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SENATE
S. NO. 1778

Prepared by the Committee on Labor, Employment and Human Resources
Development with Senators Villanueva and Revilla as authors thereof.

AN ACT
ENHANCING THE REGULATION ON EMPLOYMENT OF FOREIGN
NATIONALS AND TRANSFER OF TECHNOLOGY, AMENDING FOR THE
PURPOSE ARTICLES 40, 41, AND 42 OF PRESIDENTIAL DECREE NO. 442,
AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE
PHILIPPINES AND FOR OTHER PURPOSES

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

1 **SECTION 1.** Title II, Book I of Presidential Decree No. 442, otherwise known as
2 the Labor Code of the Philippines, is hereby amended to read as follows:

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

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

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

14
15 [The] AN employment permit may be issued to a non-resident [alien] FOREIGN

1 NATIONAL after a determination of the non-availability of a [person in the
2 Philippines who is competent, able] QUALIFIED and willing [at the time of
3 application] FILIPINO NATIONAL WHO WILL perform the services for which the
4 FOREIGN NATIONAL is desired.

5
6 THE SECRETARY OF LABOR AND EMPLOYMENT SHALL BE AUTHORIZED TO
7 GRANT EXEMPTIONS FROM THE LABOR MARKET TEST TO FOREIGN
8 NATIONALS AS PROVIDED FOR UNDER EXISTING LAWS, AS WELL AS TO
9 OCCUPATIONS IN SHORT SUPPLY AS DETERMINED BY THE DOLE'S LABOR
10 MARKET INFORMATION REPORT AND UPON TRIPARTITE CONSULTATION.

11
12 For an enterprise registered in preferred areas of investments, TOURISM
13 ENTERPRISE ZONES, OR IN DESIGNATED ECONOMIC ZONES, THE
14 employment permit SHALL ONLY BE ISSUED BY THE DOLE, [may be issued]
15 upon recommendation [of] BY the government agency charged with the
16 supervision of said registered enterprise.

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

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21 ARTICLE 40-A. UNDERSTUDY/SKILLS DEVELOPMENT PROGRAM - FOREIGN
22 NATIONALS ISSUED EMPLOYMENT PERMITS IN INDUSTRIES TO BE
23 DETERMINED BY THE DOLE SHALL IMPLEMENT AN UNDERSTUDY/SKILLS
24 DEVELOPMENT PROGRAM. THE PROGRAM SHALL BE APPROVED BY THE DOLE
25 AND SHALL ENSURE THE TRANSFER OF TECHNOLOGY/SKILLS TO FILIPINOS,
26 WHETHER NEXT-IN-RANK OR OTHERWISE, WITH THE POTENTIAL OF
27 SUCCEEDING THE FOREIGN NATIONAL IN THE SAME ESTABLISHMENT OR ITS
28 SUBSIDIARY, WITHIN A SPECIFIC PERIOD AS MAY BE DETERMINED BY THE
29 DOLE, UPON CONSULTATION WITH RELEVANT GOVERNMENT AGENCIES AND
30 INDUSTRY EXPERTS.

1 FAILURE OF THE FOREIGN NATIONAL TO CONDUCT OR COMPLETE THE
2 UNDERSTUDY/SKILLS DEVELOPMENT PROGRAM WITHIN THE SPECIFIED
3 PERIOD SHALL BE METED WITH A FINE OF NOT LESS THAN ONE HUNDRED
4 THOUSAND PESOS (P100,000.00) FOR EVERY YEAR OF NON-COMPLIANCE,
5 WITHOUT PREJUDICE TO THE NON-RENEWAL OF THE WORK PERMIT ISSUED
6 TO THE FOREIGN NATIONAL, AND/OR THE BLACKLISTING OF THE EMPLOYER
7 OF SUCH FOREIGN NATIONAL.
8

9 **SEC. 4.** Article 41 of Presidential Decree 442 is hereby amended to read as
10 follows:
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12 **ARTICLE 41.** Prohibition against transfer of employment AND OTHER
13 VIOLATIONS.
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15 (a) Employment permit issued to A FOREIGN NATIONAL SHALL BE SPECIFIC
16 TO A PARTICULAR POSITION AND EMPLOYER OR ESTABLISHMENT. NO
17 CHANGE IN THE POSITION OR EMPLOYER OF THE FOREIGN NATIONAL SHALL
18 BE MADE without PRIOR NOTICE and approval of the Secretary of Labor AND
19 EMPLOYMENT. NOTICE TO THE DOLE SHALL BE MADE THIRTY (30) DAYS
20 PRIOR TO THE INTENDED CHANGE IN POSITION OR EMPLOYER OR
21 ESTABLISHMENT. FOR THIS PURPOSE, THE DOLE SHALL MAINTAIN A
22 REGISTRY OF FOREIGN NATIONALS INDICATING THE STATUS OF
23 EMPLOYMENT AND MOVEMENT OF POSITION OR EMPLOYMENT AFTER
24 HE/SHE HAS BEEN ISSUED AN EMPLOYMENT PERMIT.
25

