

Who May Qualify for H-2B Classification?

To qualify for H-2B nonimmigrant classification, the petitioner must establish that:

- There are not enough U.S. workers who are able, willing, qualified, and available to do the temporary work.
- Employing H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.
- Its need for the prospective worker's services or labor is temporary, regardless of whether the underlying job can be described as temporary.

The Definition of “Temporary Need”

USCIS defines "Temporary Need" for H-2B by:

- What duties the workers will perform, as specified in the petition
- Whether the employer needs the number of temporary workers requested to perform those duties
- Whether the need extends throughout the employment period requested.

To determine whether the H-2B petitioner has a temporary need, USCIS analyzes:

- What duties the workers will perform, as specified in the petition
- Whether the employer needs the number of temporary workers requested to perform those duties
- Whether the need extends throughout the employment period requested.

The Four Bases for Establishing Temporary Need

- **One-time occurrence:** The petitioner has not previously hired employees to perform these services or labor, and they do not anticipate needing any workers for this in the future. Alternatively, the petitioner may have a permanent employment situation but a short-term event has resulted in a need for temporary workers.
- **Seasonal need:** need that is traditionally tied to a season of the year by an event or pattern and is of a recurring nature. The petitioner shall specify the period(s) of time during each year in which it does not need the services or labor.
- **Peakload need:** The request pertains to a specific need that occurs on a recurring basis and is typically associated with a particular time of year or event. The petitioner must indicate the timeframe(s) when they do not require any services or labor. The regulation specifies that a peakload need must be of a limited duration, but it can still recur periodically.
- **Intermittent need:** To be eligible for intermittent workers, a petitioner must prove that they do not have permanent or full-time employees to perform the required labor. They only need temporary workers for short periods.

The Difference Between a Seasonal and Peakload Need

- Petitioner claiming a peakload need must demonstrate the existence of a permanent workforce. Moreover, a peakload need may recur at different times of the year and/or multiple times in the same year.
- a seasonal need might be based around a sports season that extends for the same six months, year after year.