112TH CONGRESS
1ST SESSION

H. R. 2847

To create a nonimmigrant H–2C work visa program for agricultural workers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES
SEPTEMBER 7, 2011

Mr. SMITH of Texas introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To create a nonimmigrant H–2C work visa program for agricultural workers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "American Specialty Agriculture Act".

SEC. 2. H–2C TEMPORARY AGRICULTURAL WORK VISA PROGRAM.

Section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) is amended by striking "; or (iii)" and inserting ", or (c) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services that are defined as agricultural labor in section 3121(g) of the Internal Revenue Code of 1986, as agriculture in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), and the pressing of apples for cider on a farm; or (iii)".

SEC. 3. ADMISSION OF TEMPORARY H–2C WORKERS.

(a) PROCEDURE FOR ADMISSION.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 218 the following:

“SEC. 218A. ADMISSION OF TEMPORARY H–2C WORKERS.

“(a) DEFINITIONS.—In this section:

“(1) AREA OF EMPLOYMENT.—The term ‘area of employment’ means the area within normal commuting distance of the worksite or physical location where the work of the H–2C worker is or will be performed. If such work site or location is within a Metropolitan Statistical Area, any place within such area shall be considered to be within the area of employment.

“(2) DISPLACE.—The term ‘displace’ means to lay off a worker from a job that is essentially equivalent to the job for which an H–2C worker is sought. A job shall not be considered to be ‘essentially equivalent’ to another job unless the job—

“(A) involves essentially the same responsibilities as such other job;

“(B) was held by a United States worker with substantially equivalent qualifications and experience; and

“(C) is located in the same area of employment as the other job.

“(3) ELIGIBLE INDIVIDUAL.—The term ‘eligible individual’ means an individual who is not an unauthorized alien (as defined in section 274A(h)(3)) with respect to the employment of the individual.

“(4) EMPLOYER.—The term ‘employer’ means an employer who hires workers to perform agricultural employment.

“(5) H–2C WORKER.—The term ‘H–2C worker’ means a nonimmigrant described in section 101(a)(15)(H)(ii)(c).

“(6) LAY OFF.—

“(A) IN GENERAL.—The term ‘lay off’—

“(i) means to cause a worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in paragraph (3) of subsection (b)); and

“(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under subsection (b)(7), with either

employer described in such subsection) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

"(B) CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

"(7) PREVAILING WAGE.—The term 'prevailing wage' means the wage rate paid to workers in the same occupation in the area of employment that is calculated using the same methodology used by the Department of Labor to determine prevailing wages for the purpose of the program described in section 101(a)(15)(H)(ii)(b) on January 1, 2011, except that if the wage rate is determined by means of a governmental survey, the survey shall provide at least four levels of wages commensurate with factors such as experience, qualifications, and the level of supervision (except that where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level), and that if the wage rate is determined by a survey that provides at least four levels of wages commensurate with factors such as experience, qualifications and the level of supervision, the prevailing wage shall be equal to the first wage level.

"(8) UNITED STATES WORKER.—The term 'United States worker' means any worker who is—

"(A) a citizen or national of the United States; or

"(B) an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207, is granted asylum under section 208, or is an immigrant otherwise authorized, by this Act or by the Secretary of Homeland Security, to be employed.

"(b) PETITION.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an H–2C worker shall file with the Secretary of Agriculture a petition attesting to the following:

"(1) TEMPORARY WORK OR SERVICES.—

"(A) IN GENERAL.—The employer is seeking to employ a specific number of agricultural workers on a temporary basis and will provide compensation to such workers at a specified wage rate.

"(B) DEFINITION.—For purposes of this paragraph, a worker is employed on a temporary basis if the employer intends to employ the worker for no longer than 10 months during any contract period.

"(2) BENEFITS, WAGES, AND WORKING CONDITIONS.—The employer will provide, at a minimum, the benefits, wages, and working conditions required by subsection (k) to all workers employed in the jobs for which the H–2C worker is sought and to all other temporary workers in the same occupation at the place of employment.

"(3) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment of the H–2C worker and during the 30-day period immediately preceding such period of employment in the occupation at the place of employment for which the employer seeks approval to employ H–2C workers.

