

Advocating for Worker Rights: Learn about the role of state workforce systems and their community partners in advocating for worker rights.

Tuesday September 13, 2011. 2:30 pm - 3:45 pm.

- Migrant and Seasonal Farmworkers (MSFW) are amongst workers which state workforce systems are charged with advocating and protecting in relationship to employment opportunities.
- Federal immigration law requires a preference for employing authorized “domestic” U.S. workers prior to the authorization to employers to utilize temporary “non-immigrant” foreign workers under the H-2A (agricultural) and H-2B (non-agricultural) worker systems. Required “prevailing wages” for the H-2B program will increase significantly on October 1, 2011 and many jobs within that system might become attractive to unemployed U.S. workers if effective job recruitment for these positions occurs.
- Federal law permits issuance of visas and temporary lawful protected status to unauthorized (“undocumented”) workers under certain circumstances (including “U” and “T” visas). Such workers are then employment authorized and qualify for services from state workforce systems. Learn to recognize the kinds of abuses that might qualify such workers for lawful status.
- Limited English Proficient (LEP) individuals are entitled to a full range of services from state workforce systems and may be protected against employer discrimination where full English language skills are not appropriate job requirements.

Presenter: Arthur N. Read, General Counsel, Friends of Farmworkers, Inc., Philadelphia.

Arthur N. Read has been a practicing attorney for more than 35 years and is licensed to practice in New York, New Jersey, and Pennsylvania. He has been a full time advocate for the rights of farmworkers and other low wage workers for more than 32 years in both New Jersey and Pennsylvania. He is the author of numerous articles and has been a presenter at continuing legal education trainings for attorneys for more than 30 years. In 2007 he was awarded the Morris Dees Justice Award which was created in 2006 by the law firm of Skadden, Arps, Slate, Meagher & Flom LLP and The University of Alabama School of Law to honor Dees, an Alabama graduate, for his life-long devotion to public service. See: <http://www.friendsfw.org/FOF/Staff/DeesAward.htm>.



Employment and Training Administration



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States are required to ensure that the services provided to [Migrant Seasonal Farmworkers \(MSFWs\)](#) are "qualitatively equivalent and quantitatively proportionate" to the services provided to other jobseekers. This means that MSFWs should receive all workforce development services, benefits and protections on an equitable and non-discriminatory basis (i.e. career guidance, testing, job development, training, and job referral).

In order to locate and to contact MSFWs who are not being reached by the normal intake activities conducted by the local Job Service offices, the focus of the workforce delivery system will be to:

1. Increase the number of MSFWs in all labor exchange activities;
2. Increase the number of agricultural employers utilizing labor exchange services;
3. Encourage use of the Agricultural Recruitment System (ARS);
4. Encourage MSFWs' transition to higher wage jobs & permanent year round employment in non-agricultural work;
5. Enhance collaboration with MSFW service providers;
6. Encourage full integration of MSFWs and agencies that serve them into the One-Stop centers around the country.

State and Regional Monitor Advocates are responsible for ensuring that services provided are in accordance with federal regulations ([20 C.F.R. 651-658](#)) and the Workforce Investment Act.

The Monitor Advocates support the needs of MSFWs by

- Providing information about farmworker needs, characteristics, and concerns;
- Developing linkages with a broad range of stakeholders, including community- and employer-based organizations;
- Participating in the planning and integration and system-building functions of "one-stop" centers;
- Producing annual service assessments and analyses to promote a better understanding of services to farmworkers and to highlighting special efforts and accomplishments by states in serving them; and,
- Ensuring that all legal protections are afforded to farmworkers and that their complaints are promptly resolved.

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Who are Migrant and Seasonal Farmworkers

Who are Migrant and Seasonal Farmworkers (MSFWs)?

An MSFW is either, a migrant farmworker , a seasonal farmworker , or a migrant food processing worker:

Seasonal Farmworkers - is a person who during the preceding 12 months worked at least an aggregate of 25 or more days or parts of days in which some work was performed in farmwork earned at least half of his/her earned income from farmwork , and was not employed in farmwork year round by the same employer.

Migrant Farmworkers - is a seasonal farmworker who had to travel to do the farmwork so that he/she was unable to return to his/her permanent residence within the same date.

Migrant Food Processing Worker - means a person who during the preceding 12 months has worked at least an aggregate of 25 or more days or parts of days in which some work was performed in food processing, (as classified in the 2002 North American Industry Classification System (NAICS) definitions 3116, 311421, 311941 and 311411 for food processing establishments), earned at least half of his/her earned income from processing work and was not employed in food processing year round by the same employer, provided that the food processing required travel such that the worker was unable to return to his/her permanent residence in the same day.

The above definitions were taken from 20 CFR Part 500 Reg. 651

What are Significant States and Significant Local Offices? **20 CFR 651.10**

Significant States - are states that have the highest number of Migrant Seasonal Farmworkers (MSFW) applicants that utilize services available under the Wagner- Peyser Act and the WIA of 1998. The Employment and Training Administration designates annually the top twenty states with the highest MSFW activity based on data received from state and local offices.

Significant Local Offices - are designated annually by ETA and include those local offices where MSFWS account for 10% or more of annual applicants. In addition, those local offices that are located in an area with a large number of MSFWs can be designated as significant even if MSFWs do not account for 10% of applications.

Significant bilingual Local Offices - are also designated annually by ETA and include those significant MSFW offices where 10% or more of MSFW applicants require service provisions in Spanish (or other language)

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SI USTED TIENE UNA QUEJA ACERCA DE:

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- Un trabajo al que fue referido por un Centro Vocacional

Comuníquese con la gerencia de su Centro Vocacional mas cercano o escriba a:

Mr. Juan M. Regalado
National Monitor Advocate
U.S. Department of Labor
Employment and Training Administration
200 Constitution Avenue NW, Room C-4311
Washington, DC 20210
Telephone: (202) 693-2661
Fax: (202) 693-3817
Email: Regalado.juan@dol.gov
Web: www.doleta.gov/msfw
Job Service Locator: <http://www.servicelocator.org/>

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If you have a complaint about other employment-related issues, your local One-Stop Career Center will provide you with information on agencies that may be able to assist you.

Si usted tiene una queja acerca de otros asuntos laborales, su Centro Vocacional le proporcionará información sobre las agencias que pueden ofrecerle ayuda.

eta

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TITLE 29 — LABOR [29 CFR]

PART 42 — COORDINATED ENFORCEMENT [29 CFR 42]

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Authority: [29 U.S.C. 49, et seq.](#) ; [29 U.S.C. 201 et seq.](#) ; [29 U.S.C. 651, et seq.](#) ; [29 U.S.C. 801, et seq.](#) ; [5 U.S.C. 301.](#)

Source: 45 FR 39489, June 10, 1980, unless otherwise noted.

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§ 42.1 General statement.

These regulations are promulgated by the Secretary of Labor to describe the coordination of the activities of the Employment Standards Administration, the Occupational Safety and Health Administration, and the Employment and Training Administration relating to migrant farmworkers.

§ 42.2 Purpose.

(a) These regulations coordinate the activities of ESA, OSHA and ETA, and are intended to:

- (1) Ensure effective enforcement efforts under the protective statutes—i.e., the Farm Labor Contractor Registration Act (FLCRA), the Occupational Safety and Health Act (OSHA), and the Fair Labor Standards Act (FLSA) (*protective statutes*).
- (2) Ensure that the enforcement efforts of DOL agencies are coordinated to maximize their effectiveness, yet minimize unnecessary duplication.
- (3) Focus the attention of DOL agencies upon the special employment-related problems faced by migrant farmworkers.
- (4) Coordinate DOL enforcement efforts with related activities of farmworker groups, federal and State agencies, and other concerned parties outside the Department of Labor whose operations are related to the employment, housing, and working conditions of migrant farmworkers.
- (5) Establish an information exchange which will afford the Department, farmworker groups, and other concerned parties outside the Department of Labor the opportunity to exchange information concerning wages, hours and working conditions.

§ 42.3 National Committee.

A National Farm Labor Coordinated Enforcement Committee (*National Committee*) is hereby established which shall be responsible for: Reviewing policies, guidelines and enforcement goals and strategies for the Department of Labor with respect to migrant farm labor-related enforcement efforts under the protective statutes; resolving policies which are in conflict between DOL agencies; advising the Secretary on legislative initiatives which would strengthen farm labor-related enforcement efforts; and providing guidance and recommendations to DOL agencies on related enforcement activities.

§ 42.4 Structure of the National Committee.

- (a) The National Committee shall consist of the Under Secretary of Labor, the Solicitor of Labor, and the Assistant Secretaries for the Employment Standards Administration (ESA), the Occupational Safety and Health Administration (OSHA), and the Employment and Training Administration (ETA).
- (b) The Committee shall be headed by the Under Secretary, who shall assign to one of his/her Special Assistants the responsibility of directing the necessary staff work required by the Committee.
- (c) The National Committee shall meet on a quarterly basis to review the Department's responsibilities affecting migrant farmworkers, and at any other time as determined by the Under Secretary to be necessary to carry out the National Committee's responsibilities.
- (d) There shall be a National Committee staff level working group consisting of senior staff representatives from the Branch of Farm Labor Law Enforcement, the Wage and Hour Division, the U.S. Employment Service (the National MSFW Monitor Advocate), the Employment and Training

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Administration, the Office of Field Coordination and the Directorate of Federal Compliance and State Programs in the Occupational Safety and Health Administration, and the Office of the Solicitor.

- (e) The Special Assistant to the Under Secretary shall be the director of the staff level working group.
- (f) The staff level working group shall meet monthly or more frequently as requested by the director.
- (g) The director, or another member of the National Committee, shall attend the annual public meeting of each of the Regional Farm Labor Coordinating Committees.

§ 42.5 Policy review.

(a) The National Committee shall review the policies of OSHA, ESA and the United States Employment Service (USES), and the Office of the Solicitor and shall guide the respective agencies in improving the effectiveness of and coordination among all DOL agencies assigned responsibilities related to migrant farmworkers. These policies and guidance shall include such issues as the following:

- (1) The coordination of inspections, including housing inspections, reports and procedures of DOL agencies and State agencies designated by the Department to follow-up on complaints under, and to detect promptly violations of, any of the protective statutes.
- (2) The expedited enforcement and legal procedures to accommodate the transient and seasonal nature of migrant farmworker's problems.
- (3) The development of systems for prompt and efficient referral to the appropriate federal or State agency of violations or complaints discovered by or reported to DOL agencies or appropriate State agencies, along with prompt and efficient follow-up action by the appropriate agency from the initiation of the investigation through final enforcement action.
- (4) The training of all appropriate DOL personnel in order to ensure coordinated and effective enforcement.
- (5) The level of enforcement achieved by the remedies or sanctions used by DOL agencies to enforce the protective statutes.
- (6) The effectiveness of the Specialists Program and the Regional Farm Labor Coordinated Enforcement Committees.

§ 42.6 Enforcement strategy.

(a) Each Regional Farm Labor Coordinated Enforcement Committee shall annually prepare, on a regional basis, a migrant farm labor enforcement strategy for each protective statute pursuant to §42.20(c)(3). The National Committee shall review these regional strategies and make recommendations to the appropriate DOL agencies. In reviewing the enforcement strategies, the Committee shall pay particular attention to:

- (1) The priorities set for the investigation and enforcement activities of compliance officers.
- (2) Available data on the past and current levels of enforcement of the protective statutes in the region, including the data collected pursuant to §42.21, *infra*.
- (3) The level of attention given to directed activity as distinguished from complaint-initiated compliance activities.

(4) The capability of the agency to respond quickly and thoroughly under the strategy to emergencies involving violations of any of the protective statutes.

(5) The level of priority given by the Office of the Solicitor to farm labor-related enforcement activities under the respective protective statutes.

(6) The ability of agencies to respond quickly and effectively to resolve complaints.

(7) The extent to which agencies follow through with appropriate remedies and sanctions.

(8) The degree to which agencies coordinate and cooperate on a local and regional level.

(9) Other activities of DOL agencies related to migrant farmworker enforcement.

§ 42.7 Complaint/directed action logs.

(a) To facilitate the Committee's review of all migrant farmworker complaints, including pre and post occupancy housing inspections and the enforcement strategies of DOL agencies, the Committee shall oversee the operation of a system of coordinated Complaint/Directed Action Logs (*logs*). The logs shall be maintained by each DOL agency and appropriate SESA and OSHA State agencies.

(b) The logs shall record both the numbers of compliance actions initiated as a result of complaints and those initiated on the basis of directed activity. They shall also include a statistical record of all original referrals both from and to other DOL agencies or federal or State authorities.

(1) Whenever a complaint is received and/or an investigation is completed by an agency, the appropriate official of that agency shall enter the matter on the log.

(2) Wherever possible, the responsible agency, upon request, shall inform the complainant of the status of the actions pending, and shall inform, when applicable, the referring agency.

(3) ESA, OSHA, USES, and the Office of the Solicitor shall be responsible for preparing the quarterly statistical summary by regions of the respective agency's compliance activity. This summary shall include all complaints and compliance actions which

(i) Were pursued to completion by the subagency during the reporting period or

(ii) Were received during the reporting period or earlier, and are pending. Each agency also shall report a summary of aging and resource allocation data. The summary shall be submitted to the National Committee and the appropriate Regional Committee.

(c) The National Committee staff shall analyze the statistical summaries and shall recommend National or Regional Committee action where problems or short-comings are identified. Pursuant to this review, the National Committee shall take steps to ensure that the responsible agencies make timely responses to complaints and conduct vigorous enforcement action.

§ 42.8 Coordination plan.

(a) Based upon, among other things, the regional enforcement strategies submitted under §42.6, the National Committee shall develop an annual coordination plan concerning farm labor-related responsibilities of the Department, including migrant housing inspections, the referral of complaints, enforcement action on violations of federal or State employment-related laws subject to the jurisdiction of DOL, or regulations administered by DOL or appropriate State agencies, and assistance to stranded

migrant farmworkers.

(b) The coordination plan shall describe the present program responsibilities of ESA for enforcement in the farm labor area of the Fair Labor Standards Act, and the Farm Labor Contractor Registration Act. The plan shall include a statistical summary of the prior-year complaints under, and alleged violations of, FLSA and FLCRA as recorded in the logs of the ESA Wage and Hour Regional and Area Offices, and shall set forth general goals and objectives for FLSA and FLCRA enforcement activities for the following year as established by ESA.

(c) The coordination plan shall describe the present program responsibilities of OSHA for protecting the safety and health of migrant farmworkers. The plan shall include a statistical summary of prior-year complaints under, and alleged violations of, OSHA recorded in the logs of the OSHA State and area offices, and shall provide general goals for OSHA enforcement activities for the following year as established by OSHA.

(d) The plan shall include a review of the procedures developed by ETA to handle emergency situations, such as the stranding or displacement of migrants, and shall provide general goals for USES activities for the following year.

§ 42.9 Farm Labor Specialist (ESA).

(a) The Assistant Secretary for ESA shall designate ESA Compliance Officers as Farm Labor Specialists (*Specialists*). The Specialists shall be assigned to area offices, or field stations under area offices, with significant numbers of agricultural worker activity as designated by ESA. These Specialists shall coordinate FLCRA and FLSA activities in agricultural employment and shall be responsible for:

- (1) Conducting FLCRA/FLSA farm labor investigations;
- (2) Serving as staff advisors and consultants to regional and area officials on FLCRA and FLSA;
- (3) Coordinating FLCRA and FLSA activities with appropriate OSHA and USES activities;
- (4) Directing special migrant farmworker enforcement activities;
- (5) Monitoring the farm labor-related activities of significant crew leaders and growers in the area to ascertain that those against whom ESA has taken enforcement action are operating in compliance with FLCRA and FLSA;
- (6) Conducting technical assistance and public information programs regarding FLCRA and FLSA;
- (7) Coordinating of referrals to and from other federal and State agencies with farm labor responsibilities, such as OSHA and USES;
- (8) Advising regularly the Regional Committee on actual farm labor working conditions in their areas and otherwise participating in regional coordination activities as directed by the Regional Committee; and
- (9) Providing specialized training on FLCRA and FLSA as may be required.

§ 42.10 Farm labor contact persons and regional coordinators (OSHA).

(a) OSHA Area Directors shall be responsible for ensuring that: (1) Migrant farmworker complaints and referrals are evaluated, and appropriate action is taken; and (2) migrant farmworker camp inspections

are scheduled promptly.

(b) OSHA Area Directors shall designate OSHA compliance officers to serve in the capacity of Farm Labor Contact Persons. These Farm Labor Contact Persons shall be trained in enforcement of the Occupational Safety and Health Act of 1970 (84 Stat. 1590, [29 U.S.C. 651 et seq.](#)) and all OSHA standards affecting migrant farmworkers. These Farm Labor Contact Persons shall be designated in OSHA area offices with responsibility for conducting a significant number of migrant farmworker camp inspections.

(c) The OSHA Area Directors shall assign the Farm Labor Contact Person to:

(1) Conduct migrant farmworker camp inspections during periods when migrant housing facilities are occupied, or when it is reasonably predictable the facilities will imminently be occupied;

(2) Serve as a technical advisor on migrant farmworker-related matters;

(3) Train other compliance officers to conduct migrant farmworker camp inspections; and

(4) Perform other OSHA duties, including duties not related to migrant farmworker OSHA enforcement.

(d) Regional Administrators for OSHA shall designate a Farm Labor Regional Coordinator to coordinate migrant farmworker activities. The Farm Labor Regional Coordinators shall:

(1) Coordinate all migrant farmworker related activity within the Region's jurisdiction, i.e., enforcement, training, and public information;

(2) Serve as representatives of the OSHA Regional Administrators on the Regional Farm Labor Coordinated Enforcement Committee's staff level work group; and

(3) Perform other OSHA duties.

(e) OSHA shall request State designees of States having approved occupational safety and health plans and responsibility for conducting a significant number of migrant farmworker camp inspections to appoint a State Farm Labor Coordinator. The State Farm Labor Coordinator shall:

(1) Coordinate State OSHA migrant farmworker camp inspections and other migrant farmworker enforcement activities consistent with the objectives of this section; and

(2) Represent the State on the Regional Farm Labor Coordinating Committee's staff level working group.

§ 42.20 Regional Farm Labor Coordinated Enforcement Committee.

(a) Under the leadership of the ESA Regional Administrator, each region shall establish a Regional Farm Labor Coordinated Enforcement Committee (*Regional Committee*), including representatives of ESA, OSHA, ETA (the Regional MSFW Monitor Advocate), and the Office of the Regional Solicitor.

(b) The Regional Committee shall be headed by the Regional Administrator of ESA.

