

# H-2A and H-2B Program Updates



1-877-422-3392  
[www.fewaglobal.org](http://www.fewaglobal.org)

**Arnulfo Hinojosa, Vice President**  
**979-318-7291**

[ahinojosa@fewaglobal.org](mailto:ahinojosa@fewaglobal.org)

# Federation of Employers & Workers of America (FEWA)

- FEWA is an internationally recognized nonprofit trade association created to assist employers and workers in labor-intensive service industries by providing services related to non-immigrant labor-management issues. Specifically, FEWA is dedicated to improving business conditions, building awareness, and providing labor retention and labor management services.



# Disclaimer

- The materials in this presentation are general in nature and are for informational purposes only; they are not offered for and do not constitute specific legal advice. Nothing provided within this presentation should be used as a substitute for the advice of your own independent counsel.



U.S. Chamber of Commerce

## Jobs vs Workers.

- ◆ If every unemployed person in the country found a job, we would still have over 5 million open jobs.
- ◆ Every state is feeling the impact of the worker shortage.

National Job Openings vs  
Number of Unemployed Workers  
December 2022



Source: U.S. Chamber of Commerce Analysis, BLS Data

# Why Do Employers Use H-2 Visas?



Abundant labor supply



Reduced Training Cost



Employees can only work for YOUR company



Travel freely across border (multiple entries)



Loyal, stable and repeat workforce



Ability to bring LEGAL temporary laborers



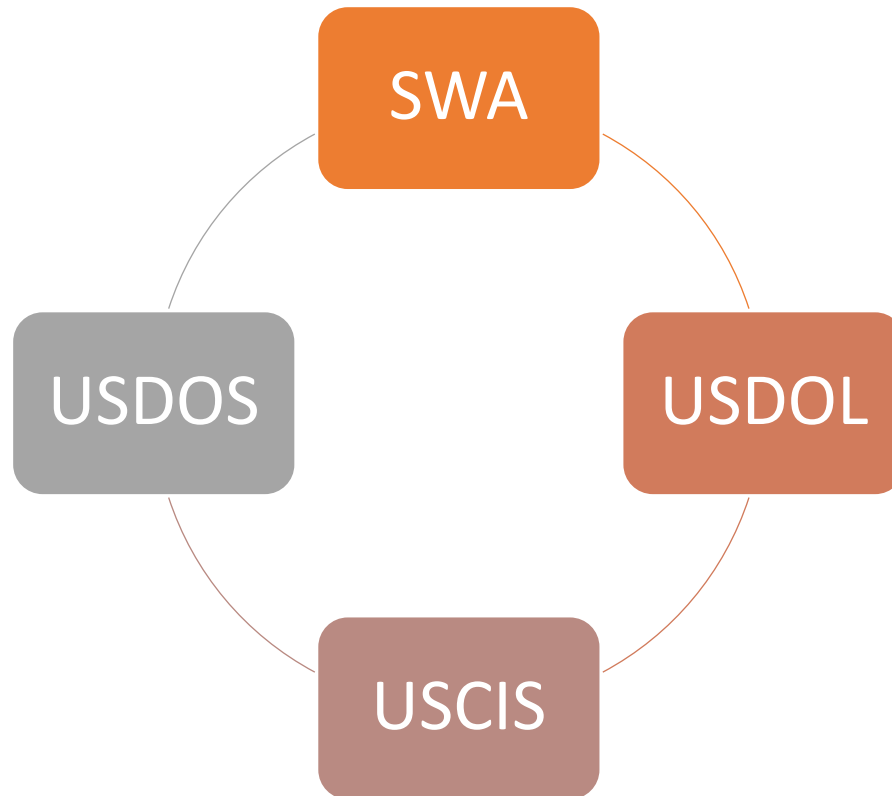
Bring as many or as few workers as needed



