



More H-2B Visas for Seasonal Work Available This Summer

By Roy Maurer

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Employers that can demonstrate that their business is at risk of failing without an infusion of foreign seasonal workers will have the chance to petition for help this summer.

The Department of Homeland Security (DHS) is authorizing 15,000 additional H-2B visas for use in fiscal year (FY) 2018, which runs through September 30. The extra numbers are on top of the 66,000 H-2B visas already issued this fiscal year.

The H-2B visa program allows U.S. employers to hire foreign nationals during peak seasons, primarily in landscaping, hospitality, seafood processing and recreation jobs. Congress has set the H-2B visa cap at 66,000 per fiscal year, with 33,000 visas granted for workers who begin jobs in the first half of the 12-month period (Oct. 1-March 31) and 33,000 visas for workers who begin jobs in the second half (April 1-Sept. 30).

Businesses and industry groups, citing labor workforce needs, have pressured the DHS for months to release additional H-2B visas. Congress authorized the additional numbers in the FY 2018 spending package that it passed in March. The same number of additional visas were also authorized in FY 2017, although at a much later date, in late July, leading many seasonal employers to say the assistance came too late.

"Once again, the delays from the administration in taking action to issue additional H-2B visas has caused extreme financial stress and potential closures to employers who rely on the H-2B program year after year to meet their labor needs," said Loan Huynh, an attorney who works on the issue in the Minneapolis office of Fredrikson & Byron. "These employers have already documented that there are no able and willing U.S. workers to meet their labor needs. The administration took more than two months to take action after Congress gave it authority to provide relief to employers."

[SHRM and CFGI eLearning: Hiring Foreign Nationals: Nonimmigrant Visas (<https://www.cfgi.org/events-learning/Pages/Hiring-Foreign-Nationals-Nonimmigrant-Visas.aspx>)]

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Eligible employers for H-2B visas can file their petitions, along with a Department of Labor-approved temporary labor certification and an attestation that they will suffer "irreparable harm" without the additional workers. Details on eligibility and filing requirements are available here (<https://www.federalregister.gov/documents/2018/05/31/2018-11732/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2018-numerical-limitation-for-the>).

The DHS said that applications will be processed in the order in which they are received, and a lottery will be used if the number of applications overwhelms the number of available visas.

Bill Sieling, executive vice president of the Chesapeake Bay Seafood Industries Association, said the announcement was good news, but that the mention of a lottery is concerning because long-time users of the program may not get their workers in the end. "It's totally unfair and irrational, really," he said.

H-2B visas were issued in a lottery for the first time earlier this year, instead of on a first-come, first-served basis, due to the excessive demand for visas at the start of the filing season.

Modest Relief

The decision to issue more visas will bring some relief to employers who say they cannot find sufficient workers, like the seafood processing plants along Maryland's Eastern Shore that are missing up to 40 percent of their usual workforce this crab season, according to *The Baltimore Sun* (<http://www.baltimoresun.com/news/maryland/bs-md-crab-visa-shortage-20180502-story.html>).

"As American unemployment has dropped, demand for temporary seasonal workers has increased dramatically," said Rep. Andy Harris, R-Md., who represents the Eastern Shore and lobbied hard for the additional visas. He said the additional visas are "significant progress" but still won't accommodate the full demand for workers this year.

"The number is far below the need and will still leave many seasonal businesses without vital workers this year," said Laurie Flanagan, co-chair of the H-2B Workforce Coalition on behalf of AmericanHort, the national trade association for growers and planters and the National Association of Landscape Professionals.

"Employers requested 75,500 worker positions under the H-2B program for the second half of 2018," Huynh said. "The additional 15,000 visas on top of the 33,000 visas already issued still leave employers with no legal means to hire 27,500 H-2B workers to meet the needs of the U.S. economy."

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