

# IMMIGRATION LAW OFFICES OF RON KATIRAEI

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## H-2A Temporary Visa (Agricultural Worker)

The H-2A program allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary agricultural jobs. A U.S. employer, a U.S. agent as described in the regulations, or an association of U.S. agricultural producers named as a joint employer must file Form I-129, Petition for a Nonimmigrant Worker, on a prospective worker's behalf.

### Qualification

To qualify for H-2A nonimmigrant classification, the petitioner must:

- Offer a job that is of a temporary or seasonal nature.
- Demonstrate that there are not enough U.S. workers who are able, willing, qualified, and available to do the temporary work.
- Show that employing H-2A workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.
- Generally, submit a single valid temporary labor certification from the U.S. Department of Labor with the H-2A petition. (A limited exception to this requirement exists in certain "emergent circumstances.")

### Process

A) Petitioner submits temporary labor certification application to the U.S. Department of Labor (DOL). Before requesting H-2A classification from USCIS, the petitioner must apply for and receive a temporary labor certification for H-2A workers from DOL. For further information regarding the temporary labor certification requirements and process, see the Foreign Labor Certification, Department of Labor Web page.

B) Petitioner submits Form I-129 to USCIS. After receiving a temporary labor certification for H-2A employment from DOL, the petitioner must file Form I-129 with USCIS. With limited exceptions, the petitioner must submit original temporary labor certification as initial evidence with Form I-129. (See the instructions to Form I-129 for additional filing requirements.)

C) Prospective workers outside the United States apply for visa and/or admission. After USCIS approves Form I-129, prospective H-2A workers who are outside the United States must:

- Apply for an H-2A visa with the U.S. Department of State (DOS) at a U.S. Embassy or Consulate abroad and then seek admission to the United States with U.S. Customs and Border Protection (CBP) at a U.S. port of entry; or
- Directly seek admission to the United States in H-2A classification with CBP at a U.S. port of entry, if a worker does not require a visa in cases where an H-2A visa is not required.

## **Period of Stay**

Generally, USCIS may grant H-2A classification for up to the period of time authorized on the temporary labor certification. H-2A classification may be extended for qualifying employment in increments of up to 1 year each. A new, valid temporary labor certification covering the requested time must accompany each extension request. The maximum period of stay in H-2A classification is 3 years.

A person who has held H-2A nonimmigrant status for a total of 3 years must depart and remain outside the United States for an uninterrupted period of 3 months before seeking readmission as an H-2A nonimmigrant. Additionally, previous time spent in other H or L classifications counts toward total H-2A time.

## **Family of H-2A Workers**

An H-2A worker's spouse and unmarried children under 21 years of age may seek admission in H-4 nonimmigrant classification. Family members are not eligible for employment in the United States while in H-4 status.