

REGULATIONS ON THE MANAGEMENT OF EMPLOYMENT OF FOREIGNERS IN CHINA

January 22, 1996 - 14:38 BJT (13:38 GMT) infoshare

(Valid From:1996.05.01)

CHAPTER I GENERAL PROVISIONS CHAPTER II EMPLOYMENT PERMISSION CHAPTER III APPLICATION AND EXAMINATION AND APPROVAL CHAPTER IV LABOUR MANAGEMENT CHAPTER V RULES ON PUNISHMENT CHAPTER VI SUPPLEMENTARY RULES

Article 1 These Regulations are hereby formulated in accordance with stipulation in relevant laws and regulations to enhance management of employment of foreigners in China.

Article 2 The foreigners as referred to in these Regulations refer to persons who do not have Chinese nationality as stipulated in the Nationality Law of the People's Republic of China.

The term of "employment of foreigners in China" as used in these Regulations refers to the behaviour of engaging in social labour and receiving remunerations in accordance with law by foreigners who have not obtained permits to reside in China.

Article 3 These Regulations are applicable to foreigners working inside China and units employing foreigners.

These regulations are not applicable to persons enjoying diplomatic prerogatives and immunity, such as those working in foreign embassies and consulates in China, UN representative offices in China, and other international organizations stationed in China.

Article 4 The labour administrations under the people's governments at the provincial, autonomous regional and municipal level and those at the prefectural level shall take charge of management of the employment of foreigners in China.

Article 5 Units that employ foreigners shall apply for employment permission for these foreigners and shall employ foreigners only after obtaining Certificates of the People's Republic of China Permitting the Employment of Foreigners (hereinafter referred to as certificates of permission).

Article 6 The posts which employing units decide to fill with foreigners shall be those in special need and which can not be taken up by domestic candidates for the time being. Moreover, no relevant state regulations shall be violated in the while.

No units shall employ foreigners to engage in cultural performances with a business character, except for those conforming with stipulations in Clause 3 of Article 9 of these Regulations.

Article 7 Foreigners seeking employment in China should meet the following qualifications:

- (1) having reached the age of 18 and being healthy;
- (2) possessing the professional skills needed for and corresponding work experiences in the work to be taken up;
- (3) free from criminal records;
- (4) having specific employer units;

(5) possessing valid passports or other international travel documents that can replace passports (hereinafter referred to as passport substitutes).

Article 8 Foreigners seeking employment in China shall enter China on the strength of occupation visas (or in line with agreements on mutual exemption of visas if such agreements have been reached) and can get employed only after obtaining Employment Certificates for Foreigners (hereinafter referred to as employment certificates) and residential documents for foreigners.

Foreigners who have not obtained residential documents (namely, those holding, F, L, C, and G visas), foreigners studying or doing field work in China, and the dependents of foreigners holding occupation visas shall not be employed in China. In special cases, employing units shall apply for certificates of permission according to the examination and approval procedures stipulated in these Regulations, and the foreigners to be employed shall change their status at public security departments on the strength of these certificates of permission, and obtain employment certificates and residential documents before they become employed.

The employment of the spouses of the persons in foreign embassies and consulates, in UN organizations, and in the representative offices of other international organizations in China shall be handled according to the Regulations of the Ministry of Foreign Affairs of the People's Republic of China on the Employment of the Spouses of the Persons Working in Foreign Embassies, Foreign Consulates, and UN Organizations in China, with relevant proceedings to be completed in line with the examination and approval procedures stipulated in Clause 2 of this article.

Certificates of permission and employment certificates shall be prepared by the Ministry of Labour in a unified way.

Article 9 Foreigners meeting one of the following qualifications can be exempted from certificates of permission and employment certificates:

(1) Foreign experts and management personnel engaged with funds directly from the Central Government or with funds from State organs or institutional units, foreign experts and management personnel with senior professional titles or certificates of special skills acknowledged by authoritative technical management departments or trade associations of their home countries or international organizations, and foreigners carrying certificates of foreign experts issued by the Administration of Foreign Experts.

(2) Foreign labourers with Permits for Foreigners to Engage in Offshore Oil Operations in the People's Republic of China who are engaged in offshore oil operations and do not have the need to land, and who have special skills.

(3) Foreigners putting on art performances of a business character on the strength of Permits for Temporary Performances of a Business Character as approved by the Ministry of Culture.

Article 10 Foreigners meeting any of the following qualifications can be exempted from obtaining certificates of permission and can directly apply, upon entry into China, for employment permits on the strength of occupation visas and other relevant certificates:

(1) Foreigners who are employed to work in China according to agreements and protocols signed between China and foreign governments or international organizations, or who are employed to implement Sino- foreign cooperative projects or projects of exchanges.

