

THE ALIEN AND HIS RIGHT TO WORK IN THE PHILIPPINES

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"In the sweat of thy face shalt thou eat bread . . ."

Genesis: 3.19.

Ever since Adam and Eve lost Paradise, men have been forced to work in order to live. In the beginning, they worked in order to obtain food from nature and fought the animals who disputed their right to such food. Later, they were forced to fight their fellow-men who did not have enough food. The struggle has been long and tiring and from all indications will be endless.

The greater majority of the people all over the world depend on labor for a living. Only a few own lands from the products of which they may supply their daily needs. Most persons earn their living by engaging in business, or working, or following one of the professions. Thus, the problem of unemployment has always been the most important problem of governments, on the solution of which hinges their success or downfall. For unemployment causes discontent, and discontent breeds war.

The presence of aliens in a country makes this problem of unemployment more acute, for aliens too must earn their living and for them this has greater meaning because they cannot become charges of the State. Their continued stay in a country depends upon their ability to support themselves. Because of this, they are willing to accept a lower salary than are native laborers and thus compete with native labor. For this reason several statutes have been enacted in various countries restricting the rights of aliens to work within their boundaries.

In the Philippines today, there is a similar problem posed by the presence of aliens. As of May 31, 1950, there were 161,158 aliens registered in the Bureau of Immigration of the Philippines. Of these, 135,099 were Chinese, 14,226 Americans, 3,062 Spaniards, 1,763 Indians, 1,361 British, and 5,647 of other nationalities.¹ Annually the Philippines admits from 100 to 1,000 quota immigrants from different countries. The following is a table of the annual admission of quota immigrants to the Philippines:²

¹ Tabulation of Aliens prepared by the Philippine Bureau of Immigration, May 31, 1950.

² Tabulation of Annual Admission of Quota Immigrants to the Philippines prepared by the Philippine Bureau of Immigration.

	<i>United States</i>	<i>China</i>	<i>Other Countries</i>
1946	26	70	84
1947	339	182	253
1948	331	470	648
1949	418	24	513
1950	149		119
Total	1,263	746	1,617

To solve this problem, several statutes have been passed restricting the right of aliens to engage in various callings and professions in the Philippines.

The Right to Work in International Law—

Article 23 (1) of the Universal Declaration of Human Rights provides:

“1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.”

This is the first positive statement made as to the right of all persons—citizen or alien—to work. Although as a general rule state constitutions or laws protect the right of citizens to work, nowhere is there any mention of the right of aliens to do the same. The power to deal with this has generally been left to the discretion of the states.

However, in the Draft Declaration on Rights and Duties of States submitted to the United Nations General Assembly is a provision which states:

“Every State has the duty to treat all persons under its jurisdiction with respect for human rights and fundamental freedoms, without distinction as to race, sex, language, or religion.”³

The imposition of this duty on the States renders more effective the right to work contained in the Universal Declaration of Human Rights.

The authority for these Declarations is found in the power conferred on the General Assembly by the Charter of the United Nations to initiate studies and make recommendations for the purpose of promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.⁴ By the nature of the charter, it is binding upon all signatory countries, one of which is the Philippines. Thus, the Philippines is required to protect the right of aliens to work within the Philippines.

³ Article 6, Draft Declaration on Rights and Duties of States.

⁴ Article 13, sec. 1(b), Charter of the United Nations.

The question is then presented: In case of conflict between this right and a contrary provision in the Philippine Constitution, which is to prevail? Since the Charter of the United Nations has the same status as a treaty between the Philippines and the other signatory countries, it is inferior to the Constitution, which is the fundamental law of the land. Therefore, in case of conflict, the provisions of the Constitution will prevail.

However, does the protection of this right preclude preference in favor of Filipinos? It is maintained that this does not so preclude the granting of preference to Filipinos. The provisions of the declarations of human rights and on the rights and duties of states were intended to protect the minority groups and to grant them an equal opportunity with the other more powerful groups in these pursuits. In the field of industry, it is sad to note, the Filipinos do not constitute the majority but are in the minority compared to the foreign groups. Philippine commerce and industry are controlled by aliens, with Philippine capital holding but a small percentage. Philippine labor is in a constant struggle to maintain its none-too-secure footing against the inroads of alien labor. Thus, if the purpose of these provisions is to achieve an equilibrium, a preference in favor of Filipinos cannot be violative of their spirit.

The Right of Aliens to Work Under the Constitution—

It has been previously stated that the Constitution being paramount, all others must yield to it. One of the principles of the Constitution is the emphasis on nationalism.⁵ Thus, laws enacted pursuant to this nationalistic policy are considered valid. Aside from this, the Constitution itself imposes restrictions on the right of aliens to work in the Philippines.

With respect to natural resources, aliens are excluded from their disposition, exploitation, development, or utilization, the same being limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens.⁶ Even in the acquisition of private agricultural lands the aliens are barred, with the exception of cases of hereditary succession.⁷

Another restriction is contained in the provision on public utilities, no franchise, certificate, or any form of authorization for the operation of which may be granted except to citizens of the Philip-

⁵ Fernando, *Political Law*, Vol. I, p. 345.

