Digest of key judgments concerning Russian migration legislation from 2019 to 2021

Dear Ladies and Gentlemen,

Please find, herein, the latest up-to-date digest of the most significant court decisions, concerning migration legislation. Here are the key decisions of the Higher Courts of the Russian Federation, as well as precedents of regional judicial authorities, from 2019 to 2021.

1. The Constitutional Court of the Russian Federation confirmed that an employer is not obliged to notify the migration authority, when changing the working conditions of a foreign employee

The company hired a foreign employee and notified the migration authority, as prescribed by law. In fact, the employee was only authorized to work in a different place of work. At the same time, the company did not amend the employment contract with the employee and thus did not notify that change, to the migration authority. However, the company was fined for failing to report a foreign employee's revised working conditions.

The company disputed the penalty. However, the courts rejected the claim, underlining the fact that every employer is required to notify the migration authority, whenever it hires a foreign national to work.

The case was decided by the Constitutional Court of the Russian Federation. It confirmed that a foreign employee can be engaged at work, not directly provided for by the employment contract. If the change is made as an amendment to the employment contract, there is no need to inform the migration authority.

***Source**: Resolution of the Constitutional Court of the Russian Federation, dated February 4th, 2020 No. 7-P*

2. The Supreme Court of the Russian Federation has confirmed the need to correctly fill in the notification form, at the conclusion of an employment contract

The company informed the local migration authority of the hiring of a foreign citizen following the start of employment. At the same time, the company did not state the date on which the employment contract was concluded in the notification. The company was subjected to a fine of 450,000 Roubles. The company disagreed with the fine and lodged a complaint with the court.

The courts confirmed the corporate culpability. The Russian Supreme Court agreed with the approach taken by the lower courts. It pointed out that it is not sufficient to meet the deadline for filing a notification, at the conclusion of the employment contract. The notification form should also be filled out correctly. The decision remained in effect and the fine was affirmed in full.

***Source:** Resolution of the Supreme Court of the Russian Federation, dated January 13th, 2021 No. 19-AD20-16*

3. The Supreme Court of the Russian Federation indicated that, if a foreign employee changes his place of residence in Russia, by his/her own decision, the employer will not be held liable

The company was held liable, since a foreign employee actually resided at an address different from that registered with the migration authorities. The company decided to challenge the fine before the court, with proof that it had met its housing obligations.

The Supreme Court found that if a foreign employee refuses to reside in premises provided by the company, this does not render the company noncompliant with the law.

***Source**: Decision of the Supreme Court of the Russian Federation, dated January 27th, 2020 No. 303-ES19-25973 in case A51-2755/2019*

4. The Second Court of Cassation of General Jurisdiction confirmed that a registered marriage does not affect the challenge of the decision, relating to the unwanted stay of a foreign citizen in Russia

A foreign national had been held criminally responsible through imprisonment. Then, he had his conviction expunged. However, the Russian Ministry of Justice had passed a ruling on the unwanted stay of foreign citizens in Russia. The foreign citizen disagreed and lodged a complaint with the court. He claimed that the decision of the Russian Ministry of Justice violated his rights, since he was married to a Russian citizen and was planning to have a child.

The courts of the first instance did not support the foreign national. The court of cassation reviewed their decisions and pointed out that the Russian Ministry of Justice's decision did not specify the term of undesirable stay, in Russia, of the foreign citizen. In fact, the stay in Russia was recognised as undesirable for an indeterminate period, which violates privacy rights and family life. The court acknowledged that the ruling was illegal, with respect to the lack of the duration of undesirable status. The term shall be limited to the term of the conviction's removal. At the same time, the court emphasized that the existence of a registered marriage, with a Russian citizen, cannot lead to the recognition of the illegality of the contested decision.

***Source**: Decision of the Second Court of Cassation of General Jurisdiction, dated January 27th, 2021 No. 88a-246/2021 in case No. 2a-364/2020*

5. The Third Court of Cassation of General Jurisdiction reaffirmed that a foreign citizen will be refused entrance into Russia if he/she was subjected to administrative penalties several times

The foreign citizen violated the traffic rules several times. As a result, the migration authorities decided to prohibit this foreign citizen from entering to Russia for three years.

The court noted that repeated violations of legislative requirements may be considered as disrespect for Russian law. As a result, the court confirmed the validity of the imposition of temporary restrictions on entry into the country.

***Source:** Decision of the Third Court of Cassation of General Jurisdiction, dated November 25th, 2020 No. 88a-17590/2020*

6. The Eighth Court of Cassation of General Jurisdiction pointed out that a highly-qualified, foreign specialist ('HQS') permanently working at one address, outside of the "permitted" Russian region, will still be subject to administrative liability, even in the case of establishment of the itinerant nature of work

A HQS permanently worked at his employer's premises, outside the Russian region specified in the work permit. HQS was subject to a fine of 5 000 Roubles. The foreign employee challenged the decision of the migration authorities. The foreign employee claimed that the employment contract provided for an itinerant nature of work. Therefore, he was entitled to work outside the Russian region, specified in the work permit.

