

Foreign Ownership Hiring H-2B & 1 out of 87 Visa Overstays

Foreign ownership itself does not appear to disqualify a business from H-2B participation. The Department of Labor requires the employer to be a bona fide U.S. employer, physically located in the United States, with a valid federal employer identification number and a qualifying temporary, full-time, non-agricultural job.

For H-2B specifically, the employer must also:

- demonstrate a temporary need, generally 9 months or less;
- recruit U.S. workers and hire qualified, available U.S. workers;
- pay at least the required wage;
- provide at least 35 hours per week;
- comply with H-2B worker protections and recordkeeping requirements; and
- not use the program to discriminate against U.S. workers or displace similarly employed U.S. workers.

For H-2B temporary workers, there are two separate numbers to keep in mind:

- **Normal statutory cap:** 66,000 H-2B workers per fiscal year — up to 33,000 for October–March and 33,000 for April–September.
- **Additional workers:** Congress can authorize supplemental H-2B visas. For example, FY2024 had authorization for up to 64,716 additional H-2B workers beyond the regular cap.

What about overstays?

There isn't a publicly reported number showing how many H-2B workers specifically overstayed in the national DHS overstay report.

For all covered nonimmigrant admissions through air and seaports in FY2024, DHS recorded:

1 out of 87

- 46.66 million expected departures;
- 538,548 overstay events — 1.15%;
- 482,954 suspected in-country overstays at the end of FY2024; and
- by February 6, 2025, that suspected in-country number had fallen to 427,204 (0.92%), after accounting for later departures and status adjustments.

Importantly, that 1.15% figure should not be applied to H-2B workers. It covers many different categories of temporary visitors, and DHS does not present that report as an H-2B-specific overstay rate. DHS does say that H-2A and H-2B overstay rates can be considered when evaluating countries' continued eligibility for H-2 programs, but the public FY2024 H-2B characteristics report doesn't provide a single national H-2B overstay count.