

EMIGRATION RULES, 1983

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EMIGRATION RULES, 1983

In exercise of the powers conferred by Sec. 43 of the Emigration Act, 1983 (31 of 1983), the Central Government hereby makes the following rules:

1. Short title and commencement :-

- (1) These rules may be called the Emigration Rules. 1983.
- (2) They shall come into force on the date of their publication in

the official Gazette.

2. Definitions :-

In these rules unless the context otherwise requires,-

- (a) "Act" means the Emigration Act. 1983 (31 of 1983) :
- (b) "Certificate" means a certificate issued under Sec. 11 of the Act;
- (c) "Competent Authority" means competent authority notified by Central Government under Sec. 15 of the Act :
- (d) "demand" means the category-wise, skill-wise number of workers required by the employer for being employed in his establishment. This includes description of job-specifications and salary offered:
- (e) "emigration number" means the number assigned by the Protector of Emigrants to an emigrant at the time of granting emigration clearance;
- (f) "Form" means a Form annexed to these rules ;
- (g) "permit" means a permit issued under Chapter IV of the Act ;
- (h) "remittable component" means a part of the wages which the emigrant is entitled to remit to India
- (i) "unauthorised emigrant" means any person who has emigrated or intends to emigrate out of India for employment in violation the provision of the Act and the rules.

3. Dependent of an emigrant :-

(1) A person who claims to be the dependent of an emigrant shall be required to produce in support of his claim a certificate to this effect from the District Magistrate or a revenue authority not below the rank of Tahsildar of the place where the emigrant ordinarily resides or domiciles.

(2) Determination of the purpose of visit of dependent shall be carried out with reference to the nature of the visa, sponsorship certificate and such other travel documents as may be considered necessary.

4. Emigrants conveyance :-

Any conveyance, especially chartered for conveyance of emigrant or

employed generally for conveying emigrant exceeding two In number shall be deemed to be emigrant conveyance.

5. Recruiting agent representing the employer :-

the representation of an employer by a recruiting agent shall be determined with reference to the power of attorney given by the employer to the recruiting agent. The representation shall be limited for purpose mentioned in the power of attorney. Such power of attorney unless limited in time by an express provision shall be valid ¹ [for the period of validity of the certificate of registration of the recruiting agent unless the same is withdrawn earlier.]

1. Subs. by G.S.R. 111 (E), dated 24th February, 1987, for the words "for a period of one year from the date of its execution" (w.e.f. 24th February, 1987).

6. Inspection of an emigrants conveyance :-

(1) If the Protector of Emigrants has reason to believe that a conveyance is an emigrant's conveyance he may inspect such conveyance with a view to detecting the presence of unauthorized emigrants in the conveyance or for obtaining such evidence as may be necessary for protecting the Interests of emigrants and he may, with such assistance, as he may think fit,-

(i) enter such conveyance at any time ;

(ii) require the production of registration certificate of the conveyance, log book and list of passengers ; and

(iii) take such other evidence and examine any person as he may deem necessary.

(2) Person having the general management or control of the conveyance shall provide such means as may be required by the Protector of Emigrants for inspection under sub-rule (1).

7. Registration of recruiting agent :-

An application for registration of a recruiting agent shall be made in Form I and shall be accompanied by-

(i) a bank draft of ¹ two thousand rupees payable in favor of the Protector-General of Emigrants towards the application fee: and

(ii) an affidavit in Form II annexed sworn before a Metropolitan Magistrate or Judicial Magistrate or a Judicial Magistrate giving the

Applicant's current financial standing.

1. IN RULE 7, IN CLAUSE (i) THE WORD "FIVE HUNDRED RUPEES" SHALL BE SUBSTITUTED BY THE "EMIGRATION (AMENDMENT) RULES, 2002 W.E.F 1ST NOVEMBER, 2002

8. Amount of security :-

(1) termination of the amount of security deposit under sub-section (3) of Sec. 11 shall be done with reference to the estimated number of persons to be recruited by an applicant during the period for which the registration is applied for in accordance with the following scale:

(i) minimum up to 100 .. 1 lakh

(ii) 101 to 600 .. 3 lakhs

(iii) 601 to 1000 .. 4 lakhs

(iv) 1001 and above .. 5 lakhs

(2) In the event of the recruitment of the specified number getting completed before the date of expiry of the certificate, the holder of the certificate may be permitted by the Registering Authority to continue recruitment up to the date of expiry of the certificate on furnishing additional security in accordance with the scale prescribed after reckoning the total number of persons to be recruited, including the number already recruited.

