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Bill 982 Potential Danger to Aliens

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H. R. 982 passed by the U.S. House of Representatives on May 3, 1973, and which is currently deliberated upon in the Senate is a potential danger to all aliens. If passed, it will result in the expulsion from the United States of some two million alleged illegal alien residents. It will also have a discriminatory impact upon all lawful residents with foreign names or accent seeking employment or presently employed. Not farfetched is the possible infringement of personal liberties of those who may be mistaken for violators in the process of strict enforcement of the proposed law.

Hiring of Aliens Made Punishable

The bill seeks to penalize any employer who shall knowingly employ, or continue to employ, any alien, who has not been lawfully admitted for permanent residence in the United States, unless such alien has obtained an authorization of employment from the Attorney General. The Act thus seeks to amend the McCarran-Walter Act, otherwise known as the Immigration and Nationality Act of 1952, which provides that employment of any alien does not subject employers to any penalty.

Unjust Provision Against Aliens Restored

On the alien violators, sanctions are provided in the form of disqualification from gaining permanent residence through the method of lawful adjustment of status in the United States. In effect, it restores the old unjust provision contained in the 1952 immigration law which was repealed when Congress realized that it was creating undue hardship upon applicants for immigrant visa.

Procedure for Imposition Of Penalty

A three-step procedure for the imposition of the sanctions is established. **First**, the employer will be served a citation informing him of the alleged violation. This occurs as soon as an evidence or information is deemed persuasive by the Attorney General to prove a violation. **Second**, a proceeding will be initiated within two years after the service of the citation and if the same employer is found to have thereafter violated the prohibition, the Attorney General shall assess a penalty of not more than $500 for each alien. Such assessment shall be preceded by a hearing. **Third**, if the employer, who has been assessed a penalty, thereafter again violates the Act, he shall be punished upon conviction by a fine of not more than $1000 or by imprisonment of not more than one year or both for each alien in respect to whom any violation shall have been found.

Due Process Right of Employers Endangered

The harsh implications of the Act are readily apparent. On the part of the employer, the service of a citation amounts to an infringement of his right to due process. Because of the absolute power of the Attorney General to find a violation without any opportunity for the alleged offender to defend himself, the liberties of the individual will be seriously threatened. Besides, a possible penalty of imprisonment or fine is certainly unjustified, based as it is upon an initial finding arrived at without any opportunity of the accused to present his side.

Added to this, the indiscriminate application of the Act to all kinds of employment makes it all the more susceptible to abuse. The hiring of a maid even for a short duration falls under the purview of the Act. What will prevent the Attorney General from concluding that a live-in relative or friend who is out of job subjects the roommate to the full sanctions of the law?

Oppressive Impact on Aliens

The effects on aliens are even more oppressive. When the Immigration Act of 1952 placed in the adjustment of status provision a limitation that aliens applying thereunder should be holding a valid non-immigrant visa, it was for the purpose of discouraging illegal entry of foreigners seeking employment in the United States. Subsequent events proved that the benefits accruing to the interest sought to be protected were far outweighed by the harm inflicted upon those whose interests were sacrificed. Applications for adjustment of status suffered burdensome delay. The incidence of violation only overburdened the enforcement agencies so that in many cases, a waiver of prosecution was not only necessary but inevitable under the circumstances. In the meanwhile, the limitation failed to check the inflow of illegal alien residents.

But what is most discomforting is the discriminatory impact of the Act upon those seeking employment as well as upon those already employed. Even the U.S. Department of Justice in its comment on the proposed law recognized this possibility. In this society where discrimination is not an occasional occurrence, it can hardly be doubted that a slight hint of possible justification for discrimination will be picked up and magnified to camouflage the propensity of some employers to discriminate. With the passage of the Act, the aliens would easily be branded as employment risks that should be avoided in the recruitment of personnel.

At present, aliens have already suffered much. It is not necessary here to document the instances when aliens have been worked harder, longer and for less pay. Engineers, lawyers, accountants and even doctors without ECFMG's have worked as office clerks. Even nurses have not been spared from this unfair employment practice.

It is not difficult to imagine that with the passage of the Act, exploitation of legal alien residents will intensify. The practice now of employment agencies to reject alien applicants who can only present employment authorization is an indication of things to come. Amidst a background of increasing economic difficulties and the concommitant rise of unemployment, the employer will be in a good bargaining position to impose unfair employment terms and aliens would virtually be forced to accept.

This tendency runs counter to the avowed policy of the state to prohibit discrimination of all forms. It has long been realized that discrimination creates bitter conflict which in turn constitutes an explosive ingredient for violence. The reality of this dreadful possibility was a prime motivation behind the passage of the Civil Rights Act of 1964. Under Title VII of said law, ample protection to all aliens from the evil of discrimination was engrafted.

The Need for Vigorous Opposition

The bill has just survived the first stage in the legislative mill and is now with the proper Senate committee. If the Senate passes it, the bill will go to the President whose signature will normally transform it into law. Because of the grave implications of the proposal to the alien population, the Senate will probably give it a thorough examination. It is well at this point for Filipinos to express vigorous opposition to its passage. Position papers must at least be drafted and submitted to the Senate committee for consideration.

Filipinos' Position Should Be to Kill Bill

There should be no alternative for Filipinos in the U.S. but to lobby for its non-passage. Compromise proposals have been suggested by various quarters like limiting the application of the Act to big employers or limiting it employment rights.

The right of the state to prohibit the employment of illegal aliens may have some legal justification (although others contend that this should be denied on humanistic grounds). But the enforcement of such right must not encroach upon the rights of legal aliens absent a compelling national interest, such as for reasons of national security (**Graham v. Richardson; 402 U.S. 305, 1971**). In this case, the need to protect the state against alleged evils caused by the influx of illegal aliens are far outweighed by the need to protect its legal residents from the exploitative threat of discrimination. Moreover, an effective solution to the problem is already sufficiently provided under existing laws. What the state should do is to increase its manpower and effectively implement its laws.