



Republic of the Philippines
DEPARTMENT OF LABOR AND EMPLOYMENT
Intramuros, Manila

Department Order No. 146-15
Series of 2015

DEPARTMENT OF LABOR AND EMPLOYMENT Administrative Service Central Records Section	
DATE:	<u>20 AUG 2015</u>
TIME:	<u>3:29 pm</u>
RECEIVED BY:	<u>[Signature]</u>

**REVISED RULES FOR THE ISSUANCE OF
EMPLOYMENT PERMITS TO FOREIGN NATIONALS**

Pursuant to the provisions of Articles 5, 40, 41 and 42 of PD 442, as amended, the provisions of Rule XIV, Book 1 of its Implementing Rules and Regulations, Section 17(5), Chapter 4, Title VII of the Administrative Code of 1987, the following Rules are hereby promulgated to govern the employment of foreign nationals:

Policy Declaration

The Alien Employment Permit (AEP) is not an exclusive authority for a foreign national to work in the Philippines. It is just one of the requirements in the issuance of a work visa (9g) to legally engage in gainful employment in the country. The foreign national must obtain the required Special Temporary Permit (STP) from the Professional Regulation Commission (PRC) in case the employment involves practice of profession and Authority to Employ Alien from the Department of Justice (DOJ) where the employment is in a nationalized or partially nationalized industry.

Section 1. Coverage. – All foreign nationals who intend to engage in gainful employment in the Philippines shall apply for Alien Employment Permit (AEP).

As used in this Rules, gainful employment shall refer to a state or condition that creates an employer-employee relationship between the Philippine based company and the foreign national where the former has the power to hire or dismiss the foreign national from employment, pays the salaries or wages thereof and has authority to control the performance or conduct of the tasks and duties.

Section 2. Exemption. – The following categories of foreign nationals are exempt from securing an employment permit:

- a. All members of the diplomatic service and foreign government officials accredited by and with reciprocity arrangement with the Philippine government;
- b. Officers and staff of international organizations of which the Philippine government is a member, and their legitimate spouses desiring to work in the Philippines;
- c. All foreign nationals granted exemption by law;
- d. Owners and representatives of foreign principals whose companies are accredited by the Philippine Overseas Employment Administration (POEA), who come to the Philippines for a limited period and solely for the purpose of interviewing Filipino applicants for employment abroad;
- e. Foreign nationals who come to the Philippines to teach, present and/or conduct research studies in universities and colleges as visiting, exchange or adjunct professors under formal agreements between the universities or colleges in the Philippines and foreign universities or colleges; or between the Philippine government and foreign government: provided that the exemption is on a reciprocal basis; and
- f. Permanent resident foreign nationals and probationary or temporary resident visa holders under Section 13 of the Philippine Immigration Act of 1940.

Section 3. Exclusion. – The following categories of foreign nationals are excluded from securing an employment permit:

- a. Members of the governing board with voting rights only and do not intervene in the management of the corporation or in the day to day operation of the enterprise.
- b. Corporate officers as provided under the Corporation Code of the Philippines, Articles of Incorporation, and By-Laws of the Corporation such as President, Secretary and Treasurer.
- c. Those providing consultancy services who do not have employers in the Philippines.
- d. Intra corporate transferee who is a manager, executive or specialist as defined below in accordance with Trade Agreements and an employee of the foreign service supplier for at least one (1) year prior to deployment to a branch, subsidiary, affiliate or representative office in the Philippines.

(i) an **Executive**: a natural person within the organisation who primarily directs the management of the organisation and exercises wide latitude in decision making and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business; an executive would not directly perform tasks related to the actual provision of the service or services of the organisation;

(ii) a **Manager**: a natural person within the organisation who primarily directs the organisation/department/subdivision and exercises supervisory and control functions over other supervisory, managerial or professional staff; does not include first line supervisors unless employees supervised are professionals; does not include employees who primarily perform tasks necessary for the provision of the service; or

(iii) a **Specialist**: a natural person within the organisation who possesses knowledge at an advanced level of expertise essential to the establishment/provision of the service and/or possesses proprietary knowledge of the organisation's service, research equipment, techniques or management; may include, but is not limited to, members of a licensed profession.

