



Addressing Labor Shortages With Temporary Agricultural Workers

Ryan E. Lamb

Foster Swift Agricultural Law News

February 29, 2016

My labor needs are not being met by the domestic market—when can I seek foreign applicants? Are potential applicants currently living in the U.S. eligible to apply under the H-2A Visa program?

Under the H-2A Visa program, agricultural employers who anticipate a shortage of domestic workers can petition the U.S. Citizenship and Immigration Service (USCIS) to bring foreign workers to the U.S. to perform agricultural labor or services of a **temporary or seasonal nature**. To initiate the process, the employer submits a job order with the State of Michigan Department of Licensing and Regulatory Affairs. Once approved, the employer seeks a *Labor Certification* from the U.S. Department of Labor (DOL) after establishing (i) that able, willing and qualified U.S. workers are not available at the time and place needed, and (ii) that the employment of aliens will not adversely affect the wages and working conditions of similarly employed U.S. workers.

As part of meeting the above criteria, the employer is required to pay the government approved prevailing wage for the job and to provide certain benefits to H-2A workers. These benefits may include transportation, housing, meals, tools and supplies, and worker's compensation insurance. To ensure compliance, labor officials from the State of Michigan will conduct a site visit of the location where the immigrants will be housed.

Unlike the H-2B Visa for temporary non-agricultural visas, the H-2A is not subject to a numerical cap on the number of participants each year.

Two important considerations:

1. If a potential applicant has been in the United States without proper visa status or work authorization, that person's individual case history may prevent his or her participation, and may also create significant immigration problems if he or she were to depart the United States.

AUTHORS/ CONTRIBUTORS

Ryan E. Lamb

PRACTICE AREAS

Agri-Business

Immigration Law



2. The employer's specialized or managerial positions may be eligible for additional visa options outside of the H-2A program.

If you are experiencing labor shortages, the H-2A program may help fill the gap.