High productivity/reduced turnover

# The H-2 Process

## Governmental Agencies



# The H-2 Process

- Involves 4 U.S. Governmental Agencies
  - State Workforce Agency (SWA)
    - Test the local labor market
    - H-2A Housing Inspections
  - U.S. Department of Labor (USDOL)
    - H-2B - Determines prevailing wage
    - Advisory to USCIS
  - U.S. Citizenship and Immigration Services (USCIS)
    - Final approval decision and notifies USDOS
  - U.S. Department of State (USDOS)
    - Issues visas to the worker in country of origin



# What is the H2B Program?

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## Some Major Requirements – H2B

- Temporary Need
- U.S. Recruiting Activities
- No Layoffs
- Job Opportunity & Full Time Threshold
- Employer Provided Items
- Transportation & Subsistence Expenses
- Visa & Expenses
- Prohibited Fees
- Notification
- Certified Occupation & Area
- Compliance (Enforcement, Violations, Penalties)





JOB:

Part Time

Full Time



Transportation,  
Subsistence,  
Visa & Visa  
Related  
Expenses





# Prohibited Fees



# Certified Occupation Area



# Other Requirements

- Disclosure of Foreign Recruitment
  - Contract prohibiting fees for prospective workers
- Frequency of pay
  - At least every two weeks
  - Piece rate or at least hourly offered wage
    - Prevailing Wage Determinations
  - Earning Statements on each payday
- Disclosure Job Order
  - H-2B and corresponding workers in language understood
- Payroll Deductions
  - Required by law, disclosed and reasonable FLSA
  - Deductions not disclosed in job order are PROHIBITED

**Compliance  
Enforcement  
Violations  
Penalties**

# H-2B Current Cap Limit

- **66,000 total**
- 33,000 first half of fiscal year
  - October 1 – March 31
- 33,000 second half of fiscal year
  - April 1 – September 30

# H-2B Supplemental Visas FY '23 & '24 64,716

FY23 Supplemental Cap Allocations	Visas Available	Dates of Need (Start date)	When Petitioners May Start Filing
<b>FY23 First Half Returning Worker Allocation</b>	18,216	Oct. 1, 2022 – March 31, 2023	Dec. 15, 2022. As of Jan. 30, 2023, USCIS <a href="#">has received enough petitions</a> to reach the cap for this allocation.
<b>FY23 Second Half Returning Worker Allocation #1</b>	16,500	April 1, 2023 – May 14, 2023	March 14, 2023 As of March 30, 2023, USCIS <a href="#">has received enough petitions</a> to reach the cap for this allocation.
<b>FY23 Second Half Returning Worker Allocation #2 (Late-Season Filers)</b>	10,000	May 15, 2023 – Sept. 30, 2023	April 13, 2023. As of September 16, 2023, USCIS is no longer accepting petitions for this allocation.
<b>FY23 El Salvador, Guatemala, Honduras, and Haiti Allocation (available whole FY)</b>	20,000	Oct. 1, 2022 – Sept. 30, 2023	For start dates on or before March 31, 2023: Dec. 15, 2022 For start dates on or after April 1, 2023: March 14, 2023. As of September 16, 2023, USCIS is no longer accepting petitions for this allocation

FY24 Supplemental Cap Allocations	Visas Available	Dates of Need (Start date)	When Petitioners May Start Filing
<b>FY24 First Half Returning Worker Allocation</b>	20,716	Oct. 1, 2023 – March 31, 2024	Nov. 17, 2023
<b>FY24 Second Half Returning Worker Allocation #1</b>	19,000	April 1, 2024 – May 14, 2024	15 days after the second half statutory cap is reached
<b>FY24 Second Half Returning Worker Allocation #2 (Late-Season Filers)</b>	5,000	May 15, 2024 – Sept. 30, 2024	45 days after the second half statutory cap is reached
<b>FY24 Country-Specific Allocation (available whole FY)</b>  + Colombia, Ecuador Costa Rica	20,000	Oct. 1, 2023 – Sept. 30, 2024	For start dates on or before March 31, 2024: Nov. 17, 2023 For start dates on or after April 1, 2024: 15 days after the second half statutory cap is reached

