

CIRCULAR No. 08/2000/TT-BLDTBXH OF MARCH 29, 2000 GUIDING THE GRANTING OF WORK PERMITS TO FOREIGNERS WORKING AT ENTERPRISES AND ORGANIZATIONS IN VIETNAM

Pursuant to the Government' s Decree No. 58/CP of October 3, 1996 on the granting of work permits to foreigners working at enterprises and organizations in Vietnam and the Government' s Decree No. 169/1999/ND-CP of December 3, 1999 amending and supplementing a number of articles of the Government' s Decree No. 58/CP of October 3, 1996 on the granting of work permits to foreigners working at enterprises and organizations in Vietnam; After consulting the concerned ministries and branches, the Ministry of Labor, War Invalids and Social Affairs hereby guides the granting of work permits to foreigners working at enterprises and organizations in Vietnam as follows:

1. SUBJECTS OF APPLICATION

Subjects to be granted work permits are foreigners and overseas Vietnamese (hereinafter collectively referred to as foreign laborers) working for the following enterprises and organizations in Vietnam (collectively referred to as employers):

1. State enterprises;

2. Foreign-invested enterprises;

a/ Enterprises with 100% of foreign capital;

b/ Enterprises in joint venture with foreign parties;

c/ Parties to business cooperation contracts (in this case Vietnamese enterprises shall have to carry out the application procedures for the granting of work permits to their foreign laborers);

d/ BOT enterprises (performing build-operate-transfer contracts), BTO enterprises (performing build-transfer-operate contracts) and BT enterprises (performing build-transfer contracts).

3. Enterprises inside export-processing zones and industrial parks;

4. Enterprises of other economic sectors (including private production and business establishments and individual business households which have made business registration and are permitted by the People' s Committees of the provinces and centrally-run cities to recruit foreign laborers);

5. Public service establishments operating under the economic cost-profit accounting regime;

6. Business and/or service organizations of the administrative State agencies, the armed forces, mass organizations and other socio-political organizations;

7. Contractors (principal contractors and subcontractors) that are Vietnamese or foreign contracting economic organizations having the legal person status. In case of bidding for selection of consultants, contractors may be individuals;

8. Health, cultural, sport, educational and training establishments;

9. Representative offices of foreign companies, branches of foreign companies, representative offices of economic, trading, financial, banking, insurance, scientific-technical, cultural, educational, health and legal consultancy organizations;

10. Joint-venture banks involving foreign parties, branches of joint-venture banks involving foreign parties, including branches of foreign banks and joint-venture credit institutions and credit institutions with 100% of foreign capital operating in Vietnam; joint-venture insurance companies or joint-venture insurance brokerage companies, branches of foreign law organizations licensed to operate in Vietnam;

11. Cooperatives.

In the above-mentioned enterprises and organizations (from Point 1 through Point 11) the following subjects shall not need work permits:

- Foreigners hired by employers to solve problems in emergency cases (i.e. complicated technical or technological incidents and/or situations occurring and affecting or threatening to affect production and business activities, which cannot be dealt with by Vietnamese specialists and foreign specialists currently working in Vietnam); if the time for solving problems in emergency cases lasts for six months or longer, within the first two months' working in Vietnam, the hired foreigners shall still have to carry out the procedures applying for work permits under the provisions of this Circular;

- Foreigners who are members of the managing boards, general directors, deputy general directors, directors, deputy directors of foreign-invested enterprises;

- Foreigners who are heads of representative offices and branches.

II. PROCEDURES FOR GRANTING OF WORK PERMITS, EXTENSION OF WORK PERMITS AND RE-GRANTING OF WORK PERMITS

1. Granting of work permits

a/ Work-permit application dossiers:

The employers must send 01 (one) set of the dossier to the State agencies authorized by the Ministry of Labor, War Invalids and Social Affairs (under the provisions in Section IV of this Circular) to apply work permits for their foreign laborers. Such a dossier consists of:

- Documents of the employer, including:

+ The application for work permits to foreigners;

+ A copy of the business registration certificate, the establishment and operation license or the permit for the setting up of the branch or representative office in Vietnam, granted by the competent Vietnamese authorities, which is notarized by a notary public of the Vietnamese State;

+ The competent agency' s document permitting the recruitment of foreigners under Clause 1, Article 7 of the Government' s Decree No. 58/CP of October 3, 1996;

+ A copy of the definite-term labor contract signed with the employer and certified by such employer or the foreign party' s decision to send the foreign laborer to work in Vietnam (for cases where the foreigner is currently residing in Vietnam); or the employer' s document on the plan to sign the labor contract or the foreign party' s plan to send the foreign laborer to work in Vietnam.

