

Navigating the H2A Application Process

In the summer of 2023, the U.S. House Agriculture Committee launched the Agricultural Labor Working Group. Arkansas Congressman Rick Crawford serves as co-chair for the committee, which has hosted district discussions around the country with farmers and stakeholders, with a specific focus on the H-2A visa program for non-immigrant workers.

Congressman Crawford has said that it is vital that he and his staff gain a deeper understanding about workforce challenges and the obstacles producers experience using the H2A process. He acknowledges that doing so enables them to share the information with other policymakers in an effort to improve the system to better serve farmers. The committee published an interim report, found [here](#), in November with the final report and recommendations likely to come in the next 45 days.

Congressman Crawford has noted that going through this process has certainly deepened his appreciation for the struggles farmers are dealing with. As a result, his staff has created an H2A guide to assist farmers through the multi-agency H2A application process. This document addresses the common mistakes made on applications and offers practical advice to avoid the delays that can occur at each agency along the way, whether it be the Department of Labor or the Office of Motor Vehicles. It also recommends the appropriate time to reach out to his office for assistance.

You can find all the information in the following pages.



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NAVIGATING THE H2A APPLICATION PROCESS

The application process for H2A worker visas is time consuming and can sometimes become tangled in bureaucracy. While delays of a week or two can usually be accommodated without too much disruption, there are cases where material complications can negatively affect critical planting operations. Please know your congressional and senatorial offices are available to assist you when significant delays arise.

Below you will find my recommendations (note: each congressional office will have its own process) that should reduce processing disruptions with the Department of Labor, U.S. Citizenship and Immigration Services, Department of State, Office of Motor Vehicles, and the Security Approval and Verification Entitlements (SAVE).

PRIVACY RELEASE

The first step needed for your congressman or senator to assist you with the H2A process is the completion of a privacy release form, which can be found on each of their respective websites. My privacy release can be found [here](#).

You will be asked to enter your address to confirm that you are a resident in the first congressional district. If you are not, it will direct you to the appropriate office.

Once you have entered the site, you will be asked to select the agency involved for which you need assistance. Additional agency-specific instructions will be listed after each section in this document.

ARKANSAS DEPARTMENT OF WORKFORCE SERVICES & U.S. DEPARTMENT OF LABOR

It appears the Arkansas Department of Workforce Services (ADWS) home inspection process has improved since the problems encountered after COVID; however, the agency continues to have a large workload. Between 75 and 32 days prior to your worker's start date, the home inspections should be completed, and the approval document uploaded into the Department of Labor (DOL) portal. The DOL is to certify the application and issue the certificate package within 30 days of the start date, although it's not uncommon for the certification to be issued sometime after 30 days depending on the agency's workload. Please reach out to my office if you have not received a response after 30 days and I will be glad to investigate the status of your application.

DOL ADVERSE WAGE EFFECT RULE

A new DOL adverse wage effect rule began in February 2023 that will create additional paperwork and a greater financial burden for farmers employing H2A workers. While I expect to see issues arise due to this new rule, unfortunately, I am unable to assist or advise you on how to structure job descriptions or wages on applications. You will need to seek advice from your H2A worker placement agency or an attorney.

PRIVACY RELEASE FOR DEPARTMENT OF LABOR:

- Click [here](#) to complete my privacy release.
- Enter your address to confirm you are in the district.
- Select the Department of Labor as the agency involved and complete the requested information.
- Include the DOL application number on the form.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES

I-129 APPLICATION PROCESS

A simple error on your I-129 applications will cause unnecessary delays, so it is important you stay up-to date with any changes to the process. One recent change is the new I-129 applications, with the expiration date of 11/20/25. No expired forms will be accepted.

I recommend you monitor the I-129 USCIS page [here](#) for updates so your H2A application process will go smoothly.

Request for Further Evidence (RFE): The USCIS is now issuing RFEs to farmers who do not complete questions 13-16 on page five of the I-129 applications. Farmers have not been required to provide this information in previous years. The questions request the year the company was established, number of employees, annual gross and net income, etc.

In 2023 there was an increase in RFEs for verification of entity name and address. The USCIS verifies entities and addresses with the Dun & Bradstreet (D&B) database. Your entity name and address listed with D&B must match the name on the USCIS petition. If you find a mismatch, please make corrections quickly to reduce delays with the approval of your USCIS application. You can click [here](#) to verify or change your D&B information.

