

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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Question

Please provide information about the various ways in which household registration ceases, in particular whether this happens when a person travels overseas, and whether people can gain employment without this registration.

RESPONSE

Please provide information about the various ways in which household registration ceases, in particular whether this happens when a person travels overseas, and whether people can gain employment without this registration.

Previous research responses have considered the household registration (*ho khau*) system in Vietnam and in particular one from May, 2005 describes the operation of the system as outlined in *Decree No. 51-CP of May 10, 1997 on Household Registration and Management* (Attachment 1). It also considers the role of local authorities and rural and urban differences in how implementation of registration occurs (RRT Country Research 2005, *Research Response VNM17324*, 16 May – Attachment 2). In a more recent response, changes associated with the introduction of the new Law on Residence in the middle of 2007 are also referred to in reference to a VietNamNet website report of a woman who had lived in Hanoi for 10 years without local registration:

Huong came to Hanoi from the northern province of Phu Tho to attend university and then stayed. She and her family were among an estimated 500,000 migrants in the city for whom a household registration book had become something of an obsession.

The book is a ticket to such basic rights as owning a home, finding a job in a State-run office, or sending children to school. Despite living in the city for dozens of years, finding a job, and otherwise working around the lack of official residence in the city, Huong and her family were treated as second-class citizens because they did not have a household registration book.

“Much of my property is in the name of others,” she pointed out. “For instance, my house is in my uncle’s name,” she said. “In my office, I worked only on short term contracts because I couldn’t provide a household registration book.”

Sending her eldest child to school was a major challenge. She had to fill out dozens of forms and eventually knock on friends’ doors to ask for help before her son was finally accepted to a primary school in Hanoi.

As of July 1, many migrants no longer face such troubles.

Clause 19 of the new Law on Residency provides that all citizens who maintain legal accommodation for at least a year in a province can register for residency in that location.

Registering permanent residence in the centrally-administered cities of Hanoi, Ho Chi Minh City, Hai Phong, Da Nang and Can Tho, in particular, become much easier than before.

About 2.2 million people nationwide would qualify to be granted a household registration book at the moment the new law takes effect, many in the leading cities of Hanoi and Ho Chi Minh City, said Lt Gen. Pham Van Duc, deputy general director of the Police Department under the Ministry of Public Security.

...

The Law on Residency is an important step in Vietnam’s legislative effort to help citizens realise the right of freedom of residence, guaranteed in the constitution.

During the process of drafting the law, many different opinions were expressed as to whether to maintain or eliminate the household registration book. Lawmakers, however, decided to retain the form as a useful tool to administer residency and focused on reforming administrative procedures and reducing inconvenience and hassles for the public.

The procedures of registering temporary and permanent residence would become simpler and more transparent, said Duc.

It would also help eliminate the ask-and-give system, he said, and would forbid actions by officials to prevent citizens from registering and using the book (or lack of a book) to limit citizens’ rights and legal interests. It would also forbid taking bribes or collecting unauthorised fees and other types of authoritarian behaviour (‘Migrants granted home registration books’ 2007, VietNamNet website, 3 July <http://english.vietnamnet.vn/social/2007/07/713323/> – Accessed 11 March 2008 - Attachment 3).

The new law appears to have overcome some of the impediments which prevented legal residence, either permanent or temporary, which existed previously. In a summary of some of the principal aspects of the law, the right to freedom of residence is highlighted:

The Law of Residence asserts that citizens are entitled to the right of freedom of residence. Accordingly, citizens have the right to choose and decide where to live or temporarily live in conformity with the law.

Non-local residents who are eligible to permanently or temporarily reside in a city can request that local authorities issue a *ho khau* (household register) or a certificate of temporary residence to them.

Citizens have the right to request that local authorities issue or re-issue a *ho khau*, a certificate of temporary residence or other residential papers to them or provide them with necessary information relating to the implementation of rights of freedom of residence.

Citizens can also request that local authorities act appropriately to protect their rights of freedom of residence. Citizens have the right to lodge a complaint and take legal action against any act that violates the Law on Residence.

