

RULES FOR THE ADMINISTRATION OF EMPLOYMENT OF FOREIGNERS IN CHINA

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(Promulgated jointly by the Ministry of Labour, Ministry of Public Security, Ministry of Foreign Affairs and the Ministry of Foreign Trade and Economic Cooperation of the People's Republic of China on 22 January, 1996)

Chapter I General Provisions

Article 1 These Rules are formulated in accordance with the provisions of the relevant laws and decrees for the purpose of strengthening the administration of employment of foreigners in China.

Article 2 The term "foreigners" in these Rules refers to the persons, who under the Nationality Law of the People's Republic of China, do not have Chinese nationality.

The term "employment of foreigners in China" in these Rules refers to acts of foreigners without permanent residence status to engage in remunerative work within Chinese territory in accordance with its laws.

Article 3 These Rules shall apply to employed foreigners within Chinese territory and their employers.

These Rules shall not apply to foreigner who enjoy diplomatic privileges and immunities employed by foreign embassies or consulates, or the offices of the United Nations and other international organizations in China.

Article 4 The labour administrative authorities of the people's government of the provinces, autonomous regions and municipalities directly under the Central Government and those at the prefecture and city level with their authorization are responsible for the administration of employment of foreigners in China.

Chapter II Employment License

Article 5 The employer shall apply for the employment permission if it intends to employ foreigners and may do so after obtaining approval and the People's Republic of China Employment License for Foreigners (hereinafter referred to as the "Employment License")

Article 6 The post to be filled by the foreigner recruited by the employer shall be the post of special need, a post that cannot be filled by any domestic candidates for the time being but violates no government regulations.

No employer shall employ foreigners to engage in commercialized entertaining performance, except for the persons qualified under Article 9 (3) of these Rules.

Article 7 Any foreigner seeking employment in China shall meet the following conditions:

- (1) 18 years of age or older and in good health;
- (2) with professional skills and job experience required for the work of intended employment;
- (3) with no criminal record;
- (4) a clearly-defined employer;
- (5) with valid passport or other international travel document in lieu of the passport (hereinafter referred to as the "Travel Document")

Article 8 Foreigner seeking employment in China shall hold the Employment Visas for their entry (In case of agreement for mutual exemption of visas, the agreement shall prevail.), and may work within Chinese territory only after they obtain the Employment Permit for Foreigner (hereinafter referred to as the "Employment Permit") and the foreigner residence certificate.

Foreigners who have not been issued residence certificate (i.e. holders of F, L, C or G type visas), and those who are under study or interim programs in China and the families of holders of Employment Visas shall not work in China. In special cases, employment may be allowed when the foreigner changes his status at the public security organs with the Employment License secured by his employer in accordance with the clearance procedures, under these Rules foreigners changes his status at the public security organs with the Employment License and receives his Employment Permit and residence certificate.

The employment in China of the spouses of the personnel of foreign embassies, consulates, representative offices of the United Nations System and other international organization in China shall follow the Provisions of Ministry of Foreign Affairs of the People's Republic of China Concerning the Employment of the Spouses of the Personnel of Foreign Embassies, Consulates and the Representative Offices of the United Nations System in China and be handled in accordance with the clearance procedures provided for in the second paragraph of this article.

The Employment License and the Employment Permit shall be designed and prepared exclusively by the Ministry of Labour.

Article 9 Foreigners may be exempted from the Employment License and Employment Permit when they meet any of the following conditions:

- (1) foreign professional technical and managerial personnel employed directly by the Chinese government or those with senior technical titles or credentials of special skills recognized by their home or international technical authorities or professional associations to be employed by Chinese government organs and institutions and foreigners holding Foreign Expert Certificate issued by China's Bureau of Foreign Expert Affairs;
- (2) foreign workers with special skills who work in offshore petroleum operations without the need to go ashore for employment and hold "Work Permit for Foreign Personnel Engaged in the Offshore Petroleum Operations in the People's Republic of China";
- (3) foreigner who conduct commercialized entertaining performance with the approval of the Ministry of Culture and hold "Permit for Temporary Commercialized Performance".

Article 10 Foreigners may be exempted from the Employment License and may apply directly for the Employment Permit by presenting their Employment Visas and relevant papers after their entry when they meet any of the following conditions:

- (1) foreigners employed in China under agreements or accords entered into by the Chinese government with foreign governments or international organizations for the implementation of Sino-foreign projects of cooperation and exchange;
- (2) chief representatives and representative of the permanent offices of foreign enterprises in China.