(2) Chief representatives and representatives of the residential offices of foreign enterprises in China.

CHAPTER III APPLICATION AND EXAMINATION AND APPROVAL

Article 11 Units employing foreigners shall fill Application for Employing Foreigners (hereinafter referred to as the Application), file applications to departments in charge of their respective trades at the same level of departments in charge of their labour management (hereinafter referred to as departments in charge of respective trades), and present the following documents in validity:

- (1) Resume of the foreigners to be employed.
- (2) Letter of employment intent.
- (3) Explanation of reasons for the employment.
- (4) Certificates qualifying the foreigners for the work.
- (5) Health certificates of the foreigners to be employed.
- (6) Other documents required by laws and regulations.

Departments in charge of respective trades shall carry out examination and give approval in line with stipulations in Article 6 and Article 7 of these Regulations and other relevant laws and regulations.

Article 12 After approval by departments in charge of respective trades, employer units shall go through verification procedures with labour administrations at the provincial, autonomous regional and municipal level or with authorized labour administrations at the prefectural level at their locations, carrying with them the application forms. Labour administrations at the provincial, autonomous regional and municipal level or authorized labour administrations at the prefectural level shall appoint special organs (hereinafter referred to as certificate issuing departments) to take specific charge of the work of the signing and issuance of certificates. Certificate issuers shall carry out verification according to the opinions put forward by departments in charge of respective trades and the supply and demand situation at the labour market, and issue certificates of permission to employer units after verification.

Article 13 Employer units at the central level and those without being affiliated to any departments in charge of respective trades may, if they want to employ foreigners, directly file applications and go through employment permission procedures with the certificate issuing departments of labour administrations.

Foreign-funded joint ventures hoping to employ foreigners do not need to ask for examination and approval from departments in charge of respective trades. They may apply for and obtain certificates of permission directly from the certificate issuing departments of labour administrations on the strength of their contracts, articles of association, certificates of approval, business licenses, and the documents specified in Article 11 of these Regulations.

Article 14 The employer units that have obtained the approval to employ foreigners shall not directly issue certificates of permission to the foreigners to be employed. The authorized units shall issue visa notices and certificates of permission to the foreigners to be employed in stead.

Article 15 The foreigners who have obtained approval to work in China shall apply for occupation visas at Chinese embassies or consulates on the strength of the certificates of permission issued by the Chinese Ministry of Labour, the notices and certificates of permission issued by authorized units, valid passports issued by their own countries, or documents that can substitute passports.

Those conforming with conditions specified in Clause 1 of Article 9 of these Regulations shall apply for occupation visas on the strength of the notices sent by authorized units, those conforming with conditions specified in Clause 2 of Article 9 of these Regulations shall apply for occupations visas on the strength of the notices given by the China Offshore Oil Corporation, and those conforming with conditions specified in Clause 3 of Article 9 of these Regulations shall apply for occupation

visas on the strength of the notices given by the foreign affairs offices of the people's governments of relevant provinces, autonomous regions or municipalities and the documents of approval issued by the Ministry of Culture (both will be given directly to Chinese embassies or consulates in the countries concerned).

Those conforming with conditions in Clause 1 of Article 10 of these Regulations shall apply for occupation visas on the strength of the notices given by authorized units and letters of projects of cooperation and exchange. Those conforming with conditions specified in Clause 2 of Article 10 of these Regulations shall apply for occupation visas on the strength of the notices given by authorized units and certificates of registration issued by administrations for industry and commerce.

Article 16 Employer units shall, within 15 days of the entry of the foreigners they employ, apply to the original certificate issuing departments for certificates of employment for these foreigners and fill the Forms of Registration of Employment of Foreigners) on the strength of the certificates of permission, the labour contracts they have signed with these foreigners, the valid passports of these foreigners, or documents that can substitute the passports.

The certificates of employment are valid only in areas designed by certificate issuing departments.

Article 17 Foreigners who have received certificates of employment shall, within 30 days after entry, apply for and obtain residence cards from public security departments on the strength of their certificates of employment. The term of validity of residence cards can be determined according to the term of validity of the certificates of employment.

Article 18 Employer units and the foreigners employed shall sign labour contracts in accordance with law. The term of labour contracts shall not be more than five years at the longest. Labour contracts shall terminate upon the expiration of their terms, although they can be renewed after completing procedures of examination and approval as stipulated in Article 19 of these Regulations.

