



U.S. Citizenship and Immigration Services

One-Time Increase in H-2B Nonimmigrant Visas for FY 2017

On July 19, 2017, the Departments of Homeland Security and Labor published a [final rule](#) increasing the numerical limit (“cap”) on H-2B nonimmigrant visas by up to 15,000 additional visas through the end of fiscal year (FY) 2017. These visas are available only to American businesses which attest that they will likely suffer irreparable harm without the ability to employ all the H-2B workers requested in their petition.

This is a **one-time** increase based on a time-limited statutory authority. It does not affect the H-2B program in future fiscal years. It will expire at the end of the day on Sept. 30, 2017.

Secretary Kelly’s decision to increase the cap was determined in accordance with Section 543 of the FY 2017 Consolidated Appropriations Act (“FY 2017 Omnibus”). Congress delegated its authority to Secretary Kelly to set a numerical cap for the remainder of the fiscal year. Secretary Kelly considered the needs of American businesses and other factors, including the impact on U.S. workers and the integrity of the H-2B program.

Who Can Petition for the Additional Visas

Only American businesses that are likely to experience irreparable harm (permanent and severe financial loss) without the ability to employ all of the H-2B workers that they request on their Form I-129 petition for this fiscal year may file under this one-time increase in the H-2B cap.

The joint final rule does not apply to petitions that are not subject to the H-2B cap, including those petitions filed in connection with an H-2B extension of stay request or on behalf of certain fish roe producers. Such petitions may continue to be filed under the normal rules of the H-2B program.

How to File an H-2B Petition

On July 19, 2017, USCIS began accepting additional cap-subject H-2B petitions with employment start dates on or before Sept. 30, 2017, and is considering them in the order they are received.

To file an H-2B petition under this one-time increase to the H-2B cap, petitioners must:

- Meet all existing [H-2B eligibility requirements](#) (including obtaining an approved temporary labor certification (TLC) from the Department of Labor (DOL) that is valid for the entire employment period stated on the petition);
- Conduct a fresh round of recruitment for U.S. workers if the TLC contains a start date of work before June 1, 2017; and
- Submit an attestation on [Form ETA 9142-B-CAA \(PDF\)](#) in which the petitioner affirms, under penalty of perjury, its business will likely suffer irreparable harm if it cannot hire all the requested H-2B workers before the end of the fiscal year. Please follow the [Form ETA 9142-B-CAA Instructions \(PDF\)](#) when completing the attestation.

Petitioners must retain evidence and records for 3 years proving compliance with the rule and demonstrating that their business is likely to suffer irreparable harm if they are unable to employ *all* the

H-2B workers requested in their petition. Petitioners must provide the documentation if DHS or DOL requests it.

Important Filing Information

The employment start date listed on an H-2B petition must be the same as the employment start date authorized on the TLC according to 8 CFR 214.2(h)(6)(iv)(D). For purposes of this H-2B cap increase, petitioners may use TLCs that list an employment start date that has passed. However, the TLC must still be otherwise valid. Petitions with employment start dates that do NOT match the TLC's employment start date will be rejected and returned with fees. USCIS may **deny** or **reject** a petition submitted without the required attestation.

Petitioners are also encouraged to provide a duplicate copy of their petition and all supporting documentation at the time of filing. Failure to submit duplicate copies may delay the Department of State from issuing a visa to otherwise eligible applicants.

If a petitioner files a petition seeking H-2B workers under this cap increase and requests a change of status for a worker in the United States, USCIS will deny the change of status request and adjudicate the petition.

If USCIS approves the H-2B petition, the worker would need to obtain the H-2B visa, if applicable, at a consular post abroad before seeking admission to the United States in H-2B status at a port of entry. Check the [Department of State processing times web page](#) to ensure that workers have sufficient time to apply for a visa.

Filing Deadlines

USCIS will stop accepting petitions under this one-time increase on Sept. 15, 2017. USCIS will reject any petitions received after Sept. 15 or after the cap is reached, whichever is earlier. Petitions not approved before Oct. 1, 2017, will be denied and any fees will not be refunded.

USCIS will consider petitions requesting an employment start date on or after Oct. 1, 2017, towards the FY 2018 H-2B cap. These petitions will be subject to all eligibility requirements for FY 2018 H-2B cap filings.

Reporting Fraud

To report that a participating employer may be abusing the H-2B program, please email us at ReportH2BAbuse@uscis.dhs.gov. Your email should include information identifying the H-2B petitioning employer and relevant information that leads you to believe that the H-2B petitioning employer is abusing the H-2B program.

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