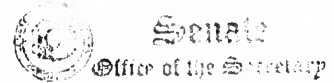
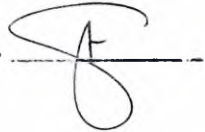


NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



'22 JUL 25 AIO :34

SENATE
S. No. 804

RECEIVED BY: 

Introduced by Senator Jinggoy Ejercito Estrada

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

EXPLANATORY NOTE

A 2019 survey by the Social Weather Stations (SWS) reported that 70% of Filipinos are "worried about the rising number of foreign Chinese workers in the Philippines." Under the same survey, 52% consider the same as a "threat to the country's overall security¹." The Bureau of Immigration (BI) estimated that 3.12 million Chinese nationals have entered the country from January 2016 to May 2018, about 335,800 working visas and special permits were issued to them².

In 2019, the Department of Finance (DOF) also urged the BI to intensify efforts against illegal foreign workers after the Department of Labor and Employment (DOLE) initially uncovered some 12,000 foreign nationals without the necessary work permits employed in various establishments³.

Heeding pervasive public concern about the influx of foreign workers competing with equally competent Filipino labor force in the local job market, there is a need to enhance and further clarify the existing regulations in the Labor Code with respect to the employment of foreign nationals.

¹ <http://www.sws.org.ph/swsmain/artcldisppage/?artcsyscode=ART-20191205180550>

² <https://www.pna.gov.ph/articles/1088072>

³ <https://www.dof.gov.ph/dominguez-wants-immigration-to-step-up-inspections-after-dole-uncovers-12k-illegal-foreign-workers/>

This proposed measure provides that:

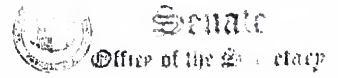
- a) All non-resident foreign nationals seeking employment in the country should obtain an employment permit from the DOLE;
- b) An employment permit may be issued to a non-resident foreign national only after a determination of the non-availability of a qualified and willing Filipino national who will perform the services for which the foreign national is desired;
- c) Foreign nationals with employment permit shall implement an understudy or skills development program which shall ensure the transfer of technology and skills to Filipinos;
- d) Employment permit issued to a foreign nationals shall be specific to a particular position and employer, and there shall be no change in the position or employer of the foreign national without prior notice and approval of the DOLE;
- e) All employers shall submit a list of engaged/employed non-resident foreign nationals to the DOLE regional offices; and
- f) Penalties shall be imposed for failure to observe regulations prescribed under this Act.

I am refiling this measure which I originally submitted during the Sixteenth Congress. The measure was also approved on Third and Final Reading by the House of Representatives during the Seventeenth Congress, and was reported out by the Senate Committee on Labor, Employment and Human Resources Development in the Eighteenth Congress.

Pursuant to the Constitutional mandate of promoting the preferential use of Filipino labor and protecting the interests and employment opportunities of our domestic manpower, the immediate passage of this measure is sought.


JINGGOY EJERCITO ESTRADA

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**AN ACT
ENHANCING THE REGULATION ON EMPLOYMENT OF FOREIGN
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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 "Title II – Employment of Non-Resident [Aliens] **FOREIGN**
4 **NATIONALS**"

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 (DOLE).**

13 "[The] **AN** employment permit may be issued to a non-resident
14 [alien] **FOREIGN NATIONAL** after a determination of the non-
15 availability of a [~~person in the Philippines who is competent, able~~]

1 **QUALIFIED** and willing [~~at the time of application~~] **FILIPINO**
2 **NATIONAL WHO WILL** perform the services for which the
3 **FOREIGN NATIONAL** is desired.