9. Validity of certificate :-

A certificate shall be valid for a period of three years: Provided that a certificate may be issued for a shorter period-

(a) if the person to whom it is issued so desires : or

(b) if the registering authority, for reason to be communicated in writing to the applicant for the certificate, considers in any case that the certificate should be issued for a shorter period.

9A. Renewal of certificate :-

An application for renewal of certificate under Sec. 13 shall be in Form X and shall be accompanied by a bank draft of ¹ two thousand rupees payable in favour of the Pay and Accounts Officer, Ministry of Labour (Main Secretariat), New Delhi, towards the application fee.]

1. In Rule 9-A, for the words "five hundred rupees" the words "two thousand rupees" shall be substituted by "Emigration (Amendment) Rules, 2002. " w.e.f 1st November, 2002

10. Terms and conditions of the certificate :-

(1) The registration certificate shall be subject to the following terms and conditions :

(i) This certificate shall be valid for a period specified in the certificate;

(ii) the certificate shall not be transferable ;

(iii) the holder of the certificate shall conduct the business under his own hand and seal :

(iv) a photocopy of registration certificate shall be displayed prominently at a conspicuous place of business :

(v) the certificate shall be made available for inspection to the emigration authorities, law enforcement authorities and employers ;

(vi) the certificate shall be produced on demand for satisfaction of the bona fides of the recruiting agent, when such demand is made by an emigrant:

(vii) the holder of the certificate shall conduct the business from the place indicated in certificate. For opening a recruitment center at a place other than the place indicated in the certificate, the holder _____ of

(viii) the holder of the certificate shall not employ sub-agents for the purpose of conducting or carrying on his business ; and

(ix) the holder of the certificate shall maintain the following records at his place of business and shall make them available for inspection on demand by Protector-General of Emigrants or the Protector of Emigrants,-

(a) a register of receipt of charges from emigrants recruited, in the form of an original acceptance roll containing the signature of each emigrant from whom the charge has been received. Each such register shall be with reference to a demand for recruitment. The register shall be maintained as permanent records:

(b) a register and records of the amounts and Pre-paid Ticket

Advise along with their photocopies received from the employers, identified demand-wise;

(c) a register containing details of expenses incurred on the recruitment of emigrants demand-wise supported by documents ;

(d) Individual folders for each employer whose demands of labour, the holder of the certificate has processed, proposes to process or is processing :

(e) bio-data of each emigrant recruited by the holder of the certificate;

(f) copies of employment contracts of each emigrant as authenticated by the Protector of Emigrants ;

(g) original demand letter, power of attorney and correspondence with the employers:

(h) all documents relating to the recruitment of emigrants including office copies of all advertisements issued, letters of interview and correspondence with the applicants, original award sheets leading to the selection, names and addresses of persons involved in the selection process, copies of letters of appointments, trade-testing particulars;

(i) a register of visas received from the employers, giving separate account of block and individual visas :

(j) a register of claims for all compensations (including for injury or death) made by the emigrants or their dependents, recruited by the holder of the certificate giving the name, address of the emigrant, emigration number, country of employment, nature of compensation (including the details in regard to the circumstances leading to the claim), address of the recipients and the name and address of the employer, and the receipt in original in token of having made the payment of compensation: and

(k) such other records as may be required to be maintained by the registering authority ;

(x) the holder of the certificate shall furnish return of the preceding month in Form IV by the 10th of the succeeding month :

(xi) copy of each advertisement for recruitment of the emigrants shall be endorsed to the Protector of Emigrants ;

(xii) the holder of the certificate shall ensure that the employer observe the terms and conditions of the contract ; and

(xiii) the holder of the certificate shall not charge any amount from the emigrant towards the repatriation expenses

(2) The certificate shall be in Form V.

11. Permits for recruitment by employers :-

(1) Application for permits. The application for issue of the permits for recruitment by foreign employers be in Form VI.

(2) The application for issue of permits for recruitment by Indian employers for foreign jobs shall be in Form VII.

