

THE THIRTIETH LEGISLATURE OF AMERICAN SAMOA

First Special Session

Begun and held at Fagatogo, Tutuila, American Samoa
on Monday, the twenty-third day of April
two thousand and seven

AN ACT AUTHORIZING THE ISSUANCE OF GUEST WORKER PERMITS BY THE ATTORNEY GENERAL FOR EMPLOYEES OF THE FISH CANNERIES AND CALL CENTER; ESTABLISHING THE SPECIAL REQUIREMENTS AND LIMITATIONS, AND GIVES THE GOVERNOR OF AMERICAN SAMOA THE AUTHORITY TO PLACE A MORATORIUM ON THE ISSUANCE OF SUCH PERMITS; AMENDING SECTIONS 41.0301 AND 41.0410 A.S.C.A.; AND CREATING A CHAPTER 09 UNDER TITLE 41 A.S.C.A.”

Preamble:

Due to the urgent need to provide a sufficient number of workers for the increased cannery output in the Territory, this act shall become effective immediately upon passage by the Legislature and approval by the Governor.

Chapter 09 of Title 41 A.S.C.A. may be re-evaluated after two years to determine whether the program should be continued and extended to other Pacific Islands.

BE IT ENACTED BY THE LEGISLATURE OF AMERICAN SAMOA:

Section 1. 41.0301 is amended to read:

“41.0301 Numerical limitation.

(a) Quarterly and yearly limits. The number of aliens born in any foreign state or dependent area who may enter American Samoa to be registered shall not in any of the first three quarters of any fiscal year exceed the total of 25, and shall not in any fiscal year exceed a total of 100 and, the total number or registration receipt cards made available to natives of any single foreign state shall not exceed 5 in any fiscal year, except these numbers shall not include Western Samoans, immediate relatives of American Samoans, nor citizens of the United States of America.

(b) Immediate relatives defined. The "immediate relatives" referred to in subsection (a) of this section shall mean the children, spouses, and parents of an American Samoan; provided, that in the case of parents, such American Samoan must be at least 21 years of age. The immediate relatives specified in this subsection who are otherwise qualified for registration shall be registered as such, without regard to the numerical limitations in this chapter.

(c) Numerical limitation of Western Samoans. Because of the historic, cultural and family interchanges between American Samoans and Western Samoans, the number of aliens born in Western Samoa who may enter American Samoa to be registered shall not in any of the first three quarters of any fiscal year exceed a total of 62, and shall not in any fiscal year exceed a total of 250.

(d) The numerical limitations established by this section shall not include aliens employed by the American Samoa Government or the United States of America, or aliens admitted and employed under chapter 09 of this Title, or other groups as further waived by Board order upon a showing of extenuating circumstances. Any alien employed under this provision who is terminated for whatever reason shall be subject to these limitations upon the expiration of 30 days from the date of termination.

(e) Aliens submitting application for registration receipt cards under this section and 41.0303 shall return to their countries of origin pending allocation of such registration receipt cards for re-entry into American Samoa. No extensions of stay beyond the original 60 days period allowed under 41.0502 (a)(2)(D) or otherwise are to be granted.

(f) Notwithstanding anything to the contrary in subsections (a) through (e), the total number of registration receipt cards made available in fiscal year 1997 to all aliens shall not exceed a total of 1,820 for aliens born in Western Samoa, 404 for aliens born in the Kingdom of Tonga, 88 for aliens born in the Republic of the Philippines, 20 for aliens born on Tuvalu, 14 for aliens born in the Republic of Fiji, 14 for aliens born in the People's Republic of China, 12 for aliens born in New Zealand, 11 for aliens born in the Republic of Korea, and 8 for aliens born in the Republic of China. The requirements of sections 41.0301(e) and 41.0502(a)(2)(D) are hereby waived only for those aliens whose applications to remain in American Samoa were processed during the period from January 3, 1997 through and including April 23, 1997 pending final determination by the Immigration Board. Such persons are subject to the requirements of section 41.0319 and 41.0404 of the Administrative Code, including submission of all required applications and payment of fees.

(g) Section 41.0403 (a) (1) shall be strictly applied to all those applicants qualifying under Section 41.0301, thus all accumulated days, months, and years those applicants were present in American Samoa prior to the Immigration Board's approval shall not be considered as "legally present in American Samoa".

Sec 2. 41.0410 is amended to read:

"41.0410 Employment of aliens-Penalty.

