



SEVENTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session

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SENATE

S. B. NO. 1425

Introduced by Senator JOEL VILLANUEVA

AN ACT
TO ENHANCE THE REGULATION ON EMPLOYMENT OF
FOREIGN NATIONALS AND TRANSFER OF TECHNOLOGY,
AMENDING FOR THE PURPOSE ARTICLES 40, 41, AND 42,
TITLE II, BOOK I OF PRESIDENTIAL DECREE NO. 442, AS
AMENDED OR THE LABOR CODE OF THE PHILIPPINES

EXPLANATORY NOTE

The proposed amendments to Articles 40, 41, and 42, Title II, Book I of the Philippine Labor Code is triggered by the lingering problem of coordination and accountability for the increasing number of foreign nationals working illegally in the country. Additionally, it is a show of good faith to countries, regions, and international bodies that the country honors its commitments in the WTO-GATS, ASEAN Economic Community (AEC), and other bilateral, regional and multilateral agreements, to at least review the restriction in the hiring of foreign nationals, or the Labor Market Test (LMT), which is used to determine the non-availability of a qualified, able and willing person in the Philippines to do the services for which the foreign national is being hired.

The amendments aim to: (1) update the provisions and reflect the terms used by the country in trade negotiations and in its bilateral, regional and multilateral agreements' commitments; (2) provide flexibility in the Labor Market Test in cases where there is a short supply of skilled workers in specific industries, occupations and professions; (3) provide for training of Filipino understudies to transfer skills and technology from the foreign national through an understudy program; (4) emphasize that the Department of Labor and Employment is the sole issuing authority of employment permits all over the country including those working or employed in enterprises in preferred areas of investments or in economic zones; and (5) update the fines and penalties for violations which was set several decades ago.

In conclusion, as the Philippines strives to meet its commitments in the WTO-GATS, AEC, and other bilateral, regional and multilateral agreements, proposed amendments will improve but reiterate the restrictive policy on employment of foreign nationals.



SENATOR JOEL VILLANUEVA



Senate

Office of the Secretary

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AMENDED OR THE LABOR CODE OF THE PHILIPPINES**

*Be it enacted by the Senate and the House of Representatives of the
Philippines in Congress assembled:*

1 **SEC. 1.** Title II, Book I of the Labor Code is hereby amended to read as
2 follows:

3 Title II - Employment of Non-Resident [~~Aliens~~] FOREIGN NATIONALS
4

5 **SEC. 2.** Article 40 of the Labor Code is hereby amended to read as follows:

6 ARTICLE 40. *Employment permit of non-resident [aliens]*
7 *FOREIGN NATIONALS – [Any—alien] ALL NON-RESIDENT*
8 *FOREIGN NATIONALS seeking [admission to the Philippines for*
9 *employment purposes and any domestic or foreign employer who*
10 *desires to engage an alien for] employment in the Philippines shall*
11 *obtain an employment permit from the Department of Labor AND*
12 *EMPLOYMENT.*

13 [~~The~~] AN employment permit may be issued to a non-resident
14 [~~alien~~] FOREIGN NATIONAL [~~or to the applicant employer after a~~
15 ~~determination of the~~] SUBJECT TO THE LABOR MARKET TEST
16 BASED ON THE non- availability of [~~a person in the~~
17 ~~Philippines who is competent, able and~~] QUALIFIED AND willing

1 [at the time of application to perform the services for which the alien
2 is desired] FILIPINO NATIONAL.

3 THE SECRETARY OF LABOR AND EMPLOYMENT IS
4 AUTHORIZED TO GRANT EXEMPTIONS FROM THE LABOR
5 MARKET TEST TO FOREIGN NATIONALS AS PROVIDED FOR
6 UNDER EXISTING LAWS AND REGULATIONS, AS WELL AS IN
7 INDUSTRIES OR OCCUPATIONS OR PRACTICE OF
8 PROFESSIONS WHERE THERE IS SHORT SUPPLY, AS
9 DETERMINED THROUGH TRIPARTITE CONSULTATION.

10 For an enterprise registered in preferred areas of investments OR
11 IN DESIGNATED ECONOMIC ZONES, THE employment permit
12 SHALL ONLY BE ISSUED BY THE DEPARTMENT OF LABOR
13 AND EMPLOYMENT, ~~may be issued upon recommendation of~~ BY
14 the government agency charged with the supervision of said
15 registered OR LOCATOR enterprise.

