

Thailand

Executive Summary

The Thai work permit requirements and immigration law are based primarily with a view towards maintaining national security, and fundamentally serve to control foreigners staying and working in the country. However, there are some provisions that facilitate foreign investors. A foreign national therefore needs to plan carefully in order to utilize or legally enjoy the privileges afforded under the law. Otherwise, he may find himself at risk of constituting a criminal offence, which carries a severe penalty of imprisonment of up to five years.

Key Government Agencies

The Police Immigration Bureau is responsible for screening all foreigners arriving at port of entries nationwide. Foreigners may enter the country with an appropriate visa issued by a Thai Embassy outside of Thailand. Upon the supervision of the Ministry of Foreign Affairs, a Thai Embassy may grant a visa based on the relevant regulations and Ministerial Policy. A foreigner who wants to work in Thailand must separately apply for a work permit through the Employment Department, the Ministry of Labor.

Current Trends

Strict enforcement of the Immigration and work permit laws are emphasized, to counter the illegal entry of neighbor country nationals. The rigid rules apply to all foreign nationals without discrimination based on race or nationality. Some of the current rules are impractical for foreign investors to legally work in Thailand. A large number of foreigners come to illegally work without an appropriate visa, *e.g.* a tourist visa, since they do not have an employer in Thailand to sponsor their applications. A new, revised Work Permit Act has been enacted

since the beginning of 2008. However, the main concepts of the old criteria are still applicable to current cases. The criteria for the granting of a work permit take into account demand for specific expertise of certain categories of foreign workers.

Business Travel

Non Immigrant Business Visa (Business Visa)

Foreigners who wish to work in Thailand are required to apply for a Non-Immigrant Business Visa from a Thai Embassy outside Thailand. A business visa is one of the requirements of the work permit application. If a foreigner does not have a non-immigrant visa, he is not eligible to locally apply for a work permit in the country. The business visa allows a holder to enter and stay in Thailand for 90 days. Legally speaking, he is not automatically allowed to work. He must separately apply for a work permit sponsored by a qualified employer in Thailand. Many foreigners frequently misunderstand that this business visa granted by a Thai Embassy allows them to work when entering the country.

After the expiry of 90 days, they may locally apply for a visa extension with the Immigration Police Bureau. The maximum period of the extension is one year. The current criteria set by the Immigration Police impose very strict rules on an employer in Thailand who sponsors a foreigner. An employer, in its capacity as a sponsor, must be qualified in terms of their employment ratio between Thai national and foreign workers. The corporate structure and the tax payment of the local sponsor must also meet the criteria as well. Otherwise, a foreigner may be not eligible to extend his visa, even though he himself may be a qualified person in terms of his expertise.

Visa Waiver

There are no visa waivers for any foreign business persons to work in Thailand. All foreigners need to apply for a non-immigrant business visa from a Thai Embassy. Otherwise, a foreign national will not be eligible to apply for a work permit in the country. Consequently, he cannot legally work in Thailand, although he can easily enter Thailand with a visa exemption for the purpose of tourism, which is permitted to some specific foreign nationals. The length of such a stay is 30 days. At present, the following countries are presently qualified under the visa exemption scheme: Australia, Austria, Bahrain, Brunei, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Indonesia, Ireland, Israel, Italy, Japan, Kuwait, Luxembourg, Malaysia, The Netherlands, Norway, New Zealand, Oman, the Philippines, Portugal, Qatar, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the UAE, the USA, and the UK. The list of qualified countries changes regularly, and unfortunately, there are no official websites promptly updating these changes. The Ministry of Foreign Affairs may be an initial source to start exploring for searches, at <http://www.mfa.go.th>.

Training

Training is considered as a form of work. A foreigner who is to be engaged in on-the-job training in Thailand must apply for a non-immigrant business visa to enter the country, and then apply for a work permit from the Employment Department, sponsored by an employer in Thailand. The length of stay permitted under the non-immigrant visa is 90 days. If the foreign national wants to extend his stay, his employer in Thailand must be qualified in accordance with the criteria set by the Immigration Bureau. Compensation is compulsory and must be declared in the application. If it is less than the minimum amount set by the authorities, the application may be rejected. It is currently quite difficult for a foreigner to work as a trainee in Thailand. An application is most likely to be denied by the authorities. The authorities always impose a condition on any

foreigner granted a permit for training to transfer his knowledge to Thai employees. If he fails to demonstrate that he has done so, his permit may not be renewed after it expires.

