

UPDATE

What are U.S. VISA Requirements for Agricultural Workers?

A citizen of a foreign country who seeks to enter the United States generally must first obtain a U.S. visa, unless a visa is not required for individuals from that country of nationality. The visa is placed in the traveler's passport, a travel document issued by the traveler's country of citizenship. Certain international travelers may be eligible to travel to the United States without a visa, if they meet the requirements for visa-free travel. The type of visa a person must obtain is defined by U.S. immigration law and relates to the purpose of travel.

In general, U.S. visas are categorized as immigrant and nonimmigrant. An immigrant is someone looking to move to a destination country to settle or reside permanently as citizens of that country.

Immigrant visas are generally issued to persons who are: 1. Immediate relatives or family-sponsored or 2. Employer-sponsored. Employer-sponsored visas are grouped into 5 preference categories: E1 - Priority Worker and Persons of Extraordinary Ability, E2 - Professionals Holding Advanced Degrees and Persons of Exceptional Ability, E3 - Skilled Workers, Professionals, and Unskilled Workers, E4 - Certain Special Immigrants, and E5 - Immigrant Investors.

Nonimmigrant visas are issued for many different purposes of temporary travel within the United States. Categories range from athletes, to diplomats, to exchange visitors, to professional and non-professional workers. Temporary agricultural workers are included here under the designation H-2A.

H-2A TEMPORARY AGRICULTURAL WORKER PROGRAM

Congress created the H-2A program in 1986 to allow legal foreign workers to temporarily work for U.S. farmers who were unable to hire qualified Americans. Temporary worker visas are for persons who want to enter the United States for employment lasting a fixed period of time and are not considered permanent. Granting a visa requires the prospective employer to first obtain a foreign labor certification from the U.S. Department of Labor (USDOL).

Potential employers must establish that there are not sufficient workers who are able, willing, qualified, and available, and that the employment of non-U.S. citizens will not adversely affect the wages

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and working conditions of workers similarly employed in the U.S. Any employer using H-2A workers must have initially attempted to find U.S. workers to fill these jobs.

In addition, potential employers generally must pay all covered workers the applicable prevailing wage or the federal or state statutory minimum wage. Wages can be calculated on the basis of hourly or “piece” rates of pay. The piece rate must be no less than the piece rate prevailing for the activity in the area of intended employment and on a pay period-basis must average no less than the highest required hourly wage rate. In addition, employers must:

- 1) Guarantee to offer each covered worker employment for a total number of hours equal to at least 75 percent of the workdays in the contract period,
- 2) Provide housing at no cost to workers,
- 3) Provide daily transportation, and
- 4) Reimburse workers for reasonable costs incurred for inbound transportation and subsistence costs once the worker completes 50 percent of the work contract period.



The employer must also file a petition with U.S. Citizenship and Immigration Services (USCIS) via a Petition for a Nonimmigrant Worker, Form I-129 on behalf of a nonimmigrant worker to come to the United States temporarily to perform services or labor, or to receive training, as an H-2A nonimmigrant worker.

APPLYING FOR AN H-2A VISA

Workers then apply for an H-2A visa from the U.S. Department of State. There are several steps in the visa application process. The order of these steps and how they are completed may vary at the U.S. Embassy or Consulate where the individual applies.

Applications are made using the Online Nonimmigrant Visa Application, Form DS-160. To complete the application, workers must:

- 1) Complete the online DS-160 application,
- 2) Print the application form confirmation page,
- 3) Obtain a photo – The photo will be uploaded when completing the online Form DS-160, and
- 4) Schedule an Interview -- Interviews are generally not required for applicants of certain ages. Note that consular officers have the discretion to require an interview of any applicant, regardless of age.

An interview is generally not required for individuals 13 and younger or 80 and older. Interviews are required (unless a renewal) for persons aged 14 – 79. Workers will need the receipt number that is printed on the approved Petition for a Nonimmigrant Worker, Form I-129, or Notice of Action, Form I-797, to schedule an interview.

