

THE GOVERNMENT
No: 105/2003/ND-CP

SOCIALIST REPUBLIC OF VIET NAM
Independence - Freedom - Happiness
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Ha Noi , Day 17 month 09 year 2003

**DECREE No. 105/2003/ND-CP OF SEPTEMBER 17, 2003
DETAILING AND GUIDING THE IMPLEMENTATION OF A NUMBER
OF ARTICLES OF THE LABOR CODE REGARDING THE
EMPLOYMENT AND MANAGEMENT OF FOREIGN LABORERS
WORKING IN VIETNAM**

THE GOVERNMENT

Pursuant to the December 25, 2001 Law on Organization of the Government;

Pursuant to the June 23, 1994 Labor Code and the April 2, 2002 Law Amending and Supplementing a Number of Articles of the Labor Code;

At the proposal of the Minister of Labor, War Invalids and Social Affairs,

DECREES:

Chapter I
GENERAL PROVISIONS

Article 1.- The following enterprises, agencies and organizations in Vietnam, which are prescribed in Article 132 of the Labor Code, established and operate under the Vietnamese law provisions, may employ foreign laborers:

1. Enterprises of all economic sectors, including all types of enterprises operating under the State Enterprise Law, the Enterprise Law or the Law on Foreign Investment in Vietnam.

2. Contractors (principal contractors, subcontractors), being Vietnamese or foreign economic organizations with legal person status.

3. Business and service organizations of State administrative agencies, people's armed forces, mass organizations, political organizations, socio-political organizations or social organizations.

4. Representative offices and branches of foreign companies; representative offices of economic, trading, financial, banking, insurance, scientific and technical, cultural, sport, education, medical' organizations.

5. The State's non-business units.

6. Medical, cultural, education, training and sport establishments.
7. Vietnam-based offices of foreign or international projects.
8. Branches of foreign lawyers' organizations, licensed to operate in Vietnam.
9. Cooperatives.

The above-said enterprises, agencies and organizations are collectively referred to as employers.

Article 2.- Foreign laborers working for the employers prescribed in Article 1 of this Decree are those who do not bear Vietnamese nationality under the Vietnamese Nationality Law.

Chapter II

EMPLOYMENT AND MANAGEMENT OF FOREIGN LABORERS WORKING IN VIETNAM

Article 3.-

1. The employers prescribed in Clause 1, Article 1 of this Decree may employ a number of foreign laborers accounting for no more than 3% of the existing number of laborers of their enterprises but not exceeding 50 and at least 1.
2. For the employers prescribed in Clauses 2, 3, 4, 5, 6, 7, 8 and 9, Article 1 of this Decree, the percentage of foreign laborers employed is not stipulated, but if wishing to employ foreign laborers, they must obtain the approval of the presidents of the provincial/municipal People's Committees.

Article 4.- Employers may employ foreign laborers who fully meet the following conditions:

1. Being aged 18 years or more.
2. Being physically fit to the working requirements.
3. Possessing high professional or technical qualifications (including engineers or people with equivalent degrees; craftsmen of traditional crafts), many

experiences in the profession, production administration, management or managerial jobs which Vietnamese laborers have not yet been able to perform.

4. Having no criminal records of the crime of infringement upon national security as provided for by Vietnamese laws; having no criminal records of other crimes; not being examined for penal liability, serving penalties or having criminal records not yet remitted under the Vietnamese and foreign laws.

5. Possessing work permits, for foreign laborers working in Vietnam for full 3 (three) months or longer, granted by competent Vietnamese State bodies, except for the cases requiring no work permits as prescribed in Clause 1, Article 6 of this Decree.

Article 5.- Dossiers and order for recruitment of foreign laborers

1. Job application dossiers: A foreign laborer shall submit 2 (two) dossier sets to the employer, one of which shall be managed by the employer and the other used by the employer for carrying out the procedures of application for a work permit. A dossier set comprises:

a/ The job application;

b/ The judicial history card, granted by a competent body in the country where the laborer resides. Where the laborer has resided in Vietnam for 6 (six) months or longer, apart from the judicial history card granted by a foreign competent body, there must be also a judicial history card granted by the Vietnamese provincial/municipal Justice Service of the locality where the foreign laborer is residing;

c/ The foreign laborer's resume, made according to a form set by the Ministry of Labor, War Invalids and Social Affairs, stuck with a photo;

d/ The health certificate granted in the foreign country. Where the foreign laborer is residing in Vietnam, the health certificate must be granted under the regulations of the Vietnamese Health Ministry;

e/ Copies of the foreign laborer's professional qualification and/or skill certificates, including the university, equivalent- or higher level diploma, or the skill certificate, granted by competent authorities according to the regulations of such foreign country.

For foreign laborers being craftsmen of traditional crafts or persons having experiences in the professions, production administration or management but

having no certificates thereof, there must be written remarks on their professional, skill and managerial qualifications, certified by competent authorities of the country of which such person bears the nationality;

f/ Three color photos (sized 3 cm x 4 cm, showing bare head, clear face and clear ears taken frontally, without glasses), taken within 1 (one) year.

