



# Instructions for Application for Nonimmigrant Worker:

## H-2B Classification

Department of Homeland Security  
U.S. Citizenship and Immigration Services

USCIS  
Form I-129H2B  
OMB No. 1615-xxxx  
Expires xx/xx/20xx

### Purpose of Form I-129H2B

This petition is used by an employer to petition U.S. Citizenship and Immigration Services (USCIS) for an alien beneficiary to come temporarily to the United States as a nonimmigrant to perform nonagricultural services or labor.

Form I-129H2B consists of the:

1. Basic petition; and
2. H-2B Named Worker Attachment (required when more than one named beneficiary is included in the petition).

### Who May File Form I-129H2B?

**General.** A U.S. employer, a U.S. agent, or a foreign employer filing through a U.S. agent may file this form and applicable supplements to classify an alien as a temporary nonagricultural worker in the H-2B nonimmigrant classification.

**Agents.** A U.S. individual or company in business as an agent may file a petition for:

1. Workers who are traditionally self-employed;
2. Workers who use agents to arrange short-term employment on their behalf with numerous employers; or
3. A foreign employer who authorizes the agent to act on its behalf.

A petition filed by an agent must include a complete itinerary of services or engagements, including dates, names, and addresses of the actual employers, and the locations where the beneficiary will perform the services. A petition filed by a U.S. agent must guarantee the wages and other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries of the petition. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

### Information About Form I-129H2B

The H-2B classification always requires a petition.

The evidence listed below for H-2B petitions and for those petitions seeking a change of status or extension of stay, as applicable, must be included.

**Including more than one alien in a petition.** You may include multiple aliens who seek admission in the H-2B classification on the same petition provided you are requesting the same action for each, and all aliens will:

1. Be employed for the same period of time;
2. Be employed in the same location(s); and
3. Perform the same services or labor.

**Total number of workers.** The total number of workers you request on an H-2B petition must not exceed the number of workers approved by the Department of Labor on the temporary labor certification. If naming beneficiaries, a single H-2B petition may be filed on behalf of no more than 25 named workers. A petitioner may file additional petitions if requesting more than 25 named workers.

**Naming beneficiaries.** Generally, you may request named or unnamed workers as beneficiaries of an H-2B petition. However, you may not request both named and unnamed workers on the same H-2B petition.

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**H-2B workers who must be named:** You must provide the name, date of birth, country of birth, and country of nationality of all H-2B workers who:

1. Are currently in the United States; or
2. Are nationals of countries that are not designated by the Secretary of Homeland Security as eligible to participate in the H-2B program (see link and "Eligible Countries List" information below).

In addition, USCIS may require the petitioner to name H-2B beneficiaries where the name is needed to establish eligibility for H-2B nonimmigrant status.

**NOTE:** You must submit an H-2B Named Worker Attachment for each additional beneficiary when more than one named beneficiary is included in the petition.

### **H-2B Nonimmigrants**

The H-2B classification is for aliens coming to the United States temporarily to engage in nonagricultural services or labor that is based on the employer's seasonal, intermittent, peakload, or one-time need. The maximum period of stay that may be granted under this petition is the period specified in the temporary labor certification the petitioner is submitting together with this petition. The maximum overall period of stay for H-2B workers is, generally, three years, after which such workers must depart from the United States and remain outside the country for a period of no less than three months before such workers again become eligible for H-2B classification. There are numerical limitations (caps) on how many H-2B workers may be admitted to the United States semi-annually.

The petition may be filed by:

1. A U.S. employer;
2. A U.S. agent; or
3. A foreign employer filing through a U.S. agent.

The petitioner and employer (if different from the petitioner) must complete and sign the relevant sections of the petition and relevant Supplement/Attachment.

Additionally, the petitioner must submit:

1. A single approved temporary labor certification from the U.S. Department of Labor (or the Governor of Guam, if the employment will occur on Guam);
2. Evidence showing that each named beneficiary meets the minimum job requirements, if any, stated on the temporary labor certification; and
3. When applicable, a petition for aliens to perform services or labor in more than one location must include an itinerary with the dates and locations where the services or labor will take place.

**NOTE:** Petitions filed on behalf of Canadian musicians who will be performing for 1 month or less within 50 miles of the U.S. Canadian border do not require a temporary labor certification. Alternatively, petitions which require work in the jurisdictions of both the U.S. and Guam Departments of Labor must submit an approved temporary labor certification from each agency.

### **H-2B Statement of Need**

You must provide a detailed statement describing the temporary need for the beneficiaries' services with this petition. This explanation or statement should describe your operations and need in sufficient detail to establish the nature of your need for the beneficiaries to perform the services or labor, how you arrived at the number of beneficiaries requested, and whether the need is a one-time occurrence, seasonal, peakload or intermittent. In all cases, you may submit any documentation supporting your statement.

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## H-2B Start Date

A petition for H-2B workers must request an employment start date that matches the start date approved by the Department of Labor on the temporary labor certification. Petitions without matching start dates may be rejected or denied. This does not apply to amended petitions which request substitution of H-2B workers using the same temporary labor certification.

## Eligible Countries List

H-2B petitions may generally only be approved for nationals of countries that the Secretary of Homeland Security has designated, with the concurrence of the Secretary of State, as eligible to participate in the H-2B program. The current list of eligible countries is located at [www.uscis.gov/h-2b](http://www.uscis.gov/h-2b).

You may request workers who are nationals of countries that have not been designated as eligible to participate in the H-2B program. To do so, you must:

1. Name each beneficiary who is not from an eligible country; and
2. Provide evidence to show that it is in the U.S. interest for the alien to be the beneficiary of such a petition.

USCIS' determination of what constitutes the U.S. interest takes into account certain factors, including but not limited to:

1. Evidence demonstrating that a worker with the required skills is not available from among foreign workers from a country currently on the eligible countries list;
2. Evidence that the beneficiary has been admitted to the United States previously in H-2B status;
3. The potential for abuse, fraud, or other harm to the integrity of the H-2B visa program through the potential admission of a beneficiary from a country not currently on the eligible countries list; and
4. Such other factors as may serve the U.S. interest.

