

Your employers no longer able to secretly cancel your work permit in Shanghai

Description

Recently, I scored a big victory in a case against Shanghai Labor Department (“SHD”) in which we sued SHD for wrongly cancelling the work permit of my client, an American individual. The court judgment, coming after long period of intentional delay, declared that SHD’s cancellation of alien work permit based on the unilateral application by employer is illegal. ***This is the first case of its kind ever so judged in Shanghai, a positive token for expatriates working in Shanghai, China.***

FACTS: my client was duly employed by a Shanghai shipping company in 2010. For some unknown reason, the company served a termination letter on my client stating that because of incompetency of the client, the company decided to terminate the labor contract. The client was very disappointed and immediately challenged the decision by going to labor arbitration. Arbitration commission delivered an award in client’s favor ordering the company to reinstate the employment and pay salaries. However not until the date of receiving the award did we come to know that during the proceeding of arbitration, client’s work permit had been revoked by SHD based on the company’s application in which the company falsely represented to SHD that the employment with client was duly terminated. As a result of such cancellation, labor arbitration commission only ordered the company to pay salary to client up to the date on which the work permit was revoked, which means that salary for the period from the date of revocation of the work permit to the date of delivery of arbitration award cannot be supported by the arbitration tribunal on the ground that because of the cancellation of the work permit, the relationship between the client and the company can no longer be considered to be a lawful labor relationship.

Apparently, client’s loss was due to the wrongful revocation of the work permit by the SHD. So we sued SHD. Our argument is simple and powerful: can SHD revoke the alien work permit that was duly obtained, based on an unlawful termination of labor contract by the employer? It is obvious that SHD failed to verify whether the labor relationship in question had been legally terminated and instead SHD simply believed what the company had said before them was true.

It is noteworthy that it has been a decades-old practice in Shanghai that Shanghai Labor Department can simply cancel or revoke the work permit held by the foreigner employees based on information provided by employers without due regard to such alien employees. This often can cause big trouble for such expat employees who, without work permit, may be thought to illegally stay in China and may be then forced to exit China. Moreover, without the work permit, labor arbitration commission and courts would not regard the relationship between the foreigners and their Chinese employers as legal labor relationship as governed under China Labor Contract Law, which will result in the loss of entitlement on the part of such expat employees to claim economic compensation or damages from their employer companies for wrongful termination.

In the course of lawsuit against SHD, Huangpu court intentionally suspended the proceeding without legal ground for almost a year, and repeatedly asked our side to withdraw the case. Of course, we rejected such request and insisted that a fair judgment be delivered.

Now with this victory, ***expat employees in China, at least in Shanghai will be better off because their employers can no longer pull the trick of revoking their work permit without their awareness***

and cause hardship on them.

As to the legal nature of the work permit, I have arrived at a new understanding of it, please read:
[A new view on the legal nature of the work permit for foreigners working in China](#)

Date Created

December 2011

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