

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City



EIGHTEENTH CONGRESS
First Regular Session

House Bill No. 5472

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

**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

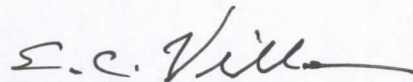
The alarming increase of foreign nationals illegally working in the Philippines over the years backed by the discoordination and lack of accountability among government agencies has been the basis for the proposed amendments to Articles 40, 41, and 42 of the Philippine Labor Code. The suggested modifications will embody good faith to other countries, regions, and international bodies and will show the country's commitment to honor the WTO-GATS, ASEAN Economic Community (AEC), and other bilateral, regional and multilateral agreements in reviewing the restrictions in hiring of foreign nationals, or the Labor Market Test (LMT), which determines 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 seek 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 are shortage of skilled workers in specific industries, occupations, and

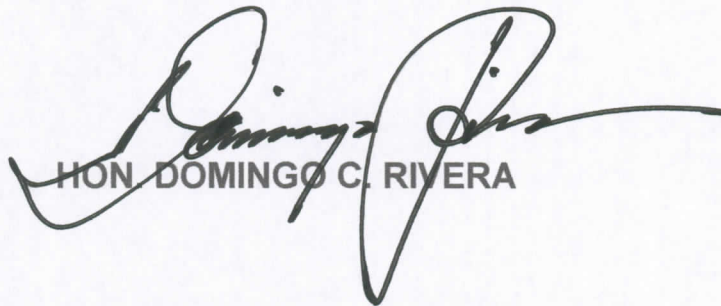
professions; (3) provide training of Filipino understudies to transfer skills and technology from the foreign nationals through understudy programs; (4) emphasize that the Department of Labor and Employment is the sole issuing authority of employment permits all over the country including those working or employed in enterprises in preferred areas of investments or in economic zones; and (5) update the fines and sanctions for violations which was set several decades ago.

Therefore, as the Philippines strives to meet its obligations in the WTO-GATS, AEC, and other bilateral, regional, and multilateral agreements, the proposed amendments will not only improve but also reiterate the restrictive policy on employment of foreign nationals.

The immediate passage of this bill is earnestly sought.



HON. EDUARDO "BRO. EDDIE" C. VILLANUEVA



HON. DOMINGO C. RIVERA

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

House Bill No. 5472

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

**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**

*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 follows:

2
3 Title II - Employment of Non-Resident [Aliens] FOREIGN NATIONALS
4

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

6
7 ARTICLE 40. Employment permit of non-resident [*aliens*] FOREIGN
8 NATIONALS – [Any alien] ALL NON-RESIDENT FOREIGN NATIONALS
9 seeking [admission to the Philippines for employment purposes and any
10 domestic or foreign employer who desires to engage an alien for] employment
11 in the Philippines shall obtain an employment permit from the Department of
12 Labor AND EMPLOYMENT.
13

14 [The] AN employment permit may be issued to a non-resident [alien]
15 FOREIGN NATIONAL ~~[or to the applicant employer after a determination of~~

1 the] SUBJECT TO THE LABOR MARKET TEST BASED ON THE non-
2 availability of a [person in the Philippines who is competent, able and]
3 QUALIFIED AND willing [at the time of application to perform the services for
4 which the alien is desired] FILIPINO NATIONAL.
5

6 THE SECRETARY OF LABOR AND EMPLOYMENT IS AUTHORIZED TO
7 GRANT EXEMPTIONS FROM THE LABOR MARKET TEST TO FOREIGN
8 NATIONALS AS PROVIDED FOR UNDER EXISTING LAWS AND
9 REGULATIONS, AS WELL AS IN INDUSTRIES OR OCCUPATIONS OR
10 PRACTICE OF PROFESSIONS WHERE THERE IS SHORT SUPPLY, AS
11 DETERMINED THROUGH TRIPARTITE CONSULTATION.
12

