



The
H-2B Process
for Guam:

**The 26 Points
from
Beginning to End**



Guam's Temporary Labor Certification and the Process for Importing H-2B Workers

We have listed the steps necessary to navigate the H-2B process in Guam. This document is meant for information purposes and does not cover every eventuality or scenario which may present itself during the processing and adjudication of an application for temporary labor certification and the necessary steps after receiving a labor certification.

The Department of Labor endeavors to assist employers to the greatest extent possible, but we do not represent ourselves to be immigration law experts.

The best advice that we can give is:

Before trying to do this process, retain an experienced immigration attorney who has a history of doing business in Guam. It is possible to do the process yourself, but if you get it wrong, the headache, money and time lost may well cost you more than the attorney's fees.

With that said, here's the process:

Before Filing the Temporary Labor Certification Application:

Prior to starting, the employer must decide how many workers, what occupations and what country they will recruit the foreign workers from. The employer must have already secured project contracts, appropriate building permits and all required supporting documents listed in the Guidelines for the Filing of a Temporary Labor Certification.

1. The employer must advertise the job opportunity prior to filing for a Temporary Labor Certification with the Governor of Guam via the Guam Department of Labor. This is commonly called "Prior Recruitment Efforts." The employer must show that they have made efforts to recruit U.S. workers (in the numbers and categories which will be requested for labor certification) prior to the filing of the application. These efforts must direct applicants to apply directly with the employer and may be in the form of a newspaper advertisement, radio spot, legal posting, participation in job fairs or any other efforts which may entice qualified and available U.S. workers to apply for the job opportunity.

The employer must document all applicants who responded to the prior recruitment efforts, what occupations they applied for and whether or not they were hired. If the applicant wasn't hired, the employer must detail the valid job related reason why the applicant was rejected. Prior recruitment efforts are scrutinized during the adjudication of the application.

Obtaining a Temporary Labor Certification:

2. The employer must file the Application for Temporary Labor Certification with the Guam DOL, Alien Labor Processing & Certification Division (ALPCD). A Caseworker will review the application for completeness and identify any deficiencies. In most cases, if the application is deficient, the application will be returned to the employer for correction. The application will be scrutinized to ensure that there are no overly restrictive job requirements or conditions which would preclude the recruitment of qualified, able and available U.S. workers. The review will also look at compliance history, licensing and the employer's ability to pay the workers requested.

Employers should make sure that they are in good standing with all governmental agencies before filing. Employers will be required to complete a **Clearance Sheet** which must be cleared by the following departments and agencies:

Guam DOL:

- *ALPCD Enforcement*- Compliance with H-2B rules and regulations
- *Guam Worker's Compensation Commission*- Compliance with Work Injury rules.
- *Fair Employment Practice Division*- History of complaints of discrimination or EEO issues.
- *Guam Wage & Hour Division*- History of violations of Wage & Hour Laws
- *Bureau of Labor Statistics*- Submission of Annual Census of Establishments form

U.S. Department of Labor:

- *Wage & Hour Division*- History of violations of federal Wage & Hour laws

Government of Guam Agencies related to Employer Provided Housing:

- *Department of Public Works* – Facility structure
- *Department of Land Management* – Zoning
- *Guam Environmental Protection Agency* - Environmental Impact & Waste Water
- *Department of Public Health & Social Services* - Sanitation and Food Serving Facilities

Department of Revenue & Taxation

- *Business Privilege Branch* – Gross Receipts Tax
- *Income Tax Assistance and Processing Branch*- Income Tax Compliance
- *Collections Branch*- Outstanding tax collections issues
- *Real Property Tax Branch*- Outstanding Property taxes

Note: Negative comments by any of the above-listed entities may result in the delay or denial of an application for temporary labor certification.

The application is not considered officially received until ALPCD acknowledges such by issuing a case number and a referral to GES to begin the testing of the labor market.

3. The employer places Job Orders with the Guam Employment Service (GES) to test the U.S. labor market for a period of 30 days. The employer is required to post an employment notice on the Guam Job Bank thus activating a job order in our Virtual One Stop (VOS) system.

The employer would need to set up an employer account at www.hireguam.com and then post the job announcements via that system. The employer should check their Hireguam dashboard frequently for referrals or important messages.

4. The employer places an ALPCD approved 3 day advertisement announcing the job opportunity and directing applicants to apply directly through GES. This ad is structured and must meet certain requirements. The ad must be published for 3 consecutive working days in the newspaper of largest circulation in Guam. ALPCD caseworkers will advise the employer when to place the advertisement.
5. If applicants are identified by GES, referrals will be made and resumes transmitted electronically to the employer through the VOS system. Interviews must be conducted for any GES referred applicants who are qualified, willing and available for the job opportunity.
6. After 30 days, the employer will submit a final report, to ALPCD, detailing the results of any referrals or interviews conducted during the labor market testing. If applicants are rejected, the employer must explain the lawful job related reasons for such refusals. The applicant may be afforded the opportunity to rebut the employer's findings in the event of a refusal.

ALPCD caseworkers will carefully review recruitment results and are empowered to verify information, conduct fact finding investigations and may negotiate with the employer or applicants to ensure that regulatory requirements are met.

