

DECREE No.58-CP OF OCTOBER 3, 1996 OF THE GOVERNMENT ON THE GRANTING OF PERMITS TO FOREIGNERS WORKING AT ENTERPRISES AND ORGANIZATIONS IN VIETNAM

THE GOVERNMENT

Pursuant to the Law on Organization of the Government of September 30, 1992;

Pursuant to the Labor Code of June 23, 1994;

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

DECREES:

Chapter I

GENERAL PROVISIONS

Article 1.-

1. Foreigners working in Vietnam and having to acquire work permits as stipulated in Item 1, Article 133 and Item 2 Article 184 of the Labor Code are those who do not bear Vietnamese nationality under the Law on Vietnamese Nationality.
2. Overseas Vietnamese working for enterprises and organizations in Vietnam must also have work permits as stipulated in this Decree.

Article 2.- The enterprises and organizations (hereafter referred to as employer) entitled to employ foreign workers include the following establishments which are lawfully established and have the legal person status:

1. State enterprises;
2. Foreign invested enterprises, enterprises in export processing zones and industrial parks;
3. Enterprises of other economic sectors;
4. Cost-accounting non-business establishments;
5. Business and service organizations owned by State administrative agencies, the armed forces, mass organizations and other political and social organizations.

Article 3.- This Decree shall not apply to:

1. Foreigners working for State administrative agencies, Vietnamese political and social organizations, and for Vietnamese individuals;
2. Foreigners who are members of the Managing Boards, directors (general directors) and deputy directors (deputy general directors) of foreign invested enterprises in Vietnam;

3. Foreigners working for diplomatic missions, consulates, representative offices of international organizations, foreign non-governmental organizations, representative offices of foreign economic, cultural, information, educational and scientific organizations in Vietnam;
4. Foreigners who are hired by the employers defined in Article 2 of this Decree to solve difficulties in emergency situations;
5. Foreigners having permanently settled in Vietnam, foreign pupils and students studying in Vietnam.

Article 4.- Foreigners working in Vietnam must abide by the labor legislation of Vietnam and shall be protected by the labor law of Vietnam, except otherwise provided for by international agreements which the Socialist Republic of Vietnam has signed or acceded to.

Chapter II

CONDITIONS AND PROCEDURE FOR RECRUITING AND GRANTING PERMITS TO FOREIGNERS WORKING IN VIETNAM

Article 5.-

1. The employers are entitled to recruit foreign workers to do jobs requiring high technical expertise or managerial jobs that Vietnamese personnel are not yet qualified for, and, at the same time, must have a plan to train Vietnamese to replace the foreigners.
2. The maximum term for employing a foreign worker shall not exceed 3 years.

Article 6.- Enterprises with foreign direct investment which need to employ foreign worker(s) must clearly explain their need in the investment project and get the approval of the agency competent to issue the investment license when the project is brought up for consideration. If the need arises to recruit more foreign labor during the process of implementing the project, it must be explained to the agency which has approved the project and the recruitment must be approved in writing by this agency.

Article 7.-

1. Vietnamese enterprises and organizations that need to employ foreign workers must make a recruitment application (with clear specification of the need, the source of wage payments and wage estimates, the plan and timetable for training and fostering Vietnamese substitutes) which must be approved in writing by the competent agency in accordance with the following provisions:

For State corporations and State enterprises having a Managing Board, the application must be approved by the Chairman of the Managing Board;

For other State enterprises, the application must be approved by the Head of the agency which has issued the decision to establish the enterprise.

For non-State enterprises and collective economic organizations, the application must be approved by the People's Committee of a province or a city directly under the Central Government;

For cost-accounting non-business organizations and business and service units attached to State agencies, the armed forces, mass organizations or other socio-political organizations, the application must be approved by the Head of the agency or organization which has issued the establishment decision..

2. Within 10 days from the date of receiving the application for recruitment of foreign workers, the competent agency must reply whether the recruitment is approved or not.

Article 8.- Foreigners working in Vietnam must meet the following conditions:

1. Aged full 18 years or more;
2. Having the professional knowledge, skills and health conditions that satisfy the requirements of the jobs defined in Article 5 of this Decree;
3. Having no previous criminal record for violation of national security or other criminal offenses as prescribed by Vietnamese law, not under examination for penal liability or serving a penal sentence, not yet pardoned under Vietnamese and foreign laws.

Article 9.- Foreigners entering Vietnam to work must be certified by the competent office of the Ministry of the Interior as having met the conditions defined in Point 3, Article 8 of this Decree.

Article 10.- The labor employers recruiting overseas Vietnamese who meet the conditions defined in Article 8 of this Decree shall be allowed to apply for work permits to the Ministry of Labor, War Invalids and Social Affairs, without having to go through consideration and approval by the competent agencies as stipulated in Article 6 and Article 7 of this Decree.

