



The Basics of H-2A Visas For Temporary Agricultural Workers

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My labor needs are not being met by the domestic market - when can I seek foreign applicants? Are potential applicants currently living in the U.S. eligible to apply under this program?

Under the H-2A program, agricultural employers who anticipate a shortage of domestic workers can petition the U.S. Citizenship and Immigration Service (USCIS) to bring foreign workers to the U.S. to perform agricultural labor or services of a **temporary or seasonal nature**. To initiate the process employers must submit a job order with the State of Michigan Department of Licensing and Regulatory Affairs (formerly known as DLEG). Once approved, employers must then obtain a *Labor Certification* from the U.S. Department of Labor (DOL) after establishing (i) that able, willing and qualified U.S. workers are not available at the time and place needed, and (ii) that the employment of aliens will not adversely affect the wages and working conditions of similarly employed U.S. workers.

As part of meeting the above criteria, employers are also required to pay the government approved prevailing wage and to provide certain benefits to H-2A workers. Examples of these benefits include transportation, housing, meals, tools and supplies, and worker's compensation insurance. To ensure compliance, labor officials from the State of Michigan will conduct a site visit of the location where the immigrants will be housed.

Unlike the H-2B Temporary Non-Agricultural Workers Visa, the H-2A is not subject to a numerical cap on the number of participants each year.

As part of the labor certification process, the employer lists the number of workers it is seeking. The employer then engages in a supervised active recruitment of U.S. workers. After the recruitment period and the necessary State of Michigan approval, the DOL will make a decision on certification. In doing so, it will subtract the number of U.S. workers successfully referred from the number of H-2A workers requested for the petition, reducing the number of potential visas available to the employer.

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Next, the petition is filed with USCIS. Once approved, the petition is transferred to the foreign consulate. At the foreign consulate, individual foreign workers apply for their H-2A Visas and then enter the U.S. Generally, H-2A Visas are valid for up to one year. Extensions of up to one year are possible, with a maximum visa period of three years.

Two important considerations:

1. If a foreign national wishes to work for you but has been in the United States without proper visa status or work authorization, that person's individual case history may prevent their participation, and may also create issues if he or she were to depart the United States. Such persons are strongly advised to consult an immigration attorney independently for the protection of their individual interests.
2. An employer's managerial or specialized level positions, requiring higher education or skill levels, may be eligible for additional visa options outside of the H-2A program.

If you are experiencing difficulty recruiting qualified, willing and able U.S. workers for meeting peak seasonal needs or performing the arduous labor needed to operate your farm, the H-2A program may help fill the gap.