



Visa/Work Permit anomalies during the COVID 19 period–special measures 15 May 2020

control v 1.9

Background

This note is about how, in practice, the extensions to visa renewal are being ignored or bypassed. The extensions have as a policy the avoidance of people populating Immigration offices, for the health and safety of public officials, and of the (often Thai) people working for companies who take paper work to Immigration offices and collect supporting documentation from other government offices.

Recommendations

The JFCCT Recommendations are in the attached file of 29 April titled:

- “1. Clarity about visa extensions – omission
2. Clarity about work permit extension”

There are seven recommendations, most addressed to current anomalies:

1. Confirmation that the visa extension to 31 July will apply to all visa classes and cases, with monitoring and review and preparation for the period beyond extension, or further extension as needed
2. Confirmation that WP extension will be treated similarly.
3. Family ‘O’ visa holders and Residents should be included in the return list. *[It is understood that ‘O’ visa holders are now included but see Case Study 1 about ‘B’ visa holders]*
4. Avoidance as far as possible of any need to make an in-person visit to any agency (including applications for visa and work permit renewals; and the various other agencies from which supporting documents have to be obtained) for the health and safety of government officials and foreigners, and the usually Thai and sometimes foreign staff of companies having to attend at offices.
5. Set up contact centre help desks (which can be staff working from home) to support a new way of operating
6. Using the time before the extensions run out to prepare urgently for digital solutions; even with on-line filing as a start.
7. Strip away unnecessary and duplicative filings and measures and harmonise Work Permit and Visa requirements, with digital solutions on the road to fully digitising and process re-engineering immigration and labour (and other) interactions.



Case study 1 – visa renewal anomalies

As the employer of a foreigner with a recently approved work permit, we are now applying for an extension of his visa to keep up with the validity of the work permit.

First, the Immigration Bureau is requiring this extension be done now, notwithstanding that the second extension of visa deferrals (the first being to 30 April, the second being to 31 July), specifically stated that it applied to all classes, including, relevantly in this case, Non Immigrant 'B'. This is shown in the JFCCT Memo about visa and work permit extensions clarifications dated 29 April 2020.

Secondly, to compound this, the Immigration Bureau (Chaeng Wattana office) has required proof-of-payment for March and April of:

- (i) the company's Social Security contribution (both employer and employee) (SS) and
- (ii) personal income tax withholding tax (WHT),
- (iii) value added tax (VAT),

even though the Ministry of Finance, via the Thai Revenue Department, has deferred requiring payment of those amounts until June 1 (see MoF announcement of 12-May, provided with this Note) primarily to limit the need for personal interaction and reduce the risk to public health. Note that these payments are typically submitted (paid) as an entire batch for the company, so the employee's individual WHT and SS cannot be paid separately; we would need to pay the entire amount due from the company for March and April now, in order to extend his visa which expires before the end of May. (As a side note, VAT is not even directly relevant to the individual's employment, being determined by company-wide revenue, yet it remains a documentation requirement of the Immigration Bureau nonetheless.)

Although we specifically pointed out to the Immigration officer (via our lawyer and also separately, in individual conversations with Immigration officials) that the requested payment receipts were not available because we were deferring payment as per the government's grace period, Immigration's oral answer was "We don't care, either submit the proof of payment for those months or no visa extension". The only alternative offered by the Immigration officer was to have the applicant leave the country and then return with a new, non-immigrant "B" visa, in which case they might consider accepting the deferred proof-of-payment as per the MoF/TRD 12-May announcement. For several reasons, including travel restrictions and current employment engagement, this did not seem viable. This was similar to the response from Immigration when suggesting the overall July 31 grace period for visa extensions should apply in this case as well.

Case study 2 – no extension of Work Permit

Apart from two Decrees supporting the extension of foreign workers from three neighbouring economies, there does not seem to be any extension (similar to that for visas). Apart from not addressing the same social distancing issue, this causes a number of problems.



There was a press statement on 24 March: <https://www.mol.go.th/en/news/mol-discusses-urgent-measures-in-3-areas-to-prevent-covid-19-pandemic/> which seemed to suggest an extension to 30 June, but there does not appear to be any Announcement, Notification or other official edict (the reference to '3 Areas' was not about the neighbouring economies):

“MOL Discusses Urgent Measures in 3 Areas to Prevent COVID-19 Pandemic

“Measures to suppress domestic outbreaks (protection side), to restrict the movement of foreign workers. Employers and companies who have requested to renew the registration of foreign workers before March 31, 2020, as well as other operations, can be done until June 30, 2020.”

