

ABSTRACT

Thesis Title : The Appeal Lodged Against the Order Concerning
Aliens' Works along with the Law

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According to international laws, a state has sovereign power over its own territory. To allow aliens to enter its territory or not, is deemed as the exercise of sovereign power of that state. The state also has the right under international laws, not to allow aliens to enter its territory. If the state allows aliens to enter its territory, the aliens so allowed must respect and comply with the laws of the state and the state must provide protection to the aliens. If the state fails to comply with its duty in providing protection to the aliens, the state is subject to liability under international laws.

As for Thailand, aliens are allowed to enter the country under the laws concerning immigration and working permission under the Working of Aliens Act B.E. 2521, except for 39 occupations and professions prohibited to be engaged by aliens under the Royal Decree Prescribing Works Relating to Occupation and Profession in Which an Alien is Prohibited to Engage B.E. 2522, which was issued by virtue of the Working of Aliens Act B.E. 2521. In this connection the Thai government has duty to protect these aliens. In providing the right to aliens to contend

and raise an objection or in having an authorized person to superintend and examine the exercise of primary administrative officials' jurisdiction, in case of not granting working permit, refusing to allow aliens to work, refusing to renew the permit or not granting permission to change work or place of work, law must provide for a person or a body of persons who has authority to superintend and examine the exercise of such jurisdiction. In this case the law must provide for power and duty of the authorized person. Criteria and methods to consider superintending and examining the exercise of jurisdiction, and an appellant's right, need to be covered, distinct and trustworthy. This is to guarantee the protection of secured and fair rights of aliens in being treated like its nationals according to international laws and to enforce national laws in compliance with obligations of international organisations in which Thailand is member, such as International Labour Organization (ILO), World Trade Organization (WTO), Asia Pacific Economic Cooperation (APEC), Association of South East Asian Nations (ASEAN), etc. These organizations stipulate that national laws must not discriminate, be open and transparent.

As a result of the study, it reveals that Section 17 of Working of Aliens Act B.E. 2521, stipulates that aliens must have the right to appeal, contend or raise an objection or appeal the order concerning aliens' work so that an authorized persons superintend and examine the exercise of primary administrative official (Director-General of the Department of Employment or official entrusted by the Director-General of the Department of Employment or the Registrar). The Act sets the method and duration to lodge an appeal, duration to consider the appeal lodged. Under the Act, an authorized person to consider the appeal is the Committee on Considering Aliens' Work which has duty to consider the appeal and to propose an opinion to the Minister to further considering the appeal.

The Act does not set covered and distinct criteria and methods for considering an appeal, to the Committee and the Minister. Final decision is left to the sole discretion of the Minister. In addition the Act does not stipulate the procedure to be followed, if the Minister's consideration is different from that of the Committee. In this case the result of the appeal consideration may not be trustworthy and fair for the appellant. It may be deemed as the lack of the protection to be guaranteed to aliens.

Moreover the law does not provide for the duty of the primary administrative official who exercises the jurisdiction in relation to the case to inform the applicant the reason of refusal and the right to appeal. Even an official may, de facto, inform the applicant but without covered and distinct legal requirement, if the official fails to do so either intentionally or not, the applicant will lose his right to appeal and the official is not subject to any liability.

In conclusion in the case that the law does not stipulate power and duty of a person who superintends and examines the exercise of jurisdiction and criteria and methods of appeal consideration in a covered, distinct and trustworthy, it may not be a guarantee of aliens' right in working in Thailand. At the same time it is also inconsistent with international obligations.