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The system of immigration- related legislation in the Russian Federation

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Introduction

Peculiarities of Russian immigration-related legislation can to a large extent be explained by the fact that citizens of neighbouring countries – former USSR republics – do not require a visa to enter the Russian Federation (except for the Baltic states, the Republic of Georgia and Turkmenistan)¹. Meanwhile, major immigration flows to the RF originate from these very countries, and they are largely spontaneous in nature.

1. Entry to the Russian Federation

Entry to the Russian Federation of foreign citizens with a visa is regulated by chapters IV and V of the Federal law No. 114-ΦЗ **‘On the Procedure of Exit from the Russian Federation and Entry to the Russian Federation’** of 15.08.1996. Following the approval of the Federal law ‘On the Legal Status of Foreign citizens in the Russian Federation’, these chapters were considerably amended (the amendments were introduced by the law No. 7-ΦЗ of 10.01.2003)². Apart from a visa, a foreign citizen shall present a completed migration card upon entry – a document used for control over his/her temporary stay and required for his/her migration registration.

Entry of a foreign citizen who does not need a visa is carried out by way of presenting a migration card and documents whose list is established on the basis of bilateral agreements on mutual visa-free trips.

2. The legal status of foreign citizens in the RF

The key legislative act in the area of migration is the Federal law **‘On the Legal Status of Foreign Citizens in the Russian Federation’** as of 25.07.2002 No. 115-ΦЗ³. It defines the legal status of foreign citizens in the RF and regulates their relations with state authorities emerging upon their stay or residence on the RF territory as well as their labour, entrepreneurial or other activities (Art. 1). In accordance with Art. 2(2), for the purpose of the Law, the notion of ‘a foreign citizen’ covers also a stateless person except for the cases when the law determines special rules for stateless persons.

As determined by Art. 4 of the Law, in the RF foreign citizens enjoy the same rights and bear the same responsibilities as RF citizens, unless the federal law provides otherwise.

Since 2002 numerous amendments have been introduced into the initial text of the Law (27 altogether). Some of them are fundamental in nature and are directed at partial liberalization of regulation. They include 2006⁴ supplements concerning temporary residence and labour activity of foreign citizens arriving in the RF without the visa requirement (Art. 6.1 and 13.1, respectively) as well as peculiarities in regulating the labour market of migrant workers (Art. 18.1); 2010⁵ supplements that refer to peculiarities of conducting labour activity by foreign citizens – highly-qualified specialists

¹ Initially on the basis of the Agreement on Visa-free Movement of Citizens of the CIS Countries on the Territory of the Member States since 9.10.1992, and after the RF left the Agreement in 2000 – on the basis of bilateral agreements on mutual visa-free trips.

² The initial text of the law as of 15.08.96 No. 114-ΦЗ was published in the Collection of RF Laws (RF CL), 1996, No. 34, Art.4029; the law as of 10.01.03 No. 7-ΦЗ was published in RF CL, 2003, No. 2, Art. 159.

³ The initial text was published in RF CL, 2002, No. 30, Art. 3032

⁴ The federal law ‘On the Amendments to the Federal Law ‘On the Legal Status of Foreign citizens in the Russian Federation’ and on finding invalid separate provisions and supplements to certain legal acts of the RF (as of 18.07.2006 No. 110-ΦЗ). Published in RF CL, 2006, No. 30, Art.3286; 2007, No. 1, Art.361.

⁵ The federal law ‘On the Amendments to the Federal Law ‘On the Legal Status of Foreign citizens in the Russian Federation’ and separate legal acts of the RF (as of 19.05.2010 No. 86-ΦЗ). Published in RF CL, 2010, No. 21, Art.2524.

(Art. 13.2) and possibility for foreign citizens exempted from the visa requirement to carry out paid employment at natural person's based on a license and without a work permit (Art. 13.3). Besides, in 2010 the Law was supplemented by the new chapter VI 'Transfer and admission of foreign citizens in accordance with the international agreements of the RF on readmission'⁶.

Foreign citizens staying in the RF are divided into three categories: temporary stayers (within the visa's period of validity, and in the case of those exempted from the visa requirement and having a migration card, - within the period that does not exceed 90 days), temporary residents (who have received a temporary residence permit with the validity period of 3 years) and permanent residents (who have a residence permit with the validity period of 5 years, and which can be extended following the individual's application).

A foreign national, lawfully staying on the RF territory, may submit an application for a temporary residence permit. A temporary residence permit is issued to an individual within a quota annually established by the Government on the basis of proposals from the federal subjects, taking into account the demographic situation in the respective subject and its possibilities as regards provision of the necessary facilities for foreign citizens (Art. 6).

