



# International Staffing Options in the Hospitality Industry



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# IMMIGRANTS ARE INDISPENSABLE TO THE WORKFORCE: HOSPITALITY SECTOR

The hospitality industry employs over **14 million** people <sup>1</sup>

**IMMIGRANTS ACCOUNT FOR:**

- 31%** OF WORKERS IN THE HOTEL AND LODGING INDUSTRY <sup>2</sup>
- 13%** OF THE U.S. POPULATION <sup>3</sup>
- 17%** OF THE TOTAL U.S. WORKFORCE <sup>4</sup>

**43%** OF SMALL HOTEL AND MOTEL OWNERS ARE IMMIGRANTS <sup>5</sup>

IMMIGRANTS ARE **1.4** TIMES AS LIKELY AS U.S.-BORN WORKERS TO BE EMPLOYED IN THE LEISURE AND HOSPITALITY SECTOR

% OF U.S.-BORN WORKERS: **9%**

% OF IMMIGRANT WORKERS: **12.3%** <sup>6</sup>

THERE ARE NEARLY **1 MILLION** JOB OPENINGS IN THE HOSPITALITY & LEISURE SECTOR <sup>7</sup>

**SOURCES**

1. Bureau of Labor Statistics, <https://www.bls.gov/cps/cpsaat18.htm>
2. The Chicago Council on Global Affairs, <https://www.thechicagocouncil.org/press-release/report-hospitality-sector-struggles-stay-open-business-midwest-amidst-stalled-reforms>
3. Bureau of Labor Statistics - U.S. Department of Labor, <https://www.bls.gov/news.release/pdf/forbrn.pdf>
4. U.S. Census Bureau, <https://www.census.gov/data/tables/2014/demo/foreign-born/cps-2014.html>
5. The Chicago Council on Global Affairs, <https://www.thechicagocouncil.org/press-release/report-hospitality-sector-struggles-stay-open-business-midwest-amidst-stalled-reforms>
6. The Pew Charitable Trusts, [http://www.pewtrusts.org/-/media/assets/2015/12/variation\\_brief.pdf?la=en](http://www.pewtrusts.org/-/media/assets/2015/12/variation_brief.pdf?la=en)
7. Bureau of Labor Statistics, <https://www.bls.gov/news.release/pdf/jolts.pdf>



# Nonimmigrant Work Visas

- Temporary visas vary depending upon ***purpose*** for visit to U.S.
- Commonly used temporary work visa categories:
  - TN NAFTA Professionals
  - H-1B Specialty Occupation Workers
  - L-1 Intra-Company Transferee
  - B-1 Business Visitor
  - F-1 Students with employment authorization
  - H-2B Nonagricultural Seasonal Workers
  - J-1 Cultural Exchange Visitors



