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Immigration

Cap Reached for Additional Returning Worker H-2B Visas

Legal Update

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This article was prepared with the assistance of ABIL, the Alliance of Business Immigration Lawyers, of which Loan Huynh, Fredrikson Immigration Department Chair, is a member.

Under the recently announced H-2B supplemental cap temporary final rule, U.S. Citizenship and Immigration Services (USCIS) announced on June 3, 2021, that it has received enough petitions to reach the cap for the additional 16,000 H-2B visas made available for returning workers only. USCIS continues to accept petitions for H-2B nonimmigrant workers for the additional 6,000 visas allotted for nationals of Honduras, Guatemala and El Salvador (collectively called the Northern Triangle).

USCIS said it is rejecting and returning any cap-subject petitions for H-2B returning workers (not including those filed under the Northern Triangle allotment) received after June 1, 2021, together with any accompanying filing fees.

Petitioners whose workers were not selected for the 16,000 returning worker allotment are encouraged to refile for workers from the Northern Triangle countries while visas for that allotment remain available. The final date for filing petitions requesting Northern Triangle nationals who are exempt from the returning worker requirement is July 8, 2021. If fewer than 6,000 beneficiaries are requested toward the visas set aside for nationals of the Northern Triangle countries, USCIS will announce by July 23, 2021, that the remaining visa numbers will be made available to beneficiaries regardless of nationality, subject to the returning worker limitation.

USCIS said it will continue to accept H-2B petitions for workers filing under the Northern Triangle allotment, as well as those that are exempt from the congressionally mandated cap. This includes petitions for:

- Current H-2B workers in the United States petitioning to extend their stay and, if applicable, change the terms of their employment or change their employers;
- Fish roe processors, fish roe technicians, and/or supervisors of fish roe processing; and
- Workers performing labor or services in the Commonwealth of the Northern Mariana Islands and/or Guam from November 28, 2009, until December 31, 2029.