

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

House Bill No. 6029



Introduced by CIBAC Party-List Representatives
Eduardo "Bro. Eddie" C. Villanueva and Domingo C. Rivera

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

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 SECTION 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 SECTION 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).

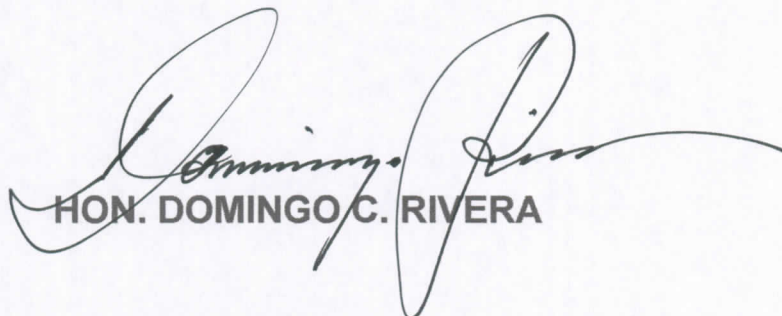
⁷ February 5, 2019. "74% of foreigners arrested in 2018 from China — Immigration". Philstar Global. Retrieved from: <https://www.philstar.com/headlines/2019/02/05/1890978/74-foreigners-arrested-2018-china-immigration>. (Date last accessed: July 25, 2019)

- 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.



HON. EDUARDO "BRO. EDDIE" C. VILLANUEVA



HON. DOMINGO C. RIVERA

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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 House of Representatives of the Philippines in Congress assembled:

1 **SECTION 1. Declaration of Policy.** – The Philippine Constitution provides that the
2 State shall promote the preferential use of Filipino labor, domestic materials and locally
3 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 workers
8 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.

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12 **SECTION 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

1 **SECTION 9.** Aliens departing from any place outside the Philippines, who are
2 otherwise admissible and who qualify within one of the following categories, may
3 be admitted as nonimmigrants:
4

5 (a) A temporary visitor coming for business or for pleasure or for reasons of
6 health; PROVIDED, THAT NO SUCH TEMPORARY VISITOR SHALL BE
7 ALLOWED TO ENGAGE IN ACTIVITIES OR RENDER SERVICES WHETHER
8 IN AN EMPLOYMENT ARRANGEMENT OR OTHERWISE, WITHOUT AN
9 ALIEN EMPLOYMENT PERMIT OR A CERTIFICATION FROM THE
10 DEPARTMENT OF LABOR AND EMPLOYMENT THAT THERE IS NO OTHER
11 FILIPINO CAPABLE, ABLE AND WILLING TO DO THE JOB FOR WHICH THE
12 FOREIGNER IS BEING HIRED, AFTER CONDUCTING THE APPROPRIATE
13 LABOR MARKET TEST, AS APPROPRIATE.
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15 **SECTION 3.** Section 20 of the Philippine Immigration Act of 1940, as amended, is
16 hereby further amended to read as follows:
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18 **SECTION 20.** In case of prearranged employment.
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20 A passport visa for nonimmigrant referred to in Section Nine (g) of this Act who
21 is coming to prearranged employment shall not be issued by a consular officer
22 until the consular officer shall have received authorization for the issuance of
23 the visa. Such authorization shall be given only on petition filed with the
24 Commissioner of Immigration establishing that no person can be found in the
25 Philippines willing and competent to perform the labor or service for which the
26 nonimmigrant is desired AS DETERMINED BY THE DEPARTMENT OF
27 LABOR AND EMPLOYMENT (DOLE) and that the nonimmigrant's admission
28 would be beneficial to the public interest. The petition shall be made under
29 oath, in the form and manner prescribed by regulations, by the prospective
30 employer or his representative.
31

32 **Filing of petition under oath.** – The petition shall state fully the nature of the
33 labor or service for which the nonimmigrant is desired, the probable length of
34 time for which he is to be engaged, the wages and other compensation which
35 he is to receive, the reasons why a person in the Philippines cannot be
36 engaged to perform the labor or service for which the nonimmigrant is desired
37 and why the nonimmigrant's admission would be beneficial to the public
38 interest.
39

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

1 ACCORDANCE WITH THE REQUIREMENTS OF PRESIDENTIAL DECREE
2 NO. 442, AS AMENDED. The title "Immigration Visas for Non-quota
3 Immigrant" shall be understood to refer only to section twenty-one of the same
4 Act.

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8 **SECTION 4.** A new Section 20-A shall be inserted as follows:
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10 **SECTION 20-A.** IN ALL CASES, THE COMMISSIONER OR ANY OF ITS
11 AUTHORIZED REPRESENTATIVES SHALL REQUIRE ANY FOREIGN
12 NATIONAL WHO INTEND TO ENGAGE IN GAINFUL EMPLOYMENT IN
13 THE PHILIPPINES, REGARDLESS OF THE PERIOD OF EMPLOYMENT,
14 TO SECURE AN ALIEN EMPLOYMENT PERMIT OR A CERTIFICATION
15 FROM THE DEPARTMENT OF LABOR AND EMPLOYMENT THAT THERE
16 IS NO OTHER FILIPINO CAPABLE, ABLE AND WILLING TO DO THE JOB
17 FOR WHICH THE FOREIGNER IS BEING HIRED BEFORE ISSUING A
18 NON-QUOTA IMMIGRATION VISA IN ACCORDANCE WITH THIS ACT.
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20 **SECTION 5.** Section 29 (b)(2) of the Philippine Immigration Act of 1940, as amended,
21 is hereby further amended to read as follows:
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23 **SECTION 29.**
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25 x x x
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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:
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31 1. An alien lawfully resident in the Philippines who is returning from a temporary
32 visit abroad;
33

34 2. An alien applying for temporary admission; *PROVIDED*, THAT AN ALIEN
35 APPLYING FOR TEMPORARY ADMISSION FOR THE PURPOSES OF
36 GAINFUL EMPLOYMENT SHALL SECURE AN ALIEN EMPLOYMENT PERMIT
37 OR A CERTIFICATION FROM THE DEPARTMENT OF LABOR AND
38 EMPLOYMENT THAT THERE IS NO OTHER FILIPINO CAPABLE, ABLE AND
39 WILLING TO DO THE JOB FOR WHICH THE FOREIGNER IS BEING HIRED
40 AFTER CONDUCTING A LABOR MARKET TEST, BEFORE THE ALIEN IS
41 GRANTED TEMPORARY ADMISSION BY THE COMMISSIONER OF
42 IMMIGRATION.
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44 **SECTION 6.** Section 42(a)(33) of the Philippine Immigration Act of 1940, as
45 amended, is hereby further amended to read as follows:
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47 **SECTION 42. (a)** In addition to the documentary stamp required by existing law,
48 there shall be collected and paid into the Philippine Treasury the following fees
49 for services, as indicated, for aliens seeking to enter or remain in the Philippines
50 under the provisions of this Act:

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

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

SECTION 45. Any individual who:

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

x x x

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

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

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

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

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

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

Approved,