



MWG  
Newsletter





**The situation  
of the management**



**and the laws and  
policies concerning  
migrant workers**

January-March  
2023

## The outstanding number of migrant workers in Thailand as of March 2023

	 Myanmar	 Cambodia	 Laos	 Vietnam	Total
<b>MoU</b>	332,444	123,942	107,995	142	<b>564,523</b>
<b>Border</b>	5,776	11,836	-	-	<b>17,612</b>
<b>Cabinet resolution</b>	1,543,355	274,287	92,301	2,088	<b>1,912,031</b>
<b>Total</b>	<b>1,881,575</b>	<b>410,065</b>	<b>200,296</b>	<b>2,230</b>	<b>2,494,166</b>

### ■ The 7 February 2023 cabinet resolution on

## Guidelines for the management of migrant workers' employment after 13 February 2023

Regarding the requirements for the renewal of work permits of migrant workers among persons permitted to work by virtue of various cabinet resolutions and they are required to extend their work permits and visas within 13 February 2023, it has been found that a number of workers have failed to meet the deadline since their countries of origin had failed

to issue them new passports or Certificate of Identity (CI) in time. Therefore, to ensure effective economic recovery and to prevent labour shortage in the country which has started to escalate, the Ministry of Labour has proposed to the cabinet which has since agreed on the recommendations on 7 February 2023.

According to the resolutions, the migrant workers who are required to renew their work permits and pay the fees within 13 February 2023 shall be temporarily allowed to stay in the Kingdom until 15 May 2023 to help them prepare proper documents and they could be allowed to continue staying and working in Thailand until 13 February 2024 or 13 February 2025 as the case may be. Pending their receiving the new work permits, the Department of Employment (DoE) will issue them some documents to prove that they have been permitted to work and it can be used in lieu of work permits including the documents acknowledging the receipt of work permit applications or the work permit registry documents as the case may be along with the receipts. The documents can be produced as proof to competent officials that they have been officially permitted to work.

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<b>Group</b>	<b>Timeline</b>	<b>Visa validity</b>
<b>Those yet to receive first visa stamp within 13 February 2023</b>	Apply for passport and visa, then renew visa within 15 May 2023	First visa stamp valid until 15 May 2023 Second visa stamp valid until 13 February 2024 (May apply for third visa stamp 120 days in advance)
<b>Those already acquired first visa stamp which expired before 13 February 2023</b>	Apply for passport and renew visa with in 15 May 2023	The second visa stamp obtained shall be valid until 13 February 2024 or 2025 depending on the date of the first visa stamp (within 1 August 2022 or after)
<b>Those already acquired visa valid until 13 February 2023, yet to apply second visa stamp or first visa stamp just expired before</b>	Apply for passport (if expired) and renew visa within 15 May 2023	Obtain visa stamp valid until 13 February 2024 or 2025 depending on the date of the first visa stamp (within 1 August 2022 or after)
<b>Dependents younger than 18 years</b>	Have to acquire visa stamp and apply for work permits within 60 days since 13 February 2023 or before turning 18 years of age	Obtain visa conditionally on the visa stamps of their parents

In addition, the cabinet has decided to extend the period for the application of the Certificate of Identity (CI) issued by the Myanmar authorities in four provinces including Samut Sakhon, Samut Prakan, Ranong and Chonburi to until 13 May 2023 to allow the migrant workers from Myanmar to have more time to acquire their personal documents in time and to prevent them from becoming undocumented.

After the migrant workers have applied for work permits pursuant to the cabinet resolution on 5 July 2022, detail of the migrant workers who have applied for work permits pursuant to the cabinet resolution on 5 July 2022 can be described as follows;

- **The number of migrant workers applying for work permits: 2,425,901**
- **The number of migrant workers having permits renewed: 1,857,254**
- **The number of migrant workers applying for work permits online: 1,773,394**
- **The number of migrant workers applying for work permits at local Employment Offices: 83,860**
- **The number of migrant workers not renewing work permits (becoming undocumented): 52025,647**

■ According to MWG's documentation,

## **The reasons many migrant workers have failed to apply for work permits as required by the cabinet resolutions can be attributed to;**

### **1 ] A lack of key information about work permit processing among the employers and the migrant workers**

There has been a lack of information and a lack of services to clarify, explain and help to address the problems during the application process. The Department of Employment (DoE) online offers a line support service to advise and address the problems during the attempt to renew the work permits. Still, it has failed to meet the demand and timely solve the problems encountered by the employers and the migrant workers. There were too small personnel to be in charge of the line support and they failed to give the effectively answers or to address the problems of the employers and the workers who had approached them. As a result, when they made an inquiry or sought for help, they often received no response or were only advised to contact a local Employment Office.

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### **2 ] The documents submitted to renew work permits contain incorrect information**

After filing documents to renew work permits online, the employers and the migrant workers have receive replied from the Department of Employment (DoE) that their documents contained incorrect information and they could rectify the problems causing the processing to stall. For example, the documents could contain incorrect titles, too small photos, tilted photos, which would be rejected and the procedure would stall instead of proceeding to receiving the visa stamp or to get registered in the non-Thai registry, etc.

