

Chinese Skilled Migration Legislation and Its Introduction of Foreign Talents*

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I. Preface

Skilled migration law was not made in China up to now although to make skilled migration law in earnest is clearly regulated in the *Outline of the National Plan for the Development of Talented People 2002-2005* (People's Republic of China; PRC) and the *Decisions on Strengthening*

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the Work on Talented People 2003 (PRC). According to the *Outline of National Plan for the Development of Talented People in the Medium Term and Long Term 2010-2020* (PRC), opener talent policy should be implemented, and to explore skilled migration shall be taken as one important and pressing national strategic task. Above two Outlines and one Decision are promulgated by the State Council, China and the Central Committee of Chinese Communist Party. To implement above national policies of skilled migration legislation, the study on skilled migration legislation has to be made in depth to clarify the notion of Chinese skilled migration law, to analyze the necessities of Chinese skilled migration legislation, to consider the concerns on Chinese skilled migration legislation, to examine the gaps between Chinese existing laws regulating foreign talents and skilled migration laws in the developed countries, and to explore new Chinese laws regulating foreign talents.

II . The Clarification on the Notion of Chinese Skilled Migration Law

Migrant, skilled migrant, migration law and skilled migration law are new notions for Chinese academics, governmental authorities and the public, especially in the context of foreigners who immigrate to China, although Chinese people emigrated to other countries for thousand years. The notion of skilled migration is not included in Chinese dictionaries(Dictionary Department, Institute of Linguistics, Chinese Academy of Social Sciences 2002 and Wu, Guanghua 1992). In Chinese language, both skilled migrant and skilled migration match *Jishu Yimin*, one phrase. In author's view, in

the term of a group of people, *Jishu Yinim* is conceptualised as foreigners who leave one's country to legally immigrate into China for permanent residence or temporary residence mainly with the basis of one's skills. *Jishu Yimin* is featured with internationality, mobility, talents, compatibility and integration.

Skilled migrant is conceptualised as above due to following three reasons. It is necessary for China to consider the original meaning of skilled migrant in the developed countries when skilled migrant is conceptualised in China. Skilled migrant is one loan phrase in Chinese (Ma Jinqi, Ma Yong and Wu Hua 2004: 188) and is usually invoked as foreigners who immigrate mainly based on one's skills for permanent residence or temporary residence in the immigration acts, regulations and policies in the developed countries. Skilled migrant has been commonly recognised as skilled foreigners in developed countries although the complete same notion is not reached in their laws and academics (Skeldon, Ron 2005: 8 and Cornelius, Wayne, Espenshade, Thomas and Salehyan, Idean 2002: 30). Additionally, China needs consider the popular understanding on skilled migrant by the academics and the public in China when skilled migrant is conceptualised in China. In the popular understanding on skilled migrant by the academics and the public in China, skilled migrant is foreigners who immigrate mainly for permanent residence, and secondarily for temporary residence (Liu, Jianxiong and Zhu, Xiongbao 2010). Furthermore, understanding of the Chinese governments on skilled migrant must be considered when skilled migrant is conceptualised in China. Skilled migrant is one phrase to be officially used as the targeted foreign talents in the national policy files such as the *Outline of National Plan for the Development of Talented People in the Medium Term and Long Term 2010-2020* (PRC).

Given the fact that the skilled migration law is one part of migration

law, and the common understanding that migration law is the laws to regulate the immigration of foreigners, Chinese skilled migration law is thus the Chinese laws to regulate the immigration of foreign talents. From the perspective of the contents, Chinese skilled migration law is featured with broadness, prominent legal techniques, combination of procedure law and substantive law, domestic law with internationality, and often changing. From the perspective of the formality, Chinese skilled migration law is featured with variety and complex. Compared with international migrant in the developed countries, international migrant in China is less in quantity and lower in quality. It can be mainly attributed to China's unattractiveness to foreign talents and very backward migration law. Chinese skilled migration law is not in the form of one special law or one special chapter of exit and entry(immigration) code. In the contrary, the contents of Chinese skilled migration law are scattered far and wide over the laws regulating foreign talents such as exit and entry administration law, foreigner employment administration law, foreign expert administration law, law on administration of examination and approval of foreigners' permanent residence.

