Understanding Recruitment Industry in Thailand

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Understanding the Recruitment Industry in Thailand

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Executive Summary

Research Report on Understanding Recruitment Industry in Thailand

By Asian Research Center for Migration, Institute of Asian Studies, Chulalongkorn University

Main objectives for this research report on Understanding Recruitment Industry in Thailand are:

1. Study the structure, profile and characteristics of Thai employment agencies
2. Examine the practices of licensed employment agencies in recruiting Thai migrant workers for employment abroad
3. Explore possible ties between the employment agencies and government officials and politicians
4. Investigate the enforcement of the labor recruitment law with respect to employment agencies, as well as possible links to human trafficking.

The study examined the existing 218 licensed employment agencies in Thailand located in both Bangkok and upcountry. Through cooperation with the Thailand Overseas Employment Administration (TOEA), Department of Employment (DOE) and Ministry of Labor, information about employment agencies was analyzed and categorized by target destination country and sectors for employment opportunities.

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At the micro-level, 14 employment agencies were selected as case studies. The study covered agencies which send migrant workers to the major destination countries of Taiwan, UAE, Qatar, Kuwait, Libya, Israel, and others. The agencies analyzed in this study were located in Bangkok and the provinces of Udornthani, Chiang Rai and Lampang. An appointment was made in advance with the employment companies, followed by an in-depth interview with the company's representatives.

Fifteen workers and four representatives from employer companies, as well as Thai ambassadors and other high-level foreign service officials in the host countries were interviewed to provide a clearer picture of the situation for Thai workers there. Furthermore, fifteen Thai returnees who had used employment agencies were also interviewed for data validation and a more in-depth perspective from the workers' point of view.

Persons were selected for interview based upon their knowledge about the recruitment process, cases of malpractice in recruitment, human smuggling and trafficking into destination countries.

The field work was carried out from October 2009 – March 2010, both in Thailand (Bangkok, Udornthani, Lampang and Chiang Rai) and abroad.

Findings

Employment Agencies

Since 1985, some 218 companies have been licensed as employment agencies in Thailand. These companies are spread throughout

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

the country but the majority are located in the Bangkok Metropolitan Area (BMA), with the remainder primarily located in the Northeast region, particularly in Udornthani. These companies normally focus on the recruitment of workers for manufacturing and other industrial work, as well as on the construction trades and other general labor employment. Following the general labor category in quantity are service jobs and agricultural work. The most common destination countries for workers in recent years have been located in the Asia-Pacific region. The Middle East also accepts a large portion of Thai workers with the second highest number of postings in the region. Other common destinations for workers include countries within the EU and in North America.

The companies in this study commonly had problems in acquiring job placement assignments, especially to Israel and Taiwan, as well as with the recruitment of workers via the use of field recruiting representatives. However, it is becoming more common for workers to go to the companies and apply for work on their own volition, without the invitation of field recruiters. Despite this, the companies still face shortfalls in filling all of the available postings, and would generally like to see Clause 35 of the Recruitment and Job Seekers Protection Act amended in order to facilitate additional recruitment. It was found that these companies conduct their own skills testing and orientations – driven by the demands of potential employers – rather than send their workers to the sessions held by government agencies. It was also uncovered that it is not uncommon for employment agencies to

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prepare two sets of labor contracts for job applicants to sign. In the second unpublicized contract, the worker is often at a distinct disadvantage compared with the terms and conditions specified in the contract shown to the authorities. However, it is necessary for employment agencies to arrange two sets of labor contracts for job applicants who wish to work in the Middle East.

Recruitment companies now tend to look after the workers they send abroad more thoroughly than before; a Thai 'camp boss' designated by the employment agency, or a representative of the employer, acts as liaison with the Thai workers to a certain degree. The most common complaints now tend to be dissatisfaction with living or working conditions rather than more egregious concerns and are typically matters that the employment agency can resolve through negotiation with the employer.

On the issue of aid and assistance provided by Thai government authorities, employment agencies generally refuse to discuss past experiences where a worker sent by them needed assistance while working abroad or the cause of the problems. However, the companies state that they have good working relationships with governmental authorities, and there is a general sense of forgiveness between the parties over past conflicts. The companies also express the desire to have better relations with Thai diplomatic missions abroad in the destination countries where large quantities of workers are sent. This is because the consular offices are tasked with checking the authenticity of job vacancies, employers' documentation, visas, etc. and sending their

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

findings to the DOE in Thailand. However, it does demonstrate that the influence of the employment agencies in Thailand is extending beyond the borders of the country to relationships with Thai diplomatic offices abroad.

The cooperation between employment agencies, particularly between companies in Thailand and those abroad, for purposes of finding and filling vacancies by Thai workers is increasing. These partnerships are based upon sharing of revenue generated by filling vacancies and also extend to providing assistance in obtaining replacement workers when needed as well as skills testing of job applicants. There are also increasingly direct business relationships between the employment agencies and large foreign employers that have steady requirements for additional workers (e.g., multi-national construction companies).

Procedures for Sending Thai Workers Abroad

Procedures followed for the legitimate processing of Thai workers for employment abroad under Thai law require that they must first apply for permission to recruit workers for a specific job vacancy abroad. The exact number of vacancies to be filled must be established prior to processing; advance recruitment preceding the actual opening of a job vacancy is not permitted. The agency then proceeds with the selection of viable candidates which requires a medical examination, skills testing (for tradesmen and skilled workers), and participation in an orientation seminar. Following those procedures, a contract is signed, a contribution is made to the Foreign

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Workers' Welfare Fund for each worker sent, the documentation is processed by the DOE for work abroad, and a report containing each recruited worker's name is sent within 15 days to relevant authorities in Thailand and abroad. If accepting work and traveling on their own recognizance, workers must submit (the employer's) documentation to the DOE, along with a copy of the employment contract certified by the Thai diplomatic mission in the host country, and the approval of their employment visa for the foreign country.

In the case of being escorted to the job site by a representative of the foreign employer, the employer must obtain the proper permits from the Labor authorities of their country and submit evidence of approval to bring in foreign employees to the Thai diplomatic mission in that country for certification. The certified documents are then used to obtain employment visas for the intended workers after they have been recruited in Thailand. The certifications verify that the worker will be allowed into the country for work in the position specified in the documentation, ensuring their safety and protection under the labor laws of that country and helping to prevent them from being lured into untenable and/or exploitive situations.

In actuality however, very few workers are formally processed for work abroad and undergo all of the correct procedures as detailed above prior to their departure. Many of the parties involved in recruitment (including domestic and foreign employment agencies, unlicensed recruiters, and job seekers themselves) undertake shortcuts and direct circumventions of the law in order to facilitate their own operations and increase their profits. Some of

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

the things they do are clearly illegal; others are in a gray area that is difficult to define.

Graft and Corruption in Job Recruitment

Corrupt practices undertaken in the worker recruitment business include those committed by:

- **High-level public officials** who receive or collect money from recruitment agencies directly or become a consultant for recruitment agencies after retirement and utilize their connections within the government to influence state officials to overlook misconduct by the agencies.
- **Politicians** who run their own recruitment agencies, have a proxy owner for a recruitment agency in which they possess a controlling interest, collect money from recruitment agencies directly or who improperly utilize their position as members of the Labor Committee in the parliament.
- **Politicians and high-level public officials who inappropriately intervene in the actions of state practitioners to oversee and discipline the operation of recruitment agencies**

Attempts to Enforce the Law

The original Recruitment and Job Seekers Protection Act of B.E. 2511 (A.D. 1968), as well as the subsequent amendments in 1985, 1994, and 2001, sought to reduce circumvention of the law by businesses involved in

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

recruiting personnel for foreign jobs with the end goal of protecting workers and job seekers from the exploitations faced in the past. However, the law as it exists today still has a number of limitations which allow the following infractions to take place:

- Recruiting without a license
- Circumvention of legal procedures pursuant to employment abroad
- Failure to declare the intent to travel for employment abroad
- Failure to secure and submit proper documentary evidence or a valid employment visa to authorities
- Sending workers to informally 'sublet' an employment contract without proper consent
- Operating without a license to avoid depositing a guarantee bond
- Announcing jobs abroad without the prior consent of the DOE
- Overcharging on commissions and fees
- Being a party to false declarations about jobs being filled on the worker's own recognizance
- Deception and fraud in accepting payment for a placement where no job actually exists

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

The illegal acts above are sometimes encouraged by difficulties in implementation and enforcement of current laws on labor recruitment including:

- Personnel Shortages
- Ineffectiveness of the orientation program for workers
- Inadequacy of the assistance provided by government officials to workers in countries of destination and the unclear delineation of roles for each agency
- Compromises, out of court settlements, and the exertion of undue influence on state practitioners attempting to control the operations of the employment agencies
- Limitations of law enforcement agencies in providing protections for workers outside the country

Deceptions by unlicensed recruiters or brokers

Unlicensed recruiters include those who do actually secure work for their clients, those who are not able to, and those who do not even attempt to do so. False claims made by these agencies include such inducements as ‘good work’, ‘high pay’, ‘quick hiring and travel’, etc. but this all comes at a price, as the client has to pay the recruiters commission early in the process. After they have been paid, the recruiter may connect the prospective client with a job that is not as good as they had promised, or they may not find employment for the worker at all. The victims may even find themselves

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

repeatedly duped into paying additional commissions in hopes of eventually securing the promised job because they trust the community-based recruiters more than they do the large recruitment company representatives or the government labor officials who are seen as outsiders.

Small-scale local recruiters include community residents, those from outside the community but from the general area, and recruiters who act as traveling representatives of the foreign employment loan services and language schools illegally engaged in recruiting. The number of these recruiters has increased due to the prevalence of persons acting as representatives of domestic and foreign employment agencies. Each have their own techniques for attracting potential clients but they are all intent on the same goal: to build credibility within rural communities so that people believe that they are capable of placing workers in attractive foreign jobs.

Human Trafficking in Thai Migrant Workers in Foreign Countries

The deceptions and fraud involved in the recruitment of Thai workers to Sweden and Finland to harvest wild fruit as well as those lured into untenable work situations in Dubai are examples of the duplicitous practices of unlicensed domestic job placement services and foreign recruiters operating illegally in Thailand. In some cases, their activities fall nothing short of traditional definitions of human trafficking. However in other cases, such as that of the Thai worker who was placed by a licensed employment agency in a Taiwanese job but did not receive the position he had been

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

contracted for and decided to return home prematurely, the intention to deceive is clear but not the case to be made for prosecution as human trafficking.

A measure of whether fraud and deception committed against job hopefuls may constitute human trafficking might be whether the exploitation of the worker has included being imprisoned or confined in limited quarters, starvation, torture, sexual abuse, denial of pay, slavery, forced prostitution, accidental injury to the extent of physical handicap, or loss of life without life without compensation paid to family members.

Recommendations

This study developed six general suggestions for addressing the problems that exist with foreign job recruitment in Thailand as outlined below:

1. Aggressive Restructuring of Procedures and Mechanisms for Recruitment

- Prevention of exploitation and human trafficking
- Management of recruitment operations
- Broad reform of pre-travel orientation programs as well as procedures to be completed prior to departure for work abroad
- Promoting and encouraging job seekers to go through government-to-government (G2G) recruitment procedures

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

2. Create Public Awareness among Workers, Youth and Society as a Whole about the Differences between Legitimate Foreign Employment vs. Scams used to Lure the Unwary

- Improve the quality of voluntary seminars about foreign employment for the general public
- Improve the quality of Thai human capital: It should be a prerequisite for Thai workers intending to work abroad that they have some knowledge of the English language or of the language of the destination country. Workers should be required to pass a language proficiency exam before departure.
- Disseminate information that will inform the general public about the recruitment process and how to confirm the veracity of claims by job recruiters. Information about existing labor laws and worker's rights in destination countries should also be provided.
- Extensively restructure public notices about recruitment, strategically time the campaigns for when they are most needed, and proactively follow up on them within communities
- Build on community resistance to exploitation of workers through education; ensure that people know the risks of human trafficking from a young age
- Other than through the media channels mentioned in the preceding text, other venues that might be considered for dissemination of

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

news and information about human trafficking might include fairs, concerts and other public events

- Improve awareness and provide planning checklists for outgoing workers.
- Coordinate use of resources by government offices and NGOs during and after campaigns as well as provide a wide range of information according to the specific needs of migrants from different industries

3. Monitoring and Control of Job Placement Services

- Ensure that adequate follow-up on placements is carried out and if necessary, blacklist any parties failing to abide by the laws or fair employment practices. Any worker backing out of a legally proper and honestly conducted job placement should be banned from further international placements for a period of three years.
- All outbound workers should be legally required to join the Foreign Workers' Welfare Fund before departure
- Provide recorded English lessons to workers while abroad so that they can improve themselves while at the job site rather than before they depart. The need for English language skills in order to communication while abroad will provide a stronger motivation to learn and a greater opportunity to practice.
- Add personnel to the Thai Labor Ministry offices abroad, especially additional legal experts. The location of Labor offices abroad

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

should also be better targeted for countries where the number of Thai workers is larger or growing rapidly.

4. Amendments to the Law and Enforcement

- **Changes to the Law:**

1. Amend the law to permit any licensed job placement service to be able to operate and recruit in any province in the country as well as establish offices abroad if permitted by the laws of that country

2. Amend the law to permit any licensed job placement service to recruit personnel in advance and access names in the 'Labour Bank' of the Thailand Overseas Employment Administration (TOEA) for potential recruitment

3. Develop rules and regulations that require job seekers to undergo the prerequisite preparations mentioned in 5.3.1 before allowing them to have their name added into the list of recruitable personnel

4. All independent private recruiters should be required to be licensed

5. Task the police force with the arrest and prosecution of unlicensed recruiters

6. Make it a crime to intentionally deceive workers through misrepresentation of a job opportunity. Violators should be subject to immediate arrest whether or not money has already changed hands to pay for a commission.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

7. Increase the severity of penalties for deception, fraud, or exploitation of job seekers during recruitment activities from paying a fine of 200,000 baht or imprisonment for 10 years to a level commensurate with the punishment for human trafficking described within the Recruitment Act . This penalty should be applied to both businesses and individuals engaged in such practices.

8. Establish more severe penalties for offenders involved in corruption related to the recruitment industry

- **Enforcement:**

1. Swift and systematic enforcement of the law should be supported through recruitment of additional personnel to monitor the operations of recruitment agencies. Personnel with relevant legal knowledge should be placed in countries where workers are located.

2. Prevention of the exertion of undue influence on state practitioners is needed. Training for staff to increase their capabilities to enforce the law is needed.

3. Punishment for personnel who do not strictly follow the rule of law should be increased as their actions may cause deception, fraud or exploitation of workers

4. Adjustment of the pre-departure orientation program for workers is needed. The content of the program should be broadened and workers should be tested after the program to determine their understanding

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

of the material. Those who do not pass the test should not be allowed to depart for their job placement.

5. International laws, particularly those related to transnational organized crime, should be taken into account when adjudicating cases of deception of workers by those involved with a transnational network even if they are not determined to be human trafficking cases. Greater cooperation with Interpol is also essential because of the limited labor protections provided under Thai laws.

5. Liaison and Cooperation

- There should be direct and formalized liaison between the DOE, Skill Development Promotion Division (SDP) and Office of Consular Affairs, with clear delineation of each institution's responsibilities towards workers
- There should be an exchange of information domestically between government agencies working with the recruitment industry
- There should be an exchange of information internationally between government agencies on matters related to combating human trafficking and exploitation, especially on companies or other parties involved in such activities. In the past, the Thai government has lacked information about companies that are known to have been previously engaged in such activities by foreign government agencies.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

- Work with the victims of human trafficking to support them in presenting evidence as witnesses against offending recruiters, employment agencies, and others. This will also facilitate documentation of their offenses with the DOE and the Thai National Police in order to maintain accurate records of parties involved with criminal activity relating to overseas recruitment.

6. Prevention of Corruption and the Peddling of Influence

- Forbid politicians (MPs, senators, or their advisers) as well as senior public officials and their families from engaging in the recruitment industry directly, through proxies, or in any other manner that creates a vested interest in recruitment businesses. This restriction should be applied throughout their active careers and for at least three years after their retirement.
- Consider appropriate punitive measures for public officials that use their influence to benefit job placement agencies, especially when their activities impair the effective enforcement of the law or protect offenders from punishment
- Screen-out politicians who already have a conflict of interest with respect to job placement agencies and review the foreign travel of such persons to investigate whether they have had any connection with human trafficking in the past

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

7. Policies and Strategies

- Change the main focus of recruitment of Thai workers for foreign employment from unskilled workers to semi-skilled, skilled and professional workers. Seek out and open up new job markets for these types of workers. Establish a standard that workers should have basic language abilities for their destination country before departure.
- Promote international cooperative recruitment arrangements with reliable job placement services and agencies in destination countries, especially those that can provide semi-skilled worker or service personnel positions
- Monitor and control the Foreign Workers' Welfare Fund to ensure that it is used effectively to assist workers abroad that have fallen into hardship
- Invigorate *The Committee for the Development of Recruitment Business and Protection of Workers* (headed by the Asst. Minister of Labor) by adding members from the Ministry of Foreign Affairs, unions, Inspector General's Office, DOE and others who can take the lead on development of strategies and policies to protect and develop Thai workers and ensure greater transparency in the recruitment industry. The Committee should also address corruption, abuse of power, and exertion of undue influence on state practitioners, and should liaise with the Ministry of Justice and other governmental bodies at senior levels as well as representatives from civil society in this endeavor.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

- Use the MOU between the Ministry of Labor and the Ministry of Social Development and Human Security on the matter of human trafficking to implement all manner of investigations and enforcement allowed under the law in order to reduce the prevalence of worker exploitation so that recruits can better themselves without fear of being abused.
- Analyze the difference between the rate of payment that workers receive while working domestically in Thailand to that received in destination countries so as to improve and legitimize the fairness of the rate of domestic wages in accordance with the increasing standard of living in Thailand. This should help to attract some workers (especially those who are unskilled or who lack foreign language abilities) who might be better off working in the domestic market.
- The Thai Government should consider acceding to International Labor Organization Convention No. 97 on the recruitment of foreign workers which states that job seekers should not be charged for services during the recruitment process or for information provided during the process. Employment service providers must collect such fees from the employer and the employer is prohibited from reimbursing said fees from their employees' wages. In addition, the Thai Government should develop policies to encourage good practices for labor recruitment. For example, the establishment of effective programs for national labor registration, language training, training of foreign employers and state officials on the cultural and

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

religious differences between employers and employees, vocational training, recordkeeping of complains, remedy of problems faced by individual workers, and organization of support groups for workers to provide mutual aid while overseas. *(Bohning – 1998: 78-110).*

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY	I
TABLE OF CONTENTS	XXI
LIST OF TABLES	XXII
CHAPTER	
I INTRODUCTION	
1.1 What do we know about labor migration from Thailand?	1
1.2 Objectives and Methodology of the Study	12
II PROFILE OF RECRUITMENT AGENCIES IN THAILAND AND THEIR COMMON CHARACTERISTICS	
2.1 Profile of Registered Recruitment Agencies in Thailand	15
2.2 Information on the Fourteen Case Studies of Interviewed Private Recruitment Agencies	23
III PROCESS OF RECRUITMENT BY PRIVATE AGENCIES	
3.1 Process of recruitment by private agencies according to the Labor Recruitment law	42
3.2 Corruption and Violations of the Law in Recruitment Practices	54
3.3 Corruption in Overseas Recruitment Process of Thai Workers	77
IV RECRUITMENT PROBLEMS	
4.1 Grievances of Thai migrant workers and Penalty on Licensed Recruitment Agencies	86
4.2 Legal Enforcement of the Recruitment and Job Seekers Protection Act, 1985, and Amendments, 1994 and 2001	112
4.3 Unorthodox Recruitment Practices and Deceptions	122
V SUMMARY, DISCUSSION AND RECOMMENDATIONS	
5.1 Summary	149
5.2 Discussion	158
5.3 Recommendation	163
REFERENCES	172

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

LIST OF TABLES

Table		Page
1.1	Number of Thai Migrant Workers Employed Internationally, 1998-2008.....	2
1.2	Number of Thai Migrant Workers Categorized by Channels of Migration (1999-2007)……	5
1.3	Number of Thai Migrant Workers with a Re-Entry Permit (1999-2007)…….....	5
2.1	Year of Registration…….....	15
2.2	Place of Registration.....	16
2.3	Job Segmentation by Industry.....	19
2.4	Countries of Destination…….	21
2.5	Information on Case Studies of Interviewed Recruitment Agencies for Overseas Employment…….	25
4.1	Total Intake of Grievances and Assistance to the Job Seekers from Recruitment Agencies and Unlicensed Agents for Intl. Employment per the Recruitment and Job Seekers Protection Act, B.E. 2528 (A.D. 1985), 2004 – 2008…….	87
4.2	Grievances and Assistance to the Job Seekers from Recruitment Agencies and Unlicensed Agents for Intl. Employment per the Recruitment and Job Seekers Protection Act, B.E. 2528 (A.D. 1985), 2004 – 2008.....	89
4.3	Grievances from and Assistance to Job Seekers from Recruitment Agencies and Unlicensed Agents for Intl. Employment per the Recruitment and Job Seekers Protection Act, B.E. 2528 (A.D. 1985) - Years 2004 – 2008…….	91

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

LIST OF TABLES (Cont.)

Table		Page
4.4a	Proportions of Grievances filed Domestically and Internationally…….	92
4.4b	Grievances and Assistance to the Job Seekers for International Employment Per the Recruitment and Job Seekers Protection Act, B.E. 2528 (A.D. 1985) Years 2004 – 2008, by Region and Province……	92
4.5	Grievances and Assistance to the Job Seekers Handled by Licensed Recruitment Agencies and Unlicensed Agents for both Domestic and International Employment per the Recruitment and Job Seekers Protection Act, B.E. 2528 (A.D. 1985) by Region and Province, Years 2004 – 2008……..	95
4.6	Assistance to Thai Nationals in Foreign Countries, 2004 – 2008.....	101
4.7	Statistics of Penalties Imposed on Licensed International Job Placement Agencies in Thailand, 2004-2008……...	102

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

CHAPTER I

INTRODUCTION

1.1 What do we know about labor migration from Thailand?

1.1.1 Trend and Pattern of International Labor Migration from Thailand

International migration is considered one of the most important movements in the populace of Thailand. For many years, Thais have migrated overseas to work both legally and illegally. Many studies state that the migration trend for Thai workers began in the 1960s, when a small number of Thai professionals, particularly doctors, nurses, and engineers, went to the United States for work. Around the end of 1972, significant movements of unskilled workers started to shift and migrate to the Middle East. During the 1980-89 period of prosperity in the oil-rich Gulf region, many Thais went there for work. Most of these workers were men, some semi-skilled, though the majority were unskilled. However, the outflow to the Middle East started to drop in 1990, largely due to political instability in the Gulf region and a growing demand for Thai workers in non-Middle East countries *(Amara Pongsapich 1986, Supang Chantavanich 1999, Supang Chantavanich, et. al 2001, Sukanya Aimimtham 2008, Department of Employment, Ministry of Labor and Srinakarinwirot University 2008).*

According to *Sukanya (2008),* the international migration of Thai laborers started in the early 1970s, largely due to the economic crisis and political changes that included the withdrawal of American military bases from Thailand. Employment on such facilities and at related businesses was reduced. This led to a shift in the Thai migrant labor market toward the Middle East, seeing that this region had emerged as a high-income area through the selling of oil, increasing their demand for workers at various industrial projects. The region became the world's most active labor market and Thai workers were among those traveling there for work on those projects. Most of these migrant workers originated from the Northern and Northeastern regions of Thailand.

Supang (1999) explained that a new era in Thai migration was brought about in the 1990s with three identifying characteristics. First,

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Thai migrant workers moved more within the East and Southeast Asian countries, and had relatively lower tasking in the Middle East, the United States or Europe. Second, a much larger number of women started to migrate, resulting in a higher ratio of Thai female migrant workers to male migrant workers, particularly to Japan and Hong Kong. Third, far greater numbers of migrant workers traveled and/or found employment illegally. These trends are sometimes described as Asianization, feminization and undocumented migration, respectively. They are similar to the trends found in other countries in the region. The main reason for Thai workers going abroad has been economic – primarily, they seek better job opportunities and higher wages. Domestic unemployment and social networks that facilitate their leaving are also reasons behind these movements.

The new shift in Thai labor migration started during the period of the 1997 Asian Financial Crisis, according to research conducted by Srinakarinwirot University with the support by the Department of Employment (DOE), Ministry of Labor (2008). The economic downturn not only resulted in an increase in the number of unemployed persons in Thailand, but also led to a huge decline in overseas employment opportunities around the globe for Thai workers. Many countries began to adopting more stringent policies regarding the recruiting of foreign migrant workers to reserve jobs for local workers. Consequently, the number of Thai persons working abroad started to fall. Nevertheless, international employment markets for Thai workers started to pick up again in 2006-2008 (Table 1).

Table 1.1: Number of Thai Migrant Workers Employed Internationally, 1998-2008

Year	Workers Deployed (1,000)
1998	175.4
1999	159.6
2000	177.7
2001	165.0
2002	160.8
2003	147.8
2004	148.6
2005	139.7
2006	160.8
2007	161.9
2008	161.8

Source: Ministry of Labor, 2009

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Overall, we can divide the trend of international migration of Thai workers into five phases *Piyawat (2001)*.

First Phase: Years 1975 – 1979: The main labor markets during this period were Middle Eastern countries, e.g., Bahrain, Saudi Arabia, Dubai, Iran, Kuwait, Jordan, Yemen, Israel, and U.A.E. As mentioned above, at that time due to the labor shortages in these countries, there was a need to recruit migrant workers from overseas to work in this region known for oil exports. At that time, 29,735 Thai workers were employed abroad, 28,691 of which went to the Middle East (95% of the total). The job positions available at that time were mostly in construction work, or in the petroleum industry.

Second Phase: 1980 – 1984: Overseas labor markets continued to expand during this period. The number of Thai migrant workers totaled 295,049, of which 244,537 had gone to Middle East (83%). African markets also expanded to countries such as Libya, Algeria, Ethiopia, and Tanzania. The number of Thai workers who went to these countries totaled 37,907 (13%). Some 4% of Thai workers abroad went to Asian countries such as Brunei, Macau and Malaysia.

Third Phase: 1985 – 1989: The number of Thai workers deploying to work overseas continued to grow, of which the total number was 530,220. Middle East remained to be the biggest labor market for Thai workers. A total of 375,528 workers went there, or 70.8% of the overall figure. Asia became the second largest job pool for Thai migrant workers with expansion to Indonesia, Hong Kong, Japan, Taiwan, China, India and Sri Lanka. The number of Thai workers who went to these countries totaled 81,149 persons, or 15.3% of the overall. Another 9.9% – 52,612 workers – went to work in Africa, while the remaining workers, who were mainly semi-skilled or skilled workers, migrated to others countries (Great Britain, Germany, Denmark, Australia, etc.).

Fourth Phase: 1990 – 1994: This period marked a big change in overseas employment destinations for Thai workers, as there was a shift toward the Asia-Pacific region. Several reasons contributed to this change, including economic and political reasons within Middle Eastern countries. The murder of a Saudi Arabian diplomat in Thailand was one of the causes. As a result, Thai workers had to start finding new labor markets. In the meantime, Taiwan, Brunei and Singapore started to adopt policies that welcomed more overseas migrant workers to work in their countries. However, the number of Thai workers was not as high

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

as before (482,473 workers in total). About 74.3% – 358,640 persons – went to work in Asian countries; 15.62% – 75,402 persons – went to the Middle East; 6% – 29,095 persons – went to Africa, while the rest went to work in other countries.

Fifth Phase: 1995 – 1999: Asian labor markets continued to become popular destination among Thai migrant workers. This is due to the fact that the similarity of the environment, society and culture between these countries and Thailand helped Thai workers to adapt better with the new working place. The payment to work in this region was also higher than the Middle East. The number of Thai workers deploying to work overseas was as high as 950,021, of which 847,022 workers went to Asian labor market (89.15%). 87,444 workers or 9.2% went to Middle Eastern countries. There were 15,019 workers went to work in other countries (1.58%), wherein Africa became the least popular destination with 9,073 Thai workers (0.95%).

1.1.2 Recruitment of Thai workers for International Employment

There are five channels for Thai migrant workers to be recruited for employment abroad:

a) Undertaking applications and work on one's own cognizance
b) Accepting jobs arranged by the TOEA
c) Being recruited by foreign employers and escorted to the job site by them
d) Recruitment facilitated by private employment agencies
e) Being accepted into foreign job training programs

(Thailand Overseas Employment Administration (TOEA), Supang et al. 2001a, Piyawat 2001, Department of Employment, Ministry of Labor and Srinakarinwirot U., 2008)

According to *Supang (1999)*, while the flows of Thai migrant workers in the 1960s were small and organized by private individuals, larger outflows that started in the 1970s were facilitated by employment agencies and the government. The first group of Thai workers facilitated as such was sent to the Middle East in 1974 after employers first visited Thailand to contact private employment companies that would provide them with workers. Since then, the majority of Thai workers have been sent to Saudi Arabia on work contracts arranged by private recruitment companies *(Sukanya 2008)*.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Table 2 shows that from 1999-2007 the majority of migrant workers use the services of private employment agencies. During the period, 1999-2004, the Ministry of Labor was the least used channel for overseas employment. From 2005 onward, the number of Thai workers going overseas as trainees dwindled to the smallest proportion in comparison to other channels.

Table 1.2: Number of Thai Migrant Workers Categorized by Channels of Migration (1999-2007)

	Through Employment agency	Acting Alone (first time)	Through TOEA	Escorted by Employer	Job Training Program	Total
1999	111,398	2,658	843	3,270	5,625	159,657
%	69.8	1.7	0.5	2.1	3.5	100%
2000	98,363	4,196	737	3,068	5,754	177,709
%	55.4	2.4	0.4	1.7	3.2	100%
2001	84,050	5,215	437	3,633	5,439	165,047
%	50.9	3.2	0.3	2.2	3.3	100%
2002	84,218	5,221	422	3,265	5,426	160,807
%	52.4	3.3	0.3	2.0	3.4	100%
2003	77,517	8,897	409	3,652	5,368	147,769
%	52.5	6.0	0.3	2.5	3.6	100%
2004	66,775	13,020	1,778	4,664	5,684	148,596
%	44.9	8.8	1.2	3.1	3.8	100%
2005	55,115	11,392	6,711	4,889	5,967	139,667
%	39.5	8.2	4.81	3.50	4.3	100%
2006	68,185	14,228	8,013	6,634	6,505	160,846
%	42.4	8.9	5.0	5.0	4.0	100%
2007	62,141	15,784	8,290	7,613	6,158	161,917
%	38.4	9.8	5.1	5.1	3.80	100%

Source: Ministry of Labor 2008 (Cited in the 'Research Study on the Development of International Job Recruitment Placement Procedures for Thai Workers to Achieve Greater Competitiveness in Global Labor Markets' (2009).)

Table 1.3: Number of Thai Migrant Workers with a Re-Entry Permit (1999-2007)

	1999	2000	2001	2002	2003	2004	2005	2006	2007
Re-entry	35,863 (22.46)	65,591 (36.91)	66,273 (40.15)	62,225 (38.71)	51,872 (35.10)	56,675 (38.14)	55,593 (39.80)	57,281 (35.61)	61,931 (38.25)

Source: Ministry of Labor 2008 (Cited in the 'Research Study on the Development of International Job Recruitment Placement Procedures for Thai Workers to Achieve Greater Competitiveness in Global Labor Markets' (2009).

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Recruitment by private agencies or “acting alone” on one’s own cognizance have always been the two competing modes of labor recruitment *(Supang Chantavanich et. al 2001)*. As for the case of Singapore, ‘acting alone’ is on the increase and is the mode preferred by Thai workers. This is due to the high cost of labor recruitment charged to workers by employment agencies as commissions and to cover “kick-backs” to Singaporean employers, so that the employers would “reserve” work permit quotas for them. Despite the high risks, some Thai workers, especially those from Northern Thailand, prefer to enter Singapore via illegal channels of recruitment. There are several reasons behind this. For migrant workers, it equates to a substantive reduction in job placement cost, as well as shorter time spent on the process. For employers, illegal workers take away the burden of contributions to the social welfare system and protection by law. At the same time, employers are ensured of an adequate labor supply as they are not restricted by quotas imposed by the government. They also have bargaining power over the vulnerable workers. For employment agencies, illegal recruitment helps to avoid taxes and bureaucratic procedures, hence speeding up recruitment.

The recruitment procedure to work in Japan is different from other Asian countries that take in Thai migrant workers because Japan does not accept unskilled workers. The recruitment of Thai workers is carried out only through a training system known as the Japan International Training Cooperation Organization (JITCO). JITCO functions under the jurisdiction of five ministries: Justice; Foreign Affairs; International Trade and Industry; Labor; and Transportation, and was founded to implement a policy to replace casual workers with foreign trainees. However, there are some flaws in the JITCO system, particularly in the management trainee system. Because the training system is full of holes and has become a hotbed of casual and disguised employment.

Both *Supang et al (2001)* and *Piyawat (2001)* stated that the operations of recruiting companies in Thailand for overseas employment are largely unregulated, or in other words, completely market-driven, with minimal input from government bodies. Most job seekers comply with agency demands and are willing to pay unnecessarily high recruiting fees to get jobs. The situation thus creates an urgent need for the Thai government to intervene, otherwise only recruiting agencies will gain from international labor migration.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

According to *Piyawat*'s case study on one overseas employment recruiting company, it was found that their system involved five parties: foreign employers, recruitment representatives ('reps'), employment companies, agents and workers. The major problems that lie within the overseas employment recruiting operations include that foreign employers and their reps cooperate on setting job compensation, thus eliminating competitive bidding. The consequence of this is that rates of compensation are kept within about THB25,000-135,000 per position; actual job taskings may not be in accordance with the contract; job applications are approved prior to receipt of certification to travel; job positions and workers are being bought from other recruiting companies; laws and regulations, e.g., the Recruitment and Job Seekers Protection Act of 1985, are circumvented by opening many branches; the commission fees are charged that are higher than the rates set by the Act; commission fees are being collected more than 30 days in advance; some being unable to travel after having made payment; and, recruiting companies continuing their business while under probation or having had their licenses revoked. The job seekers also cause problems since they generally do not check information about the authenticity of employment agencies; some patronize unlicensed job placement services; they accept inordinate risk in the conditions set by some services; and, often do not report to the proper authorities upon arrival at the destination.

1.1.3 Thailand's Migrant Worker Policies and Their Limitations

Because of the high income from large-scale movements of Thai workers abroad immensely helping in improve Thailand's economy, the Fifth National Economic Plan (1982-86) of the Thai government adopted explicit provisions for the export of Thai workers *(Supang 1999; Piyawat 2001)*. This plan encouraged Thai people to work overseas. However, later national economic plans lacked such provisions because it became clear that Thai workers often experienced difficult circumstances abroad. In particular, unscrupulous Thai private employment agencies charged high fees to workers, promising high-paying jobs with good working conditions, but many workers later discovered that their jobs were difficult and the wages relatively low. In some cases, Thai workers found that the jobs promised to them never even existed.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

The Thai Immigration Act of 1979 and the Employment Recruitment Act of 1983 allowed private recruiters to operate employment recruitment services sending Thai workers abroad if these agencies were registered with the Ministry of Labor. There are at present approximately 220 licensed recruiting agencies in the country. Most migrant workers find employment via agencies rather than through the Ministry of Labor or by direct contact with employers. A large number of them find employment independently, but very few use the services of the Ministry of Labor. Most workers find private employment agencies more proactive, faster, and more efficient, despite some malpractice engaged in by some agencies. To date, the government still has no policy to centralize and strictly control the recruitment process itself.

In addition, the Ministry of Labor and Social Welfare Office have established representative offices in major destination countries, which are responsible for overseeing and assisting Thai workers abroad. The Labor Attaches at these offices mainly supervise documented workers. Most undocumented workers experiencing difficulties abroad are afraid to turn to these representatives or Thai diplomatic missions for protection because most embassies respond only to documented workers.

Even in more recent studies by *Sukanya (2008)* and a report conducted by *Thai Labor Solidarity (2008)*, Thai workers continue to face unfair treatment by some employment agencies. *Sukanya* stated that according to the report on international worker migration from Thailand, Thailand is still not a party to key international conventions concerning international workforce migration, and the domestic policies we have are not comprehensive enough; as a result, our migrant worker policies are somewhat ambiguous and marked by omissions (Huguet and Punpuing, 2005. Cited in Sukanya Aimimtham, Impacts of International Migration on Socio-economic Conditions in Rural Northeast Thailand. Doctoral dissertation, Geography, the Graduate Division of Arts and Sciences, Komazawa University, Tokyo, Japan, 2008).

The Recruitment and Job Seekers Protection Act, 2528 B.E. (1985), amended in 1994, covers recruitment procedures for both local and overseas employment. However, it does not prevent migration of any Thai national with proper travel documents and cannot protect job seekers after they migrate. Labor-control checkpoints may be able to

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

stop those intending to migrate, but when they are disguised as travelers or tourists, the authorities are unable to be prevent them.

The Recruitment and Job Seekers Protection allows private agencies to operate recruitment services. By the time the law had been enacted, there were large numbers of recruiting agents supplying workers to jobs in foreign countries. Nevertheless, the Act cannot protect Thais who act on their own cognizance, or are recruited by other means, i.e., unlicensed recruiting agencies. Moreover, as penalties meted out for offenses in illegal recruitment are not severe enough, the Act offers little protection for job seekers. Its purpose is to regulate recruitment and prevent cheating or exploitation of prospective migrant workers, and to curtail illegal labor migration. Nevertheless, many job seekers are deceived by these private recruiting agencies, especially unlicensed ones. Some have been duped into using their services though the work being promoted did not really exist, or job seekers have been charged excessively high commissions. Some workers who completed the recruitment process found themselves having no job once they reached the destination country. Employers have failed to honor the conditions of job contracts. Moreover, some female workers have been sexually harassed or even raped.

1.1.4 Thai Labor Migration to the Middle East

According to Thanavon Pamaranon (2009), due to the large flow of migrant workers from East Asian countries since the end of the 1970s, the Gulf States have been engaging in policy interventions to encourage, if not force, migrant workers to return to their home countries after the completion of their initial contracts. Visa, residency and citizenship laws were made more prohibitive, as well as were recruitment and employment procedures. The most crucial development within the labor laws of Gulf states since 1975 has provided that only ‘registered agents’ can contract foreign labor, or there are provisions that foreign workers must be sponsored by a national authority. Such provisions allow an enterprising national to establish himself as a sponsor (‘*kafeel’)* in the business of selling sponsorship of migrant workers for a percentage of the wages of the workers they sponsor.

