

# 外国人在中国就业管理规定（中英文）

（1996年1月22日劳部发〔1996〕29号公布 根据2010年11月12日《关于废止和修改部分人力资源和社会保障规章的决定》第一次修订，根据2017年3月13日《人力资源社会保障部关于修改〈外国人在中国就业管理规定〉的决定》第二次修订）

## 第一章 总则

第一条 为加强外国人在中国就业的管理，根据有关法律、法规的规定，制定本规定。

第二条 本规定所称外国人，指依照《中华人民共和国国籍法》规定不具有中国国籍的人员。

本规定所称外国人在中国就业，指没有取得定居权的外国人在中国境内依法从事社会劳动并获取劳动报酬的行为。

第三条 本规定适用于在中国境内就业的外国人和聘用外国人的用人单位。

本规定不适用于外国驻华使、领馆和联合国驻华代表机构、其他国际组织中享有外交特权与豁免的人员。

第四条 各省、自治区、直辖市人民政府劳动行政部门及其授权的地市级劳动行政部门负责外国人在中国就业的管理。

## 第二章 就业许可

第五条 用人单位聘用外国人须为该外国人申请就业许可，经获准并取得《中华人民共和国外国人就业许可证书》（以下简称许可证书）后方可聘用。

第六条 用人单位聘用外国人从事的岗位应是有特殊需要，国内暂缺适当人选，且不违反国家有关规定的岗位。

用人单位不得聘用外国人从事营业性文艺演出，但符合本规定第九条第三项规定的人员除外。

第七条 外国人在中国就业须具备下列条件：

- (一) 年满 18 周岁，身体健康；
- (二) 具有从事其工作所必须的专业技能和相应的工作经历；
- (三) 无犯罪记录；
- (四) 有确定的聘用单位；
- (五) 持有有效护照或能代替护照的其他国际旅行证件 (以下简称代替护照的证件)。

第八条 在中国就业的外国人应持 **Z 字签证** 入境 (有互免签证协议的, 按协议办理), 入境后取得《外国人就业证》(以下简称就业证) 和外国人居留证件, 方可在中国境内就业。

未取得居留证件的外国人 (即持 F、L、C、G 字签证者)、在中国留学、实习的外国人及持职业签证外国人的随行家属不得在中国就业。特殊情况, 应由用人单位按本规定规定的审批程序申领许可证书, 被聘用的外国人凭许可证书到公安机关改变身份, 办理就业证、居留证后方可就业。

外国驻中国使、领馆和联合国系统、其他国际组织驻中国代表机构人员的配偶在中国就业, 应按《中华人民共和国外交部关于外国驻中国使领馆和联合国系统组织驻中国代表机构人员的配偶在中国任职的规定》执行, 并按本条第二款规定的审批程序办理有关手续。

许可证书和就业证由劳动部统一制作。

第九条 凡符合下列条件之一的外国人可免办就业许可和就业证:

(一) 由政府直接出资聘请的外籍专业技术和管理人员, 或由国家机关和事业单位出资聘请, 具有本国或国际权威技术管理部门或行业协会确认的高级技术职称或特殊技能资格证书的外籍专业技术和管理人员, 并持有外国专家局签发的《外国专家证》的外国人;

(二) 持有《外国人在中华人民共和国从事海上石油作业工作准证》从事海上石油作业、不需登陆、有特殊技能的外籍劳务人员;

(三) 经文化部批准持《临时营业演出许可证》进行营业性文艺演出的外国人。

第十条 凡符合下列条件之一的外国人可免办许可证书，入境后凭 **Z 字签证** 及有关证明直接办理就业证：

(一) 按照我国与外国政府间、国际组织间协议、协定，执行中外合作交流项目受聘来中国工作的外国人；

(二) 外国企业常驻中国代表机构中的首席代表、代表。

### **第三章 申请与审批**

第十一条 用人单位聘用外国人，须填写《聘用外国人就业申请表》（以下简称申请表），向其与劳动行政主管部门同级的行业主管部门（以下简称行业主管部门）提出申请，并提供下列有效文件：

