

# OUR PRACTICE

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## Agricultural

Employers and agricultural associations may arrange for aliens to perform seasonal or temporary" agricultural work in the H-2A classification. Coordinating and completing the three-part process with two or three federal agencies before the time workers are actually needed requires careful planning, and we can help.

The three steps include:

- "Labor Certification" through the U.S. Department of Labor (DOL) and the state workforce agency, which determine that the employer not only (1) has been unable to find sufficient U.S. workers through recruitment offering at least the higher of the prevailing wage, adverse effect wage rate, or rate paid to the employer's other workers, but also (2) can meet demanding conditions of employment involving housing, meals, transportation, insurance, and work availability. DOL's website describes the [criteria and process](#) in some detail. DOL now allows employers and their agents (including attorneys) to file, track and manage H-2A labor certification filings online, although a paper application package still must be submitted.
- The employer or association's [petition to the immigration service \("USCIS"\)](#) on [Form I-129](#) covering one or more alien workers (who need not be identified by name if not named in the labor certification) coming from the same country for work covered by the same labor certification.
- H-2A [visa application](#) at the notified U.S. consulate(s) by alien workers, who must be prepared to convince the consulate of their [nonimmigrant intent](#). In rare cases an individualized [change of status](#) to H-2A could result from the USCIS petition for a particular worker.

## Family Members

The spouse and children under age 21 are technically eligible to accompany or follow the worker to the U.S. using an H-4 visa, but in reality family members often have a difficult time convincing the consular officer that they intend to return to a home abroad. Careful documentation is advised.

## How We Can Help

The Baker Donelson Immigration Group understands the requirements and process for H-2A workers and the tight timing usually involved. We can help the employer take the right steps as early as possible in order for visas to be issued as quickly as possible. With our Spanish language capability, we can help alien workers document their nonimmigrant intent for the consulate. We assist workers who have come to the U.S. in H-2A status evaluate and pursue their options for other nonimmigrant status or permanent residence.

## Important Links

- [DOL: H-2A Certification](#)
- [DOS: Temporary Workers](#)