(a) No person may knowingly employ any alien without written approval of the Board before the person commences work.

(b) No alien may seek employment or become employed without prior written approval of the Board.

(c) If after a hearing the Board finds that any person has been guilty of a violation of subsection (a), or (b), he/she shall be subject to a fine as follows:

(1) first offense, \$500 per person employed illegally; \$1,000 per person employing a person illegally;

(2) second offense, \$1,000 per person employed illegally; \$3,000 per person employing a person illegally;

(3) third or more offenses, \$2,000 per person employed illegally; \$6,000 per person employing a person illegally.

(d) The fines levied by the Board pursuant to subsection (c) shall be paid to the treasurer of American Samoa.

(e) Any employee violating this section on the first offense is guilty of a class B misdemeanor, and on the second or more offenses is guilty of a class A misdemeanor.

(f) Any employer violating this section is guilty of a class A misdemeanor.

(g) Violation of this section by aliens shall be a deportable offense in addition to fines.

(h) Subsections (a) and (b) of this section shall not apply to guest workers who are admitted and are employed under the provisions of chapter 09 of this Title."

Sec 3. There is created a Chapter 09 under Title 41 which reads:

“Chapter 09

GUEST WORKER PERMIT

- 41.0901 Definitions.**
 - 41.0902 Authorization to issue guest worker permit.**
 - 41.0903 Requirements for eligibility for guest worker permit.**
 - 41.0904 Health certification by guest worker—Penalty.**
 - 41.0905 Permit good for one year—Renewal—Fees.**
 - 41.0906 No bond or security of any kind necessary for issuance of permit.**
 - 41.0907 Requirement for a host in American Samoa—Penalty.**
 - 41.0908 No round-trip ticket necessary to enter.**
 - 41.0909 Issuance of guest worker permit.**
 - 41.0910 Immediate employment—Termination of employment.**
 - 41.0911 Authority of the Governor to implement moratorium.**
 - 41.0912 Guest worker’s family not included in permit—Eligibility for residence status.**
 - 41.0913 Amnesty for foreign nationals residing in American Samoa without authorization.**
 - 41.0914 No board approval necessary for guest worker permits.**
 - 41.0915 Registration forms.**
 - 41.0916 Authority to adopt rules.**
 - 41.0917 Certificate—Personal possession required.**
 - 41.0918 Change of address.**
 - 41.0919 Sponsor penalty.**
 - 41.0920 Abrogation of relevant laws.**
- 41.0901 Definitions.**

As used in this chapter, unless the context clearly indicates otherwise:

- (a) “Affiant” means a person who attests to, or signs an affidavit.**
- (b) “Affidavit” means a written statement which is authorized or required by law, attested to or signed by the affiant, and submitted in support of an application for a guest worker permit.**
- (c) “Guest worker” means a person of Samoan ancestry born in the Independent State of Samoa who is granted authorization to enter and remain in American Samoa for purposes of employment at the fish canneries or call center only, under the provisions of this chapter.**

(d) "Host" means anyone who is a 21 year old bona fide individual resident or business of American Samoa who can certify by affidavit that he/she/they will provide housing and lodging facilities, whether free of charge or by rent agreement, for a guest worker during his/her stay in American Samoa.

(e) "Immediate relative" means the children, spouse, siblings and parents of a guest worker.

(f) "Sponsor" means an employer belonging to either of the two current fish canneries or call center doing business in American Samoa requesting a guest worker permit for an individual to enter American Samoa for purposes of employment by those canneries or call center.

41.0902 Authorization to issue guest worker permit.

The Attorney General of American Samoa is authorized to issue guest worker permits, subject to the requirements of this chapter, for the purpose of entry of persons of Samoan ancestry born in the Independent State of Samoa into American Samoa for purposes of employment by either of the two canneries or call center.

41.0903 Requirements for eligibility for guest worker permit.

Each guest worker for whom a permit is requested must meet all of the following requirements:

(1) Must be at least 19 years old, and no older than 45 years, at the time the original application is presented to the Attorney General;

(2) Must be a person of Samoan ancestry born in the Independent State of Samoa;

(3) Must not have been convicted anywhere of any crime, whether a misdemeanor or felony, including civil infractions;

(4) Must possess a certificate from the highest health authority in his/her country of origin that bearer is of good health, fit for work, not pregnant, in cases of females, and free from any sexually transmitted diseases, malaria, filariasis, or any disease that is deemed contagious and capable of being transmitted from one person to another;

(5) Must not have been previously deported or excluded by the American Samoa Immigration Board or Attorney General;

(6) Must not have been ordered by the courts of American Samoa to remain outside the Territory of American Samoa for any amount of time; and

(7) Must comply with the prohibitions of section 41.0615.