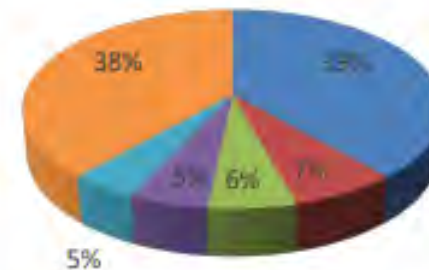
## Applications Received<sup>1</sup>

FY 23	Q1 (Oct-Dec)	Q2 (Jan-Mar)	Q3 (Apr-Jun)	Q4 (Jul-Sept)	% Change FY 2022
16,383	1,754	10,599	341	3,689	14.6%

## Applications Processed<sup>2</sup>

Determinations	FY 23	Q1	Q2	Q3	Q4
<b>Total Processed</b>	15,502	1,529	6,830	4,583	2,560
- Certified	12,054	1,141	5,592	3,204	2,117
- Denied	1,340	204	289	591	256
- Withdrawn	2,000	159	940	738	163
- Rejected	107	25	9	50	23
<b>Positions Requested</b>	274,037	38,185	114,787	72,919	48,146
<b>Positions Certified</b>	211,666	27,498	92,554	49,561	42,053
<b>Processed Timely<sup>2</sup></b>	46.1%	84.5%	61.1%	1.1%	59.0%

## Top Occupations



- Landscaping and Groundskeeping Workers
- Maids and Housekeeping Cleaners
- Forest and Conservation Workers
- Amusement and Recreation Attendants
- Meat, Poultry, and Fish Cutters and Trimmers
- All Other Occupations