III. The Necessities of Chinese Skilled Migration Legislation

Chinese skilled migration legislation shall be pressing ahead because of the big gaps between China and the developed countries in the field of the introduction of foreign talents, the shortcomings of existing laws regulating foreign talents, the requirements of national talents programs and Constitutional regulation regarding the rule of law.

The big gaps between China and the developed countries in the field

of the introduction of foreign talents hinder China's modernization and internationalization to a certain extent. Firstly, entered foreigners are in very small number and occupy a very low percentage of the whole population. Foreigners entered and exited China reached 52.112 million person-times in 2010(Bureau of Exit and Entry Administration, Ministry of Public Security, China 2011), it is 3.8 per cent of the Chinese whole population. 160 million foreigners entered the USA in 2010(Office of Immigration Statistics, Department of Homeland Security the USA 2010), calculated by person-times, it is 132.64 per cent of the whole population, the USA. 2.77 million foreigners entered Taiwan China in 2009(National Immigration Agency, Ministry of the Interior of Taiwan, China 2010), calculated by person-times, it is 30.14 per cent of the whole population, Taiwan China.

Secondly, residing foreigners in China is in very small number and occupy a very low percentage of the whole population. By using the data of the sixth population census of China, 593,832 foreigners were residing in China up to November 2010(National Statistic Bureau, China 2011), it is 0.04 per cent of Chinese whole population. It is far less than 13.5 per cent of the USA, 13.1 per cent of German, 10.7 per cent of France, 1.69 per cent of Japan, 1.1 per cent of South Korea, 1.76 per cent of Taiwan China, 0.4 per cent of Brazil, and 8.7 per cent of Russia.

Thirdly, employed foreigners in China cannot be compared to employed foreigners in the developed countries. 41597 foreigners are newly employed with Foreigner Employment Permit or Foreign Expert Certificate in 2010 in China(Ministry of Human Resource and Social Security, China 2009 and Ministry of Human Resource and Social Security, China 2010, Dong, Wei and Shi, Yubo 2010). 1,094,396 foreigners entered the USA with occupational visas such as H-1B, O-1, P-1 and L-1 in 2010(Monger, Randall

and Mathews, Megan 2010). 168,783 foreigners were issued visas for the employment purposes in 2001 in Japan.

Fourthly, foreigners who enter China and reside in China with permanent residence status are nearly zero. 649 foreigners were issued permanent residence card during the period between August 2004 and September 2005 (Bureau of Exit and Entry Administration, Ministry of Public Security, China 2005). It is the sole data regarding permanent residence which Chinese central governments published after the promulgation of the *Measures for the Administration of Examination and Approval of Foreigners' Permanent Residence in China 2004* (PRC). China's permanent resident policy so far has not yielded very obvious results. From 2004 to around 2011, there have been at 4,752-plus foreigners who have been granted permanent resident cards. This is a relatively extreme small number in comparison with the developed countries such as the USA and Australia. There were 1,042,625 foreigners and 168,685 foreigners who are separately granted permanent residence permits in 2010 in the USA(United States, Department of Homeland Security 2010:5) and in Australia(Australia, Department of Immigration and Citizenship 2011:3).

Lastly, the requirements of applying for permanent residence based on employment visa are extremely strict in China. In accordance with Article 6(2) of the *Measures for the Administration of Examination and Approval of Foreigners' Permanent Residence in China 2004* (PRC), "foreigners applying for permanent residence in China must abide by Chinese laws, be in good health and without any criminal record, and must meet at least one of the following requirements: ... (2) having been holding the post of deputy general manager, factory deputy director or above or of associate professor, associate researcher and other associate senior titles or above or

enjoying an equal treatment, for at least four successive years, with a cumulative period of residence in China not less than three cumulative years in four years and with a good tax paying record;” According to the 8 of the *Measures for the Administration of Examination and Approval of Foreigners’ Permanent Residence in China 2004* (PRC), “in the case of a foreigner under item (2) of the first paragraph of Article 6 herein, the entity in which he holds a post must be any of the following: (1) an institution subordinate to any department of the State Council or to the people’s government at the provincial level; (2) a key college or university; (3) an enterprise or institution carrying out a key engineering project or major scientific research project of the state; or (4) a high-tech enterprise, enterprise with foreign investment in an industry encouraged, advanced-tech enterprise with foreign investment or export-oriented enterprise with foreign investment”. In the immigration law of the developed countries, the requirements of applying for permanent residence are mainly based on employment and residence period other than employment position. Legally operated corporations are equally entitled to support the skilled migration application of their proposed employed foreigners.