1 (3) The applications under rules (1) and (2) above shall be accompanied by bank draft of Rupees Two thousand payable in favour of the Pay and Accounts Officer, Ministry of Labour (Main Secretariat), New Delhi, towards the application fee."

1. In Rule 11, after sub-rule (2) the following shall be inserted from BY THE "EMIGRATION (AMENDMENT) RULES, 2002 W.E.F 1ST NOVEMBER, 2002"

12. Conditions of permit :-

The permit shall be subject to the following conditions, namely:

(i) The permit is not transferable.

(ii) The permit is valid for a period of **1** [one year] from the date of issue or the date of completion of the recruitment whichever is earlier.

(iii) Workers recruited on the strength of this permit shall not be repatriated on the ground that they do not possess the required skill.

(iv) The holder of the permit shall not obtain the assistance of recruiting agent in any manner.

(v) The employment agreement with the worker shall be signed by the holder of the permit.

(vi) The holder of the permit shall be under obligation to treat the contract entered into with the worker as enforceable under the Labour Laws of the country of employment. It shall be his responsibility to file the copies of the contracts with the concerned

authorities in the country of employment.

(vii) The holder of the permit shall not supply manpower recruited on the strength of this permit to any other agency or concern.

(viii) The holder of the permit shall be responsible for the general welfare and redressal of specific grievances of the workers recruited on the strength of the permit during the period of contract

.

(ix) The holder of the permit shall not extend the services of a worker after the expiry of a contract without entering into a fresh contract or without extending the existing contract.

(x) The holder of the permit shall notify to the Indian Mission in the country of employment each case of death or disability of a worker within 48 hours of the occurrence of the event. Similarly information should be communicated to the next of kin in India in case of disability/death within 48 hours.

(xi) The holder of the permit is prohibited from supplying manpower for a work in another country to a country other than the country from which the permit has been issued.

1. In Rule 12, in sub-rule (ii) the words six months, the words one year shall be substituted, BY THE "EMIGRATION(2nd AMENDMENT) RULES, 2004

13. Issue of permit :-

(1) On receipt of the application, the competent authority may verify the facts contained in the application and may make the following Inquiries to ascertain that the terms and conditions of employment are not discriminatory or exploitative :

(a) the basis on which the demand has been computed ;

(b) the principle on which skills have been classified ;

(c) job contents of a post required to be filled ;

(d) scope of future prospects in various categories of jobs ;

(e) structure of supervisory control ;

(f) grievances procedure followed ; and

(g) general reputation of the applicant and reports of specific misconduct, if any.

(2) A permit issued under Sec. 17 of the Act shall be in Form VIII and shall be valid for a period of ¹[one year] from the date of its issue or till the recruitment of the persons for whose recruitment such permit is issued is completed, whichever is earlier.

(3) In case the employer is not able to complete the recruitment within ² [one year], then he may make an application under Sec. 18 of the Act for an extension of the period of validity of the permit, stating the reasons therein for not completing the recruitment within the prescribed period. The prescribed authority may extend the validity of the permit by such further period as it may think fit but not exceeding three months at a time

.

1. Subs. by G.S.R. 111 (E), dated 24th February, 1987, for the words "six months" (w.e.f. 24th February, 1987).

2. In Rule 13, in sub-rule (3) the words six months, the words one year shall be substituted, BY THE "EMIGRATION(2nd AMENDMENT) RULES, 2004

14. 14 :-

(1) A foreign employer who has been granted a permit under sub-rule (2) of Sec. 15 of the Act shall on arrival in India submit to the Protector-General of Emigrants a certified copy of permit and thereafter may proceed to make recruitments.

(2) Where the permit under sub-section (2) of Sec. 15 has been issued for recruitment of persons not more than two in number and where such recruitment is being made on the basis of postal communication or personal contact, a copy of the permit certified by the Indian Mission in the country of employment can be filed by such person himself.

