

Legislation

Law for Partial Amendment of the Immigration Control and Refugee Recognition Act

[Law No. 73, June 2, 2004; *Shutsunyūkoku kanri oyobi Nanmin nintei hō no ichibu wo kaiseisuru hōritsu*]

I. Introduction

The Law for Partial Amendment of the Immigration Control and Refugee Recognition Act was enacted by the 159th session of the Diet. Considering the present state of immigration control in Japan, it is necessary to decrease the number of illegal foreign residents. It is for this purpose that this amendment reinforces penal sanctions, reviews the period of denial of landing with respect to an alien who has been deported from Japan, and establishes a system for departure orders and revocation of residential status for aliens who are illegally residing in Japan and who also fall within certain criteria. Following the establishment of the refugee recognition system in Japan in 1981, and in light of drastic changes in the circumstances affecting the Japanese system of refugee recognition along with further changes in international affairs, and for the purpose of providing asylum to refugees more appropriately, a system is established to permit the provisional stay of those who have filed applications for recognition of refugee status. Furthermore, a system is established for the obtaining residential status by those who have been illegal foreign residents but who have been since recognized as refugees. Additionally, the appeal system against the measure not to recognize refugee status, and so on, was reviewed. In August 1999, the Council for the Promotion of Measures for Persons with Disabilities decided to review the disqualification clauses regarding persons with disabilities, which might unreasonably prevent such persons from participating in social activities. Following this decision, the scope for denying landing permission for foreign nationals with mental disabilities, and so on, was also reviewed.

This law was promulgated on June 2, 2004. The review of the grounds for denying landing permission for persons with mental disabilities was enforced on December 2, 2004. The measures regarding illegal foreign residents were enforced on August 2, 2004. The review of the Refugee Recognition System is to be enforced on the day designated by Cabinet Order.

II. Outline of the Amendment

1. Measures against illegal foreign residents

(1) Fine increases

With the aim of deterring acts of illegal residence, the following economic sanctions

were reinforced: the maximum fine for illegal entry, and so on, was increased from 300,000 yen to 3 million yen (Article 70); the maximum fine for engagement in activities other than those authorized was raised from 200,000 yen to 2 million yen (Article 73); the maximum fine for the encouragement of illegal employment was increased from 2 million yen to 3 million yen (Article 73-2).

(2) Establishment of a system for departure orders

In order to significantly reduce illegal foreign residents, it is necessary to encourage voluntary appearance at an immigration office, as well as to use the limited staff at the Immigration Bureau effectively, and to establish a system which allows illegal foreign residents to depart from Japan promptly and efficiently. The departure order system was established to permit illegal foreign residents who satisfy all of the following requirements, to depart from Japan without being taken into custody (Article 24-2) if: the alien has appeared at an immigration office voluntarily with the intention of departing from Japan immediately; the alien does not come under any of the grounds for deportation other than overstaying; the alien has not been sentenced to penal servitude or imprisonment on the charge of larceny or other prescribed crimes in Japan; the alien has no past record of deportation, nor that of departure by a departure order; the alien is expected with certainty to depart from Japan immediately. Along with the introduction of this system, overstaying after the period of the departure order (Article 70(1)(viii)-2), overstaying after the revocation of the departure order (Article 70(1)(viii)-3), and absconding in violation of the conditions of the departure order (Article 72(iii)-2) have become punishable. To stay in Japan after the period of the departure order has become a new ground for deportation (Article 24(viii)).

(3) Reviewing the period for denying landing permission

An alien who has been deported from Japan for overstaying the authorized period of stay or so on, and who has re-entered Japan and overstayed again, will be deported from Japan. As a result of the increase of such repeat cases, the period of denial of landing permission for an alien who has been deported from Japan in the past, or who has departed from Japan by a departure order, is extended from 5 years to 10 years (Article 5(1)(ix)-Ha). By the establishment of the departure order system mentioned above, the period for denying landing permission for an alien who has left Japan by a departure order is reduced to 1 year (Article 5(1)(ix)-Ni), to promote the voluntary appearance of illegal foreign residents at an immigration office.

(4) Establishment of the status of residence revocation system

There are a number of aliens who obstruct the fair immigration administration for aliens who reside in Japan, and there is an increasing necessity to apply the system of residential status in Japan in a more appropriate manner. Therefore, to implement immigration control fairly and accurately, a system is established for the revocation of residential status, which clarifies the requirements and effects of revocation, such as a

providing the opportunity to depart from Japan voluntarily without retroactivity in the effect of revocation.