(c) The Regional Committee shall:

(1) Meet regularly on at least a quarterly basis;

(2) Exchange information on enforcement activities, including complaint/directed action logs developed

by the DOL subagencies;

(3) Develop a written coordinated enforcement strategy specifying for the region all information which the Regional Committee believes will be helpful to the National Committee in formulating the annual coordination plan. This strategy shall include at a minimum all information called for by §42.8 for the region, taking into account particular conditions in the region (e.g., the seasonality of the farm labor population). Once it is reviewed by the National Committee and appropriately revised, the regional offices of ESA, ETA, and OSHA shall follow the enforcement strategy for the year, with revisions as needed by changing circumstances during the year. The National Committee shall be advised of any such revisions;

(4) Maintain contacts with State agencies, farm labor groups, growers, and other interested parties; and

(5) Coordinate cross-training of enforcement personnel within the region.

(d) There shall be a regional committee staff level working group in each region consisting of regional staff representatives from ESA, ETA, OSHA, the Office of the Regional Solicitor, and OSHA State Farm Labor Coordinators within that region. This working group shall meet at least monthly.

(e) The designated Farm Labor Specialist (ESA), Farm Labor Regional Coordinators (OSHA), and MSFW Monitor Advocates (USES) in each region shall be available to provide staff support to the Regional Committees.

(f) To facilitate coordination with farm labor groups and growers in each region, the respective Regional Committee shall hold an annual public meeting, transcribe or recorded at the option of the Regional Committee, which shall be:

(1) Publicized to all appropriate migrant farmworker and grower associations in the region;

(2) Conducted by the director of the Regional Committee with other DOL agency representatives participating as necessary; and

(3) Opened to all members of the public.

(g) The Regional Committee shall conduct and cooperate with the National Committee in order to develop, implement and ensure the uniform and effective application of coordinated enforcement efforts.

§ 42.21 Data collection.

(a) For each protective statute, ESA, OSHA, and the Office of the Solicitor (SOL) shall regularly collect statistical data reflecting their enforcement efforts on a regional and national basis and shall submit such data quarterly to the National and Regional Committees. Fourth quarter data shall be accompanied by annual summaries. These submissions shall include at least the data items specified in this section. The data collected will provide a basis for coordination of enforcement of the protection statutes.

(b) The statistical data submitted by ESA on FLCRA enforcement shall include: (1) Total compliance actions covered by the Act, showing total farm labor contractor (FLC) actions, total farm labor contractor employee (FLCE) actions, total User actions, total concurrent FLSA actions, and total actions with noncompliance; (2) total types of assignments (JS complaint, other complaint, employers of undocumented workers); (3) total types of compliance actions (conciliation, full investigation, follow-up investigation, other); (4) total compliance hours expended; (5) total crew workers affected; (6) total violations by categories and type of violation (FLC, FLCE, User); (7) total compliance actions in which civil money penalties (CMPs) are assessed and total amount assessed; (8) total compliance actions in

which CMPs are collected and total amount collected.

(c) The Wage-Hour Division shall submit the following statistical data on FLSA enforcement with respect to employees working within the categories of Agriculture, Agricultural Products, and Agricultural Services, etc., and various subcategories of each of these three major categories: (1) Total number of completed investigations; (2) total hours spent in conducting investigations; (3) number of employees found underpaid (total, under minimum wage provisions, under overtime provisions); (4) amount of underpayment found (total, under minimum wage provisions, under overtime provisions); (5) total number of employees to whom income was restored; and (6) total amount of money restored.

(d) OSHA's migrant farmworker enforcement statistical data shall be submitted for each region on a state-by-state basis, including OSHA State Plan States, and shall include: (1) Number of complaints received and number of inspections conducted in response; (2) number of referrals received and number of inspections conducted in response; (3) number of programmed or directed inspections, (4) number of violations found by type of violation (serious, willful, repeat and other than serious); (5) total number of employees affected by inspections; (6) approximate total hours spent on migrant camp inspections; (7) number of inspections for which penalties were proposed and amount proposed; (8) number of inspections for which penalties were collected and amount collected.

(e) The SOL shall submit statistical data on farm labor-related enforcement efforts under each protective statute which shall include: (1) Total cases received by SOL; (2) actions taken on cases (settled, referred to ALJ, civil actions filed, referrals to U.S. Attorney); and (3) results of cases (including injunctions and license revocations and denials).

(f) Complaint Response Data—ESA and OSHA shall submit annually a summary of aging data for their respective migrant farmworker-related activities under FLCRA, FLSA and OSHA respectively, showing aging from receipt of a complaint or completion of an investigation until referral to SOL or other final action by the enforcement agency. The Office of the Solicitor shall submit similar data showing aging of matters between receipt by SOL of a case and the completion of some responsive action on the case. Where available, OSHA shall submit data showing the average length of time between receipt of a complaint and the completion of the action taken in response to the complaint. Where available, ESA shall submit data showing complaints received, complaints on hand, and number of actions completed based on complaints.

(g) The National Committee shall review the data collection systems of ESA, OSHA and SOL, as they pertain to farm labor enforcement, and recommend any necessary changes to the subagencies.

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Table 7. Hired Farm Labor - Workers and Payroll: 2007

[For meaning of abbreviations and symbols, see introductory text]

Item	United States
Hired farm labor	farms 482,186
	workers 2,636,509
	\$1,000 payroll 21,877,661
Farms with-	
1 worker	farms 166,390
	workers 166,390
2 workers	farms 110,779
	workers 221,558
3 or 4 workers	farms 97,311
	workers 330,447
5 to 9 workers	farms 64,593
	workers 406,110
10 workers or more	farms 43,113
	workers 1,512,004
Workers by days worked:	
150 days or more	farms 201,292
	workers 911,439
Farms with-	
1 worker	farms 86,117
	workers 86,117
2 workers	farms 45,512
	workers 91,024
3 or 4 workers	farms 35,050
	workers 117,750
5 to 9 workers	farms 19,999
	workers 125,463
10 workers or more	farms 14,614
	workers 491,085
Less than 150 days	farms 384,051
	workers 1,725,070
Farms with-	
1 worker	farms 150,376
	workers 150,376
2 workers	farms 89,963
	workers 179,926
3 or 4 workers	farms 74,760
	workers 251,323
5 to 9 workers	farms 42,007
	workers 258,998
10 workers or more	farms 26,945
	workers 884,447
Reported only workers working	
150 days or more	farms 98,135
	workers 361,948
	\$1,000 payroll 6,947,799
Reported only workers working	
less than 150 days	farms 280,894
	workers 816,908
	\$1,000 payroll 1,459,561
Reported both - workers working 150	
days or more and workers	
working less than 150 days	farms 103,157
	150 days or more, workers 549,491
	less than 150 days, workers 908,162
	\$1,000 payroll 13,470,301
Migrant farm labor on farms with hired	
labor (see text)	farms 38,784
Migrant farm labor on farms reporting only	
contract labor (see text)	farms 8,488

Table 7. **Hired Farm Labor - Workers and Payroll: 2007 - Con.**

[For meaning of abbreviations and symbols, see introductory text]

Item	Delaware
Hired farm labor farms	647
workers	3,223
\$1,000 payroll	36,460
Farms with-	
1 worker farms	229
workers	229
2 workers farms	143
workers	286
3 or 4 workers farms	120
workers	408
5 to 9 workers farms	94
workers	591
10 workers or more farms	61
workers	1,709
Workers by days worked:	
150 days or more farms	390
workers	1,343
Farms with-	
1 worker farms	164
workers	164
2 workers farms	83
workers	166
3 or 4 workers farms	74
workers	249
5 to 9 workers farms	51
workers	307
10 workers or more farms	18
workers	457
Less than 150 days farms	417
workers	1,880
Farms with-	
1 worker farms	179
workers	179
2 workers farms	88
workers	176
3 or 4 workers farms	74
workers	242
5 to 9 workers farms	40
workers	244
10 workers or more farms	36
workers	1,039
Reported only workers working	
150 days or more farms	230
workers	744
\$1,000 payroll	18,887
Reported only workers working	
less than 150 days farms	257
workers	763
\$1,000 payroll	3,413
Reported both - workers working 150	
days or more and workers	
working less than 150 days farms	160
150 days or more, workers	599
less than 150 days, workers	1,117
\$1,000 payroll	14,160
Migrant farm labor on farms with hired	
labor (see text) farms	68
Migrant farm labor on farms reporting only	
contract labor (see text) farms	7

Table 7. **Hired Farm Labor - Workers and Payroll: 2007 - Con.**

[For meaning of abbreviations and symbols, see introductory text]

Item	Maryland
Hired farm labor farms	3,058
workers	14,938
\$1,000 payroll	151,232
Farms with-	
1 worker farms	934
workers	934
2 workers farms	681
workers	1,362
3 or 4 workers farms	660
workers	2,269
5 to 9 workers farms	486
workers	3,030
10 workers or more farms	297
workers	7,343
Workers by days worked:	
150 days or more farms	1,608
workers	6,598
Farms with-	
1 worker farms	607
workers	607
2 workers farms	377
workers	754
3 or 4 workers farms	351
workers	1,177
5 to 9 workers farms	148
workers	926
10 workers or more farms	125
workers	3,134
Less than 150 days farms	2,212
workers	8,340
Farms with-	
1 worker farms	805
workers	805
2 workers farms	502
workers	1,004
3 or 4 workers farms	462
workers	1,593
5 to 9 workers farms	293
workers	1,764
10 workers or more farms	150
workers	3,174
Reported only workers working	
150 days or more farms	846
workers	2,907
\$1,000 payroll	53,584
Reported only workers working	
less than 150 days farms	1,450
workers	4,077
\$1,000 payroll	9,860
Reported both - workers working 150	
days or more and workers	
working less than 150 days farms	762
150 days or more, workers	3,691
less than 150 days, workers	4,263
\$1,000 payroll	87,787
Migrant farm labor on farms with hired	
labor (see text) farms	236
Migrant farm labor on farms reporting only	
contract labor (see text) farms	20

Table 7. **Hired Farm Labor - Workers and Payroll: 2007 - Con.**

[For meaning of abbreviations and symbols, see introductory text]

Item	New Jersey
Hired farm labor	2,415
farms	24,385
workers	237,683
\$1,000 payroll	
Farms with-	
1 worker	616
farms	616
workers	468
2 workers	936
farms	
workers	
3 or 4 workers	446
farms	1,512
workers	412
5 to 9 workers	2,633
farms	473
workers	18,688
10 workers or more	
farms	
workers	
Workers by days worked:	
150 days or more	1,403
farms	9,692
workers	
Farms with-	
1 worker	387
farms	387
workers	252
2 workers	504
farms	
workers	
3 or 4 workers	261
farms	889
workers	268
5 to 9 workers	1,728
farms	235
workers	6,184
10 workers or more	
farms	
workers	
Less than 150 days	1,738
farms	14,693
workers	
Farms with-	
1 worker	536
farms	536
workers	362
2 workers	724
farms	
workers	
3 or 4 workers	337
farms	1,139
workers	232
5 to 9 workers	1,407
farms	271
workers	10,887
10 workers or more	
farms	
workers	
Reported only workers working	
150 days or more	677
farms	3,752
workers	66,321
\$1,000 payroll	
Reported only workers working	
less than 150 days	1,012
farms	3,630
workers	12,607
\$1,000 payroll	
Reported both - workers working 150	
days or more and workers	
working less than 150 days	726
farms	5,940
150 days or more, workers	11,063
less than 150 days, workers	158,755
\$1,000 payroll	
Migrant farm labor on farms with hired	
labor (see text)	429
farms	
Migrant farm labor on farms reporting only	
contract labor (see text)	41
farms	

Table 7. **Hired Farm Labor - Workers and Payroll: 2007 - Con.**

[For meaning of abbreviations and symbols, see introductory text]

Item	Pennsylvania
Hired farm laborfarms	11,722
workers	60,721
\$1,000 payroll	590,891
Farms with-	
1 workerfarms	3,818
workers	3,818
2 workersfarms	2,471
workers	4,942
3 or 4 workersfarms	2,426
workers	8,273
5 to 9 workersfarms	1,843
workers	11,651
10 workers or morefarms	1,164
workers	32,037
Workers by days worked:	
150 days or morefarms	5,728
workers	24,498
Farms with-	
1 workerfarms	2,320
workers	2,320
2 workersfarms	1,290
workers	2,580
3 or 4 workersfarms	1,132
workers	3,769
5 to 9 workersfarms	615
workers	3,846
10 workers or morefarms	371
workers	11,983
Less than 150 daysfarms	8,841
workers	36,223
Farms with-	
1 workerfarms	3,257
workers	3,257
2 workersfarms	1,940
workers	3,880
3 or 4 workersfarms	1,805
workers	6,121
5 to 9 workersfarms	1,138
workers	7,068
10 workers or morefarms	701
workers	15,897
Reported only workers working	
150 days or morefarms	2,881
workers	9,966
\$1,000 payroll	180,858
Reported only workers working	
less than 150 daysfarms	5,994
workers	17,913
\$1,000 payroll	32,553
Reported both - workers working 150	
days or more and workers	
working less than 150 daysfarms	2,847
150 days or more, workers	14,532
less than 150 days, workers	18,310
\$1,000 payroll	377,479
Migrant farm labor on farms with hired	
labor (see text)farms	811
Migrant farm labor on farms reporting only	
contract labor (see text)farms	81

Table 7. **Hired Farm Labor - Workers and Payroll: 2007 - Con.**

[For meaning of abbreviations and symbols, see introductory text]

Item	Virginia	West Virginia
Hired farm laborfarms	10,571	3,251
workers	39,484	9,738
\$1,000 payroll	293,996	32,794
Farms with-		
1 workerfarms	3,918	1,246
workers	3,918	1,246
2 workersfarms	2,511	813
workers	5,022	1,626
3 or 4 workersfarms	2,109	728
workers	7,149	2,438
5 to 9 workersfarms	1,357	367
workers	8,519	2,264
10 workers or morefarms	676	97
workers	14,876	2,164
Workers by days worked:		
150 days or morefarms	4,038	777
workers	13,647	1,964
Farms with-		
1 workerfarms	1,767	383
workers	1,767	383
2 workersfarms	933	213
workers	1,866	426
3 or 4 workersfarms	776	121
workers	2,620	398
5 to 9 workersfarms	364	41
workers	2,314	267
10 workers or morefarms	198	19
workers	5,080	490
Less than 150 daysfarms	8,394	2,848
workers	25,837	7,774
Farms with-		
1 workerfarms	3,493	1,178
workers	3,493	1,178
2 workersfarms	2,047	696
workers	4,094	1,392
3 or 4 workersfarms	1,561	622
workers	5,248	2,076
5 to 9 workersfarms	904	285
workers	5,558	1,758
10 workers or morefarms	389	67
workers	7,444	1,370
Reported only workers working		
150 days or morefarms	2,177	403
workers	6,363	880
\$1,000 payroll	110,899	10,028
Reported only workers working		
less than 150 daysfarms	6,533	2,474
workers	16,940	6,168
\$1,000 payroll	23,449	4,401
Reported both - workers working 150		
days or more and workers		
working less than 150 daysfarms	1,861	374
150 days or more, workers	7,284	1,084
less than 150 days, workers	8,897	1,606
\$1,000 payroll	159,648	18,365
Migrant farm labor on farms with hired		
labor (see text)farms	940	85
Migrant farm labor on farms reporting only		
contract labor (see text)farms	122	8

**PROCESSING OF H-2A APPLICATIONS AND JOB ORDERS
Role of State Workforce Agencies - March 2, 2011**

From: H2ASWA, Chicago - ETA SVC

Sent: Wednesday, March 02, 2011 3:52 PM

To: Alesia Brown; Andrew Szilvasi; Angel Canals; Angela Balderas; Ann Armijo; Annie McCraw; Barbara Lusinger; Barnett, Delicia A - WHD; Barry Hirshbein; Belen Ledezma; Cutter, Bernarda - ETA; Beverly Bynum ; Beverly Williams; Bonnie Lance; Brenda Wilson; Brian Clark; Bridget Kemmling; Bubba Grant; Camille Nieves; Carl Reavis; Carmen Rodriguez ; Carol Kanayama; Cecilia Garduno; Charles Davis; Chris Ramos; Chris Wilhelm; Christine Bailey; Christy Chapman; Cindy Hudson; Claudia Greenwood; Colleen Dubbe; Connie Fuller; Connie Parks; Cris LaDuke; Cynthia Seckler; Daniel Gunter; Daniel Shaw; Daniel Valdez; David Copeland; David Ghee; David Slimp; Debi Traylor; Debra Roseburr; Diana Armstead; Diane G. Smith; Dolly Raja; Donna Allen; Doris Lachance; Dunnia Aplicano; E Magana; Erlinda Anderson; Ernesto Magana; Fernando Chavarria; FJuan Perez-Febles; FLC Minnesota; FLC Ohio; Frances Arangure; Frances Pineda; Frances Regan; Francis Idiong; Francisco Cerda; Francisco Macias; Gary Hoffman; Gayla Reardon; Gloria Bostic; Gloria Harrison; Gloria Neal; Henry Gross; Herb Greenwell; Irene Laguna; Isabel Silva; Jamie Duffin; Janie Claytor-Woodson; Janneth Bronyraur; Jason Padgett; Jeanette Pickinpaugh; Jeff Gatewood; Jennifer Bauer; Jennifer Wilch; Jim Case; Joan Modrell; Joan-Ann Anthony; Joanne King; Jody Thomas; John M. Waters; John McDonald; John Newkirk; John Stoltz; Johnny Riley; Jon Weirether; Jorge Acero; Jorge Gomez; Jose Ocasio; Joyce Hahn; Regalado, Juan - ETA; Judith Ezop; Katherine Takasugi; Keith Badger; Ken Kelnhofer; Kessler, James F - WHD; Keyla Rivero-Rodriguez; Kim Morigeau; Kim Rodriguez; Laurie Fuglvog; Leben, John A - WHD; Leila Jackson; Linda Prince; Lori Adams; Lucy Ruelas; Ruby Peters; Maria Perez; Maria Rabizo; Mary Fleming; Melissa Romero-McKean; Merlin Williams; Michelle Abraham; Millie Dileo; Nicholas Bishop; Nicole Skeek; Norma Martinez; Oliver Jarrell; Pablo Nunez; Rafael Di Stasio; Rafael Rivera; Ramon Valencia; Rebeca Guerra; Richard Olivarez; Rigoberto Villegas; Rodney Carr; Roman Diaz; Roman Diaz; Ron Hike; Ron Miller; Rosa Flores-Quinones; Rosario Quesada; Ruby Bryson (RBryson@dew.sc.gov); Russell Ogawa; Samantha Pearson; Shannan Canfield; Sharon Rood; Sheila Gray; Sherri Wilson (Sherri.Wilson@dol.state.ga.us); Sherry Clark; Stacey Wire; Steve Porr; Susan Gunsch; Sylvia Sanchez; Roberts, Thadeus - ETA; Thomas Ukinski; Tim Lawhorn; Tim Mogle; Tracy Shaleen; Travis Crabtree; Venus Vendoures; Vincent McQueen; Vint DeGraw; Vivian Hopkins; W. Pat Sanderlin; Walter Jants; Weldon Floyd; William Bexley; William Carillo; William Parks; William Reed; Yvette DeLeeuw; Barnett, Delicia A - WHD; Brooks, Maria - ETA; Conboy, Chris - ETA; Ford, Chad - ETA; Banos, Janet - ETA; Kessler, James F - WHD; Leben, John A - WHD; Massey, Valerie - ETA; Orona, Ben - ETA; Pasternak, Brian - ETA; Steis, Tatyana - ETA

Cc: Wills, Lynette - ETA; Gonzalez, Chris - ETA; Rotterman, John - ETA; Giles, Charlene - ETA

Subject: SWA H-2A Roles and Responsibilities

IMPORTANT INFORMATION REGARDING THE PROCESSING OF H-2A APPLICATIONS AND JOB ORDERS

March 2, 2011

Dear SWA H-2A Staff:

The National Office of Foreign Labor Certification has requested that the Chicago NPC issue this communication in order to (1) remind SWA staff of their roles and responsibilities under the 2010 H-2A Final Rule, and (2) address certain issues with respect to appropriate content on agricultural clearance orders, which fail to meet the regulatory requirements of 20 CFR 653, Subpart F and 20 CFR 655, Subpart B.