I-129 15-day response: Once you have filed your I-129 application with the U.S. Citizenship and Immigration Services (USCIS), you should receive a response within 15 working days. Make sure to check your case status [here](#) to monitor progress on your application during this 15-day period. If you have not received your approval email or any communication from USCIS after 15 days, please contact my office for assistance.

I-129 approval: The USCIS will notify you by email that your I-129 application has been approved and will then mail the official 797B approval notice via USPS.

If you are hiring workers from South Africa, the U.S. consulates there require your worker to submit a copy of the 797B approval notice with their DS 160 application (the next step in the H2A process.) Other embassies such as Mexico only require the worker to provide the USCIS email that notified you of your approval.

Last year many farmers lost valuable time because the 797B approval notices were not delivered by the USPS in a timely manner, which primarily affected those employing South African workers. **To help you eliminate this costly delay, once you have received your approval notice by email, contact my office and I will gladly contact USCIS on your behalf and request that they provide you with a digital copy of the 797B approval notice so that your South African workers may continue with the application process.**

Additional USCIS communication: Unfortunately, the USCIS also relies on the USPS to send you other communication such as Requests for Further Evidence (RFE) or Intent to Deny letters. Because the USPS can be unreliable, I highly recommend frequently checking your USCIS online status [here](#) to determine if any communication has been sent to you. **If your status indicates USCIS has sent you one of the above letters and it is not received within one week, please contact my office immediately and I will request a digital copy of the communication for you.**

PRIVACY RELEASE FOR THE USCIS:

- Click [here](#) to complete my privacy release.
- Enter your address to confirm you are in the district.
- Select the U.S. Citizenship and Immigration as the agency involved.
- The person who has signed the I-129 application must complete the applicant fields on the privacy release. Put n/a in the beneficiary fields.
- Please include the 797C receipt number on the form.
- Only the applicant's signature can appear on this form.

DEPARTMENT OF STATE

U.S. EMBASSIES AND CONSULATES

DS 160 APPLICATION

I am hopeful that backlogs at the embassies and consulates, if any, will be minimum this year. If you are hiring a returning worker, the interview requirement will more than likely be waived unless that worker went through administrative processing the previous year. The interview waiver will be determined by the answers provided by the applicant to questions during the online appointment scheduling process. You can go to the workers' home country website at travel.state.gov for more information on its processes.

Scheduling timely appointments: If your worker's interview appointment is not scheduled within your needed timeframe, please check the online appointment system daily for cancelations.

Administrative Processing (AP): If your worker is found ineligible for an H2A visa, their application will more than likely be sent to AP. Your worker can be found ineligible for many reasons. The most common are unlawful presence or overstay in the U.S.; violation of any federal or state law including driving violations, DUI, public intoxication, etc.; and failure to disclose any of the forementioned violations on their DS-160 application. The AP wait time can be one to six months. Unfortunately, when the worker's application is placed in AP, our office is unable to provide a timeline or request an expedite, and we will not be able to provide any additional information regarding the worker's reason for AP.

Yearly Administrative Processing: If your worker has been found ineligible for a U.S. visa, they will continue to be found ineligible and require AP each time they apply for an H2A visa. Each farmer will need to weigh the delay AP causes for their worker and its effects on their farm production to determine if it is worth requesting the worker to return each year.

Privacy release for the Department of State:

- Click [here](#) to complete my privacy release.
 - The privacy release must be completed with the H2A worker's information since this person is applying for the visa.
 - Enter the farm address to confirm the worker is in the district.
 - Select the Department of State as the agency involved.
- Must include the DS-160 confirmation number on the privacy release.

OFFICE OF MOTOR VEHICLES AND SYSTEM ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE)

***NEW* Issuance of H2A driver's licenses is now simplified.**

The Arkansas State Police and Office of Motor Vehicles under the Arkansas Department of Finance and Administration have revised the procedures and the required documents for H2A workers who are applying for an Arkansas driver's license. The applicants should follow these steps:

- Study for the written exam. The testing information can be found [here](#).
- Schedule an appointment [here](#) with the Arkansas State Police (ASP) to take the written test. Select #2 box, "Immigration Documents for Instruction Permit Test." **Complete only the fields with an asterisk.**
- Bring the following documents to your appointment at the ASP testing location:
 - Foreign passport
 - H2A visa and your I-94
 - Letter of Employment (The letter must be on company letterhead and include the worker's full name as it appears on the immigration document, date of birth, current address, and length of employment.)

