

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

OFFICE OF THE SECRETARY OF DEFENSE

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SENATE
S. No. 1742

RECEIVED

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

Republic Act No. 8042 entitled "AN ACT TO INSTITUTE THE POLICIES OF OVERSEAS EMPLOYMENT AND ESTABLISH A HIGHER STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES", also known as the "Migrant Workers Act of 1995" for short, was enacted to protect and promote the rights and welfare of Filipino migrant workers.

One of the policies it sets out in Section 2, under Declaration of Policies, restates the constitutional provision on the State's duty and responsibility to protect labor (Section 18, Article 11, Declaration of Principles and State Policies; and Section 3, Article XIII, Social Justice and Human Rights), to wit:

"(b) The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote all employment and equality of employment opportunities for all. Towards this end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers."

It further asserts in letter (c) of the same Section 2 that:

"(c) x x x The existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizen shall not, at any time, be compromised or violated."

Accordingly, all throughout R.A. 8042, there are regulatory provisions on Deployment, Illegal Recruitment, Services and other provisions, including penalties for illegal recruitment,

which serve to carry out stated policies of protection and promotion of the rights of Filipino migrant workers and which regulate the recruitment of Filipinos for employment abroad.

Unfortunately, however, Sections 29 and 30 of the Act also provide for the eventual deregulation of recruitment activities over a period of five years following the effectivity of the act in July 1995, which would make migration of workers “strictly a matter between the workers and his foreign employer.”

“SEC. 29. *Comprehensive Deregulation Plan on Recruitment Activities.* - Pursuant to a progressive policy of deregulation whereby the migration of workers becomes strictly a matter between the worker and his foreign employer, the DOLE, within one (1) year from the effectivity of this Act, is hereby mandated to formulate a five-year comprehensive deregulation plan on recruitment activities taking into account labor market trends, economic conditions of the country and emerging circumstances which may affect the welfare of migrant workers.

“SEC. 30. *Gradual Phase-out of Regulatory Functions.* - Within a period of five (5) years from the effectivity of this Act, the DOLE shall phase-out the regulatory functions of the POEA pursuant to the objectives of deregulation.

In this regard, Section 23, par. (b.1) also subjects the regulatory mandate of the Philippine Overseas Employment Administration (POEA) to said deregulation and phase-out provisions of Sections 29 and 30.

Congressional records of the Bicameral Committee deliberations at the time show that these two provisions, which originated from the Senate version of the law, Senate Bill No. 2077, were included in the final version because: 1) it was expected at the time that the Philippines will have achieved the status of a “newly-industrialized country” by the year 2000; and 2) it would do away with “bureaucratic red tape” and corruption in the process of recruitment.

Today, nine years from the enactment of R.A. 8042, it is clear that the dream of achieving NIC-hood has not materialized and it seems will not materialize anytime soon. As to the second reason, deregulation is not the answer and solution to the problem of corruption and “bureaucratic red tape.” It would be tantamount to “throwing the baby out with the bath water,” as the saying goes.

The realities faced by our overseas Filipino workers today also calls, in fact, for more protection rather than less or none at all. They constitute compelling arguments for the outright scrapping of the deregulation provisions of Sections 29 and 30 of R.A. 8042.

Despite R.A. 8042, illegal recruitment still continues to be committed against prospective Filipino migrant workers, as borne out by the records of the Philippine Overseas Employment Administration (POEA). Incidents of on-site violations of the rights of overseas Filipino workers also still continue, ranging from non-payment of wages to maltreatment and physical abuse.

The hope of R.A. 8042 that migration becomes strictly a matter between workers and their foreign employers also appears not to be borne out by the reality that there are layers of intermediaries between them, in the Philippines as well as in host countries. Brokers in labor markets worldwide continue to emerge, and local private employment agencies are allowed to continuously participate in the recruitment and placement of OFWs.