**NOTE:** It is recommended that H-2B petitions for workers from countries not listed on the "Eligible Countries List" be filed separately.

## Prohibited Fees

As a condition of approval of an H-2B petition, no job placement fee or other compensation (either direct or indirect) may be collected at any time from a beneficiary of an H-2B petition. This includes collection by a petitioner, agent, facilitator, recruiter, or similar employment service, as a condition of employment, whether before or after the filing or approval of a petition. The only exceptions to this are:

1. The lower of the actual cost or fair market value of transportation to the offered employment; and
2. Any government-mandated passport, visa, or inspection fees.

However, even the payment of these fees by a worker may be otherwise prohibited under law.

If USCIS determines any of the following have occurred, the petition will be denied or revoked:

1. You collected, or entered into an agreement to collect, prohibited fees as described above;
2. You knew, or should have known, at the time of filing the petition that the beneficiary paid, or agreed to pay, any agent, facilitator, recruiter, or similar employment service as a condition of employment;
3. The beneficiary paid you prohibited fees or compensation as a condition of employment after the petition was filed; or
4. You knew, or had reason to know, that the beneficiary paid, or agreed to pay, the agent, facilitator, recruiter, or similar employment service prohibited fees after the petition was filed.

In these instances, the only exceptions to a mandatory denial or revocation are found at 8 CFR 214.2(h)(6)(i)(B)(4).

Submit any evidence requested in **Part 6.** with your petition. Additional evidence may be requested indicating that, to the best of the petitioner's knowledge, the beneficiaries have not paid, and will not pay, prohibited fees or other prohibited forms of compensation.

### Interrupted Stays

Interrupted stays are certain periods of time that a worker spends outside the United States during an authorized period of stay in H-2B status. An interrupted stay does not count toward the worker's maximum 3-year limit in the classification.

An H-2B worker may qualify for an interrupted stay under the following conditions:

If the worker was in the United States in H-2 status for an aggregate period of:	Then H-2 time is interrupted if he or she is outside the United:
18 months or less	At least 45 days, but less than 3 months
More than 18 months, but less than 3 years	At least 2 months

Time in H-2B status is not automatically interrupted if the worker departs the United States. It is considered interrupted only if the guidelines in the above chart are met. For more on interrupted stays, see [www.uscis.gov/h-2b](http://www.uscis.gov/h-2b).

### Notification Requirements

By filing an H-2B petition, you agree to notify DHS within 2 work days if an H-2B worker:

1. Fails to report to work within 5 work days after the employment start date stated on the petition;
2. Completes the labor or services more than 30 days earlier than the employment end date stated on the petition;
3. Absconds from the worksite by not reporting for work for a period of 5 consecutive work days without the consent of the employer; or
4. Is terminated prior to the completion of the services or labor.

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.

Failure to comply with this agreement may result in penalties. See [www.uscis.gov/h-2b](http://www.uscis.gov/h-2b) for more information.

### Liability for Return Transportation

The Immigration and Nationality Act makes a petitioner liable for the reasonable cost of return transportation for an H-2B beneficiary who is dismissed before the end of the period of authorized admission.

### Filing Multiple Petitions

You generally may file one petition to request all of your H-2B workers associated with one temporary labor certification (up to a limit of 25 workers when they are named). Even in cases where filing a separate petition is not required, it may still be advantageous to file more than one H-2B petition. This can occur when you petition for multiple workers, some of whom may not qualify for part or all of the validity period you request. This most frequently occurs when:

1. Some of the workers you request are nationals of a country not on the eligible countries list;
2. You request interrupted stays for workers; or
3. At least one worker is nearing the 3-year maximum stay limit.

If we request additional evidence because of these situations, it may delay petition processing. Filing separate petitions for workers who are not affected by these scenarios may enable you to quickly obtain some workers, if they are otherwise eligible, in the event that the petition for your other workers is delayed.

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If you decide to file more than one petition with the same temporary labor certification, you may only do so if:

1. Each petition is accompanied by the valid temporary labor certification; and
2. The total number of beneficiaries on your petitions does not exceed the total number of workers approved by the U.S. Department of Labor on the temporary labor certification.

### **Substitution of Beneficiaries**

In certain instances, an employer may substitute a beneficiary of an H-2B petition with another worker, as long as the total number of beneficiaries will not exceed the number of beneficiaries certified in the original temporary labor certification and the substituted beneficiary will not be employed beyond the period approved in the H-2B petition.

1. **Substituting beneficiaries who were previously approved for consular processing with workers who are outside of the United States.** You must submit a letter at the Consulate or Port of Entry notifying of a substitution with:
  - A. Copy of the petition approval notice; and
  - B. Evidence of the qualifications of beneficiaries.
2. **Substituting beneficiaries who were previously approved for consular processing with workers who are in the United States.** You must submit an amended petition, with fee, to the USCIS Service Center where the original petition was filed with:
  - A. A copy of the original petition approval notice;
  - B. A copy of the previously submitted temporary labor certification;
  - C. A statement explaining why the substitution is necessary, including the name, date of birth, and country of birth for any original beneficiaries and, if their employment was terminated, the date of and reason for that determination;
  - D. Evidence of the qualifications of beneficiaries, if applicable;
  - E. Evidence of the beneficiaries' current status in the United States;
  - F. Evidence that the number of beneficiaries will not exceed the number allocated on the approved temporary labor certification, such as employment records or other documentary evidence to establish that the number of visas sought in the amended petition were not already issued; and
  - G. Evidence that the amended petition will retain a period of employment within the same half of the same fiscal year as the original petition. Otherwise, a new temporary labor certification issued by DOL or the Governor of Guam and subsequent H-2B petition must be submitted.

**NOTE:** Beneficiaries who were admitted to the United States may not be substituted without a new petition accompanied by a newly approved temporary labor certification.