(一) 拟聘用的外国人履历证明；

(二) 聘用意向书；

(三) 拟聘用外国人原因的报告；

(四) 拟聘用的外国人从事该项工作的资格证明；

(五) 拟聘用的外国人健康状况证明；

(六) 法律、法规规定的其他文件。

行业主管部门应按照本规定第六条、第七条及有关法律、法规的规定进行审批。

第十二条 经行业主管部门批准后，用人单位应持申请表到本单位所在地区的省、自治区、直辖市劳动行政部门或其授权的地市级劳动行政部门办理核准手续。省、自治区、直辖市劳动行政部门或授权的地市级劳动行政部门应指定专门机构（以下简称发证机关）具体负责签发许可证书工作。发证机关应根据行业主管部门的意见和劳动力市场的需求状况进行核准，并在核准后向用人单位签发许可证书。

第十三条 中央级用人单位、无行业主管部门的用人单位聘用外国人，可直接到劳动行政部门发证机关提出申请和办理就业许可手续。

外商投资企业聘雇外国人，无须行业主管部门审批，可凭合同、章程、批准证书、营业执照和本规定第十一条所规定的文件直接到劳动行政部门发证机关申领许可证书。

第十四条 获准来中国工作的外国人，应凭许可证书及本国有效护照或能代替护照的证件，到中国驻外使、领馆、处申请 Z 字签证。

凡符合第九条第二项规定的人员，应凭中国海洋石油总公司签发的通知函电申请 Z 字签证；凡符合第九条第三项规定的人员，应凭文化部的批件申请 Z 字签证。

凡符合本规定第十条第一款规定的人员，应凭合作交流项目书申请 Z 字签证；凡符合第十条第二项规定的人员，应凭工商行政管理部门的登记证明申请 Z 字签证。

第十五条 用人单位应在被聘用的外国人入境后十五日内，持许可证书、与被聘用的外国人签订的劳动合同及其有效护照或能代替护照的证件到原发证机关为外国人办理就业证，并填写《外国人就业登记表》。

就业证只在发证机关规定的区域内有效。

第十六条 已办理就业证的外国人，应在入境后三十日内，持就业证到公安机关申请办理居留证。居留证的有效期限可根据就业证的有效期确定。

#### **第四章 劳动管理**

第十七条 用人单位与被聘用的外国人应依法订立劳动合同。劳动合同的期限最长不得超过五年。劳动合同期限届满即行终止，但按本规定第十九条的规定履行审批手续后可以续订。

第十八条 被聘用的外国人与用人单位签订的劳动合同期满时，其就业证即行失效。如需续订，该用人单位应在原合同期满前三十日内，向劳动行政部门提出延长聘用时间的申请，经批准并办理就业证延期手续。

第十九条 外国人被批准延长在中国就业期限或变更就业区域、单位后，应在十日内到当地公安机关办理居留证件延期或变更手续。

第二十条 被聘用的外国人与用人单位的劳动合同被解除后，该用人单位应及时报告劳动、公安部门，交还该外国人的就业证和居留证件，并到公安机关办理出境手续。

第二十一条 用人单位支付所聘用外国人的工资不得低于当地最低工资标准。

第二十二条 在中国就业的外国人的工作时间、休息休假、劳动安全卫生以及社会保险按国家有关规定执行。

第二十三条 外国人在中国就业的用人单位必须与其就业证所注明的单位相一致。

外国人在发证机关规定的区域内变更用人单位但仍从事原职业的，须经原发证机关批准，并办理就业证变更手续。

外国人离开发证机关规定的区域就业或在原规定的区域内变更用人单位且从事不同职业的，须重新办理就业许可手续。

第二十四条 因违反中国法律被中国公安机关取消居留资格的外国人，用人单位应解除劳动合同，劳动部门应吊销就业证。

第二十五条 用人单位与被聘用的外国人发生劳动争议，应按照《中华人民共和国劳动法》和《中华人民共和国劳动争议调解仲裁法》处理。

第二十六条 劳动行政部门对就业证实行年检。用人单位聘用外国人就业每满一年，应在期满前三十日内到劳动行政部门发证机关为被聘用的外国人办理就业证年检手续。逾期未办的，就业证自行失效。

外国人在中国就业期间遗失或损坏其就业证的，应立即到原发证机关办理挂失、补办或换证手续。

## **第五章 罚则**

第二十七条 对违反本规定未申领就业证擅自就业的外国人和未办理许可证书擅自聘用外国人的用人单位，由公安机关按《中华人民共和国外国人入境出境管理法实施细则》第四十四条处理。

第二十八条 对拒绝劳动行政部门检查就业证、擅自变更用人单位、擅自更换职业、擅自延长就业期限的外国人，由劳动行政部门收回其就业证，并提请公安机关取消其居留资格。对需该机关遣送出境的，遣送费用由聘用单位或该外国人承担。

