

USA Temporary Non-Agricultural Workers Visa Application Pack

USA Temporary Non-Agricultural Workers Visa

The USA welcomes thousands of people every year under the Temporary Worker Visa Program. There are various categories of nonimmigrant visas for a person who wishes to work temporarily in the United States. They are based on the US immigration laws, namely the Immigration and Nationality Act (INA).

Under INA, if you want to work in the U.S. temporarily, you need a specific visa based on the purpose of your travel and type of work you will be doing.

H-2B Temporary Non-Agricultural Workers Visa is one of the most popular types of temporary work visa in the US. The H-2B nonagricultural temporary worker program allows U.S. employers to bring foreign nationals to the United States to fill temporary nonagricultural jobs.

The US Department of State (DOS) and the Department of Homeland Security (DHS) has strict rules about who it lets in to work in the US. It is vital that all prospective applicants apply for a visa in the correct category using the correct application forms. Failure to submit the form correctly and accurately can result in delays and sometimes denial. Failure to submit the correct supporting documents or to lie in your application can lead to a denial and in many cases you will not be allowed to apply for a US visa for a period of ten years.

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Qualifying for a USA Temporary Non-Agricultural Workers Visa

This visa category applies to people who wish to perform services as Temporary Non-Agricultural Workers.

To qualify for H-2B nonimmigrant classification:

- The employer must establish that they need the prospective worker's services or labor on temporary basis, regardless of whether the job can be described as permanent or temporary. The employer's need is considered temporary if it is a one-time occurrence, a seasonal need, a peak-load need, or an intermittent need;
- The employer must demonstrate that there are not sufficient U.S. workers who are able, willing, qualified, and available to do the temporary work;
- The employer must show that the employment of H-2B workers will not adversely affect the wages and working conditions of similarly employed U.S. workers; and
- The employer must obtain a valid temporary labor certification from the U.S. Department of Labor (DOL), if required for the specific position

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H-2B Cap

There is a limit, or “cap,” on the total number of foreign nationals who may be provided H-2B nonimmigrant classification every fiscal year. Currently, the H-2B cap set by Congress is 66,000, with 33,000 to be allocated for employment beginning in the 1st half of the fiscal year (October 1 - March 31) and 33,000 to be allocated for employment beginning in the 2nd half of the fiscal year (April 1 - September 30). Any unused numbers from the first half of the fiscal year will be made available for use by employers seeking to hire H-2B workers during the second half of the fiscal year. Unused H-2B numbers cannot be carried over from one fiscal year to the next.

Generally, an H-2B worker who extends their stay in H-2B status will not be counted again against the numerical limit. The spouse and children of H-2B workers classified as H-4 nonimmigrants are also not counted against the numerical limit. However if you change from another status to H-2B status, you will be counted against the annual H-2B cap. If you apply for a job as a fish roe processor, fish roe technician and/or supervisor of fish roe processing, you are exempt from the H-2B Cap.

Once the H-2B cap is reached, USCIS may only accept petitions for H-2B workers who are exempt from the H-2B cap.

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Documents You Employer Needs to File for You

In order for you to apply for a Temporary Non-Agricultural Workers Visa, your prospective employer needs first to submit a Temporary Labor Certification Application to the U.S. Department of Labor and be approved for it.

U.S. employers are allowed to hire foreign workers to fill jobs essential to the U.S. economy. In order to receive certification, your prospective employer must demonstrate that there are insufficient qualified U.S. workers available and willing to perform the work in the area of intended employment. The certification is designed to assure that your admission as a foreign worker into the United States will not take the job opportunities, wages, and working conditions of U.S. workers.

Once labor certification is received, the prospective employer can file the Form I-129, Petition for Nonimmigrant Worker with United States Citizenship and Immigration Services (USCIS). This application needs to be filed no earlier than 6 months prior to the proposed employment start date. Together with the Form I-129 your employer will need to submit the labor certification from the Department of Labor and evidence that you meet the minimum job requirements stated in the certification.

Once approved, your prospective employer will be sent Form I-797, Notice of Action. This form is no longer needed for your interview; however, to verify petition approval you will need to present your I-129 petition receipt number so please make sure you get it from your prospective employer. Then you are free to apply for H-2B Visa.

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H-2B Eligible Countries List

H-2B petitions may only be approved for nationals of countries that the Secretary of Homeland Security has designated as eligible to participate in the H-2B program. The list of H-2B eligible countries is published in a notice in the Federal Register (FR) by the Department of Homeland Security (DHS) on a rolling basis. Designation of countries on the H-2B list of eligible countries will be valid for one year from publication.