16
17 **SEC. 3.** A new Article 40-A of the Labor Code is hereby provided to read as
18 follows:

19 ARTICLE 40-A. *UNDERSTUDY PROGRAM* – FOREIGN
20 NATIONALS ISSUED EMPLOYMENT PERMITS SHALL
21 TRANSFER TECHNOLOGY TO AT LEAST TWO (2) FILIPINO
22 UNDERSTUDIES WITHIN A PRESCRIBED PERIOD OF THE
23 DEPARTMENT OF LABOR AND EMPLOYMENT-APPROVED
24 UNDERSTUDY PROGRAM OF THE ENTERPRISE.

25
26 **SEC. 4.** Article 41 of the Labor Code is hereby amended to read as follows:

27 ARTICLE 41. Prohibition against transfer of employment.

28 a) After the issuance of an employment permit, the [alien]
29 FOREIGN NATIONAL shall not transfer to another job or
30 change his/HER employer without prior approval of the
31 Secretary of Labor AND EMPLOYMENT.

32 b) Any non-resident [alien] FOREIGN NATIONAL who shall
33 take up employment in violation of the provision of this Title
34 and its implementing rules and regulations, AS WELL AS
35 THE EMPLOYER OR THE RESPONSIBLE PERSON
36 REPRESENTING THE EMPLOYER, shall be punished [in
37 accordance with the provisions of Articles 289 and 290]
38 WITH A FINE of [the Labor Code.] NOT LESS THAN
39 FIFTY THOUSAND PESOS (P50,000.00) NOR MORE
40 THAN ONE HUNDRED THOUSAND PESOS (P100,000.00);

1 OR IMPRISONMENT OF NOT LESS THAN SIX MONTHS
2 NOR MORE THAN SIX YEARS OR BOTH SUCH FINE AND
3 IMPRISONMENT AT THE DISCRETION OF THE COURT.

4 In addition, the ~~[alien-worker]~~ FOREIGN NATIONAL shall be
5 subject to deportation after service of his/HER sentence.

6 THE SECRETARY OF LABOR AND EMPLOYMENT IS
7 AUTHORIZED TO IMPOSE A FINE OF FIFTY THOUSAND
8 PESOS (P50,000.00) FOR EVERY YEAR OR FRACTION
9 THEREOF TO BOTH THE FOREIGN NATIONAL FOUND
10 WORKING WITHOUT VALID EMPLOYMENT PERMIT AND TO
11 THE EMPLOYER.

12
13 **SEC. 5.** Article 42 of the Labor Code is hereby amended to read as follows:

14 ARTICLE 42. *Submission of List.* – Any employer employing non-
15 resident foreign nationals [on the effective date of this Code] shall
16 submit a list of such nationals to the REGIONAL DIRECTOR OF
17 THE DEPARTMENT OF LABOR AND EMPLOYMENT WHICH
18 HAS JURISDICTION ON THE EMPLOYER ~~[Secretary of Labor and~~
19 ~~Employment]~~ within 30 days after HIRING, ~~[such date]~~ indicating
20 their names, citizenship, foreign and local addresses, nature of
21 employment and status of stay in the country. ~~[The Secretary of~~
22 ~~Labor and Employment shall then determine if they are entitled to~~
23 ~~an employment permit.]~~

24
25 **SEC. 6. Implementing Rules and Regulations.** - Within ninety (90) days
26 from the effectivity of this Act, the Secretary of Labor and Employment, in
27 coordination with concerned agencies, shall formulate the necessary rules
28 and regulations to implement the provisions of this Act.

29
30 **SEC. 7. Separability Clause.** – If any provision of this Act is declared
31 unconstitutional or otherwise invalid, the validity of the other provisions shall
32 not be affected thereby.

33
34 **SEC. 8. Repealing Clause.** - All statutory laws, orders and issuances, rules
35 and regulations and/or parts thereof inconsistent with the provisions of this Act
36 are hereby repealed or modified accordingly.

1 **SEC. 9. Effectivity.** - This Act shall take effect after fifteen (15) days from the
2 date of its publication in Official Gazette or in a newspaper of general
3 circulation.

4

5 **Approved,**