Thus, while the state certainly plays a central role in managing migration, the power is also distributed to *kafeels* who possess considerable authority in the recruitment process and over the rights of migrant workers. However, *kafeels* with in the *kafala* system are often

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

engaged in various forms of malpractice that include charging exorbitant commissions, fraud, falsification of documents, as well as discrepancies between formal employment contracts and actual conditions (Thanavon Pamaranon 2009).

Thanavon further stated that the establishment of “enclave” industrial areas is seen as one of the solutions addressed by Gulf planners to the issue of low and semi-skilled worker expatriation. Migrant workers are housed largely in “work camps”, which become rather attractive as they not only exclude migrant workers from the indigenous population, but also minimize the cost of providing infrastructure and services at other sites. The most essential feature for recruitment into such facilities would be to get contracting firms from East Asian countries to cooperate on bringing in workers to establish such camps for the duration of the project.

Most Thai workers who work in the Middle East have had overseas employment experience prior to their arrival in the Gulf. They base their decisions largely on monetary considerations: raising their standard of living at home, needing additional income, settling loans and repaying debts, accumulating savings and gaining new work experience. Having determined their preconditions, workers expose themselves to exploitation by employment agencies, as well as by sponsors, workers of other nationalities, employers, and pressure from debts, not to mention distress due to poor living conditions.

Thai workers face collective discrimination due to cultural differences and a language barrier if they are non-Arabs, and non-Muslims; they do not speak Arabic, and are smaller in number. Although the local Thai Consul may act as a mediator in solving some problems that workers report, many Thai workers have adopted various strategies to cope. These include an awareness that their situation is temporary and strategizing their debt liabilities. They also use kinship, “wait and see” attitudes, change jobs, or maintain a second job. Thanavon pointed out that each job may have a distinctive facet to it that may inhibit progress with it; one of the more common difficulties is encountering groups of Thais who are nevertheless from a different region of the country, thus causing a newcomer from a different region to be ostracized (Thanavon Pamaranon 2009).

As for the future of labor migration in the Gulf in the coming year, there have been some delays in many projects, especially for private sector mega-projects in the UAE, as the real estate industry in many Middle Eastern countries has encountered a bubble amid the

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

global economic recession. Many transnational corporations have stopped hiring migrant workers, while local companies also hold back on recruitment of new workers, to await developments economically. The slump has upset Qatar's economy; however the overall picture for the foreign labor market remains somewhat positive. This is because most large projects are part of state development plans in for public health, education, housing and training, as well as for human resources development. The Qatar government stressed that these projects will continue despite the recession; they are increasing their budget, which will eventually lead to higher job recruitment there. Many employment agencies that were formerly sending workers to the UAE are now shifting toward labor markets in Qatar.

Since many employers are satisfied with the performance of Thai migrant workers, the prospect of Thai migrant workers being recruited to work in Qatar is relatively high. It has been estimated that the labor market in Qatar should be able to accommodate at least 9,000 workers from Thailand. This would help in reducing the problem of unemployment in Thailand to some extent. Thus, the Thai government has entered into a Memorandum of Understanding (MOU) with Qatar to proceed in the near future, in order to improve labor relations at the G2G level (Vitul Sukhawattana 2009).

In summary, the number of Thai workers migrating abroad continues to rise as the global economy slowly recovers itself. However, the current trend for the labor market seems will shift more toward East Asia as many Middle Eastern countries have been hit by the downturn. Recruitment by employment agencies remains the most popular channel for Thai migrant workers, although the number of workers going 'acting alone' is increasing. This is largely due to the high cost of commissions charged to the workers by the employment agencies. Recruitment procedures conducted by official recruiting agencies are long and rigorous, as well as costly. Many agencies earn high profit at the cost of job seekers who go into debt, because the only way they can pay the commission is to get loans. Due to the lack of protective statutes in the Recruitment and Job Seekers Protection Act, many job seekers have been deceived by private employment agencies, especially unlicensed ones, as the act only regulates their recruitment procedures. It does not serve to protect those who choose to to seek work via other channels and the penalties are also not severe enough. The situation indicates an urgent need for the Thai government to

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

intervene; otherwise employment agencies will continue to take advantage of unwitting job seekers.

1.2 Objectives and Methodology of the Study

1.2.1 Objectives

To understand the structure and practices of Thai international job employment agencies:

1. Study the structure, profile and characteristics of Thai employment agencies
2. Examine the practices of licensed employment agencies in recruiting Thai migrant workers for employment abroad
3. Explore possible ties between the employment agencies and government officials and politicians
4. Investigate the enforcement of the labor recruitment law with respect to employment agencies, as well as possible links to human trafficking.

1.2.2 Methodology

The study examined the existing 218 licensed employment agencies in Thailand located in both Bangkok and up-countries. Through cooperation with the Thailand Overseas Employment Administration (TOEA), Department of Employment (DOE) and Ministry of Labor, information about employment agencies was analyzed and categorized by target destination country and sectors for employment opportunities. Current recruiting practices, including direct recruitment by the government, were also explored. As ARCM had been invited by the Department of Employment to participate in pre-departure orientations of Thai migrant workers since 2004, we have easy access to Ministry of Labor data as well as access to employment agency statistics. In addition, records on revocations of licenses and forfeitures of guarantee bonds were analyzed. An inventory to identify the common characteristics of major employment agencies was developed, covering their past performance, size of recruitment activity, types of services offered to migrant workers, etc. At the micro-level, 14 employment agencies were selected as case studies.

The study covered agencies which send migrant workers to the major destination countries of Taiwan, UAE, Qatar, Kuwait, Libya, Israel, etc. The agencies analyzed in this study are located in Bangkok and the provinces of Udornthani, Chiang Rai and Lampang. An

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

appointment by telephone was made in advance with these companies followed by an in-depth interview with the company's representatives.

Due to the sensitivity and high level of mistrust between employment agencies, the studies team employed various strategies to gain access and their cooperation in answering questions. Planned strategies included personal connections and networks, recommendations from the Ministry of Labor, etc., where we started with agencies having good reputations and case histories, then using snow-ball sampling technique and the promise of anonymity for ethical reasons to elicit answers. All of these approaches were carefully planned to ensure that there was a proper distribution among employment agencies.

Fifteen workers and four representatives from employers' companies, as well as Thai ambassadors and other high Foreign Service officials in the host countries were interviewed to provide a clearer picture of the situation for Thai workers there. Furthermore, fifteen Thai returnees who had used employment agencies were also interviewed for data validation and a more in-depth perspective from the workers' point of view.

1.2.3 Data Collection

The field work was carried out from October 2009 – March 2010, both in Thailand (Bangkok, Udornthani, Lampang and Chiang Rai) and abroad.

The main techniques employed by the team for data collection included:

(1) An <u>inventory</u> of existing employment agencies registered with the Minister of Labor to identify their profiles and major characteristics.

(2) <u>In-depth interviews</u> with various participants: state officials, employment agencies and Thai workers. The interview guides were prepared by the team for each group and were used to probe into recruitment operations. It helped in examining the networks of people involved in recruitment here and abroad, as well as the bidding process to get positions from employers. In the interviews:

a) The questions for *state officials* included their opinions toward the operations of employment agencies, their recommendations toward recruitment procedures, limitations in the implementation of state policies, the role of the officials and ways to solve problems related to employment agencies, such as deceptions or misinformation

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

and fraud committed against Thai workers. Altogether, 14 officials were interviewed in Thailand and abroad.

b) Fourteen *employment agencies* in Thailand were selected for interview. To get an overall picture of the agency, general questions such as their length of time in business, which countries of destination and what kind of segmentation in job placements were asked. To be more specific, the procedures, problems during processing, as well as how they engage in solving problems were all pursued in the questioning. Furthermore, the role and involvement of the state, as well as coordination among employment agencies, locally and internationally were also included the list of questions. Due to the high sensitivity of the information, one employment agency that had ceased operations was also approached to reveal recruitment techniques for further verification.

c) The interview guide for the *workers* included questions about their decisions to leave Thailand, choice of recruitment, costs paid for services, details about the services provided, information given by recruiters, recruitment processing, working and living conditions, salaries, plus possible exploitation and rights violations at the destination that could be linked to human trafficking. Fifteen returnees and workers who were going back to work overseas were among those interviewed in this battery.

(3**)** Informant interviews: Persons were selected who are knowledgeable about the recruitment process and cases of malpractice in recruitment, human smuggling and trafficking into destination countries. Possible ties with people in government and politicians were discussed. A former DG, Deputy DG of the DOE, key officials and owners of employment agencies were selected as informants.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

CHAPTER II

PROFILE OF RECRUITMENT AGENCIES IN THAILAND AND THEIR COMMON CHARACTERISTICS

2.1 Profile of Registered Recruitment Agencies in Thailand

According to Thailand Overseas Employment Administration (TOEA) under the Department of Employment, Ministry of Labour (MOL), there are 218 registered recruitment agencies in Thailand (as of December 1, 2009). Before the updated list of registered recruitment agencies was created, there were 233 agencies, which mean that more than 10 agencies ceased to operate. The reasons behind the termination will be discussed in Chapter 4. Profile of the 218 recruitment agencies will be presented according to their data of establishment, location of operation, job segmentation and destination of recruitment.

Old – New Agencies

In terms of year of registration, the earliest year was in 1984 which was immediately after the promulgation of the Employment Recruitment Act in 1983. From Table 2.1.1, 43.6% of the total number or the majority of the recruitment companies in Thailand are the ones that have recently registered from 2000 until present time. 36.2% are the companies which registered around 1990-1990, while the remaining 20.2% are the ones which have been established from 1980-1989. The distribution indicates that more companies started recently which reflects the attractiveness and profit of recruitment business in Thailand.

Table 2.1 Year of Registration

	Number	Percentage (%)
1980 – 1989	44	20.2
1990 – 1999	79	36.2
2000 – Present	95	43.6
Total	***218***	***100.0***

Source: Thailand Overseas Employment Administration. Thai Private Overseas Recruitment Agencies [online]. Thailand Overseas

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Employment Administration, Department of Employment, Ministry of Labour: http://www.overseas.doe.go.th/overseas_old/tpora/tpora_list.htm (as of 1 December, 2009) [2 February, 2010]

Location of Operation

Regarding the location, these agencies are widespread throughout the country. The majority of the companies, or 64.7%, are located in Bangkok area. The second most popular location is Northeast region of Thailand (18.3%), in which most of the agencies are situated in Udon Thani Province (18 agencies). This follows by Central (11.5%), North (4.6%) and East (0.9%) parts of Thailand (See Table 2.2).

Table 2.2 Place of Registration

	Number	Percentage (%)
Bangkok	**141**	**64.7**
Central	**25**	**11.5**
Pathumthani		(8)
Nonthaburi		(13)
Samut Prakan		(3)
Lopburi		(1)
North	**10**	**4.6**
Chiang Mai		(1)
Chiang Rai		(2)
Lampang		(4)
Nan		(1)
Phitsanulok		(1)
Sukhothai		(1)
East	**2**	**0.9**
Chonburi		(1)
Rayong		(1)
Northeast	**40**	**18.3**
Udon Thani		(18)
Nakhon Ratchasima		(3)
Buriram		(1)
Surin		(1)
Sakon Nakhon		(1)

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Nakhon Phanom		(5)
Khon Kaen		(3)
Nongkhai		(2)
Nongbualamphu		(2)
Ubon Ratchathani		(4)
Total	***218***	***100***

Source: Thailand Overseas Employment Administration. Thai Private Overseas Recruitment Agencies [online]. Thailand Overseas Employment Administration, Department of Employment, Ministry of Labour: http://www.overseas.doe.go.th/overseas_old/tpora/tpora_list.htm (as of 1 December, 2009) [2 February, 2010]

Job Segmentation

Job segmentations in Table 2.3 is classified according to International Standard Classification of Occupations (ISCO)[1] defining by International Labour Organization (ILO). According to most recruitment agencies, workers may not require to have any skills prior on taking the job such as maids or building caretaking jobs, while some positions required semi-skilled to skilled workers. There are also trainings for workers before work starts.

As shown in Table 2.1.3, the most popular job category is in the production manufacturing and labour segment, which comprises of 69.7% of the total number of job placements posted by the recruitment companies in Thailand. Most of the job positions available in this category are *construction workers* (offered by 31 agencies) and *general manufacturing laborers* (offered by 21 agencies). The type of industries was unidentified since most of the recruitment agencies stated that job vacancies change through time, depending on the decision of the

[1] The International Standard Classification of Occupations is a tool for organizing jobs into a clearly defined set of groups according to the tasks and duties undertaken in the job. It is intended both for statistical users and for client oriented users. The main client oriented applications are in the recruitment of workers through employment offices, in the management of short or long term migration of workers between countries as well as in the development of vocational training programmes and guidance.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

companies or the employers in host countries. Many recruitment agencies also offer a lot of semi-skilled to skilled works such as *blacksmiths, toolmakers,* and *machine-tool operators* (posted by 15 recruitment agencies). There are also several vacancies for works which relate *textile and garment manufacture* (tailors, dressmakers, sewers, upholsterers), and *auto-parts manufacture* (machinery fitters, machine assemblers and precision instrument makers).

13.5% of the total job availability is jobs in *service and hospitality sector*. There are both unskilled works such as *housekeeping works* (maids, building caretakers, and cleaners), as well semi-skilled to skilled works such as *cooks, waiters, bartenders, Air hostess,* and *hotel staff***).** 9.2% is professional, technical or other related works which require high skills. These jobs are engineers, technicians, accountants, doctors, nurses and so on. A significant 5.2% is works in *agricultural and fishery sector*. Only a few recruitment agencies offer administrative managerial (4) and clerical (5) works.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Table 2.3 Job Segmentation by Industry

		Number	Percentage (%)
0/1:	**Professional, Technical and Related Workers**	**23**	**9.2**
0-2/0-3	Architect, Engineers and Related Technicians	16	
0-6/0-7	Medical, Dental, Veterinary and Related Workers	5	
1-1.1	Accountant	2	
2:	**Administrative and Managerial Workers**	**4**	**1.6**
3:	**Clerical and Related Workers**	**2**	**0.8**
5:	**Service Workers**	**34**	**13.5**
5-3	Cooks, Waiters, Bartenders and Related Workers	11	
5-4	Maids, Caretakers, and Related Housekeeping Service Workers	18	
5-5.1	Building Caretakers, Cleaners and Other Related Workers	5	
6:	**Agricultural, Forestry and Fishery Related Workers**	**13**	**5.2**
7-/8/9:	**Production Manufacturing, Transport Equipment Operators and Laborers**	**175**	**69.7**
7-0	Production Supervisors and General Foremen	8	
7-2	Metal Processers	6	
7-3	Wood Preparation Workers and Paper Makers	8	
7-4	Chemical Processers and Related Workers (Including Petroleum-Refining Workers)	4	
7-7	Food and Beverage Processers	4	
7-9	Tailors, Dressmakers, Sewers, Upholsterers and Related Workers	13	
8-3	Blacksmiths, Toolmakers and Machine-Tool Operators	15	

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

8-4	Machinery Fitters, Machine Assemblers and Precision Instrument Makers (Except Electrical)	11	
8-5	Electrical Fitters and Related Electrical and Electronics Workers	8	
8-7	Plumbers, Welders, Sheet Metal and Structural Metal Preparers and Erectors	19	
8-9	Glass Formers, Potters and Related Workers	4	
9-0	Rubber and Plastic Product Makers	2	
9-5	Bricklayers, Carpenters and Other Construction Workers	31	
9-6	Stationary Engine and Related Equipment Operators	9	
9-7	Material-Handling and Related Equipment Operators, Dockers and Freight Handlers	5	
9-8	Transport Equipment Operators	7	
9-9	Manufacturing Laborers (General or Unspecified)	21	
Total		***251****	***100***

Source: Thailand Overseas Employment Administration. Thai Private Overseas Recruitment Agencies [online]. Thailand Overseas Employment Administration, Department of Employment, Ministry of Labour: http://www.overseas.doe.go.th/overseas_old/tpora/tpora_list.htm (as of 1 December, 2009) [2 February, 2010]

Note: The information recorded in this table is only taken from 101 recruitment agencies, out of 218 agencies listed by MOL.

* The total number of this table is 251 because some agencies post more than one job positions.

Destination of Recruitment

Thai workers are recruited all over the world. Two main regions for overseas labour market of Thai workers, according to Table

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

2.4, are Asia-Pacific (49.6%) and Middle East (41.3%). The most popular destination in Asia-Pacific region is Taiwan, in which 57 recruitment agencies send workers there. Other popular destinations are Brunei, Japan, Malaysia and Singapore. Major foreign labour markets in Middle East are U.A.E. – Dubai, Qatar, Kuwait, Israel and Libya. Other minor destinations for Thai workers are Europe (5.2%), North America and Africa (3.9%)

Table 2.4 Countries of Destination

	Number	Percentage (%)
Asia-Pacific		**114**
		49.6
Australia	1	
New Zealand	2	
Brunei	11	
China	1	
Hong Kong	5	
Japan	11	
Macau	1	
Malaysia	10	
Singapore	11	
South Korea	4	
Taiwan	57	
Middle East	**95**	**41.3**
Bahrain	3	
Iran	2	
Iraq	3	
Israel	11	
Kuwait	12	
Libya	10	
Oman	6	
Qatar	17	
Saudi Arabia	6	
Sudan	1	

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

United Arab Emirates (U.A.E.) – Dubai		20
United Arab Emirates (U.A.E.) – Abu Dhabi		4
Europe	**12**	**5.2**
England	2	
Finland	1	
Hungary	1	
Poland	2	
Portugal	2	
Romania	1	
Russia	2	
Turkey	1	
North America and Africa	**9**	**3.9**
Canada	1	
Mexico	1	
United States	5	
South Africa	2	
Total	***230****	***100***

Source: Thailand Overseas Employment Administration. Thai Private Overseas Recruitment Agencies [online]. Thailand Overseas Employment Administration, Department of Employment, Ministry of Labour: http://www.overseas.doe.go.th/overseas_old/tpora/tpora_list.htm (as of 1 December, 2009) [2 February, 2010]

Note: The information recorded in this table is only taken from 101 recruitment agencies, out of 218 agencies listed by TOEA.

* The total number of this table is 230 because some agencies send workers to more than one country.

* The total number of this table is 230 because some agencies send workers to more than one country.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

2.2 Information on the Fourteen Case Studies of Interviewed Private Recruitment Agencies

2.2.1 Common features of Interviewed Recruitment Agencies for Overseas Employment

In this study fourteen private agencies were selected as case studies on the recruitment business on overseas employment. According to the selected samples, it is found that one of the factors that have a significant impact on recruitment process on overseas employment is the length of time. The findings are as follow:

In this research, the researchers put the companies into three different categories based on its stability and the length of establishment. The first category includes recruitment agencies that have been operating for a very long period of time (21-30 years) which has high stability on recruitment process. The second category includes recruitment agencies that have been operating for a long period of time (11-20 years) which has gained moderate stability on recruitment process. The third category includes recruitment agencies that have been operating for a short period of time (0-10 years). According to table 2.1, it is found that there are four agencies in the first category, six agencies in the second category and four agencies in the third category.

From table 2.5 the apparent feature is that agencies from the first category, which have been operating for a long period of time, are prone to send semi- to skilled workers more than unskilled workers. A major overseas market for the recruitment of Thai workers from these agencies is also concentrated in the Middle East. However, recruitment agencies from the second and third category focus more in sending unskilled worker where the market is concentrated in Asia-Pacific region. The reason for this is explained by the researcher in chapter 1 under the pattern and trend of working abroad in Thailand. It is evident that the selected recruitment agencies in this study share the same characteristics as categorized by Piyawat (2001) under the subject of *trend of International Migration of Thai people*. The recruitment agencies in the first category that were established during 1980-1989 or those that have been operating for a long period of time (21-30 years) match with First, Second and Third Phases or during the period of 1975-1989 when working in the Middle East was on the rise. It is seen that agencies in the first category have operated their business with countries in the Middle East for a long time. As a result of this, the

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

trend of the recruitment agencies in Thailand today greatly concentrates on outsourcing workers to Middle Eastern countries, but with a shift and development from sending unskilled workers to semi-skilled and skilled workers instead.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Table 2.5 Information on Case Studies of Interviewed Recruitment Agencies for Overseas Employment

Recruitment Agencies	Period of Establishment			Location of Operation			Type of Work		Countries of Destination		
	Category 1 (21-30 year) 1980-1989	**Category 2** (11- 20 year) 1990-1999	**Category 3** (0-10 year) 2000- present	**Bangkok**	**North Eastern**	**North**	**Unskilled**	**Semi-skilled to Skilled**	**Asia-Pacific**	**Middle East**	**Other Regions**
Agency 1	/			/				/		/	
Agency 2		/		/				/		/	
Agency 3	/			/				/		/	
Agency 4	/			/				/		/	
Agency 5		/			/		/		/		
Agency 6		/			/		/			/	
Agency 7	/				/		/		/		
Agency 8		/			/		/		/		
Agency 9			/		/		/				/
Agency 10			/		/		/		/		
Agency 11			/		/		/		/		
Agency 12		/				/	/		/		
Agency 13		/				/	/		/		
Agency 14			/			/		/	/		
Total	***4***	***6***	***4***	***4***	***7***	***3***	***9***	***5***	***8***	***5***	***1***

Source: Research Team (2010)

เก็บเอกสารฉบับที่ 24 ม.ก. 54 เกรียงพิพัฒ

This also applies in the case of agencies in the second category, that are established during(2553-2542) or those that have been operating for 11-20 years in which recruitment process emphasizes mainly on unskilled labor and labor market in Asia-Pacific region. The recruitment agencies in the third category, that are established for a short period of time foresee the difficulty in penetrating the labor market in the Middle East which is the main market for the recruitment agencies in the first category. The agencies have already become specialized in the labor market and have built up strong relationships and networks. Therefore, competing in labor market in Asia-Pacific region and concentrating on outsourcing unskilled labor where agencies in second category engage themselves with are seen as opportunities. From this, it explains well on the direction of agencies in third category, even though the periods divided in Piyawat's work do not cover the period during the establishment of the recruitment agencies in the third category,

2.2.2 Procedures

(1) Finding job positions and related issues

Job searching process and other related issues vary from agency to agency as categorized above. The methods of overseas job arrangement found in this study are as follow:

- The use of previous data such as outsourcing qualified Thai workers that guarantees the employer, foreign recruitment agency and contractors. Most of the job positions come from overseas employer, overseas representative/agent or overseas contractor that contact Thai recruitment agency itself or from trusted partnership who have been operating together for a long period of time.
- Another method is having recruitment agencies at destination that coordinate with recruitment agencies in overseas such as Taiwan and Israel. These agencies do not only search for job positions but also look after the workers and coordinate with their government.
- Owners of the recruitment agencies or representatives directly travel to the destination country and search for job positions, as well as to 1. Visit workplace that workers were previously sent 2. Contact the labor office to gain an access to other companies in the country and make a contract on job positions with an assist of translators. This direct method is widely used in European countries.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

- Searching job positions in world labor magazines containing information on world labor market where the recruitment agencies can find a major project from contractors in various countries. They then negotiate service fee before entering the destination country for further permission on sending workers, for instance, the proportion on commission fee between them.
- Offers from existing Thai workers (high reliability from employers) to the recruitment agencies in two ways. First is Thai workers offer job vacancies directly to the recruitment agencies with commission fees. Second is overseas employer assigns existing Thai workers to look for friends or relatives to fill job vacancies. In this case, recruitment agencies in Thailand act as a middle man to facilitate the process of forming legal document on sending Thai workers overseas with service fee on matching workers with available positions where it may be known as assignment job.
- Some buys job positions from overseas employers or recruitment agencies. Even though the information was not given in details, it is found that the main problem is buying positions especially in Taiwan and Israel resulting in unfair commission that exceeds the limits by regulations. This burden is passed to workers.

Interview from representatives in many recruitment agencies admitting that buying job positions from overseas still exist:

"…The agency has connection with various brokers in overseas has a duty to search for job positions and are undoubtedly paid by a person in the agency. However, the exact amount of money is unknown. The result or work is being reviewed annually due to frequent changes. In my opinion, searching for job positions is highly competitive…"

Interviewed a recruitment agency on November 3, 2009

"…For overseas job position searching, the agency has a network of brokers in Taiwan and they look for the job positions. I think that buying job positions is quite common because searching for jobs is highly competitive..."

Interviewed a recruitment agency on November 17, 2009

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

(2) Searching for workers and related issues

The methods of searching for workers to be sent overseas by recruitment agencies do not vary. The main method is:

- **Recruiting those who come directly to the office**: Most of the agencies revealed that the majority of the job seekers they recruit had either used their services previously and were satisfied with the services provided or had received a recommendation of the agency by other workers who had experience with the services of the recruiting agency in the past.

"…In the past, we depended on agents in the village but it is reducing now. This is because the agency is seen more reliable as well as the advanced technology that allow personal contacts to be a lot easier. Some apply directly to the desired company themselves after visiting the labor to ask for detailed information on recruitment agencies…"

Interviewed a recruitment agency on November 4, 2009

- **Obtaining permission from the Department of Employment to recruit workers outside the area** including areas where a number of unemployment located, especially in north eastern, northern region, is complex and includes a number of steps. The length of time upon the request of this permission is also limited. From this perspective, the licensed recruitment agencies locating in Bangkok chose to set up a subsidiary company or other company to serve as a network in other provinces such as Udornthani, Lampang, Nakorn Ratchasima where there are a lot of unemployed people who wish to work abroad. These subsidiary companies would only recruit job seekers in the region and then transfer them to the parent/host company in Bangkok. This method has eased out the prohibition on recruiting workers from outside the allowed areas as well as has helped the agency in reaching more job seekers from the target group.
- **Using agents/brokers to find workers for the recruitment agency** (the analysis on agents/brokers will be discussed in details in chapter 4) to search for job seekers and send them to recruitment agencies with agreed commission fees.

"…Around ten percent of workers come from agents and most of them come from word-of-mouth. Most agents are those who are

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

already looking for a job and then go and tell other people, while some are village chiefs. The recruitment agencies limit the commission fee at 15,000-20,000 baht per person. Some of them charge more than agreed price. (Normally, the agents collect services fees from workers first and then pay to the recruitment agency) However, nowadays the use of agents is reduced by the recruitment companies as they are now having more direct contacts..."

Interviewed a recruitment agency on February 8, 2010

"…In searching for workers today still uses agents because workers trust people who they are familiar with (because most of the workers are afraid to apply for job directly in Bangkok). If the recruitment agency has not received permission, they will not put up job advertisement. Nowadays, most private recruitment companies do not hire permanent agents as the agents also want to be able to recruit a lot of people. Thus, there are a lot of unbinding agents who do not depend on any agencies. If they found job vacancies in a company who offer a reasonable commission fee, they then supply workers to that company…"

Interviewed a recruitment agency on February 9, 2010

"…Most of the job seekers are brought by agents. One stop service of the Ministry of Labor is not working. If one stop service works, the Ministry of Labor will have job arrangement all over the country, Gathering all the workers from every province to the TOEA is also not working, We have to admit that even Thai people, though I have legally sent workers overseas for many times, those who have gone to work overseas, when they wish to seek for another job, they still come with their agents. They do not trust anyone else but the agents. Now the agent has even raised service fees up to 20,000 baht per person because these days when the workers had the skill testing, only a few get the jobs. Some agents bring ten people, only two get the jobs. From this, the agents have lost a lot as well. That is why some agents have to increase the service fees. However, an increasing number of job seekers now come directly to the recruitment agency for mechanical jobs, or skilled job because they know that they will have to pay extra if they come with the agents…"

Interviewed a recruitment agency on February 8, 2010

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

- **Use existing network of other recruitment agencies in Thailand to search for workers** or use any other network that the recruitment agencies has a good relationship with to arrange workers. This method is different from opening up subsidiary or establishing an office in other provinces because those networks are independent. Labor arrangement also only happens when the main recruitment agency makes a request and that the other agency in the network does not have adequate job positions at that time for the job seekers. For this method, both companies have agreed on any expenses and service fee beforehand.

As for the problems of searching for workers, many companies agree that the obstacle which causes this problem is the "regulation" falls in Section 35 of the Employment and Job Seeker Protection Act 1985, which states that in the case when the overseas recruitment agencies who desires to enroll or notify enrollment of job seekers in advance must request for permission from the registrar. Furthermore, the nature of incoming jobs is known in a short notice and employers have a time limit for the recruitment agency to arrange workers for them. This makes it hard for the agencies to gather the required number of workers within the limited timeframe. If the agency cannot supply the workers for some of these positions, they will have to return those positions to the overseas company. This affects the income of the agency. Therefore, a number of recruitment agencies solve the problem by having job seekers filled out the application forms first. When there are jobs available, the agencies then call those job seekers for further steps. As for the employer's side, they contact several recruitment agencies in Thailand to supply the workers instead of sticking to one agency to solve this issue.

"…The law that prohibits the agency to recruit job seekers in advance is a major problem because when employer wants to send information to the agency which can be given in a short notice, the agency may not have adequate supply of workers. I think that the regulation should be loosened because the application process then has to be unofficial, though it does not break the law as job seekers keep coming and the agency just let them fill in the application form…"

Interviewed a recruitment agency on February 8, 2010

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

"…in terms of law related to the recruitment process, it is a good restriction but it makes the agencies lose opportunities in hiring more job seekers and waste their time because most of the overseas employment especially construction projects that require workers when there is an order may take some time. When we cannot supply these construction projects workers as we have agreed due to a short amount of time and prohibitions by the law, those construction project will switch to other agencies in other countries, even though in fact they want Thai workers but we cannot fulfill their request. This increases the size of competitors as the economy of the country of employment choose to pick certain groups of workers. Most of the time, we prefer job seekers to apply directly via advertisement on the television or in the radio but sometimes they are distracted by other agents. Now most of the job seekers come from the agents rather than coming to the recruitment company by themselves…"

Interviewed a recruitment agency on February 9, 2010

Apart from labor issue arisen from law, another issue comes from agents and brokers that often hide information from the workers and the private recruitment agencies.

"…The main problem coming from the use of agents and brokers in searching for job seekers is that the benefits promised to both parties are often agreed orally. There was a case that the broker deceived the worker by telling the worker that he would collect money for the agency but in the end he ran away with the money. The latter was left for the recruitment agency to be solved…"

Interviewed a recruitment agency on November 4, 2009

(3) Skill testing and Training of the Recruitment Agency

In terms of training, Article 36 of the Employment and Job seeker Protection states that for the recruitment of overseas employment, the licensed agencies must send the qualified job seekers for training on laws, custom and tradition of the country that they are going to, including working conditions at the Central Employment Registration Office, Provincial Recruitment Office or other institutions appointed by the Director-General. Therefore, the workers who are going to work through legal channels must go through all the training provided by the Ministry of Labor first. The recruitment agencies must

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

comply with this regulation, while some may even provide transportation for the workers.

"…The selected workers from the company must be trained by the Department of Employment but at the same time we also have our own training program (father-son system – the workers must make a vow that they will not consume alcohol, gamble or smoke) as well as giving information on what kind of things they may face, how to behave and many workers follow these rules…"

Interviewed a recruitment agency on November 3, 2009)

"…Training program provided by the Ministry of Labor is rather disappointing because some of the instructors have never been abroad. We once suggested them to have a 3-day training program with more professional instructors. It can be seen that the officers of the Ministry do not give importance to this…"

Interviewed a recruitment agency on February 4, 2010

For skills testing, it is found that workers who must pass the test are those that have to be in the position that requires semi-skilled to skilled work, for example, mechanical jobs. The testing also depends on the country that the workers are going to, for example, the workers who are going to Singapore must pass skill test. The test and skill training can be accessed through the Department of Skill Development or run by the private recruitment agencies themselves. However, the procedure of training and skill testing set up by the private agencies has to proceed according to the standard of the Department of Skill Development. Personnel from the Development of Skill Development will be sent to the skill testing centre set by the agency to examine the standard of the centre; the instructors also need to pass the test and approved by the Department of Skill Development first before the skill testing centre can be opened. Recruitment agencies that can set up the testing centre or training school in Thailand are those who are large, have operated for a long period of time and emphasized on recruiting semi- and skilled workers.

However, even though at the state level, the Department of Skill Development has set up procedures in training and developing skills of the workers, but according the interview with the recruitment agencies in this research, it is found that recruitment agencies are

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

confident to use skills testing centre run private sector or by the recruitment agencies as they see that the training is more specific and is more suitable for the jobs that the workers are going to do.

"…Our company does not contact the Department of Skill Development to be the trainers for our workers because we have our own training centre for workers. In fact, we think that some of our skill training segment is more professional than the training provided by the Department of Skill Development because the company carefully train the workers. Some test must be set as employers in the destination country required, for example, the test must be in English. Any expenses arising from training will be included in recruitment services fees because the workers' skills must be tested before going to work. For example, welder must pass the test before they can start working, in which I think the skill of Thai welder in number one in the world"

Interviewed a recruitment agency on February 9, 2010

"…Every worker must have their skills tested and trained by trainers. We only train those who lack of skills. The training only takes place during their waiting time before going to the country of destination to develop any skills require by the employer. If the workers stay with us for three to four days, it is free of charge. However, if they stay for three to four weeks, we will charge 2,000 baht. But if they are trained for welding work, there will be extra charge…"

Interviewed a recruitment agency on February 4, 2010

(4) The Making of the Contract of Employment by the Recruitment Agency

According to Article 23 of the Employment and Job Seeker Protection Act, it states that for recruitment for overseas employment, the private recruitment agencies must make the employment contract with workers where it has to be concluded in a written form. The contract must include all the terms and condition set by the Department of Employment. From this, it is found that there is employment contract (Thai version) made in Thailand as a main contract between recruitment agencies and workers, and as evidence to show the Department of Employment in Thailand as well. However, when Thai people go overseas to work, they often make more than one contract and more than one language. The languages used depend on the destination

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

countries. For example, Taiwan uses Chinese and countries in the Middle East uses Arabian. The recruitment agencies also mention that if the contracts are made into other languages, those contracts will be translated in Thai version for the workers.

Although the private recruitment agencies may provide services for translation to the employment contract for the workers, in the case where there are more than one version of the employment contract, it is found that *"the contract of employment which is not submitted to the Department of Employment is the actual copy of the contract"*. From the sample of the selected workers, the study found that the procedure arranged by the employer, the rate of monthly salary and other social benefits the workers entitled to will go in accordance to the new contract of employment made between the workers and the foreign employer or with the foreign contractor once they arrive at the country of employment. Many workers receive higher salary and better social benefits and job positions than stipulated in the initial contract submitted to the Department of Employment, while some workers receive lower payment. Therefore, the issue of the employment contract needs to be followed and investigated so that Thai workers who go to work abroad will not be exploited from the unfair contract.

"…The company has arranged the contracts with both the overseas broker and job seekers where the company will require the workers to read the contract (in Thai) every time. In the case where that the contract is in other languages, the contract will be translated for them…"

Interviewed a recruitment agency on November 3, 2009

(5) Welfare for Workers at the Country of Destination provided by the Recruitment Agency

There are a number of ways on how the recruitment agency manages welfare for the workers while they are working:

- **Using overseas agents to manage Thai workers welfare instead of managing it themselves** (these agents are those who send job positions for recruitment agencies in Thailand). This method is mostly used with workers sent to Taiwan and Singapore, for instance. This development of labor welfare for Thai workers is the most obvious. The agency in Taiwan will prepare a translator for convenience of Thai workers. The duty of the agency starts from the

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

arrival of the workers at the airport until the departure. According to the interview with Thai workers that had been working in Taiwan, it is found that Thai workers prefer asking the agency in Taiwan for help more than the agency in Thailand. The labor welfare provided by the agency in Taiwan usually comes in the form of negotiation when there are issues related to work with employer or among workers. This also includes health welfare where they have to send workers to hospitals.

- **Employers manage labor welfare directly**. The recruitment agency in Thailand will contact the employer via email and telephone. Whenever issues occur, the employer will contact the recruitment agency in Thailand directly. The agency then will contact the workers directly or talk with their relatives in Thailand. In the case of serious issues, the recruitment agency will contact the Royal Thai Embassy in the country of destination to help. This method is mostly used for countries that the agency has recently been doing business with or countries that are very far from Thailand.
- **Having a boss for Thai workers from the recruitment agency to look after them** (Camp boss). This method happens when the recruitment agency hire a Thai person to look after the workers in the country of destination. These people are responsible to take care of the workers in every aspects including work, the living conditions, and negotiate to the employer if any issues occur. The arrangement and salary for the camp boss depends on the agreement between the employer or the contractor, and the recruitment agency in Thailand whether they would want to arrange to have camp boss or not as well how they are going to pay the boss. For example, from the case study of the recruitment agency, the employer would pay half of the salary for the camp boss while the agency in Thailand will pay for the other half.

(6) Complaints by Workers and Solutions of the Recruitment Agency

From the research, it is found that every agency have received complaints from the workers. Most of the complaints are the living and work conditions. The methods used to solve these problems are related to labor welfare mentioned above but most of the time the agencies use negotiations first to solve the problems.

"…We have received complaints that the jobs do not match the job positions as promised, but this is because the skills of the workers

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

did not meet the requirement. For instance, some welders could not do the job according to the order of the employer. In this case, we had to switch the job positions but if the employer does not pay wages as agreed in the contract, it is our liability. Often the complaints come in the first few years that the workers start working but these days there are not so much. An example of the recent complaint is that workers working in South Korea go to work while they are intoxicated…"

Interviewed a recruitment agency on February 9, 2010

"…There are no complaints for the recruitment procedure but there are some workers who complained in the case that they had already paid for training fees but did not get the jobs because they could not pass the test. However, we have never been complaints against…"

Interviewed a recruitment agency on November 4, 2009

"…Another issue arising from recruitment is some Thai workers are sent back because they consume alcohol, gamble, and absent from work. The labor welfare for the workers in foreign country is communicated via email. The company will have an engineer who receives the money before being sent to work overseas to become camp boss. But for the countries such as Taiwan and Israel there are no complaints because the brokers in those countries will manage the workers. There are translators provided there and whenever there are issues, they will contact the agency...Most of the issues are personal issues coming from the workers. These issues are 1. High expenses 2.Self-discipline 3. Behaviors such as alcohol, gambling. Whenever the workers face such issues they would contact the company first as there is a camp boss there to look after them. Problems which are often found such as there is not enough food, bad food sanitization and the timing of the payment. Some complain that extra expenses are too high, especially the expense before travelling, since some of them have to make informal loans with an interest of 5%, some have to borrow from the Bank for Agriculture and Agricultural Co-operatives. Some were deceived by the agents that they would be paid for working overtime as the agents tend to exaggerate…"

Interviewed a recruitment agency on February 4, 2010

Even though the information received from most of recruitment agencies said that some issues could be solved by

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

negotiations, but it is found that some agencies still receive complaints that had lead them to face punishment from the Department of Employment. Those agencies are told to comply with the regulations, have their licenses suspended and revoked (which will be explained in more details in chapter 4). In the end, the recruitment agencies that face license punishment imposed by the Department of Employment can have the case appeal at the court if they view that the punishment is unjust.

