

## **GUIDELINES AND PROCEDURES ON THE WAIVER OF THE TWO-YEAR HOME COUNTRY RESIDENCY REQUIREMENT FOR EXCHANGE VISITORS**

### **SECTION 1. PURPOSE**

- To prescribe guidelines and procedures relative to the grant or non-grant of requests of exchange visitor participants for the waiver of the two-year home residency requirement through the No Objection Statement (NOS) by the Philippine Government.
- To provide guidelines in the processing and evaluation of applications for NOS under the alternative arrangement prescribed by the Exchange Visitor Program Committee.

### **SECTION 2. COVERAGE**

This Circular shall cover all exchange visitors within the purview of Section 212 (e) of the US Immigration and Nationality Act, as amended, which provides that no person admitted under the Exchange Visitor Program shall be eligible for an immigrant visa, or for permanent residence, or for non-immigrant visa until it is established that such person has resided and had been physically present in the country of his/her nationality, or where he/she had his last permanent residence for at least two (2) years following his/her departure from the United States.

### **SECTION 3. DECLARATION OF POLICIES**

It is hereby declared the policy of the Exchange Visitor Program (EVP) Committee to carefully and rigorously evaluate all applications of EVP participants to the waiver of the two-year home residency requirement through the issuance of No Objection Statement, in consideration of the following objectives of the RP-US exchange program:

- Promote mutual understanding among Filipino and American peoples by means of cultural and professional qualifications;
- Provide an avenue for Filipinos and permanent residents in the Philippines to participate in educational and cultural programs and avail themselves of opportunities for educational/professional advancement; and

- Ensure that maximum benefits of the program shall accrue to the Philippines by requiring participants to return to their home country after their cultural and professional training in the United States to share their acquired knowledge and experiences with their government and fellow Filipinos.

### SECTION 4. DEFINITION OF TERMS

For purposes of these Guidelines, the terms or phrases used here shall mean or be understood as follows:

- Exchange Visitor refers to the foreign national who has been selected by a sponsor to participate in an exchange visitor program and who is seeking to enter or has entered the United States temporarily on a J-1 visa. The term does not include the visitor's immediate family.
- Exchange Visitor Program refers to the international exchange program administered by the United States to implement the Mutual Education and Cultural Exchange Act of 1961, as amended, Public Law 87-256, 22 USC 2451, et seq. (1988). The purpose of the Act is to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges. Educational and cultural exchanges assist in furthering the United States' foreign policy objectives.
- Exchange Visitor Skills List refers to a list of fields of specialized knowledge or skills designated by the US Secretary of State in April 1972, as amended, and those countries which clearly required the services of persons engaged in one or more of such fields. Any alien who is a national or resident of one of those countries and obtained an exchange visitor visa and/or became a participant in an exchange visitor program involving a designated field of specialized knowledge or skill after the effective date of public notices is subject to the two-year home country requirement of Section 212(e) of the US Immigration and Nationality Act.
- No Objection Statement refers to the statement issued by the Philippine Government that it has no objection to the waiver of the two-year home residency requirement.
- Sponsor refers to a legal entity designated by the US Government to conduct an exchange visitor program.
- Two-Year Home Residency Requirement refers to the provision that an exchange visitor who is within the purview of section 212(e) of the Immigration and Nationality Act must reside and be physically present in the country of nationality or last legal permanent residence for an aggregate of at least two (2) years following departure from the United States, before the exchange visitor is eligible to apply for an immigrant visa or permanent residence, a non-immigrant H visa as a temporary worker or trainee, or a non-immigrant L visa as an intra-company transferee, or a non-immigrant H or L visa as a spouse or minor child of a person who is a temporary worker or trainee or an intra-company transferee.

Section 212(e) of the US Immigration and Nationality Act, as amended, provides that no person admitted under the exchange visitor program shall be eligible to apply for an immigrant visa, or for permanent residence, or for non-immigrant visa until it is established that such person has resided and been physically present in the country of nationality or last legal permanent residence for an aggregate of at least two years following departure from the United States.