第二十九条 对伪造、涂改、冒用、转让、买卖就业证和许可证书的外国人和用人单位，由劳动行政部门收缴就业证和许可证书，没收其非法所得，并处以一万元以上十万元以下的罚款；情节严重构成犯罪的，移送司法机关依法追究刑事责任。

第三十条 发证机关或者有关部门的工作人员滥用职权、非法收费、徇私舞弊，构成犯罪的，依法追究刑事责任；不构成犯罪的，给予行政处分。

## **第六章 附则**

第三十一条 中国的台湾和香港、澳门地区居民在内地就业按《台湾和香港、澳门居民在内地就业管理规定》执行。

第三十二条 外国人在中国的台湾和香港、澳门地区就业不适用本规定。

第三十三条 禁止个体经济组织和公民个人聘用外国人。

第三十四条 省、自治区、直辖市劳动行政部门可会同公安等部门依据本规定制定本地区的实施细则，并报劳动部、公安部、外交部、对外贸易经济合作部备案。

第三十五条 本规定由劳动部解释。

第三十六条 本规定自 1996 年 5 月 1 日起施行。原劳动人事部和公安部 1987 年 10 月 5 日颁发的《关于未取得居留证件的外国人和来中国留学的外国人在中国就业的若干规定》同时废止。

# RULES FOR THE ADMINISTRATION OF EMPLOYMENT OF FOREIGNERS IN CHINA

(Promulgated jointly by the Ministry of Labour, Ministry of public Security, Ministry of Foreign Affairs and the Ministry of Foreign Trade and Economic Cooperation of the People's Republic of China on 22 January 1996)

## **Chapter I General Provisions**

Article 1 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

Article 2 The term "foreigners" in these Rules refers to the persons, who under the Nationality Law of the People's Republic of China, do not have Chinese nationality. The term "employment of foreigners in China" in these Rules refers to acts of foreigners without permanent residence status to engage in remunerative work within Chinese territory in accordance with its laws.

Article 3 These Rules shall apply to employed foreigners within Chinese territory and their employers. These Rules shall not apply to foreigners who enjoy diplomatic privileges and immunities employed by foreign embassies or consulates, or the offices of the United Nations and other international organizations in China.

Article 4 The labour administrative authorities of the people's government of the provinces, autonomous regions and municipalities directly under the Central Government and those at the prefecture and city level with their authorization are responsible for the administration of employment of foreigners in China.

## **Chapter II Employment License**

Article 5 The employer shall apply for the employment permission if it intends to employ foreigners and may do so after obtaining approval from the People's Republic of

China Employment License for Foreigners ( hereinafter referred to as the "Employment License").

Article 6 The post to be filled by the foreigner recruited by the employer shall be the post of special need, a post that cannot be filled by any domestic candidates for the time being but violates no government regulations No employer shall employ foreigners to engage in commercialized entertaining performance, except for the persons qualified under Article 9 (3) of these Rules.

Article 7 Any foreigners seeking employment in China shall meet the following conditions: (1) 18 years of age or older and in good health (2) with professional skills and job experience required for the work of intended employment; (3) with no criminal record; (4) a clearly-defined employer; (5) with valid passport other international travel document in lieu of the passport ( hereinafter referred to as the "Travel Document").

Article 8 Foreigners seeking employment in China shall hold the Employment Visas for their entry (In case of agreement for mutual exemption of visas, the agreement shall prevail.), and may work within Chinese territory only after they obtain the Employment Permit for Foreigner ( hereinafter referred to as the "Employment Permit" ) and the foreigner residence certificate Foreigners who have not been issued residence certificate (i.e. holders of F, L, C or G-types visas) , and those who are under study or interim programs in China and the families of holders of Employment Visas shall not work in China. In special cases, employment may be allowed when the foreigner changes his status at the public security organs with the Employment License secured by his employer in accordance with the clearance procedures under these Rules foreigners changes his status at the public security organs with the Employment License and receives his Employment permit and residence certificate. The employment in China of the spouses of the Personnel of foreign embassies, consulates , representative offices of the United Nations System and other international organization in China shall follow the Provisions of Ministry of Foreign Affairs of the People's Republic of



China Concerning the Employment of the Spouses of the Personnel of Foreign Embassies, Consulates and the Representative Offices of the United Nations System in China and be handled in accordance with the clearance procedures provided for in the second paragraph of this article. The Employment License and the Employment Permit shall be designed and prepared exclusively by the Ministry of Labour.

