

ประกาศกระทรวงมหาดไทย

เรื่อง การยกเว้นข้อห้ามมิให้คนต่างด้าวเข้ามาในราชอาณาจักรเป็นการเฉพาะ
สำหรับคนต่างด้าวสัญชาติเวียดนาม ตามมติคณะรัฐมนตรี เมื่อวันที่ ๑๐ พฤศจิกายน พ.ศ. ๒๕๕๘

อาศัยอำนาจตามความในมาตรา ๕ แห่งพระราชบัญญัติคนเข้าเมือง พ.ศ. ๒๕๒๒ ซึ่งแก้ไขเพิ่มเติมโดยประกาศคณะรักษาความสงบแห่งชาติ ฉบับที่ ๘๗/๒๕๕๗ ลงวันที่ ๑๐ กรกฎาคม พุทธศักราช ๒๕๕๗ เรื่อง การแก้ไขเพิ่มเติมผู้รักษาการตามกฎหมายที่เกี่ยวข้องกับอำนาจหน้าที่ของเจ้าพนักงานตำรวจ และมาตรา ๑๗ แห่งพระราชบัญญัติคนเข้าเมือง พ.ศ. ๒๕๒๒ นายกรัฐมนตรีและรัฐมนตรีว่าการกระทรวงมหาดไทยโดยอนุมัติของคณะรัฐมนตรี เมื่อวันที่ ๑๐ พฤศจิกายน พ.ศ. ๒๕๕๘ ออกประกาศไว้ ดังต่อไปนี้

ข้อ ๑ คนต่างด้าว หมายถึง บุคคลสัญชาติเวียดนามที่ถือหนังสือเดินทางโดยได้รับการตรวจลงตราประเภทคนอยู่ชั่วคราวที่เข้ามาในราชอาณาจักรเพื่อทำงานภายใต้เงื่อนไขตามบันทึกความเข้าใจว่าด้วยความร่วมมือด้านแรงงานระหว่างรัฐบาลแห่งราชอาณาจักรไทยกับรัฐบาลแห่งสาธารณรัฐสังคมนิยมเวียดนามท้ายประกาศนี้

ข้อ ๒ มิให้นำบทบัญญัติตามมาตรา ๑๒ (๓) แห่งพระราชบัญญัติคนเข้าเมือง พ.ศ. ๒๕๒๒ มาใช้บังคับกับคนต่างด้าว ตามข้อ ๑

ข้อ ๓ ให้พนักงานเจ้าหน้าที่ตามกฎหมายว่าด้วยคนเข้าเมืองประทับตราอนุญาตให้คนต่างด้าวซึ่งถือหนังสือเดินทางเพื่อเข้ามาอยู่ในราชอาณาจักรเป็นเวลาไม่เกินสองปีในกรณีที่หนังสือเดินทางมีอายุใช้ได้น้อยกว่าสองปีให้ประทับตราอนุญาตให้อยู่ในราชอาณาจักรได้ไม่เกินอายุของหนังสือเดินทางนั้น

เมื่อคนต่างด้าวดังกล่าวอยู่ในราชอาณาจักรครบกำหนดระยะเวลาที่อนุญาตตามวรรคหนึ่งแล้ว หากประสงค์จะอยู่ในราชอาณาจักรต่อไปอีกเพื่อการทำงาน ให้มีสิทธิขออยู่ในราชอาณาจักรได้อีกแต่เมื่อนับรวมระยะเวลาตั้งแต่ประทับตราอนุญาตตามวรรคหนึ่งแล้วจะต้องไม่เกินสี่ปี

ข้อ ๔ คนต่างด้าวซึ่งได้รับอนุญาตให้อยู่ในราชอาณาจักรเป็นการชั่วคราวประสงค์จะเดินทางออกไปนอกราชอาณาจักร และเดินทางกลับเข้ามาอีกภายในระยะเวลาที่ได้รับอนุญาตให้อยู่ในราชอาณาจักรยังมีเหลืออยู่ ให้แจ้งต่อพนักงานเจ้าหน้าที่ตรวจคนเข้าเมืองก่อนเดินทางออกนอกราชอาณาจักร

ทั้งนี้ ตั้งแต่บัดนี้เป็นต้นไป

ประกาศ ณ วันที่ ๓๐ ธันวาคม พ.ศ. ๒๕๕๘

พลเอก ประยุทธ์ จันทร์โอชา

นายกรัฐมนตรี

พลเอก อนุพงษ์ เผ่าจินดา

รัฐมนตรีว่าการกระทรวงมหาดไทย

MEMORANDUM OF UNDERSTANDING
between
THE GOVERNMENT OF THE KINGDOM OF THAILAND
and
THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET
NAM
ON LABOUR COOPERATION

