

FOREIGN EMPLOYMENT ACT, 2042 (1985)

Date of Royal Seal and
Publication

2042/7/14/4

Act No. 26 of the year 2042

Foreign Employment (First Amendment) Act, 2049 (1992)

An Act made to provide for the matters relating foreign employment:

Preamble:

Whereas it is expedient to control and manage as well as to maintain economic interests and conveniences of the general public,

Now, therefore, His Majesty's King Birendra Bir Bikram Shah Dev has made this Act on the advice and with the consist of the National Panchayat.

1. Short Title and Commencement:

1. This Act may be called the "Foreign Employment Act, 2042 (1985)".
2. This Act shall come into force on such date as His Majesty's Government may, by notification published in the Nepal Gazette, prescribe^{*}

2. Definitions:

Unless the subject or context otherwise requires, in this Act-

^{*} This Act is prescribed to be effective on 2043.3.2 (corresponding to 1986/6/17). (Nepal gazette 2043/3/2)

- (a) "Worker" means a Nepali Citizen employed in accordance with this Act in a foreign country specified in the notification published by His Majesty's Government.
 - (b) "Foreign Employment" means the employment to be obtained by a worker to abroad.
 - (c) "Foreign Employment enterprises" means the Act or providing foreign employment to Nepali citizens and the meaning of this expression also includes the solecion act of workers by the representative of employment providing or cause to be given institution.
 - (d) "Licence-holder" means the institution b\obtaining the licence pursuant to Section 6.
 - (e) "Employment Providing Institution" means the institution providing foreign employment to workers.
 - (e1) "Association" means the association established under the prevailing law with an objective of operating foreign employment business:".
 - (e2) "Department" means the Department of Labour of His Majesty's Government.
 - (f) "Prescribed" or "As prescribed " means prescribed or as prescribed in Rules framed under this Act.
3. **Restriction to operate Foreign Employment Enterprises Without Licence:** No one shall be entitled to operate Foreign Employment Enterprise without obtaining license under this Act.
4. **His Majesty's Government to specify the Countries:**
- 1. His Majesty's Government shall, by publishing a notification in the Nepal Gazette, specify the countries permitted to operate the foreign employment business.

2. The licence-holder may operate foreign employment business only in the countries specified under sub-section (1) with permission to operate the foreign employment business".
5. **Licence not to be issued except for Institution:** Except for institution, no licence shall be issued for the operation of foreign Employment Enterprise.
 - (5a) **Ownership and liability of the Association:** Notwithstanding anything contained in the prevailing laws "without the approval of His Majesty's Government, the licence-holder its". Cannot transfer or alter its ownership or liability.
6. **Licence:**
 - (1) Institution intending to operating Foreign Employment Enterprise shall have to submit an application with prescribed particulars to His Majesty's Government.
 - (2) His Majesty's Government May issue licence with conditions after receiving prescribed fee and the deposit pursuant to Section 8 from such institution if the institution applying for licence in accordance with Sub-section (1) is deemed competent and fit to operate Foreign Employment Enterprise.
 - (3) The licence issued pursuant to Sub-section (2) shall have to be renewed by the licence-holder in each financial year by paying fee as prescribed.
7. **Deposit to be Kept:**
 - (1) Institution intending to obtain licence pursuant to Section 6 shall have to deposit prescribed amount of money to his majesty's Government before obtaining the licence.
 - (2) His Majesty's Government may accept immovable assets as well for additional deposit to be furnished pursuant to sub-section (2).

8. **Prior permission to be Obtained:-**

- (1) In order to selected workers for foreign employment the licence-holder shall have to obtain prior permission of His Majesty's Government and for such permission an application with the following particulars shall have to be submitted:-
 - (a) Name and address of the employment providing institution.
 - (b) Type of the foreign employment and the duplicate copy of the requisition notice of the institution providing the employment relating thereto, and the licence granted in such respect by the Government of the concerned country or by the official or agency authorized by such Government.
 - (c) Copy of the agreement entered into between the employment providing institution and the licence-holder regarding sending of workers abroad.
 - (d) Copy of the contract to be entered into between the employment providing institution and the worker.
 - (e) Others particular as prescribed.
- (2) His Majesty's Government shall not provided permission for selecting workers if the particulars submitted pursuant to sub-section (1), when scrutinized show the followings:-
 - (a) If the person with the qualification demanded by the employment providing institution is required for the economic development of Nepal,
 - (b) If the proposed foreign employment is to regularized by the laws of the concerned country,
 - (c) If the services, terms and facilities are found unsatisfactory in proportion to the qualification demanded by the employment providing institution.