The Law on Residence strictly forbids any act that prevents citizens from realizing their rights of freedom of residence, abuses regulations of *ho khau* to restrict citizens' legitimate interests, or cause difficulties and asks them for bribes ("Some Key Points on Law of Residence" 2007, *Saigon GP Daily*, 13 June, <http://www.saigon-gpdaily.com.vn/Law/New/2007/6/56280/#> - Accessed 12 August 2008 – Attachment 4).

In another report later that month in the same publication, a number of questions were put to the Head of the Police Bureau of Administrative Management on Social Order in an on-line exchange, including the following, which related to a returning citizen:

My daughter went to study abroad in 2002 and her name was removed from the *ho khau*. Can she apply for a *ho khau* again when she returns to Viet Nam? What papers will be needed for the application?

Answer: Based on Article 2 of the Law on Residence, Vietnamese people who live in a foreign country but still retain their Vietnamese citizenship can apply for a *ho khau* when returning to the country to live ("Online Exchange between Police Leader and SGGP Readers about Residence Law Implementation" 2007, *Saigon-GP Daily*, 29 June, <http://www.saigon-gpdaily.com.vn/Law/2007/6/56583/#> - Accessed 12 August 2008 – Attachment 5).

The Research Section attempted to access a copy of the English translation of the new Law on Residence from various internet law websites, and a law firm which has a subscription service to a number of Vietnamese laws, but one could not be located.

The US State Department commented on developments in 2007:

During the year the National Assembly implemented a controversial new Law on Residence that allows the MPS to retain the system of residence registrations. Many citizens believed that this government practice effectively served as a barrier for individuals and families seeking to move within the country and become legal residents of a new province or city. By law the MPS restricts the number of residency registrations issued, for example, for Hanoi and Ho Chi Minh City.

Many persons continued to migrate without approval, especially laborers moving from rural areas to cities in search of work. Moving without permission hampered persons seeking legal residence permits, public education, and healthcare benefits. Foreign passport holders must register to stay in private homes, although there were no known cases of local authorities refusing to allow foreign visitors to stay with friends and family. Citizens are also required to register with local police when they stay overnight in any location outside of their own homes; the government appeared to have enforced these requirements more strictly in some

districts of the Central and Northern Highlands. (US Department of State 2008, *Country Reports on Human Rights Practices for 2007 – Vietnam*, March - Attachment 7)

A recent conference paper which examines labour migration and taxation payments in Vietnam provides a general overview of the formal mechanics of the registration system, but also suggests that registration is no barrier to those who seek to work elsewhere;

The household registration system (*ho khau*) made it particularly complicated to change permanent residence from one district to another, allowing for temporary registration for students or party cadres. The *ho khau* system divided people into four categories...Beyond these four categories of residence, the category of non-registered is exploding today. Migrants from nearby provinces flood into the industrial zones without bothering to register at all, returning home for the weekend. Even migrants from farther away often fail to register and live in boarding houses or in the back room of the restaurant or small family firm where they work. While a number of industrial workers are unregistered, the majority of unregistered migrants work in the unofficial household economy. (Jandl, Thomas 2008, "The Changing Realities of Labor Migration and Tax Allocation in Vietnam: Is There a 'Federalism' Problem among Early and Late Developers?" WISC Second Global International Studies Conference, Ljubljana, 23-26 July, <http://www.wiscnetwork.org/papers.php?char=9> – Accessed 15 August 2008 - Attachment 8)

In relation to whether household registration ceases, the 1997 Decree on Household Registration and Management includes the following clause:

Article 16.

...

Persons who have been absent from their permanent place of residence for more than 6 months without registering their temporary absence and without plausible reasons shall have their names crossed out from the household registration book. When they return, they must re-apply for registration of their permanent residence as stipulated.

With regard to those persons who have registered their permanent residence but who in fact do not live in their permanent residence address without any plausible reasons, or cannot live there, the household management agency must cross out their names in the household registration book.

Bribery was also formally proscribed by the 1997 Decree:

Article 19.

...

Persons assigned to look after settling household registration and management violate the stipulations of this Decree or misuse this work to take bribes or cause trouble to citizens shall be subject to administrative discipline or examined for penal liability, depending on the character and seriousness of the violation (Vietnam Minister of the Interior 1997, *Decree No. 51-CP of May 10, 1997 on Household Registration and Management*, 30 June - Attachment 1).