The Government of the Kingdom of Thailand represented by the Ministry of Labour and the Government of the Socialist Republic of Viet Nam represented by the Ministry of Labour, Invalids and Social Affairs (hereinafter referred to jointly as the "Parties" and individually as a "Party");

- Respecting the principle of equality and mutual benefits;
- Desiring to enhance the distinguished relations between the Parties and the Parties' interest in strengthening their economic growth and promoting and developing of cooperation between the Parties in the field of labour;
- Sharing a common aspiration to promote sound labour policies and practices, to improve the capacities and capabilities of both countries, to enhance skills of manpower, social security and to strengthen transparency and efficiency in the sending and receiving process of workers between the two countries;
- Have agreed as follows:

Article 1

For the purpose of implementation of this Memorandum of Understanding (hereinafter referred to as "MOU") the competent authorities shall be:

- a) Ministry of Labour on behalf of the Government of the Kingdom of Thailand;
- b) Ministry of Labour, Invalids and Social Affairs on behalf of the Socialist Republic of Viet Nam.



Article 2

The Parties shall work towards the encouragement of technical cooperation between the two countries in the field of labour, as follows:

- a) Exchange of systems, programs, studies, expertise, research, studies and information on areas including (but not limited to) comparative labour and employment law and administration (e.g. collective bargaining, compliance and enforcement, resolution of labour disputes, social security and labour protection, rehabilitation, freedom of association, occupational safety and health, maritime work, unemployment insurance and management of foreign workers) and enhancing labour productivity;
- b) Encouragement of the exchange of visits between the personnel in charge and experts;
- c) Exchange of information for prevention of illegal recruiting of manpower and human trafficking for employment;
- d) Any other areas of cooperation agreed upon by the Parties in the field of labour.

Article 3

The Parties shall cooperate on skill development in order to upgrade skill of manpower, and enhance labour productivity.

Article 4

The activities under Article 2 and Article 3 may be implemented through a variety of means, such as the exchange of best practices, information, manual and expertise; joint project, workshop and dialogue. The arrangement shall be agreed upon by the Parties subject to the national interests and available resources and on the case-by-case basis.

Article 5

The Parties shall make efforts to enhance transparency and efficiency of the sending and receiving process for the workers from one country who intend to work legally in another country.

In implementing this MOU, the Parties agree to conclude the "Agreement

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on the Employment of Workers", setting out the implementing details of the sending and receiving process.

The Parties shall decide on possible sectors and quota of workers to be recruited when possible.

Workers employed under this MOU have the right to fair treatment in the workplace subject to national laws, regulations, and policies of the receiving country.

Article 6

In order to support the implementation of this MOU and the Agreement related to the Employment of Workers set forth in Article 5, the competent authorities of the Parties may appoint officers to be the coordinators for each side.

Such officers, through the consultation with each side, may research, assist, coordinate, monitor and advise the sending and receiving process. The Parties shall facilitate the tasks of the officers.

Article 7

- a) The Parties shall work out and agree on the implementation work plans of this MOU.
- b) Each competent authority shall designate a national focal point at senior officials' level to facilitate communication between the Parties concerning this MOU.
- c) The competent authority of the Parties shall conduct meeting on the implementation of this MOU periodically for senior officials and once a year on rotation basis for ministerial level.
- d) Each Party shall be responsible for the travel, accommodation and subsistence costs of its delegations and personnel resulting from the implementation of this MOU, including for the meetings of the senior officials. The host Party shall facilitate the required local transportation for visiting delegations and for the logistical and secretarial costs pertaining to the meetings in the implementation of this MOU.

Article 8

Any difference arising out of the interpretation or implementation of



this MOU and its related Agreement shall be resolved amicably through consultation and/or negotiation between the Parties.

Article 9

- a) This MOU shall enter into effect on the date of the signature by the Parties.
- b) This MOU shall remain in effect for 5 (five) years and may be renewed upon mutual consent. However, this MOU may be suspended or terminated by either Party if there is any justifiable reason and the termination shall take effect sixty days following the date of written notice to the other Party.
- c) This MOU shall remain effective during its ongoing renewal process unless one of the Parties requests for its termination.
- d) Any amendment of this MOU may be made as agreed upon by the Parties through diplomatic channels.
- e) The termination of this MOU shall not affect the validity and duration of any ongoing action plan, projects, programmes until the completion of such projects, and programmes.

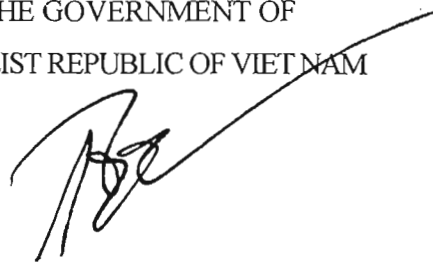
IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this MOU.