The above-said papers prescribed in the dossiers, which are granted by foreign authorities or notarized or authenticated, must be consularly legalized under the Vietnamese law provisions and translated into Vietnamese. The translations and copies thereof must be notarized according to Vietnamese law provisions.

2. Procedures and order for recruitment of foreign laborers:

a/ For employers:

- Employers must publish in central or local newspapers for three consecutive issues their employment needs and fully notify the job requirements and benefits of laborers and employers in the process of recruitment and working and after the laborers give up their jobs.

- Employers must carry out the procedures of application for work permits for foreign laborers working in Vietnam under the provisions of this Decree, after the foreign laborers submit dossiers comprising all the papers prescribed by this Decree.

b/ For foreign laborers:

- Foreigners wishing to work in Vietnam must thoroughly study the Vietnamese law provisions supplied by the employers, and, concurrently, prepare all necessary papers in accordance with the provisions of this Decree.

- Foreigners wishing to work in Vietnam must submit job application dossiers as prescribed in Clause 1 of this Article to the employers.

- c/ After receiving the work permits, the laborers and their employers must enter into written labor contracts (with the exception of foreign laborers sent by the foreign sides to work in Vietnam). The employers shall have to send copies of the signed labor contracts to the agencies which have granted work permits to the foreign laborers. The contents of the jobs in the labor contracts must not be contrary to those inscribed in the granted work permits.

Article 6.- Granting of work permits

1. Foreign laborers working for enterprises, agencies or organizations in Vietnam must have work permits, excluding the following subjects:

- Foreign laborers entering Vietnam to work for less than 3 (three) months or to handle emergency cases (emergency cases are defined as complicated technical or technological incidents which affect or threaten to affect production or business activities and cannot be handled by Vietnamese experts or foreign experts currently working in Vietnam).

- Foreigners being Managing Board members, general directors, deputy general directors, directors or deputy directors of the enterprises which are set up under the Vietnamese law provisions and have the legal person status.

- Foreigners being chiefs of Vietnam-based representative offices or branches.

- Foreign lawyers granted permits by the Ministry of Justice for the practice of lawyer's profession in Vietnam according to law provisions.

2. The provincial/municipal Labor, War Invalids and Social Affairs Services shall grant work permits to foreign laborers according to a form set by the Ministry of Labor, War Invalids and Social Affairs.

3. A dossier of application for a work permit comprises:

- The employer's written request for a work permit, made according to a form set by the Ministry of Labor, War Invalids and Social Affairs.

- The foreign laborer's job application dossier (prescribed in Clause 1, Article 5 of this Decree).

4. Valid duration of work permits: The valid duration of a granted work permit shall coincide with the term of the labor contract (for the subjects which have entered into labor contracts) or be stated in the decision of the foreign side that sends the foreign laborer to work in Vietnam, but must not exceed 36 months.

5. For the subjects requiring no work permits as prescribed in Clause 1 of this Article, the employers shall have to report to the provincial/municipal Labor, War Invalids and Social Affairs Services of the localities (where the enterprises, agencies or organizations are headquartered) on the details of foreign laborers, including full names, nationalities, passport serial numbers, dates of job

commencement and completion, and job(s) to be done, at least 7 (seven) days before the concerned foreign laborers start to work.

For foreigners entering Vietnam to perform assorted contracts (other than labor contracts) between enterprises, agencies or organizations in Viet-nam and foreign enterprises, agencies or organizations, the enterprises, agencies and organizations in Vietnam shall make the reports as required for foreigners working for less than 3 (three) months for enterprises, agencies or organizations in Vietnam.

Article 7.- Extension of work permits

1. Work permits may be extended in cases where the employers have made plans to train and are training Vietnamese laborers to take over the jobs currently done by foreign laborers but these Vietnamese laborers are not yet able to substitute such foreign laborers. Work permits shall not be extended for foreign laborers who are punished for breaching labor disciplines under the provisions at Points b and c, Clause 1, Article 84 of the Labor Code, which have been amended and supplemented.

2. Dossiers of application for extension of work permits:

a/ The employers shall make applications for extension of work permits according to the regulations of the Ministry of Labor, War Invalids and Social Affairs, which must clearly state the reasons for not having trained Vietnamese laborers, full names of the Vietnamese laborers who have been trained and are being trained, training expenses, training duration, training places, in order to substitute foreign laborers.

b/ A copy of the labor contract or the foreign side's document appointing the foreigner to continue working in Vietnam (certified by the employer).

c/ The granted work permit.

3. Extensible duration of work permits

The extensible duration of a work permit shall depend on the duration for which the foreign laborer continues to work for the employer, which is determined in the labor contract or the foreign side's document appointing the foreigner to continue working in Vietnam but must not exceed 36 (thirty-six) months. For cases where the first-time extended duration has expired but substitute Vietnamese laborers have not yet been trained, the work permits shall be further extended if so approved by the presidents of the People's Committees of the provinces or

centrally-run cities where the enterprises, agencies or organizations are headquartered.

