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The Legal Framework of the Sponsorship Systems of Qatar, Saudi Arabia and Kuwait: A Comparative Examination

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The Legal Framework of the Sponsorship Systems of Qatar, Saudi Arabia and Kuwait: A Comparative Examination

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Abstract: The sponsorship system of the Arab Gulf countries comprises rules and regulations that tie the residence of a migrant worker to his/her sponsor in the country. This paper offers an in-depth examination of the legal framework of the sponsorship system of three countries of the Gulf Cooperation Council (GCC) - Qatar, Saudi Arabia, and Kuwait. The paper looks at different aspects of the system starting with the requirement for sponsorship and ending with the rules on absconding and repatriation.

Keywords: Qatar, Kuwait, Saudi Arabia, Sponsorship, Foreign Labour

Introduction

This paper will systematically examine and compare the legal frameworks of the sponsorship systems of three of the Gulf Cooperation Council (GCC) countries: Qatar, Saudi Arabia, and Kuwait. The objective is to provide the reader with a clear understanding of the established rules and procedures of the three systems and highlight the similarities and differences between them. This will serve the purpose of creating a more comprehensive understanding among researchers and advocates alike of the specificity of each case. The study of the degree to which the rules and regulations of each system are implemented in each country is beyond the scope and purpose of this paper. There exists a large body of reports detailing the problems with the sponsorship system and describing its negative impact on the interests and needs of migrants in the Gulf countries.

Underlying the sponsorship system of each of the three GCC countries examined, is the position that foreign workers are not to be treated as migrant workers who should be accorded the protections

and rights associated with that status. Those rights and protections stem from the legal and normative framework on international migration, which includes both binding international law and guiding principles and best practices. In theory and practice, foreign workers are considered to be temporary contractual workers. It is on this basis that the sponsorship system has been constructed.

Structurally speaking, the sponsorship system has common features across all three countries. First, the system is both administered and regulated by the Ministries of Interior. In practical terms, this means that the institution that grants migrant workers their residency rights is the same one that enforces those decisions without outside intervention by the courts or other governmental bodies. Second, the system is constructed around the model of employer sponsorship of foreign labour. Thus while the responsibility for granting or withholding residency rights to foreign labour is held by one institution, the enforcement of that system is highly dispersed among the various employers. The responsibility for a migrant worker and his/her residency in the country lies with the various employers, citizens in the case of domestic workers or companies and institutions.¹

The Requirement for Sponsorship

All three countries require any foreigner entering the country to have a sponsor. This not only applies to foreigners entering the country for employment purposes but also to visitors.

In Qatar, the law requires each foreigner granted an entry visa to the country to have a sponsor.² This applies to individuals entering on a temporary visit visa or those entering the country for residence and work.³ Similarly in Saudi Arabia, any foreigner permitted to enter the country must submit information about the sponsor for his obligations and commitments and a guarantor for his deportation in case he is required to leave the Kingdom. The sponsor may also be the businessman/company that has contracted him. If he fails to do that, he is required to pay an amount equivalent to the cost of his return and undertake to report to the Foreigners Control Office once every week at least.⁴ The Aliens' Residence Law and its implementing regulations are the primary legal sources for Kuwait's sponsorship system. This law requires all migrant workers to have a local sponsor, who must also be their employer. It is worth noting that this law does not employ the term 'sponsors' for employers but refers to them instead as recruiters. However, implementing regulations do refer to them as sponsors.⁵

Requirement to Return Passport

The sponsor in Qatar is required by law to return the passport or travel document to the sponsored individual once the procedures for issuing or renewing the residence permit are completed.⁶ In Saudi Arabia, a decision by the Council of Ministers prohibits employers from retaining the passports of migrant workers or members of their families and guarantees their freedom of movement within the Kingdom provided they hold a valid residence permit.⁷ In 2007, the Kuwaiti Ministry of Social Affairs and Labour issued a specific decree prohibiting employers in the private sector from retaining the travel documents of their workers.⁸

All three countries have put in place legislation prohibiting the withholding of passports in an effort to reduce abuses of the system by employers and in response to widespread criticism.

Transfer of Sponsorship

The transfer of sponsorship is a main feature of the sponsorship systems of all three countries. Once a foreign worker enters the country under the sponsorship of an employer, s/he is not permitted to transfer their sponsorship, and therefore work for another employer, without obtaining the approval of the original sponsor. The rules differ from one country to another in terms of the conditions that must be met before a transfer can be effected.