### **Change of Status or Extension of Stay**

A petition requesting a change of status or an extension of stay for an employee in the United States must be filed with the evidence listed below. Consult the regulations that relate to the specific nonimmigrant classification sought.

A nonimmigrant who must have a passport to be admitted must maintain a valid passport during his or her entire stay. If a required passport is not valid, include a full explanation with your petition.

A petition requesting a change of status or an extension of stay must be filed with:

1. A copy of the beneficiary's Form I-94, Nonimmigrant Arrival/Departure Record, passport, travel document, or Form I-797;
2. Evidence showing that the beneficiary qualifies for the specific classification sought;
3. A copy of the beneficiary's last two pay stubs, most recent W-2, Internal Revenue Service (IRS) transcripts of the beneficiary's federal individual income tax return for the three most recent tax years, if applicable; and

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4. Evidence the beneficiary continues to meet the licensing requirements for the profession or occupation, if applicable.

**NOTE:** The beneficiary's dependent family members (generally, spouses and children under 21) should use Form I-539, Application to Change/Extend Nonimmigrant Status, to apply for a change of status or extension of stay.

The following nonimmigrants are not eligible to change status:

1. An alien admitted under a visa waiver program;
2. An alien in transit (C) or in transit without a visa (TWOV);
3. A crewman (D);
4. A fiancé(e) (K-1) or his or her dependent (K-2);
5. A spouse of a U.S. citizen (K-3) or his or her dependent (K-4);
6. A J-1 exchange visitor who was admitted in J-1 status for the purpose of receiving graduate medical training;
7. A J-1 exchange visitor subject to the foreign residence requirement who has not received a waiver of that requirement; and
8. An M-1 student to an H classification, if training received as an M-1 helped him or her qualify for H classification.

### **Special Instructions for Certain Beneficiaries in the CNMI**

An alien who was admitted to the CNMI prior to November 28, 2009 may not currently hold a Federal nonimmigrant classification that permits a change of status. However, in certain situations, a petitioner may request that the beneficiary be granted initial status in the CNMI. This will allow certain beneficiaries who were present in the CNMI prior to the transition date and are currently lawfully present in the CNMI in parole status to be granted an initial nonimmigrant status without having to depart the CNMI.

### **H-2B Petitions Requesting an Exemption to the Temporary Need Requirement for H-2B Workers on Guam or in the CNMI**

If requesting consideration of your petition as exempt from the requirement that the service or labor be temporary under section 1045 of the National Defense Authorization Act (NDAA) for Fiscal Year 2019 (Pub. L. 115-232), you should also submit:

1. If claiming eligibility directly connected to, or directly associated with, the military realignment:
  - A. A copy of any applicable agreement, contract or subcontract for services or labor for construction, repairs, renovations, or facility services that is directly connected to, or associated with, the military realignment on Guam or in the CNMI;
  - B. Other relevant evidence that each requested H-2B position is:
    - (1) For construction, repairs, renovations, or facility services; and
    - (2) Directly connected to, or associated with, the military realignment on Guam or in the CNMI; and
  - C. A signed statement from an official within the Department of Defense (DoD), including a branch of the armed forces. This statement should provide the DoD view regarding whether the applicable agreement, contract, or subcontract is directly connected to, or directly associated with, the military realignment. If this DoD statement is not provided, the petitioner should establish why it could not be obtained.
2. If claiming eligibility for health care workers:
  - A. A signed statement on company letterhead from a corporate officer or facility administrator having the authority to speak on behalf of the company or facility attesting that the facility where the workers will perform service or labor jointly serves members of the Armed Forces, dependents, and civilians on Guam or in the CNMI. The statement should include evidence such as a TRICARE or other applicable provider number to demonstrate the facility's service to members of the Armed Forces and their dependents. The statement should also include, to the extent possible, the number of members of the Armed Forces, dependents and civilians on Guam or in CNMI that

the petitioning facility has served in the preceding 12 months.

## General Instructions

USCIS provides forms free of charge through the USCIS website. In order to view, print, or fill out our forms, you should use the latest version of Adobe Reader, which you can download for free at <http://get.adobe.com/reader/>. If you do not have internet access, you may order USCIS forms by calling the USCIS Contact Center at 1-800-375-5283. The USCIS Contact Center provides information in English and Spanish. For TTY (deaf or hard of hearing) call: 1-800-767-1833.

**Signature.** Each petition must be properly signed and filed. For all signatures on this petition, USCIS will not accept a stamped or typewritten name in place of a signature. A legal guardian may also sign for a mentally incompetent person. If the request is not signed or if the requisite signature on the request is not valid, USCIS will reject the request. See 8 CFR 103.2(a)(7)(ii)(A). If USCIS accepts a request for adjudication and determines that it has a deficient signature, USCIS will deny the request.

**Validity of Signatures.** USCIS will consider a photocopied, faxed, or scanned copy of the original, handwritten signature valid for filing purposes. The photocopy, fax, or scan must be of the original document containing the handwritten, ink signature.

**Filing Fee.** Each petition must be accompanied by the appropriate filing fee. (See the **What Is the Filing Fee** section of these Instructions.)

**Evidence.** At the time of filing, you must submit all evidence required by statute, regulations and/or these Instructions with your petition, as applicable. USCIS may reject or deny your petition for failure to submit evidence or supporting documents in accordance with 8 CFR 103.2(b)(1).

**Biometric Services Appointment for Certain Beneficiaries.** After receiving your petition and ensuring completeness, USCIS may inform you in writing if the beneficiary or beneficiaries must submit biometrics. Failure of a beneficiary to appear at a biometrics appointment may result in denial of your petition.

USCIS may require that you appear for an interview or provide biometrics (fingerprints, photograph, and/or signature) at any time to verify your identity, obtain additional information, and conduct background and security checks, including a check of criminal history records maintained by the Federal Bureau of Investigation (FBI), before making a decision on your petition. After USCIS receives your application or petition and ensures it is complete, we will inform you if you need to attend a biometric services appointment. If an appointment is necessary, the notice will provide you the location of your local or designated USCIS Application Support Center (ASC) and the date and time of your appointment or, if you are currently overseas, instruct you to contact a U.S. Embassy, U.S. Consulate, or USCIS office outside the United States to set up an appointment.

