labor certification from DOL, the employer must attest that it will complete a new assessment of the United States labor market to include the steps described below.

Attestation (F)(1): The employer must agree that it will place a new job order for the job opportunity with the State Workforce Agency (SWA) serving the area of intended employment not later than the next business day after submitting the I-129 petition for H-2B worker(s), and inform the SWA that the job order is being placed in connection with a previously submitted and certified Application for Temporary Employment Certification for H-2B workers by providing the SWA with the unique DOL case number identified on the certified Form ETA-9142B. The job order must contain the job assurances and contents set forth in

H-2B Visa Program

Form ETA-9142-B-CAA-8, Attestations



20 CFR 655.18 for recruitment of U.S. workers at the place of employment, and remain posted for at least 15 calendar days. The employer must also follow all applicable SWA instructions for posting job orders and receive applications in all forms allowed by the SWA, including online applications.

Attestation (F)(2): During the period of time the SWA is actively circulating the job order for intrastate clearance, the employer must agree to contact, by email or other available electronic means, the nearest comprehensive American Job Center (AJC) serving the area of intended employment where work will commence or, if a comprehensive AJC is not available, the nearest affiliate AJC serving the area of intended employment where work will commence. Upon contacting the AJC, the employer must request staff assistance advertising and recruiting U.S. workers for the job opportunity, and provide to the AJC the unique identification number associated with the job order

H-2B Visa Program

Form ETA-9142-B-CAA-8, Attestations



placed with the SWA or, if unavailable, a copy of the job order.

Attestation (F)(3): During the period of time the SWA is actively circulating the job order for intrastate clearance, the employer must agree to make reasonable efforts to contact, by mail or other effective means, its former U.S. workers who were furloughed and laid off during the period beginning January 1, 2022, until the date the I-129 petition is submitted to DHS, and those who were employed in the occupation at the place of employment. However, employers are not required to contact U.S. workers who were terminated for cause or who abandoned the worksite, as defined in 20 CFR 655.20(y). The employer must provide each former U.S. worker a full disclosure of the terms and conditions of the job order, and solicit their return to the job. Employers are required to maintain documentation to be submitted in the event of an audit or investigation sufficient to prove contact with each former U.S. worker consistent with document retention requirements under

H-2B Visa Program

Form ETA-9142-B-CAA-8, Attestations



20 CFR 655.56 and 20 CFR 655.65. This documentation may, for example, consist of a copy of a form letter sent to all former employees, along with evidence of its transmission (postage account, address list, etc.).

Attestation (F)(4): Where the occupation or industry is traditionally or customarily unionized, during the period of time the SWA is actively circulating the job order for intrastate clearance, the employer must agree to contact (by mail, email or other effective means) the nearest American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) office covering the area of intended employment to provide written notice of the job opportunity, by providing a copy of the job order placed, and request assistance in recruiting qualified U.S. workers for the job opportunity.

H-2B Visa Program

Form ETA-9142-B-CAA-8, Attestations



Attestation (F)(5): The employer must agree to offer the job to any qualified and available U.S. worker who applies or is referred for the job opportunity until the date on which the last H-2B worker departs for the place of employment, or 30 days after the last date on which the SWA job order is posted, **whichever is later**. The employer must attest that it understands that applicants can be rejected only for lawful job- related reasons, consistent with 20 CFR 655.40(a). If the employer wishes to interview U.S. applicants, DOL reminds the employer that it must conduct the interviews by phone or provide a procedure for the interviews to be conducted in the location where the worker is being recruited so that the worker incurs little or no cost. The employer must not provide H-2B workers with more favorable treatment in whether it requires or in how it conducts interviews.64(a)(4)(i), and request assistance in recruiting qualified U.S. workers for the job. The employer must also attest that the contacts, disclosures, and requests for assistance required by paragraph (a)(4)(iv) were provided in a language understood by the worker(s), as necessary or reasonable, and in writing;