It is only possible to transfer the sponsorship of a worker in Qatar through a written agreement between the new and former employer with the approval of the competent authority of the Ministry of Labour.⁹ In some cases, the Minister of Interior or his authorized representative may transfer sponsorship on a temporary basis if a suit is filed between the employee and his sponsor. In cases where the Labour Law is not applicable to the employee,¹⁰ as in the case of domestic workers, the Minister or his authorized representative may order the transfer in the event of abuse by the employer or if it is deemed to be in the public interest. For the same reasons, this may also be done if the worker requests the transfer even when the Labour Law governs the sponsorship of the worker.¹¹

Saudi Arabia uses the term “transfer of services” in lieu of “transfer of sponsorship.” The change was effected in an attempt to deflect criticism of the Saudi sponsorship system. To transfer the services of a foreign employee from one employer to another, the former must hold valid residence and work permits and must have spent at least one year working for the current employer. The employee needs an officially certified waiver from the current employer, which must be submitted within one month of its signature to the Ministry of Labour. The transfer of services must also include the written approval of the employee to work for the employer requesting the transfer. In certain cases, the Minister of Labour may decide to transfer the services without approval from the current employer and these include the existence of a lawsuit between the employee and current employer where the latter has caused the lawsuit to be prolonged; the existence of humanitarian justifications requiring the unification of the family or other similar reasons; and other cases as determined by the Minister.¹²

The conditions set by Kuwait for the transfer of the work permit from one employer to another include obtaining the permission of the previous employer; the completion of one year of continuous residence in the country for foreign workers recruited on the basis of a work permit; the lapse of three years of continuous labour residence in the country for foreign workers recruited to work on government contracts; and the lapse of one year of continuous labour residence with the last employer for workers who are locally contracted.¹³ A number of cases are exempted from the previous conditions including but not limited to holders of university degrees or their equivalent, locally contracted workers, husbands and children of Kuwaiti women who hold another nationality.¹⁴ The transfer of any foreign worker to another employer without the permission of the previous employer is permitted after the lapse of three years of continuous employment.¹⁵

In the case of domestic workers, the Kuwaiti Ministry of Interior’s standardized domestic labor contract, which came into effect in 2006, no longer permits them to transfer their residence to another employer. If they leave their employer or are terminated, they are expected to leave immediately or face deportation. A previous directive, which is replaced by the standardized contract, enabled domestic workers to transfer to a different visa sponsor once every two years, with the consent of the former sponsor.¹⁶

In summary, the rules on the transfer of sponsorship are the most forgiving in the case of Kuwait, which has allowed certain exceptions to the requirement of obtaining the current sponsor's approval.

Ban on Return

In an effort to regulate the number of foreigners residing in the country at any given time and protect the interests of employers, the three countries have enacted legislation that requires foreigners to spend a certain amount of time outside the country after the end of the original work contract, based upon which they were granted residence. The laws differ from one country to the other in terms of the conditions that can result in the ban on return for a certain period of time.

Qatar has taken an all-encompassing approach. In accordance with Qatari law, a foreigner who has previously resided in Qatar for employment purposes may not be granted another entry visa until two years have lapsed from the date of his departure. This period may, however, be waived by the Minister or his authorized representative subject to a written approval from the previous sponsor.¹⁷ Moreover, a foreign worker who was dismissed from work on the basis of Art. 61¹⁸ of the labour law, and who has not challenged the dismissal before the competent court, or whose challenge has been rejected, is denied re-entry for work purposes for four years from the date of his departure.¹⁹

Under Kuwaiti law, the employer may request to cancel the work permit for an employee and deny him the right to work in the country for two years if the worker has violated the terms and conditions of his contract, or if his service was terminated in accordance with the disciplinary chapter of Art. 55 of Law No. 38 of 1964.²⁰

In Saudi Arabia, the worker may be banned from returning to the country for work for a period of two years if he is caught working for an employer other than the one who recruited him, and whose name is noted in his work permit, prior to his release by the latter and obtaining the approval of the concerned authority for the transfer of services.²¹

Exit Permits and Absence Abroad

The stay of a foreigner in each of the countries under examination is heavily regulated in terms of his/her ability to temporarily or permanently exit the country.

