

Japanese Court “Forgives” Vietnamese Trainee Convicted of Abandoning a Baby... Up to a Point

Philip Brasor, Masako Tsubuku

Technical trainees who come from overseas to work in Japan are subject to conditions that don't necessarily apply to foreign workers who come to Japan with conventional work visas. There are many people who feel these conditions are unreasonable, especially given the general understanding that the technical trainee system, whose ostensible purpose since it was established in 1993 is to "transfer technology" from Japan to so-called developing countries, has evolved into a system that provides Japanese employers with cheap labor.

One such perceived condition is that trainees cannot be pregnant while they are in Japan. Any trainee who is found to be pregnant may be subject to deportation. This supposed rule became headline news in December 2020 when the Kumamoto district prosecutor indicted a Vietnamese trainee on suspicion of abandoning not one, but two dead bodies. The trainee, a 21-year-old woman named Le Thi Thuy Linh, worked on a tangerine farm and had given birth to twin boys in mid-November 2020. The indictment says it was likely the twins were stillborn, and she placed the bodies in a cardboard box that she put on a shelf in the house where she lived in the town of Ashikita. A Dec. 29, 2020 Mainichi Shimbun story described Le's situation and said she tried to hide her pregnancy from others by wearing loose clothing, afraid that if her condition was discovered she'd be sent back to Vietnam. She earned about ¥150,000 a month, of which ¥120,000 she sent back to family in Vietnam.

She had arrived in Japan in Aug. 2018 and was hoping to stay and work until Aug. 2021.

Le gave birth by herself after working half-a-day in the fields. Two days later she was brought to a hospital where "the abandonment of the babies' bodies came to light." She was subsequently arrested and, according to the Mainichi Shimbun, said that she was afraid of being fired and sent back home, but there was no one she could talk to about it. Even when she had fallen sick a month earlier, she refused treatment due to fear that the pregnancy would be discovered.

In actuality there is no express prohibition against pregnancy for trainees in the official technical trainee program. The prohibition is usually implemented by the overseas organizations that recruit possible trainees in their home countries and, more often than not, extract a hefty fee for their services. In any event, there is no specific law in Japan that makes it illegal for a trainee to be pregnant, but, as Le's lawyers continually pointed out during her defense, this fact is not properly explained to trainees after they arrive. Their rights as workers fall under the same protections as those that shield regular workers in Japan. Asahi Shimbun reported on Dec. 11, 2020 that, according to the immigration bureau, the labor standards law "should" also apply to foreign technical trainees, which means not only can they not be fired for being pregnant, but they should also be allowed time off for delivery and recovery.

It should be noted that Le's case was not the first of its kind. In 2019 the immigration bureau sent out a notification telling the associations that were licensed companies to accept trainees before dispatching them to employers that it was forbidden to punish them for being pregnant. There have been a number of instances of trainees abandoning babies and being arrested, as well as instances of trainees who, having been found to be pregnant, were deported at their own expense. Sometimes, a trainee sees her pregnancy through to delivery, but gets "caught" afterwards. In Jan. 2019, a Chinese trainee was arrested on suspicion of child neglect after leaving her newborn child alone at a house in Kawasaki. At the same time, there have been cases where trainees have given birth in Japan and, thanks to help from local support groups, were not punished or deported. In one such case, a Vietnamese trainee received resident status and returned to work.

The point here is that, despite the immigration bureau's notification, the central government is not actively involved in protecting trainees, whose numbers prior to the COVID pandemic were increasing substantially due to Japan's acute labor shortage. The Kumamoto branch of the labor ministry alone reported a 21.6 percent increase in trainees from 2018 to 2019. Technical trainees accounted for 60.4 percent of all foreign workers in Kumamoto. In contrast, South Korea, which has a similar trainee system as well as similar attendant problems, also has a national network of government-run support facilities. Several years ago, freelance journalist Kouichi Yasuda reported on this system for the web channel No Hate TV, and described facilities in Seoul where trainees could freely access pamphlets in a variety of languages that provide information on where they can go for help in adjusting to life in South Korea. Such centers also provide free consultations for work-related matters and everyday problems. Yasuda is clear that the situation in the work place for

technical trainees in South Korea is not really much better than it is in Japan, but at least trainees have somewhere to go to get help. In Japan, there is no government equivalent, though there is the government-backed Organization for Technical Intern Training (OTIT), which is supposed to act as a "watchdog" over the accepting associations. In any case, most support for individual trainees who find themselves in trouble is provided by local non-profit NGOs.

However, none of these circumstances were relevant to Le's criminal case, which hinged on the abandonment of a corpse. Whatever misunderstandings she had about her situation, once she put those two dead babies in a box without informing the authorities, she had committed a felony, and last July she was convicted by a district court and sentenced to 8 months in prison, suspended for 3 years.

Naturally, her lawyers appealed, and, according to Mainichi Shimbun, on Jan. 19 the Fukuoka High Court upheld the conviction but reduced the lower court sentence to 3 months imprisonment suspended for 2 years. The high court judge admitted that he was moved by Le's story of hiding her pregnancy and stillbirth delivery in order to keep "studying," so a certain "degree of forgiveness" was in order. Needless to say, her defense was not satisfied, since they demanded the conviction itself be thrown out based on their assertion that her intention was always to inter the two bodies properly. (The Fukuoka High Court judged it was not illegal that she kept her babies for 33 hours.) They plan to appeal again. At the press conference following the trial, one of Le's lawyers described the judge's logic as being "rough."

A Kumamoto-based trainee support group told both Asahi and Mainichi that the first solution is to crack down more on the accepting associations that dispatch the workers. By law, employers themselves cannot hire trainees.

They have to go through these local associations that have been set up expressly for this purpose, but in order to protect the interests of the companies they represent, they tend to provide trainees with as little information and resources as legally possible. At the very least, these associations should regularly inspect worksites to talk with trainees about their issues. In his report, Yasuda said these associations typically instill fear in the trainees, since their manner is all-controlling. Ostensibly, it is the job of the OTIT to police these associations, and yet human rights violations still occur regularly. In 2020, the Kumamoto support group addressed 40 separate problems with trainees, of which 6 involved pregnancies. Obviously, Le became pregnant after she arrived in Japan, so part of these associations' job should be providing health-related information, including how and where to get contraception. The support group, noting that the high court judge's decision was

"inadequate," said the only real solution was holding the accepting associations accountable for these kinds of problems, rather than punishing the trainees themselves. And that's the government's job.

See also the following articles on the Technical Intern Training Program in Japan:

Bao Quyen Tran, [Vietnamese Technical Trainees in Japan Voice Concerns Amidst COVID-19](#), The Asia-Pacific Journal, September 15, 2020.

For another report on issues of international trainees and pregnancy in Japan, see Oono Momo and Ishida Motoshi, NHK World Correspondent, ["Forbidden Pregnancies lead Vietnamese workers to abandon newborns,"](#) NHK World Japan.

Philip Brasor and **Masako Tsubuku** have written about media and money issues for the past 25 years.