As you are aware, the U.S. Department of Labor regulations at 20 CFR part 653, Subpart F and 20 CFR part 655, Subpart B require the State Workforce Agency (SWA) to perform a review of the employer's Agricultural and Food Processing Job Order (ETA Form 790 and attachments) (H-2A job order) filed in

PROCESSING OF H-2A APPLICATIONS AND JOB ORDERS
Role of State Workforce Agencies - March 2, 2011

connection with an H-2A application to ensure compliance with the regulations, 20 CFR part 653, subpart F, before accepting that job order for intrastate clearance. We appreciate your partnership with us in this endeavor, and we know how much you are confronted with in the first examination of the job order. That is why the CNPC has continued to conduct monthly calls to address your questions concerning the processing of job orders under the 2010 Final Rule. Additionally, our SWA training slides, Frequently Asked Questions (FAQs), job order checklist, and general procedures guidance covering the initial processing of employer job orders are important reference documents for SWA staff involved in the review of H-2A job orders.

As we reach one year of implementation under the 2010 Final Rule, we need to continue to be diligent in reviewing the terms and conditions of H-2A job offers as some of them are being accepted containing language that fail to meet all of the applicable regulatory requirements of 20 CFR part 653, Subpart F and 20 CFR part 655, Subpart B. As outlined below, the CNPC has identified certain specific issues of non-compliance which require our immediate attention. Please note that consistent with the Department's regulations:

- We may not accept for clearance an H-2A job order which is not in compliance all applicable regulatory requirements found at 20 CFR part 653, Subpart F and 20 CFR 655, Subpart B.
- If an employer's H-2A job order fails to comply with one or more applicable regulatory provisions, the SWA must issue a Notice of Deficiency clearly explaining the reasons for not accepting the job order and list the relevant regulatory provisions with which the job order has failed to comply.
- As a general reminder, please refer to the attached general job order processing procedures we worked on together in February - March 2010.

Important Note: If, after a SWA denial of the job order, the employer chooses to utilize the H-2A emergency filing procedures under 20 CFR 655.134, the Office of Foreign Labor Certification/CNPC has and will continue to support your denial of the job order when the employer files his H-2A application. The CNPC will issue a Notice of Deficiency requesting the employer address each issue outlined in your denial letter where the denial reason(s) is consistent with the regulations and program guidance. The SWA should be prepared to provide the CNPC, when requested, with documentation or other supporting materials/information that can assist us in preparing and issuing a defensible Notice of Deficiency.

With respect to job offer terms and conditions, a few of the issues we wanted to bring to your attention include the following:

1. Inclusion of Grievance and Arbitration Language - 20 CFR 655.122(b) - Job Qualifications and requirements

Each job requirement in the job order must be bona fide and consistent with the normal and accepted job requirements used by non H-2A employers in the same or comparable occupations and crops. The SWA must not accept for clearance a job order which contains grievance and arbitration language which does not meet this statutory/regulatory standard. Except for the North Carolina Growers Association (NCGA), which was approved by the Department long ago to use this language specifically in connection with its collective bargaining agreement, the SWA must require the employer to remove the grievance and arbitration language from their job order(s) where such terms are not normal and accepted job requirements used by non H-2A employers in the same or comparable occupations and crops. If the employer(s) fails to remove such language when requested, the SWA must issue a denial letter to the employer(s).

Recently, the Washington SWA issued a notice of deficiency on the grounds that the job order contained mandatory arbitration and waiver provisions considered not to be normal and accepted among non-H-2A growers in the state. When the emergency application was subsequently filed, the CNPC supported the

PROCESSING OF H-2A APPLICATIONS AND JOB ORDERS
Role of State Workforce Agencies - March 2, 2011

SWA's action. The application was approved only when the employer removed the mandatory terms and replaced it with language making it clear that the workers may choose to use arbitration, rather than be forced into arbitration as a mandatory condition of employment.

2. Language regarding Disclosure of Work Contract - 20 CFR 655.122(q)

Each job offer must advise potential applicants that they will be provided with a copy of the work contract. Therefore, we must not accept for clearance any job order that does not include the following language (consistent with 20 CFR 655.122(q)):

"The employer will provide to an H-2A worker no later than the time at which the worker applies for the visa, or to a worker in corresponding employment no later than on the day work commences, a copy of the work contract between the employer and the workers in a language understood by the worker."

We have noticed that some job orders contain confusing language with respect to this regulatory requirement OR outdated language from the 2008 regulations. Regardless, SWA staff should pay close attention to the language contained in the employer's job offer with respect to the proper disclosure of work contracts and ensure compliance with the 2010 Final Rule language.

3. Language regarding In-Bound Transportation and Subsistence - 20 CFR 655.122(h)(1)

Each job offer must properly apprise potential applicants of the transportation and subsistence guarantees when traveling to the place of employment. The regulations clearly provide the standard language for use in employer job offers, which includes the following:

"The employer must pay the worker for reasonable costs incurred by the worker for transportation and daily subsistence from the place from which the worker has come to work for the employer, whether in the U.S. or abroad to the place of employment."

Again, we have noticed that some job orders contain confusing language with respect to this regulatory requirement OR outdated language from the 2008 regulations. The following is an example of an unacceptable transportation and subsistence language found in an approved job order on the H-2A Public Job Registry that was previously accepted. The language clearly states that the employer will reimburse from the port of entry versus where the worker has come to work.

"The employer will reimburse the worker for costs incurred by the worker for visa application fees, border crossing fees, transportation costs and reasonable subsistence from the U.S. Consulate/Port of Entry from which the worker came to work for the employer to the place of employment."

SWA staff should pay close attention to the language contained in the employer's job offer with respect to the proper disclosure of in-bound transportation and subsistence benefits and ensure compliance with the 2010 Final Rule language.

4. Unduly Restrictive Job Qualifications and Requirements - 20 CFR 655.122(b)

The Department's regulations prohibit the employer from including in the job offer job qualifications or requirements that would act to inhibit able, willing, qualified and available U.S. workers from applying for the job opportunity for which the employer seeks to hire H-2A workers. Section 20 CFR 655.122(b) explicitly states the following:

PROCESSING OF H-2A APPLICATIONS AND JOB ORDERS
Role of State Workforce Agencies - March 2, 2011

"[e]ach job qualification and requirement listed in the job order must be bona fide and consistent with the normal and accepted qualifications required by employers that do not use H-2A workers in the same or comparable occupations and crops. Either the CO or SWA may require the employer to submit documentation to substantiate the appropriateness of any job qualification specified in the job order."

Employers who submit job order(s) which contain unduly restrictive job qualifications and requirements must be required to document the need for the job qualification or requirement. The SWA has authority under the 2010 Final Rule to require employers to substantiate each job qualification and requirement where this regulatory standard of review has not been met. If the documentation does not substantiate the appropriateness of the job qualification or requirement, employers must be required to remove the qualification or requirement from the job order and issue a denial letter if the employer fails to do so citing to 20 CFR 655.122(b).

If you have any questions regarding this e-mail, please feel free to contact the CNPC through the H-2A SWA mailbox. Thank you for your continued cooperation in assisting the CNPC in their endeavor to provide good customer service to the H-2A stakeholders while continuing to carry out our mutual mandate in the H-2A program.

Sincerely,

CHICAGO NATIONAL PROCESSING CENTER



**U.S. Department Labor
Employment and Training Administration**

OMB Control No. 1205-0134
Expiration Date: November 30, 2012

**Agricultural and Food Processing Clearance Order ETA Form 790
Pedido de Empleados para Agricultura y Procesamiento de Alimentos**

1. Employer's Name and Address (Number, Street, City, State, and Zip Code)/ Nombre y Dirección del Empleador (Numero, Calle, Ciudad, Estado y Código Postal)	Nos. 4 - 8 for STATE USE ONLY Números 4 a 8 para USO ESTATAL	
	4. Industry Code/Código Industrial	5. Job Order No. /Num. de Orden de Empleo
	6. Occupational Title and Code /Título Ocupacional y Código	
	7. Clearance Order Issue Date / Fecha de Tramite	
	8. Job Order Expiration Date / Fecha de Expiración	
Telephone number/Teléfono: _____ Fax: _____	9. Anticipated Period of Employment / Periodo Anticipado de Empleo	
2. Location and Direction to Work Site/ Ubicación y Dirección al Lugar de Trabajo	From/ Desde: _____	To/Hasta: _____
	10. No. of Workers Requested / Num. de Trabajadores Solicitados	
	11. Anticipated Hours of Work per Week/Horas Anticipadas de Trabajo por Semana. Total: _____	
	Sunday / Domingo _____ Monday / Lunes _____	
	Tuesday / Martes _____ Wednesday / Miércoles _____	
	Thursday / Jueves _____ Friday / Viernes _____	
	Saturday / Sábado _____	
(If additional space is needed, use separate sheet of paper/ Si necesitas más espacio, utilices otra hoja de papel)	12. Collect Calls Accepted from/Aceptan Llamadas por Cobrar de:	
3. Location and Description of Housing / Dirección y Descripción de la Vivienda	Employer / Empleador	Yes/Si <input type="checkbox"/> No <input type="checkbox"/>
	Local Office / Oficina Local	Yes/Si <input type="checkbox"/> No <input type="checkbox"/>
(If additional space is needed, use separate sheet of paper / Si necesitas más espacio, utilices otra hoja de papel)		

13. Board Arrangements / Arreglo de Alojamiento

14. Referral Instructions / Instrucciones sobre cómo Referir Candidatos

15. Job Specifications / Especificaciones del Trabajo

(If more space is needed, summary of Material Job Specifications in ENGLISH can be included in separate document, and may also be included in SPANISH)

16. Wage Rates, Special Pay Information and Deductions / Tarifa de Pago, Información Sobre Pagos Especiales y Deducciones (Rebajas)

Crop Activities	Hourly Wage	Piece Rate / Unit(s)	Special Pay (bonus, etc.)	Deductions	Yes/Sí	No	Pay Period Período de Pago
Cultivos	Salario por Hora	Pago por Pieza / Unidad(es)	Pagos Especiales (Bono, etc.)				
	\$	\$		Social Security / Seguro Social	<input type="checkbox"/>	<input type="checkbox"/>	Weekly / Semanal
	\$	\$		Federal Tax Impuestos Federales	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	\$	\$		State Tax Impuestos Estatales	<input type="checkbox"/>	<input type="checkbox"/>	Bi-weekly / Quincenal
	\$	\$		Meals / Comidas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	\$	\$		Other (specify)/ Otro (especifica)	<input type="checkbox"/>	<input type="checkbox"/>	Other / Otro <input type="checkbox"/>

More Details About the Pay / Mas Detalles Sobre el Pago

(If additional space is needed, use separate sheet of paper. / Si necesitas más espacio, utilice otra hoja de papel)

17. Transportation Arrangements / Arreglos de Transportación

(If additional space is needed, use separate sheet of paper. / Si necesitas más espacio, utilices otra hoja de papel)

18. Is it the prevailing practice to use Farm Labor Contractors (FLC) to recruit, supervise, transport, house, and/or pay workers for this (these) crop activity (ies)? ¿ Es la práctica habitual de usar Contratistas de Trabajo Agrícola para reclutar, supervisar, transportar, dar vivienda, y/o pagarle a los trabajadores para este(os) tipo(s) de cosecha(s)? Yes / Si No

If you have checked yes, what is the FLC wage for each activity? / Si contesto "Si," cual es el salario que le pagas al Contratista de Trabajo Agrícola por cada actividad?

19. Unemployment Insurance provided? Seguro de Desempleo? Yes/Si No

20. Workers' compensation insurance provided? Se le provee seguro de compensación/indemnización al trabajador: Yes/Si No

21. Are tools provided at no charge to the workers? / Se les proveen herramientas sin costo alguno a los trabajadores? Yes/Si No

22. List any arrangements which have been made with establishment owners or agents for the payment of a commission or other benefits for sales made to workers. (If there are no such arrangements, enter "None") / Enumere todos los acuerdos o convenios hechos con los propietarios del establecimiento o sus agentes para el pago de una comisión u otros beneficios por ventas hechas a los trabajadores. (Si no hay ningún acuerdo o convenio, indique "Ninguno")

23. List any strike, work stoppage, slowdown, or interruption of operation by the employees at the place where the workers will be employed. (If there are no such incidents, enter "None") / Enumere toda huelga, paro o interrupción de operaciones de trabajo por parte de los empleados en el lugar de empleo. (Si no hay incidentes de este tipo, indique "Ninguno")	
24. Address of Order Holding Office (include Telephone number)/Dirección de la Oficina donde se radica la oferta (incluya el número de teléfono)	25. Name of Local Office Representative (include direct dial telephone number) / Nombre del Representante de la Oficina Local (Incluya el número de teléfono de su línea directa)
26. Employer's Certification: This job order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job. Certificación del Empleador: Esta orden de trabajo describe los términos y condiciones del empleo que se le ofrece, y contiene todos los términos y condiciones materiales ofrecidos.	
Employer's Signature & Title/ Firma y Título del Empleador _____ Date: _____	
<p>READ CAREFULLY, In view of the statutorily established basic function of the Employment Service as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the State agencies are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the One-Stop Career Center constitute a contractual job offer to which the One-Stop Career Center, ETA or a State agency is in any way a party.</p> <p>LEA CON CUIDADO, En vista de la función básica del Servicio de Empleo establecida por ley, como una entidad de intercambio laboral sin comisiones, es decir, como un foro para reunir a los empleadores y los solicitantes de empleo, ni ETA ni las agencias del estado pueden garantizar la exactitud o veracidad de la información contenida en las órdenes de trabajo sometidas por los empleadores. Ni ninguna orden de trabajo aceptado o contratado en el Centro de Carreras (One-Stop Career Center) constituyen una oferta de trabajo contractuales a las que el One-Stop Career Center, ETA o un organismo estatal es de ninguna manera una de las partes.</p>	
<p>Public Burden Statement The public reporting burden for responding to ETA Form 790, which is required to obtain or retain benefits (44 USC 3501), is estimated to be approximately 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and reviewing the collection. The public need not respond to this collection of information unless it displays a currently valid OMB Control Number. This is public information and there is no expectation of confidentiality. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to the U.S. Department of Labor, Migrant and Seasonal Farmworker Program, Room S4209, 200 Constitution Avenue, NW, Washington, DC 20210.</p>	

Step-By-Step Instructions for Completing Form ETA-790

These instructions will help employers understand the information that is being requested. Please read the instructions carefully and follow them to minimize the chances of your application package being returned due to incomplete information. **Please try and include as much detail as possible on the face of the form itself. Even if attachments are necessary, the essential terms and conditions must be spelled out on the face of this form.** Compliance with the disclosure requirements of the Migrant and Seasonal Farmworker Protection Act and all assurances required by federal regulations are the responsibility of the employer.

- Item 1 - Enter full name of individual employer, partnership, or corporation, and the complete address and complete phone number.
- Item 2 - Provide the location of and directions to your work site and workers housing. Use commonly understood street or highway numbers and accurate distances.
- Item 3 - Enter the capacity of the housing and a brief description of the housing in English and Spanish. Describe housing facilities such as: a) Structures provided, e.g., camp, cabin, barracks or house. Describe general composition of the living quarters such as wood or concrete; b) Note the number of persons for whom housing is available. Note the number of barracks, family units and /or, single rooms available, and the total capacity of these types of units; c) The furnishings and equipment supplied by the employer, e.g., furniture, eating and cooking utensils; utilities available, such as gas, electricity, heat; parking spaces for trailers, arrangements for utility hookups and charges; Medical and recreational facilities available for worker's benefit and their locations; whether or not public housing is provided; and, are any charges required of workers to use the housing.
- **Item 4, 5, 6, 7, and 8 for State Agency use only.**
- Item 9 - Enter date when work to be performed by these workers is scheduled to begin. Enter date when work to be performed by those workers is expected to be finished.
- Item 10 - Enter total number of workers that you are requesting. Also, state in body of job order total number of workers to be employed in this activity or service for the period of time involved.
- Item 11 - Enter total hours per week. Enter normal hours worker is expected to work each day of the week. Describe any special work schedule situations in an attachment.
- Item 12 - Indicate whether or not an employer is willing to accept collect calls from job applicants. Indicate whether or not the order-holding office is willing to accept collect calls from job applicants.
- Item 13- Describe how the employer intends to provide either 3 meals a day to each worker or furnish free and convenient cooking and kitchen facilities so that workers can prepare their own meals. The charge for 3 meals shall be within the approved range unless the regional administrator has approved a higher charge. Where the employer provides facilities for cooking, explain how the workers will have access to stores where they can purchase groceries.
- Item 14- Explain how applicants are to be hired. Indicate, for example, the hours that the order-holding office will be open to accept telephone referrals; the hours that the employer will be available to interview workers by telephone; whether referred workers should report to the order-holding office when they arrive in the area; and whether anybody different from the employer has hiring authority.

