



Conditions of H-2b Seasonal Employment in the United States

How this Information Can Help

Below you will find the answers to frequently asked questions and factors that seasonal employment candidates must understand. We invite you to review this information and contact us if you have questions or need more information.

1. What do we mean by “H-2b?”

- H-2b is a classification under US immigration law for foreign workers “sponsored” by US employers for temporary non-agricultural jobs.
- Most H-2b jobs are seasonal, but the classification can be used to meet many different temporary employment needs.
- An H-2b worker cannot be hired for a permanent year-round job on a temporary basis.

2. What do we mean by “Sponsor”?

- The popular term “sponsor” is commonly used instead of the legal term “petitioner.” Both terms refer to the employer that files paperwork to get the job and foreign worker approved for H-2b classification by the Department of Homeland Security (DHS).
- The term for the H-2b workers who are “sponsored” is beneficiary.

3. What restrictions apply to H-2b workers?

- The work authorization of H-2b workers approved to work for the “sponsoring” employer is **employer-specific**, meaning that an H-2b worker

may not work for any other US employer or in any other job than the employer and job specifically approved by the United States DHS.

- Since the immigration status of H-2b workers depends upon maintaining the approved H-2b employment, they lose their status if they leave the H-2b jobs and must leave the United States immediately unless they proceed to another DHS-approved job or activity.

4. Does an H-2b worker get a work permit?

- The basic answer is no. *Work Permit* is the popular (but unofficial) term for an Employment Authorization Document (EAD) that permits an alien to work for a temporary period of time without restriction as to employer or type of job.
- Under US law, only very specific categories of aliens are entitled to obtain EADs. The US system is unlike the systems of many other countries that provide procedures for foreign persons to apply for and receive *work permits*.
- Employer-specific workers like those in H-2b classification are not eligible for EADs. Unlike aliens who have EADs, the work authorization of H-2b aliens is restricted to the specifically approved US employer and job.

5. Obligations and Benefits of “Sponsorship”

Employer Perspective

- “Sponsorship” does not obligate the “sponsor” to employ a “sponsored” H-2b worker if its business needs change. A “sponsoring” employer may dismiss an H-2b worker at any time for cause related to poor performance.

Employee Perspective

- If an H-2b employee is terminated before the end of the approved H-2b employment period, the “sponsoring” employer is required by law to pay for the worker’s return transportation home.

6. Can H-2b workers change jobs?

- H-2b workers are not free to take other jobs on the US job market, and are not eligible for state unemployment benefits. However, they may be “sponsored” by other employers for seasonal work and commence new employment if and when US authorities approve.

- If the proper process is followed and the case is approved, an H-2b worker may be employed concurrently in more than one job. Each job would have to qualify for H-2b classification.

7. Who qualifies? *Standards for H-2b employees*

- Needs of H-2b jobs in the US vary greatly. One employer may be satisfied with unskilled persons who speak no English, who will perform repetitive tasks or require minimal supervision. Another employer may need a PhD with special skills and proficiency in multiple languages.
- Any foreign person who meets training, experience, language proficiency, and other requirements of the temporary H-2b employment is potentially eligible.

8. H-2b Wages and Working Conditions

- A “sponsoring” employer must pay at least the wage that the labor authority in the state of employment agrees is appropriate for the type and location of the H-2b job. US law protects foreign workers from underpayment in order to protect their interests and the interests of US workers.
- The working conditions offered to H-2b workers must also be the same as offered to US workers in the same jobs.
- If a US employer would be required to pay overtime to US workers, it would have to pay overtime to H-2b workers at the same rate.
- Accommodations for lodging and subsistence of H-2b workers are not dictated by US law. Some employers offer both at no cost, some offer one or the other at reduced cost, and some offer no assistance with either lodging or subsistence.

9. What about cost?

- Some employers who “sponsor” US workers hire immigration lawyers to handle processing on their behalf. The employers pay these fees because the lawyers represent the employer rather than the workers being “sponsored”.

- Some employers choose non-attorney US agents to handle processing and recruitment of workers. Many such agents charge no fees to the employer and collect their fees from the workers through foreign agents who actually recruit and select the workers. US agent fees vary so much that they cannot be estimated.
- Fees for foreign agent services are typically paid by the workers. These fees, which are not regulated by US law, vary tremendously.

10. H-2b Process: General Description *(three basic steps)*

- **STEP ONE:** The employer (or employer representative) applies for certification through state and federal labor authorities that no US workers are available for specific seasonal jobs. Each type of job requires separate certification. The type and number of positions must both be specified.
- **STEP TWO:** The employer files a petition with DHS requesting approval to fill a specific seasonal job with the number of seasonal workers for which the need was certified in step one. If any of the named foreign workers is already in the United States under H-2b status working for another employer, the new employer asks at this step for approval of change of H-2b employment and new Forms I-94 (this document is explained below).
- **STEP THREE:** Foreign workers identified generally (“unnamed workers”) or by name on the approval notice issued at step two apply to US consulates in their home country for H-2b visas (see below). If the workers are already in the USA in H-2b status, they can begin work for the new employer as soon as they receive new Forms I-94 reflecting the new work authorization.

11. Understanding “Visas” *(a commonly misunderstood term!)*

- A visa is a travel document issued by a US consulate in an alien’s home country. It allows the visaholder to board a common carrier (usually an airplane) bound for the United States and to apply for admission to the United States under the classification of the visa.
- There are dozens of different temporary visa classifications, of which H-2b is one (other examples are B-2, H-1b, J-1, and P-3). Each classification has its own rules and procedures.

- Only 66,000 H-2b visas may be issued per year. In 2005 returning H-2b workers were exempted from being counted within this number because the maximum number of visas was consistently being exhausted before all US employers could get the seasonal workers they needed.
- Once a visaholder enters the United States, his visa is irrelevant unless he has to travel outside the United States and return.