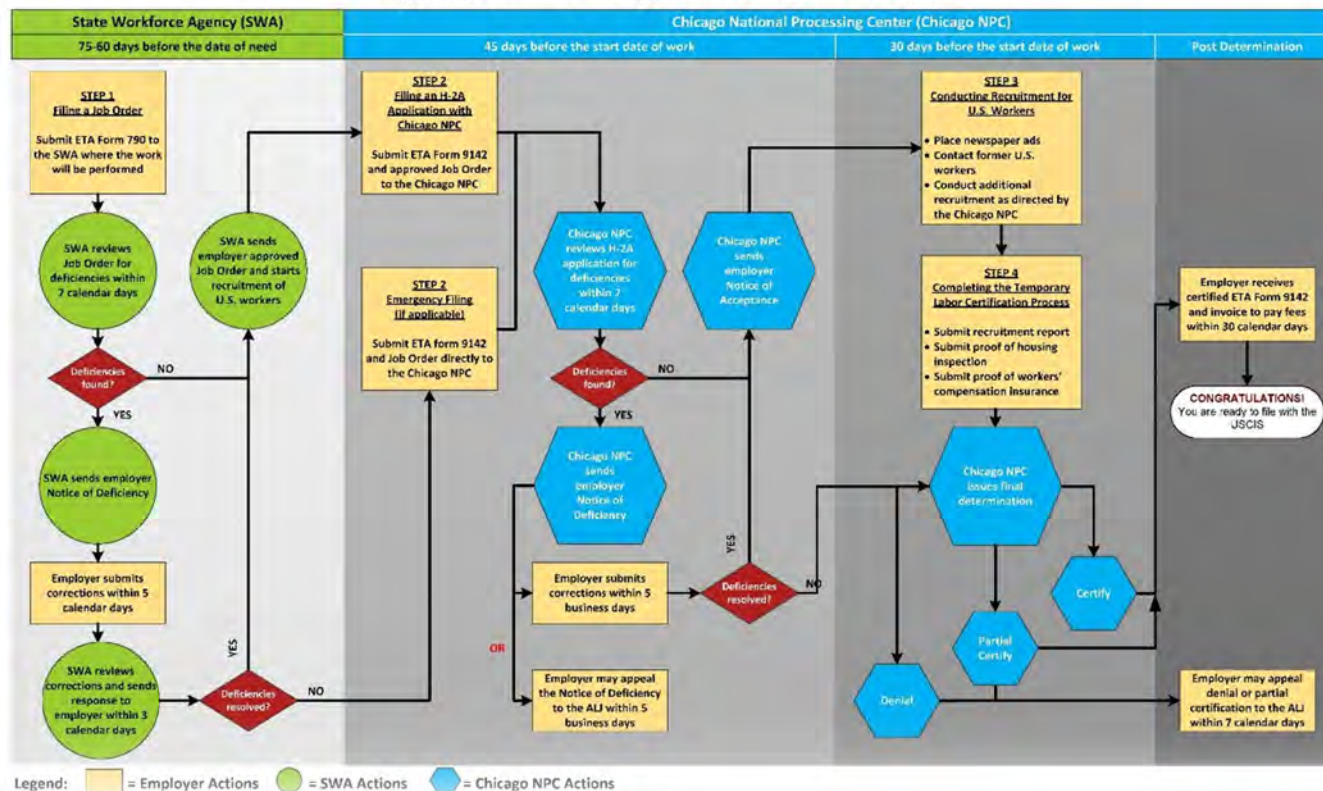
# USDOL FY 2023 H2B Statistics

# What is the H-2A Program? No cap limitations!

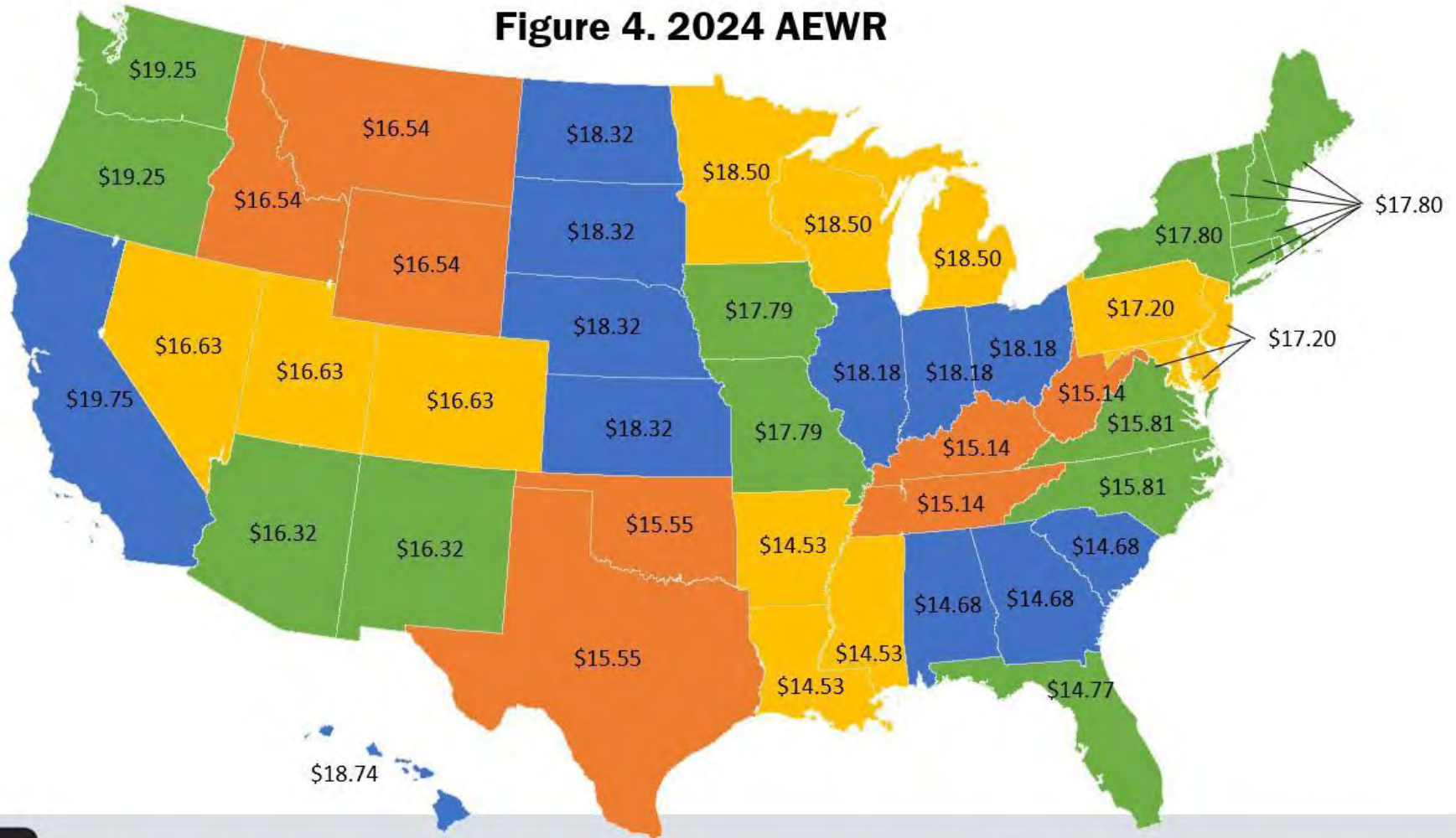


# Basic Process Elements

### Appendix C. H-2A Application Process Flow Chart



### Figure 4. 2024 AEW



## Some Major Requirements – H2A

- Agriculture & Seasonal/Temporary
- U.S. Recruitment Activities
- Corresponding Employment
- No Layoffs
- Required Wages & AEW
- $\frac{3}{4}$  Guarantee
- Transportation & Subsistence
- Housing & Meals
- Deductions
- Disclosures
- Notification
- State workers' compensation insurance or its equivalent

# Corresponding Employment

- The Department of Labor's regulations governing the H-2A Program also apply to the employment of U.S. workers by an employer of H-2A workers in any work included in the approved job order or in any agricultural work performed by the H-2A workers during the period of the job order. <sup>2</sup>

# $\frac{3}{4}$ Guarantee

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- Guarantee to offer the worker employment for a total number of hours equal to at least  $\frac{3}{4}$  of the workdays in the contract period <sup>3</sup>
- Begins on the first workday after the worker arrives at the place of employment (or the contractual first date of need, whichever is later) and ends on the date the contract expires <sup>3</sup>
- Each workday must consist of a full number of hours of work time as specified in the job order <sup>3</sup>
- Failure to meet this provision would require the employer to supplement the worker's pay to meet the  $\frac{3}{4}$  guarantee <sup>3</sup>
