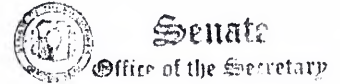


NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



'22 JUL 18 P5:08

SENATE

RECEIVED 5/

S.B. No. 743

Introduced by **SENATOR JOEL VILLANUEVA**

**AN ACT
REQUIRING ALL FOREIGN NATIONALS WHO INTEND TO WORK IN
THE PHILIPPINES TO PRESENT AN EMPLOYMENT PERMIT PRIOR
TO THE ISSUANCE OF NONIMMIGRANT VISA OR TEMPORARY
ADMISSION TO THE PHILIPPINES, AMENDING FOR THE PURPOSE
COMMONWEALTH ACT NO. 613, AS AMENDED, OTHERWISE
KNOWN AS THE PHILIPPINE IMMIGRATION ACT OF 1940**

EXPLANATORY NOTE

The Philippine Constitution provides that the State shall develop a self-reliant economy effectively controlled by Filipinos (Article 2, Section 19). It also provides that the State shall promote the preferential use of labor and adopt measures to help them become competitive (Article 12, Section 12).

Consistent with these policies, Article 40 of the Philippine Labor Code requires any foreign worker seeking admission for purposes of employment in the Philippines to secure an alien employment permit (AEP) from the Department of Labor and Employment. The AEP can only be issued after a determination that there are no Filipinos capable, able and willing to do the job for which the foreigner is being hired.

Meanwhile, in order to expedite the issuance of permits to foreigners who intend to work in the Philippines for less than six months, the Bureau of Immigration (Bureau or BI) issued AFF Jr.-No.05-009 which exempted foreigners from getting an AEP if they will only work in the Philippines for a period less than six months. In this case, they shall only be required to secure a special working permit (SWP) from the Bureau. Compared to the issuance of AEP, the process of getting an SWP is less stringent.

According to DOLE, it has issued 115,652 AEPs from 2015 to 2017,¹ while the BI has issued 185,099 SWPs in 2018 alone.² Thus, it appears that there is a disproportionate number of SWPs issued by the BI compared to the number of AEPs issued by the DOLE.

This is especially alarming considering that the Bureau's authority to issue work permits appears questionable. Section 9(a),³ Section 42(a)(32),⁴ and Section 42(a)(33)⁵ of Commonwealth Act No. 613, as amended (Philippine Immigration Act or BI Charter), relied upon by the Bureau as legal bases for its authority, do not give the BI clear authority to issue a work permit.⁶ Section 9(a) merely authorizes the BI to issue visa to foreigners who will come to the country for "business or for pleasure or for reasons of health," while Section 42 merely allows the BI to collect fees.

This anomaly is even aggravated by the fact that in 2018, we discovered that the Bureau's satellite office in SM Aura issues SWPs in one day, upon payment of an additional un-receipted fee of Php5,000. In the mean time, during the deliberations of the proposed 2019 budget of the Bureau, the BI was unable to provide a clear answer when it was asked regarding the process for the issuance of SWPs.

These questionable practices have resulted in the increasing number of foreign workers in the country, some of whom were found to be illegally working here, especially prior to 2020, when COVID-19 pandemic hit. In 2018, BI even arrested close to 800 foreign nationals and deported 611 foreign nationals illegally working in the country.⁷

This bill seeks to amend the Philippine Immigration Act to clarify the authority of the Bureau to issue work-related visa, permits and other visa issued to temporary visitors coming for business or those temporarily admitted to the Philippines. Towards this end, it clarifies that:

- 1) A temporary visitor admitted under Section 9(a) shall not be allowed to engage in activities or render services whether in an employment arrangement or otherwise, without an alien employment permit or a certification from the DOLE that there is no other Filipino capable, able and willing to do the job for which the foreigner is being hired, after conducting the appropriate labor market test, as necessary;

¹ October 1, 2018. Response letter from the Department of Labor and Employment to the Office of Senator Joel Villanueva on the request for the official number of foreign nationals with AEP.