H-2B Visa Program

Form ETA-9142-B-CAA-8, Attestations



Attestation (F)(6): Where the employer maintains a website presence for its business operations, and during the period of time the SWA is actively circulating the job order for intrastate clearance, it must attest that it posted the job opportunity in a conspicuous location on its website. The job opportunity must have been posted on the employer's website and must have disclosed the terms of the job order placed pursuant to 20 CFR 655.65(a)(4)(i), and remain posted for at least 15 calendar days;

Attestation (F)(7): The employer must agree to offer the job to any qualified and available U.S. worker who applies or is referred for the job opportunity until the date on which the last H-2B worker departs for the place of employment, or 30 days after the last date on which the SWA job order is posted, whichever is later. The employer must attest that it understands that applicants can be rejected only for lawful job-related reasons, consistent with 20 CFR 655.40(a). If the employer wishes to interview U.S. applicants, DOL reminds the employer that it must

H-2B Visa Program

Form ETA-9142-B-CAA-8, Attestations



Attestation (F)(7) (continued): conduct the interviews by phone or provide a procedure for the interviews to be conducted in the location where the worker is being recruited so that the worker incurs little or no cost. The employer must not provide H-2B workers with more favorable treatment in whether it requires or in how it conducts interviews.

Attestation (G): The employer must attest that each of the workers it requests and/or instructs to apply for a nonimmigrant visa under the Form I-129 petition, whether currently named or unnamed, has been issued an H-2B visa or was otherwise granted H-2B status during one of the last 3 fiscal years (Fiscal Years 2021, 2022, or 2023), unless the Form I-129 petition submitted to DHS' USCIS requests a national(s) of El Salvador, Guatemala, Honduras, Haiti, Colombia, Ecuador, or Costa Rica who is not subject to a returning worker requirement, consistent with 8 CFR 214.2(h)(6)(xiv)(A)(2).

H-2B Visa Program

Form ETA-9142-B-CAA-8, Attestations



Attestation (H): The employer must agree to retain, for a period of 3 years from the date of certification, a copy of the signed attestation form, evidence and a detailed written explanatory statement establishing that its business meets the standard described in paragraph (C) of the attestation, and, if applicable, proof of recruitment efforts set forth in 20 CFR 655.64(a)(4)(i)-(viii) and a recruitment report that meets the requirements set forth in 20 CFR 655.48(a)(1)-(4), and (7), consistent with the document retention requirements under 20 CFR 655.65, 20 CFR 655.56, and 29 CFR 503.17. In addition, the employer must agree to provide this documentation to a DHS and/or DOL official upon request.

Attestation (I): The employer must agree to retain documentary evidence establishing that each of the workers it is requesting on the Form I-129 petition, whether named or unnamed, are only workers who have been issued an H-2B visa or otherwise granted H-2B status during one of the last 3 fiscal years (Fiscal Years 2021, 2022, or 2023), unless the Form I-129 petition submitted to DHS USCIS requests a national(s)

H-2B Visa Program

Form ETA-9142-B-CAA-8, Attestations



of El Salvador, Guatemala, Honduras, Haiti, Colombia, Ecuador, or Costa Rica who is not subject to a returning worker requirement, consistent with 8 CFR 214.2(h)(6)(xiv).

Attestation (J): The employer must agree to comply with all assurances, obligations, and conditions of employment set forth in the Application for Temporary Employment Certification (Form ETA-9142B and all Appendices) certified by the DOL for its job opportunity. Employers are reminded to review and ensure they understand the obligations and assurances of Appendix B of Form ETA-9142B.

Attestation (K): The employer must agree to fully cooperate with any compliance review, evaluation, verification or inspection conducted by DHS, including an on-site inspection of the employer's facilities, interview of the employer's employees and any other individuals possessing pertinent information, and review of the employer's records related to the compliance with immigration laws and regulations, including but not

H-2B Visa Program

Form ETA-9142-B-CAA-8, Attestations



Attestation (K) (continued): limited to evidence pertaining to or supporting the eligibility criteria for the FY 2024 supplemental allocation outlined in paragraph 8 CFR 214.2(h)(6)(xiv)(B), as a condition for the approval of the H-2B petition.