Effective January 19, 2010, nationals from the following countries are eligible to participate in the H-2B Program: **Argentina, Australia, Belize, Brazil, Bulgaria, Canada, Chile, Costa Rica, Croatia, Dominican Republic, Ecuador, El Salvador, Ethiopia, Guatemala, Honduras, Indonesia, Ireland, Israel, Jamaica, Japan, Lithuania, Mexico, Moldova, the Netherlands, New Zealand, Nicaragua, Norway, Peru, Philippines, Poland, Romania, Serbia, Slovakia, South Africa, South Korea, Turkey, Ukraine, United Kingdom and Uruguay.**

A national from a country not on the list may still apply for a H-2B visa if the Secretary of Homeland Security determines that it is in the U.S. interest for that alien to be issued with a H-2B Visa.

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US Visa Ineligibility

There are several classes of people who are inadmissible to the US under the Immigration and Nationality Act (INA), based on:

- Health related grounds – these could be people with communicable diseases or without proper vaccinations
- Criminal or related grounds – for example, controlled substance traffickers
- Security and related grounds – these include members of terrorist organizations
- Likely to become public charge, meaning people who will not be able to support themselves based on their age, health or other conditions
- Illegal entrants, immigration violators, or previously removed from the US

To find more information about persons, inadmissible to the US, you can go the relevant sections of the Immigration and Nationality Act.

In some cases an ineligible person can apply for a waiver of ineligibility and still get a visa. This can happen if it was a minor crime and they can prove they have rehabilitated from it, or, alternatively, a long time has passed after the crime was committed.

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Length of Stay

As an H-2B temporary worker, you may be admitted for the period stated on your employer's labor certification, which is usually one year. Your time period may be extended, but generally cannot go beyond a total of three years, though some exceptions do apply.

An individual who has held H-2B nonimmigrant status for a total of three years is required to leave and remain outside the United States for an uninterrupted period of three months before seeking readmission as an H-2B nonimmigrant.

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Applying for a Temporary Non-Agricultural Workers Visa

US Temporary Non-Agricultural Workers Visa applicants should apply to the nearest US Embassy or Consulate to the place of their permanent residence. As the processing time of visa applications is quite long, it is advisable to apply for a Visa well before the intended departure date.

The first step in the Visa application process is to fill out the required documents.

Required Documents

1. The first thing to do is complete this [Nonimmigrant Application Form DS-156](#) online. Make sure you answer all questions in English using **only English characters**. Press the continue button at the end of the form. On the last page, you will see a bar code. You will need it to schedule your interview. Print the form and bring it to your interview. Do not fold the printed application form.

Please note that some US embassies now use [a new DS-160 Online Nonimmigrant Visa Electronic Application](#). Follow the link in order to find out if the Embassy you plan to apply to is one of them and if it is, for instructions how to apply.

2. All male applicants aged 16-45 should complete a supplementary form DS-157 about their travel plans. If you are a national of one of these countries which are considered as sponsoring terrorism (**Cuba, Syria, Sudan, and Iran**), you will have to complete if you are aged 16 and up, regardless of gender. This application form is included in this information pack.
3. You should have a valid passport with a validity date at least six months beyond your intended period of stay in the United States
4. One photograph 2x2 inches stapled or glued to form DS-156. Please see this page for [photograph requirements](#).

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Dependants

Your spouse and unmarried children under 21 years of age are entitled to H-4 classification in order to accompany or join you in the US. The main applicant must be able to show that he or she will be able to support his or her family in the U.S. A person who has received a visa as the spouse or child of a Temporary Non-Agricultural Workers visa holder **may not accept employment** in the U.S.

Dependants should apply at the same time as the primary applicant and provide proof of their relationship to the exchange visitor (e.g. marriage and birth certificates.). If the spouse and children apply separately at a later time, they should bring a copy of the exchange visa holder's passport and visa, along with all other required documents.

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Supporting Documents

Your I-129 petition receipt number

Visa fee receipt to show payment of the visa application fee.

Binding Ties to Home Residence. With the exception of the H-1B, L-1, and O categories , applicants must demonstrate they have no intention of abandoning their home of permanent residence and that they are coming to the U.S. for a temporary period. Examples would be mortgage statements or ownership documents for property owned in the home country, letters from your current employer that your job will be held open to you etc.

Dependents Relationship e.g. marriage certificate or birth certificate to prove the relationship of any dependents and proof that you can support them whilst in the USA

All supporting documents must be original copies unless stated. If they are written in a language other than English they must be translated and certified by a recognized, qualified translator. The translation must include the translators name and signature, qualifications and confirmation that the translation is a correct and accurate translation of the original document. The US visa issuing authority verifies all supporting documents are valid and accurate should they believe that a document has been falsified.

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Visa Interview and Visa Processing Times

As a part of your Temporary Non-Agricultural Workers Visa application process, you will be required to pass an interview with a US consular officer. Everybody aged 14 to 79 are required to pass an interview. **To make an appointment for interview you will need to provide the receipt number that is printed on the approved Form I-129 petition.** In order to find out more about how to make an appointment, visit the webpage of the Embassy or Consulate where you plan to apply by clicking this link:

<http://www.usembassy.gov/>

The waiting time for visa appointments is different for each country. You can find more about waiting times by visiting [Visa Wait Times](#) or by looking on your local US Embassy website.