Criticised by the percentage of residing foreigners of the whole population and integration level of foreigners, Shanghai, Beijing and Guangzhou, the most developed three municipalities in China are not modernised and internationalised. Research project team of *Impacts and Promotion of 2008 Olympic Games on Beijing Modernization* argued that one of main gaps between Beijing and other world municipalities such as London, Paris was the very small size of international migrant in Beijing. According to the *Overall Development Strategy of Guangzhou Municipality 2020*, Guangzhou was not a world municipality partly because of the lack of international

migrants and multi-cultures.

With the reference of skilled migration law in the developed countries, there are noticeable formal and substantive issues in Chinese laws regulating foreign talents which became normal and calls for immediate solution. China always attached great importance to foreign talents since the implementation of open and reform in the end of 1978. Some laws regulating foreign talents are promulgated and notable progress were made, including the *Provisional Rules of Work on Introducing Foreign Talents 1983* (PRC), the *Law of Administration of Entrance and Exit of Foreigners 1985* (PRC), and the *Rules of Administration of Foreigners Employment in China 1996* (PRC), Formal issues of laws regulating foreign talents are mainly the lack of legal authority, seriousness of law conflicts, the lack of timely amendments, poor adaptability, obscurity of legal regulations, as well inconvenience of implementation. Substantial issues of laws regulating foreign talents are mainly to attach little significance to human resource market in governing methods, to disregard independent working and skilled migration visa, to guide foreign talents distribution within China territory in contrary motion, not to establish relatives/employer sponsor/nomination system, not to impose duties on employer of foreign talents, not to unify the administration of foreigner employment, as well not to unify the administration of foreigner exit and entrance.

Article 5 of the Constitution 1982(2004 amendment) regulates that the State will be governed by law. In the light of the *Outline of the National Plan for the Development of Talented People 2002-2005* (PRC) and the *Decisions on Strengthening the Work on Talented People 2003* (PRC) skilled migration law shall be made in earnest. Therefore, foreign talents administration needs to be shifted from policy guidance to law regulation.

From the perspective of governing the State by law, policy files cannot be direct source of administration of foreign talents. However policy files are the important direct sources of foreign talents administration in China now. For example, the foremost governmental file of foreign talents administration, the *Provisional Measures of Introducing High Level Foreign talents 2008* (PRC) is jointly promulgated by the Organization Department of the Central Committee of the CPC, the Unification Department of the Central Committee of the CPC and other 16 ministerial level departments. Additionally, it is hard for foreign talents to know the policy files of foreign talents administration and its contents although they are the object of foreign talents administration because many foreign talents administration policy file are internal policy files with secret. Furthermore, foreign talents are used to settle matters by law other than by policy as they usually live in the developed countries with the environment of governing the State by law. Communication barriers may be caused between Chinese governments and foreign talents. Service and administration of foreign talents might be then inefficiency should Chinese governments continually attach great importance into policy methods and disregard law methods.

IV. The Examinations on Chinese Existing Laws Regulating Foreign Talents

Given the argument that Chinese skilled migration law is the Chinese laws to regulate the immigration of foreign talents, it is imperative to examine Chinese existing laws regulating foreign talent to clarify the issues to be resolved for Chinese skilled migration legislation. The existing

foremost laws regulating foreign talents are the *Law of Exit and Entrance Administration 2012* (PRC), the *Rules on the administration of Foreigner Employment in China 1986* (PRC), the *Measures for the Administration of Examination and Approval of Foreigners' Permanent Residence in China 2004* (PRC).

