

Ninth Congress of the }
Republic of the Philippines }
Third Special Session }

'95 MAY 24 17:02

SENATE

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COMMITTEE REPORT NO. 999

Submitted by the Committee of the Whole in Reviewing the Overseas Employment Policy and Program on MAY 24 1995, 1995

Re: Senate Bill No. 2077 (Prepared by the Committee)

Sponsors: Senators Herrera and Ople

MR. PRESIDENT:

The Committee of the Whole in Reviewing the Overseas Employment Policy and Program to which were referred all overseas workers related bills and resolutions referred to it on May 22, 1995 has considered the same and has the honor to report them back to the Senate with the recommendation that Senate Bill Nos. 2068, 2069, 2070, 2071, 2075 and 2076, and taking into consideration Senate Bill Nos. 129, 137, 161, 312, 346, 388, 486, 724, 798, 892, 917, 980, 996, 1018, 1459, 1592, 1769, 1813, 1889, 1909 and 1943; House Bill Nos. 3764, 4523, 8716 and 14314; and P. S. Resolution Nos. 5, 27, 59, 114, 137, 141, 148, 225, 266, 330, 337, 346, 351, 365, 407, 467, 518, 548, 600, 604, 616, 618, 626, 657, 779, 836, 849, 856, 930, 932, 933, 947, 951, 1024, 1041, 1057, 1058, 1080, 1090 and 1112 be consolidated in the attached S. No. 2077 entitled:

"AN ACT
TO INSTITUTE THE POLICIES OF THE OVERSEAS EMPLOYMENT
PROGRAM AND ESTABLISH A HIGHER STANDARD OF
PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT
WORKERS AND FOR OTHER PURPOSES"

with Senators Herrera, Ople, Romulo, Angara, Shahani, Alvarez, Biazon, Coseteng, Gonzales, Macapagal-Arroyo, Maceda, Mercado, Rasul, Revilla, Roco, Sotto, Tatad, Tolentino and Webb as authors thereof.

Respectfully submitted:


BLAS F. OPLE
Co-Chairman


ERNESTO F. HERRERA
Chairman

MEMBERS

Womans
HEHERSON T. ALVAREZ

Rodolfo G. Diazon
RODOLFO G. DIAZON

with amendments
ANNA DOMINIQUE M. L. COSETENG

Nephtali A. Gonzales
NEPHTALI A. GONZALES

Gloria Macapagal
GLORIA M. MACAPAGAL-ARROYO

Orlando S. Mercado
ORLANDO S. MERCADO

Santanina T. Rasul
SANTANINA T. RASUL

RAMON B. REVILLA

with amendments
RAUL S. ROCO

Vicente C. Sotto III
VICENTE C. SOTTO III

Francisco S. Tatad
FRANCISCO S. TATAD

Arturo S. Tolentino
ARTURO S. TOLENTINO

FREDDIE N. WEBB

with amendments
LETICIA R. SHAHAM
President Pro Tempore

Alberto G. Romulo
ALBERTO G. ROMULO
Majority Leader

Ernesto M. Maceda
ERNESTO M. MACEDA
Acting Minority Leader

HON. EDGARDO J. ANGARA
President of the Senate
M a n i l a

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SENATE

S. No. 2077

Introduced by Senators Herrera, Ople, Romulo, Angara, Shahani, Alvarez,
Biazon, Coseteng, Gonzales, Macapagal-Arroyo, Maceda, Mercado, Rasul,
Revilla, Roco, Sotto, Tatad, Tolentino and Webb

AN ACT
TO INSTITUTE THE POLICIES OF THE OVERSEAS EMPLOYMENT PROGRAM
AND ESTABLISH A HIGHER STANDARD OF PROTECTION AND PROMOTION OF
THE WELFARE OF MIGRANT WORKERS 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 Act of 1995".

SEC. 2. *Declaration of Policies.* -

(a) 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 endeavor to provide adequate and timely social, economic and legal services to Filipino migrant workers.

(b) 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, endeavor to uphold the dignity of its citizens, in general, and Filipino migrant workers, in particular.