A foreign worker in Qatar must obtain an exit permit from his sponsor in order to leave the country whether temporarily or permanently. The only exceptions to this rule are women sponsored by the head of the family, minors, and visitors staying thirty days or less. If the sponsor refuses to sign the exit permit or is unable to do so, and has not appointed a deputy, then the expatriate must appoint a departure sponsor or submit a certificate proving he is not serving any sentence and has no pending lawsuits from the court of jurisdiction fifteen days after having published his intended date of departure in two daily newspapers.²² A foreigner may leave the country for a period of six months without losing his residency.²³

Foreigners residing in Saudi Arabia need to obtain an exit permit before leaving the country. If the foreigner wished to leave the country for a specific period of time during the given period of residence, he can request an exit and re-entry permit valid for a period of six months from the date of departure.²⁴

If sponsored by an employer, the foreign worker needs to obtain the permission of his employer to obtain the exit permit.²⁵ At the end of the employment contract, a foreign worker needs to obtain the approval of his employer in order to be able to obtain a final exit visa. The foreigner may then remain in the country for a period of two months of the issue of either type of visa: exit and re-entry or final exit.²⁶ If the foreigner is a dependant of another, then s/he may obtain an exit and re-entry visa upon the request of the head of the family (the sponsor) valid for one trip only and a period of nine to twelve months for study purposes.²⁷

An exit permit is not required in Kuwait except for foreign employees of ministries and some other government institutions.²⁸ A resident is permitted to leave the country for a period of six months without losing residency. In the following cases, a resident may exceed this period: Study purposes; sick people seeking treatment and those accompanying them; government and company employees whose work requires them to travel for a period exceeding six months.²⁹

Kuwait is the only country of the three that does not require the migrant worker, with the exception of those employed by ministries and other government institutions, to obtain an exit permit from the employer before leaving the country temporarily or permanently.

Self-Sponsorship

In certain limited cases, a foreigner may be permitted to act as his own sponsor. This right is extended to foreign investors in all three countries and a number of other cases in Qatar and Kuwait.

A number of different categories of persons may sponsor themselves in Qatar. According to the Workers' Rights Handbook published by the Qatari National Human Rights Committee, these categories include investors subject to law No. (13) of 2000 concerning non-Qatari capital investments in economic activities, owners and benefactors of real estates and residence units according to law No. (17) of 2004 concerning the organization and benefit of non-Qataris from real estates and residence units, and any other categories decided by a ruling from the Council of Ministers.³⁰

In Saudi Arabia, foreign investors and non-Saudi staff are sponsored by the licensed firm, which may be partially or fully owned by the foreign investor. In effect, this means that foreign investors may sponsor themselves through their companies.³¹

Foreigners in Kuwait may sponsor themselves and obtain a residence for two to five years, provided they can support themselves financially for the duration of their stay and can produce a certificate of good conduct. This form of residence can be renewed upon expiry. Self-sponsored expatriates may sponsor their wives and children and are entitled to run their own business.³² Recent news reports claim that this article (No. 24) may be activated for foreigners who have resided in the country for a minimum of 15 years, have no criminal record, have high academic qualifications, and earn a minimum monthly salary of KD500.³³

In addition, foreigners may be granted regular residence to practice economic or industrial activity or a certain profession or craft, provided they submit the required permit to practice the activity, profession, or craft.³⁴ The Ministry of Social Affairs and Labour has recently announced the re-activation of

the procedure to issue residence to foreigners engaged in business activity subject to meeting certain conditions including having a share of KD100,000 in a company and presenting a clearance certificate from the Ministry of Commerce and Industry which refers to the company's budget for the previous two years. Prior to 1975, such residence was issued under the aforementioned article (No. 19) to professionals and craftsmen but the procedure has been suspended since 1975.³⁵

Dependent Sponsorship and Employment

The entry, residence, and employment of dependents of foreigners residing in Kuwait, Saudi Arabia, and Qatar are subject to very specific rules and regulations. Each of these countries aims to limit the actual number of foreigners in the country and restrict the possibility of migrant workers' settlement and their demographic reproduction as much as possible.