"…As for other agencies that have their license suspension, I think it happens probably because they went against the law without knowing. Most of them are middle-sized companies. The Department of Labor will negotiate with them so that they would pay compensation to the workers. Most of the cases happen where the agents deceived the workers. In the case where the employers found guilty in terms of payment, negotiations will be made, for example, the employer went bankruptcy and the worker leave before time. In general, there are conditions in most contracts that the liability goes to the company. The compensation depends on what had been agreed and the condition since many workers had to make loans from different sources to be able to pay for the recruitment fees. Some made loans with the bank, while some with financial banker with interest of 3% to 4%. As for this case there should be compensation for the workers...."

Interviewed a recruitment agency on February 9, 2010

2.2.3 Assistance from the government and state officials from different levels

Even though the topic of the assistance from the government and state officials from different levels to the private recruitment agencies is rather sensitive, it is found that many recruitment agencies receive some sort of assistance in the recruitment process of Thai workers for overseas employment from government and public officials. The level of assistance varies depending on the network and relationships (which will be described in the next section) with the private recruitment agencies.

"…We know many officers from the Ministry of Labor from the head of the department to the staff level. We also recognize many employees from several recruitment companies, because we have the

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

same table at the Ministry of Labor so sometimes we know each other news and exchange information about jobs in various countries…"

Interviewed a recruitment agency on November 17, 2009

"…In terms of network, apart from the Union for recruitment agencies in each province, we also know people in the TOEA. But now we want to know the people who work for the consulate…"

Interviewed a recruitment agency on November 4, 2009

"…We are quite close to the officers so there are rarely problems for work coordination…"

Interviewed a recruitment agency on February 4, 2010

It can be seen that most of the recruitment agencies in the study do not wish to specify what kind of assistance they receive from government officials or politicians. They do admit that having relationship and network with these people help the process goes smoother.

In terms of assistance and support from the state, although most companies can conduct recruitment business by themselves, but to be able to smooth out the process, this also depends on the terms and conditions of the state policy, as well as the support from the government. Therefore, the recruitment business growth varies depending on the era of the government. Government policies are very important in recruitment business, particularly, the opening of new labor market, which is still considered to be a weakness in the operation of all governments because in the past the opening of new labor markets in various countries, recruitment agencies often manage it on their own and by themselves.

"…Previously, the government policies rarely benefit the company. Poor recruitment process is partially a result from politics and happened because most of officers from the ministerial level or consultants using the wrong method…"

Interviewed a recruitment agency on February 4, 2010

"…The support on overseas employment recruitment from this government is good in comparison to other administration. The policies are good; however, it is still unsuccessful in practice. The Development

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

of Employment and the Department of Skill Development still need to organize and keep the system up-to-date. Our performance is still not up to the standard in comparison to the Philippines. Our Ministry of Labor is also unable to identify where is our major overseas labor market or the skill in which they required. Furthermore, the Thai workers even though their skill is up to the standard, but they lack of language ability. Even though there are trainings provided by the Department of Skill Development, however many workers refuse to participate in the training since the food is not provided. This is because the Department does not have enough budgets to facilitate those who come for training. The way in solving this problem is to increase in funding. As for the workers who work at construction sites, they should use the method of 'upgrading' the workers by providing them with some information on theoretical knowledge…"

Interviewed a recruitment agency on February 10, 2010

2.2.4 Network of recruitment agencies for business benefits

In terms of the network of recruitment agencies, it is found that many private recruitment agencies for overseas employment need to establish and use the network in sending Thai workers abroad. The network of recruitment agencies can be classified into three types, as follow:

(1) Recruitment agencies in Thailand and recruitment agencies in foreign countries

For this type of network, most recruitment agencies in Thailand rely on the recruitment agencies in foreign countries to find job positions and look after Thai workers in countries of destination. This type of network is often formed for the recruitment agencies in Taiwan, Singapore, Israel and countries with laws saying that the recruitment must be done through agencies in that country.

(2) Recruitment agencies in Thailand and other recruitment agencies in Thailand

Having a network of recruitment agencies in this manner is mainly for consultation approach to discuss on the way in running recruitment business with other companies. Some companies use this network to assist in operations such as sharing the workers, sending the workers together on behalf of one company, sending workers to training and skill testing centers of another company (In the case that the

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

company does not set up their own skill testing centre) as well as hire joint camp boss to look after the workers in country of destination.

"…There is assistance provided for small companies – those that do not have training centre, since the workers going to work must pass the test before they can work in overseas. Some small companies send workers for training at our training centre. We think that it is a good thing because it also benefits the company by reducing the setup cost of our training centre. Small companies may coordinate with us or some workers come themselves by the Department of Skill Development …"

Interviewed a recruitment agency on February 9, 2010

In addition, recruitment agencies formed a network together by establishing the Association of Employment. This is for coordination among member companies and there will be a meeting as the Association has defined. Apart from the Association of Employment for overseas employment recruitment at the central level, from the study, it is found that in some provinces, like Udonthani, that have a number of recruitment agencies also establish a club for recruitment agencies in Udonthani to act as a central for network of agencies in the province.

"…The association has cooperated with many companies in order to determine the wage for the workers or sometimes have many companies coming together to supply workers and act as one company. We also send people to be the camp boss in Dubai and also have our staff there as well. The same goes for Algeria…"

Interviewed a recruitment agency on February 4, 2010

(3) Recruitment agencies in Thailand and overseas contractors

This type of network is a network between recruitment agencies in Thailand and the overseas contractors, where the contractors are mainly construction companies for big projects such as train construction, Industrial construction, and for large government projects in various countries. At present, key contractors are those in South Korea, Japan, and Europe. The recruitment agencies for overseas employment in Thailand would establish a network to serve contractors

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

to supply and arrange Thai workers for required positions as well as provide training for these workers before they depart the country.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

CHAPTER III

PROCESS OF RECRUITMENT BY PRIVATE AGENCIES

3.1 Process of recruitment by private agencies according to the Labor Recruitment law

In the recruitment of Thai workers for employment abroad, workers may leave the country through different channels such as using the services of employment agencies, acting alone on one's own cognizance, or being escorted there by a representative of the employer. The prerequisites and procedures for undertaking employment abroad according to the Employment and Job-Seeker Protection Act are specified below:

3.1.1 Recruitment Procedure for Employment abroad via Recruitment Agencies

Step One: Criteria of Employment agencies

(1) Employment agencies that are allowed to send workers abroad must be licensed

In order to avoid being deceived by unlicensed employment agencies, job seekers check the names of employment agencies that have been licensed by the Department of Employment (DOE); they can do this by contacting the DOE for the name list.

(2) Representatives of employment agencies must also be licensed

Those who have not legally registered are considered to be illegal agents or recruiters, which goes against the law. Job seekers must ask to see the license of any person who attempts to recruit them for work overseas. Job seekers should not pay recruitment fees to unlicensed representatives or recruiters, or if the payment has already been arranged, they should obtain a receipt from such persons as evidence to confirm their payment.

(3) Employment agencies must receive approval before they can publicize vacancies

According to the Employment and Job-Seeker Protection Act, employment agencies must obtain approval from the DOE first before advertising or publicizing any job vacancy. They must also specify the number of positions available on each announcement of vacancies in foreign employment before they are permitted to make the announcement public.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

<u>Step Two</u>: Selection and Preparation Procedures for Workers

(4) After selecting workers:

- The selected workers are required to obtain a medical examination and undergo skills testing. The medical examination must be a full examination by any of the hospitals listed as approved by the DOE. The approved hospitals may charge each worker around THB700-1,000 for the examination prior to employment abroad (except to Taiwan).
- In the case of Taiwan, there are only 8 hospitals that workers may use if they are planning to go to work in that country. The approved hospitals in this case are Siriraj Hospital, Chulalongkorn Hospital, Ramathibodi Hospital, Ratchawithi Hospital, Srinakarin Hospital, Udorn Thani Hospital, Maharaj (Nakorn Ratchasima) Hospital and Lampang Hospital. The cost of a medical examination by one of these hospitals will be around THB1,100 as set by Taiwan, because there is more detail required than in typical medical examinations. (According to the law, hospitals are not allowed to charge more than THB1,500).
- Exemption from skills testing exists for the following workers intending to work abroad: unskilled workers, those who have certification from a skills training institute, or those who have been exempted by the Labor Union. The cost of skills testing should not exceed THB500; however, if it actually costs more than THB500, workers may be charged more accordingly, given special permission by the Director-General of the Department of Skill Development, but it should not in any case be higher than THB1,000. The list of skills testing centers can be obtained from the Standards Division, the Department of Skill Development Tel: 0-2643-4987-8. Employment agencies are not allowed to charge workers for skills testing or medical examinations since these are the fees which can only be charged by the providers where the job seekers go for the service.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

(5) Employment agencies must request permission before being allowed to dispatch workers:

The employment agency must then submit to the DOE the details of the recruited workers who are to be sent abroad. The details of the job seekers includes their name, their national identification card number, address, previous occupation, level of education, years of work experience, name of the prospective employer and location of the workplace in the foreign country. The DOE permits recruiters to send workers within 60 days of the date of approval for travel. An extension may be allowed under certain circumstances, but not over 30 days.

(6) Employment agencies must send recruited workers to pre-departure orientations

DOE organizes orientations for workers. They are free of charge and are required by the law, to brief outgoing workers about their employment contracts, rules and regulations that they should be aware of, including the laws and customs of the country of employment.

(7) Employment agencies must arrange the signing of the employment contract

Agencies are responsible the employment contract between job seekers, employers and representatives of the employment agency. The contract must be rendered in at least two languages, with English as the primary language of the contract. A Thai language copy will permit the worker to read and understand the details of the contract before signing it. The contract must list the name and the address of the employer, rate of pay, tenure of employment, location of workplace, working hours, other benefits for workers such as holidays, payment for overtime or for work on holidays, and other social welfare benefits that workers may get such as health insurance.

(8) Employment agencies must arrange contributions to Foreign Workers Assistance Fund

In order to provide assistance for workers in foreign countries, if the employer is not willing to remit money to the fund, the employment agencies are responsible to send this share of money to the fund themselves. Section 37 of the Employment and Job-seeker Protection Act states that the employment abroad licensee shall organize the employer abroad who concludes the hire of services contract with a job-seeker to remit money to the fund established under Section 52 for each job-seeker. If it is unable to organize the employer abroad to do so, the licensee shall have the duty to remit money to the

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

fund.

(9) Charging recruitment fees

Employment agencies will charge the recruitment fees according to the type of employment and countries of destination. In general, the agencies will charge the fees for: (1) going documents THB1,050; (2) cost for medical examination, not exceeding THB1,500; (3) cost for skill testing, not exceeding THB500, unless the expense of the test cost more than THB500, the workers could be charged higher according to the rate notified by the Director-General of the Department of Skill Development. However, the cost should not exceed THB1,000; (4) services and recruitment fees: according to Clause 6, amended in 1994 by the Ministry of Labor, those parties who have been approved to recruit workers for employment abroad may charge a service fee in the form of a cash payment or other type of compensation. This fee is not to exceed double the amount of the monthly wages that the worker receives from their employer for the first month or the first 30-day period after work commences for employment contracts of one year or longer. In cases where the contract is less than one year, the charging of service fees is to be reduced pro-rata to the contract duration. Apart from this service fee, those parties who are approved to recruit workers may charge other fees based on the actual expenses incurred during the recruitment process however, they are not to exceed more than three times the monthly wage that the worker will receive in the first month or that they receive for the first 90-day period after work commences.

According to Clause 7, the rate of service fees and other expenses established in Clause 6, Section 2 does not apply for these cases:

(1) For the recruitment process to be feasible for work in Israel and South Korea with **up to a 2-year employment contract**, those who are approved to recruit workers may charge or collect services fees according to the actual expenses of the process but not exceeding four times the monthly wage that the worker will receive for the first month or for the first 120-day period after the work commences.

(2) For the recruitment process to be feasible for work in Taiwan with less than a 2-year employment contract, those who are approved to recruit workers may charge or collect service fees according to the actual expenses of the process but not exceeding two

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

and a half times the monthly wage that the worker receives for the first month or for the first 75-day period after the work commences.

According to Clause 8, those parties who are approved to recruit workers may collect the following expenses from the worker:

(1) The cost of locating an employment position

(2) The cost of making arrangements for the worker to be employed abroad such as for document certification, document translation, and visa application fees

(3) The cost paid for applicable fees charged for entrance into the welfare system for the worker in the foreign countries as established by their respective governments

According to Clause 9, those parties who are approved to recruit workers may not charge the following expenses as they are considered to be personal expenses which the worker needs to pay for themselves:

(1) Travel document fee

(2) Medical examination fee

(3) Skill-testing fee

(4) Airfare

(5) Airport tax

(6) Expenses related to language and cultural orientation trainings

Step Three: Traveling to the Country

(10) Employment agencies must escort workers through the DOE Labor Checkpoint.

Officers at the checkpoint will check whether or not the workers are going work legally and have all the important documents ready. After the check is over, the recruited workers must take the important documents with them, particularly the employment contract in which the workers should not return it back to the agency.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

(11) Employment agencies must submit the names of workers and their destination

The employment agencies must notify, in writing, the names of the recruited workers within 15 days prior to the departure date to the Thai Labor Office in the country of employment or to the Thai Consulate. The workers must also notify after their arrival in the country of destination within 15 days. They are advised to notify back immediately in the case they may forget, by filling in the form given by an officer from the DOE in Thailand during the pre-departure orientation.

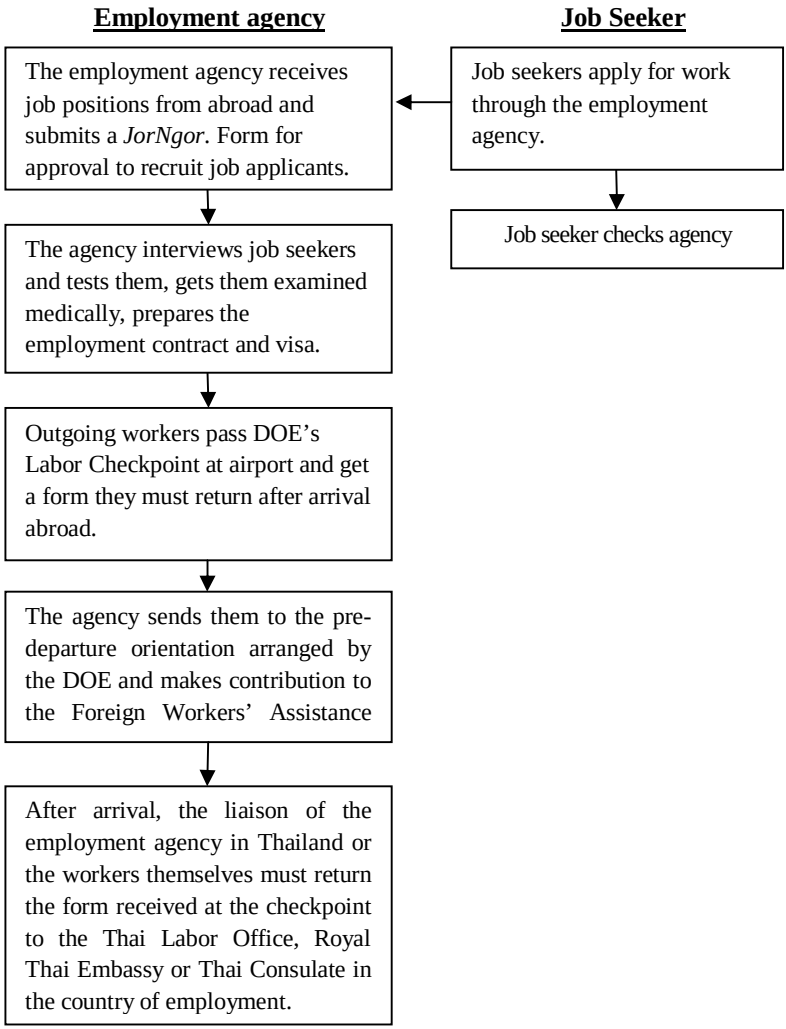
(12) Employment agencies are responsible for ensuring workers are paid

The Employment and Job-Seeker Protection Act does not state that the employment agencies in Thailand are required to have a subsidiary company in foreign countries. However, in reality, after the arrival of the workers at the country of destination, the subsidiary company in such country is in charge of taking the workers to the workplace. It is also the duty of the subsidiary company or the representatives from the recruitment agency in Thailand to ensure that the workers receive monthly salary and get position stated in accordance with the employment contract as agreed with the employer. If the worker did not receive the salary or get the job position as stipulated, the subsidiary company must act as mediator in the negotiation between the worker and the employer. For example, in the case of the work in Taiwan, private agency in Thailand would send the worker to Taiwan first; once the worker reaches Taiwan, the representative from the agency in Thailand would be the one who sends the worker to the workplace and ensure that all workers complete the work as stated in the employment contract.

The flow chart below shows the recruitment procedure for employment abroad:

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Flow Chart 3.1.1: Recruitment Procedure via Employment agency for Work Abroad



(13) Employment agencies must follow the Recruitment Agreement (*JorNgor. 33)*:

- Where a recruitment agency is unable to send job seekers to work abroad they have to return all the commissions, including fees and

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

other expenses paid to them by job seekers within 30 days.

- Where a job seeker does not get a job as stipulated in the employment contract, the recruitment agency has to arrange for the job seeker to go back to Thailand and will be responsible for all the necessary expenses and has to return all the payment collected by the agency, including services fees and other expenses to the job seeker.

- Where a job seeker gets paid less than contracted or job position which differs from the employment contract such that the job seeker requests return to Thailand; the agency has to arrange for him/her to return at the agency's expense. In some cases, the job seeker may agree to continue work, even though the salary is lower than agreed; the agency then has to return part of the commission in proportion to the difference in pay within 30 days upon the date when the request is made.

- Where a job seeker is not allowed to continue in job throughout the contract and is dismissed for no reason of their own doing; the recruitment agency has to return the commissions, including fees and other expenses paid to them by job seekers within 30 days after the request is made.

3.1.2 Acting on One's Own Cognizance to Pursue Work Abroad

Acting alone to seek work abroad is a legal recruitment channel. A job seeker who wishes to work abroad, but does not want to pay recruitment fees may apply for employment abroad with the DOE, through relatives or friends working abroad, or directly to employers abroad. The employer or their representative must prepare several documents, including the confirmation letter of employment, a work permit (where required), the contract of employment, and a photocopy of the documents of the job seeker, for submission to the Thai Labor Office, embassy or consulate in the country of employment for verification.

After the verification is made, all the documents should be sent to the job seeker, along with the visa application to notify the DOE that they will be going to work abroad on their own.

Procedure for Acting on One's Own Cognizance

The details of the procedure follow:

Step One: Job seeker submits documents notifying to the State Agency

A job seeker goes to the DOE to apply for a permit to work

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

abroad, showing a contract of employment in accordance with the law.

Step Two: Job seeker submits documentation to the DOE

The job seeker must declare their intent to work abroad, acting alone, and provides all the required documents (as stated below) to their provincial DOE Office, or the Overseas Employment Division at the DOE before going for not less than 15 days.

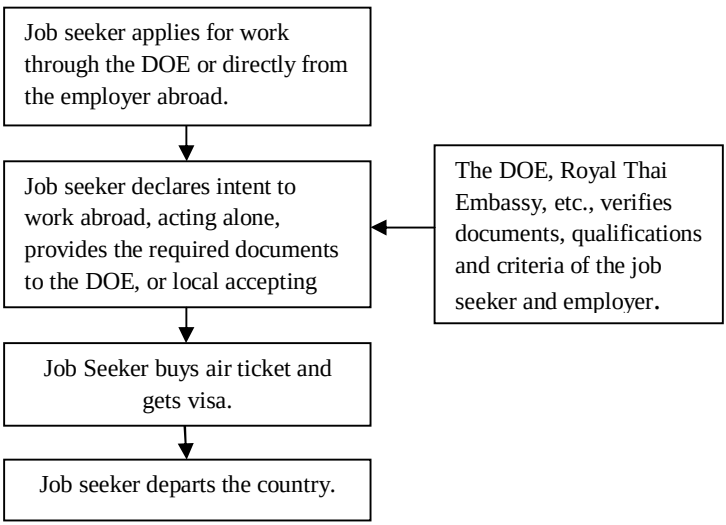
Step Three: State agency verifies all documentation and other evidence

After submission of the required documents to the DOE, they verify the documents, and qualifications of the applicant versus the foreign employer's criteria.

Step Four: Job seeker purchases plane ticket, applies for visa, and departs the country

Once the job seeker is approved for work abroad, they can go buy an air ticket and apply for a visa. After all this, they are ready for their departure.

Flow Chart 3.1.2: Procedure for Acting Alone to Pursue Foreign Work



Required Documents for notification to travel to work, acting alone

1. A Photocopy of the National Identification Card
2. A Photocopy of the Household Registration
3. Evidence of contact with the employer abroad

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

4. A Photocopy of the work permit of the country of employment
5. A Photocopy of the employment contract
6. A Photocopy of the national identification card of a person who approves the job seeker's departure (if female) to work abroad.

Note: Each document must be presented along with the original of it.

3.1.3 Going to Work Abroad by Being Escorted by the Employer

Going to work in a foreign country by being escorted by the employer occurs when a job seeker is taken there by either a Thai or foreign representative assigned to recruit Thai workers to work in the foreign job. It is rare to find the problem of a worker being deceived this way, especially when they contact the employer directly as they may have worked for the employer previously; some others are contacted by the employer's representative whom the job seeker knows from the past. According to the Employment and Job-Seeker Protection Act, workers accepting work abroad this way must submit documentation to the DOE for verification before they can depart the country.

The procedure for being escorted by the employer:

Step One: Employer has an employment agency in Thailand, or the DOE, recruit the worker

A foreign employer who wishes to recruit Thai workers must give power of attorney to the employment agency or the DOE to recruit workers in Thailand. The foreign employer has to notify the Royal Thai Embassy, Consulate or Thai Labor Office in their country that he/she wishes to recruit Thai workers by organizing the employment agency or the DOE in Thailand to be their representative in the recruitment process. In the case where the Royal Thai Embassy, the Thai Consulate or the Thai Labor Office does not locate in the country, the employer can contact them from country nearby. The Thai diplomatic mission will be responsible for verifying the documents. These documents include (1) Letter of Power of Attorney; (2) Demand Letter for Job Position; (3) Employment Contract; (4) where the employer is a registered business, the Company's registration is also required.

Step Two: State agencies work together to verify and certify the submitted documents

After the verification process is completed, these documents will be certified and evaluated by the DOE. The Department will coordinate with the Royal Thai Embassy or the Thai Consulate of the country of employment to ensure that the company and the employer do

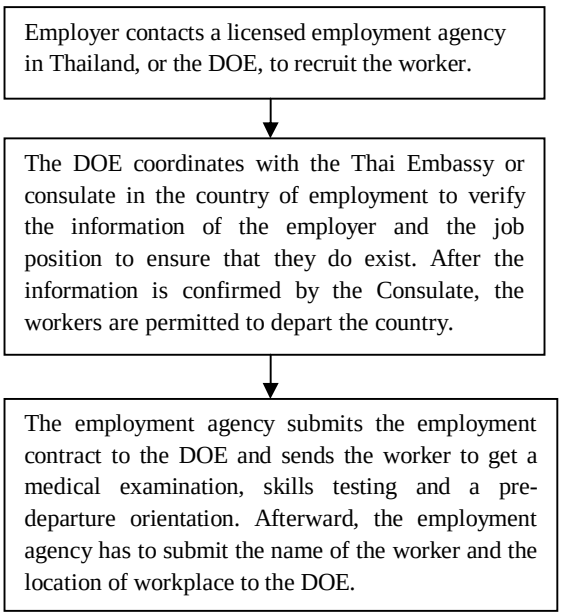
แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

exist, and the job position is available for the worker. After receiving the confirmation from the Consulate, the worker then can depart the country. **Step Three: Worker gets medical examination, undergoes testing and pre-departure orientation**

Representatives who are allowed to recruit workers for employment abroad must submit the employment contract to the DOE and have the workers get a medical examination, undergo skills testing and a pre-departure orientation. The next process is the submission of the name of recruited workers as well as the location of workplace to the Thai Labor Office in the country of employment or to the Royal Thai Embassy or the Thai Consulate.

The diagram below shows the details of the procedure:

Flow Chart 3.1.3: the Procedure for being escorted abroad by the Employer



3.1.4 Going to Work abroad through the State's Arrangement

Going to work in foreign country through the arrangement of the state is the cooperation in a form of government to government or

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

'*G2G*'. The country of employment which uses this type of recruitment process is South Korea, as South Korea does not want to receive workers recruited through the facilitation of employment agencies in Thailand. State agency which is responsible to arrange the recruitment procedure is the DOE. Going to work abroad through the arrangement of the state is the best channel of recruitment as the workers do not need to pay for services fees; they only need to pay for plane ticket, passport, visa, and other expenses such as medical examination.

There is another form of recruitment process through the state's arrangement which is called "a trainee system" where the workers are sent to the country of destination and will be trained for certain period. The two countries of destination which receive trainees are Japan and South Korea. There are a few problems of deception found in the recruitment process through this channel since the company at the destination manages the procedure closely. The problems found in this type of recruitment process occur when the trainee "takes flight", which means that the workers who hold 'trainee' flees from orientation and goes to work illegally elsewhere in the country and does not return to Thailand by the expiration date of their visa. This has led Japan to stop receiving trainees from Thailand for a while. At present, Japan has started to receive trainees from Thailand again and the regulation has become stricter to prevent Thai trainees from 'taking flight' again.

The procedure for going to work abroad via G2G arrangement:

<u>Step One:</u> Job seeker registers at the DOE

Job seeker must register with the DOE as to be called back to have skill testing and language test (in the case of going to work in South Korea, job seeker has to take lessons and pass Korean language test as notified by the DOE).

<u>Step Two:</u> Worker gets medical examination, undergoes testing and pre-departure orientation

After the job seeker passes the test and is approved to go to work abroad through the state's arrangement, he/she must have medical examination from the hospitals listed by the government. Afterwards the job seeker may purchase the plane ticket and apply for visa to enter the country of destination. The DOE will later call the job seeker to participate in the pre-departure orientation. The job seeker has to remit a contribution for membership in the Foreign Workers' Assistance Fund, a requirement set by the Employment and Job-Seeker Protection Act. The job seeker has to pay these expenses when contacted prior to

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

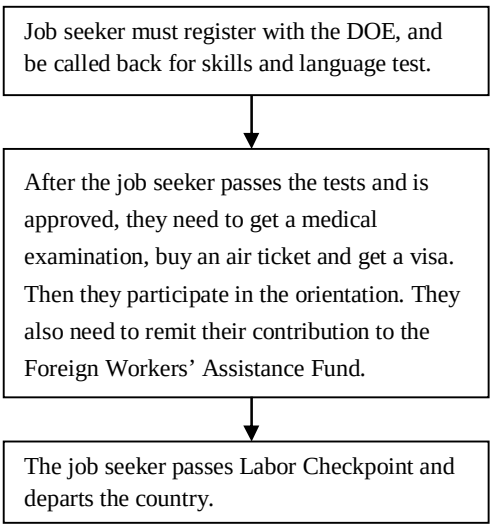
departing the country.

<u>Step Three:</u> Job seeker goes through Labor Checkpoint and departs the country

An officer at the Labor Checkpoint in the airport will check all the job seeker documents. After the check is completed, the job seeker must take these documents with them and may depart the country.

The diagram below shows the details of the procedure:

Flow Chart 3.1.4: Procedure for going to work abroad via G2G arrangement



3.2 Corruption and Violations of the Law in Recruitment Practices

The recruitment process for employment abroad via employment agencies in practice comes in many forms and is rather complex. Such recruitment process sometimes does not comply with the provisions set in the Employment and Job-Seekers Protection Act. Although, the provisions or the regulations are written out clearly in the laws, it is found that in the recruitment process by private recruitment companies, including the employer abroad who directly recruits workers, there are many ways to manage the recruitment procedures to avoid or violate the regulations set by the laws.

For example, charging high recruitment fees exceeding the

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

standard rate, recruiting workers without having the license and establishing the recruitment company, or the way which employer abroad get the workers to travel on their own without notifying the DOE or not operating the procedure as employment agencies, finding quotas or job positions from the Union to persuade workers to work abroad without concluding the employment contract, or establishing another company which serves as the network for the contractor in sending the workers abroad, and so forth. By avoiding or violating the regulations in certain steps is considered to be law infringement. However, the ways of avoiding the law, as mentioned above, are commonly recognized among those who have been involved in this business, and may receive no complaints from the workers against such practices.

This is because most workers do not have enough information or knowledge about laws. In addition, the recruitment process is the course of interaction among different parties who are involved in the procedures to form mutual benefits. People are involved in this process are employment agencies and representatives from the sending countries, state officers, politicians as well as placement agencies of the receiving countries, employers and unlicensed recruiters who hunt for job seekers. The preliminary analysis of the recruitment process in practice which does not go according to the law can be studied from the information gathered by the Thai Consulates on general problems faced by Thai workers in foreign countries, particularly the issue on the employment contract and working conditions. Thai Consulates hold the responsibility to investigate the documents used for granting Power of Attorney.

After the investigation is completed, this must follow by the certification and evaluation of the document in accordance with Section 36 and Section 48 as assigned by the Ministry of Labor for the protection of job seekers set in the Act. Furthermore, the information on the recruitment process in practice can also be found in the various complaints gathered by the DOE (see Information Service Center, DOE – Complaints on Recruitment Companies - See http://lib.doe.go.th/doeinfor/pagedata/ frmDocLawdetail.aspx?). It is found that most of the complaints were by job seekers who were deceived by the corrupted employment agencies to return services fees and other expenses to them. The requests were made because the recruitment fees were too high from the standard and there were job positions available as promised, or the employer did not even exist, or in the case where the workers the

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

conditions differ from stipulated in the employment contract. The complaints also include the grievances from the workers being deceived by illegal agents and unlicensed recruiters, which is explained in more details in Chapter 4.

As for the information of the recruitment process of employment abroad explained in this chapter will explain the recruitment process in practice. Some of the procedures may not operate in accordance with the law or avoid some regulations, or some procedures are not stated in the law, for instance. The information obtained from the interviews and documentary research can divide the recruitment process into two main categories according to the recruitment process in which the employment contract is made between the employer and the employee without using the facilitation of Employment offices; and the recruitment process in which the employment contract between the employer and the employee through Employment offices. (Panthip, Kanjanajitra, Saisunthorn et al., 1998). The two types of the recruitment process in practice are the recruitment process operated by employment agencies that does not follow the Employment and Job-Seeker Protection Act and the recruitment process operated by foreign employers without the facilitation of employment agencies.

3.2.1 Recruitment Practices in violation of Labor Recruitment law

In Clause 30 (3), it sets the regulation for the recruitment process for employment abroad. In the recruitment process of worker to labor markets in Asia region, the employment agencies in Thailand and the placement agencies in the receiving countries hold a very important role in such process, as the employment agencies acting like a mediator in seeking for workers for the foreign employers. The agencies that are permitted to send workers for employment abroad have to be Company Limited or Public Company Limited. According to the law, it is not allowed foreigners to run recruitment companies to recruit Thai workers for employment abroad. However, it is found that, in practice, the placement companies from the receiving countries, both registered and unregistered, such as companies in Taiwan and South Korea use bribery to operate employment agencies in Thailand and have the name of the agencies registered under the name of the representatives in Thailand (Lan, 2007). The recruitment process does not differ from the normal procedure commonly practiced among other employment agencies, however such operation is not generally revealed in public. Sometimes

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

the owner of the recruitment agency is Chinese who married with Thai (Interview with the representative from a recruitment agency who is a foreigner on November 5, 2009) and assigned relatives to operate and coordinate in searching for workers in the local areas to be sent to the agency based in Bangkok.

The problems of unregistered employment agencies deceiving Thai workers who go to work abroad has occurred for a long time and continued to expand, especially around the North Eastern region, which is the biggest area highly populated by people in the working age in the country. The countries of destination that these workers are lured to go to include the United States of America, Canada, South Korea, Taiwan, Australia, Spain, South Africa, Poland, England, Germany, Lithuania and countries from United Arab Emirates, etc. Even though some countries, such as South Korea has changed the recruitment method by recruiting the worker through the Employment Permit System for Foreigner (EPS) run under the system of government to government (G2G), instead of using the training system in 2004, there are still cases of unlicensed recruiters running travelling agencies as a cover up who deceived workers that there are job vacancies with high salary in the factories in South Korea. These workers were often lured to believe by false promises and had to pay for deposit, but were unable to go to work as promised in the end. These companies often closed their business and ran away after having received money from job seekers.

There are many forms of the recruitment process managed by some employment agencies that does not comply with the law. Examples of such practices are recruiting workers without the approval of the DOE as to prepare workers in advance while waiting for the confirmation of the number of job positions or order from the employer abroad, fake contract of employment or the conditions do not go according to the contract, charging high recruitment fees than the standard set by the law, as well as not looking after the workers to be paid or get the job position as agreed in the contract. The analysis of the types of different employment agencies that perform the recruitment process not according to the Act can be explained in detail, as follow:

(1) Recruiting workers with an approval and preparation workers in advance

Recruitment agencies that want to be able to supply workers to employer abroad as requested often recruit workers in advance without applying for permission from the DOE set by the law as to have enough job positions from the employers and the qualification of the workers would be up to the standard. Although such practice does not comply

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

with the law, many employment agencies choose to operate the system this way.

Many agencies found the provision which does not allow employment agencies to recruit workers in advance to be problematic. This is because when the employers want to hire workers, the request would come in such notice that the agencies might not have enough workers to supply to the employers. According to the opinions from people in different sectors, this provision should be alleviated as normally the workers would come in continuously to the agencies and the agencies would get them to fill in the form, although to furtively recruit workers in advance is considered to be illegal. In reality, if the agencies cannot recruit workers in advance they would have to use the service from illegal agents and recruiters to find workers in limited amount of time, as they do not have enough workers in the stock.

(2) Buying job positions

Buying job positions is a competition and cooperation between employment agencies in Thailand, placement agencies in foreign countries, employers and representatives of the employers in determining the price of the job position. The auction for job positions would take place in bargaining the price of the job positions in which sometimes can shoot up from THB25,000 to THB130,000 in 1997. There are also buying job positions and workers from other employment agencies (Piyawat 2001) and then advertise to workers that they can earn high salary from these jobs. Since the recruitment fee is high, the job seekers misunderstand the salary would be high also as they did not looking at the working hour (Interview with a recruitment agency on February 10, 2010).

From the interview with Provincial Employment Office, it is found the state agency has to ignore the fact that there are some employment agencies established network with overseas placement agencies and buy job positions from them. There are loopholes in Thai laws which open ways for individuals to seek benefits at the cost of others. Although, the law is strict, but to enforce the law in every aspects in not easy, when the case where workers file a complaint, the best way to conclude the case is that the workers they receive compensation from the perpetrator. In addition, there is no progress in the process where the Provincial Labor Office passing the case to the central to get the perpetrator to be punished as stated in the law, because most of illegal agencies are backed up by politicians. Most of the time, the Office would negotiate so that the workers would receive some compensation. In terms of police arrestment, Provincial Labor

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

officers have a very limited role since they can only join with the main police officer during the arrestment.

The outcome from the protection scheme is also not very effective due to the limitation in personnel and budget. Due to limitation in reaching out the workers, Provincial Labor Office often uses the local network by getting village and district chiefs, and Tambol Administration Offices to broadcast and distribute information to the workers. The level of assistance is varied depending on the willingness of these actors. As Provincial Labor Officer knows that there are constraints in its performance, it would get their informants with connections to search for information. But, in reality, there are more agents or representatives of employment agencies than the state agents, particularly when some illegal recruiters are political candidates who hold connections with employment agencies. The issue of agents and recruiters is main cause for the process of corruption to continue.

In terms of the competition in buying job positions, by using foreign recruiters, such as those from Taiwan and Israel, the level of competition would be higher. Since most of time middlemen would be the person who contacts the employment agencies, some agencies that have established good relationship with the employers do not need to use recruiters. Sometimes workers who have worked and established good relationship with the employer, in which sometimes are also a camp boss as they have stayed in the foreign country for a long time up to 10-20 years and become familiar with the employer, would be the persons who propose job positions to the employment agencies. The charge per person per a job position is varied depending on the agreement. For example, for Taiwan, the charge for buying one position per person is around THB30,000-65,000; for Israel, the charge is around THB200,000 per person as the monthly wage for the worker going there is relatively high. The fee which most of employment agencies collect is around THB75,000 – 130,000 up to the management of the agency. Some employment agencies can collect low recruitment fee than others because they have established a good connection with foreign recruiters whom they have contacted with for a long time. Therefore, they can negotiate with the broker to lower the cost in order to be able to charge recruitment fee from the workers at the rate set by the law. This is because there are fewer workers who are interests in going to Taiwan in 2007-2008, so the agencies need to reduce the fee (Interview with a recruitment agency on February 8, 2010).

Employment agencies often view that the state policy is not beneficial for the operation of finding job positions for workers and

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

believe that the political involvement in the recruitment process is the main cause for frauds found in the recruitment situation. The political involvement mainly comes from figures from ministerial level or the advisor intervening in the recruitment process. Good employment agencies often will try to keep its positive image and its reputation in their operation to avoid having license suspension. Some employment agencies will get the job seekers to notify the Development of Employment that they are going to work abroad by themselves. This is because the sending area is relatively far and that there is no embassy in the area, in which the embassy cannot certify the existence of the employer as there are no one to and inspect the area, but because the agencies know the employer so they can confirm with the job seeker. This method is rather risky, because if the job seekers went there and faced problems, upon their return the agencies would be the one who responsible to handle the compensation to the job seekers.