- **Employers must maintain accurate records of hours offered and hours actually worked** <sup>3</sup>





# Transportation & Subsistence

- Inbound: Provide *or* pay for transportation and daily meals to the place of employment *or* reimburse workers once 50% of the work contract period has elapsed <sup>3</sup>
  - Note: FLSA requirement for Federal Minimum Wage and reimbursement in first work week where wages fall below FLSA minimum wage <sup>3 2</sup>
- Outbound: Provide *or* pay for return transportation and daily meals upon completion of the work contract period <sup>3</sup>
- Daily: Provide to/from worksite and employer-provided housing at no cost <sup>2</sup>
  - Must comply with all applicable laws and regulations, be properly insured, and be operated by licensed drivers <sup>3</sup>

# Housing

- ▶ Provided at no cost to H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day <sup>3</sup>
- ▶ Inspected and approved by SWA prior to occupancy <sup>3</sup>
- ▶ Maintained during occupancy to meet the appropriate OSHA or ETA standards <sup>3</sup>

## Rental/Public Accommodations

- ▶ Must meet local standards <sup>3</sup>
- ▶ Housing-related charges must be paid directly by the employer to the housing's management <sup>3</sup>
- ▶ If certified housing becomes unavailable, substitute housing must still be in compliance with the applicable housing standards <sup>3</sup>



# Meals

- Provide three meals per day to each worker at no more than a DOL-specified cost <sup>3</sup>

OR

- Furnish free and convenient cooking and kitchen facilities where workers can prepare their own meals <sup>3</sup>