This provision is applicable to the following exchange visitors:

- Those whose participation in the program was financed in whole or in part, directly or indirectly, by an agency of the United States Government or by the Philippine Government;
- Those, who at the time of admission to the program, is a national or resident of a country which had designated as clearly requiring the services of persons engaged in the field of specialized knowledge or skills in which the alien was engaged (referring to the Exchange Visitor Skills List); and
- Those who came to the United States or acquired such status in order to receive graduate medical education or training.

### **SECTION 5. THE PHILIPPINE EVP COMMITTEE**

The EVP Committee is an inter-agency body, created through Administrative Order No. 242 to coordinate the Philippine participation in the Exchange Visitor Program.

- The EVP Committee is mandated, among others, to promulgate rules and regulations to implement the Philippine participation in the exchange program. As part of its functions, it shall review and decide on applications for NOS taking into consideration the benefits that may accrue to the Philippines from its participation in the EVP and, at the same time, the continued opportunities of Filipino exchange visitors for self-realization.

- o The EVP Committee is composed of the heads of the following Philippine Government agencies or their duly designated representatives with at least the rank of a Director:

- o Department of Foreign Affairs

- o Department of Health
  
- o Department of Education, Culture and Sports
  
- o Department of Labor and Employment
  
- o Department of Science and Technology
  
- o National Economic and Development Authority
  
- o Professional Regulation Commission
  
- o Commission on Higher Education
  
- o Technical Education and Skills Development Authority
  
- o Office of the President
  
- o Commission on Filipinos Overseas

- The Committee is chaired by the Department of Foreign Affairs, and the Commission on Filipinos Overseas (CFO) serves as the Secretariat.

## **SECTION 6. APPLICATION REQUIREMENTS**

Exchange visitor participants from the Philippines applying for waiver of the two-year home residency requirement through the No Objection Statement (NOS) from the Philippine Government shall comply with the following requirements:

- The applicant fills out the NOS application form, which is available at the Philippine Embassy or Consulate in the United States or at the website of the Commission on Filipinos Overseas.
- The applicant submits the NOS application form to the EVP Committee through the CFO, together with the following supporting documents, in three (3) copies:
  - o Copy of the Certificate of Eligibility for Exchange Visitor (J-1) Status (IAP Form 66 / DS 2019);
  - o Original copy of the clearance from former employer / company in the Philippines at the time of departure for the training program, clearing the applicant from any contractual obligation or financial accountability;
  - o Copy of the certificate of completion from the training / sponsoring institution. In cases wherein the applicant is currently on training at the time of application, he/she shall submit a certificate from the host institution indicating the specific period of attendance, applicant's good standing, and confirming the applicant's eligibility to complete the program (as amended by EVP Resolution 02-2003). The applicant may also submit a duly accomplished Certificate of Participation which is available at the CFO website;
  - o Proof of the spouse's citizenship (birth certificate or passport) and certified true copy of marriage contract, in case of applicants requesting for NOS by virtue of their marriage to a US citizen;
  - o Certified true copy of the birth certificate, in case of applicants requesting NOS by virtue of their having a minor child/children who is/are US citizen/s; Certificate from the head/leader of a recognized religious denomination in the Philippines allowing the continued stay in the United

States of its member, in case the applicant requesting for NOS is a priest, nun, missionary;

- o Other documents to support the application for NOS; and
  
- o Waiver Review File Number issued by the Waiver Review Division of the United States Department of State.

If the reasons for applying do not fall within the criteria set for granting NOS as indicated in Section 9, the applicant shall submit the following additional requirements:

- o Curriculum vitae;
  
- o Conditional letter of offer from the training institution in the US, and certification that the participant is of good standing; and
  
- o Proof of income of the family being supported in the Philippines (Income Tax Return or Certificate of No Income from the Bureau of Internal Revenue or Certificate of Indigency from the barangay, whichever is applicable).

- The applicant shall pay the processing fee of one hundred twenty five US dollars (US\$125) exclusive of bank charges, to the Commission on Filipinos Overseas through bank or other means of electronic transfer to the following account:

Account name: Commission on Filipinos Overseas

Account no.: 000012-1149-23

Bank name Land Bank of the Philippines

Branch: Intramuros, Manila

The EVP Committee authorizes the Commission on Filipinos Overseas to use the fees to cover expenses for the processing and handling of NOS applications, subject to the usual accounting and auditing procedures.