⁶ Article XIII, sec. 1, Constitution of the Philippines.

Discrimination against aliens in the regulation of natural resources is universally upheld, inasmuch as the state, in its sovereign capacity, holds such resources in trust for its people, and may, therefore, through its legislative power, lawfully limit and restrict the right of enjoyment to its own citizens. *State v. Kofines*, 33 R.I. 211, 80 A. 432, Ann. Cas. 1913C, 1120; *Bondi v. MacKay*, 87 Vt. 271, 89 A. 228, Ann. Cas. 1916C, 130; *People ex rel. Atty. Gen. v. Naglee*, 1 Cal. 232, 52 Am. Dec. 312; Annotation: 39 ALR 350; 40 LRA (NS) 285.

⁷ Article XIII, Sec. 5, Constitution of the Philippines.

panies or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines.⁸ This restriction was held to be not violative of the due process and equal protection clause because said guarantees have to give way to the specific provision of the Constitution.⁹

The provision of the Constitution on protection to labor should be construed to mean Philippine labor. In view of the policy of nationalism, this provision can be relied upon for measures giving preference to Filipino laborers. Thus, an order of the Court of Industrial Relations issued during the pendency of a labor dispute permitting the hiring of laborers from time to time and on a temporary basis provided that the majority of the laborers to be employed should be native was upheld by the Supreme Court as meeting the test of reasonableness and public interest and, therefore, valid.¹⁰ However, if such measures should deprive the aliens of the opportunity to earn a livelihood, as when they are arbitrarily prohibited from engaging in ordinary kinds of business, the courts will rule them out as unconstitutional.¹¹

These restrictions on the right to work have been generally upheld as part of the police power of the state. It is generally accepted that in the interest of public safety, public health, or public morals the state may regulate the exercise of professions and occupations.¹² If the work is public, there is no question that it is subject to the police power of the state. But, if the work sought to be controlled by the government is private, and the public welfare is in no way involved, it is clear that the legislature cannot deny to the individual employer the right to employ aliens.¹³ On the other hand, if the work, though private, is such that the exclusion of aliens is, in fact, necessary to the protection of the public welfare, such exclusion is within the police power.¹⁴

Specific Restrictions on the Right of Aliens to Work—

The Philippines admits persons engaging in various types of occupations to enter, the only restriction being with regard to unskilled manual labor.¹⁵ This fact makes the task of weeding out more difficult. To accomplish this, laws have been passed by Congress in aid of the constitutional provisions. One of these is Republic Act No. 37 which grants preference to Filipino citizens in the lease of public market stalls, and which was approved on October

⁸ Article XIV, Sec. 8, Constitution of the Philippines.

⁹ *Co Chiong et al. v. Cuaderno et al.*, 46 O. G. 4833, 4840.

¹⁰ *Dee C. Chuan v. Court of Industrial Relations*, G.R. No. L-2216.

¹¹ *Truax v. Raich*, 239 U.S. 33.

¹² *United States v. Gomez Jesus*, 31 Phil. 218.

¹³ Annotation: LRA 1916D, 571.

¹⁴ *People v. Crane*, 214 N.Y. 154, 108 NE 427.

¹⁵ Sec. 29(a) No. 14, Philippine Immigration Law.

1, 1946. The validity of this Act has been upheld in the case of *Co Chiong et al. v. Cuaderno et al.*¹⁶

The prohibition against aliens buying private agricultural land was reiterated in the case of *Krivenko v. Register of Deeds of Manila*,¹⁷ wherein it was held that the term agricultural lands includes residential lots.

Likewise, the practice of law in the Philippines is restricted to citizens.¹⁸ The license to practice law is a privilege, not a right, and may be granted or withheld at the will of the state. Because the office of a lawyer is a position of trust, he being an officer of the court, it is within the power of the state in the interest of public welfare to regulate and restrict the granting of this license. This discrimination is reasonable because the foreign born cannot be expected to have the same interest in the public weal as the citizens who form a part of the government itself.

From the foregoing, it is evident that the right of aliens to work means merely equality of opportunity. It is not a vested right which is not subject to any form of impairment. Where the Constitution itself imposes a restriction, the alien cannot claim this right. The inherent powers of the state are still supreme and, in the long run, the rights of citizens must first be satisfied. However, this fact does not permit the government to render the right of aliens to work nugatory by arbitrary discrimination. The granting of preference to citizens does not fall within the latter classification.

Perhaps the better solution is to restrict the entry of aliens into the country in order to avoid this problem. However, in the absence of such restriction, there is nothing to prevent the legislature from enacting laws which tend to solve this difficulty provided they pass the test of reasonableness and public interest.

¹⁶ 46 O.G. 4833.

¹⁷ 44 O.G. 471.

¹⁸ Rule 127, sec. 2, Rules of Court.