

**[BOI MEMORANDUM CIRCULAR NO. MCL 09-001,
February 18, 2009]**

**PROVIDING THE IMPLEMENTING RULES AND REGULATIONS FOR
EXECUTIVE ORDER NO. 758, DATED 04 FEBRUARY 2009,
ENTITLED "PRESCRIBING THE GUIDELINES FOR THE ISSUANCE
OF SPECIAL VISA FOR EMPLOYMENT GENERATION TO CERTAIN
INDIVIDUALS AND UNDER SPECIAL CIRCUMSTANCE**

SECTION 1. *Title* - These rules shall implement the issuance of the Special Visa for Employment Generation (SVEG) under Executive Order (E.O.) No. 758 (series of 2008).

SECTION 2. *To Whom Issued* - Subject to restrictions imposed by the Constitution and existing laws on control, nationality and/or ownership of working capital, a SVEG shall be issued to a foreigner or foreigners with controlling interests in an entity, firm, partnership or corporation that establishes, expands or rehabilitates a business activity, investment, enterprise or industry that enables the proportional employment of at least ten (10) full-time/regular Filipino workers are actually employed on a long-term basis in the Philippines.

The minimum requirement provided for in the preceding paragraph shall not apply to laws requiring specific investment and/or capitalization requirement such as, but not limited to, the Foreign Investment Act and Retail Trade Liberalization Law.

Further, the foreign equity participation in an entity, partnership or corporation shall be consistent with the Constitution, the Foreign Investment Act and other special laws.

SECTION 3. *Viable and Sustainable Commercial Investment/Enterprise* - Viable and sustainable commercial investment, enterprise or industry shall mean any business activity, investment, enterprise or industry in the Philippines that a SVEG under these rules shall be issued to any foreigner or group of foreigners in any business activity, investment, enterprise or industry in accordance with the laws, rules and regulations of the Philippines that:

- a. Engages in the manufacturing, processing, assembly, production, packaging, supply, delivery and/or trading of goods, products and/or commodities, either for mass consumption or for export including foreign investors in special economic zones owned and/or administered by the Philippine Economic Zone Authority (PEZA);
- b. Requires or utilizes, on a wide-market proportion, service-intensive support in information technology, systems research and development, education, knowledge and business process out-sourcing, production/services/innovation off-shoring and call and/ or transaction processing;

- c. Provides, on a marketable and profitable degree, service-oriented support in modern, alternative, indigenous, physical, therapeutic, recuperative and health-care facilities; or
- d. Provides training for long-term and full-time/regular employment of Filipino workers in a business activity, investment, enterprise or industry covered by Section 22 of these Rules.

SECTION 4. *Nature of Employment of Filipino Workers* - Under these Rules, the employment of at least ten (10) long-term and full-time/regular Filipino workers shall be for managerial, executive, professional, technical, skilled or unskilled positions in a business activity, investment, enterprise or industry in the Philippines.

SECTION 5. *Definition of Managerial Position* - A position is managerial if these characteristics concur:

- a. The worker manages the organization or a department of the organization;
- b. The worker supervises and controls the work of other supervisory, professional or managerial employees, or manages an essential function of the organization;
- c. The worker has the authority to hire and/or fire those persons supervised, or if none are supervised, works at a senior level within the organization; and
- d. The worker has the authority to make decisions concerning the day-to-day operations of the portion of the organization over which he or she has authority.

SECTION 6. *Definition of Executive Position* - A position is executive if these characteristics concur:

- a. The worker directs the management of the organization or a major part of the organization;
- b. The worker sets the goals and policies of the organization or part of the organization;
- c. The worker has extensive decision-making authority; and
- d. The worker receives only general supervision or direction from higher level executives, a board of directors, or the stockholders of the organization.

SECTION 7. *Definitions of Professional, Technical, Skilled and Unskilled* - The term professionals shall refer to employment requiring formalized, extensive training or education in creative and intellectually challenging work that includes, but are not necessarily limited to, researchers, computer data and systems technicians/designers/programmers/ analysts, physical/occupational therapists, nurses, medico-health specialists, medical technologists, radiologists and electronic/graphic/digital media specialists.

The term *technical* shall refer to employment that requires highly-specialized scientific, agro-industrial, chemical, mechanical, electric, electronic and similar

expertise.

The term *skilled* shall refer to employment that requires at least two years training or experience.

The term *unskilled* shall refer to employment that requires less than two years training or experience. However, this term excludes housekeepers and household workers, including domestics, nannies, cooks, guards, caretakers and the like.