Certain categories of foreign citizens receive a temporary residence permit outside the quota. They include, in particular, spouses of RF citizens permanently residing on the RF territory; disabled parents of legally capable Russian citizens; foreign citizens with at least one disabled parent who is RF citizen; foreign citizens with minor children or children aged 18 yet regarded disabled or with limited legal capacity with RF citizenship (Art. 6 part 3). This preferential norm can be considered an indication of partial recognition of the principle of family unity; yet explicitly this principle is not fixed in the Law.

A temporary residence permit can be refused or revoked on the grounds listed in Art. 7 of the Law, in particular, in the case of previous unserved or unremoved sentence for a grave or especially grave crime within or outside the Russian Federation, in the absence of proved ability to provide means of subsistence for himself/herself and family members within the minimum subsistence level, for medical condition (drug addiction, HIV-infection, infectious diseases posing a threat to others) as well as the case when an individual has been found liable for administrative offences twice during one year for violating the rules of stay or residence of foreign citizens on the RF territory.

Art. 6.1 included in the Law in 2006 establishes a preferential procedure of admission and examination of applications for a temporary residence permit within the quota for foreign citizens entering the RF following the visa-free regime: some documents that have to be attached to the application (in particular, medical documents) can be submitted by them following the admission of their application while the application itself is examined within two months (and not six months, as it is provided for other applicants).

Foreign citizens with a temporary residence permit have limited freedom of movement: they are not entitled to change their place of residence upon their own discretion and have to reside in the region where their temporary residence permit has been issued.

After the expiry of annual residence based on a temporary residence permit, a foreign national is entitled to apply for a permanent residence permit. The list of documents attached to the application and grounds for refusal of a permanent residence permit are largely identical with those specified for a temporary residence permit. A permanent residence permit is granted for five years and may subsequently be extended for every five years upon individual's application.

⁶ The federal law 'On the Amendments to Separate Legal Acts of the RF as regards Implementation of RF International Agreements on Readmission' (as of 23.07.2010 No. 180-Ф3). Published in RF CL, 2010, No. 30, Art. 4011.

3. Labour migration

The Law does not have a separate chapter regulating labour migration. The respective provisions were initially included into Art. 13 ‘Conditions of Participation of Foreign Citizens in Labor Relations’. In accordance with this article foreign citizens (except for those in possession of a permanent residence permit) have been entitled to work only with employers granted a permission to attract and employ foreign workers. Subsequently (in 2010), an amendment was introduced into the Law that provided for an exception from the rule as regards hiring migrant workers entering the country within a visa-free regime as well as highly-qualified specialists and their family members (Art. 6.1, Art. 6.2).

As regards foreign citizens themselves (apart from those with a permanent residence permit), they are obliged to preliminary obtain a work permit for employment or individual entrepreneurial activity. A work permit is issued taking into account the quota annually established by the RF Government with regional distribution. At the same time, temporarily staying foreign citizens (‘foreign workers’ - using the terminology of the Law) and temporary stayers shall work in the same region where a work permit was issued. Exceptions are provided only for a number of occupations⁷.

It is noteworthy that the established procedure for regulating labour migration puts ‘foreign workers’ who are exempted from the visa requirement in an extremely difficult position, since their period of stay is 3 months and can be extended only under the condition of concluding an employment agreement for a period of no longer than 1 year since the moment of their entry. Since employers avoid concluding employment agreements, this category of foreign citizens have to either regularly leave every three months and then arrive again or continue working illegally and accept slave labour conditions and absolute dependence on an employer.

One of the latest novelties as regards regulation of work of ‘foreign workers’ has been the introduction of a licence which gives them the right to work at natural persons’ under an agreement without a work permit (Art. 13.3). The licence is issued to an individual under the condition of payment of a fixed advance payment for a period of one up to three months. This period can be extended several times for a period of up to three months. The total period of licence validity including extensions cannot be longer than twelve months since the day of issuing the licence. After the expiry of twelve months since the day of issuing the licence a foreigner may apply for a new licence.

4. Migration registration of foreign citizens

The Law on the legal status of foreign citizens is directly related to the Federal Law No. 109-ФЗ ‘*On Migration Registration of Foreign citizens and Stateless Persons in the Russian Federation*’ of 12.07.2006⁸. Migration registration is considered as ‘one of the forms of regulating migration processes’ (the preamble to the Law). Migration registration is carried out for notification purposes. Notification on the arrival of a foreigner is sent by the host party by post to the territorial office of the RF Federal Migration Service within 7 working days since the date of arrival or is submitted by the foreign citizen himself/herself directly at the territorial office. In the case of the change of the place of stay or temporary residence a foreign citizen shall submit the notification in accordance with the new address. The establishment of rules and procedure of migration registration is delegated to the RF Government (Art. 8 of the Law, based on these grounds it adopted the decision ‘*On the Procedure of the Implementation of Migration Registration of Foreign citizens and Stateless Persons in the Russian Federation*’ as of 15.012007 No. 9⁹).

⁷ The Order of the RF Ministry of Health and Social Development as of 28.07.2010 No. 564. Published in ‘Российская газета’ (‘The Russian Newspaper’) No. 210, 17.09.2010.