Competing to get job positions requires a lot of tactics. For example, getting the job position in Israel, employment agencies need to run around and negotiate to get the approval to send workers abroad; in this case there is an involvement of politicians behind the operation demanding the officers to follow the order. Another case which relates to working in Israel is the establishment of “Labor Union” which is not a state institution, although the chair of the union is former senior official. There are a big annual meeting and several monthly meetings. The purpose of setting up the union is to look after Thai workers in Israel; however the real intention is to personal profits from sending Thai workers to Israel. The union charges around THB20,000 per worker for membership fee, in which various employment agencies are forced to pay (Interview with a recruitment agency on February 8, 2010). The employment agencies then need to collect the money from the workers. In the case of Canada, if the employment agencies did not bribe politicians or senior officials to obtain job positions they would not be able to gain approval to send the workers. Ultimately, the workers have to pay high amount of money, as a consequence.

(3) Charging high recruitment fees and providing distorted information

According to the Clause 6 amended in 1994 set by the Ministry of Labor on the rate of services fee and other expenses charging to the workers, it states that those who are approved to recruit workers for employment abroad may charge service fee, in a form of money payment or other kinds of compensation, not higher than double the monthly wage of the workers received from the employer in the first

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

month for not less than one-year employment contract. For the case where the contract is less than one year, the charging of service fee should be reduced, proportionately. As for the recruitment fee, the charge should be in relation to the actual expenses of the recruitment process, but cannot be more than three times of the monthly wage that the workers will receive in the first month. The setting of the fee can be varied depending on the length of the employment contract. For example, for the employment contract for work in Israel and South Korea that lasts for at least two years, the employment agencies may collect recruitment fee according to the actual expenses but cannot exceed four times of the monthly wage of the workers received in the first month. (See Appendix).

The expenses in which the employment agencies may collect from the workers are the cost of finding job position; the cost for arranging the workers to be able to work abroad, such as the cost for document certification, document translation, visa application fee; and the cost for welfare system for the workers in the foreign countries as set by each government of the countries of destination. The employment agencies cannot charge other personal expenses of which the workers need to handle such fees themselves. These expenses include fees for passport application, medical examination, skill testing, airfare, language and cultural orientation in preparation to go and work abroad.

However, the workers often pay a whole sum for services fee and other expenses which is higher than the rate set by the law. Although, after the employment agencies have receive an approval form to recruit workers or *"JorTor. 2"* from the DOE and are allowed to start recruiting workers, they are not entitled to collect money from the workers yet. This is because *"JorTor. 2"* is only an approval form to start recruiting workers in advance which does not mean that the agencies have the job vacancies guaranteed for the workers. However, in practice, almost all of employment agencies would collect service fee or recruitment fee from the workers from the beginning.

(4) Deceiving workers and avoiding the law

The reason behind the workers being charged to pay for recruitment fee and other expenses to go to work abroad higher that the set rate is partially because the workers do not have enough knowledge of the procedures and the rules of law. Some workers who go to work in Taiwan may have to pay up to THB150,000, which is the cost for the whole services fee, but they have to accept the conditions and fill in the form stating the fee is not higher than the amount set by the law. These

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

workers also have to take over the contract of previous workers who have left the job.

Deception of the workers can come into two forms. The first form occurs when job seekers tricked to pay a large amount of money in advance to the broker or the recruitment agency as they were made to believe that the fee is for document preparation and travel cost, and so on, but in the end they did not get to go to work abroad as promised. Another form of deception happens when arranging the workers to arrive overseas; however, there are no job positions for them and the workers do not receive any help from the employment agencies. Sometimes, there are more workers being recruited than the quota of available job positions, as the agencies hope to collect recruitment fees from the workers in advance. The employment agencies and their field representatives use a method that makes it difficult for workers to claim compensation for later and generally constitutes fraud.

There are many forms, but the most common practice starts with a field representative who is the primary element in recruiting job seekers for employment agencies. The field representative will help them every step of the way and pay some expenses for the workers first, such as those for medical examinations, passports, food, transportation, etc.. After they get their medical exam, job seekers begin to feel more assured that they will get to work abroad. After they pass skills testing, field representatives will start collecting money from them…around THB30,000. The recruiters then confiscate the workers' passports and tell them that it is part of the routine, and will start charging more and more money from the worker until they finally place them in some job. Workers end up paying a large amount of money and may not even get a job.

Employment agencies have different ways to avoid the rules and regulations of each country in carrying out the recruitment procedures. The main problem faced by workers is being charged a large commission exceeding the rate set by the law. However, there are only a few complaints of such problems. This is because most of them are willing to pay it; some believe that a high recruitment fee guarantees them a job placement. Most complaints are made because workers did not get a job after payments have been made. The commissions vary depending on the rule set by the agents or the recruitment companies. State policy and foreign employers also have an influence in the increasing of service fee and other expense. For example, the recruitment fee for going to work in Taiwan is relatively high because this includes the commission to independent recruiters. In

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

addition, even with correct recruitment procedures, workers still need to pay large service fees and other expenses. An example of this is going to work in Singapore, since workers will receive training from the Building and Construction Authority (BCA), which has representative offices in Chiang Mai, Bangkok and Udorn Thani. Those who are going to Singapore have to be skilled and according to the recruitment process, must pass a written exam to obtain SEC(K) – Skills Evaluation Certificate (Knowledge) – certification. There are 2-3 ways of gaining job positions in Singapore.

1. Direct contact with the employer;

2. Having Singaporean manpower recruiter connect them with job positions – charges apply;

3. Employers hiring the workers themselves

If workers who are going to Singapore did not pass the BCA training program, the employer will have to pay SGD440 in taxes. But if they passed the training, the employer will receive levy and only needs to pay SGD100. As a result, workers will earn higher pay. As for the recruitment process using the service of recruiters in Singapore to find the job position, the market value will be charged. However, the rate is not set, and there is no memorandum on the cost of job positions, even though there is the standard set by the law. Therefore, if Thai workers contact the employer directly, there would be no charge on market value (Interview with an owner of a recruitment agency on November 5, 2009).

Apart from this, in the case of the quota setting in 2007 by the Swedish Forest Berries Association (SBIF), along with the Immigration Committee of Sweden, this resulted in the cooperation with a number of employment agencies in Sweden, themselves as part of the SBIF, in seeking migrant workers. Four employment agencies in Thailand had facilitated in arranging the employment contract, accommodation, visa application, reserving plane ticket and negotiating with the Thai Labor Office in the country of destination and the Ministry of Labor. In order to avoid Swedish Taxation Law, there was a formal arrangement for the employment contract between the employment agencies and workers. Swedish employment agencies paid the money to Thai employment agencies to recruit and supply workers to the employers. The workers had to sign the contract with one of the four employment agencies in Thailand. Employment condition is arranged by the signing of the contract between workers and the employment agencies in Thailand, and that workers receive Thailand's minimum wage of THB8,000 monthly with THB500 per diem for daily expense in Sweden. The

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

workers also had to mortgage their land in order to get loans to pay for the recruitment…typically about THB90,000 per person.

(5) Lack of Assistance for workers after Recruitment

From the information from Protection of Thai Nationals Abroad Division, Department of Consular Affairs, Ministry of Foreign Affairs, and from the network of Thai workers who went to work abroad, it is found that there are a number of Thai workers who face exploitation and suffer from poor treatment while working in foreign countries. Part of this is due to the lack of knowledge of the workers, so they have to face problems with the employers do not follow the conditions stipulated in the contract of employment. Some of workers face violation by the employers as they do not receive the welfare or the salary as agreed in the contract; the employment contract differs from the agreed conditions; the employers did not pay the salary on time, no payment for working overtime as promised, or the job position or the location of the workplace is different from the contract. In addition, the welfare and other social benefits are not adequate or suitable, such as, the accommodation, food, medical treatment, and so on. In some cases, workers have to work in dangerous environment, for instance, touching chemicals without wearing suitable protection. Many workers were 'set adrift' by their agencies. The major problem found among Thai workers is the job position being different from the employment contract. For example, there was a worker who was taken to have his skill testing by the recruitment agency before going to work in Taiwan as a welder. However, after his arrival in Taiwan, he found that his job placement is not to be a welder, but he had to work as told by the order. This is because he did not pay a close attention to the contract of employment concluded by the DOE (Interview with a Thai worker on January 25, 2010). Another worker applied for a job in Qatar as a welder also, however, once he arrived he found himself working as a carpenter. Not receiving salary as stipulated in the employment is another problem found among workers. For example, in one of the interviews, one worker mentioned in the contract he supposed to earn USD400 per month, however, the actual was around USD300. Although he had followed up with the situation, the employer only said that he would get paid this amount of money.

In principle, workers who go to work overseas will receive protection from the labor law, if their rights were violated by the employer by not following the contract or were sent to another employer, receiving salary lower than agreed in the contract, no day-off, not receiving payment for working overtime and so forth. However,

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

there are still a number of limitations of the assistance providing to help these workers who have been violated against the labor law. For example, workers are unable find any law experts who can communicate in Thai or negotiate with the employer. Sometimes, some companies would assign a camp boss to take care of the workers; however some workers may not receive a fair treatment. Sometimes, the food sanitization is not good because of corruption. Sometimes the supervision of the camp boss is lax, allowing workers to gamble, distill liquor for sale, etc. (*from an interview with a worker on January 25, 2010*). Sometimes, workers have to solve problems themselves. An example of this happened in a case where the company did not pay workers as agreed, postponing it for several days. So the workers went on strike, but it was unsuccessful since the company controlled their finances. In the end, the workers lost because they had stopped working to go on strike, so the company deduct lost time for each day they had been on strike.

The issue of providing assistance for workers during the post-recruitment process relates to the preparation and training process for workers in terms of skills and language training. The preparation and training process for workers only lasts for 6 hours, which is still insufficient. When workers fell ill and need to go to the hospital, the procedures is very complicated, especially if accident happened either during work or happened elsewhere. They had to go police office first, as the doctor wished to know the cause of the accident. If there were no records from the police, the hospital would not take in the patient. Apart from, there was also a problem in communication since there were no Thai interpreters (Interview with a Thai worker on January 25, 2010). Some engineers had to become foremen supervising other workers, paying them and being in charge of production control due to the lack of language ability.

Another way of using the facilitation of the employment agencies is when the employer abroad who can directly recruit Thai workers getting the employment agency in Thailand to prepare for required documents for workers and readying them to travel abroad via the agency. This recruitment process helps in reducing the recruitment fee for workers and guarantees the job placement, which does not go against the law (For more information see Chapter 4: 4.2).

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

3.2.2 Recruitment by Foreign Companies without the Aid of Thai Employment Agencies

The recruitment process without the facilitation of employment agencies can be divided into two categories:

(1) Recruitment by foreign employers where workers are advised to declare themselves as acting alone

The method employed by most employment abroad companies, which are mainly foreign companies with Thai companies as a joint venture that hold share investment with (Interview with a representative from foreign employment company on January 28, 2010) is conducted through the direct search for workers without using the service from brokerage companies. In this method, the employment company would get workers to notify the DOE that they would be traveling to work overseas on their own and stress to them not to say that the foreign employer would be escorting them to work, and that they had no relations with the host company in Thailand. The recruitment process starts off as the employer sends people to search for workers in Thailand. Due to the lack of knowledge in laws and documentary preparation of Thai job seekers, as they do not know the way to or the system to contact the state agency; the employer has to cooperate with Thai company who holds the share of the company to send a representative to furtively facilitate the procedures. This is to avoid being litigated under the law; the company would stress to workers not to report to the DOE that the Thai company was helping in the recruitment, as the Thai company could be found guilty of violating of the Act, due to not having a license to recruit ; the process is rather risky. If the problem occurs and an investigation ensues, applicants may reveal the truth under pressure.

Companies that recruit workers directly will prepare an employment contract themselves. Under the condition that the job seekers wish to leave the job before the contract ends, they will need to arrange for the expenses themselves, such as airfare in which the company has paid for. The reason behind having the Thai joint venture company to recruit workers directly is because employment agencies often recruit workers who do not meet the criteria set by the employer. For example, they may hire an agricultural worker to work as a technician but the worker has not been trained to do the job. The worker must, e.g., be skilled or semi-skilled, understand circuitry, or have a knowledge of complex systems, etc.

In reality, the joint venture company has the right to directly recruit workers, but with rules and regulations that need to be followed.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Moreover, the company must pay a large amount of and obey strict obligations in terms of taking care of the workers. Existing rules and regulations have greatly constrained recruitment procedures by companies, particularly the provision in the Act that states only licensed employment agencies are able to recruit workers for foreign jobs. There are also other conditions stated in *"JorNgor. 23"*, on the subject of requesting approval to take employees to work abroad; *"JorNgor. 27"* requesting approval to send workers abroad; as well as *"JorNgor. 22"*, requesting approval to recruit or advertise vacancies in advance.

The procedures in the recruitment process for employment abroad have been set out clearly. The DOE has set the rights and the duties, according the Employment and Job-Seeker Protection Act, as well as the regulations on the request for an approval to recruit workers for employment abroad in 2005, along with the regulations of Ministry of Labor and Social Welfare on the request for an approval to recruit workers for employment abroad. From this perspective, it can be seen that although, there are certain rules and regulations for different parties to follow in the recruitment process, some overseas recruitment companies still directly recruit workers through the help of the joint venture company in Thailand, along with the service from the employment agency. One of the interviewee (Interview with a representative from a foreign employment company on January 18, 2010) stated that such practice happens as the company wants to reduce the procedures of the recruitment process set by the law. From the study on the regulations of the DOE, it is found that such process is considered to infringe Section 36 in the recruitment process of workers for employment abroad. This is because the license to recruit workers for work abroad must follow many conditions as specified in Clause 3 (5), as well as follow the procedures in requesting for permission to establish a temporary district office outside the allowed area. Some other conditions include a request for permission to recruit workers in other provinces outside the province which are given permission to; the registration of employee; the registration of representative; a request for identification card of licensee, manager and employee and representative; and a request for substituted permission or identification card; as well as regulations set by the DOE *"JorNgor. 47"* on the announcement of recruitment in which allows the licensee to recruit job seekers in advance (TOEA, DOE). The joint venture company or the employer in Thailand is not ready to abide by these conditions.

Recruitment processed by an employer abroad may be considered beneficial because they can control the quality of the

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

workers. They also find that it is a way to help workers avoid paying large recruitment fees. For example, job seekers who are going to Qatar have to pay around THB100,000-130,000 as a commission fee. It is better for workers to be hired directly as the employer pays for the airfares. But the problem that follows may occur when the workers do not hold the responsibility and do not work until the end of the contract.

As a consequence, most of the foreign employment company uses the system of collecting bond to avoid workers from not following the contract. The way, in which the foreign employer recruits job seekers, they may face conflicts in the recruitment process. Sometimes there is news presenting a negative image of foreign employers neglecting Thai workers which causes some anxiety. Some employers have to use employment agencies to supply workers. But at the same time, they are at risk of facing the problem of unqualified workers. In some cases, there is a recruitment process in which the foreign employer recruits job seekers by themselves such as Qatar, Dubai and Taiwan. Although the state encourages the employers to recruit workers directly so as to avoid the charging of hire recruitment fees by the recruiters, however the direct recruitment sometimes does not work since there is a problem of conflict of interest among recruiters, employers and state officials (Robert 2007). Nevertheless, it is found that this form of recruitment process leads to few cases of human trafficking in the destination country.

(2) Recruitment process by getting the workers to travel on tourist visa

This type of process is employed mostly by unlicensed recruiters. This group of recruiters often uses network and connections to recruit people who they are familiar with such as relatives of close friends. Most of them also know the owners of the business in foreign countries such as business related to factory work, agricultural work, restaurants, traditional massage, spa, or sexual service. Some of business owners are Chinese who go to countries in United Arab Emirates to operate the business such as Dubai, Bahrain, Oman, Qatar as well as countries in the Asian region such as Malaysia and Singapore.

Job seekers who work for this kind of business are mainly women and are often deceived in terms of remuneration or high salary. For example, workers are persuaded to travel on tourist visa instead of an employment visa, which is against the law. Most of them cannot stay legally there for more than three months. They will not receive any welfare or social benefits and are often exploited by their employers.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Female workers may be bought and sold. Some workers were promised that they would be working in a Thai restaurant; however, after their arrival their passport and air tickets were confiscated. Some paid commissions but did not get a job at all.

Complaints from such job seekers are scarce because they are illegal in the destination country and are thus afraid to appear before authorities to file charges. They would be charged themselves and then be deported. They are afraid to identify themselves and endure exploitation by their employers. Some female workers, who have had experience working in spas or brothels in foreign countries, find ways to go to work in that kind of business again in another country where they believe they can earn more (*from an interview with a female worker on January 28, 2010*).

The way of recruiting workers to go to work overseas on tourist visa is a method employed by large contractors in Thailand that hold share investment with overseas companies in the past. Because at that time, there was a high demand for labor mobilization to work for large construction projects, thus, the contractors could not wait for an issuance of employment visa from the state of the receiving countries, as the visa application process required a long time to process. They had to prepared around 4,000 – 5,000 workers in advance and sent them to work with tourist visa instead. However, the contractors were fined a large sum of money; this is due to the fact tourist visa only permits the workers to stay in the country for 30 days, after this the fine will be charged. As a result, the contractors changed the recruitment method and recruit workers through the help from Thai joint venture companies instead. It can be seen that recruiting workers to go to overseas on tourist visa is a widely used method. Some travel agencies also have some involvement, since they are the one in charge of taking the workers abroad. However, this recruitment method is illegal with the workers colluding with the recruiters. The chance of workers being deceived into exploitative situation which may lead them to become victims of human trafficking is high, but the cases do not usually breach the law once the workers enter the receiving countries.

3.2.3 Illegal Recruitment Factors

In the recruitment of Thai workers for employment abroad, there are many factors that affect the recruitment methods used by employment agencies, recruiters and the receiving employers in foreign countries. The two major factors for this are: first, the recruitment system allows private entities to seek for benefit from it, while in some

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

countries such as Vietnam and the Philippines, the recruitment system is arranged directly by the state; and second, the laws of Thailand are not comprehensive enough and enforcement is lax. The most common issue that has been discussed is the issue of high recruitment commissions being charged that are in excess of the rate set by law, which has become an issue that many find difficult to control through legal prohibitions. This results in the reality that workers continually fall into exploitative situations (Robert, 2007). Another problem is that the workers have to pay a large sums to recruiters, who could be their relatives, friends, head of village, someone from the same village or recruitment recruiters who go into the village to recruit job seekers. This is because there is a high competition toward fulfilling job placements, as well as strictures in the Thai labor policy that affects the mobilization of labor and recruitment. The limitations of the law are another factor affecting the recruitment of Thai workers. A discussion of this is in the following section.

(1) The role of illegal recruiters, competition over job vacancies and their accomplices

Labor recruiters have a very important role in the recruitment process for migrant workers in Asia and countries in the Middle East. Castles and Miller (1993) viewed that the reason that recruiters are so important is because the receiving countries have no intention of setting up bilateral agreements with countries supplying workers. Although, countries like the Philippines have managed some agreements with receiving countries, workers still cannot totally escape the threat of human trafficking and illegal exploitation.

In terms of the competition among foreign labor recruiters in searching for job position, from the documentary research, it is found that the set up of the quota system in limiting the number of imported labor into some of the receiving countries like Taiwan makes the labor recruiters to compete against each other in order to seek or buy job positions. The set up of quota system was initiated by the Council of Labor Affairs (CLA) in Taiwan, which is an institute that has an important role in controlling the number of migrant workers, as well as managing the business and industries that want to hire migrant workers. The committee members in the CLA comprise of state officials, employers, and businessmen, no involvement from the NGOs.

The framework for the setting up of the quota on different industries and various works is not clear, depending on the decision made by the CLA committee. For example, the setting of the quota on

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

the recruitment of domestic helpers and caregivers depends on how fast the employers want the workers by evaluating the number and the age of children in the house and the conditions of patients and elderly (Lan, 2008). The quota system creates a relationship between government officials, employers and employment agencies or their representatives in seeking for mutual benefits. The procedure in the quota notification as well as the approval allows bribery and corruption to occur. There are news related corruption cases where the employers using political connections to obtain the quota or the placement agencies bribe CLA officers to accelerate the recruitment process operated by the state so that they can get the approval on the quota faster (Lan, 2008).

Another factor is that people who work in the recruitment business in Thailand are normally not those who work in international business in the first place, but they usually start as a worker or an agent (Interview with a senior official on December 29, 2009). There are legal mechanisms which will protect and help the workers and strictly control the operation of the employment agencies. For example, in terms of the license registration to open a recruitment business, the owners must state clearly that they would like to open a recruitment business otherwise they will not be allowed to operate such business. At the same time, the information on the location of operation and the list of names of staffs has to be given to the registrar. The owner also needs to place THB5 million as guarantee bond to the registrar at the DOE.

The assurance bond will be used as compensation for workers, in the case of deception or being neglected by the employment agencies. This is because the Development of Employment or the workers are considered to be preferential creditors meaning that even if the employment agencies are in debt with other creditors, the assurance bond that has been collected cannot be used to pay other creditors; the priority of debt payment would go to the workers first. However, in practice, these agents or recruiters normally do not register to become licensees. Thus, the chance of workers being deceived is high and the workers who faced problems may not take the issue for litigation.

(2) Policies on migrant workers of the country of destination and high recruitment fee

Policies on migrant workers in Asian countries are widely criticized for affecting the way to seek for benefits of migrant workers (Lan, 2008). According to the policies of Taiwanese government on the migration issue, although in the recruitment process there is a contract signing by the job seekers to be contract workers, in the end the job

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

seekers are still at risk of becoming illegal migrant workers. This is due to the fact that workers often have to run away from the employers as they cannot endure the debts shackles or strict contract bondage. Such contract restraints the freedom of the workers to exercise their rights as well as exploit them.

Apart from a strict procedure in the worker selection process, Taiwanese policies also deprive the rights of the workers as to prevent the continuous flow of overseas migrant workers into the domestic labor market. Such policies also set out rules and regulations prohibiting the workers to change employers, except the employers have gone bankruptcy or have to close down. From this situation, workers are exploited by the employers or recruiters who make them change employer against the agreement in the contract. The prohibition on the workers from changing employers causes the workers to become victimized of exploitation from the employers and receive ill treatment. In addition, the government also demands the employer to place assurance bond in which equal to the amount 2-month salary that the workers would receive. The employer also needs to pay for levy or formally known as Employment Stabilization Fee each month.

Even if migrant workers run away from the employer, the employer still needs to pay for levy until they can catch the workers or until the end of the contract. All of these fees will be used by the government for the expenditures on the management of foreign migrant workers and the development of domestic workers. The labor system with strict measures is criticized for leading the recruiters to seek for benefits from being both labor suppliers and quota sellers (Lan, 2008). This has become the factor which causes the collection of recruitment fee to be at higher rate.

Another factor is the collection of other fees used for the operation of the recruitment process for employment abroad at high rate such as placement fee. Taiwan is considered to be a country where the workers have to pay placement fee at higher rate, in comparison to other receiving countries. Approximately, the placement fee for workers in Taiwan costs around TWD80,000-220,000. The amount of money being charged depends on the type of work categorized by industry and nationality of the workers. For example, for construction work, workers will be collected higher placement fee than going to work as domestic helper; and the placement fee for Thai, Indonesian and Vietnamese workers will be higher than the fee for Filipino workers. The reason behind the collection of placement fee is because Taiwan is a popular country of destination for overseas migrant workers since the

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

minimum wage is a lot higher than other countries in Asia. But the chance of getting a job in Taiwan is low, because the job positions in Taiwan are limited by the quota system. Thus, labor recruiters see the opportunity to increase the cost for the recruitment process and find jobs which are popular among Thai workers. This makes the workers who want to go to work in Taiwan to be at risk of having to pay commission fee/service fee at higher rate and not being able to go to work as promised or being deceived by the recruiters from both sides.

The set up of quota on workers by some countries like Taiwan results in the high competition in getting job positions among labor recruiters and leads to the collection of placement fee from the workers at high rate (Lan, 2008).

(3) Limitation of Laws

Debates on limitations and imprecision in related laws remain, due to differences in opinion from various sides. From the interviews with the owners or the share holders of overseas companies that recruit workers for employment abroad without using the facilitation of employment agencies, the interviewees view that the laws and regulations are too strict and outdated in relation to the actual situation. This leads them to violate the law.

However, from an informal interview with a key informant from senior official side, the interviewee views that the rules and regulations according to the law are already clear and comprehensive, but the practitioners tend to avoid these regulations.

The laws should be more favorable in these aspects:

1. Some laws are too strict and are inconsistent with the recruitment procedure operated by employment agencies, such as when a recruitment agency wants to recruit a worker to Singapore to work as trailer truck driver; they have to check with the authorities first before undertaking recruitment.

2. Besides from not being comprehensive, mechanisms of some laws also prevent employment agencies to operate the business. Embassies go to ensure the existence of job positions. Sometimes, some agencies intend to operate in a proper manner but have to face bureaucratic processes that are unfavorable.

3. There are also loopholes in the legal system, for example, in the case of the recruitment process where the worker is acting alone on their own cognizance, a worker who already went to Singapore found himself to be incapable of doing the job, like operating an excavator machine; he would then go and negotiate with the employer, asking if

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

his brother could take over the job instead. Afterwards, personal agreement is made in which the brother is allowed to take over the contract. He then goes to notify at the Ministry of Labor to be going to work by himself; the Embassy then goes in and inspect the company.

(4) Limitation in using authority of Inspection and Job-Seeker Protection Division to inspect the operation of employment agencies

According to the law, government officials from the DOE have the authority to inspect employment agencies. The inspection may include checking to see whether or not the agencies charge the workers in advance; whether or not the agencies keep personal documents of the workers such as passport; or whether or not the contract of employment has been arranged. The inspection can be divided into three forms:

1. documentary inspection, for example: there should be records of the number of workers being recruited and sent overseas, financial records, records of the number of jobs, etc.
2. Field inspection, which is to be conducted at the specified period, e.g., company inspection, license and other permissions inspection that have reached the due date, etc.
3. Inspection upon request, for example: inspection in the area that received a lot complaints on, or in the area where the labor mobilization takes place. Apart from these forms of inspection, the officials from the Division are also in charge of providing information and knowledge to the licensees. During the inspection, if it was found that the employment agencies did not follow the Employment and Job-Seeker Protection Act, the inspector would have the rights to take legal action and fine the other party.

However, if it was found that the agencies violated the law and the offence is considered to be a criminal case, this must be reported. For example, the case where the recruitment agency collected the money from the workers in advance but did not send the workers to work in the end; the inspector can report to the police officer for further investigation and litigation. In the case of serious offences where the recruitment agency denied to compensate the workers, inspector can pass the case to the central, in which will lead to license suspension for 120 days as a punishment on the recruitment agency. Most cases which took place in Udorn Thani are the cases where the employment agencies had their license suspended for 120 days. But most of them were appealed and the period of suspension was reduced. These

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

agencies have ways to avoid legal measures. Some agencies have their own agents and connection in which police officers could be close friend with the network; as well as get helps from local people. In the past, some recruitment companies were also backed up by politicians.

The Employment and Job-Seeker Protection Act is rather flexible, which allows employment agencies to take different channels to avoid the law (Interview with a government official from Provincial Employment Office on November 5, 2009). Often, Provincial Employment Office would pass the complaints from workers to police officers to sue the perpetrator; but this also depends on the decision of the police officers whether they would take the case to the court or not. If the offence was conducted by employment agencies, inspectors have the rights to report the case to the police officers but do not have the authority to request police officers to take the case to the court. The decision made by the police officers has to do with the prioritization of different cases. In the case where a worker was deceived to go to work abroad and no one has died; the two parties (the recruitment agency and the worker) have to reach the agreement themselves. In such case, some police stations will not take legal action. For cases of deception of workers, as the cases tend to recur in the same pattern, there are disputes over who want to take action. From the system, the inspectors are not police officers but are only labor officers.

The way to solve the problem tends to be through negotiation and through coordination with police officers. But they cannot force the police officers or rush them to precede the case; the best they can do is asking how much the case has progressed, for instance.

As for the view towards setting up different branches of employment agencies, there should be some flexibility on some procedures, while in some procedures there should be an increase in the authority for inspecting and managing the recruitment process. Although, the embassy may have certified the existence of job positions, the Ministry of Labor should have the authority to further investigate to ensure the positions, according to Section 157, and able to punish the perpetrator.

(5) Attitudes of workers

Due to the way of thinking of Thai society, when it comes to the decision making, Thai people usually make decisions based on trust or familiarity, rather than based on reasoning. As a consequence, workers usually will not come to apply for employment abroad unless they are accompanied by the agents. If we look at the contract system, it

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

can be seen that Thai people prefer to be approached at home like 'Direct Sale'. We have to consider that the state or the society does not have ways to encourage people to be more critical when making decisions. If we cannot change this mind-set when the workers have gone to work overseas they may need some helps from others still. If Thai people were able to help themselves more, the cost for going to work abroad would fall (since at the moment, there are costs from being collected from the village, preparing documents, having medical examination, etc.). Channels for violating the rules of laws are created solely because of the legal loopholes from the government official side, but are created by the workers as well. The workers, despite the fact that do not know the broker well, still pay the money to broker because of their eagerness to get the job. Also, even when they are to work abroad, they still do not know their rights; when they are told that they would get THB30,000 per month, their eyes would be wide opened.

Thai workers from the North and North Eastern provinces, especially from Udorn Thani province, whom were lured by labor recruiters, from being told that the DOE had received 5,000 job positions for forest berries picking in Sweden and that they would get visa to enter the country. Many workers believed this and submitted in recruitment application and passport to the recruiters and went to the hospital to have medical examination.

The complaints from workers have been reported by Provincial Employment Office to police officers, however the process had to pass through police officers, attorney, and then to the court, which depended on their discretion if they want to take the case further or not. The waiting for the actual process may take up to a year for every procedure to complete until the workers would receive compensation from the perpetrator. The procedures include the judgment on penalization and the arrangement for conciliatory meeting, and so on. After the court decision was made and the recruitment agency was guilty, following procedures include compensation and confiscation. After all these processes to be completed, workers would be in debt and ran out of money. So in the end, the workers would end up wasting their time and money. Alternatively, in solving this kind of cases, many use the method of negotiation in order to get the recruitment agency to compensate the workers, in which make the workers feel satisfied and do not want to take the case to the court.

The main problem is that people from Northeastern region trust people from their own communities and region far more easily than outsiders towards going for work 'overseas'. Those people who

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

were deceived are those who have previous overseas working experience. They still deny the advice from the government officials as they believe that these officials are trying to interfere or lie to them. For example, Provincial Employment Office try to tell the workers that they did not receive any contract from Sweden about such job positions but the workers still did not believe them. The workers prefer to believe the recruiters more than the officials and are easily deceived to leave the village. When the problem occurs, they would blame the Provincial Employment Office for not stopping them. In fact, Provincial Employment Office holds a meeting with village heads and district chief officers twice a month to point out the information on the deception cases of workers; however, this group of people furtively the recruiters themselves (interview with the Provincial Employment Office on November 5, 2009).

3.3 Corruption in Overseas Recruitment Process of Thai workers

Many seek to share the profits earned from running an overseas recruitment business of Thai workers, as it is considered to be an industry with a high income. However, the processes of this business, including getting orders or positions from foreign employers, recruiting workers, and charging services fees from job seekers, sometimes do not comply with the law. This causes employment agencies to seek for a help from people with high authority to handle the situation so it would conform to the laws, in order to protect or to solve the problems in which the employment agencies encounter. Meanwhile, these authorities, either those who have direct or indirect involvement, see the ways they could gain benefits from this business as well.

From the interviews with state officials at all levels, most of their responses show that there is no corruption or involvement from influential people in the operation of employment agencies. But when the research team conducted a document study, followed existing evidence on the punishment of high level officials who have been involved with employment agencies, as well as inquired other parties on such matter, it is found that corruptions in overseas recruitment process do exist. People involved in this corruption are politicians including some Ministers, Advisors to the minister, and some Members of Parliament; as well as senior officials including some executives from the Permanent Secretary, from the Director-General and the Deputy Director-General levels. As for the officials from lower-level the information is not apparent, part of this could be because they did it as to follow the order by the commander or the benefits gained from such

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

practices is not adequate to be recognized. In addition, some officials who were involved in the corruption could be on duty for a short while or temporarily, so there were no complaints on the matter.

A recruitment agency stated that:

"….There is only a few groups of people who have ruined the reputation of recruitment industry; those are former officials and new recruitment businesses (who established themselves during the period of workers being sent to Taiwan) who have been buying job positions and distending the salary and other figures unrealistically. Some agencies even used false advertisement saying that the working hour will be 10 hours per day and 28 days per month, and the DOE still approved them to send workers there, despite the fact that the actual working hour is only 8 hours per day per week. However, the employment agencies use this method of distending the figures to make it appear that the salary is higher than the real amount. Workers may misunderstand and think that these companies offer a better payment, but in fact that is not true, because the workers did not look at the amount of working hour. The distention of the figures is often employed by the employment agencies who want to charge high commission fees. However, agencies which operate justly and is honest to the workers will state the real amount of working hour which is 8 hours per day; being paid one and half times as much of the actual salary for working overtime, and double the payment for working during holiday period. When you think about it where you can earn more money, really, and also you won't even be forced to work for 10 hours per day either."

"Another thing I would like to add is the way some agencies would charge workers for recruiting fees up to THB300,000-500,000. I'm not sure what excuse or reason they come up with, but there is nowhere in this world would charge recruiting fees this high. It is almost like human trafficking and it is actually happening."

Recruitment Agency, Interviewed on February 10, 2010

The same agency also confirmed that:

".....There are a lot of interferences by politicians or former officials. They also demand a lot of money as well, but luckily these people cannot reach me. They often come and intervene with countries that request high recruiting fees, especially the projects that are short-term ones. It is more

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

difficult for them to be involved with the long-term projects. When around 6,000-7,000 workers are being sent somewhere abroad, politicians or retired government officials will interfere in the hope of gaining some quick bribe to allow them to proceed (according to the interviewee, this also includes the Israeli recruitments and fruit picking in Sweden)...."

Recruitment Agency, Interview on February 10, 2010

Information on this type of corruption is also affirmed by an official:

"Certainly, there are a number of attempts in deterring the state involvements, both from officials and politicians, in the recruitment process, but 'business and politics are almost inseparable'."

Official from Ministry of Labor, interviewed on October 26, 2009

Corruption found in the recruitment industry can be divided into the following categories:

1. Corrupt High-Ranking permanent officials: *by receiving or collecting money from employment agencies, or having conflicts of interest by being a consultant for the employment agencies after their retirement.* The officials from this level include some Permanent Secretaries and Director Generals. This type of corruption occurs in a form of bribery offered by employment agencies that seek for protection or special supervision from the state, in a hope to secure a smoother process in sending workers overseas. Although it may not comply completely with the law, a large sum of money is sometimes arranged and offered to high-ranking officials by the agencies. In 2002, there was a major case of corruption, in which one recruitment agency was not able to send the workers abroad as promised and was unable to reimburse the fees to these workers. After the investigation, it was found that this recruitment agency paid a large amount of money to a high-ranking official at the level of the Permanent Secretary. The involvement of high officials, who although they were not directly bribed, was also revealed. The officials who were involved in this scheme were punished and expulsed from the government. It is found that corruptions that involved high-ranking officials are sometimes not conducted by the officials themselves, but done by their family instead. In addition, there are also former high-ranking officials working for Thailand Employment abroad Administration (TOEA) who even

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

operate their own employment agencies. (an interview with a key informant in October 2009)

Not all the cases of the involvement of corrupted the high-ranking officials with the employment agencies, mentioned above, would be reported or investigated. However, there is another type of corruption occurring when former high-ranking officials who are retired or resigned from the government become a consultant for a recruitment agency or a consultant for the union of recruitment companies. By having former high-ranking officials as the consultant, while these former officials may or may not receive compensation in return, it would be easier for the employment agencies to operate their business even if they did something not according to the law or have the penalty reduction. For example, a recruitment agency may be penalized from offending the law by having the license suspension; the period of the suspension may be reduced from 120 days to only 15 days.

This could be because the officials who are in charge of handling the case may be afraid to offend the consultant of this recruitment agency who was once a former high-ranking official, so they had to reduce the penalty. Other way to reduce the penalty could be done through a special 'request' asking the officials in charge to 'help' the agency to avoid the penalty. This type of corruption violates the ethics of the state official. The role of state official has changed from being the person who was supposed to manage the operation of private sector to go according to the rule of good governance, to become someone who gives advices to private sector himself which sometimes does not comply with the law. In addition, there are also some corrupted executives who also find ways to gain benefits from recruitment business through corruption. These corrupted executives normally would run their own business and seek profits from other employment agencies. They would then pass these benefits to state officials in a hope to be promoted or have the opportunity to be involved in the recruitment business in which they could receive up to eight-digit income, in return. (Interview with key informant on January 28, 2010)

2. Corrupt Politicians: politicians involved are some Ministers, Advisors to the Minister and Members of Parliament. *Some ministers run their own recruitment business*. Since the beginning of the recruitment business sending worker to countries in the Middle East in 1980, there were some politicians who became wealthy from the success of owning a recruitment business. Some of them became

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

politician first and then started running the business as their political status facilitated them to succeed in the industry. At the mistrial level, there were cases of ministers from the Ministry of Labor who used their authority *to send workers from their employment agencies to pass the quota of workers in the overseas labor markets.* There were also cases that these ministers used the power to get working visa issued for workers within one day or solicited bribes from other employment agencies by charging them THB3,000 per worker (Interview with a key informant on January 28, 2010). Media identified some of these officials from the Ministry of Labor as "Ministers against Labor, *as there was money, in large or small sum, being collected from recruitment business*. Gains from the 'taxes' went to some ministers or some state officials. In some period, there may not be a direct involvement by the Minister in the corruption of the recruitment process; the Advisor to the Minister may become involved instead (Interview with key informant on January 28, 2010). However, the study found that there were some previous Ministers who were removed from the Ministry of Labor because of their involvement in the overseas recruitment procedure (Interview with key informant on January 28, 2010). This data verified that frauds or benefit seeking in recruitment industry truly exist, but the government has attempted to eradicate such corruptions as well.