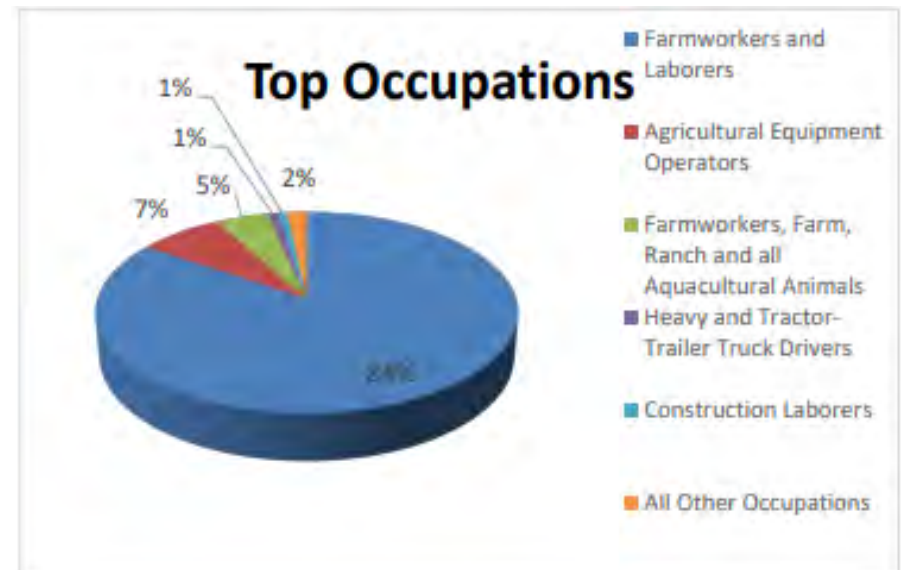
# USDOL FY 2023 H-2A Statistics

## Applications Received<sup>1</sup>


FY23	Q1 (Oct-Dec)	Q2 (Jan-Mar)	Q3 (Apr-Jun)	Q4 (Jul-Sept)	% Change FY 2022
21,018	5,863	8,541	3,783	2,831	10.5%

## Applications Processed


Determination	FY23	Q1	Q2	Q3	Q4
<b>Total Processed</b>	20,881	3,255	10,501	4,016	3,109
- Certified	20,379	3,162	10,320	3,888	3,009
- Denied	197	28	59	66	44
- Withdrawn	305	65	122	62	56
<b>Positions Requested</b>	389,908	55,533	156,196	99,692	78,487
<b>Positions Certified</b>	378,513	54,738	150,805	96,408	76,562
<b>Processed Timely<sup>2</sup></b>	98.2%	98.8%	96.9%	97.2%	97.8%




# NT + Recruiting services




**BENEFITS OF HIRING SALVADORAN TEMPORARY WORKERS UNDER THE H-2B VISA PROGRAM**




**USAID**  
FROM THE AMERICAN PEOPLE



GOBIERNO DE EL SALVADOR



## Need H-2B Workers?




Are you familiar with H-2B visas reserved for Northern Central American countries?

Applying specifically for Guatemalan workers may provide your business an advantage in the H-2B randomization process.

The governments of Guatemala and the United States are working together to help businesses like yours find the workers you need.

## GUATEMALA'S SEASONAL LABOR PROGRAM



- Access to a database of qualified workers across a variety of sectors
- A team that manages the recruitment and hiring process for H-2B workers
- The ability to get workers trained and certified via INTECAP
- A positive and efficient working relationship with the U.S. Embassy for scheduling worker appointments




## WHAT DO YOU NEED TO HIRE TOP HONDURAN WORKERS?

The Government of Honduras through its Temporary Work Abroad Program (PTTE), has put in place a practical recruitment process customized to the needs of your company. Our database includes skilled workers for agricultural (H2A) and non-agricultural (H2B) visa classifications.

**FAQ**

**THE BENEFITS OF HIRING HONDURAN WORKERS ARE:**

- 05 Multi-skilled and reliable workers.
- 04 Free charges and transparent process for workers and employers.
- 03 Save time and effort thanks to our staff trained recruitment and visa processing.
- 02 Ability to evaluate potential workers before hiring.
- 01 Assistance to workers throughout the process until their returns.