**Copies.** You should submit legible photocopies of documents requested, unless the Instructions specifically state that you must submit an original document. USCIS may request an original document at the time of filing or at any time during processing of a petition. If USCIS requests an original document from you, it will be returned to you after USCIS determines it no longer needs your original.

**NOTE:** If you submit original documents when not required or requested by USCIS, **your original documents may be immediately destroyed after we receive them.**

**Translations.** If you submit a document with information in a foreign language, you must also submit a full English translation. The translator must sign a certification that the English language translation is complete and accurate, and that he or she is competent to translate from the foreign language into English. The certification must also include the translator's signature, printed name, the signature date, and the translator's contact information.

## How to Fill Out Form I-129H2B

1. Type or print legibly in black ink.
2. Complete the basic form and any relating attachments/supplements.

3. If you need extra space to complete any item within this petition, use the space provided in **Part 11. Additional Information** or attach a separate sheet of paper. Type or print the individual petitioner's legal name, or the company or organization name, at the top of each sheet; indicate the **Page Number, Part Number, and Item Number** to which your answer refers; and sign and date each sheet.
4. Answer all questions fully and accurately. If a question does not apply to you (for example, if you have never been married and the question asks, "Provide the name of your current spouse"), type or print "N/A" unless otherwise directed. If your answer to a question which requires a numeric response is zero or none (for example, "How many children do you have" or "How many times have you departed the United States"), type or print "None" unless otherwise directed.
5. You should submit a duplicate copy of the petition and all supporting documentation. **Failure to do so may result in delays in processing this petition or in visa processing abroad.**

## Specific Instructions

### Part 1. Petitioner Information

**Item Numbers 1. - 2.** If you are an individual or sole proprietor (someone who owns a business, but the business is not organized as a separate legal entity) filing this petition, complete **Item Numbers 1. - 2.**

**Item Number 3. Petitioning Company or Organization Name.** If you are a company or an organization filing this petition, provide the name of your company or organization.

**Item Number 4. Trade Name or "Doing Business As" Name** (if applicable). If you are a company or an organization that is known by a different name than the one you provided in **Item Number 3.**, provide your trade name or "doing business as" name.

**Item Number 6. Primary U.S. Office Address of Petitioner.** Provide the address of the petitioner's primary office within the United States. The primary U.S. office address must not be the address of petitioner's outside counsel or clients. Petitions filed with an address that is not the petitioner's U.S. office address may be rejected or denied. The location of your primary office may determine where the petition must be filed.

**Item Number 8. Mailing Address.** Provide the petitioner's mailing address, if different from the Primary U.S. Office Address.

**Item Numbers 9. - 11. Petitioner's Contact Information.** Provide the petitioner's contact information.  
**Item Numbers 12. - 14. Tax Payer Identification Numbers.** Provide an Employer Identification Number (EIN), Individual Taxpayer Identification Number (ITIN), and/or U.S. Social Security Number (SSN), as applicable. Individual employers and sole proprietors must provide a U.S. Social Security Number.

**Item Numbers 15. - 17. E-Verify Information.** If the petitioner participates in E-Verify and will complete Form I-9 for alien beneficiary(ies) to perform services or labor, or to receive training, provide the petitioner's E-Verify Company Identification Number or Client Company Identification Number. E-Verify is an Internet-based system that compares information entered by an employer from an employee's Form I-9, Employment Eligibility Verification, to records available to DHS and the Social Security Administration to confirm employment eligibility. The E-Verify Company Identification Number, which consists of four to seven numerical characters, is located on each page of the memorandum of understanding directly below the E-Verify logo. The E-Verify Contact Center is available to assist you if you have additional questions by emailing [E-Verify@dhs.gov](mailto:E-Verify@dhs.gov).

### Part 2. Information About This Petition

**Item Number 2. Basis for Classification.** Select **only one** of the following options:

**Item A. New employment.** Select this box if the beneficiary:

1. Is outside the United States and holds no classification;

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2. Will begin employment in the United States for a new employer in a different nonimmigrant classification than the beneficiary currently holds; **or**
3. Will work for the **same** employer but in a different nonimmigrant classification.

**NOTE:** Do not select this box if the beneficiary will work for the same employer in the same classification, but there is a material change in the terms and conditions of employment or the beneficiary's eligibility as specified in the original approved petition. Select the box for **Item F., Amended Petition**, instead.

**Item B. Continuation of previously approved employment without change with the same employer.** Select this box if you are applying to continue the employment of the beneficiary in the same nonimmigrant classification the beneficiary currently holds and there has been no change to the employment.

**Item C. Change in previously approved employment.** Select this box if you are notifying USCIS of a non-material change to the previously approved employment, such as a change in job title without a material change in job duties.

**Item D. New concurrent employment.** Select this box if you are applying for a beneficiary to begin new employment with an **additional employer** in the same nonimmigrant classification the beneficiary currently holds while the beneficiary will continue working for his or her current employer in the same classification.

**Item E. Change of employer.** Select this box if you are applying for a beneficiary to begin employment working for a **new employer** in the same nonimmigrant classification that the beneficiary currently holds.

**Item F. Amended petition.** Select this box if you are applying to notify USCIS of a material change in the terms or conditions of employment, the beneficiary's eligibility as specified in the original approved petition, or to add or remove entities from an approved blanket petition.

**Item Number 3. Requested Action.** The following information explains the actions petitioners/employers may request on their petition. Select **only one** action.

**Item A. Notify the office listed in Part 5. so the beneficiary can seek a visa or admission.** Select this box if the beneficiary is outside of the United States, or, if the beneficiary is currently in the United States, but he or she will leave the United States to obtain a visa/admission abroad.