## **3 ] Data of many migrant workers yet to be stored online**

Many migrant workers found their information was yet to be stored online by the Department of Employment (DoE) even though they have previously applied for work permits or have applied for change of employer online already. But when they attempted to renew their work permits, they have found no such information was there. As a result, they have to ask the local Employment Office to help change the online information for them. Nonetheless, during the processing of work permit renewal, the Department of Employment (DoE) has shut down its work permit renewal database. Therefore, even some migrant workers have contacted the Employment Office to request for change of the information, it was not possible to do so since the system was shut down and the local Employment Office was not able to make change or add new information to the system. This made it impossible for them to renew their work permits in time making many of them become undocumented since they could not renew their work permits in time. In addition, after filing the application to renew work permits online and while awaiting the approval, the migrant workers, particularly those from Myanmar were required to apply for the Certificate of Identity (CI) at the Counter Services and the Myanmar authorities. Many migrant workers, however, could not find their data in the online system and could not apply for CI in time. Even though the deadline has been extended, but if they could not reserve an online queue, it would not be possible for them to apply for passports within 15 May 2023. This will make them vulnerable to become undocumented.



## **4 ] The application for work permits has to be done only through a computer device**

For the renewal of work permits this time, the Department of Employment (DoE) has designed the system to only accept applications filed online and filed through a computer device. The system cannot accept the filing via mobile devices. As a result, many employers of small-scale businesses could not file the online applications by themselves. Even though they have approached the local Employment Office for help, but the officers might not be able to offer such help in all cases. And they would be advised to seek help from the brokers which would cost them more. And in various instances, the brokers have failed to apply for work permits within the deadline making it not possible to renew the work permits.

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## **5 ] The complicated and onerous registration process**

Even though the filing of work permit application can be done online, other steps have to be made at a government office like before. The retarded approval of work permit renewal has slowed down the other steps in the system. Yet, there have been problems concerning the biometrics system making it not possible for the workers benefiting from the 5 July 2022 cabinet resolution to reserve an online queue to renew their registration. The migrant workers in Bangkok who are not registered with the social security system cannot reserve an online queue to undergo health checkup and to buy health insurance. As a result, they do not have health documents which have to be attached to the applications to renew their work permits online and are not able to renew their work permits within the deadline. They also cannot secure an online queue to acquire visa stamps, to apply for non-Thai ID cards (pink cards), particularly those based in Bangkok and areas with the predominant employment of migrant workers.



In addition, there have been problems concerning the issuance of passports for the migrant workers within the deadline, even though it has been extended to until 15 May 2023. It has been found no queues are available to for the migrant workers from Myanmar to apply for CI until June 2023. As a result, the migrant workers will certainly not be able to apply for their passports and to acquire visa stamps within the deadline set out in the cabinet resolution. In addition, there have been problems regarding the application for passports for migrant workers from Laos and Cambodia who are required to return to apply for passports in their countries of origin although they have to first obtain CI

issued by the local embassies. And after returning to apply for their passports already, when they travel back to Thailand, they would receive a tourist visa stamp (PP30) at the border checkpoint. Such visas do not meet the requirements set out in the concerned cabinet resolutions which require that the visa stamps must have expired before the issuance of the cabinet resolutions. As a result, with the tourist visas, the returning migrant workers are not allowed to use their passports to obtain the kind of visa stamps at a local Immigration Office as required by the cabinet resolutions. It makes it possible for them to not meet the requirements in time and become undocumented.

## **The Regulation of the Department of Labor Welfare and Protection concerning labour inspection and criminalization of offenders pursuant to the Ministerial Regulation on Labour Protection in Sea. Fishing Work B.E. 2565, B.E. 2566**

The Department of Labor Welfare and Protection has issued a regulation to set out guidelines for labour inspection and criminalization of offenders pursuant to the Ministerial Regulation on Labour Protection in Sea. The Regulation will come into force on 26 April 2023 (thirty days after its publication in the Government Gazette). The Regulation sets out key guidelines on various issues including authorizing the labour inspector to promptly carry out an investigation and to

take legal action upon receiving the complaint or if it appears to the labour inspector that an offence has been committed against the Ministerial Regulation, authorizing the multidisciplinary team to coordinate when an offence has been on labour trafficking, forced labour, or the use of child labour to proceed to implement the national referral mechanism and the protection of trafficking survivors. And in case of repeated offence by the employers within two years even though they are not the same offences, the labour inspector is authorized to propose to the superior official to settle the case without having to wait for prior instructions.

For an offence of labour trafficking, forced labour, the use of child labour, document retention, wage deduction to service debt, and failure to make payment via bank account, the labour inspector is authorized to report the cases to the inquiry official immediately and to fix the period of time to settle the case. The labour inspector is required to compile facts and evidence and propose it to their superior official within five days since the day the offence has been identified and to issue an order to force the offender to pay a fine within 30 days since the day the order is issued.

