Briefing on Recent Reforms of Chinese Immigration Law

Beijing, 19 December, 2017
Summary Report

On 19 December 2017, the International Organization for Migration (IOM) organized a briefing for ten officials from eight EU MS Embassies in Beijing. Prof. Björn Ahl, Chair of Chinese Legal Culture was invited to give a presentation on recent reform of Chinese immigration law. This activity was carried out under the framework of *EU-China Dialogue on Migration and Mobility Support Project*.

Prof. Björn Ahl is an expert on Chinese public law, comparative constitutional law, Chinese positions on public international law, legal transfers and legal culture. As a Principal Investigator of the research project Chinese Immigration Law and Policy Reforms: Perspectives of Lawmakers, Administrators and Immigrants, Prof. Ahl specifically introduced new development and trends of Chinese immigration law, covering the new approach towards the selection of economic-stream immigrants to China, relevant application procedures of work permit, residence schemes, and the applicability of China labour law protections to foreign nationals was touched upon.

Prof. Ahl introduced that the Chinese government implemented various approaches and policies to attract overseas Chinese talents such as the famous: *Recruitment Program of Global Experts* (known as "the Thousand Talents Plan"). Although this plan targeted Chinese talents abroad to come back to China, it was not very successful because people of Chinese origins were not willing to come back in a permanent position. Since April 2017, nation-wide new work permit system of foreigners was launched in China that integrated previous Foreigners' Employment Permit and the Foreign Expert Work Permit into one single Foreigner's Work Permit in China. The current competent responsible Chinese organization for new work permit is the State Administration of Foreign Expert Affairs (SAFEA) instead of previous Ministry of Human Resources and Social Security and SAFEA. Prof. Ahl argued, that the main aim of the new system is to encourage the high-skilled ('category A'-foreigners), control the skilled ('category B'-foreigners) and restrict the low-skilled foreigners ('category C'-foreigners)" to China.

Generally, category A targets science and technology talent candidates but explicitly excludes talents in the social science. The basis of the new approach in selecting economic-stream immigrants in China included points-system and employer-demanding system. The nine categories of the new points system were presented including its detailed ranking system. The application for the Foreigners' Work Permit includes pre-departure and post-arrival procedures. For the current residence permit for foreigners, MPS issued Draft Regulations on the Administration of Permanent Residence Permits for Foreigners in 2016, which broadened scope of application. In May 2017, the new chip-based ID-card was introduced that might give more facilitation of foreigners in China.

Prof. Ahl also listed applicable labour-related laws for foreigners working in China. A valid work permit and a valid employment contract were the basis of legal protection for foreign nationals. Regulations of the Administration of Foreigners Working in China regulated the minimum wage, maximum working hours' protection and weekly rest, the leave entitlement and participation in the social security scheme. Because work relations between employers and foreign employees without work permits do not constitute an employment relation per Chinese labour laws, these important protections do not apply to irregular employment. Unemployment insurance was only applicable to foreign employees with permanent residence status.

Generally, Chinese court are relatively good to foreigners and are flexible in their ways to protect foreigners whom overall enjoy equal rights like Chinese citizens in particular in the Courts of Guangdong, Beijing and Zhejiang. Nowadays, Chinese law courts most likely apply Chinese Labour Law and Labour Contract Law to cases of foreigners working in China. The research on the right to minimum wage, maximum working hours, leave entitlement of foreigners were ongoing and more information on how courts are working in this environment will be available in future. Since 2014, Chinese Courts set up a database system to access all Courts decisions (http://wenshu.court.gov.cn/), where the public can view court judgment and process of cases.

During the briefing, the participants actively clarified questions about the application criteria of work permits, the weighting category of points system, role of agencies helping foreigners, and the issue of internships in China, etc. Following a constantly changing environment and new concept of immigration in China, the participants expressed that many issues surrounding immigration in China required to be further analyzed and tackled such as limited accessible websites on information for foreigners working in China, difficult obtaining Chinese permanent residence, etc.

Positive feedback was received from the attending European consular officials (see Annex 1 for evaluation). This briefing created a helpful platform for them to get updated information and trends of Chinese immigration laws. The mutual discussions and exchanges were beneficial to help European officials be familiar with Chinese immigration system and development, which facilitate the support consular officials provide to their nationals on working in China. In addition, it identified possible areas for future similar activities, including: the contents of specific labour law problems, issues of English teachers in China, challenges and difficulties of foreigners during the application for work permits.