12. How is a Visa Different from a Form I-94?

- If a visaholder is admitted to the USA, he is issued a **Form I-94** Arrival-Departure Record by the US immigration inspector at the port of entry. This document, which is typically stapled into the passport, is endorsed with a temporary classification such as H-2b.
- Once the foreign person enters the United States, his visa is irrelevant for purposes of his US immigration status. The expiration date of the visa may be the same or different as the expiration date on the **Form I-94**. Many legal aliens don't have visas at all.
- The **Form I-94** is also the worker's proof of US immigration status. The dates on the **Form I-94** define the time period over which the person may remain and work in the United States as long as he complies with the conditions of his immigration status.
- The **Form I-94** is also the worker's proof of H-2b employment authorization, but it is valid only for employment with the "sponsoring" employer. If an H-2b worker quits the approved H-2b job, the I-94 becomes invalid. An invalid **Form I-94** disqualifies the holder from legally changing status, changing employment, or extending his stay in the United States.
- H-2b aliens may change employment, but only after approval of the US immigration authority and receipt of a new **Form I-94** for the new employment.

13. End of the H-2b Experience: *Returning Home... or not?*

- H-2b is a temporary classification. According to US law, a person applying for an H-2b visa must intend to return home and a person in H-2b status who has finished his H-2b employment is expected to do so.

- Some H-2b workers want to remain in the United States after their approved H-2b periods by obtaining new H-2b employment, changing to another immigration status such as student, or working illegally. A decision to take one of these options should be made with extreme caution and with careful consideration of both the short-term and long-term consequences of the decision.
- Unfortunately, most people (including Americans) do not understand that immigration law governing immigration status in the United States has different standards than consular law governing US visas. They also do not understand that the consequences of a bad decision affect not only the individual who made the decision, but the future US immigration opportunities of the members of that person's family at home.
- H-2b workers who are interested in remaining in the United States must take care to get information and advice from extremely **reliable sources!**

14. WARNING

Be careful about information!

- A great deal of dangerously inaccurate information circulates to foreign persons visiting and working in the United States. Even American friends can seriously misunderstand US immigration law. Mistaken reliance on information from unofficial sources can result in the same serious consequences as intentional violations of the law. Even “customer service” hotlines operated by US authorities have limited reliability for three reasons:
- The answers to most immigration questions depend upon application of facts to the law. Customer service attendants are trained to provide information rather than advice.
- Getting accurate information in response to a question depends upon the question that is asked. Persons who are not trained in US immigration law typically do not understand what questions to ask.
- Customer service personnel typically answer questions in English or Spanish. Persons who speak other languages must rely upon translators or translations that can unintentionally change legal meaning.

15. WARNING

Do not rely upon the experiences of others!

- There are hundreds of reasons why one case is different from another. Reasons that cause a certain outcome for one person may be totally unknown to another person seeking the same outcome. Although it is true that at one time it was possible for a foreign person who had entered the United States illegally -- or stayed illegally -- to eventually obtain legal status, things have changed. There are at least two reasons for this:
- It was possible until five years ago to adjust status to permanent resident of the United States even if the applicant was illegal at the time of application. This is because an exception to the general rule expired in April 2001, was not extended by the US Congress, and is not expected to be extended.
- “9/11” changed the opinions of many Americans about immigration. Since September 11, 2001, the US public and legislators have become extremely conservative about foreign persons visiting as well as studying and working in the United States.

16. About Imerica Consulting

- Imerica Consulting (IC) is a foreign agent with a license in Romania to recruit Romanian citizens for US jobs. IC complies fully with all requirements of Romanian law governing placement of Romanians in foreign jobs.
- IC operates in a close-knit team of highly educated English-speaking professionals who work together to recruit and select workers for US jobs, teach English at all proficiency levels, provide a variety of general and customized training, arrange insurance and transportation for all of its clients, and design tours of Romania for its US clients to experience Romanian culture and interview workers (if desired).

17. Role of Imerica Consulting

- IC matches qualified employees directly with its US employer clients' needs. Since IC works directly with US employers, no US agent is involved or necessary.
- IC meticulously interviews applicants, identifies those who best fit the employers' needs, and develops/conducts custom training to meet the US client employer's needs.

- ICs careful recruitment and selection process is carefully designed and conducted to weed out candidates who might leave the US jobs and violate US immigration status.
- IC offers one-stop-shopping if desired by its US employer clients -- including all H-2b processing -- in cooperation with its US attorney partner.

18. IC's Expertise

- IC has placed over 200 H-2b workers and is planning to place Romanians in over 150 more US jobs in spring and fall of 2006.
- US employer clients of IC use IC's services year after year because they are pleased with both IC selectees and IC services.
- IC's Romanian staff is managed by Romanian attorneys personally trained in the United States in US immigration law. A highly experienced US immigration lawyer provides constant support and assistance to IC, IC client workers, and IC client employers.
- IC's services are so expert and meticulous that the visa refusal rate of IC selectees is less than 5%.

19. Importance of Communication

- Imerica Consulting is committed to excellent communication with its client workers and employers.
- Since the consequences of misunderstandings and violations are so serious, it is extremely important to IC for all parties to know and comprehend the details of their US employment and US immigration status. IC is aware that the "grapevine" provides misinformation that can be harmful to both the H-2b workers and their US employers.
- IC maintains close communication with both H-2b workers and employers throughout the employment periods and is always available to help resolve misunderstandings, problems, and emergencies.
- IC also maintains close communication with US authorities. It provides the US consulate in Bucharest with comprehensive updates about H-2b workers and sends information to the Department of Homeland Security if and as necessary.