1. To Promote the Development of National Economy and Society by Introducing Foreign Talents is not covered as One of Legislative Purposes of Laws Regulating Foreign Talents

According to the *Outline of National Plan for the Development of Talented People in the Medium Term and Long Term 2010-2020* (PRC), opener talent policy should be implemented, the introduction of high level foreign talents shall be taken as one important and pressing national strategic task. Opener talents policy and the national strategy of the introduction of high level foreign talents could not be implemented without efficient administration of exit, entrance, working, and permanent residence. However to promote the development of national economy and society by introducing foreign talents is not covered as one of legislative purposes of above mentioned three laws.

Article 1 of the *Measures for the Administration of Examination and Approval of Foreigners' Permanent Residence in China 2004* (PRC) regulates that “these Measures are formulated in accordance with the relevant provisions of the *Law of Administration of Entrance and Exit of Foreigners 1985* (PRC) and the Detailed Rules for its implementation for the purpose of standardizing the examination and approval of foreigners' permanent residence in China”. Article 1 of the *Rules on the Administration of*

Foreigner Employment in China 1996 (PRC) regulates that “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”. According to Article 1 of the *Law of Exit and Entrance Administration 1985* (PRC), “this Law is formulated with a view to regulate the exit and entrance administration, safeguarding the sovereignty of the People’s Republic of China, maintaining its security and public order and facilitating international exchange and opening-up”. Without a proper legislative purpose, it is logically hard for above three mentioned laws to establish legal systems of introducing foreign talents to promote Chinese economic and social development.

2. Not to Authorize and Encourage Provincial Regions to Introduce Their Needed Foreign Talents

China is big country with 960 square kilometers which is divided in to 32 provincial regions excluding Hong Kong and Macao. Development level of economy and society, and structure of human resource are various in different provincial regions, so do the needs for foreign talents. But there are not legal regulations to authorize and encourage provincial regions to introduce their needed foreign talents based on their separate substantial and formal conditions. Regional skilled migration systems are established in the USA, Canada and Australia. In Canada, the Provincial Nomination Skilled Migration outcome was 30,369 or 31.66 per cent of the skill stream in 2009, compared to 8,047 or 6.18 per cent in 2005. In Australia, the State Specific and Regional Migration(SSRM) outcome was 37 410 or 32.9 per cent of the skill stream in 2010-2011, compared to 33.9 per cent in

2009-2010(Australia, Department of Immigration and Citizenship 2011: 3). In the *Measures for the Administration of Examination and Approval of Foreigners' Permanent Residence in China 2004* (PRC), the significant consideration on employer is paid on the ownership, size and industry other than regional location. In other words, the needs of provincial region for foreign talents are neglected in the Measures. China may establish regional skilled migration system to keep equilibrium distribution of foreign talents in China and give full play to the important functions of foreign talents in the development of the provincial region economy and society.

3. To Confuse High Level Foreign Talents with Other Normal Foreigners

According to opener talent policy and the national strategy of introducing high level foreign talents, high level foreign talents should be the key part of foreigners who China concerned. However, there are not peculiar regulations on high level foreign talents in the *Rules on the administration of Foreigner Employment in China 1996* (PRC), the *Measures for the Administration of Examination and Approval of Foreigners' Permanent Residence in China 2004* (PRC). The regulations of foreign talents visa in the Law of Administration of Exit and Entrance 2012 are to general to be implemented. Both high level foreign talents and other normal foreigners are applicable for the same employment visa, foreign employment permit, foreigner residence permit and foreign expert certificate. Foreign talents have to submit separate application files for above visa, permits and certificate. The procedures of processing application for above visa, permits and certificate are bureaucratic and time consuming.

The unification of visa and permit is not abnormal in some developed countries and regions, such as IT Card, Gold Card and Science Card in South Korea, Business and Academic Card and Permanent Residence Card(Plum Blossoms Card) in Taiwan China. Fortunately, the breakdown of the unification of permits and certificate was made in the *Provisional Measures of Residence Certificate System of High Level Foreign talents 2011* (Jiangsu Province, PRC). According Article 2 of this Provisional Measures, high level foreign talents without Jiangsu Household registration may apply for Residence Certificate of High Level Foreign talents if they satisfy the requirements of this Provisional Measures. The successful of the unification of different permits and certificate in Jiangsu Province could be expanded to the whole China.