Employment Assignments

Intracompany Transfer Assignment: Non-Immigrant B Visa

Foreign employees who are transferred to work in Thailand are required to apply for a non-immigrant B visa from a Thai Embassy prior to entering the country, which allows them to stay for 90 days. They must also separately apply for a work permit sponsored by a Thai subsidiary of the multinational company as a responsible employer in Thailand. There are no special visas to be issued for a foreigner who is posted to work in Thailand. The non-immigrant B visa is required for all foreigners who intend to work in Thailand. The visa allows a foreigner to initially stay for 90 days. Within this period, they must have their subsidiaries or employers in Thailand obtain a work permit before commencing work. Otherwise, they cannot legally work in Thailand, even though they can enter the country with a non-immigrant visa.

The family member of an applicant may obtain a non-immigrant “O” (Others) visa, which also allows them to stay 90 days. The length of stay can be extended if the applicant can extend his visa when in the country. Genuine family status is always verified by the authorities. A marriage certificate and birth certificates if they have children are required to be presented for verification. Currently, a de facto status is not acceptable to the authorities.

Other Comments

According to the current rules and practice of the authorities, only non-immigrant business visas are issued to businessmen traveling to Thailand. The non-immigrant business visa covers all types of

business purposes, *e.g.* training, employment assignment, doing business, company management, etc. The non-immigrant visa is a pre-requisite requirement for a foreigner who wants to work in Thailand.

The process of applying for a non-immigrant business visa is quite simple and takes around two working days at any Thai Embassy. Upon the discretion of the Embassy, some nationals (*e.g.* Indians, Pakistanis) may have to apply for a non-immigrant visa in their home countries. Unlike the work permit-combined immigration system (*e.g.* as in the USA, Australia, or Canada), the foreign work permit law is independent and separate from the Immigration law. The Employment Department, the Ministry of Labor, is in charge of locally granting and controlling work permit matters. The Immigration Police Bureau governs the immigration law to control foreigners who enter or leave the country and have the authority to determine whether or not to extend foreigners' visas.

Some foreigners may obtain a non-business visa from a Thai Embassy, but they may be unable to locally receive a work permit due to unqualified employer sponsoring. They could possibly obtain a work permit from the Employment Department, but would not be able to extend their visa, because of the disqualifying characteristics of the employer.

The current rules for granting a work permit are based on proof of investment, as set out by the Employment Department. A sponsor, as an employer in Thailand, must have paid-up capital of Baht 2 million baht per each individual work permit. An applicant must have sufficient experience and a suitable educational background pertinent to the position applying for a work permit.

A foreigner required to engage in work which is of a necessary and urgent nature for a period of less than 15 days may currently enter Thailand without a non-immigrant B visa. However, the foreign

national must submit a work notification to the Employment Department before commencing work. Machinery repairs by foreign technicians are an example of work of a necessary and urgent nature.

Some professions (*e.g.* lawyers, architects) are prohibited to foreigners for applying for a work permit.

A foreigner who has received a work permit may be eligible to extend his visa (a 90-day non-B visa) in Thailand. A sponsor that is a company employer in Thailand must have shareholders' equity of not less than Baht 1 million. In addition, the ratio of employment between Thais and foreigners must not be less than 4 to 1. If a company employs one foreigner, at least 4 Thai staff (full-time) must be hired. Otherwise, the foreign employee may not be able to extend his visa, even if he has a work permit.

A foreigner who has been staying in Thailand for up to 90 consecutive days must notify the Immigration Police Bureau for every 90 days of stay. Failure to comply with this requirement will be subject to a fine.

Work permit and immigration planning is becoming increasingly significant, as enforcement by the authorities gets tougher. Employers involved in transactions such as mergers, acquisitions, re-organizations, and financial restructuring must evaluate the impact on the employment eligibility of foreign nationals when structuring such transactions.

A company with paid-up capital of at least Baht 30 million is entitled to use the One Stop Service Center for submission of work permit and visa extension applications. The One Stop Service Center is designed to facilitate the granting of work permits and visa extensions to executive level foreign employees within one day. The One Stop Service Center process reduces the time for considering applications, compared with the normal channel which may take up to one month.

Foreigners who have been staying and working in Thailand for three consecutive years are eligible to apply for permanent residency. The process normally takes at least one year. Criminal or character checks of an applicant in his home country must be made before lodging an application through the Immigration Police Bureau. The final decision for approval rests with the Minister of Interior's discretion. The authorities always consider an applicant's work qualifications and tax payment record paid to the Thai Government and compelling reasons tight to Thailand.

According to the general practice of the authorities, foreigners who have been granted permanent residency may be eligible for naturalization of citizenship after holding permanent resident status for at least 10 years. An applicant must clearly present his background and qualifications which benefits Thailand. Normally, the process may take up to two years after an application is submitted. The Minister of Interior is the person who gives the final approval.