



Advocacy Brief: Migrants' Prohibited Jobs During and After the COVID-19 Pandemic

Over the past several decades, changes in population structure and labor demand in small scale business and manufacturing sectors in Thailand have caused an increased demand for foreign workers, especially those from neighboring countries. However, Thai law prevents foreign workers from holding jobs and working in skilled trades traditionally held by Thai people, even though foreign workers are critical to these sectors. In response to an increase in the arrival of illegal foreign workers leading to a fear that foreign labor would take jobs away from Thai people, the Royal Thai Government (RTG) passed a law in 1979 called: “Royal Decree on the List of Jobs and Professions Prohibited for Foreigners to Hold”,. This Royal Decree lists specific jobs that foreigners cannot hold in any circumstances along with ones that foreigners can hold dependent on their nationality. Under this Royal Decree, foreigners were prohibited to hold thirty-nine careers. A foreigner who

wanted to hold other job than the one listed in this Royal Decree shall submit a request to the Director-General of the Department of Labor (equivalent to Permanent Secretary of the Ministry of Labor in present day) for a consideration on case-by-case basis while the nationals from three neighboring countries (Cambodia, Laos and Myanmar) were allowed to hold a general labor job and domestic work according to the cabinet’s resolution.¹

An updated list of sectors and industries subject to the above Royal Decree was not released until 2019 to address a growing frustration from businesses about the country’s labor shortages.² During that year, the Ministry of Labor (MOL) announced the “Ministry of Labor’s Ministerial Regulation on the Jobs the Foreigners cannot Hold” (hereinafter referred to as 'the Regulation'), that allows foreigners to hold some jobs that were previously prohibited. The Regulation comprises of 40 jobs: 27 absolutely prohibited jobs and 13 conditionally allowed jobs, which are categorized into four lists:

- List No. 1: **Twenty-seven jobs** foreigners cannot hold in any circumstances.
- List No. 2: **Three jobs** foreigners cannot hold unless an international agreement or Thailand’s legal obligation allows, for instance, obligations under ASEAN Mutual Recognition Arrangement

¹ Ministry of Labour.(n.d.) List of Jobs and Professions Prohibited for Foreigners to Hold Retrieved 15 April 2022 from https://www.mol.go.th/employee/occupation_prohibited

² DailyNews Online.(2017). Plan to Unlocked Prohibited Jobs for Migrant Workers. Retrieved 10 January 2022 from <https://d.dailynews.co.th/politics/593094/>

on Architectural Services (MRA). Those foreigners must be citizens of the countries that have such treaties with Thailand. These jobs include 1) an accounting and auditing, 2) engineering, and 3) architecture. X

- List No. 3: **Eight semi-skilled or skilled jobs** foreigners cannot hold unless they have an employer or employment contract. Unlike the jobs in List No. 2 and No. 4 that there is work agreement between the country of the foreigners and Thailand before they arrive in Thailand, the prerequisite for foreigners who want to hold the job under this category is to secure their own employment contract before applying for a work registration. These jobs include 1) agriculture, forestry and fishery, 2) bricklayer, carpenter and buildings constructor, 3) stuffed mattress and blanket maker, 4) knifemaker, 5) shoemaker, 6) hatmaker, 7) apparel maker, and 8) pottery maker X
- List No. 4: **Two jobs** that foreigners cannot hold unless they have an employer and enter Thailand through the MOU Thailand has with other countries, in accordance with immigration law. Under this category, only nationals from Cambodia, Laos and Myanmar are eligible because their country has a respective MOU with Thailand for working on these two jobs in Thailand. There is a specific employment and work registration under the MOU scheme. These jobs include work as 1) a general labor frequently found in a construction sites, factories or markets, and 2) shop assistant.

Employers/entrepreneurs and workers must follow this Regulation. As the Regulation carries the criminal sentence, then ignorance of law excuses no one based on the Criminal Code. Employers who hire foreign workers without a work permit or who allow foreign workers to work in prohibited jobs are subject to imprisonment and THB 10,000 – 100,000 fine penalty per one illegal labor. Increasing fine payment with

imprisonment will be applied should the employer recommit the same offense. Foreign workers who violate the Regulation are subject to deportation in accordance with the immigration law following their completion of a THB 5,000 – 50,000 fine sentence set forth in the labor law.

