

The regulatory authority is Sec. 214.2(h), as amended by 1615 AC-18

(h) * * *

(2) Petitions. (i) Filing of petitions. (A) General. A United States employer seeking to classify an alien as an H-1B, H-2A, H-2B, or H-3 temporary employee must file a petition on the form prescribed by USCIS in accordance with the form instructions.

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The statutory authority is section 101(a)(15)(H), 214(a), 214(c)(1), and 214(g) of the Immigration and Nationality Act (INA); 8 U.S.C. 1101(a)(15)(H), 1184(a), 1184(c)(1), 1184(g), and section 222 of the Immigration Act of 1990 (Pub. L. 101-649).

101(a)(15)(H)

§1101. Definitions

(a) As used in this chapter-

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens-(H) an alien (i) [(a) Repealed. [Pub. L. 106-95, §2\(c\), Nov. 12, 1999, 113 Stat. 1316](#)] (b) subject to [section 1182\(j\)\(2\) of this title](#), who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty occupation described in [section 1184\(i\)\(1\) of this title](#) or as a fashion model, who meets the requirements for the occupation specified in [section 1184\(i\)\(2\) of this title](#) or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under [section 1182\(n\)\(1\) of this title](#), or (b1) who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in [section 1184\(g\)\(8\)\(A\) of this title](#), who is engaged in a specialty occupation described in [section 1184\(i\)\(3\) of this title](#), and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under [section 1182\(t\)\(1\) of this title](#), or (c) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in [section 1182\(m\)\(1\) of this title](#), and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under [section 1182\(m\)\(2\) of this title](#) for the facility (as defined in [section 1182\(m\)\(6\) of this title](#)) for which the alien will perform the services; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in [section 3121\(g\) of title 26](#), agriculture as defined in [section 203\(f\) of title 29](#), and the pressing of apples for cider on a farm, of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the

United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

214(a)

§1184. Admission of nonimmigrants

(a) Regulations

(1) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under [section 1258 of this title](#), such alien will depart from the United States. No alien admitted to Guam or the Commonwealth of the Northern Mariana Islands without a visa pursuant to [section 1182\(l\) of this title](#) may be authorized to enter or stay in the United States other than in Guam or the Commonwealth of the Northern Mariana Islands or to remain in Guam or the Commonwealth of the Northern Mariana Islands for a period exceeding 45 days from date of admission to Guam or the Commonwealth of the Northern Mariana Islands. No alien admitted to the United States without a visa pursuant to [section 1187 of this title](#) may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.

(2)(A) The period of authorized status as a nonimmigrant described in [section 1101\(a\)\(15\)\(O\) of this title](#) shall be for such period as the Attorney General may specify in order to provide for the event (or events) for which the nonimmigrant is admitted.

(B) The period of authorized status as a nonimmigrant described in [section 1101\(a\)\(15\)\(P\) of this title](#) shall be for such period as the Attorney General may specify in order to provide for the competition, event, or performance for which the nonimmigrant is admitted. In the case of nonimmigrants admitted as individual athletes under [section 1101\(a\)\(15\)\(P\) of this title](#), the period of authorized status may be for an initial period (not to exceed 5 years) during which the nonimmigrant will perform as an athlete and such period may be extended by the Attorney General for an additional period of up to 5 years.

214(c)(1)

§1184. Admission of nonimmigrants

(c) Petition of importing employer

(1) The question of importing any alien as a nonimmigrant under subparagraph (H), (L), (O), or (P)(i) of [section 1101\(a\)\(15\) of this title](#) (excluding nonimmigrants under [section 1101\(a\)\(15\)\(H\)\(i\)\(b1\) of this title](#)) 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 1101\(a\)\(15\)\(H\)\(ii\)\(a\) of this title](#), the term "appropriate agencies of Government" means the Department of Labor and includes the Department of Agriculture. The provisions of [section 1188 of this title](#) shall apply to the question of importing any alien as a nonimmigrant under [section 1101\(a\)\(15\)\(H\)\(ii\)\(a\) of this title](#).

214(g)

§1184. Admission of nonimmigrants

(g) Temporary workers and trainees; limitation on numbers

(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 1992)-

(A) under [section 1101\(a\)\(15\)\(H\)\(i\)\(b\) of this title](#), may not exceed-

- (i) 65,000 in each fiscal year before fiscal year 1999;
- (ii) 115,000 in fiscal year 1999;
- (iii) 115,000 in fiscal year 2000;
- (iv) 195,000 in fiscal year 2001;
- (v) 195,000 in fiscal year 2002;
- (vi) 195,000 in fiscal year 2003; and
- (vii) 65,000 in each succeeding fiscal year; or

(B) under [section 1101\(a\)\(15\)\(H\)\(ii\)\(b\) of this title](#) may not exceed 66,000.

(2) The numerical limitations of paragraph (1) shall only apply to principal aliens and not to the spouses or children of such aliens.

(3) Aliens who are subject to the numerical limitations of paragraph (1) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status. If an alien who was issued a visa or otherwise provided nonimmigrant status and counted against the numerical limitations of paragraph (1) is found to have been issued such visa or otherwise provided such status by fraud or willfully misrepresenting a material fact and such visa or nonimmigrant status is revoked, then one number shall be restored to the total number of aliens who may be issued visas or otherwise provided such status under the numerical limitations of paragraph (1) in the fiscal year in which the petition is revoked, regardless of the fiscal year in which the petition was approved.

(4) In the case of a nonimmigrant described in [section 1101\(a\)\(15\)\(H\)\(i\)\(b\) of this title](#), the period of authorized admission as such a nonimmigrant may not exceed 6 years.