"(4) RECRUITMENT.—

"(A) IN GENERAL.—The employer—

"(i) conducted adequate recruitment in the area of intended employment before filing the attestation; and

"(ii) was unsuccessful in locating a qualified United States worker for the job opportunity for which the H–2C worker is sought.

"(B) OTHER REQUIREMENTS.—The recruitment requirement under subparagraph (A) is satisfied if the employer places—

"(i) a local job order with the State workforce agency serving the local area where the work will be performed, except that nothing in this clause shall require the employer to file an interstate job order under section 653 of title 20, Code of Federal Regulations; and

"(ii) a Sunday advertisement in a newspaper of general circulation in the area of intended employment.

"(C) ADVERTISEMENT REQUIREMENT.—The advertisement requirement under subparagraph (B)(ii) is satisfied if the advertisement—

"(i) names the employer;

"(ii) directs applicants to contact the employer or their representative;

"(iii) provides a description of the vacancy that is specific enough to apprise United States workers of the job opportunity for which certification is sought;

"(iv) describes the geographic area with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the job; and

"(v) states the rate of pay, which shall not be less than the wage as described in subsection (k)(2)(A).

"(D) END OF RECRUITMENT REQUIREMENT.—The requirement to recruit United States workers shall terminate on the first day of the contract period that work begins.

"(5) OFFERS TO UNITED STATES WORKERS.—The employer has offered or will offer the job for which the H–2C worker is sought to any eligible United States worker who—

"(A) applies;

"(B) is qualified for the job; and

"(C) will be available at the time and place of need.

This requirement shall not apply to a United States worker who applies for the job on or after the first day of the contract period that work begins.

"(6) PROVISION OF INSURANCE.—If the job for which the H–2C worker is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker unless State law provides otherwise, insurance covering injury and disease arising out of, and in the course of, the worker's employment, which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

"(7) REQUIREMENTS FOR PLACEMENT OF H–2C WORKERS WITH OTHER EMPLOYERS.—A nonimmigrant who is admitted into the United States as an H–2C worker may be transferred to another employer that has filed a petition under this subsection and is in compliance with this section.

"(8) STRIKE OR LOCKOUT.—There is not a strike or lockout in the course of a labor dispute which, under regulations promulgated by the Secretary of Agriculture, precludes the hiring of H–2C workers.

"(9) HOUSING.—Except for H–2C workers who are reasonably able to return to their permanent residence (either within or outside the United States) within the

same day, the employer will provide housing to H–2C workers through one of the following means:

"(A) Employer-owned housing in accordance with regulations promulgated by the Secretary of Agriculture.

"(B) Rental or public accommodations or other substantially similar class of habitation in accordance with regulations promulgated by the Secretary of Agriculture.

"(C) Except where the Governor of the State has certified that there is inadequate housing available in the area of intended employment for migrant farm workers and H–2C workers seeking temporary housing while employed in agricultural work, the employer may furnish the worker with a housing voucher in accordance with regulations, if—

"(i) the employer has verified that housing is available for the period during which the work is to be performed, within a reasonable commuting distance of the place of employment, for the amount of the voucher provided, and that the voucher is useable for that housing;

"(ii) upon the request of a worker seeking assistance in locating housing for which the voucher will be accepted, the employer makes a good faith effort to assist the worker in identifying, locating and securing housing in the area of intended employment; and

"(iii) payment for the housing is made with a housing voucher that is only redeemable by the housing owner or their agent.

An employer who provides housing through one of the foregoing means shall not be deemed a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1823) by virtue of providing such housing.

"(10) PREVIOUS VIOLATIONS.—The employer has not, during the previous two-year period, employed H–2C workers and knowingly violated a material term or condition of approval with respect to the employment of domestic or nonimmigrant workers, as determined by the Secretary of Agriculture after notice and opportunity for a hearing.

"(c) PUBLIC EXAMINATION.—Not later than 1 working day after the date on which a petition under this section is filed, the employer shall make a copy of each such petition available for public examination, at the employer's principal place of business or worksite.

