

# Free Flow of Skilled Labor in ASEAN by 2015: Its Implications on the Rules Regulating Foreign Workers in Cambodia

\*Kanharith Nop

- I. Introduction
- II. Policy of Free Flow of Skilled Labor
  - A. Definition of Skilled Labor
  - B. Advantage and disadvantage of free flow of skilled labor
  - C. Scope of the policy of the free flow of skilled labor
- III. Immigration Law
  - A. Categories of foreigners
  - B. Process to obtain entry permit
    - 1. Non-immigrant aliens
    - 2. Immigrant aliens
  - C. Procedural rules for obtaining residence card
    - 1. Non-immigrant aliens
    - 2. Immigrant aliens
- IV. Laws and regulations on labor relations
  - A. Prohibition of discrimination
  - B. Recruitment of foreign workers
  - C. Necessary requirements for working in Cambodia
    - 1. Procedural requirements for obtaining and renewing work permit and workbook
    - 2. Revocation of work permit and punishment
- V. Health Examination
- VI. Integration under the labor laws
- VII. Harmonization between the preferential treatment and equal treatment
  - 1. The issuance of permits
  - 2. Non-competition
  - 3. Quota restriction
- VIII. Conclusion

---

\* The Author is Senior Legal Advisor at HBS Law; Doctor of Laws, Nagoya University at Japan. Email: nopkanharith@yahoo.com

## **Abstract**

Under the framework of ASEAN Economic Community, the skilled workers who are involved in trade in goods, service, and investment will freely move in the ten country members. The paper aims at reviewing the current laws and regulations of Cambodia that may be affected by the policy of free flow of skilled workers. The current laws and regulations of Cambodia have different treatment towards the employment of foreigners and Cambodians. A foreigner who wishes to come to Cambodia for work must go through the procedural rules to obtain visa entry, residence cards, workbook and work permit. Laws and regulations have reserved jobs for Cambodian nationals through punishment of employer who hires foreign workers exceeding the limit and the rejection of the renewal of the workbook and work permit of the foreigners who compete with Cambodians in the labor market. The paper suggests the harmonization between the preferential treatment toward Cambodian workers and the realization of the commitment for free mobility of skilled workers and professionals in Cambodia.

**Key words (5 to 10 words):** Implications of Free Flow of Skilled Labor on Rules of Foreign Workers in Cambodia

## I . Introduction

Under the ASEAN Economic Community Blueprint, country members of ASEAN including Cambodia have collectively demonstrated their strong commitment toward the realization of the integration of ASEAN by 2015. Many policies on various aspects of economic activities along with their action plans have been put in schedules. Free flow of skilled labor is one of them. In order to materialize this policy, the reexamination and revision of national laws that hinder the free movement of skilled labor are inevitable.

The policy that only encourages the free flow of skilled labor has brought both excitement and fear to Cambodians. Excitement is only for those who are skilled workers and professionals as they will be able to freely move and work in any member country of the ASEAN. However, in reality, the number of Cambodian unskilled migrants is much higher than the number of the skilled ones.<sup>1</sup> This can imply that most Cambodian skilled workers tend to work in the local labor market. Because there is a possibility that the labor market will be open for foreign skilled labor, most of the Cambodian skilled workers who used to enjoy the preferential treatment under the laws are starting to fear the integration of the community.

Though the use of foreign labor force is to some extent limited by national laws, the labor market of Cambodia has been open for foreigners before the integration. In 2013, the Ministry of Labor and Vocational Training, through the deployment of Labor Inspectors to 717 enterprises, have found that there were 3,884 foreign workers, which is 15.45 percent increase if compared with the inspection in 2012 at 583 enterprises, which comprise of 3,364 foreign workers.<sup>2</sup> Since 2009 until 2013, the Ministry inspected the foreign manpower in 2,892 enterprises and found 17,964 foreign workers.<sup>3</sup> Based on the data above, though it does not categorize the foreigners based on nationality, it is evident that the number of foreigners who have been working in Cambodia has increased.

- 
1. SARAH HUELSENER & ADAM HEAL, MOVING FREELY? LABOUR MOBILITY IN ASEAN 2-3 (Asia-Pac. Research & Training Network on Trade 2014), *available at* <http://artnet.unescap.org/pub/polbrief40.pdf>.
  2. MINISTRY OF LABOUR & VOCATIONAL TRAINING OF CAMBODIA, REPORT ON THE WORK RESULT IN THE YEAR OF 2013 AND THE IMPLEMENTATION OF THE ACTION PLAN OF THE YEAR OF 2014, at 9 (2013).
  3. MINISTRY OF LABOUR & VOCATIONAL TRAINING OF CAMBODIA, STRATEGIC PLAN ON DEVELOPMENT IN THE FIELD OF LABOUR AND VOCATIONAL TRAINING 2014-2018, at 21 (2013).

Foreigners who are working in the labor market of Cambodia have gone through the selection process under the laws on immigration and the integration process under the labor laws.<sup>4</sup> The foreigners apply for status of residence in Cambodia through the procedural requirements set by the government of Cambodia who decides to accept or reject such application. Upon the foreigners have been granted the residence status; the labor laws integrate them into Cambodian society by treating them, to the specified extent, in the same manners and level with Cambodians.

When examined carefully during the integration process, the labor laws of Cambodia put more weight to the principle of preferential treatment rather than the principle of equal treatment with regard to employment of foreigners. The labor laws prioritize Cambodians to job placement. This means that an employer can recruit a foreigner only when he or she cannot find any Cambodian capable enough to work in that particular position. Furthermore, the labor laws limit the number of foreign workers in every enterprise and punish the employer who employs foreigners in excess of this maximum limit through fine or imprisonment. Other than these, there are other legal requirements for the employment of foreigners in Cambodia.

Since the integrations of the ASEAN community commence from the end of 2015, this paper aims to examine the legal implications of the policy of free flow of skilled labor on the system of preferential treatment in Cambodia. First, the paper provides a general overview on the policy of free flow of skilled labor under the ASEAN Economic Community Blueprint. Second, it examines the rules governing the employment of the foreigners in Cambodia, particularly from the perspective of laws and regulations relating to immigration and the labor relations. Then, it examines the impact of the policy of free flow of skilled labor on these current rules. Finally, this research suggests the harmonization between the principle of preferential treatment and equal treatment.

---

4. The concepts of selection and integration have been applied in the laws and policies governing foreign workers in Japan. Chizuko Hayakawa, *Labor Law and Policy Issues Relating to Foreign Workers in Japan*, 7(3) JAPAN LABOR REVIEW 19 (2010), available at [http://www.jil.go.jp/english/JLR/documents/2010/JLR27\\_hayakawa.pdf](http://www.jil.go.jp/english/JLR/documents/2010/JLR27_hayakawa.pdf).

## II . Policy of Free Flow of Skilled Labor

### A. Definition of skilled labor

The policy under the ASEAN Economic Community Blueprint only encourages the free movement of skilled labor or workers. The flow of non-skilled and semi-skilled workers is not the main goal of the community. In general, skilled workers are those who have professions such as physicians, nurses, science and technology workers, engineers, information technology specialists, graduate and postdoctoral students, scholars and researchers, and administrative managers.<sup>5</sup> Skilled workers also include those who have some special skill, knowledge or ability to work and those who have attended colleges, universities or technical schools or have earned their skills on the jobs and been accredited by the relevant authorities.<sup>6</sup>

In the Cambodian context, the Labor Law of Cambodia has two provisions specifically and directly dealing with the issues of skilled or specialized workers. It is worth to note that the Labor Law has not defined skilled or specialized workers. For example, the Labor Law limits the probationary period of the skilled worker to two months and empowers the ministry in charge of labor to determine the maximum number of foreign skilled workers in an enterprise.<sup>7</sup> In the collective labor disputes mostly happening in the garment factories, the Arbitration Council in 2004 defined the skilled workers as those who received training in the factories at least two months.<sup>8</sup> In 2006, the Arbitration Council determined that a sewing machine repairman is a specified worker because such a job requires a specialization in repairing sewing machines. In addition, tailor in the Cutting Unit is also a skilled worker.<sup>9</sup> However, not all workers who work

---

5. Surendra Gera et al., *International Mobility of Skilled Labor: Analytical and Empirical Issues, and Research Priorities* (Human Res. Dev. Can., Working Paper 2004 D-01, 2004).