The applicant is responsible for setting up his / her own visa appointment. You need to provide a receipt showing the visa application processing fee has been paid, when you come for your visa interview.

You need to arrive at the outside entrance of the Embassy at your specified appointment time. The primary applicant will be the only person allowed into the building for the interview except in the case of children ages 17 and under.

During the interview the consular section officer will review your application and your supporting documentation. S/he might also ask some questions about your planned visit to the USA.

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Fingerprinting

Your visa application must include biometric data such as your fingerprints. This information is stored on a US government database and will be accessed to check your criminal record or in the event of you being involved in a criminal act either as a victim or a perpetrator. You must give your biometric data at US embassy consular section in the country where you are applying for your US visa. This will be done at your interview. You will be asked to put your fingers on a glass screen so that a digital photograph of your fingerprints can be taken.

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Visa Fees and Submitting your Application

Application fees for US Temporary Non-Agricultural Workers visas are as follows:

Form DS-156 Nonimmigrant visa application processing fee: **\$131.00**

There may also be a visa issuance fee which is calculated by country according to the fees your country charges to US citizens. Click this link and select the country where you will apply for your US Student Visa to find out if there is an issuance fee.

http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3272.html

The issuance fee is payable if your application is successful when you attend your visa interview.

All fees are non refundable.

Each US visa issuing authority accepts payment in different ways. The link at the bottom of the page will take you to your relevant US visa issuing office where you can find out how to pay.

Your application form should be posted to the visa application centre in the country where you live. Click on this link to find the one which serves your country of residence.

<http://www.usembassy.gov/>

If you require further help with your US Student visa email: Student/Exchange Visitor Visa Center at: fmjvisas@state.gov.

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Legal Rights and Protections for Temporary Non-Agricultural Workers Visa Holders

As a temporary visitor to the U.S., it is important that you are aware of your rights, as well as protections and resources available when you come to work or study here. Before your interview, review the Nonimmigrant Rights, Protections and Resources pamphlet included in this application pack. You will be required to have read and understood the pamphlet before being issued a U.S Temporary Non-Agricultural Workers Visa.

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Entering the US and Duration of Stay

US Temporary Non-Agricultural Workers visa applicants should be aware that a visa is not a guarantee for entering the US. The final decision is made by a US Customs and Border Protection official. They have the final authority to grant or deny entry to the US.

If you are allowed to enter the US, the customs official will determine how long you stay by filling out an Arrival/Departure Record (form I-94). In most cases, you will see a specific date in the lower right-hand corner on the Form I-94. This is the date by which you must leave the United States.

Form I-94 is a very important document as it authorizes your stay in the U.S. It's very important to keep in your passport during your stay in the US.



U.S. Department of State
SUPPLEMENTAL NONIMMIGRANT VISA APPLICATION

Approved OMB 1405-0134
Expires 11/30/2011
Estimated Burden 1 Hour*

**PLEASE TYPE OR PRINT YOUR ANSWERS IN THE SPACE PROVIDED BELOW EACH ITEM
PLEASE ATTACH AN ADDITIONAL SHEET IF YOU NEED MORE SPACE TO CONTINUE YOUR ANSWERS**