- Documents of the foreign laborer, including:

+ The application for a permit to work in Vietnam.

+ The judicial record granted by the provincial/municipal Justice Service of the Vietnamese locality where the foreigner is currently residing.

In cases where the foreigner is residing in a foreign country, his/her judicial record is the one granted by the competent authorities of such foreign country.

+ A copy of the foreigner's certificate of his/her professional qualification, which may be the diploma of university, equivalent or higher degree or the certificate of the professional skill, issued by the competent authorities according to the regulations of the foreigner's country.

For foreign laborers who are artisans in traditional crafts and occupations or who have much experience in their job, production administration and management but have no certificates thereof, they must make written self-evaluations of their professional degree, skills or managerial degree, which are certified by the competent authorities of the country(ies) where they are citizens.

+ The health certificate issued by the Vietnamese provincial or higher-level hospital or by a hospital or health establishment equivalent to the provincial-level hospital. If the health certificate is issued in a foreign country, it must comply with the regulations of such country.

A health certificate is valid for 6 (six) months from the date of its issuance to the date the competent State agency receives the work permit application dossier.

+ The curricula vitae affixed with a 3 cm x 4 cm color photo of the foreigner.

+ Three 3 cm x 4 cm color photos showing the foreigner's bare head, taken frontally, clear face and two ears, without glasses. Such photo must be taken within one year before the date of receipt of the work permit application dossier.

The foreign-language judicial records, health certificates, curricula vitae, copies of the certificates of the professional qualification and skill, written self-evaluations of the professional qualification, skill and managerial qualification must be translated into Vietnamese. The Vietnamese translations must be legalized by a consulate or notarized by a notary public of the Vietnamese State.

b/ Granting of work permits:

- Work permits are granted according to the terms of the labor contracts already entered into or expected to be entered into, or according to the foreign party's decisions to send the foreign laborers to work in Vietnam. The term of a labor contract during which a work permit is granted is the labor contract's definite term of between one and three years, or seasonal or piece-work labor contract's term of under one year.

- Within 15 (fifteen) days after receiving the complete and valid work permit application dossiers, the agencies authorized by the Ministry of Labor, War Invalids and Social Affairs must grant work permits to the foreigners. In case of non-granting of a work permit, they must issue a written reply clearly stating the reason therefor.

2. Extension of work permits

a/ Work-permit extension application dossiers: Within thirty days before the expiry of the labor contract, the employer must send 01 (one) set of the work-permit extension application dossier to the agency authorized by the Ministry of Labor, War Invalids and Social Affairs to apply for extension of the foreigner's work permit. Such set of dossier consists of:

- The employer's work-permit extension application which must clearly state the reason for failure to train Vietnamese personnel to substitute the foreigner; the full name of the Vietnamese who has been trained or is under training to substitute the foreign laborer, the training expense, duration and place.

- The copy of the extended labor contract, which must be certified and stamped by the employer.
- The granted work permit.

b/ Extension of work permits:

- Each granted work permit shall be extended only once. The extension duration of a work permit shall correspond to the extension duration of the labor contract already entered into.

For example: Mr. A enters into a three-year labor contract with Company X and is granted a work permit with a term of three years. Due to work requirements, Mr. A and Company X agree to extend the labor contract for another three years, Mr. A's work permit shall be extended for another three-year term.

- Within 15 (fifteen) days after receiving the complete and valid dossiers, the agencies authorized by the Ministry of Labor, War Invalids and Social Affairs must extend the work permits. In case of non-extension, they must issue a written reply clearly stating the reason therefor. No extension shall be granted to those persons who gravely violate the Vietnamese labor legislation.

3. Re-granting of work permits in cases of loss or damage

a/ Work permit re-granting application dossiers: In cases where a work permit is lost or damaged, the foreign laborer must make an application for re-granting of the work permit, with his/her employer's certification and proposal, and send it to the work-permit granting agency.

b/ Re-granting of work permits: Within 15 days after receiving the complete and valid work permit re-granting application dossiers, the competent agencies (the agencies that have issued the lost or damaged work permits) shall consider and re-grant the work permits to the foreign laborers. In cases of non-re-granting of a work permit, they must issue a written reply clearly stating the reason therefor.

III. WORK PERMITS

1. Work permits are granted according to the form set by the Ministry of Labor, War Invalids and Social Affairs in Decision No. 311/2000/QĐ-LĐTBXH of March 29, 2000 of the Minister of Labor, War Invalids and Social Affairs on the issuance of the work permit form, the printing, circulation and management of work permits granted to foreigners working at enterprises and organizations in Vietnam.

