

“Double-Standard Employment” under JPEPA: The Bilateral Agreement and Its Implications for Filipino Nurse Migration to Japan

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Abstract

This article scrutinizes the situation of Filipino nurses and Japanese hospital staff under the Japan-Philippines Economic Partnership Agreement (JPEPA). As the agreement prioritizes the enhancement of free trade between the two countries in accordance with WTO (World Trade Organization) regulations and the principle of bilateral relations, it compromises the professional practice of Filipino nurses who enter Japan.

Based on a construction analysis of JPEPA's provisions on the movement of natural persons (MNP), interwoven with interviews with Filipino nurses and Japanese hospital staff, this article points out that the MNP scheme of JPEPA devises a “double-standard employment,” which permits Filipino nurses to work in Japan (recognition of right to employment) but does not permit them to practice their profession (denial of right to practice), until they pass Japan's National Board Examination (NBE) for nurses. As a result, they are prevented from earning a desirable amount. Worse, even if they pass the NBE and are allowed to work in Japan for the long term, the program and other current pertinent laws do not allow them to raise a family in Japan. Without a clear vision of a career path or a future family life, Filipino nurses tend to be discouraged from studying and working enthusiastically to prepare for the NBE. Such predicament is caused by a loophole in an agreement dealing with natural persons in economic terms. It is important that each nurse under JPEPA is treated with due respect as an individual, not as economic goods.

Keywords: WTO regulations, Japan's migration laws, Filipino nurses

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Introduction

TODAY, THE MIGRATION OF NURSES across borders is one of the major issues associated with globalization. A large number of nurses leave their home countries to work abroad, motivated by a worldwide shortage of nurses that push many Asian countries to “produce nurses for export” (Buchan, Kingma, and Lorenzo 2005; Hosein and Clive 2007; Yeates 2009). Yeates (2010) pointed out that such production is often part of a wider economic development strategy that leads to the promotion of labor export. Migrants’ remittances raise the sending country’s foreign exchange holdings, help its government pay off debts and obtain loans, and invigorate the economy by supporting consumption, investment, and businesses at large. Indeed, it is not possible to talk about nurse migration without situating it in the context of trade and business today. The Filipino nurses’ migration to Japan under the Japan-Philippines Economic Partnership Agreement (JPEPA), whose challenges I will discuss in this article, in a way reflects such a trend—that is, it was crafted in accordance with the rules and regulations of a bilateral trade relationship.

The JPEPA, signed between the governments of Japan and the Philippines in 2006, is an economic partnership agreement (EPA), which entails an enhanced negotiation of a free trade agreement under the rules of the World Trade Organization (WTO). It contains specific provisions on the movement of natural persons (MNP), which allow the entry of Filipino health professionals into Japan under certain conditions and requirements. This was Japan’s first EPA that involves foreign health professionals, particularly nurses and certified care workers. The JPEPA prescribes that Japan should accept (a) short-term business visitors; (b) intracooperative transferees; (c) investors; (d) natural persons of the other Party (in this case, the Philippines) who deliver professional services; (e) natural persons of the other Party who engage in supplying services which require advanced levels of technology or knowledge, or specialized skills belonging to particular fields of industry on the basis of a contract with public or private organizations in the former Party (in this case Japan); and (f) nurses and certified care workers. The Japan-Singapore Economic Partnership Agreement signed in 2002 also contains the first five

of these six categories of natural persons. However, the last category, “nurses and certified care workers,” was unique to JPEPA. Therefore, it was necessary that a new provision be added in the list in chapter 9, article 110 (Watanabe 2007, 274).¹

The migration of nurses under JPEPA accorded with Mode 4 of the General Agreement on Trade and Services (GATS),² which covers natural persons who are either service suppliers (such as independent professionals) or those who work for a service supplier and are present in another WTO member to supply such services.³ With this regard, Mode 4 can be applied to any independent professional, such as information technology engineers, who enter Japan to work. However, the uniqueness of nurses and certified care workers is that they are health professionals who take care of the ill or the disabled. They must obtain a work permit and at the same time be recognized by Japan for their clinical competencies in patient care. As Plotnikova and Bremner (2014) note, the problem of managing the crossborder mobility of health workers is how to balance economic needs and ensure coherence between professional qualifications of foreign health workers and the national standards of the receiving country.