1. Last Name(s) <i>(List all Spellings)</i>	2. First Name(s) <i>(List all Spellings)</i>	3. Full Name <i>(In Native Alphabet)</i>						
4. Clan or Tribe Name <i>(If Applicable)</i>		5. Spouse's Full Name <i>(If Married)</i>						
6. Father's Full Name		7. Mother's Full Name						
8. Full Name and Address of Contact Person or Organization in the United States <i>(Include Telephone Number)</i>								
9. List All Countries You have Entered in the Last Ten Years <i>(Give the Year of Each Visit)</i>	10. List All Countries That Have Ever Issued You a Passport	11. Have you ever lost a passport or had one stolen? <input type="checkbox"/> Yes <input type="checkbox"/> No						
12. Not Including Current Employer, List Your Last Two Employers <table><tr><td><u>Name</u></td><td><u>Address</u></td><td><u>Telephone Number</u></td><td><u>Job Title</u></td><td><u>Supervisor's Name</u></td><td>Dates of Employment <i>(mm-dd-yyyy) or "Present"</i> <u>From</u> _____ <u>To</u> _____</td></tr></table>			<u>Name</u>	<u>Address</u>	<u>Telephone Number</u>	<u>Job Title</u>	<u>Supervisor's Name</u>	Dates of Employment <i>(mm-dd-yyyy) or "Present"</i> <u>From</u> _____ <u>To</u> _____
<u>Name</u>	<u>Address</u>	<u>Telephone Number</u>	<u>Job Title</u>	<u>Supervisor's Name</u>	Dates of Employment <i>(mm-dd-yyyy) or "Present"</i> <u>From</u> _____ <u>To</u> _____			
13. List all Professional, Social and Charitable Organizations to Which You Belong <i>(Belonged) or Contribute (Contributed) or with Which You Work (Have Worked).</i>		14. Do you have any specialized skills or training, including firearms, explosives, nuclear, biological, or chemical experience? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, please explain.						
15. Have you ever performed military service? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, complete below. <table><tr><td><u>Name of Country</u></td><td><u>Branch of Service</u></td><td><u>Rank/Position</u></td><td><u>Military Specialty</u></td><td>Dates of Service <i>(mm-dd-yyyy) or "Present"</i> <u>From</u> _____ <u>To</u> _____</td></tr></table>			<u>Name of Country</u>	<u>Branch of Service</u>	<u>Rank/Position</u>	<u>Military Specialty</u>	Dates of Service <i>(mm-dd-yyyy) or "Present"</i> <u>From</u> _____ <u>To</u> _____	
<u>Name of Country</u>	<u>Branch of Service</u>	<u>Rank/Position</u>	<u>Military Specialty</u>	Dates of Service <i>(mm-dd-yyyy) or "Present"</i> <u>From</u> _____ <u>To</u> _____				
16. Have you ever been in an armed conflict, either as a participant or victim? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, please explain.								
17. List all educational institutions you attend or have attended. Include vocational institutions but not elementary schools. <table><tr><td><u>Name of Institution</u></td><td><u>Address/Telephone Number</u></td><td><u>Course of Study</u></td><td>Dates of Attendance <i>(mm-dd-yyyy) or "Present"</i> <u>From</u> _____ <u>To</u> _____</td></tr></table>			<u>Name of Institution</u>	<u>Address/Telephone Number</u>	<u>Course of Study</u>	Dates of Attendance <i>(mm-dd-yyyy) or "Present"</i> <u>From</u> _____ <u>To</u> _____		
<u>Name of Institution</u>	<u>Address/Telephone Number</u>	<u>Course of Study</u>	Dates of Attendance <i>(mm-dd-yyyy) or "Present"</i> <u>From</u> _____ <u>To</u> _____					
18. Have you made specific travel arrangements? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, please provide a complete itinerary for your travel, including arrival/departure dates, flight information, specific location you will visit, and a point of contact at each location.								

Paperwork Reduction Act Statement

Public reporting burden for this collection of information is estimated to average 1 hour per response, including time required for searching existing data sources, gathering the necessary documentation, providing the information and/or documents required, and reviewing the final collection. You do not have to supply this information unless this collection displays a currently valid OMB control number. If you have comments on the accuracy of this burden estimate and/or recommendations for reducing it, please send them to: A/ISS/DIR, Room 2400 SA-22, U.S. Department of State, Washington, DC 20522-2202

Photo Guide for US Visa Applicants

General

- The photograph for each visa applicant must be an unmounted, full face photo, as described below
- The photograph must have been taken within the last six months
- One (1) photograph must be submitted stapled or glued to the application DS-156

Photo Size

The photo for each visa applicant submitted must measure:

- 2 by 2 inches (roughly 50 mm square) with the head centered in the frame.
- The head (measured from the top of the hair to the bottom of the chin) should measure between 1 inch to 1 3/8 inches (25 mm to 35 mm) with the eye level between 1 1/8 inch to 1 3/8 inches (28 mm and 35 mm) from the bottom of the photo

Photo Appearance

- The photograph must be a full-face view in which the visa applicant is facing the camera directly. See these [graphics](#) showing the full-face view, and more.
- The applicant should not look down or to either side, and the face should cover about 50 percent of the photo area.
- Side or angled views are NOT accepted.
- The photograph should be in color and must be taken against a white or off-white background. Photos with dark, busy, or patterned backgrounds will not be accepted.
- In general, the applicant's head, including both face and hair, should be shown from the crown of the head to the tip of the chin on top and bottom and from hairline side-to-side. It is preferable that ears be exposed.
- Head coverings and hats are only acceptable due to religious beliefs, and even then, may not cover any portion of the applicant's face.
- Sunglasses or other wear which detracts from the face are not acceptable unless required for medical reasons (an eye patch, for example).
- A photograph depicting a person wearing a traditional facemask or veil that does not permit adequate identification is not acceptable.
- Photos of military, airline or other personnel wearing hats are not acceptable. Photographs of applicants wearing tribal, national costume, or other headgear not specifically religious in nature are not acceptable.

Digital Photos

Digitally reproduced photographs must be reproduced without discernible pixels or dot patterns. Photocopied photographs are NOT accepted.

