

H2B Visa: What does it take to bring staff in from out of country?

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Introduction

- Why do we need Visa's?
- What kind of Visa is Needed?
- Process to Apply for a Visa
- Complications with the Visa Process
- Drawbacks & Benefits of hiring Visa Workers

Why do we need Visa's?

- Expanded Labor Pool for a tremendous need of people, especially in reforestation.
- Locals do not apply for this type of work
- Have the Ability to find Hard Workers
 - Long hours
 - Away from home
 - Difficult terrain
 - Without H2B Visa we do not have a business
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What kind of Visa is Needed?

- Several different types of Visa in the Labor Industry
- You need to know which one to get to compliant
- For our line of work, we obtain H2B Visa- Needed for Temporary Non-Agricultural Workers
 - (Department of Immigration considers forestry non-ag)

- H2B has several Categories including:
 - **Peakload**- an employer must establish that it regularly employs permanent workers to perform the services or labor at the place of employment and that it needs to supplement its permanent staff at the place of employment on a temporary basis due to a seasonal or short term demand and that the temporary additions will not become a part of the petitioner's regular operation
 - **Seasonal**- an employer must establish that the services or labor is traditionally tied to a season of the year by an event or pattern and is of a recurring nature. The petitioner shall specify the periods of time during each year in which it does not need the services or labor. The employment is not seasonal if the period during which the services or labor is not needed, is unpredictable or subject to change or is considered a vacation period for the petitioner's permanent employee.

Process to Apply for a Visa

- Hire a Consultant to reduce errors
 - Each error constitutes a 2 week delay in approval
- Prevailing Wage: 180-150 days
- Recruitment at 120 days
- Complete a DOL Form 9142 (Application for Temporary Employment) at 109 days
- *Petitioner then submits Form I-129 to US Citizenship & Immigration Service (USCIS) 100 days*
- *Prospective workers outside the United States apply for visa and/or admission. After USCIS approved Form I-129, prospective H-2B workers who are outside the United States must:*
 - Apply for an H-2B 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-2B classification with CBP at a U.S. port of entry in cases where an H-2B visa is not required.

Process to Apply for a Visa and Hire

- Comply with the Migrant and Seasonal Agricultural Worker Protection Act (MSPA)
 - Must have certified drivers, certified vehicles, certified housing
- Job Announcements/Disclosure- must state all terms of employment
- Provide roundtrip transportation to and from Mexico
- Prepare I-9's
- Deduct Taxes & Social Security
 - All workers must have a valid taxpayer ID to fill out a w-2. Each worker needs a passport, i94 card and a copy of the 1797b approval notice
- Reporting of Workers to DOL or USCIS within 2 workdays if a worker is terminated, doesn't show or leaves the job early.
- Report Unused Visas

Complications with the Visa Process

- ¾ Guarantee Rule
- Must pay prevailing wage a minimum of 32 hours per week rather they work or not such as rained or snowed out days.
- Must know work schedule and a must get letters of intent from contractors to justify H2B staffing levels
- Limits on numbers of workers you can bring in and may not have enough crew to allow flexibility of jobs
- Process takes to long to bring workers in- difficult to adjust for clients needs.
- USCIS does not understand forestry needs
 - “The contracts you provided do not support your assertion of a temporary seasonal work for the beneficiaries. It appear that the duties can be performed year-round....which further suggest that you are hiring for speculative employment.... “

Drawbacks of hiring Visa Workers

- People leave and then you've lost a visa plus expenses
- It's a significant investment of money to bring in H2B workers
- Staff doesn't always get along living together in company providing housing
- Pay rates per employee is expensive
- County by County prevailing wage changes- Workers don't want to work in lower prevailing wage counties
- You can't replace H2B visa holders once they quit because application windows have closed .
- Must maintain every record for 3 years

Benefits of hiring Visa Workers

- They are hard workers that want to support their family
- They are willing to work any day of the week
- H2B Visa workers tend to take better care of company housing.
- H2B workers tend to stay longer than local hires.
- H2B workers are more safety compliant than local hires
- Re-hire % is higher with H2B workers.