(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) 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 interests of Filipino migrant workers in distress are adequately protected and safeguarded.

(e) The right of Filipino migrant workers to participate in the democratic decision-making processes of the State is recognized. The immediate institution of a system of absentee voting by Filipino migrant workers is imperative.

(f) Deployment of Filipino workers abroad entails, on the part of the State, a responsibility to ensure their protection. Pursuant to this, the government shall deploy only skilled Filipino workers and only to countries that guarantee their protection. Guarantee of protection to Filipino migrant workers may be manifested by any of the following:

- i) The country has existing labor and social laws protecting the rights of migrant workers; or
- ii) The country is a signatory to multilateral conventions, declarations or resolutions relating to the protection of migrant workers; or
- iii) The country has concluded a bilateral agreement or arrangement with the Government protecting the rights of overseas Filipino workers; or
- iv) The country is taking positive, concrete measures to protect the rights of migrant workers.

(g) The State recognizes the role of women in nation building. Toward this end all programs of the Philippine Overseas Employment Administration shall recognize the special need and characteristics of women migrant 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.

SEC. 3. *Migrant Workers; Definition.* - For purposes of this Act, 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 national.

I

ILLEGAL RECRUITMENT

SEC. 4. *Definition.* - For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referrals, 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 the Labor Code: *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 this Act;

(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 abstract or attempt to abstract inspection by the Secretary of Labor and Employment or by his duly authorized representative;

(h) To fail to file 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 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 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 this Act and its implementing rules and regulations;

(l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment;

(n) Failure to reimburse expenses incurred by the worker in connection with his

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documentation and processing for purposes of deployment, in cases where deployment does not actually take place.

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.

SEC. 5. *Penalties.* -

(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than five (5) years but not more than ten (10) years and a fine of not less than Fifty Thousand Pesos (₱50,000.00) nor more than Five Hundred Thousand Pesos (₱500,000.00).

(b) The penalty of life imprisonment and a fine of not less than Five Hundred Thousand Pesos (₱500,000.00) nor more than One Million Pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

SEC. 6. *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 aforesaid 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. 7. *Free Legal Assistance; Automatic Entitlement Under the Witness Protection Program.* - A mechanism for free legal assistance for victims of illegal recruitment shall be established within the Department of Labor and Employment including its regional offices. Such mechanism must include coordination and cooperation with the Department of Justice and non-government organizations and other volunteer groups.

The provisions of Republic Act 6981 to the contrary notwithstanding, any person who is a victim of illegal recruitment shall be automatically entitled to the Witness Protection Program provided thereunder.

SEC. 8. *Mandatory Periods for Resolution of Illegal Recruitment Cases.* - The preliminary investigations of cases under this Act shall be terminated within a period of fifteen (15) 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. 9. *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. 10. *Money 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 employment including claims for actual, moral, exemplary and other forms of damages.

The liability of the principal and the recruitment/placement agency or any and all claims under this Section shall be joint and several.

Any compromise/amicable settlement or voluntary agreement on any money claims exclusive of damages under this Section shall not be less than fifty percent (50%) of such money claims: *Provided,* That any installment payments, if applicable, to satisfy any such compromise or voluntary settlement shall not be more than two (2) months. Any compromise/voluntary agreement in violation of this paragraph shall be null and void.

Non-compliance 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:

(1) 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;

(2) Suspension for not more than ninety (90) days; or

(3) 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.

II

SERVICES

SEC. 11. *Travel Advisory/Information Dissemination.* - To give utmost priority to the

establishment of programs and services to prevent illegal recruitment, fraud and exploitation or abuse of Filipino migrant workers, all embassies and consular offices, through the Philippine Overseas Employment Administration (POEA), shall issue travel advisories or disseminate information on labor and employment conditions, migration realities and other facts; and adherence of particular countries to international standards on human and workers rights which will adequately prepare individuals into making informed and intelligent decisions about overseas employment. Such advisory or information shall be published in a newspaper of general circulation at least three (3) times in every quarter.