Kingma (2007, 159) points out that it is reasonable for each state to set the qualification standards for certain professions, like medicine and nursing, that require strict criteria for practice. However, this creates a disparity between a work permit (the right to employment) and a license (the right to practice) for foreign professionals. This is especially true in the case of EPAs whose primary principle is regulated by the WTO, which claims that the right of each government to regulate professional standards is one of the fundamental premises of GATS. The WTO insists that the objective of GATS is to liberalize service trade, and not to deregulate it.

During the negotiations for JPEPA, the JNA was opposed to the possibility of mutual recognition of nursing licenses under the agreement. Japan requires Philippine nurses to obtain their licenses within three years⁴ upon entering Japan before they can work as nurses⁵ or as certified care workers. The JNA's opposition to the mutual recognition of license is understandable,

considering the language barrier, which will be discussed later in this article. However, this condition consigns Filipino nurses to only noninvasive work—such as arranging the bedside environment, making the bed, and organizing medical supplies—until they pass the National Board Examination (NBE) for nurses (Watanabe 2007, 295). Nursing is a profession that is usually regulated by the state. Like in many other countries, to practice nursing in Japan requires an exclusive occupational license from the Japanese government.

Under the MNP scheme of JPEPA, Filipino nurses are permitted to work in Japan—they are considered on-the-job trainees, albeit for a limited number of years. They cannot practice their profession (nursing) until they pass the NBE. Such a scheme might have disappointed the Philippines, which has been sending its nurses all over the world. The government of Japan, on the other hand, has been insisting that JPEPA not contradict other pertinent laws, such as passing the NBE requirement. To further minimize even a slim gap between the existing laws of Japan and the terms of JPEPA, the JPEPA contains a provision stating that Filipino nurses who pass the Japan's NBE shall obtain the “special activity visa: nurse,” renewable every three years with no limitations.⁶ In this regard, it appears that the government of the Philippines could no longer demand further compromises (i.e., for the Filipino nurses to be able to start practicing their profession more easily and continue doing so without limitations) because GATS, the principle governing JPEPA, focuses on matters of trade, not on immigration policies, labor standards, and development issues of the involved countries. Given this situation, JPEPA, which was crafted under such a logic, could potentially frustrate and disappoint the nurses of both countries.

This study focuses on the movement of Filipino nurses to Japan under JPEPA, a trade agreement with a section on the MNP, to learn about what has been happening since its launch, with a particular interest in the “incompatibilities” between the right to employment and the right to practice. Has such disparity between a work permit and a license, which is termed “double-standard employment” in this article, resulted in distrust and ill will among the people concerned with JPEPA? In order to answer this research question, the author of this study conducted literature reviews

and interviews of employers, employees, and organizations in both the sending and receiving countries.

Reaction of the Sending Country: The Philippines

The Junk JPEPA movement, which was strongly supported by the Philippine Nurses Association, Inc. (PNA), was popular prior to the signing of JPEPA between Gloria Macapagal-Arroyo, then president of the Philippines, and Junichiro Koizumi, then prime minister of Japan, in September 2006. The Junk JPEPA movement proclaimed that “JPEPA, in fact, covers a wide range of trade issues which is apparently a bad deal for the Philippines” (The PCIJ Blog, 2006). The PNA, under national president, Dr. Leah Paquiz, issued on 19 October 2007 a position statement concerning JPEPA; it insisted that JPEPA does not treat Filipino nurses fairly, as it does not give them opportunity to perform nursing practices. This could downgrade the pride of Filipino nurses, who are of export quality, the statement comments.

Even with a bachelor’s degree earned from four years of higher education in the Philippines, proof of competence by virtue of having passed the Philippine Licensure Examination and three solid years of working experience, the Filipino nurse will go to Japan not to fully practice the nursing profession but to become a trainee. Under the JPEPA, the Filipino nurse must train under the supervision of a Japanese nurse for up to three years. If unable to pass the nursing licensure examination in Japanese, the Filipino nurse would have to be deported. (PNA 2007)

The PNA emphasizes in this statement that they were not satisfied with the condition that Filipino nurses in Japan will not be treated as a nurse until they pass the NBE, which the Japanese government conducts in Japanese. This results in the violation of the Filipino nurses’ right to practice nursing. Having been educated in English, Filipino nurses are proud of being highly competitive, adaptable, and in demand, especially in English-speaking countries. As the PNA proudly stated at the beginning of the position paper,

“Filipino nurses constitute the biggest foreign-educated nurses in the United States. There is also a growing number of nurses in Europe and in the Middle East. They are dubbed to be the best nurses in the world” (PNA 2007).