The grounds for the revocation of residential status are the following: the alien has caused an immigration inspector to make an error of judgment in respect of the statement that he or she does not fall under the grounds for denial of landing (Article 22-4(1)(i)); the alien has made a false statement regarding the activities to be undertaken while staying in Japan (Article 22-4(1)(ii)); the applicant has made a statement of facts other than those mentioned in (Article 22-4(1)(iii)); a person other than the applicant has submitted a document that is not based on fact besides the cases other than to (Article 22-4(1)(iv)); the alien staying in Japan under any status of residence has not engaged in the activities corresponding to that of the status issued for three months or more without justifiable reason, and that status of residence granted to the alien becomes merely nominal (Article 22-4(1)(v)). When an alien is regarded as falling under or , the alien shall be subject to the procedures for immediate deportation (Article 24(ii)-2). This is for the reason that these are considered to be violations of serious parts of the immigration control order in Japan. However, when an alien is regarded as falling under any of to , the alien is granted a grace period for departure not exceeding 30 days, during which period he or she may depart from Japan voluntarily (Article 22-4(6)). Along with the introduction of this system, overstaying after the revocation of the status of residence (Article 70(1)(iii)), and overstaying after the grace period for departure (Article 70(1)(iii)-2) have become punishable.

2. Review of the Refugee Recognition System

(1) Establishment of the system for permitting provisional stay

In the old Immigration Control and Refugee Recognition Act, the procedures for recognition of refugee status and the procedures for deportation were independent and were carried out concurrently. Therefore, where illegal foreign residents had filed applications for recognition of refugee status, they were taken into custody and then the procedures for deportation were carried out. Now, to ensure the secure legal status of illegal foreign residents who have filed applications for recognition of their refugee status, the system of permitting provisional stay is preceded by the procedures for recognition of refugee status if they fail to satisfy all of the requirements in Article 61 (for example, an alien falls under certain grounds for deportation, an alien has filed an application for recognition of refugee status six months after the date of landing in Japan, an alien has not directly entered Japan from a territory where he or she was likely to be persecuted and so on). In cases where the provisional stay is permitted, the procedures for deportation will be suspended temporarily while the procedures for recognition of refugee status are carried out (Article 61-2-6(2)). An alien who has been granted permission for provisional stay can stay in Japan lawfully during the period of provisional stay after the granting of permission.

By the introduction of this system, overstaying after the period of provisional stay (Article 70(1)(viii)-4), and absconding from violation of conditions under the permission for provisional stay (Article 72(iii)-3) have become punishable.

- (2) Regularization of the legal status of illegal foreign residents including those who have been recognized as refugees

To regularize the status of those who have been recognized as having the legal status of refugee, acquisition of the status of residence as a permanent resident will be granted uniformly (Article 61-2-2(1)) where certain requirements are satisfied: for example, where an alien has filed an application for recognition of refugee status within six months after the date of landing in Japan, or a where an alien has been recognized as a refugee but has not yet acquired residency status. Even if they do not satisfy these requirements, their stay in Japan could be granted as an exception where there are circumstances in which their permission to stay must be granted (Article 61-2-2(2)). With the introduction of this system, a status of residence could be revoked where it is discovered that they have obtained permission to stay in Japan by making a false statement or by other unlawful means (Article 61-2-8(1)), and the overstaying after the grace period for departure after the revocation of the status of residence (Article 70(1)(iii)-2) has become punishable.

- (3) Review of the appeal system

With regard to the appeal system against the non-recognition of refugee status and so on, there was previously some doubt as to whether or not the judgment of the Immigration Bureau which manages the deportation of illegal aliens and so on, was appropriate from the perspective of providing asylum to foreigners who have filed applications for recognition of refugee status. In order to increase equity, neutrality, and transparency in the procedures of refugee recognition, refugee examination counselors will be appointed to participate as third parties in the procedures for the examination of appeals. Under this new appeal system, the Minister of Justice shall consult with refugee examination counselors, who are appointed from amongst experienced professionals in law and international affairs, with regard to the decision of objection filed (Article 61-2-9(3), 61-2-10(2)).

3. Review of the grounds for denial of landing applicable to persons with mental disabilities

In the old Immigration Control and Refugee Recognition Act, there was a policy to uniformly deny aliens permission to land on the sole ground of mental disability. However, this new law provides that the denial of permission for landing will apply to those who, due to mental disability, are unable to discern between right and wrong, or who seriously lack those abilities, where they are not accompanied by designated guardians for their activities in Japan as determined by ministerial ordinance of the Ministry of

Justice (Article 5(1)(ii)).

