



Calculating Interrupted Stays for the H-2 Classifications

What is an interrupted stay?

USCIS officers use the term “interrupted stay” when adjudicating extension of stay requests in the H-2A and H-2B nonimmigrant classifications. It refers to certain periods of time an H-2 worker spends outside the United States during an authorized period of stay, that do not count toward the alien’s maximum 3-year limit in the classification. You can find interrupted stay regulations at:

- 8 CFR 214.2(h)(5)(viii)(C) – H-2A
- 8 CFR 214.2(h)(13)(i)(B) -- General H-2 regulations
- 8 CFR 214.2(h)(13)(iv)-(v) – H-2B

Interrupted stay regulations are the same for both H-2A and H-2B. They are summarized as follows:

If the worker was in the United States in H-2 status for...	Then H-2 time is interrupted if he or she is outside the United States for...
18 months or less	at least 45 days, but less than 3 months
More than 18 months, but less than 3 years	at least 2 months, but less than 3 months

Time in H-2 status is not automatically interrupted if the H-2 worker departs the United States. It will be considered to be interrupted if the guidelines in the chart above are met. Additionally:

- If H-2 time is interrupted, time stops accruing toward the H-2 worker’s 3-year limit. Once he or she returns to the United States in H-2 status, time toward the 3-year limit begins to accrue again from the point where it stopped.
- If the H-2 worker has reached the 3-year limit, he or she must depart and remain outside the United States for at least 3 months before being readmitted in H-2 status.
- Any time the H-2 worker is outside the United States for at least 3 months, his or her 3-year limit restarts from the beginning upon the worker’s readmission to the United States in H-2 status (for example, starts again at “day one”).

What are important factors to consider when calculating interrupted stays?

Important factors to consider include:

- **The definition of “day”:** For purposes of interrupted stays, a day is a full 24-hour period (from midnight to midnight) outside the United States. USCIS calculates a travel day to or from the United States as a full day in the United States – even if the H-2 worker departs at 12:01 a.m.
- **The definition of “month”:** For purposes of interrupted stays, a month can be anywhere from 28 to 31 days, depending on which month is used to calculate the interruption.
- **Distinguish between months and days:** The chart above tracks the regulations. If the chart states months, we calculate months – not an equivalent number of days.
- **Leap years:** When counting days, we always consider whether a particular year has February 29.
- **Effect of multiple interrupted stays:** An H-2 worker may acquire more than one interrupted stay during the same 3-year period. It is important to remember that the 3-year maximum period of stay is calculated from the worker’s first date of entry in H-2 status – not from his or her most recent date of entry in H-2 status (unless the worker was outside the United States for at least 3 months between entries).

When does USCIS calculate an interrupted stay?

We will calculate an interrupted stay only when you (the petitioner) request us to do so. Alternatively, your representative may make the request on your behalf if he or she has filed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, with your Form I-129, Petition for a Nonimmigrant Worker.

Who has the responsibility to show evidence of an interrupted stay?

You (the petitioner) have the responsibility to show that an interrupted stay occurred. To show this, submit evidence with Form I-129 of all the beneficiary’s entries in, and departures from, the United States during the current 3-year period of stay. If the evidence you submit is insufficient, we may request additional evidence from you.

What is acceptable evidence to show that an interrupted stay occurred?

There is no piece of evidence that is “better” than others or “always acceptable.” Evidence must clearly show a date of departure from, or arrival in, the United States. We consider each piece of evidence on a case-by-case basis.

The evidence you submit must show that it is “more likely than not” that the beneficiary arrived in or departed from the United States on the dates that you request. We may not grant an interrupted stay if we cannot verify your claims.

Should I file separate petitions for some of the H-2 workers I am requesting?

You are not required to file more than one petition per temporary labor certification. However, you may benefit from filing multiple petitions. Here are some examples of how you could benefit:

- If we request additional evidence to verify interrupted stays for some H-2 workers, petition processing may be delayed. Filing a separate petition for H-2 workers for whom you are not requesting interrupted stays may enable you to obtain approval on behalf of those workers more quickly (if they are otherwise eligible) while processing continues for the other petition.
- We may shorten the validity period for one or more of your H-2 workers if we are unable to verify your claims for some periods of interrupted stay. Doing this may cause the validity period for all other workers to be shortened, because petition validity periods are limited to the worker with the shortest approvable validity period. Filing a separate petition for workers for whom you are not requesting interrupted stays may allow them to get the full validity periods you request, if they are otherwise eligible.
- We may shorten the validity period of one or more of your H-2 workers if they will reach the 3-year maximum period of stay during your requested validity period. Doing this may cause the validity period for all other workers to also be shortened. Filing a separate petition for workers who are not nearing the 3-year limit may allow them to get the full validity periods you request, if they are otherwise eligible.

What do I need to know if I choose to file separate petitions for H-2 workers?

If you do choose to file more than one petition with the same temporary labor certification, you may do so if:

- You pay all relevant fees for each petition;
- The total number of beneficiaries you request on the petitions you submit does not exceed the total number of workers approved by the Department of Labor on the temporary labor certification;
- One petition is accompanied by the original temporary labor certification; and
- The other petitions are accompanied by photocopies of the same labor certification and a statement explaining why the original was not submitted, such as:
 - “I submitted the original temporary labor certification in connection with a previously filed petition. The receipt number for that petition is [insert number]”; or
 - “I am filing more than one H-2 petition at this time for some of the total of [Insert number of workers] workers covered by the original temporary labor certification. I submitted (or am submitting) the original temporary labor certification with the other petition, covering the remaining number of workers authorized in the temporary labor certification.”

Plug-ins