6. ROBYN IREDALE ET AL., FREE FLOW OF SKILLED LABOUR STUDY 23 (ASEAN-Austl. Dev. Coop. Program 2010), available at [http://www.aadcp2.org/uploads/user/6/technicalReports/services/FreeFlowLabour\\_exSummary.pdf](http://www.aadcp2.org/uploads/user/6/technicalReports/services/FreeFlowLabour_exSummary.pdf).

7. Law on Labour, Royal Code NSRKM/0397/001, arts. 68, 264 (1997) (Cambodia).

8. Common Way Fashion Co. v. Khmer Youth Union Fed'n, Arbitration Council Case No. 69/04 (2004) (Cambodia).

9. Hong Mei M & H, Arbitration Council Case No. 53/06 (2006) (Cambodia).

in the garment factories are skilled workers. Ironers and fray trimmers are not specialized workers.<sup>10</sup> Based on the Arbitration Council, skilled workers are those who have received training or those who have specializations or skills.

## **B. Advantage and disadvantage of free flow of skilled labor**

Due to the scarcity of the study on the advantages and disadvantages of free movement of skilled labor to Cambodia, the possible advantages are as follows. The free mobility of skilled workers and profession to Cambodia can fulfill the need of the enterprises that are engaged in cross-border business or investment. They can just deploy their employees from their home countries to work in Cambodia so that they do not have to spend time and money in employing Cambodian workers for temporary works or services. This can encourage the investors to do more trade and investment in Cambodia.

Moreover, through the integration of foreigners into Cambodian society, the Cambodian workers may earn experience, knowledge, and know-how from their foreign colleagues as they live and work together in the enterprise or in the society. This is important for the development of skill and profession of local workers, which leads to the high productivity in services.

The free flow of foreign skilled workers may also cause disadvantages to Cambodia. The labor forces in Cambodia are those who have finished their education at primary school. The statistic on continuous education of the students in 2011 of the Ministry of Education, Youth, and Sport shows that 76.7 percent of the labor force, aging from fifteen to sixty-four, finish primary school and drop out during secondary school.<sup>11</sup> This reflects that the labor market of Cambodia is full of unskilled workers and the provision of training and education for skill and profession to these people will face difficulty due to their low level of education.

Due to the high levels of school dropout at the secondary school level as mentioned above, Cambodia may also lack professionals to feed the hunger of service entities. Therefore, Cambodian workers will earn very little benefit from this integration, as the foreign enterprises will recruit specialists or professionals of their own nationality or other foreigners. Furthermore, the capacity and qualification of Cambodian skilled workers in order to compete with the foreign ones is still questionable. This is because to compete with foreign workers, the Cambodian workers are required to have both skill and language proficiency to

---

10. F.Y. Cambodia Fashion Ltd., Arbitration Council Case No. 73/06 (2006) (Cambodia).

11. MINISTRY OF LABOUR & VOCATIONAL TRAINING OF CAMBODIA, *supra* note 3, at 45.

the extent that allows them to communicate with foreign employers or managers.

### **C. Scope of the policy of the free flow of skilled labor**

On November 20, 2007, the country members of ASEAN collectively affirmed their commitment to make ASEAN a single market, production based, highly competitive economic region; a region of equitable economic development and a region fully integrated into the global economy.<sup>12</sup> Free flow of skilled labor is one of the core elements in “single market and production base” in this blue print as follow:<sup>13</sup>

#### **A5. Free flow of skilled labor**

33. In allowing for managed mobility or facilitated entry for the movement of natural persons engaged in trade in goods, services, and investments, according to the prevailing regulations of the receiving county, ASEAN is working to:

#### **Actions:**

i. Facilitate the issuance of visa and employment passes for ASEAN professionals and skilled labor who are engaged in cross-border trade and investment related activities.

Under the policy in the Blueprint above, the receiving country is committed to facilitate the issuance of entry visa and employment passes or permits to the professionals and skilled workers who are engaged in cross-border trade and investment related activities. Accordingly, the free flow policy only targets the flow of the managed mobility (the movement of natural persons who deal with cross-border trade and investment) pursuant to the regional rules and national laws and regulations of the receiving countries.<sup>14</sup>

Noting the above rules in the Blueprint, on November 19, 2012, the 2012 ASEAN Agreement on the Movement of Natural Persons was signed in Phnom Penh, Cambodia to facilitate the movement of natural persons engaged in the conduct of trade in goods, trade in services and investment between Member

---

12. See ASS'N OF SE. ASIAN NATIONS, ASEAN ECONOMIC COMMUNITY BLUEPRINT (2008), available at <http://www.asean.org/archive/5187-10.pdf>.

13. *Id.* at 15-16.

14. Mary Grace L. Riguer, *ASEAN 2015: Implications of People Mobility and Services* 17 (Inst. for Labor Studies, Working Paper Series 2012, 2012).

States.<sup>15</sup> The Agreement further provides the procedure for application of visa, permit, pass or other authorizing documents for the temporary entry or temporary stay of the natural person, at the same time it protects the integrity of the Member States' borders and protects the domestic labor force and permanent employment in the territories of the Member States.

The Agreement only applies to measures affecting the temporary entry and stay of natural persons who are employees having received remuneration from their employers in one Member State and traveling to other Member States to establish company presence, negotiation of trade, and provide services under any commercial or service agreements.<sup>16</sup> This Agreement does not apply to measures affecting natural persons seeking access to the employment market of another Member State, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.<sup>17</sup> This means that the Agreement will not affect the rules on permanent employment of foreign employees on permanent basis in Cambodia.

To enable the free flow of skilled labor in the Blueprint, the country members can negotiate for the bilateral or Mutual Recognition Arrangements (MRA) in order to recognize the educational certificate, professional qualification, length of experience and other specific recognition in each MRA. Up to now, there were seven MRAs that have been made in order to guarantee the free flow of skilled labor in the field of (1) engineering services, (2) nursing services, (3) architectural services, (4) surveying qualifications, (5) medical practitioners, (6) dental practitioners, and (7) accountancy services.<sup>18</sup>

### III. Immigration Law

Before examining the detailed rules governing employment of foreigners in Cambodia, it is of great importance to understand the tradition of legislation in Cambodia where laws delegate the rule-making power to the executive branch, such as the Royal Government of Cambodia and the relevant ministries to make detailed and specific rules to govern the issues. That is why the issues of

---

15. 2012 ASEAN Agreement on the Movement of Natural Persons, art. 1, Nov. 19, 2012.

16. *Id.* arts. 2, 3.

17. *Id.* art. 2, ¶ 2.

18. These agreements can be found on the Association's homepage, *available at* <http://www.asean.org/asean>.



employment of foreigners are regulated by laws that are accompanied by the rules made by the Royal Government at the central level in the form of “Anukret” or “Sub-decree” and by ministries in the form of “Prakas,” which literally means proclamation. Throughout the paper, these legal instruments have been consulted as they play an important role in regulating the activities of foreigners in Cambodia.

In order to understand the rules governing labor relations, the review of laws and regulations are not enough. The awards or decisions of the Arbitration Council also have much influence on labor relations because even non-binding awards have been used by the parties as ground or supportive documents for the further discussion and negotiation among the parties, for decision in courts, or for strike or lockout.<sup>19</sup> The Arbitration Council was created in 2003 in response to the absence of Labor Court and its decisions have been publicized on its homepage.

### A. Categories of foreigners

The Law on Immigration of 1994 has classified foreigners who enter Cambodia according to the period and purpose of stay. They are non-immigrant aliens, immigrant aliens and immigrant investors. To the great extent based on applicable laws and regulations, they have to go through different processes for obtaining entry and residence permits. Therefore, it is of priority to define those people before examining the rules applied to them.

**Non-immigrant aliens:** Under the Law on Immigration, non-immigrant aliens are not defined but are numerated as the following people.<sup>20</sup> Non-immigrant aliens include employees or agents of embassies or international experts who come to Cambodia under the agreement with Cambodian government: soldiers, officers, employees, students and their families with the permission from the Cambodian government. Moreover, passengers who wait for transit to other countries and their stays do not exceed one week, tourists, commercial and bank representative whose period of stay does not exceed three months are non-

---

19. The Arbitration Council in Cambodia deals only with collective labor disputes. There are two kinds of awards, namely binding and non-binding ones. ECON. INST. OF CAMBODIA, FINAL REPORT: BASELINE STUDY FOR THE ARBITRATION COUNCIL FOUNDATION (ACF) 106 (2010), available at <http://www.arbitrationcouncil.org/uploads/b11f8-acf-baseline-study.pdf>.