13 For an enterprise registered in preferred areas of investments OR IN
14 DESIGNATED ECONOMIC ZONES, THE employment permit SHALL ONLY
15 BE ISSUED BY THE DEPARTMENT OF LABOR AND EMPLOYMENT, [may
16 be issued] upon recommendation [of] BY the government agency charged with
17 the supervision of said registered enterprise OR LOCATOR.
18

19 **SECTION 3.** A new Article 40-A of the Labor Code is hereby provided to read as
20 follows:
21

22 ARTICLE 40-A. UNDERSTUDY PROGRAM – FOREIGN NATIONALS
23 ISSUED EMPLOYMENT PERMITS SHALL TRANSFER TECHNOLOGY TO
24 AT LEAST TWO (2) FILIPINO UNDERSTUDIES WITHIN THE PRESCRIBED
25 PERIOD AS INDICATED IN THE DEPARTMENT OF LABOR AND
26 EMPLOYMENT-APPROVED UNDERSTUDY PROGRAM OF THE
27 ENTERPRISE.
28

29 **SECTION 4.** Article 41 of the Labor Code is hereby amended to read as follows:
30

31 ARTICLE 41. Prohibition against transfer of employment.
32

33 (a) After the issuance of an employment permit, the [alien] FOREIGN NATIONAL
34 shall not transfer to another job or change his/HER employer without prior
35 approval of the Secretary of Labor AND EMPLOYMENT.
36

37 (b) Any non-resident [alien] FOREIGN NATIONAL who shall take up employment
38 in violation of the provision of this Title and its implementing rules and
39 regulations, AS WELL AS THE EMPLOYER OR THE RESPONSIBLE PERSON
40 REPRESENTING THE EMPLOYER, shall be punished [in accordance with the
41 provisions of Articles 289 and 290] WITH A FINE of [the Labor Code.] NOT
42 LESS THAN FIFTY THOUSAND PESOS (P50,000.00) NOR MORE THAN ONE
43 HUNDRED THOUSAND PESOS (P100,000.00), OR IMPRISONMENT OF NOT
44 LESS THAN SIX MONTHS NOR MORE THAN SIX YEARS OR BOTH SUCH
45 FINE AND IMPRISONMENT AT THE DISCRETION OF THE COURT.
46

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

1 IN ADDITION, THE SECRETARY OF LABOR AND EMPLOYMENT SHALL
2 IMPOSE A FINE OF FIFTY THOUSAND PESOS (P50,000.00) FOR EVERY
3 YEAR OR FRACTION THEREOF OF CONTINUING VIOLATION TO BOTH THE
4 FOREIGN NATIONAL FOUND WORKING WITHOUT VALID EMPLOYMENT
5 PERMIT AND TO THE EMPLOYER.
6

7 **SECTION 5.** Article 42 of the Labor Code is hereby amended to read as follows:
8

9 ARTICLE 42. Submission of List. – Any employer employing non-resident foreign
10 nationals [on the effective date of this Code] shall submit a list of such nationals
11 to the REGIONAL DIRECTOR OF THE DEPARTMENT OF LABOR AND
12 EMPLOYMENT WHICH HAS JURISDICTION ON THE EMPLOYER [Secretary
13 of Labor and Employment] within 30 days after HIRING, [such date] indicating
14 their names, citizenship, foreign and local addresses, nature of employment and
15 status of stay in the country. [The Secretary of Labor and Employment shall then
16 determine if they are entitled to an employment permit.]
17

18 **SECTION 6. *Implementing Rules and Regulations.*** – Within ninety (90) days from
19 the effectivity of this Act, the Secretary of Labor and Employment, in coordination with
20 concerned agencies and in consultation with the relevant stakeholders, shall formulate
21 the necessary rules and regulations to implement the provisions of this Act.
22

23 **SECTION 7. *Repealing Clause.*** – All statutory laws, orders and issuances, rules and
24 regulations and/or parts thereof inconsistent with the provisions of this Act are hereby
25 repealed or modified accordingly.
26

27 **SECTION 8. *Effectivity.*** – This Act shall take effect after fifteen (15) days from the
28 date of its publication in Official Gazette or in a newspaper of general circulation.
29
30

31 **Approved**