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- Item 15 - Provided a detailed summary of the job duties inside the box. Even if additional information is to be provided in an attachment, the summary must be provided in the box and must be as complete as possible. In the box provided list all major crop activities, summarize the major duties associated with those duties and estimate the percentage of time that will be spent doing them. Describe the duties (work tasks) which make up the job, in step-by-step detail, as appropriate. Avoid technical terms when possible, or define them where usage is necessary. Describe use of any equipment necessary to carry out tasks (i.e. harvesting onions – pull onions from the ground, snip off the tops using a sniper, deposit onions in a 50 pound sack, (80%); harvest tomatoes – detach green tomatoes from plants and deposit them in a 20 pound bucket, carry bucket to a truck to be located at the edge of the field, throw bucket up to the person on the truck (20%).

In an attachment, provide whatever additional detail is required to explain the full range of tasks and duties required. Explain any worker performance standards that will apply. Describe any training provided. Describe any experience that is required. Describe any licenses or permits that are required. Describe what level of supervision will be provided. Explain the provision of necessary tools and equipment.

- Item 16 - Enter appropriate wage rate information for each distinct activity. In no event may rate be less than the applicable FLSA or State minimum, or the applicable prevailing hourly wage rate, whichever is higher. Piece rates may not be less than those prevailing in the area and occupation. Include an attachment explaining your handling of this item. If H2A workers are requested, the Adverse Effect Wage Rate (AEWR) is the guaranteed minimum unless FLSA or State minimum, or the applicable prevailing hourly wage rate is higher. Enter the unit used when piece rates are being paid. Describe the unit size that governs how the piece rate is paid, such as tree size/spacing, weight/size/number of boxes picked/packed, dimensions of bags or boxes filled. For example: 5/8 bushel, 90 pound bag or box, 10 box bin.

Hourly Rate Equivalent

The piece rate must be expressed in estimated hourly wage rate equivalents for each activity and unit size, i.e., what a worker might expect to earn per hour at this rate. The estimated hourly equivalent is not guaranteed. However, the estimated hourly equivalent can be no less than the highest of the applicable Federal or State minimum (or AEWR if applicable) or the prevailing hourly wage rate.

Additional information may include:

1) Any bonus or incentives aside from the flat rate or piece rate, e.g., garden space, milk, eggs, meat, health insurance; 2) Special conditions on guaranteed weeks of work, under what conditions bonuses or incentives are to be paid, if any; 3) If the activity is covered by a "schedule of rates", indicate conditions under which each of the rates on the schedule applies; 4) Describe frequency of pay arrangements, e.g., daily, weekly, biweekly; 5) Indicate deductions to be made from workers' wages, such as Social Security, workers' compensation, health insurance, Federal or state tax. If applicable, note whether employer of record or farm labor contractor will be responsible for deductions.

- Item 17 - Describe how the employer intends to reimburse transportation costs or advance or provide for the cost of transportation and subsistence, when such is the prevailing practice in the area. Describe in detail transportation arrangements, if any such as: Any arrangement whereby employer will provide transportation for workers from the place of recruitment to the place of employment; if employers will reimburse workers for their travel expenses in getting to the job or arrange for charter by transport for group of workers; any arrangement whereby employers advance transportation costs to workers; instructions to workers on what to do in case of emergencies, accidents, breakdowns; and, the name of the contact person when such events occur.

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- Item 18 - Have you in the past used a Farm Labor Contractor to provide you with workers or is it a common and prevailing practice in the area of intended employment to pay farm labor contractors to recruit, hire, transport, or supervise the sorts of workers requested? If so, state the wage that you have paid in the past and/or would be willing to pay a farm labor contractor for providing you with the quantity of workers that you are requesting and performing the duties that are prevailing.
- Item 19 - Indicate whether the employer pays unemployment insurance taxes.
- Item 20 - Indicate whether the employer has a valid workers' compensation insurance policy that will cover the workers requested.
- Item 21 - Indicate whether tools are going to be provided to the worker at no cost to the worker.
- Item 22 - Question is self explanatory.
- Item 23 - Question is self explanatory.
- Item 24 - Enter the address and phone number of the One-Stop Career Center (Order - Holding Office) that is closest to the employer.
- Item 25 - Name and direct dial telephone number of the of One-Stop Career Center official that is most familiar with the job order.
- Item 26 - Read the employer's certification statement before signing. To be signed by the employer or other authorized person. Type or print full name and title.

FY2010 H-2A Reg. 2 ETA

Work City	Wrk ST	REQ	CERT	Certified - Full	Certified - Partial	Withdrawn
Total ETA Reg. 2		4,721	4,551	2,728	1,823	52
BRIDGEVILLE	DE	40	20	20		
LEWES	DE	6	6	6		
UPLAND	DE	20	20	20		
Sub-Total DE		66	46	46		
ABINGDON	MD	2	2	2		
ADAMSTOWN	MD	15	15	15		
BALTIMORE	MD	6	6	6		
CAVETOWN	MD	16	16	16		
CHESAPEAKE CITY	MD	50	50	50		
CHESTERTOWN	MD	21	21	21		
CHURCHVILLE	MD	14	14	14		
DENTON	MD	15	15	15		
DICKERSON	MD	7	7	7		
FREDERICK	MD	58	58	58		
GLENWOOD	MD	8	8	8		
HAGERSTOWN	MD	5	5	5		
HAMPSTEAD	MD	12	12	12		
HANOVER	MD	1	1	1		
HURLOCK	MD	24	24	24		
HYDES	MD	14	14	14		
KENNEDYVILLE	MD	90	90	90		
MECHANICSVILLE	MD	7	7	7		
MONKTON	MD	16	16	16		
MOUNT AIRY	MD	10	10	10		
MT. AIRY	MD	5	5	5		
MYERSVILLE	MD	4	4	4		
NORTH EAST	MD	6	6	6		
PHOENIX	MD	20	20	20		
POOLSVILLE	MD	5	5	5		
RIDGELY	MD	11	11	11		
SABILLASVILLE	MD	8	8	8		
SHARPSBURG	MD	10	10	10		
SMITHSBURG	MD	28	28	28		
STEVENSON	MD	10	10	10		
STREET	MD	42	21	21		21
SYKESVILLE	MD	4	4	4		
THURMONT	MD	8	8	8		
UPPERCO	MD	11	8	8		
WALDORF	MD	6	6	6		
WESTMINSTER	MD	58	58	58		
WHITE HALL	MD	12	12	12		
WOODBINE	MD	6	6	6		
WOODSTOCK	MD	4	2	2		
Sub-Total MD		649	623	623	0	21

FY2010 H-2A Reg. 2 ETA

Work City	Wrk ST	REQ	CERT	Certified - Full	Certified - Partial	Withdrawn
ASPERS	PA	6	6	6		
AVELLA	PA	4	4	4		
BERWICK	PA	48	48	48		
BIGLERVILLE	PA	2	2	2		
BURGETTSTOWN	PA	4	4	4		
CHADDS FORD	PA	1				1
CLINTON	PA	10	10	10		
COATESVILLE	PA	11	11	11		
CORAPOLIS	PA	16	16	16		
DALLAS	PA	9	4	4		
DALTON	PA	7	7	7		
DILLSBURG	PA	34	34	34		
DOVER	PA	48	48	48		
ELIZABETHTOWN	PA	8	8	8		
FINLEYVILLE	PA	4				4
FOMBELL	PA	8	8	8		
GERMANSVILLE	PA	24	12	12		
GLEN ROCK	PA	6				
GLENMOORE	PA	6	2	2		
GREENSBURG	PA	6	6	6		
HAMBURG	PA	6	6	6		
HERMITAGE	PA	12	12	12		
HOLLIDAYSBURG	PA	6	6	6		
HONEY BROOK	PA	26	14	14		12
HUSTONTOWN	PA	3	3	3		
INDIANA	PA	5	5	5		
KENNETT SQUARE	PA	7	7	7		
LAKEWOOD	PA	6	6	6		
LANCASTER	PA	5	5	5		
LEESPORT	PA	21	21	21		
MANHEIM	PA	18	18	18		
MCDONALD	PA	4	4	4		
MCMURRAY	PA	10	10	10		
MEADVILLE	PA	8	8	8		
MECHANICSBURG	PA	10	10	10		
MONTGOMERY	PA	10	10	10		
NEW HOPE	PA	42	36	36		6
NEW RINGGOLD	PA	5	5	5		
NORTHAMPTON	PA	3	3	3		
OREFIELD	PA	84	73		73	
ORRTANNA	PA	6	6	6		
ORWIGSBURG	PA	23	23	23		
REINHOLD	PA	4	4	4		
RENFREW	PA	5	5	5		
ROCHESTER	PA	4	4	4		
UNIONVILLE	PA	1	1	1		

FY2010 H-2A Reg. 2 ETA

Work City	Wrk ST	REQ	CERT	Certified - Full	Certified - Partial	Withdrawn
VENETIA	PA	2	2	2		
WARRINGTON	PA	30	30	30		
WEATHERLY	PA	32	32	32		
WEST CHESTER	PA	7	7	7		
WEXFORD	PA	9	9	9		
YORK	PA	10	10	10		
Sub-total PA		686	625	552	73	23
ALTON	VA	10	10		10	
AMELIA	VA	11	11		11	
AXTON	VA	5	5		5	
BARBOURSVILLE	VA	16	16	16		
BASKERVILLE	VA	26	26		26	
BERRYVILLE	VA	12	12	12		
BLACKSTONE	VA	16	16		16	
BLACKWATER	VA	8	8	8		
BLAIRS	VA	48	48		48	
BRACEY	VA	6	6		6	
BREMO BLUFF	VA	5	5	5		
BRODNAX	VA	2	2	2		
BROOKNEAL	VA	6	6		6	
BUFFALO JUNCTION	VA	20	20		20	
CALLANDS	VA	10	10		10	
CASTLEWOOD	VA	7	7	7		
CHARLES CITY	VA	6	6	6		
CHARLOTTE CT. HS.	VA	5	5		5	
CHARLOTTE CT.HS.	VA	4	4		4	
CHASE CITY	VA	6	6		6	
CHATHAM	VA	46	46	10	36	
CHESAPEAKE	VA	20	20	20		
CLARKSVILLE	VA	4	4		4	
CLAUDEVILLE	VA	2	2	2		
CLAUDVILLE	VA	7	7	7		
CLEARBROOK	VA	36	35		35	
CLOVER	VA	3	3		3	
CONCORD	VA	4	4		4	
CROSS JUNCTION	VA	22	22	22		
CROZET	VA	6	6	6		
CUMBERLAND	VA	1	1		1	
DANVILLE	VA	4	4		4	
DELTAVILLE	VA	20	20	20		
DINWIDDIE	VA	1	1		1	
DOLPHIN	VA	7	7		7	
DRAKES BRANCH	VA	10	9		9	
DRY FORK	VA	41	41		41	
DUNDAS	VA	14	14		14	
ELK CREEK	VA	22	22	22		

FY2010 H-2A Reg. 2 ETA

Work City	Wrk ST	REQ	CERT	Certified - Full	Certified - Partial	Withdrawn
EMPORIA	VA	18	18		18	
FANCY GAP	VA	10	10	10		
FARMVILLE	VA		0		0	
FORT BLACKMORE	VA	30	30	30		
FREDERICKSBURG	VA	26	19		19	6
FREEMAN	VA	3	3		3	
GALAX	VA	17	16	16		
GASBURG	VA	4	4		4	
GLADYS	VA					
GORE	VA	60	30	30		
GREENVILLE	VA	2	2	2		
GRETNA	VA	18	18		18	
HALIFAX	VA	1,358	1,355	620	735	
HANOVER	VA	4	4	4		
HARDYVILLE	VA	7	7	7		
HAYES	VA	6	6	6		
HILLSVILLE	VA	16	16	16		
HURT	VA	6	6		6	
JARRATT	VA	5	5		5	
JAVA	VA	24	23		23	
JETERSVILLE	VA					
KEELING	VA	18	18		18	
KELLING	VA	6	6		6	
KENBRIDGE	VA	10	10		10	
KEYSVILLE	VA	35	35		35	
LAUREL FORK	VA	12	12	12		
LAWRENCEVILLE	VA	15	15		15	
LONG ISLAND	VA	4	4		4	
LUNENBURG	VA	2	2		2	
MARTINSVILLE	VA	4	4		4	
MCKENNEY	VA	11	11		11	
MECHANICSVILLE	VA	43	43	43		
MIDDLETOWN	VA	10	10	10		
MIDLOTHIAN	VA	10	10	10		
MOSELEY	VA	26	26	26		
MOUTH OF WILSON	VA	15	15	15		
NATHALIE	VA	22	22		22	
NELSON	VA	3	3		3	
NEW KENT	VA	5	5	5		
ORANGE	VA	20	20	20		
PALMYRA	VA	3	3	3		
PAMPLIN	VA	6	6		6	
PENHOOK	VA	18	18		18	
PETERSBURG	VA	6	6		6	
PINEY RIVER	VA	55	55	55		
PURCELLVILLE	VA	10	10	10		
QUINTON	VA	4	4	4		

FY2010 H-2A Reg. 2 ETA

Work City	Wrk ST	REQ	CERT	Certified - Full	Certified - Partial	Withdrawn
RANDOLPH	VA	6	6		6	
RAWLINGS	VA	13	13		13	
RED OAK	VA	9	9		9	
RINGGOLD	VA	19	19		19	
ROCKY MOUNT	VA	12	12		12	
SAXE	VA	4	4		4	
SCOTSSBURG	VA	6	6		6	
SKIPWITH	VA	8	8		8	
SOUTH BOSTON	VA	7	7		7	
SOUTH HILL	VA	88	83	25	58	
SPENCER	VA	4	4		4	
STEPHENS CITY	VA	22	19	19		
STONEY CREEK	VA					
STONY CREEK	VA	8	8		8	
SUFFOLK	VA	34	34	34		
SUTHERLAND	VA	2	2		2	
SUTHERLIN	VA	23	20	1	19	2
TIMBERVILLE	VA	215	215	215		
VERNON HILL	VA	11	11		11	
VIRGILINA	VA	7	7		7	
VIRGINIA BEACH	VA	6	6	6		
WACHAPREAGUE	VA	10	7		7	
WARFIELD	VA	2	2		2	
WARSAW	VA	30	30	30		
WHITE PLAINS	VA	6	6		6	
WINCHESTER	VA	229	224	16	208	
WYLIESBURG	VA	11	11		11	
Sub-Total VA		3,278	3,215	1,465	1,750	8
LESAGE	WV	5	5	5		
MARTINSBURG	WV	34	34	34		
SOUTH CHARLESTON	WV	3	3	3		
Sub-Total WV		42	42	42	0	0

FY2010 H-2A NJ

Work City	Wrk ST	REQ	CERT	Certified - Full	Certified - Partial	Withdrawn
ANDOVER	NJ	7	7	7		
BAPTISTOWN	NJ	4	4	4		
BORDENTOWN	NJ	2	2	2		
BRIDGETON	NJ	75	40	40		35
CHANGEWATER	NJ	6	6	6		
CHESTER	NJ	17	17	17		
DEERFIELD	NJ	101	101	101		
EDISON	NJ	10	10	10		
ELMER	NJ	16	16	16		
FINESVILLE	NJ	5	5	5		
FLEMINGTON	NJ	4	4	4		
FORDS	NJ	2	2	2		
FRENCHTOWN	NJ	5	5	5		
GALSSBORO	NJ	30	30	30		
GLASSBORO	NJ	14	14	14		
GREEN VILLAGE	NJ	9	9	9		
LINCROFT	NJ	3	3	3		
LONG VALLEY	NJ	18	18	18		
MEDFORD	NJ	8	8	8		
MILFORD	NJ	37	37	37		
MONMOUTH	NJ	5	5	5		
MONROE	NJ	1	1	1		
MONROEVILLE	NJ	60	60	60		
PENNINGTON	NJ	7	7	7		
PHILLIPSBURG	NJ	4	2	2		
PILES GROVE	NJ	10	10	10		
RINGONES	NJ	14	14	14		
SALEM	NJ	8	8	8		
WHITEHOUSE STATION	NJ	12	9		9	
Total NJ		494	454	445	9	35



Employment and Training Administration

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Foreign Labor Certification

ADVERSE EFFECT WAGE RATES - YEAR 2011

ADVERSE EFFECT WAGE RATES - YEAR 2011

Under the H-2A Program, the employer must offer, recruit at, and pay a wage that is the highest of the Adverse Effect Wage Rate (AEWR) in effect at the time the job order is placed, the prevailing hourly or piece rate, the agreed-upon collective bargaining rate (CBA), or the Federal or State minimum wage. Pursuant to 20 CFR 655.120, if a new AEWR is published, or the employer is notified of a new prevailing wage rate during the contract period, and that new rate is higher than the wage determined by the Chicago National Processing Center (NPC) (except the CBA) during the application process the employer will increase the pay of all employees in the same job occupation to the higher rate.