**Item B. Change the status and extend the stay of a beneficiary who is now in the United States in another status.** Select this box if the beneficiary is currently in the United States in a different nonimmigrant classification and is applying to change to a new nonimmigrant status.

**Item C. Extend the stay of a beneficiary who now holds this status.** Select this box if the beneficiary is currently in the United States in a nonimmigrant classification and is requesting an extension of his or her stay in the same nonimmigrant classification.

**Item D. Amend the stay of a beneficiary who now holds this status.** Select this box if the beneficiary is currently in the United States in the same nonimmigrant classification and you are notifying USCIS of any material changes in the terms and conditions of employment or the beneficiary's eligibility as specified in the original approved petition, but you are not seeking a change in previously approved validity dates.

### Part 3. Beneficiary Information

**Item Number 16. Form I-94, Arrival/Departure Record.** If U.S. Customs and Border Protection (CBP) or USCIS issued the beneficiary a Form I-94, Arrival/Departure Record, provide the beneficiary's Form I-94 number and date that the beneficiary's authorized period of stay expires or expired (as shown on the beneficiary's Form I-94). The Form I-94 number also is known as the Departure Number on some versions of Form I-94.

**NOTE:** If the beneficiary was admitted to the United States by CBP at an airport or seaport after April 30, 2013, CBP may have issued them an electronic Form I-94 instead of a paper Form I-94. The beneficiary may visit the CBP website at [www.cbp.gov/i94](http://www.cbp.gov/i94) to obtain a paper version of an electronic Form I-94. CBP **does not** charge a fee for this service. Some travelers admitted to the United States at a land border, airport, or seaport, after April 30, 2013, with a passport or travel document, who were issued a paper Form I-94 by CBP, may also be able to obtain a replacement Form I-94 from the CBP website without charge. If the beneficiary cannot obtain the Form I-94 from the CBP website, the beneficiary

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may obtain it by filing Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Record, with USCIS. USCIS **does** charge a fee for this service. See the USCIS website at [www.uscis.gov/I-102](http://www.uscis.gov/I-102) for more information.

**Passport and Travel Document Numbers.** If the beneficiary used a passport or travel document to travel to the United States, enter either the passport or travel document information in the appropriate space on the petition, even if the passport or travel document is currently expired.

**Item Number 18. Beneficiary's current residential U.S. address.** You must provide the beneficiary's current address if the beneficiary is in the United States. USCIS will use this address, unless otherwise updated through the AR-11 process, to notify the beneficiary if USCIS denies a request to change status or extend stay submitted on Form I-129H2B.

#### **Part 4. Information About The Beneficiary's Public Benefits**

On July 29, 2020, the U.S. District Court for the Southern District of New York (SDNY) in *State of New York, et al. v. DHS, et al. and Make the Road NY et al. v. Cuccinelli, et al.* enjoined the Department of Homeland Security (DHS) from enforcing, applying, implementing, or treating as effective the Inadmissibility on Public Charge Grounds Final Rule ("Public Charge Final Rule") for any period during which there is a declared national health emergency in response to the COVID-19 outbreak. (84 FR 41292, Aug. 14, 2019, final rule; as amended by 84 FR 52357, Oct. 2, 2019, final rule correction). Subsequently, on August 12, 2020, the U.S. Court of Appeals for the Second Circuit, in *State of New York, et al. v. DHS, et al. and Make the Road NY et al. v. Cuccinelli*, granted an administrative stay of the July 29, 2020 nationwide injunction in all states outside of the Second Circuit, i.e. all states except New York, Connecticut, and Vermont. This stay allows DHS to continue implementing the Public Charge Final Rule everywhere except in New York, Connecticut, and Vermont.

During the injunction, petitioners requesting an extension of stay or changes of status using Form I-129H2B on behalf of a beneficiary using Form I-129H2B, in which the petitioner/employer has a physical address or in which the beneficiary physically resides in New York, Connecticut, or Vermont, should not provide information requested in **Part 4.**

**Information About The Beneficiary's Public Benefits** or the **Information About the Additional Beneficiary's Public Charge** section in the **Named Worker Attachment for Form I-129H2B.**

In general, a condition of the approval of a request to extend the beneficiary's stay or change the beneficiary's status is that the beneficiary must demonstrate that, since obtaining the nonimmigrant status that you seek to extend or from which you seek to change on behalf of the beneficiary, he or she has not received one or more public benefits as set forth in 8 CFR 212.21(b) (and listed below), for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months). This condition only applies to beneficiaries who are seeking to change status or extend their stay in the United States. Therefore, you only have to complete the information in **Part 4**, if you are also requesting an extension of the beneficiary's stay in the United States or a change of the beneficiary's status with this petition. If you are filing this petition without a request for the beneficiary's change of status or extension of stay, you may skip **Part 4.**

**Item Number 1. Public Benefits.** Provide the information requested about the beneficiary's receipt or the beneficiary's current certification for receipt of public benefits, as defined in 8 CFR 212.21(b) (and which are listed below), unless the nonimmigrant classification you are seeking for the beneficiary is exempt from the public charge inadmissibility ground under INA 212(a)(4). Provide the requested information and documentation. For additional beneficiaries, please respond to the questions in a separate copy of the **Named Worker Attachment for Form I-129H2B** for each beneficiary.

**Item Number 2.** You must provide information about all public benefits as defined in 8 CFR 212.21(b) (and which are listed below) received by the beneficiary in his or her current nonimmigrant status regardless of how long the beneficiary has received the public benefit, or the beneficiary's current certification for receipt of public benefits. USCIS will calculate the duration of each public benefit to be considered. If the beneficiary received public benefits intermittently throughout the year, provide each instance separately. For example, if the beneficiary received Supplemental Nutrition Assistance Program (SNAP) from January to February and June to December, list the information separately. If you require additional space, use the space provided in **Part 11. Additional Information.**

Receipt means when a benefit-granting agency provides a public benefit to the beneficiary whether in the form of cash, voucher, services, or insurance coverage. Only the public benefits received by or attributable to the beneficiary will be considered.

