



## DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2011-0108]

RIN 1601-ZA11

### Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2A and H-2B Nonimmigrant Worker Programs

**AGENCY:** Office of the Secretary, DHS.

**ACTION:** Notice.

**SUMMARY:** Under Department of Homeland Security (DHS) regulations, U.S. Citizenship and Immigration Services (USCIS) may generally only approve petitions for H-2A and H-2B nonimmigrant status for nationals of countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated by notice published in the **Federal Register**. That notice must be renewed each year. This notice announces that the Secretary of Homeland Security, in consultation with the Secretary of State, is identifying 84 countries whose nationals are eligible to participate in the H-2A program and 81 countries whose nationals are eligible to participate in the H-2B program for the coming year.

**DATES:** The designations in this notice are effective from January 19, 2020, and shall be without effect after January 18, 2021.

**FOR FURTHER INFORMATION CONTACT:** Ihsan Gunduz, Office of Strategy, Policy, and Plans, Department of Homeland Security, Washington, DC 20528, (202) 282-9708.

#### **SUPPLEMENTARY INFORMATION:**

**Background:** Generally, USCIS may approve H-2A and H-2B petitions for nationals of only those countries that the Secretary of Homeland Security, with the concurrence of the Secretary of

State, has designated as participating countries.<sup>1</sup> Such designation must be published as a notice in the **Federal Register** and expires after one year. In designating countries to include on the list, the Secretary of Homeland Security, with the concurrence of the Secretary of State, will take into account factors including, but not limited to: (1) the country's cooperation with respect to issuance of travel documents for citizens, subjects, nationals, and residents of that country who are subject to a final order of removal; (2) the number of final and unexecuted orders of removal against citizens, subjects, nationals, and residents of that country; (3) the number of orders of removal executed against citizens, subjects, nationals, and residents of that country; and (4) such other factors as may serve the U.S. interest. *See* 8 CFR 214.2(h)(5)(i)(F)(I)(i) and 8 CFR 214.2(h)(6)(i)(E)(I). Examples of factors serving the U.S. interest that could result in the exclusion of a country or the removal of a country from the list include, but are not limited to: fraud, abuse, nonimmigrant overstay<sup>2</sup> rates (including but not limited to H-2 nonimmigrants), and other forms of non-compliance with the terms and conditions of the H-2 visa programs by nationals of that country.

USCIS, however, may allow, on a case-by-case basis, a national from a country that is not on the list to be named as a beneficiary of an H-2A or H-2B petition based on a determination that such participation is in the U.S. interest. Determination of such U.S. interest

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<sup>1</sup> With respect to all references to "country" or "countries" in this document, it should be noted that the Taiwan Relations Act of 1979, Pub. L. No. 96-8, Section 4(b)(1), provides that "[w]henver the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan." 22 U.S.C. 3303(b)(1). Accordingly, all references to "country" or "countries" in the regulations governing whether nationals of a country are eligible for H-2 program participation, 8 CFR 214.2(h)(5)(i)(F)(I)(i) and 8 CFR 214.2(h)(6)(i)(E)(I), are read to include Taiwan. This is consistent with the United States' one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

<sup>2</sup> An overstay occurs when a nonimmigrant who was lawfully admitted to the United States for an authorized period remains in the United States beyond his or her authorized period of admission. For purposes of this Federal Register Notice, DHS uses FY 2018 U.S. Customs and Border Protection H-2A and H-2B nonimmigrant overstay data.

will take into account factors, including but not limited to: 1) evidence from the petitioner demonstrating that a worker with the required skills is not available either from among U.S. workers or from among foreign workers from a country currently on the list described in 8 CFR 214.2 (h)(5)(i)(F)(I)(i) (H-2A nonimmigrants) or 214.2(h)(6)(1)(E)(I) (H-2B nonimmigrants), as applicable; 2) evidence that the beneficiary has been admitted to the United States previously in H-2A or H-2B status; 3) the potential for abuse, fraud, or other harm to the integrity of the H-2A or H-2B visa program through the potential admission of a beneficiary from a country not currently on the list; and 4) such other factors as may serve the U.S. interest. *See* 8 CFR 214.2(h)(5)(i)(F)(I)(ii) and 8 CFR 214.2(h)(6)(i)(E)(2).