As for the case of the Members of Parliament (MPs), there are different roles for MPs in the corruption. *Some MPs would be an owner of a recruitment agency, or have their family member or their nominee owns a recruitment company* while they control the business 'behind the curtain'. (Interview an official on November 19, 2009). State officials would call this type of agency as "Recruitment agency under the supervision of high-ranking officials" which means an agency with the politician's vested support. These MPs are normally MPs from Northeast and Northern provinces where there are many job seekers. These MPs are often interested *to be part of Labor Commission of the parliament to seek for their own personal interests*. The route in becoming an MP for these people would first start by running a recruitment company by themselves or by the family, and then they would enter the political stage at the provincial level by applying to be a candidate for a Member of Parliament (national) election. Because of this reason, by going to study the conditions of Thai migrant workers in foreign countries as part of the Labor Commission's duty is in fact the way for these corrupted MPs to look for overseas labor markets for their own business (Interview with a key informant on January 28,

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

2010). Such practices weaken the effectiveness of the overseas recruitment procedure of Thai workers operated by the DOE, since the government cannot compete against employment agencies that are backed up by MPs or Ministers. From this perspective, it is important for the Labor Commission to create good governance in the overseas recruitment procedure of Thai workers.

The other type of MPs is the one *who uses the recruitment business as a channel to gain votes* from the people in the village who are interested in using the services from the employment agencies that they operate for employment abroad (Interview with an official on November 12, 2009). However, this method of campaigning is not considered to be an act of corruption; it is viewed as the way of using recruitment business to enter the political arena.

3. Politicians and High-Ranking Officials intervening in the Punishment and Protection of Recruitment Agencies

Political involvement in the recruitment business can be divided into two types. First type is *a recruitment agency with the back-up of politicians.* There are a number of politicians who established their recruitment company by having other people's name as the nominee. These corrupted politicians were once be former officials working for the DOE and used to work as a recruitment agent. After having gained enough knowledge of the business and enough capitals, they would start running their own business. This is a way for them to seek for funding to pave their way up to the political arena. Another type of involvement is *when politicians use the recruitment business as a way to campaign for their election* by gathering votes from people in the village who are interested in working abroad to vote for them. This type of corrupted MPs would usually have a large social network that is known to many people, who would try to persuade villagers to apply for employment abroad (Interview Key Informant on November 9, 2009).

According to the Employment Act of 1994, there are provisions which prohibit employment agencies to operate certain activities, such as collecting high service fees and going costs exceeding the standard set by the DOE; recruiting workers in advance even though there are no job positions available, for instance. Recruitment agencies that are not abided by the law would be penalized by the Director General of the DOE, who has the authority to charge the suspension or the revocation of the license on the offenders. The period of the license suspension may last from 30 up to 120 days. It is found that *when some employment agencies who fell under the penalty, they would seek for help from the politicians or high-ranking officials to*

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

negotiate for penalty reduction such as decreasing the period of the suspension from 120 days to 15 days. In such case, the officials who are responsible have to compromise as they feel afraid to offend the request of the MPs or the high-ranking officials. As for those who helped to intervene would get some form of compensation from the agency or they could request for the money from the agency in exchange for the penalty reduction (Information from the Recruitment Agency.). The reduction of the penalty through such interferences causes the list of the recruitment agency names that have their license suspended and revoked to become unknown to the public, even though there are notices putting up on the Ministry of Labor Website and at the notice board of various provincial Employment Offices. Nevertheless, if a job seeker calls to make an inquiry about the information on the recruitment agency that he/she is interested in using the services, the DOE would be able to answer if that particular agency is under the penalty or not. Another type of interference is *getting certified signature from a politician.* According to the regulation, a recruitment agency needs to have at least three years experience before being allowed to send workers overseas. Agencies that did not have 3-year experience would look for politicians to certify that they have enough experience, even though in reality they do not. Once the official sees the certified signature of the politician, he would feel obliged to let that agency to send workers abroad immediately. Such practice is another way of political interference in the recruitment process. The politician would receive up to millions of Baht as an 'inducement' from the agency, in return (information from a recruitment agency, interviewed on November 3, 2009). The amount of compensation reflects the reality that the business of employment agencies is very profitable; the profits they could make are up to tens to hundreds of million Baht, as they are able to pay politicians a large sum from just one certified signature.

4. Assistance from the Practitioners from the Government Side to the Recruitment Agencies upon Returned Compensation

If there were no complaints of corruption conducted by practitioners from the government side, it would be very difficult to find information which confirms minor cases of corruption such as this, since most of the invocations filed against major politician for their influence and their involvement with the employment agencies. It is rare to find complaints against practitioners because there are no sufferers from these cases. Assistances from officers usually come in a form of helping private agencies to make the recruitment process flow

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

faster, such as making the process of sending the workers abroad to go faster, quicker process of issuance and certifying of criminal record of the workers (CID), setting up a fast-track orientation for workers, as well as closing the eyes to the charging of high recruitment fees to the workers which exceeds the standard set by the law, etc. However, there are some cases which were complaint against such as the case where Thai workers in foreign countries who face troubles were sent to the emergency shelter run by an NGO and need to pay the NGO for the assistance instead of being sent to the emergency shelter managed by the state which is free of charge (Information from key informant.*)*. It can be seen that these assistances do not go against the law, but can help the employment agencies to send workers abroad faster and earn more profits. However, from this practice, the workers may not receive a proper protection or an orientation before their departure, in which may lead them to be rejected by the foreign employers as their qualification does not meet the criteria set by the employers. As a consequence, disadvantages go to the workers who have paid for the recruitment fees but cannot claim for any compensation from the private agencies. This is because the agencies could argue that it was not their fault that the workers faced rejection since the flaws came from the workers themselves. There is a lack of information on the compensation from the agencies sent to the practitioners. Only one agency mentioned that they are familiar with the officers who work for the DOE from the chief executive to the low-ranking level, as they "used to go out for a meal and a drink together" (Interviewed a recruitment agency on November 17, 2009). Nevertheless, in this study, the research team did not receive any information on the bribery of the government officials by the recruitment agencies.

As for the officer level, the information from the Ministry of Labor states that "the state officers and the employment agencies have some connections, as the officers would compromise with the agencies (when the agencies did something against the regulation). Sometimes the level of compromise is so high that it can turn into corruption" (Interviewed a key informant on November 23, 2009).

Another case which required job seekers had to pay for *certified investigation into any criminal past before their departure*. Some agencies have stated that workers were required to pay THB1,500 for the issuance of the 'certified statement of criminal record'. During ex-PM Thaksin's administration, the requirement for criminal record checks was abolished, but later reinstituted. At present, in practice, in cases where workers do not wish to pay for the criminal record check

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

have to wait 2 months for a free copy. If they want the process to go faster they must pay THB1,500, or if they want it immediately they may pay up THB3,000 (Interviewed a recruitment agency on November 19, 2009). As for the certification of their criminal record, an officer explained that the investigation into the criminal record of workers is conducted by every country. In Thailand, the Crime Investigation Division (CID) is tasked with it. They have to investigate the background of the worker by tracing back to their birthplace and court records, which may take around one week to process.

The DOE provides this service to workers and the employment agencies through the Thailand Employment abroad Administration (TOEA). Agencies or workers can will in the form and submit to the registrar for the investigation of criminal record at the TOEA. The TOEA will pass this to the Public Security Office for the investigation which will take around one week to process and then the result will be sent back to the TOEA. Agencies or workers can submit in the form directly to the Public Security Office. The problems, which cause the delay and the charging of the procedure which is not collected by the state, happen when the workers have not prepared all the required documents, as well as employment agencies and workers tend to pay the recruiters who provide services for submitting the form to the Public Security Office, rather than study and prepare the documents ready themselves (Interviewed an officer from the DOE on December 29, 2009). From the information provided the Public Security officers, the investigation of the criminal record is in fact does not required any payment. The charging of the fees is requested by the broker and the employment agencies that choose to use the services from these recruiters, so that the process will go faster.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

CHAPTER IV

RECRUITMENT PROBLEMS

Traveling abroad to accept job opportunities is a long-standing practice for Thais, and has gone on *en masse* since 1973. Most have gone to more developed countries than Thailand, where the pay they have earned has generally been higher than they could obtain at home.

Thus, there are many Thai workers employed abroad today; they send substantial income home from their jobs, helping boost cashflows in their local their communities, as well as the overall national economy. By and large, the Thai workers that have gone abroad over recent years were successful, i.e., they earned good incomes that helped their families back home buy needed assets such as real estate, and thus served as an example to others seeking to improve their lives.

However, some other job hopefuls were not so fortunate. Some failed to succeed in getting work abroad. Some had insufficient information to aid in their decision to accept such work. Others still were undisciplined in their new jobs, behaved inappropriately and/or failed to comply with the laws and regulations of the host country. Part of their problem stems from having been taken advantage of by their recruiters, or by errant employment agencies lacking good governance practices. This, in turn, emanated from improper or inappropriate procedures preliminary to sending workers abroad, and from ineffectual government officials and regulatory standards. These obstacles together form the recruitment problems we note here, based on our research, which we have sub-divided into the following major categories:

4.1 Grievances of Thai migrant workers and Penalty on Licensed Recruitment Agencies

4.1.1 Grievances of Job Seekers and Recruited Workers

Sending Thai workers abroad is a recruitment business that has high income and generally involves a large number of people. The more there are involved in this trade, the more deceptions and other malpractices we discover, perpetrated by employment agencies and/or their representatives, or by independent agents. In the matter of job positions, descriptions, actual compensation, the high commissions demanded for recruitment services, abandonment by recruiters after having been sent abroad, etc., such unfortunate occurrences are

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

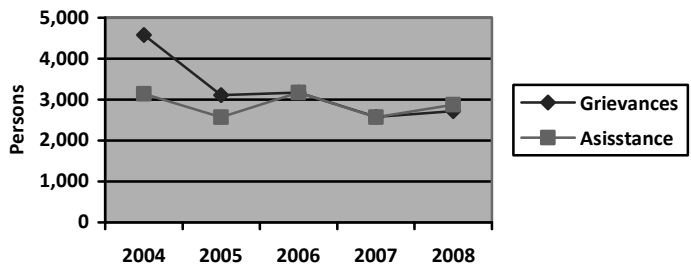
increasingly apparent from the number of complaints filed annually, and the number of cases of assistance handled domestically.

Table 4.1 – Total Intake of Grievances and Assistance to the Job Seekers from Recruitment Agencies and Unlicensed Agents for Intl. Employment per the Recruitment and Job Seekers Protection Act, B.E. 2528 (A.D. 1985), 2004 – 2008

Year	Total Intake of Grievances and Assistance to Job Seekers							
	Grievances				Assistance			
	Persons			Funds Recovered (THB)	Persons			Funds Recovered (THB)
	Total	Male	Female		Total	Male	Female	
2004	4,581	3,681	900	339,522,217	3,138	2,719	452	87,150,979
2005	3,109	-	-	211,333,355	2,569	-	-	83,343,428
2006	3,173	2,538	635	203,736,467	3,175	2,530	645	81,821,499
2007	2,577	2,162	415	147,780,289	2,572	2,164	408	61,048,958
2008	2,717	2,061	656	169,180,071	2,875	2,223	652	58,259,323
Total	**16,157**	10,442	2,606	**1,071,552,399**	**14,329**	9,636	2,157	**371,624,187**

Source: Planning and Information Division, Department of Employment, MOL

Graph 4.1 – Grievances and Assistance to Thai Workers while Abroad



แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

In Table 4.1, the intake of grievances by Thai workers, and assistance rendered to them domestically and abroad for the years 2004-2008, shows that there were some 16,157 complaints, having been filed by 10,422 male and 2,606 female complainants; the sum of money involved in these cases totaled THB1,071,552,399. Assistance was rendered on 14,329 complaints during that five-year period, aiding 9,636 male and 2,157 female individuals, involving a total sum of THB371,624,187.

Formal recruitment work must be licensed by the DOE (where the Director is the signatory official) to individuals and registered companies. However, it has been found that a great many job seekers contact unlicensed job recruitment services, and are thereby often cheated or otherwise ill-treated by them, as seen from the foregoing statistics. Unfortunately, such malpractice is not exclusive to the domain of unlicensed recruiters; some licensed recruiters also engage in unscrupulous practices, as well, as seen from the following statistics:

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Table 4.2: Grievances and Assistance to the Job Seekers from Recruitment Agencies and Unlicensed Agents for Intl. Employment per the Recruitment and Job Seekers Protection Act, B.E. 2528 (A.D. 1985), 2004 – 2008

Year	Recruitment Agencies/Independent Agents								Illegal Agents/ Representatives						
	Grievances				Assistance				Grievances				Assistance		
	Persons			Funds Recovered (THB)	Persons			Funds Recovered (THB)	Persons			Funds Recovered (THB)	Persons		
	Total	Male	Female		Total	Male	Female		Total	Male	Female		Total	Male	Female
2004	2,854	2,426	428	200,494,312	2,823	2,467	353	87,150,979	1,727	1,255	472	139,027,905	315	252	99
2005	1,590	1,416	274	104,682,465	2,035	1,768	267	76,674,759	1,419	976	443	106,650,890	534	378	156
2006	1,980	1,626	354	122,294,355	1,947	1,600	347	81,821,499	1,193	912	281	81,442,111	1,228	930	298
2007	1,541	1,400	141	74,643,465	1,587	1,433	154	61,048,958	1,036	762	274	73,136,621	985	731	254
2008	1,069	889	180	76,061,151	1,210	1,029	181	58,259,323	1,648	1,172	476	93,118,920	1,663	1,192	471

Source: Planning and Information Division, Department of Employment, MOL

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เกรียงพิพัฒ

In Table 4.2, it can be seen that in 2004 there were 4,581 complaints, where some 3,138 received assistance; also there were 2,854 complaints involving licensed agencies/agents and 2,823 persons that were rendered assistance. Grievances that involved cases of having been deceived by an unlicensed recruiter totaled 1,727 cases, where only 315 persons could be rendered assistance.

In 2005, there were 3,109 complaints received, where 2,569 persons were rendered assistance. Grievances that involved cases of having been deceived by a licensed recruiter totaled 1,590, where 1,416 persons were rendered assistance; grievances that involved cases of having been deceived by an unlicensed recruiter totaled 1,419, but only 534 persons could be rendered assistance.

In 2006, complaints totaled 3,173, wherein 3,175 persons were rendered assistance. Those grievances that had involved cases of having been deceived by a licensed recruiter totaled 1,980, whereing 1,947 persons were rendered assistance; cases of having been deceived by an unlicensed recruiter totaled 1,193, but only 1,228 persons had been rendered assistance.

In 2007, 2,577 cases were filed, 2,572 persons were assisted, with 1,541 cases of having been deceived by a licensed recruiter and 1,587 persons assisted. Grievances against unlicensed recruiters totaled 1,036, where 985 persons were rendered assistance.

In 2008, 2,717 cases were filed, 2,875 persons were assisted, some 1,069 cases having involved a licensed recruiter, and 1,210 persons assisted. There were a total of 1,648 grievances against unlicensed recruiters, where 1,663 persons were rendered assistance.

Taking into consideration these statistics, the trend seen in the number of grievances against licensed recruiters exhibited a steady fall during the included years, as did grievances against unlicensed recruiters in the years 2004-2007; however, in 2008, grievances against unlicensed recruiters began to rise.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Table 4.3: Grievances from and Assistance to Job Seekers from Recruitment Agencies and Unlicensed Agents for Intl. Employment per the Recruitment and Job Seekers Protection Act, B.E. 2528 (A.D. 1985) -- Years 2004 – 2008

Year	International Employment			
	Grievances			Assistance
	Persons	Funds Recovered (THB)	Persons	Funds Recovered (THB)
2004	4,485	338,677,797	3,122	104,006,889
2005	3,069	211,183,435	2,548	83,299,258
2006	3,139	203,578,847	3,148	81,782,099
2007	2,561	147,566,446	2,556	61,035,218
2008	2,710	169,115,771	2,869	58,257,023

Source: Planning and Information Division, Department of Employment, MOL

From Table 4.3, similar statistics relative to complaints registered abroad and assistance to them there show that in 2004, some 4,485 cases were filed and 3,122 persons were assisted. In 2005, some 3,069 cases were filed and 2,548 persons were assisted. In 2006, 3,139 cases were filed and 3,148 persons were assisted. In 2007, there were 2,561 cases and 2,556 persons assisted. In 2008, the figures were 2,710 cases and 2,869 persons assisted.

If one compares Tables 4.1 and 4.3, it will be found that the majority of grievances were relative to international job recruiting and/or working abroad during the inclusive period (see also Table 4.1.4a), which reflects upon the seriousness of the problems with international job recruitment in Thailand.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Table 4.4a – Proportions of Grievances filed Domestically and Internationally

Year	Total	Domestic	Filed Internationally
2547	4,581	96 (2.1%)	4,485 (97.9%)
2548	3,109	40 (1.3%)	3,069 (98.7%)
2549	3,173	34 (1.1%)	3,139 (98.9%)
2550	2,577	16 (0.6%)	2,561 (99.4%)
2551	2,717	7 (0.3%)	2,710 (99.7%)

The following statistics reveal complaints registered externally in foreign countries by Thai workers, subdivided by their home domicile.

Table 4.4b: Grievances and Assistance to the Job Seekers for International Employment Per the Recruitment and Job Seekers Protection Act, B.E. 2528 (A.D. 1985) Years 2004 – 2008, by Region and Province

Overseas Employment

REGION/PROVINCE	Grievances				Assistance			
	Persons			Received Back (Bath)	Persons			Received Back (Bath)
	Total	Male	Female		Total	Male	Female	
Whole Kingdom	2,710	2,058	652	169,115,771	2,869	2,220	649	58,257,023
Bangkok	958	759	199	71,837,317	1,112	912	200	44,081,087
Vicinity	90	55	35	12,064,500	90	55	35	305,000
Samut Prakan	1	1	0	600,000	1	1	0	20,000

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Nonthaburi	9	5	4	325,400	9	5	4	285,000
Pathum Thani	80	49	31	11,139,100	80	49	31	0
Central	80	33	47	1,713,299	78	31	47	31,000
Ayutthaya	7	5	2	856,500	7	5	2	0
Chonburi	57	18	39	386,299	57	18	39	31,000
Nakhon Nayok	3	3	0	60,000	3	3	0	60,000
Suphan Buri	11	5	6	395,500	11	5	6	0
Phetchaburi	1	1	0	15,000	0	0	0	0
North	550	400	150	28,122,835	536	100	136	1,687,400
Chiang Mai	4	0	4	107,000	3	0	3	0
Lamphun	15	9	6	450,000	15	9	6	0
Lampang	227	201	26	11,074,300	225	199	26	1,168,400
Uttaradit	16	7	9	333,000	15	7	8	0
Phrae	19	14	5	777,000	23	20	3	40,000
Nan	1	0	1	25,000	1	0	1	0
Phayao	27	15	12	2,141,400	23	13	10	256,500
Chiang Rai	87	41	46	5,083,541	83	37	46	37,000
Nakhon Swawan	2	2	0	144,000	3	3	0	5,500
Kamphaeng Phet	3	3	0	35,000	3	3	0	0
Tak	37	35	2	2,333,894	37	37	0	160,000
Sukhothai	51	38	13	2,193,000	50	40	10	0
Phitsanulok	23	13	10	2,044,700	18	11	7	0
Phichit	8	8	0	160,000	8	8	0	0
Phetchabun	30	14	16	1,221,100	29	13	16	20,000

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

North-East	1,032	811	221	55,377,820	1,053	822	231	12,152,536
Nakhon Ratchasima	147	93	54	10,968,900	146	88	58	135,000
Buri Ram	83	59	24	3,848,500	70	48	22	45,000
Surin	22	22	0	1,025,000	22	22	0	0
Si Sa Ket	0	0	0	0	3	2	1	85,000
Ubon Ratchathani	13	11	2	350,000	22	19	3	24,000
Yasothon	3	2	1	275,000	1	1	0	0
Chaiyaphum	131	103	28	5,194,300	135	107	28	201,500

Source: *Planning and Information Division, Department of Employment, MOL*

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Table 4.5 Grievances and Assistance to the Job Seekers Handled by Licensed Recruitment Agencies and Unlicensed Agents for both Domestic and International Employment per the Recruitment and Job Seekers Protection Act, B.E. 2528 (A.D. 1985) by Region and Province, Years 2004 – 2008

REGIOIN/PROVINCE	Recruitment Agencies								Unlicensed Agents						
	Grievances				Assistance				Grievances				Assistance		
	Persons			Received Back	Persons			Received Back	Persons			Received Back	Persons		
	Total	Male	Female	(THB)	Total	Male	Female	(THB)	Total	Male	Female	(THB)	Total	Male	Female
Whole Kingdom	1,069	889	180	76,061,151	1,210	1,029	181	58,259,323	1,648	1,172	476	93,118,920	1,663	1,192	471
Bangkok	757	621	136	54,570,757	907	769	138	44,083,387	205	138	67	17,270,860	206	141	65
Vicinity	6	5	1	815,400	6	5	1	305,000	84	50	34	11,249,100	84	50	34
Samut Prakan	1	1	0	600,000	1	1	0	20,000	0	0	0	0	0	0	0
Nonthaburi	5	4	1	215,400	5	4	1	28,500	4	1	3	110,000	4	1	3
Pathum Thani	0	0	0	0	0	0	0	0	80	49	31	11,139,100	80	49	31
Central	5	4	1	83,000	3	2	1	31,000	78	32	46	1,690,299	78	32	46

เก็บไว้ในห้องสมุดวันที่ 24 ม.ค. 54 เกรียงพิพัฒ

Ayutthaya	0	0	0	0	0	0	0	0	7	5	2	856,500	7	5	2
Chonburi	3	2	1	68,000	3	2	1	31,000	54	16	38	318,299	54	16	38
Nakhon Nayok	0	0	0	0	0	0	0	0	6	6	0	120,000	6	6	0
Suphanburi	0	0	0	0	0	0	0	0	11	5	6	395,500	11	5	5
North	78	68	10	3,768,794	67	63	4	1,687,400	472	332	140	24,354,041	469	337	132
Chiang Mai	1	0	1	22,000	0	0	0	0	3	0	3	85,000	3	0	3
Lamphun	0	0	0	0	0	0	0	0	15	9	6	450,000	15	9	6
Lampang	42	40	2	2,269,900	41	39	2	1,168,400	185	161	24	8,804,400	184	160	24
Uttaradit	1	0	1	160,000	0	0	0	0	15	7	8	173,000	15	7	8
Phrae	1	1	0	150,000	4	4	0	40,000	18	13	5	627,000	19	6	3
Nan	0	0	0	0	0	0	0	0	1	0	1	25,000	1	0	1
Phayao	6	6	0	339,500	5	5	0	256,500	21	9	12	1,801,900	18	8	10
Chiang Rai	2	1	1	103,500	2	1	1	37,000	85	40	45	4,980,041	81	36	45
Nakhon Swawan	0	0	0	0	1	1	0	5,500	2	2	0	144,000	2	2	0
Kamphaeng Phet	0	0	0	0	0	0	0	0	3	3	0	35,000	3	3	0

เก็บไว้ในล่าสุดวันที่ 24 ม.ค. 54 เกรียงพิพัฒ

Tak	12	11	1	313,894	12	12	0	160,000	25	24	1	2,020,000	25	25	0
Sukhothai	6	5	1	160,000	0	0	0	0	45	33	12	2,033,000	50	40	10
Phitsanulok	4	2	2	230,000	0	0	0	0	19	11	8	1,814,700	18	11	7
Phicit	0	0	0	0	0	0	0	0	8	8	0	160,000	8	8	0
Petchabun	3	2	1	20,000	2	1	1	20,000	27	12	15	1,201,000	27	12	15
North-East	223	191	32	16,823,200	227	190	37	12,152,536	809	620	189	38,554,620	826	632	194
Nakhon Ratchasima	15	9	6	2,483,400	14	4	10	135,000	132	84	48	8,485,500	132	84	48
Buri Ram	15	13	2	860,000	2	2	0	45,000	68	46	22	2,988,500	68	46	22
Surin	0	0	0	0	0	0	0	0	22	22	0	1,025,000	22	22	0
Sisaket	0	0	0	0	3	2	1	85,000	0	0	0	0	0	0	0
Ubon Ratchathani	3	3	0	45,000	1	1	0	24,000	10	8	2	305,000	21	18	3
Yasothon	2	1	1	145,000	0	0	0	0	1	1	0	130,000	1	1	0
Chaiyaphum	2	2	0	20,000	6	6	0	201,500	129	101	28	4,994,300	129	101	28
Amnat Charoen	0	0	0	0	0	0	0	0	4	4	0	65,000	4	4	0
Nong Bua Lamphu	0	0	0	0	0	0	0	0	121	101	20	4,839,400	129	103	26

เก็บในห้องสมุดวันที่ 24 ม.ค. 54 เกรียงพิพัฒ

Khon Kaen	15	13	2	859,000	8	8	0	375,000	111	83	28	3,825,600	108	81	27
Udon Thani	159	141	18	11,474,800	182	158	24	10,659,500	124	105	19	5,661,200	123	104	19
Loei	0	0	0	0	0	0	0	0	1	1	0	30,000	0	0	0
Nong Khai	0	0	0	0	0	0	0	0	38	30	8	2,225,000	38	30	8
Mahasarakham	2	2	0	350,000	2	2	0	186,536	1	1	0	150,000	1	10	
Roi Et	2	0	2	0	0	0	0	0	0	0	0	0	0	0	0
Kalasin	0	0	0	0	0	0	0	0	13	9	4	976,000	11	8	3
Sakhon Nakhon	0	0	0	0	6	4	2	150,000	34	24	10	2,269,120	39	29	10
Nakhon Phanom	8	7	1	406,000	3	3	0	129,000	0	0	0	0	0	0	0

Source: *Planning and Information Division, Department of Employment, MOL*

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From Table 4.4, it can be seen that the Northeastern region of the country was the origin of the most complaints, and also where the most assistance was rendered to complainants, followed by Bangkok Metropolitan Area (BMA), then the North and Central regions. By province, complaints and assistance to workers while employed abroad were highest from workers with domiciles in BMA, Udornthani, Lampang, Korat, Chaiyaphum, Khon Kaen, Nong Bua Lamphu, Chiang Rai, Buriram and Pathumthani, in that order.

Table 4.5 shows grievances and assistance to job seekers handled by licensed recruitment agencies and unlicensed agents for both domestic and international employment, sub-divided by the province where the complaint was filed (or the domicile of the complainant when already working outside the country). In some provinces, the majority of complaints emanate from cases where the job seekers/workers were handled by licensed employment agencies, such as in BMA and Udornthani, but in most provinces, it is the reverse situation where unlicensed recruiters are more commonly the culprit. The total damages in monetary terms recorded with these malpractice cases came to THB169 million in 2008; the range of monetary value per case when involving licensed agents was THB10,000-175,000/case, while the range of damages involved in cases with unlicensed agents was THB34,000-150,000/case.

In both those general situations, the complainants that were assisted got back about the same amounts as they had lost, or slightly less (also note that some amounts were carried over to the following year while being resolved). Because the amounts recovered are more commonly less than the total losses claimed, it is thus obvious that not all losses could be recovered for the victims. It might also be noted that the number of male complainants outnumbered by 5-6 to 1 the number of female complainants, implying that the number of male Thais gaining employment abroad exceeds the number of female job seekers.

When we undertake a review of grievances seen in each province, Ministry of Labor data shows that (DOE Office Office in the Northeast, Authorized by the Provincial DOE Director, Ref. 4/2551 and 4/2552, Inspection and Protection Division) a large proportion of the complaints were related to excessive commissions charged by employment agencies or recruiters (and in excess of the law), or not being sent to work after having paid commissions. Aside from those complaints, the law is often broken by operating without a license, be it as a company, their representative, or an independent agent (recruiter). Another common offense is intentional contravention of the law in the

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

procedures preliminary to dispatching a worker to employment abroad. There are also legal indemnities relative to a worker's job tenure being foreshortened contrary to their contract, and sent home

4.1.2 Assistance to Workers While Still Abroad

Assistance to Thai workers while they are undergoing hardship abroad is rendered by two ministries, i.e., the ministries of Labor and Foreign Affairs. Where there is a representative office of the Ministry of Labor within the Thai diplomatic mission in a foreign country, that office undertakes the job of handling assistance efforts, while the diplomatic mission – i.e., the nearest consular office – accepts the initial contacts and complaints. Consular offices likewise handle the liaison on complaints when no Ministry of Labor office has been established in the host country. The method most often tried first in most cases is arbitration with related parties as the advocate of the Thai person undergoing hardship. If that fails, Ministry of Foreign Affairs funds budgeted for repatriations are made available to return the worker.

Thai Labor offices abroad also have a special fund to assist Thais fallen into hardship while abroad. However, Thai workers sent abroad by the government by a licensed private employment agency who needs assistance must be a member of that fund to use its emergency funding. In cases where the worker undertook the work on their own cognizance, or was brought to the job through the efforts of the foreign employer, or even in cases where the Thai citizen entered into a job training program, they may become members to that fund voluntarily and thereby be eligible for disbursement of funds when assistance is needed.

Assistance may take many forms, e.g., repatriation funds, a subsistence allowance if awaiting the start of a new job, etc. If the worker has suffered an accident before or after having traveled to the destination country for employment, they can get coverage of medical expenses; if their lives have been lost, funeral expenses and/or the cost of repatriating the body to Thailand are paid for by the fund, as well. In any event, even if the worker is not a member of the fund, assistance in some form or another is rendered to them according to Ministry of Labor rules and regulations.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Table 4.6 – Assistance to Thai Nationals in Foreign Countries, 2004 – 2008

Type of Assistance	2004	2005	2006	2007	2008	*TOTAL*
Assistance to Thai Persons (general)	1,146	1,291	1,553	1,450	1,598	**7,038**
Assistance to Thai Migrant Workers in Industrial Sector	484	198	1,767	1,451	190	**4,090**
Assistance to Thai Migrant Workers in Fisheries Sector	39	387	298	79	61	**903**
Assistance to Victims of Sex Trafficking	318	295	375	447	409	**1,844**
Assistance for Deceased Thai Persons				158	156	**314**
Follow-up on death benefits, etc.	1,108	1,203	1,249	124	65	**189**
Finding surviving relatives and assisting in their welfare				70	80	**150**
Others	-	-	-	850	95	**945**
TOTAL	**3,095**	**3,374**	**5,242**	**4,629**	**2,654**	**15,473**

** Other assistance – Driver's License Renewals, Money Transfers*
Source: *Protection of Thai Nationals Division, Department of Consular Affairs, Ministry of Foreign Affairs*

From statistics on Thai workers fallen into hardship while employed abroad during the years 2004-2008, it is apparent that three categories of Thai workers are most vulnerable to hardship while there, i.e., unskilled laborers, workers in the fisheries industry, and those deceived into entering the sex industry. Those most often needing assistance during the subject period were unskilled laborers, with some 4,090 cases reported; followed by persons deceived into entering the sex industry, at 1,844 cases; and then, fishery workers with 903 cases.

These numbers are small in comparison to the total number of workers who travel abroad for employment each year, but they do indicate that problems certainly exist. They may arise from 1) the employment contract entered into by the worker, such as being paid less than claimed while being recruited, job placements not consistent with the originally contracted job description (Thai Embassy, Qatar; Royal Thai Consulate, Dubai), hardship in living conditions; or, 2) problems that are exacerbated by the worker, such as a lack of knowledge pertaining to the laws of the country they have chosen to work in, dissatisfaction with working conditions, the inability to perform in their job at the standards expected on the job, language problems, an inability to adapt to the local environment/climate, alcoholism, etc.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Data on assistance to Thais who have been lured into the sex trade show that the problem has not yet been fully rectified despite the efforts of many organizations to eradicate it, largely because the victims themselves have not taken the necessary precautions to avoid such traps and because they are often ignorant of the law. They know little about legal status or their rights, and even less about the laws of the country they travel to work in, thereby eventually finding themselves in so harsh a situation that they must resort to contacting Thai diplomatic offices for assistance.

4.1.3 Punishment of Offenders Illegally Recruiting Workers in Thailand

The large number of grievances filed with the authorities has made it necessary to define penalties to reduce the incidence of unfair employment practices per the Recruitment and Job Seekers Protection Act, B.E. 2528 (A.D. 1985), as well as amendments to the Workmen's Compensation Act (1994) and the Labor Relations Act-No.3 (1994). Punishments defined therein for infractions by business organizations or individuals are specifically intended to deter the mistreatment of Thai workers being harmed by deceitful or irresponsible practices. The remedies afforded by the above legislation include the probation, suspension or revocation of business licenses of organizations found to be guilty of malpractice in recruitment, forfeiture of guarantee bonds, and in some instances, possible criminal charges.

Table 4.7 Statistics of Penalties Imposed on Licensed International Job Placement Agencies in Thailand, 2004-2008

Year	Intl. Job Placement Agencies – Penalties (Cases)			
	Probations	Temporary Suspensions	Revocations	*Total*
2004	15	6	0	21
2005	4	5	0	9
2006	2	9	1	12
2007	5	7	0	12
2008	0	4	5	9
Total	26	31	6	63

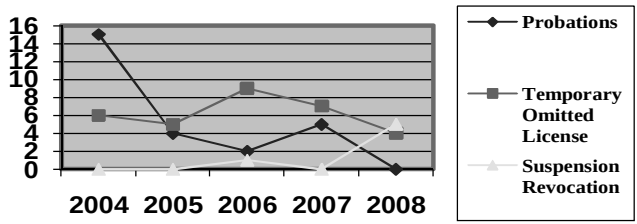
Source: *Planning and Information Division, Department of Employment, MOL*

From the statistics on actions taken against licensed recruiters that had broken the law, 2004-2008, we find that some 26 recruitment

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

companies had been penalized, wherein 26 had been put on probation, 31 had had their licenses temporarily suspended and 6 had lost them altogether.

Graph 4.2 Punishment of Offending Employment Agencies



A review of the cases where the recruiter was put on probation showed that the cases were largely for not extremely serious offenses, and were correctable by merely observing the law more strictly in operating procedures. There were offenses such as not using the identifying phrase of “employment agency” in their published name, or not registering their field recruitment representatives with the proper authorities to ensure that their activities were inspected at regular intervals, etc. (Announcement of the DOE, http://lib.doe.go.th/doeinfor/pagedata/frmDocLawdetail.aspx?lawdetail=312). Since 2004, the trend toward such infractions has been a subsiding one (Table 4.7).

Offending employment agencies and independent agents handed down the punishment of temporary suspensions for 30-120 days had committed committed (Ministry of Labor Announcement of Adjudications, 31/2547; DOE Circular, 5/2552) such infractions as:

- Charging commissions in excess of those provided for by law
- Failing to arrange a job placement for the applicant and sending them to the position after having received a commission from the applicant
- Assessment of other incidental charges or demands on assets from applicants not provided for by law

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

- Assessment of commissions and/or other fees from the applicant prior to a potential employer having accepted the applicant for a job position, or before the applicant had undertaken the position, but had not yet received their first month's pay
- Failure to issue a legally proper receipt for payments received from a job applicant
- Failure to declare job openings in advance with the DOE
- Failure to register their employment recruitment business with the DOE, or for unauthorized or improper advertising on the acceptance of applicants for work per ministerial guidelines
- Failure to submit a copy of the labor contract to the DOE prior to sending a worker abroad
- Failure to send the job incumbent to a pre-departure orientation
- Failure to submit their monthly activity report to the DOE within the tenth day of the following month
- Failure to submit their list of recruited workers in foreign countries and relevant details to the DOE
- Failure to submit their list of recruited workers in foreign countries and relevant details to the Thai embassy in the host country detailing all recruited workers sent there, in writing.

Statistics for the period, 2004-2008 indicate that violations resulting in temporary suspensions were ongoing in fairly constant volume throughout the period. As for violations resulting in the revocation of the business license, they tended to be similar in nature to those resulting in temporary suspensions, but involved repeated infractions of the law by the offender (DOE Announcements: 1/2551, 4/2551, 1/2552, 4/2552), thus being adjudicated the harsher penalty for deeds such as:

- Recruitment by a company, or a representative of a company, without a valid license
- Circumvention of the law in processing a job applicant for foreign employment
- Deception or misinformation in recruiting for work abroad
- Failure to heed a DOE Order

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

- Failure to dispatch a job applicant to the contracted job after having received their commission and/or other expenses from the applicant, etc.

The above infractions are all considered intentional attempts to deceive, along with failure to comply with, or correctly comply with the law.

4.1.4 Summary of Grievances

Data available on grievances, penalization of offenders and assistance to workers before and after departure for work abroad shows that Thai job hopefuls and workers abroad still confront a number of obstacles and problems toward foreign employment. Over the five-year statistical study period, it was found that unlicensed job placement services and recruiters were responsible for a majority of the infractions against the law, and that there was a ratio of 5-6:1 of men versus women complainants, implying that the majority of workers seeking jobs abroad are male. The numbers of complainants versus those assisted are comparable, demonstrating that the authorities are working fairly diligently toward rectifications of problems affecting workers and job applicants; it may be noted, however, assistance statistics in some years exceed the number of complaints. This is most commonly due to over-year actions taken on open cases. Funds recovered less than the sums liable and claimed indicate that some cases or claims could not be recovered, either in part or in full.

Grievance statistics (Table 4.4), both for those filed domestically and internationally, can be summarized as indicating that significant problems do arise while abroad, as well as before departure. One of the most common complaints is that recruiters – be they licensed or unlicensed employment agencies, their field representatives or independent recruiters – do often charge clearly excessive commissions, fees and expenses from their job seeking clients. Also, it is a common occurrence for recruiters to be unlicensed or not possess a license valid to their recruitment activities. Another common complaint was that workers were sent home before the completion of their promised tenure of contract.

The latest nationwide data on the value of claims (2008) showed a total for the year of THB169 million. Losses typically ranged between THB10,000-175,000, while fraud perpetrated by unlicensed recruiters typically ranged between THB34,000-150,000. The number of complaints and the number of individuals actually provided

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

assistance are comparable, indicating that the authorities are apparently making progress in resolving these complaints. In some cases the statistics exhibited skewed annual totals, being a function of some cases being carried over into following years before resolution.