This statement indicates that Filipino nurses are flexible and can perform the competency if no language barrier exists. However, the working conditions of nurses in the United States, Europe, or even in the Middle East are remarkably different from those in Japan. In the United States and Europe, most doctors and patients can speak English; in the Middle East, doctors speak English and interpretation services are offered for those who need it (as mentioned by a Filipino nurse referred to in the next section of this article). This being the case, there is no language problem in these areas. On the contrary, in Japan, only a few doctors can speak English, let alone patients. In addition, English interpretation services in clinical settings are uncommon. Consequently, in order for health professionals to work in Japan, Japanese language proficiency is an unavoidable prerequisite. Without it, Filipino nurses will not be able to perform their profession in Japan, which they could have otherwise exercised elsewhere in the global labor market. This does not only degrade the Filipino nurses’ appreciation of their work in Japan but also forces them to reconcile with the low salary caused by the double-standard employment: as nurse candidates who are allowed to perform the tasks of a nurse assistant while receiving on-the-job training.

JPEPA guarantees that “candidates should receive the same wage as or a higher wage than that of Japanese staff who are engaged in the equivalent job” (Ministry of Health, Labor and Welfare 2008) in order to alleviate the potential gap between the salaries of Japanese and Filipinos if they perform the same job. However, the problem lies in that Filipino nurse candidates (and for that matter all EPA nurse candidates) cannot hold the same position as Japanese nurses until they pass the NBE; as a result, they receive lower wages. The estimated average annual income of a registered nurse in Japan is 4.78 million yen, while that of a nonlicensed assistant nurse is 2.9 million yen (Nenshu-Labo 2016).⁷ It may be assumed that nurse candidates (before passing the NBE) receive the same income as the latter. The primary reason

why Filipino nurses migrate is to support their families in the Philippines. In fact, in a survey conducted among nurse candidates on their reasons for going to Japan, all of them responded, “I wish to support my family financially” (Hirano, Ogawa, and Ohno 2012). The double-standard employment is disadvantageous to Filipino nurses on two levels: (a) they cannot perform their nursing competency, and (b) even if they could so, they cannot earn the same amount as Japanese nurses. This predicament seems to discourage Filipino nurses from working and studying to pass the NBE, earn more as a nurse, and stay in Japan longer if they wish.

As a consequence, such double-standard employment negatively affects not only the Filipino nurses who send remittances to their families, but also the government of the Philippines, which sends nurses as a bid to compete in the global care sector. This will be explained in the following section.

Reaction of Filipino Nurses

The double-standard employment under JPEPA does not allow Filipino nurses to realize their professional potential until they pass the NBE in Japanese. Generally speaking, Filipino nurses have less opportunities to learn Nihongo because of the limited number of language courses in the Philippine nursing curricula, which give more emphasis on nursing practicum than on general education, including language studies (Kawaguchi 2009). One can thus assume that most of the Filipino EPA nurses have no or little opportunities to learn Japanese in college. Thus, it is not too difficult to imagine how hard it could be for most of the Filipino EPA nurses to pass the NBE in a language they barely know. Intensive and extensive Japanese language training and a strong will to accomplish their goal are essential for them to pass the NBE.⁸ Nonetheless, are Filipino nurses informed of the fact that the examination they would take is conducted in Japanese and that they would have to pass it within the first three years after their entry to Japan?

A Filipino nurse from the first batch of EPA nurses in Japan told the author how alarmed she was when she heard that the national examination is conducted in Japanese.

I was so surprised to hear that I have to take the examination in Japanese. I have never studied Japanese before I came [to Japan], so how could I pass it? ... I thought Japanese doctors could speak English [so there is no need for us to speak Japanese]. (Ms. A)

It was only when she started her intensive Japanese language course in Japan that she learned that she would have to take the NBE in Nihongo. Before she entered Japan, she was optimistic that Japanese doctors could speak English and that English is used in clinical settings. She also mentioned that when she was in Saudi Arabia, doctors spoke English well, and in case she needed to communicate with non-English-speaking patients, the hospital provided an English-Arabic interpreter. She expected the same with Japanese hospitals, but having an English-Japanese interpreter is very rare in Japan.