Indicate whether the beneficiary has received or been certified to receive the following public benefits, since having obtained the nonimmigrant status that you seek to extend or that you seek to change on behalf of the beneficiary. You need to respond even if the beneficiary falls within one of the categories of individuals for whom receipt of public benefits will not be considered - see table below for evidence that must be provided to document that the beneficiary qualifies for the exclusion):

- Any Federal, state, local, or tribal cash assistance for income maintenance;
- Supplemental Security Income (SSI);
- Temporary Assistance for Needy Families (TANF);
- Federal, state or local cash benefit programs for income maintenance (often called "General Assistance" in the state context, but which may exist under other names);
- Supplemental Nutrition Assistance Program (SNAP, formerly called "Food Stamps");
- Section 8 Housing Assistance under the Housing Choice Voucher Program;
- Section 8 Project-Based Rental Assistance (including Moderate Rehabilitation);
- Public Housing under the Housing Act of 1937, 42 U.S.C. 1437 et seq.; and
- Federally-Funded Medicaid.

**NOTE:** You need only to report public benefits received by the beneficiary on or after October 15, 2019 but not any received by the beneficiary before October 15, 2019.

If the beneficiary has not received any of the public benefits listed above, please select that option.

If the beneficiary is currently not certified to receive any of the public benefits listed above, please select that option.

If the beneficiary has received or is certified to receive the public benefits but requested disenrollment, please provide, in addition to providing the information about any exclusions below, evidence of the disenrollment or the request to disenroll if the public benefit-granting agency has not processed the request.

Unless the beneficiary qualifies for certain exclusions listed in the table below, the beneficiary is ineligible for extension of stay and change of status if the beneficiary has received, since obtaining the nonimmigrant status that you seek to extend or which you seek to change on behalf of the beneficiary, the public benefits listed above for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two public benefits in one month counts as two months).

The following is a list of exclusions from the public benefit considerations listed above. If the beneficiary belongs to one of the following categories, submit the evidence listed for the applicable categories.

Exclusion	Description	Evidence you must submit for the beneficiary to qualify for exclusion (as applicable)
U.S. Armed Forces Service Members	<p>At the time the public benefit was received or at the time you file the Form I-129, or at time of adjudication of the I-129, the beneficiary is:</p> <ul style="list-style-type: none"> <li>• An alien enlisted in the U.S. Armed Forces, serving in active duty or in the Ready Reserve component of the U.S. Armed Forces;</li> <li>• The spouse or child of the service</li> </ul>	<ul style="list-style-type: none"> <li>• Service Members: Certified evidence of alien's enlistment/service issued by the authorizing official of the executive department in which service member is serving.</li> <li>• Spouses and Children of Service Members: Copy of Form DD-1173, United States Uniformed Services Identification and Privilege Card</li> </ul>

Exclusion	Description	Evidence you must submit for the beneficiary to qualify for exclusion (as applicable)
	member (listed above); or <ul style="list-style-type: none"> <li>The spouse or child of an individual enlisted in the U.S. Armed Forces, or serving in active duty or in the Ready Reserve component of the U.S. Armed Forces.</li> </ul>	(Dependent).
Federally-funded Medicaid	<ul style="list-style-type: none"> <li>Receipt by an alien child under 21 years of age;</li> <li>The recipient of Medicaid payment(s) for a an "emergency medical condition";</li> <li>The receipt of Medicaid for services provided under the Individuals with Disabilities Education Act (IDEA); or</li> <li>Receipt during pregnancy and during the 60-day period after the last day of the pregnancy.</li> </ul>	<ul style="list-style-type: none"> <li>A statement with information regarding the "emergency medical condition" determination (if applicable);</li> <li>Documentation of payments under the IDEA or school-based service; or</li> <li>Pregnancy verification letter from medical professional including estimated duration of pregnancy.</li> </ul>
Children Who Will Naturalize under INA 322	<ul style="list-style-type: none"> <li>Child currently residing abroad who entered the United States with a nonimmigrant visa to attend N-600K, Application for Citizenship and Issuance of Certificate Under INA Section 322 interview.</li> </ul>	<ul style="list-style-type: none"> <li>A copy of N-600K interview notice.</li> </ul>
Public Benefits While in Immigration Category Exempt from Public Charge	<ul style="list-style-type: none"> <li>Received public benefits while in a category that is exempt from public charge inadmissibility; or</li> <li>Received public benefits while in a category for which the applicant had received a waiver for public charge inadmissibility.</li> </ul>	Information that evidences the applicant's status or that the applicant received a waiver for the public charge ground of inadmissibility, such as: <ul style="list-style-type: none"> <li>Approval notice (Form I-797, Notice of Action); or</li> <li>Form I-94, Arrival/Departure Record.</li> </ul>

### Documentation

If the beneficiary has received or is currently certified to receive, any of the public benefits listed above, submit evidence in the form of a letter, notice, certification, or other agency documents that contain the following:

1. Beneficiary's name;
2. Name and contact information for the public benefit granting agency;
3. Type of public benefit;
4. Date the beneficiary started receiving the public benefit or, if certified, date the beneficiary will start receiving the public benefit; and
5. Date the benefit or coverage ended or expires (mm/dd/yyyy)(if applicable).

If the beneficiary has received or is currently certified to receive public benefits, please indicate whether an exclusion

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applies to the beneficiary in **Item Number 3.**, and provide the evidence listed in the chart above to demonstrate why the benefit should not be considered.

## **Part 5. Processing Information**

**Item Numbers 17. - 18.** If you are indicating that your petition is exempt from the H-2B numerical limitation (or cap) in **Item Number 17.**, you must indicate the appropriate basis for such exemption in **Item Number 18.** USCIS will reject your Form I-129H2B if the relevant numerical limitation has been reached and you have not properly indicated a basis for cap exemption. USCIS may deny your Form I-129H2B if USCIS determines that beneficiaries you indicate as exempt from the cap are subject to the numerical limitation. See 8 CFR 214.2(h)(8)(ii)(D).