15. Application for emigration clearance :-

(1) Every application made under sub-section (2) of Sec. 22 of the Act shall be made in Form IX by the applicant directly or through the recruiting agent if ¹including Indian employers permitted under Rule 11(2) concerned and shall be accompanied by-

(a) a true copy of the demand verified and authenticated by the Indian Mission in the country of employment :

(b) a true copy of the power of attorney given by the employer to the recruiting agent verified and authenticated by the Indian Mission in the country of employment :

(c) a true copy of the agreement under sub-section (3) of Sec. 22 of the Act verified and authenticated by the Indian Mission in the country of employment;

(d) a statement setting out the particulars of matters prescribed under sub-rule (2) not provided in the agreement :

(e) a statement of additional conditions, if any :

(f) a statement as to the provision by way of security for meeting the expenses which may be incurred in case it becomes necessary to arrange for the repatriation to India of the applicant. This statement shall be verified and authenticated by the Recruiting Agent in case the applicant is recruited by him : and

(g) a demand draft of ²rupees two hundred drawn in favor of the Protector-General of Emigrants as the emigration fee in respect of each applicant.

3 [(2) An agreement under sub-section (3) of Sec. 22 shall provide for the following matters:

(i) period of employment/place of employment ;

(ii) wages and other conditions of service ;

(iii) free food or food-allowance provision ;

(iv) free accommodation;

(v) provision in regard to disposal, or transportation to India, of dead body of the emigrant :

(vi) working hours, overtime allowance, other working conditions, leave and social security benefits as per local labour laws :

(vii) to and from air passage at the employer's costs ; and

(viii) mode of settlement of disputes.]

1. In sub-rule (1) of Rule 15, after the words "or through the employer" and before the words "concerned and", the words inserted from BY THE "EMIGRATION (AMENDMENT) RULES, 2002 W.E.F 1ST NOVEMBER, 2002"

2. In clause (g) of sub-rule (1) of Rule 15, for the words "Rupees One hundred", the words "Rupees Two hundred" shall be substituted from BY THE "EMIGRATION (AMENDMENT) RULES, 2002 W.E.F 1ST NOVEMBER, 2002"

3. Subs. by G.S.R. 111 (E), dated 24th February, 1987, for sub-

rule (2) w.e.f., 24th February, \1987).

15A. 15A :-

All applications from the persons, individually or through recruiting agents or through other permitted agents, who intend to go abroad on short term non-employment visit and requiring suspension of emigration check requirements for a limited period (emigration suspension), shall be accompanied by a demand draft of Rupees One hundred drawn in favour of the Prefector General of Emigrants as fee in respect of each applicant."

16. 16 :-

Emigration clearance under sub-section (1) of Sec. 22 of the Act shall be given ¹ [by making] an entry incorporating grant of emigration clearance to an emigrant for the country of employment for the period of contract and the attestation number, of the Mission on the demand should be made in the passport of the emigrant by the Protector of Emigrants.

1. Subs. by G.S.R. 111 (E), dated 24th February, 1987, for sub-rule (2) w.e.f., 24th February, \1987)., for the words "in From X and" (w.e.f. 24th February, 1987).

17. Direct requirement by foreign employer :-

(1) Where an emigrant has been recruited directly by a foreign employer, the emigrant shall be required to deposit one-way return fare calculated from the place of employment to the place of origin on the basis of the International Air Transport Association fare structure as security.

(2) Where the liability for bearing the cost of repatriation falls on the emigrant, security deposited by him under sub-rule (2) shall be utilized for his repatriation on the orders of the Protector of Emigrants.

18. Form of appeal :-

(1) Every appeal presented to the Central Government under Sec. 23 of the Act shall be in the form of a memorandum

¹ rupees two hundred drawn in favor of the Union of India towards the fee for the appeal.

(2) The memorandum-

(a) shall set forth concisely the grounds of objection to the order

appeared against and such ground shall be numbered consecutively : and

(b) shall specify-

(i) the address at which notices or other processes may be served on the appellant ; and

(ii) the date on which the order appealed against was served on the appellant.

(3) Where the memorandum is presented after the expiry of the period of thirty days referred to in sub-section (2) of Sec. 23 , it shall be accompanied by a petition, in triplicate, duly verified and supported by the documents, if any, relied upon by the appellant, showing cause how the appellant had been prevented from preferring the appeal within the said period of thirty days.