A foreign worker residing in Qatar may obtain residence permits for the spouse, male children who have not completed their studies up to the age of 25, and unmarried daughters. The Minister or his authorized representative may also extend this to the parents of the foreign worker.³⁶

In Saudi Arabia, the residence permit of a foreigner who has a right to family reunion (see below) includes the wife and children who are less than eighteen years old. Once any of the children is older than eighteen, s/he is required to obtain an independent residence permit in accordance with stipulated provisions.³⁷ In order to limit the number of foreigners in the Kingdom, Saudi Arabia has chosen to grant the right to seek residence for their families (wife and children) to foreigners working in certain high-level professions. The first category includes university professors, teachers from all educational institutions including professional training centers, doctors, pharmacists, veterinarians, engineers including chemical and agricultural engineers, entomologists, computer specialists, weapons specialists; all of whom must be graduates of universities, institutes, and specialized scientific institutes. In addition, this category also includes directors of companies or institutions which employ one hundred employees and individuals who have acquired a long-term residence of five years or more. The second category includes accountants, lawyers, academics, radiology and laboratory assistants, surveyors, drafters, and engineers all of whom must be graduates of specialized scientific institutes; have resided in the Kingdom for a year or more; and have a monthly salary of SR4,000 or more.³⁸

In 2013, a regulation allowing a Saudi woman married to a foreigner to sponsor her husband and children came into effect.³⁹

The rules for dependents of sponsored individuals are more elaborate in Kuwait. According to a Ministerial Order issued in 1992, a dependent residence visa may be granted to the wife of a foreigner working in the government sector and three of his children if his monthly salary is no less than KD450. Another Ministerial order stipulates that the fee for each of the aforementioned individuals is KD10 per annum.⁴⁰ If he has more than three children, then he must pay an annual fee of KD100 for each additional child for the first year and KD10 for each following year.⁴¹ If the dependent is a family member other than a wife or child, then he must pay an annual fee of KD200 per person.

A foreigner employed in the private sector can apply for a dependent residence visa for his wife and only two of his children if his monthly salary is less than KD650 for an annual fee of KD100 for each of them for the first year and KD10 for each following year.⁴² Obtaining a visa for additional children

or family members, other than a wife or child, requires the foreigner to pay an annual fee of KD200 per person.⁴³ Exempted from the previous rules are a Kuwaiti citizen's foreign wife and a divorced or widowed foreign wife of a Kuwaiti citizen if they had children. These two exemptions are also applicable to GCC citizens who reside in Kuwait.⁴⁴

These rules are without prejudice to the rules of the 1987 Ministerial Order which implements the Aliens Residence Law of 1959 and allows for granting a regular visa for dependents so long as the resident is able to provide for them for the duration of their stay, informs the General Administration for Immigration Affairs of their place of residence, and bears the cost of their repatriation.⁴⁵

In terms of dependents seeking employment in Qatar, the law clearly defines for each category of residents who their sponsor should be. Male foreigners must be sponsored by their employers, whereas women are to be sponsored by the person supporting her and with whom she is residing even if she takes up employment.⁴⁶ New regulations issued in Saudi Arabia in 2013 by the Ministry of Labour allow dependents of foreign workers to seek employment if s/he is 18 years of age, has lived in the Kingdom for at least a year and has obtained the sponsorship of their employer. The employer must obtain the approval of the dependent's main sponsor. If a dependent leaves his or her employment and goes back to being a dependent of a foreign worker, he or she must remain in that status for at least one year before seeking another job.⁴⁷ Children of Saudi women married to foreigners may seek employment in the private sector and do not need to transfer their sponsorship to their employer. The foreign husband of a Saudi woman may also seek employment in the private sector provided he has a recognized passport, which enables him to travel back to his home country at any time.⁴⁸

Kuwaiti regulations also permit the transfer of a dependent's residence to a work residence subject to the approval of the original sponsor and the lapse of at least one year in the country.⁴⁹

Looking at the rules on dependent sponsorship, Kuwait places the heaviest burden on the foreign worker with the requirement of a minimum salary as well as the imposition of annual fees. Qatar only requires the foreign worker to meet the specified minimum salary requirement. Saudi Arabia, on the other hand, has not introduced the monetary requirement but has instead chosen to regulate the issue of family residence by limiting it to foreigners working in certain professions.

Seconding Workers

Seconding workers refers to the practice of temporarily loaning the services of an employee to another employer while still under the sponsorship of the original employer.

