

Lawful Deportation of Foreign Nationals Due to Lack of a Work Permit*

Supreme Administrative Court Judgment No. A.PA. 277/2566, dated 27th October B.E. 2566 (2023)

Mr. M. (P)

v.

Minister of Interior (D1)

Ministry of Interior (D2)

Commissioner of the Immigration Bureau (D3)

Immigration Bureau (D4)

The Working of Alien Act, B.E. 2551 (2008) and the Immigration Act, B.E. 2522 (1979) prohibit foreign nationals with tourist visas from working in the Kingdom of Thailand without a work permit. It appeared that the Plaintiff's employer was an international firm that could enjoy the benefits of the investment promotion certificate as stated in the Investment Promotion Act, B.E. 2520 (1977) in establishing the affiliated company called Y. (Thailand) Co., Ltd., yet the said company did not apply for permission to bring the Plaintiff who was a foreign national into the country to work for the newly established company in accordance with Section 24 or Section 25 of the aforesaid legislation. Given that the officials of the Defendant No. 4 found out that the Plaintiff entered the country with a tourist visa to work for the said company without a work permit, the Defendant No. 3 issued an order to register the Plaintiff's name to the internal watchlist database of foreign nationals with previous issues that shall be banned from re-entering the country in accordance with Section 12 paragraph one (3) of the Immigration Act, B.E. 2522 (1979). When the Plaintiff subsequently re-entered the country in October B.E. 2560 (2017) with a tourist visa to work while the said company still had not yet acquired a work permit for the Plaintiff, the Defendant No. 3 lawfully issued an order to the Plaintiff to depart the country. The Plaintiff also had no standing to sue for a revocation of the order that added the Plaintiff's name to the internal watchlist database since it was not deemed as an 'administrative order' that directly affected the Plaintiff's rights according to the Administrative Procedure Act, B.E. 2539 (1996) but was rather deemed as an internal process of administrative agency in providing relevant information for the immigration officers in exercising their discretion in decision-making to issue an administrative order.

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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) and Section 42 paragraph one*

Legal Provisions: *Administrative Procedure Act, B.E. 2539 (1996): Section 5*
Investment Promotion Act, B.E. 2520 (1977): Section 24 and Section 25
Immigration Act, B.E. 2522 (1979): Section 12 paragraph one (3) and Section 22 paragraph one
Working of Alien Act, B.E. 2551 (2008): Section 10 and Section 51

Judgment (Summary)

Around October B.E. 2558 (2015), a British international firm headquartered in the UK was interested in launching a company in Thailand. The Plaintiff, a British citizen, was an employee of the said international firm and was assigned to travel to the Kingdom of Thailand to prepare for the establishment of the new affiliated company called Y. (Thailand) Co., Ltd. On 2nd December B.E. 2558 (2015), the Plaintiff went to inspect the prospective office space for the company to rent and was arrested by the officials of the Defendant No. 4. It appeared that the Plaintiff was permitted to enter the country with a tourist visa but was not yet granted a work permit. The Plaintiff was prosecuted for breaching Section 9 and Section 10 of the Working of Alien Act, B.E. 2551 (2008), which stipulated that in general, no alien shall engage in any work without a work permit and the alien who is eligible for the work permit must have the place of residence in the country or has been permitted to enter the country temporarily under the law on immigration in any status other than tourists. Consequently, the officials of the Defendant No. 4 imposed a fine on the Plaintiff, and the Plaintiff agreed to depart the country to settle the case in accordance with Section 51 of the Working of Alien Act, B.E. 2551 (2008). With the previous conviction in violating the aforesaid legislation, the Plaintiff was deemed an alien that shall be excluded from re-entering the country according to Section 12 paragraph one (3) of the Immigration Act, B.E. 2522 (1979). As a result, the Defendant No. 3 issued an order to register the Plaintiff's name to the internal watchlist database of foreign nationals with previous issues that shall be banned from re-entering the country in accordance with Section 12 paragraph one (3) of the Immigration Act, B.E. 2522 (1979). Later on, the Plaintiff re-entered the country with a tourist visa on 25th October B.E. 2560 (2017). The officer of the Defendant No. 3 checked the database and found that the Plaintiff was listed as an alien with previous issues