Article 19 The certificates of employment of foreigners shall become invalid upon expiration of the labour contracts they sign with employer units. If both parties hope to prolong the contracts, the employer unit shall apply, within 30 days of the termination of the original labour contracts, to labour administrations for prolonging the employment and go through, if approved, procedures for extending the term of the certificates of employment.

Article 20 The foreigners who have prolonged their term of employment in China or changed their locations of employment or employers shall go through alteration procedures with local public security departments within 10 days of such changes.

Article 21 After termination of the labour contracts between the employed foreigners and the employer units, the employer units shall make timely reports to labour and public security departments, return the certificates of employment and residence cards of the foreigners, and go through exit procedures with public security departments.

Article 22 Employer units shall not pay the foreigners they employ wages lower than local minimum wage standards.

Article 23 The working hours, rest, holidays, labour safety and sanitation, and social insurance for foreigners employed in China shall be handled in line with relevant State regulations.

Article 24 The employer units with which the foreigners work in China shall be same and one as specified in the certificates of employment.

The foreigners who change their employers within the location designed by the certificate issuing

departments but still engage in the same occupation shall ask for approval from the original certificate issuing departments and go through employment alteration procedures.

The foreigners who get jobs beyond the area designated by the certificates issuing departments or change their employer within the area designated by the certificate issuing departments but engage in different occupations shall go through procedures for employment permission anew.

Article 25 Employer units must terminate their labour contracts with the foreigners who have been deprived by Chinese public security departments of the right to reside in China due to violation of Chinese laws, and labour departments shall revoke the certificates of employment of these foreigners.

Article 26 Should any labour disputes arise between employer units and employed foreigners, these disputes shall be handled in line with the Labour Law of the People's Republic of China and the Regulations of the People's Republic of China on the Settlement of Labour Disputes in Enterprises.

Article 27 Labour administrations shall carry out annual checks of certificates of employment. Within 30 days of the conclusion of each full year of employment of foreigners, the employer units shall go through procedures with the certificate issuing departments of labour administrations for the annual check of certificates of employment on behalf of the foreigners they employ. Certificates of employment shall become invalid automatically should employer units fail to go through these procedures within the prescribed time.

Foreigners who lose or damage their certificates of employment while working in China shall report their cases to the original certificate issuing departments and go through procedures for new certificates.

Article 28 Foreigners who get employed without obtaining certificates of employment and employer units that employ foreigners without obtaining certificates of permission shall be handled by public security departments in line with Article 44 of the Implementing Rules of the Law of the People's Republic of China on the Management of the Entry and Exit of Foreigners.

Article 29 Labour administrations shall revoke the certificates of employment of foreigners who refuse checks of their certificates of employment by labour administrations, change their employers or jobs without permission, or prolong their terms of employment without authorization, and ask public security departments to deprive these foreigners of their qualification for residing in China. If these foreigners are to be repatriated, the repatriation costs shall be shouldered by the employer units or the foreigners themselves.

Article 30 Foreigners and employer units that forge, alter, transfer, trade or use other's certificates of employment or certificates of permission shall be subject to confiscation of these certificates of employment or certificates of permission by labour administrations and be fined at between over 10,000 yuan and below 100,000 yuan. Those who commit cases so serious as to become criminal shall be handed over to judicial departments to affix criminal responsibilities.

Article 31 The staff members of certificate issuing departments and other relevant departments who usurp their power, ask for illegal charges, or do wrong to serve their friends or relatives and as a result commit crimes shall be affixed with criminal responsibilities or be administratively disciplined if their cases are not so serious as to be criminal.

Article 32 Residents from China's Taiwan, Hong Kong and Macao regions who seek jobs on the Chinese mainland shall be treated in line with the Regulations on the Management of Employment of Taiwan, Hong Kong and Macao Residents on the Chinese Mainland.

Article 33 These Regulations are not applicable those foreigners who are employed in China's Taiwan, Hong Kong, or Macao regions.

Article 34 Privately-owned economic organizations and individuals are forbidden to employ foreigners.

Article 35 Labour administrations at the provincial, autonomous regional and municipal level may formulate, together with public security departments and other departments, local implementing rules of these Regulations and report these rules to the Ministry of Labour, the Ministry of Public Security, the Ministry of Foreign Affairs, and the Ministry of Foreign Trade and Economic Cooperation for the record.

Article 36 These Regulations shall be explained by the Ministry of Labour.

Article 37 These Regulations shall take effect on May 1, 1996. The Stipulations on the Employment of Foreigners Who have Not Obtained Residence Cards and Foreigners Who Come to China for the Purpose of Study promulgated by the former Ministry of Labour and Personnel and the Ministry of Public Security on October 5, 1987 shall be nullified at the same time.

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