Generally speaking, sponsors in Qatar are prohibited from permitting their workers to be employed by anyone else. The competent authority may, however, authorize a sponsor to lend the foreign workers he sponsors to another employer for no more than six months, which may be renewed for another six months. The competent authority may also grant permission to a foreigner to work for another employer outside the regular working hours of his original employment provided that his sponsor agrees to it in writing. The approval of the Ministry of Labour must be obtained for workers who are subject to the Labour Law. In all cases, visas may not be assigned or transferred to third parties in any manner whatsoever nor can they be used by third parties, whether such transfer, assignment, or use is remunerated or not.⁵⁰

A similar provision exists in Kuwaiti law which prohibits the employer from employing workers who do not hold a work permit or those who hold a work permit to work for another employer, even if the work is temporary and the original employer's approval has been obtained. Should that happen, the worker's permit will be revoked and they are to be repatriated at the expense of the employer.⁵¹

In Saudi Arabia, employers may not allow their workers to work for others and may not employ the workers of others themselves unless they follow legal rules and procedures related to the transfer of sponsorship.⁵²

Qatar's rules on seconding workers are the most permissive, allowing foreign workers to seek additional employment but subject to the approval of the sponsor and the competent authority.

Repatriation and Absconding

As a general rule, the sponsorship systems of all three countries require the employer to bear the responsibility and costs of repatriating their foreign employees.

Under Qatari law, the sponsor has the obligation to repatriate the foreign worker after the expiry or cancellation of his residence permit or when an order to repatriate him/ her is issued. If the foreign worker refrains from departing, the sponsor must notify the competent authority to repatriate him and pay the costs associated with it. However, the sponsor is not obligated to pay the costs of repatriation if the foreign worker is not subject to the Labor Law (domestic workers) after the lapse of thirty days from the date of his reporting the worker's escape. Furthermore, whoever employs a foreigner without sponsoring them is responsible for paying repatriation expenses in addition to the prescribed penalty. The sponsor must also bear the expenses of burial or transportation of the body of a deceased foreign worker to his/her country of origin.⁵³

Saudi Labour Law requires the employer to bear the costs of the exit visa and return ticket to the worker's home country at the end of his/her employment.⁵⁴ The residence regulations stipulate that if the sponsor insists on cancelling his sponsorship for strong reasons and no new sponsor offer was submitted then the foreign resident is to be detained if found and must leave the country within one week.⁵⁵

In Kuwait, the employer is required to pay the costs for repatriating the worker. If the worker discontinues his employment and joins another employer, then the latter employer must bear the costs of repatriation so long as the discontinuation of the previous employment has been reported and no violation of the law has taken place.⁵⁶ In a number of cases, the employer is exempted from paying the costs of repatriation and these include: the worker being fired in accordance with the provisions of the Labour Law; the worker refusing an engagement without just cause; the worker ending the work contract in violation of its terms and conditions; and the worker absconding from work and joining another employer. Once the former employer reports this, the new employer must bear the costs of repatriation. In all of the aforementioned cases, the Ministry of Labour may revoke the worker's permit for at least two years.⁵⁷

Concluding Remarks

Upon closer examination of the sponsorship systems of Qatar, Saudi Arabia, and Kuwait, it is clear that they are structurally and functionally similar; it is not merely the way in which the systems have been

constructed that is similar but also the way in which they operate. The rules in all three countries have been formulated around the needs of the employer as the baseline and subsequently amended as a knee-jerk response to some of the abuses that have resulted from that. This is evident, for example, in the case of the legislation prohibiting the holding of the worker's passport and the requirement to return it once all the necessary paperwork has been completed.

A number of reasons could be posited for the similarity in the sponsorship systems of the three countries. The sponsorship system is said to have evolved from the Bedouin tradition of hospitality, which is based on the concept of offering guests protection and taking responsibility for them.⁵⁸ Given their geographical proximity and shared cultural heritage, it is possible to understand how all three countries may have applied this concept to their legal systems. The Kafala system may also have evolved from Islamic Sharia law relating to personal kafala/guarantees.⁵⁹

The three countries also share a similar history in terms of their need for migrant workers. The discovery of oil has led to rapid development and the need for manpower to execute projects. This has led to a rapid influx of foreign labour. Coupled with the increase of the national population's wealth, this has created a dependence on foreign labour to carry out jobs that were considered inferior by the local population (mainly in the construction and services sectors). Therefore, all three countries found themselves faced with the same challenge of trying to balance between their high dependence on foreign labour and their need to limit the influx of foreigners in order to guarantee the numerical superiority of their national population.

Another factor, which may have led to the similarity in the legal frameworks of the sponsorship systems in these countries, is the political and economic union between them – the Gulf Cooperation Council. This is a platform through which the Gulf countries formulate much of their economic and political policies and exchange information and strategies for dealing with common issues facing them, including the issue of population imbalance.⁶⁰

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