2011 Adverse Effect Wage Rates

STATE	2011 AEWR
Alabama	\$ 9.12
Arizona	\$ 9.60
Arkansas	\$ 8.97
California	\$ 10.31
Colorado	\$ 10.48
Connecticut	\$ 10.25
Delaware	\$ 10.60
Florida	\$ 9.50
Georgia	\$ 9.12
Hawaii	\$ 12.01
Idaho	\$ 9.90
Illinois	\$ 10.84
Indiana	\$ 10.84
Iowa	\$ 11.03
Kansas	\$ 11.52
Kentucky	\$ 9.48
Louisiana	\$ 8.97
Maine	\$ 10.25
Maryland	\$ 10.60
Massachusetts	\$ 10.25
Michigan	\$ 10.62
Minnesota	\$ 10.62
Mississippi	\$ 8.97
Missouri	\$ 11.03
Montana	\$ 9.90
Nebraska	\$ 11.52
Nevada	\$ 10.48
New Hampshire	\$ 10.25
New Jersey	\$ 10.60
New Mexico	\$ 9.60
New York	\$ 10.25
North Carolina	\$ 9.30
North Dakota	\$ 11.52
Ohio	\$ 10.84
Oklahoma	\$ 9.65
Oregon	\$ 10.60
Pennsylvania	\$ 10.60
Rhode Island	\$ 10.25
South Carolina	\$ 9.12
South Dakota	\$ 11.52
Tennessee	\$ 9.48
Texas	\$ 9.65
Utah	\$ 10.48
Vermont	\$ 10.25
Virginia	\$ 9.30
Washington	\$ 10.60
West Virginia	\$ 9.48

Office of Foreign Labor
Certification

- [About FLC](#)
- [How do I...](#)
- [Policies & Regulations](#)
- [Program Debarments](#)
- [H-2A Amendments and Extensions Fact Sheet](#)
- [iCERT Portal System](#)

Forms and Instructions

- [ETA 9142](#)
- [ETA 9141](#)
- [ETA 9089](#)
- [ETA 9035](#)
- [ETA 750](#)
- [ETA 9127](#)
- [All Forms](#)

Hiring Foreign Workers

- [Permanent](#)
- [H-1B](#)
- [H-1B1](#)
- [E-3](#)
- [H-1C](#)
- [H-2A](#)
- [H-2B](#)
- [D-1](#)
- [Prevailing Wage](#)

FAQs

- [Permanent](#)
- [H-1B](#)
- [H-1C](#)
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- [D-1](#)
- [Prevailing Wage](#)

Related Links

- [USCIS](#)
- [Department of State](#)
- [Workers' Rights](#)

FeedBack

H-2B_FY09 Data Soc Major Num

Soc Major	Major Description	Cert Wrks	Req Wrks	DC	DE	MD	NJ	PA	VA	WV
	Total	154,489	214,744	68	592	6,795	4,258	5,946	8,612	301
37-0000	Building and Grounds Cleaning and Maintenance Occupations	72,508	86,190	65	437	4,043	2,497	4,056	5,258	101
39-0000	Personal Care and Service Occupations	15,041	17,193		36	445	827	123	179	
45-0000	Farming, Fishing, and Forestry Occupations	14,323	18,001		19	91		333	118	
51-0000	Production Occupations	13,557	37,002		0	1,328	22	289	916	69
47-0000	Construction and Extraction Occupations	12,980	20,918		55	118	188	513	230	
35-0000	Food Preparation and Serving Related Occupations	12,303	15,579		0	355	133	247	357	15
53-0000	Transportation and Material Moving Occupations	6,180	8,752		21	26	91	121	858	108
41-0000	Sales and Related Occupations	2,916	4,349		0	52	0	32	170	8
27-0000	Arts, Design, Entertainment, Sports, and Media Occupations	1,675	1,787		19	169	287	130	100	
43-0000	Office and Administrative Support Occupations	1,057	1,353			3		10		
49-0000	Installation, Maintenance, and Repair Occupations	777	1,377		5	5	34	85	0	
33-0000	Protective Service Occupations	640	1,442			160			400	
29-0000	Healthcare Practitioners and Technical Occupations	159	159				119			
17-0000	Architecture and Engineering Occupations	76	287							
19-0000	Life, Physical, and Social Science Occupations	70	70							
11-0000	Management Occupations	37	61	1					16	
13-0000	Business and Financial Operations Occupations	32	32	2				7	10	
31-0000	Healthcare Support Occupations	27	46							
15-0000	Computer and Mathematical Occupations	11	14							
25-0000	Education, Training, and Library Occupations	3	13			0				
99-0000	Unclassified	117	119				60			

H-2B_FY09_ONET_Jobs

ONET_Code	ONET_Title	H-2B Jobs FY09
37-3011.00	Landscaping and Groundskeeping Workers	54,442
45-4011.00	Forest and Conservation Workers	12,753
37-2012.00	Maids and Housekeeping Cleaners	9,589
39-3091.00	Amusement and Recreation Attendants	9,229
37-1011.00	First-Line Supervisors/Managers of Housekeeping and Janitorial Workers	6,392
47-2061.00	Construction Laborers	6,235
51-9198.01	Production Laborers	4,996
51-3022.00	Meat, Poultry, and Fish Cutters and Trimmers	4,362
39-2021.00	Nonfarm Animal Caretakers	4,054
35-3031.00	Waiters and Waitresses	3,627
41-2031.00	Retail Salespersons	2,465
35-9011.00	Dining Room and Cafeteria Attendants and Bartender Helpers	2,449
53-7062.03	Freight, Stock, and Material Movers, Hand	1,834
35-9021.00	Dishwashers	1,764
53-7063.00	Machine Feeders and Offbearers	1,687
35-2021.00	Food Preparation Workers	1,478
53-7064.00	Packers and Packagers, Hand	1,397
37-2011.00	Janitors and Cleaners, Except Maids and Housekeeping Cleaners	1,348
39-9031.00	Fitness Trainers and Aerobics Instructors	1,282
27-2022.00	Coaches and Scouts	1,164
35-2014.00	Cooks, Restaurant	973
45-3011.00	Fishers and Related Fishing Workers	895
47-2181.00	Roofers	894
47-3011.00	Helpers--Brickmasons, Blockmasons, Stonemasons, and Tile and Marble Setters	820
51-9198.02	Production Helpers	809
47-3012.00	Helpers--Carpenters	663
51-9031.00	Cutters and Trimmers, Hand	632
51-9199.99	Production Workers, All Other	619
33-9092.00	Lifeguards, Ski Patrol, and Other Recreational Protective Service Workers	607
43-4081.00	Hotel, Motel, and Resort Desk Clerks	528
47-3015.00	Helpers--Pipelayers, Plumbers, Pipefitters, and Steamfitters	466
35-3021.00	Combined Food Preparation and Serving Workers, Including Fast Food	458
35-2013.00	Cooks, Private Household	445
47-2031.01	Construction Carpenters	417
37-3013.00	Tree Trimmers and Pruners	379
47-2022.00	Stonemasons	378
47-2081.02	Drywall Installers	363
51-2091.00	Fiberglass Laminators and Fabricators	360
47-2221.00	Structural Iron and Steel Workers	333
47-5051.00	Rock Splitters, Quarry	314
35-9099.99	Food Preparation and Serving Related Workers, All Other	305
51-3023.00	Slaughterers and Meat Packers	287
51-3021.00	Butchers and Meat Cutters	287
37-3012.00	Pesticide Handlers, Sprayers, and Applicators, Vegetation	252

H-2B_FY09_ONET_Jobs

ONET_Code	ONET_Title	H-2B Jobs FY09
47-2051.00	Cement Masons and Concrete Finishers	244
53-3032.02	Tractor-Trailer Truck Drivers	240
47-4031.00	Fence Erectors	235
41-9091.00	Door-To-Door Sales Workers, News and Street Vendors, and Related Workers	214
45-2041.00	Graders and Sorters, Agricultural Products	205
51-6011.03	Laundry and Drycleaning Machine Operators and Tenders, Except Pressing	196
53-3031.00	Driver/Sales Workers	194
45-2092.01	Nursery Workers	186
27-1026.00	Merchandise Displayers and Window Trimmers	184
35-2015.00	Cooks, Short Order	182
47-4051.00	Highway Maintenance Workers	179
49-9042.00	Maintenance and Repair Workers, General	176
27-1013.01	Painters and Illustrators	173
35-3041.00	Food Servers, Nonrestaurant	172
53-3021.00	Bus Drivers, Transit and Intercity	170
51-9023.00	Mixing and Blending Machine Setters, Operators, and Tenders	155
47-2021.00	Brickmasons and Blockmasons	146
47-5099.99	Extraction Workers, All Other	145
39-6011.00	Baggage Porters and Bellhops	142
45-4029.99	Logging Workers, All Other	140
27-1023.00	Floral Designers	137
47-2141.00	Painters, Construction and Maintenance	136
49-9051.00	Electrical Power-Line Installers and Repairers	136
51-2099.99	Assemblers and Fabricators, All Other	133
29-9091.00	Athletic Trainers	119
53-7061.00	Cleaners of Vehicles and Equipment	118
49-9098.00	Helpers--Installation, Maintenance, and Repair Workers	116
41-2011.00	Cashiers	114
47-2211.00	Sheet Metal Workers	105
47-2031.03	Carpenter Assemblers and Repairers	104
53-3041.00	Taxi Drivers and Chauffeurs	104
43-9199.99	Office and Administrative Support Workers, All Other	100
49-9052.00	Telecommunications Line Installers and Repairers	100

H-2B Landscape Laborer

State	Area Name	H-2B Hourly OES
DC	Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division	\$12.66
DE	Dover, DE MSA	\$10.48
DE	Sussex County, Delaware nonmetropolitan area	\$12.13
DE	Wilmington, DE-MD-NJ Metropolitan Division	\$12.37
MD	Baltimore-Towson, MD MSA	\$12.80
MD	Bethesda-Gaithersburg-Frederick, MD Metropolitan Division	\$12.68
MD	Cumberland, MD-WV MSA	\$11.98
MD	Garrett County, Maryland nonmetropolitan area	\$10.12
MD	Hagerstown-Martinsburg, MD-WV MSA	\$12.18
MD	Salisbury, MD MSA	\$12.17
MD	St. Mary's County, Maryland nonmetropolitan area	\$11.96
MD	Upper Eastern Shore nonmetropolitan area	\$11.56
MD	Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division	\$12.66
MD	Wilmington, DE-MD-NJ Metropolitan Division	\$12.37
NJ	Allentown-Bethlehem-Easton, PA-NJ MSA	\$12.86
NJ	Atlantic City, NJ MSA	\$15.10
NJ	Camden, NJ Metropolitan Division	\$12.90
NJ	Edison, NJ Metropolitan Division	\$12.29
NJ	New York-White Plains-Wayne, NY-NJ Metropolitan Division	\$15.08
NJ	Newark-Union, NJ-PA Metropolitan Division	\$13.72
NJ	Ocean City, NJ MSA	\$11.74
NJ	Trenton-Ewing, NJ MSA	\$12.98
NJ	Vineland-Millville-Bridgeton, NJ MSA	\$12.28
NJ	Wilmington, DE-MD-NJ Metropolitan Division	\$12.37
PA	Allentown-Bethlehem-Easton, PA-NJ MSA	\$12.86
PA	Altoona, PA MSA	\$9.31
PA	East Central Pennsylvania nonmetropolitan area	\$11.98
PA	Erie, PA MSA	\$10.18
PA	Far Western Pennsylvania nonmetropolitan area	\$10.09
PA	Harrisburg-Carlisle, PA MSA	\$13.58
PA	Johnstown, PA MSA	\$10.88
PA	Lancaster, PA MSA	\$12.94
PA	Lebanon, PA MSA	\$11.75
PA	Newark-Union, NJ-PA Metropolitan Division	\$13.72
PA	Northeastern Pennsylvania nonmetropolitan area	\$11.83
PA	Philadelphia, PA Metropolitan Division	\$13.19
PA	Pittsburgh, PA MSA	\$11.97
PA	Reading, PA MSA	\$12.03
PA	Scranton--Wilkes-Barre, PA MSA	\$11.59
PA	State College, PA MSA	\$12.89
PA	West Central Pennsylvania nonmetropolitan area	\$9.90
PA	Williamsport, PA MSA	\$11.78
PA	York-Hanover, PA MSA	\$11.00
PA	Youngstown-Warren-Boardman, OH-PA MSA	\$10.51
VA	Blacksburg-Christiansburg-Radford, VA MSA	\$10.27
VA	Charlottesville, VA MSA	\$12.41
VA	Danville, VA MSA	\$9.79
VA	Harrisonburg, VA MSA	\$11.23

H-2B Landscape Laborer

State	Area Name	H-2B Hourly OES
VA	Kingsport-Bristol-Bristol, TN-VA MSA	\$9.79
VA	Lynchburg, VA MSA	\$9.17
VA	Northeastern Virginia nonmetropolitan area	\$10.86
VA	Northwestern Virginia nonmetropolitan area	\$11.38
VA	Richmond, VA MSA	\$11.67
VA	Roanoke, VA MSA	\$10.83
VA	Southside Virginia nonmetropolitan area	\$9.59
VA	Southwestern Virginia nonmetropolitan area	\$10.09
VA	Virginia Beach-Norfolk-Newport News, VA-NC MSA	\$10.99
VA	Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division	\$12.66
VA	Winchester, VA-WV MSA	\$11.23
WV	Charleston, WV MSA	\$9.74
WV	Cumberland, MD-WV MSA	\$11.98
WV	Hagerstown-Martinsburg, MD-WV MSA	\$12.18
WV	Huntington-Ashland, WV-KY-OH MSA	\$9.94
WV	Morgantown, WV MSA	\$11.84
WV	North Central West Virginia nonmetropolitan area	\$9.64
WV	Parkersburg-Marietta-Vienna, WV-OH MSA	\$10.42
WV	Southern West Virginia nonmetropolitan area	\$9.77
WV	Steubenville-Weirton, OH-WV MSA	\$9.35
WV	Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division	\$12.66
WV	Wheeling, WV-OH MSA	\$9.37
WV	Winchester, VA-WV MSA	\$11.23



Know Your Rights

Call one of the hotlines listed in this pamphlet if you need help

You are receiving this pamphlet because you have applied for a nonimmigrant visa to work or study temporarily in the United States. The purpose of this pamphlet is to help you understand your rights when you arrive in the United States. Even though you will be living in the United States only temporarily, you will still have many of the basic workplace rights that U.S. citizens and residents have.

This pamphlet gives an overview of your basic workplace rights. Understanding your rights will help you to protect yourself from abuse. Keep this pamphlet with you in the United States in case you need to reach someone for help.

This pamphlet was also created to help you protect yourself against the most serious abuses, such as human trafficking. Human trafficking is a form of modern-day slavery where an employer or other individual, through physical or psychological abuse, causes an individual to feel that he or she is not free to leave the situation. **Recognizing that you are in an abusive employment situation is the first step toward getting help.**

If you arrive in the United States and have problems at work, you should seek help immediately. Do not believe your employer if he or she says that you do not have legal rights in the United States. Do not accept legal advice from your employer, contractor, or recruiter. Only an attorney representing you should give you legal advice.

If you believe your rights are being violated, the hotlines listed in this pamphlet can help you reach local organizations that can provide further assistance. **Do not be afraid to contact these organizations! They are here to help you.**

This pamphlet is not a substitute for legal advice. There are many different types of temporary work and educational visas, and you should not be afraid to ask for more information about your visa.

IF YOUR RIGHTS ARE VIOLATED, CALL THESE TOLL-FREE NUMBERS:

National Human Trafficking Resource Center
1-888-373-7888
(24 hours)

Trafficking in Persons and Worker Exploitation Task Force Complaint Line
1-888-428-7581
(Monday – Friday, 9am-5pm Eastern Time)

Are You Coming To The United States Temporarily To Work Or Study?

We Are Confident That You Will Have An Interesting And Rewarding Stay. However, If You Should Encounter Any Problems, You Have Rights And You Can Get Help!

You Have the Right to:

- Be treated and paid fairly;
- Not be held in a job against your will;
- Keep your passport and other identification documents in your possession;
- Report abuse without retaliation;
- Request help from unions, immigrant and labor rights groups and other groups; and
- Seek justice in U.S. courts.

These rights, and others, are explained in this pamphlet.

If you are mistreated or your rights are violated, call these toll-free numbers:

National Human Trafficking Resource Center's
24 Hour Toll-Free Hotline
1-888-373-7888

(Run by a non-governmental organization)

Trafficking in Persons and Worker Exploitation
Task Force Complaint Line

(Monday – Friday, 9am-5pm Eastern Time)

1-888-428-7581

(Run by the U.S. Department of Justice)

If you are in immediate physical danger, Call **911**

For more on your rights to be treated and paid fairly at work, see page 5

For more on your right not to be held in a job against your will, see page 7

This pamphlet was created as a result of a U.S. Federal law, Public Law 110-457.

The U.S. Government has issued this pamphlet to honor the rule of law and uphold the dignity of all who come to this country. The U.S. Government is committed to combating human trafficking and labor rights violations.

REMEMBER!!

There Are Ways to Protect Yourself

- Keep your passport in a safe, easily accessible place at all times;
- Keep copies of your passport, visa, and employment contract in your home country with relatives or friends;
- Always have the phone number of your home country's embassy;
- Keep this pamphlet handy so that you can refer to it once you are in the United States;
- Keep a record of all the days and hours that you work, and the amount and date of each payment that you receive; and
- Call the National Human Trafficking Resource Center Hotline at 1-888-373-7888 (24 hours) or the Trafficking in Persons and Worker Exploitation Task Force Complaint Line at 1-888-428-7581 (weekdays 9am-5pm Eastern Standard Time) if you need help.

Deception and Lies:

Employers, and people who help them, may also use deception and lies. For example:

- False promises about working conditions, living conditions, or pay;
- Telling you that you have no rights;
- Telling you that you will not be believed if you try to seek help; and
- Instructing you to lie about their identity.

2. What should I do if these things are happening to me?

- If any one of these things is happening to you or you are in a dangerous situation, **get help immediately** by calling 911, the National Human Trafficking Resource Center (1-888-373-7888), or the Trafficking in Persons and Worker Exploitation Task Force Complaint Line (1-888-428-7581). They can help refer you to a local organization that help victims of human trafficking in your area.
- If you are in physical danger, you should call **911** to reach the Police. If you call the police, show them this pamphlet and tell them about the abuse that you have suffered.

3. Will I be deported if I report the abuse?

There are programs to protect people who report abuse. You should not be afraid to seek help even if you have immigration concerns. You should consult with an immigration attorney who does not work for your employer. The hotline can help you find someone to consult.

- If you believe you may be a victim of human trafficking or of another serious crime, including rape or sexual assault, you may be entitled to a different nonimmigrant visa, like a T visa (for trafficking victims) or a U visa (for victims of other serious crimes). These visas were created to provide protection for certain crime victims worried about their immigration status. Many people are unfamiliar with these visas and you may need to tell people assisting you about them.

4. What services are available for victims of human trafficking?

- If you are a victim of trafficking in the United States, you may be eligible for benefits, services, and immigration remedies under federal or state programs.
- Many organizations can help you access these services, which include medical care, mental health care, housing, dental care, legal advocacy for immigration and other legal needs, employment assistance, and public benefits.

TIP

Before leaving for the United States, talk with migrant worker organizations or former migrant workers for names and numbers of persons or organizations you can contact if you have problems or questions when you are in the United States.

Human Trafficking

1. What is human trafficking?

Human trafficking is among the most terrible workplace abuses that an individual in the United States could encounter. Human trafficking occurs whenever a person is recruited, transported, or kept against his or her will for purposes of exploitation. For a full definition of human trafficking, please see www.state.gov/g/tip (see Legislation—Trafficking Victims Protection Act). The following are some warning signs that may indicate human trafficking:

Threats and Fear:

Employers, and people who help employers, may use threats and other intimidating acts to make you and other workers feel too afraid to try to leave. For example:

- Beatings, physical abuse, or sexual abuse;
- Threats of beatings, physical abuse, or sexual abuse;
- Locking in or restraining a worker;
- Threats of harm to the worker or the worker's family if the worker tries to leave, complain of mistreatment, report the situation to authorities, or seek help;
- Threats of being deported or arrested, or of being turned over to police for trying to leave, complain, report, or seek help for the worker's situation;
- The employer, or someone working with the employer, has harmed or threatened other workers who have tried to leave, complain, report, or seek help; or makes threats that any worker who tries to escape will be found and brought back.

Rules and Controls:

Employers, and people who help them, may use rules and controls to make it harder for you and other workers to leave, complain about mistreatment, or seek help. For example:

- Rules against leaving the workplace, or strict rules about where you can go when not working;
- Rules against holding onto your own passport, visa, birth certification, or other identification documents;
- Denial of adequate food, sleep, or medical care; or
- Preventing or restricting you from communicating freely with family, other workers, or others outside the workplace.

