

# New Exit-Entry Law Enacted by China's Congress

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On June 30 the National People's Congress Standing Committee passed a new Exit-Entry Administration Law.<sup>2</sup> This is the first overhaul of China's immigration law since 1985.<sup>3</sup>

The overriding policy behind the law is to create harsher punishments for foreigners who illegally enter, live, or work in China. But beyond that, the law enacts wide-ranging changes to the rules for foreigners' visas, residence, and rights in China.

The law is skeletal in many places, leaving it to administrators to enact implementing regulations and to officers to exercise their discretion. The new law won't take effect until July 1, 2013.<sup>4</sup>

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<sup>2</sup> The text of the law is available at the National People's Congress (NPC) website, [http://www.npc.gov.cn/npc/xinwen/2012-07/01/content\\_1728516.htm](http://www.npc.gov.cn/npc/xinwen/2012-07/01/content_1728516.htm). An unofficial English translation is available at <http://lawandborder.com/?p=1425>. The draft law had three readings before the NPC between its introduction in December 2011 and its enactment. NPC maintains a website with legislative history at [http://www.npc.gov.cn/huiyi/lfzt/crjglfzt/node\\_17064.htm](http://www.npc.gov.cn/huiyi/lfzt/crjglfzt/node_17064.htm).

<sup>3</sup> Foreigner Entry-Exit Administration Law, enacted by the Standing Committee of the National People's Congress Nov. 22, 1985 (hereinafter, "1985 Foreigner EEAL").

<sup>4</sup> Exit-Entry Administration Law (hereinafter, "EEAL"), art. 93. Prior rules called for fines of 500 RMB per day, not to exceed a total of 5000 RMB, or detention of 3-10 days. Implementing Rules for

## Penalty Provisions

**Fines for Unauthorized Work:** A fine of 5000 to 20,000 RMB will be imposed on a foreigner who works illegally. In serious circumstances, detention of five to 15 days may also be imposed.<sup>5</sup> Prior rules allowed fines not exceeding 1000 RMB but not detention.<sup>6</sup>

**Fines for Overstay:** Foreigners who illegally reside in the country may be given a warning. In serious cases, they will be fined 500 RMB per day, not to exceed a total of 10,000 RMB, or detained five to 15 days.<sup>7</sup>

**Employer Sanctions:** The Public Security Bureau (PSB) already carries out inspections for immigration law compliance, sometimes without giving the employer prior notice. Under the new law, a fine of 10,000 may be imposed for every foreigner illegally employed, up to a maximum of 100,000 RMB. Prior rules allowed for fines not exceeding 50,000 RMB.<sup>8</sup> Under the new law, any monetary gain resulting from such employment will also be confiscated.<sup>9</sup> It's not clear how such gains will be calculated.

**Voluntary Departure and Deportation:** Foreigners who have violated the immigration law may be given a deadline to depart voluntarily, if appropriate, or deported. A person who has been deported is not allowed to reenter for one to five, or 10 years in the case of "severe" violations.<sup>10</sup>

**Prohibitions on Departing China:** The government may order that a foreigner is prohibited from departing China if he or she has defaulted on payments due to workers. And a court may order that a foreigner is prohibited from departing if suspected of crime or involved in pending civil litigation.<sup>11</sup>

**Restrictions on Residence and Work Locations of Foreigners:** The PSB 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.<sup>12</sup> This enacts into statute a prior regulation, which is punishable by a warning, a fine of 1000 to 10,000 RMB, or deportation

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the Foreigner Entry-Exit Administration Law, promulgated by the Ministries of Public Security and Foreign Affairs, April 24, 2010 (hereinafter, "Implementing Rules"), art. 42.

<sup>5</sup> EEAL, art. 80.

<sup>6</sup> Implementing Rules, art. 44.

<sup>7</sup> EEAL, art. 78. Under prior rules, illegal overstay could be punished by a warning, a fine of 500 RMB per day not to exceed 5000 RMB, or detention of three to 10 days. Implementing Rules, art. 42.

<sup>8</sup> Implementing Rules, art 44. These rules also require the employer to cover all expenses of repatriating foreigners employed without authorization.

<sup>9</sup> EEAL, art. 80.

<sup>10</sup> EEAL, arts. 62 and 81.

<sup>11</sup> EEAL, Art. 28. *Cf.* 1985 Foreigner EEAL, art. 23.

<sup>12</sup> EEAL, art. 44;

in serious cases.<sup>13</sup>

## Enhanced Law Enforcement Powers

**Biometric Data:** Foreigners applying for residence certificates must provide to 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.<sup>14</sup>

**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.<sup>15</sup>

**Reporting Requirements for Employers and Schools:** Work units that employ foreigners or recruit overseas students must report relevant information to local public security organs in accordance with regulations yet to be promulgated.<sup>16</sup>

**Whistleblowing:** If citizens discover the illegal entry, illegal residence, or illegal employment of foreigners, they should timely report this to local public security organs.<sup>17</sup>

**Detention for Investigation:** A foreigner may be detained for investigation of suspected immigration law violations for up to 30 days, or 60 days in “complicated cases” upon the approval of the next higher level of the PSB or the Exit-Entry Frontier Inspection Station.<sup>18</sup> Vice-minister of Public Security Yang Huanning reported to Congress that new detention centers are currently under construction.<sup>19</sup>

## Eligibility for Visas and Residence Permits

**Industries and Occupations Prohibited, Encouraged, or Restricted to Foreigners:** Various departments under the State Council will formulate and periodically adjust a guidance catalog 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.<sup>20</sup> According to state-controlled media, this catalog will define specific industries

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<sup>13</sup> Implementing Rules, arts. 23 and 42.

