



THE AMERICAN
CHAMBER OF COMMERCE IN THAILAND
หอการค้าอเมริกันในประเทศไทย



AMCHAM POSITION PAPER ON VISA AND WORK PERMIT

There are various long-standing difficulties faced by foreigners with legitimate business and professional reasons for living and working in Thailand. The following is a summary of specific concerns, and some suggestions for addressing them. We respectfully ask that these suggestions be considered from the perspective of enhancing Thailand's competitiveness, and of facilitating Thailand's transition to a more modern economy with a balanced mix of services and manufacturing that includes both SMEs and large multinational enterprises, in line with Thailand 4.0.

❖ **Applying for a work permit requires first obtaining a non-immigrant "B" visa from a Thai Embassy or Consulate.**

We suggest allowing the application for a non-immigrant "B" visa, if required, to be submitted from within Thailand, i.e. not requiring a trip out of country for the purpose of getting a different visa class. If applying from overseas, we suggest allowing both the application for a non-immigrant "B" visa and a work permit to be submitted and approved by a Thai Embassy or Consulate.

❖ **Short-term business visitors**

We welcome the Royal Decree on Management of Foreign Workers, March 27, 2018 which stipulates that foreigners who enter Thailand occasionally to organize or attend meetings; give lectures and presentations at meetings; participate in training sessions, tours, seminars, art or cultural exhibitions, and sports competition, shall **not** need work permits. Furthermore, for these types of events, there should not be a need for visas. Clarity and easy process are essential for enhancement of Thailand's attractiveness and competitiveness.

We suggest eliminating any remaining ambiguity about normal activities which business visitors may engage in, such as reviewing financial reports or signing documents, being considered as "work".

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- ❖ **The legal definition of “work” for people who live and work in Thailand.** The overly broad definition of “work” needs to be more clearly defined.

We suggest a simple definition which reflects the actual activities commonly considered as “working”, for example:

“a consistent and regular engagement of any profession, with or without employer, but not including voluntary work and not including activity otherwise excluded by Decree or other administrative action”.

Additionally, it should be made clear that a person already holding a work permit should not need an additional work permit, or work permit endorsement, to engage in activities outside their organization. These would include activities typical of corporate directors or board members of volunteer organizations.

- ❖ **Differentiate between skilled and unskilled workers**

We suggest the work permit system be fundamentally restructured into skilled and unskilled categories with different requirements for each category. For skilled workers, the SMART Visa program can be used as a model for many of the necessary changes.

- ❖ **Work permits for employees of third-party service providers.** Services are a key enabler of the economic growth envisioned by Thailand 4.0. Services are often delivered through specialized, third-party consulting firms or subject-matter experts located inside and/or outside the country. Current work permit regulations consider only the entity paying an individual's salary, and require that entity to be in Thailand.

We suggest that a method or category be established by which a company in Thailand can facilitate obtaining a work permit for an individual employed by a third party. If the ultimate beneficiary of the services is in Thailand, and if all other relevant criteria for the applicant are met, then the permit shall be granted. If the duration of the work being performed in Thailand creates a local income tax liability, provisions should be made to ensure appropriate collection.



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- ❖ **Work permit applications currently require specific and exact detail as to location of the workplace.** Constantly modifying a work permit to include new locations is difficult, time consuming, and economically unproductive.

We suggest that location be removed as a component of the job description, and that the work permit rely instead on the scope of work and nature of the job, with no limitation as to the location within Thailand where that work may be performed. This would recognize the typical nature of many jobs performed in a modern digital economy, another key driver of the Thailand 4.0 strategy.

- ❖ **Companies (both Thai and foreign) wishing to employ skilled foreign professionals are often unable to do so.** The legal requirements of the Department of Employment, Ministry of Labor for obtaining work permits are based on a company's registered capital. Service companies, technology companies, and especially SMEs, which help drive Thailand's economic growth, do not want or need to have high registered capital to start up and offer their services to larger corporate clients. Additionally, there is a requirement of the Immigration Bureau to employ at least four Thai nationals for every work permit issued to a foreigner. SMEs providing or developing new technology or new services often start with one or two people plus intellectual capital. These companies are, therefore, unable to hire foreign technical experts, even when there are no local resources available with the necessary skills.

We suggest that registered capital and staff ratios be eliminated as metrics for issuance of work permits, especially for those industries and/or professional skills where sufficient resources are not locally available, and for SMEs which, by definition, have neither high capital nor large staff.

- ❖ **Visa and work permit renewals require repeat submission of the same documents supplied with the initial application,** even when the information is unchanged. This duplication results in excessive paperwork (often hundreds of pages for each renewal, many requiring original authentication each time by other government agencies), delays, and unproductive use of time.

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We suggest streamlining the process and allowing electronic submission of most documents for visa and work permit renewals, and requiring that only new and changed information be submitted. We also suggest a grace period on the renewal date or the ability to renew in advance of the renewal date.

❖ **There is little coordination between the Immigration Bureau and the Department of Employment, Ministry of Labor for the visa and work permit application process or for subsequent renewals.** (with an exception for BOI-promoted companies.) Each organization requires its own copy of the same documents to be submitted. The lack of coordination between Labor and Immigration results in many other difficulties and inconsistencies, including the following:

- **No automatic coordination of visa term with validity of work permit** (e.g. a maximum two-year work permit but maximum one-year visa).
- **Foreigners holding a work permit and a one-year visa are nevertheless required to report to Immigration every 90 days**, even if there has been no change in their status.
- **Upon termination of a work permit, the employee has just seven days before expiry of the visa.** This leaves no time for ending a lease, closing bank accounts, managing personal effects, or transitioning to new employment.
- **Most employees of the various Foreign Chambers of Commerce and NPOs with significant operation history in the Kingdom are unable to apply for one-year visas.** Currently, visas for most foreign employees of these Chambers and NPOs are limited to 90 days, despite work permits being issued to them with a one-year term.

We suggest:

- Synchronizing the validity of the visa with that of the work permit. Consider issuing longer-term work permits (up to three years) following the initial one-year work permit approval.

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- Eliminating the 90-day Immigration reporting requirement for work permit holders, unless there is a change of address.
- Extending the period of time visas remain valid after termination of a work permit. A 90-day visa extension following work permit expiration would allow a realistic period for personal and professional reorganization.
- Giving Foreign Chambers of Commerce and NPOs with at least 5 years of filed audit reports in the Kingdom the same rights to obtain visas for their foreign employees as are applicable to any Thai or foreign company.

We believe that overall coordination between Labor and Immigration is indeed possible – the “One Stop Shop” service available to BOI-promoted companies proves that it can be done very effectively.

Other suggestions to make life easier for foreign businesspeople with long-term visas or permanent residency:

- **Provide Foreigner Identification cards** for those who have work permits. This would eliminate the need for foreigners to carry passports – most foreigners are reluctant to do so because replacing lost or stolen passports is expensive and very time consuming.
- **Eliminate the requirement for foreigners with permanent residence status to also obtain a work permit.** Permanent residency should include the right to work in Thailand.
- **Eliminate the requirement for foreigners with permanent residence status to also obtain re-entry permits.** Permanent residency should, by definition, include the right to leave and return without additional endorsements.

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