

H1-B Visa Description and Requirements Summary

H1-B Visas was established in 1965. Applicants should seek specialized occupation that requires “theoretical or practical application” of a unique body of knowledge and hold an accredited bachelor’s or equivalent degree (CIO). In order to obtain a H1-B visa, employers must demonstrate adherence to program requirements. The employer then files a petition for a nonimmigrant worker (form I-129) with supporting documents and payment.

Duration of Visa

. The visa is not a direct path citizenship, but can serve as a “dual intent” visa allowing applicants to be in the process of green card application while holding a H1-b visa. After the petition is approved, the worker can then apply for the visa and enter the U.S. Employers can then act as part of the “PERM labor certification” a necessary step in the direction towards a green card application (CIO). The normal amount of time allowed for this visa amounts to six years. Extensions may be granted in some cases.

Wages

The minimum salary for a H1-B visa holder is \$60,000 per year, which has not changed since the program begun. H1-B visas should be paid according to prevailing wages, or actual wages, whichever is highest. This means that visa holders can earn upwards of \$100,000 in some circumstances. Employers must attest that US qualified workers are not available for the position (Differences Between L1 Visa and H1B Visa) (The Precarious Position of Banker).

Annual Allocation

There is currently an annual cap of 65,000 visas, plus an additional allocation of 20,000 for graduates of US universities with a Master's degree or higher educational achievement. New applicants are chosen randomly by a computerized lottery system. (Differences Between L1 Visa and H1B Visa) (The Precarious Position of Banker).

Recent Changes

Denial Rates have increased dramatically in the last few years. In 2015, the denial rate was 6%. In 2019, the number rose to 24% (CIO). Before Trump left office, he finalized a regulation that replaced the lottery system with a system that awards petitions on a highest to lowest salary level system. Biden did not rescind the rule, but delayed it until next year's H1-B cap selection. Because of this change, students are 54% less likely to obtain a H1-B visa going forward. ((2021 Might Be A Decisive Year).

On June 24th, 2021, The US Chamber of Commerce requested Congress and the Biden administration to remove the per-county cap on green card applications. They also requested that H1-B visas be doubled to allow for 2,80,00 a year (Quint). Furthermore, USCIS is streamlining the process of previously approved H1-B applicants, making the overall process less difficult ("The H1-B Visa Process").

Through the Cracks

Like many legal systems, companies will do what they can to get around requirements,

Much attention has been drawn in the past decade to numerous instances of H-1B abuse. Firms that have twisted the intent of the program to hire inexperienced workers at lower pay, outsourcers that have flooded the applicant pool, IT workers needing to train H-1B replacements — incidents such as these

have only fueled controversy around the H-1B visa's impact on US workers.

(CIO)

Despite this, it appears unlikely that a resort development would utilize many of these visa holders as the minimum salary is far greater than the average salary Stantec anticipates the project to create. It may be more likely that another type of visa holder such as L1-B would be considered. However, more research is needed on the loopholes referenced and past and current abuses to the system before anything can be conclusively determined.

H-2B Visa Description and Requirements Summary

H-2B visas allow both unskilled and skilled non-agricultural workers to enter the US to enter the U.S for a year at a time. In order for applications to be considered, employers must show that there are no qualified workers available for the job. The nature of the position must be temporary and applicants must have plans to return home once the year is complete.

To begin the application process, employers must advertise for job offers in an attempt to find U.S workers. After this, employers apply to the local state workforce agency (SWA) for a temporary labor certification. Once the certification is approved, the employer must file a visa petition on form I-129 and submit it to the U.S citizenship and Immigration Services (USCIS) (Bray, Ilona and J.D).

Duration of Visa

If the employer is able to show that H-2B visa-holders are still required for the position, the visa can be extended upon request in one year increments. The visa can be renewed for a maximum of two years amounting to a total of three years.