"(d) LIST.—

"(1) IN GENERAL.—The Secretary of Agriculture shall maintain a list of the petitions filed under subsection (b), which shall—

"(A) be sorted by employer; and

"(B) include the number of H–2C workers sought, the wage rate, the period of intended employment, and the date of need for each alien.

"(2) AVAILABILITY.—The Secretary of Agriculture shall make the list available for public examination.

"(e) PETITIONING FOR ADMISSION.—

"(1) CONSIDERATION OF PETITIONS.—For petitions filed and considered under subsection (b)—

"(A) the Secretary of Agriculture may not require such petition to be filed more than 28 calendar days before the first date the employer requires the labor or services of the H–2C worker;

"(B) unless the Secretary of Agriculture determines that the petition is incomplete or obviously inaccurate, the Secretary, not later than 10 business days after the date on which such petition was filed, shall either approve or reject the petition and provide the petitioner with notice of such action by means ensuring same or next day delivery; and

"(C) if the Secretary determines that the petition is incomplete or obviously inaccurate, the Secretary shall—

"(i) within 5 business days of receipt of the petition, notify the petitioner of the deficiencies to be corrected by means ensuring same or next day delivery; and

"(ii) within 10 business days of receipt of the corrected petition, approve or deny the petition and provide the petitioner with notice of such action by means ensuring same or next day delivery.

"(2) PETITION AGREEMENTS.—By filing an H–2C petition, a petitioner and each employer consents to allow access to the site where the labor is being performed to the Department of Agriculture or the Department of Homeland Security for the purpose of investigations to determine compliance with H–2C requirements and the immigration laws. Notwithstanding any other provision of law, the Departments of Agriculture and Homeland Security cannot delegate their compliance functions to other agencies or Departments.

"(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—

"(1) PERMITTING FILING BY AGRICULTURAL ASSOCIATIONS.—A petition under subsection (b) to hire an alien as a temporary agricultural worker may be filed by an association of agricultural employers which use agricultural services.

"(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association is a joint employer of temporary agricultural workers, such workers may be transferred among its members to perform agricultural services of a temporary nature for which the petition was approved.

"(3) TREATMENT OF VIOLATIONS.—

"(A) INDIVIDUAL MEMBER.—If an individual member of a joint employer association violates any condition for approval with respect to the member's petition, the Secretary of Agriculture shall consider as an employer for purposes of subsection (b)(10) and invoke penalties pursuant to subsection (i) against only that member of the association unless the Secretary of Agriculture determines that the association or other member participated in, had knowledge of, or had reason to know of the violation.

"(B) ASSOCIATION OF AGRICULTURAL EMPLOYERS.—If an association representing agricultural employers as a joint employer violates any condition for approval with respect to the association's petition, the Secretary of Agriculture shall consider as an employer for purposes of subsection (b)(10) and invoke penalties pursuant to subsection (i) against only the association and not any individual member of the association, unless the Secretary determines that the member participated in, had knowledge of, or had reason to know of the violation.

"(g) EXPEDITED ADMINISTRATIVE APPEALS.—The Secretary of Agriculture shall promulgate regulations to provide for an expedited procedure—

"(1) for the review of a denial of a petition under this section by the Secretary; or

"(2) at the petitioner's request, for a de novo administrative hearing at which new evidence may be introduced.

"(h) MISCELLANEOUS PROVISIONS.—

"(1) ENDORSEMENT OF DOCUMENTS.—The Secretary of Homeland Security shall provide for the endorsement of entry and exit documents of H–2C workers as may be necessary to carry out this section and to provide notice for purposes of section 274A.

"(2) FEES.—

"(A) IN GENERAL.—The Secretary of Agriculture shall require, as a condition of approving the petition, the payment of a fee, in accordance with subparagraph (B), to recover the reasonable cost of processing petitions.

"(B) FEE BY TYPE OF EMPLOYEE.—

"(i) SINGLE EMPLOYER.—An employer whose petition for temporary alien agricultural workers is approved shall, for each approved petition, pay a fee that—

"(I) subject to subclause (II), is equal to $100 plus $10 for each approved H–2C worker; and

"(II) does not exceed $1,000.