The processing and handling of NOS applications shall include the costs of the following:

- Sending of communications / decisions of the EVP Committee to the NOS applicant through registered mail;
- Sending of original NOS documents to NOS applicant through courier service;
- Sending of endorsements of the approved NOS to the Philippine Embassy in Washington, D.C.;
- Sending of endorsements of the approved NOS from the Philippine Embassy, Washington, D.C. to the US Department of State;
- Verification of information through international and local telephone calls;
- Publication of resolutions and other important announcements as the need arises;
- Monitoring of projects implemented by NOS applicants under the alternative arrangement, which shall be conducted by representative/s of the EVP Committee member-agencies and/or by the EVP Committee Secretariat; and
- Other administrative requirements (including but not limited to hiring of personnel on a contractual basis, and purchasing of office equipment and supplies).

The Commission on Filipinos Overseas shall submit to the EVP Committee a quarterly financial report of all payments received from NOS applicants, and expenses incurred in line with the processing of NOS applications. (As amended by Resolution 02-2007).

### **SECTION 7. AUTHENTICATION**

Supporting documents issued by institutions and agencies in the United States must be authenticated by the Philippine Embassy or Consulate that has jurisdiction in the place of

residence of the applicant.

### **SECTION 8. DECISION MAKING**

All applications and requests for NOS shall be initially evaluated by the EVP Secretariat to determine which applications are eligible for waiver under Sec. 9 below and give recommendation/s to the EVP Committee. Communications/documents may be sent through electronic means and/or facsimile to facilitate the approval of the EVP Committee.

- Applications which are eligible under Sec. 9 below shall be issued NOS. Notice of this action shall be given to the Committee in its next regular meeting.
- NOS applications which are not eligible under Sec. 9 hereof shall be decided upon by the EVP Committee.
- Decisions of the EVP Committee member-agencies must be submitted to the EVP Secretariat within ten (10) working days upon receipt.

### **SECTION 9. BASES FOR THE GRANT OF THE NO-OBJECTION STATEMENT (NOS)**

The EVP Committee shall grant NOS to applicants in the following cases, provided that the exchange program was not funded wholly or in part by any agency of the Philippine Government, or any public or private educational or other institution in the Philippines, and that the participant has no outstanding financial or service obligations with any government agency, or any public or private institution in the Philippines:

- The skill/profession of the exchange visitor participant is not in the Skills List of the Philippines;
- The applicant is married to a US citizen or legal permanent resident, or has a minor child who is a US citizen residing in the United States;
- The applicant is a religious worker (priest, nun, missionary) in a recognized religious denomination; and
- The applicant has an ailing family member in the United States and his separation from the latter would cause a severe and direct threat to the life of the said family member.

The EVP Committee shall not grant NOS to applicants who have not attended or have not



completed their training programs, unless the reasons for non-completion or non-attendance are any of the following:

- violations of the participant's recognized rights by training institution or sponsor, as proven by supporting documents; and
- cancellation, suspension, or termination of the training program for causes not attributable to the applicant (As amended by EVP Resolution 02-2003).

### **SECTION 10. SKILLS LIST**

Education and training opportunities in fields of professions contained in the Philippine Skills List are necessarily covered by the two-year home residency requirement. Thus, all NOS applications of EVP participants whose field of training in the US is included in the Skills List shall be evaluated on a case-to-case basis taking into consideration the provisions of Section 1 and the priorities of the Philippine Government.

### **SECTION 11. OBLIGATION WITH PHILIPPINE GOVERNMENT AGENCY**

If the training of the NOS applicant was funded in part or in whole by agencies of the Philippine Government, or by private or public higher education institutions in the Philippines, the applicant shall reimburse the expenses incurred by said agencies or institutions in relation to his/her training or studies in the United States. The reimbursable amount shall be determined by the Philippine government agency or private/public educational institution concerned, financial clearance of which shall be obtained before the pertinent NOS could be given.

### **SECTION 12. MERITORIOUS CASES**

The NOS may also be granted to exchange visitor participants for valid and reasonable justifications on a case-to-case basis as may be determined by the EVP Committee.

