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$40,000 = resident visas

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Assuming that Filipinos use up the maximum 20,000 visa numbers available to them in fiscal year 1976, under the pro-rata allocation of visa numbers that takes effect on October 1, 1977, a Filipino with at least $40,000 in capital may, if he meets certain other requirements, apply for an immigrant visa under the non-preference category. The same privilege is given to a Filipino of retirement age or under sixteen years of age.

They will not be required to obtain labor certification because, for purposes of the Immigration Law, they will not be competing with American workers by entering the labor market. In fact, in the case of the investor, he will be establishing an enterprise that is going to provide job opportunities for Americans.

No Filipino investor, retiree or minor in recent years obtained his immigrant visa through this method because of the oversubscription of the 20,000 visa number maximum annually alloted to the Philippines. Under the new law, however, the non-preference category may receive immigrant visas unused by preferences one to seventh.

It will be noted, for example, that 1,200 numbers will be available annually to refugees under the seventh preference. These numbers will not be used by Filipinos because they are only available to refugees from communist countries, countries in the Middle East and refugees from natural catastrophes as defined by the President. Under such circumstances, the 1,200 numbers will fall down to the non-preference category.

The Investor

The Filipino investor will be required to satisfy the following requirements before he is granted an immigrant visa:

First: He must have invested or be actively in the process of investing $40,000 in an enterprise in the United States;

Second: He must be a principal manager in that enterprise;

Third: He must employ a person or persons in the United States who are United States citizens or aliens lawfully admitted for permanent residence, exclusive of the alien, his spouse and children.

As stated in the law, there need not be an actual investment as long as the alien is in the process of investing. This does not mean that it would be sufficient merely to be in the process of exploring business possibilities. Nor will it be enough to have the $40,000 in the bank. There must, at least, be a positive commitment to invest.

The $40,000 may include money borrowed from the bank. Part of it may also have been given as a gift by his parents. The acquisition of said capital, however, must have been done in good faith as the Immigration Service will carefully scrutinize the case to prevent circumvention of the law.

It is imperative that the investor be a principal manager. It is not necessary that he be the highest executive officer or own the controlling interest in the corporation. It is thus possible for more than one person in the same business to apply for permanent resident status as investors.

Unlike the old regulation, the new rule does not expressly require that the alien have at least one year of experience or training in the field of his business. It is also expected that he will participate full time in the enterprise.

The Retiree and Minor

An alien wishing to retire here or a minor child will be required to demonstrate that he has substantial personal wealth and will be entirely supporting himself, or that he has close relatives in the United States to support him. Such proof is necessary to establish that he will not become a public charge.

If the applicant had been employed recently in his home country, it may be difficult to convince the Immigration Service or the American Consul that he will not be seeking employment in the U.S. Also, if the retiree has a spouse, it will be necessary to show that the spouse is similarly qualified for resident status. This is to avoid a situation wherein the applicant, after obtaining his immigrant visa, may petition for his spouse who otherwise would not be qualified (for example, if she is relatively young and is of working age and likely to retire).