SEC. 12. *Repatriation of Workers; Emergency Repatriation Fund.* - The repatriation of the worker and the transport of his personal belongings shall be the primary responsibility of the agency which recruited or deployed the worker overseas. All costs attendant to repatriation shall be borne by the agency concerned and/or its principal.

Likewise, the repatriation of remains and transport of the personal belongings of a deceased worker and all costs attendant thereto shall be the responsibility of the principal and/or the local agency.

The Overseas Workers Welfare Administration (OWWA) shall undertake the repatriation of workers in cases of war, epidemic, disasters or calamities, natural or man-made, and other similar events without prejudice to seeking reimbursement from the responsible principal or agency.

For this purpose, there is hereby created and established an emergency repatriation fund under the administration, control and supervision of the OWWA, initially to consist of One Hundred Million Pesos (₱100,000,000.00); which shall be taken from the existing fund controlled and administered by OWWA. Thereafter, such fund shall be provided for in the General Appropriations Act from year to year: *Provided*, That the amount appropriated shall in no case be less than One Hundred Million Pesos (₱100,000,000.00).

SEC. 13. *Mandatory Repatriation of Underage Migrant Workers.* - Upon discovery or being informed of the presence of migrant workers whose actual ages fall below the minimum age requirement for overseas deployment, the responsible officers in the foreign service shall without delay repatriate said workers and advise the Department of Foreign Affairs through the fastest means of communication of such discovery and other relevant information.

SEC. 14. *Reintegration into the Mainstream.* - The DOLE shall facilitate the smooth reintegration of returning migrant workers into the mainstream of economic activities in the country.

The DOLE, OWWA and POEA shall, within ninety (90) days from the effectivity of this Act, formulate a program that would motivate migrant workers to plan for productive options such as entry into highly technical jobs or undertakings, livelihood and entrepreneurial

development, better wage employment, and investment of savings.

SEC. 15. *Establishment of a Migrant Workers Resource Center.* - Within the premises and under the administrative jurisdiction of the Philippine Embassy in countries where there are large concentrations of Filipino migrant workers, there shall be established a Migrant Workers Resource Center with the following services:

- (a) Counselling and legal services;
- (b) Assistance in the procurement of medical and hospitalization services;
- (c) Information, advisory, settlement and community networking services; and
- (d) Institute a scheme of registration of undocumented workers to bring them within the purview of this Act. For this purpose, the Center is enjoined to compel existing undocumented workers to register with it within six (6) months from the effectivity of this Act, under pain of having his/her passport cancelled.

The Center shall be staffed by the service attaches or officers who represent other Philippine government agencies abroad and, if available, volunteers from the Filipino community settled in the host countries. In countries categorized as highly problematic by the Department of Foreign Affairs and the Department of Labor and Employment and where there is a concentration of Filipino migrant workers, the government must provide a lawyer and a social worker for the Center. The Labor Attache shall coordinate the operation of the Center and shall keep the Chief of Mission informed and updated on all matters affecting it.

SEC. 16. *Migrant Workers Loan Guarantee Fund* .- In order to further prevent unscrupulous illegal recruiters from taking advantage of workers seeking employment abroad, the OWWA, in coordination with government financial institutions shall institute financing schemes that will expand the grant of pre-departure loan and family assistance loan. For this purpose, a Migrant Workers Loan Guarantee Fund is hereby created and the initial amount of one hundred million (P100,000,000) pesos from the OWWA is set aside as a guarantee fund in favor of participating government financial institutions.

SEC. 17. *Rights and Enforcement Mechanism Under International and Regional Human Rights Systems.* - The Department of Foreign Affairs is mandated to make an assessment of rights and avenues of redress under international and regional human rights systems that are available to Filipino migrant workers who are victims of abuse and violation and, as far as practicable, pursue the same in behalf of the victims if it is legally impossible to file individual complaints. If a complaints machinery is available under international or regional systems, the Department of Foreign Affairs shall inform the Filipino migrant workers of the existence of such legal options.