Methodology

In order to understand a work situation of migrants in Thailand under the Regulation application, and how the Regulation has addressed the situation migrants and employers have faced, this study was held through qualitative research. Information was gathered from documents and articles on migrant works situation in Thailand. To comprehend the actual situation and relevant parties' viewpoints, secondary data collecting was conducted. The information was gathered through fieldwork in Chiang Rai, Chiang Mai, Samut Sakorn, and Mae Sot (Tak), which involved focus group discussion, discussing in-depth with potential key informants from the beauty sector, vendor sector, construction sector and fishery industry. Data also come from attending seminars on the COVID-19 pandemic and the labor condition in Thailand. Additionally, feedback and suggestions from the roundtable discussion with relevant CSOs, migrants, and local host communities were used to enhance and develop the report in response to the research report draft. As follows, the study laid down a finding through the specific jobs in the Regulation identified as a concern to the above stakeholders.

Challenges Identified in a Changing Migrant Work Situation

Labor demand in Thailand has continually increased as the country transitions from an aging society to an aged society. Thailand's senior population is growing while the workforce population is drastically shrinking compared to other ASEAN countries.³ External factors, such as prevalent overseas travel restrictions and the fluctuating global economic condition, exacerbate labor shortages. These factors highlight the importance of adjusting the prohibited jobs list to adapt to the

³ Bank of Thailand. (2018). Aging Society and Challenges of Thailand's Labor Market. Retrieved 10 January 2022 from

<https://www.bot.or.th/Thai/MonetaryPolicy/EconomicConditions/AAA/AgePeriodCohort.pdf>

changing situation, especially during the COVID-19 pandemic, which has caused an even greater shortage of workers. Since some businesses have closed or downsized, particularly in tourism and service sectors, workers must seek new careers. Moreover, enforcement of the Regulation has been increasingly inconsistent from one province to another i.e., the number of job registration a migrant can register varies from one province to another, the authorities applied their individual judgement over an inspection of a prohibited job holding because of lack of clear guidance. Lack of understanding regarding the Regulation by both workers and employers has resulted in workers mistakenly working prohibited jobs.

This lack of understanding is due to ambiguity in the Regulation without clear explanation, trouble accessing the full Regulation especially in a migrant language, and language barriers as the Regulation are mostly found in Thai. This prevents migrants from fully understanding the Regulation.

Another key issue during the COVID-19 pandemic is that many migrant workers can neither find a new job after sudden job loss, nor travel back to their countries of origin due to border closures, and in the case of Myanmar, political unrest. These workers struggled to earn money to afford a high fee for a job change registration and access public health services after they have lost a job. With an instability in job and prolonged unemployment, this triggered migrants to not properly register for a new job but to illegally pay lesser to an illegal broker for a fake registration document, as well as for a bribery to the authority not to arrest them based on the illegal status they are. Migrants continue to live in Thailand with their illegal status and living condition at risk.

Under the Regulation, migrant is not allowed to own a business. According to information from NGO workers, if migrants own small businesses related to prohibited job categories, they could be fined for running their business illegally. Being said that, there are small businesses run by migrants in or near communities where migrant

workers live such as traditional food stalls, shops with imported items from their respective country, traditional dressmaking shops, and bicycle garages. During the COVID-19 pandemic, they were able to survive with an income from their not-permitted business. If the Regulation permits migrant to holding small business, it will not only establish another legal job, but also ensure they are properly taxed. Furthermore, allowing a migrant to establish a small business in their community will promote independence and resilience, contribution to society, and enable migrant workers to take care of their dependents. In fact, many migrant workers have already assimilated into the Thai community, so by adjusting the Regulation, it will reduce inequality, and sustainably strengthen migrant worker communities.

Considering amendment of the Regulation without regular revisiting for the Regulation review of a significant situation changing and labor demands at that time (in 1979, 1993, 2000, 2005 and 2008), policy adjustment to the Regulation is necessary to address the labor shortage and to reflect current migrant labor employment situation in both short and long terms during and after the COVID-19 situation. This will alleviate income shortages for migrant workers, promote better living conditions and the resilience of migrant workers

Demand for Migrant Workers After the COVID-19 Pandemic

Data indicates that there is high demand for migrant workers in different industries, especially in the “three D’s” jobs (Dirty, Dangerous, and Difficult).⁴ Additionally, there are more migrant workers performing in these three categories despite lower wage when compared to Thais holding the same job, which reflects the unpopularity of these jobs among Thais. Thais tend to work on the three D’s job only when they get higher wage or there is a little chance the job will be replaced with technology.⁵ From December 2019, prior to the beginning of the COVID-19 pandemic, to June 2020, Thailand's migrant population decreased by 545,591.