SECTION 8. *Other Investments in the Philippines* - Foreigners with other investments in the Philippines consisting of real estate, shares of stock of bonds, insurance, mutual plans, estate funds, local or foreign currency time deposits may avail themselves of the privileges of the SVEG upon *proof of utilization of* such investments into an active and continuous business activity, investment, enterprise or industry in the Philippines under Section 2 of these Rules.

SECTION 9. *Filing and Contents of SVEG Application* - The SVEG application shall be filed at the Office of the Commissioner consisting of:

- a. Notarized letter-request;
- b. Photocopy of passport with updated stay;
- c. Certified true copies of the Articles of Incorporation and latest General Information Sheet or any proof of investment of the applicant;
- d. Certified true copy of the DOLE-issued Alien Employment Permit, whenever applicable;
- e. DOLE certification that the applicant 's activity, investment, enterprise or industry in the Philippines employees at least ten (10) Filipino workers;
- f. NICA clearance, and
- g. BI Clearance

The application shall also certify, among others, that:

- a. The applicant maintains a lawful immigration status in the Philippines;
- b. The applicant is engaged in a viable and sustainable business activity, investment, enterprise or industry in the Philippines;
- c. The applicant exercises acts of management with authority to employ, promote and dismiss employees;
- d. The applicant evinces a genuine intention to indefinitely remain in the Philippines, for purposes of these Rules;
- e. The applicant 's business activity, investment, enterprise or industry is a real and on-going affair requiring daily supervision that shall provide employment for at least ten (10) long-term full time/regular Filipino workers in accordance with Philippine labor laws and other applicable special laws;

f. The applicant undertakes to continuously comply with the conditions and limitations of the SVEG, as may be imposed by the Commissioner of Immigration.

SECTION 10. *Compliance to Permit, License and Clearance Requirements, Cooperation and Coordination* - Applicants for SVEG shall also attach proofs of compliance with the Labor Code, SSS, PhilHealth and Pag-ibig on business license and other clearance requirements as may be required by law or regulations.

Government departments and agencies shall coordinate with the BI in the issuance of directives with a view to minimizing documentary requirements under these Rules.

SECTION 11. *One-Stop-Shop Center* - A One-Stop Shop Center shall be established at the BI to assist the issuance of permits, licenses and clearances (not otherwise attached in their applications under Section 9 of these Rules. The BI shall provide adequate office space and facilities to all duly-authorized representatives of the government agencies concerned.

SECTION 12. *Processing Time, Substantive Proof Needed, Control Number for each Application, Preventing Intercalations, Non-Application of Technical Rules of Evidence and Procedure* - The Commissioner of Immigration shall, upon payment of an application fee of P2,000.00, together with payment of legal research fee, BI clearance and Express lane fee, receive and resolve completely-accomplished SVEG applications within fifteen (15) working days from the date of filing.

He shall assign a specific control number for each application and implement measures to prevent intercalations. Substantive proof shall be received and evaluated, without strict observance to the technical rules of evidence and procedure.

SECTION 13. *Notice of Approval/Disapproval, Motion for Reconsideration, Decisions/Rulings are Final and Executory* - Upon resolution of each application, the Commissioner of Immigration shall send via registered mail a Notice of Approval/Notice of Disapproval to the applicant. Within forty five (45) days from receipt, a Notice of Disapproval may be reviewed via a Motion for Reconsideration (MR) to the *Commissioner of Immigration*. An MR fee in the amount of P1,500.00, together with payment of legal research fee, BI clearance and Express lane fee, shall be paid and collected, for this purpose. Only one MR shall be allowed. The Commissioner of Immigration shall resolve the MR within a period of five days from receipt. Such resolution shall be final and executory.

SECTION 14. *Registration and Documentation, Issuance of ACRI-Card and Identification Certificate, Multiple Entry Privileges and Conditional Stay* - The Notice of Approval shall direct the alien to report, without need of prior departure from the Philippines, for registration and documentation at the BI. An Alien Certificate of Registration (ACR) I-Card and an Identification Certification (I.D.) shall be issued upon payment of appropriate fees. The A.C.R. - I Card and I.D. shall indicate, among others as follows:

Status Adjusted Without Departure as a Special Non-Immigrant with Multiple Entry Privileges and Conditional Stay in the Philippines under EO No. 758 (Series of 2008 in relation to C.A. No. 613, Section 47 (a) (2) under BI Control No. _____.