- (d) If the proposed foreign employment is against the value, dignity or health of the worker, or
- (e) If other condition as prescribed are found.

9. a. **Merit List To Be Prepared:**

- (1) The licence-holder shall have to keep prepared the merit list of the persons, who have submitted the applications before the licence-holder for foreign employment in consonance of the advertisement published under Section 9 for the selection of workers, on the basis of their professional qualifications and experience.
- (2) The names of alternative persons for not more than five percent of the total number of posts that have been requisitioned shall be included in the merit list to be prepared pursuant to sub-section (1).
- (3) While selecting the workers pursuant to Section 10, the licence-holder shall have to select the persons, whose names have been included in the merit list, for foreign employment in accordance with the number and order of such merit list.
- (4) The merit list as referred to in sub-section (1) shall be required to be submitted before the Department.

b. **Advertisement Not Required:**

- (1) Unless the persons whose names have been included in the merit list as referred to in Section 9a could be sent for foreign employment, no advertisement shall be required to be done pursuant to Section 9 in order to select the workers for the foreign employment to be obtained on the basis of professional qualifications and experience of such persons.
- (2) In case the persons, whose names have been included in the merit list as referred to in Section 9a; have been selected for foreign employment without the advertisement pursuant to

sub-section (1), the licence-holder shall have to give the information of such matter to the Department.

10. **Selection of Worker**

- (1) Selection of worker shall have to be done impartially.

While selecting the workers for foreign employment by the licence-holder, it shall have to be done on the prescribed basis.

- (2) The Licence-holder while selection worker shall have to include the representative of His Majesty's Government and the representative of foreign employment providing institution, if such institution wants to be included in the selection.
- (3) The description along with the name list of the selected labours shall be submitted to the Department within seven days from the date of selection of the labour under Sub-section (1).
- (4) The labours selected under Sub-section (1) shall be sent for foreign employment within four months from the date of selection. His Majesty's Government may extend the period up to two times not exceeding 15 days at one time, if there is reasonable cause of being failure to send the labours within the given period.
- (5) In case of failure to sent the selected labours within the period mentioned in Sub-selected (4), the concerned agency shall pay back the amount received from such labours and the interest there of at the rate of 18 percent within fifteen days.

11. **Foreign Employment Should not Be Provided;** Not with standing anything contained elsewhere in this Act, the licence-holder shall not have the authority to provide the foreign employment to the minors and women.

Provided that the foreign employment may be provided to women by obtaining the permission of His Majesty's Government and guardians.

Clarification:

1. For the purpose of this Section, "minor" means the person who has not attained the age of eighteen years.
2. For the purpose of this Section, "guardian" means the following relative of the woman who is desirous of going in foreign employment:-
 - (a) Father or mother in respect of an unmarried woman and husband in respect of a married woman,
 - (b) In cases where the relative as referred to in clause (a) above is not available, the elder brother or younger brother of the same home and joint family, who has attained the age of twenty-one years, in respect of an unmarried woman and the father-in-law or mother-in-law living in the same joint family in respect of a married woman,
 - (c) In respect of a woman who does not have even the relatives mentioned in clause (b) above, the person recommended by the concerned Village Development Committee or Municipality stating him or her as her nearest relative.
12. **Service Charge:** The license-holder is allowed to take service charge as prescribed for providing foreign employment.
13. **Contract relating to Foreign Employment:**
 - (1) The license-holder shall have to explain in the language understood by the worker the full content of the contract and the facilities to be obtained from it as well as the consequence thereto, before the conclusion of contract between the worker and employment providing institution.
 - (2) Only if the worker agrees to the contract explained fully to him pursuant to Sub-section (1), one copy of such contract shall have to be provided each to the worker and His Majesty's Government after the contract has been signed by both the parties and the contract.

