



April 11, 2024

PA-2024-11

Policy Alert

SUBJECT: Extension of the Temporary Need Exemption for Certain H-2B Workers on Guam and in the Commonwealth of the Northern Mariana Islands

Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the [USCIS Policy Manual](#) to reflect the extension of the current exemption from the temporary need requirement for petitions for temporary nonagricultural (H-2B) nonimmigrant workers on Guam and in the Commonwealth of the Northern Mariana Islands (CNMI), as provided in the National Defense Authorization Act for Fiscal Year 2024 (FY 2024 NDAA).¹

Background

The H-2B nonimmigrant visa classification applies to a noncitizen seeking to perform temporary nonagricultural labor or services in the United States when U.S. workers are not available.² Previous NDAA's created and expanded upon an exemption from the requirement that the nonagricultural labor or services be temporary in nature for petitioners of certain H-2B workers on Guam and in the CNMI.³ This exemption was set to expire on December 31, 2023.⁴

The FY 2024 NDAA, which took effect on December 22, 2023, extended the current exemption from this temporary need requirement for an additional 5 years, through the end of the day on December 30, 2029. USCIS is updating policy guidance to reflect this extension.

This guidance, contained in Volume 2 of the Policy Manual, is controlling and supersedes any related prior guidance on the topic.

Policy Highlights

¹ See Section 1807 of the FY 2024 NDAA, [Pub. L. 118-31, 137 Stat. 136, 688](#) (December 22, 2023) (amending Section 6(b)(1)(B) of [Pub. L. 94-241](#) (March 24, 1976), as amended and codified at [48 U.S.C. 1806\(b\)](#)).

² See [INA 101\(a\)\(15\)\(H\)\(ii\)\(b\)](#).

³ See Section 1049 of the FY 2018 NDAA, [Pub. L. 115-91](#), 131 Stat. 1283, 1558 (December 12, 2017) (amending [48 U.S.C. 1806\(b\)](#)). See Section 1045 of the FY 2019 NDAA, [Pub. L. 115-232](#), 132 Stat. 1636, 1959 (August 13, 2018) (amending Section 6(b) of [Pub. L. 94-241](#) (March 24, 1976), as amended and codified at [48 U.S.C. 1806\(b\)](#)). See Section 5901 of the FY 2023 NDAA, [Pub. L. 117-263](#), 136 Stat. 2395, 3440 (December 23, 2022) (amending Section 6(b)(1)(B) of [Pub. L. 94-241](#) (March 24, 1976), as amended and codified at [48 U.S.C. 1806\(b\)](#)).

⁴ See Section 5901 of the FY 2023 NDAA, [Pub. L. 117-263](#), 136 Stat. 2395, 3440 (December 23, 2022) (amending Section 6(b)(1)(B) of [Pub. L. 94-241](#) (March 24, 1976), as amended and codified at [48 U.S.C. 1806\(b\)](#)).

- Explains that a petitioner meeting one of the NDAA criteria may qualify for an exemption to the requirement that the nonagricultural service or labor be temporary in nature if the employment start date is before December 31, 2029.
- Affirms that petitions with employment start dates on or after December 31, 2029, are subject to adjudication under the law and regulations that apply to petitions for H-2B workers at that time.

Summary of Changes

Affected Section: Volume 2 > Part I > Chapter 11 > Section A, Temporary Workers on Guam and in the Commonwealth of the Northern Mariana Islands

- In subsection 1 (General Eligibility Requirements), revises first paragraph under the italicized subheading “Exemption from H-2B Temporary Need Requirement Under the NDAA” and the second paragraph under the italicized subheading “Eligible Services or Labor under the NDAA”.
- In subsection 6 (Decision), revises the first and second paragraphs under the italicized subheading “Period of Admission for H-2B Workers on Guam or in the CNMI Under the NDAA”.

USCIS may also make other minor technical, stylistic, and conforming changes consistent with this update.

Citation

Volume 2: Nonimmigrants, Part I, Temporary Agricultural and Nonagricultural Workers (H-2), Chapter 11, Temporary Nonagricultural Worker (H-2B) Petitions Requiring Special Handling [[2 USCIS-PM I.11](#)].