7. ALPCD caseworkers will then adjudicate the application and prepare a synopsis on the application which will summarize all aspects of the application and will contain the caseworker's recommendation.
8. The synopsis and application is again reviewed and either concurred by the ALPCD Administrator or remanded back to the caseworker for further research, corrections or action. Depending on the circumstances, the Administrator may consult with the employer, Director or other governmental entities to recommend changes to the application should there be concerns that may be mitigated as opposed to denying an application in its entirety.
9. Once concurred by the ALPCD Administrator the application is reviewed by the Director of Labor. The Director will indicate approval or denial and will sign each application form.
10. The Governor's Legal Counsel conducts a review of the application to ensure compliance with all applicable regulations. Any applications found to be deficient are remanded back to ALPCD for correction.
11. Once acceptable, the application is then Approved or Denied and signed by the Governor of Guam. The application is returned to ALPCD for issuance of validity dates, and final processing prior to release to the employer.
12. The application is then released to the employer for use as a supporting document with their I-129 petition to the U.S. Citizenship & Immigration Services. Employers are asked to pick up their labor certifications in person and will sign out the documents and sign an Acknowledgement of Employer's Responsibilities form which advises the employer what steps to take next and formally advising the employer of their responsibilities as an H-2B employer on Guam.

Obtaining Approval from the U.S. Government:

The Department of Labor is not a representative agency of the U.S. Citizenship & Immigration Services or the State Department. The following information is for guidance only and employers are urged to consult with those agencies or a Guam immigration attorney for accurate and updated information:

13. The employer must now prepare appropriate form I-129 for all workers being requested and necessary supporting documents to petition for admittance of H-2B workers into the United States with the U.S. Citizenship & Immigration Services (USCIS).

14. The employer pays fees and submits all necessary documentation to the USCIS at the California Service Center. Fees should be made payable to the Treasurer of Guam. Effective 7/30/07 the fees for I-129 petitions are:

\$325.00 per I-129 petition
\$150.00 Fraud Prevention Fee per I-129 petition
Processing & adjudication times are normally about 2 months

Premium Processing fee is \$1,225.00 per I-129 petition and guarantees a 15 day response from USCIS on the application

15. The I-129 application is adjudicated at the California Service Center. The employer should receive a Form I-797 "Receipt Notice" indicating the receipt of the application. Delays may occur due to the H-2B worker cap currently in place. Employers must file within certain time frames and documents must indicate certain dates to be acceptable.

16. If the petition is approved, the employer will receive an I-797 "Approval Notice" and a duplicate is sent, by USCIS, to the U.S. Embassy of the country in which the worker resides. The employer must send an original of the Approval Notice to the foreign worker who is responsible to schedule and interview at the Embassy.

17. The worker will then be interviewed at the U.S. Embassy and if the worker passes the interview, a Visa will be issued and affixed to the worker's passport. Workers are scrutinized by the Department of State and various checks are done to ensure there are no fraud or security issues with the workers prior to visa issuance.

18. Once the visa is issued the worker may lawfully enter the United States however, most H-2B visas for employment in Guam are for entry to Guam only. The visa cannot be used to travel to other areas of the United States.

Once the worker arrives on Guam:

19. Within 24 hours from their arrival on Guam, the employer must report the presence of the worker by registering him with ALPCD. It is a violation of Guam law should the employer assign the foreign worker to begin work without first being registered.

20. Registration is accomplished by filing an Application for Temporary Non-Immigrant ID card at the ALPCD office. Copies of the passport, employment contract, copy of I-94 obtained online, Notice of Approval Form I-797 from DHS and a completed common registration form are required attachments. The application is reviewed and if complete and acceptable, it is officially received. There is currently a yearly fee of \$2,091.00 per worker.
21. After the Application for Registration is processed, the foreign worker is photographed and issued an ID card, which must be in his possession at all times and conspicuously displayed during working hours.
22. The foreign worker is now clear to begin work for the employer. It is important to also have the worker apply for a Social Security Card and to complete the DHS I-9 and all proper Tax forms. H-2B workers must file Guam income tax returns like any other worker. It is highly recommended that workers file "Single or married 0" on their W-4 forms to ensure that they do not owe taxes at the end of the year.
23. Should the duration of work last more than a year, the employer would need to apply for an extension of stay with USCIS. In order to accomplish this, the employer would need to apply for a new labor certification with ALPCD.
24. Once the extension of stay is approved, by the USCIS, the employer must renew the H-2 ID Card. It is common that the employer may not receive the extension approval from USCIS prior to the expiration of the worker's visa. If the employer filed the I-129 for extension prior to the worker's expiration, the worker may continue working until the extension approval is received by the employer, but must secure a Temporary H-2B ID from ALPCD. Once the approval is received, the employer may file for renewal of the worker's registration with ALPCD and obtain the regular H-2B ID.
25. When the worker is ready to depart the U.S., the employer must submit an Application for Exit Clearance with ALPCD and subsequently, a Notification of Departure form after the actual departure.
26. Once the employer has completed their projects and successfully repatriated all workers, they may apply for the release of the bonding submitted with the labor certification application.

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Note: Changes to program rules may occur, this FAQ is not intended to set policy and is not exhaustive. Employers must do their due diligence and refer to the published rules and regulations or seek competent legal advice to ensure compliance with program rules.