Attaching the Photo to the DS-156

- Staple or glue the one photograph to the DS-156 in the designated space. If the photograph is stapled, staples should be placed as far away as possible from the applicant's face.
- Do not enclose photographs in glassine or other types of envelopes. The photograph must be stapled or glued properly to the DS-156 in the designated space.



U.S. Department of State

Know Your Rights

Call one of the hotlines listed in this pamphlet if you need help

You are receiving this pamphlet because you have applied for a nonimmigrant visa to work or study temporarily in the United States. The purpose of this pamphlet is to help you understand your rights when you arrive in the United States. Even though you will be living in the United States only temporarily, you will still have many of the basic workplace rights that U.S. citizens and residents have.

This pamphlet gives an overview of your basic workplace rights. Understanding your rights will help you to protect yourself from abuse. Keep this pamphlet with you in the United States in case you need to reach someone for help.

This pamphlet was also created to help you protect yourself against the most serious abuses, such as human trafficking. Human trafficking is a form of modern-day slavery where an employer or other individual, through physical or psychological abuse, causes an individual to feel that he or she is not free to leave the situation. **Recognizing that you are in an abusive employment situation is the first step toward getting help.**

If you arrive in the United States and have problems at work, you should seek help immediately. Do not believe your employer if he or she says that you do not have legal rights in the United States. Do not accept legal advice from your employer, contractor, or recruiter. Only an attorney representing you should give you legal advice.

If you believe your rights are being violated, the hotlines listed in this pamphlet can help you reach local organizations that can provide further assistance. **Do not be afraid to contact these organizations! They are here to help you.**

This pamphlet is not a substitute for legal advice. There are many different types of temporary work and educational visas, and you should not be afraid to ask for more information about your visa.

IF YOUR RIGHTS ARE VIOLATED, CALL THESE TOLL-FREE NUMBERS:

National Human Trafficking Resource Center
1-888-373-7888
(24 hours)

Trafficking in Persons and Worker Exploitation Task Force Complaint Line
1-888-428-7581
(Monday – Friday, 9am-5pm Eastern Time)

Are You Coming To The United States Temporarily To Work Or Study?

We Are Confident That You Will Have An Interesting And Rewarding Stay. However, If You Should Encounter Any Problems, You Have Rights And You Can Get Help!

You Have the Right to:

- Be treated and paid fairly;
- Not be held in a job against your will;
- Keep your passport and other identification documents in your possession;
- Report abuse without retaliation;
- Request help from unions, immigrant and labor rights groups and other groups; and
- Seek justice in U.S. courts.

These rights, and others, are explained in this pamphlet.

If you are mistreated or your rights are violated,
call these toll-free numbers:

National Human Trafficking Resource Center's
24 Hour Toll-Free Hotline
1-888-373-7888

(Run by a non-governmental organization)

Trafficking in Persons and Worker Exploitation
Task Force Complaint Line

(Monday – Friday, 9am-5pm Eastern Time)

1-888-428-7581

(Run by the U.S. Department of Justice)

If you are in immediate physical danger, Call **911**



For more on your rights to be treated and paid fairly at work, see page 5

For more on your right not to be held in a job against your will, see page 7

This pamphlet was created as a result of
a U.S. Federal law, Public Law 110-457.

The U.S. Government has issued this pamphlet to honor the rule of law and uphold the dignity of all who come to this country. The U.S. Government is committed to combating human trafficking and labor rights violations.



REMEMBER!!

There Are Ways to Protect Yourself

- Keep your passport in a safe, easily accessible place at all times;
- Keep copies of your passport, visa, and employment contract in your home country with relatives or friends;
- Always have the phone number of your home country's embassy;
- Keep this pamphlet handy so that you can refer to it once you are in the United States;
- Keep a record of all the days and hours that you work, and the amount and date of each payment that you receive; and
- Call the National Human Trafficking Resource Center Hotline at 1-888-373-7888 (24 hours) or the Trafficking in Persons and Worker Exploitation Task Force Complaint Line at 1-888-428-7581 (weekdays 9am-5pm Eastern Standard Time) if you need help.



Deception and Lies:

Employers, and people who help them, may also use deception and lies. For example:

- False promises about working conditions, living conditions, or pay;
- Telling you that you have no rights;
- Telling you that you will not be believed if you try to seek help; and
- Instructing you to lie about their identity.

2. What should I do if these things are happening to me?

- If any one of these things is happening to you or you are in a dangerous situation, **get help immediately** by calling 911, the National Human Trafficking Resource Center (1-888-373-7888), or the Trafficking in Persons and Worker Exploitation Task Force Complaint Line (1-888-428-7581). They can help refer you to a local organization that help victims of human trafficking in your area.
- If you are in physical danger, you should call **911** to reach the Police. If you call the police, show them this pamphlet and tell them about the abuse that you have suffered.