In preparation for the interview, workers will need to:

- 1) Pay the non-refundable visa application fee, if required, before your interview. When the visa is approved, a visa issuance fee may also be required.
- 2) Gather and prepare the required documents:
 - Passport valid for travel to the United States - The passport must be valid for at least six months beyond the planned period of stay in the United States.
 - Nonimmigrant Visa Application, Form DS-160 confirmation page.
 - Application fee payment receipt, if required before the interview.
 - Photo – If the photo upload fails while completing the online DS-160 application, a printed photo in the correct format will be required in the interview.
 - Receipt Number for the approved petition as it appears on the Petition for a Nonimmigrant Worker, Form I-129, or Notice of Action, Form I-797, from USCIS.



Additional documentation may be required. All visa applicants will generally need to show proof of compelling ties to their home country to demonstrate their intent to return after the temporary stay in the United States. Examples of compelling ties include: a residence abroad which the worker does not intend to abandon, family relationships, economic situation, and long term plans.

During the visa interview, a consular officer will determine whether the worker is qualified to receive a visa, and if so, which visa category is appropriate based on the purpose of travel. The worker must establish that he or she meets the eligibility requirements under U.S. law to receive the visa. Digital fingerprint scans will be taken as part of the application process. These are usually taken during the interview.

TRAVEL TO THE UNITED STATES

A U.S. visa allows a foreign citizen to travel to a U.S. port-of-entry (generally an airport) and request permission to enter the United States. A visa does not guarantee entry into the United States. The Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) officials at the port-of-entry have authority to permit or deny admission to the United States. If the worker is allowed to enter the United States, the CBP official will provide an admission stamp or paper Form I-94, Arrival/Departure Record.

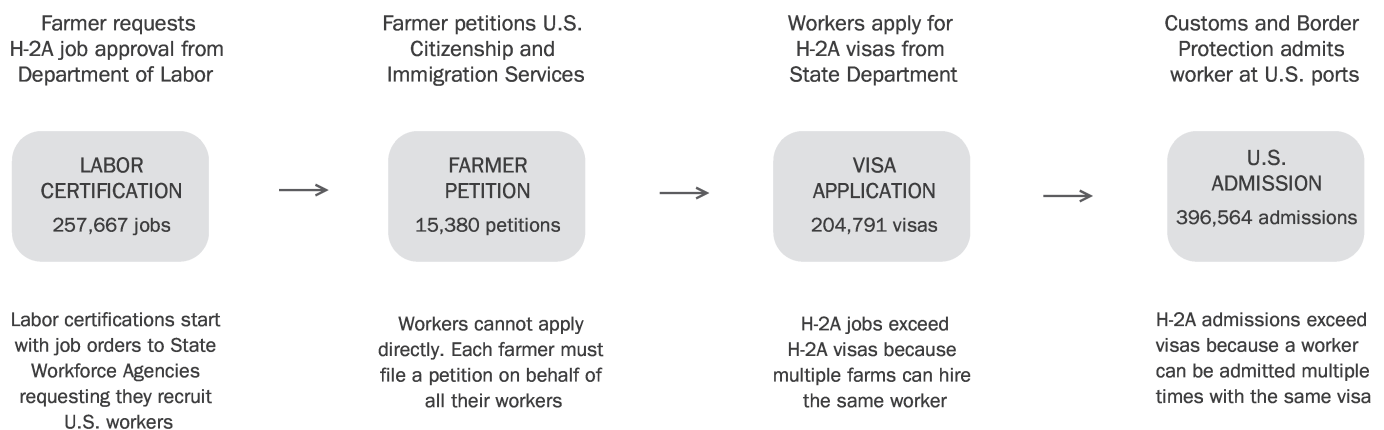
Once the worker has been admitted into the U.S. they are required to depart on or before the date indicated on the admission stamp or paper Form I-94, unless the request to extend the stay is approved by USCIS. Failure to depart the U.S. on time will result in the worker becoming out of status. Under U.S. law, visas of travelers who are out of status are automatically voided. If a worker holds a multiple-entry visa and it was voided due to becoming out of status, it will not be valid for future entries into the United States. Failure to depart the U.S. on time may also result in becoming ineligible for visas the worker may apply for in the future.