⁸ The initial text was published in RF CL, 2006, No. 30, Art.3285.

⁹ The initial text was published in RF CL, 2007, No. 9, Art.653.

Another important decision of the RF Government – *‘On the State Information System of Migration Registration’* of 14.02.2007 No. 94 – was issued on the basis of Art. 10 of the Law. The decision defines the procedure of functioning of a single information system that provides for ‘the formation of exhaustive, reliable and up-to-date information on movements of foreign citizens and conducting labour activity, which is indispensable for the assessment of migration situation, working out and implementation of measures aimed at regulating migration processes’. Information contained in the system is considered restricted information. The Federal Migration Service of Russia is the operator of the system.

5. Voluntary resettlement of compatriots

A special role among legal acts related to migration regulation is played by the decree of the RF President as of 22.06.2006 No. 637 *‘On Measures for Assisting Voluntary Resettlement in the Russian Federation of Compatriots Living Abroad’*¹⁰. The decree and the National Programme to Assist Voluntary Resettlement of Compatriots¹¹ approved by it constitutes an attempt to solve the problem of attracting additional labour force to certain regions via purposefully directed migration flows. For this purpose, interested regions design their resettlement programmes which are then put together and presented to the representations of the Federal Migration Service of Russia in CIS countries or diplomatic representations. ‘Compatriots living abroad’ interested in resettlement may get acquainted with programme conditions, choose a region for resettlement among those included in the programme and submit an application for resettlement. If the result of application examination is satisfactory, an individual receives a certificate of a programme participant. Programme participants receive reimbursement of travel expenses to their prospective place of residence. In the case of relocation to the most problematic regions they additionally receive a one-time payment for facilities arrangement (as a ‘relocation fee’) and monthly allowance in the case of the lack of income from labour activity (in the case of resettlement in better-off regions the relocation fee and monthly allowances are not paid). Besides, Programme participants enjoy the priority right to receive a temporary residence permit (outside the quota), a permanent residence permit and Russian citizenship. The initial period of Programme’s validity: 2006-2012, and the plan was to admit 300 thousand participants. Unfortunately, the Programme turned out to be extremely ineffective despite the fact that in 2010 an amendment to it was introduced that allowed for participation in the Programme not only due to the place of residence abroad but also following the relocation of a foreigner to the RF territory and receiving a temporary residence permit¹².

¹⁰ Published in RF CL, 2006, No. 26, Art.2820; 2009, No. 11, Art.1278, No. 27, Art.3341; 2010, No. 3, Art.275.

¹¹ The notion of ‘compatriots living abroad’ does not have a specific legal definition. In accordance with Art. 2 of the Federal Law ‘On the State Policy of the Russian Federation as regards Compatriots Living Abroad’ as of 04.09.1999 (RF CL, 1999, No. 22, Art.2670), compatriots, apart from RF citizens permanently residing abroad are individuals and their descendants ‘belonging, as a rule, to the nations that historically occupied the RF territory and who have made a free choice for the sake of spiritual, cultural and legal link with the RF, individuals, whose relatives in the direct ascending line earlier resided on the RF territory’, including individuals who were citizens of the USSR and resided in the states that used to be a part of the USSR, whether or not having citizenship of these states, as well as emigrants for the Russian empire, RSFSR, USSR and RF with respective citizenships, regardless of the fact whether they currently have citizenship of another state or not.

¹² In accordance with the official statistics of the RF Federal Migration Service, in June 2010 there were 9151 registered Programme participants. In June 2011, following the permission for individuals present on the RF territory to enter the Programme, their number has increased to 21230.

6. Federal Migration Service

Control over temporary stay and residence of foreign citizens lies within the competence of the Federal Migration Service (FMS Russia) and its territorial bodies¹³. Departmental statutory acts of FMS Russia (administrative regulations), issued in pursuance of separate provisions of legal acts and constituting a guide for employees of territorial services, play an important role in law enforcement practice.

Conclusion

Legislation that regulates immigration-related issues has a number of serious drawbacks. In the first place, this refers to labour immigration, since legislation lacks norms on protection and guarantees of labour migrant rights. It seems right to withdraw norms regulating labour activity of foreign citizens from the law 'On the Legal Status of Foreign citizens in the Russian Federation' and create a stand-alone law on labour migration.

It cannot be regarded rational to have two parallel systems of quotas – for temporary residence and for work, especially since both systems do not provide for distinct substantial criteria for candidate selection.

Some liberalisation of initially extremely rigid regulation is of discrete nature. Besides, new norms 'are layering over' the old ones, and subsequently it is not always possible to avoid contradictions between them. It makes law enforcement practice extremely difficult.

¹³ The Decree of the RF President as of July 19, 2004 No. 928 'The Issues of the Federal Migration Service' (RF CL, 2004, No. 30. Art.6150)