- e. Contractual service supplier who is a manager, executive or specialist and an employee of a foreign service supplier which has no commercial presence in the Philippines:
 - (i) who enters the Philippines temporarily to supply a service pursuant to a contract between his/her employer and a service consumer in the Philippines;
 - (ii) must possess the appropriate educational and professional qualifications; and
 - (iii) must be employed by the foreign service supplier for at least one year prior to the supply of service in the Philippines.

Section 4. Procedure in the Processing of Applications for AEP. –

- a. All applications for AEP shall be filed and processed at the DOLE Regional Office or Field Office having jurisdiction over the intended place of work.

A duly accomplished application form with the following complete documentary requirements must be submitted:

1. photocopy of Passport with visa, or Certificate of Recognition for Refugees or Stateless Persons;

2. Original copy of notarized appointment or contract of Employment enumerating the duties and responsibilities, annual salary, and other benefits of the foreign national ;
 3. photocopy of Mayor's Permit to operate business, in case of locators in economic zones, Certification from the PEZA or the Ecozone Authority that the company is located and operating within the ecozone, while in case of a construction company, photocopy of license from PCAB or DO 18-A Registration should be submitted in lieu of Mayor's Permit; and
 4. copy of employer's understudy training program to be conducted by the foreign national to transfer knowledge and/or skills to the Filipino worker.
- b. In the case of foreign nationals to be assigned in related companies, applications may be filed in the Regional Office or Field Office having jurisdiction over any of the applicant's intended places of work.
 - c. Additional position of the foreign national in the same company or subsequent assignment in related companies during the validity or renewal of the AEP will be subject for publication requirement. A change of position or employer shall require an application for new AEP.
 - d. At any given time only one AEP shall be issued to a foreign national. A foreign national may be issued one (1) AEP only at any given time.

Section. 5. Fees. – Upon filing of application, the applicant shall pay a fee of Nine Thousand Pesos (P 9,000.00) for an AEP with a validity of one year. In case the period of employment is more than one year, an additional Four Thousand Pesos (P4,000.00) shall be charged for every additional year or fraction thereof. In case of renewal, the applicant shall pay a permit fee of Four Thousand Pesos (P4,000.00) for each year of validity or fraction thereof.

A courier fee of Two Hundred Pesos (P200.00) shall be charged to the foreign national upon the implementation of the AEP online application system.

Loss of AEP or change of information or entries in the AEP shall be subject to payment of One Thousand Five Hundred Pesos (1,500) for AEP replacement. In case of loss, the request for replacement shall be supported by a duly notarized Affidavit of Loss.

All fees covered by official receipt issued by the Regional Office are non-refundable.

Sec. 6. Labor Market Test and other objection against the foreign national. – The DOLE Regional Office shall publish in a newspaper of general circulation all applications for new AEP, change or additional position in the same company or subsequent assignment in related companies within (2) two work days from receipt of application.

The same shall be published in the DOLE website and posted in the PESO, **such publication and posting shall be for a period of thirty (30) days** and shall contain the name, position, employer and address, a brief description of the functions to be performed by the foreign national, qualifications, monthly salary range and other benefits, if there are any.

It shall also indicate in the same notice of publication that any person in the Philippines who is competent, able and willing at the time of application to perform the services for which the foreign national is desired may file an objection at the DOLE Regional Office.

Any objection or information against the employment of the foreign national relative to labor market test must be filed with the Regional Office within thirty (30) days after publication.

The DOLE Regional Office shall refer to the DOLE Skills Registry System, the Professional Regulation Commission's (PRC) Registry of professionals, and the Technical Education and Skills Development Authority (TESDA) registry of certified workers to establish availability or non availability of able and qualified Filipino worker.

Information or criminal offense and grave misconduct in dealing with or ill treatment of workers maybe filed with the Regional Offices any time.

Section. 7. Processing period. Applications for new AEP shall be processed and an AEP shall be issued within twenty-four (24) hours after publication and payment of required fees and fines, if there is any. Applications for renewal of AEP shall be processed within twenty-four (24) hours after receipt.

Section 8. Ocular Inspection. The authorized representatives of the Regional Director may conduct ocular inspection to verify legitimacy of employment of the foreign national as deemed necessary, within two (2) working days upon payment of fees.

Section. 9. Validity of AEP. The AEP shall be valid for the position and the company for which it was issued for a period of one (1) year, unless the employment contract, or other modes of engagement provides otherwise, which in no case shall exceed three (3) years.

