

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20725
Summary Calendar

SANJEEVA KHEMSARA, MADHU KHEMSARA,
MOTILAL KHEMSARA, and SUKHCHEN KHEMSARA,

Plaintiffs-Appellants,

VERSUS

THAI AIRWAYS INTERNATIONAL, LTD.,

Defendant-Appellee.

Appeal from the United States District Court
For the Southern District of Texas

(CA H 93-3214)

(April 3, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

Per curiam:*

This is an appeal from an order granting Appellee, Thai Airways International Ltd.'s ("Thai Airways") Motion to Dismiss for *forum non conveniens*. We affirm.

FACTS

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Sanjeeva Khemsara, Madhu Khemsara, Motilal Khemsara and Sukhchen Khemsara (collectively "Appellants") are citizens of India and longtime permanent residents of the United States. In 1992, the Appellants made arrangements to travel to New Delhi, India. The trip originated in Dallas, Texas, with a layover in Los Angeles, California, where Appellants boarded a Thai Airways flight to Bangkok, Thailand. Appellants booked reservations in a Bangkok hotel, because their flight schedule required an overnight stay there before the final flight to New Delhi.

Upon their arrival in Bangkok on October 6, 1992, Appellants allegedly submitted their visa applications, passports and passenger tickets to the immigration officer on duty at the Immigration Visa Section in order to obtain "visas upon arrival" for their overnight stay in Bangkok. According to the Immigration Visa Section Incident Report, Appellants were "impolite in manner and words and were rude to the Visa Officers who were on duty." The Thailand immigration officer determined that the Appellants "might cause damage to the country" if allowed to enter and, therefore, prohibited them from entering Thailand pursuant to "Section 12 of [Thailand's] Immigration Act 1979." The immigration officer retained Appellants' passports and detained the two male Appellants in the immigration detention room, while the two female Appellants were required to remain in the bus gate area overnight. Appellants were deported from Thailand to India on October 7, 1992, aboard the flight to New Delhi on which they were originally scheduled to travel. Appellants allege that they were subjected to

verbal and physical abuse and denied nourishment during their detention, all at the hands of employees of Thai Airways.

Appellants commenced this personal injury action against Thai Airways in the District Court of Harris County, Texas on August 25, 1993, asserting causes of action for assault and battery, intentional infliction of emotional distress, false imprisonment, breach of contract and tortious interference with contract. Thai Airways removed the action to the United States District Court for the Southern District of Texas, Houston Division on the grounds that Thai Airways is an "agency or instrumentality of a foreign state" as that term is defined in the Foreign Sovereign Immunities Act, 28 U.S.C. § 1603(b). On April 12, 1994, Thai Airways filed a motion to dismiss the action on the basis of *forum non conveniens*, which the district court granted, after hearing oral argument.

DISCUSSION

Appellants contend that the district court erred in granted Thai Airways's motion to dismiss for *forum non conveniens*. We review that decision for abuse of discretion. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255, 102 S.Ct. 252, 266, 70 L.Ed.2d 419 (1981). Further, if the district court considered all the relevant public and private interest factors and its balancing of these factors is reasonable, its decision deserves substantial deference. *Id.* at 255.

A *forum non conveniens* analysis involves a three step inquiry. *Baumgart v. Fairchild Aircraft Corp.*, 981 F.2d 824, 835 (5th Cir.) cert. denied 113 S.Ct. 2963 (1993). First, the court must