Article 9 Foreigners may be exempted from the Employment License and Employment permit when they meet any of the following conditions: (1) foreign professional technical and managerial personnel employed directly by the Chinese government or those with senior technical titles or credentials of special skills recognized by their home or international technical authorities or professional associations to be employed by Chinese government organs and institutions and foreigners holding Foreign Expert Certificate issued by China's Bureau of Foreign Expert Affairs; (2) foreign workers with special skills who work in offshore petroleum operations without the need to go ashore for employment and hold "Work Permit for Foreign Personnel Engaged in the Offshore petroleum Operations in the People's Republic of China"; (3) foreigners who conduct commercialized entertaining performance with the approval of the Ministry of Culture and hold "permit for Temporary Commercialized Performance".

Article 10 Foreigners may be exempted from the Employment License and may apply directly for the Employment Permit by presenting their Employment Visas and relevant papers after their entry when they meet any of the following conditions: (1) foreigners employed in China under agreements or accords entered into by the Chinese government with foreign governments or international organizations for the implementation of Sino-foreign projects of cooperation and exchange; (2) chief representatives and representatives of the permanent offices of foreign enterprises in China.

### **Chapter III Application and Approval**

Article 11 The employer When intending to employ a foreigner , shall fill out the Application Form for the Employment of Foreigners ( hereinafter referred to as the "Application Form" ) and submit it to its competent trade authorities at the same level as the labour administrative authorities together with the following documentations : ( 1 ) the curriculum vitae of the foreigner to be employed; ( 2 ) the letter of intention for employment; ( 3 ) the report of reasons for employment; ( 4 ) the credentials of the foreigner required for the performance of the job; ( 5 ) the health certificate of the foreigner to be employed; ( 6 ) other documents required by regulations. The competent trade authorities shall examine and approve the application in accordance with Articles 6 and 7 of these Rules and relevant laws and decrees.

Article 12 After the approval by the competent trade authorities, the employer shall take the Application Form to the labour administrative authorities of the province, autonomous region or municipality directly under the Central Government or the labour administrative authorities at the prefecture and city level where the said employer is located for examination and clearance. The labour administration authorities described above shall designate a special body ( hereinafter referred to as the "Certificate Office" ) to take up the responsibility of issuing the Employment License . The Certificate Office should take into consideration of the opinions of the competent trade authorities and the demand and supply of labour market , and issue the Employment License to the employer after examination and clearance.

Article 13 Employers at the Central level or those without the competent trade authorities may submit their application directly to the Certificate Office of the labour administrative authorities for the Employment Permit. The examination and approval by the competent trade authorities is not required for foreign-funded enterprises to employ foreigners, and such enterprises may submit their applications directly to the Certificate Office of the labour administrative authorities for the Employment License , bringing with them the

contract, articles of association, certificate of approval, business license and the documentation referred to in Article 11 of these Rules.

Article 14 Employers with permission to employ foreigners shall not send the Employment License nor the letter of visa notification directly to the foreigners to be employed and they must be sent by the authorized unit.

Foreigners with permission to work in China should apply for Employment Visas at the Chinese embassies, consulates and visa offices, bringing with them the Employment License issued by the Ministry of Labour, the letter or telex of visa notification sent by the authorized unit and the valid passport or Travel Document. Personnel referred to in Article 9 (1) of these Rules should apply for the Employment Visas by presenting their letter or telex of visa notification by authorized unit; personnel referred to in Article 9 (2) should apply for the Employment Visas by presenting their letter or telex of visa notification issued by the China National Offshore Oil Corporation; personnel referred to in Article 9 (3) should apply for the Employment Visas by presenting their letter or telex of visa notification issued by the foreign affairs office under the people's government of provinces, autonomous regions or municipalities directly under the Central Government and the relevant documents of approval of the Ministry of Culture (addressed to the Chinese embassies, consulates or visa offices). Personnel referred to in Article 10 (1) of these Rules should apply for the Employment Visas by presenting their letter or telex of visa notification by authorized unit and the documentation on projects of cooperation and exchange; personnel referred to in Article 10 (2) should apply for the Employment Visas by presenting their letter or telex of visa notification by the authorized unit and the registration certification issued by the administrative authorities of industry and commerce.

