

China's New Exit-Entry Law Targets Illegal Foreigners
July 2012



Further information

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INTRODUCTION

Following a report from the Deputy Minister of Public Security, Yang Huanning to the National People's Congress Standing Committee on April 25 ("**Report to Congress**"), China's top legislature, the Standing Committee of the National People's Congress passed a new Exit-Entry Administration Law on 30 June, 2012, representing the first overhaul of China's immigration law since 1986.

Xinhua News Agency reports that the overriding policy behind the law is to impose harsher punishments on foreigners who illegally enter, live, or work in China. However the new law goes further and enacts wide-ranging changes to the two already existing laws governing foreigners' visa, residence and rights in China (the PRC Law on the Control of the Exit and Entry of PRC Nationals and the PRC Law on the Control of the Entry and Exit of Aliens), and introduces several new features.

The new Exit-Entry Administration Law will take effect on **1 July 2013**, and the two previous laws will be abolished concurrently.

Some of the highlights include:

- Harsher punishments including the introduction of sanctions on employers who employ foreigners illegally and a deportation and ban from re-entry system.
- Prohibition on foreigners to exit the country for being delinquent in paying labour remuneration .
- Halving of the prior *minimum* validity period for foreigners' work-based residence permits from 180 days to 90 days, an effort to more closely monitor foreign workers.
- Introduction of the collection of fingerprints and "other biometric data" for foreigners applying for residence certificates.
- Introduction of "talent introduction" visas and provisions on treatment of refugees.

A more detailed description of the key provisions is set out below.

HARSHER PUNISHMENTS

Sanctions on Employers

According to the new law, employers will be fined RMB10,000 for every foreigner illegally employed, up to a maximum fine of RMB100,000. Any monetary gains resulting from such employment will also be confiscated. (Article 80)

Sanctions on foreigners who work illegally

The new law stipulates that foreigners should obtain the required identity and employment documents when they are working in China. Any expat caught working in China without valid employment documents could be fined between RMB5,000 and RMB20,000. In serious circumstances, detention of five to 15 days, may also be imposed. (Article 80)

Fines and detention for illegal stay

Foreigners staying in the country illegally may be given a warning. In severe cases, they will be fined RMB500 per day, not to exceed a total of RMB10,000, or detained five to 15 days. (Article 78) The new law further states that people who assist in such illegal acts will also be punished.

Deportation

Foreigners found guilty of illegal entry, illegal residence or working illegally in the country may be repatriated and will not be allowed to re-enter China for a period between one to five years. Foreigners who have violated China's laws and regulations and are deemed "unsuitable" to stay may be given a deadline to depart voluntarily. Foreigners who commit "severe violations" that do not constitute crimes may be deported and not allowed to re-enter China for 10 years. (Articles 62, 81)

Prohibition from exiting the country

Apart from the prohibition on foreigners to exit the country under circumstances prescribed by existing laws (criminals who have not served the terms of their sentence, suspects and defendants under criminal cases, or people having unsettled civil cases who are not allowed to exit China upon decision by people's courts), foreigners who are in arrears of paying labour remuneration are also prohibited from exiting the country if so ordered by the local People's Government or the relevant departments under the State Council. (Article 28)

STRENGTHENING SUPERVISION AND MANAGEMENT

Length of residence certificates

Foreigners' work-related residence permits will be valid for a minimum 90 days and a maximum of five years, representing halving of the prior minimum validity period of 180 days. Non-work-related residence certificates will be valid for a minimum 180 days and a maximum of five years. (Article 30)

Request for biometric data

Foreigners applying for residence permits 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)

Reporting requirements for employers and schools and whistleblowing

Units or personnel employing foreigners or enrolling foreign students should report employment information to the local police departments. Meanwhile, citizens are encouraged to report clues regarding foreigners who may be working and living in China illegally. (Article 45)

Restrictions over residence and working locations of foreigners

The law also allows the PSB and national security organs to restrict foreigners and foreign entities from establishing residences or workplaces in certain locations. If already established in banned areas, they could be given deadlines to move. (Article 44)

Discretion to deny visas

The new law appears to give visa 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)

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)

WELCOME DEVELOPMENTS

Introduction of “talent introduction” visas

The law for the first time allows visas to be granted to foreign “talent,” but leaves further details to be set by agency regulations. (Articles 16, 31)

“Green card” system

The new law, in broad and vague fashion, 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. According to news reports, by the end of 2011, just 4,752 foreigners had been granted green cards nationwide.

Introduction of treatment of 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)

IMPETUS FOR THE NEW LAW

The new law came about as a result of the Chinese government's sentiment that border entry and residency laws needed to be "modernized" because of the pace of change since the last legislative activity in 1986. The Report to Congress stressed that the government will reinforce its administration of foreigners who have entered, stayed and worked in China illegally (the media calls it "**The Three Illegals**"). Even prior to the new law being passed on 30 June, Beijing PSB announced that it would launch a police campaign in "clearing" The Three Illegals in Beijing during the period of 14 May to the end of August, 2012. The announcement was made immediately after video footage was posted on the internet of a British tourist sexually assaulting a Chinese woman outside a Beijing subway station, prompting public outrage over the incident.

Despite the impetus, the new Exit-Entry Administration Law will largely be seen by multinationals and their expatriate employees as yet another blow to their confidence in China as an international center.

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