⁴ KulKolkarn, Kiriya (2021). The Need to Employ Migrant Workers in Thailand. Bangkok: Thailand Science Research and Innovation.

⁵ KulKolkarn, Kiriya (2021), Ibid.

The decrease particularly affected fishery and construction industries, which experienced increasing labor demands. The construction industry alone lost 100,000-200,000 workers.⁶ Post-pandemic data indicates that some migrant workers returned to their home countries.⁷ When Thailand announced the re-opening of the service industry, businesses like restaurants and small accommodations also faced labor shortages.

Labor shortages affect Thailand's commerce, especially when economic recovery is in a regressive state and there are still various kinds of work that require human labor, specifically in the construction and service industry. But the Regulation restricts employers' ability to fill the gap during this challenging period i.e., a registration timeframe is not practical, the practitioners do not have a common understanding on the Regulation and relevant rules, the expenses for registration fee and a guarantee amount paid for a migrant worker is too high. Migrants in the skilled job sector are also unable to afford the job registration fee. Many works in jobs they think are legal but in actuality are prohibited, leading to arrest and fine payment and affects their living condition, as well as punishment upon both migrants and employers.

Transportation in Jobs

According to List No. 1 of the Regulation, driving is one among 27 absolutely prohibited jobs for foreign workers to hold in Thailand. This means foreign workers cannot work as drivers for transportation businesses, including product delivery and passenger transportation services.

Despite this restriction, many migrant workers in retail stores as shop assistant deliver products, such as ice cubes and cooking gas tanks to their customers, as it is assumed to be part of their *permitted* "shop assistant"

⁶ PrachachatTurakij Online (2021). Construction and Fishery require more 1.2 million Workers. Retrieved 30 December 2021 from

<https://www.prachachat.net/economy/news-495666>

⁷ Thailand Development Research Institute (2022). Impact of Covid-19 towards Migrant Workers. Retrieved 30 December 2021 from <https://tdri.or.th/2021/01/covid-103/>

duties. During a focus group discussion, one Burmese migrant worker said they understood riding a motorcycle was part of their legal shop assistant duties and were not informed that it was illegal. Migrants were not fully aware of the Regulation and did not know where to get such information. Consequently, this practice often leads to arrest and fines from the authorities.

Beauty Business Jobs

Hairdressing is grouped under List no. 1, meaning that migrants cannot hold a hairdressing job in any circumstances. The Regulation describes a hairdressing job to include hairdressing, applying makeup, facial massages, pedicures, and manicures. According to field visits, few Thais are currently interested in learning about beauty careers, and those who are interested often become entrepreneurs, opening their own businesses, rather than salon employees.

Meanwhile, migrants are found holding a hairdressing job in a beauty shop especially those small and medium-sized businesses located throughout Thailand, especially in border provinces. Border provinces contain diverse populations where economic, social, and cultural assimilation lead to more migrants working in the service industry, including restaurants, accommodation facilities, and beauty businesses.

It is illegal for migrant workers to work as hairdressers in salons as the Regulation has not adapted to increased labor demand in the industry because there is ongoing resistance from Thai hairdressing business, perceiving migrants as a competing party⁸. Being said that, a 2017 study on the impact of migrant worker employment in hairdressing salons found that some entrepreneurs tended to hire migrant workers because they could pay them lower wages.⁹ As a consequence,

⁸ <https://www.hairworldplus.com/feature/ทำไมชาวต่างชาติ-ทำอาชีพ/>

⁹ Vithayanun, Nutthika. (2017). Impacts of Permitting Foreign Migrant Workers to Work, According To the Thai Royal Ordinance Concerning the Management of Foreign Worker's Employment, For A Service Business Of Beauty Salon. Bangkok: Thammasat University

migrants in a hairdressing business are put in at risk situation of buying themselves out of trouble when confronting an inspection of prohibited job holding. Allowing migrants to hold a job in a hairdressing and beauty salon especially the ones migrants currently hold, such as hair washing, pedicures, and manicures will promote a better work condition of migrants.