4. Not to Encourage Foreign Talents with Chinese Origin to Immigrate and Process their Application with the Priority

Foreign talents with Chinese origin, for China, are the most important part of international migrant. They are one key group of high level foreign talents to be contacted and introduced into China. In comparison with other foreign talents, foreign talents with Chinese origin is more keen and available to immigrate into China as they are more familiar with Chinese culture, to keep closer contact with China, to have a deeper feeling with China. The regulations of exit, entrance, employment, permanent residence and nationality for foreign talents with Chinese origin need to separate from relevant regulations for other foreign talents. Otherwise the features of foreign talents with Chinese origin of being more familiar with Chinese culture, keeping closer contact with China, and having a deeper feeling

with China cannot be positively responded by Chinese laws and thus cannot be given full play in the development of economy and society in China. The only regulation on foreign talents with Chinese origin is in *Some Rules on Preferential Treatment in Pay and Life Necessities of Introduced High Level Foreign talents 2008*. Article 2 of this Some Rules regulate that public security authority shall process, with the priority, the application for being granted Chinese nationality and resuming Chinese nationality of foreign talents who meet the requirements of one-thousand program. In the other laws regulating foreign talents, the special regulation or system of foreign talents with Chinese origin is not established.

5. The Absence of Foreign Talent Employer Responsibility System

Foreign talents employer is one of the keys to give full play of the functions of foreign talents in the development of economy and society. The establishment of foreign talents employer responsibility system is beneficial for the reduction of the cost of introducing foreign talents, and the promotion of the training of domestic talents. However, there are not regulations of foreign talents employer responsibility at the *Measures for the Administration of Examination and Approval of Foreigners' Permanent Residence in China 2004* (PRC). For the *Rules on the administration of Foreigner Employment in China 1996* (PRC), employer responsibility is only regulated in Article 30, which rules that “for employers who forge, falsely use, transfer, buy and sell the Employment License, The labor administrative authorities shall take over the Employment Permit and the Employment License in question, confiscate the illegal proceeds and impose a fine between ten thousands and one hundred thousands RMB Yuan. In

serious cases which constitute a crime, their criminal responsibility of the perpetrators shall be looked into by the judicial authorities”.

The legal responsibility for invitation and employment are unfortunately absent. For foreign expert employer administration, the governmental authority attach great importance on whether the employer meet the requirements of employing foreign experts other than which legal responsibility employer will take for invitation and employment. In term of the *Law of Administration of Exit and Entrance 2012*, the legal responsibility for invitation is set up. However the legal responsibility for employment is still unluckily absence.

Foreign talents employer responsibility system is very popular in the developed countries. Employer is legally required to make labor market test, to nominate or sponsor proposed employed foreign talents, to assist governmental authority to manage introduced foreign talents. The invitation, employment and management of foreign talents will be beyond the control due to the absence of employer responsibility. For example, Mr. WANG, Zhiguo, one professor fell in One-thousand Program at the Harbin Medical University, China was questioned for his plagiarising papers in 2011.

6. Legal Issues of Foreigner Permanent Residence in China

To be granted permanent residence is one foremost step for foreign talents to give full play and integrate into China. Foreigner permanent residence system is one important system to attract foreign talents. Chinese Permanent Resident(Green Card) System was established at the *Law of Administration of Entrance and Exit of Foreigners 1985* (PRC), and developed in the *Measures for the Administration of Examination and Approval of Foreigners’*

Permanent Residence in China 2004 (PRC). The permanent residence system enhances the internationalization of China, and standardizes the examination and approval of permanent residence of foreigners in China.

However, numbers of legal issues could be found in the Measures. Legal issues existed not only in legislative structure and legislative goal but in system design and operational details. For example, the scope of applicant for Chinese permanent residence system is seriously narrowed. According to Article 6(2) of the *Measures for the Administration of Examination and Approval of Foreigners' Permanent Residence in China 2004* (PRC), only foreign talents with high level position and at least four successive years working experiences in China are eligible for permanent residence application. Foreigners just with normal position in China and with working experiences in other countries are excluded to apply for permanent residence. Attraction of Chinese permanent residence system is thus deliberately weakened. These issues scale up the disadvantages of China being a State with a very developing migration law, and hinder the high-speed development of Chinese migration law. These legal issues should be ignored in no case and is great significance to make a careful and comprehensive critical legal thinking. These legal issues might be resulted from incomplete knowing and understanding of permanent resident system, and of the relations between international migration and China social and economic development.