20. Law on Immigration, Royal Code No. 05/NS/94, art. 7 (1994) (Cambodia).

immigrant aliens.

In addition to these foreigners, the Law on Immigration also defines non-immigrant aliens as those who are foreigners that live along the border of Cambodia and are allowed to enter and leave once or multiple times, passenger and crews who land the craft or stop the ship to load food at the airport or port in the territory of Cambodia, and foreigners who are permitted to fish along the beach of Cambodia.

**Immigrant Aliens:** Immigrant aliens are those who come to Cambodia to perform their profession and conduct activities relating to the industry, commerce, agriculture or services and who are not non-immigrant aliens.<sup>21</sup> Most immigrants are those who tend to have permanent or long-term stay in Cambodia. That is why, to become an immigrant alien, a foreign national is required to obtain an approval from the Minister of the Ministry of Interior in the form of the Prakas (proclamation).<sup>22</sup> Furthermore, the Prakas issued by the Minister of Ministry of Interior is also required to rescind the status as immigrant aliens.<sup>23</sup> These legal requirements in deed distinguish immigrant aliens from non-immigrant aliens.

**Investor immigrant aliens:** Investor immigrant aliens are those who come to Cambodia for investment under the laws of investment of Cambodia and are defined as foreigners who come to oversee the result of the investment or who received letter of permission of investment from the Council for Development of Cambodia (CDC).<sup>24</sup> Under the laws on investment of Cambodia, the investor immigrant alien may submit their investment projects to the Council for the Development of Cambodia in order to get the status of qualified investment project (QIP).<sup>25</sup> The Council for the Development of Cambodia is the organ of the Royal Government of Cambodia that has legal competence to evaluate whether

---

21. *Id.* art. 10.

22. *Id.* art. 5.

23. *Id.* art. 6.

24. *Id.* arts. 25, 26.

25. Law on Investment of the Kingdom of Cambodia, Royal Kram No. 03/NS/94 (1994) [hereinafter Law on Investment]; Amendment to the Law on Investment of the Kingdom of Cambodia, Royal Kram No. NSRKM/0303/009 (2003) [hereinafter Amendment to the Law on Investment].

or not an investment project is a qualified investment project.<sup>26</sup> If a project is considered a qualified investment project, the investors can receive investment incentives from the government such as tax holiday on income tax or import tax.<sup>27</sup>

Based on the definitions above, a foreigner who resides and works either for a temporary or permanent period falls under the category of non-immigrant or immigrant alien. This is because under the Law on Immigration, non-immigrant and immigrant aliens can work in Cambodia provided that they possess work permit and workbook. The foreign workers are not investment immigrant aliens.

## **B. Process to obtain entry permit**

### **1. Non-immigrant aliens**

Based on laws, non-immigrant aliens who wish to enter Cambodia must obtain permission from the government of Cambodia through embassies and consulates or any foreign authority representing the interest of Cambodia.<sup>28</sup> Additionally, they have to carry their valid passports or any other documents with entry permits issued by the authorities mentioned above and must pay the visa and tax of airport or port.

In 1999, the Royal Government of Cambodia issued a Sub-decree dealing with the process for allowing non-immigrants to enter, leave and reside in Cambodia.<sup>29</sup> Based on this Sub-decree, there are seven types of visas, namely Diplomatic Visa (Visa A), Formal Visa (Visa B), Courtesy Visa (Visa C), Tourist Visa (Visa T), Passing Visa (Visa D), Normal or Business Visa (Visa E), and Special Visa (Visa K).<sup>30</sup> Based on the laws, non-immigrant aliens who come to Cambodia without obtaining visas prior to their arrivals are not allowed to enter Cambodia; and due to national security reasons, the foreigners are not allowed to enter Cambodia even though they have received entry permits.<sup>31</sup>

---

26. Law on Investment, *supra* note 25, art. 3.

27. Amendment to the Law on Investment, *supra* note 25, art. 14.

28. Law on Immigration, *supra* note 20, art. 8.

29. Sub-decree No. 75 on the Formalities of Application for Authorization of Non-Immigrant Aliens to Enter, Exit and Reside in the Kingdom of Cambodia (1999) [hereinafter Sub-decree No. 75].

30. *Id.* art. 4.

31. Law on Immigration, *supra* note 20, art. 9.

However, due to the policy made by the Ministry of Foreign Affairs and International Cooperation, presently, a Tourist Visa can be obtained through online application to the Ministry of Foreign Affairs and International Cooperation, which is called e-Visa.<sup>32</sup> The length of validity of e-Visa for tourists is three months or more from the date of issuance and the length of permitted stay is one month. In addition to the e-Visa, foreign nationals can apply for Tourist Visa or Business Visa at the visa counter upon their arrival at Cambodia international airports in Phnom Penh and Siem Reap, and any entry points at the borders of Cambodia. The maximum stay is thirty days but may be extended to a period more than thirty days. However, not all foreign nationals can apply for the e-Visa or visa on arrival. They are advised to check with Cambodia embassies or consulates in their countries before coming to Cambodia.

Since the foreign nationals are required to perform activities according to the type of visa they obtained, they have to obtain a Business Visa if they wish to provide service or work in Cambodia.<sup>33</sup> Foreigners are allowed to enter Cambodia and stay in Cambodia under Business Visa for a period of one month.<sup>34</sup> It is very normal that foreign workers may prolong their stays while working in Cambodia. It is noted that the request for permission and extension on the period of stay in Cambodia fall under the administrative management of the Ministry of Interior, which has the right to issue and renew Business Visas to foreigners.<sup>35</sup> Business Visas can be extended from one month to twelve months by requiring the foreigners to submit the documents to the Ministry of Interior.<sup>36</sup>

The process for obtaining the visa extension is as follows. The applicants must fulfill the application for extension of stay by attaching the passport with its validity at least three months before the expiration date. They must stick current photos, pay tax and fees for permission on the extension of stay. The Ministry of Interior demands the foreigners to prove the necessity for extension of their stay in Cambodia.<sup>37</sup> Moreover, the foreigners who plan to extend their stays for more than six months must have letters from their affiliate institutions confirming the

---

32. The e-Visa for Tourist Visa can be applied via <https://www.evisa.gov.kh/Default.aspx>.

33. Sub-decree No. 75, *supra* note 29, art. 6.

34. Sub-decree No. 75, *supra* note 29, art. 5.

35. Sub-decree No. 75, *supra* note 29, art. 10.

36. Sub-decree No. 75, *supra* note 29, art. 8.

37. Sub-decree No. 75, *supra* note 29, art. 9.

necessity for the extension of temporary stay.

In addition, the foreigners have to provide their employment contracts with factories, enterprises, companies, or work sites, which are recognized by Ministry of Labor and Vocational Training or letter certifying the commercial registration issued by the Ministry of Commerce of Cambodia. It must be noted that although the foreign workers have their visas extended, they can still be forced to leave Cambodia when they do not possess valid work permits.<sup>38</sup>

## 2. Immigrant aliens

Another type of foreigners who work in Cambodia is immigrant alien. Similar to rules governing activities of non-immigrant aliens, there are two procedural rules on the process before and after arriving in Cambodia. However, based on the reason that immigrant aliens tend to stay longer than non-immigrant aliens, the laws and regulations on immigration have provided rules which best fit the situation of immigrant aliens.

The following is the procedure for the foreigners who wish to reside and work in Cambodia.<sup>39</sup> At first, the foreigners apply for permission as immigrant aliens to the Ministry of Interior through the embassies or consulates of Cambodia, or any foreign authority that represent the interest of Cambodia. They must fulfill the form of visa by attaching copies of their valid passports and other travel documents that have equal legal value to a passport and have validity of at least six months before entry into Cambodia.