### **SECTION 13. STATEMENT OF NO OBJECTION**

The EVP Committee shall transmit its decision on NOS applications to the Philippine Embassy in Washington, D.C. in the form of an endorsement letter. The decision of the EVP Committee shall be conveyed by the Philippine Embassy to the US Department of State. The Philippine Embassy shall furnish the applicant with a copy of the Philippine Government's decision.

### **SECTION 14. ALTERNATIVE ARRANGEMENT**

If the reasons of the applicant do not fall within the criteria set for the granting of NOS, and the applicant has presented valid and reasonable justifications for his / her request, the EVP Secretariat may offer the alternative arrangement in lieu of the two-year home-residency requirement, which shall require the EVP participant to individually undertake a project with two components involving (1) developing and implementing of a transfer of technology project; and (2) sponsorship of an enhancement training for an identified beneficiary in his/her particular field of expertise.

The project proposal must benefit a particular sector and address national priorities as provided for in the Medium Term Philippine Development Plan or as identified by the President of the Republic of the Philippines.

### **SECTION 15. PROCEDURES FOR ALTERNATIVE ARRANGEMENT**

The procedure and requirements in the processing and evaluation of NOS applications under the alternative arrangement are as follows:

#### **□ I. Project Proposal □**

- Within 30 days from receipt of notification from the EVP Committee, the applicant shall initially submit a project proposal (2 copies) to the EVP Secretariat;
- The project proposal must identify a Philippine government agency or private institution with the proper recommendation of the agency concerned, which shall serve as partner or counterpart institution. The partner institution shall assist in the implementation of the project

and assess its impact against the objective of technology and knowledge transfer. Only proposals that have been endorsed by the head of the identified partner agency/institution or his/her duly authorized representative shall be reviewed and processed by the EVP Committee. For proposals involving lectures/seminars/workshops, the project must be implemented for 5 days (equivalent to 40 hours) with at least 30 qualified participants. For teachers, the project must also be implemented on a division level.

- The EVP Secretariat shall forward the project proposal to the member-agency/ies concerned identified in Annex A for technical evaluation. The EVP Secretariat and the agency concerned may also seek the technical review of other non-member agencies or institutions as necessary to determine possible benefits of the project proposal vis-a-vis the objectives of technology transfer.

- The EVP Secretariat shall inform the applicant of any action regarding his/her project proposal. The applicant shall be expected to respond or make appropriate revisions on the proposal, if required. After the proposal has been approved in a technical review, the applicant shall submit the final version of his/her proposal to the EVP Secretariat.

- The approved project proposal shall be covered by a memorandum of agreement to be signed by the applicant, the partner institution, and the representative of the EVP Committee to ensure commitment of the parties involved to implement the project. Prior to implementation, the applicant must notify the EVP Secretariat about the details of his/her implementation (i.e., dates, time and venue) for monitoring purposes.

- The project implementation must be conducted physically by the EVP participant applying for NOS.

## II. Enhancement Training Sponsorship Project

- o After the EVP Committee's approval of the project proposal, the EVP participant shall transfer the amount of One Thousand Five Hundred US Dollars (US\$1,500.00) to the EVP Committee through the CFO's trust account as sponsorship for the enhancement training of an identified beneficiary in his/her particular field of expertise.

Account name: Commission on Filipinos Overseas

Account no.: 000012-1149-23

Bank name Land Bank of the Philippines

Branch: Intramuros, Manila

- The EVP participant shall designate the EVP Committee as its authorized representative in coordinating with the beneficiaries on all matters pertaining to his/her involvement in the enhancement training sponsorship.
- The EVP Committee, through the CFO, shall serve as fund manager and shall implement the enhancement training sponsorship project following the guidelines of the CFO's Lingkod sa Kapwa Pilipino (LINKAPIL) or Link for Philippine Development Program.
- The EVP participant shall identify a qualified beneficiary that shall receive the sponsorship. If he/she does not know of a beneficiary, he/she may seek assistance from the EVP Committee.
- The EVP Committee, through the CFO, shall coordinate with the identified beneficiary. A Memorandum of Agreement shall be executed among the EVP participant, the EVP Committee and the beneficiary, defining the responsibilities of the parties involved.
- The CFO, in behalf of the EVP Committee, shall be responsible for the disbursement of funds to the beneficiary as well as monitoring the performance of the beneficiary.
- The EVP Committee shall not assume further obligation or responsibility to the EVP participant regarding his/her status in the United States beyond the issuance of a No Objection Statement to the waiver of the two-year home-country residency requirement.

