

[REPUBLIC ACT NO. 8042, June 07, 1995]

**AN ACT TO INSTITUTE THE POLICIES OF OVERSEAS
EMPLOYMENT AND ESTABLISH A HIGHER STANDARD OF
PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT
WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN
DISTRESS, AND FOR OTHER PURPOSES**

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

SECTION 1. *Short Title.* — This Act shall be known and cited as the "Migrant Workers and Overseas Filipinos Act of 1995."

SEC. 2. *Declaration of Policies.* —

- a. In the pursuit of an independent foreign policy and while considering national sovereignty, territorial integrity, national interest and the right to self-determination paramount in its relations with other states, the State shall, at all times, uphold the dignity of its citizens whether in country or overseas, in general, and Filipino migrant workers, in particular.
- b. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. Towards this end, the State shall provide adequate and timely social, economic and legal services to Filipino migrant workers.
- c. While recognizing the significant contribution of Filipino migrant workers to the national economy through their foreign exchange remittances, the State does not promote overseas employment as a means to sustain economic growth and achieve national development. The existence of the overseas employment program rests solely on the assurance that the dignity and fundamental human rights and freedoms of the Filipino citizen shall not, at any time, be compromised or violated. The State, therefore, shall continuously create local employment opportunities and promote the equitable distribution of wealth and the benefits of development.
- d. State affirms the fundamental equality before the law of women and men and the significant role of women in nation-building. Recognizing the contribution of overseas migrant women workers and their particular vulnerabilities, the State shall apply gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers and the composition of bodies tasked for the welfare of migrant workers.
- e. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty. In this regard, it is imperative that an effective mechanism be instituted to ensure that the rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, documented or undocumented, are adequately protected and safeguarded.

- f. The right of Filipino migrant workers and all overseas Filipinos to participate in the democratic decision-making processes of the State and to be represented in institutions relevant to overseas employment is recognized and guaranteed.
- g. The State recognizes that the ultimate protection to all migrant workers is the possession of skills. Pursuant to this and as soon as practicable, the government shall deploy and/or allow the deployment only of skilled Filipino workers.
- h. Non-governmental organizations, duly recognized as legitimate, are partners of the State in the protection of Filipino migrant workers and in the promotion of their welfare. The State shall cooperate with them in a spirit of trust and mutual respect.
- i. Government fees and other administrative costs of recruitment, introduction, placement and assistance to migrant workers shall be rendered free without prejudice to the provision of Section 35 hereof.

Nonetheless, the deployment of Filipino overseas workers, whether land-based or sea-based, by local service contractors and manning agencies employing them shall be encouraged. Appropriate incentives may be extended to them.

SEC. 3. *Definitions.* — For purposes of this Act:

- a. "Migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a state of which he or she is not a legal resident; to be used interchangeably with overseas Filipino worker.
- b. "Gender-sensitivity" shall mean cognizance of the inequalities and inequities prevalent in society between women and men and a commitment to address issues with concern for the respective interests of the sexes.
- c. "Overseas Filipinos" refer to dependents of migrant workers and other Filipino nationals abroad who are in distress as mentioned in Sections 24 and 26 of this Act.

I. Deployment

SEC. 4. *Deployment of Migrant Workers.* — The State shall deploy overseas Filipino workers only in countries where the rights of Filipino migrant workers are protected. The government recognizes any of the following as a guarantee on the part of the receiving country for the protection and the rights of overseas Filipino workers:

- a. It has existing labor and social laws protecting the rights of migrant workers;
- b. It is a signatory to multilateral conventions, declarations or resolutions relating to the protection of migrant workers;
- c. It has concluded a bilateral agreement or arrangement with the government protecting the rights of overseas Filipino workers; and
- d. It is taking positive, concrete measures to protect the rights of migrant workers.

SEC. 5. *Termination or Ban on Deployment.* — Notwithstanding the provisions of Section 4 hereof, the government, in pursuit of the national interest or when public welfare so requires, may, at any time, terminate or impose a ban on the deployment of migrant workers.

II. Illegal Recruitment

SEC. 6. *Definition.* — For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: *Provided,* That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

- a. To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;
- b. To furnish or publish any false notice or information or document in relation to recruitment or employment;
- c. To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;
- d. To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;
- e. To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;
- f. To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;
- g. To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;
- h. To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;
- i. To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;
- j. For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;
- k. To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;
- l. Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and
- m. Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.

SEC. 7. Penalties. —

- a. Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than Two hundred thousand pesos (P200,000) nor more than Five hundred thousand pesos (P500,000).
- b. The penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (P500,000) nor more than One million pesos (P1,000,000) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein.

Provided, however, That the maximum penalty shall be imposed if the person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.

SEC. 8. Prohibition on Officials and Employees. — It shall be unlawful for any official or employee of the Department of Labor and Employment, the Philippine Overseas Employment Administration (POEA), or the Overseas Workers Welfare Administration (OWWA), or the Department of Foreign Affairs, or other government agencies involved in the implementation of this Act, or their relatives within the fourth civil degree of consanguinity or affinity, to engage, directly or indirectly, in the business of recruiting migrant workers as defined in this Act. The penalties provided in the immediate preceding paragraph shall be imposed upon them.

SEC. 9. Venue. — A criminal action arising from illegal recruitment as defined herein shall be filed with the Regional Trial Court of the province or city where the offense was committed or where the offended party actually resides at the time of the commission of the offense: *Provided,* That the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts: *Provided, however,* That the aforesated provisions shall also apply to those criminal actions that have already been filed in court at the time of the effectivity of this Act.

SEC. 10. Monetary Claims. — Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.

The liability of the principal/employer and the recruitment/ placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition

precedent for its approval. The performance bond to be filed by the recruitment/ placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/ placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.

Any compromise/amicable settlement or voluntary agreement on money claims inclusive of damages under this section shall be paid within four (4) months from the approval of the settlement by the appropriate authority.

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

Noncompliance with the mandatory periods for resolutions of cases provided under this section shall subject the responsible officials to any or all of the following penalties:

- a. The salary of any such official who fails to render his decision or resolution within the prescribed period shall be, or caused to be, withheld until the said official complies therewith;
- b. Suspension for not more than ninety (90) days; or
- c. Dismissal from the service with disqualification to hold any appointive public office for five (5) years.

Provided, however, That the penalties herein provided shall be without prejudice to any liability which any such official may have incurred under other existing laws or rules and regulations as a consequence of violating the provisions of this paragraph.

SEC. 11. *Mandatory Periods for Resolution of Illegal Recruitment Cases.* — The preliminary investigations of cases under this Act shall be terminated within a period of thirty (30) calendar days from the date of their filing. Where the preliminary investigation is conducted by a prosecution officer and a *prima facie* case is established, the corresponding information shall be filed in court within twenty-four (24) hours from the termination of the investigation. If the preliminary investigation is conducted by a judge and a *prima facie* case is found to exist, the corresponding information shall be filed by the proper prosecution officer within forty-eight (48) hours from the date of receipt of the records of the case.

SEC. 12. *Prescriptive Periods.* — Illegal recruitment cases under this Act shall prescribe in five (5) years: *Provided, however,* That illegal recruitment cases involving economic sabotage as defined herein shall prescribe in twenty (20) years.

SEC. 13. *Free Legal Assistance; Preferential Entitlement Under the Witness Protection Program.* — A mechanism for free legal assistance for victims of illegal