The first batch of EPA nurses received the least orientation. The author of this noticed that the orientation given by the Philippine Overseas Employment Administration (POEA) to the first batch focused more on Japanese customs and culture, and very little on the working conditions in Japan and the job description of a nurse in the country (Hirano 2009). Encouraged by the Japanese ambassador to the Philippines who saw them as “diplomats who contribute to the friendship between the Republic of the Philippines and Japan,” the Filipino nurses must have felt proud of being chosen to represent their country. However, it seemed that given a limited time to prepare and dispatch the first batch of nurses to Japan, the POEA did not have enough time to discuss details with the Japan International Corporation of Welfare Services (JICWELS), Japan’s placement agency, and to completely orient the first batch of Filipino nurses about the preconditions for working in Japan—particularly the difference between a work permit and a license.

The weak point of the “government to government” (G-to-G) project, such as JPEPA, is that the officials in both sending and receiving countries

are constrained by other administrative responsibilities. In other words, they are committed foremost to the implementation of the agreement without deviating from its provisions once it is signed. If Filipino nurses were well informed about the requirement—to pass the NBE in a language they know little about—they might not have applied for the program in the first place or they could have withdrawn before departure, to the embarrassment of the Philippine government. Therefore, it is speculated that an unpleasant side of this program was not clearly explained by the Philippine government to the first batch of EPA nurses prior to their entry to Japan.⁹

One can assume that such situation was tragic for Filipino nurses, especially for the first few batches, who were not prepped for the “double-standard employment.” In a separate article, the author quoted a nurse from the second batch who was about to leave for Japan. Asked what she would be like in the next five years, she answered that she hoped to pass the NBE and become a chief nurse in Japan (Hirano, Ogawa, and Ohno 2010). Considering the low passing rate in the examination, for which she must have prepared hard in the following years in Japan, her future vision was clearly too optimistic.

Filipino nurses working in Japan have lesser opportunities to perform their nursing competencies. A Filipino nurse from the first batch shared how she felt when she was employed as a nurse candidate.¹⁰

I am a nurse in the Philippines, and I can perform an IV [intravenous injection]. I feel dejected when I see freshly licensed Japanese nurses giving IV to patients. I can do it better than they [the Japanese fresh nurses].... Unfortunately, we are not treated equally due to having not passed the national examination for nurses in Japanese, yet ... (Ms. B)

Ms B. evoked her struggles in not being treated as an equal of the Japanese nurses, just because she had yet to obtain a nursing license in Japan. As a nurse who had worked for more than five years prior to

participating in JPEPA, she felt useless by not being respected for her competency, which is praised in her home country. Competency, which values what a nurse can actually do in clinical settings, is stressed in recent health professional education, including nursing (The Lancet 2010).

For Filipino nurses, being treated as nurse candidates brings about not only a professional crisis but also financial one. Another Filipino nurse from the first batch described her situation as follows:

[Before we pass the examination] we are paid less [than the Japanese nurses]. I feel sorry that I can hardly send money to my family (in the Philippines) now.... I am considering moving to a different country to work, in order to earn more money. (Ms. C)

As mentioned earlier, the primary motivation of Filipino nurses in working abroad is usually to earn more and help support their family. If they fail to send enough financial support, then they would feel guilty. It appears from the narrative that some candidates who cannot manage to support their family may opt to terminate their contract in Japan and move to a different country. This will not only be disadvantageous to their career development as a nurse; it could also even affect the sustainability of the EPA system, which aims to train foreign nurses to work in Japan, so that they could obtain a license and continue working long-term in the country (Ministry of Health, Labor and Welfare 2016). In order to achieve this goal, the Japanese government demanded a budgetary appropriation of 380 million yen for the language education of EPA nurses and certified care workers for fiscal year 2016 (Ministry of Health, Labor and Welfare 2015). After all, the EPA program is a G-to-G project.

It is safe to suggest that the Filipino nurses' inclination to move to another country indicates that Japan has become a less attractive country as a work destination for Filipino nurses. Whether or not Filipino nurses are provided opportunities to exercise their professional knowledge and skills is a decisively important issue.