2. Work permits must be fully inscribed with the details defined in the set form.

3. A work permit shall cease to be effective in the following cases:

a/ Its term expires;

b/ The labor contract terminates ahead of time;

c/ It is withdrawn by a competent State agency for violation of Vietnamese laws;

d/ The employing enterprise or organization terminates its operation due to dissolution, bankruptcy, withdrawal of its business license by the competent State authorities, expiry of the business license, or withdrawal of business license by the enterprise owner;

e/ The labor cooperation agreement or the investment contract is no longer effective.

4. Foreign laborers must keep the work permits throughout their working duration determined therein. Within 15 (fifteen) days after the expiry of their work permits the foreign laborers must submit them to their employers for returning them to the work permit-granting agencies.

IV. AUTHORIZATION OF THE GRANTING OF WORK PERMITS TO FOREIGN LABORERS

1. The Ministry of Labor, War Invalids and Social Affairs shall authorize the Labor, War Invalids and Social Affairs Services of the provinces and centrally-run cities to grant, extend and re-grant work permits to foreign laborers working in the provinces and centrally-run cities (excluding enterprises and organizations under the management of the provincial-level boards of management of industrial parks) in strict compliance with the provisions of law as from July 1st, 2000.

2. The Ministry of Labor, War Invalids and Social Affairs shall authorize the provincial-level boards of management of industrial parks (including the industrial park management boards directly attached to the Vietnam Industrial Park Management Board) to grant, extend and re-grant work permits to foreign laborers working at enterprises and organizations under their respective management in strict compliance with the provisions of law as from July 1st, 2000.

3. Cancellation of authorization. Where an agency authorized by the Ministry of Labor, War Invalids and Social Affairs to grant, extend and re-grant work permits fails to strictly comply with the regulations on the granting of work permits to foreign laborers working at enterprises and organizations in Vietnam, the Ministry of Labor, War Invalids and Social Affairs shall cancel such authorization.

V. ORGANIZATION OF IMPLEMENTATION

1. The employers shall have to:

a/ Strictly observe the provisions of this Circular.

b/ Report on the situation on the employment of foreign laborers who have been working in Vietnam by June 30, 2000 to the provincial/municipal Labor, War Invalids and Social Affairs Services or industrial parks management boards of the localities where they have their head offices, before July 15, 2000.

c/ Report on the situation on the employment of foreign laborers to the provincial/municipal Labor, War Invalids and Social Affairs Services or industrial parks management boards (of the localities where they have their head offices) before July 15 for the first biannual report and before January 15 of the subsequent year for the annual report.

2. The provincial/municipal Labor, War Invalids and Social Affairs Services and industrial parks management boards shall have to:

a/ Receive and archive work permit application dossiers, work permit extension application dossiers and work permit re-granting application dossiers;

b/ Grant, extend and re-grant work permits to foreign laborers;

c/ Oversee and inspect the situation on the use of work permits at enterprises and organizations where work permits are granted.

d/ Receive and sum up reports on the situation on the employment of foreign laborers from the employers under their management;

e/ Urge, inspect and sum up the situation on the employment of foreign laborers by June 30, 2000 for reporting it to the Ministry of Labor, War Invalids and Social Affairs before July 31, 2000;

f/ Make sump-up reports on the situation on the employment of foreign laborers to the Ministry of Labor, War Invalids and Social Affairs before July 31 for the first biannual report and before January 31 of the subsequent year for the annual report.

3. The foreign laborers who have been granted work permits under the Labor, War Invalids and Social Affairs Ministry' s Circular No. 09/LDTBXH of March 18, 1997, which remain effective, may continue using such work permits till their expiry. Upon the expiry of such a work permit, if a foreign laborer wishes to apply for extension thereof, the work permit will be extended for a duration corresponding to the extended duration of the labor contract already entered into and such extension will be effected at the agencies authorized by the Ministry of Labor, War Invalids and Social Affairs. For lost or damaged work permits which were previously granted by the Ministry of Labor, War Invalids and Social Affairs, the re-granting of such work permits will be also effected at the agencies authorized by the Ministry of Labor, War Invalids and Social Affairs.

4. This Circular takes effect 15 days after its signing and replaces the Labor, War Invalids and Social Affairs Ministry' s Circular No. 09/LDTBXH of March 18, 1997 guiding the granting of work permits to foreigners working at enterprises and organizations in Vietnam.

In the course of implementation of this Circular, any arising problems should be promptly reported to the Ministry of Labor, War Invalids and Social Affairs for study and settlement.

For the Minister of Labor, War Invalids and Social Affairs
Vice Minister
LE DUY DONG