


EIGHTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
First Regular Session



'19 JUL 11 A11 :26

SENATE

S. B. NO. 343

RECEIVED BY: 

Introduced by **SENATOR JOEL VILLANUEVA**

**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

The proposed amendments to Articles 40, 41, and 42 of the Philippine Labor Code is triggered by the lingering problem of coordination and accountability among government agencies for the increasing number of foreign nationals working illegally in the country. Additionally, it is a show of good faith to other countries, regions, and international bodies that the country honors its commitments in the WTO-GATS, ASEAN Economic Community (AEC), and other bilateral, regional and multilateral agreements, to at least review the restriction in the hiring of foreign nationals, or the Labor Market Test (LMT), which is used to determine the non-availability of a qualified, able and willing person in the Philippines to do the services for which the foreign national is being hired.

The amendments aim to: (1) update the provisions and reflect the terms used by the country in trade negotiations and in its bilateral, regional and multilateral agreements' commitments; (2) provide flexibility in the Labor Market Test in cases where there is a short supply of skilled workers in specific industries, occupations and professions; (3) provide for training of Filipino understudies to transfer skills and technology from the foreign national through an understudy program; (4) emphasize that the Department of Labor and Employment is the sole issuing authority of employment permits all over the country including those working or employed in enterprises in preferred

areas of investments or in economic zones; and (5) update the fines and penalties for violations which was set several decades ago.

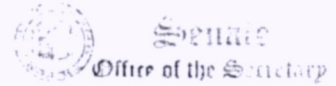
In conclusion, as the Philippines strives to meet its commitments in the WTO-GATS, AEC, and other bilateral, regional and multilateral agreements, the proposed amendments will improve but reiterate the restrictive policy on employment of foreign nationals.

The immediate passage of this bill is earnestly sought.



SENATOR JOEL VILLANUEVA

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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 the Labor Code is hereby amended to read as
2 follows:

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

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

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

11 [The] AN employment permit may be issued to a non-resident [alien]
12 FOREIGN NATIONAL [~~or to the applicant employer after a~~
13 ~~determination of the~~] SUBJECT TO THE LABOR MARKET TEST
14 BASED ON THE non- availability of a [~~person in the Philippines who is~~
15 ~~competent, able and~~] QUALIFIED AND willing [~~at the time of application~~
16 ~~to perform the services for which the alien is desired~~] FILIPINO
17 NATIONAL.

1 THE SECRETARY OF LABOR AND EMPLOYMENT IS AUTHORIZED
2 TO GRANT EXEMPTIONS FROM THE LABOR MARKET TEST TO
3 FOREIGN NATIONALS AS PROVIDED FOR UNDER EXISTING LAWS
4 AND REGULATIONS, AS WELL AS IN INDUSTRIES OR
5 OCCUPATIONS OR PRACTICE OF PROFESSIONS WHERE THERE
6 IS SHORT SUPPLY, AS DETERMINED THROUGH TRIPARTITE
7 CONSULTATION.

8 For an enterprise registered in preferred areas of investments OR IN
9 DESIGNATED ECONOMIC ZONES, THE employment permit SHALL
10 ONLY BE ISSUED BY THE DEPARTMENT OF LABOR AND
11 EMPLOYMENT, [may be issued] upon recommendation [of] BY the
12 government agency charged with the supervision of said registered
13 enterprise OR LOCATOR.

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

16 ARTICLE 40-A. UNDERSTUDY PROGRAM – FOREIGN NATIONALS
17 ISSUED EMPLOYMENT PERMITS SHALL TRANSFER TECHNOLOGY
18 TO AT LEAST TWO (2) FILIPINO UNDERSTUDIES WITHIN THE
19 PRESCRIBED PERIOD AS INDICATED IN THE DEPARTMENT OF
20 LABOR AND EMPLOYMENT-APPROVED UNDERSTUDY PROGRAM
21 OF THE ENTERPRISE.

22 **SEC. 4.** Article 41 of the Labor Code is hereby amended to read as follows:

23 ARTICLE 41. Prohibition against transfer of employment.

24 (a) After the issuance of an employment permit, the [alien] FOREIGN
25 NATIONAL shall not transfer to another job or change his/HER employer
26 without prior approval of the Secretary of Labor AND EMPLOYMENT.

27 (b) Any non-resident [alien] FOREIGN NATIONAL who shall take up
28 employment in violation of the provision of this Title and its implementing
29 rules and regulations, AS WELL AS THE EMPLOYER OR THE
30 RESPONSIBLE PERSON REPRESENTING THE EMPLOYER, shall be
31 punished [in accordance with the provisions of Articles 289 and 290]
32 WITH A FINE of [the Labor Code.] NOT LESS THAN FIFTY
33 THOUSAND PESOS (P50,000.00) NOR MORE THAN ONE HUNDRED
34 THOUSAND PESOS (P100,000.00), OR IMPRISONMENT OF NOT
35 LESS THAN SIX MONTHS NOR MORE THAN SIX YEARS OR BOTH
36 SUCH FINE AND IMPRISONMENT AT THE DISCRETION OF THE
37 COURT.

38 In addition, the [alien worker] FOREIGN NATIONAL shall be subject to
39 deportation after service of his/HER sentence.

40 IN ADDITION, THE SECRETARY OF LABOR AND EMPLOYMENT
41 SHALL IMPOSE A FINE OF FIFTY THOUSAND PESOS (P50,000.00)

1 FOR EVERY YEAR OR FRACTION THEREOF OF CONTINUING
2 VIOLATION TO BOTH THE FOREIGN NATIONAL FOUND WORKING
3 WITHOUT VALID EMPLOYMENT PERMIT AND TO THE EMPLOYER.

4 **SEC. 5.** Article 42 of the Labor Code is hereby amended to read as follows:

5 ARTICLE 42. Submission of List. – Any employer employing non-
6 resident foreign nationals [on the effective date of this Code] shall submit
7 a list of such nationals to the REGIONAL DIRECTOR OF THE
8 DEPARTMENT OF LABOR AND EMPLOYMENT WHICH HAS
9 JURISDICTION ON THE EMPLOYER [Secretary of Labor and
10 Employment] within 30 days after HIRING, [such date] indicating their
11 names, citizenship, foreign and local addresses, nature of employment
12 and status of stay in the country. [The Secretary of Labor and
13 Employment shall then determine if they are entitled to an employment
14 permit.]

15 **SEC. 6. Implementing Rules and Regulations.** – Within ninety (90) days
16 from the effectivity of this Act, the Secretary of Labor and Employment, in
17 coordination with concerned agencies and in consultation with the relevant
18 stakeholders, shall formulate the necessary rules and regulations to
19 implement the provisions of this Act.

20 **SEC. 7. Repealing Clause.** – All statutory laws, orders and issuances, rules
21 and regulations and/or parts thereof inconsistent with the provisions of this Act
22 are hereby repealed or modified accordingly.

23 **SEC. 8. Effectivity.** – This Act shall take effect after fifteen (15) days from the
24 date of its publication in Official Gazette or in a newspaper of general
25 circulation.

26 **Approved,**

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