So renewal of Work Permit still needs to be done, with no apparent exceptions. This also includes supporting documentation:

- Health Certificate needs to be obtained as always
- Social security receipts (similar to Case Study 1)
- Company registration no older than 3 months
- All paperwork as normally asked, including 90 day reporting and TM30 registration

At OSOS, a maximum of 50 persons per day is allowed. One HR at an SME member spent two full working days at OSOS to renew one work permit.

For those companies where staff are working from home, how does the HR or Legal officer prepare the paperwork and be present at either Ministry of Labour or OSOS?

Case study 3 – Work Permit (and visa) issues for those who cannot return to Thailand

On the expiry of a work permit, the existing work permit needs to be cancelled. This should be done by the employer's HR officer, and must be within no more than seven days after expiry.

What happens where the company is closed, either temporarily or permanently? How would the HR officer actually get the work permit and arrange the cancellation?

If the work permit has expired, then does a new, Non-Immigrant 'B' visa need to be applied for before return (notwithstanding the stated visa extension which applies to all visa classes)?

It seems that one has to apply for a new work permit as if it were the first application. Supporting documents (especially paper based) will be especially difficult to obtain (school papers, work papers, company papers etc.).

An even more basic question in light of overall entry restrictions, is whether return to Thailand is even allowed if the work permit has been cancelled.



Assuming entry is possible, does this mean that on the first day back at work, work cannot legally be done? While the visa may be good for entry, it may not be sufficient if a new work permit application has to be started, which might then require a fresh visa also.

Case study 4 – 90 day reporting

The 90 day reporting requirement has been postponed until after the COVID 19 situation is resolved. Although the postponement is welcome, 90 day reporting should be a simple process which could be done by a functioning, well-maintained on line system for all cases at any time.

But we have received advice from Immigration that if the 90 day reporting is not done within the 90 days (regardless of the extension), it must be done in-person. Thus there is uncertainty and concern about how social distancing will apply. Will thousands of foreigners be required to do in-person, 90-day reporting in the first few days following either the extension period or at some point after the situation is resolved?

We are aware of design limitations in some on line platforms; for example, a platform may only accept on-time filing with no means of accepting (for example with graded but modest fines) late filing; the only fall back being in-person filing.

We are also concerned that on renewal of work permit, Ministry of Labour will insist on having the 90 day report. If so, the Ministry of Labour could be advised to accept that that this is not available (if the extension has been relied on) or it should be possible to do online for all cases.

A 90 day on line filing system should be available for all cases and could be used now by those who do not want to take advantage of the extension and on-going into the future. Our recommendations (submitted 11 February 2020)¹ on the proposed immigration app were that it was unnecessarily complicated, that a simple on-line filing should be available for all cases, and ultimately that 90-day reporting should be changed to filing a change of address only.

Case study 5 – TM.30 reporting

The current requirement for TM30 reporting is not clear. This is reporting by landlords about the presence / movement of foreigners. New entrants are now very low due to CAAT entry restrictions, so the reporting would be about internal movement of foreigners (also likely to be very low). There are reported difficulties with first time on-line registrations and some Immigration offices requiring landlord presence during TM.30 registration.

TM.30 reporting should be deferred during the COVID 19 period, the categories of foreigner to which it applies should be reduced and ultimately the instrument should be removed. JFCCT has made recommendations at www.jfcct.org/major-business-issues/work-permit-visa/

¹ <https://pronto-core-cdn.prantomarketing.com/2/wp-content/uploads/sites/1871/2020/04/Immigration-App-Response-v-1.11.pdf>



JFCCT has also done a legal brief exploring means of changing the effect of s.38 of the Immigration Act; it is noted that relevant powers are currently with the Prime Minister.

Case study 6: Permanent Residents

Permanent Residents are not on the CAAT list of those allowed to re-enter (which is work permit holders, Smart Visa holders and Thai citizens, apart from official or other special categories). But an extension applies (understood to be until “after the situation is resolved”²) if the validity date of the Permanent Resident’s re-entry permit has passed while the permanent resident was out of the country and unable to return.

For those who are in Thailand, information has been provided that a visit to Chaeng Wattana is not needed, only upon next departure date.

A similar question arises for Permanent Residents for whom the notification date stamped by their local police district in their ‘red book’ passes while they are stuck outside Thailand and unable to return. How will those cases be addressed?

JFCCT
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² Para 1 of the 7 April ‘first extension’ Notification, since extended to 31 July; for Residents, ‘until the situation is resolved’ is a reference somehow to post COVID 19