

Temporary Work Visas for Nannies

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Nannies may work in the US under a temporary visa called the H-2B, which allows a foreign worker to enter the US to perform non-agricultural labor on a temporary basis.

The employer, however, must carefully document this temporary need. Such documents may include proof that the child will be going to nursery school in a year or that either parent has a definite plan to stop working at a certain time.

The duration of the H-2B status depends on the employer's need but may be granted for a maximum of one year. This may be extended for another 12 months twice for a total stay of three years.

The H-2B visa is for both skilled and unskilled workers. Examples of unskilled workers who have been granted the visa aside from nannies are kitchen helpers, construction workers, dining room attendants and landscape laborers.

Examples of skilled workers that may qualify for the visa are computer programmers, production managers, trainers and chefs.

The annual cap for the H-2B is 66,000 visas per year and the cap does not apply to the spouse or children of the beneficiary. Because of its limits, the H-2B category has not been widely used until recently.

The H-2B cap was reached for the first time in March 2004. Under the Save Our Small and Seasonal Business Act of 2005, an additional 35,000 was added to the 2005 cap which had been reached before the 2005 fiscal year ended.

The job for which the foreign worker is sponsored as an H-2B must be one-time, seasonal, intermittent or peakload.

The US Citizenship and Immigration Services (USCIS) will examine the

employer's need, not the duties of the position.

In one case, an employment agency engaged in providing temporary services on a continuous basis was not granted an H-2B for a foreign worker. The US employer, however, may sponsor more than one foreign worker for H-2B on one petition provided the beneficiaries have the same occupation as well as terms and conditions of employment.

In order to obtain an H-2B visa, the employer must embark on a recruitment process to ascertain that no US citizens or permanent residents are available for the position. S/he has to apply for temporary labor certification to determine further that the employment of the foreign worker will not adversely affect the working conditions of employees in a similar position and will not adversely affect the wage rate and working conditions of similarly employed workers.

The H-2B petition may be filed for unnamed beneficiaries although the USCIS emphasized that this is allowed only as an exception upon presenting clear business reasons why the beneficiaries are not identified.

In petitions for unnamed beneficiaries, approved petitions for a group or where the job does not require education, teaching or experience, the USCIS may substitute the beneficiaries.

If the employer terminates the H-2B worker before the expiration of the H-2B status, the employer will shoulder the costs of the worker's transportation back to his/her home country.

Despite its limitations, the H-2B category is a viable option for US employers that immediately need the services of foreign workers.

