

THE POSITION OF ILLEGAL IMMIGRANTS

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Introduction

The aim of this study is to examine and recognise the position of illegal immigrants. There are many questions which need to be answered, inter alia: What are their rights? What is their Status? Can they enjoy the same rights as the citizens of the country do? What protections do they have?

Since there are no decided Malaysian case law on the subject, the writer was faced with a number of difficulties especially in defining the term "illegal immigrants" (Chapter Two) and discussing their position (Chapter Three).

The present situation in Malaysia is that the law is unsettled on the definition of "illegal immigrants". There are still confusions concerning the term "illegal immigrants" and "refugees" which further complicates the extension to them of the treatment that they deserve.

The scarcity of cases, rulings of the courts and opinion of the authorities also adds weight to the problems concerning their position.

Legally speaking, these immigrants are illegal since their entry is illegal and they remain as such until they take certain steps to legalise their stay here. Until that time they can be deported back to their country or to their last port of call outside of Malaysia.

CHAPTER ONE

A. Historical Background¹

Introduction

Economic development of British Malaya progressed rapidly with the establishment of British control and protection, as the economic policy then was aimed at creating favourable conditions for the exploitation of the country's resources. Demand for a steady,adequate and cheap labour supply in the fast expanding public work sector, the tme mines and the agricultural enterprises together with the opportunities for trade and urban occupation; and the refusal of the indigenous Malays to work in the mines and estates had forced the employers, both government and private, to turn to outside sources for their labour requirement.

Their effort has resulted in the three main streams of immigration into Malaya - the northern stream from China, the western stream from India and the less important stream from the then Dutch East Indies in the south. Each migration stream exhibited pronounced differences in their magnitude, mode of entry and government regulations.

Professor Saw Swee-Hock listed three characteristic of these flows of migration. Firstly, their transient nature. Almost

all immigrants came not as permanent settlers, but with the intention of returning to their homeland ultimately, after acquiring some wealth or on retirement. Therefore, the flow of immigration was also very voluminous, sometimes, as in depression years, exceeding the immigration figures.

The second characteristic was the abnormal sex ratio. Very few women were among the immigrants as most men left their families behind for they had the intention of rejoining them eventually and they were not in a position to support families on first arrival. Furthermore, there were obstacles in the way of emigrating women in the form of caste taboos among Indians and the reluctance of authorities in China to lose their hold over the overseas Chinese whose remittances were an important source of foreign exchange.

The third characteristic of immigration was the vast preponderance of poor, illiterate, unskilled labourers in the movement. Most came already indebted to the extent of the cost of passage and living expenses incurred from the time of recruitment to the time of employment. Those who came free of debt formed a small minority and were mostly traders, businessmen, professional men, immigrants returning after brief visits to their homeland, and relatives of men who had made good.