"(ii) ASSOCIATION.—Each employer-member of a joint employer association whose petition for H–2C workers is approved shall, for each such approved petition, pay a fee that—

"(I) subject to subclause (II), is equal to $100 plus $10 for each approved H–2C worker; and

"(II) does not exceed $1,000.

"(iii) LIMITATION ON ASSOCIATION FEES.—A joint employer association under clause (ii) shall not be charged a separate fee.

"(C) METHOD OF PAYMENT.—The fees collected under this paragraph shall be paid by check or money order to the Department of Agriculture. In the case of employers of H–2C workers that are members of a joint employer association petitioning on their behalf, the aggregate fees for all employers of H–2C workers under the petition may be paid by 1 check or money order.

"(i) ENFORCEMENT.—

"(1) INVESTIGATIONS AND AUDITS.—The Secretary of Agriculture shall be responsible for conducting investigations and random audits of employer work sites to ensure compliance with the requirements of the H–2C program. All monetary fines levied against violating employers shall be paid to the Department of Agriculture and used to enhance the Department of Agriculture's investigatory and auditing power.

"(2) FAILURE TO MEET CONDITIONS.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a failure to meet a condition of

subsection (b), or a material misrepresentation of fact in a petition under subsection (b), the Secretary—

"(A) may impose such other administrative remedies (including civil money penalties in an amount not to exceed $1,000 per violation) as the Secretary determines to be appropriate; and

"(B) may disqualify the employer from the employment of H–2C workers for a period of 1 year.

"(3) PENALTIES FOR WILLFUL FAILURE.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a willful failure to meet a material condition of subsection (b), or a willful misrepresentation of a material fact in a petition under subsection (b), the Secretary—

"(A) may impose such other administrative remedies (including civil money penalties in an amount not to exceed $5,000 per violation) as the Secretary determines to be appropriate;

"(B) may disqualify the employer from the employment of H–2C workers for a period of 2 years;

"(C) may, for a subsequent violation not arising out of the prior incident, disqualify the employer from the employment of H–2C workers for a period of 5 years; and

"(D) may, for a subsequent violation not arising out of the prior incident, permanently disqualify the employer from the employment of H–2C workers.

"(4) PENALTIES FOR DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a willful failure to meet a material condition of subsection (b) or a willful misrepresentation of a material fact in a petition under subsection (b), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment on the employer's petition under subsection (b) or during the period of 30 days preceding such period of employment, the Secretary—

"(A) may impose such other administrative remedies (including civil money penalties in an amount not to exceed $15,000 per violation) as the Secretary determines to be appropriate;

"(B) may disqualify the employer from the employment of H–2C workers for a period of 5 years; and

"(C) may, for a second violation, permanently disqualify the employer from the employment of H–2C workers.

"(j) FAILURE TO PAY WAGES OR REQUIRED BENEFITS.—

"(1) ASSESSMENT.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, that the employer has failed to pay the wages, transportation, subsistence reimbursement, or guarantee of employment attested by the employer under subsection (b)(2), the Secretary shall assess payment of back wages, or such other required benefits, due any United States worker or H–2C worker employed by the employer in the specific employment in question.

"(2) AMOUNT.—The back wages or other required benefits described in paragraph (1)—

"(A) shall be equal to the difference between the amount that should have been paid and the amount that was paid to such worker; and

"(B) shall be distributed to the worker to whom such wages are due.

"(k) MINIMUM WAGES, BENEFITS, AND WORKING CONDITIONS.—

"(1) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—

"(A) IN GENERAL.—Each employer seeking to hire United States workers shall offer such workers not less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H–2C workers. No job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer's H–2C workers.

"(B) INTERPRETATION.—Every interpretation and determination made under this section or under any other law, regulation, or interpretative provision regarding the nature, scope, and timing of the provision of these and any other benefits, wages, and other terms and conditions of employment shall be made so that—

"(i) the services of workers to their employers and the employment opportunities afforded to workers by the employers, including those employment opportunities that require United States workers or H–2C workers to travel or relocate in order to accept or perform employment—

"(I) mutually benefit such workers, as well as their families, and employers; and

"(II) principally benefit neither employer nor employee; and

"(ii) employment opportunities within the United States benefit the United States economy.