41.0904 Health certification by guest worker—Penalty.

(a) In addition to the requirement of section 41.0903(4) above, guest worker must provide a signed affidavit, with himself/herself as the affiant, that he/she is of good health, fit for work, not pregnant, in cases of females, and is free from any sexually transmitted disease, malaria, filariasis, or any disease that is deemed contagious and capable of being transmitted from one person to another.

(b) Any guest worker who knowingly presents a false affidavit under this section in order to obtain a guest worker permit, shall be guilty of a class A misdemeanor. The guest worker permit that was issued to said person shall immediately be revoked and he or she deported without delay. This individual shall not be eligible as a guest worker at any other time in the future.

41.0905 Permit good for one year—Renewal—Fees.

(a) Each guest worker permit issued by the Attorney General shall be valid for one year from the date it was issued, and shall entitle the guest worker to multiple entries into American Samoa for the purpose for which it was issued.

(b) Each permit may be renewed for an additional year not to exceed ten consecutive renewals.

(c) Each permit issued for the first time shall be for a fee of \$50.00, paid to the Government of American Samoa by the guest worker or sponsor as provided under regulations promulgated hereunder. Each subsequent renewal shall be for \$30.00.

41.0906 No bond or security of any kind necessary for issuance of permit.

For purposes of this chapter, neither the sponsor nor the guest worker applicant shall be required to post a bond, either monetary or otherwise, or post security of any kind as a requirement for the issuance of a guest worker permit. However, the sponsor is responsible for all expenses related to, and necessary for repatriating, to their countries of origin, those guest workers whose employment are terminated, or are deemed deportable or excluded by the Attorney General pursuant to the laws of American Samoa. The sponsor shall be responsible for assuring that provisions are in place to take care of expenses incurred by the guest worker for health or medical services, fees and fines, utilities, and any other expenses or debts of the guest worker.

41.0907 Requirement for a host in American Samoa—Penalty.

(a) Each application for a guest worker permit shall be supported by an affidavit from a host stating his/her ability and willingness to provide housing and lodging facilities for a guest worker during his/her stay in American Samoa, and shall declare whether he provides these accommodations free of charge or for a charge.

(b) A host who provides housing and lodging facilities for a charge shall submit with his/her affidavit a copy of his/her business license and rent agreement with the guest worker, stating, among other things, the term of the agreement, the monthly rental payment, the facilities provided, and other such information the Attorney General by regulation may require.

(c) No person may act as host for more than 5 guest workers at one time.

(d) A host or sponsor shall not require from a guest worker, through use of coercion, duress, force or threat of deportation, a portion of his/her wage earnings over and above the agreed upon rental rate, or reasonable household expenses attributed to the guest worker except as provided in this statute.

(e) Anyone who violates subsections (c) above shall be guilty of a class A misdemeanor for the first violation, and a class D felony for every subsequent violation. Anyone who violates subsection (d) above shall be guilty of a class D felony.

(f) Anyone who provides a false affidavit or false information under subsections (a) and (b) of this section shall be guilty of a class B misdemeanor.

41.0908 No round-trip ticket necessary to enter.

Each person who is granted a guest worker permit may enter American Samoa with only a one-way ticket from his point of origin.

41.0909 Issuance of guest worker permit.

Guest worker permits may be issued only upon the satisfaction of the following requirements:

(1) That the sponsor presents a completed application for each guest worker to the Attorney General with a certification that it is unable to meet its employment requirements with individuals currently residing in American Samoa, and other information that the Attorney General by regulation may require;

(2) That the Attorney General examines and certifies to the Governor that he/she has reviewed each application, that the requirements of this chapter have been satisfied, and that the employment needs of the sponsor cannot be met with individuals residing in American Samoa;

(3) That the Governor has consented to the issuance of each permit and has reported to the Legislature of American Samoa for its review:

- (A) The number of permits to be issued;
- (B) That he has approved the issuance of such permits; and
- (C) The circumstances under which they are issued.