3. Will I be deported if I report the abuse?

There are programs to protect people who report abuse. You should not be afraid to seek help even if you have immigration concerns. You should consult with an immigration attorney who does not work for your employer. The hotline can help you find someone to consult.

- If you believe you may be a victim of human trafficking or of another serious crime, including rape or sexual assault, you may be entitled to a different nonimmigrant visa, like a T visa (for trafficking victims) or a U visa (for victims of other serious crimes). These visas were created to provide protection for certain crime victims worried about their immigration status. Many people are unfamiliar with these visas and you may need to tell people assisting you about them.

4. What services are available for victims of human trafficking?

- If you are a victim of trafficking in the United States, you may be eligible for benefits, services, and immigration remedies under federal or state programs.
- Many organizations can help you access these services, which include medical care, mental health care, housing, dental care, legal advocacy for immigration and other legal needs, employment assistance, and public benefits.

TIP

Before leaving for the United States, talk with migrant worker organizations or former migrant workers for names and numbers of persons or organizations you can contact if you have problems or questions when you are in the United States.



Human Trafficking

1. What is human trafficking?

Human trafficking is among the most terrible workplace abuses that an individual in the United States could encounter. Human trafficking occurs whenever a person is recruited, transported, or kept against his or her will for purposes of exploitation. For a full definition of human trafficking, please see www.state.gov/g/tip (see Legislation—Trafficking Victims Protection Act). The following are some warning signs that may indicate human trafficking:

Threats and Fear:

Employers, and people who help employers, may use threats and other intimidating acts to make you and other workers feel too afraid to try to leave. For example:

- Beatings, physical abuse, or sexual abuse;
- Threats of beatings, physical abuse, or sexual abuse;
- Locking in or restraining a worker;
- Threats of harm to the worker or the worker's family if the worker tries to leave, complain of mistreatment, report the situation to authorities, or seek help;
- Threats of being deported or arrested, or of being turned over to police for trying to leave, complain, report, or seek help for the worker's situation;
- The employer, or someone working with the employer, has harmed or threatened other workers who have tried to leave, complain, report, or seek help; or makes threats that any worker who tries to escape will be found and brought back.

Rules and Controls:

Employers, and people who help them, may use rules and controls to make it harder for you and other workers to leave, complain about mistreatment, or seek help. For example:

- Rules against leaving the workplace, or strict rules about where you can go when not working;
- Rules against holding onto your own passport, visa, birth certification, or other identification documents;
- Denial of adequate food, sleep, or medical care; or
- Preventing or restricting you from communicating freely with family, other workers, or others outside the workplace.



An Overview of the Nonimmigrant Visa Process

What is a nonimmigrant visa?

A nonimmigrant visa is a U.S. government document that permits individuals who travel to the United States to request entry for a particular purpose; for example, to work or to study.

The nonimmigrant visa process involves two important steps:

1. Applying for the visa at the appropriate U.S. embassy or consulate abroad; and
2. Presenting the visa to an immigration inspector at a U.S. port of entry.

TIP

Before you travel to the United States, **make two copies** of all important documentation, especially your passport (with visa), your contract, and your identity documents. Give one set of these copies to someone you trust in your home country. When you arrive in the United States and receive an I-94, make one copy of the I-94 in case you lose the original. Keep these documents in a safe place.

What are the important parts of my documentation?

1. **The visa.** It is located in your passport and shows your picture and visa expiration date. If your visa expires, you cannot reenter the United States on that visa until it is renewed.
- If you have an employment-based visa, the visa will include the name of the employer who is sponsoring you to work in the United States.
- Your temporary work visa **does not give you permission** to work for **any** employer that you choose—it is permission to work **only** for the employer listed on your visa application. In rare cases, it may be possible to change employers.
- This does not mean you have to continue to work for your employer if the employer is abusing or exploiting you.

2. **The I-94 Card.** This is a white card provided to you when you enter the United States. Your I-94 card shows the period of time that you are allowed to remain in the United States.

Do not lose this card!

TIP

Once you arrive in the U.S., **keep your passport and other travel documents in a safe place where you can access it at all times!** It is illegal for your employer to take your passport away from you!



Your Workplace Rights in the United States

There are several protections that are specific to the type of visa you receive. These are outlined below by visa category.