"(2) REQUIRED WAGES.—

"(A) IN GENERAL.—Each employer petitioning for workers under subsection (b) shall pay not less than the greater of—

"(i) the prevailing wage; or

"(ii) the applicable Federal, State, or local minimum wage, whichever is greatest.

"(B) SPECIAL RULE.—An employer can utilize a piece rate or other alternative wage payment system as long as the employer guarantees each worker a wage rate that equals or exceeds the amount required under subparagraph (A).

"(3) REIMBURSEMENT OF TRANSPORTATION COSTS.—

"(A) REQUIREMENT FOR REIMBURSEMENT.—

"(i) IN GENERAL.—Except for H–2C workers who are reasonably able to return to their permanent residence (either within or outside the United States) within the same day, an H–2C worker who completes 50 percent of the period of employment of the job for which the worker was hired, beginning on the first day of such employment, shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from—

"(I) the place from which the H–2C worker was approved to enter the United States to the location at which the work for the employer is performed; or

"(II) if the H–2C worker traveled from a place in the United States at which the H–2C worker was last employed, from such place of last employment to the location at which the work for the employer is performed.

"(ii) CONSTRUCTION.—Notwithstanding the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), the employer need not reimburse the cost of the H–2C worker's transportation and subsistence unless the worker has completed 50 percent of the period of employment of the job for which the workers was hired.

"(B) TIMING OF REIMBURSEMENT.—Reimbursement to the worker of expenses for the cost of the worker's transportation and subsistence to the place of employment under subparagraph (A) shall be considered timely if such reimbursement is made not later than the worker's first regular payday after a worker completes 50 percent of the period of employment of the job opportunity as provided under this paragraph.

"(C) ADDITIONAL REIMBURSEMENT.—Except for H–2C workers who are reasonably able to return to their permanent residence (either within or outside the United States) within the same day, an H–2C worker who completes the period of employment for the job opportunity involved shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the work site to the place where the worker was approved to enter the United States to work for the employer. If the worker has contracted with a subsequent employer, the previous and subsequent employer shall share the cost of the worker's transportation and subsistence from work site to work site.

"(D) LIMITATION.—

"(i) AMOUNT OF REIMBURSEMENT.—The amount of reimbursement provided to a worker or alien under this paragraph shall be equal to the lesser of—

"(I) the actual cost to the worker or alien of the transportation and subsistence involved; or

"(II) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

"(ii) DISTANCE TRAVELED.—No reimbursement under subparagraph (A) or (B) shall be required if the distance traveled is 100 miles or less.

"(E) REIMBURSEMENT FOR LAID OFF WORKERS.—If the worker is laid off or employment is terminated for contract impossibility (as described in paragraph (5)(D)) before the anticipated ending date of employment, the employer shall provide—

"(i) the transportation and subsistence reimbursement required under subparagraph (C); and

"(ii) notwithstanding whether the worker has completed 50 percent of the period of employment, the transportation and subsistence reimbursement required under subparagraph (A).

"(F) CONSTRUCTION.—Notwithstanding the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), the employer is not required to reimburse visa, passport, consular, or international border crossing fees or any other fees associated with the H–2C worker's lawful admission into the United States to perform employment that may be incurred by the worker.

"(4) EMPLOYMENT GUARANTEE.—

"(A) IN GENERAL.—

"(i) REQUIREMENT.—Each employer petitioning for workers under subsection (b) shall guarantee to offer the worker employment for the hourly equivalent of not less than 50 percent of the work hours during the total anticipated period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer.

"(ii) FAILURE TO MEET GUARANTEE.—If the employer affords the United States worker or the H–2C worker less employment than that required under this subparagraph, the employer shall pay such worker the amount which the worker would have earned if the worker had worked for the guaranteed number of hours.

"(iii) PERIOD OF EMPLOYMENT.—For purposes of this subparagraph, the term 'period of employment' means the total number of anticipated work hours and workdays described in the job offer and shall exclude the worker's Sabbath and Federal holidays.

"(B) CALCULATION OF HOURS.—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker's Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

"(C) LIMITATION.—If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the 50 percent guarantee described in subparagraph (A).