Reaction of the Hospitals Receiving EPA Candidates

The double-standard employment under JPEPA confuses not only Filipino nurses and their country but also Japanese hospitals and medical institutions receiving EPA nurses. That is because the receiving hospitals cannot count them as nurses until they pass the NBE, and satisfy the standard nurse per patient ratio.¹¹ In addition, receiving hospitals are required to render additional tasks to support the candidates’ learning in order for them to pass the examination. Supporting nurse candidates is not easy for the receiving hospitals. As a Japanese preceptor to Filipino nurses said,

[After taking a six-month Japanese language course,] nurses seem to understand what we say in simple Japanese. However, when the conversation becomes a little complicated, they start to get confused, so we have to say the same thing in simple Japanese. ... we are not Japanese language teachers, but we have to teach them Japanese language by spending extra hours aside from our hectic [nursing tasks]. (Ms. D)

This staff nurse confessed that it was difficult to support Filipino nurses as this meant “additional work” from her colleagues who already had hectic schedules. Such difficulty was largely attributed to the limited Japanese language proficiency of Filipino nurses, who were then given only a six-month Japanese language training after entering Japan.¹² Some receiving hospitals prepared a custom-made Japanese-English dictionary of technical terms and jargons used in clinical settings. To help the candidates prepare for the NBE, they developed monthly curricula for the Filipino nurses¹³ (Hirano 2009). Some hospitals employed one or more additional staff mostly retired nurses, to take the responsibility of training foreign nurses. The cost per head that hospitals have shouldered was 13.6 million yen (Tsubota et al. 2015), which includes salary, staff labor, variable expenses, and fixed costs. These hospitals need not shoulder these extra expenses if they hire Japanese licensed nurses who could fully exercise their professional skills upon employment. This situation with the EPA candidates, however, caused economic and psychological burdens to the persons concerned (Hirano and Tsubota 2016).

There were contrasting ways in which hospitals dealt with EPA nurses. One hospital bore the economic and psychological costs as an “investment,” so that the hospital can encourage nurse candidates to concentrate on their study. The other hospital, especially the director, was not pleased to accept foreign nurses and thus was less interested in supporting them.

The former case, hereafter referred to as “Hospital A,” announces the successful cases of foreign nurses who pass the NBE every year. According to a head nurse, the director was very proactive in providing tangible as well as emotional support to foreign nurses. For example, he bought copies of a review book of the NBE, which includes the exams from the past five years,¹⁴ gave each of the foreign nurses a copy, and asked them to solve thirty questions per day. He also asked for the cooperation and understanding of the head nurse and chief clerks of all the divisions in the hospital—including the pharmacy division and laboratories (Hirano 2010b). This would be later helpful to the foreign nurses, when they needed to ask questions on special fields, such as pharmacology or inspection sciences. Foreign nurses in Hospital A work as assistant nurses from 8:30 a.m. to 12:30 p.m., Monday to Friday, and were given four hours in the afternoon to study for the NBE, including two hours of tutorial conducted by the head nurse, staff nurses, or special instructors hired by the hospital. The time they were given to study was not long enough, compared to other hospitals.¹⁵ At any rate, the author of this article assumes that several factors helped the candidates pass the NBE. First, the hospital gave every candidate sufficient emotional and tangible support, which was truly appreciated. A Filipino nurse who passed the NBE in her second trial said that she studied very hard to reciprocate the generous assistance. Second, the hospital shouldered the cost of 2 million yen per foreign nurse, including tuition for special instructors, in addition to the scholarship program they offer to Japanese nursing students, which costs about 3-4 million yen per head. The hospital considers the cost an “investment,” which can be beneficial in return, if they pass the NBE.

In the latter case, hereafter referred to as “Hospital B,” nurse candidates worked full time from 8:30 a.m. to 5:30 p.m., and an hour was

given as a “study hour” after work. However, the director of the hospital did not agree to employ special instructors for Japanese language training. Through an in-depth interview with a head nurse of the hospital, a multifaceted bureaucratic construction of JPEPA in relation to the recruitment of Filipino nurses, has emerged.

Q. There is a government subsidy that hospitals can apply for by sending an application through JICWELS as you may know. Has this hospital applied for this subsidy?

A. No. Not yet. The director mentioned that there is no need to do so. He told us to leave them as they are, and that we do not need it.