In addition to the submission of photos, the applicants must submit a health certificate issued by doctors of their home countries; evidence on their means of economic support for themselves or their families; criminal records; copy of

---

38. Sub-decree No. 75, *supra* note 29, art. 13.

39. Sub-decree No. 30 on the Formalities of Application for Authorization of Immigrant Aliens to Enter, Exit and Reside in the Kingdom of Cambodia, art. 3 (1996) [hereinafter Sub-decree No. 30].

employment contract with any private sector, which is certified by Cambodian government; and receipt on deposit of money in the National Bank of Cambodia to guarantee the returning fee as the case may be.<sup>40</sup>

Foreigners who wish to come to Cambodia with their family can also apply as group of family to get the permission from the Ministry of Interior. If their applications have been approved, the foreigner is required to pay tax for visa in amount of 250,000 Riel (approximately US \$63) for each member of the family and 125,000 Riel (approximately US \$32) for children less than twelve years old. It is noted that the recognition of any foreigner as immigrant alien is made by the Prakas of the Minister of the Ministry of Interior.<sup>41</sup>

### C. Procedural rules for obtaining residence card

In 1995, one year after the adoption of the Law on Immigration in 1994, the Ministry of Interior issued a Prakas on the Management on the Issuance of Residence Cards to aliens. This Prakas has provided additional rules and procedures on the application for residence cards by immigrant aliens and by non-immigrant aliens, the detailed procedures of which the Law on Immigration does not specify.

This Prakas has categorized the residence cards as temporary residence cards and permanent residence cards. In general, foreigners who do not wish to stay long may apply for the temporary residence cards. Temporary residence cards are given to staff members and specialists in managerial works, technical staff members, and specialized workers and sellers of service or labor. The permanent residence cards are issued to those who are immigrant aliens and investor immigrant aliens, their spouses and dependents who are recognized by the Council for the Development of Cambodia.<sup>42</sup>

#### 1. Non-immigrant aliens

---

40. Amount of deposit varies according to the country where the foreigners come from. For example, people from the neighboring countries of Cambodia must deposit 500,000 Riel (approximately US \$125) and people from Asia and Australia must deposit 1,250,000 Riel (approximately US \$315). Sub-decree No. 30, *supra* note 39, art. 2.

41. Sub-decree No. 30, *supra* note 39, art. 5; Law on Immigration, *supra* note 20, art. 12.

42. Ministry of Interior Prakas No. 555 on the Management of the Issuance of Resident Cards to Aliens, art. 1 (1995) (Cambodia) [hereinafter Prakas on the Issuance of Resident Cards].

When arriving in Cambodia, non-immigrant aliens are not required to apply for the temporary residence card from the Ministry of Interior until they have been living in Cambodia more than one year.<sup>43</sup> However, for any purpose, the non-immigrant aliens may ask for the issuance of the residence card or permit though the period of their stay is less than one year. For example, in order to register a newly established company with the tax administration, it is required to submit the certified letter confirming the residence of directors.<sup>44</sup> Accordingly, the foreign director of a company must have residence permit if he wishes to be a director of that company.

The Law on Immigration, Prakas on Management on the Issuance of Residence Cards to Aliens, and Sub-decree on Procedure Permitting Foreign Non-Immigration Aliens to Leave, Enter, and Reside in the Kingdom of Cambodia do not set the period of the validity of temporary resident cards. Due to the requirement that a non-immigrant alien must submit a copy of their passport or any other equivalent documents with the proper visa in order to apply for a residence card,<sup>45</sup> and based on the nature of temporary residence of the non-immigrant aliens, it is reasonable that the period of the resident card conforms to the period of permission of stay in Cambodia as specified in the visa attached to the passport or other equivalent documents.

The documents submitted for temporary residence cards are (1) an application for temporary residence card, (2) information slip form, (3) a copy of the passport or equivalent documents with proper visa, (4) photos, (5) a copy of medical certificate from a doctor of the country the foreigners migrated from stating the good physical fitness for the performance of his or her profession and with a copy of a written employment contract, (6) a copy of Social Security Insurance issued by an employer or insurance company, and (7) a copy of receipt of payment of tax on temporary resident card.<sup>46</sup> In practice, in order to prove that a foreigner truly resides in Cambodia, a house lease agreement is also required.

Since the requirement that non-immigrant aliens have residence cards after

---

43. Sub-decree No. 75, *supra* note 29, art. 8.

44. Ministry of Economy and Finance Prakas No. 1139 MoEF on Tax Registration, art. 8 (2014) (Cambodia).

45. Prakas on the Issuance of Resident Cards, *supra* note 42, art. 2-A.

46. Prakas on the Issuance of Resident Cards, *supra* note 42, art. 2.

one year of living in Cambodia, a copy of a medical certificate from a doctor of the country where the foreigner comes from may be seen as a burden to the non-immigrant alien. This is because they have to return to their home country for a medical check-up and get the result to Cambodia. This requirement is time-consuming and costly. To be practical, there may be cases where the submission of medical certificates issued by the competent authorities in Cambodia is acceptable just to apply for the residence permit or card.

## 2. Immigrant aliens

Different from non-immigrant aliens who are required to have residence cards after living in Cambodia for more than one year, the immigrant aliens have an obligation to apply for residence cards promptly upon their arrival to Cambodia. This means that within forty-eight hours after arriving in Cambodia, the immigrant aliens have to be present at the Foreign Alien Office of the Municipal or Provincial Police Commissariats where they intend to reside in order to apply for residence cards. After receiving the application, the office provides the immigrant aliens with the receipts.<sup>47</sup> This residence card is very important to reflect the legal residence in Cambodia, as the foreigners have to show this card whenever the authority comes to check or ask for it.<sup>48</sup>

In cases where this residence card is withdrawn or confiscated by the competent authority, the foreigners will be forced to leave Cambodia in seven days. This period of leave can be extended based on the fact of each case and be amended by the Minister of Ministry of Interior after receiving a proposal from a police department and this extension period cannot exceed three months. It is noted that the Prakas of the Minister of the Ministry of Interior is required to decide the discontinuance of the recognition of foreigners as immigrant aliens.<sup>49</sup>

Before moving to new residence, immigrant aliens must request for the certificate of residence from the Alien Office of the Municipal or Provincial Police Commissariats of the place they are about to leave and of the place where they are about to move to within forty-eight hours.<sup>50</sup> If the immigrant aliens intend to leave Cambodia for a period of not more than three months, they must apply for the re-entry permit.<sup>51</sup> The residence card is valid for a period of

---

47. Law on Immigration, *supra* note 20, art. 14.

48. Law on Immigration, *supra* note 20, art. 16.

49. Law on Immigration, *supra* note 20, art. 16.

50. Law on Immigration, *supra* note 20, art. 15.

51. Law on Immigration, *supra* note 20, art. 23.



two years and can be renewed in every two years.<sup>52</sup> The residence card is very important as it proves that a foreigner is living legally in a particular country. With this card, foreigners can ask the authority in Cambodia to issue a criminal record for them and use this record as necessary.

Documents required for application for permanent residence cards are similar to those for application for temporary residence cards. The different ones are (1) a copy of the Prakas (proclamation) on recognition as an immigrant alien or immigrant alien who is a private investor, and (2) a certificate from any bank in Cambodia which states that the concerned person has deposited properly his or her bond as required by Sub-decree on Procedure Permitting Foreign Immigration Aliens to Leave, Enter, and Reside in the Kingdom of Cambodia.<sup>53</sup>

The immigrant aliens do not have to provide a copy of a medical certificate from a doctor of the country the foreigners migrated from, stating the good physical fitness for the performance of his or her profession and with a copy of a written employment contract in this case. This may be because before becoming the immigrant alien, the foreigner is already required to submit a certificate of health.

After examining the rules on entry and stay in Cambodia, the paper further examines the rules on employment of foreigners. The employment of foreigners must be in conformity with laws and regulations on labor relations in Cambodia. The Ministry of Interior has the right to inspect the work permit of the foreigners in factories, enterprises, companies, or establishments in cooperation with the Ministry of Labor and Vocational Training.<sup>54</sup> To improve the inspection, on July 16, 2014, the Ministry of Interior and Ministry of Labor and Vocational Training jointly adopted the Joint Prakas, which determines the provisions and legal conditions on inspections over foreign labor at establishments and enterprises.<sup>55</sup> Furthermore, this Joint Prakas has empowered the Joint Inspection Team of Foreign Labor to have the exclusive right in inspection over the use of foreign labor in Cambodia.

---

52. Law on Immigration, *supra* note 20, art. 21.

53. The amount of deposit has been specified in Article 2 of the Sub-decree as a guarantee for the payment of returning fee of the immigrant aliens. Sub-decree No. 30, *supra* note 39.

54. Law on Immigration, *supra* note 20, art. 19.

55. Ministry of Interior & Ministry of Labour and Vocational Training Joint Prakas No. 2662 Br.K on Inspection of Foreign Workforce in the Kingdom of Cambodia (2014).