The Eighth Court of Cassation of General Jurisdiction confirmed the decision of the district court. The court indicated that the establishment of the itinerant nature of work shall not relieve the administrative liability of an HQS. There was no evidence before the courts to support the itinerant nature of the work. According to the facts of the case, the foreign employee was permanently working in the same territory, but not in the Russian region specified in the work permit.

***Source:** Resolution of the Eighth Court of Cassation of General Jurisdiction, dated June 23rd, 2020 No. 16-2824/2020*

7. The Ninth Court of Cassation of General Jurisdiction confirmed the legality of deportation, since the declared purpose of entry to Russia was inconsistent with the actual activities

A foreign citizen came to Russia, for commercial purposes, on the basis of a regular business visa. In the course of the inspection, the migration authorities revealed that, in fact, the foreign citizen was working in a company, without the required documents. The employee received an administrative liability, in the form of a fine and expulsion.

The Court of Cassation indicated that the commercial purpose of the visit implies making business trips, to private companies, to resolve certain commercial matters (e.g. negotiations, the conclusion of contracts). Since the foreign citizen worked without the required documents, the court recognized that the stated purpose of entering Russia is inconsistent with this person's actual activities. The court thus confirmed the legality of administrative liability.

Source: *Resolution of the Ninth Court of Cassation of General Jurisdiction, dated June 19th, 2020 No. 16-502/2020*

8. The Moscow City Court reminded that the employer shall check the validity of the required documents of foreign citizens

During an inspection, the migration authorities discovered that a foreign employee was working on the basis of falsified documents. The foreign employee stated that, during his hiring, the employer did not clarify the information on work permits. The company was fined 500,000 Roubles. The company submitted a claim to the court. The company reported seeking the required documents from its employee. Furthermore, the company stated that there is no obligation to verify the authenticity of these documents.

These arguments were not accepted by the Moscow City Court. The Court noted that the fact that the employee filed false migration documents with the company, at the time of hiring, cannot be regarded as a ground for escape from administrative responsibility. The company had the opportunity to verify the authenticity of the document, by submitting a request to the migration authorities, and verifying the database of the migration authorities.

It should be noted that the courts confirmed this position several times.

Source: *Decision of the Moscow City Court, dated December 2nd, 2020 in case No. 7-14102/2020*

9. The Moscow City Court pointed out that it is unlawful to use the incorrect form of the notification on salary payment to the HQS

The company submitted the salary payment notice to HQS on time, but did not use the legally-approved notification form. The company was subject to administrative liability. The company filed a claim with the court.

The Moscow City Court stated that it is the migration authorities who draw up a notification form, as well as the procedure for this notification. While the company had the opportunity to comply with the rules, it did not take all possible measures to comply. The company failed to provide proof of its inability to comply with the respective rules. The Moscow City Court has not changed its decision.

Source*: Decision of the Moscow City Court, dated August 26th, 2019 in case No. 7-9999/2019*

10. The Moscow City Court indicated that obtaining the required documents, after being brought to administrative liability, may be a ground for mitigation of punishment

During an inspection, the migration authorities discovered that a foreign employee was working in a company, without the required documents. The foreign employee was administratively liable to a fine and expulsion. The employee submitted a claim to the court. The employee confirmed the offence, but stated that he had already received a patent for the work.

The lower courts did not support the foreign employee and left the migration authorities' ruling in force. The Moscow City Court disagreed with this approach and stated that the

employee had paid the fees stipulated by the legislation and had received the necessary required documents. This may be regarded as a mitigating factor. The Moscow City Court ruled out deportation, as an administrative penalty, which had been claimed in previous court decisions of this case.

***Source**: Resolution of the Moscow City Court, dated June 18th, 2019 No. 4a-3064/2019*

11. The Moscow Regional Court reaffirmed that an employer will be liable, in case of filing the notification of the conclusion of the employment contract, with the wrong migration authority's department

The employer filed the notification concerning the conclusion of an employment contract with the department of the Migration Authority, located in a Russian region, different from where it was registered. The company was held administratively liable through a suspension of its activities, for the 15-day period. The company filed a claim with the court.

The Moscow Regional Court explained that the filing of the notification on the conclusion of the employment contract, to another department of the migration authority, does not rule out the guilt of the company. The administrative penalty was left unchanged.

***Source**: Decision of the Moscow Regional Court, dated March 5th, 2020 in case No. 12-264/2020*

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If you have any questions, please, do not hesitate to contact ALRUD Labour experts:

Irina Anyukhina
Partner
Labour and Employment
E:ianyukhina@alrud.com

Margarita Egiazarova
Senior Associate, PhD in Law
Labour and Employment
E:megiazarova@alrud.com

Sincerely,
ALRUD Law Firm