

8 CFR Plus Excerpt
(The 8 CFR Plus published version appears in two columns)

§ 214.2(h)

[**Editorial Note:** The final rule published on July 13, 2000, which amended 8 CFR part 103 (§ 103.1(f)(3)(iii)(J) and (W)) and part 214 (§§ 214.1(c)(1) and 214.2(h)(2), (5), (9), (10), (11), (12), (13), (14), (16) and (18)) and thereby delegated the adjudication of certain H-2A petitions for agricultural workers to the Department of Labor, was withdrawn on October 1, 2002. *See* 67 FR 61474, Oct. 1, 2002. This new rule nullified that transfer and maintained the status quo. To that extent all the listed regulatory provisions stand modified as of October 1, 2002, and should be read accordingly.]

(h) Temporary employees--

[214.2(h)(1)]

(1) Admission of temporary employees--

(i) *General.* Under section 101(a)(15)(H) of the Act, an alien may be authorized to come to the United States temporarily to perform services or labor for, or to receive training from, an employer, if petitioned for by that employer. Under this nonimmigrant category, the alien may be classified as follows: under section 101(a)(15)(H)(i)(c) of the Act as a registered nurse; under section 101(a)(15)(H)(i)(b) of the Act as an alien who is coming to perform services in a specialty occupation, services relating to a Department of Defense (DOD) cooperative research and development project or coproduction project, or services as a fashion model who is of distinguished merit and ability; under section 101(a)(15)(H)(ii)(a) of the Act as an alien who is coming to perform agricultural labor or services of a temporary or seasonal nature; under section 101(a)(15)(H)(ii)(b) of the Act as an alien coming to perform other temporary services or labor; or under section 101(a)(15)(H)(iii) of the Act as an alien who is coming as a trainee or as a participant in a special education exchange visitor program. These classifications are called H-1C, H-1B, H-2A, H-2B, and H-3, respectively. The employer must file a petition with the Service for review of the services or training and for determination of the alien's eligibility for classification as a temporary employee or trainee, before the alien may apply for a visa or seek admission to the United States. This paragraph sets forth the standards and procedures applicable to these classifications.

(ii) *Description of classification.*

(A) An H-1C classification applies to an alien who is coming temporarily to the United States to perform services as a registered nurse, meets the requirements of section 212(m)(1) of the Act, and will perform services at a facility (as defined at section 212(m)(6) of the Act) for which the Secretary of Labor has determined and certified to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) of the Act. This classification will expire 4 years from June 11, 2001.

(B) An H-1B classification applies to an alien who is coming temporarily to the United States:

(1) To perform services in a specialty occupation (except agricultural workers, and aliens described in section 101(a)(15) (O) and (P) of the Act) described in section 214(i)(1) of the Act, that meets the requirements of section 214(i)(2) of the Act, and for whom the Secretary of Labor has determined and certified to the Attorney General that the prospective employer has filed a labor condition application under section 212(n)(1) of the Act;

(2) To perform services of an exceptional nature requiring exceptional merit and ability relating to a cooperative research and development project or a coproduction project provided for under a Government-to-Government agreement administered by the Secretary of Defense;

(3) To perform services as a fashion model of distinguished merit and ability and for whom the Secretary of Labor has determined and certified to the Attorney General that the prospective employer has filed a labor condition application under section 212(n)(1) of the Act.

(C) An H-2A classification applies to an alien who is coming temporarily to the United States to perform agricultural work of a temporary or seasonal nature.

(D) An H-2B classification applies to an alien who is coming temporarily to the United States to perform nonagricultural work of a temporary or seasonal nature, if unemployed persons capable of performing such service or labor cannot be found in this country. This classification does not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession. The temporary or permanent nature of the services or labor to be performed must be determined by the Service. This classification requires a temporary labor certification issued by the Secretary of Labor or the Governor of Guam, or a notice from one of these individuals that such a certification cannot be made, prior to the filing of a petition with the Service.

(E) An H-3 classification applies to an alien who is coming temporarily to the United States:

(1) As a trainee, other than to receive graduate medical education or training, or training provided primarily at or by an academic or vocational institution, or

(2) As a participant in a special education exchange visitor program which provides for practical training and experience in the education of children with physical, mental, or emotional disabilities.

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