An Overview of the Nonimmigrant Visa Process

What is a nonimmigrant visa?

A nonimmigrant visa is a U.S. government document that permits individuals who travel to the United States to request entry for a particular purpose; for example, to work or to study.

The nonimmigrant visa process involves two important steps:

1. Applying for the visa at the appropriate U.S. embassy or consulate abroad; and
2. Presenting the visa to an immigration inspector at a U.S. port of entry.

What are the important parts of my documentation?

1. The visa. It is located in your passport and shows your picture and visa expiration date. If your visa expires, you cannot reenter the United States on that visa until it is renewed.
 - If you have an employment-based visa, the visa will include the name of the employer who is sponsoring you to work in the United States.
 - Your temporary work visa **does not give you permission** to work for **any** employer that you choose—it is permission to work **only** for the employer listed on your visa application. In rare cases, it may be possible to change employers.
 - This does not mean you have to continue to work for your employer if the employer is abusing or exploiting you.
2. The I-94 Card. This is a white card provided to you when you enter the United States. Your I-94 card shows the period of time that you are allowed to remain in the United States.

Do not lose this card!

TIP

Before you travel to the United States, **make two copies** of all important documentation, especially your passport (with visa), your contract, and your identity documents. Give one set of these copies to someone you trust in your home country. When you arrive in the United States and receive an I-94, make one copy of the I-94 in case you lose the original. Keep these documents in a safe place.

TIP

Once you arrive in the U.S., **keep your passport and other travel documents in a safe place where you can access it at all times!** It is illegal for your employer to take your passport away from you!

Your Workplace Rights in the United States

There are several protections that are specific to the type of visa you receive. These are outlined below by visa category.

A-3, G-5, and B-1 domestic employee visas

- If you work for a diplomat (A-3 visa) or a representative of an international organization (G-5 visa), or if you are a domestic employee holding a B-1 visa, your employer must provide you with an employment contract that complies with U.S. law.
- The contract must include the following provisions:
 - An agreement by your employer not to keep your passport, employment contract, or other personal property from you;
 - An agreement by your employer to abide by all laws in the United States;
 - An explanation of how much you will be paid for your work, as well as how frequently you will be paid; and
 - A description of your work duties, weekly work hours, holidays, sick days, and vacation days.
- Make sure that you understand the terms of the contract. If you cannot understand the language in which the contract is written, ask someone you trust to read the contract to you in a language that you understand. **Do not sign anything that you do not understand!**
- When you apply for the visa, a U.S. Consular Officer will meet with you and confirm that your contract complies with U.S. law. Do not hesitate to ask the U.S. Consular Officer any questions. Your employer is not supposed to be present when you meet with the Consular Officer.
- If you sign a contract that violates your rights, or if your employer does not do what the contract says, call the hotlines listed in this pamphlet immediately. They can help you find a lawyer who can help explain your rights in this situation.

H-1B and H-1B1 visas for performing services in specialty occupations

- If you are coming to the United States to perform services in a specialty occupation or as a fashion model, please refer to www.Travel.State.gov for more information regarding your rights and ability to change employers.

H-2A temporary agricultural worker visas

- If you are a temporary agricultural worker, you must receive a written description of the terms of your employment no later than the first day of work. This document must contain detailed information about the benefits, wages, housing, work duration, and transportation benefits that your employer will

- If you mix or apply pesticides that require you to use protective equipment (like coveralls or a mask or respirator), your employer must give you equipment that is clean and in good condition.
- **Medical Emergencies:** In the case of an emergency, call **911** and ask for an ambulance.
 - Your expenses may be paid for, so you should tell your employer as soon as possible so the employer can file the necessary paperwork.
 - When you are at the doctor or clinic, ask for copies of the paperwork regarding your illness or injury.

6. Your Right to Join a Union and Bargain Collectively

- With few exceptions, all workers in the United States have a right to form and join a union, regardless of their immigration status under federal law. Your employer cannot take action against you for doing so. This means you can:
 - Join with other workers to improve wages and working conditions;
 - Attend public speeches, rallies, and demonstrations; and
 - Join a union or other worker organization.

7. Your Right to More Protections Under State Law

- Call the hotlines listed in this pamphlet for a referral to organizations that can tell you about your rights in the state where you are working.

8. Your Right to Leave an Abusive Employment Situation

- You do not have to stay in your job if your employer is abusing you.
- But, if you came to the United States on an employment-based visa and you leave your employer, your visa status will no longer be valid. However, depending on the type of visa you have, you may be able to change visa categories or employers. You may also be able to remain in the United States legally to pursue a legal claim.
- You may also make a formal complaint or file a lawsuit against your employer while you are still working. There are severe penalties for an employer who tries to punish workers because they pursue their rights.
- If you are experiencing problems with your current employer, contact the hotlines listed in this pamphlet. They will be able to connect you with a local organization that can speak with you about your options.

TIP

You have rights in the United States and no one can take those rights away from you. There are hundreds of organizations that can help. Don't be afraid to ask for help to protect your rights.

because of your gender, race, national origin, color, religion, or disability.

- Your employer should pay the same amount to each worker for the same work and offer each worker the same job opportunities no matter what the worker's gender, race, national origin, color, religion, or disability.
- Your employer can't make you speak only in English at work unless there is an important business reason to require English.

4. Your Rights as a Woman Worker

- Your employer **MAY NOT** treat you differently or badly because you are a woman or you are pregnant - this is sex discrimination. Whether you are a woman or a man, your employer **MAY NOT** sexually harass you. Your employer should never:
 - Demand that you perform sex acts;
 - Touch you in a sexual manner; or
 - Say or yell sexual or offensive comments.

TIP

Keep a detailed record of every inappropriate comment and/or action your employer takes against you and write down the names and phone numbers of any witnesses.

5. Your Right to a Healthy and Safe Workplace

- All employees have a right to safe and clean working conditions:
 - **Housing:** If your employer provides housing, it should be clean, safe, and in a sturdy structure.
 - **Bathrooms:** Bathrooms should be clean and accessible.
 - **Potable Water:** If you work in agriculture, in most cases, you have the right to receive clean water to drink and to wash your hands.
 - **Illness or Injury on the Job:** If you are injured or get sick at work you may seek medical treatment. In most cases, you will receive free medical treatment and part of the wages lost while injured.
- If you are working with or around **pesticides or dangerous chemicals:**
 - You have a right to wash your hands in clean water after handling the pesticides/chemicals. You are entitled to training on pesticide safety during the first 5 days of work.
 - Your employer must tell you where and when pesticides were sprayed to avoid accidental exposures. Workers and others must not be in an area where pesticides are being applied.

CAUTION!

Your employer cannot force you to do something or go somewhere, even back to your home country, by withholding your pay.

provide.

- You are entitled to payment at or above a wage that is set by the government. This rate applies whether you are paid hourly or by piece rate.
- You do not have to pay either U.S. social security taxes or fees to a labor recruiter in your home country.
- Your employer must provide clean and safe housing at no charge.
- Your employer must reimburse you for transportation costs from your country to your place of employment, but only after you complete half the contract period; and your employer must pay for your return transportation costs for your trip home after completion of the contract.
- You are entitled to guaranteed work for at least 3/4 of the number of workdays stated as the contract period unless you are displaced by a U.S. worker during the first half of the contract period.

H-2B temporary non-agricultural worker visas

- If you are a temporary non-agricultural worker, you are entitled to payment at or above the prevailing wage, which will be at least the federal, state, or local legal minimum wage, but may be higher. This rate applies whether you are paid hourly or by piece rate.
- Your employer must provide return transportation costs for your trip home if your work ends or you are dismissed for business reasons unrelated to job performance before the end of your contract.
- You are usually entitled to terms and conditions of employment that are normal for similarly employed U.S. workers in the area.
- You should never have to pay fees to a labor recruiter in your home country.

J-1 exchange visitor visas

- Unless your exchange program is sponsored by the Federal government, the program must be a minimum of three weeks duration. The Form DS-2019, the basic document required to apply for a J visa, reflects the category of exchange and the program dates. Depending on the category of exchange, there may be other documents and/or contracts which cover the terms of your exchange program.
- Your sponsor's advertisements must be accurate and explain all costs, conditions, and restrictions of the exchange program. Your sponsor must also give you an orientation and provide you with information about:
 - the J-1 program and a description of the specific program in which you are participating and its rules;

- travel and entry into the United States;
- housing;
- fees, and costs, including living expenses, healthcare, and insurance costs;
- life and customs in the United States;
- local resources;
- your sponsor's address and the name and phone number of the person responsible for you in the United States;
- contact information for the Exchange Visitor Program Services of the Department of State; and
- The Department of State's Exchange Visitor Program brochure;
- If you are entering on a Summer Work Travel program and do not have pre-placed employment, your sponsor must assist you in locating employment if you have not found employment within the first week following your arrival, and insure that you receive pay and benefits commensurate with those offered to your American counterparts.
- If your J-1 visa is for a training and internship program:
 - Your sponsor must interview you in person, by telephone or by web camera;
 - Your sponsor must have a Training/Internship Placement Plan (Form DS-7002) in place before your visa paperwork is submitted. This Form includes a written statement of any stipend you will be paid, and a summary of the training objectives of the program.
 - Your sponsor must give you a written statement of the costs and fees you will have to pay, and an estimate of living expenses in the United States.
 - Your training/internship must be at least 32 hours per week; and
 - If your training/internship is in agriculture, your working conditions and wages must meet strict federal requirements for agricultural workers.
- Your sponsor must assure that you have medical insurance coverage, though your sponsor need not provide or pay for this coverage.
- If you work in the United States, you should apply for and receive your own Social Security number, and your employer must report all tax withholdings using this number.
- If you are bringing your spouse or minor children with you on a J-2 visa, they may apply for work authorization only if the income is not necessary to support you.

For more information on visa categories and U.S. entry procedures, see the Web site of the U.S. Department of State:

www.Travel.State.gov

Your Rights Regardless of Visa Status

There are also many **rights you have regardless of your visa status**. If any of these rights are violated, you can report the violations to a government enforcement agency. In most cases, you can also bring a lawsuit to attempt to recover your losses, without fear of being punished.

1. Your Right Not to Be Retaliated Against

- It is unlawful for your employer to try to punish you, for example, by threatening to report you to immigration or the police if you try to enforce your rights! If your employer threatens you at any time, **seek help immediately. Remember, your safety comes first!**

2. The Right to Be Paid

- You have the right to get paid for **all work you do, in the same manner as U.S. workers.**
- You have the right to earn at least the federal legal minimum wage \$6.55 per hour, and \$7.25 per hour starting on July 24, 2009, in the same manner as U.S. workers. Also check
 - The minimum wage for the **state** in which you work. If that wage is higher, you have the right to be paid the higher amount.
 - Your employment contract, which may obligate your employer to pay a higher amount.
- Most workers in the United States are entitled to overtime pay of one and a half times the amount of their wage for any hours worked over 40 hours per week. For example, if your regular wage rate is \$10 per hour, your employer may be required to pay you \$15 for each hour you work above 40 hours in a single week.
- If your employer takes money from your paycheck, this is called a deduction. Many deductions are illegal if they diminish your legal wage rate. For example, an employer usually may not deduct for housing (with some visa classifications, housing must be provided free of charge), most uniforms, safety equipment, or recruitment fees.

TIP

Make sure to keep a written record of **all the time that you work**. Get a notebook and write down all of the days and hours that you worked, how much you were paid, the days you received a payment, any deductions taken from your paycheck, and the reasons for those deductions.

3. Your Right Not to be Discriminated Against

- As an employee, you have the right to not be treated differently or badly at work



U.S. Citizenship and Immigration Services

Victims of Human Trafficking & Other Crimes

USCIS helps protect victims of human trafficking and other crimes by providing immigration relief. Human trafficking, also known as trafficking in persons, is a form of modern-day slavery in which traffickers lure individuals with false promises of employment and a better life.

Individuals and their families may also fall victim to many other types of crime in the United States. These crimes include: rape, murder, manslaughter, domestic violence, sexual assault, and many others.

There are two types of immigration relief we provide to victims of human trafficking and other crimes:

T Nonimmigrant Status (T Visa)

T nonimmigrant status provides immigration protection to victims of trafficking. The T Visa allows victims to remain in the United States and assist law enforcement authorities in the investigation or prosecution of human trafficking cases.

U Nonimmigrant Status (U Visa)

U nonimmigrant status provides immigration protection to crime victims who have suffered substantial mental or physical abuse as a result of the crime. The U visa allows victims to remain in the United States and assist law enforcement authorities in the investigation or prosecution of the criminal activity.

Last updated: 04/08/2011



U.S. Citizenship and Immigration Services

Victims of Human Trafficking: T Nonimmigrant Status

Human trafficking, also known as trafficking in persons, is a form of modern-day slavery in which traffickers lure individuals with false promises of employment and a better life. Traffickers often take advantage of poor, unemployed individuals who lack access to social services. The T Nonimmigrant Status (T visa) protects victims of human trafficking and allows victims to remain in the United States to assist in an investigation or prosecution of human trafficking.

T Nonimmigrant Eligibility

You may be eligible for a T visa if you:

- Are or were a victim of trafficking, as defined by law
- Are in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry due to trafficking.
- Comply with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking (or you are under the age of 18, or you are unable to cooperate due to physical or psychological trauma)
- Demonstrate that you would suffer extreme hardship involving unusual and severe harm if you were removed from the United States
- Are admissible to the United States. If not admissible, you may apply for a waiver on a [Form I-192, Application for Advance Permission to Enter as a Non-Immigrant](#)

Applying for T Nonimmigrant Status

To apply for a T visa, submit:

- [Form I-914, Application for T Nonimmigrant Status](#)
- Three passport size photographs
- A personal statement explaining how you were a victim of trafficking (on the Form I-914)
- Evidence to show you meet eligibility requirements

Note: You are strongly encouraged to submit [Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons](#), to show law enforcement agency support. Form I-914, Supplement B serves as primary evidence that you are a victim of trafficking and that you have complied with reasonable requests from law enforcement.

For more information for the T Visa forms visit our [Forms](#) section

Filing for Qualifying Family Members

Certain qualifying family members are eligible for a derivative T visa.

If you are....	Then...
Under 21 years of age	You may apply on behalf of your spouse, children, parents and unmarried siblings under age 18.
21 years of age or older	You may apply on behalf of your spouse and children.

To apply for a qualified family member, you must file a Form I-914, Supplement A, Application for Immediate Family Member of T-1 Recipient, at the same time as your application or at a later time. To apply for permanent residency (a green card) for yourself or a qualifying family member, see the [Green Card for a T Nonimmigrant](#) page.

Last updated: 04/08/2011

[Plug-ins](#)



U.S. Citizenship and Immigration Services

Questions and Answers: Victims of Human Trafficking, T Nonimmigrant Status

T Nonimmigrant Status (T Visa) is set aside for those who are or have been victims of human trafficking and are willing to assist law enforcement in the investigation or prosecution of acts of trafficking. Below are Questions and Answers pertaining to T nonimmigrant status.

Background

In October 2000, Congress created the “T” nonimmigrant status by passing the Victims of Trafficking and Violence Protection Act (VTVPA). The legislation strengthens the ability of law enforcement agencies to investigate and prosecute human trafficking, and also offer protection to victims.

Questions and Answers

Q. What Is Human Trafficking?

A. Human trafficking, also known as trafficking in persons, is a form of modern-day slavery in which traffickers lure individuals with false promises of employment and a better life. Traffickers often take advantage of poor, unemployed individuals who lack access to social safety nets. The T nonimmigrant visa allows victims to remain in the United States to assist federal authorities in the investigation and prosecution of human trafficking cases.

To consider a situation ‘trafficking’ depends on the type of work, and the use of force, fraud, or coercion to obtain or maintain work.

Under Federal law, the term “severe forms of trafficking” can be broken into two categories:

- Sex trafficking: recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act where the commercial sex act is induced by force, fraud, or coercion, or the person being induced to perform such act is under 18 years of age.
- Labor trafficking: recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of involuntary servitude, peonage, debt bondage, or slavery.

Q. Do Federal Laws Prohibit Trafficking In Persons?

A. Yes. The Thirteenth Amendment to the U.S. Constitution outlaws slavery and involuntary servitude (holding another in service through force or threats of force.) The Victims of Trafficking and Violence Protection Act (VTVPA) supplements existing laws that apply to human trafficking, including those passed to enforce the Thirteenth Amendment. The VTVPA also establishes new tools and resources to combat trafficking in persons, and provides an array of services and protections for victims of severe forms of trafficking.

Q. Is There Any Immigration Relief Available For a Victim of a Severe Form of Trafficking In Persons?

A. Yes. Victims of severe forms of human trafficking are eligible for a T Nonimmigrant status (T visa). The T nonimmigrant visa allows victims to remain in the United States to assist in the investigation or prosecution of human traffickers. Once a T nonimmigrant visa is

granted, a victim can apply for permanent residence after three years.

Q. How Do You Become Eligible For T Nonimmigrant Status?

A. To qualify for T nonimmigrant status you must:

- Be or have been a victim of severe trafficking in persons.
- Be physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry on account of trafficking.
- Comply with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking.
- Demonstrate that you would suffer extreme hardship involving severe and unusual harm if you were removed from the United States.

If under the age of 18 at the time of the victimization, or if you are unable to cooperate with a law enforcement request due to physical or psychological trauma, you may qualify for the T nonimmigrant visa without having to assist in investigation or prosecution.

You must also be admissible to the United States or obtain a waiver of admissibility.

Q. What is the Application Process to Obtain a T Nonimmigrant Visa?

A. If you are a victim of a severe form of trafficking, you must submit a Form I-914, Application for T Nonimmigrant Status. The Form I-914 requests information regarding your eligibility for T nonimmigrant status, as well as admissibility to the United States. You must also include a statement in your own words about your victimization. You may submit a law enforcement agency endorsement using Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons. You also have the option to submit secondary evidence of compliance with reasonable requests for assistance. This evidence may include: trial transcripts, court documents; police reports, news articles and affidavits.

Q. Are There Fees That I Must Pay To Apply?

A. There is no fee to file a Form I-914, Application for T Nonimmigrant Status. You may submit a request for a waiver of the filing fees for all other forms associated with filing your Form I-914.

Q. Can My Family Members Also Obtain T Nonimmigrant Status?

A. Yes. Immediate family members are eligible for derivative nonimmigrant status.

If the principle applicant is.... Then...

Under 21 years of age They may apply on behalf of spouse, children, parents and unmarried siblings under age 18.

21 years of age or older They may apply on behalf of spouse and children.

To apply for family members, you must submit a Form I-914 Supplement A, Application for Immediate Family Member of T-1 Recipient. Your family member's application can be filed at the same time as you or at a later time.