Attestation (L): The employer must agree to fully cooperate with any audit, investigation, compliance review, evaluation, verification or inspection conducted by DOL, including an on-site inspection of the employer's facilities, interview of the employer's employees and any other individuals possessing pertinent information, and review of the employer's records related to the compliance with applicable laws and regulations, including but not limited to evidence pertaining to or supporting the eligibility criteria for the FY2024 supplemental allocation outlined in paragraphs 20 CFR 655.64(a) and 655.65(a), as a condition for the approval of the H-2B petition.

H-2B Visa Program

Form ETA 9142-B-CAA-8, Attestation



NOTE: The employer must agree not to impede, interfere, or refuse to cooperate with an employee of the Secretary who is exercising or attempting to exercise DOL's audit or investigative authority.

Declaration Under Penalty of Perjury

When you sign Form ETA-9142-B-CAA-8, Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 303 of Division O of the Consolidated Appropriations Act, 2023, Public Law 117- 328, as extended by sections 101(6) and 106 of Division A of the Continuing Appropriations Act, 2024 and Other Extensions Act, Public Law 118-15, you are declaring under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Form ETA-9142-B-CAA-8 will not be considered complete and valid if the attestation is not signed and dated by an individual who has the authority to sign Form ETA-9142-B-CAA-8. An attorney or agent should not sign this section unless the attorney or agent is an employee of the employer and has authority to sign as the employer.

H-2B Visa Program

Special Document Retention Requirements



20 CFR 655.67 Special document retention provisions for Fiscal Years 2023 through 2026 under the Consolidated Appropriations Act, 2022, as extended by Public Law 117–180

(a) An employer that files a petition with USCIS to employ H–2B workers in fiscal year 2023 under authority of the temporary increase in the numerical limitation under section 204 of Division O, Public Law 117–103 must maintain for a period of three (3) years from the date of certification, consistent with 20 CFR 655.56 and 29 CFR 503.17, the following:

- (1) A copy of the attestation filed pursuant to the regulations in 8 CFR 214.2 governing that temporary increase;
- (2) Evidence establishing, at the time of filing the I–129

H-2B Visa Program

Special Document Retention Requirements



20 CFR 655.67(a)(2) - continued

petition, that the employer's business is suffering irreparable harm or will or will suffer impending irreparable harm (that is, **permanent and severe financial loss**) without the ability to employ all of the H-2B workers requested on the petition filed pursuant to 8 CFR 214.2(h)(6)(xiii), including a detailed written statement describing the irreparable harm and how such evidence shows irreparable harm;

(3) Documentary evidence establishing that each of the workers the employer requested and/or instructed to apply for a visa, whether named or unnamed on a petition filed pursuant to 8 CFR 214.2(h)(6)(xiii), have been issued an H-2B visa or otherwise granted H-2B status during one of the last three (3) fiscal years (fiscal year 2020, 2021, or 2022), unless the H-2B worker(s) is a national of

H-2B Visa Program

Special Document Retention Requirements



20 CFR 655.67(a)(3) - continued

El Salvador, Guatemala, Honduras, or Haiti and is counted towards the 20,000 cap described in 8 CFR 214.2(h)(6)(xiii)(A)(2). Alternatively, if applicable, employers must maintain documentary evidence that the workers the employer requested and/or instructed to apply for visas are eligible nationals of El Salvador, Guatemala, Honduras, or Haiti as defined in 8 CFR 214.2(h)(6)(xiii)(A)(2); and

(4) If applicable, proof of recruitment efforts set forth in 20 CFR 655.65(a)(5)(i) through (viii) and a recruitment report that meets the requirements set forth in 655.48(a) (1) through (4) and (7), and maintained throughout the recruitment period set forth in 655.65(a)(5)(ix).

H-2B Visa Program

Special Document Retention Requirements



20 CFR 655.67 - continued

(b) DOL or DHS may inspect the documents in paragraphs (a)(1) through (4) of this section upon request.

(c) This section expires on October 1, 2026.

