

Q&A

Q: How many people will this apply to?

- It is too early to provide an estimate as to how many individuals may benefit from this change in policy.

Q: How long will this be in effect?

- This is a **temporary** action due to the COVID-19 pandemic. These measures will end no later than December 31, 2020.

Q: What will happen to people with security issues/people who need a waiver?

- In light of the current drawdown in services and the inability to interview these applicants in person, cases with associated derogatory information will be suspended and refused under INA 221(g) until the resumption of visa interviews.
- Employers seeking workers should anticipate that applicants with visa ineligibilities will not be issued even if they were previously issued after an in-person interview or granted a waiver.
- Petitioners and employers are encouraged to closely vet workers to ensure they are likely to be issued without a need for an interview.

Q: What if the original visa holder is no longer available to work?

- In some instances, U.S. employers may substitute a worker with an individual who may ultimately qualify for an H-2 visa.
- To substitute a worker who has not been admitted into the United States, the petitioning employer must provide written notification to the consular section.
- This notification must name both the worker who was originally issued the visa (or named on the petition) and the worker who will be replacing him or her.
- Consulates in Mexico that regularly process H-2 visas will notify its petitioners and agents of the new procedures to implement these changes.

Q: Why are you doing this?

- The H-2 program is essential to the economy and food security of the United States and is a national security priority.
- Although in response to significant worldwide challenges related to the COVID-19 pandemic the Department of State has temporarily suspended routine visa services at all U.S. Embassies and Consulates, the Department has advised that H-2 applications are “mission critical” and should continue to be processed to the extent permitted by post resources and local government restrictions.
- The health and safety of mission staff and applicants is of utmost importance. Each Embassy and Consulate worldwide will continue to monitor the situation and adjust visa services to ensure public safety and adhere to local health advisories to mitigate the transmission of COVID-19.

Q: Which Embassy does the most H-2A processing?

- H-2A visas are processed at many embassies and consulates around the world.
- Mission Mexico issued 88.2 percent of all H-2A visas and 74.1 percent of all H-2B visas in FY 2019.
- Each embassy or consulate’s capacity to process H-2A visas will depend on the circumstances at that embassy or consulate, and applicants should visit the embassy website to determine the operating status of that embassy or consulate.

Q: How can I determine which workers will require an interview?

A: As a general practice, we encourage H-2 petitioners, agents, and recruiters to have frank conversations with their workers to understand their situation and past immigration history in order to produce more consistent results and reduce processing times. Even if a worker’s situation conforms with the interview waiver criteria noted above, they generally will not be granted an interview waiver if they:

- Have been unlawfully present inside the United States after April 1, 1997.
- Have been arrested or convicted of a crime involving moral turpitude. (Note: Traffic infractions and fines that did not involve an arrest would not meet this definition.)
- Have been arrested for an alcohol-related offense (such as DUI) within the past 5 years, unless they have received clearance from a panel physician since the arrest.
- Have been granted a waiver of ineligibility under 212(d)(3)(A) in the past.