(4) Any notice required to be served on the appellant shall be served on him in the manner prescribed in rule 18, at the address for service specified in the memorandum

.
1. In sub-rule (1), of Rule 18, for the words: "Rupees one hundred", the words "Rupees two hundred" shall be substituted BY THE "EMIGRATION (AMENDMENT) RULES, 2002 W.E.F 1ST NOVEMBER, 2002"

19. Procedure before the appellate authority :-

(1) On receipt of an appeal under rule 18, the appellate authority shall send a copy of the memorandum of appeal to the registering authority or the competent authority or the Protector of Emigrants or the prescribed authority against whose order the appeal has been presented.

(2) The appellate authority shall then issue notices to the appellant and the registering authority or the competent authority or the Protector of Emigrants or the prescribed authority, as the case may be, fixing a date for hearing of the appeal.

(3) On the date fixed for the hearing of the appeal, or any other day to which the hearing of the appeal may be adjourned, the appellant as well as the representative of the registering authority or the competent authority or the Protector of Emigrants or the prescribed authority, as the case may be, shall be heard.

(4) Where on the date fixed, or any other day to which the hearing

of the appeal may be adjourned, the appellant falls to appear when the appeal is called on for hearing, the appellate authority may decide the appeal on the basis of the records of the case.

20. Contents of the order In appeal :-

The order of appellate authority shall be in writing and shall state briefly the grounds for the decision and shall also be signed by the appellate authority.

21. Representation of party :-

Any person who has filed an appeal under Sec. 23 of the Act may appoint a pleader, advocate or any other person to appear, plead and act on his behalf before the appellate authority.

22. Procedure for deciding emigrant status :-

Where question arises before a Protector of Emigrants as to whether a person intending to depart from India is or is not an emigrant shall be decided by the Protector of Emigrants after holding an inquiry in the following manner :

(a) he may require the presence of the concerned person on an appointed day and time :

(b) he may also require the concerned person to produce evidence relating to-

(i) the present occupation :

(ii) his financial status and income :

(iii) certificate of sponsorship from the foreign country ;

(iv) the source of financing of the journey :

(v) the source of receipt of foreign exchange ; and thereafter he shall pass speaking order and copy of the same shall be provided to the person concerned and an endorsement to this effect shall be made in the passport.

23. Forfeiture of security deposit :-

Where the competent authority or the registering authority has reason to believe that it is expedient to forfeit the whole or any part of security furnished by any person for being utilized for such purpose and in such manner as may be specified in the order, he may, after giving a notice to this effect to such person and thereafter giving him an opportunity to represent his case, by order in writing, forfeit the whole or any part of the security.

24. Authorities and officers to have certain powers of civil courts :-

1 The Protector-General of Emigrants, the registering authority, the competent authority and every Protector of Emigrants shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 , while trying a suit, In respect of the following matters, namely :

- (a.) summoning and enforcing the attendance of witnesses :
- (b) requiring any public record or copy thereof from any court or office:
- (c) requisitioning any public record or copy thereof from any court or office;
- (d) receiving evidence on affidavits : and
- (e) issuing commissions for the examination of witnesses of documents.

(2) Every proceeding before the Protector-General of Emigrants, or the registering authority or the competent authority or a Protector of Emigrants shall be a judicial proceeding within the meaning of Secs. 193 and 228 of the Indian Penal Code and the Protector-General of Emigrants, the registering authority, the competent authority, and every Protector of Emigrants shall be deemed to be a civil court for the purposes of Sec. 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

26. Service of notice and orders :-

A notice or an order issued under these rules shall be served on any person in the following manner, that is to say,-

- (a) by delivering or tendering the notice or order to that person or his duly authorized agent ; or
- (b) by sending a notice or order to him by registered post with acknowledgment due to the address of his place of residence or his last known place of residence or the place where he carries out or last carried out business or personally works or last worked for gain ; or
- (c) if the notice or order cannot be served under Cl. (a) or CL. (b) by affixing it on the outer door or some other conspicuous part of

the premises in which that person resides or is known to have last resided, or carries out or last carried out business or personally works or last worked for gain and that written report thereof should be witnessed by two persons.

26A. Withdrawal of the certificate of registration of recruiting agent during suspension :-

Where an order suspending the operation of the registration certificate of the recruiting agent has been issued by registering authority, under sub-section (2) of Sec. 14 of the Act, the certificate of that recruiting agent may be withdrawn by the registering authority, for the period for which the suspension of certificate has been ordered and for the periods of further extensions of such suspension of such certificate, if any.]