

CHAPTER 150

FOREIGN EMPLOYMENT AGENCY

Act
No. 32 of 1980.

AN ACT TO REGULATE THE CARRYING ON OF THE BUSINESS OF A FOREIGN EMPLOYMENT AGENCY AND THE RECRUITMENT BY PERSONS CARRYING ON THAT BUSINESS, OF PERSONS FOR EMPLOYMENT ABROAD. AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[23 rd March. 1981.]

Short title.

1. This Act may be cited as the Foreign Employment Agency Act.

foreign employment agency and charge for any service rendered by the Commissioner such fees as may be determined by the Minister with the concurrence of the Minister in charge of the subject of Finance.

Foreign employment agencies to be licensed,

2. (1) A person shall not carry on the business of a foreign employment agency unless he is the holder of a licence issued under this Act and otherwise than in accordance with the terms and conditions of that licence.

(2) The provisions of this Act other than the provisions of subsection (1) shall not apply to and in relation to the State.

(2) A person who, on the appointed date, is carrying on the business of a foreign employment agency on the authority of a licence issued under the Fee-Charging Employment Agencies Act may, notwithstanding anything to the contrary in subsection (1) of this section, continue to carry on that business—

(3) No public corporation shall be entitled to carry on the business of a foreign employment agency.

4. (1) An application for a licence shall be made to the Commissioner in writing and shall contain the following particulars :—

- (a) until the expiration of a period of thirty days after the appointed date; or
- (b) where he has made an application for a licence under this Act, within the period of thirty days after the appointed date, until the determination of that application or where the application is refused until the time for appealing against that refusal has expired, or where an appeal is made against the refusal until the determination of that appeal.

- (a) the full name and address of the applicant;
- (b) whether the applicant is an individual, firm or a company;
- (c) if the applicant—
 - (i) is an individual, whether he is a citizen of Sri Lanka;
 - (ii) is a firm, whether the partners of the firm are citizens of Sri Lanka;
 - (iii) is a company, whether the majority of the shares in the capital of [he company is held by citizens of Sri Lanka;

Application of this Act.

3. (1) The State shall be entitled through the Commissioner with the assistance of such officers as may be necessary, to carry on the business of a

(d) if the applicant is a firm or a company, the full name and address of the persons to be in charge of the business;

- (e) whether the applicant, if an individual, is a person of good repute;
- (f) where the applicant is a firm or company, whether the person to be in charge of the business is a person of good repute;
- (g) the address of the premises in which the business is to be carried on together with its floor area and facilities available in those premises.

(2) The particulars contained in paragraph (e) or paragraph (f) of subsection (1) shall be supported by two recent testimonials as to the character and reputation of the applicant or the person to be in charge of the business, as the case may be.

Conditions for grant of licence.

5. A licence shall not be granted unless—

- (a) the applicant—
 - (i) if an individual, is a citizen of Sri Lanka;
 - (ii) if a firm, is a firm the partners of which are citizens of Sri Lanka; or
 - (iii) if a company, is a company, the majority of whose shares in the capital of the company is held by citizens of Sri Lanka; and
- (b) the applicant if an individual, or in the case of a firm or company, the person to be in charge of the business, is a person of good repute; and
- (c) the premises in which the business is to be carried on are suitable, having regard to the locality in which the premises are situated, the size of the premises and the facilities in those premises.

6. (1) Before the issue of a licence, the Commissioner shall direct the applicant—

- (a) to enter into an agreement with the Commissioner—
 - (i) to carry on the business in a morally or otherwise irrefragable manner; and
 - (ii) to take all steps as are reasonably possible to ensure that the terms and conditions imposed on an employer abroad under the contract of employment to be entered into by that employer with a person recruited for employment abroad by the foreign employment agency in relation to which the licence is applied for, are observed by that employer;
- (b) to enter into a bond with the Commissioner with two sureties in such sum not less than one hundred thousand rupees, as may be determined by the Commissioner, for the satisfaction of claims which might arise in connexion with the business or any contract of employment referred to in paragraph (a); and
- (c) to pay the prescribed fee for the licence.

Applicant to comply with directions issued by the Commissioner before issue of the licence.

(2) Where the applicant fails to comply with the directions issued under subsection (1), the Commissioner shall refuse to grant him a licence.

7. Every licence shall—

- (a) be in the prescribed form; and
- (b) unless it is cancelled earlier, be in force for a period of twelve months from the date of its issue.

Form and duration of licence.

8. A licence may be renewed by the Commissioner for a period or periods not exceeding one year at a time on application made to him within one month before the expiry of the licence if—

Renewal of licence-

(a) the Commissioner is satisfied that the licensee has observed the provisions of this Act or any regulation made thereunder or of any agreement or bond entered into by the licensee under this Act or has not been convicted of any offence under this Act or any regulation made thereunder, and

(b) the licensee pays the prescribed fee for the renewal of the licence.