## IV. Laws and regulations on labor relations

### A. Prohibition of discrimination

The Labor Law of Cambodia governs the relations between employers and workers who perform their employment contracts in the territory of Cambodia, regardless of the place where the contracts are made or the nationality and residences of the contracting parties.<sup>56</sup> In other words, as long as the performance of work of the employees takes place in Cambodia, the Labor Law of Cambodia applies, even though the performance of work is done temporarily or permanently in Cambodia.

Generally, the Labor Law of Cambodia integrates the foreign workers by making the working environment of equal treatment with Cambodian workers. For example, its Article 12 prohibits employers from relying upon race, color, sex, creed, religion, political opinion, birth, social origin as ground for hiring, defining and assigning of work, vocational training, advancement, promotion, remuneration, granting of social benefits, taking disciplinary measure or terminating the employment contract.

With respect to principle of equal wage, the Labor Law, in particular its Article 106 further provides that wage must be equal to all workers regardless of their origin for work of equal conditions, professional skill and output.<sup>57</sup> In consideration with the prohibition of discrimination in Article 12 above, the Arbitration Council in 2004 has interpreted Article 106 as “wages must be equal without discrimination based on origin, sex, age, union membership, if those workers are working under the same working conditions, and have the same professional skill and the same outputs.”<sup>58</sup>

In addition, the Arbitration Council in 2009 requires employer to apply the principle of equal wage to both foreign and Cambodian workers who have the same position and professional skill.<sup>59</sup> The difference in wage is not discriminatory action of the employers if it is proved that there is difference in

---

56. Law on Labour, *supra* note 7, art. 1.

57. Law on Labour, *supra* note 7, art. 106.

58. June Textile Co. v. Khmer Youth Fed'n of Trade Union, Arbitration Council Case No. 14/04 (2004) (Cambodia).

59. Naga World, Arbitration Council Case No. 47/09 (2009) (Cambodia).

professions, skills, output and/or position of the workers.

It is worth noticing that the Labor Law of Cambodia does not absolutely adopt the principle of equal treatment without any exception. While aiming at creating an equal working environment for foreign workers to a great extent, the Labor Law also has reserved jobs for Cambodians. This is known as the system of preferential treatment for Cambodian workers. This is because in practice foreign employees seem to have better treatment than Cambodian employees.<sup>60</sup>

This reservation can be found in Article 12 of the Labor Law that all workers are treated equally “except for the provisions fully expressing under this law, or in any other legislative text or regulation protecting women and children, as well as provisions relating to the entry and stay of foreigners.”<sup>61</sup> This phrase has reflected that foreign workers are equal to Cambodian employees to an extent limited and specified by laws and regulations of Cambodia. Next, the paper examines the rules that specifically apply to the employment of foreign workers.

## **B. Recruitment of foreign workers**

Based on the principle of freedom of contract, the employer has freedom to select the workers freely and under the principle of non-discrimination in Article 12, the employer is prohibited to consider on the nationality of the workers as a reason for hiring. However, Article 263 requires enterprises of any kind and professionals such as lawyers, bailiffs, and notaries who need to recruit staff to work for them must seek Cambodians as the first priority.<sup>62</sup> Accordingly, in the legal profession, the priority in job placement is given to Cambodians.

In realization of the priority in recruitment for Cambodian employees in the Labor Law, in 2001, the Ministry of Social Affairs, Labor, Vocational Training and Veteran Rehabilitation<sup>63</sup> has issued a Prakas that reaffirmed the requirement

---

60. Cambodian employees and foreign employees have the same positions, but foreign employees are paid higher than Cambodian employees. According to the Arbitration Council, this different treatment violates the principle of equal treatment in Article 106 of the Labor Law of Cambodia.

61. Law on Labour, *supra* note 7, art. 12.

62. Law on Labour, *supra* note 7, art. 263.

63. In 2005, the government of Cambodia established the Ministry of Labor and Vocational Training to be the ministry which is charge of labor issues and vocational training. Law on Establishment of Ministry of Labour and Vocational Training, Royal Code NSRKM/0105/003 (2005) (Cambodia).

that employers recruit Cambodians before they can recruit foreign workers.<sup>64</sup> In 2014, the Ministry of Labor and Vocational Training issued a new Prakas on the Use of Foreign Employees while continued to demand the employers of any kind to recruit Cambodians first.<sup>65</sup> The employment of foreigners is permissible under the following conditions.<sup>66</sup> First of all, if employers cannot find a suitable Cambodian applicant to fulfill the need of the enterprise or company, the employer may recruit foreigners who are specialists, technicians or professionally skilled.

Second, it is required that the employer has to make a written request to the Ministry prior to the recruitment of the foreigners. That means that even if the employer plans to recruit only one foreign employee, the employer still has the obligation to get prior approval. The request of the need for the use of foreigners of the upcoming year must clarify the number of foreign employees and that of Cambodians, as well as the main reason for the necessary use of the foreign employees, and must be sent to the Ministry of Labor and Vocational Training before the end of November of each year.

Based on the Labor Law and Prakas, upon receiving the request of the employers, the Ministry in general permits the use of foreign workforce not exceeding ten percent of the total number of Cambodian employees.<sup>67</sup> The new Prakas on the Use of Foreign Workforce further sets the maximum limit according to the following categories of the employee.<sup>68</sup>

- Office employee: 3%
- Specialized employee or worker: 6%
- Non-specialized employee or worker: 1%

---

64. Ministry of Labour and Vocational Training Prakas No. 196 KB/Kr.K on Use of Foreign Workforce (2001) (Cambodia) [hereinafter Prakas on Use of Foreign Workforce (2001)].

65. Ministry of Labour and Vocational Training Prakas No. 196 KB/Kr.K on Use of Foreign Workforce (2014) (Cambodia) [hereinafter Prakas on Use of Foreign Workforce (2014)].

66. *Id.* art. 1.

67. Law on Labour, *supra* note 7, art. 264; Prakas on Use of Foreign Workforce (2014), *supra* note 65, art. 2.

68. Prakas on Use of Foreign Workforce (2014), *supra* note 65, art. 2.

If compared to the skilled foreigners, the foreign non-skilled workers are not given much priority in recruitment because Cambodian non-skilled workers are already abundant in the labor market.

In case where the employers need to use foreign workforce more than this ten percent, the request must contain clear and detailed information on the position, skill, and profession of each foreigner who is employed and objective reasons for the need of the use of foreign workforce more than this maximum limit.<sup>69</sup> Additionally, the employer who employs foreigners must bring the written employment contract of each foreigner to register with the Department of Employment and Workforce of the Ministry of Labor and Vocational Training for those who are located in Phnom Penh and with Municipal/Provincial Departments of Labor and Vocational Training for those who are located in cities and provinces.<sup>70</sup>

In practice, though the enterprises may request for the use of foreigners in any percentage exceeding the maximum limit, the Department of Employment and Workforce of the Ministry of Labor and Vocational Training and Municipal/Principal Department of Labor and Vocational Training have much discretion to decide whether to approve, reject, or reduce the requested percentage depending on the real situation of need of foreign workers in the requesting enterprises.

It is worth to note that the Labor Law, particularly Article 264, does not set this maximum limit but it delegates the power to the Ministry of Labor and Vocational Training to do so. Such a legislative rule provides flexible means in setting the maximum limit of the use of foreign workforce while reserves the jobs for Cambodians. That means the Ministry can issue the Prakas to set this limit at any time in response to the real situation of the labor market. Since 2001 until 2014, this maximum limit of ten percent remains unchanged.<sup>71</sup>

---

69. Prakas on Use of Foreign Workforce (2014), *supra* note 65, art. 2.

70. Prakas on Use of Foreign Workforce (2014), *supra* note 65, art. 3.

71. Prakas on Use of Foreign Workforce (2001), *supra* note 64; Prakas on Use of Foreign Workforce (2014), *supra* note 65.

## C. Necessary requirements for working in Cambodia

Article 261 of the Labor Law requires foreigner to have a work permit and workbook that is issued by the Ministry of Labor and Vocational Training. In addition, the foreigner must also fulfill conditions, such as having legally entered the Kingdom of Cambodia, possessing a valid passport and residence permit, being fit for their job and have no contagious diseases. Because the matters relating to entry permit and residence permit have been discussed above, the following section focuses on other legal issues of the working of foreigners in Cambodia under the Labor Law.