Section. 10. Renewal of AEP. An application for renewal of AEP shall be filed not earlier than sixty (60) days before its expiration.

In the case of officers whose appointment or election takes place before the expiration of AEP, the application must be filed not later than fifteen (15) working days after appointment, or before its expiration, whichever comes later.

In case the appointment or election will take place after the expiration of the AEP, the application for renewal must be filed before the expiration of the AEP which can be renewed for one (1) year.

Within fifteen (15) working days after the date of appointment or election, the foreign national shall submit to the issuing Regional Office the Board Secretary's Certification.

The Regional Director shall revoke the AEP after one (1) month from its issuance, if no Certification is filed.

Section. 11. Denial of application for new or renewal of AEP. An application for AEP or the renewal thereof may be denied by the Regional Director based on any of the following grounds:

- a. misrepresentation of facts in the application;
Misrepresentation of facts includes fraudulent misrepresentation that is a false statement that will have a negative effect in the evaluation of the application was made knowingly, or without belief in its truth, or recklessly whether it is true or false.
- b. submission of falsified documents;
- c. the foreign national has been convicted of a criminal offense or a fugitive from justice in the country or abroad;
- d. grave misconduct in dealing with or ill treatment of workers; or
- e. availability of a Filipino who is competent, able and willing to do the job intended for or being performed by the foreign national.

The Regional Director shall issue an Order denying the application for new or renewal of AEP which shall have the effect of forfeiture of the fees paid by the applicant.

Section. 12. Cancellation/revocation of AEP. The Regional Director may, motu proprio or upon petition, cancel or revoke an AEP after due process, based on any of the following grounds:

- a. non-compliance with any of the requirements or conditions for which the AEP was issued;
- b. misrepresentation of facts in the application;
Misrepresentation of facts includes fraudulent misrepresentation that is a false statement that will have a negative effect in the evaluation of the application was made knowingly, or without belief in its truth, or recklessly whether it is true or false.
- c. submission of falsified or tampered documents;
- d. meritorious objection or information against the employment of the foreign national;
- e. foreign national has been convicted of a criminal offense or a fugitive from justice;
- f. employer terminated the employment of foreign national;
- g. grave misconduct in dealing with or ill treatment of workers;
- h. disapproval of the application for an Authority to Employ Alien by the Department of Justice (DOJ) or Special Temporary Permit by the Professional Regulation Commission (PRC), if applicable.

In such cases, the Regional Director shall issue an Order cancelling or revoking the AEP.

Section. 13. Effect of denial/ cancellation or revocation of AEP. A foreign national whose AEP has been denied or cancelled is disqualified to re-apply within a period of ten (10) years in case the grounds for denial or cancellation is any of the following:

- a. conviction of criminal offense or fugitive from justice in the country or abroad; or
- b. grave misconduct in dealing with or ill treatment of workers .

Section. 14. Appeal. The aggrieved foreign national or his authorized representative may file an appeal with the Secretary of the Department of Labor and Employment (DOLE) within ten (10) days after receipt of the copy of denial/ cancellation/ revocation order.

The decision of the DOLE Secretary shall be final and executory unless a motion for reconsideration is filed within ten (10) days after receipt of the decision. No second motion for reconsideration shall be allowed.

Section.15. Penalty for working without AEP. The Regional Director shall impose a fine of Ten Thousand Pesos (P10, 000.00) for every year or a fraction thereof to foreign nationals found working without a valid AEP. Employers found employing foreign nationals without a valid AEP shall also pay a fine of Ten Thousand Pesos (P10, 000.00) for every year or a fraction thereof.

Newly hired or appointed officers may file the application for new AEP without penalty thereof within fifteen (15) working days after signing of contract or appointment.

If the commencement of employment is later than the fifteen (15) working days grace period, the application for new AEP may be filed before the commencement of employment without penalty.

Section 16. Repealing Clause - All guidelines, rules and regulations, procedures and agreements inconsistent herewith are hereby repealed or modified accordingly.

Section 17. Effectivity - These Rules shall take effect after (15) days from the date of its publication.


ROSALINDA DIMAPILIS-BALDOZ
Secretary

Dept. of Labor & Employment
Office of the Secretary



019672

20 August 2015