

## **A Guideline to the H-2A Temporary Agricultural Workers Program**

Below are some guidelines to help you understand the steps to hiring a temporary migrant laborer(s) for work on your farm. Some workers may be capable of legally operating semis or other heavy trucks, if they hold or obtain the proper licensing. In addition to these guidelines, additional resources are available in the form of fee based recruitment and placement companies. These companies can handle the paperwork, help find laborers, and ensure your search for labor is in compliance with the law. A list of some of the companies offering these services can be found at the end of this document.

### **Do You Qualify to Hire an H-2A Worker?**

To qualify for H-2A nonimmigrant classification, the employer 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. This means an active effort, including newspaper and radio advertising in areas of expected labor supply. This must be an effort independent of and in addition to the efforts of the SWA. In establishing worker qualifications and/or job specifications, the employer must designate only those qualifications and specifications which are essential to carrying out the job and which are normally required by other employers who do not hire foreign workers
- 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.” See e.g., 8 CFR 214.2(h)(5)(x) for specific details.)

## What is the Process for Obtaining an H-2A Worker?

**Step 1:** *Employer submits temporary labor certification application to the U.S. Department of Labor (DOL).* Before requesting H-2A classification from USCIS, the employer 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](#).

- **Step 2:** *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.)
- **Step 3:** *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.

## Which Countries Can I Look to for Workers?

Except as noted below, H-2A petitions may only be approved for nationals of countries that the Secretary of Homeland Security (DHS) has designated, with the concurrence of the Secretary of State, as eligible to participate in the H-2A program.

The Department of Homeland Security publishes the list of H-2A and H-2B eligible countries in a Federal Register notice. Designation of eligible countries is valid for one year from publication.

Effective Jan. 19, 2019, nationals from the following countries are eligible to participate in the H-2A program:

- Andorra
- Argentina
- Australia
- Austria
- Barbados
- Belgium
- Brazil
- Brunei
- Bulgaria
- Canada
- Chile
- Colombia
- Costa Rica
- Croatia
- Czech Republic
- Denmark
- Dominican Republic
- Ecuador
- El Salvador
- Estonia
- Fiji
- Finland
- France
- Germany
- Greece
- Grenada
- Guatemala
- Honduras
- Hungary
- Iceland
- Ireland
- Israel
- Italy
- Jamaica
- Japan
- Kiribati
- Latvia
- Lichtenstein
- Lithuania
- Luxembourg
- Macedonia
- Madagascar
- Malta
- Moldova
- Mexico
- Monaco
- Mongolia
- Montenegro
- Mozambique
- Nauru
- The Netherlands
- Nicaragua
- New Zealand
- Norway
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Poland
- Portugal
- Romania
- Samoa
- San Marino
- Serbia
- Singapore
- Slovakia
- Slovenia
- Solomon Islands
- South Africa
- South Korea
- Spain
- St. Vincent and the Grenadines
- Sweden
- Switzerland
- Taiwan\*
- Thailand
- Timor-Leste
- Tonga
- Turkey
- Tuvalu
- Ukraine
- United Kingdom
- Uruguay
- Vanuatu

### **How long can an H-2A worker 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.

*Exception:* Certain periods of time spent outside of the United States may “interrupt” an H-2A worker’s authorized stay and not count toward the 3-year limit.

## **As an employer, what am I required to provide to an H-2A worker?**

**Wages:** The wage or rate of pay must be the same for U.S. workers and H-2A workers. The hourly rate must also be at least as high as the applicable Adverse Effect Wage Rate (AEWR), federal or state minimum wage, or the applicable prevailing hourly wage rate, whichever is higher. The Adverse Effect Wage Rate is established every year by the Department of Labor for every state except Alaska. Employers should consult with the SWA or the Department of Labor regional office to determine what the rate is for their state

**Housing:** The employer must provide free housing to all workers who are not reasonably able to return to their residences the same day. Such housing must be inspected and approved according to appropriate standards. Generally, housing provided must meet the full set of standards established by DOL's Occupational Safety and Health Administration (OSHA). Rental housing which meets local or state health and safety standards also may be provided

**Meals:** The employer must provide either three meals a day to each worker or furnish free and convenient cooking and kitchen facilities for workers to prepare their own meals. If meals are provided, then the employer may charge each worker a certain amount per day for the three meals

**Transportation:** After a worker has completed 50 per cent of the work contract period, the employer must reimburse the cost of transportation and subsistence from the place of recruitment to the place of work if such costs were borne by the worker.

- The employer must provide free transportation between the employer's housing and the worksite for any worker who is provided housing
- Upon completion of the contract, the employer must pay economic costs of a worker's subsistence and return transportation to the place of recruitment. Special conditions apply when the worker will not be returning to the place of recruitment because of another job
- If the employer must advance transportation costs to foreign workers or provide transportation, the employer must advance such costs or provide transportation to U.S. workers as well. In addition, if it is prevailing practice in the occupation to provide transportation, the employer must provide transportation to the U.S. worker as well.

### Companies Offering Fee Based Recruitment and Placement Services

The list below is just a sample of many companies offering such services. It is not intended to be comprehensive, nor are any of the companies on this list endorsed or necessarily recommended by Sangamon County Farm Bureau®. More companies can be found by a simple search of the Internet.

- [www.workabroadnetwork.com](http://www.workabroadnetwork.com)
- [www.aglaborco.com](http://www.aglaborco.com)
- [www.farmaidh2a-llc.com](http://www.farmaidh2a-llc.com)
- [www.farmworkerlanc.org](http://www.farmworkerlanc.org)
- [www.laborquest.com](http://www.laborquest.com)