² December 11, 2018. Response letter from the Bureau of Immigration to the Office of Senator Joel Villanueva on SWPs issued to Foreign Nationals

³ Sec. 9. Aliens departing from any place outside the Philippines, who are otherwise admissible and who qualify within one of the following categories, may be admitted as nonimmigrants:

(a) A temporary visitor coming for business or for pleasure or for reasons of health;

⁴ Sec. 42. (a) In addition to the documentary stamp required by existing law, there shall be collected and paid into the Philippine Treasury the following fees for services, as indicated, for aliens seeking to enter or remain in the Philippines under the provisions of this Act:

(32) Waiver of objection of exclusion under Section 29(b) - 100.00

⁵ (33) Petition for permit to work - 30.00

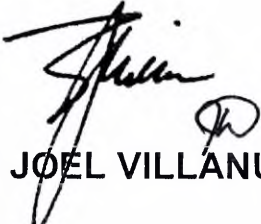
⁶ BI Operation Order No. JHM-2018-011 cited Section 9 and Section 42(a)(32) as basis for BI's authority to issue work permits, while the draft Clarificatory Joint Guidelines of DOLE and BI on the issuance of work permits cited Section 42(a)(33).

⁷ February 5, 2019. "74% of foreigners arrested in 2018 from China — Immigration". Philstar Global. Retrieved from: <https://www.philstar.com/headlines/2019/02/05/1890978/74-foreigners-arrested-2018-china-immigration>. (Date last accessed: July 2022).

- 2) An applicant for a pre-arranged employment visa must provide an AEP issued by the DOLE before such visa is issued by the Bureau;
- 3) All foreign nationals who intend to work in the Philippines, regardless of the duration of employment, must secure an AEP from the DOLE or a certification that there is no other Filipino capable, able and willing to do the job for which the foreigner is being hired before he/she can be issued a non-quota immigration visa;
- 4) A foreigner applying for temporary admission under Section 29(b) of the BI Charter, who desires to engage in gainful employment in the Philippines must secure an AEP from the DOLE or a certification that there is no other Filipino capable, able and willing to do the job for which the foreigner is being hired before he/she can be temporarily admitted in the country;
- 5) The "Petition for Permit to Work" referred to in Section 42(a)(33) of the BI Charter is issued only in relation to an application for a pre-arranged employment visa under Section 9(g) of the BI Charter; and
- 6) A foreign national who is working in the Philippines without a valid work visa shall be punished with a fine ranging from Php500,000 to Php5 Million, in addition to imprisonment of not more than two years and deportation, if he is an alien.

Indeed, the passage of this bill is even more important now as the government seeks to provide local employment to our citizens and as our economy recovers from the pandemic. Recently, it was reported that Philippine Offshore Gaming Operators, one of the top employers of foreigners working with only a special work permit from BI, is making a comeback⁸. Our experience in the past has clearly shown us the detrimental effect of allowing the proliferation of foreign workers in the country (e.g., lost jobs for Filipinos, rising criminality in certain industries with high number of foreign workers, etc.), without the appropriate labor market test.

Thus, the immediate passage of this bill is thus earnestly sought.


SENATOR JOEL VILLANUEVA

⁸ June 28, 2022. "Slowly but surely, POGOs coming back online in PH." Inquirer.Net. Retrieved from: <https://business.inquirer.net/351562/slowly-but-surely-pogos-coming-back-online-in-ph> (date last accessed: July 17, 2022).

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S. B. NO 743

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COMMONWEALTH ACT NO. 613, AS AMENDED, OTHERWISE
KNOWN AS THE PHILIPPINE IMMIGRATION ACT OF 1940

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

1 **SECTION 1. Declaration of Policy.** – The Philippine Constitution provides that
2 the State shall promote the preferential use of Filipino labor, domestic materials and
3 locally produced goods, and adopt measures that help make them competitive. It also
4 provides that the State shall develop a self-reliant and independent national economy
5 effectively controlled by Filipinos.
6

7 Pursuant to this, the State shall ensure that capable, able and willing Filipino
8 workers are not deprived of job opportunities in the Philippines through efficient and
9 transparent enforcement of regulations on the entry and employment of foreign
10 nationals in the country.
11

12 **SEC. 2.** Section 9(a) of Commonwealth Act No. 613, as amended, otherwise
13 known as the Philippine Immigration Act of 1940, is hereby further amended to read
14 as follows:
15

16 **Sec. 9.** Aliens departing from any place outside the Philippines, who are
17 otherwise admissible and who qualify within one of the following categories,
18 may be admitted as nonimmigrants:
19