<sup>14</sup> EEAL, arts. 7 and 30.

<sup>15</sup> EEAL, art. 66.

<sup>16</sup> EEAL, art. 45.

<sup>17</sup> EEAL, art. 45.

<sup>18</sup> EEAL, art. 60. *Cf.* 1985 Foreigner EEAL, art. 27 (specifying no time limit for detention for investigation).

<sup>19</sup> State Council, Work Report to the NPC Regarding Administration of Foreigners’ Entry, Stay, and Work (Apr. 2012), [http://www.npc.gov.cn/huiyi/ztbg/wgrrcjlgzbg/node\\_18545.htm](http://www.npc.gov.cn/huiyi/ztbg/wgrrcjlgzbg/node_18545.htm).

<sup>20</sup> EEAL, art. 42.

and occupations that are prohibited to, encouraged, or restricted to foreigners. This catalog may parallel the existing Foreign Industrial Investment Guidance Catalog, which identifies industries in which foreign investment is prohibited, encouraged, or restricted.<sup>21</sup>

**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.<sup>22</sup>

**“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.<sup>23</sup> It's unclear which agency will take the lead.

**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.<sup>24</sup> A closely related provision is that a person may be denied admission to China if the officer believes he or she may engage in activities inconsistent with the terms of the visa, such as working illegally or overstaying.<sup>25</sup> This may be the basis for denying admission to a person who has violated the terms of his or her visa in the past.

## 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; and to promote international exchange and opening to the outside world.

There was an overriding sense in the government that immigration laws need to be modernized to keep up with changes in migration patterns since the last legislative activity in 1985. Yang Huanning, Vice-minister of Public Security, reported to the Congress 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.<sup>26</sup> Still, the overall percentage of foreigners residing in China, about 0.04 percent,<sup>27</sup> is tiny compared to many countries.

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<sup>21</sup> Shen Fei, New Rules Lay Foundation for Migrant Law, People's Daily, July 5, 2012, <http://english.peopledaily.com.cn/90883/7865908.html>.

<sup>22</sup> EEAL, art. 30.

<sup>23</sup> EEAL, arts. 16 and 31.

<sup>24</sup> EEAL, art. 21.

<sup>25</sup> EEAL, art. 25.

<sup>26</sup> State Council Work Report, *supra*. See New Law Targets Foreigners' Illegal Presence, Xinhua, June 30, 2012, [http://www.chinadaily.com.cn/china/2012-06/30/content\\_15539201.htm](http://www.chinadaily.com.cn/china/2012-06/30/content_15539201.htm); New China

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.

The State Council also reported 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.<sup>28</sup>

Another perceived problem the new law tries to tackle is the insufficient oversight of foreigners' work in China. This is a politically sensitive subject, 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 (internal 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.

The new law doesn't change the rules regarding permanent residence in China. Permanent residence may be granted to foreigners who make "outstanding contributions" to China or "otherwise meet the requirements" for permanent residence as set by agency regulations.<sup>29</sup> Current regulations allow applications for permanent residence by certain investors; senior company officers, associate-level or higher professors or researchers; those who have made outstanding contributions to China; Chinese citizens' and permanent residents' spouses who have lived in China for at least five years; and certain other children and relatives.<sup>30</sup> The regulations set no targets or quotas for the number of persons who may be granted permanent resident status. By the end of 2011, just 4,752 foreigners had been granted green cards nationwide.<sup>31</sup>

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Law Targets Foreigners Working Illegally, AP, June 30, 2012, <http://www.foxnews.com/world/2012/06/30/new-china-law-targets-foreigners-working-illegally/>; Xuyang Jingjing, Foreigners Flouting Laws Face Harsher Punishments, Global Times, July 2, 2012, <http://www.globaltimes.cn/content/718352.shtml>.

<sup>27</sup> Shen Fei, *supra*.

<sup>28</sup> State Council Work Report, *supra*.

<sup>29</sup> EEAL, art. 47. *Cf.* 1985 Foreigner EEAL, art. 14.

<sup>30</sup> Measures for the Administration of Examination and Approval of Foreigners' Permanent Residence in China, promulgated by the Ministries of Public Security and Foreign Affairs, Aug. 15, 2004.

<sup>31</sup> 721 Foreigners Get "Green Cards" in Beijing, Xinhua, May 28, 2012, [http://www.china.org.cn/china/2012-05/28/content\\_25497771.htm](http://www.china.org.cn/china/2012-05/28/content_25497771.htm).

The practical impact of the new law will become known only as the law takes effect July 1, 2013, as administrators enact implementing regulations, and as officers begin to exercise the discretion granted to them under the law.