determine whether there exists another forum that is available to the litigants and would provide an adequate remedy to the prevailing party. *Id.* A foreign forum is "available" when the entire case and all parties can come within the jurisdiction of that forum, and is "adequate" when the parties will not be deprived of all remedies or treated unfairly, even though they may not enjoy the same benefits as they might receive in an American court. *Id.* The district court found that Thai Airways had demonstrated, and Appellants had failed to rebut, that an adequate, alternative forum is available in Thailand. This finding was supported by evidence that Thailand law recognizes personal injury actions, and Thai Airways has agreed to submit to the jurisdiction of Thailand. Appellants do not challenge the finding that a forum in Thailand is available, but contend that such a forum is not adequate, because they "are, to this day, barred from entering Thailand and subject to criminal prosecution if they attempt to enter that country." They rely on a statement in a report of the incident made by a Thai official that states, "[Appellants] have been considered as persons prohibited to enter into the Kingdom under Section 12 of the Immigration Act 1979." However, according to the uncontested Affidavit of a Thai Airways' official, the denial of a temporary visa for entry into Thailand in the past does not prohibit the same foreign citizens from applying for a visa to enter Thailand in the future. Furthermore, the photocopies of Appellants' passports included in the record of this case reveal no notation that any of them are prohibited from reapplying for entry into Thailand. In

sum, there is no evidence that Appellants are barred from future entry into Thailand, or that they would face criminal prosecution if they attempted to do so. Appellants further contend that because they were treated badly during their last trip to Thailand, "they would fair no better upon their return to that country." It is unclear whether they are arguing that they would not be allowed into the country in the future, or that they would not receive a fair trial in a Thai court. Either way, there is no evidence in the record that supports these assertions. The district court did not abuse its discretion in finding that Thailand provides an adequate and available forum to hear this cause of action.

The second step in the analysis requires a balancing of "private interest" factors. Such factors include: (1) the relative ease of access to sources of proof; (2) the availability of compulsory process for attendance of unwilling witnesses, and the costs of obtaining attendance of willing witnesses; (3) the probability of an opportunity to view the premises, if view would be appropriate to the action; and (4) other factors affecting the ease, speed, and expense of trial or the enforceability of a judgment if obtained. *Baumgart*, at 835-36. The district court balanced the private interest factors and found:

In the instant case, the alleged misconduct on which this action is based occurred in Thailand and the order of detention and deportation was executed by officials of the government of Thailand pursuant to the immigration laws of Thailand. Accordingly, the evidence and sources of proof pertaining to the incident at issue are in Thailand. Additionally, no compulsory process is available for the attendance of necessary witnesses who reside in Thailand. Further, the translation of documentary evidence and witness testimony to English

would pose additional problems affecting the ease, speed, and expense of the trial. These factors weigh heavily in favor of dismissal, notwithstanding that plaintiffs' choice of forum is in the United States.

Appellants argue that they and their physicians are all present in Texas, and will provide the "primary source of proof" at trial, and that it would be less expensive for Appellee to bring its officers and agents to Texas, than it would be for Appellants and their physicians to travel to Thailand. They also contend that independent investigation of the scene of the incident is not a factor in this case. Next, Appellants point out that wherever this case is tried, it will be necessary to translate documents and witness testimony. Finally, Appellants believe it would be easier to enforce a judgment from a United States court than one from a Thai court, although they have supplied nothing to support this belief.

The district court appropriately considered Appellants' choice of forum, and their arguments supporting that choice but found those factors outweighed, because Thailand is the focal point of this case. Furthermore, out of the 17 witnesses Appellants identified other than themselves who have purported knowledge of relevant information, only three reside in the United States. The remaining 14 witnesses reside in either Thailand or India. We hold that the district court did not abuse its discretion in finding that the private interest factors weighed heavily in favor of granting the motion.

Having found that the district court did not err in holding that an available adequate forum exists for Appellants' claims, and

that the private interest factors weigh in favor of a *forum non conveniens* dismissal, we need not reach the third step of the analysis, which involves a consideration of certain "public interest" factors. *Baumgart*, at 837. However, the district court did consider the public interest factors. Specifically, the district court found that because the incident occurred in Thailand, involved acts of Thai officials, and questions of Thai law, the public interest weighed heavily in favor of trial of the action in Thailand. This finding was not an abuse of discretion.

CONCLUSION

The district court did not abuse its discretion in dismissing this action on the basis of *forum non conveniens*. We AFFIRM.