V. New Chinese Laws Regulating Foreign Talents

To fundamentally resolve legal issues of foreign talents, measures must be taken from the perspective of law. Compared with the developed countries

mostly having law in the nature of skilled migration, it is a pressing need for China, a developing country to make law in the nature of skilled migration. China needs to carefully consider which kind of skilled migration law is suitable for China and how to promote skilled migration legislation.

The legislation of the adjunct regulations of the *Law of Administration of Exit and Entrance 2012* will be significant to resolve above argued legal issues. The *Law of Exit and Entry Administration* was passed on 30 June 2012 and will be effective from 1 July 2013. It is the foremost law as well general law in international migration field in China. It stresses the importance of introducing foreign talents to China and principle regulates the scheme of foreign talents visa, foreign talents permanent residence, the change of foreign talents status from stay to residence. These principle regulations regarding foreign talents will be detailed in adjunct regulations of the *Law of Administration of Exit and Entrance 2012*. According to this brand new law, *Regulations of Issuance and Administration of Normal Visa* will be made. *Rules on the administration of Foreigner Employment in China 1996* (PRC), the *Measures for the Administration of Examination and Approval of Foreigners' Permanent Residence in China 2004* (PRC) will be amended.

If above argued legal issues could not be resolved at the adjunct regulations of the *Law of Administration of Exit and Entrance 2012*, proved disadvantages of laws regulating foreign talent will be succeeded from laws regulating foreign talents. The abnormal relationship among foreign talents, exit and entry administration, foreigners employment in China, and foreigners' permanent residence in China will be remained for a very long term. Legal issues aroused by foreign talents administration will be more serious and negative for the development of Chinese economy and society.

Existing laws regulating foreign talents must be examined with the guidance of opener talent policy and the national strategy of introducing high level foreign talents. The adjunct regulations of the *Law of Administration of Exit and Entrance 2012* need to be made with the purpose of promoting the development of economy and society by introducing foreign talents. The legislative purposes of the *Law of Administration of Entrance and Exit of Foreigners 1985* (PRC), the *Rules on the administration of Foreigner Employment in China 1996* (PRC), and the *Measures for the Administration of Examination and Approval of Foreigners' Permanent Residence in China 2004* (PRC) could not be completely succeeded for the legislative purpose of new laws regulating foreign talents.

The adjunct regulations of the *Law of Administration of Exit and Entrance 2012* could be with the six principles which are encouraging foreign talents to be introduced, filling in the gaps of domestic human resource, market oriented, promoting foreigners integrate into China, introducing foreign talents in high demand with the priority, and freedom of governmental information related to foreign talents administration.

Provincial region skilled migration system might be established in the adjunct regulations of the *Law of Administration of Exit and Entrance 2012*. With the basis of central government administrative power of immigration, some provincial level governments will be authorised and encouraged to introduce foreign talents who will make direct economic and social contribution on its provincial region. Provincial skilled migration occupation list and provincial level governments/ employer nomination criteria will be made for provincial foreign talents selection. Foreigner skilled migration application won't be processed anymore by Central government exit and entry administration authority according to national criteria of skilled

migration application if one's nominated skilled migration application is approved by provincial exit and entry administration authority.

In order not to confuse with employment visa (Z visa) in China, high level foreign talents card or visa need to be specially designed in the adjunct regulations of the *Law of Administration of Exit and Entrance 2012*. The progressive growth of foreign talents laid the foundation for high level foreign talents card or visa to be divorced from employment visa for all foreigners. With the complete implementation of opener talent policy and the national strategy of introducing high level foreign talents, more and more foreign talents will be introduced into China in the expectable future. Additionally, some regulations of high level foreign talents should be legalised and systemised. According to *Some Rules on Preferential Treatment in Pay and Life Necessities of Introduced High Level Foreign talents 2008* (PRC), introduced high level foreign talents are given preferential treatment in pay and life necessities. Moreover, special skilled migration visa is popularly regulated in some Western countries, such as EB-1-4 in the USA, distinguished talents visa and general skilled migration visa in Australia.