41.0910 Immediate employment—Termination of employment.

(a) Each guest worker who is issued a permit shall be employed by the sponsor within two weeks of arrival after first complying with the employment laws of American Samoa and those of the federal government which are applicable to American Samoa, and shall continue to be employed by sponsor while in American Samoa on a guest worker permit.

(b) The sponsor shall inform the Attorney General one day before it terminates employment of a guest worker, and must make sure that the guest worker departs American Samoa immediately upon termination of services. A guest worker who remains in American Samoa after termination of employment shall be subject to arrest and detention until arrangements are made by the sponsor for his immediate transportation back to the Independent State of Samoa.

41.0911 Authority of the Governor to implement moratorium.

The Governor of American Samoa is granted the authority to place a moratorium on the issuance of guest worker permits upon his/her determination that any of the following has occurred:

(a) There are sufficient willing individuals in American Samoa to fill the vacancies certified by sponsor;

(b) That the influx of guest workers has placed an unbearable strain on the resources, utilities, infrastructure or basic services of American Samoa;

(c) That the guest worker permits have been abused and misused, leading to undesired negative results; or

(d) That the further issuance of said permits will not be in the best interest of American Samoa.

41.0912 Guest worker's family not included in permit—Eligibility for residence status.

(a) Each person who is granted permission to enter American Samoa on a guest worker permit is not entitled to inclusion of his/her immediate relatives for sponsorship under the guest worker permit.

(b) Guest workers shall not become eligible for residence status in American Samoa under chapter 03 of this Title.

(c) In the event that a guest worker applies and is granted an alternate residence status under the provisions of this Title, the years that he/she spent in American Samoa as a guest worker shall not be counted towards his/her application for permanent residence status pursuant to the provisions of section 41.0403 and as provided in the American Samoa Code Annotated.

41.0913 Amnesty for foreign nationals residing in American Samoa without authorization.

(a) In order to meet the guest worker permit requirements, and at the same time maintain the population at current levels, amnesty is hereby granted to nationals of the Independent State of Samoa of Samoan ancestry residing in American Samoa without proper authorization granted by the Attorney General or the Immigration Board, in order to become employed by sponsor as a guest worker, subject to employment requirements, provided however, that no individual shall be entitled to amnesty unless that individual is deemed qualified and is issued a guest worker permit.

(b) This grant of amnesty shall expire 90 days from the effective date of this law.

41.0914 No board approval necessary for guest worker permits.

Because it is the intent of this law to provide a more efficient and expeditious means of providing necessary workers for the two canneries and call center, guest worker permits do not require the approval of the Immigration Board.

41.0915 Registration forms.

The Attorney General is authorized and directed to utilize his/her authority under section 41.0306 to carry out and to implement the provisions of this chapter.

41.0916 Authority to adopt rules.

The Attorney General shall adopt administrative rules pursuant to 4.1001 et seq. to implement the provisions of this chapter.

41.0917 Certificate—Personal possession required.

(a) Every guest worker residing in American Samoa shall at all times carry with him/her and have in his/her personal possession any certificate of alien registration receipt card issued to him/her pursuant to this chapter.

(b) Any guest worker who fails to comply with this section shall be guilty of a class B misdemeanor.

41.0918 Change of address.

Every guest worker who enters American Samoa shall within 14 days following his arrival, notify the Attorney General and the sponsor in writing of his/her current address and any additional information as may be required by the Attorney General; and shall notify the Attorney General in writing whenever there is a change in his/her address, within 5 days of that change. Failure to comply with this section may subject the guest worker to immediate revocation of his/her permit.

41.0919 Sponsor penalty.

The sponsor of the guest worker shall be fined \$100 per day for each infraction of the sponsor's responsibilities as provided by this statute.

41.0920 Abrogation of relevant laws.

This law does not abrogate relevant provisions of other laws, except as specifically included herein."

Sec 4. Effective date.

Due to the urgent need to provide a sufficient number of workers for the increased cannery output in the Territory, this Act shall become effective immediately upon passage by the Legislature and approval by the Governor.

Chapter 09 of Title 41 A.S.C.A. may be re-evaluated after two years to determine whether the program should be continued and extended to other Pacific Islands.

Lolo M. Moliga
LOLO M. MOLIGA
President of the Senate

Savali Talavou Ale
SAVALI TALAVOU ALE
Speaker, House of Representatives

Hereby Approved this 30th day of May 2007
[Signature]
Governor of American Samoa