Annual Allocation

The current cap for H-2B visas is 66,000 per fiscal year. On May 25, 2021 the Department of Homeland Security and the Department of Labor published a temporary rule increasing the cap to an additional 22,000 visas for a total of 88,000 this fiscal year end 2021 (USCIS.)

Wages

H-2B visa holders must be paid the rate specified in the original job order made by the employer. Employers must offer either the highest of the prevailing wage rate of the federal, state or local minimum wage. Employers may choose to pay H-2B workers in other methods than hourly, such as incentives, bonuses, and commissions, but the weekly sum must work out to be not less than the hourly wage as outlined above (US Department Of Labor). However, Despite these regulations, Daniel Costa in the Economic Policy Institute states that “The H-2B program’s wage regulations are allowing employers to legally undercut U.S. wage standards and underpaid migrant workers' ' citing publicly available data from the the Bureau of Labor Statistics.

Conclusion

Given the requirements of the H-2B visa, it appears much more likely that a Tourism Generator Project, such as the one suggested by Red River Gorge Economic Development, may utilize these visa holders. The question is whether the current cap of 88,000 for the entire US would allow them to fill the anticipated

Citations

Bray, Ilona and J.D. “H-2B Work Visa Requirements, Fees, and Application Process.”

Www.Alllaw.Com, <https://www.alllaw.com/articles/nolo/us-immigration/h-2b-work-visa-requirements-fees-application-process.html>. Accessed 27 June 2021.

CIO, The H-1B Visa: Facts, Requirements, Processes.

<https://www.cio.com/article/3239285/h-1b-visa-requirements-processes-and-faqs.html>.
Accessed 27 June 2021.

Costa, Daniel. “Wages Are Still Too Low in H-2B Occupations: Updated Wage Rules

Could Ensure Labor Standards Are Protected and Migrants Are Paid Fairly.” *Economic Policy Institute*, <https://www.epi.org/blog/wages-are-still-too-low-in-h-2b-occupations-updated-wage-rules-could-ensure-labor-standards-are-protected-and-migrants-are-paid-fairly/>. Accessed 27 June 2021.

Differences Between L1 Visa and H1B Visa. <https://www.bankbazaar.com/visa/difference-between-l1-visa-and-h-1b-visa.html>. Accessed 27 June 2021.

US Department Of Labor. *Fact Sheet #78C: Wage Requirements under the H-2B Program*

<https://www.dol.gov/agencies/whd/fact-sheets/78c-h2b-wage-requirements>. Accessed 27 June 2021.

H-1B Specialty Occupations, DOD Cooperative Research and Development Project

Workers, and Fashion Models | USCIS. 5 Feb. 2021, <https://www.uscis.gov/working->

in-the-united-states/temporary-workers/h-1b-specialty-occupations-dod-cooperative-research-and-development-project-workers-and-fashion.

2021 Might Be A Decisive Year For H-1B Visas.

<https://www.forbes.com/sites/stuartanderson/2021/06/02/2021-might-be-a-decisive-year-for-h-1b-visas/?sh=6e893ec418df>. Accessed 27 June 2021.

“The H1-B Visa Process Is Getting Easier—and Tougher.” IndustryWeek, 27 May 2021,

<https://www.industryweek.com/the-economy/regulations/article/21165421/the-h1b-visa-process-is-getting-easierand-tougher>.

The Precarious Position of Bankers on H1B Visas | EFinancialCareers.

<https://www.efinancialcareers.com/news/2021/06/h1b-visas-banking>. Accessed 27 June 2021.

Quint, The. “US Chamber Seeks to Double H1-B Visa Quota, Remove Country Cap.”

TheQuint, 25 June 2021, <https://www.thequint.com/us-nri-news/us-chamber-asks-for-removal-of-country-cap-on-green-card-application-double-h1-b-quota>.

USCIS. H-2B Temporary Non-Agricultural Workers 3 June 2021,

<https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2b-temporary-non-agricultural-workers>.