Household registration and employment

In addition to the discussion in the May 2005 research response referred to above, the Viet Nam Labor Code states that

Section 5. (1) All persons shall have the right to work, the right to freely choose an employment and occupation, to learn a trade, and to improve professional skills without any discrimination in respect of sex, race, social class, creed or religion.

(2) Maltreatment of workers and the use of forced labour in any form shall be prohibited.

(3) Every activity that generates employment, constitutes self-employment, and teaches or involves the learning of a trade for employment, and every production or business activity that absorbs abundant labour shall receive encouragement, favourable treatment and assistance from the State.

The code also allows employees to seek employment without restriction by location;

Section 16. (1) Workers shall have the right to be employed by any employer in any location not prohibited by law. Persons in search of employment shall have the right to apply to the employer directly or to register with an employment service agency in order to find a job to suit their aspiration, ability, qualifications and health.

(2) The employer shall have the right to recruit workers directly or through employment service agencies, and to increase or reduce its labour force to suit production and business requirements and in compliance with the provisions of the law. (Socialist Republic of Vietnam 1994, "Labour Code", 23 June, ILO website <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/38229/64933/E94VNM01.htm> - Accessed 14 August 2008 – Attachment 6)

List of Sources Consulted

Internet Sources:

Government Information & Reports

US Department of State <http://www.state.gov/>

UK Home Office <http://www.homeoffice.gov.uk/>

Immigration & Refugee Board of Canada <http://www.irb-cisr.gc.ca/>

Non-Government Organisations

European Country of Origin Information Network <http://www.ecoi.net/>

Region Specific Links

Vietnam Law and Legal Forum

http://news.vnnet.vn/vietnamlaw/Reports.asp?CATEGORY_ID=3&SUBCATEGORY_ID=8&NEWS_ID=2149

Vietnam Net website <http://english.vietnamnet.vn/politics/2007/06/703596/>

Asian Legal Information Institute <http://www.asianlii.org/resources/269.html>

World Legal Information Institute <http://www.worldlii.org/catalog/269.html>

World Legal Materials from Asia (Cornell University)

<http://www.law.cornell.edu/world/asia.html#vietnam>

Vietnam Law Documents <http://coombs.anu.edu.au/~vern/luat/luat.html>

Update Vietnam Legal Research <http://www.nyulawglobal.org/globalex/vietnam1.htm>

Just Law Links – Vietnam <http://www.justlawlinks.com/GLOBAL/asian/asian-vietnam.htm>

Search Engines

Google <http://www.google.com.au/>

Google Scholar <http://www.google.com>

Alta vista <http://www.altavista.com>

Clusty <http://www.clusty.com>

Databases:

FACTIVA (news database)

REFINFO (IRBDC (Canada) Country Information database)

BACIS (DIAC Country Information database)

ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)

MRT-RRT Library Catalogue

List of Attachments

1. Vietnam Minister of the Interior 1997, *Decree No. 51-CP of May 10, 1997 on Household Registration and Management*, 30 June. (FACTIVA)
2. RRT Country Research 2005, *Research Response VNM17324*, 16 May.
3. ‘Migrants granted home registration books’ 2007, VietNamNet website, 3 July <http://english.vietnamnet.vn/social/2007/07/713323/> – Accessed 11 March 2008.
4. “Some Key Points on Law of Residence” 2007, *Saigon GP Daily*, 13 June, <http://www.saigon-gpdaily.com.vn/Law/New/2007/6/56280/#> - Accessed 12 August 2008.
5. “Online Exchange between Police Leader and SGGP Readers about Residence Law Implementation” 2007, *Saigon-GP Daily*, 29 June, <http://www.saigon-gpdaily.com.vn/Law/2007/6/56583/#> - Accessed 12 August 2008.
6. Socialist Republic of Vietnam 1994, “Labour Code”, 23 June, ILO website <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/38229/64933/E94VNM01.htm> - Accessed 14 August 2008.
7. US Department of State 2008, *Country Reports on Human Rights Practices for 2007 – Vietnam*, March.
8. Jandl, Thomas 2008, “The Changing Realities of Labor Migration and Tax Allocation in Vietnam: Is There a ‘Federalism’ Problem among Early and Late Developers?” WISC Second Global International Studies Conference, Ljubljana, 23-26 July, <http://www.wiscnetwork.org/papers.php?char=9> – Accessed 15 August 2008.