(KATAOKA Masayo)

Act to Support Persons with Developmental Disabilities

[Law No. 167. December 10, 2004 *Hattatsu-Shōgaisha Shien hō*]

Although “Developmental Disabilities” such as Autism, Learning Disorders (LD) and Attention-Deficit / Hyperactivity Disorders (ADHD) have attracted attention in recent years, social recognition and support systems for people with disabilities has been less than sufficient. In view of the situation surrounding developmentally disabled persons, this Bill was introduced in order to establish support for such persons in education and employment, and to designate support centers, and so on. This is to take place alongside a clarification of the duties of national and local public bodies regarding the provision of developmental support, early diagnosis of developmental disabilities in order to plan support for all areas of the life of a developmentally disabled person and contributions to improvements in welfare. This Act was approved on December 3, 2004, and was passed by a unanimous vote in the House of Councilors.

The main points of this law are as follows:

(1) Definitions

“Developmental Disability” includes Autism, Asperger’s Syndrome and other pervasive developmental disorders, LD, ADHD and other similar brain function disorders, and other disabilities for which symptoms are generally developed at a young age, as stipulated by Cabinet Ordinance (Article 2(1)). A “developmentally disabled child” is a person under 18 years of age, suffering from a developmental disability (Article 2(2)).

“Developmental support” includes medical, welfare, and educational care corresponding to the characteristics of the developmental disability in order to support the reasonable development of the mental functions for persons with developmental disabilities, and to do so in order to promote a smooth social life (Article 2(3)).

(2) Duties

National and local public bodies shall take necessary measures to assist with the early diagnosis of developmental disabilities, the early developmental support for developmentally disabled children (developmental support before attendance at school, within schools, and so on), support regarding working and life in the local area for persons with developmental disabilities, and other such support (Article 3(1), (2)). Both the intentions of the child with the developmental disability and their guardian(s) must be respected as much as possible (Article 3(3)).

(3) Support Measures

This Act provides for the early diagnosis of developmental disabilities in children (Article 5), early support (Article 6), childcare and education (Article 8), the use of after-school programs for the healthy upbringing of school children (Article 9), employment support (Article 10) and locally provided lifestyle assistance (Article 11), rights protection for developmentally disabled persons (Article 12), in addition to support to families (Article 13).

(4) Support centers for developmentally disabled persons

This Act provides for the appointment of support centers for developmentally disabled persons as institutions to provide consultations and advice from the Metropolitan and Prefectural Governments (Article 14), and guarantees specialized medical institutions (Article 19).

This Act came into effect on April 1, 2005.

(SASAKI Takeshi)

Act Partially Amending the Individual Income Tax Act and others

[Law No. 21, March 31, 2005; *Shotokuzeihō tou no ichibu wo kaiseisuru hōritsu*]

In November 2004, the Tax Commission published the “Report Concerning FY2005 Tax Reform”. The “Act Partially Amending the Individual Income Tax Act and others”, which implements the Report, was enacted in March 2005. This summary introduces the two main points of this Act.

(1) The amount of loss accrued in calculation of the amount of real estate income from a business partnership cannot be deducted from various other income

A number of people in recent years have used the amount of loss incurred in business partnerships to deduct taxes. These include, for example, partnerships which carry out the business of lending expensive depreciable assets (for example, airplanes or ships) by purchasing investments from members of the partnership and borrowing money as operating funds from other people. In this sort of partnership, a loss belongs to a member of the partnership, which a partnership creates by appropriating the depreciation allowance and interest on money borrowed, so the members of the partnership can cut down on taxes by totaling up various other incomes with this loss. When a member of a partnership is an individual, the income accrued by a partnership lending a plane or a ship is treated as real estate income according to the Individual Income Tax Act. Therefore, the amount of loss accrued in calculating the amount of real estate income could be deducted from the amount of various other income, for example employment income. The Tax Commission

stated the following in the above-mentioned Report: “The government has to take appropriate corresponding steps to prevent such tax avoidance”. For this reason, according to the FY2005 tax revisions, in the business dealings of a partnership in which real estate income is accrued, a loss to an individual member of a partnership shall be considered to not exist for the purpose of income tax.

(2) Reduction of individual across-the-board tax credits

By 1999, the Japanese economy was remarkably stagnant. To encourage improvements, the administration of the then prime minister, Keizo Obuchi, introduced individual across-the-board tax credits that allowed individuals to reduce income tax by 20% (reductions up to 250,000 yen). The Japanese economy has recovered somewhat by the introduction of this measure. Therefore, the scale of the across-the-board tax credits will be reduced to half under this current tax law revision.

For individual income tax from FY2006, the rate of the tax credit will be reduced from 20% to 10%, and the ceiling on tax credits will be reduced from 250,000 yen to 125,000 yen.

(YASUI Eiji)