In December 2008, DHS published in the **Federal Register** two notices, “Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2A Visa Program,” and “Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H-2B Visa Program,” which designated 28 countries whose nationals were eligible to participate in the H-2A and H-2B programs. *See* 73 FR 77043 (Dec. 18, 2008); 73 FR 77729 (Dec. 19, 2008). The notices ceased to have effect on January 17, 2010, and January 18, 2010, respectively. *See* 8 CFR 214.2(h)(5)(i)(F)(2) and 8 CFR 214.2(h)(6)(i)(E)(3). In implementing these regulatory provisions, the Secretary of Homeland Security, with the concurrence of the Secretary of State, has published a series of notices on a regular basis. *See* 75 FR 2879 (Jan. 19, 2010) (adding 11 countries); 76 FR 2915 (Jan. 18, 2011) (removing 1 country and adding 15 countries); 77 FR 2558 (Jan. 18, 2012) (adding 5 countries); 78 FR 4154 (Jan. 18, 2013) (adding 1 country); 79 FR 3214 (Jan.17, 2014) (adding 4 countries); 79 FR 74735 (Dec. 16, 2014) (adding 5 countries); 80 FR 72079 (Nov. 18, 2015) (removing 1 country from the H-2B program and adding 16 countries); 81 FR 74468 (Oct. 26, 2016) (adding 1 country); 83 FR 2646 (Jan. 18, 2018)

(removing 3 countries and adding 1 country); 84 FR 133 (Jan. 18, 2019) (removing 2 countries from both the H-2A program and the H-2B program, removing 1 country from only the H-2B program, and adding 2 countries to both programs and 1 country to only the H-2A program).

### ***Countries with Continued Eligibility***

The Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that 84 countries previously designated to participate in the H-2A program in the January 18, 2019 notice continue to meet the regulatory standards for eligible countries and therefore should remain designated as countries whose nationals are eligible to participate in the H-2A program. Additionally, the Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that 81 countries previously designated to participate in the H-2B program in the January 18, 2019 notice continue to meet the regulatory standards for eligible countries and therefore should remain designated as countries whose nationals are eligible to participate in the H-2B program. These determinations take into account how the regulatory factors identified above apply to each of these countries.

### ***Countries Designated as Eligible***

The Secretary of Homeland Security has now determined, with the concurrence of the Secretary of State, that the countries designated as eligible shall remain unchanged for 2020.

Consistent with the 2019 notice, nationals of non-designated countries may still be beneficiaries of approved H-2A and H-2B petitions upon the request of the petitioner if USCIS determines, as a matter of discretion and on a case-by-case basis, that it is in the U.S. interest for the individual to be a beneficiary of such petition. *See* 8 CFR 214.2(h)(5)(i)(F)(I)(ii) and 8 CFR 214.2(h)(6)(i)(E)(2). USCIS may favorably consider a beneficiary of an H-2A or H-2B petition who is not a national of a country included on the H-2A or H-2B eligibility list as serving the

national interest, depending on the totality of the circumstances. Factors USCIS may consider include, among other things, whether a beneficiary has previously been admitted to the United States in H-2A or H-2B status and complied with the terms of the program. An additional factor for beneficiaries of H-2B petitions, although not necessarily determinative standing alone, would be whether the H-2B petition qualifies under section 1045 of the National Defense Authorization Act (NDAA) for FY 2020, Public Law 116-92. However, any ultimate determination of eligibility will be made according to all of the relevant factors and evidence in each individual circumstance.

