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

[Signature]

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 DECREES 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

SECTION 1. Title II, Book I of the Labor Code is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

ARTICLE 41. Prohibition against transfer of employment.

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

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

In addition, the [alien worker] FOREIGN NATIONAL shall be subject to 
deportation after service of his/HER sentence.
IN ADDITION, THE SECRETARY OF LABOR AND EMPLOYMENT SHALL
IMPOSE A FINE OF FIFTY THOUSAND PESOS (P50,000.00) FOR EVERY
YEAR OR FRACTION THEREOF OF CONTINUING VIOLATION TO BOTH THE
FOREIGN NATIONAL FOUND WORKING WITHOUT VALID EMPLOYMENT
PERMIT AND TO THE EMPLOYER.

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

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

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

SECTION 7. Repealing Clause. — All statutory 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 8. Effectivity. — This Act shall take effect after fifteen (15) days from the
date of its publication in Official Gazette or in a newspaper of general circulation.

Approved