- (3) The contract to be entered into between the worker and the employment providing institution shall not differ from the contract submitted by the licence-holder pursuant to clause (d) of Sub-section (1) of Section 9.
 - (4) After entering into a counteract pursuant to sub-section (2), the licence-holder shall, at least seven days prior to sending the worker abroad for foreign employment, have to submit an application along with all the documents relating thereto before His Majesty's Government for permission.
 - (5) If the documents submitted pursuant to sub-section (4) are not found different from the particulars submitted under Section 9, His Majesty's Government shall grant approval to send such worker to foreign employment. Provided that it may bar such sending if there has been found any difference.
14. **Information on the Subject of the Country to be visited for Foreign Employment to be given:** After the submission of documents to His Majesty's Government pursuant to Sub-section (4) of Section 13, the licence-holder shall inform the worker to sent for foreign employment about the geographical location, culture, labour law as well as economic, political and social condition and regarding the labour of works to be performed by him of the concerned country. Without giving such information no worker shall be sent for foreign employment.
15. **Record to be kept:** The licence-holder shall keep up to date record of the worker sent for foreign employment as prescribed.
- The licence-holder shall, within thirty-five days after the end of each fiscal year, have to submit before His Majesty's Government the annual description of all the acts and proceedings done and taken by it in respect of foreign employment business in the previous fiscal year.
16. **Provision relating to worker's income:** The license-holder shall make arrangement to deposit prescribed amount of money from the income of the workers at prescribed place or send to his home country in the prescribed way, for the welfare or maintenance of the workers and their dependents.

17. **Investigation to be done:**

- (1) His Majesty's Government may investigate or cause to be investigated if the worker files a complaint regarding the employment providing institution, which has not fulfilled its contract responsibility or the license-holder who has not taken necessary and appropriate action to make the contract conditions fulfilled.
 - (2) From the investigation conducted pursuant to Sub-section (1) if it has been found necessary to call the concerned worker back home, His Majesty's Government may order the license-holder to provide necessary amount of money for the return of such worker.
 - (3) In case the license-holder does not abide by the order of His Majesty's Government pursuant to Sub-section (2) the return fare of the worker shall be met from the deposit of the license-holder deposited pursuant to Section 7. The concern license-holder shall be informed as soon as possible to reimburse the amount borne as expenditure from the deposit and the license holder shall deposit that amount within fifteen day of receiving notice.
 - (4) In case the amount deposited under Section 7 is insufficient to return back the labours to the native country the license-holder shall pay the due expenditure within the time notified by His Majesty's Government and if such amount is not paid within the time limit it shall be realized with pursuant to prevailing laws from the assets of the license-holder.
18. **Inspection:** His Majesty's Government may inspect documents and other concerned papers kept by the license-holder regarding the compliance of this Act and the Rules frame door Orders or Directives issued under this Act.

A. **Inquiry and Investigation of the Offences Relating to Foreign Employment:**

- (1) If His Majesty's Government is informed directly or indirectly, by way of a complaint filed by any person or by any other manner, of the fact that any offence is happened or committed or is about to be happened or committed in contravention of this Act or The Rules framed under this Act, His Majesty's Government May cause to take

proceedings on inquiry and investigation of the offence relating thereto by designating at least a Gazetted third class officer as the investigation officer.

- (2) While conducting inquiry and investigation on the offence pursuant to sub-section (1) or collecting the proofs and evidence thereof, the investigation officer shall have all the powers equal to those conferred to the police under the prevailing law such as arresting the person involved in the offence, making searches in any places in respect of the offence, taking in his custody the documents and other articles and things related with the offence, causing to make depositions and preparing the deeds.
- (3) While conducting inquiry and investigation pursuant to sub-section (2), the investigation officer shall cause the accused to make deposition and, if there is sufficient ground to show him as an offender from the evidence available beforehand, may release him on bail or on guarantee or, if he could not provide bail or guarantee, may take action by keeping him detained in custody with the approval of the authority hearing the case or may detain him in custody for a maximum period of upto thirty days not exceeding seven days at a time.

Provided that a recidivist (persistent offender, shall not be released on bail.)

- (4) The investigation officer may have consultations with the government lawyer, if it is so required, in conducting the acts of inquiry and investigation as set-forth in this Section.
- (5) It shall be the duty of all the concerned including the Police to provide necessary assistance to the investigation officer in performing the acts of inquiry and investigation as set-forth in this Section.