Q. Why do you think he said such a thing?

A. I do not know. He never pays attention to the foreign nurses. It seems that he has no interest in them.

Q. Then why did he decide to accept EPA nurses?

A. Well, he said that the MHLW asked him to accept EPA nurses. He is a member of a committee in the MHLW, and owing to this connection, the MHLW asked him to do so.... He did not even ask our opinion about employing EPA nurses. All he said was, “I decided to employ EPA nurses.”... And all the tasks and responsibilities have fallen onto us [nurses]. The mass media report that EPA nurses are pitiful because they need to pass the NBE without sufficient Japanese language support [from receiving hospitals], but actually we [nurses] are also the victims!

(Ms. E, a head nurse for Filipino nurses in Hospital B)

The interview above refers to a subsidy offered by the MHLW in order to support hospitals in dealing with the candidates’ linguistic problems. It could be used either to hire Japanese language tutors or to pay for Japanese language courses. Starting in fiscal year 2010, the MHLW pays an annual subsidy of 295,000 yen for each hospital that accepts one or more nurse candidates, and 117,000 yen per candidate every year to cover their training expenses (Japan Times 2010). Hospital B had a total of seven foreign nurses at that time, including two Filipino nurses; thus, the subsidy they would receive

may at least reduce the economic burden of supporting the nurses. The head nurse asked the director of the hospital to apply for the government subsidy, so that they could support the foreign nurses more easily. They only had to submit an application form through JICWELS, with the permission of the director, to apply for the subsidy. However, no matter how hard the head nurse tried to persuade the hospital director, he did not pay any attention to her advice.¹⁶ A robust hierarchal system among the hospital staff—the director positioned at the top, and foreign nurses possibly lower than Japanese nurses—does exist in this hospital. In the system, the director has absolute power in decision making and hospital management. Without support from the director, Filipino nurse candidates in Hospital B, including Ms. F below, lost the motivation to study hard for the NBE and ended up returning home without obtaining a license. This makes an apparent contrast to their counterpart in Hospital A. Ms F. had compromised her profession; she would just work as a nurse candidate until her contract expires. To her, as long as she could earn a certain amount as a nurse candidate, that was better than nothing.¹⁷

We were not given any enough time, enough support [to pass the NBE]. At the beginning, I tried hard to study for the NBE, but without help from the hospital, I can hardly pass it. Finally I gave up becoming a registered nurse in Japan. I will work here—since it is better than earning nothing—until the termination of the contract, and go home to look for another job in another country. (Ms. F, a Filipino nurse from the first batch in Hospital B)

However, it is noted that the indifference of the director of Hospital B to the situation of foreign nurses, which resulted in the disappointment of the nurse candidates like Ms. F, can be interpreted as the director's silent resistance against the bureaucratic procedure of the MHLW in recruiting hospitals that accept foreign nurses for JPEPA.

In the initial stages of the implementation of the EPAs on foreign nurses, the MHLW had a hard time recruiting “volunteer” hospitals to receive foreign nurses. Many hospitals were hesitant to employ foreign nurses who

lack Japanese language proficiency, especially in a double-standard employment setting.¹⁸ Nurse candidates with little Japanese language proficiency could not work even as trainees without the help of Japanese nurses. Therefore, supporting candidates were in some cases a psychological burden for receiving hospitals (Hirano and Tsubota 2016). On another level, however, for some hospitals—especially privately owned ones such as Hospital B—the MHLW’s inquiry must have been felt as a pressure. The directors would have been only obliged to reply to the inquiry positively. Here, interestingly, one can observe another layer of hierarchy above the directors—the relationship between the MHLW and the hospitals.

It has been observed that several hospitals that employed EPA nurse candidates did not provide necessary training and support. In this picture, we must notice that there are many “victims.” The first are the foreign nurses, who received no attention from the directors. Second are the head nurses and the nursing staff, who ought to support foreign nurses but were not given institutional assistance—exemplified by the rejection of the requests, proposals, and suggestions—by a director, who holds absolute power in managing a hospital. Nonetheless, I argue that the hospital directors themselves are victims. They are affected by demanding bureaucrats who prioritize saving the face of the Japanese government before the officials of the sending countries; the bureaucrats preset a certain (or enough) number of hospitals that employ EPA nurse candidates at the time when many hospitals were skeptical about the feasibility of the EPAs (Ogawa et al. 2010).¹⁹ Insisting that the EPA’s MNP provisions, particularly those on nurses and certified care workers, were devised from inputs of the nurse-sending countries, the MHLW claims that it is only responsible for preparing enough number of job offers that match the number of jobs seekers as demanded by the nurse-sending countries. In this logic, once a labor contract between a nurse and a hospital is signed, the responsibilities to support the foreign nurse are handed over to the receiving hospitals. Though some foreign nurses are not diligent enough to pass the NBE, the MHLW insists that it is not responsible for such matters.

