



Senate

Office of the Secretary

SENATE

'19 AUG -5 P5:13

S. B. NO. 857

RECEIVED BY: _____

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 NON-IMMIGRANT 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 AFFJr.-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 basis 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 Php5,000. In the mean time, during the deliberations of the proposed 2019 budget of the Bureau, when the BI was asked the process for the issuance of SWPs, it was unable to provide a clear answer.

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. In 2018, BI 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

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).

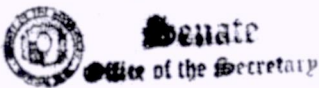
⁷ February 5, 2019. "74% of foreigners arrested in 2018 from China — Immigration". Philstar Global. Retrieved from: <https://www.philstar.com/headlines/2019/02/05/1890978/74-foreigners-arrested-2018-china-immigration>. (Date last accessed: 25 July 2019)

and willing to do the job for which the foreigner is being hired, after conducting the appropriate labor market test, as appropriate;

- 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 period 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.

The immediate passage of this bill is earnestly sought.


SENATOR JOEL VILLANUEVA



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REQUIRING ALL FOREIGN NATIONALS WHO INTEND TO WORK IN
THE PHILIPPINES TO PRESENT AN EMPLOYMENT PERMIT PRIOR
TO THE ISSUANCE OF NON-IMMIGRANT 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

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

- 1 **SECTION 1. Declaration of Policy.** – The Philippine Constitution provides
2 that the State shall promote the preferential use of Filipino labor, domestic
3 materials and locally produced goods, and adopt measures that help make
4 them competitive. It also provides that the State shall develop a self-reliant
5 and independent national economy 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
9 efficient and transparent enforcement of regulations on the entry and
10 employment of foreign 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
14 to read 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
18 categories, may be admitted as nonimmigrants:
19
20 (a) A temporary visitor coming for business or for pleasure or for reasons
21 of health; PROVIDED, THAT NO SUCH TEMPORARY VISITOR SHALL

1 BE 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
5 THERE IS NO OTHER FILIPINO CAPABLE, ABLE AND WILLING TO
6 DO THE JOB FOR WHICH THE FOREIGNER IS BEING HIRED,
7 AFTER CONDUCTING THE APPROPRIATE LABOR MARKET TEST,
8 AS APPROPRIATE.
9

10 **SEC. 3.** Section 20 of the Philippine Immigration Act of 1940, as amended, is
11 hereby further amended to read as follows:
12

13 **SEC. 20.** In case of prearranged employment.
14

15 A passport visa for nonimmigrant referred to in Section Nine (g) of this
16 Act who is coming to prearranged employment shall not be issued by
17 a consular officer until the consular officer shall have received
18 authorization for the issuance of the visa. Such authorization shall be
19 given only on petition filed with the Commissioner of Immigration
20 establishing that no person can be found in the Philippines willing and
21 competent to perform the labor or service for which the nonimmigrant
22 is desired AS DETERMINED BY THE DEPARTMENT OF LABOR
23 AND EMPLOYMENT (DOLE) and that the nonimmigrant's admission
24 would be beneficial to the public interest. The petition shall be made
25 under oath, in the form and manner prescribed by regulations, by the
26 prospective employer or his representative.
27

28 **Filing of petition under oath.** – The petition shall state fully the
29 nature of the labor or service for which the nonimmigrant is desired,
30 the probable length of time for which he is to be engaged, the wages
31 and other compensation which he is to receive, the reasons why a
32 person in the Philippines cannot be engaged to perform the labor or
33 service for which the nonimmigrant is desired and why the
34 nonimmigrant's admission would be beneficial to the public interest.
35

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

1 Non-quota Immigrant” shall be understood to refer only to section
2 twenty-one of the same Act.

3
4 x x x

5
6 **SEC. 4.** A new Section 20-A shall be inserted as follows:

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

19
20 **SEC. 5.** Section 29 (b)(2) of the Philippine Immigration Act of 1940, as
21 amended, is hereby further amended to read as follows:

22
23 **Sec. 29.**

24
25 x x x

26
27 (b) Notwithstanding the provisions of this Section, the Commissioner of
28 Immigration, in his discretion, may permit to enter any alien properly
29 documented, who is subject to exclusion under this section, but who is:

30
31 1. An alien lawfully resident in the Philippines who is returning from a
32 temporary visit abroad;

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

44
45 **SEC. 6.** Section 42(a)(33) of the Philippine Immigration Act of 1940, as
46 amended, is hereby further amended to read as follows:

47
48 **Sec. 42. (a)** In addition to the documentary stamp required by existing
49 law, there shall be collected and paid into the Philippine Treasury the

1 following fees for services, as indicated, for aliens seeking to enter or
2 remain in the Philippines under the provisions of this Act:

3
4 x x x
5

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

10 **SEC. 7.** Section 45 of the Philippine Immigration Act of 1940, as amended, is
11 hereby further amended to read as follows:
12

13 **Sec. 45.** Any individual who:
14

15 (a) When applying for an immigration document, impersonates another
16 individual, or falsely appears in the name of deceased individual, or
17 evades the immigration laws by appearing under an assumed or fictitious
18 name; or

19 x x x
20

21 (h) IS WORKING IN THE PHILIPPINES WITHOUT A VALID WORK
22 VISA AS REQUIRED UNDER THIS ACT;
23

24 (I) Attempts or conspires with one another to commit any of the foregoing
25 acts, shall be guilty of an offense, and upon conviction thereof, shall be
26 fined [not more than one thousand pesos] IN AN AMOUNT RANGING
27 FROM FIVE HUNDRED THOUSAND PESOS TO FIVE MILLION
28 PESOS, and imprisoned for not more than two years, and deported if he
29 is an alien.
30

31 **SEC. 8. Implementing Rules and Regulations.** – Within ninety (90) days
32 from the effectivity of this Act, the Bureau of Immigration, in coordination with
33 the Department of Labor and Employment, other appropriate government
34 agencies, and other relevant stakeholders, shall formulate the necessary rules
35 and regulations to implement the provisions of this Act.
36

37 **SEC. 9. Separability Clause.** – If any provision of this Act or any part thereof
38 shall be declared unconstitutional or invalid, the other provisions, as far as
39 they are separable, shall remain in force and effect.
40

41 **SEC. 10. Repealing Clause.** – All laws, orders and issuances, rules and
42 regulations and/or parts thereof inconsistent with the provisions of this Act are
43 hereby repealed or modified accordingly.
44

45 **SEC. 11. Effectivity.** – This Act shall take effect after fifteen (15) days from its
46 publication in the Official Gazette or in two (2) newspapers of general
47 circulation.
48

49 **Approved,**
50