Cancellation of a licence,

9. (1) The Commissioner may cancel any licence if he is satisfied that the licensee—

(i) has contravened any of the provisions of this Act or of any regulation made thereunder or of any agreement or bond entered into by the licensee under this Act;

(ii) has been convicted of an offence under this Act or any regulation made thereunder;

(iii) has not complied with any directions issued by the Commissioner to the licensee under section 20 or section 22; or

(iv) has furnished in any application or in any return or in any written information or written explanation sent by the licensee under this Act, any particulars which to the knowledge of the licensee are false or incorrect.

(2) The cancellation of a licence under subsection (1) shall not take effect until the time for appealing against the decision of the Commission has expired or if an appeal has been made until the appeal is disposed of.

10. Where the Commissioner decides to refuse the grant or the renewal of a licence or to cancel a licence, he shall communicate to the applicant or the licensee, as the case may be, his decision together with the reasons therefor.

11. (1) The applicant or licensee, as the case may be, who is aggrieved by a decision of the Commissioner—

(a) refusing the grant or the renewal of a licence; or

(b) cancelling the licence,

may appeal against the decision to the Secretary to the Ministry within fourteen days of the date on which the decision is communicated to him.

(2) Such Secretary may on any appeal under subsection (1)—

(a) allow the appeal and direct the Commissioner to grant or renew a licence - or

(b) disallow the appeal.

(3) The Commissioner shall comply with any direction issued to him under subsection (2).

12. The licensee shall display prominently in the premises on which the business is carried on the licence granted to him.

Display of licence

13. A licensee shall not charge, directly or indirectly, for any services rendered by the licensee, a fee in excess of the prescribed fee for those services.

Fee for services not to exceed prescribed fee.

14. (1) A licensee shall within thirty days of any change in the particulars stated in his application for a licence, inform the Commissioner in writing of the change.

Licence to inform Commissioner of any change of particulars.

(2) Nothing in subsection (1) shall authorize the licensee to carry on any business otherwise than in accordance with the terms and conditions of the licence.

15 (1) A licensee shall not issue any advertisement or notice calling for applications from persons for employment abroad or take any other action in connection with or incidental to such employment without the prior approval in writing of the Commissioner.

No action regarding recruitment to be taken without the approval of the Commissioner.

(2) For the purpose of obtaining the approval of the Commissioner under subsection (1), the licensee shall submit to the Commissioner, the following particulars'—

Commissioner shall communicate his decision to applicant or licensee together with his reasons therefor.
Appeals.

- (a) the name and address of the employer abroad;
- (b) a copy of the contract or agreement entered into by the licensee with the employer abroad for recruitment of persons;
- (c) the nature of employment for which persons are to be recruited ;
- (d) the terms and conditions of employment including those relating to wages, holidays, hours of work and passage from and to Sri Lanka offered by the employer to the persons to be recruited for employment abroad; and
- (e) such further particulars as may be prescribed.

(3) Where the particulars submitted under subsection (2) are insufficient, the Commissioner may call for such additional particulars as he may consider necessary.

(4) The Commissioner may refuse to grant approval under subsection (1) in any case where he is satisfied that the nature of the employment for which persons are to be recruited is degrading or inhuman or that the terms and conditions of such employment are unreasonable having regard to the average standards of employment of persons.

(5) The Commissioner shall not disclose to any person other than the officers of the Department of Labour for the purposes of the discharge of their functions under this Act, or to any court of law, any information furnished to him under subsections (2) and (3) except with the consent of the licensee.

Authorized officer may be present at interview of person for recruitment for employment abroad.

16. An officer authorized in writing for the purpose by the Commissioner, may be present at any interview, conducted by a licensee, of any person for recruitment for employment abroad for the purpose of ensuring conformity with the provisions of this Act or any regulation made thereunder and it shall be the duty of such licensee to afford all facilities to such officer to be so present.

17. (1) The Commissioner may refuse to approve the recruitment of any class or category of persons for employment abroad—

Grounds on which approval may not be granted.

(i) if in his opinion—

(a) the services of that class or category of persons are vital to the economic development of Sri Lanka; or

(b) having regard to the current and prospective demand of the services of that class or category of persons, the departure of persons of that class or category from Sri Lanka will adversely affect the national economy; or

(c) having regard to the skills of that class or category of persons, the terms and conditions of employment offered to them are not satisfactory; or

(ii) if the employment offered is not regulated by law in the country in which such employment is offered.

(2) A licensee who is aggrieved by a decision of the Commissioner refusing to approve the recruitment of any class or category of persons for employment abroad, may, within fourteen days of the date on which such decision is communicated to him, appeal against such decision to the Secretary to the Ministry.

(3) Such Secretary may, on any appeal made under subsection (2)—

(a) allow the appeal and direct the Commissioner to approve the recruitment of the class or category of persons to whom the appeal relates; or

(b) disallow the appeal.

(4) The Commissioner shall comply with any direction issued to him under subsection (3).

Contract of employment.

18. (1) The contract of employment between the employer abroad and the person recruited for employment by such employer shall, before it is signed by such employer or his agent and such person, be read and explained to such person in a language that he understands.