OTHER CONSIDERATIONS

Workers can request to extend their stay beyond the date indicated on the admission stamp or paper Form I-94. In addition, while in the U.S. a worker may also request a change of status from USCIS before their authorized stay expires. However, if the worker cannot remain in the United States while USCIS processes the change of status request, he or she must apply for a visa at a U.S. Embassy or Consulate. The U.S. Citizenship and Immigration Services (USCIS) website has more information. A worker's spouse and unmarried, minor children may also apply for the same visa category to accompany or join the worker in the U.S. The worker must demonstrate an ability to financially support the family members while they are in the United States.

The United States Department of Agriculture (USDA) recently launched farmers.gov, a new web resource with features to help with H-2A applications. The site provides an overview of the H-2A visa program, the process of filing and links to relevant U.S. agency web pages.

Four federal agencies oversee the H-2A program, 2019



Sources: "Selected Statistics by Program," OFLC Performance Data, Department of Labor, Employment and Training Administration; "Nonimmigrant Worker Petitions," Citizenship and Immigration Services; "Nonimmigrant Visa Statistics," Department of State; "Legal Immigration and Adjustment of Status Report Quarterly Data," Department of Homeland Security (admissions based on 2018 data). Bier, D.J. 2020.

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Ag Help Wanted: Guidelines for Managing Agricultural Labor is an educational guidebook designed to assist every person who currently manages or expects to manage human resources on farms, ranches, nurseries, dairies, and other agricultural operations. The text includes chapters covering:

- Organization Planning | Compliance Information;
- Organization Planning | Engaging Labor through Contractors; and
- Staffing the Farm Business | H-2A Agricultural Work Visas

RESOURCES:

Most of the information presented in this document was drawn from the U.S. Department of State — BUREAU of CONSULAR AFFAIRS online materials and U.S. Department of Labor – Wage and Hour Division online materials, “H-2A: Temporary Agricultural Employment of Foreign Workers.”

Bier, D.J. *H-2A Visas for Agriculture: The Complex Process for Farmers to Hire Agricultural Guest Workers*. Immigration Research and Policy Brief. No. 17. CATO Institute. March 10, 2020. <https://www.cato.org/publications/immigration-research-policy-brief/h-2a-visas-agriculture-complex-process-farmers-hire> (accessed April, 2020).

U.S. CITIZENSHIP AND IMMIGRATION SERVICES

<https://www.uscis.gov> (accessed April, 2020).

U.S. DEPARTMENT OF AGRICULTURE — Farmers.gov | H-2A Visa Program

<https://www.farmers.gov/manage/h2a>

U.S. CITIZENSHIP AND IMMIGRATION SERVICES — I-129, PETITION FOR A NONIMMIGRANT WORKER

<https://www.uscis.gov/i-129> (accessed April, 2020).

U.S. DEPARTMENT OF LABOR — SEASONAL JOBS

Your One-Stop Source for Seasonal and Temporary Jobs

<https://seasonaljobs.dol.gov/jobs> (accessed April, 2020).

U.S. DEPARTMENT OF LABOR — WAGE AND HOUR DIVISION

H-2A: Temporary Agricultural Employment of Foreign Worker

<https://www.dol.gov/agencies/whd/agriculture/h2a> (accessed April, 2020).

U.S. DEPARTMENT OF STATE — BUREAU of CONSULAR AFFAIRS

<https://travel.state.gov/content/travel/en/us-visas.html> (accessed April, 2020).



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