Conclusion: Toward a Successful JPEPA

The double-standard employment regulated by JPEPA guarantees Filipino nurses the right to be employed in Japan. However, as health professionals, Filipino nurses are not satisfied with mere employment by hospitals or medical institutions because there is no guarantee that they can “fully practice the nursing profession” (PNA 2007) until they pass the NBE. The double standard in employment resulted in the double standard in the nursing practice that they were allowed to do (Ms. B) or in the compensation they obtained through the practice (Ms. C). Both situations frustrated the Filipino nurses and their Japanese peers, for whom supporting a nurse candidate entailed additional work, as mentioned by a Japanese staff nurse, Ms. D. Accepting foreign nurses has depended on the philanthropic commitment of hospital staff who work hard as “volunteers.” Some job offerings are even merely “gestures” to please the bureaucrats, as mentioned by Ms. E.²⁰ One must notice that such gestures by a hospital may not translate to support for the foreign nurse candidates; in worse cases like Hospital B, they end up receiving no assistance at all. Such employment is likely to disappoint foreign nurse candidates; with no hope of passing, they are discouraged from studying the Japanese language and reviewing for the NBE, as in the case of Ms. F.

Even after the Japanese government extended the duration of the Japanese language training program,²¹ the system of double-standard employment persists because the overall framework of EPAs is governed by WTO regulations, which prioritize the liberalization of trade in services over the deregulation of services. In this framework, matters pertaining to migration are out of the scope of the EPAs, despite the fact that the agreement involves actual movement of persons. In view of such limitations, the terms under JPEPA regulating the migration of Filipino nurses to Japan are worth a genuine review. Otherwise, some hospitals may opt to employ foreign nurses merely as cheap labor, and such hospitals are likely to provide insufficient support for nurse candidates to save costs. It is safe to predict that such hospitals will recruit nurses who are not well motivated to pass the

NBE but willing to work merely as nurse assistants, and thus earn a lesser amount. A salary of 180,000 yen per month is still higher than Filipino nurses' earnings in the Philippines, anyway. But this is not the goal of JPEPA. As the MHLW proclaims, the program is intended to train foreign nurses to work in Japan by obtaining a licentiate in Japan.

Unlike other sections referring to trade commodities, the MNP section of JPEPA concerns human beings, which cannot be treated like commodities. The provisions on the movement of health professionals under the MNP section attracted the attention of the mass media and the general public in both Japan and the Philippines. That Japan opened its labor market was seen as epoch-making (although the MHLW has insisted that the section has nothing to do with the opening of the labor market but is merely a part of the trade agreement whose purpose is the promotion of free trade). The provision was even politicized, as manifested in the PNA statement. Nurses are not commodities. They are human beings—individuals who take pride in their profession. They wish to develop their own career, while being conscious of the responsibility to support their families financially. For both the sending and receiving countries to benefit from the program, it is suggested that we pay more attention to the human aspects thereof. If it is inevitable that the movement of nurses is included in the EPA for the enhancement of bilateral relations and trade, the program that implements its provisions must be so crafted that each nurse is treated as an individual citizen in terms of his/her value and socioeconomic situation (e.g., career path, family life, etc.) and not as economic goods