Q. Are There a Limited Number of T Nonimmigrant Visas Given Each Year?

A. Yes. Congress has limited the number of T nonimmigrant visas granted each year to 5,000. This does not apply for family derivative visas. Once the cap is reached, applicants will be placed on a waiting list. This waiting list allows those applicants who cannot be granted a visa due to the numerical limitation to obtain priority in the following year.

Q. Can I Legally Work in the United States If I Have T Nonimmigrant Status?

A. Yes. When USCIS grants T nonimmigrant status, an Employment Authorization Document (EAD) is granted at the same time. The information for the EAD is generated from the Form I-914. There is no need to file a Form I-765, Application for Employment

Authorization, along with the application for a T nonimmigrant status.

Q. How Long Am I Allowed to Remain in the United States With My T Nonimmigrant Visa?

A. The T nonimmigrant visa is valid for 3 years and a visa holder may be eligible to apply for permanent residence (Green Card) after 3 years in T nonimmigrant status.

Q. How Can I Apply For Permanent Residence (Green Card)?

A. You may apply for permanent residence by submitting Form I-485, Application to Register Permanent Residence or Adjust Status. You must have been lawfully admitted to the United States as a T nonimmigrant and must continue to hold such status at the time of application.

To qualify for permanent residence, you must:

- Be physically present in the United States for a continuous period of at least three years in T nonimmigrant status, or a continuous period during the investigation or prosecution of the acts of trafficking, provided that the Attorney General has certified that the investigation or prosecution is complete, whichever time is less.
- Maintain good moral character during your stay in the United States.
- Have complied with any reasonable request for assistance in investigation or prosecution or demonstrate extreme hardship involving unusual and severe harm upon removal from the United States.
- Be admissible to the United States, or obtain a waiver of admissibility.

For more information on green cards, see the “Green Card for a T Nonimmigrant” link to the right.

Q. Is A Victim of Trafficking Eligible For Any Services And Benefits?

A. Victims of trafficking may be eligible for a number of federally funded benefits and services regardless of immigration status if they have been certified by the U.S. Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR). Once a victim has been certified, they are eligible for the same services as a refugee. If the victim is under the age of 18, he or she is eligible for certain benefits without the requirement of certification.

For more information about the certification process, please see the “Health and Human Services” link to the right.

Q. Are There Any Other Forms of Immigration Relief Available to Victims of Trafficking?

A. Yes. Another status granted to victims of human trafficking is U nonimmigrant status (U visa). To apply for a U visa, victims must file a Form I-918, Petition for U Nonimmigrant Status. U visas are awarded to people who have suffered substantial physical or mental abuse as a result of having been a victim of specified criminal activity.

For more information about U Nonimmigrant Status, see the “Victims of Criminal Activity, U Nonimmigrant Status” link to the left.

Additional information

To report trafficking in persons call: 1-888-428-7581 or 1-888-3737-888

[Plug-ins](#)



U.S. Citizenship and Immigration Services

Victims of Criminal Activity: U Nonimmigrant Status

Individuals and their families may fall victim to many types of crime in the U.S. These crimes include: rape, murder, manslaughter, domestic violence, sexual assault, human trafficking and many others.

U nonimmigrant status protects victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity.

U Nonimmigrant Eligibility

You may be eligible for a U nonimmigrant visa if:

- You are the victim of qualifying criminal activity.
- You have suffered substantial physical or mental abuse as a result of having been a victim of criminal activity.
- You have information about the criminal activity. If you are under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may possess the information about the crime on your behalf (see [glossary](#) for definition of 'next friend').
- You were helpful, are helpful, or are likely to be helpful to law enforcement in the investigation or prosecution of the crime. If you are under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may assist law enforcement on your behalf.
- The crime occurred in the United States or violated U.S. laws
- You are admissible to the United States. If you are not admissible, you may apply for a waiver on a [Form I-192, Application for Advance Permission to Enter as a Non-Immigrant](#).

Qualifying Criminal Activities

- | | | |
|-----------------------------|--------------------------|-------------------------------|
| • Abduction | • Hostage | |
| • Abusive Sexual Content | • Incest | |
| • Blackmail | • Involuntary Servitude | • Sexual Assault |
| • Domestic Violence | • Kidnapping | • Sexual Exploitation |
| • Extortion | • Manslaughter | • Slave Trade |
| • False Imprisonment | • Murder | • Torture |
| • Female Genital Mutilation | • Obstruction of Justice | • Trafficking |
| • Felonious Assault | • Peonage | • Witness Tampering |
| | • Perjury | • Unlawful Criminal Restraint |
| | • Prostitution | • Other Related Crimes |

- Rape

Petitioning for U Nonimmigrant Status (U Visa)

To petition for a U nonimmigrant status, submit:

- [Form I-918, Petition for U Nonimmigrant Status](#)
- [Form I-918, Supplement B, U Nonimmigrant Status Certification](#), on which a law enforcement official confirms that you were or will likely be helpful in the prosecution of the case
- A personal statement describing the criminal activity of which you were a victim
- Evidence to establish each eligibility requirement - visit our [Forms](#) section.

Filing for Qualifying Family Members

Certain qualifying family members are eligible for a derivative U visa.

If you are...	Then...
Under 21 years of age	You may petition on behalf of your spouse, children, parents and unmarried siblings under age 18.
21 years of age or older	You may apply on behalf of your spouse and children.

To petition for a qualified family member, you must file a Form I-918, Supplement A, Petition for Immediate Family Member of U-1 Recipient, at the same time as your application or at a later time. To apply for permanent residency (a green card) for yourself or a qualifying family member, visit our [Green Card for a U Nonimmigrant](#) page.

Last updated: 04/08/2011

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OFFICE OF THE GENERAL COUNSEL
Division of Operations Management

MEMORANDUM OM 11-62

June 7, 2011

TO: All Regional Directors, Officers in Charge,
and Resident Officers,

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Updated Procedures in Addressing Immigration Status
Issues that Arise During NLRB Proceedings

This memorandum provides a brief introduction to immigration status issues, and an update regarding how such issues should be addressed during NLRB investigations and proceedings. The NLRA protects all employees covered by the Act regardless of immigration status;¹ however, immigration status issues may affect remedies and occasionally present other practical difficulties for the enforcement of the Act. Supplementing GC 02-06, this memorandum provides further guidance for proceeding when immigration status issues arise during NLRB case handling. It also identifies immigration agencies that have discretion to provide immigration remedies and other assistance to discriminatees or witnesses in Board proceedings. Regions should contact DAGC Peter Sung Ohr in the Division of Operations-Management whenever issues arise that may require assistance from such immigration agencies as further described below.

A. Background

1. Immigration Agencies

Since the organization of the Department of Homeland Security (“DHS”) in 2002, primary responsibility for immigration issues has been split between three agencies within DHS:

- United States Citizenship and Immigration Services (“USCIS”) is responsible for adjudicating immigration benefits, such as visas;
- Immigration and Customs Enforcement (“ICE”) investigates immigration violations and enforces the law, including the prosecution of removal actions before immigration judges within the Department of Justice;
- Customs and Border Patrol (“CBP”) is responsible for securing the physical borders and points of entry.

Within the limits of the law, USCIS, ICE, and CBP have discretion to decide whether, when, and how to enforce the law in each particular case coming within their respective jurisdictions. See Reno v. American-Arab Anti-Discrimination Comm., 525 U.S. 471, 483-87 (1999). In

¹ Sure-Tan, Inc. v. NLRB, 467 U.S. 883 (1984); see Hoffman Plastic Compounds, Inc. v. NLRB, 535 U.S. 137, 152 (2002) (expressly reaffirming this principle, though limiting remedies in order to avoid conflict with immigration law).

exercising this discretion, immigration agencies will consider, among other things, “[c]urrent or past cooperation [by the individual] with . . . law enforcement authorities, such as the U.S. Attorneys, the Department of Labor, or National Labor Relations Board, among others.” Memorandum, “Exercising Prosecutorial Discretion,” Commissioner of Immigration and Naturalization Services Doris Meissner, p. 8 (November 17, 2000); see also Memorandum, “Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens,” Assistant Secretary of Immigrations and Customs Enforcement John Morton p. 4 (June 30, 2010); OM Memo 97-11 “Relations with Immigration and Naturalization Service (INS) of the U.S. Department of Justice” (February 14, 1997).

2. Immigration Status

Non-citizens² may hold one of two general categories of lawful visa status:

- **Immigrant visas** confer status as a Lawful Permanent Resident, colloquially referred to as a “green card.” Lawful Permanent Residents generally have work authorization. This status does not expire but can be terminated in a variety of circumstances, including certain criminal convictions.
- **Nonimmigrant visas** are temporary and will expire within a specific defined term. There are many varied types of nonimmigrant visas, most often named after the statutory subsection in the Immigration and Nationality Act (“INA”), which creates each specific type. INA, Pub. L. 82-414, as amended, see 8 U.S.C. § 1101, et seq. For example, the “H-2B visa” refers to the temporary worker visa governed by INA § 101(a)(15)(H)(ii)(b), (see below). The scope and nature of work authorization varies considerably among the nonimmigrant visas:
 - **No work authorization** is provided by many of the most common nonimmigrant visa types, including B-1 visas for business, B-2 visas for tourists and short term visitors covered by the visa waiver program (visitors from, for example, Japan, Czech Republic, Italy, England, etc.).
 - **Limited work authorization** is provided by a number of visas, particularly those obtained through work (rather than family or asylum). Such work authorization is limited to a specific employer; indeed, the visa itself is terminated if the employment relationship ends, and the former employee is then required by law to leave the country. Visas of this sort include H-1 visas for professionals, H-2B visas for nonprofessionals, and L visas for intracompany transferees.
 - **Broader work authorization** that permits working for any employer is provided by some visas, including portions of the term of some student visas, K-1 fiancée visas, and T, U, and S,³ law enforcement visas (described more fully below).

² “All persons born or naturalized in the United States” are citizens under the Fourteenth Amendment. Citizens generally do not encounter immigration status issues when working in the United States.

³ The S visa was created in 1994 as a temporary program and made permanent in 2001 require certification by the Attorney General and are capped at 200 visas per year. They are available only for informants against criminal organizations or enterprises. 8 U.S.C. § 1101(a)(15)(S)(i). An additional 50 visas are available where the Secretary of State and the Attorney General provide certification for a reliable informant on terrorist organizations. 8 U.S.C. § 1101(a)(15)(S)(ii); 8 U.S.C. § 1184(k)(1).

Violations of visa terms—either by working when unauthorized or by “overstaying” after the expiration of a visa—can result in loss of visa status and removal from the country. In addition, entering the country without any valid immigration status violates immigration law and can result in removal; such persons are commonly referred to as “**undocumented.**”

B. Procedure for Addressing Immigration Status Issues

As noted, the NLRA protects covered employees regardless of immigration status. Therefore, immigration status (or lack thereof) is generally not relevant either in representation proceedings or at the merits stage of unfair labor practice proceedings. As stated, in GC 02-06, “Procedures and Remedies for Discriminatees Who May Be Undocumented Aliens after Hoffman Plastic Compounds, Inc.” p. 6:

- Regions generally should presume that employees are lawfully authorized to work. They should refrain from conducting a *sua sponte* immigration investigation and should object to questions concerning the discriminatee's immigration status at the merits stage.
- Regions should investigate the discriminatee's immigration status only after a respondent establishes the existence of a genuine issue [during the remedial stage].
- Regions should conduct an investigation by asking the Union, the charging party and/or the discriminatee to respond to the employer's evidence.

Regions should continue to follow this policy and consult GC 02-06 for additional direction.

Nonetheless, immigration issues are sometimes unavoidably interjected into NLRB proceedings. For example, NLRB discriminatees, witnesses, or voting-eligible employees may be taken into custody by ICE or CBP. In addition, immigration status may be inextricably intertwined with an unfair labor practice, such as where immigration threats or related conduct is the basis of the unfair labor practice allegation. Finally, the issue may be as simple as an employee volunteering information about immigration status or asking the Region for immigration advice or assistance.

Regions should not provide immigration advice. Resolution of these issues is best addressed when employees can obtain immigration advice through their union or from an independent immigration attorney. Regions may refer interested persons to the list of accredited immigration services providers maintained by the Department of Justice and found at <http://www.justice.gov/eoir/statspub/raroster.htm>.⁴ Individuals sometimes are mistaken about their immigration status and Regions should not assume that immigration status information volunteered by an unrepresented person is correct.

C. Seeking Assistance from Immigration Agencies Regarding Status Issues

As set forth below, in certain cases where immigration status is of particular significance, the Agency may decide to seek the assistance of one of the three immigration agencies to advance

⁴ As a public service, the Region could place copies of the listing of currently recognized organizations and accredited individuals in a binder in a designated area in the Regional office for the public's use.

the effective enforcement of the NLRA. Such agencies might assist in providing visa remedies, deferring immigration actions during the pendency of the NLRB proceeding, and/or releasing individuals from custody or providing access to witnesses in custody. Regions should consult with DAGC Peter Sung Ohr in the Division of Operations-Management when such issues arise.

Regions should also discuss with the Division of Operations-Management cases involving any of the following circumstances: 1) where the status of an individual involved in the case is lost, particularly because of protected concerted activities; 2) where the individual's presence in the country is important to the effectuation of the Act; 3) where NLRB or immigration processes are being abused by the employer; and/or 4) where the employer knew or was willfully ignorant of the employee's lack of status. These circumstances are merely illustrative and there may be others where consulting with the Division of Operations-Management would be prudent.

1. Loss of Status, Particularly Where Status is Lost Because of Protected Concerted Activities

Cases involving lawful immigration status that is illegally stripped from an employee as a direct result of an unfair labor practice are very compelling. For example, as previously noted, an employee holding a nonimmigrant work visa—such as the H or L visas—will be dependent upon continued employment by a specific employer in order to maintain immigration status and legally remain in the country. An employer who fired such an employee in violation of, for example, Section 8(a)(1) or 8(a)(3), also would have unlawfully deprived the employee of visa status. In addition, the investigation, prosecution, and remediation of the unfair labor practice would likely be impeded by the discriminatee's absence from the country. However, remaining in the country to pursue the unfair labor practice could subject the discriminatee to immigration penalties and could complicate remedial considerations—even though the employee had always complied with immigration law and has been illegally deprived of immigration status.

In addition, cases where individuals lost lawful immigration status for any of a variety of other reasons may also require assistance from immigration agencies in order to remain in the country to participate in NLRB proceedings. This category includes those cases where there is simply the expiration of a temporary nonimmigrant visa.

2. Importance of the Individual's Presence in the Country to the Effectuation of the Act

Immigration status issues may interfere with enforcement and effectuation of the NLRA by, for example, impacting the availability of discriminatees and important witnesses during NLRB proceedings. In such cases, it may be appropriate to seek the assistance of immigration agencies.

In addition, particular attention is required where the alleged ULP involves egregious conduct, such as physical coercion, involuntary servitude, blackmail, or violations of other laws. Examples of physical coercion and involuntary servitude may include taking an employee's passport or imposing illegal working conditions. Examples of blackmail may include interfering with protected activity through illegal threats of retaliation such as threats to call immigration authorities or threats to "blacklist" employees. In such cases, additional immigration remedies

may be available, including a law enforcement visa such as the U or T Visa.⁵ It is very important that Regions contact the Division of Operations-Management when such issues arise.

T Visas:

The T Visa category was created in 2000 by the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386. This visa is available where the applicant is the victim of “severe forms of trafficking in persons,”⁶ and the victim must be present in the United States because of the trafficking. 8 U.S.C. § 1101(a)(15)(T)(i)(II). The victim must have either “complied with any reasonable request for assistance in the investigation or prosecution of acts of such trafficking in persons, or [i]s less than 15 years of age.” 8 U.S.C. § 1101(a)(15)(T)(i)(III). Additionally, the victim must also prove “extreme hardship involving unusual and severe harm” if the victim were deported. 8 C.F.R. § 214.11(i) (describing evidentiary standard for extreme hardship). There is also a numerical limit of 5000 T Visas per year.

T Visas last for a term of three years, and automatically include work authorization. 8 C.F.R. § 214.11(l)(4)(work authorization); § 214.11(p)(three year term). Family members of victims can also obtain T Visas; family member T Visas are not subject to the numerical cap. 8 C.F.R. § 214.11(o). T Visas also include a path to becoming a lawful permanent resident. 8 C.F.R. § 214.11(p)(2).

This visa could be applicable in some cases that come before the NLRB. For example, where a discriminatee is brought into the country under false pretenses and confined in sweatshop conditions, a T Visa may be available. However, in most cases, T Visas may not be available either because the individual came to the United States independent of any trafficking, or the circumstances do not rise to the level of severe trafficking required by USCIS.

In those cases where a T Visa may be applicable, the Regional Office should immediately contact DAGC Peter Sung Ohr in the Division of Operations-Management.

U Visa:

Like the T Visa, the U Visa category was created by the Victims of Trafficking and Violence Protection Act. The U Visa is available where the nonimmigrant applicant is the victim of one the following “qualifying crimes” while in the United States:

rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion;

⁵ Such visas are available to the victims of certain qualifying crimes who are cooperating with law enforcement agencies. 8 U.S.C. § 1101(a)(15)(T) & (U); 8 C.F.R. § 214.14.

⁶ Defined as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” 8 C.F.R. § 214.11(a).

manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

8 U.S.C. 1101(a)(15)(U)(iii).

Applicants for U Visas must submit a completed Form I-918, "Petition for U Nonimmigrant Status" to USCIS for consideration, along with a completed and certified Supplement B form completed by an agency responsible "for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity." See 8 C.F.R. § 214.14(c)(2)(i); Instructions for I-918, Supplement B at 2. In completing Supplement B, the agency must certify that the individual submitting the Form I-918 is a victim of certain qualifying criminal activity and is, has been, or is likely to be helpful in the investigation or prosecution of that activity. See 8 C.F.R. § 214.14(c)(2).

USCIS has interpreted this list of U Visa qualifying crimes broadly, and stated in the relevant regulatory documents that this is a list "of general categories of criminal activity. It is also a non-exclusive list. Any similar activity to the activities listed may be a qualifying criminal activity." New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, Interim Final Rule, 72 F.R. 53014, 53018 (September 17, 2007).

If a Regional Office receives a request to complete the Supplemental B form to certify a U Visa application, the Region should immediately contact DAGC Peter Sung Ohr in the Division of Operations-Management. Initially, it will be the Regional Office's responsibility to investigate whether the nonimmigrant applicant has been a victim of a qualifying criminal activity and is being, has been, or is likely to be helpful to the investigation of that activity. The qualifying criminal activity must be related to the meritorious unfair labor practice alleged in the ULP under investigation by the NLRB.