**How do I place my job offer?**  
Send your request by email: [pttusa@trabajo.gob.hn](mailto:pttusa@trabajo.gob.hn) with your approved I-797B attached.

**Do employers need to visit Honduras to coordinate recruitment, selection and hiring?**  
It is not necessary for employers to visit Honduras to coordinate recruitment and selection process. However, if employers would like to conduct interviews, it can be arranged.

**What is the cost for recruitment?**  
All PTTE recruitment and selection services are free of charge for both employers and workers.

**Who can help if the workers or the company needs assistance in the USA?**  
PTTE provides assistance to both parties throughout the

# H2B Citations/Links

- 1. "2015 H-2B Interim Final Rule: Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States." Office of Foreign Labor Certification. Accessed August 8, 2019.  
[https://www.foreignlaborcert.doleta.gov/pdf/H-2B 2015 IFR Factsheet April 2015.pdf](https://www.foreignlaborcert.doleta.gov/pdf/H-2B%202015%20IFR%20Factsheet%20April%202015.pdf).
- 2. "H-2B Application for Temporary Employment Certification: Form ETA-9142B-Appendix B." Office of Foreign Labor Certification. Accessed August 8, 2019.  
[https://www.foreignlaborcert.doleta.gov/pdf/ETA Form 9142B Appendix B.pdf](https://www.foreignlaborcert.doleta.gov/pdf/ETA%20Form%209142B%20Appendix%20B.pdf)
- 3. "Wage and Hour Division (WHD) H-2B Side-by-Side Comparison of the 2009 and 2015 Rules." U.S. Department of Labor. Accessed August 8, 2019.  
<https://www.dol.gov/whd/immigration/H2BFinalRule/H2BSideBySide.htm>
- 4. "2015 Final Rule: Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program." Office of Foreign Labor Certification. Accessed August 8, 2019.  
[https://www.foreignlaborcert.doleta.gov/pdf/H-2B 2015 Wage Final Rule Factsheet April 2015.pdf](https://www.foreignlaborcert.doleta.gov/pdf/H-2B%202015%20Wage%20Final%20Rule%20Factsheet%20April%202015.pdf)
- 5. "Assurances and obligations of H-2B employers." 20 CFR §655.20 (2015). Accessed August 8, 2019  
<https://www.govinfo.gov/content/pkg/FR-2015-04-29/pdf/2015-09694.pdf>

# H2A Citations/Links

1. Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, Employer Guide to Participation in the H-2A Temporary Agricultural Program (2012), [https://www.foreignlaborcert.doleta.gov/pdf/H-2A\\_Employer\\_Handbook.pdf](https://www.foreignlaborcert.doleta.gov/pdf/H-2A_Employer_Handbook.pdf)
2. Wage and Hour Division, U.S. Department of Labor, Fact Sheet #26: Section H-2A of the Immigration and Nationality Act(INA) (2010), <https://www.dol.gov/whd/regs/compliance/whdfs26.pdf>
3. Wage and Hour Division, U.S. Department of Labor, Agricultural Enforcement: H-2A, [https://www.foreignlaborcert.doleta.gov/pdf/WHD\\_2010\\_H2A\\_Final\\_Rule\\_Public\\_Rollout.ppt](https://www.foreignlaborcert.doleta.gov/pdf/WHD_2010_H2A_Final_Rule_Public_Rollout.ppt) (last visited August 8, 2019).
4. Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, H-2A Application for Temporary Employment Certification: Form ETA-9142A-Appendix A, [https://www.foreignlaborcert.doleta.gov/pdf/ETA\\_Form\\_9142A\\_Appendix\\_A\\_7369.pdf](https://www.foreignlaborcert.doleta.gov/pdf/ETA_Form_9142A_Appendix_A_7369.pdf) (last visited August 8, 2019).

## Q & A

Arnulfo Hinojosa

Vice President

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[ahinojosa@fewaglobal.org](mailto:ahinojosa@fewaglobal.org)