In the amount of monetary settlements, they remain lower than the sums claimed and litigated, which may be taken to show that legal redress for damages incurred by offenders still lags behind in the recovery of losses. It can also be seen that licensed employment agencies are responsible for greater losses than independent unlicensed recruiters, but this is more likely a function of the fact that licensed employment agencies must place guarantee bonds with the DOE for their licensing. When litigation occurs and a licensed employment agency is found guilty and liable to pay damages, larger sums can be recovered because the DOE can deduct the damages to be paid to the complainant from the agency's bond money deposited with the DOE. However, when a recruiter is an unlicensed private individual, then found guilty and liable to pay damages, only smaller sums can be recovered from a private individual with less substantial financial resources to call upon. Litigation against them also generally takes longer to resolve, as well.

The national region having the highest incidence of labor complaints due to malpractice in recruitment is the Northeastern region, where the largest proportion of complaints are directed against private individuals as recruiters, rather than licensed employment agencies. After that region, the second highest rate of occurrence is within the Northern region, and then the Central region, where independent unlicensed recruiters are named as the offenders in many labor complaints.

However, a disproportionately larger proportion of the total complaints are filed in Bangkok Metropolitan Area – the most of any region in Thailand – likely because many complainants choose to file their charges at the Ministry of Labor in the capital.

The most common charge filed is that of the recruiter charging an exorbitant commission, and then failing to deliver a job after they had collected the money. Also common is the charge that a licensed job placement service had charged more for their services than the law allows. Continuing to occur are charges filed against licensed companies for using unlicensed field agents and representatives. This is aside from those charges filed by workers already overseas after having fallen into an untenable situation.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

After studying the trend in charges filed by workers, a closer analysis into the implications of those charges and types of assistance typically rendered shows that they may be sub-categorized into:

Problems of Workers and Job Applicants

(1) Pre-Departure Problems: Data suggests that these problems will most likely be in the vein of exaggeration, or outright lying about the details about the job relative to the actual position obtained, or about working conditions, pay or fringe benefits. Making the job sound more attractive is the most common method of inducement recruiters may use to lure job applicants into committing to the use of that recruiter. Such fraud at its most extreme culminates in never gaining a job after having paid an exorbitant commission to get it. This also makes it obvious that job applicants often lack sufficient information to discern the difference between genuine job opportunities and intentional attempts to defraud incautious job seekers, thus paying large sums of money to recruiters without getting some kind of guarantee from them for actual performance.

Despite official reports on the proliferation of spurious job offers being advertised each year, and frequent, wide-ranging efforts to inform the public about malpractice committed by even licensed employment agencies, as well as unlicensed 'headhunters' in the recruitment of workers for 'overseas' jobs (Report from the Provincial Operation Center on Human Trafficking), many job seekers continue to be cheated and deceived every year, which obviously indicates that they believe what the job placement services say more than they do the warnings of governmental authorities, or they simply still have not had sufficient access to proper information to avoid such pitfalls.

The incidence rate of fraud committed by unlicensed job placement services and independent agents suggests that the use of these illegal private recruiters is still a channel of choice for many job seekers in the populace. For this reason, the most common problem in recruitment for foreign jobs is deception and fraud committed by unlicensed private individuals acting as recruiters (From Employment Agency in the Northeast; Employment Agency in BMA, and other provincial sources). Reports from many provinces show that the number of persons who have experienced such malpractice is larger than the number of those who were cheated by legal employment agencies. The amount of money embezzled from the unwary by these unlicensed private recruiters is also larger overall than the total amount

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

cheated out of job seekers by licensed recruiters. They have the advantage of roaming deeper into rural communities to find potential job applicants that larger, formally licensed organizations don't much attempt to delve into. Uninformed job seekers in rural communities thus are victimized out of their own carelessness, or a lack of precautionary information reaching them. They fail to check whether the recruiters are reputable and that the jobs abroad they advertise are bona-fide, or that the recruiter is really able to place an applicant into these positions. Illegal recruiters are therefore very much still in business.

(2) Post-arrival Problems in the Destination Country: Data received from complainants and directives of related DOE authorities do not comprehensively show the nature of problems occurring abroad, however, interviews with those returning from foreign job placements imply that failure of the employer abroad to honor the specific details of labor contracts with foreign workers may be the most prevalent concern of those traveling to work internationally. Failure to get the job promised to them (Interviews with workers, November 18, 2009; Thai female workers, Chiang Rai, November 19, 2009), salaries being lowered than agreed upon (sometimes due to the worker possessing a lower work skills proficiency than the employer had required and contracted for), or merely a case of intentional deception on the job specifics. These failures to match a job description may result in the worker not being assured of a specific job position and/or regular employee status prior to departure.

Other problems faced by workers sent abroad include housing quarters or an environment not to their liking (largely a function of sometimes unrealistic hopes by job seekers inexperienced with the host country); this problem could also be exacerbated by an unsympathetic employer failing to adhere to the employment contract. (Interviews with male workers in Lampang, November 18, 2009.)

Aside from the above, a number of other problems emanate from the workers themselves. They may be unwilling to conduct themselves according to the rules and regulations of the employer; they may also exhibit unsatisfactory behavior, due to unfamiliarity with their new surroundings or the personality of the worker. Some are addicted to gambling, or alcohol, or are habitually argumentative and tend to exhibit violent behavior toward fellow workers. (Interviews with 2 male workers in Doha, Qatar, January 25-26, 2010). It has also been claimed by Thai workers abroad that some Thai female workers abroad have secretly and voluntarily engaged in the selling of sexual favors.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

(Interviews with two female workers in Chiang Rai, November 19, 2009).

Problems Emanating from the Actions of Employment Agencies

It has been found that the main problems with them have been overcharging job applicants, failure to arrange work abroad for the applicants after being paid, improper handling of personnel, and evasion of established legal procedures, as expanded upon below:

(1) Pre-Departure Problems: The problem of employment agencies demanding payment before sending job seekers to a position abroad, and then failing to arrange a job for them as promised, is apparently due, in part, to increasing competition in the foreign job recruiting market, such that employment agencies are vying to send personnel to the same foreign job vacancies. Inevitably, some companies will lose out in a competitive market wherein another agency may arrange workers faster than others, securing available vacancies first, and leaving other agencies' applicants out of a job (Data from Provincial Court, Lampang); however, in some cases, the intent to defraud job seekers is evident in some cases, using attractive foreign job vacancies as bait to lure unwitting applicants into paying large placement commissions. (From an interview with a male worker in Chiang Rai, November 20 2009, *ibid.*) The agencies also employ unlicensed field representatives (DOE, *ibid.*)to seek out new customers. Employment agencies have been responsible for plots to circumvent legal procedures prerequisite to departure to new jobs abroad, by having job hopefuls declare that they are applying for and accepting work on their own cognizance, when in fact it was arranged by an employment agency; this process is also used to evade normal prerequisites for employment visas and work permits in the host country. There has been the obvious intent to not abide by relevant laws in many of their actions.

(2) Post-arrival Problems in the Destination Country: On workers' problems after arrival, the problem of not getting the job they contracted for often is a result of orientations and training that are given too little time and/or content to prepare the worker. (Employment agency in the Northeast, November 3, 2009). It is also noted that employment agencies often lack any mechanism to follow-up on and assist workers sent abroad. (Employment agency in the Northeast, ibid.). This is largely due to their lack of enthusiasm toward assuming

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

any responsibility for workers after they have left the country. This of course leaves workers with the necessity of having to fend for themselves and seek solutions without help from their recruiters. Being paid less than contracted is a very common problem, and has often been found to be the fault of the recruiting agent and false promises made by them.

Problems Emanating from the Actions of Unlicensed Recruiters

The most significant problems caused by unlicensed recruiters stem from willful deception of their customers; this has occurred nationwide, affecting a large number of job seekers, and involving large sums of money. Their tactics are aggressive, and they can go deep into rural areas where many poor families want to better themselves by finding employment outside of the country where they hear pay and benefits are more generous. The reputability of unlicensed recruiters is generally based on a personal acquaintanceship with them in their community, often as someone who had themselves successfully worked abroad (or are rumored as such). Word of mouth referrals gives such persons legitimacy in rural communities, even when the job seeker does not personally know the recruiter. (Interview with a female worker in Chiang Rai, November 19, 2009). Because these recruiters are working outside the law in a very surreptitious manner, it is difficult to catch or limit them, and the informal agreements made with them by job hopefuls are almost impossible to enforce.

Problems with Public Service Officials

(1) Dissemination of Information and Preparation of Job Seekers for Foreign Job Opportunities: That there are still so many people being defrauded by unscrupulous recruiters indicates that public service announcements and warnings are not reaching the target audience as well as they should. Giving advice and counsel mostly to those who present themselves at public service offices is largely a defensive measure that reaches only those who contact them. Offensive dissemination of public warnings against the dangers of trusting illegal recruiters is carried out only very rarely, and is clearly limited in area coverage and frequency. (ibid.). There is a need to publicly announce the names of offenders and detail their offenses, both those of licensed and unlicensed recruiters, using such media as newsletters, online websites and government office bulletin boards. (DOE News, Ministry of Labor website, labor market reports, DOE announcements and

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

operational reports from provincial authorities). That still might not get to all those at risk in rural areas, but would likely reach more than currently so, despite the fact that these media are not the most effective means to reach communities deep within rural areas.

(2) **Pre-departure orientation seminars are lacking in sufficient detail** toward educating Thai workers before they depart for foreign jobs, especially considering their length of only 2-8 hours. (Interview of a male worker in Chiang Rai, November 19, 2009). This amount of time is insufficient to give outgoing workers an in-depth understanding of what they may be getting themselves into, how to prepare themselves, and how to conduct themselves while abroad. (Interview of an employment agency in Bangkok, February 10 2010; Consular Affairs Office, Ministry of Foreign Affairs, October 29, 2009).

Outgoing workers may sometimes find that they must accept a position with lower job skill ratings than the one they had contracted with the recruiter. They do not seek skills training to upgrade their skills prior to departure because such training may be expensive (and time-consuming). (Interview of an employment agency in the Northeast, November 4, 2009.). These limitations therefore present an obstacle that would be difficult to overcome, should they attempt it.

(3) Punishment of employment agencies having broken the law: Punishment of offenders has been relatively small compared to the overall damage done by them. There are many companies involved in recruiting and they serve many clients. Any malpractice committed by them largely affects many job seekers quite seriously. This affects the entire industry. Stricter controls, heavier punishments and enforcement may be needed to reduce the harm done by offending companies. This study found no public dissemination of the names and offenses of employment agencies that had broken the law, making continued breaches of contract and compromise of the law easy for them.

It is obviously needed that governmental authorities find media channels to effectively disseminate news and warnings about recruitment scams and malpractice to communities deep in rural areas.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

4.2 Legal Enforcement of the Recruitment and Job Seekers Protection Act, 1985, and Amendments, 1994 and 2001

The above Act and later amendments were specifically intended to protect foreign job applicants and workers, wherein those legal edicts were conceived to limit and control recruiters seeking to send workers abroad. This study has found, however, that in large measure, the laws contained in the Act have not been abided by as they should be, and that there are limitations to these laws, as referred to in the following:

4.2.1 Breaking the Law

Operationally, the law is being widely broken, or intentionally circumvented, by job applicants, workers traveling abroad, employment agencies, independent recruiters and even by government civil servants. Examples of the offenses are cited below.

Applicants and Workers in Foreign Jobs

Declaration of Intent to Work Abroad: By law, job applicants and workers going abroad for work must report to Labor Ministry authorities to express their intent to accept work abroad. This includes whether the work was arranged by a licensed employment agency, or via application for work and arrangement of travel to the foreign job site on their own cognizance (as amended May 3, 2004). The authorities are charged with prohibiting foreign travel by itinerant workers who have not undergone legal procedures prior to departure.

Clause 48 states that, “Any person intent upon accepting work abroad that has not been recruited by a licensed employment agency must report their intent to their local DOE office at least 15 days prior to their intended departure.”

Clause 63 gives authorities the power to “prohibit and prevent by whatever means necessary any Thai citizen from exiting the Kingdom of Thailand with the intent of accepting work abroad who is not in possession of the appropriate permits and certifications required by law prior to departure.”

In our study, we found that most Thai workers going to jobs abroad do not observe the law in their preparations, i.e., they do not report their plans to the proper authorities. Thus, they do not have the official certification for going to work abroad. They use other excuses as their reason for travel, most commonly seeking tourist visas (Interview with a female worker in Chiang Rai, November 20, 2009), or seeking entry into countries where they do not initially require a pre-

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

entry visa, such as Bahrain. (Source:http://www.dailynews.co.th/dailynews/pages/front_th/popup_news/Default..aspx?newsid=96666&newsType=1&template=1). They then overstay the time permitted to them upon entry, which of course breaks the laws of the host country, as well. That would be further compounded by those who go abroad and enter into prostitution, where prohibited. Travel is undertaken by lone individuals as well as in groups, where they contact other workers already there at the destination, or are sent by independent recruiters or employment agencies here; they may get involved with persons illegally selling false educational documentation or skills certifications in order to gain employment beyond their own qualifications (Interview with a female worker in Chiang Rai, November 19, 2009) there.

There is also the incidence of going to a job abroad to replace someone who has not worked out their entire contract tenure and wishes to leave for personal reasons, i.e., subletting a job contract. This is considered a circumvention of the law. (Interview with a male worker in Chiang Rai, November 20, 2009). The reason for their desire to depart early may be to accept another position elsewhere, or perhaps other reasons, but the person traveling to take over their position does so without notification to the proper authorities, thus making it an illegal act.

The desire to go work abroad for promised higher pay, combined with insufficient caution toward deceit by recruiters and other problems that might arise, plus the intent to perhaps enter into a form of employment that is itself illegal, circumvention of the law to prevent being forced to meet certain requirements such as those for work permits, skills certifications and employment visas, will all require much time and effort to resolve with Thai workers. So, workers will continue to travel without proper certifications for work abroad, resulting in violations here in Thailand and there, as well as making them vulnerable to intolerable situations while abroad.

Unlicensed Independent Recruiters

Illegal Recruitment Activity: It is quite evident from this study that the most significant problem with recruiters is the high incidence rate of them engaging in deceit, embezzling money from job hopefuls, and not arranging the jobs they claimed they could. Clause 30 of the Act states that, “It is forbidden for any person to engage in the activity of recruiting others for work in foreign countries prior to having received an official permit from DOE authorities in their home province.” However, it has been found that even local officials such as

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

district and village chiefs, or other government officials are attracted to the lure of easy money acting as recruiters for foreign jobs. (Interviews with an employment agency in the Northeast, November 3, 2009). This is because it is quite easy for them to contact people in their communities, where they have the status to be believed and trusted. That many job seekers had done so erroneously is evident from some of the complaints on record, such as the following case:

"Recruiters came to our village…they arrived on their own without invitation…When they took us off to work in other countries, we always traveled as tourists....."

Thai female worker interviewed in Lampang, November 20, 2009

The problem of paying for a job placement, but not getting a job is often a spoken of:

"…We paid the recruiter THB75,000 to get work in South Korea, but in the end, we were not permitted into Korea, and paid our money for nothing!"

Thai male worker interviewed in Chiang Rai, November 20, 2009

The primary reason that these recruiters do not seek licensing may be because they want to charge higher commissions than the law allows, so they don't want to be regularly inspected. They are not afraid of the law, and they want avoid any responsibility for the workers they do send, so the number of licensed recruiters remains relatively few compared to the number actually in operation.

Employment Agencies and Job Placement Services

From this study, we have found that companies commonly engage in a number of illegal activities, both before sending a worker abroad, or after they have arrived later on. The infractions they are guilty of include those penalizing their licensing, and those penalizing individual conduct with fines, such as infractions of the law regarding their licensing may be improper display of their business name (DOE Directive 1/2551, dated February 15, 2008; as well as Directive 8/2551, dated September 25 2008; and Directive 1/2552, dated February 23, 2009), where by the law, when a private individual obtains licensing as an independent recruiter, they must display the words "Recruitment Office" with their business name, and a registered company must display the words Limited Partnership, or Company Limited, along with

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

"employment agency" in their name Further, Clause 35 denotes that accepting applications without prior public notice of vacancies is unlawful.

Licensing of (Field) Representatives

The licensing of field recruiting representatives employed by employment agencies is required by Clause 15, Subpart 1, and Clause 47, which state that, "Employment agencies are (also) required to have their field recruiting representatives licensed according to the standards set by the Ministry of Labor", and Clause 16, which denotes that, "A guarantee bond must be set for each field recruiting representative equal to THB50,000."

Our study has found, however, that employment companies still commonly engage field representatives in their recruitment work that have not been licensed, specifically in the recruitment of workers and the in the job of escorting them through processing or to the job site. (DOE Directives 1/2551, February 15 2008; 8/2551, September 25, 2008; and, 4/2552, September 7, 2009). Such flagrant breach of the law may occur out of a general carelessness, the intent to circumvent those regulations, or merely to reduce their operating expenses by avoiding the placement of guarantee bonds for their field recruiters.

Accepting Responsibility for Workers Employment agencies commonly ask job applicants to declare to the authorities that they are accepting work on their own cognizance because they want to avoid technicalities and procedures such as submitting the labor contract to the authorities for review, or to avoid the job applicant having to submit to a pre-departure medical examination, or undergo skills testing according to Clause 36. In order to evade having to accept responsibility for the worker traveling abroad, they thus advise the job seekers to declare that they are accepting the work on their own cognizance (DOE Lampang Office, November 17, 2009; Female worker interviewed in Chiang Rai, November 19, 2009; as well as DOE Directive 4/2552, September 7, 2009), or get them to travel on visas that have no provision for permission to work in the destination country.

Employment agencies also sometimes engage in the 'sale' of workers to other agencies when the opportunity arises.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

"….Perhaps 'Agency A' has a poor reputation, but has a cooperative relationship with 'Agency B'…then they may trade in workers where Agency B has work to offer, but insufficient personnel to fill the total personnel requirement…"

Female worker interviewed in Chiang Rai, November 19, 2009

Because no formal arrangement is made between the second agency that has 'bought' the workers from a previous employment recruiter, responsibility for those workers traded when they go abroad becomes even more clouded if problems arise after their arrival in the host country.

As we have mentioned before, they are also often guilty of accepting commissions for their recruitment processing prior to departure, but not sending the worker to any posting 'overseas' after having gotten payment, which breaks the law in Clause 85.

When a worker goes abroad and finds that the work they are given is not as contracted, Clause 39 states that, "The licensed employment agency that has coordinated the contract and placed the worker with that job, must accept responsibility for bringing the worker back to Thailand at the employment agency's own expense, including the airfare, accommodation, meals and other costs as necessary."

However, it has been found that employment agencies frequently do not accept responsibility for workers they have sent and are stranded abroad, as confirmed by foreign employers.

"….These recruiters and employment agencies never make any effort to take care of, or assist, the workers they send here…..Sometimes workers are sold to other companies, and don't receive any pay. They wind up sleeping at the Thai Embassy, not having received any pay at all for many months…."

Interview with a construction company in Qatar, January 26, 2010

Commissions

Infractions of the law regarding the charging of commissions and fees include charging more than the law allows, issuing receipts specifying sums received lower than the actual amounts they have received, and demanding payment in advance of placement and thus before the law allows, which break the laws of several statutes.

Records of complaints filed and penalties imposed show that this is rampant, being violations on Clause 26, Subpart 1, together with Clause 47 on the charge of overcharging job seekers for their

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

recruitment services (DOE Directives, 4/2552, February 23, 2009; and, 5/2552, September 7, 2009), and/or demanding payments ahead of a proper time due by law, and/or falsifying receipts by indicating lower sums paid to them than the client had actually paid, being offenses of Clause 27, Subpart 2, and Clause 47 (as noted in official announcements posted by labor offices in several local communities).

"…The first time I went to work in Israel, I had to pay THB60,000, not including the airfare and cost of medical examination. The second time I went, using that same employment agency, I had to pay THB90,000, but on the contract it was stated that I would only pay THB25,000…"

Female worker interviewed in Chiang Rai, November 19, 2009

"….This time it cost me THB95,000, but the receipt they gave me said that I had paid only THB63,504, and the employment agency staff forbade me from telling anyone at the Labor Ministry that I had paid more, or I wouldn't be sent to work abroad."

Male worker interviewed in
Chiang Rai, November 20, 2009

Such malpractice is in violation of Clause 91 Subpart (3) as intent to defraud and bearing false witness before government officials, and unlawful acceptance of a worker's assets. (DOE Directives 4/2551 February 28, 2008; and, 1/2552, February 23, 2009).

Summary Enforcement of the law regarding the recruitment of Thai workers for employment abroad shows a history of disregard for the law beginning with the unlawful recruitment of workers by unlicensed recruiting agents and field representatives of employment agencies, on to false advertising and claims that fail to warn job seekers of the dangers and difficulties involved, and the avoidance of licensing that would make the recruiters culpable and responsible for the welfare of workers sent abroad, often leaving them stranded in foreign lands. They also circumvent proper licensing to reduce the expenses prerequisite to legal operation of their businesses.

Failure to abide by the law is also evident in the false declarations made by job seekers that they are proceeding on their own cognizance. This only helps the recruiters that they have contacted avoid taking responsibility for them while abroad. Similar failures to abide by the law include not applying for a proper employment agency

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

license, overcharging on commissions and fees for job placements or charging for services not allowed by law, as well as failing to place a worker in a job after having been paid to do so.

4.2.2 <u>Limitations to Efforts by Governmental Authorities in Implementing the Law</u>

(1) Personnel Shortage: The efforts of governmental authorities toward preventing deception or fraud committed against job seekers trying to find work abroad is compromised by an inadequate number of personnel to do the job in provincial areas, as told by Northern region officials.

"…..Our main problem is that we do not have enough personnel to cover our territory. Right now, we've got only one person to accept all complaints. When someone comes in with a complaint, we have to take the time to interview them. Therefore that time is lost for the staffer to go out and check local communities. It's not uncommon for him to work on weekends to make up for a lack of time during the workweek. That staff member has a family of his own, so we can't ask him to do this all the time."

Northern Region Labor
Ministry Office, November 20, 2009

"…..We are expected to care of our workers in many countries, but sometimes our hands are full. In some countries, there are many people that need looking after, so sometimes we don't take care of each and every case as well as we should."

An official of an Inspection and Job-Seekers Protection
Division Office in a foreign country

Although the Ministry of Labor has organized the Labor Volunteer Project and the 'Knocking-Door' Project to raise awareness and provide information on how to prevent deceptive recruitment practices, the volunteers working for these projects have limited expertise and are not compensated for their efforts. Moreover, the projects need to be better targeted to focus on areas where deceptive recruitment practices are more prevalent so as to use the limited resources of these projects more efficiently.

(2) Ineffectiveness of the pre-departure orientation program: The preparation and orientation program for the workers has

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

had problems achieving its goals due to the short duration and uninteresting content of the program. Although according to the law the workers must take part in the orientation program, the actual orientation provided by the state agency is only half a day in length. Instead of increasing the length of the orientation, officials often hand out the orientation documents to workers to read on their own. One of the reasons for the short duration of the program is because the recruitment agencies do not want workers to wait for a long time before departure to work abroad. In addition, from the officials' point of view, the workers do not take much interest in the program. Therefore, it is seen as a requirement of the Recruitment Act that must be completed rather than a meaningful training exercise. As a result, the trainings lack vigor and result in the workers possessing insufficient knowledge of essential information about working overseas. The DOE should consider adjusting the nature and duration of the orientation program to make it more effective by utilizing funds from the Ministry of Labor's Workers' Assistance Fund.

(3) Deficiency of assistance provided by government officials in destination countries and unclear delegation of agency roles

In general, the two Thai government agencies tasked with providing assistance to Thai workers abroad are the Ministries of Labor and Foreign Affairs. The Ministry of Labor has very few offices located in foreign countries and no offices exist in the countries where there have been recent increases in the number of Thai workers present (new markets). This leaves the task of assisting Thai workers to local Thai diplomatic missions that are insufficiently equipped to handle the caseload, particularly in the Middle Eastern region. As a result, the time necessary to provide assistance has been significantly prolonged in these areas and has become a burden to the Thai Consulates or Embassies attempting to provide the assistance:

"…This job falls to Thai consulates for the most part. Unfortunately, they have only a very small budget for assisting Thai workers that have fallen into difficulty while abroad. The Consulates hope that the employment agencies will screen out many of the unsuitable job hopefuls before they get into trouble abroad…the Labor office has so few personnel to handle the caseload that they have to go

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

out on Saturday or Sunday evenings to contact people in the community. That makes it hard for people to believe we want to help."

An Official in the Provincial Labor Office in the Northern region, November 18, 2009

In addition to the delay in providing assistance, there are also problems with unclear delineation of roles between the two state agencies, as the Ministry of Labor and the Ministry of Foreign Affairs both hold expectations that the other agency will provide services to the workers. An official from the Ministry of Labor stated:

"… the role of looking after Thai workers who face difficulties is the responsibility of the Ministry of Foreign Affairs. However, because of the limited budget provided for sending these workers back to Thailand, the Ministry of Foreign Affairs expect that the Recruitment Office will help to contain the flow of outmigration…There are also problems with insufficient staffing in the Department of Employment to address the number of complaints received from workers. As a result, the officials have to go out to answer the complaints on Saturday or Sunday evenings and it is difficult for some officials to go out for visits during that time. This has caused problems in providing outreach assistance to workers…"

Provincial Labor Office in the Northern region, November 18, 2009

For the officials to be able to provide effective assistance to Thai workers overseas, they require knowledge of immigration laws in the countries of destination as well as connections with lawyers and the networks of agencies who supervise employment of foreign workers and job placement organizations in foreign countries. In addition, the provision of supervision and assistance services must be made quicker and the flow of information back to the Ministry of Labor in Thailand must be improved so that they are able to follow up on concerns with the recruitment agencies in Thailand.

Another limitation is that the government does not inform every overseas worker that they must become a member of the Foreign Workers Assistance Fund by paying the membership fee. The workers who are not contributing members of the Fund are often those who went to work overseas on their own recognizance or those who were hired directly by their employers. When these workers face difficulties in foreign countries, they will not be able to receive assistance from the Fund.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

(4) Compromise, out of court settlements and exertion of undue influence upon State Practitioners: Loopholes in the law

When there are lawsuits brought against employment agencies for misconduct, they often escape serious punishment due to connections with governmental authorities. In other cases, the company is able to exert influence over the complainant to withdraw the charges or settle out of court. One official noted that:

"…The government and the employment agencies are inseparable. They forgive any misconduct too easily as though they were one single corporate entity. When employment agencies need governmental officials to smooth something over for them, they get their way."

An official at a Northern region labor office, November 18, 2009

"…Employment agencies usually have the connections to see that the case is settled out of court. Maybe the money that was taken is repaid, and that matter is put to rest without further enforcement. The law is too soft on them."

An official at a Northeastern region labor office, November 4, 2009

Although there is some information available about the problem of high-ranking officials and politicians being inappropriately influenced by recruitment companies, there is no information available about how to prevent this influence. There is also no information available about the level of awareness among state practitioners of the harmful effects of this type of influence upon protection mechanisms for workers.

(5) Limitations to the law in protecting workers abroad

Existing labor protection laws for workers abroad still have a number of limitations in serving their intended purpose. They are still inadequate in terms of protecting workers from improprieties by employment agencies and independent recruiters or in punishing unscrupulous domestic job placement services and foreign employers who do not adhere to the terms of the labor contracts they have entered into with job seekers. When problems arise in foreign countries, the laws of the host country are the basis on which the cases are adjudicated. In many cases, this makes reaching a resolution a long and drawn out process.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

"….One example was a company that hired workers for 4 months to 2 years but didn't pay the workers…the case occurred in Brunei in 2003 but to date no resolution to the case has been reached." Former Thai worker in Brunei, interviewed in Lampang, November 18, 2009

In summary, limitations within the laws that have been enacted to protect Thai workers abroad stem from the following issues: personnel shortages for enforcing the laws, ineffectiveness of the pre-departure orientation program for workers, deficiency of assistance provided to the workers by government officials in the countries of destination and the unclear delineation of roles for each agency, the problems created by compromises and out of court settlements, the exertion of undue influence on state practitioners recruitment agencies, and the jurisdictional limitations on law enforcement entities to provide protections for workers outside of the country.

4.3 Unorthodox Recruitment Practices and Deceptions

4.3.1 Miscellaneous Recruitment Practices

Other recruitment practices may be employed by organizations having an interest in foreign job placements, but are not licensed employment agencies. One reason for not seeking licensing is sometimes the fact that for such licensing, a security deposit of THB5 million is required by law. Other than this, they may not want to be responsible for problems involved in the recruitment process. There are five general types of organizations illegally involved in foreign job placement services. They would be foreign employment loan services, mail-order bride services, tour companies, foreign language schools and trade skill schools (from interviews on November 4, 2009). Foreign employment loan services, mail-order bride services and tour companies should be registered with the Ministry of Commerce. Ministry of Labor officials have asked that the Ministry of Commerce exert greater supervision and control over such businesses (from interviews in November 2009). Language and trade skill training schools should be registered with the Ministry of Education. These businesses may be involved in foreign job placement services in the following ways:

(1) Foreign Employment Loan Services: These companies engage in the business of extending loans to applicants to pay for

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

foreign job placement services. They are generally associated with companies that act as loan guarantors on bank loans to the job applicants. They act as an intermediary in securing the assets of the job applicants for the loans, for which they are typically recompensed at a rate of about 3% of the loan value per month. The loan applicants must generally pay a further 9-10% interest rate on the loan to a finance company subsidiary of the commercial bank extending the loan. Therefore, the foreign employment loan service company acts as the intermediary between the bank and the loan customer by handling the initial processing of the loan documentation and securitization of collateral. Such intermediaries also proactively seek and procure foreign job hopefuls, doing so illegally, as they are not licensed employment agencies. In provinces where it is popular to seek international work, publicly displayed signage advertising job placement services by these loan service companies is quite common…'Fast Credit' they claim, relative to the underlying services above.

(2) Matchmaking, Mail-Order Bride Services

These businesses typically began as 'mail-order bride' matchmaking services wherein the photographs of eligible women were displayed on websites for the perusal of men in foreign lands to consider for matrimony, but later they gained momentum in the illegal trafficking of women for prostitution abroad in countries such as Germany.

Thai women who have engaged these services include those who were fully aware of the true import of such activities, and realized that they were being sent to engage in sex services at snack bars, spas, brothels, etc., as well as some women who were being deceived and actually hoped they really were being sent to marry someone. In any case, they inevitably found themselves in a form of indentured servitude, where they had to work long and hard to repay a huge debt assumed in their passage to the destination. They were and are now commonly confined against their will, have their passports seized to prevent their escape, and are subjected to other forms of ill-treatment. This form of recruitment business is thus one of the most onerous, and engages in a number of illegal activities that take advantage of job seekers, as will be discussed later.

(3) Tour Companies

Tour companies have gotten involved in the foreign job recruitment business under the guise of taking travelers on foreign

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

tours, bearing tourist visas. Since some desirable destination countries for employment opportunities do not easily issue work visas, e.g., Dubai, Qatar, or don't issue visas to unskilled workers (such as Japan), if the job seeker is intent upon going to such a country quickly, they may seek to obtain a tourist visa using a tour company to process the visa request.

There have been cases of tour companies, in collusion with job seekers, having engaged in a deception where the job seekers fraudulently obtained tourist visas to South Korea, but their true purpose was to take over a job for a Thai incumbent already there, assuming the post of the legitimately authorized worker who would return home prior to the end of their contracted employment (from interviews October 29, 2009).

This sort of deceptive practice may be only a sideline for tour companies who also organize legitimate tours to foreign countries. In other cases, the tour company may even be actively recruiting workers that associated businesses in the destination country accept for unlicensed placements in jobs, despite the worker bearing only a tourist visa. When their tourist visa expires, they may either depart the country, and then re-enter on a new temporary permit to continue working illegally, or they may resort to living there illegally beyond the expiration of their visa. When they must return home, either because they have been apprehended by the authorities there, or because of hardship to the extent that they decide to surrender to Thai diplomatic offices there, the destination country will likely impose fines for illegal entry and/or overstay of their original visa that could amount to thousands of US Dollars, which the offenders are usually in no position to pay.

(4) Language Schools

Since a number of countries have statutes that require foreign workers to be able to communicate in the native language of that country, an opportunity arose for language schools to become involved in the lucrative foreign job placement service business. Job seekers will often seek some language training if the target country uses a language they are unfamiliar with. Some language schools are in fact unlicensed job placement agencies whose main concern is the procurement of workers for foreign employment. It has been found that, in provinces where foreign job placements are widely sought after, foreign language schools that exhibit such illegal activity are quite common, similar to

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

the case with foreign employment loan service businesses. An example of the more common deceptions is quoted below:

Udornthani Language School Charged with Fraud in Job Placement Services to New Zealand

Udornthani – Local people filed a complaint against the owner of Mitr Thai Foreign Language School, located near the DOE Udorn office, for charging hundreds of thousands in Baht as fees, fraudulently claiming to be able to send job applicants to harvest fruit in New Zealand with wages of THB50,000/month…but none of the victims got to go!

(Reported February 16) -- Pol. Lt. Col. Terdsak Boonchot, Investigative Inspector, SorBor 3., Udornthani Municipal Police, received a report from Mr. Chanchai Wisetpao of the DOE, Udornthani, that a charge should be filed against Miss Premmika Tawanda, owner of the Mitr Thai Foreign Language School, located across the street from the DOE Udorn Office on Liang Muang Road, Tambon Nong Samrong, Amphur Muang, Udornthani, for conducting illegal foreign job placement services without a license, and for the embezzlement of funds from job applicants.

Because of numerous complaints received by the DOE Udorn Office, action was taken. Among them were complaints filed by Mr. Junla Soyotha, aged 31 years, residing at 43 M.4 Tambon Soyprao, Amphur Nonghan, Muang, Udornthani; and Mr. Thampon Uton, aged 30, residing at 112 M.2 Tambon Dtaohai, Amphur Phen, Udornthani, who submitted evidence that they had in April 2008 paid THB90,000 and THB60,000, respectively, to be placed in foreign job postings in New Zealand, but still had not been sent to work there as contracted, so they had decided to lodge complaints with the authorities against the school.

Mr. Thampon publicly stated that at the time of the deception, he had been in the process of applying for work in Taiwan through the DOE Udorn Office, but was unable to speak Taiwanese, so he went to the school to get some instruction in that language. There were many other students there for similar purposes. While attending studies there, the school owner announced that there were a number of new openings for fruit harvesters in New Zealand; they were offering a nine-month contract with monthly pay of THB50,000/month. Interested applicants would have to pay THB280,000, but if they went with the first group, they would be called to travel in one month.

Mr. Thampon added that one group had already gone, but they still needed more workers, so more were being sought. Anyone who was ready could go immediately, and wouldn't have to wait. At first, he said, he was hesitant, but many of his friends were quite interested in this job opening, so he decided to apply, paying a deposit of THB90,000 as did about 10 others, but when it came time to depart and there was no news he became suspicious. When he went to the school to ask for news, he was told that a problem had come up that would delay travel for a while.

Before he decided to make a complaint, he had gone to the school to ask for his name to be stricken from the list, and get his deposit returned.

They gave him back THB30,000, and said they would return the remainder, but never did. Visiting the school again, the school owner was never there to face them, and would not speak to him over the telephone. Thus, he and the other man had decided to make an official complaint.

Source: Thairath Online News – February 16, 2009, 14:46 hrs.
http://www.thairath.co.th/online.php?section=newsthairathonline&content=123790

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Korean language schools are a rather special category because of the South Korean requirement that foreign workers must be able to speak rudimentary Korean in order to work in their country. In their Employment Permit System for Foreigners, it is stated that the South Korean and Thai governments agreed in 2007 to formal guidelines for language centers to instill a basic knowledge in the Korean language to prospective Thai job seekers before traveling to work in South Korea. The resulting Thai directive denoted the establishment of 24 Korean language centers, with 12 in the Northeastern region (Udornthani would get 6), 5 in the Northern region (Chiang Rai would get 2), and the Central region would get 7 (Bangkok would get 3). Prospective job seekers may study Korean language at the government Trade Skills Center 1, Samut Prakarn, at a cost of only THB100 per student. Alternatively, they may choose to study at any of the approved 24 private language centers at a cost of THB6,500 per student. Because the Samut Prakarn Trade Skills Center is not located in a region where the majority of job seekers emanate from, most have found it expedient to attend the 24 approved private sector language schools nearer to their domiciles.

(5) Vocational Skill Training Schools

Skilled and semi-skilled workers seeking job openings abroad typically must take examinations to assess their trade skills prior to employment. For this reason, a number of trade skills training schools have opened to meet the demand for formal training in job skills, both state schools and private sector institutions. It may be noted that a number of the private sector schools have been expressly opened by employment agencies engaged in recruiting workers for foreign job postings. Other trades and professions where schools have opened advertising that they can train attendees for work abroad include schools for massage services, or for nursing skills at facilities for the elderly or children, or for the accommodation industry, maid services, etc.

Some curricula claim that they have received certification from the Ministries of Education and Labor, and thus graduates can qualify for work abroad. However, our researchers have found from the testimony of government authorities that some of these schools have illegally engaged in job placement services (from interviews January 11, 2010). Some course brochures claim that the graduates can immediately qualify for work abroad. Some health care assistant courses claim that graduates will be selected for job openings in Japan,

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

which is definitely a falsehood because Japan does not permit foreign workers to be employed in their health care industry, with the exception of Filipinos that are nevertheless required to attend a special course designed for them, including the study of Japanese, for one year. Thus, there is absolutely no chance for a Thai job seeker to gain employment into the Japanese health care system.

Other curricula have claimed that students in courses for clinical care technicians, kindergarten school teachers, business administration would immediately qualify for work in Australia, Canada or America upon graduation. These claims can even be seen in their online websites, and are thus false advertising contrary to the regulations of the Thailand Consumer Protection Board.

4.3.2 Deceptive Practices by Job Placement Agents

Persons or organizations illegally engaged in foreign job placement services in Thailand may be categorized into four groups, namely local, village-community level 'headhunters'; representatives of companies outside the community-level; representatives of domestic employment agencies; and, representatives of foreign employment agencies. Each category displays a distinct propensity for certain misinformation, deceptions and illegal acts:

(1) Local Community Recruiters and Agency Representatives

These persons are residents of the community in which they ply their trade. They may hold some official status in their community, such as the district administrative chief, village chief or a teacher (from interviews November 23, 2009), or they may be a member of the community that has formerly been employed abroad or perhaps not. They represent other organizations or individuals, such as an employment agency or other business engaged in recruiting workers for employment abroad. Some of the agents are in contact with foreign employers or friends working abroad. Sometimes they seek only to secure employment for friends and relatives with no intention to deceive the job seeker, and no intention of pursuing recruitment as a regular source of income. Those who successfully get employed abroad may voluntarily seek to reward the person who led them to it. Two common examples of such local job recruiters are related to below. Their names, 'Nok' and 'Boon' are fictional, having been changed to protect their true identities:

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Nok – "Do you want to go abroad?"