DONE in duplicate at Bangkok, Thailand on this 23rd day of July 2015, in the English language.

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM

General *Surasak Karnjanarat*

(Surasak Karnjanarat)
Minister of Labour



(Pham Thi Hai Chuyen)
Minister of Labour, Invalids and
Social Affairs

**AGREEMENT ON THE EMPLOYMENT OF WORKERS
BETWEEN
THE GOVERNMENT OF THE KINGDOM OF THAILAND
AND
THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM**

Pursuant to the Article 5 of the Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Socialist Republic of Viet Nam on Labour Cooperation, 2015; the Government of the Kingdom of Thailand represented by the Ministry of Labour and the Government of the Socialist Republic of Viet Nam represented by the Ministry of Labour, Invalids and Social Affairs (hereinafter referred to jointly as the "Parties" and individually as a "Party".)

Have reached the following understanding:

Article 1

Purpose

The purpose of this Agreement on the Employment of Workers (hereinafter referred to as the "Agreement") is to develop and expand cooperation between the Parties and establish a concrete framework for facilitation contractual employment of workers in the territory of the Parties in an efficient, transparent and cost effective manner.

In this regard, both Parties shall take necessary measures to ensure that:

- a. Proper procedures for employment of workers are followed;
- b. Procedures on repatriation of workers who have completed the terms and conditions of employment contract to their country of origin are effective;
- c. Workers are entitled to obtain legal protections and shall abide by laws of the other Party.

The Parties shall cooperate on the employment of workers in the construction and fishing sectors as a pilot project.

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Article 2

Definitions

For the purpose of this Agreement;

a. "Worker" means a citizen from either Party who is recruited by his/her Government agency (ies) to work in the territory of the other Party;

b. "Employer" means a business enterprise or a business owner that employs the workers from the sending Party pursuant to the relevant rules and laws of the receiving Party;

c. "Employee" means a worker from the sending Party who voluntarily enters the territory of the other Party for employment and agrees to work legally for an employer to earn wages in return under the definite term of employment contract;

d. "Sending Agency" refers to the Government Agency authorized by the competent authority and the agency (ies) approved by competent authority or by such authorized Government Agency to recruit and send the workers to work in the receiving country under this Agreement;

e. "Receiving Agency" refers to the Government Agency authorized by the competent authority and the agency (ies) approved by competent authority or by such authorized Government Agency to receive the workers from the sending agency to work in the receiving country under this Agreement.

Article 3

Competent Authorities

For the purpose of implementation of this Agreement, the competent authorities shall be:

a) Ministry of Labour on behalf of the Government of the Kingdom of Thailand;

b) Ministry of Labour, Invalids and Social Affairs on behalf of the Socialist Republic of Viet Nam.

Y. B. H.

Ch. H.

Article 4

Rights and Obligations of workers and employees

1. Workers who entered the territory of the receiving country for employment under this Agreement shall be entitled to the same fair treatments as enjoyed by local workers based on the basic principles of non-discrimination and equality, regardless of gender, ethnic and religious differences.

2. Workers who entered the territory of the receiving country for employment under this Agreement shall obtain protection, rights and benefits in accordance with the employment contracts, labour laws and regulations in force in the receiving country.

3. Employees can transfer their money and rightful property.

4. Employees shall abide by laws, rules and regulations; respect local customs, traditions of the receiving Party and shall not take part or interfere in political affairs or any other internal matters of the receiving Party.

5. Employees shall contribute to the funds, if any, in pursuant to the laws and regulations of both countries.

6. Employees shall pay taxes or others as required by the laws and regulations of both countries.

7. If the employment contract has been terminated before its due date resulted from the fault of the employee, he/she shall return to their country of origin on his/her own expense.

8. Employee is allowed to work only after they are granted the work permits by the competent authority of the receiving country and the employee shall work only for the permitted employer and in the permitted areas.

Article 5

Rights and Obligations of employers

The competent authority shall establish measures to ensure that;

1. Employers are responsible for applying for visa, work permit as well as complying with the laws of the receiving country concerning social security and workmen's compensation.

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2. In the event of an accident or serious illness or death of the employees during the term of employment contract, the employers shall notify the competent authority of the receiving country and the embassy of the sending country located in the receiving country. Such employers shall make all the procedures to claim insurance for the workers and arrange for the repatriation of the employee's remains and personal belongings to their country of origin in case of death.

3. For the reason of safety and health of foreign workers, employers shall arrange the proper accommodation for employees and employees should accommodate in the arranged premises.

4. If the employee's employment contract has been terminated before its due date and the termination is not from his/her fault, the government authority shall make effort to find the new employer for the duration remains in his/her work permit or the employer must be responsible for an economy class ticket for him/her to return to his/her country.