(5) The numerical limitations contained in paragraph (1)(A) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under [section 1101\(a\)\(15\)\(H\)\(i\)\(b\) of this title](#) who-

(A) is employed (or has received an offer of employment) at an institution of higher education (as defined in [section 1001\(a\) of title 20](#)), or a related or affiliated nonprofit entity;

(B) is employed (or has received an offer of employment) at a nonprofit research organization or a governmental research organization; or

(C) has earned a master's or higher degree from a United States institution of higher education (as defined in [section 1001\(a\) of title 20](#)), until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000.

(6) Any alien who ceases to be employed by an employer described in paragraph (5)(A) shall, if employed as a nonimmigrant alien described in [section 1101\(a\)\(15\)\(H\)\(i\)\(b\) of this title](#), who has not previously been counted toward the numerical limitations contained in paragraph (1)(A), be counted toward those limitations the first time the alien is employed by an employer other than one described in paragraph (5).

(7) Any alien who has already been counted, within the 6 years prior to the approval of a petition described in subsection (c), toward the numerical limitations of paragraph (1)(A) shall not again be counted toward those limitations unless the alien would be eligible for a full 6 years of authorized admission at the time the petition is filed. Where multiple petitions are approved for 1 alien, that alien shall be counted only once.

(8)(A) The agreements referred to in [section 1101\(a\)\(15\)\(H\)\(i\)\(b1\) of this title](#) are-

- (i) the United States-Chile Free Trade Agreement; and
- (ii) the United States-Singapore Free Trade Agreement.

(B)(i) The Secretary of Homeland Security shall establish annual numerical limitations on approvals of initial applications by aliens for admission under [section 1101\(a\)\(15\)\(H\)\(i\)\(b1\) of this title](#).

(ii) The annual numerical limitations described in clause (i) shall not exceed-

(I) 1,400 for nationals of Chile (as defined in article 14.9 of the United States-Chile Free Trade Agreement) for any fiscal year; and

(II) 5,400 for nationals of Singapore (as defined in Annex 1A of the United States-Singapore Free Trade Agreement) for any fiscal year.

(iii) The annual numerical limitations described in clause (i) shall only apply to principal aliens and not to the spouses or children of such aliens.

(iv) The annual numerical limitation described in paragraph (1)(A) is reduced by the amount of the annual numerical limitations established under clause (i). However, if a numerical limitation established under clause (i) has not been exhausted at the end of a given fiscal year, the Secretary of Homeland Security shall adjust upwards the numerical limitation in paragraph (1)(A) for that fiscal year by the amount remaining in the numerical limitation under clause (i). Visas under [section 1101\(a\)\(15\)\(H\)\(i\)\(b\) of this title](#) may be issued pursuant to such adjustment within the first 45 days of the next fiscal year to aliens who had applied for such visas during the fiscal year for which the adjustment was made.

(C) The period of authorized admission as a nonimmigrant under [section 1101\(a\)\(15\)\(H\)\(i\)\(b1\) of this title](#) shall be 1 year, and may be extended, but only in 1-year increments. After every second extension, the next following extension shall not be granted unless the Secretary of Labor had determined and certified to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under [section 1182\(t\)\(1\) of this title](#) for the purpose of permitting the nonimmigrant to obtain such extension.

(D) The numerical limitation described in paragraph (1)(A) for a fiscal year shall be reduced by one for each alien granted an extension under subparagraph (C) during such year who has obtained 5 or more consecutive prior extensions.

(9)(A) Subject to subparagraphs (B) and (C), an alien who has already been counted toward the numerical limitation of paragraph (1)(B) during fiscal year 2013, 2014, or 2015 shall not again be counted toward such limitation during fiscal year 2016. Such an alien shall be considered a returning worker.

(B) A petition to admit or otherwise provide status under [section 1101\(a\)\(15\)\(H\)\(ii\)\(b\) of this title](#) shall include, with respect to a returning worker-

(i) all information and evidence that the Secretary of Homeland Security determines is required to support a petition for status under [section 1101\(a\)\(15\)\(H\)\(ii\)\(b\) of this title](#);

(ii) the full name of the alien; and

(iii) a certification to the Department of Homeland Security that the alien is a returning worker.

(C) An H-2B visa or grant of nonimmigrant status for a returning worker shall be approved only if the alien is confirmed to be a returning worker by-

(i) the Department of State; or

(ii) if the alien is visa exempt or seeking to change to status under [section 1101 \(a\)\(15\)\(H\)\(ii\)\(b\) of this title](#), the Department of Homeland Security.

(10) The numerical limitations of paragraph (1)(B) shall be allocated for a fiscal year so that the total number of aliens subject to such numerical limits who enter the United States pursuant to a visa or are accorded nonimmigrant status under [section 1101\(a\)\(15\)\(H\)\(ii\)\(b\) of this title](#) during the first 6 months of such fiscal year is not more than 33,000.

(11)(A) The Secretary of State may not approve a number of initial applications submitted for aliens described in [section 1101\(a\)\(15\)\(E\)\(iii\) of this title](#) that is more than the applicable numerical limitation set out in this paragraph.

(B) The applicable numerical limitation referred to in subparagraph (A) is 10,500 for each fiscal year.

(C) The applicable numerical limitation referred to in subparagraph (A) shall only apply to principal aliens and not to the spouses or children of such aliens.

Pub. L. 101-649 - **S.358 - Immigration Act of 1990**

See <https://www.congress.gov/bill/101st-congress/senate-bill/358>

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