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Notes

- ¹ The English version of JPEPA can be accessed from the following website: <http://www.mofa.go.jp/region/asia-paci/philippine/epa0609/main.pdf>.
- ² GATS contains four modes under the MNP section. Mode 1 refers to cross-border supply, which covers a service supplied from the territory of one WTO member into the territory of another WTO member. Mode 2 refers to consumption abroad, which involves a service supplied in the territory of one WTO member to the service consumer of another WTO member. Mode 3 refers to commercial presence, which involves the flow of capital from one WTO member to another for the purpose of establishing a business to provide a service.
- ³ For the details, see Japan-Philippines Economic Partnership Agreement (JPEPA 2009). The document (PDF) is entitled, “The Agreement between Japan and the Republic of the Philippines for an Economic Partnership” but is also known as JPEPA.
- ⁴ For certified care workers, they are given only one chance to take the national examination within four years after their entry. This condition is according to the regulation of the Certified Social Worker and Certified Care Worker Law in Japan.
- ⁵ With 694,000 members, the JNA seems to be one of the strongest pressure groups influencing the Ministry of Health, Labour and Welfare (MHLW). The JNA insisted on the following four preconditions for foreign nurses: (1) to pass the NBE for nurses in Japanese language, (2) to obtain a proficient enough Japanese language ability to provide care safely, (3) to be employed under the same conditions as Japanese nurses, and (4) not to admit mutual recognition of license (Okaya 2005). These preconditions were all included by the MHLW in the JPEPA negotiation.
- ⁶ See JPEPA (2009), chapter 6. The document (PDF) is entitled, “The Agreement between Japan and the Republic of the Philippines for an Economic Partnership” but is also known as JPEPA.
- ⁷ According to the calculation by a Japanese think tank based on the Basic Survey on Wage Structure (*Chingin kouzou kihon toukei chousa*) of the MHLW.
- ⁸ This was proven by the higher passing rate of Vietnamese nurses in March 2016. The passing rate of the Vietnamese was 41 percent, while that of Filipinos was 11 percent. One of the crucial factors contributing to the passing rate, the author of this article assumes, is the precondition for entering Japan. Under the Japan-Vietnam Economic Partnership Agreement, obtaining an N3 level of Japanese Language Proficiency Test (JLPT) is a precondition for entry to Japan.
- ⁹ The author attended predeparture orientations from the first batch to the latest (eighth batch) in 2016 and found that the atmosphere of the orientation has changed drastically. JICWELS officers clearly explained the precondition for working in Japan as a nurse—namely, passing the national examination in the Japanese language. A JICWELS official told the author that the conduct of such orientation was demanded by the receiving hospitals. Some hospitals were disappointed with the attitude of some of the Filipino nurses who were not motivated to work and study hard to pass the examination. This fact is also reported in the author’s survey (Hirano et al. 2010).

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- ¹⁰ “Nurse candidate” is the term used for nurses who enter Japan under the EPA programs but have yet to pass the NBE.
- ¹¹ Medical service fee regulated by the Medical Care Act will be paid in accordance to a nurse per patient ratio of each hospital. The lower a nurse per patient ratio the hospital allocates, the higher the fee that the hospital receives.
- ¹² The first and second batches of Filipino nurses were given only a six-month Japanese language training period. Upon request from the Philippines, the Japanese government extended the length of the Japanese language training to two months (predeparture training) for the third batch. The six-month predeparture language training started from the fourth batch that entered Japan in 2012, in addition to the six-month postentry training.
- ¹³ This hospital also applied the same curricula for the training of a Filipino nurse who would be accepted the following year.
- ¹⁴ The NBE for nurses composed of 240 questions. For details, see Kawaguchi’s article in this special issue.
- ¹⁵ Some hospitals allocate almost all morning or afternoon for study hours (interviewed in November 2010).
- ¹⁷ Interviewed October 2010.
- ¹⁸ According to the author’s previous study, a nationwide survey on the acceptance of foreign nurses among hospitals in Japan, 61.7 percent answered that they were not or likely not to accept foreign nurse candidates under the EPA program (Kawaguchi et al. 2009).
- ¹⁹ A study by Ogawa et al. is based on a survey of hospitals and long-term care facilities that accepted the first batch of Indonesian nurses and certified care workers. The data introduced to this study were comments on the EPA system that are common to the Japan-Indonesia Economic Partnership Agreement and JPEPA.
- ²⁰ This was particularly true in the case of the hospitals that received foreign nurses at the initial stage of the implementation of the EPAs, when there was only limited support offered by the Japanese government. It has been eight years since Japan started receiving foreign nurses. Today, with better, though far from sufficient, support from the Japanese government, many hospitals are more proactively recruiting foreign nurses. Some hospitals recruit foreign nurses as part of a management strategy—that is, preparing for the global outreach of medical market, which the Prime Minister Abe’s cabinet is currently promoting under the “Japan Revitalization Strategy” (Prime Minister and His Cabinet 2013)
- ²¹ See note 11.

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