

Unlawful Order of Deportation *

Supreme Administrative Court Judgment No. A. 696/2561, dated 13th July B.E. 2561 (2018)

Mr. John David Young (P)

v.

Immigration Bureau (D1)

Minister of Interior (D2)

The Plaintiff was an alien who was permitted to take up residency in Thailand. He was sentenced with criminal penalties – 3-year imprisonment and 7,000 Thai Baht fine – by the judgment of the Phuket Provincial Court; but the sentence was deferred. The Plaintiff would not be excluded from entering Thailand under Section 12 paragraph one (6) of the Immigration Act, B.E. 2522 (1979) since he had not been imprisoned by the judgment of the Thai Court. Moreover, the Plaintiff remained residing in Thailand and did not commit a crime or had behavior as specified in Section 12 of the Immigration Act, during the period of deferred sentence. He then would not likely be danger to the society or cause disruption jeopardizing public peace or safety of the public or security of the Kingdom. Thus, the Plaintiff was not prohibited from entering the Kingdom pursuant to Section 12 paragraph one (7) of the same Act. The Supreme Administrative Court affirmed the decision of the Administrative Court of First Instance to revoke the deportation order issued by the official of the Defendant No.1 and the decision on an appeal to dismiss an appeal issued by the Defendant No.2 in effect on the issuance date of the order and the decision.

Legal Principles: *Administrative Act, Issuance of Order*

Administrative Court Procedure: *Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999): Section 9 paragraph one (1)*

Legal Provisions: *Immigration Act, B.E. 2522 (1979)*

* Summarized by Kitiwan Khantitirat, Bachelor of Laws (LL.B.), Chulalongkorn University, Master of Laws (LL.M.) in International Law, Thammasat University, Master of Laws (LL.M.), Georgetown University, United States of America, Administrative Case Official, Practitioner Level, Public Law Study Group 3, Bureau of Research and Legal Studies, the Office of the Administrative Courts.

Judgment (Summary)

The Plaintiff was an alien who was permitted to take up residency in Thailand since the year of 2000 under Section 41 paragraph one of the Immigration Act, B.E. 2522 (1979). He was charged with trespass and battery and then was sentenced to 3-year imprisonment and 7,000 Thai Baht fine by the Phuket Provincial Court. However, the Plaintiff made a confession and it was useful for the trial so the Court decided to reduce the punishment in half to one year and six months imprisonment and 3,500 Thai Baht fine. According to a presentence investigation report, the Plaintiff did not have bad personality and behavior, and had a good career, and he had never been imprisoned; therefore, the Court decided to defer the sentence for one year. After the Phuket Provincial Court rendered the judgment, the Commander (Investigation) of Immigration Bureau put the Plaintiff's name in a record as a person prohibiting from entering Thailand pursuant to the rule prescribed by the Commission on considering, making and changing of records of aliens having behavior that was decided to be excluded from entering the Kingdom. At the beginning of February 2015, the Plaintiff left Thailand for a business trip aboard and returned to Thailand at the Sadao immigration checkpoint, Songkla province. He was informed that he had to leave Thailand on the ground that the Plaintiff was a person prohibited from entering Thailand pursuant to Section 12 (6) and (7) of the Immigration Act.

The Supreme Administrative Court held that the sentence of imprisonment or fine against the Plaintiff was deferred for one year by the judgment of the Phuket Provincial Court; as a result, he had not been imprisoned by the judgment of the Thai Court. He would not be excluded from entering Thailand pursuant Section 12 paragraph one (6) of the Immigration Act. The Defendant No.1 did not report the Plaintiff's behavior to the Commander General to propose the Commission on Immigration so that the Commission would recommend the Defendant No.2 to revoke the permission for residency of the Plaintiff under Section 53 of the Immigration Act. The Plaintiff remained residing in Thailand and did not commit a crime or had behavior as specified in Section 12 of the Immigration Act, during the period of deferred sentence. Therefore, the Plaintiff would not likely be danger to the society or cause disruption jeopardizing public peace or safety of the public or security of the Kingdom. He then was not prohibited from entering Thailand pursuant to Section 12 paragraph one (7) of the Immigration Act. The Defendant No.1 unlawfully issued an order to deny the Plaintiff entering Thailand and order to deport the Plaintiff, and the Defendant No.2 unlawfully issued a decision on an appeal of the order of the Defendant No.1 to dismiss the appeal, pursuant to Section 9 paragraph one (1) of the Act on the Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999).

Accordingly, the Supreme Administrative Court affirmed the decision of the Administrative Court of First Instance to revoke the deportation order issued by the official of the Defendant No.1 and the decision on an appeal to dismiss an appeal issued by the Defendant No.2 in effect on the issuance date of the order and the decision.