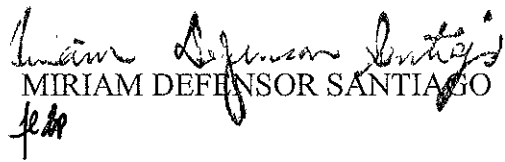
Likewise, the feminization of the OFW sector and the upsurge of vulnerable skills overseas, like domestic helpers and performing artists, require continued government intervention to promote their welfare. Efforts to forge bilateral labor agreements for the protection of OFWs have also not borne much fruit. Out of the 187 countries of destination of OFWs, only twenty-one (21) countries have signed bilateral labor agreements with the Philippine government.

These realities highlight the fundamental argument against deregulation, which is that the constitutionally mandated responsibility of the State to extend full protection to labor, whether local and overseas, organized and unorganized, as provided in Section 3 of Article XI¹¹ of the Constitution and Section 18, Article 11, should not be abdicated.

Deregulation would also violate the UN Convention for the Protection of the Rights and Welfare of All Migrant Workers and Members of their Families that was ratified by the Philippines in June 1995.

In view of all the foregoing, Sections 29 and 30, and with them, Section 23, par. (b.1), of R.A. 8042 should be repealed and the regulatory functions of the Philippine Overseas Employment Administration (POEA) strengthened thereby.

This is a senate counterpart bill to the one filed in the House of Representatives by Rep.
Etta Rosales.¹


MIRIAM DEFENSOR SANTIAGO
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¹ This bill was originally filed during the 14th Congress 1st Regular Session

31 JUL 2016

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Introduced by Senator Miriam Defensor Santiago

1 AN ACT
2 STRENGTHENING THE REGULATORY FUNCTIONS OF THE PHILIPPINE
3 OVERSEAS EMPLOYMENT ADMINISTRATION (POEA), AMENDING FOR THIS
4 PURPOSE REPUBLIC ACT NO. 8042, OTHERWISE KNOWN AS THE "MIGRANT
5 WORKERS AND OVERSEAS FILIPINOS ACT OF 1995"

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

6 SECTION 1. Section 23, paragraph (b.1) of Republic Act No. 8042, otherwise known as
7 the "Migrant Workers and Overseas Filipinos Act of 1995" is hereby amended to read as
8 follows:

9 "(b.1) Philippine Overseas Employment Administration - [Subject to deregulation and
10 phase-out as provided under Sections 29 and 30 herein,] The Administration shall regulate
11 private sector participation in the recruitment and overseas placement of workers by setting up a
12 licensing and registration system. It shall also formulate and implement, in coordination with
13 appropriate entities concerned, when necessary, a system for promoting and monitoring the
14 overseas employment of Filipino workers taking into consideration their welfare and the
15 domestic manpower requirements."

16 SECTION 2. Section 29 of the same law is hereby repealed.

17 "[SEC. 29. *Comprehensive Deregulation Plan on Recruitment Activities.* -

18 Pursuant to a progressive policy of deregulation whereby the migration of workers becomes
19 strictly a matter between the worker and his foreign employer, the DOLE, within one (1) year
20 from the effectivity of this Act, is hereby mandated to formulate a five-year comprehensive
21 deregulation plan on recruitment activities taking into account labor market trends, economic
22 conditions of the country and emerging circumstances which may affect the welfare of migrant
23 workers.]

SECTION 3. Section 30 of the same law is hereby repealed.

“[SEC. 30. *Gradual Phase-out of Regulatory Functions.* - Within a period of five (5) years from the effectivity of this Act, the DOLE shall phase-out the regulatory functions of the POEA pursuant to the objectives of deregulation.]”

SECTION 4. *Repealing Clause.* - All laws, orders, issuances, rules and regulations or part thereof inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SECTION 5. *Effectivity Clause.* - This Act shall take effect within fifteen (15) days after its publication in the *Official Gazette* or in at least two (2) newspapers of general circulation, whichever comes earlier.

Approved.