20 (a) A temporary visitor coming for business or for pleasure or for reasons of
21 health; PROVIDED, THAT NO SUCH TEMPORARY VISITOR SHALL BE

1 ALLOWED TO ENGAGE IN ACTIVITIES OR RENDER SERVICES
2 WHETHER IN AN EMPLOYMENT ARRANGEMENT OR OTHERWISE,
3 WITHOUT AN ALIEN EMPLOYMENT PERMIT OR A CERTIFICATION
4 FROM THE DEPARTMENT OF LABOR AND EMPLOYMENT THAT THERE
5 IS NO OTHER FILIPINO CAPABLE, ABLE AND WILLING TO DO THE JOB
6 FOR WHICH THE FOREIGNER IS BEING HIRED, AFTER CONDUCTING
7 THE APPROPRIATE LABOR MARKET TEST, AS NECESSARY.
8

9 **SEC. 3.** Section 20 of the Philippine Immigration Act of 1940, as amended, is
10 hereby further amended to read as follows:
11

12 **SEC. 20.** In case of prearranged employment.
13

14 A passport visa for nonimmigrant referred to in Section Nine (g) of this Act
15 who is coming to prearranged employment shall not be issued by a consular
16 officer until the consular officer shall have received authorization for the
17 issuance of the visa. Such authorization shall be given only on petition filed
18 with the Commissioner of Immigration establishing that no person can be
19 found in the Philippines willing and competent to perform the labor or service
20 for which the nonimmigrant is desired AS DETERMINED BY THE
21 DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) and that the
22 nonimmigrant's admission would be beneficial to the public interest. The
23 petition shall be made under oath, in the form and manner prescribed by
24 regulations, by the prospective employer or his representative.
25

26 **Filing of petition under oath.** – The petition shall state fully the nature of the
27 labor or service for which the nonimmigrant is desired, the probable length of
28 time for which he/SHE is to be engaged, the wages and other compensation
29 which he/SHE is to receive, the reasons why a person in the Philippines
30 cannot be engaged to perform the labor or service for which the nonimmigrant
31 is desired and why the nonimmigrant's admission would be beneficial to the
32 public interest.
33

34 **Accompanying documents.** – The petition shall be accompanied by a
35 certified copy of any written contract or agreement entered into for the NON
36 immigrant's service and shall contain such additional information as may be
37 deemed material. Substantiation of all the allegations made in the petition
38 shall be required and the allegations that no person can be found in the
39 Philippines willing and competent to perform the labor or service for which
40 the nonimmigrant is desired and that the nonimmigrant's admission would be
41 beneficial to the public interest shall be established beyond doubt by
42 convincing and satisfactory evidence, PROVIDED THAT, IN ALL CASES,
43 THE PETITION SHALL BE SUPPORTED BY AN ALIEN EMPLOYMENT
44 PERMIT ISSUED BY THE DEPARTMENT OF LABOR AND EMPLOYMENT
45 IN ACCORDANCE WITH THE REQUIREMENTS OF PRESIDENTIAL
46 DECREE NO. 442, AS AMENDED. The title "Immigration Visas for Non-quota
47 Immigrant" shall be understood to refer only to section twenty-one of the
48 same Act.
49

50 x x x

1
2 **SEC. 4.** A new Section 20-A shall be inserted as follows:
3

4 **SEC. 20-A.** IN ALL CASES, THE COMMISSIONER OR ANY OF ITS
5 AUTHORIZED REPRESENTATIVES SHALL REQUIRE ANY FOREIGN
6 NATIONAL WHO INTEND TO ENGAGE IN GAINFUL EMPLOYMENT IN
7 THE PHILIPPINES, REGARDLESS OF THE DURATION OF
8 EMPLOYMENT, TO SECURE AN ALIEN EMPLOYMENT PERMIT OR A
9 CERTIFICATION FROM THE DEPARTMENT OF LABOR AND
10 EMPLOYMENT THAT THERE IS NO OTHER FILIPINO CAPABLE, ABLE
11 AND WILLING TO DO THE JOB FOR WHICH THE FOREIGNER IS BEING
12 HIRED BEFORE ISSUING A NON-QUOTA IMMIGRATION VISA IN
13 ACCORDANCE WITH THIS ACT.
14