### SECTION 16. PROJECT PROPOSAL FORMAT

The format for the project proposal is as follows:

- **Project Title.** Project Title. This section should reflect the title/name by which the project will be officially referred to.
- **Rationale.** This section should include the current status of the particular sector/institution in the Philippines relative to the expertise or technology to be introduced by the project, including the need for the expertise or technology being offered. The projected benefits to a particular sector(s)/institution(s) in the Philippines must be clearly stated. This section should also introduce the field of expertise of the exchange visitor, i.e. academic background, professional experience, professional affiliations, etc., and elaborate on the reasons for the choice of the project relative to the exchange visitor's field of expertise and to the objectives of the EVP.
- **Objectives.** This section should contain the general and specific objectives of the proposed undertaking.
- **Project Description.** This section should contain the background of the project. It must define the specific elements of the project and how these are expected to contribute to the

realization of the major objectives and specific results. The project description should discuss the kind of input or contributions that the volunteer will be delivering in the course of his or her volunteer work. Project viability and sustainability must also be described in this section.

- **Operation/Methodology.** This section should describe the steps or stages for the implementation or conduct of the project. It must elaborate on how the transfer of technology/knowledge to a particular sector/institution in the Philippines will be effected. If the proponent will be collaborating with local or international institutions, this section should explain how these institutions will be helping in the project, the respective roles of the proponent and the collaborating institution, as well as the funding sources.

- **Projected Output/End Results.** This section should reflect specific projected outputs/results or outcomes of the project, which must be expressed in quantifiable/measurable and qualitative terms, as well as ways by which to sustain the benefits of the project. This section should also clearly state the target beneficiaries of the project.

- **Inputs and Budget.** Major inputs required for the production of outputs should be presented in a tabular form. It should specify organizations, equipment, services and travel if applicable. The total cost of the project should be indicated, including the funding details.

- **Project Evaluation and Monitoring.** This section should include the mechanics/scheme for the evaluation and monitoring of the project. The indicators for the evaluation have to be clearly specified.

- **Timeline.** This section should provide the detail of the duration for each of the stages in the implementation of the project, including the specific year/date when the project proposal is to be started and completed. Project proposals must be implementable within two (2) years, and must include at least one (1) working visit of the proponent in the Philippines in connection with the project.

- **References.** At least three local and three overseas references with their street and/or postal addresses and telephone numbers should be indicated under this section.

**Other Requirements.** A transmittal request/letter should accompany the project proposal.

## SECTION 17. PROJECT MONITORING AND APPROVAL OF APPLICATION

The exchange visitor who has been offered the alternative arrangement is expected to work with his/her partner institutions in the Philippines for the implementation/completion of his/her project proposal.

- The EVP Committee shall monitor activities in connection with the implementation of projects under the alternative arrangements.
- The proponent and partner institution shall submit to the EVP Secretariat a terminal report (3 copies) detailing the outcomes/results of the project. The applicant shall also be required to submit a project module (2 copies) to the EVP Secretariat, for approval, within thirty (30) days after completion of the project. The module is intended to serve as a guide for private and public institutions that may wish to replicate the project in the future. The monitoring report submitted by the representatives of the EVP Committee and the terminal reports of the NOS applicant and his/her partner institution shall be forwarded to the concerned member-agency/ies which conducted the evaluation of the project proposal.

The approval of the terminal report by the member-agency concerned shall serve as basis for the granting of the NOS to the EVP participant. Notice of this action shall be given to the Committee in its next regular meeting. The EVP Committee shall inform the Philippine Embassy in Washington, D.C. of the approval of the NOS, for endorsement to the US Department of State.