A-3, G-5, and B-1 domestic employee visas

- If you work for a diplomat (A-3 visa) or a representative of an international organization (G-5 visa), or if you are a domestic employee holding a B-1 visa, your employer must provide you with an employment contract that complies with U.S. law.
- The contract must include the following provisions:
 - An agreement by your employer not to keep your passport, employment contract, or other personal property from you;
 - An agreement by your employer to abide by all laws in the United States;
 - An explanation of how much you will be paid for your work, as well as how frequently you will be paid; and
 - A description of your work duties, weekly work hours, holidays, sick days, and vacation days.
- Make sure that you understand the terms of the contract. If you cannot understand the language in which the contract is written, ask someone you trust to read the contract to you in a language that you understand. **Do not sign anything that you do not understand!**
- When you apply for the visa, a U.S. Consular Officer will meet with you and confirm that your contract complies with U.S. law. Do not hesitate to ask the U.S. Consular Officer any questions. Your employer is not supposed to be present when you meet with the Consular Officer.
- If you sign a contract that violates your rights, or if your employer does not do what the contract says, call the hotlines listed in this pamphlet immediately. They can help you find a lawyer who can help explain your rights in this situation.

H-1B and H-1B1 visas for performing services in specialty occupations

- If you are coming to the United States to perform services in a specialty occupation or as a fashion model, please refer to www.Travel.State.gov for more information regarding your rights and ability to change employers.

H-2A temporary agricultural worker visas

- If you are a temporary agricultural worker, you must receive a written description of the terms of your employment no later than the first day of work. This document must contain detailed information about the benefits, wages, housing, work duration, and transportation benefits that your employer will



- If you mix or apply pesticides that require you to use protective equipment (like coveralls or a mask or respirator), your employer must give you equipment that is clean and in good condition.

- **Medical Emergencies:** In the case of an emergency, call **911** and ask for an ambulance.

- Your expenses may be paid for, so you should tell your employer as soon as possible so the employer can file the necessary paperwork.
- When you are at the doctor or clinic, ask for copies of the paperwork regarding your illness or injury.

6. Your Right to Join a Union and Bargain Collectively

- With few exceptions, all workers in the United States have a right to form and join a union, regardless of their immigration status under federal law. Your employer cannot take action against you for doing so. This means you can:
 - Join with other workers to improve wages and working conditions;
 - Attend public speeches, rallies, and demonstrations; and
 - Join a union or other worker organization.

7. Your Right to More Protections Under State Law

- Call the hotlines listed in this pamphlet for a referral to organizations that can tell you about your rights in the state where you are working.

8. Your Right to Leave an Abusive Employment Situation

- You do not have to stay in your job if your employer is abusing you.
- But, if you came to the United States on an employment-based visa and you leave your employer, your visa status will no longer be valid. However, depending on the type of visa you have, you may be able to change visa categories or employers. You may also be able to remain in the United States legally to pursue a legal claim.
- You may also make a formal complaint or file a lawsuit against your employer while you are still working. There are severe penalties for an employer who tries to punish workers because they pursue their rights.
- If you are experiencing problems with your current employer, contact the hotlines listed in this pamphlet. They will be able to connect you with a local organization that can speak with you about your options.

TIP

You have rights in the United States and no one can take those rights away from you. There are hundreds of organizations that can help. Don't be afraid to ask for help to protect your rights.

because of your gender, race, national origin, color, religion, or disability.

- Your employer should pay the same amount to each worker for the same work and offer each worker the same job opportunities no matter what the worker's gender, race, national origin, color, religion, or disability.
- Your employer can't make you speak only in English at work unless there is an important business reason to require English.

4. Your Rights as a Woman Worker

- Your employer **MAY NOT** treat you differently or badly because you are a woman or you are pregnant - this is sex discrimination. Whether you are a woman or a man, your employer **MAY NOT** sexually harass you. Your employer should never:
 - Demand that you perform sex acts;
 - Touch you in a sexual manner; or
 - Say or yell sexual or offensive comments.

5. Your Right to a Healthy and Safe Workplace

- All employees have a right to safe and clean working conditions:
 - **Housing:** If your employer provides housing, it should be clean, safe, and in a sturdy structure.
 - **Bathrooms:** Bathrooms should be clean and accessible.
 - **Potable Water:** If you work in agriculture, in most cases, you have the right to receive clean water to drink and to wash your hands.
 - **Illness or Injury on the Job:** If you are injured or get sick at work you may seek medical treatment. In most cases, you will receive free medical treatment and part of the wages lost while injured.
- If you are working with or around **pesticides or dangerous chemicals:**
 - You have a right to wash your hands in clean water after handling the pesticides/chemicals. You are entitled to training on pesticide safety during the first 5 days of work.
 - Your employer must tell you where and when pesticides were sprayed to avoid accidental exposures. Workers and others must not be in an area where pesticides are being applied.

TIP

Keep a detailed record of every inappropriate comment and/or action your employer takes against you and write down the names and phone numbers of any witnesses.

provide.

- You are entitled to payment at or above a wage that is set by the government. This rate applies whether you are paid hourly or by piece rate.
- You do not have to pay either U.S. social security taxes or fees to a labor recruiter in your home country.
- Your employer must provide clean and safe housing at no charge.
- Your employer must reimburse you for transportation costs from your country to your place of employment, but only after you complete half the contract period; and your employer must pay for your return transportation costs for your trip home after completion of the contract.
- You are entitled to guaranteed work for at least 3/4 of the number of workdays stated as the contract period unless you are displaced by a U.S. worker during the first half of the contract period.

