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As there is no express provision prohibiting the representation of an H-2A alien who abandons his/her employment contract and unlawfully remains in the U.S., a recipient may exercise its discretion in offering legal assistance to such individuals. In making such determinations, a recipient might well wish to consider the reason for the abandonment of the contract. For example, if the abandonment is related to the cause of action the worker wished to pursue, the abandonment might be deemed to be a constructive termination. In such a case, a strong argument can be made that allowing an H-2A worker legal representation for a claim against the initial employer that arose under the original employment contract (despite the fact that the alien *may be required to depart* the United States prior to or during the course of representation) is consistent with the Congressional intent underlying the H-2A worker program. *See id.* at ii, iv. Thus, denying an H-2A worker representation in such a case might result in the denial of meaningful representation to that person in contravention of Congressional intent.

If the abandonment is not related to the claim which the H-2A worker wishes to pursue, a recipient would want to carefully consider all of the relevant circumstances and equities in determining whether the proposed representation would be consistent with the recipient's priorities and a reasonable use of its limited resources. Among the factors the recipient might wish to consider would be the reason for the abandonment (i.e., mere convenience of the worker, family emergency, etc.) and the nature of the employer's violation (i.e., whether the violation is so egregious that the claim should be pursued notwithstanding the worker's breach of the contract), if any.

Very truly yours,

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