### 1. Procedural requirements for obtaining and renewing work permit and workbook

The owners or directors of the enterprises or foreigners who come to perform any kind of occupations in Cambodia must duly apply for work permit and workbook.<sup>72</sup> Workbook is an employment record of a worker, which contains the type of occupation, duration of the employment contract, wage, methods of wage payment and history of subsequent employment contracts.<sup>73</sup> Workbooks belong to the workers; and therefore, the workers have obligation to pay tax or fee in relation with the issuance of this workbook.<sup>74</sup> The employer must record

---

72. Ministry of Labour and Vocational Training Prakas No. 197/PRK/MLVT on the Work Permit and Employment Card, art. 1 (2014) (Cambodia) [Prakas on the Work Permit (2014)].

73. Law on Labour, *supra* note 7, art. 34.

74. In 2003, there was a case where the workers claimed that the employer bore the obligation to pay tax and costs for the issuance of workbook. Loyal Cambodia Ltd. v. Khmer Youth Fed'n of Trade Union, Arbitration Council Case No. 21/03 (2003) (Cambodia).

the recruitment or termination of the worker, wage, and increase of wage in the workbook and apply for a visa from Labor Inspector in seven days after the day of recruitment and termination.<sup>75</sup>

In addition to workbook, foreign workers have to possess a work permit.<sup>76</sup> The procedural rules for obtaining and renewing work permits and workbooks have been placed under the same Prakas issued by the ministry in charge of labor.<sup>77</sup> In practice, in the Capital City of Phnom Penh, the Municipal Department of Labor and Vocational Training has the authority to issue the workbook and work permit to foreigners who are employed at enterprises with less than one hundred workers while the Ministry of Labor and Vocational Training has such power for enterprise with workers more than one hundred.<sup>78</sup>

This work permit is valid for one year and may be extended as long as the validity of extension does not exceed the validity period in the residence permit held by the concerned person. That means the foreign worker must have legally entered Cambodia, possess a valid passport and valid resident permit, be fit for their jobs and have no contagious disease.

The Prakas No. 413 of 2005 of the Ministry of Labor and Vocational Training regulates the fee and procedures for obtaining a work permit and workbook.<sup>79</sup> This Prakas requires employers to facilitate the foreign workers to obtain work permits and workbooks. The Prakas No. 195 of 2014 reaffirmed the requirements for the application of work permits and workbooks in the Prakas No. 143 of 2005 based on the categories of foreigners as follows.

---

75. Law on Labour, *supra* note 7, art. 37.

76. Law on Labour, *supra* note 7, art. 261.

77. Prakas on the Work Permit (2014), *supra* note 72.

78. MINISTRY OF LABOUR & VOCATIONAL TRAINING OF CAMBODIA, DETERMINATION ON THE MANAGEMENT OF WORKERS AT SMALL AND MEDIUM ENTERPRISES AND ESTABLISHMENTS IN PHNOM PENH CAPITAL CITY (2008).

79. The Ministry in charge of labor has updated procedures for obtaining work permit and workbook. *See* Ministry of Social Affairs, Labour and Veteran Affairs Prakas No. 520/PRK/MOSALVA on the Work Permit and Employment Card (1997) (Cambodia); Ministry of Social Affairs, Veteran and Youth Rehabilitation Prakas No. 305/PRK/MOSAVYR on the Work Permit and Employment Card (2001) (Cambodia); Ministry of Social Affairs, Labour and Veteran Affairs Prakas No. 162/PRK/MOSALVA on the Work Permit and Employment Card (2001) (Cambodia).

***a. Foreigners having fixed-duration visa (non-immigrant aliens)***

The required documents for obtaining work permit and workbook are summarized as the following:<sup>80</sup>

- 1) Application form for obtaining work permit and workbook;
- 2) Clarification letter of the enterprise owners about the number of Cambodian and foreign workers;
- 3) Copy of each passport of workers;
- 4) Payment of annual fee (US \$100) for each foreigner;
- 5) Employment contract or written notice on employment contract of foreigner;
- 6) A certificate certifying having appropriate capacity fit to the occupation issued not more than six months by competent authority of the country of the foreigner workers. The foreigners who already entered into Cambodia but do not have this health certificate must have this certificate issued by the Department of Health Labor of the Ministry of Labor and Vocational Training.

In order to renew work permit and workbook, there is no much difference from the required documents for initially obtaining the work permit and workbook. These required documents are application for renewal, clarification letter of enterprise owners, copies of passports, annual fee for each foreigner (US \$100), and health certificate issued by Department of Labor Health of the Ministry of Labor and Vocational Training.<sup>81</sup>

***b. Foreigners enter into the triangle area-Cambodia, Vietnam and Laos***

For foreigners who are Vietnamese or Lao and live near the border of four provinces of Cambodia: Steung Treng, Kratie, Mondol Kiri, and Ratanak Kiri, the required documents for obtaining and renewing work permits and workbooks are similar to documents required for foreigners having fixed-duration visas, except the following.<sup>82</sup> First, the applicants must submit copies of passports, border pass or laissez-passer or any documents agreed and approved by the governments of the three countries. Second, the annual and service fee for the issuance and renewal of work permits and workbooks for each foreigner is slightly less expensive than that of the non-immigrant alien (US \$80).

---

80. Prakas on the Work Permit (2014), *supra* note 72, art. 2.a.

81. Prakas on the Work Permit (2014), *supra* note 72, art. 2.b.

82. Prakas on the Work Permit (2014), *supra* note 72, art. 3.



Third, there must be certificates certifying that the foreigners have an appropriate ability or capacity fit to the occupation. The competent authority of the countries of the foreigners issues this certificate.

***c. Foreigners having permanent residence in Cambodia (immigrant aliens)***

For foreigners who have been permitted to reside permanently in Cambodia, the required documents for obtaining and renewing work permit and workbook are similar to documents required for foreigners having fixed-duration visas, except the following.<sup>83</sup> First, the applicants must submit copies of passports or any documents of equal value issued by the Ministry of Interior permitting permanent residence in Cambodia. Second, the annual and service fee (US \$50) for the issuance and renewal of work permit and workbook for each foreigner is less expensive than that of the non-immigrant alien and that of the foreigner living near the borders of Cambodia.

The payment for extension of work permit and workbook must be done before the end of March of each year. If this payment is not paid for the extension, the enterprise that uses these foreign workers is treated as keeping foreigners without work permit and workbook.<sup>84</sup>

Control of foreigners from 2009-2013

Description	2009	2010	2011	2012	2013	2014
Issuance of new workbook and work permit	1,030	696	932	512	1,172	4,342
Extension of workbook and work permit	1,969	1,820	2,252	2,333	2,517	10,891
Total Fee Collected (in USD)	306,800	255,150	324,700	294,450	401,820	1,582,920

(Source: Department of Employment and Manpower 2013 cited in Strategic Plan on Development in Field of Labor and Vocational Training 2014-2028)<sup>85</sup>

83. Prakas on the Work Permit (2014), *supra* note 72, art. 4.

84. Prakas on the Work Permit (2014), *supra* note 72, art. 5.

85. MINISTRY OF LABOUR & VOCATIONAL TRAINING OF CAMBODIA, *supra* note 3, at 22.

## 2. Revocation of work permit and punishment

The Labor Law, in particular Article 262, provides that the Ministry of Labor and Vocational Training can revoke a work permit if the holders do not fulfill the above requirements for working in Cambodia. Moreover, work permits are also withdrawn or rejected for renewal in the cases where the holders who are applying for renewals are competing with Cambodian job seekers, or when the holders are unemployed for more than one month or are not hired by another employer. This revocation is carried out upon the expiration of the work permit that may be reissued or extended.

Under Article 372 of the Labor Law, employers who hire or keep in their enterprises or companies a foreigner who does not possess a workbook authorizing them to carry out a paid job in Cambodia, shall be subject to a fine of sixty-one to ninety days of the base daily wage or to imprisonment of six days to one month.<sup>86</sup> In the event of a repetitive offense, such person shall be subject to imprisonment of one month to three months.