In addition, the legal officer or the labour inspector is required to compile information and evidence to submit to their superior official within five working days and the superior official is required to complete the review of the filing within two days to allow the legal officer or the labour inspector to report the case to the inquiry officer within two working days. If the inquiry official finds the suspect has committed the offence and agrees to pay a fine, they can propose to the competent official to have the fine paid within seven days and the legal officer or the labour inspector can propose it to the competent official within two days.

The new regulation has given more clarity to the labour inspection in fishing sector and labour protection and it has clearly set out duties and durations for the implementation in compliance with the recommendations made by the MWG and proposed to the Ministry of Labour, particularly regarding the vulnerabilities of the use of forced labour in various manners with clearer guidelines and durations. This will help to enhance labour protection and the operation of labour inspector and civil society which offer help to the migrant workers in fishing sector.

## ■ Guidelines for the implementation and interpretation on **Document retention of migrant workers under an offence of forced labour and an offence against the Royal Ordinance Concerning Management of Employment of Foreign Workers**

ON 19 December 2022, The Guardian reported news about a garment factory in Mae Sot District, Tak, and noted that given the previous use of labour and labour dispute, it could be tantamount to the use of forced labour or not. There are two key issues on this case concerning the use of forced labour including document retention and using debt burden as an obligation. Even though initially, the authorities and the multidisciplinary team determined that the case did not constitute the use of forced labour, it has made an observation and raised concern about document retention.

Given the offence of forced labour under Section 6/1 of the Emergency Decree Amending the Anti-Human Trafficking Act B.E. 2551, B.E. 2562 (2019) which states that any person who compels another person to work or to provide services by one of the following means:

- (1) threatening to cause injury to life, body, liberty, reputation or property of the person threatened or any other person;
- (2) intimidating;
- (3) using force
- (4) confiscating identification documents;
- (5) using debt burden incurred by such person or any other person as the unlawful obligation
- (6) using any other means similar to the above acts.



Given the above information, the case may constitute the use of forced labour. The Migrant Working Group (MWG) has found the practical problems regarding the interpretation of Section 6/1 (4) concerning the withholding of personal documents of the migrant workers in various contexts. For example, the case of an employer who retains/withholds personal documents of the worker claiming the worker has signed a document to authorize the employer keep the documents for them although the worker is not given a chance to prove if they have actually signed the document voluntarily or not. In addition, there have been cases of workers who have complained about the retention of their personal documents with the Employment Office, but the Employment Office would rather seek to resolve it through mediation by summoning and negotiating to convince the employer to return to the workers the documents without taking legal action against the employer who has violated the law. When the worker complained with the Office of Labor Welfare and Protection, the labour inspector would refuse to accept the complaint

claiming the matter belongs to the Department of Employment (DoE)'s criminal case division, and is not the violation of labour rights under the Labour Protection Act which would authorize the labour inspector of the Office of Labor Welfare and Protection to review and make decision on the case. They do not even consider such case could constitute an offence of forced labour under Section 6/1 (4). As a result, the migrant worker whose documents have been withheld from them shall receive no protection under Section 6/1 of the Emergency Decree Amending the Anti-Human Trafficking Act B.E. 2551, B.E. 2562 (2019) since the official does not realize and does not treat the retention of personal documents as an offence of forced labour.

In similar vein, the retention of personal documents and work permits of migrant workers is an offence against Section 131 of the Royal Ordinance Concerning Management of Employment of Foreign Workers B.E. 2560 and its amendment in B.E. 2561 since it could be related to the commission of the offence of forced labour.

But it has often been found that when the migrant worker files the complaint, the employer often invokes Section 131/2 which states that “In the case where a foreigner agrees to have any person kept the work permit or document under paragraph one, such person must agree and facilitate the foreigner to access such document at all times as requested by the foreigner and in the case of violation, he or she shall be liable to the same penalty as the offence under paragraph one". The employer would then return the documents to the migrant workers upon the filing of complaint with the authorities. In such case, the employment official would rather interpret that since the employer has returned the documents, it would not constitute document retention even though practically, the employer had refused or prevented the migrant worker from having access to the documents promptly upon the request. And since the authorities tend to interpret the case in this manner, the document retention according to Section 6/1 of the Emergency Decree Amending the Anti-Human Trafficking Act B.E. 2551,

B.E.2562 (2019) has also been dismissed by them as well.

To ensure clarity as to the guidelines on the review of the document retention of the migrant workers according to the Royal Ordinance Concerning Management of Employment of Foreign Workers and an offence of forced labour under the Anti-Human Trafficking Act, the Migrant Working Group (MWG) has submitted letters to seek a consultation with concerned authorities including the Office of Council of State, the Department of Employment (DoE), the Ministry of Labour, the Royal Thai Police, the Ministry of Social Development and Human Security, Office of Attorney General, and the Office of the Prime Minister to review the interpretation and guidelines concerning the offence of forced labour related to document retention and document retention of the migrant workers according to relevant laws. This should ensure clarity for the implementation on the screening, assistance, protection and legal action further on.