19. **Power to Direct:**

- (1) His Majesty's Government may, from time to time issue necessary directions to the licence-holder concerning foreign employment.

- (2) It shall be the duty of the licence-holder to abide by the direction, given pursuant to Sub-section (1).
20. **Special power of His Majesty's Government:** Not with standing anything mentioned elsewhere in this Act, in special situation His Majesty's Government may, at any time cancel the licence provide under this Act.
21. **Advisory Committee:** An advisory committee shall be constituted as prescribed to advice His Majesty's Government concerning foreign employment.
22. **Permission to Go in Personal Capacity:**
- (1) If any person desires to go abroad in personal capacity for foreign employment, he shall be required to submit an application, for obtaining approval, before His Majesty's Government with specify therein the following particulars:-
- (a) The country desired to go,
 - (b) The nature of the works to be performed abroad,
 - (c) The institution providing the employment, the acceptance granted by the institution and the terms and facilities of the employment,
 - (d) His nearest relative in the native country and the consent to bear his liability.
- (2) His Majesty's Government shall, upon receipt of the application as referred to in sub-section (1), conduct necessary inquiry and examination and grant approval to the applicant to go abroad in personal capacity for foreign employment.
23. **Punishment:**
- (1) In case any licence-holder does any act in contravention of this Act or the Rules framed under this Act or does not comply with the order or directions of His Majesty's Government, His Majesty's

Government may punish him with a fine of an amount ranging from twenty thousand rupees to one hundred thousand rupees and may revoke the licence of such licence-holder.

A. Notwithstanding anything contained in sub-section (1) above, the person who does an act in contravention of Section 11 shall be liable to a fine of upto five hundred thousand rupees and imprisonment of upto ten years or both punishments.

- (2) In cases any person operates a foreign employment business without obtaining a licence under this Act or sends a person abroad by giving false assurances or putting temptation on such person by explaining that he was being sent for foreign employment or takes any amount on such pretence, the amount so taken and the amount to be sent by fifty percent of such amount shall be realized for compensation from him and the expenses incurred to such person in two way travel to and from such foreign country shall also be recovered from him and made available to such person, and he shall be liable to a fine ranging from fifty thousand rupees to five hundred thousand rupees or imprisonment for a term ranging from three years to seven years or both punishments. He shall be liable to the half of such punishment if the person is yet to be sent abroad.
- (3) Any person knowingly or maliciously, if conceals, changes or falsifies facts of any documents, reports, audit or particulars to be kept, prepared, or submitted under this Act or attempts to do such things such person shall be liable to a fine of rupees twenty five thousand to two hundred fifty thousand or imprisonment of six months to three years.
- (4) His Majesty's Government shall revoke the licence of such licence-holder who are held liable to punishment under sub-sections (2) and (3) and such licence-holders shall not be provided with another licence.
- (5) Person being a better in the offence under this act or conspiring to commit such offence shall be liable to half of the punishment of the offence if such offence was committed and such offender shall not be given any licence for conducting foreign employment business.

24. **His Majesty's Government to be the Plaintiff:** His Majesty's Government shall be the plaintiff in cases under this Act.
25. **Delegation of Power:** His Majesty's Government may delegate some or all of the power conferred upon it by this Act to any official by notification published in the Nepal Gazette.
26. **Power to Frame Rules:**
- (1) His Majesty's Government may frame rules to carry out the objectives of this Act.
- (2) Without prejudice to the power conferred by Sub-section (1) such rules may provide for the following:-
- (a) Particulars to be given in the application to be submitted for licence.
 - (b) Qualification of institution needed to operate Foreign Employment Enterprises.
 - (c) Format of the licence, fee and renewal fee.
 - (d) Procedure for cancellation and conditions of cancellation of the licence.
 - (e) Procedure for cancellation and conditions of cancellation of the licence.
 - (f) Particulars to be given in the application for permission to select workers.
 - (g) Particulars to be mentioned in the advertisement by licence-holder.
 - (h) Provision relating to service charge.
 - (i) Conditions to be mentioned in the contract relating to foreign employment.

- (j) Provision relating to the functioning of office of the institution operating Foreign Employment Enterprise.
- (k) Investigation procedure relating to the complaint of worker.
- (l) Procedure and provision for returning workers to their homes.
- (m) Procedure relating to inspection.