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H-2B VISA

Overview

The H-2B visa is a temporary non-immigrant visa that is used for U.S. employers to hire foreign workers to engage in non-agricultural work that is seasonal, intermittent, to meet a peak load need or a one time occurrence. The annual number on the foreign workers that are eligible for H-2B during each CIS year is 66,000. The employer will have to file a Labor Certification Application on behalf of the foreign worker. The position offered and the employer's need must be one time, seasonal, peak load or intermittent, and the position offered must be for less than one year. There must be no qualified and willing U.S. workers available for the job.

Qualifying Criteria- Employer's Responsibility

The employer has to demonstrate the temporary need for foreign workers under one of the following standards:

Seasonal need: The services or labor is traditionally tied to a season of the year by an event or pattern and is of a recurring nature;

Intermittent: The petitioner must establish that it has not employed permanent or full-time workers to perform the services or labor, but occasionally or intermittently needs temporary workers to perform services or labor for short periods;

One time occurrence: The petitioner has not employed workers to perform the services or labor in the past and the petitioner will not need workers to perform the services in the future, or that it has an employment situation that is otherwise permanent, but a temporary event of short duration has created the need for a temporary occurrence; or

Peak-load need: The petitioner employs permanent workers to perform services or labor at the place of employment and that it needs to supplement its permanent staff at the place of employment on a temporary basis due to a seasonal or short term demand and that the temporary additions to staff will not become a part of the petitioner's regular operation.

Application procedures

The prospective employer must file a complete Labor Certification Application in duplicate to the local State Workforce Agency serving the area of proposed employment. The employer is also required to submit information on recruitment requirements, advertisement on the opening position, appropriateness of the wages and working conditions offered and interview reports with reasons stated for not hiring the qualified candidates. Once the Department of Labor approves or denies the Labor Certification the employer can submit the Form I-129, employer's support letter, evidence of alien's qualification and any rebuttal evidence if the Department of Labor denies the Labor Certification to the USCIS Service Center. After the petition is approved by the USCIS, aliens must have the approval notice with them when they apply H-2B visa at the U.S. consulate. Extension of stay can be sought on a one-year increment basis but the employer can't continuously employ the aliens for more than three years.

Time Frame

Employers are advised to file applications for H-2B certifications no more than 120 days but at least 60 days before certification is needed. The current processing time for USCIS to decide a H-2B petition is approximately 1-2 months depending on the filing Service Center.