### **Designation of Countries Whose Nationals Are Eligible to Participate in the H-2A and H-2B Nonimmigrant Worker Programs**

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1), 215(a)(1), and 241 of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1), 1185(a)(1), and 1231), I am designating, with the concurrence of the Secretary of State, nationals from the following countries to be eligible to participate in the H-2A nonimmigrant worker program:

1. Andorra
2. Argentina
3. Australia
4. Austria
5. Barbados
6. Belgium
7. Brazil
8. Brunei

9. Bulgaria
10. Canada
11. Chile
12. Colombia
13. Costa Rica
14. Croatia
15. Czech Republic
16. Denmark
17. Dominican Republic
18. Ecuador
19. El Salvador
20. Estonia
21. Fiji
22. Finland
23. France
24. Germany
25. Greece
26. Grenada
27. Guatemala
28. Honduras
29. Hungary
30. Iceland
31. Ireland

32. Israel
33. Italy
34. Jamaica
35. Japan
36. Kiribati
37. Latvia
38. Liechtenstein
39. Lithuania
40. Luxembourg
41. Macedonia
42. Madagascar
43. Malta
44. Mexico
45. Moldova
46. Monaco
47. Mongolia
48. Montenegro
49. Mozambique
50. Nauru
51. The Netherlands
52. New Zealand
53. Nicaragua
54. Norway

55. Panama
56. Papua New Guinea
57. Paraguay
58. Peru
59. Poland
60. Portugal
61. Romania
62. Samoa
63. San Marino
64. Serbia
65. Singapore
66. Slovakia
67. Slovenia
68. Solomon Islands
69. South Africa
70. South Korea
71. Spain
72. St. Vincent and the Grenadines
73. Sweden
74. Switzerland
75. Taiwan
76. Thailand
77. Timor-Leste

78. Tonga
79. Turkey
80. Tuvalu
81. United Kingdom
82. Ukraine
83. Uruguay
84. Vanuatu

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1), 215(a)(1), and 241 of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1), 1185(a)(1), and 1231), I am designating, with the concurrence of the Secretary of State, nationals from the following countries to be eligible to participate in the H-2B nonimmigrant worker program:

1. Andorra
2. Argentina
3. Australia
4. Austria
5. Barbados
6. Belgium
7. Brazil
8. Brunei
9. Bulgaria
10. Canada
11. Chile

12. Colombia
13. Costa Rica
14. Croatia
15. Czech Republic
16. Denmark
17. Ecuador
18. El Salvador
19. Estonia
20. Fiji
21. Finland
22. France
23. Germany
24. Greece
25. Grenada
26. Guatemala
27. Honduras
28. Hungary
29. Iceland
30. Ireland
31. Israel
32. Italy
33. Jamaica
34. Japan

35. Kiribati
36. Latvia
37. Liechtenstein
38. Lithuania
39. Luxembourg
40. Macedonia
41. Madagascar
42. Malta
43. Mexico
44. Monaco
45. Mongolia
46. Montenegro
47. Mozambique
48. Nauru
49. The Netherlands
50. New Zealand
51. Nicaragua
52. Norway
53. Panama
54. Papua New Guinea
55. Peru
56. Poland
57. Portugal

58. Romania
59. Samoa
60. San Marino
61. Serbia
62. Singapore
63. Slovakia
64. Slovenia
65. Solomon Islands
66. South Africa
67. South Korea
68. Spain
69. St. Vincent and the Grenadines
70. Sweden
71. Switzerland
72. Taiwan
73. Thailand
74. Timor-Leste
75. Tonga
76. Turkey
77. Tuvalu
78. Ukraine
79. United Kingdom
80. Uruguay

## 81. Vanuatu

This notice does not affect the status of aliens who currently hold valid H-2A or H-2B nonimmigrant status. Aliens currently holding such status, however, will be affected by this notice should they seek an extension of stay in H-2 classification, or a change of status from one H-2 status to another, for employment on or after the effective date of this notice. Similarly, aliens holding nonimmigrant status other than H-2 status are not affected by this notice unless they seek a change of status to H-2 status.

Nothing in this notice limits the authority of the Secretary of Homeland Security or his designee or any other federal agency to invoke against any foreign country or its nationals any other remedy, penalty, or enforcement action available by law.

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Chad F. Wolf,  
Acting Secretary of Homeland Security.

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