Article 6

Sending and Receiving Process

1. Recruitment of workers and their entry into the territory of the other Party for employment shall be regulated in accordance with relevant laws, rules and procedures of both Parties.

2. The sending agency shall have the transparent and efficient system for the registration of workers who are willing to be recruited to work abroad under this Agreement.

3. The receiving agency shall inform the sending agency of the name list of permitted employers who have indicated their intention to employ foreign workers, including the number of workers, qualification of workers required, condition of employment and offered remuneration.

4. The sending agency shall conduct the matching process between the permitted employers and the registered workers or facilitate the permitted employers on the workers selection process.

5. The sending agency shall inform the receiving agency of the name list of workers who pass the recruitment process and the medical checkup as agreed by the Parties. The selected workers shall be offered an employment contract before travelling to the receiving country.

Article 7

Employment Contract

1. The employment contract, approved by the competent authority of the receiving country, shall be concluded between the worker and the employer for the duration of 2 (two) years. The term of employment contract is extendable, if necessary, for another 2 (two) years. After completion of the term of employment, the worker shall return to their country of origin.

In the case of re-applying for employment in the receiving country, a worker needs to return to their country and a 30 (thirty) days break is required before re-applying for employment.

2. The sending agency shall provide the workers with a copy of the employment contract.

Article 8

Authentication

The employment contract and all other documents relating to the employment of workers shall be done in Thai, Vietnamese and English, and authenticated by the Embassy of the sending country located in the receiving country.

Article 9

Orientation and Preliminary Education of Workers

1. The competent authorities of the Parties shall provide their counterparts with the information on language, religion, living and working conditions in the receiving country including information on workers' rights, duties and benefits under the laws and regulations of the receiving country.

2. The competent authority of the sending country or the sending agency shall conduct a mandatory orientation for the workers concerning the information as prescribed in Paragraph 1 of Article 9 including contents of the employment contract or written offer of employment sent by the employers to the workers to ensure that workers have clear understanding of the terms and conditions of their employment.

Article 10

Visa, Work permit and Health services

The competent authorities shall coordinate with their authorities concerned to ensure that workers, who have been selected and duly permitted pursuant to the laws and regulations of the sending country, have fulfilled in pursuant of the laws and regulations of the receiving country, inter alia, the following requirements;

1. Visa;
2. Work permit;
3. Health insurance or health services as required.

Article 11

Return and Repatriation

1. The Parties shall extend their fullest cooperation to ensure that the employee who has completed their term of employment contract or whose employment contract has been terminated before its due date resulted from the fault of the employee shall return to their country of origin.

2. The competent authorities of both Parties shall be responsible for administrating the name list of employees permitted to work under this Agreement. The Competent Authorities shall keep the name list of employees who have returned to their country of origin at the end of their employment term for the purpose of reference and review.

3. The competent authority shall establish measures to ensure that the employers shall notify the competent authority of the receiving country the

name list of employees who have left their employment either by the completion of their employment term or any other reasons. The competent authority of the receiving country shall, in turn, provide such name list directly to the competent authority of the sending country.

Article 12

Dispute Settlement

Any dispute occurred between the employees and employers regarding the employment shall be settled in accordance with laws and regulations of the receiving country.

Article 13

Cooperation on Implementation

1. The Parties shall take all necessary measures, in their respective territory, to prevent and suppress illegal border crossing, human trafficking for employment and illegal employment of foreign workers.

2. The competent authorities of the Parties shall conduct a meeting on the implementation of the Agreement periodically for senior officials.

3. The competent authorities of the Parties through the coordinating officers shall work together to solve problems as well as to protect rights and benefits of workers in accordance with employment contract including laws and regulations of the receiving country.

Article 14

Amendment

1. Any changes of this Agreement shall be made by mutual consent through negotiation between both Parties.

2. The Parties may revise, amend or modify this Agreement by mutual consent through diplomatic channel.

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Article 15

Entry into force and Termination

1. This Agreement shall enter into force on the date of signature by the Parties.

2. This Agreement shall be effective for 2 (two) years, and may be renewed upon mutual consent and shall remain effective during its renewal process unless either Party requests to terminate its effectiveness.

3. Either Party may request to terminate this Agreement or suspend the implementation of this Agreement on any reasonable ground by presenting written notice to the other Party.

4. The termination shall take effect 60 (sixty) days after the date of presenting written notice to the other Party.

5. The termination of this Agreement shall not affect the validity and duration of any employment contract until the completion of such contract.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at Bangkok, Thailand on this 23rd day of July 2015, in the English language.

FOR THE GOVERNMENT OF
THE KINGDOM OF THAILAND

FOR THE GOVERNMENT OF
THE SOCIALIST REPUBLIC OF VIET NAM

General *Surasak Karnjanarat*

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