Article 11.-

1. After recruiting and signing a labor contract, the employer must submit three dossiers to the Ministry of Labor, War Invalids and Social Affairs applying for the work permit. Each dossier shall consist of:

a/ Documents of the employer:

An application for a work permit for foreigners according to the form prescribed by the Ministry of Labor, War Invalids and Social Affairs;

The written decision of the competent agency allowing the recruitment of foreigners, except for the case specified in Article 10 of this Decree.

A copy of the establishment and operating license of the employer.

b/ Documents of the foreigner, including:

An application for a permit to work in Vietnam according to the form prescribed by the Ministry of Labor, War Invalids and Social Affairs;

A copy of the labor contract signed with the employer.

Copies of the certificates on his/her professional knowledge and skills.

A health certificate issued by a Vietnamese medical establishment or a medical establishment of the country of which the foreigner is a citizen or the country where the foreigner last resided if he/she bears no nationality.

A curriculum vitae certified by a competent State agency of the country of which the foreigner is a citizen or the country where the foreigner last resided if he/she bears no nationality;

Three 3 x 4 cm photographs

2. The documents specified in Item 1 of this Article which are made and certified abroad must be legalized by a consular office and translated into Vietnamese; their translation and copies must be certified by a State notarization office of Vietnam.

Article 12.-

1. Within 45 days after receiving the full and valid dossier, the Ministry of Labor, War Invalids and Social Affairs shall have to cooperate with the concerned agencies to consider and reply the applicant. If the application is refused, the reason must be clearly stated.

2. Foreigners working in Vietnam for three months or more shall have their work permits granted by the Ministry of Labor, War Invalids and Social Affairs. The Ministry may empower a qualified provincial/municipal Service of Labor, War Invalids and Social Affairs to grant the permit. .

3. For foreigners working in Vietnam for less than three months, the Ministry of Labor, War Invalids and Social Affairs shall empower the Service of Labor, War Invalids and Social Affairs of the province or the city directly under the Central Government to grant the permit. .

Article 13.-

1. The work permit shall be issued for the term of the labor contract already signed.

2. When necessary, the employer and the foreign worker may agree to extend the term of the already agreed labor contract, which, however, can be extended only once and the extension shall not be longer than the term of the signed labor contract and the total length of time, including the extension period, must not exceed three years. In such cases, the employer must file an application requesting the extension of the work permit together with an explanation, the copies of the extended labor contract and the work permit to the Ministry of Labor, War Invalids and Social Affairs at least 30 days before the old labor contract expires.

Within 15 days after receiving the full dossier, the Ministry of Labor, War Invalids and Social Affairs shall reply to the applicant about the extension of the work permit.

3. Foreigners working for less than three months as stipulated in Item 3, Article 12 of this Decree, if they need to extend their labor contract, shall also observe the provisions in Item 2 of this Article.

Article 14.- The work permit shall be invalidated in the following cases:

1. The work permit expires;

2. The labor contract is terminated prior to its expiry date;

3. The work permit is withdrawn by a competent State agency because its holder violates Vietnamese law;

4. The employing enterprise or organization terminates its operation because of dissolution or bankruptcy, has its business license withdrawn by a competent State agency, its business license has expired, or is withdrawn by the owner of the enterprise.

5. The labor cooperation treaty or the investment contract is no longer valid.

Article 15.- The person to whom a work permit is granted shall have to pay a fee as prescribed by law.

The Ministry of Labor, War Invalids and Social Affairs and the Ministry of Finance shall provide for the amount, the collection and use of this fee.

Chapter III

IMPLEMENTATION PROVISIONS

Article 16.- Any organization or individual that violates the provisions of the Labor Code and this Decree shall, depending on the extent of such violation, be disciplined, administratively sanctioned, or examined for criminal liability in accordance with the provisions of law.

Article 17.- The Ministry of Labor, War Invalids and Social Affairs shall grant and uniformly manage the work permits.

Article 18.- This Decree takes effect from the date of its signing.

The provisions on the granting of labor cards to foreigners working for enterprises with foreign-invested capital set forth in the Labor Regulation for enterprises with foreign-invested capital issued together with Decree 233-HDBT of 22 June, 1990 of the Council of Ministers (now the Government) and all other regulations contrary to this Decree are now annulled.

Article 19.- If, within 6 months from the date this Decree takes effect, the employers and foreigners working in Vietnam to whom this Decree applies still do not have work permits (except those people who have been granted labor cards before the date of issue of this Decree and these cards are still valid) must complete the procedure to apply for work permits in accordance with the provisions of this Decree.

Article 20.- The Ministry of Labor, War Invalids and Social Affairs shall collaborate with concerned Ministries and branches of the Government in guiding the implementation of this Decree.

Article 21.- The Ministers, the Heads of the ministerial-level agencies and the agencies attached to the Government, the Presidents of the People's Committees of the provinces and the cities directly under the Central Government shall have to implement this Decree.

On behalf of the Government

The Prime Minister

PHAN VAN KHAI