that shall be banned from re-entering the country in accordance with Section 12 paragraph one (3) of the Immigration Act, B.E. 2522 (1979); hence, an order was issued to the Plaintiff to depart the country. The Plaintiff submitted a written appeal to the Defendant No. 1 on the same day as the date of the said order. The Plaintiff asserted that the purpose of his visit this time was to work for the newly established company, Y. (Thailand) Co., Ltd., as assigned by its parent company based abroad. However, the Defendant No. 1 still affirmed the decision of the Defendant No. 3, which required the Plaintiff to leave the country. Subsequently, the Plaintiff filed a case with the Administrative Court of First Instance, requesting the Court as follows: 1) to revoke the order of the Defendant No. 3, which required the Plaintiff to leave the country, and to revoke the order of the Defendant No. 1, which rejected the appeal of the Plaintiff by affirming the decision of the Defendant No. 3; and 2) to revoke the order of the Defendant No. 3, which registered the Plaintiff's name to the watchlist of the Defendant No. 4.

The Supreme Administrative Court held that even though the benefits of the investment promotion certificate as stated in the Investment Promotion Act, B.E. 2520 (1977) were applicable for Y. (Thailand) Co., Ltd., it appeared that the company did not apply for permission to bring foreign nationals into the country to work for the company in accordance with Section 24 or Section 25 of the Investment Promotion Act, B.E. 2520 (1977). Given that the Plaintiff admitted in his appeal complaint that his intention for entering the country this time was to work for the aforesaid company, it was an apparent violation of laws, namely the Working of Alien Act, B.E. 2551 (2008) and the Immigration Act, B.E. 2522 (1979), which prohibited foreign nationals from working without a work permit. In other words, the previous conviction record in the watchlist of the Defendant No. 4 was not in itself the reason why the Plaintiff was rejected to re-enter the country. The official of the Defendant No. 3 issued an order to the Plaintiff to depart the country due to the Plaintiff's confession in the appeal complaint regarding his aim in working for the Y. (Thailand) Co., Ltd., which still had not yet acquired a work permit for the Plaintiff. Therefore, the order to leave the country was lawful and in accordance with Section 22 paragraph one of the Immigration Act, B.E. 2522 (1979) since it was apparent that this matter was contrary to Section 12 paragraph one (3) of the aforesaid act.

As for the Plaintiff's request seeking the Supreme Administrative Court to revoke the order of the Defendant No. 3, which registered the Plaintiff's name in the watchlist of the Defendant No. 4, it appeared that the action of the Defendant No. 3 did not fall within the scope of 'Administrative Order' that directly affected the Plaintiff's rights according to the Administrative Procedure Act, B.E. 2539 (1996) in which it could be subjected to judicial review. To be precise, the decision of the Defendant No. 3 to register the Plaintiff's name in

the watchlist of the Defendant No. 4 was just a part of the internal process of the administrative agency in providing relevant information aiming to assist the immigration officers in exercising their discretion in issuing administrative orders such as permitting or rejecting foreign nationals to enter the country. Therefore, the order of the Defendant No. 3 to add the Plaintiff's name in the internal watchlist database of the Defendant No. 4 was not deemed as an 'Administrative Order' that directly affected the Plaintiff's rights according to the Administrative Procedure Act, B.E. 2539 (1996). Hence, the Plaintiff was not a person who is aggrieved or injured or who may inevitably be aggrieved or injured in consequence of the aforesaid action of registering his name into the watchlist and had no standing to sue according to Section 42 paragraph one of the Act on 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 dismiss this case.

Keywords: administrative order, discretion, immigration, alien, tourist visa

คำสำคัญ: คำสั่งทางปกครอง ดุลยพินิจ ตรวจสอบคนเข้าเมือง คนต่างด้าว การตรวจลงตราในหนังสือเดินทาง ประเภทนักท่องเที่ยว

(แบบสำรวจความคิดเห็นต่อเอกสารวิชาการ ที่จัดทำโดยบุคลากรสำนักวิจัยและวิชาการ)



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