



USCIS Update

Dec. 11, 2008

USCIS FINALIZES STREAMLINING PROCEDURES FOR H-2A PROGRAM

WASHINGTON — U.S. Citizenship and Immigration Services (USCIS) announced today changes to the H-2A regulations that will streamline the hiring process of temporary and seasonal agricultural workers. This final rule will facilitate the H-2A process for employers by removing certain limitations and will further encourage lawful employment. These changes stem from the commitment made by President Bush's Administration in August 2007, after Congress failed to pass comprehensive immigration reform. This final rule supplements the extensive reforms of the H-2A program that are included in the Department of Labor's final rule, also being published today.

U.S. employers may file an H-2A petition with USCIS if they have a shortage of available U.S. workers to fill temporary or seasonal agricultural jobs. Once the petition is approved, the employers can hire foreign workers to fill those jobs for a limited period of time. The final rule includes mechanisms to enhance the integrity of the program, increase protection of U.S. workers, and protect H-2A workers from unscrupulous employers and recruiters.

Key areas of reform addressed in the final rule include:

- Relaxing the current limitations on H-2A employers to petition for multiple, unnamed agricultural workers;
- Extending from 10 days to 30 days the time a temporary or seasonal agricultural worker may remain in the country following the expiration of his or her temporary H-2A stay;
- Reducing from six months to three months the time an H-2A worker who has spent three years in the United States must reside and be physically present outside the United States before he or she is eligible to re-obtain H-2A status;
- Allowing H-2A workers, who are changing from one H-2A employer to another H-2A employer, to begin work with the new petitioning employer upon the filing of a new H-2A petition, provided the new employer is participating in USCIS' [E-Verify](#) program;
- Prohibiting H-2A employers and recruiters from imposing certain fees on prospective H-2A workers as a condition of employment;
- Requiring an approved temporary labor certification in connection with all H-2A petitions;
- Requiring employers to notify USCIS when H-2A workers fail to show up for work, complete the work more than 30 days early, are terminated, or abscond from the worksite; and
- Permitting the approval of H-2A petitions only for nationals of certain countries designated as important to the operation of the program and appearing on a list to be published annually in the Federal Register. The initial list of participating countries to be published simultaneously with this Final Rule includes Mexico, Jamaica, and 26 others. DHS may allow on a case-by-case basis a worker from a country not on the list to be eligible for the H-2A program if such participation is in the U.S. interest.

This rule will also establish a land-border exit system pilot program requiring H-2A workers admitted through a port of entry participating in the pilot program to also depart through a participating port and to present designated biographic and/or biometric information upon departure.

These changes are being made in further fulfillment of the commitment made by President George W. Bush's Administration in August 2007, after Congress' failure to pass comprehensive immigration reform, to address immigration challenges using existing authorities.

This final rule supplements the extensive reforms of the H-2A program that are included in the Department of Labor's final rule, also being published today. The final rule has been transmitted to the Federal Register and will become effective 30 days after it is posted.

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