**Item Numbers 19 - 20.** Additional information is available above in the **H-2B Petitions Requesting an Exemption to the Temporary Need Requirement for H-2B Workers on Guam or in the CNMI** section of the instructions.

## **Part 6. Basic Information About the Proposed Employment and Employer**

**Item Number 8.** A petition for aliens to perform services or labor in more than one location must include a detailed itinerary including the dates, names, and addresses of the actual employers, and the locations where the beneficiary will perform the services.

**Item Number 9.** If the beneficiary(ies) will work at only one worksite, and the address of the worksite is different from the address provided in **Part 1. Petitioner Information**, then provide the address of the worksite.

## **Part 8. Statement, Contact Information, Certification, and Signature of the Petitioner or Authorized Signatory.**

Select the appropriate box to indicate whether you read this petition yourself or whether you had an interpreter assist you. If someone assisted you in completing the petition, select the box indicating that you used a preparer. Further, you must sign and date your petition. If **Part 8.** is being completed by an authorized signatory, then the authorized signatory must provide his or her daytime telephone number, mobile telephone number (if any), and email address (if any). Every petition **MUST** contain the signature of the petitioner (or parent or legal guardian, if applicable) or authorized signatory. A stamped or typewritten name in place of a signature is not acceptable.

**Part 9. Interpreter's Contact Information, Certification, and Signature.** If you used anyone as an interpreter to read the Instructions and questions on this petition to you in a language in which you are fluent, the interpreter must fill out this section; provide his or her name, the name and address of his or her business or organization (if any), his or her daytime telephone number, his or her mobile telephone number (if any), and his or her email address (if any). The interpreter must sign and date the petition.

**Part 10. Contact Information and Signature of the Person Preparing this Petition, if Other Than the Petitioner or Authorized Signatory.** This section must contain the signature of the person who completed your petition, if other than you, the petitioner or authorized signatory. If the same individual acted as your interpreter **and** your preparer, that person should complete both **Part 9.** and **Part 10.** If the person who completed this petition is associated with a business or organization, that person should complete the business or organization name and address information. Anyone who helped you complete this petition **MUST** sign and date the petition. A stamped or typewritten name in place of a signature is not acceptable. If the person who helped you prepare your petition is an attorney or accredited representative, he or she may also need to submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, along with your petition.

## **Part 11. Additional Information**

**Item Numbers 1. - 6.** If you need extra space to provide any additional information within this petition, use the space provided in **Part 11. Additional Information.** If you need more space than what is provided in **Part 11.**, you may make copies of **Part 11.** to complete and file with your petition, or attach a separate sheet of paper. Type or print your company or organization name at the top of each sheet; indicate the **Page Number, Part Number, and Item Number** to which your answer refers; and sign and date each sheet.

**We recommend that you print or save a copy of your completed application to review in the future and for your records.**

### **What Is the Filing Fee?**

The filing fee for Form I-129H2B depends on whether or not the petition names beneficiaries:

1. For 1 to 25 named beneficiaries: **\$715**; or
2. With only unnamed beneficiaries: **\$385**.

Each petitioner must also include the mandatory Fraud Prevention and Detection fee of **\$150**. The Fraud Prevention and Detection fee cannot be waived.

**NOTE:** Unless USCIS rejects your petition, your filing fee will not be refunded. **DO NOT MAIL CASH.** You must submit all fees in the exact amounts. USCIS will reject or deny your Form I-129H2B if you fail to submit required fees when you submit your petition. You should pay the filing fee and each additional fee with separate checks or money orders.

### **Payments by Checks or Money Orders**

Use the following guidelines when you prepare your checks or money orders for the Form I-129H2B filing fee and additional fees:

1. The checks or money orders must be drawn on a bank or other financial institution located in the United States and must be payable in U.S. currency; **and**
2. Make the checks or money orders payable to **U.S. Department of Homeland Security**.

**NOTE:** Spell out U.S. Department of Homeland Security; do not use the initials "USDHS" or "DHS."

**Notice to Those Paying by Check.** If you send USCIS a check, we will convert it into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually take 24 hours and your bank will show it on your regular account statement.

You will not receive your original check back. We will destroy your original check, but will keep a copy of it. If USCIS cannot process the EFT for technical reasons, you authorize us to process the copy in place of your original check. If your check is returned as unpayable, we may reject your petition.

### **How To Check If the Fees Are Correct**

Form I-129H2B's filing fee and additional fees are current as of the edition date in the lower left corner of this page. However, because USCIS fees change periodically, you can verify that the fees are correct by following one of the steps below.

1. Visit the USCIS website at [www.uscis.gov](http://www.uscis.gov), select "FORMS," and check the appropriate fee; or
2. Visit the USCIS Contact Center at [www.uscis.gov/contactcenter](http://www.uscis.gov/contactcenter) to get answers to your questions and connect with a live USCIS representative. The USCIS Contact Center provides information in English and Spanish. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

### **When to File?**

Generally, a Form I-129H2B petition may not be filed before the Temporary Labor Certification is obtained.

## Where to File?

Please see our website at [www.uscis.gov/I-129H2B](http://www.uscis.gov/I-129H2B) or visit the USCIS Contact Center at [www.uscis.gov/contactcenter](http://www.uscis.gov/contactcenter) to connect with a USCIS representative for the most current information about where to file this petition. Petitions filed at the incorrect location may be rejected or denied. The USCIS Contact Center provides information in English and Spanish. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

## Premium Processing

To determine if your petition is eligible for Premium Processing, visit the USCIS website at [www.uscis.gov/forms/how-do-i-use-premium-processing-service](http://www.uscis.gov/forms/how-do-i-use-premium-processing-service). If your Form I-129H2B is eligible for and you are requesting Premium Processing Services, you must also file Form I-907, Request for Premium Processing Service. Send Form I-129H2B and Form I-907 together according to the filing instructions for Form I-907. Please see our website at [www.uscis.gov/I-907](http://www.uscis.gov/I-907).