Article 8.- Work permits re-granted in case of loss or damage

1. Foreign laborers shall have to make applications for the re-granting of work permits, which clearly state the reasons for their loss or damage, and are certified by the employers, and send them to the provincial/municipal Labor, War Invalids and Social Affairs Services which have granted such work permits, enclosed with the damaged work permits.

2. Work permits re-granted to foreign laborers shall be exactly the same as the granted ones.

Article 9.- Work permits shall be invalidated in the following cases:

1. Work permits expire.
2. Labor contracts terminate ahead of time.
3. The jobs inscribed in the labor contracts are different from the ones proposed for the granting of work permits.
4. Work permits are revoked by competent State bodies for violations of Vietnamese laws.
5. Enterprises, agencies or organizations terminate their operation.
6. Foreign laborers are imprisoned, dead or missing under the court's declarations.

Article 10.- Use of work permits

1. Foreign laborers shall keep their granted work permits that remain valid. At least 3 (three) days before their work permits expire, the foreign laborers must hand over them to the employers. The employers shall have to receive such work permits and, within 7 (seven) days after receiving the work permits, hand them over to the agencies which have granted such work permits.

2. Foreign laborers must produce their work permits upon request of competent State bodies.

Chapter III

INSPECTION, COMMENDATION AND HANDLING OF VIOLATIONS

Article 11.- The ministries, the ministerial-level agencies, the Government-attached agencies and the People's Committees at all levels shall have to examine and inspect the implementation of the Labor Code and this Decree.

Article 12.- Enterprises, agencies, organizations and individuals that record achievements in the implementation of the Labor Code and this Decree shall be commended and/or rewarded according to Vietnamese law provisions.

Article 13.- Enterprises, agencies, organizations and individuals that commit acts of violating the provisions of the Labor Code and this Decree, and/or other relevant law provisions shall, depending on the nature and seriousness of their violations, be sanctioned administratively or examined for penal liability according to Vietnamese law provisions.

Article 14.- Foreign laborers currently working at enterprises, agencies or organizations in Vietnam, who have not yet been granted work permits, shall have to carry out the procedures of application therefor under the provisions in Article 6 of this Decree. Past 6 (six) months after this Decree becomes effective, any foreign laborers who have no work permits shall be proposed by the provincial/municipal Labor, War Invalids and Social Affairs Services to the Public Security Minister to issue decisions to expel them out of Vietnam according to law provisions.

Chapter IV

IMPLEMENTATION PROVISIONS

Article 15.- The Ministry of Labor, War Invalids and Social Affairs and the concerned ministries and branches shall, within the scope of their respective functions, tasks and powers, have to guide the implementation of this Decree.

Article 16.- The Ministry of Finance shall have to guide the rates of the fee for granting of work permits to foreign laborers, and the regime of collection, remittance, management and use thereof.

Article 17.- Responsibilities of the provincial/municipal Labor, War Invalids and Social Affairs Services:

1. To receive and archive dossiers of application for granting, extension, and re-granting of work permits.

2. Within 15 days after receiving the complete and valid dossiers of application for granting, extension or re-granting of work permits from the employers, the provincial/municipal Labor, War Invalids and Social Affairs Services shall have to grant, extend or re-grant work permits. In case of refusal to grant, extend or re-grant work permits, they shall have to issue written replies, clearly stating the reason(s) therefor.

3. To oversee, sum up and report on the situation of foreign laborers working in enterprises, agencies and/or organizations located in the localities under their management.

4. To examine and inspect the implementation of the Labor Code and this Decree.

5. To revoke expired work permits.

Article 18.- Responsibilities of the employers

1. To abide by the provisions of the labor legislation and other relevant law provisions of Vietnam.

2. To carry out procedures of application for granting, extension or re-granting of work permits to foreign laborers and pay the fee for granting of work permits according to the regulations of the Ministry of Finance.

3. To fully perform the labor contracts signed with foreign laborers.

4. To receive the expired work permits of foreign laborers and hand them over to the agencies which have granted them.

5. To manage the foreign laborers' job application dossiers, and concurrently supplement papers related to the foreign laborers.

6. To manage foreign laborers working in their enterprises, agencies or organizations.

7. To report on the situation of their employment of foreign laborers according to the regulations of the Ministry of Labor, War Invalids and Social Affairs.

Article 19.- This Decree takes implementation effect 15 days after its publication in the Official Gazette and replaces the Government's Decree No.

58/CP of October 3, 1996 and Decree No. 169/1999/ND-CP of December 3, 1999 regarding the granting of work permits to foreigners working in enterprises and organizations in Vietnam.

For foreign laborers who have been granted work permits which are still valid till the effective date of this Decree, such work permits shall remain valid and are not required to be changed for new ones.

Article 20.- The ministers, the heads of the ministerial-level agencies, the heads of the Government-attached agencies, and the presidents of the People's Committees of the provinces and centrally-run cities shall have to implement this Decree.

**On behalf of the Government
Prime Minister**

PHAN VAN KHAI
(This translation is for reference only)