

# HIRING TEMPORARY FOREIGN WORKERS FOR FARM LABOR

Farm labor employers in the Southeast are increasingly using a federal program that allows them to import foreign workers on a temporary basis. The H-2A Temporary Foreign Worker Program for Agriculture requires the employers to demonstrate a shortage of U.S. laborers.

The program has a number of benefits for employers, most notably the assurance of a legal, documented workforce and the reduction of labor turnover with the resulting loss in productivity. The program is not without costs, however. The negotiation of bureaucratic hurdles in receiving labor certification and issuing visas to the workers can take time and cause frustration. This publication provides background information on the program and details the criteria for qualifying to recruit and hire temporary or seasonal workers from outside the United States. The procedures for applying to the program and contact information and references for those wishing to find out more about participation in the program are also in this publication.

## Background

The temporary foreign agricultural worker program was first authorized as the H-2 program under

the Immigration and Nationality Act of 1952 and was amended as the H-2A visa program under the Immigration Reform and Control Act of 1986. The

H-2A visa is for temporary workers performing "agricultural labor or services of a temporary or seasonal nature," as defined in the INA. Workers under this definition typically are farm workers, orchard workers, and ranch hands. The H-2A program provides for the admission of foreign agricultural workers to perform work that is

temporary in nature, *provided U.S. workers are not available*. In contrast to the H-2B program for nonagricultural workers, no restrictions are made on the number of H-2A workers that are admitted yearly. While the 15,628 H-2A workers admitted to the United States in 2002 represent a small percentage of the estimated 1.2 million farm workers, they are concentrated in the southeastern United States. The Department of Labor estimates that 42 percent of these workers were destined for this area of the country. The program had increased to 33,292 workers admitted in 2001. For national security reasons, restrictions were placed on the program in 2001 and 2002 to slow processing of visa requests. The number of visas requested in the program is expected to increase during the next few years.

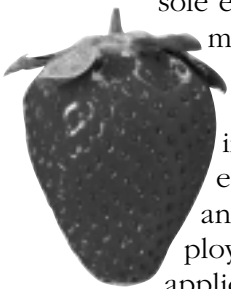




The H-2A program allows agricultural employers to recruit foreign workers if they can prove that they have attempted without success to hire local workers. The U.S. Department of Labor reviews and makes decisions on H-2A visa applications and, along with the Bureau of Citizenship and Immigration Services, enforces federal regulations regarding the program. The H-2A visa only allows individuals to work for the original employer that submitted the visa request. Workers are not allowed to apply for a green card or other immigration status during their stay in the United States. After an H-2A contract is finished, workers must return to their home countries and wait for their employers to hire them again, or they can apply for a different visa status.

### Qualifying Criteria

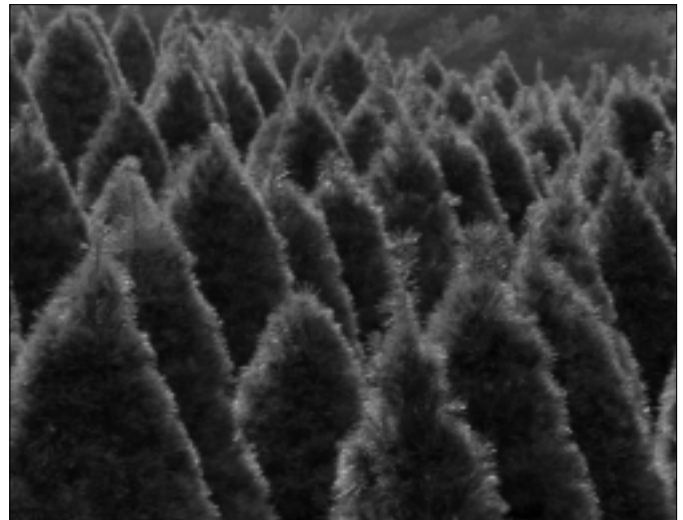
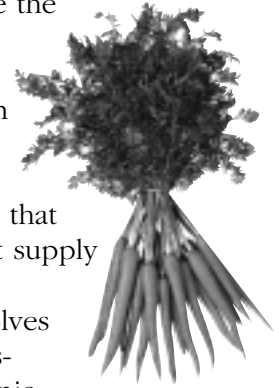
- An agricultural employer who anticipates a shortage of U.S. workers needed to perform agricultural labor or services of a temporary or seasonal nature can file an application requesting temporary foreign agricultural labor certification. *Temporary or seasonal nature* refers to employment performed at certain seasons of the year, usually in relation to the production or harvesting of a crop or for a limited time period of less than one year when an employer can show that the need for the foreign workers is truly temporary.
- The employer can be an individual proprietorship, a partnership, or a corporation. An association of agricultural producers can file as a sole employer, as a joint employer with its members, or as an agent of its members.
- An authorized agent, whether an individual, such as an attorney, or an entity, such as an association, can file an application on behalf of an employer. Associations can file master applications on behalf of their members.