III

THE LEGAL WELFARE COMMISSION

SEC. 18. *Creation.* - There is hereby created a body to be known as the "Legal Welfare Commission for Migrant Workers" attached to the Office of the President and to be composed of a Chairman and two (2) Members to be appointed by the President of the Philippines who must be of proven competence and with at least ten (10) years experience as a legal practitioner, either in the government service or in private practice of law or both.

SEC. 19. *Term; Salaries; Privileges.* - The Chairman and Members of the Commission shall be appointed for a term of six (6) years without reappointment and shall receive and enjoy the same salaries and privileges as the Chairman and Members of the Commission on Human Rights created under Executive Order No. 163, Series of 1987.

SEC. 20. *Powers and Functions.* - The Commission shall exercise the following powers and functions:

(a) To devise and set-up the appropriate legal system, structure and procedures that would provide immediate legal assistance and protection to Filipino migrant workers who are arrested, investigated or charged with civil, criminal or administrative offenses in the countries where they are working, or who have filed complaints against their foreign employers;

(b) To investigate, on its own or on complaint by any Filipino migrant worker or any member of his family, any complaint or grievance said worker or member of his family has against an official or employee of any department, agency or office of the Philippine government whether here or abroad;

(c) To adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court;

(d) To establish close linkages and arrangements with the Departments of Labor and Employment and Foreign Affairs, the Philippine Overseas Employment Administration, the Overseas Workers Welfare Administration and other government agencies concerned, as well as with non-governmental organizations and associations of migrant workers, in order to ensure effective coordination and cooperation in the provision of legal assistance services to Filipino migrant workers;

(e) To administer and manage the Legal Assistance Fund for migrant workers established under Section 20 hereof and authorize disbursements therefrom in accordance with the purposes for which the Fund was set-up;

(f) To keep and maintain a record and inventory of all cases and complaints filed by or against Filipino migrant workers abroad and regularly monitor the status and progress thereof and ensure that the workers are given adequate legal assistance and protection as provided under this Act;

(g) To recommend to Congress and to the President legislative and administrative

measures that the Commission deems necessary to protect the rights and promote the legal welfare of Filipino migrant workers;

(h) To request the assistance of any department, bureau, office or agency of the government for the effective discharge of its functions and responsibilities; and

(i) To exercise such other powers and functions as may be necessary to accomplish the objectives of this Act.

SEC. 21. *Staff.*- The Commission shall be assisted by a pool of lawyers from the Departments of Justice, Labor and Employment, and Foreign Affairs, the Office of Solicitor General and other government agencies concerned as may be assigned and detailed therein upon authority issued by the Office of the President.

The Commission may also appoint or hire additional lawyers and other technical and administrative personnel for the effective discharge of its functions, including the hiring of competent foreign lawyers to represent Filipino migrant workers facing charges abroad: *Provided*, That a Filipino lawyer shall be assigned to collaborate with any foreign lawyer so contracted to ensure that the rights of said workers are adequately safeguarded.

SEC. 22. *Legal Assistance Fund.* - There is hereby established a Legal Assistance Fund for Migrant Workers, hereinafter referred to as the "Fund", in the amount of One Hundred Million Pesos (₱100,000,000.00) to be constituted from the following sources:

₱50 M from the Contingency Fund of the President

₱30 M from the Presidential Social Fund

₱20 M from the Welfare Fund for Overseas Workers established under L.O.I.

No. 537, as amended by P.D. Nos. 1694 and 1809.

Any balances of existing funds which have been set aside by the government specifically as legal assistance or defense fund to help migrant workers shall, upon effectivity of this Act, be turned over to, and form part of, the Fund created under this Act.

SEC. 23. *Uses of the Fund.* - The Fund created under the preceding section shall be used exclusively to provide legal services to migrant workers in accordance with such guidelines and procedures as may be promulgated by the Commission. The expenditures to be charged against the Fund shall include the fees for the foreign lawyers to be hired by the Commission to represent migrant workers facing charges abroad, bail bonds to secure the temporary release of workers under detention, court fees and charges and other litigation expenses.