To strengthen the connections between foreigner with Chinese origin and China, relative sponsor/nomination visa and employer sponsor/nomination visa need to be created in the adjunct regulations of the *Law of Administration of Exit and Entrance 2012*. Relative sponsor/nomination visa in nature refers to foreigner with Chinese origin visa as foreigners without Chinese origin almost do not have relatives to provide sponsor nomination with China. For employer sponsor/nomination visa, foreigners with Chinese origin have more opportunities to be employed in China than foreigner without Chinese origin do. Employer sponsor/nomination visa is also basically perceived as foreigner with Chinese origin visa.

To improve the efficiency of foreign talents administration, foreign talents employer responsibility system needs to be established in the adjunct regulations of the *Law of Administration of Exit and Entrance 2012*. Employer of foreign talents will be required to make labor market test, to ensure the genuineness of foreign talents personal files, to employ foreign talents according to proposed position and duty, to train domestic talents who might be suitable for foreign talents position, to annually report foreign talents employment to relevant governmental authorities, not to illegally employ foreigners and so on. Employer of foreign talents will be fined if they do not perform responsibilities. In serious cases, one's Foreign Talents Employment License will be suspended or withdrawn.

To expand the scope of foreign talents to be introduced, independent skilled migration system needs to be established in the adjunct regulations of the *Law of Administration of Exit and Entrance 2012*. Foreigners who do not have working experiences in China and Chinese employer invitation will be thus eligible to lodge the skilled migration application. The conditions to be granted skilled migration visa for foreigners who do not have working experiences in China and Chinese employer invitation will be more restrict than the conditions for foreigners who have working experiences in China and Chinese employer invitation.

To reduce the cost of introducing foreign talents and to introduce foreign talents China really needs, systems of assessing foreigner talents methods and criteria needs to be improved in the adjunct regulations of the *Law of Administration of Exit and Entrance 2012*. Skilled migration occupation list is designed to limit the profession of foreign talents to be introduced. System of points test is designed to shun subjectivity, one-sidedness and superficiality of foreigner talents assessment. Criteria of assessment of

foreigner talents need to be detailed for the careful implementation. All employers should be entitled to employ foreign talents and be financially support by governments without discrimination. Members assessing foreigner talents need to be internationalised and professionalised.

To protect Chinese citizens' employment right, labor market test system established in existing laws regulating foreign talents must be improved in the adjunct regulations of the *Law of Administration of Exit and Entrance 2012*. Labor market test system is established in the *Rules on the administration of Foreigner Employment in China 1996* (PRC). However, the regulation of labor market test system is too general to be complete implemented. The prerequisite of introducing foreign talents is the protection of Chinese citizens' employment right. Employer must make labor market test before employing foreign talents to ensure that there are not available Chinese citizen to be employed to fill in the vacant position, and Chinese citizens' salary and working conditions won't be lowed due to foreigner employment. National human resource authority and foreign expert authority might be designed to jointly make the procedure and criteria of labor market test, and process the report of labor market test submitted by employer.

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[국문초록]

중국의 기술이민 관련 입법과 외국 인재의 도입

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중국의 기술이민법은 외국 인재의 국제적인 이동을 규율하는 중국 법이다. 중국의 기술이민 관련 입법은 선진국과 비교하였을 때 외국 인재의 도입에 큰 격차가 있다는 점, 외국 인재를 규율하는 현행법의 흠결, 국가적 인재 프로그램에 따른 요구와 법치주의와 관련한 헌법규정들로 인해 강력하게 추진될 것이다. 중국의 입장에서는 기술이민법이 필요한지의 여부를 판단하는 단계에서 어떠한 종류의 기술이민법이 필요한지와 어떤 입법과정을 채택할 것인지의 단계로 향상시키는 것이 중요하다. 기술이민법의 목적은 외국 인재의 출입국을 원활하게 하여 중국 사회의 발달과 경제를 개선하는 것이다. 이러한 목적에 의해 중국의 기술이민법 관련 입법은 정당화될 것이다.

주제어 : 기술이민, 입법, 기술이민법, 외국 인재, 출입국 관리

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