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

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

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

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

10 Sec. 4. Article 41 of Presidential Decree No. 442 is hereby amended to read
11 as follows:

12 **"ARTICLE 41. Prohibition against transfer of employment AND**
13 **OTHER VIOLATIONS.**

14 **"(a) After the issuance of an employment permit, the [alien]**
15 **FOREIGN NATIONAL shall not transfer to another job or change his**
16 **employer without prior approval of the Secretary of Labor. THE**
17 **EMPLOYMENT PERMIT ISSUED TO A FOREIGN NATIONAL**
18 **SHALL BE SPECIFIC TO A PARTICULAR POSITION AND**
19 **EMPLOYER OR ESTABLISHMENT. NO CHANGE IN THE**
20 **POSITION OR EMPLOYER OF THE FOREIGN NATIONAL SHALL**
21 **BE MADE WITHOUT PRIOR NOTICE AND APPROVAL OF THE**
22 **SECRETARY OF LABOR. NOTICE TO THE DOLE SHALL BE MADE**
23 **THIRTY (30) DAYS PRIOR TO THE INTENDED CHANGE IN**
24 **POSITION OR EMPLOYER OR ESTABLISHMENT. FOR THIS**
25 **PURPOSE, THE DOLE SHALL MAINTAIN A REGISTRY OF**
26 **FOREIGN NATIONALS INDICATING THE STATUS OF**
27 **EMPLOYMENT AND MOVEMENT OF POSITION OR**
28 **EMPLOYMENT AFTER HE/SHE HAS BEEN ISSUED AN**
29 **EMPLOYMENT PERMIT.**

30 **"(b) Any non-resident [alien] FOREIGN NATIONAL who shall**
31 **take up employment in violation of the provision of this Title and its**
32 **implementing rules and regulations, shall be [punished in accordance**

1 ~~with the provisions of Articles 289 and 290 of the Labor Code] METED~~
2 **WITH A FINE OF NOT LESS THAN TWENTY FIVE THOUSAND**
3 **PESOS (P25,000.00) NOR MORE THAN FIFTY THOUSAND**
4 **PESOS (P50,000.00) AND SHALL BE BLACKLISTED FROM RE-**
5 **ENTERING THE COUNTRY.**

6 "In addition, the ~~[alien worker]~~ **FOREIGN NATIONAL** shall be
7 subject to deportation after service of his sentence.

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

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

24 Sec. 5. Article 42 of Presidential Decree No. 442 is hereby amended to read
25 as follows:

26 "ARTICLE 42. Submission of List. - ~~[Any employer employing~~
27 ~~non-resident foreign nationals on the effective date of this Code]~~ **ALL**
28 **EMPLOYERS** shall submit a list of ~~[such nationals]~~ **ENGAGED OR**
29 **EMPLOYED NON-RESIDENT FOREIGN NATIONALS** to the
30 ~~[Secretary of Labor and Employment]~~ **DOLE THROUGH THE**
31 **REGIONAL OFFICE HAVING JURISDICTION OVER THEIR**
32 **PRINCIPAL PLACE OF BUSINESS. THE LIST SHALL BE**

1 **SUBMITTED** within thirty (30) **CALENDAR** days after [~~such date~~]
2 **HIRING** indicating their names, citizenship, foreign and local
3 addresses, nature of employment and status of stay in the
4 country.~~[The Secretary of Labor and Employment shall then determine~~
5 ~~if they are entitled to an employment permit.]~~

6 *Sec. 6. Implementing Rules and Regulations.* – Within ninety (90) days from
7 the effectivity of this Act, the Secretary of Labor and Employment, in coordination
8 with concerned agencies and in consultation with the relevant stakeholders, shall
9 formulate the necessary rules and regulations to implement the provisions of this
10 Act.

11 *Sec. 7. Repealing Clause.* – Any law, presidential decree or issuance, executive
12 order, letter of instruction, administrative order, rule, or regulation contrary to or
13 inconsistent with the provisions of this Act are hereby repealed, modified, or
14 amended accordingly.

15 *Sec. 8. Separability Clause.* – If any provision or part hereof is held invalid or
16 unconstitutional, the remainder of the law or the provision or part not otherwise
17 affected shall remain valid and subsisting.

18 *Sec. 9. Effectivity.* – This Act shall take effect fifteen (15) days after its
19 publication in the *Official Gazette* or in a newspaper of general circulation.

Approved,