"(D) TERMINATION OF EMPLOYMENT.—

"(i) IN GENERAL.—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required due to any form of natural disaster, including flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease, pest

infestation, regulatory action, or any other reason beyond the control of the employer before the employment guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker's employment.

"(ii) REQUIREMENTS.—If a worker's employment is terminated under clause (i), the employer shall—

"(I) fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed during the period beginning on the first work day after the arrival of the worker and ending on the date on which such employment is terminated;

"(II) make efforts to transfer the United States worker to other comparable employment acceptable to the worker; and

"(III) not later than 24 hours after termination, notify (or have an association acting as an agent for the employer notify) the Secretary of Homeland Security of such termination.

"(l) PERIOD OF ADMISSION.—

"(1) IN GENERAL.—An H–2C worker shall be admitted for a period of employment, not to exceed 10 months, that includes—

"(A) a period of not more than 7 days prior to the beginning of the period of employment for the purpose of travel to the work site; and

"(B) a period of not more than 14 days following the period of employment for the purpose of departure or extension based on a subsequent offer of employment.

"(2) EMPLOYMENT LIMITATION.—An alien may not be employed during the 14-day period described in paragraph (1)(B) except in the employment for which the alien is otherwise authorized.

"(m) ABANDONMENT OF EMPLOYMENT.—

"(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(c) who abandons the employment which was the basis for such admission or status—

"(A) shall have failed to maintain nonimmigrant status as an H–2C worker; and

"(B) shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).

"(2) REPORT BY EMPLOYER.—Not later than 24 hours after an employer learns of the abandonment of employment by an H–2C worker, the employer or association acting as an agent for the employer, shall notify the Secretary of Homeland Security of such abandonment.

"(3) REMOVAL.—The Secretary of Homeland Security shall promptly remove from the United States any H–2C worker who violates any term or condition of the worker's nonimmigrant status.

"(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate the alien's employment if the alien promptly departs the United States upon termination of such employment.

"(n) REPLACEMENT OF ALIEN.—An employer may designate an eligible alien to replace an H–2C worker who abandons employment notwithstanding the numerical limitation found in section 214(g)(1)(C).

"(o) EXTENSION OF STAY OF H–2C WORKERS IN THE UNITED STATES.—

"(1) EXTENSION OF STAY.—If an employer seeks approval to employ an H–2C worker who is lawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (b) shall request an extension of the alien's stay and, if applicable, a change in the alien's employment.

"(2) WORK AUTHORIZATION UPON FILING PETITION FOR EXTENSION OF STAY.—

"(A) IN GENERAL.—An alien who is lawfully present in the United States on the date of the filing of a petition to extend the stay of the alien may commence or continue the employment described in a petition under paragraph (1) until and unless the petition is denied. The employer shall provide a copy of the employer's petition for extension of stay to the alien. The alien shall keep the petition with the alien's identification and employment eligibility document, as evidence that the petition has been filed and that the alien is authorized to work in the United States.

"(B) EMPLOYMENT ELIGIBILITY DOCUMENT.—Upon approval of a petition for an extension of stay or change in the alien's authorized employment, the Secretary of Homeland Security shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

"(C) FILE DEFINED.—In this paragraph, the term 'file' means sending the petition by certified mail via the United States Postal Service, return receipt requested, or delivering by guaranteed commercial delivery which will

provide the employer with a documented acknowledgment of the date of receipt of the petition for an extension of stay.

"(3) LIMITATION ON AN INDIVIDUAL'S STAY IN STATUS.—

"(A) MAXIMUM PERIOD.—The maximum continuous period of authorized status as an H–2C worker (including any extensions) is 10 months.

"(B) REQUIREMENT TO REMAINS OUTSIDE THE UNITED STATES.—In the case of an alien outside the United States whose period of authorized status as an H–2C worker (including any extensions) has expired, the alien may not again apply for admission to the United States as an H–2C worker unless the alien has remained outside the United States for a continuous period equal to at least 1/5 the duration of the alien's previous period of authorized status as an H–2C worker (including any extensions).".

(b) PROHIBITION ON FAMILY MEMBERS.—Section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) is amended by striking "him;" at the end and inserting "him, except that no spouse or child may be admitted under clause (ii)(c);".

