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Updated: New Exit-Entry Law Enacted by China's Congress

Posted on [July 5, 2012](#) by [Gary Chodorow](#)



On June 30 the National People's Congress Standing Committee enacted a new Exit-Entry Administration Law. This is the first overhaul of China's immigration law since 1986.

Xinhua News Agency [reports](#) that the overriding policy behind the law is to create harsher punishments for foreigners who illegally enter, live, or work in China.

The new law won't take effect until July 1, 2013.

Here are my (very) preliminary impressions.

Key Provisions

Fines for Unauthorized Work: A fine of 5000 to 20,000 yuan will be imposed on a foreigner who works illegally. In serious circumstances, detention of five to 15 days, as well as a fine of 5000 to 20,000 yuan will be imposed. (Article 80).

Fines for Unauthorized Residence: Foreigners who illegally reside in the country may be given a warning. In serious cases, they will be fined 500 yuan per day, not to exceed a total of 10,000 yuan, or detained five to 15 days. (Article 78).

Employer Sanctions: A fine of 10,000 may be imposed for every foreigner illegally employed, up to a maximum of 100,000 yuan. Any monetary gain resulting from such employment will also be confiscated. (Article 80).

中文版

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Industries and Occupations Prohibited, Encouraged, or Restricted to

Foreigners: Various departments under the State Council will formulate and periodically adjust a guidance list regarding the country's need for foreign workers, taking into account economic and social development needs, as well as the supply and demand for human resources. (Article 42). According to [People's Daily](#), this list will define specific industries and occupations that are prohibited to, encouraged, or restricted to foreigners.

Residence Certificates: Foreigners' work-based residence certificates will be valid for a minimum of 90 days and a maximum of five years. That represents the halving of the prior minimum validity period of 180 days, an effort to more closely monitor foreign workers. Non-work-based residence certificates will be valid for a minimum of 180 days and a maximum of five years. (Article 30).

"Talent Introduction" Visa Category: The law for the first time allows visas and residence certificates to be granted to foreign "talent," but leaves further details to be set by agency regulations. (Articles 16, 31).

Voluntary Departure and Deportation: Foreigners who have violated China's laws and regulations will be given an exit deadline to depart voluntarily, if appropriate. But foreigners who commit "severe" violations may be deported and are not allowed to reenter for 10 years. (Article 81).

Discretion to Deny Visas: The statute appears to give officers unbridled discretion to refuse a visa if for any reason issuance is "not suitable." Nor is the officer required to explain to the applicant the reason for the refusal. (Article 21).

Green Cards: The law, at the highest level of generality, allows permanent residence to be granted to foreigners who make "outstanding contributions" to China or "otherwise meet the requirements" for permanent residence as set by agency regulations. (Article 47). The law sets no targets or quotas for the number of green cards to be granted. By the end of 2011, just 4,752 foreigners had been granted green cards nationwide.

Restrictions on Residence and Work Locations of Foreigners: The Public Security Bureau and national security organs may restrict foreigners and foreign entities from establishing residences or workplaces in certain locations, if required for national security or public security. If already established, they may be given deadlines to relocate. (Article 44).

Refugees: For the first time, China's domestic law reflects its obligations under the 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees. Persons may apply for refugee status and remain in the country while being screened. (Article 46).

Biometric Data: Foreigners applying for residence certificates must provide to the public security bureau (PSB) their fingerprints and "other biometric data." In addition, the PSB and Ministry of Foreign Affairs may, with the State Council's approval, promulgate regulations to collect such biometric data from persons exiting and entering the country. (Articles 7, 30).

Body Searches: Exit-Entry Frontier Inspection Stations may perform body searches of persons exiting or entering China, in accordance with needs for national security and for preserving an orderly exit-entry process. Body searches shall be carried out by two frontier inspectors of the same sex as the person to be searched. (Article 66).

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Reporting Requirements for Employers and Schools: Work units that employ aliens or recruit overseas students must report relevant information to local public security organs in accordance with regulations. (Article 45).

Whistleblowing: If citizens discover the illegal entry, illegal residence, or illegal employment of aliens, they should timely report this to local public security organs. (Article 45).

Underlying Policies

Article 1 of the law states that it was enacted in order to standardize exit and entry administration; to safeguard sovereignty, safety and social order of the People's Republic of China; and to promote international exchange and opening to the outside world.

There was an overriding sense in the government that immigration laws needed to be modernized because of the pace of change since the last legislative activity in 1986. Yang Huanning, Vice-minister of Public Security reported to the NPC in April 2012 that the number of foreigners entering China "has been increasing by 10 percent annually since 2000." He said that the number of foreigners employed in China rose from 74,000 in 2000 to 220,000 by the end of 2011, with many working as employees of foreign companies, teachers or representatives of foreign organizations. Still, the overall percentage of foreigners residing in China, about [0.04 percent](#), is tiny compared to many countries.

Since 1986, China has begun to experience a new trend of economic immigration (at the same time that emigration continues). The driving forces behind the trend are the nation's economic growth and changing demography. As China modernizes and urbanizes, smaller families are preferred, labor force growth is slowing, and the elderly population is increasing. This results in wage pressure and economic immigration.

In particular, reports to the NPC were that the government's immigration-records systems are outdated. At present, the Ministry of Foreign Affairs is responsible for issuing visas and the Ministry of Public Security is responsible for issuing residence certificates. But a foreigner's information is archived in various ministries files, such as the departments for human resources, foreign experts, commerce, and education, according to the purpose of a person's visit. As a result, the current system is spread out across a number of agencies, making enforcement of visa regulations a difficult task.

Another perceived problem the new law tries to tackle is the insufficient oversight of foreigners' work in China. Especially in light of the difficulties that China's own population—including recent college graduates—has finding work. Chinese citizens themselves face some restrictions on where they can live and work due to the hukou (residence registration) system. So it appeared incongruous that some foreigners with merely short-term visas not authorizing work in China have been able to reside and work in China for extended periods by dashing to the border and renewing their temporary stay once every few months.

Another glitch in the current regime that the new law seeks to address is companies that issue fake certificates or invitation letters used by foreigners to obtain work visas on false pretenses. Such companies may be fined under the new law.

The draft law had three readings before the NPC between its introduction in December 2011 and its enactment.

In addition to the legislative efforts, Vice-minister Yang also reported that establishment

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of detention facilities for foreigners who have illegally entered or are illegally working in China is currently under consideration.

We'll make available further details as our firm further analyzes the law and as the government begins to implement it.

Legal Authorities

[Text](#) of the law (Chinese) and [translation](#) (English)

NPC's [webpage](#) on the law (Chinese)

[State Council's Report](#) to the NPC on Its Work Related to Foreigners' Entry and Exit, Residence, Employment (April 2012) (Chinese)

Media Coverage

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