IV

COUNTRY-TEAM APPROACH

SEC. 24. *Primordial Concern of Philippine Embassies.* - The country-team approach, as enunciated under Executive Order No. 74, shall be the mode under which Philippine

Embassies or their personnel will operate in the protection of the Filipino migrant workers as well as in the promotion of their welfare. The protection of the Filipino migrant workers and the promotion of their welfare, in particular, and the protection of the dignity and fundamental rights and freedoms of the Filipino citizen, in general, shall be the primordial concern of the Philippine Embassies that is superior to other diplomatic functions.

V

DEREGULATION AND PHASE-OUT

SEC. 25. *Comprehensive Deregulation Plan on Recruitment Activities.* - Pursuant to a progressive policy of deregulation whereby the migration of workers becomes strictly a matter between the worker and his foreign employer, the DOLE, within one (1) year from the effectivity of this Act, is hereby mandated to formulate a five (5) year comprehensive deregulation plan on recruitment activities taking into account labor market trends, economic conditions of the country and emerging circumstances which may affect the welfare of migrant workers.

SEC. 26. *Gradual Phase-Out of Regulatory Functions.* - Within a period of one (1) year from the effectivity of this Act, the DOLE shall formulate a five (5) year plan on the gradual and partial or total phase-out of the regulatory functions of the POEA pursuant to the objectives of deregulation.

VI

MISCELLANEOUS PROVISIONS

SEC. 27. *POEA and OWWA Boards; Additional Memberships.* - Notwithstanding any provision of law to the contrary, the respective Boards of the POEA and OWWA shall, in addition to their present composition, have three (3) members each who shall come from the women, sea-based and land-based sectors respectively, to be appointed by the President in the same manner as the other members.

SEC. 28. *Report to Congress.* - In order to update Congress on the situation of Filipino Migrant Workers in foreign countries, the Department of Foreign Affairs and the Department of Labor and Employment shall submit an annual report on the following:

- (a) Working conditions of Filipino migrant workers;
- (b) Problems encountered by the migrant workers, specifically violations of their rights;
- (c) Initiatives/actions taken by the Philippine foreign posts to address the problems of Filipino Migrant Workers;
- (d) Changes in the laws and policies of host countries; and
- (e) Status of negotiations on bilateral labor agreements between the Philippines and

the host country.

Any officer of the government who fails to report as stated in the preceding section shall be subject to administrative penalty.

SEC. 29. *Representation in Congress.* - Pursuant to Section 5(2) Article VI of the Constitution and in line with the objective of empowering overseas Filipinos to participate in the policy-making process to address Filipino migrant concerns, five (5) sectoral representatives for migrant workers in the House of Representatives shall be appointed by the President on the basis of proportional representation from the regional distribution of migrant workers.

The nominees must have at least five (5) years experience as a migrant worker.

SEC. 30. *Exemption from Travel Tax.* - All laws to the contrary notwithstanding, the migrant worker shall be exempt from the payment of travel tax upon proper showing of proof of entitlement to the exemption as may be deemed by proper authorities.

SEC. 31. *Non-Increase of fees; Abolition of Repatriation Bond.* - Upon approval of this Act, all fees shall remain at their present levels and the repatriation bond shall be abolished.

SEC. 32. *Appropriation and other Sources of Funding.* - The amount necessary to carry out the provisions of this Act shall be in the General Appropriations Act of the year following its enactment into law and thereafter.

A special LOTTO draw shall be undertaken, the proceeds of which shall be for the exclusive purpose of instituting a scholarship program for deserving immediate descendants below Twenty-one (21) years of age of bonafide migrant workers as may be determined by the POEA. The LOTTO draw shall be held on the commemoration of the Migrant Workers Day as may be designated.

SEC. 33. *Repealing Clause.* - All laws, decrees, executive orders, rules and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 34. *Separability Clause.* - If, for any reason, any section or provision of this Act is held unconstitutional or invalid, the other sections or provisions hereof shall not be affected thereby.

SEC. 35. *Effectivity.* - This Act shall take effect after fifteen (15) days from its publication in the *Official Gazette* or in at least two (2) national newspapers of general circulation, whichever comes earlier.

Approved,