(c) NUMERICAL CAP.—Section 214(g)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)) is amended—

(1) in subparagraph (A), by striking "or" at the end;

(2) in subparagraph (B), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(C) under section 1101(a)(15)(H)(ii)(c) may not exceed 500,000.".

(d) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 218 the following:

"Sec. 218A. Admission of temporary H–2C workers.".

SEC. 4. LEGAL ASSISTANCE.

(a) IN GENERAL.—A nonimmigrant worker admitted to or permitted to remain in the United States under section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)) for agricultural labor or service shall be considered to be an alien described in section 101(a)(20) of such Act (8 U.S.C. 1101(a)(20)) for purposes of establishing eligibility for legal assistance under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.), but only with respect to legal assistance on matters relating to wages, housing, transportation, and other employment rights as provided in the job offer under which the nonimmigrant was

Comment [a1]: Shld be based on employment K, law, not just job offer. Broadly refer to terms of emplyment

admitted. The Legal Services Corporation may not provide legal assistance for or on behalf of any such alien, and may not provide financial assistance to any person or entity that provides legal assistance for or on behalf of such alien, unless the alien is present in the United States at the time the legal assistance is provided.

(b) MEDIATION.—An H–2C worker may not bring a civil action for damages against their employer, nor may the Legal Services Corporation or any other attorney or individual bring a civil action for damages on behalf of an H–2C worker, unless at least 90 days prior to bringing the action a request has been made to the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute and mediation has been attempted.

(c) CONDITION FOR ENTRY ONTO PROPERTY FOR LEGAL SERVICES CORPORATION REPRESENTATION.—No employer of a nonimmigrant having status under section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)) shall be required to permit any recipient of a grant or contract under section 1007 of the Legal Services Corporation Act (42 U.S.C. 2996f), or any employee of such a recipient, to enter upon the employer's property, unless such recipient or employee has a pre-arranged appointment with a specific nonimmigrant having such status.

SEC. 5. MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION.

Section 3(8)(B)(ii) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802(8)(B)(ii)) is amended by striking "under sections 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and Nationality Act." and inserting "under subclauses (a) and (c) of section 101(a)(15)(H)(ii), and section 214(c), of the Immigration and Nationality Act." .

SEC. 6. ARBITRATION AND MEDIATION.

(a) APPLICABILITY.—Any H–2C worker may, as a condition of employment with an employer, be subject to mandatory binding arbitration and mediation of any grievance relating to the employment relationship. An employer shall provide any such worker with notice of such condition of employment at the time the job offer is made.

(b) ALLOCATION OF COSTS.—Any cost associated with such arbitration and mediation process shall be equally divided between the employer and the H–2C worker, except that each party shall be responsible for the cost of its own counsel, if any.

(c) DEFINITIONS.—As used in this section:

(1) The term "condition of employment" means a term, condition, obligation, or requirement that is part of the job offer, such as the term of employment, the job responsibilities, the employee conduct standards, and the grievance resolution process, and to which an applicant or prospective H–2C worker must consent or accept in order to be hired for the position.

(2) The term "H–2C worker" means a nonimmigrant described in section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(ii)(c)).

SEC. 7. EFFECTIVE DATE; SUNSET; REGULATIONS.

(a) EFFECTIVE DATE.—The amendments made by this Act shall take effect on the date that is 2 years after the date of the enactment of this Act, and the Secretary of Agriculture shall accept petitions to import an alien under sections 101(a)(15)(H)(ii)(c) and 218A of the Immigration and Nationality Act (as added by sections 2 and 3 of this Act) beginning on such date.

(b) SUNSET.—Beginning on the date that is 2 years after the date of the enactment of this Act, no new petition to import an alien under sections 101(a)(15)(H)(ii)(a) and 218 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a); 8 U.S.C. 1188) shall be accepted. The Department of Labor H–2A program regulations published at 73 Fed. Reg. 77110 et seq. (2008) shall be in force for all petitions approved under such sections beginning on the date of the enactment of this Act.

(c) REGULATIONS.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Agriculture shall promulgate regulations, in accordance with the notice and comment provisions of section 553 of title 5, United States Code, to implement the Secretary's duties under this Act.