(2) Two copies of the contract referred to in subsection (1) shall as soon as the contract is signed, be forwarded to the Commissioner by the licensee or such agent to be certified by such Commissioner, prior to the departure from Sri Lanka, of the person recruited for employment.

(3) As soon as the Commissioner certifies the copies of such contract under the provisions of subsection (2), he shall inform such licensee or agent of the same and shall forward for registration, one copy of such contract to the Ministry charged with the subject of Labour of the country of the employer abroad.

Maintenance of records.

19. Every licensee shall maintain such records as may be prescribed.

Returns.

20. (1) The Commissioner may at any time by written directions require a licensee to send him before the date specified in any such direction—

- (a) a return containing such particulars as he may require in relation to the business of the foreign employment agency carried on by the licensee ;
- (b) evidence of remittance to a bank in Sri Lanka, of the commission payable by the employer on whose behalf the licensee recruits any person for employment abroad; and
- (c) such written information or written explanation as he may require in respect of any particulars stated in any return sent by the licensee.

(2) The licensee to whom a direction under subsection (1) is issued shall comply with the direction within such time as shall be specified in the direction.

21. (1) The Commissioner or any person- authorized by the Commissioner in writing in that behalf may—

Powers of entry and inspection.

- (a) for the purpose of ascertaining whether the provisions of this act and any regulation made "thereunder are complied with, enter and inspect, at all reasonable hours of the day or night, the premises in which the business of a foreign employment agency is carried on by a licensee; and
- (b) inspect, and take copies of, any records required by or under this Act or any regulation made thereunder to be kept in respect of that business.

(2) Every person who obstructs or delays the Commissioner or any person authorized by him in that behalf in the exercise of any power conferred by subsection (1) shall be guilty of an offence under this Act.

22. The Commissioner may issue to a licensee such directions as he may think necessary for the purposes of making the licensee to comply with the provisions of this Act and any regulation made thereunder and any licensee to whom any such direction is issued shall comply with such direction within such time as shall be specified in the direction.

Directions of the Commissioner.

23. (1) Where the Commissioner receives a complaint from any person recruited for employment abroad or employed abroad—

Inquiry into complaints made by persons recruited for employment abroad.

- (a) that the terms and conditions imposed on an employer by the contract of employment in relation to him have not been observed by that employer; and
- (b) that the licensee who recruited him for employment abroad has, in breach of the agreement entered into by the licensee with the Commissioner under section 6 (1) (a), failed to take such steps as are reasonably possible to ensure that those terms and conditions are observed by the employer,

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the Commissioner may, after such inquiry as he may deem necessary, direct the licensee to pay that person such sum of money as may be determined by the Commissioner to be sufficient to defray the expenses, including cost of passage to Sri Lanka, incurred by that person as a result of the breach of those conditions by the employer.

(2) The Commissioner shall at any inquiry held under subsection (1) give the parties affected an opportunity to be heard.

Regulations.

24. (1) The Minister may make regulations in respect of any matter in respect of which regulations are authorized by this Act to be made or required by this Act to be prescribed.

(2) Every regulation made under subsection (1) shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made under subsection (1) shall as soon as convenient after its publication in the Gazette be brought before Parliament for approval and any regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder.

(4) The date on which any regulation is deemed to be so rescinded shall be published in the Gazette.

Offences.

25. Every person who—

- (a) contravenes any provisions of this Act or of any regulation made thereunder; or
- (b) furnishes any return, written information or written explanations containing any particulars which to his knowledge are false and incorrect,

shall be guilty of an offence and shall on conviction by a Magistrate be liable to a

fine not exceeding one thousand five hundred rupees or to imprisonment of either description to a term not exceeding eighteen months or to both such fine and imprisonment.

26. Where any offence under this Act is committed by a body of persons then—

Offences by body of persons.

- (a) if the body of persons is a body corporate, every person who at the time of the commission of that offence was a director or officer of that body corporate; or
- (b) if the body of persons is a body other than a body corporate, every person who at the time of commission of the offence was a member of that body,

shall be deemed to be guilty of the offence :

Provided, however, that such director, officer or member shall not be deemed to be guilty of that offence if he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of that offence.

***28.** In this Act, unless the context otherwise requires—

Interpretation.

" appointed date " means the 23rd day of March, 1981;

" business of a foreign employment agency" means business (whether or not carried on by charging fees or otherwise and whether or not carried on in conjunction with any other business) of providing services (whether by provision of information or otherwise) for the purpose of finding persons employment with employers abroad or of supplying employers abroad with persons for employment by them abroad and includes the issue of an advertisement or notice calling for applications from persons for employment abroad or taking of any other action in connexion with or incidental to such employment;

* Section 27 (repealing and amending provision) is omitted.

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" Commissioner " means the person for a *time* being holding the office of Commissioner of Labour and includes a person for the time being holding the office of Deputy or Assistant commissioner of Labour

"employer" includes a body of employers;

" licence " means a licence issued under this Act; and

public corporation means any corporation, board or other body which was or is established by or under any written law other than the Companies Ordinance,* with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise.

* Repealed and replaced by the Companies Act, No. 17 of 1982.