'Nok' is a middle-aged woman who has worked in Taiwan as a maid. She had to pay THB170,000 to an agent in her community to get placed many years ago. She also had to pay 3-5% interest per month on the money she had borrowed to pay for the placement service. Currently, her husband does agricultural work in Israel. He was sent there by an established employment agency. His Israeli employer currently needs more workers and has asked that her husband help find some. Her husband calls and tells when they need more workers in Israel. Nok then spreads the news in her village. The parents of some young people have even asked her to tell them of any new job openings that their children could fill.

She only has to ask them, "Who wants to go abroad?" to get the people she needs. When she has the workers the foreign employer wants and they have passports, she faxes copies of their passports to her husband's employer and provides a telephone contact number to get in touch with. With just that information, the employer contacts his regular Thai employment agency to process their paperwork. In this way, the prospective worker might have to pay only THB220,000 for a job in Israel, rather than the usual THB350,000 they might have to pay an employment agency that had to find workers themselves. So the job seeker saves THB130,000, relatively speaking. Nok's service is therefore popular.

The families of the workers sent to Israel pay Nok THB10,000 only after the workers safely arrive at the foreign job site. Sometimes they borrow the money to pay this amount from their community savings and loan association at an interest rate of 1.50 percent per month. Along with funds borrowed from friends and maybe the village chief or a foreign job loan service, they put together the full service fee. This method of recruitment is thus a kind of follow-on chain in the procurement of laborers. The eventual foreign employer will have a number of workers from the same community source. Employers like this method because they get the personnel they need from a reliable source and there is little, if any, deception involved. Nok acts as an agent in recruitment for work in Israel and Taiwan, because these two destinations are not difficult to send people to (from interviews January 10, 2010).

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Boon "I only send my children and grandchildren."

Boon is a 50-year old man. He and his wife both worked in Israel for a total of twelve years (1994-2006). Before that, he had worked in Saudi Arabia in 1984. Now they are both back in Thailand because they have aged. However, having been a trusted employee of his Israeli employer, he gets calls from Israel asking for Boon to send along his children, grandchildren and those of close friends to work in Boon's stead. He uses exactly the same method as Nok, sending copies of passports and a telephone contact number for the domestic employment agency to get in touch while they are processing the paperwork. The total cost of the service is charged at about the same amount, too, THB222,500. Boon himself charges nothing because he sends only family members, and he has savings of over THB1,000,000 from his own 12 years of employment in Israel.

Auntie Sai: Defendant in numerous lawsuits

The above are examples of unlicensed agents that do not practice deception or misinformation. However, deceitful 'headhunters' also exist on the local community level, as well. One example is the following person, 'Auntie Sai' (a fictional name) who is in the business purely for money; however, her customers have found that, after paying for her service, they do not get to go abroad for work. She is currently the defendant in numerous lawsuits for fraud and embezzlement. At first, she did actually arrange work abroad for some, but after that, began to deceive people. She was once the owner of an unlicensed employment agency and language school. She had been charged with fraud and embezzlement before, tried and sent to jail twice. Whenever local people discovered her past and realized her deceptions, she would just move on to another community and start over again. These days, no one believes her anymore because she has become notorious, widely known to be untrustworthy (from interviews with village chiefs, March 22, 2010). There have been cases where persons were deceived from the very beginning, and there were some who did actually get work, but when they returned and tried an agent's service again, were cheated the second time around (from interviews with provincial DOE staff, November 23, 2009).

(2) Representatives of Unlicensed Employment Agencies

These recruiters are the traveling representatives of unlicensed international job placement companies who go out and seek job

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

hopefuls in communities; typically they search for job applicants in rural areas. In Chiang Rai Province, they go to such rural districts as Wieng Chiang Rung, Chiang Kong, Phen Mengrai, Terng, Phan, etc. They tell people that they represent as many as ten employment companies, seeking out job hopefuls by:

- Door-to-door visits
- Contacting the relatives of persons said to be interested in foreign work, or have used their services before and may want to go again, wherein the representatives offer both jobs and loans toward the service fee
- Send out postcards to referrals given by satisfied customers. These postcards give return contact information for those interested. Generally speaking, the traveling reps wait about 3 months after those who have successfully gone on to work abroad so that the news of their safe arrival has gotten out. New hopefuls can then use the contact numbers on the postcards to begin the process for themselves. These headhunters normally charge three percent of the money borrowed to cover the service fee as an arrangement fee for themselves, and require a THB10,000 deposit before sending them on to the employment agency in Bangkok. That covers the passport fee and charge for the medical examination. The total transportation expense is normally set at around THB50,000 (from interviews at an employment agency January 9, 2010).

Both the representatives, and the companies they work for, are illegal because they are unlicensed. These unlicensed job placement services have a high incidence rate of deception and fraud. Victims of intentional falsehood and fraud perpetrated by them cannot seek redress under relevant labor laws. For these reasons, the DOE recommends that job seekers should:

- Should only apply for work at licensed employment agencies and job placement services, not with unverifiable ‘headhunters’
- Check with the DOE to confirm that the agency in question really has jobs available
- Never pay job placement fees in cash! Pay only into the registered business account of the employment agency or licensed independent agent.

From the DOE Information Service Center

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Nevertheless, there are many unlicensed companies and individuals conducting job placement services that do in fact successfully send people to work abroad. Those that legitimately send workers abroad but are unlicensed, tell their clients to go and register with the DOE as though they are doing so on their own cognizance, and not through a job placement service. In this way, if any difficulties arise, the job placement service cannot be made culpable. When workers find themselves in trouble in the destination country, they must find a way to solve such problems by their own ends. They are also typically not protected by any labor laws in the destination country. Therefore, while such companies as those described here may be acting in good faith, and do secure work abroad for job seekers, they may be sending the unwary into a difficult situation where they have paid expensively for the service, but lack a formal job contract, could be forced into a job as described, be paid less than was originally stated, or be ineligible for overtime, or they simply don't receive the length of job tenure they had been told they'd get. All such misrepresentations may be considered deception and fraud; such misinformation is actually quite commonplace in Thailand.

We refer to one such instance of such a situation with Mr. Prachoom (fictionalized name), a worker aged 39 from Wieng Chiang Rung, Chiang Rai:

An Example of a Worker being Escorted to a Job by a Bogus Recruiter

Mr. Prachoom (fictionalized name) was deceived into going to work in Korea. The recruiter traveled with him. He claimed at the DOE office that he was undertaking the work on his own cognizance, but had paid over THB90,000 to the recruiter to be taken to work in the USA. That didn't happen. Finally the recruiter told him he would take him to work in Taiwan, but eventually he was sent to a job in Korea. For eight months at that job, he had to work without pay, and was only given money for food and had to work at two jobs. He finally decided to run away from that and find work on his own as an illegal migrant worker. He found work in a plastics factory. Over the course of three more years, he had to change jobs eight times. In 1997, he decided to file charges with the Thai Embassy against his recruiter and employers for deceiving him and not paying him for work, however, friends told him that he shouldn't do that because he was an illegal immigrant. Fortunately, the threat of that convinced his latest employer to buy him a ticket back to Thailand. All in all, Prachoom, over the three years he

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

had been there, had managed to save only THB100,000, after having paid THB90,000 to go in the first place. Now, back in Thailand, Prachoom still wants to find work abroad.
(From an interview with the victimized worker – November 22, 2009)

One DOE office in the provinces (from interviews November 4, 2009) estimates that 30% of all job placement services currently operating are unlicensed. With some 218 companies properly licensed operating in the market and sending people abroad for work, that leaves another 65 companies or so in the country acting outside the law. When charges are filed against these unlawful job placement services, the time required for adjudication of their wrongdoing is generally lengthy, and the defendants often flee to escape punishment, or it is difficult to prove their wrongdoing (from interviews with provincial DOE staff, November 4, 2009). It is common for these unlicensed job placement services and their representatives to frequently move their places of business.

(3) Domestic Representatives of Job Placement Services and Independent Agents

Licensed employment agencies are permitted by law to recruit personnel for international employment opportunities, and may likewise send out representatives to proactively seek potential applicants for such work. Their representatives must possess a valid Thai National ID Card and must operate from a single fixed base. Their operational territory must be fixed, and they are not allowed to recruit personnel outside of their assigned territory.

A simplified example of this would be where a company obtained a license to recruit workers in Chiang Rai province; their employees and representatives would then be operating legally so long as they recruited personnel anywhere within Chiang Rai province, but would be acting unlawfully if they did so outside of Chiang Rai. This limitation exists because most licensed employment agencies are located in Bangkok; however, their representatives are largely based in the provinces where job seekers largely emanate from. These representatives may be licensed to operate in a specific outlying province by placing a THB1,000,000 security guarantee for each representative office operating in an outlying province (from interviews – January 11, 2010).

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

That security deposit is demanded to offset any damage to victims if they are found guilty of fraud or misrepresentation. Such representatives may work for only one company. This condition causes many employment agencies to attempt circumvention of the law, because it forces them, representatives and their employers, to be mutually responsible for their recruitment actions. The Ministry of Labor does not intend to permit employment agencies or their representatives too much freedom of operation; otherwise, the abuse of their privileges may become excessive. However, sufficient controls over the activities of their representatives have not yet been enacted to prevent all the excesses of employment agency field representatives or independent recruiters from occurring (from interviews – January 11, 2010).

There have been cases of employment agency field representatives having separated (resignations and terminations) from their employers, yet continued to present themselves as the representatives of those legitimate job placement services. Victims of fraud committed by such persons uniformly believed the perpetrators were honest because they were previously known to be legally licensed representatives or agents. When charges are filed against such wrongdoers, their former employers of course deny any part in such wrongdoing because the perpetrators are no longer in their employ.

Aside from being permitted to appoint representatives to act in their stead, licensed employment agencies, are also legally allowed to review the names of job seekers at provincial DOE offices, and to use DOE premises to interview job applicants, as in our example of a case where a private employment agency did elect to use DOE premises in Chiang Rai to review applicants in November 2009:

An Example of an Announcement Accepting Applicants by a Private Employment Agency

Inasmuch as the DOE Chiang Rai Office has received notification from the Center for Certification of Job Applicants and Recruitment of Thai Workers for Foreign Employment of the TOEA has approved a request by Kaosong Overseas Development Company Limited, License No. Taw.925/2541, located at 279/1-2 Sutthisarn Road, Sam Sen Nok, Huay Kwang, Bangkok, to review the list of job applicants seeking employment abroad held at the Chiang Rai DOE Office and accept applications for work opportunities on November 20, 2009.

The DOE Chiang Rai Office is therefore taking this opportunity to announce that Kaosong Overseas Development Company Limited proposes to:

1. Accept applicants as a private employment agency for work in Taiwan and Brunei only, wherein a placement fee will be charged to successful job placements.

2. The placement fee and expenses relevant to accepting work in Taiwan for a contracted period of at least two years, as charged by the private employment agency, shall amount to the equivalent of not exceeding two and a half months' pay,

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

i.e., 75 days (based on the first month's pay rate) in the position the applicant is recruited to assume.

3. The placement fee and expenses relevant to accepting work in Taiwan for a contracted period of at least one year as charged by the private employment agency shall amount to the equivalent of not exceeding two and a half months' pay, i.e., 75 days (based on the first month's pay rate) in the position the applicant is recruited to assume.

4. Any payments of fees made to the private employment agency for services rendered or arranged should be made using the bank deposit slip provided by the employment agency, wherein the job applicant shall insure that they receive proper written evidence of payment, or alternatively they may make payments by transferring funds into the employment agency's account using normal procedures for bank transfer into that account.

5. If after having made payment for a job placement to the employment agency, the job applicant finds that they have not departed for the destination country within 30 days, they should request an immediate refund from the employment agency or file a claim against the employment with the DOE.

6. For this recruitment program, the private employment agency has requested the use of DOE facilities and applicant name lists; the DOE has no other part in the processing of job applicants, and accepts no responsibility for the operations of the employment agency. Neither shall the employment agency seek any fee or remuneration from the DOE for undertaking this service at DOE premises.

DOE Chiang Rai Office
Tel 053-152051-4, ext. 312-315
November 20, 2009

If any business enterprise or individual not licensed as a private employment agency undertakes the work of job recruiting and intentionally deceives applicants, thereby charging money for services not rendered to them as promised, they shall be liable to immediate apprehension, arrest and trial. The DOE can undertake such enforcement of the law only after having received a properly executed complaint, with corroborating testimony of a witness to the illegal act(s), prior to requesting the local Police authorities to arrest the accused (from interviews – January 11, 2010).

(4) Foreign Representatives of Job Placement Services and Independent Agents

These are representatives of foreign job placement services/employers, or act as independent agents recruiting for them, so, even though they are largely Thai citizens, they are nevertheless categorized as foreign representatives and agents. Such Thai citizens as these are typically those who have worked abroad before, and perhaps had several foreign jobs in the past. They also may have been promoted to some level of administrative supervision (sometimes called

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

a ‘Camp Boss’ or ‘Camp Admin’) over Thais while employed abroad. In such work, they handled liaison between the employer and newer Thai staff. Though they may not be any cheaper than having an employment agency handle their procurement needs, foreign employers come to trust such personnel after they return to their homeland to recruit more workers. They may do so as independent agents, or liaise with a foreign employment agency hired by the employer to process documentation for new hires.

These representatives could also be in contact with domestic employment agencies, where desired. The foreign employer abroad merely indicates how many new workers are desired, and their Thai ‘representative’ sets about finding them, coordinating the processing of new recruits with employment agencies. In such arrangements, a Thai employment agency would handle liaison with DOE authorities, presenting evidence of the authenticity of the foreign employer; however, the Thai ‘rep’, as an employee of the foreign company, would act as the direct liaison between the foreign employer/employment agency and the Thai employment agency.

In another version of this arrangement, the Thai ‘rep’ would be an employee of the Thai employment agency and liaises with the foreign counterparts based on the representative’s familiarity with them. In either case, their ultimate function is to assist finding new hires, and coordinating on the processing of documentation – including passport and visa applications, arranging air ticketing, etc. – preliminary to new hires traveling to the foreign job site. With this methodology, the new hires typically are free to specify with the DOE that they are being led to the new job by a representative of the foreign employer, in accordance with Clause 48 of the Recruitment and Job Seekers Protection Act (from interviews with foreign employer ‘reps’ – January 29, 2010).

In this work, the representative is compensated by the foreign employer/employment agency, and possibly the Thai employment agency, as well. They are expected to take care of the travel needs, food and discipline of the foreign workers they provide while abroad, and may be looking after workers in several countries. Because of this, they usually have monthly earnings exceeding THB100,000 per month.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

4..3.3 Deception of Job Applicants and Workers: Examples

Deception in Contracting Employment as Fruit Pickers in Sweden

The business of recruiting fruit harvesters for work in Sweden began about fifteen years ago, after Thais touring the country or traveling to visit relatives found extra income working as wild fruit harvesters while there. Statistics show that there were about 450 Thais engaged in such work during 2003, typically engaged in such activity for about two and a half months between July and September, from which they earned about THB185,000 per person. News got back to Thailand, because it seemed an excellent opportunity where they could earn a significant amount of money in a very short time, making the idea quite popular with many, which in turn opened the door to deception and fraud when recruiters started charging job hopefuls an 'operational expense' of THB80,000-200,000 to be introduced to such work.

At first, these recruiters largely went through the process of becoming licensed to recruit workers in Sweden (according to Ms. Thitiporn Jirasawat, "Thai Labor in Sweden", September 15, 2004), but after a time, this job opportunity became popular with other nationalities, as well, and the number of Thais seeking work as wild fruit harvesters began to exceed real demand. The deception and taking advantage of Thai workers wishing to go there first began to appear with overcharging for rest quarters (accommodation while working), as well as for consumer goods and other basic necessities at up to twice the general market prices prevalent there. Those workers had little choice but to accede to such demands because they were working up to 18 hours a day (voluntarily); they had no time to seek accommodation elsewhere, or to go shopping – at least as seen in 2003.

Wild fruit merchants thus formed the Sverige Bar Intress Forening (SBIF) – Sweden Forest Berries Association – and formally sought licensing from the Swedish government to import Thai workers specifically for the purpose of seasonally harvesting wild fruit, in which occupation, the workers would be exempted from Swedish requirements for work permits, as well as a tax exemption on earnings made by these fruit pickers. Thereafter, workers were only required to pay for their own airfares and visa fees, but no commissions nor 'operational expenses' would be assessed by the SBIF. The above

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

association further undertook responsibility for securing adequate rest accommodation and food at reasonable prices for the workers.

Those new provisions allowed Thai workers to return home with a total of THB85 million in 2004 earned by 1,527 Thai workers harvesting wild berries for sale to the SBIF. The association also issued the 'letters of invitation' allowing job hopefuls to process travel to work there. In 2005, The Thai government issued a special directive, "DOE Procedures for Processing Thai Workers for Employment as Wild Fruit Harvesters in Sweden", A.D.2005, to facilitate Thai workers seeking such employment, also permitting the government to gather statistics and better control the process. The revised regulations designated procedures for Thai job applicants wanting to enter this seasonal work to present SBIF 'letters of invitation' to the proper authorities in order to be allowed processing ("DOE Procedures for Processing Thai Workers for Employment as Wild Fruit Harvesters in Sweden", A.D.2005).

In 2009, some 5,911 Thais undertook fruit harvesting work in Sweden, largely via the recruitment efforts of unlicensed private employment recruiters that were allowed to continue for a time because it was only seasonal work where their labor was voluntary and there were basically 'self-employed'. In any case, the Ministry of Labor decided that such recruiters should be licensed companies, and that further recruitment should proceed under the category of 'Arranged and Escorted by the Employer'.

The activities of the four companies thereafter licensed to undertake such recruitment (as of October 2009) included:

- Siam Royal Service Group Company Ltd.: Sent 2,372 workers
- Sinsunchai Company Ltd. : Sent 1,668 workers
- Blueberry Service Company Ltd. : Sent 738 workers
- T.S. Law and Business Company Ltd. : Sent 1,133 workers

By then, each job hopeful was paying THB75,000-120,000 for the job opportunity, all in all. Meanwhile, living expenses had increased somewhat in Sweden, and the selling price of wild berries gathered there had fallen, thus reducing the income of the migrant workers. For those reasons, some of the 'invited workers' returned home prematurely that year, while some others remained until the scheduled completion of their agreed upon stay at the end of August 2009. Most of those workers failed to return with the planned THB100,000-300,000 in retained earnings they thought they would have upon arrival (from interviews with the returning workers). They, of course, still had retained debts from money borrowed to pay for the

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

work opportunity and associated expenses. They therefore formed a committee to submit a class-action complaint with the Ministry of Labor and the Thai Parliament against three of the recruitment companies (Blueberry Service Company Ltd. was not named as an offender).

There were also Thai migrant fruit pickers that went to Finland and Spain; they befell similar disappointments. The Finnish-Thai Association has indicated that migrant workers that had gone there had paid approximately THB150,000 per person to recruiters, thinking that they would gain better earnings than those who had gone to Sweden. They too were left with unpaid debts from the experience, and some were even charged with misdemeanors by Finnish law while there, such as excessive numbers of passengers riding in a personal vehicle (Anucha Charoenp, ***Bangkok Post***, January 2, 2010).

In 2009, some 28 workers originating from Northeastern Thailand filed civil and criminal charges against Mr. Saichon Jaroensuk and Mr. Norbert Barlocca for fraud and embezzlement, wherein Mr. Barlocca had charged each person THB250,000 to escort them to their new fruit harvester jobs abroad. It was claimed that after they ahad arrived, they were not taken to work as fruit harvesters, but were instead sent to work in a meat slaughterhouse; they did not receive pay equivalent to the THB40,000-50,000 promised, their passports were seized, they locked into rooms when not working and were sometimes beaten. Eventually Mr. Barlocca bought them tickets to return to Thailand, and coerced them into signing statements stating that they had not paid him THB250,000 each, and that they would not seek legal action against him or his partner. Even so, the case eventually went to court; Mr. Saichon was found guilty and penalized 18 months imprisonment (pending appeals), as well as fined THB30,000 for recruiting without a license; further charges were filed with the Udornthani Public Prosecutor and Minister of Labor (Ms. Sunee Chairoat, ***Matichon*** Newspaper, September 20, 2009).

แก้ไขเพิ่มเติม

A poster offering the services of Mr. Saichon, an unlicensed foreign job placement service.

Points of Contention – A possible case of human trafficking: A representative of several job applicants who had been deceived and defrauded for employment as fruit pickers in Sweden has stated that the job seekers wanted the recruiter to return their commission fees paid to the recruitment agency and that criminal charges be brought against the offending parties, being three recruitment agencies named in the law suit. A Member of Parliament for Lamphun Province (Thai for Thais Party), Mr. Sataporn Maneerat, was championing their case, and had added that charges would also be filed with the DOE because they had also falsified documentary evidence of the plaintiffs having attended a pre-departure orientation for outbound Thai workers (Jor.Ngaw.12) thus allowing the plaintiff workers to travel to Sweden (***Prachathai*** newspaper, September 24, 2009).

The Minister of Labor thereafter stated publicly that appropriate legal charges had been filed and legal remedies sought toward the case of the workers that had been deceived during work in Finland, and that his office would follow that case closely. He had requested the Thai Police Department intervene into any attempt to launder the money involved in the case. As for the charge of illegal recruiting practices per regulations relevant to workers seeking work overseas on their own cognizance, A.D. 2004, Clause 4 of those regulations state that:

> *"Thai workers that seek of their own accord to apply for jobs abroad in other countries, and who have not entered into a recruitment contract with an employment agency, or have not been processed by a licensed foreign job placement service, or have been recruited by the DOE, must submit a Form (Jor.Ngaw.) 39 to the DOE along with the appropriate documentary evidence proving that the destination country is prepared to receive them for the purpose of employment at least 15 days prior to their departure from the Kingdom of Thailand for their employment abroad."*

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Analysis: The affixing of the official government seal on forms attesting to have attended the required pre-departure orientation for Thai workers going abroad for employment, and dating it, indicates that the worker is ready to depart and has met all the legal prerequisites to departure, to the best knowledge of preparations indicated by the Thai worker.

An analysis therefore shows that the authorities were not culpable in any wrongdoing in issuing the form to the workers based on their allegations to the proper authorities prior to departure. In the matter of the allegation that the recruitment company had lied to the workers about the pay to be received in the work abroad, the actual pay to be received was not specified in writing in any employment contract with the recruiter, therefore, there did not exist just cause for the charge of failing to receive pay as agreed, but could constitute probable cause for human trafficking. This is due to the fact that there was evidence of deception and exploitation of the workers by the recruitment company. The large number of Thai workers sent to Sweden, 5,911 persons, would require the authorities to investigate whether the SBIF had legally and properly issued letters of invitation to all of them, and whether the recruitment companies had overcharged the job applicants or not.

As for other charges against recruitment companies such as operating without a license, etc., it would be difficult to effectively penalize the companies according to the Recruitment Act because the workers had voluntarily declared that they were undertaking foreign employment on their own recognizance. Instead, the companies should be penalized according to the Human Trafficking Act. Likewise, they might be unable to take action in recovering any money paid for the services of these companies without a proper legal agreement having been made between the recruiters and their clients; that is a loophole that needs to be closed, just as the legal accommodations abbreviating proper procedures for workers going abroad to work only as temporary migrant workers allowed unscrupulous persons to circumvent the law and take advantage of unwary job applicants, too.

In addition, it is also noted that in the advertising posters of Mr. Saichon, deceptive wording was used to allay any concern of the applicants and mislead them from the facts. The poster said that he could arrange for their departure for work within three months; it also said that his ‘company’ had never cheated anyone, when in fact, he did not even have, or work for, a licensed recruitment company. Officials

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

from the Ministry of Labor should be responsible for apprehending the offenders making such false claims by putting up posters in public areas advertising the availability of work when none actually existed in Udon Thani Province.

Thai Women Lured Into Prostitution and Massage Parlor Services in the Middle East

Since 1982, there has been evidence of Thai women being sent into prostitution in Bahrain and Dubai, where they were originally recruited to be masseuses at spas. The recruiter who first sent them there was a Thai national with business connections in both countries. Some of the women sent there knew in advance that they were being sent to work as prostitutes. It has been recorded that perhaps 90% of all Thai women sent to work as such in Bahrain were voluntarily complicit in accepting the employment (Ms. Vorarat Tanikuji, ***Matichon*** newspaper, 2009). Most were women from North or Northeastern Thailand who met unlicensed recruiters in the resort town of Pattaya, Thailand, using loopholes in the law to facilitate their recruitment. In the case of Bahrain as the destination, they knew that a Thai citizen could travel there and stay without a pre-entry visa for up to 14 days. The women soon found that they were in debt with the recruiters for as much as THB150,000 with all expenses taken into consideration.

Once they had arrived in Bahrain, they were met and controlled by a 'madam' – sometimes referred to by these Thai women as their '*Mae Tac'*…"Mother of Contract" – who would see to it that they fulfilled their work obligations per 'contract'. There were of course no real written contracts involved, and since they were on tourist visas, no legal work status.

Their '*Mae Tac'* would attend to their housing and food, etc., deducting it from their earnings along with money owed to the recruiter. After all the deductions, most found that they had no money left. Eventually, they would find a way to contact the Thai Embassy.

In 2008, some 1,500 Thai women in such a situation sought assistance from the Thai Embassy in Bahrain. The embassy would find them places to stay temporarily and prepare them for repatriation. Over time, it was seen that an official bulletin was needed to warn Thai women specifically against accepting work in Bahrain. In 2007, the Anti-Human Trafficking Dept. of the Thai National Police had already apprehended four suspects on involvement in the human trafficking of

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Thai women sent to Bahrain, and issued arrest warrants for another 19 procurers acting as the 'field recruiting agents'. This year (2010), two suspects were arrested at Suvarnabhumi Airport:

> ***"January 11, 2010 – Anti-Human Trafficking Dept. Head, Pol. Col. Suvitchayapol Imjairat, arrested at Suvarnabhumi Airport two suspects, a Mr. Chaitawat and a Mrs. Kobkun, believed to be involved in cases of human trafficking (recruiting Thai women as masseuses for spas in Bahrain, but then luring into prostitution there).***

In Dubai, police had arrested Thai women working at a small spa where they had provided sexual services to customers. Meanwhile, the Royal Thai Consulate for Dubai has been assisting a number of women who had apparently been working at a spa owned by a Chinese national, but had then been forced into prostitution. Some of them had been recruited by Thai national procurers in their home country. The spa owner has connections in Bangkok and elsewhere in the country, where other Chinese associates send out agents to recruit Thai women for work in the Mideast, or even advertise on websites to attract them.

The recruiters would charge a commission of THB22,000 or so. As for the air ticket and visa fee, the employer would pay for this. In Dubai, it is normally required that foreign workers obtain a proper visa, and that there be a Dubai citizen acting as their sponsor in the case of a Dubai employment visa and work permit. However, Thais traveling to work in Dubai or other Gulf States usually begin by declaring that they are traveling to work there on their own cognizance per Clause 48 of Thai law, thus relieving others involved of any culpability in illegal acts.

The female complainants who had requested assistance had all entered the country on tourist visas. After they arrived at their workplace, they were locked up in rooms and made to work each day from 10.00-24.00 hours. They were not paid as originally claimed, getting only 15% of the sums charged to customers. They did not say whether they had been forced to have sex with customers, but it was often said that the customers, who were mostly not of UAE nationality, would complain if they failed to have sex with them, "I've already paid for it! Why wasn't I given sex?" they would say.

Aside from being engaged in prostitution, their passports were seized by the employer, and some were beaten by the Chinese owner if

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

they refused to have sex with a customer. After one month, knowing that their return tickets had been cancelled, they had decided to flee the spa and seek help from the Thai Consulate in Dubai. They all asked to be repatriated and paid for their tickets with money they had earned at the spa (interviews with three victims, January 28, 2010). With certainty, there remain many other such Thai women working under such conditions in Dubai.

Points of Contention – Thai female (as well as some male) workers, as such, in almost all cases entered the country on tourist visas, but a few did have employment visas. Their status under Dubai law thus differed. Those who had entered on tourist visas were illegal in Dubai and Bahrain by having engaged in work while there. Thus, they could not seek remedies under labor laws there. Those who had employment visas could, however, demand justice there by the country's labor laws. One argument against such claims would be the fact that their work permits indicated approval to work as spa massage parlor staff. If they had worked in prostitution, laws there regulated that any such offender should in any case be arrested and deported. For those that had found it necessary to flee their employers, by law there they could only seek damages against their employers if they had entered the country on an employment visa.

Analysis – In the eyes of the law, the Thai workers that had entered the host country on tourist visas and worked in spas there as prostitutes are difficult to classify as victims of human trafficking, because they had voluntarily entered into the situation knowing what kind of work they were becoming involved in, despite being victimized in the sums of money they had paid or were in debt to procurers for leading them to their jobs.

Those who had entered the country on employment visas, held against their will by their employers and were forced into prostitution are more clearly victims of human traffickers. They would have had employment contracts, and any failure to pay them as contracted would have been tantamount to a breach of contract. Nevertheless, interpretation of Thai law found just cause and rendered assistance to both the illegal and statutorily legal workers, eventually culminating in warrants for arrest being issued for 19 suspects in Thailand involved in human trafficking, and the arrest of six such criminals between 2007-2010.

Inasmuch as the majority of the sex workers that have entered into Mideast countries have gone there on tourist visas, we obviously need to seek better compliance with the law by tour companies in

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Thailand that typically accept work in processing the visas for such persons.

It is difficult to hunt down the procurers/recruiters and charge them with infractions of the law without the full cooperation of the victims to identify offenders and act as witnesses. Most victims only want their money back from the recruiter so that they can go apply for work elsewhere. If they are to cooperate with the authorities, it would mean identifying the culprits and giving formal testimony, a process that could take 6 months, which is thus an obstacle to gaining their cooperation in fighting human trafficking in Thailand.

From the perspective of the destination countries, the crimes committed are offenses under the Convention on Transnational Organized Crime that they are signatories to. Unfortunately, there has not been a great deal of cooperation and liaison between Thailand and the destination countries on this matter. That includes many countries elsewhere, not one of the Gulf States. Enforcement of related laws in this matter requires close cooperation between the police agencies of Thailand and the destination country to ensure that efforts in fighting such crimes are successful and that these actions are prosecuted as transnational crimes.

Thai Workers Sent to Taiwan

Taiwan has been a popular destination country for Thai workers for over twenty years. However, with changes in Taiwanese tax laws and policies regarding pay to foreign guest workers, and deductions from pay for their housing and sustenance, it has been fast becoming a less attractive choice. Added to high commission fees being requested to arrange jobs in Taiwan (licensed employment agencies and unlicensed recruiters alike) typically seeking THB60,000-80,000 in the 1990's, had raised their prices to THB180,000-200,000 in the new millennium (from data on Thai workers abroad, 2008), Thai workers have thus had to increasingly bypass Taiwan and seek employment elsewhere having higher pay and/or lower commissions charged to go there.

One not atypical example of a case of Thai workers seeking work in Taiwan where the employment contract was not adhered to is related here.

In this example, the worker had signed a contract for employment in a metals factory, but after arrival was taken to work as a welder. The job had been arranged by a licensed employment agency

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

and he had paid a THB180,000 commission for it. He contacted the employment agency and reported that the job was not the one he had contracted for. After about one month, the worker's brother had died in Thailand; the worker thus asked his employer for leave to attend his brother's funeral. After returning, he decided not to go back to Taiwan after the funeral, as it would incur further losses in deductions to his for the commission and other expenses. His pay in the job he had gotten made it not worthwhile. The employment agency tried to get him to convince him to return to Taiwan, especially as the employer had bought him a return air ticket in order for him to attend his brother's funeral. A month after that, a representative of the foreign workers' union advised him to demand his money back from the employment agency. The agency returned THB30,000 to him, but he found that inadequate. The union 'rep' thus took him to the local DOE to file a claim against the employment agency, demanding the return of THB70,000 more (out of THB180,000 originally paid). They refused and told him to sue if he wanted more, claiming that he could not succeed in a trial against their lawyers. The worker eventually decided to settle out of court for an additional THB50,000 (Thai Labour Campaign, 2008).

Thai workers who have had problems with their recruitment agent or the employer in Taiwan have reported such complaints as being threatened by the agent, attempted rape, being overworked on the job, having to work for the employer at multiple locations with little time to rest, accidents while working in construction (falling from scaffolding – broken ribs), etc., or even disappeared completely, like Mr. Prasit Som-In from Nong Bua Lamphu who had gone there to work legally on an underground subway tunnel. He disappeared from his housing quarters on December 10, 2007, and has not been seen since, even though relatives even undertook traveling to Taiwan to try to find him (Thai Labour Campaign, 2008).

Points of Contention – A worker having traveled to work in Taiwan on a legally binding contract but not getting the job as contracted would be a clear labor law violation. Often, workers in a situation like this do not appeal the breach of contract, fearing large financial losses if they refuse the different job. In the case of the worker returning to Thailand on emergency leave to attend his brother's funeral after only one month on the job would normally be considered a breach of contract by the worker if he chose not return to the job using a ticket purchased for him by his employer. Usually a labor contract for Taiwan has a two-year tenure before release to return home. This

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

would be unless the job entailed undertaking an existing labor contract to fill out the remaining tenure for a Thai employee that wished to return home for personal reasons.

Analysis – The legal strictures regarding this case entail two major points of contention, i.e., not getting the job contracted for, and the right to demand return of any commission paid for such breach of contract. On the first point, the seriousness of any offense committed by the recruitment company would be weighed against the severity of differences between the contracted job and the one actually offered, where minor differences would be deemed only a minor offense. The severity of an offense here must be compared against more serious infractions where workers might be lured into prostitution, or not receive fair pay for their work after dubious deductions are made from their salaries. Under such circumstances, it is expected that the worker protest such conditions and seek redress.

Unfortunately, even in cases like those, because the worker went there illegally, little could be done to punish those involved in unfair practices against them. This case of the worker not being positioned in the job of his contracted choice is of a type that can be handled by the Council of Labour Affairs (CLA) of Taiwan. That is not an easy task, however, without the cooperation of the Taiwanese employer. Most often, such infractions of job contracts go unsettled because the Thai worker gives in and accepts the situation rather than risk further losses. A case such as the one above is not so serious as intentional fraud and embezzlement by a recruiter, or one of human trafficking.

As for his demand for a refund of his commission paid to the employment agency, there is weakness in Thai law regarding such redress. The worker paid more for the service than Thai law accepts as legal and proper, which denotes that the employment agency may not charge more than one month's salary on the new job for the recruitment service. Because the agency charged THB180,000, this was a case of the worker choosing to pay more than the law allowed for and placing himself in a situation where his claim for an amount exceeding that provided for by law forcing him to negotiate and settle out of court. The worker also compromised his position by initially accepting the alternate job position, but then returning home on emergency leave at the expense of his employer, and thereafter not returning to his job as promised. This resulted in the employer also filing a complaint that the worker had breached his job contract. Thus, while getting back only THB70,000 out of the THB180,000 originally paid to the employment

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

agency, getting back more than that would have been difficult, even with the help of an NGO, because the worker would be at a disadvantage in negotiating a better settlement.

The following example alludes to a case where 19 workers had been contracted to work on a tomato orchard in Spain. The workers were forced to pay excessive commissions, did not receive the agreed upon wages, and were terminated from employment prematurely. The following letter of complaint was submitted to the authorities:

A Sample Complaint Letter from a Worker who was Deceived

November 14, 2009
To: The Director of the Overseas Labor Union

With this letter, some 19 of us wish to file a complaint expressing extreme hardship that we are undergoing at this time while working in Spain. What we wish to relate to you here is the truth in its entirety.

We were invited by the N.T. Union Company, a subsidiary of K.S. Manpower Supply Company, to apply for work in Spain where it was described that we would receive generous salaries equivalent to THB60,000-70,000 per month, not including overtime. The recruiter assessed a job placement commission of THB580,000 per person. We were to have job tenure of 9 months, thereafter renewable every 3 months, automatically, for 5 years.

We found the terms attractive and thus agreed; we had to borrow money to pay the commission fee, some of it coming from Bangkok Bank, some from unlicensed loan sharks at an interest rate of 3 percent per month. We used the deeds to our homes as collateral to get enough money to pay THB700,000-800,000 each including expenses. They told us to lie on our visa applications and state that we were only paying THB2,560 for that, and another THB45,000 in miscellaneous expenses. The recruiter told us that we would have to lie on certain other declarations or we would not be able to go. So we went to apply for our overseas work certifications at the DOE in Chiang Mai, saying the same things about the cost and that there would be a representative of the foreign employer escorting us to the job site. Our applications were approved July 2, 2008. We all paid our fees to N.T. Union.

On about July 5th or 6th, we went to K.S., as instructed. When there, they demanded that we make a video recording on which we were to say that we had only paid THB45,000 in total, were traveling

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

on our own without escort, and that the recruiter was not responsible for our welfare, if anything happened to us. We went to the airport on July 7, 2008, and made the same statements to the Immigration authorities there so that we would be allowed to travel.

We arrived in Spain on July 7, 2008, and were met by representatives of the Proyecto Reitman Company (Avenida Adolfo Suavez,10.30.700 – Torne Pacheco; Tel:968577335, Fax: 968578379, Tlf Gratis: 900959782 Website: www.proyectoreitman.es ; Email: jmsp@right-man), being two persons, Mr. Manuel Mirochnik (Israeli nationality), and Mr. Jose Manuel Carrosco (Spanish nationality). They took us to work at AGRICOLA PASTRANA (MENDEZ) Company, where we received pay of EUR5.97 per hour for our work, which was less than the rate K.S. told us we would get. Nevertheless, we accepted the work, which was on a tomato farm. We stayed there for about one year. The MENDEZ Company told us then that we had to return home because our contracts had expired. On July 15th, the MENDEZ Company bought air tickets for us to return home on July 19, 2009. We therefore contacted K.S., where 'Nok', a company representative, tel. 081- 8414383, told us that we shouldn't return and that we should find a way to stay past the Mendez Company's deadline, so that we would be extended, otherwise, we could not immediately return there for work.