### **SECTION 18. APPEAL/REQUEST FOR RECONSIDERATION**

The decision of the EVP Committee may be appealed within 30 days from receipt of the decision. The appeal process shall be as follows:

- The applicant submits to the EVP Committee Secretariat a request for reconsideration within thirty (30) days from the receipt of the decision. For this purpose, the appeal/request for reconsideration postmarked beyond the reglamentary period shall be deemed to have exceeded the allowable period for appeal.
- The appeal/request for reconsideration shall include new information or documents to support/justify the appeal. It shall be acted upon by the EVP Committee within 30 days from receipt thereof.
- The applicant submits to the EVP Committee Secretariat a request for reconsideration within thirty (30) days from the receipt of the decision. For this purpose, the appeal/request for reconsideration postmarked beyond the reglamentary period shall be deemed to have exceeded the allowable period for appeal.
- The appeal/request for reconsideration shall include new information or documents to support/justify the appeal. It shall be acted upon by the EVP Committee within 30 days from receipt thereof.
- The decision of the EVP Committee on the appeal shall be final.

**SECTION 19. MISCELLANEOUS PROVISIONS**

- EVP participants with approved NOS shall be encouraged to return to the Philippines for at least one (1) working visit for a reasonable period to consult, teach or share his/her expertise with counterparts in the country.
- The EVP Committee shall consider projects implemented by NOS applicants prior to its approval as null and void.
- The EVP Committee reserves the right to deny a No Objection Statement to EVP participants who fail to comply with the guidelines indicated herein.

**SECTION 20. EFFECTIVITY**

ADOPTED this 10th day of April 2008 during the 72nd regular meeting of the EVP Committee in Manila, Philippines.

(Sgd.) ACTING ASST. SECRETARY LOURDES O. YPARRAGUIRRE  
Department of Foreign Affairs

(Sgd.) DIRECTOR ELLA BLANCA B. LOPEZ  
Office of the President

(Sgd.) DIRECTOR MA. VIRGINIA G. ALA  
Department of Health

(Sgd.) ASST. SECRETARY MARIO P. BRAVO  
Department of Science and Technology

(Sgd.) ASST. SECRETARY TERESITA G. INCIONG  
Department of Education

(Sgd.) DIRECTOR FELICITAS Q. BAY  
Department of Labor and Employment

(Sgd.) DIRECTOR ERLINDA M. CAPONES  
National Economic Development Authority

(Sgd.) EXECUTIVE DIRECTOR WILLIAM C. MEDRANO  
Commission on Higher Education

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Technical Educational and Skills Development Authority

(Sgd.) CHAIRPERSON LEONOR T. ROSERO  
Professional Regulation Commission

(Sgd.) EXECUTIVE DIRECTOR JENNIFER O. GONZALES  
Commission on Filipinos Overseas

### Annex A: Agencies which will Conduct Technical Evaluation of Project Proposal

- Group (1) – Fields in the Administration of Public or Public-Oriented Affairs. Agencies concerned: CHED / TESDA / DEPED / DFA / DOLE / DOH
- Group (2) – Fields in the Medical Profession. Agencies concerned: DOH / PRC / DOST
- Group (3) – Fields in Computer Science and Related Professions. Agencies concerned: DOST/ TESDA / PRC / CHED
- Group (4) – Fields in Engineering and Related Professions. Agencies concerned: DOST/ TESDA / PRC / CHED
- Group (5) – Fields in the Natural Sciences. Agencies concerned: DOST/ TESDA / PRC / CHED
- Group (6) – Fields in the Social Sciences. Agencies concerned: CHED / DFA / DOLE / NEDA / OP
- Group (7) – Fields in the Study and Practice of Education. Agencies concerned: DEPED / CHED (College and University Teaching in Natural Sciences, Mathematics, Engineering and Technology (except Agriculture); College and University Teaching of Social Sciences, Liberal Arts and Literature (including Foreign Language Education) and Career Guidance and Counseling / TESDA (Vocational and Technical School teaching)
- Group (8) – Fields in Communication, Transport and Construction Professions. Agency concerned: DOST
- Group (9) – Fields in Business. Agencies concerned: CHED / NEDA / DOLE / TESDA
- Group (10) – Fields of Library Science. Agency concerned: CHED