EIGHTEENTH CONGRESS OF THE REPUBLIC OF THE PHILIPPINES Second Regular Session

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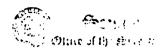
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SENA 1778 s. No. 1778

and Human Resources

Prepared by the Committee on Labor, Employment and Human Resource's 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:

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

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

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

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

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

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

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

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

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

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

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

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SEC. 4. Article 41 of Presidential Decree 442 is hereby amended to read as follows:

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ARTICLE 41. Prohibition against transfer of employment AND OTHER VIOLATIONS.

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(a) Employment permit issued to A FOREIGN NATIONAL SHALL BE SPECIFIC TO A PARTICULAR POSITION AND EMPLOYER OR ESTABLISHMENT. NO CHANGE IN THE POSITION OR EMPLOYER OF THE FOREIGN NATIONAL SHALL BE MADE without PRIOR NOTICE and approval of the Secretary of Labor AND EMPLOYMENT. NOTICE TO THE DOLE SHALL BE MADE THIRTY (30) DAYS PRIOR TO THE INTENDED CHANGE IN POSITION OR EMPLOYER OR ESTABLISHMENT. FOR THIS PURPOSE, THE DOLE SHALL MAINTAIN A REGISTRY OF FOREIGN NATIONALS INDICATING THE STATUS OF EMPLOYMENT AND MOVEMENT OF POSITION OR EMPLOYMENT AFTER HE/SHE HAS BEEN ISSUED AN EMPLOYMENT PERMIT.

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

ENTERING THE COUNTRY, 32

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

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

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

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

ARTICLE 42. Submission of List. — ALL EMPLOYERS [Any employer employing non-resident foreign nationals on the effective date of this Code] shall submit a list of ENGAGED OR EMPLOYED NON-RESIDENT FOREIGN NATIONALS [such nationals] to the DOLE THROUGH THE REGIONAL OFFICE HAVING JURISDICTION OVER THEIR PRINCIPAL PLACE OF BUSINESS. [Secretary of Labor and Employment] THE LIST SHALL BE SUBMITTED within 30 CALENDAR days after HIRING, [such date] indicating their names, citizenship, foreign and local addresses, nature of employment and status of stay in the country. [The Secretary of Labor and Employment shall then determine if they are entitled to an employment permit.]

SEC. 6. Implementing Rules and Regulations Within ninety (90) days
from the effectivity of this Act, the Secretary of Labor and Employment, in
coordination with concerned agencies and in consultation with the relevant
stakeholders, shall formulate the necessary rules and regulations to implement the
provisions of this Act.
SEC. 7. Repealing Clause All laws, executive orders, rules and regulations
or any part hereof inconsistent herewith are deemed repealed or modified
accordingly.
SEC. 8. Separability Clause If any part or provision of this Act shall be
declared unconstitutional and invalid, such declaration shall not invalidate other
parts thereof which shall remain in full force and effect.
SEC. 9. Effectivity This Act shall take effect fifteen (15) days its complete
publication in the Official Gazette or in at least two (2) newspapers of general
circulation, whichever comes earlier.

Approved,