



H-2B Visas

A solution for labor shortages in the construction industry



VERDIN
900 Jackson St., Ste. 535
Dallas, TX 75202

www.verdinlaw.com
T: (214) 741-1700
F: (214) 276-7848



Introduction

The North Texas economy is thriving. Major companies including Toyota, Liberty Mutual, and Kubota are moving their headquarters or corporate campuses to the Dallas-Fort Worth Metroplex. Amongst the beneficiaries of this economic boom are commercial and residential builders. The construction boom is so great in fact that many builders find themselves facing workforce shortages. This lack of readily available labor limits the economic benefits that builders can reap from the growing North Texas economy. A solution is needed, and fortunately one exists.

Under U.S. immigration law, employers facing a temporary labor shortage can bring foreign nationals to the United States to meet the temporary labor need. For the construction industry, this is most readily accomplished through the H-2B visa, which allows a foreign national to come to the U.S. to perform temporary, non-agricultural work.

Requirements for the H-2B Visas

There are three main requirements that the employer must show in order to sponsor a foreign national for an H-2B visa. Those requirements are:

- 1) There are not enough U.S. workers who are able, willing, qualified, and available to do the temporary work.
- 2) Employing H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.
- 3) The need for the prospective worker's services or labor is temporary, regardless of whether the underlying job can be described as temporary.

The law provides for four different situations that may constitute a "temporary" need. A temporary need includes (1) a one-time occurrence, (2) a seasonal need, (3) a peakload need, (4) or an intermittent need. Each of those is further defined by law, but let it suffice to say that the differences between them lie in the nature of the positions to be filled.

The H-2B Visa Application Process

The process of applying for an H-2B visa on behalf of a prospective employee or employees can be broken down into three main phases.

First, the employer must file for temporary labor certification with the Department of Labor (DOL). Essentially, this is a request for the DOL to certify that there are insufficient workers in the U.S. to fill the positions the



employer needs, and also that bringing in foreign workers will not have an adverse effect on the pay or working conditions of U.S. workers. One key advantage of the labor certification process for H-2B visas is that the employer can request DOL to certify multiple positions on a single application for temporary labor certification. That is, the employer does not have to file a separate labor certification application for every single employee he wishes to bring in. This is so as long as the workers will perform the same type of services under the same terms and conditions, in the same area of intended employment, and for the same period of employment. So, for example, an employer could seek labor certification for five cement finishers on a single application for labor certification, so long as they will all have the same terms and conditions of employment, and will all work at the same place for the same amount of time.

Once the labor certification is issued, the employer files the visa petition with the U.S. Citizenship and Immigration Service. This stage of the process is eligible for “premium processing,” which guarantees a response from the government within 15 calendar days. Premium processing takes several months off of the total time required to obtain the H-2B visa.

Finally, after the visa petition is approved, the prospective worker attends his or her visa interview with the U.S. Department of State in their home country (or in some cases, the worker goes directly to a U.S. port of entry and requests admission in H-2B status).

Benefits of H-2B Employees to Construction Industry Employers

Aside from the alleviation of labor shortages, a number of other features of the H-2B visa work to the advantage of construction industry employers. First, H-2B visas are issued in connection with a specific employer. The visa holder cannot simply come to the U.S. and work for whomever he chooses. So, H-2B employees will by nature be very reliable, as their visa status depends on their continued employment with the sponsoring employer.

Additionally, spouses and any children under age 21 of the H-2B visa holder can accompany their H-2B family member to the U.S. These spouses and children receive H-4 visas. Although H-4 spouses cannot work, H-4 children may attend school in the U.S. The family unity and (for children) educational benefits that the H-2B visa offers provide a stable home environment for the H-2B worker, which can only yield greater productivity for their sponsoring employers.

Finally, H-2B status can be extended for qualifying employment in increments of up to 1 year, with a maximum period of stay of 3 years. After that, the visa holder must return home, but only for a period of 3 uninterrupted months, before seeking readmission to the United States in H-2B status. Thus, construction industry employers can utilize H-2B employees for years with relatively little interruption, so long as the labor market conditions continue to support the need for H-2B employees.



Key advantages of the H-2B visa for construction companies

- **Ability to bring in lawful temporary workers.** The H-2B visa is an underused and efficient strategy to bring temporary laborers to the U.S. to help alleviate the workforce shortages plaguing construction companies.
- **No foreign employment history necessary.** Unlike other visas, there is no requirement to establish a history of employment with a foreign employer.
- **Streamlined paperwork.** U.S. employers can use a single labor certification application to apply for multiple workers, so long as those workers will do the same type of work, under the same terms and conditions, in the same place, and for the same amount of time. Additionally, in certain instances, U.S. employers may file a single visa petition for H-2B workers returning to the U.S. for further employment.
- **Rapid turnaround available.** In most instances, approval of a visa petition take 2-3 months. However, the government offers “premium processing” for H-2B visa petitions, which guarantees a response within 15 days. This significantly reduces the overall H-2B visa processing time.
- **Opportunity for multiple visa renewals.** H-2B classification can be extended for qualifying employment in increments of up to 1 year each, with a maximum period of stay of 3 years.
- **Family benefits.** Spouses and children (under age 21) may accompany their H-2B family member to the United States. In addition, children may attend school in the U.S.
- **Pathways to residency.** Although an H-2B visa is a temporary visa, there are pathways to permanent residency with careful planning.

VERDIN is a specialist law firm in the field of U.S. immigration law. We focus on representing companies and investors, helping them achieve their objectives through strategic use of U.S. immigration law and policy.