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Immigration Alert

H-2B Cap Reached for the First Half of Fiscal Year 2015

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On February 2, USCIS announced that the congressionally mandated H-2B cap for the first half of fiscal year 2015 has been reached. January 26, 2015 was the final receipt date for new H-2B worker petitions requesting an employment start date prior to April 1, 2015. As the cap has been reached, USCIS will only accept petitions for H-2B workers who are exempt from the H-2B cap.

There is a statutory cap on the number of individuals who may receive H-2B nonimmigrant classification during a fiscal year. USCIS allows 66,000 new H-2B petitions per fiscal year, with 33,000 allocated for employment beginning between October 1 and March 31, and 33,000 for employment beginning between April 1 and September 30. H-2B workers extending their stay will not be counted against the cap, nor will fish roe processors, technicians, or supervisors of fish roe processing. Moreover, until December 31, 2019, workers performing labor or services in the Commonwealth of Northern Mariana Islands (CNMI) and/or Guam are also exempt from the H-2B cap.

H-2B petitions may only be approved for nationals of countries that have been designated as eligible for this program. A list of eligible countries can be viewed here. However, a national from a country not on the list may be eligible to participate in the program if the Secretary of Homeland Security determines that it is in the U.S.'s interest for him or her to be the beneficiary of an H-2B petition.

The H-2B program allows US employers or agents to fill certain temporary nonagricultural jobs. To qualify for H-2B nonimmigrant classification, the petitioner must establish that:

- There are not enough U.S. workers who are able, willing, qualified, and available to do the temporary work;
- The employment of H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers; and
- The need for the prospective worker's services or labor is temporary, regardless of whether the underlying job can be described as temporary. The employer's need is considered temporary if it is a one-time occurrence, a seasonal need, a peak-load need, or an intermittent need.

The maximum period of stay in H-2B classification is 3 years, and the period of stay may be extended for qualifying employment in increments of up to 1 year each. An individual who has held H-2B nonimmigrant status for a total of 3 years must depart and remain outside of the United States for an uninterrupted period of 3 months before seeking readmission as an H-2B nonimmigrant. Moreover, previous time spent in H-1B or L-1 classifications counts toward H-2B time. Time spent in H-4 status is not deducted from the maximum allowable period of stay in H-2B status.

If you have any questions about the H-2B visa program, please contact your Mintz Levin attorney.

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