Chapter III Application and Approval

Article 11 The employer when intending to employ a foreigner, shall fill out the Application Form for the Employment for Foreigners (hereinafter referred to as the "Application Form") and submit it to its competent trade authorities at the same level as the labour administrative authorities together with the following documentation:

- (1) the curriculum vitae of the foreigner to be employed;
- (2) the letter of intention for employment;
- (3) the report of reasons for employment;

- (4) the credentials of the foreigner required for the performance of the job;
- (5) the health certificate of the foreigner to be employed;
- (6) other documents required by regulations.

The competent trade authorities shall examine and approve the application in accordance with Articles 6 and 7 of these Rules and relevant laws and decrees.

Article 12 After the approval by the competent trade authorities, the employer shall take the Application Form to the labour administrative authorities of the province, autonomous region or municipality directly under the Central Government or the labour administrative authorities at the prefecture and city level where the said employer is located for examination and clearance. The labour administration authorities described above shall designate a special body (hereinafter referred to as the "Certificate Office") to take up the responsibility of issuing the Employment License. The Certificate Office should take into consideration of the opinions of the competent trade authorities and the demand and supply of labour market, and issue the Employment License to the employer after examination and clearance.

Article 13 Employers at the central level or those without the competent trade authorities may submit their application directly to the Certificate Office of the labour administrative authorities for the Employment Permit.

The examination and approval by the competent trade authorities is not required for foreign-funded enterprises to employ foreigners, and such enterprise may submit their applications directly to the Certificate Office of the labour administrative authorities for the Employment License, bringing with them the contract, articles of association, certificate of approval, business license and the documentation referred to in Article 11 of these Rules.

Article 14 Employers with permission to employ foreigners shall not send the Employment License nor the letter of visa notification directly to the foreigners to be employed, and they must be sent by the authorized unit.

Article 15 Foreigner with permission to work in China should apply for Employment Visas at the Chinese embassies, consulates and visa offices, bringing with them the Employment License issued by the Ministry of Labor, the letter or telex of visa notification sent by the authorized unit and the valid passport or Travel Document.

Personnel referred to in Article 9 (1) of these Rules should apply for the Employment Visas by presenting their letter or telex of visa notification by authorized unit; personnel referred to in Article 9 (2) should apply for the Employment Visas by presenting their letter or telex of visa notification issued by the China National Offshore Oil Corporation; personnel referred to in Article 9 (3) should apply for the Employment Visas by presenting their letter or telex of visa notification issued by the foreign affairs office under the people's government of provinces, autonomous regions or municipalities directly under the Central Government and the relevant documents of approval of the Ministry of Culture (addressed to the Chinese embassies, consulates or visa offices).

Personnel referred to in Article 10 (1) of these Rules should apply for the Employment Visas by presenting their letter or telex of visa notification by authorized unit and the documentation on projects of cooperation and exchange; personnel referred to in Article 10 (2) should apply for the Employment Visas by presenting their letter or telex of visa notification by the authorized unit and the registration certification issued by the administrative authorities of industry and commerce.

Article 16 The employer should, within fifteen days after the entry of the employed foreigner, take to the original Certificate Office the Employment License, the labour contract with the said foreigner and his passport or Travel Document to receive his Employment Permit while filling out the Foreigner Employment Registration Form.

The Employment Permit shall be effective only within the area specified by the Certificate Office.

Article 17 Foreigners who received their Employment Permit should, within thirty days after their entry, apply for the residence certificate with the public security organs bringing with them their Employment Permit. The term of validity of the residence certificate may be determined in accordance with the term of validity of the Employment Permit.

Chapter IV Labour administration

Article 18 The employer and its foreign employee should, in accordance with law, conclude a labour contract, the term of which shall not exceed five years. Such contract may be renewed upon expiration after the completion of clearance process in accordance with Article 19 of these Rules.

Article 19 The Employment Permit of the employed foreigner shall cease to be effective upon the expiration of the term of the labour contract between the foreigner and his employer. If renewal is required, the employer should, within thirty days prior to the expiration of the contract, submit an application to the labour administrative authorities for the extension of term of employment, and after approval is obtained, proceed to go through formalities for the extension of the Employment Permit.

Article 20 The foreign employee should, within ten days after obtaining the approval for extension of his term of employment in China or the change of his employment location or his employer, go through formalities for the extension or change of his residence certificate at the local public security organs.