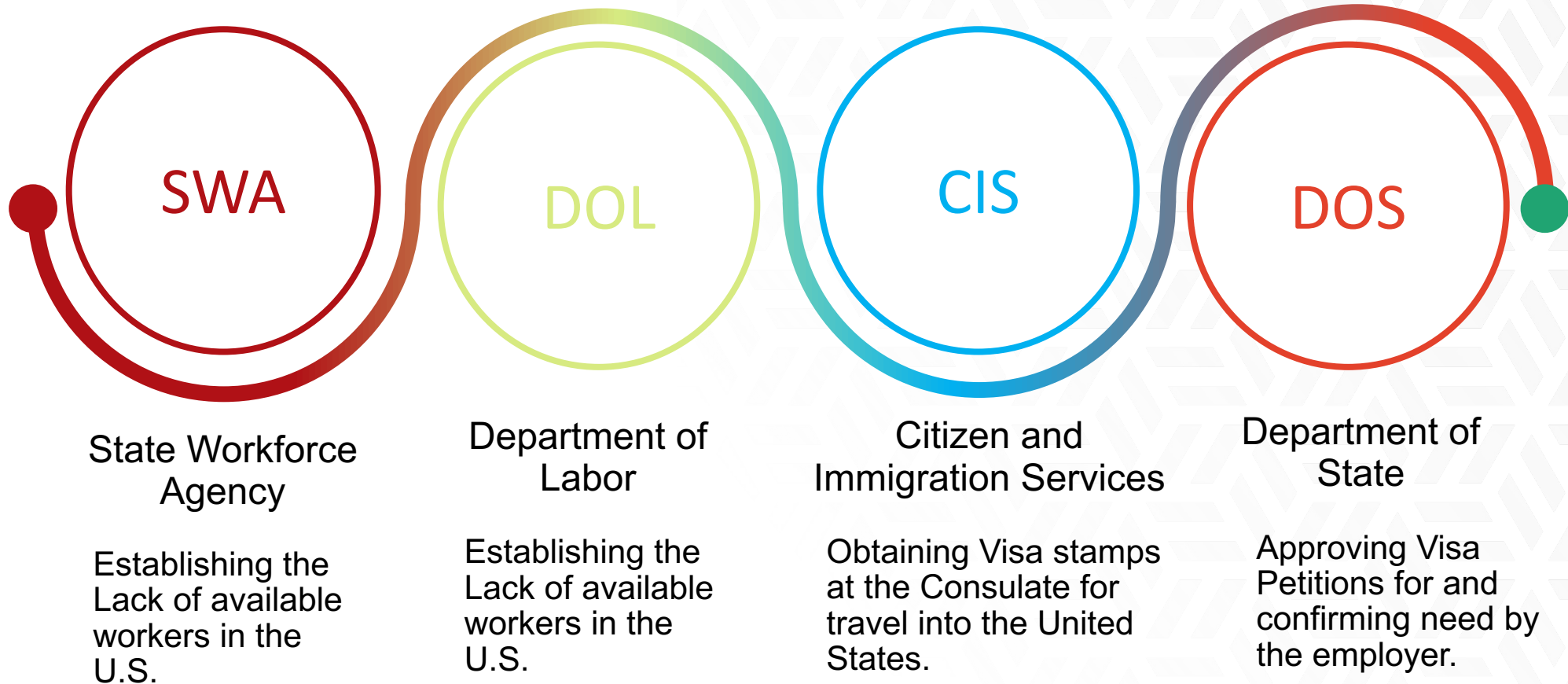


# H-2B Visa Process

- Must document Seasonal / Short-Term Need and specify how many employees needed.
- Must define job requirements and submit request for prevailing wage determination to the Department of Labor.
- Must submit job order with State Workforce Agency and file for temporary labor certification with Department of Labor.
- Must conduct recruitment as directed by Department of Labor, including advertising offered wages.
- Must prepare recruitment report detailing disposition of applications from all U.S. Workers who applied.
- Must file I-129 Petition with USCIS.



# The Four Steps to an H-2B



# Establishing Temporary Need

**One-time occurrence:** has not employed workers to perform the services or labor in the past, and the petitioner will not need workers to perform this in the future; or an employment situation that is otherwise permanent, but a temporary event of short duration has created a need for temporary workers

**Seasonal need:** traditionally tied to a season of the year by an event or pattern and is of a recurring nature.

**Peakload need:** regularly employs permanent workers to perform the services or labor at the place of employment and that it needs to supplement its permanent staff at the place of employment on a temporary basis *due to a seasonal or short-term demand and that the temporary additions to staff will not become a part of the petitioner's regular operation.*"

**Intermittent need:** not employed permanent or full-time workers to perform the service or labor, but occasionally or intermittently needs temporary workers to perform services or labor for short periods.

# Establish a Lack of U.S. Workers

In order to receive an H-2B temporary labor certification, the employer must establish that: There are not enough U.S. workers who are able, willing, qualified, and available to do the temporary work.

- Did the employer conduct the required recruitment for U.S. workers.
- Whether U.S. workers were offered employment.
- Whether U.S. workers were improperly laid off or displaced.
- Review of job order and certification obligations, including wages and working conditions, for H-2B workers and protected-U.S. workers.





# Employer Obligations to U.S. Workers

- Submit a job order to the State Workforce Agency (SWA), which must remain open until 21 days before the employer's first date of need;
- Place a newspaper advertisement on two separate days, one of which must be a Sunday;
- Contact its former U.S. employees;
- The employer must hire qualified U.S. applicants and may not refuse to hire the U.S. applicants for discriminatory reasons.
- Must not impose any restrictions or obligations on U.S. workers that will not also be imposed on H-2B workers.
- Must offer U.S. workers terms and working conditions at least as favorable as those offered or provided to H-2B workers.



# Wage Obligations



- The employer may not layoff its U.S. employees in the period beginning 120 days before the date of need through the end of the certification.
- The offered wage must meet Prevailing Wage from DOL
- The employer must pay the offered wage during the entire period of employment.
- Wages must be paid free-and-clear.
- The employer must pay at least every two weeks, or the prevailing frequency in the geographical area.

# Transportation Visa Fees

## Inbound transportation:

- The employer must provide *or* pay for transportation and daily subsistence to the place of employment *or* reimburse workers when 50% of the job order has elapsed.

## Outbound transportation:

- The employer must provide *or* pay for return transportation and subsistence if the worker completes the job order period or is dismissed early with or without cause.

## Visa fees:

- Employer is always liable for visa fees & related expenses in or before the first workweek.





# Wage and Hour's Enforcement

The Department of Homeland Security (DHS) delegated H-2B enforcement responsibility to Wage and Hour Division (WHD). WHD enforces laws governing wages, hours, working conditions, leave, and child labor, including:

- *Fair Labor Standards Act (FLSA)*
- *Family and Medical Leave Act (FMLA)*
- *Service Contract Act (SCA) and Davis-Bacon and Related Acts (DBRA)*
- *Migrant and Seasonal Agricultural Worker Protection Act (MSPA)*
- *OSHA Field Sanitation Standards*
- *Immigration and Nationality Act (INA) (H-1B, H-2B, H-2A)*

# J-1 Cultural Exchange Visitors

- Administered by the U.S. Department of State
- Promotes cultural exchange and mutual understanding between the people of the U.S. and other countries
- Covers various purposes



# J-1 Categories

- Au pair and EduCare
- Camp Counselor
- Government Visitor
- Intern
- International Visitor (Dept. of State use)
- Physician
- Professor and Research Scholar
- Short-term Scholar
- Specialist
- Student, college/ university
- Student, secondary
- Summer Work Travel
- Teacher
- Trainee





# Summer Work Travel Program

- Sponsored by third party agencies that obtain a fee from the student
- Allows post-secondary students to work and travel in the U.S. during their summer vacation
- Participants can work for up to four months and travel for up to one month after their work period ends
- Participants gain exposure to the U.S. culture and work environment.
- Presently only 109,000 authorized annually



# QUESTIONS?

# THANK YOU!

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