26 (b) Any non-resident [alien] FOREIGN NATIONAL who shall take up
27 employment in violation of the provision of this Title and its implementing rules
28 and regulations, shall be [punished in accordance with the provisions of
29 Articles 289 and 290] METED WITH A FINE OF [the Labor Code] NOT LESS
30 THAN TWENTY FIVE THOUSAND PESOS (P25,000.00) NOR MORE THAN FIFTY
31 THOUSAND PESOS (P50,000.00) AND SHALL BE BLACKLISTED FROM RE-
32 ENTERING THE COUNTRY,

1
2 In addition, the [alien worker] FOREIGN NATIONAL shall be subject to
3 deportation.

4
5 (C) ANY EMPLOYER, HIS/HER ATTORNEY-IN-FACT OR ANY OTHER DULY
6 AUTHORIZED REPRESENTATIVE, WHO SHALL HIRE NON-RESIDENT FOREIGN
7 NATIONALS IN VIOLATION OF ANY OF THE PROVISION OF THIS TITLE AND
8 ITS IMPLEMENTING RULES AND REGULATIONS, SHALL BE METED WITH A
9 FINE OF NOT LESS THAN ONE HUNDRED THOUSAND PESOS (P100,000.00)
10 NOR MORE THAN TWO HUNDRED THOUSAND PESOS (P200,000.00). THE
11 SECRETARY OF LABOR AND EMPLOYMENT MAY ALSO SUSPEND OR ORDER
12 THE CLOSURE OF AN ERRING EMPLOYER FOR REPEATED VIOLATIONS OR
13 BLATANT DISREGARD OF THE PROVISIONS OF THIS TITLE.

14
15 IN ALL CASES, THE FINES IMPOSED HEREIN SHALL BE WITHOUT PREJUDICE
16 TO OTHER ADMINISTRATIVE, CIVIL OR CRIMINAL LIABILITY THEY MAY
17 INCUR BY REASON OF SUCH ACT OR OMISSION.

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19 **SEC 5.** Article 42 of Presidential Decree 442 is hereby amended to read as
20 follows:

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22 **ARTICLE 42. Submission of List. – ALL EMPLOYERS** [Any employer employing
23 non-resident foreign nationals on the effective date of this Code] shall submit a
24 list of ENGAGED OR EMPLOYED NON-RESIDENT FOREIGN NATIONALS [such
25 nationals] to the DOLE THROUGH THE REGIONAL OFFICE HAVING
26 JURISDICTION OVER THEIR PRINCIPAL PLACE OF BUSINESS. [Secretary of
27 Labor and Employment] THE LIST SHALL BE SUBMITTED within 30 CALENDAR
28 days after HIRING, [such date] indicating their names, citizenship, foreign and
29 local addresses, nature of employment and status of stay in the country. [The
30 Secretary of Labor and Employment shall then determine if they are entitled to
31 an employment permit.]
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1 **SEC. 6. Implementing Rules and Regulations.** - Within ninety (90) days
2 from the effectivity of this Act, the Secretary of Labor and Employment, in
3 coordination with concerned agencies and in consultation with the relevant
4 stakeholders, shall formulate the necessary rules and regulations to implement the
5 provisions of this Act.

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7 **SEC. 7. Repealing Clause.** - All laws, executive orders, rules and regulations
8 or any part hereof inconsistent herewith are deemed repealed or modified
9 accordingly.

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11 **SEC. 8. Separability Clause.** - If any part or provision of this Act shall be
12 declared unconstitutional and invalid, such declaration shall not invalidate other
13 parts thereof which shall remain in full force and effect.

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15 **SEC. 9. Effectivity.** - This Act shall take effect fifteen (15) days its complete
16 publication in the Official Gazette or in at least two (2) newspapers of general
17 circulation, whichever comes earlier.

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19 *Approved,*