We were deeply in debt and the MENDEZ Company pay left us with only enough money to send home about THB30,000 (per month). On about July 25, 2009, we were evicted from the dormitory where we had been living and sent to live with Mr. Jose Manuel Carrosco. Over the next 4 months, 'Nok' would call occasionally and give us hope, saying that everything would be taken care of in due course. We were warned not to report the problem to the Thai Embassy or go find another job. If we didn't do as they instructed us, it was said that the K.S. Company would not accept responsibility for whatever happened to us. Since then, they have not contacted us, but we did record some of the telephone contacts with 'Nok'. We don't know if it is adequate evidence or not. We hope you will consider helping us.

In summary, we hope that we may be allowed to continue working in Spain so that we can recover the indebtedness we now owe for coming to work here, and to improve the lives of our families. But, if we must return home, we hope that you, sir, can help us demand repayment of at least some of the commission money we paid to the recruiter, because they have not honored their promises to us.

Source: http://www.prachathai.com/journal/2009/12/26855[30 NOV 2552]

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

CHAPTER V

SUMMARY, DISCUSSION AND RECOMMENDATIONS

5.1 Summary

Foreign job recruitment business in Thailand is an industry that first began as early as 1967 as the Mideast labor market began to expand prodigiously, due to the increased income they were receiving from oil exports, inducing in Thailand in the enactment of the original Recruitment and Job Seekers Protection Act of B.E. 2511 (A.D. 1968). Recruitments in those days were facilitated by the employers sending representatives to Thailand to find workers, or in some cases, workers contacting employers themselves on their own cognizance.

With the clearer legal definition for recruitment business provided by that labor Act, a number of employment agencies opened their doors and obtained licensing from the Ministry of Labor to formally recruit workers for international jobs. They had to post guarantee bonds of THB5 million each to cover any damages incurred by them in their job placements should they not settle claims against them of their own accord.

Employment Agencies

From the years 1985 to 2010, when this study was undertaken, some 218 companies had come into being that have licensing as employment agencies (however, over that thirty-year period some companies were closed and some new companies took their place – at their zenith there were as many as 250 licensed recruitment agencies).

Of that 218 companies, 44 had been licensed in 1980. Another 79 companies were registered between 1990 and 1999. The final 95 companies were all registered on or after the year 2000. These companies are spread throughout the country, but most (65%) are located in Bangkok Metropolitan Area (BMA), 18% are in the Northeast (especially Udornthani with 18 companies), plus those within the Central region, where there are also 13 companies in Nonthaburi, as well. These companies normally cater to the recruitment of workers for manufacturing and other industries, as well as construction and as general laborers (67% of all jobs offered). Following that general category would be service jobs, such as housekeepers, cooks, and other service staff (13% of the total positions offered), then agricultural workers (5.2%). Some recruitment agencies specialize in professional

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

job placements such as engineers, architects, doctors and accountants that make up 9% of the total international job postings. The most common destinations for workers these days are in the Asia-Pacific region, taking 49.6% of all postings, e.g., to Brunei, Taiwan, Japan, Singapore and Malaysia. The Mideast still accepts a fairly large proportion with the second highest number of postings, e.g., to the UAE, Qatar, Kuwait, Israel and Libya. Other destinations include the EU, taking 5.2% and North America, taking 3.9%.

In this study we took particular note of 14 employment agencies, that number of which included some companies that had been in business for as long as 30 years, and others that were relatively new. Some are in Bangkok, while others are located in the Northeast or the North. These companies are largely occupied with sending workers to destinations in the Asia-Pacific and Mideast regions.

The companies in this study commonly had problems in acquiring job placement assignments, especially to Israel and Taiwan, as well as the recruitment of workers via the use of field recruiting representatives; however, it is becoming more common for people to come in and apply for work on their own without the invitation of field recruiters. They are still having some trouble in filling all the available postings, and would generally like to see Clause 35 Recruitment and Job Seekers Protection Act amended. They are conducting their own skills testing and orientations – as desired by potential employers – rather than similar sessions held by governmental authorities.

It is not uncommon for employment agencies to prepare two sets of labor contracts for job applicants to sign; in a second, unpublicized contract, the worker is at a distinct disadvantage to the terms and conditions specified in the contract shown to the authorities. However, it is necessary for employment agencies to arrange two sets of labor contracts for job applicants who wish to work in the Middle East.

It was also found that they now tend to look after the workers they send abroad more than before, where a Thai ‘camp boss’ designated by the employment agency, or a representative of the employer, liaises with the Thai workers to a certain degree. The most common complaints now tend to be dissatisfaction with living or working conditions, and are typically matters that the employment agency can resolve through negotiation with the employer.

In the matter of aid and assistance from Thai governmental authorities, employment agencies generally refuse to declare past

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

experiences where a worker sent by them needed assistance while working abroad, or for what reasons. However, they do say that they have good working relationships with governmental authorities, and there is a degree of forgiveness shown to them. They express the desire to have better relations with Thai diplomatic missions abroad in the destination countries that many workers are sent to (because these consular offices are tasked with checking the authenticity of job vacancies, employers' documentation, visas, etc. and sending their findings to the DOE in Thailand). This demonstrates that the influence of the employment agencies in Thailand is extending beyond the borders of the country to relationships with Thai diplomatic offices abroad.

As far as connections between employment agencies, especially between companies here and those abroad, cooperation on finding vacancies that could be filled by Thai workers is increasing. They share the income from filling these vacancies and assist each other in obtaining replacement workers when needed, or on skills testing of the job applicants. There is also increasing direct liaison with large foreign employers that have steady requirements for additional workers (e.g., multi-national construction companies).

Procedures for Sending Thai Workers Abroad

Procedures followed for the legitimate processing of Thai workers for employment abroad are designated by law, that is, they must first apply for permission to recruit workers for a given job vacancy abroad. The exact number of vacancies to be filled must be specified; advance recruitments prior to the actual opening of a job vacancy are not permitted. The agency then proceeds with the selection of viable candidates, getting them to undertake medical examinations, skills testing (for tradesmen and skilled workers), and then on to orientation seminars. After that, a contract is signed, a contribution is made to the Foreign Workers' Welfare Fund for each worker sent, processing by the DOE for work abroad, and reports containing each recruited worker's name are sent within 15 days to other authorities in Thailand and abroad.

When accepting work and traveling on their own cognizance, workers must submit (the employer's) documentation to the DOE, along with a copy of employment contract certified by the Thai diplomatic mission in the host country and approval for their employment visa to the foreign country.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

In the case of being escorted to the job site by a representative of the foreign employer, the employer must obtain the proper permits from the Labor authorities of their country and submit evidence of approval to bring in foreign employees to the Thai diplomatic mission in that country for certification. The certified documents are then used to obtain employment visas for the intended workers after they have been recruited in Thailand. The certifications verify that the worker will be allowed into the country and work in the position specified in the documentation, ensuring safety and protection by the labor laws of that country, helping to prevent them being lured into untenable and oppressive situations.

When the state undertakes the recruitment of workers for foreign positions via G2G deals, it undertakes responsibility for the safety and security of the workers sent in cooperation with the foreign government. With respect to South Korea, a special arrangement called the 'Employment Permit System for Foreigners' ensures that the desired skills are met by the recruited personnel and that they are taught rudimentary Korean language before traveling to that country to help minimize difficulties in adapting to the new country and work environment.

In actuality, however, very few workers are processed for work abroad and undergo all the correct procedures as detailed above prior to their departure. Many of the businesses involved, including domestic and foreign employment agencies, job seekers and unlicensed recruiters, undertake shortcuts and direct circumventions of the law to facilitate their own operations and increase their profits. Some of the things they do are clearly illegal; some other things are in a gray area that is difficult to define. These actions are mentioned below:

o **Illegal Processing and Sending of Workers for Work Abroad**

This begins with unlicensed employment agencies and their operations, and moves on to include licensed employment agencies that recruit for job postings that have not received prior approval by Thai Labor authorities. This goes on to falsified job descriptions, overcharging clients in commissions and fees, the failure to accept responsibility for looking after the welfare of workers sent abroad, and the dispatch of workers abroad using the circumvention of them declaring that they are taking a job abroad on their own cognizance.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

o **Recruitment by a Foreign Employer without the liaison of an Employment Agency**

In this case, what most likely occurs is that a foreign company has personnel at their own subsidiary company here select candidates for work abroad without the liaison of a Thai employment agency, then having the successful candidates declare (to the DOE) that they are traveling for work abroad on their own cognizance.

o **Recruitment by an Independent Recruiters and Sent Abroad on Tourist Visas**

Here, small-time recruiters with a connection to one or more employers abroad, seek out workers wanting to go abroad and send them on tourist visas.

o **G2G Recruitment Where Applicants Must study the Language of the Target Country**

In this scenario, individual independent recruiters or employment agencies may participate in finding candidates, wherein those recruiters may charge commissions to get workers into these highly desirable government-sponsored programs.

The failures to abide by the law commonly occur because it is a business with high profit potential, thus many people get involved purely for a quick profit with little investment. These opportunities seem especially lucrative to small-time entrepreneurs seeking the large commissions for merely arranging a foreign job for someone else. It is getting more and more expensive too, with the tacit consent of some foreign employers and destination countries that may want to limit the flow of foreign workers into their labor market (by letting it become costlier). The increased expense induces recruiters to find methods that would circumvent any rule or regulation that increases costs. Employment agencies in Thailand generally feel that there are a number of Thai laws that should be amended to reduce the inherent costs, e.g., the current prohibition against advance recruitment before the job vacancy has officially opened, and limitations on the amount of the commissions and fees they may charge. Another unseen cost is evident in graft and corruption by public officials that facilitate employment agency operations ‘for a price’.

Graft and Corruption in Job Recruitment

Corrupt practices undertaken in the worker recruitment business include those committed by:

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

- **High level public officials** who receive or collect money from recruitment agencies directly or become a consultant for recruitment agencies after retirement and utilize their connections within the government to influence state officials to overlook misconduct by the agencies.
- **Politicians** who run their own recruitment agencies, have a proxy owner for a recruitment agency in which they possess a controlling interest, collect money from recruitment agencies directly or who improperly utilize their position as members of the Labor Committee in the parliament.
- **Politicians and high public officials who inappropriately intervene in the actions of state practitioners to oversee and discipline the operation of recruitment agencies**

Problems with the recruitment process in Thailand: Some governmental authorities have apparently prevented severe penalization or stricter control of employment agency companies. The extent of this problem is reflected in the statistics on complaints and requests for assistance by workers abroad between the years 2004-2008, where complaints filed with the Ministry of Labor were in a ratio of 5-6:1 for males over females. The ratio of complaints registered to the number of cases provided assistance are negligibly different. Out of 15,964 complaints, there were 14,329 that had received assistance; but, on claims totaling THB1.07 billion in monetary settlements, funds actually recovered were less than half the sums demanded (Table 4.1.3). The most common high value complaint was one where the recruiter had charged a large sum of money as a commission, but had failed to arrange work abroad for the client.

Also common was overcharging commissions above the limits allowed by law, and recruitment business being undertaken by unlicensed recruiters. Intent to circumvent the law in travel (wrong visa, failure to declare work intent abroad, etc.) were also quite common, as was sending workers home prematurely. The state can, if it wishes, assess damages against offending employment agencies and gain payment of those damages by deducting them from the employment agencies' guarantee bonds. Yet, this is almost never done, and cases can drag on for a long time and valid claims often still go unpaid. This is largely due to the influence of graft.

Below, we list the major problems in job recruiting in Thailand by the party most responsible for the problems listed:

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

- **Workers and Job Seekers**

The most common complaints from them prior to departure are that they are often duped by exaggerated claims on pay, benefits, working conditions, etc., stated for job opportunities that induce job seekers to pay extravagant sums to get placed in such jobs, but then fail to get sent to work. It is obvious that they lack access to sufficient information to confirm or deny the existence of advertised job postings, so they believe the recruiters rather blindly, rather than consider the precautionary warnings from governmental authorities.

As for post-arrival problems, we found that they often register complaints about being paid less than promised, or working conditions that were considered unacceptable.

- **Employment Agencies**

Infractions committed against workers and job applicants are generally committed by the employment agency or their representative, if not by an independent recruiter. Their frequent habit of forcing job hopefuls to declare that they are traveling to a job on their own cognizance is particularly dangerous for workers after they arrive in the destination country. This leaves them without rights or recourse when any supposed job contract is broken, and forces them to resolve issues without assistance from the recruiter. Over the statistical five-year period we analyzed, 31 employment agencies had had their licenses suspended (about five per year), and 6 had had their licenses revoked for such misconduct, out of 218 licensed companies.

- **Unlicensed Small-Time Recruiters**

This segment of the industry is responsible for some of the most aggressive and onerous exploitation of job seekers and workers, reaching as they do into the most basic grassroots rural communities to purvey ‘dream jobs’, especially when they charge, and get, exorbitant sums for non-existent jobs.

- **Government Officials**

Government precautionary warnings and announcement about recruitment problems, especially with regard to ‘small-time’ unlicensed recruiters seem to be falling on deaf ears. They need to try harder. Government-sponsored orientations and seminars provide too little information and are too short to include more worthy content. Government officials also need to more severely punish employment agencies and other offenders.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Attempts to Enforce the Law

The original Recruitment and Job Seekers Protection Act of B.E. 2511 (A.D. 1968) and its amendments in 1985, 1994, and 2001, sought to reduce circumvention of the law by businesses involved in recruiting personnel for foreign jobs, as well as protect workers and job seekers better than in the past. However, the law as it stands today still has a number of limitations, where all of the above infractions are commonly being committed, i.e.,

- Recruiting without a license
- Circumvention of legal procedures pursuant to employment abroad
- Failure to declare the intent to travel for employment abroad
- Failure to secure and submit proper documentary evidence and a valid employment visa
- Sending workers to informally 'sublet' an employment contract without proper consent
- Operating without a license to avoid depositing a guarantee bond
- Announcing jobs abroad without the prior consent of the DOE
- Overcharging on commissions and fees
- Being party to falsely declaring a job taken on one's own cognizance
- Deception and fraud in accepting payment for a placement where no job exists.

Limitations to Enforcement

The illegal acts above are sometimes induced by difficulties in operating a recruitment business as defined by current laws. Problems with enforcement thus include:

- Personnel Shortage
- Ineffectiveness of the orientation program for the workers
- Deficiencies in providing assistance to workers in the countries of destination and unclear delineation of roles for government agencies

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

- Compromises, out of court settlements and exertion of undue influence on state practitioners overseeing the operations of the employment firms
- Jurisdictional limitations for law enforcement entities in providing protections for workers outside of the country

Other Illegal Acts

Other than the above offenses and ploys, there are five other forms of illegal practices, being those undertaken by:

1) Foreign employment loan services
2) Tour companies
3) Matchmaking services
4) Language schools
5) Job skills training schools

These businesses make wild advertising claims to lure job hopefuls into thinking that through that business, there exists an easy route toward obtaining foreign employment without undergoing normal formalities. These businesses are usually not properly licensed, but nevertheless operate quite aggressively in seeking out persons interested in foreign job placement, often going deep into rural communities to attract new clients.

Deceptions by unlicensed recruiters or brokers

Unlicensed recruiters include those who can find work for their clients, as well as those who cannot, or do not intend to. False claims made by them include ‘good work’, ‘high pay’, ‘quick hiring and travel’, etc., but this all comes ‘at a price’, they say, wherein the client has to pay the commission quickly, too. After they are paid, they may connect a prospective client with a job that is not as good as they have said, or they may not find any work for them whatsoever. The victims may go so far as to allow themselves to be duped repeatedly and paying more again on the hope of an eventual job, because they believe these community-level recruiters more than they do big recruitment company representatives or government labor officials that are outsiders to their community.

Small-scale local recruiters include community residents, those from outside the community, but in the general locality, as well as recruiters who are traveling representatives of the foreign employment loan services and language schools illegally engaged in recruiting. The

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

number of recruiters has increased further with the prevalence of persons representing domestic and foreign employment agencies. They each have their own techniques used to attract potential clients, but they are one and all intent on the same goal: to build credibility within rural communities so that people believe that they are capable of placing workers in attractive foreign jobs.

The deception and fraud involved in the dispatch of Thai workers to Sweden and Finland to harvest wild fruit, and other Thais lured into untenable work situations in Dubai are examples of the work of unlicensed domestic job placement services, as well as foreign recruiters operating illegally in Thailand. In some cases, their activities are nothing short of human trafficking. However, the case of the Thai worker who had been placed by a licensed employment agency in a Taiwanese job, but failed to receive the position he had contracted for, accepted the new position for a short time, then returned home prematurely, was definitely a case of intentional deception, but clearly not a case of human trafficking.

A measure of whether fraud and deception committed against job hopefuls may constitute human trafficking might be whether the exploitation of the worker has included being imprisoned or confined in limited quarters, starvation, torture, sexual abuse, denial of pay, slavery, forced prostitution, accidental injury to the extent physical handicap or loss of life without life without compensation.

5.2 Discussion

The first point of contention we would like to analyze and critique would be, *"Why do an inordinate number of Thai job hopefuls gravitate toward unlicensed and improperly operated job placement services rather than licensed, formalized employment agencies? Why are they so satisfied with the informal, unlicensed recruiters and are so quick to pay them large sums of money without proper evidence of the authenticity of their claimed job opportunities?"*

Academic studies into these questions have been addressed in a number of studies, e.g., *Halfacree and Boyle – 1993,* in their study on student selection of countries for higher study, where it is demonstrated that young people from working class backgrounds tend to remain in or near the cultural roots more than middle-class young people, whereas *Hodge 1985* demonstrates that the 'service class' may

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

be more liable to migrate to far-flung destinations for employment than other job categories.

Workers, as human capital, all have cultural roots and a sense of *habitus* toward a specific regional type where social structures inhibit class mobility *(Bourdieu – 1984);* some persons may naturally perceive foreign job opportunities as a form of 'stairway to heaven' *(Fielding – 1992)* not available to them in their own culture. A kind of common sense attitude that has been termed 'practical consciousness' *(Giddens – 1984)* infers that there exists a form of commitment by them toward desperate choices amid few perceived opportunities, i.e., one of '*throwing all caution to the winds*' when the person feels the aspiration to better oneself beyond likely opportunities in their native social system; thus, we find Thai workers and job aspirants often do not bother to consider precautions relative to recruiters offering that chance to better themselves. It is a 'discursive consciousness' *(Giddens)* that denotes a tendency toward a 'common sense' approach – without any attempt to research the facts – on any decision based on the data available to them relative to the job opportunity and the destination country *(Molho 1986, Thrift 1985).*

They may consider the risk relative to the probable 'cost-benefit', weighing the gamble of commission cost against pay they may stand to gain rather more shrewdly than some may expect. That they may face unexpected difficulties in the host country later on is in itself part of the allure of the adventure *(Giddens),* being a 'hedonistic type of migration' *(Taylor – 1969). Researchers view this behavior toward migration as rather indiscriminate, being intent to escape the circumstances they currently find themselves in for the hope of a better life.*

As for the tendencies and preferences of those who are not very selective toward the job position they seek or the destination countries that they find acceptable, we note the opinions of those who have provided a large proportion of the data used in this study:

"*In Thai society, there is a set of accepted beliefs that sway opinions without due recourse to the available facts. Familiarity with these concepts often outweighs logic. Job hopefuls may place greater faith in local community recruiters because of 'their familiarity'…and may be unwilling to trust others simply because they are not members of their own communities.*

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

"If one examines Thai society in general, it can be seen that there is a definite social preference to not venture out and seek contacts on one's own, but rather to sit at home and wait to be contacted…a reticence toward proactive engagement. As with the direct sales approach, where it is assumed that choice and discrimination is largely dependent on suggestion, we can see that they have the general assumption (as suggested to them by recruiters) that once they get abroad, someone will help them along toward their goals; it is a concept they fervently believe! An important corollary to this is that, "If Thai workers had greater resources with which to help themselves in the first place, the amount of money that they would be willing to invest in going overseas would actually drop!" The (local unlicensed recruiters) succeed in capturing the rural market for job placements because they go straight to consumers' homes to contact them, help them with such mundane and unfamiliar matters as documentation, getting a medical examination, etc., in other words, they provide an all-inclusive service right to their doorstep." (From interviews with a key informant, December 29, 2009)

A further explanation on why job seekers do not attempt to gather relevant information regarding proposed job opportunities abroad, and instead place their futures in the hands of recruiters whom they expect to add value to their lives so as to prevent deception cases, is provided in the 'Recommendations' section.

The second point of contention that we would critique here is the lack of transparency in the recruitment business, and constant attempts to circumvent the law. This study was faced, from the beginning, with obstacles to direct contacts with employment agencies and private recruiters. Many companies cancelled prior appointments for interviews saying that they were not yet ready to provide any insights or made the excuse that the managing director was 'not in'. Thus, we had to depend on a knowledge of their activities by persons personally familiar with them, plus data available from governmental labor resources. This was all due to a lack of transparency in the business, or expressed another way, habitual secrecy, often to avoid prosecution for illegal practices.

Things they wish to conceal include recruiting in advance for positions when they do not yet have an opening, or overcharging on commissions, plus shortcuts in orientations and other preparations, etc.

Some otherwise legally proper employment agencies may

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

report to the authorities a job description for a vacancy that is intentionally incorrect. Job seekers believe this official version and invest in them, placing substantial commissions, only to find after arrival that the real job that they have been contracted for is somewhat different, and probably not as good as the one described during recruitment. Nevertheless, when they actually arrive abroad, they tend to accept inferior jobs that are less attractive than the ones they had agreed upon before departure. They will be cognizant that they have already invested a large sum and feel forced to try to recoup that loss.

Excesses in the commissions charged are covered by the job seekers themselves, who are advised by their recruiters to conceal the true sums paid and quote somewhat less when declaring themselves to government officials before departure. The general lack of transparency in recruitment business thus causes it to be full of insincerity. Standards of good governance should be earnestly applied to this industry, lest it become largely one of intentional exploitation, slavery and human trafficking lacking any credibility whatsoever.

The third point of contention to be critiqued is interference by politicians and retired high public officials in favor of employment agencies. Their involvement promotes an attitude of complacence toward breaking or circumventing the law, because agencies then assume that they will be protected from severe punishment for any infractions of the law. Those public figures involved in the protection of employment agencies are of course receiving monetary inducements for their aid.

Corruption in the Ministry of Labor has existed since its inception. Current Labor officials admit that this is true to some extent, but express their belief that the problems are more commonly a matter of politics within the government, where ministerial portfolios are often filled with party politicians seeking personal benefit from their posts while in office.

As for bureaucrats that have irretrievably dishonored themselves by succumbing to corruption, it is not very clear whether interference with migrant labor matters is primarily of function of maneuvering by political parties for some agenda of their own, or purely a manifestation of personal greed…or equally both. The Labor ministerial post has largely gone to the New Aspiration Party in recent years, with occasional sharing of Labor posts with the Democrat Party in the past; however, no political party has been seen to undertake a

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

platform of reform toward labor affairs. The foreign job recruitment industry needs to introduce good governance concepts and abandon attempts to use political interference and/or bureaucratic corruption, as well as operate in an environment of fairer adjudication in labor-related lawsuits, court appeals and punishments. There is also a need for employment agencies to employ candidate review committees to select recruits, rather than leave such matters to single individual recruiters; the entire recruitment process needs to be inspected and audited at regular intervals.

At the same time, The Labor Ministry, with their increasingly important role as the overseer to an ever expanding and more competent labor force, needs to ensure that they are not so easily deceived and exploited by opportunists seeking an easy profit at their expense; it is also the Labor Ministry mission to improve the quality of our human capital, especially in such areas as linguistic abilities and higher technical skills.

Deception of Thai workers by opportunists clearly leads to exploitation that is often tantamount to human trafficking and slavery. When the simple dream of bettering one's life by seeking employment abroad becomes a path leading forced confinement, starvation, torture, sexual abuse, slavery or indentured servitude, prostitution or abandonment after seizure of their travel documents, etc., such acts against workers clearly constitute human trafficking.

There are greater and lesser incidents of this crime, where the milder forms might include failure to pay overtime to workers, paying workers less than the contracted basic salary rates, or the placement of workers in jobs other than the ones contracted, or any other form of deception and intentional exploitation. We need to establish better defined guidelines to combat such crime, and prevent all forms of human trafficking in employment.

The fourth point of contention is that recruitment agencies need to do better at following ethical practices in operating their businesses in order to avoid exploitation of job seekers and to support Thai workers who endeavor to go overseas in order to improve their financial situation. Such workers benefit Thailand both through their own professional development and in their contribution towards a more prosperous and equitable society. An important aspect of the current situation of inequitable economic opportunities available to them within Thailand is that the income scales for laborers have expanded very little

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

in the past 30 years in comparison to the increased standard of living in the country as a whole. This has resulted in many workers earning an insufficient income to maintain a decent living standard and caused them to seek overseas work in order to earn a higher income than is available to them in Thailand. In pursuing solutions for the problems faced by Thai workers who go to work overseas, the structural inequalities they face within Thailand that push them into positions of vulnerability to labor exploitation must be considered.

5.3 Recommendations

We have six general suggestions to make toward the problems we have found with foreign job recruitment in Thailand, outlined in detail below:

5.3.1 Aggressive Restructuring of Procedures and Mechanisms for Recruitment

- **<u>Prevention of Exploitation and Human Trafficking</u>**

(1) Aggressively strengthen our efforts to disseminate news and information to the populace via existing channels such as 'Labor Volunteers' and door-to-door campaigns reaching every administrative district of the country, especially in rural areas and where it has been statistically shown that predatory recruiters have been most active. Use *community workers and contacts to reach grassroots citizenry*, and take that opportunity to educate them about the dangers of placing too great faith in opportunistic recruiters.

(2) The DOE should devise long-term operational plans to combat worker exploitation and prevent further cheating of job hopefuls, especially in districts where there has historically been a high prevalence of such crime.

(3) As suggested by an informant in this study, since senior public officials within the Ministry of Labor have in the past exhibited corrupt behavior, it is suggested that they undergo orientations specific to good governance so that they may be apprised of their duties toward recruitment business.

(4) A campaign should be organized to dissuade Thai women from attempting to travel on a tourist visa to another country to work as a masseuse (or to undertake travel abroad on their own recognizance to work at spas).

(5) There is a need for greater cooperation with INTERPOL in order to investigate and punish human traffickers and other transnational criminals.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

(6) The Ministry of Labor should cooperate with the National Human Rights Commission of Thailand in protecting job applicants and migrant workers. Specifically, investigations into the issue of human trafficking among laborers should take place in order to prevent continuing malfeasance.

- **Management of Recruitment Operations**

(1) Unlicensed job placement services and individual recruiters have already been encouraged to get licensed. The next step should be to establish harsher penalties for recruiting without a license. Registration for licensing should be conducted through the Department of Employment. The case studies conducted confirmed that it is possible for individual recruiters to register.

(2) The law should be amended to prohibit unskilled or semi-skilled workers from traveling to work abroad on a declaration of accepting work on their own cognizance. Only skilled workers (and/or career professionals) should be permitted to do this.

(3) There should be aggressive enforcement of the law against job placement services and independent recruiters who openly engage in using public name lists to contact workers and offer foreign jobs. They should be arrested without the prerequisite of corroborating witnesses or having already received commissions.

(4) A domestic employment agency should be required to register the names of foreign employment agencies they cooperate with on recruitments, in order that both agencies be responsible for commission cost control, unless the operating country of the foreign agency already has legislation controlling how much they may charge. If the country of destination does not have a name registration system in place, the domestic employment agency should register the name of the overseas employer.

(5) A mandatory orientation seminar should be given to all recruitment business staff on relevant laws and specific illegal acts that will not be tolerated, including unacceptable forms of circumvention of the law.

(6) Monitor and discipline the business activities of foreign employment loan services, tour companies, matchmaking services, as well as skills training centers and language schools within communities where rampant abuse of the law and job seekers has statistically been highest.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

(7) Forbid any worker 'acting alone on one's own cognizance' from making such declaration in any province other than their home domicile; this would help deter Thai workers from being duped by procurers and recruiters outside their communities.

(8) Get the cooperation of news publishers and broadcast media (including 'community radio stations') to disseminate information and news to job seekers to ensure that they are more aware of the pitfalls of illegitimate recruiters, especially in the Northeast and Northern regions.

(9) Allow members of the Overseas Workers' Assistance Fund to borrow from the fund for preparation activities

- **Sweeping Reform of Pre-Travel Orientations and Procedures Prior to Leaving for Work Abroad**

The pre-travel orientation should be extended to 5-10 days. Managing officials and lecturers should be taken to see conditions in job destination countries to understand what workers must be prepared for, and prospective workers should be given mandatory language training to ease their adaptation to the new work environment. Workers must be made aware of the pitfalls and traps that cause them to become victims of human trafficking.

Curricular materials might be derived from the Asian Research Center for Migration of the Institute for Asian Studies, Chulalongkorn University, as well as the Sociology Department of Khon Kaen University and/or the Office of Consular Affairs (Ministry of Foreign Affairs) to train outgoing workers based on a pilot program in 2010. Orientations held at the provincial, regional or national levels must all be refined and lengthened over the 5 hours presently designated, even though they may not yet be approved by the Office of Consular Affairs.

- **Promoting and Encouraging Job Seekers to Access Employment through Government-to-Government (G2G) Recruitment Procedures**

5.3.2 Create Public Awareness among Workers, Youths and within Society toward Bona-Fide Foreign Employment vs. Traps Used to Lure the Unwary

- Improve on the quality of voluntary seminars about foreign employment for the general public to include specific details about the

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

process of finding such work, plus the offering of English language linguistic training, an overview of Thai law, and advice on attitude improvements for workers going abroad (‘conscientiousness, frugality, loyalty, perseverance’). A pilot program with close monitoring is advisable.

- Improve the quality of Thai human capital: It should be a prerequisite for Thai workers intending to work abroad that they have some knowledge of the English language or the language of the destination country. Passing of a proficiency examination should be a pre-departure requirement.
- Disseminate information that can assist the populace with recruitment. List the names of legal employment agencies (all 218). This would help them discern which companies are legally responsible and those which are not. This would help workers themselves to participate in prevention of human trafficking. The workers should also be provided with information on how to confirm the veracity of claims by recruiters (e.g., name of prospective employer, job position(s) available, etc.) as well as about the labor laws of the country of destination.
- Drastically restructure public notices, devise proper timing for campaigns and proactively follow up on them in communities.
- Build on community resistance to exploitation of workers through education; ensure that people know the risks of human trafficking. The Ministry of Education should have a hand in this. Programs should be in place to instruct students at M.S.3 level and above within the educational system.
- Other than the media channels mentioned in the foregoing text, other channels that might be considered for dissemination of news and information about human trafficking might include fairs, concerts and other public events.
- Improve awareness and provide planning checklists for outgoing workers.
- Coordinate the use of resources by government offices and NGOs during and after campaigns and provide a sufficient range of information to workers to address their needs for all overseas employment sectors.
- Build the desire of Thai workers experienced from jobs abroad, when back, to advise outgoing workers and job hopefuls about

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

working conditions, etc., so that they may achieve the highest benefit from their services and can negotiate better compensation later on.

- Develop the quality of licensed job placement services so that they may perform in the international job market better and more competitively. Monitor them with regard to:
  - Foreign job brokers trying to sell job vacancies in Thailand; forbid this!
  - The sale of employment agencies to previously unlicensed owners
  - Helping to maintain a steady flow of vacancies in the job market
  - Maintaining good contacts with foreign employers and other facilitators
  - …and hold competitions for the 'best employment agency' with recognition for good service!

5.3.3 Monitoring and Control of Job Placement Services

- Make sure that there has there been adequate follow-up on placements, and if necessary, blacklisting of any party failing to abide by the law and fair employment practices. Any worker walking out on a legally proper and honestly conducted job position should be banned from further international placements for three years.
- All outbound workers should be legally required to join the Foreign Workers' Welfare Fund before departure.
- Provide recorded English lessons to workers while abroad, so that they can improve themselves while they are there, rather than giving such materials to them before they depart has limited hope of success because they will feel a greater need once there.
- Add personnel to Thai Labor Ministry offices abroad, especially legal experts, and move Labor offices from countries with now few Thai workers to countries where the number of Thai workers has grown significantly.

5.3.4 Amendments to the Law and Enforcement

- **Changes to the Law:**

1. Amend the law to permit any licensed job placement service to be able to operate and recruit in any province in the country and may establish offices abroad, where permitted by that country.
2. Amend the law to permit any licensed job placement service to recruit personnel in advance and access names in the 'Labour

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

Bank' of Thailand Overseas Employment Administration (TOEA) for potential recruitment.

3. Develop rules and regulations that require job seekers to undergo prerequisite preparations mentioned in 5.3.1 before allowing them to have their name added to lists of recruitable personnel.

4. All independent private recruiters must be licensed.

5. Task the police force with the arrest and prosecution of unlicensed recruiters.

6. Make it a crime to deceive or misrepresent a job opportunity, and be subject to immediate arrest, whether money has changed hands for commissions or not.

7. Make more severe the punishments for deception, fraud or exploitation of job seekers during recruitment activities from paying the fine of 200,000 baht or imprisonment for 10 years, and making them commensurate with the criminal punishments for human trafficking in accordance with the Recruitment Act . Such punishments should be applied to businesses and individuals engaged in such practices.

8. Set harsher penalties for offenders involved in corruption vis-à-vis recruitment business.

- **Enforcement:**

1. Swift and thorough enforcement of the law is needed by recruiting more personnel to monitor the operation of the recruitment agencies. Bail bonds should not be allowed on the more serious crimes as there is the distinct possibility that the suspects may flee to escape punishment, given their international connections. Offenders should be placed on DSI blacklists to prevent their further involvement in recruiting business. Personnel with legal knowledge should be placed in countries where workers are located.

2. Prevention on the exertion of influence on state practitioners is needed. For example, court appeals on cases where employment agencies have been previously found guilty, or in initial deliberation where they are being tried for offenses above the individual government department's jurisdiction should, by default, be adjudicated exclusively in jury trials. Additional training for staff in order to increase their capability to enforce the laws is also needed.

3. Punishment for personnel who do not strictly follow the rule of law should be increased in severity as their actions may result in deception, fraud or exploitation of workers.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

4. Adjustment of the pre-departure orientation program for workers is needed. The content of the program should be broadened and workers should be tested after completing the program to ascertain whether they are ready for departure. Those who do not pass the exam should not be allowed to depart.

5. International laws, particularly those related to transnational organized crime, should be taken into account when deliberating cases of deception of workers related to a transnational network. Even when they do not turn out to be human trafficking cases, a greater level of cooperation with Interpol is essential so as to deal with the limitations of labor protections provided under Thai laws.

5.3.5 Liaison and Cooperation

1. There should be direct formal liaison between the DOE, Skill Development Promotion Division (SDP) and Office of Consular Affairs, with clear delineation of responsibilities toward workers.

2. There should be an exchange of information between many government agencies, e.g., with our consulates and embassies abroad, and the Ministry of Social Development and Human Security to combat human trafficking and exploitation.

3. There should be an exchange of information between governments on matters related to combating human trafficking and exploitation, especially on companies involved in such activity, e.g., a Chinese tour company that was found to be really a front for luring Thai women into prostitution in Dubai. The Thai government lacked any information about that company, though apparently such information may have been available from sources outside the country.

4. There should be an exchange of information and close liaison between the police forces of Thailand and destination countries to assist each other in the apprehension of parties involved in human trafficking, extradition and prosecution of offenders.

5. Liaise with victims of human trafficking to get them present evidence and act as witnesses against offending recruiters, employment agencies, etc., as well as to add to data at the DOE and Thai National Police.

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

5.3.6 Prevention of Corruption and the Peddling of Influence

- Forbid politicians (MPs, senators, or their advisers), as well as senior public officials or their families from engaging in recruitment business directly or through nominees or in any other manner that exhibits a vested interest in recruitment businesses throughout their active careers and for at least three years after their retirement.
- Consider appropriate punitive measures for public officials that use their influence to benefit job placement services, especially when that participation conflicts with effective enforcement of the law, or protects wrongdoers from punishment.
- Filter out any politician with a Labor portfolio who already has a conflict of interest with respect to job placement services, and review the foreign travel of such persons to investigate whether they have had any connection with human trafficking.

5.3.7 Policies and Strategies

- Change the major focus of Thai workers being recruited for foreign employment from unskilled workers to semi-skilled (e.g., medical assistants, computer technicians, restaurant service personnel, drivers, etc.), skilled and professional workers. Seek out new job markets for them. Establish a standard that all workers should have basic language capabilities for their destination country before departure.
- Promote international cooperative recruitment arrangements with reliable job placement services and agencies in destination countries, especially those that can offer semi-skilled worker or service personnel positions.
- Monitor and control the Foreign Workers' Welfare Fund to ensure it is used effectively to assist workers abroad that have fallen into hardship.
- Invigorate *the Committee for the Development of Recruitment Business and Protection of Workers* (headed by the Asst. Minister of Labor), with members from the Ministry of Foreign Affairs, unions, Inspector General's Office, DOE and others take the lead on development of strategies and policies to protect and develop Thai workers, as well as ensure transparency in recruitment business. They are also needed to tackle corruption and abuse of power and influence,

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

and should liaise with the Ministry of Justice and other governmental bodies at senior levels, as well as representatives from civil society.

- Use the MOU between the Ministry of Labor and Ministry of Social Development and Human Security on the matter of human trafficking to implement all manner of investigation and enforcement of the law to reduce exploitation, at least in its most onerous and despicable forms, so that workers can better themselves without fear of being abused.
- Analyze the difference between the rate of payment that workers would receive for working domestically in Thailand and those received for similar work in their destination countries so as to improve the rate of domestic payment in accordance with the increasing standard of living in Thailand. This will assist with attracting more workers (especially those who are unskilled and who lack foreign language capabilities) to work within the domestic market.
- The Thai Government should consider acceding to International Labor Organization Convention No. 97 on the recruitment of foreign workers which states that job seekers should not be charged for services during the recruitment process or for information provided during the process. Employment service providers must collect such fees from the employer and the employer is prohibited from reimbursing said fees from their employees' wages. In addition, the Thai Government should develop policies to encourage good practices for labor recruitment. For example, the establishment of effective programs for national labor registration, language training, training of foreign employers and state officials on the cultural and religious differences between employers and employees, vocational training, recordkeeping of complains, remedy of problems faced by individual workers, and organization of support groups for workers to provide mutual aid while overseas. *(Bohning – 1998: 78-110).*

แก้ไขล่าสุดวันที่ 24 ม.ค. 54 เตรียมพิมพ์

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