Article 19 of the Law on Immigration provides that an employer who employs foreigner must comply with the Labor Law of Cambodia.<sup>87</sup> Under Article 31, the Law on Immigration punishes those who violate Article 19 with a transactional fine from 200,000 to 500,000 Riels.<sup>88</sup> In case of repetition of the same offense, the employers are subject to one to three-month imprisonment. Under Article 33 of the same Law, the Ministry of Interior has the power to impose a transactional fine specified in the Law.<sup>89</sup> Furthermore, Article 35 obligates the Minister of Interior to order for expulsion from the Kingdom of Cambodia of any immigrant alien who violates these provisions of the Law.<sup>90</sup>

Based on the given and assumed facts, employers who employ foreigners without workbook or work permit would be subject to penalties specified in Articles 31 and 33 of the Law on Immigration. In addition, the employee would be subject to the administrative measure such as forced expulsion specified in Article 35 of the same Law as well.

---

86. Law on Labour, *supra* note 7, art. 372.

87. Law on Immigration, *supra* note 20, art. 19.

88. Law on Immigration, *supra* note 20, art. 31.

89. Law on Immigration, *supra* note 20, art. 33.

90. Law on Immigration, *supra* note 20, art. 35.

## V. Health Examination

Under Article 261 of the Labor Law, foreigners who work in Cambodia must be fit for their occupation and have no contagious diseases. The Joint Prakas No. 09 adopted on January 19, 1994, which is approximately three years before the adoption of the Labor Law on March 13 1997, requires both Cambodians and foreigners to receive health examination before starting to work in Cambodia at the Health Labor Department of the Ministry of Social Affairs, Labor, and Vocational Training (currently Ministry of Labor and Vocational Training).<sup>91</sup>

The subject of general examination includes (1) height, weight, body build; (2) history of past sickness; (3) eyes; (4) ears, nose, and throat; (5) blood pressure, heart, and pulse; (6) digestive appetizer; (7) x-ray of lungs; (8) productivities and urinates; (9) nerve system; (10) osseous system; and (11) diagnostic tests. Based on real and specific professions, there may be additionally special examination on the health of the workers.<sup>92</sup> After examining the conditions of these eleven items, the Department of Labor Health issues a health certificate with the conclusion or results whether the workers are fit for the jobs and have good health.<sup>93</sup> The cost of the health examination must be borne by the employer.<sup>94</sup>

## VI. Integration under the labor laws

Other than above, all workers are protected from forced labor and guaranteed minimum wage. The working hours for regular workers are eight hours per day and forty-eight hours per week. Over timework is allowed only two hours a day based on workers' agreement and permission of the Labor Inspector. The worker can enjoy paid holidays and annual paid leave.

Furthermore, the laws and the arbitrator-made rules have protected workers in the case of employer's unilateral modification of working conditions through

---

91. Ministry of Social Affairs, Labour and Veteran Affairs & Ministry of Health Joint Prakas No. 09-MOSALVA on Medical Examination for Cambodians and Foreigners who Come to Work in Cambodia, arts. 1-3 (1994).

92. *Id.* art. 5.

93. *Id.* art. 6.

94. *Id.* art. 7.

the change of content of employment contract or Internal Regulations, and termination of employment contract.<sup>95</sup> In case of work-related injuries or sickness, in an enterprise composed of at least eight workers, the victim worker is entitled to benefits provided by the National Social Security Fund. In an enterprise of less than eight workers, the responsibility on compensation and benefit for the victim worker rests on employer.

A foreigner may be a candidate for the election of the management of the union if he or she is at least twenty-five years old, can speak and write in Khmer, have the right to permanent residence in accordance with the Immigration laws of Cambodia, and have worked for at least two consecutive years in Cambodia.<sup>96</sup> It is important to note that only foreigners who have permanent residence permits and have been working in Cambodia for two years are allowed to be one of the leaders of the union. This is because being a representative of workers regardless of foreign or Cambodian, a leader must have knowledge of the working environment in Cambodia to the extent that he or she can fulfill his or her duty as a union leader.

Since Cambodian Labor Law aims to integrate foreigners into the Cambodian working society, being able to communicate in the Khmer language is necessary to be part of the community. That is why; the Labor Law requires foreigners who wish to become leaders of the union to have the ability to speak and write in Khmer. The requirement that representatives of workers know Khmer is interesting as there is no such requirement for those who wish to become representatives of employer's association.

---

95. See *Ho Hing Garment v. Cambodia Labour Union Fed'n*, Arbitration Council Case No. 17/03 & 18/03 (2003) (Cambodia); *M & V Int'l 1 v. Cambodian Indus. Union Fed'n*, Arbitration Council Case No. 06/06 (2006) (Cambodia); *Union Fed'n for Increasing Khmer Emps.' Lifestyle v. Cintri*, Arbitration Council Case No. 61/09 (2009) (Cambodia).

96. Law on Labour, *supra* note 7, art. 270.

## VII. Harmonization between the preferential treatment and equal treatment

Though the disadvantages seem to be visualized according to the current situation of labor forces in Cambodia, the regional integration is the priority and Cambodia has to customize itself to this development. More importantly, only the mobility of skilled workers and processionals is the subject of the regional policy while that of the unskilled ones is not. It is noted that Cambodia also recognizes the need of skilled workers in the labor market. This is evident that Prakas of the ministry in charge of labor allows the employment of skilled workers accounting for six percent much higher than three percent office workers and one percent non-skilled workers.<sup>97</sup>

The regional rule just requires the ASEAN countries to accelerate or facilitate the mobility of people while it maintains the laws and regulations of Cambodia. As discussed earlier, under the laws and regulations on immigration, the foreigners have to go through the process to obtain visas and residence permits. Under the laws and regulations governing labor relations, foreigners must possess a workbook and work permit. More importantly, the employment of foreigners is not free as there is a quota restriction on the number of foreign workers in an enterprise. This is to reserve jobs for Cambodians. Therefore, foreigners under the Cambodian laws are not totally treated equally to Cambodians since the laws give preferential treatment to Cambodians. Although the free flow of skilled labor targets the citizens of the country members of ASEAN, the paper suggests that Cambodia provides equal treatment to all foreign workers who come to work in Cambodia either temporarily or permanently regardless of their nationalities. That means that if it is necessary to amend the laws and regulations on foreign workers in Cambodia to realize the commitment under the Blueprint, the Cambodian government should adopt the same rules to facilitate the free mobility and employment of all foreign skilled workers regardless of whether or not they are the citizens of country members of ASEAN. Therefore, the areas of laws to be amended are those regulating the issuance of permits, non-competition and quota restriction.

---

97. Prakas on Use of Foreign Workforce (2001), *supra* note 64, art. 2.

## **1. The issuance of permits**

The free flow of skilled labor means the flow of labor to Cambodia either for a short period with one entry or short stay with multiple entries. Hence, it may affect the rules on these two kinds of foreigners in Cambodia. According to Cambodian laws and regulations, foreign workers whose length of stay is temporary come to work in Cambodia under the Normal Visa or Business Visa with the maximum period of one month for the first issuance with the possibility of renewal. To work in Cambodia, even though they have legally entered Cambodia, the foreign workers must possess work permits and workbooks. The laws and regulation on immigration do not require these workers to hold residence cards.

The foreign workers will only be required to have residence cards when they have renewed their visa, workbook and work permit, or they have been working in Cambodia more than one year. These rules are suitable to the situation of the foreign workers who are involved in cross-border trade for a temporary stay in Cambodia. What should be done is to facilitate and accelerate the process of the issuance of the visa, work permit, and workbook to all those kinds of foreign skilled workers or professionals.

With respect to the employment of skilled workers who want to work permanently in Cambodia, the foreigners have to follow the procedures as provided for immigrant aliens under the laws and regulations on immigration. These rules govern the process in applying for entry permit, workbook, work permit and residence card. Similar to the employment of skilled workers for temporary stay in Cambodia, the rules on the skilled workers who are immigrant aliens will remain the same. However, the government of Cambodia should facilitate and accelerate the procedural rules required for the issuance of permits enabling them to work legally in Cambodia.

## **2. Non-Competition**

The Cambodian labor laws should be amended to allow the skilled workers and professionals to work in Cambodia though they compete with the Cambodian workers. The current laws of Cambodia tend to protect the employment of Cambodian workers. If the foreign workers fall into the situation that they compete with Cambodian workers in the labor market, the authorities in charge of issuance and renewal of the work permit and workbook can reject the issuance of these documents when foreign workers apply for renewals. The workbook and work permit are the legal documents for foreign workers. If they work without these documents, their employers and the workers themselves are subject to fine

and imprisonment under the laws on labor and immigration.