15 **SEC. 5.** Section 29 (b)(2) of the Philippine Immigration Act of 1940, as
16 amended, is hereby further amended to read as follows:
17

18 **Sec. 29.**

19
20 X X X
21

22 (b) Notwithstanding the provisions of this Section, the Commissioner of
23 Immigration, in his discretion, may permit to enter any alien properly
24 documented, who is subject to exclusion under this section, but who is:
25

26 1. An alien lawfully resident in the Philippines who is returning from a
27 temporary visit abroad;
28

29 2. An alien applying for temporary admission; *PROVIDED*, THAT AN ALIEN
30 APPLYING FOR TEMPORARY ADMISSION FOR THE PURPOSES OF
31 GAINFUL EMPLOYMENT SHALL SECURE AN ALIEN EMPLOYMENT
32 PERMIT OR A CERTIFICATION FROM THE DEPARTMENT OF LABOR
33 AND EMPLOYMENT THAT THERE IS NO OTHER FILIPINO CAPABLE,
34 ABLE AND WILLING TO DO THE JOB FOR WHICH THE FOREIGNER IS
35 BEING HIRED AFTER CONDUCTING A LABOR MARKET TEST, BEFORE
36 THE ALIEN IS GRANTED TEMPORARY ADMISSION BY THE
37 COMMISSIONER OF IMMIGRATION.
38

39 **SEC. 6.** Section 42(a)(33) of the Philippine Immigration Act of 1940, as
40 amended, is hereby further amended to read as follows:
41

42 **Sec. 42. (a)** In addition to the documentary stamp required by existing law,
43 there shall be collected and paid into the Philippine Treasury the following
44 fees for services, as indicated, for aliens seeking to enter or remain in the
45 Philippines under the provisions of this Act:
46

47 X X X

48 33. Petition for permit to work IN RELATION TO AN APPLICATION FOR A PRE-
49 ARRANGED EMPLOYMENT VISA UNDER SECTION 9(G) OF THIS ACT -
50 30.00

1 **SEC. 7.** Section 45 of the Philippine Immigration Act of 1940, as amended, is
2 hereby further amended to read as follows:

3
4 **Sec. 45.** Any individual who:

5
6 (a) When applying for an immigration document, impersonates another
7 individual, or falsely appears in the name of deceased individual, or evades
8 the immigration laws by appearing under an assumed or fictitious name; or

9
10 x x x

11
12 (h) IS WORKING IN THE PHILIPPINES WITHOUT A VALID WORK VISA AS
13 REQUIRED UNDER THIS ACT;

14
15 (l) Attempts or conspires with one another to commit any of the foregoing
16 acts, shall be guilty of an offense, and upon conviction thereof, shall be fined
17 [not more than one thousand pesos] IN AN AMOUNT RANGING FROM FIVE
18 HUNDRED THOUSAND PESOS (Php500,000.00) TO FIVE MILLION
19 PESOS (Php5,000,000.00), and imprisoned for not more than two (2) years,
20 and deported if he is an alien.

21
22 **SEC. 8. *Implementing Rules and Regulations.*** – Within ninety (90) days from
23 the effectivity of this Act, the Bureau of Immigration, in coordination with the
24 Department of Labor and Employment (DOLE), other appropriate government
25 agencies, and other relevant stakeholders, shall formulate the necessary rules and
26 regulations to implement the provisions of this Act. All agencies that are authorized
27 under existing laws to issue a work permit or a license of similar import shall be
28 coordinated with DOLE for proper certification and recordkeeping.

29
30 **SEC. 9. *Separability Clause.*** – If any provision of this Act or any part thereof
31 shall be declared unconstitutional or invalid, the other provisions, as far as they are
32 separable, shall remain in force and effect.

33
34 **SEC. 10. *Repealing Clause.*** – All laws, orders and issuances, rules and
35 regulations and/or parts thereof inconsistent with the provisions of this Act are hereby
36 repealed or modified accordingly.

37
38 **SEC. 11. *Effectivity Clause.*** – This Act shall take effect after fifteen (15) days
39 from its publication in the Official Gazette or in at least two (2) newspapers of general
40 circulation.

41
42 **Approved,**