Article 21 After the termination of the labour contract between the foreign employee and his employer, the employer should promptly report it to the labour and public security authorities, return the Employment Permit and the residence certificate of the said foreigner, and go through formalities for his exit from China.

Article 22 The wage paid to the foreign employee by the employer shall not be lower than the minimum wage in the locality.

Article 23 The working hours, rest and vacation, work safety and hygiene as well as the social security of the foreign employees in China shall follow the relevant provisions of the state.

Article 24 The employer of the foreign employee in China shall be the same as specified in his Employment License.

When the foreigner switches employers within the area designated by the Certificate Office but stays in a job of the same nature, the change must be approved by the original Certificate Office and recorded in his Employment Permit.

If the foreigner is to be employed outside the area designated by the Certificate Office or switch employer within original designated area while taking up jobs of a different nature, he must go through formalities for a new Employment License.

Article 25 For foreigner whose residence status is revoked by public security organs due to his violation of Chinese law, his labour contract should be terminated by his employer and his Employment Permit be withdrawn by the labour administrative authorities.

Article 26 Should the labour disputes arise between the employer and its foreign employee, they should be handle in accordance with the Labour Law of the People's Republic of China and the Regulations of the People's Republic of China on Settlement of Labour Disputes in Enterprises.

Article 27 The labour administrative authorities shall conduct an annual inspection of the

Employment Permit. Within thirty days prior to the end of every year of employment of the foreigner, the employer should go through formalities of the annual inspection at the Certificate Office of the labour administrative authorities. The Employment Permit shall automatically cease to be effective when the deadline is passed.

In case of loss or damage of the Employment Permit during the term of his employment in China, the foreigner should promptly report it to the original Certificate Office and go through formalities for the issuance of the Employment Permit.

Chapter V Penalty Provisions

Article 28 Violation of these Rules, i.e. foreigners who work without the Employment Permit or employers which hire foreigner without the Employment License, shall be handled by the public security organs in accordance with Article 44 of the Rules Governing the Implementation of the Law of the People's Republic of China on the Entry and Exit of Aliens.

Article 29 For Foreigner who refuse to have their Employment Permit inspected by the labour administrative authorities, change their employers and professions at will or extend their term of employment without permission, the labour administrative authorities shall withdraw their Employment Permit and recommend that their residence status be canceled by the public security organs. In case of deportation, the costs and expenses shall be borne by the said foreigners or their employers.

Article 30 For foreigners and employers who forge, alter, falsely use, transfer, buy and sell the Employment Permit and the Employment License, the labour administrative authorities shall take over the Employment Permit and the Employment License in question, confiscate the illegal proceeds and impose a fine between ten thousand and one hundred thousand RMB yuan. In serious cases which constitute a crime, their criminal responsibility of the perpetrators shall be looked into by the judicial authorities.

Article 31 In case of abuse of power, illegal collection of fees, and fraudulent practices on the part of official personnel of the Certificate Office or other departments, they shall be investigated in accordance with the law for their criminal responsibility if crimes are committed, or they shall be subject to administrative disciplinary measures if the cases do not constitute a crime.

Chapter VI Supplementary Provisions

Article 32 The employment in the mainland of the residents of Taiwan, Hong Kong and Macao region of China shall follow the Rules for the Administration of the Employment in the Mainland of the Residents of Taiwan, Hong Kong and Macao.

Article 33 These Rules do not apply to the employment of foreigners in China's Taiwan, Hong Kong and Macao region.

Article 34 Individual economic organizations and private citizens are prohibited from employing foreigners.

Article 35 The labour administrative authorities of the provinces, autonomous regions and municipalities directly under the Central Government may formulate their own rules for implementation of these Rules in conjunction with the public security and relevant authorities in the locality, and report it to the Ministry of Labour, Ministry of Public Security, Ministry of Foreign Affairs and the Ministry of Foreign Trade and Economic Cooperation for putting on record.

Article 36 The Ministry of Labors shall be responsible for the interpretation of these Rules.

Article 37 These Rules shall enter into force as of 1 May 1996. The Provisions Concerning the

Employment in China of the Foreigners Who Have Not Yet Obtained Residence Certificate and Foreigners Who Study in China jointly promulgated by the former Ministry of Labour and Personnel and the Ministry of Public Security on 5 October 1987 shall be annulled simultaneously.

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