

8 CFR 214.2(h)(5)

(vi) Petitioner consent and notification requirements— (A) Consent. In filing an H-2A petition, a petitioner and each employer consents to allow access to the site by DHS officers where the labor is being performed for the purpose of determining compliance with H-2A requirements.

(B) Agreements. The petitioner agrees to the following requirements:

(1) To notify DHS, within 2 workdays, and beginning on a date and in a manner specified in a notice published in the **Federal Register** if:

(i) An H-2A worker fails to report to work within 5 workdays of the employment start date on the H-2A petition or within 5 workdays of the start date established by his or her employer, whichever is later;

(ii) The agricultural labor or services for which H-2A workers were hired is completed more than 30 days earlier than the employment end date stated on the H-2A petition; or

(iii) The H-2A worker absconds from the worksite or is terminated prior to the completion of agricultural labor or services for which he or she was hired.

(2) To retain evidence of such notification and make it available for inspection by DHS officers for a 1-year period beginning on the date of the notification. To retain evidence of a different employment start date if it is changed from that on the petition by the employer and make it available for inspection by DHS officers for the 1-year period beginning on the newly- established employment start date.

(3) To pay \$10 in liquidated damages for each instance where the employer cannot demonstrate that it has complied with the notification requirements, unless, in the case of an untimely notification, the employer demonstrates with such notification that good cause existed for the untimely notification, and DHS, in its discretion, waives the liquidated damages amount.

8 CFR 214.2(h)(6)(i)(F)

(F) Petitioner agreements and notification requirements. (1) Agreements. The petitioner agrees to notify DHS, within 2 work days, and beginning on a date and in a manner specified in a notice published in the **Federal Register** if: an H-2B worker fails to report for work within 5 work days after the employment start date stated on the petition; the nonagricultural labor or services for which H-2B workers were hired were completed more than 30 days early; or an H-2B worker absconds from the worksite or is terminated prior to the completion of the nonagricultural labor or services for which he or she was hired. The petitioner also agrees to retain evidence of such notification and make it available for inspection by DHS officers for a one-year period beginning on the date of the notification.

8 CFR 214.2(h)(5)(xi)(A)(iv)

(4) If USCIS determines that the beneficiary paid or agreed to pay the agent, facilitator, recruiter, or similar employment service such fees or compensation as a condition of obtaining the H-2A employment after the filing of the H-2A petition and with the knowledge of the petitioner, the petition will be denied or revoked unless the petitioner demonstrates that the petitioner or facilitator, recruiter, or similar employment service has reimbursed the beneficiary in full or where such fee or compensation has not

yet been paid by the alien worker, that the agreement has been terminated, or notifies DHS within 2 workdays of obtaining knowledge in a manner specified in a notice published in the **Federal Register**.

8 CFR 214.2(h)(6)(i)(B)(4)

(4) If USCIS determines that the beneficiary paid or agreed to pay the agent, facilitator, recruiter, or similar employment service such fees or compensation after the filing of the H-2B petition and that the petitioner knew or had reason to know of the payment or agreement to pay, the petition will be denied or revoked unless the petitioner demonstrates that the petitioner or agent, facilitator, recruiter, or similar employment service reimbursed the beneficiary in full, that the parties terminated any agreement to pay before the beneficiary paid the fees or compensation, or that the petitioner has notified DHS within 2 work days of obtaining knowledge, in a manner specified in a notice published in the **Federal Register**.

INA 214(c)(1)

(c)(1) The question of importing any alien as a nonimmigrant under 10a/ subparagraph (H), (L), (O), or (P)(i) of section 101(a)(15) (excluding nonimmigrants under section 101(a)(15)(H)(i)(b1)) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant. For purposes of this subsection with respect to nonimmigrants described in section 101(a)(15)(H)(ii)

(a), the term "appropriate agencies of Government" means the Department of Labor and includes the Department of Agriculture. The provisions of section 218 shall apply to the question of importing any alien as a nonimmigrant under section 101(a)(15)(H)(ii)(a).