## Address Change

A petitioner or beneficiary who is not a U.S. citizen must notify USCIS of his or her new address within 10 days of moving from his or her previous residence. USCIS will use the most recent address to notify the beneficiary that a petition requesting an extension of stay or change of status has been denied. For information on filing a change of address, go to the USCIS website at [www.uscis.gov/addresschange](http://www.uscis.gov/addresschange) or reach out to the USCIS Contact Center at [www.uscis.gov/contactcenter](http://www.uscis.gov/contactcenter) for help. The USCIS Contact Center provides information in English and Spanish. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

## Processing Information

**Initial Processing.** Once USCIS accepts your petition, we will check it for completeness. If you do not completely fill out this petition, you will not establish a basis for your eligibility and USCIS may reject or deny your petition.

**Requests for More Information.** USCIS may request that you provide more information or evidence to support your petition. We may also request that you provide the originals of any copies you submit. If we request an original document from you, it will be returned to you after USCIS determines it no longer needs your original.

**Requests for Interview.** We may request that you appear at a USCIS office for an interview based on your petition. At the time of any interview or other appearance at a USCIS office, we may require that you provide your biometrics to verify your identity and/or update background and security checks.

**Decision.** The decision on Form I-129H2B involves a determination of whether you have established eligibility for the immigration benefit you are seeking. USCIS will notify you of the decision in writing.

A petition that is not properly filed may be rejected. A petition is not considered properly filed until accepted by USCIS. Some reasons a petition may be rejected include that it is not properly signed, is not accompanied by the correct fee, or was not properly filed with the correct Service Center. If rejected, USCIS will return the petition along with a notice that identifies the basis for rejection. You may correct the deficiency and resubmit the petition, in most circumstances.

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## USCIS Forms and Instructions

To ensure you are using the latest version of this petition, visit the USCIS website at [www.uscis.gov](http://www.uscis.gov) where you can obtain the latest USCIS forms and immigration-related information. If you do not have internet access, you may order USCIS forms by calling the USCIS Contact Center at **1-800-375-5283**. The USCIS Contact Center provides information in English and Spanish. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

Instead of waiting in line for assistance at your local USCIS office, you can schedule an appointment online at [www.uscis.gov](http://www.uscis.gov). Select "Tools," then under "Self Service Tools," select "Make an Appointment" and follow the screen prompts to set up your appointment. Once you finish scheduling an appointment, the system will generate an appointment notice for you.

## Penalties

If you knowingly and willfully falsify or conceal a material fact or submit a false document with your Form I-129H2B, we will deny your Form I-129H2B and may deny any other immigration benefit. In addition, you will face severe penalties provided by law and may be subject to criminal prosecution.

## USCIS Compliance Review and Monitoring

By signing this petition, you have stated under penalty of perjury (28 U.S.C. section 1746) that all information and documentation submitted with this petition are complete, true, and correct. You also authorize the release of any information from your records that USCIS may need to determine your eligibility for the immigration benefit you are seeking and consent to USCIS verifying such information.

The U.S. Department of Homeland Security (DHS) has the authority to verify any information you submit to establish eligibility for the immigration benefit you are seeking at any time. USCIS' legal authority to verify this information is in 8 U.S.C. sections 1103, 1155, and 1184, and 8 CFR parts 103, 204, 205, and 214. To ensure compliance with applicable laws and authorities, USCIS may verify information before or after your case is decided.

Agency verification methods may include, but are not limited to: review of public records and information; contact through written correspondence, the internet, fax, other electronic transmission, or telephone; unannounced physical site inspections of residences and locations of employment; and interviews. USCIS will use information obtained through verification to assess your compliance with the laws and to determine your eligibility for an immigration benefit.

Subject to the restrictions under 8 CFR 103.2(b)(16), USCIS will provide you with an opportunity to address any adverse or derogatory information that may result from a USCIS compliance review, verification, or site visit after a formal decision is made on your case or after the agency has initiated an adverse action which may result in revocation or termination of an approval.

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## DHS Privacy Notice

**AUTHORITIES:** The information requested on this petition and the associated evidence, is collected under the Immigration and Nationality Act sections 101, 214, 222, and 248 and 8 CFR parts 103, 214, and 248.

**PURPOSE:** The primary purpose for providing the requested information on this petition is to petition USCIS for an alien to temporarily enter the United States as an H-2A nonimmigrant worker. An employer, including an association of U.S. agricultural producers named as a joint employer on the temporary labor certification accompanying the petition, (or agent, where applicable) will also use this form to request an extension of stay of an H-2A nonimmigrant worker or to change the status of an alien currently in the United States as a nonimmigrant to H-2A. DHS uses the information you provide to grant or deny the immigration benefit you are seeking.

**DISCLOSURE:** The information you provide is voluntary. However, failure to provide the requested information, including your Social Security number (if applicable), and any requested evidence, may delay a final decision or result in **a rejection or** denial of your petition.

**ROUTINE USES:** DHS may share the information you provide on this petition and any additional requested evidence with other Federal, state, local, and foreign government agencies and authorized organizations. DHS follows approved routine uses described in the associated published system of records notices [DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System, DHS/USCIS-007 Benefits Information System, and DHS/USCIS-018 Immigration Biometric and Background Check] and the published privacy impact assessment [DHS/USCIS/PIA-016(a) Computer Linked Application Information Management System and Associated Systems], which you can find at [www.dhs.gov/privacy](http://www.dhs.gov/privacy). DHS may also share this information, as appropriate, for law enforcement purposes or in the interest of national security.

## Paperwork Reduction Act

An agency may not conduct or sponsor an information collection, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The public reporting burden for this collection of information is estimated at 3 hours for Form I-129H2B and at 30 minutes for the Named Worker Attachment for Form I-129H2B, including the time for reviewing instructions, gathering the required documentation and completing and submitting the request. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Ave NW, Washington, DC 20529-2140; OMB No 1615-XXXX. **Do not mail your completed Form I-129H2B to this address.**

09/04/2020