To access the Form ETA-9142-B-CAA-8 and General Instructions, visit OFLC's website at:
<https://www.dol.gov/agencies/eta/foreign-labor/forms>

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 flc.pwd@dol.gov

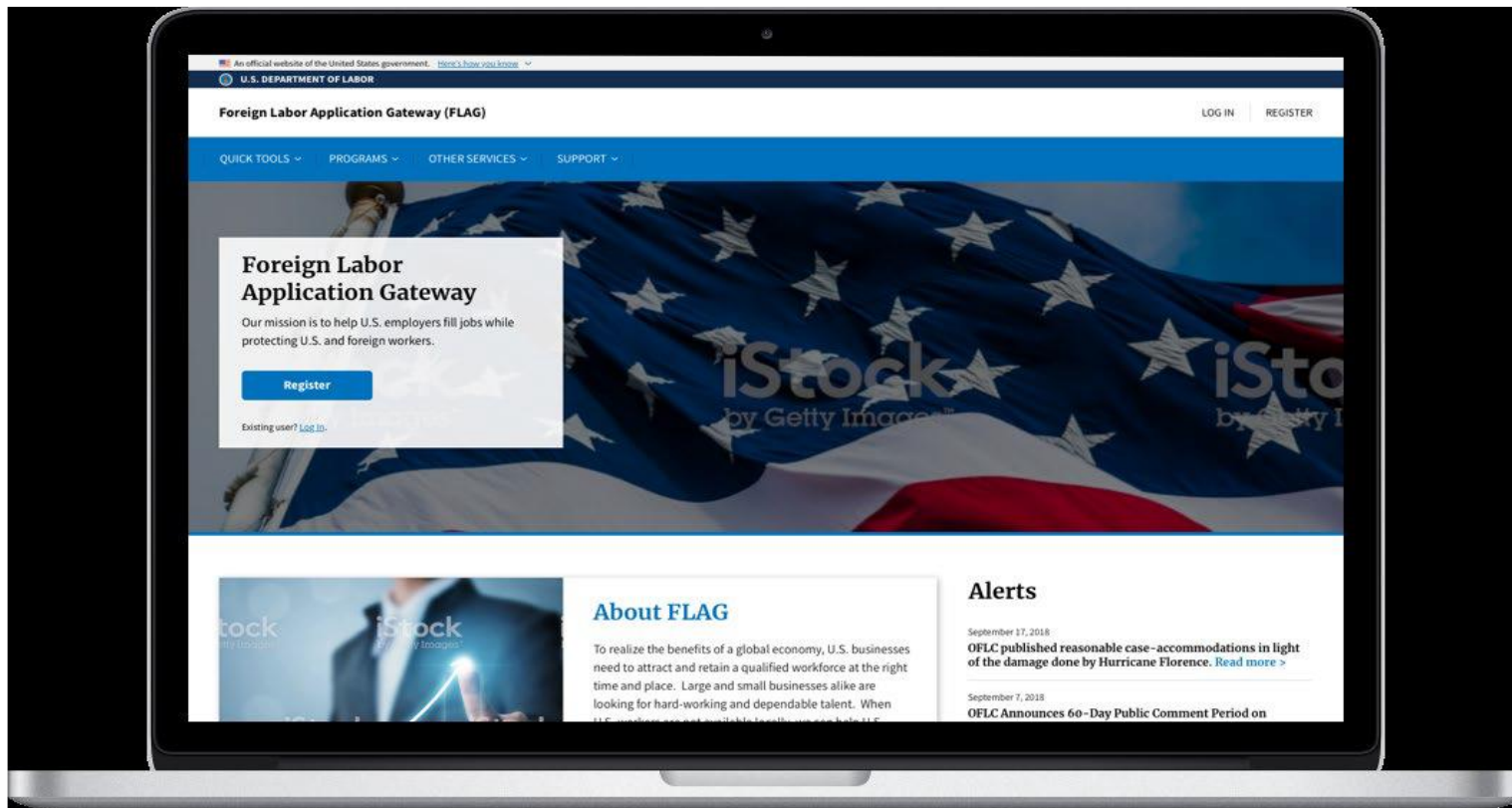
- H-2B Program Support
 - Contact OFLC H-2B Program Helpdesk for any questions related to the processing of H-2B applications at tlc.chicago@dol.gov

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?



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