Upon the conclusion of the Regional investigation, the Region should submit a written recommendation to the Division of Operations-Management addressing whether the ULP allegation is related to the qualified criminal activity within the meaning of the U Visa statute and whether the nonimmigrant applicant has demonstrated that he or she has been, is being, or is likely to be helpful to the investigation.

The U Visa should be applicable in a greater number of cases than the T Visa because of the breadth of the crimes which qualify. The list includes a number of crimes that may arise in the workplace, and which also constitute unfair labor practices in some cases, including "peonage; involuntary servitude; . . . unlawful criminal restraint; false imprisonment; blackmail; extortion; . . . felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes."

The remedy provided by the U Visa are substantially similar to those available with the T Visa: a term of generally three or four years (USCIS may extend the term beyond four aggregate years), work authorization, family member visas, and a path to becoming a lawful permanent resident. 8 C.F.R. § 214.14(g), (c)(6), (f), (g)(2), respectively.

3. Abuse of Process: Retaliation Using Immigration Status

Whether or not a T or U Visa may be available to an individual involved in a Board proceeding, Regions should contact the Division of Operations-Management in cases where an employer is taking advantage of immigration status issues in an attempt to abuse the NLRB process and thwart the effective enforcement of the law. Examples of this type of behavior include calling or threatening to call ICE in retaliation for protected concerted activities, citing immigration status as a pretext for unlawful firing, and alluding to immigration status in a menacing or suggestive way during representation or ULP proceedings.⁷

4. Employer Knowledge or Willful Ignorance of Individuals Undocumented Status

Regions should also contact the Division of Operations-Management in cases where a respondent employer commits ULPs against an employee knowing or with willful ignorance of such employee's lack of immigration work authorization. Such employers pose a significant threat to the enforcement of the NLRA because they deliberately take advantage of the employee's lack of status. In most such cases, the employees are aware or suspect that the employer knows of their immigration status, and are thus deterred from exercising their legal rights even where no overt immigration threats are made.

The kind of evidence that demonstrates that an employer knew or was willfully ignorant of the workers' status includes: failure to ask for I-9 documents,⁸ complicity in accepting fraudulent I-9 documents, and irregular pay arrangements. Threats to take action based on status or other statements acknowledging employees' status also reflect a knowing or willfully ignorant Employer.⁹

Conclusion

Although Regions should not raise immigration status issues *sua sponte*, in cases where such issues arise, immigration agencies may grant immigration remedies or favorably exercise discretion in order to assist the NLRB in the enforcement of the NLRA. Regions should contact DAGC Peter Sung Ohr in the Division of Operations-Management in all cases where the circumstances arguably justify using these mechanisms.

/s/
R.A.S.

cc: NLRBU
Released to the Public

⁷ Generally, an employer may raise immigration status during remedial ULP proceedings as a defense to back pay and reinstatement. GC 02-06; see Hoffman Plastic Compounds, Inc. v. NLRB, 535 U.S. 137 (2002); NLRB v. Domsey Trading Corp., __ F.3d __, 10-3356, 2011 WL 563688 (2d Cir. February 18, 2011) (“[W]e find that employers may cross-examine backpay applicants with regard to their immigration status, and leave it to the Board to fashion evidentiary rules consistent with Hoffman.”).

⁸ Acceptable documents to establish a worker's identity and eligibility to work in the United States.

⁹ Seeking such information should be done consistent with the guidelines in GC 02-06.



U.S. Citizenship and Immigration Services

Battered Spouse, Children & Parents

As a battered spouse, child or parent, you may file an immigrant visa petition under the Violence against Women Act (VAWA). VAWA allows certain spouses, children and parents of U.S. citizens and permanent residents (green card holders) to file a petition for themselves without the abuser's knowledge. This will allow you to seek both safety and independence from the abuser. The provisions of VAWA apply equally to women and men. Your abuser will not be notified that you have filed for immigration benefits under VAWA.

Help is also available from the National Domestic Violence Hotline at 1-800-799-7233 or 1-800-787-3224 (TDD). The hotline has information about shelters, mental health care, legal advice and other types of assistance, including information about filing for immigration status. For more information, visit the [National Domestic Violence](#) website.

Those Eligible to File

- **Spouse:** You may file for yourself if you are, or were, the abused spouse of a U.S. citizen or permanent resident. You may also include on your petition your unmarried children who are under 21 if they have not filed for themselves.
- **Parent:** You may file for yourself if you are the parent of a child who has been abused by your U.S. citizen or permanent resident spouse. You may include on your petition your children, including those who have not been abused, if they have not filed for themselves. You may also file if you are the parent of a U.S. citizen, and you have been abused by your U.S. citizen son or daughter.
- **Child:** You may file for yourself if you are an abused child under 21, unmarried and have been abused by your U.S. citizen or permanent resident parent. Your children may also be included on your petition. You may file for yourself as a child after age 21 but before age 25 if you can demonstrate that the abuse was the main reason for the delay in filing.

Eligibility Requirements for a Spouse

- **You are:**
 - married to a U.S. citizen or permanent resident abuser

or

 - your marriage to the abuser was terminated by death or a divorce (related to the abuse) within the 2 years prior to filing, or
 - your spouse lost or renounced citizenship or permanent resident status within the 2 years prior to filing due to an incident of domestic violence, or
 - you believed that you were legally married to your abusive U.S. citizen or permanent resident spouse but the marriage was not legitimate solely because of the bigamy of your abusive spouse.
- **You:**
 - have been abused in the United States by your U.S. citizen or

- permanent resident spouse, or
 - have been abused by your U.S. citizen or permanent resident spouse abroad while your spouse was employed by the U.S. government or a member of the U.S. uniformed services, or
 - are the parent of a child who has been subjected to abuse by your U.S. citizen or permanent spouse.
- You entered into the marriage in good faith, not solely for immigration benefits.
 - You have resided with your spouse.
 - You are a person of good moral character.

Eligibility Requirements for a Child

- **You:**
 - are the child of a U.S. citizen or permanent resident abuser
 - were the child of a U.S. citizen or permanent resident abuser who lost citizenship or lawful permanent resident status due to an incident of domestic violence
 - have been abused in the United States by your U.S. citizen or permanent resident parent
 - have been abused by your U.S. citizen or permanent resident parent abroad while your parent was employed by the U.S. government or a member of the U.S. uniformed services
 - have resided with the abusive parent
 - have evidence to prove your relationship to your parent
 - must provide evidence of good moral character if you are over the age of 14

Eligibility Requirements for a Parent

- You are the parent of a U.S. citizen son or daughter or were the parent of a U.S. citizen son or daughter who lost or renounced citizenship status related to an incident of domestic violence or died within 2 years prior to filing
- You have been abused by your U.S. citizen son or daughter
- You have resided with the abusive son or daughter
- You are a person of good moral character

Filing Process

- You must complete the [Form I-360, Petition for Amerasian, Widow\(er\), or Special Immigrant](#), including all supporting documentation
- You must file the form with the Vermont Service Center (VSC)
- If you meet all filing requirements, you will receive a notice (Prima Facie Determination Notice) valid for 150 days that you can present to government agencies that provide certain public benefits to certain victims of domestic violence
- If your Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant is approved and you do not have legal immigration status in the United States, we may place you in deferred action, which allows you to remain in the United States

Working in the United States

If you have an approved Form I-360 and have been placed in deferred action, you are eligible to apply to work in the United States. To apply to work in the United States, you must file the [Form I-765, Application for Employment Authorization](#), with the Vermont Service Center.

Your children listed on your approved Form I-360, may also apply for work authorization. For more information on working in the United States, visit our [Working in the U.S.](#) page.

Permanent Residence (Green Card)

If you have an approved Form I-360, you may be eligible to file for a [green card](#). Your children listed on your approved Form I-360 may also be eligible to apply for a green card. For information about filing for a green card, see the [Immigration Options for Victims of Crimes Brochure](#).

For more information on battered spouse, children and parents, visit our [Questions & Answers: Battered Spouses & Children](#) page.

Last updated: 04/07/2011

[Plug-ins](#)

Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa

Purpose:

Immigrants are particularly vulnerable because many do not speak English, are often separated from family and friends, and may not understand the laws of the United States. For these reasons, immigrants are often afraid to report acts of domestic violence to the police or to seek other forms of assistance. Such fear causes many immigrants to remain in abusive relationships.

This pamphlet will explain domestic violence and inform you of your legal rights in the United States. The International Marriage Broker Regulation Act (IMBRA) requires that the U.S. Government provide foreign fiancé(e)s and spouses immigrating to the United States information about their legal rights as well as criminal or domestic violence histories of their U.S. citizen fiancé(e)s and spouses. One of IMBRA's goals is to provide accurate information to immigrating fiancé(e)s and spouses about the immigration process and how to access help if their relationship becomes abusive.

What is domestic violence?

Domestic violence is a pattern of behavior when one intimate partner or spouse threatens or abuses the other partner. Abuse may include physical harm, forced sexual relations, emotional manipulation (including isolation or intimidation), economic and/or immigration related threats. While most recorded

incidents of domestic violence involve men abusing women or children, men can also be victims of domestic violence.

Domestic violence may include sexual assault, child abuse, and other violent crimes. Sexual assault is any type of sexual activity that you do not agree to, even with your spouse, and can be committed by anyone. Child abuse includes: physical abuse (any injury that does not happen by accident, including excessive punishment), physical neglect (failure to provide food, shelter, medical care or supervision), sexual abuse, and emotional abuse (threats, withholding love, support or guidance).

Under all circumstances, domestic violence, sexual assault, and child abuse are illegal in the United States. All people in the United States (regardless of race, color, religion, sex, age, ethnicity, or immigration status) are guaranteed protection from abuse under the law. Any victim of domestic violence – regardless of immigration or citizenship status – can seek help. An immigrant victim of domestic violence may be eligible for immigration protections.

If you are experiencing domestic violence in your home, you are not alone. This pamphlet is intended to help you understand U.S. laws and know how to get help if you need it.

What are the legal rights for victims of domestic violence in the United States?

All people in the United States, regardless of immigration or citizenship status, are guaranteed basic protections under both civil and criminal law. Laws governing families provide you with:

- The right to obtain a protection order for you and your child(ren).
- The right to legal separation or divorce without the consent of your spouse.
- The right to share certain marital property. In cases of divorce, the court will divide any property or financial assets you and your spouse have together.
- The right to ask for custody of your child(ren) and financial support. Parents of

children under the age of 21 often are required to pay child support for any child not living with them.

Consult a family lawyer who works with immigrants to discuss how any of these family law options may affect or assist you.

Under U.S. law any crime victim, regardless of immigration or citizenship status, can call the police for help or obtain a protection order.

Call police at 911 if you or your child(ren) are in danger. The police may arrest your fiancé(e), spouse, partner, or another person if they believe that person has committed a crime. You should tell the police about any abuse that has happened, even in the past, and show any injuries. Anyone, regardless of immigration or citizenship status, may report a crime.

Likewise, if you are a victim of domestic violence you can apply to a court for a protection order. A court-issued protection order or restraining order may prohibit your abuser from calling, contacting, approaching, or harming you, your child(ren), or other family members. If your abuser violates the protection order, you can contact the police, who may arrest the abuser. Applications for protection orders are available at most courthouses, police stations, women's shelters, and legal service offices.

If your abuser accuses you of a crime, you have basic rights, regardless of your immigration or citizenship status, including: the right to talk to a lawyer; the right to not answer questions without a lawyer present; the right to speak in your defense. It is important to talk with both an immigration lawyer and a criminal lawyer.

What services are available to victims of domestic violence and sexual assault in the United States?

In the United States, victims of crime, regardless of immigration or citizenship status, can access help provided by government or nongovernmental agencies, which may include counseling, interpreters, emergency housing, and even monetary assistance.

The national telephone numbers or “hotlines” listed below have operators trained to help victims 24 hours a day free of charge. Interpreters are available and these numbers can connect you with other free services for victims in your local area, including emergency housing, medical care, counseling, and legal advice. If you cannot afford to pay a lawyer you may qualify for a free or low-cost legal aid program for immigrant crime or domestic violence victims.

National Domestic Violence Hotline
1-800-799-SAFE (1-800-799-7233)
1-800-787-3224 (TTY)
www.ndvh.org

National Sexual Assault Hotline of the Rape, Abuse and Incest National Network (RAINN)
1-800-656-HOPE (1-800-656-4673)
www.rainn.org

National Center for Missing and Exploited Children
1-800-THE-LOST (1-800-843-5678)
www.missingkids.com

The National Center for Victims of Crime
1-800-FYI-CALL (1-800-394-2255)
1-800-211-7996 (TTY)
www.ncvc.org

NOTE: These are organizations whose primary mission is safety and protection.

If I am a victim of domestic violence, sexual assault, or other crime, what immigration options are available to me?

There are three ways immigrants who become victims of domestic violence, sexual assault, and some other specific crimes may apply for legal immigration status for themselves and their child(ren). A victim’s application is confidential and no one, including an abuser, crime perpetrator or family member, will be told that you applied.

- Self-petitions for legal status under the Violence Against Women Act (VAWA)
- Cancellation of removal under VAWA
- U-nonimmigrant status (crime victims)

These immigration benefits each have specific requirements that must be established. Consult an immigration lawyer who works with victims of domestic violence to discuss how any of these immigration benefits may affect or assist you.

How does the marriage-based immigration process work?

The marriage-based immigration process involves several steps to obtain legal immigration status in the United States, and over time, to be eligible for citizenship. These steps depend on the type of marriage-based visa you travel on to the United States, as well as other factors. The following information is an overview of some of these types of visas, as well as information on your legal rights.

K-1 nonimmigrant status (as the fiancé(e) of a United States citizen): You are required to either marry the United States citizen within 90 days of entry or to depart the United States. Following your marriage to the U.S. citizen fiancé(e) who petitioned for you, you must file an Application to Register Permanent Residence or Adjust Status (Form I-485). If your Form I-485 is approved, your status will be adjusted from a K nonimmigrant to that of a conditional permanent resident. You will have that conditional status for two years.

If you remain in the U.S. without marrying the U.S. citizen who sponsored your K-1 visa, or marry someone else, you will violate the terms of your visa, have no legal status, and may be subject to removal proceedings or other penalties.

K-3 nonimmigrant status (as the spouse of a United States citizen): You are allowed to enter the United States temporarily while waiting for approval of a family-based visa petition (I-130). Once the I-130 is approved, you are entitled to lawful permanent

residence (green card) and will need to file an Application to Register Permanent Residence or Adjust Status (Form I-485).

All other marriage-based immigration status holders should refer to the information given to them from the U.S. consulate. Additional information may be found online at <http://www.uscis.gov>.

What are the penalties for marriage fraud?

Immigrants who commit marriage fraud may be subject to removal proceedings and may be barred from receiving future immigration benefits in the United States. Conviction for marriage fraud can involve imprisonment for up to five (5) years and fines up to \$250,000 (U.S. currency).

If I am married to a U.S. citizen who filed immigration papers on my behalf, what is my immigration status?

If you have been married less than 2 years when your Form I-485 is approved, you will receive conditional residence status from USCIS. Ninety (90) days before the second anniversary of your conditional residence, you and your spouse generally must apply together to remove the conditions on your lawful residence. To do so, you must prove the marriage is in “good faith” and valid. Once the conditions are removed, you have permanent residency that is not dependent on your U.S. spouse.

If you have been married more than 2 years when your Form I-485 is approved, you will receive permanent residence status from USCIS. On that date you will no longer be dependent on your U.S. citizen spouse for immigration status.

There are three situations when the law allows conditional residents the option to request a waiver of the requirement that you and your spouse file jointly to request removal of the conditions. 1) The removal of the conditional resident from the U.S. would result in extreme hardship; OR 2) The marriage was legally terminated, other than by death, and the applicant was not at fault for failing to file a timely application to remove the conditional basis of his or her status;

OR 3) During the marriage the U.S. citizen or lawful permanent resident spouse subjected the conditional resident to battery or extreme cruelty. All three waivers are filed on Form I-751 and require you to prove your marriage was in “good faith” and not fraudulent.

What other ways does the U.S. government try to inform foreign fiancées and spouses about their rights and protect them and their children from abuse?

The International Marriage Broker Regulation Act of 2005 (IMBRA) is a law in the United States that changed the marriage-based immigration process to help foreign fiancé(e)s and spouses. IMBRA mandates that the U.S. Government give immigrating foreign fiancé(e)s and spouses information and self-help tools to help protect them against violence from the partners who sponsor their visas. Immigrating fiancé(e)s and spouses are often unfamiliar with the U.S. laws and unsupported by family or friends to escape violence at home.

IMBRA required this pamphlet be written and distributed to tell you about laws and services that can help you in the United States if you are abused. IMBRA prevents U.S. citizens from sponsoring multiple visas for foreign fiancé(e)s if they have a history of violent crimes. IMBRA requires the U.S. government to give foreign fiancé(e)s and spouses of U.S. citizens a copy of the criminal background check that USCIS does on U.S. citizen-sponsors, as well as a copy of the visa sponsorship application.

How does the U.S. government regulate “International Marriage Brokers”?

If an agency qualifies as an “international marriage broker,” it is required to give you background information on the U.S. client who wants to contact you, including information contained in Federal and State sex offender public registries, and get your written permission before giving the U.S. client your contact information. The agency is required to give you a copy of this pamphlet. It is prohibited from doing business with you if you are under 18 years of age.

Can I rely on the criminal background information on my U.S. citizen fiancée or spouse?

The criminal background information compiled by the agency comes from various public sources, as well as information provided by the U.S. citizen clients on immigration applications. USCIS does not have access to all criminal history databases in the United States. The U.S. citizen sponsor may not tell the truth in the sponsorship application. It is also possible the U.S. citizen has a history of abusive behavior but was never arrested or convicted. Therefore, the criminal background information you receive may not be complete. The intent of IMBRA is to provide available information and resources to immigrating fiancé(s) and spouses. Ultimately you are responsible for deciding whether you feel safe in the relationship.

Can foreign fiancées or spouses who are victims of domestic violence also be victims of human trafficking?

Other forms of exploitation including human trafficking can sometimes occur alongside domestic violence, when the exploitation involves compelled or coerced labor, services, or commercial sex acts.

Help regarding human trafficking may be found at:

National Human Trafficking Resource Center
1-888-373-7888
(24 hours a day, 7 days a week)
www.acf.hhs.gov/trafficking

Human Trafficking and Worker Exploitation Task Force Hotline, U.S. Department of Justice
1-888-428-7581
(Monday - Friday, 9am to 5pm)
www.usdoj.gov/crt/crim/tpwetf.php

More information can be found at our website or by calling the toll free number listed below.

USCIS General Information

In the United States, telephone toll free to:
1-800-870-3676 or

Visit our internet website at:

<http://www.uscis.gov>