### **3. Quota restriction**

Last but not least, an important area of law to be modified in order to guarantee the free flow of skilled workers and professional by 2015 is the relaxation on the quota restriction of the number of foreign workers in an enterprise. This rule has been used to reserve jobs for Cambodian nationals. In order to balance the interest of the Cambodian people and the compliance with its commitment and obligations to facilitate the mobilization of the skilled workers, the government should amend its laws and regulations through the increase of number of foreign skilled workers while the numbers of other types of workers remain unchanged. In addition, the report on the numbers and categories of foreign workers and the request to use foreign workers more than the permitted quota in an enterprise are very important. This is to avoid the abuse of the employer who may employ other types of foreign workers, such as office workers, and unskilled workers more than the maximum limit.

## **VII. Conclusion**

The integration of ASEAN by 2015 will establish a single market through the guarantee of free mobility of skilled labor in trade in goods and services. The scope of integration will target only the skilled workers in service sectors. The laws and regulations of Cambodia on foreign employment and immigration have been adopted as the reservation of the jobs for Cambodian workers. They more or less may hinder the free movement of skilled workers or professionals of other country members of or outside ASEAN.

To balance the interest of Cambodian workers and the guarantee of free flow of skilled workers or professionals, the paper suggests that there should be amendment of laws and regulations of Cambodia to facilitate and accelerate the speed of flow of skilled labor form ASEAN or other nations. This is very important to avoid the different treatment based on nationality of the skilled workers. The different treatment based on qualification is generally allowed so the foreign skilled workers should receive preferential treatment more than the other foreign workers who are not skilled or professional.

The laws and regulations of Cambodia should guarantee that the skilled workers and professionals freely work in Cambodia even though they compete with the Cambodian workers. In order to achieve this, the government should modify the laws and regulations that restrict the number of the skilled workers

and should delete the rules that reject the renewal of the workbook or work permit of foreign workers who compete with Cambodian workers. However, the obligation of the employer to report to the ministry in charge of labor about the numbers and categories of the foreign workers remain the same. This is to make sure that the special treatment is only available to skilled workers and professionals; and to avoid the abuse of the employers who employ foreign workers that are not professionals or skilled workers.



## **Bibliography**

### **Articles**

Chizuko Hayakawa, Labor Law and Policy Issues Relating to Foreign Workers in Japan, 7(3) Japan Labor Review 19 (2010), available at [http://www.jil.go.jp/english/JLR/documents/2010/JLR27\\_hayakawa.pdf](http://www.jil.go.jp/english/JLR/documents/2010/JLR27_hayakawa.pdf).

### **Cases**

Common Way Fashion Co. v. Khmer Youth Union Fed'n, Arbitration Council Case No. 69/04 (2004) (Cambodia).

F.Y. Cambodia Fashion Ltd., Arbitration Council Case No. 73/06 (2006) (Cambodia).

Ho Hing Garment v. Cambodia Labour Union Fed'n, Arbitration Council Case No. 17/03 & 18/03 (2003) (Cambodia).

Hong Mei M & H, Arbitration Council Case No. 53/06 (2006) (Cambodia).

June Textile Co. v. Khmer Youth Fed'n of Trade Union, Arbitration Council Case No. 14/04 (2004) (Cambodia).

Loyal Cambodia Ltd. v. Khmer Youth Fed'n of Trade Union, Arbitration Council Case No. 21/03 (2003) (Cambodia).

M & V Int'l 1 v. Cambodian Indus. Union Fed'n, Arbitration Council Case No. 06/06 (2006) (Cambodia).

Naga World, Arbitration Council Case No. 47/09 (2009) (Cambodia).

Union Fed'n for Increasing Khmer Emps.' Lifestyle v. Cintri, Arbitration Council Case No. 61/09 (2009) (Cambodia).

### **International Materials**

2012 ASEAN Agreement on the Movement of Natural Persons, Nov. 19, 2012.

### **Internet Sources**

Ass'n of Se. Asian Nations, <http://www.asean.org/asean> (last visited Nov. 1, 2014).

Kingdom of Cambodia Ministry of Foreign Affairs & Int'l Cooperation, <https://www.evisa.gov.kh/Default.aspx> (last visited Jan. 14, 2015).

### **Other Nonperiodic Materials**

Surendra Gera et al., International Mobility of Skilled Labor: Analytical and Empirical Issues, and Research Priorities (Human Res. Dev. Can., Working Paper 2004 D-01, 2004).

Sarah Huelser & Adam Heal, Moving Freely? Labour Mobility in ASEAN (Asia-Pac. Research & Training Network on Trade 2014), available at <http://artnet.unescap.org/pub/polbrief40.pdf>.

Robyn Iredale et al., Free Flow of Skilled Labour Study (ASEAN-Austl. Dev. Coop. Program 2010), available at [http://www.aadcp2.org/uploads/user/6/technicalReports/services/FreeFlowLabour\\_exSummary.pdf](http://www.aadcp2.org/uploads/user/6/technicalReports/services/FreeFlowLabour_exSummary.pdf).

Mary Grace L. Riguer, ASEAN 2015: Implications of People Mobility and Services (Inst. for Labor Studies, Working Paper Series 2012, 2012).

### **Reports**

Ass'n of Se. Asian Nations, ASEAN Economic Community Blueprint (2008), available at <http://www.asean.org/archive/5187-10.pdf>.

Econ. Inst. of Cambodia, Final Report: Baseline Study for the Arbitration Council Foundation (ACF) (2010), available at <http://www.arbitrationcouncil.org/uploads/b11f8-acf-baseline-study.pdf>.

Ministry of Labour & Vocational Training of Cambodia, Determination on the Management of Workers at Small and Medium Enterprises and Establishments in Phnom Penh Capital City (2008).

Ministry of Labour & Vocational Training of Cambodia, Report on the Work Result in the Year of 2013 and the Implementation of the Action Plan of the Year of 2014 (2013).

Ministry of Labour & Vocational Training of Cambodia, Strategic Plan on

Development in the Field of Labour and Vocational Training 2014-2018 (2013).

### **Statutes and Regulations**

Amendment to the Law on Investment of the Kingdom of Cambodia, Royal Kram No. NSRKM/0303/009 (2003).

Law on Establishment of Ministry of Labour and Vocational Training, Royal Code NSRKM/0105/003 (2005) (Cambodia).

Law on Immigration, Royal Code No. 05/NS/94 (1994) (Cambodia).

Law on Investment of the Kingdom of Cambodia, Royal Kram No. 03/NS/94 (1994).

Law on Labour, Royal Code NSRKM/0397/001 (1997) (Cambodia).

Ministry of Economy and Finance Prakas No. 1139 MoEF on Tax Registration (2014) (Cambodia).

Ministry of Interior & Ministry of Labour and Vocational Training Joint Prakas No. 2662 Br.K on Inspection of Foreign Workforce in the Kingdom of Cambodia (2014).

Ministry of Interior Prakas No. 555 on the Management of the Issuance of Resident Cards to Aliens (1995) (Cambodia).

Ministry of Labour and Vocational Training Prakas No. 196 KB/Kr.K on Use of Foreign Workforce (2001) (Cambodia).

Ministry of Labour and Vocational Training Prakas No. 196 KB/Kr.K on Use of Foreign Workforce (2014) (Cambodia).

Ministry of Labour and Vocational Training Prakas No. 197/PRK/MLVT on the Work Permit and Employment Card (2014) (Cambodia).

Ministry of Social Affairs, Labour and Veteran Affairs & Ministry of Health Joint Prakas No. 09-MOSALVA on Medical Examination for Cambodians and Foreigners who Come to Work in Cambodia (1994).

Ministry of Social Affairs, Labour and Veteran Affairs Prakas No. 162/PRK/MOSALVA on the Work Permit and Employment Card (2001)

(Cambodia).

Ministry of Social Affairs, Labour and Veteran Affairs Prakas No. 520/PRK/MOSALVA on the Work Permit and Employment Card (1997) (Cambodia).

Ministry of Social Affairs, Veteran and Youth Rehabilitation Prakas No. 305/PRK/MOSAVYR on the Work Permit and Employment Card (2001) (Cambodia).

Sub-decree No. 30 on the Formalities of Application for Authorization of Immigrant Aliens to Enter, Exit and Reside in the Kingdom of Cambodia (1996).

Sub-decree No. 75 on the Formalities of Application for Authorization of Non-Immigrant Aliens to Enter, Exit and Reside in the Kingdom of Cambodia (1999).