

H-2B Visas for Temporary Workers in Technology



By Michael J. Wildes, Esq.

The H-2B seasonal worker visa allows U.S. employers or U.S. agents who meet specific regulatory requirements to bring foreign nationals to the United States to fill temporary jobs. Typically, the H-2B visa is associated with agricultural jobs, however this visa is available to other individuals as well.

Today, more than ever before, as the U.S. economy continues to be powered by the latest developments in technology, there is a greater demand for skilled computer-related workers such as webmasters, LAN operators, desktop publishers, etc. No doubt the need for skilled IT foreign national workers will only continue to increase as the use of computers and the Internet in the workplace becomes even more pervasive.

To obtain an H-2B nonimmigrant visa, a U.S. employer must file a petition on behalf of the foreign national worker and the employer must establish the following criteria:

That there are not enough U.S. workers who are able, willing, qual-

ified, and available to do the temporary work;

That the employment of H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers; and

That the need for the prospective worker's services or labor is in fact temporary, regardless of whether the underlying job can be described as temporary. This can be shown by proof of a one-time occurrence, a seasonal need, a peakload need, or an intermittent need.

H-2B petitioners must also provide a single, valid temporary labor certification from the U.S. Department of Labor. There is a statutory numerical limit, or "cap," on the total number of individuals who may receive H-2B nonimmigrant classification during a fiscal year. In other words, employers need to watch out for filing deadlines and do so promptly and accurately because once the H-2B cap is reached, the U.S. may only accept petitions for a very narrow type of H-2B workers who are exempt from the H-2B cap.

There are three steps in the H-2B program process:

- 1) The petitioner must apply for and receive a temporary labor certification from the Department of Labor before requesting H-2B worker classification;
- 2) After receiving the temporary la-

bor certification for H-2B employment, the employer should file for the visa category with the temporary labor certification; and

3) Prospective workers outside of the U.S. must apply for an H-2B visa with the U.S. Department of State at a U.S. Embassy or Consulate abroad, or directly seek admission to the U.S. in this classification at a U.S. port of entry with U.S. Customs and Border Protection after the H-2B petition has been approved.

H-2B petitions may only be approved for nationals of countries that the Secretary of Homeland Security has designated, with the approval of the Secretary of State, as eligible to participate in the H-2B program. The list of eligible countries is published annually in a Federal Register notice. However, a foreign national from a non-listed or eligible country may still be granted an H-2B visa if the Secretary of Homeland Security determines that it is in the U.S. interest for him or her to be the beneficiary of such a petition.

Generally, the period of stay in the U.S. granted for an H-2B visa holder is based on the temporary labor certification. It can be extended for qualifying employment in increments of up to one year each, but there must be a new valid temporary labor certification accompanying such extensions.

The maximum overall period of stay in H-2B classification is three years. A person who has held the maximum period in this classification must depart and remain outside the U.S. for an uninterrupted period of three months before seeking readmission as an H-2B nonimmigrant. Finally, an H-2B worker's spouse and unmarried children under 21 years of age may seek admission under H-4 nonimmigrant classification, but they are not eligible for employment in the United States while here in H-4 status.

If you are an employer and your business requires skilled IT workers, filing for an H-2B visa for a foreign national may be a great solution for you. Also, if you're a foreign national, skilled in this field, there might be more businesses willing to file a petition on your behalf due to the increased demand for your work. Just remember to retain the assistance of a lawyer who is experienced in U.S. business immigration law as the H-2B visa process can be quite complex, especially given its strict petition process.

Michael J. Wildes is the Managing Partner of Wildes and Weinberg, P.C. with offices in New York, New Jersey, and Florida. If you would like to contact Michael Wildes, please email him at michael@wildeslaw.com and visit the firm's website at www.wildeslaw.com.

Ice Cream on Grand
HOME MADE

Fresh and bursting with flavor is what Ice Cream on Grand has to offer. Serving the Englewood, NJ area we provide great tasting ice cream that's prepared fresh with the highest quality of Kosher ingredients.

Treat yourself today with our decadent home-made ice cream in a large variety of flavors.

At Ice Cream on Grand you are sure to enjoy the great atmosphere, the friendly service, and affordable prices. Take your taste buds on an unforgettable journey at Ice Cream on Grand.

**We are a peanut-free facility*

<p>Hard Ice Cream:</p> <ul style="list-style-type: none"> • Banana • Butter Pecan • Caramel Dream • Cake Batter • Cherry Vanilla • Chocolate Seduction • Chocolate • Chocolate Chip Cookie Dough • Coconut • Coffee • Cookies & Cream • Cookie Monster • Maple Walnut • Marble Crunch • Mint Chocolate Chip • Pistachio Almond • Rocky Road • Rum Raisin • Strawberry • Vanilla 	<p>Sugar/Fat Free Hard Ice Cream:</p> <ul style="list-style-type: none"> • Chocolate • Coffee • Maple Walnut • Pistachio Almond • Rum Raisin <p>Sherbets:</p> <ul style="list-style-type: none"> • Black Raspberry • Blueberry • Cotton Candy • Lemon • Mango • Orange 	<p>Soft Ice Cream</p> <ul style="list-style-type: none"> • Vanilla • Chocolate <p>Dole™ Whip:</p> <ul style="list-style-type: none"> • Pineapple • Raspberry • Mango • Orange
--	---	---

Ice Cream on Grand now serving Waffle a la Mode

(201) 569-5346 523 Grand Avenue Englewood, NJ 07631 www.icecreamongrand.com

facebook Kof-K Supervision