Note: An Arkansas state ID or fishing license is no longer required if you can provide the documents listed above to the ASP. If any problems are encountered during the visit, or the instructor is requesting additional information, please contact Alisa Blackerby, Driver's License Coordinator, at (501) 618-8613 or (501) 681-5489 before leaving the test site. Further information regarding the ASP's required documentation for H2A workers can be found [here](#).

- After the worker passes the written test, the ASP will issue the instruction permit with information for scheduling the skills portion of the test. There is no longer a waiting period for taking the skills test and the testing appointment can be scheduled as soon as one is available.
- Once the worker passes the skills test, go to the DMV for issuance of the driver's license. In addition to the I-797B approval notice, the DMV requires the same identification documentation as submitted to the ASP.
- The DMV will submit the applicant's information to the SAVE system for status verification. The SAVE approval should take place within minutes and the Arkansas driver's license will then be issued.

OTHER INFORMATION REGARDING DRIVER'S LICENSES FOR H2A WORKERS.

- The driver's knowledge test is offered in Spanish. The skills portion is only offered in English and no interpreter is allowed.
- If your worker has been issued a driver's license in another state and that license has not expired, or is expired for less than 30 days, and they are transferring to Arkansas for work, they will be able to apply for an Arkansas driver's license with no retest requirement.
- If your worker's out-of-state license has expired for 31 days, but less than a year, they will be required to take the written exam.
- If your worker's out-of-state license has expired for more than one year, they must take the written and the skills test to be issued an Arkansas DL.

- Arkansas' statute allows a person to drive for up to six months on their foreign license if they are not becoming a resident of Arkansas. However, you need to verify if your insurance policy covers a foreign licensed driver on your farm vehicles.
- Workers who are in-country transfers can apply to renew their driver's license up to 90 days before their current visa expires if they have been approved for a visa extension and have their I-797A.
- Reciprocal Countries, whose driving laws are comparable to Arkansas and deemed a match to allow reciprocation of driver's licenses are the following: Germany, France, South Korea, Taiwan and Manitoba, Canada.

SYSTEM ALIEN VERIFICATION FOR ENTITLEMENTS (SAVE)

Each H2A worker who applies for a government benefit must have their immigration status verified through the SAVE system. Most workers' statuses will be verified within minutes. However, H2A "in-country" transfers who did not leave the U.S. but transferred to another visa to continue to work, can experience tremendous delays with the SAVE system's verification. For these workers, SAVE requires the government entity to submit additional information for verification and the worker may wait two weeks to 90 days for a verification. This wait time is primarily experienced when applying for a driver's license.

If your worker is an "in-country" transfer, after their SAVE inquiry is submitted by the DMV, they need to request a copy of their SAVE verification document to ensure the document shows "Case Under Review." The worker will be notified when SAVE returns the confirmation.

You can check your SAVE status online [here](#).

My office is available to assist you during this SAVE verification process; however, there is no guarantee that the efforts to expedite the process for you will succeed. At a minimum, a congressional inquiry requires that SAVE respond with updates. It also ensures all the additional documentation for your case has been submitted properly. If your worker has been waiting longer than three weeks, please reach out to my office.

PRIVACY RELEASE FOR SAVE:

- Click [here](#) to complete my privacy release.
- Enter the farm address to confirm the worker is in the district.
- Select the U.S. Citizenship and Immigration as the agency involved.
- The worker's information goes in the applicant fields and put N/A in the beneficiary fields. The worker must sign the release.
Include the SAVE verification number and the DMV location where they applied.

ARKANSAS DELEGATION CONTACT INFORMATION

- **Senator Tom Cotton**
Cotton.Senate.Gov (501) 223-9081
- **Senator John Boozman**
Boozman.Senate.Gov (501) 372-7153
- **AR01 Congressman Rick Crawford**
Sherrie.Mitchell@mail.house.gov
Crawford.House.Gov (870) 203-0540
- **AR02 Congressman French Hill**
Hill.House.Gov (501) 324-5941
- **AR03 Congressman Bruce Westerman**
Westerman.House.Gov (870) 864-8946
- **AR04 Congressman Steve Womack**
Womack.House.Gov (479) 424-1146