H-2B temporary non-agricultural worker visas

- If you are a temporary non-agricultural worker, you are entitled to payment at or above the prevailing wage, which will be at least the federal, state, or local legal minimum wage, but may be higher. This rate applies whether you are paid hourly or by piece rate.
- Your employer must provide return transportation costs for your trip home if your work ends or you are dismissed for business reasons unrelated to job performance before the end of your contract.
- You are usually entitled to terms and conditions of employment that are normal for similarly employed U.S. workers in the area.
- You should never have to pay fees to a labor recruiter in your home country.

J-1 exchange visitor visas

- Unless your exchange program is sponsored by the Federal government, the program must be a minimum of three weeks duration. The Form DS-2019, the basic document required to apply for a J visa, reflects the category of exchange and the program dates. Depending on the category of exchange, there may be other documents and/or contracts which cover the terms of your exchange program.
- Your sponsor's advertisements must be accurate and explain all costs, conditions, and restrictions of the exchange program. Your sponsor must also give you an orientation and provide you with information about:
 - the J-1 program and a description of the specific program in which you are participating and its rules;

CAUTION !
Your employer cannot force you to do something or go somewhere, even back to your home country, by withholding your pay.

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- travel and entry into the United States;
 - housing;
 - fees, and costs, including living expenses, healthcare, and insurance costs;
 - life and customs in the United States;
 - local resources;
 - your sponsor's address and the name and phone number of the person responsible for you in the United States;
 - contact information for the Exchange Visitor Program Services of the Department of State; and
 - The Department of State's Exchange Visitor Program brochure;
- If you are entering on a Summer Work Travel program and do not have pre-placed employment, your sponsor must assist you in locating employment if you have not found employment within the first week following your arrival, and insure that you receive pay and benefits commensurate with those offered to your American counterparts.
 - If your J-1 visa is for a training and internship program:
 - Your sponsor must interview you in person, by telephone or by web camera;
 - Your sponsor must have a Training/Internship Placement Plan (Form DS-7002) in place before your visa paperwork is submitted. This Form includes a written statement of any stipend you will be paid, and a summary of the training objectives of the program.
 - Your sponsor must give you a written statement of the costs and fees you will have to pay, and an estimate of living expenses in the United States.
 - Your training/internship must be at least 32 hours per week; and
 - If your training/internship is in agriculture, your working conditions and wages must meet strict federal requirements for agricultural workers.
 - Your sponsor must assure that you have medical insurance coverage, though your sponsor need not provide or pay for this coverage.
 - If you work in the United States, you should apply for and receive your own Social Security number, and your employer must report all tax withholdings using this number.
 - If you are bringing your spouse or minor children with you on a J-2 visa, they may apply for work authorization only if the income is not necessary to support you.

For more information on visa categories and U.S. entry procedures,
see the Web site of the U.S. Department of State:

www.Travel.State.gov

Your Rights Regardless of Visa Status

There are also many **rights you have regardless of your visa status**. If any of these rights are violated, you can report the violations to a government enforcement agency. In most cases, you can also bring a lawsuit to attempt to recover your losses, without fear of being punished.

1. Your Right Not to Be Retaliated Against

- It is unlawful for your employer to try to punish you, for example, by threatening to report you to immigration or the police if you try to enforce your rights! If your employer threatens you at any time, **seek help immediately**. Remember, your safety comes first!

2. The Right to Be Paid

- You have the right to get paid for **all work you do, in the same manner as U.S. workers**.

- You have the right to earn at least the federal legal minimum wage \$6.55 per hour, and \$7.25 per hour starting on July 24, 2009, in the same manner as U.S. workers. Also check
 - The minimum wage for the **state** in which you work. If that wage is higher, you have the right to be paid the higher amount.
 - Your employment contract, which may obligate your employer to pay a higher amount.

- Most workers in the United States are entitled to overtime pay of one and a half times the amount of their wage for any hours worked over 40 hours per week. For example, if your regular wage rate is \$10 per hour, your employer may be required to pay you \$15 for each hour you work above 40 hours in a single week.

- If your employer takes money from your paycheck, this is called a deduction. Many deductions are illegal if they diminish your legal wage rate. For example, an employer usually may not deduct for housing (with some visa classifications, housing must be provided free of charge), most uniforms, safety equipment, or recruitment fees.

3. Your Right Not to be Discriminated Against

- As an employee, you have the right to not be treated differently or badly at work

TIP

Make sure to keep a written record of **all the time that you work**.

Get a notebook and write down all of the days and hours that you worked, how much you were paid, the days you received a payment, any deductions taken from your paycheck, and the reasons for those deductions.