Skilled Work in Construction Sector

‘Skilled work’ in List No. 3 is defined as a work that required a technical skill or specific knowledge. Foreigners from any country could hold the listed job if they are proved to have such skill and register for such skilled job with the authority. There are eight jobs under this List including bricklayer, carpenter and buildings constructor. However, migrants can hold only the job they registered with under the authority. There is a fee that they must pay for every job they want to register. Reportedly a registration cost criterion varies from province to province depending on the context of migrant work situation. For example, In Chiang Mai where a construction sector has higher demand on migrant labor, a registration fee for skilled labor in construction work costs 400 - 800 baht per job per worker. The workers must pay more if they want to register for additional construction jobs, and only up to three jobs. Many migrant workers can also work other jobs in List No. 3 but could not afford to register because the registration fee is calculated per job, not per list. They are subject to arrest if they hold a job that they have not registered with Thai authorities despite an increasing demand for a skilled labor in construction.

Shop Assistant and Legal Conflict of Entrepreneurship

Shop assistants are grouped into List No. 4 of the Regulation, meaning these positions are only open to migrant workers from Cambodia, Laos, and Myanmar. "Shop assistant" duties include "selling goods in a wholesale or retail shop, at a stall or booth in a market or on street".¹⁰ In practice, this line of work continues to cause confusion for inspectors given ambiguity in

scope of duties for "shop assistants", and lack of clear guidelines from the government. For example, it is unclear whether a migrant worker is performing the duty of a "shop owner" or "shop assistant" when processing monetary transactions with customers or when keeping shop alone (without a presence of a shop owner). Such transactions, according to NGO workers, are essential for migrant workers in "shop assistant" roles, as migrant workers must follow their employer's directions, which often include selling, cleaning, arranging products, and handling monetary transactions. Enforcement of the Regulation relies on individual judgement of the government official conducting routine labor inspections to determine if the migrant worker acts as a "shop owner" or a "shop assistant". Yet it is unclear whether these combined tasks establish the migrant worker as a "shop owner".

Recommendations on the Prohibited Jobs Regulation

Given an analysis of the current situation and labor demand of migrant work, this study aimed at recommending RTG to reconsider adjusting a description of particular jobs in the Regulation to reflect the current practice of migrants and employers.

1. Migrant should be allowed to a vehicle driving job in a shop assistance because there are many migrants found working as shop assistant that is required to deliver a product to a customer by riding a motorcycle or other vehicle.
2. The work parameters for migrant workers in beauty and salon businesses should include a job that most migrants hold such as hair washing, pedicures, and manicures, in order to meet increasing labor demand, especially in small and medium-sized businesses.
3. Migrant workers should be given opportunities to develop their labor skills and access to occupational skill testing, as well as essential

¹⁰ Department of Employment. (2020) *Announcement on Prohibited Jobs for Foreign Workers*. Retrieved 20 January 2022 from

https://www.doe.go.th/prd/assets/upload/files/legal_th/68c9bf9be8ce0073681f327e8455e35f.pdf

knowledge such as safety and security at work, public health and sanitation at work. This will enhance quality of labor in the market to meet occupational standards.

4. There should be a one-time registration fee of 400 baht covering all skilled construction work under List No. 3 of the Regulation to reduce the registration cost for the employee and employer, and so that employees can avoid being arrested for working in a construction job that the employee has not registered.
5. The Regulation should amend a description of shop assistance to include handling monetary transactions with customer and doing the shop assistance without the employer's presence.
6. The Regulation should include a self-employed job the migrant can hold in their community such as selling traditional food and clothes. This will promote independence and resilience, contribution to society, and enable migrant workers to take care of their dependents.

policies on prohibited jobs should be done through a consultation with stakeholders, including entrepreneurs, specific profession association, migrant workers, and NGOs who work closely with the migrant workers to consider their experiences and opinions when developing policy.

Recommendation on the Administration of the Regulation

Apart from the above recommendation addressing a description adjustment of the specific jobs in the Regulation, here is the recommendation towards an overall administration and enforcement of the Regulation.

1. There should be a designated sub-committee under Department of Employment, Ministry of Labor, to periodically review the prohibited jobs lists to ensure its adaptation to current labor market needs. This review should include collecting relevant data on current migrant work situation vis-a-vis a labor demand situation from recommendations, reports, and surveys from the academic institutes, CSOs, and international organizations.
2. Under the supervision of the sub-committee in No.1, the process of reviewing and revising