### How to Apply

- Applications for labor certification (Form ETA 750) are filed with the regional administrator and local State Workforce Agency. In Alabama, the SWA is the Alabama Department of Industrial Relations. Their contact information is at the end of this publication.

- The regional administrator will review an employer's application promptly. Typically, the regional administrator will notify the employer of the decision to accept or reject an employer's application within seven days after receipt of the application.
- After an employer's application is accepted for consideration, the regional administrator will require the employer to independently engage in specific recruitment efforts within the region. This is done if the regional administrator determines that there may be a sufficient supply of labor to be recruited. Recruitment usually involves advertising in local newspapers, checking electronic databases, and consulting with local employment agencies and unions.
- If the regional administrator determines that the employer has complied with all conditions, the employer is granted the temporary foreign agricultural labor certification for the number of job opportunities that were not filled by U.S. workers during the recruitment period. Qualified and eligible U.S. workers who are seeking employment and who apply in the first half of the contract period will continue to be referred to the employer by the SWA. The employer must hire these U.S. workers.
- After receiving certification from the DOL, the employer uses the BCIS Form I-129, Petition for Nonimmigrant Worker. The Labor Certification



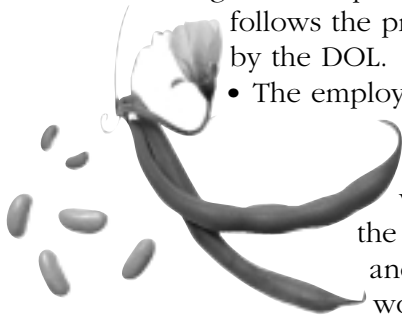
Determination and the Form I-129 are submitted to the BCIS along with filing fees.

- When BCIS approves the petition, it forwards the notice of approval to the appropriate Department of State consulate in the country where the foreign worker resides. The worker then applies for the H-2A visa at the consulate. The Department of State issues the visa for up to 1 year, but, in practice, it is rarely for more than 9 months.

### Requirements

The H-2A has visa requirements intended to protect workers from exploitive working conditions. Employers are required to provide the following benefits to workers:

- The employer must offer the H-2A worker the same wages as comparable U.S. workers. This follows the prevailing wage established by the DOL.
- The employer must provide the worker with an earnings statement detailing the worker's total earnings, the hours of work offered, and the hours actually worked.
- The employer must provide transportation to and from the worker's temporary home as well as transportation to the next workplace when the contract is fulfilled.
- The employer must provide housing to all H-2A workers. The housing must be inspected by DOL and must satisfy appropriate minimum federal standards.
- The employer must provide the necessary tools and supplies to perform the work.
- The employer must provide meals or facilities in which the workers can prepare food.
- The employer must provide worker's compensation insurance to the H-2A workers.



### For More Information

- All initial applications to the H-2 program begin at the State Workforce Agency.  
Contact the SWA in Alabama at the following:  
Alabama Department of Industrial Relations  
649 Monroe Street, Room 2805  
Montgomery, AL 36131  
Phone: (334) 242-8020  
Fax: (334) 242-8585  
<http://dir.alabama.gov/>
- Contact the U.S. Department of Labor Regional Office at (404) 562-2131 or consult the U.S. Department of Labor Web page at <http://www.workforcesecurity.doleta.gov/foreign/h-2a.asp>.
- Al French, the USDA coordinator of Agricultural Labor Affairs, maintains an informative Web site on this subject at [http://www.usda.gov/oce/oce/labor-affairs/1910\\_142.htm](http://www.usda.gov/oce/oce/labor-affairs/1910_142.htm).
- Another source of information is the Bureau of Citizenship and Immigration Services. Contact their Atlanta District Office at the following:  
Bureau of Citizenship and Immigration Services  
Atlanta District  
Martin Luther King Jr. Federal Building  
77 Forsyth Street SW  
Atlanta, GA 30303  
(800) 375-5283  
<http://www.immigration.gov/graphics/index.htm>



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**For more information**, call your county Extension office. Look in your telephone directory under your county's name to find the number.

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