Article 15 The employer should, within fifteen days after the entry of the employed foreigner take to the original Certificate Office the Employment License the labour contract with the said foreigner and his passport or Travel Document to receive his Employment

Permit while filling out the Foreigner Employment Registration Form. The Employment Permit shall be effective only within the area specified by the Certificate Office.

Article 16 Foreigners who received their Employment Permit should, within thirty days after their entry, apply for the residence certificate with the public security organs bringing with them their Employment Permit. The term of validity of the residence certificate may be determined in accordance with the term of validity of the Employment Permit.

#### **Chapter IV Labour Administration**

Article 17 The employer and its foreign employee should, in accordance with law, conclude a labour contract, the term of which shall not exceed five years. Such contract may be renewed upon expiration after the completion of clearance process in accordance with.

Article 18 of these Rules. Article 19 The Employment Permit of the employed foreigner shall cease to be effective upon the expiration of the term of the labour contract between the foreigner and his employer. If renewal is required, the employer should, within thirty days prior to the expiration of the contract, submit an application to the labour administrative authorities for the extension of term of employment, and after approval is obtained, proceed to go through formalities for the extension of the Employment Permit.

Article 19 The foreign employee should, within ten days after obtaining the approval for extension of his term of employment in China or the change of his employment location or his employer, go through formalities for the extension or change of his residence certificate at the local public security organs.

Article 20 After the termination of the labour contract between the foreign employee and his employer, the employer should promptly report it to the labour and public security authorities, return the Employment Permit and the residence certificate of the said foreigner, and go through formalities for his exit from China.

Article 21 The wage paid to the foreign employee by the employer shall not be lower than the minimum wage in the locality.

Article 22 The working hours, rest and vacation, work safety and hygiene as well as the social security of the foreign employees in China shall follow the relevant provisions of the state.

Article 23 The employer of the foreign employee in China shall be the same as specified in his Employment License . When the foreigner switches employers within the area designated by the Certificate Office but stays in a job of the same nature, the change must be approved by the original Certificate Office and recorded in his Employment Permit. If the foreigner is to be employed outside the area designated by the Certificate Office or switch employer within original designated area while taking up jobs of a different nature, he must go through formalities for a new Employment License

Article 24 For foreigner whose residence status is revoked by public security organs due to his violation of Chinese law, his labour Contract should be terminated by his employer and his Employment Permit be withdrawn by the labour administrative authorities

Article 25 Should the labour disputes arise between the employer and its foreign employee, they should be handled in accordance With the Labour Law of the People's Republic of China and the Regulations of the people's Republic of China on Settlement of Labour Disputes in Enterprises

Article 26 The labour administrative authorities shall conduct an annual inspection of the Employment Permit Within thirty days prior the end of every year of employment of the foreigner . the employer should go through formalities of the annual inspection at the Certificate Office of the labour administrative authorities The Employment Permit shall automatically cease to be effective when the deadline is passed. In case of loss or damage of the Employment Permit during the term of his employment in China the foreigner should

promptly report it to the original Certificate Office and go through formalities for the issuance of the Employment Permit.

#### **Chapter V Penalty Provisions**

Article 27 Violation of these Rules, i. e. Foreigners who work without the Employment Permit or employers which hire foreigners without the Employment License, shall be handled by the public security organs in accordance with Article 44 of the Rules Governing the complementation of the Law of the people's Republic of China on the Entry and Exit of Aliens.

Article 28 For foreigners who refuse to have their Employment Permit inspected by the labour administrative authorities, change their employers and professions at will or extend their term of employment without permission the labour administrative authorities shall withdraw their Employment permit and recommend that their residence status be canceled by the public security organs in case of deportation, the costs and expenses shall be borne by the said foreigner their employers.

Article 29 For foreigners and employers who Forge, after, falsely use, transfer, buy and sell the Employment Permit and the Employment License, The labour administrative authorities shall take over the Employment Permit and the Employment License in question, confiscate the illegal proceeds and impose a fine between the thousand and one hundred thousand RMB Yuan. In serious cases which constitute a crime, their criminal responsibility of the perpetrators shall be looked into by the judicial authorities.

Article 30 in case of abuse of power, illegal collection of fees, and fraudulent practices on the part of official personnel of the Certificate Office or other department, they shall be investigated in accordance with the law for their criminal responsibility if crimes are committed, or they shall be subject to administrative disciplinary measures if the cases do not constitute a crime.

#### **Chapter VI Supplementary Provisions**

Article 31 The employment in the mainland of the residents of Tai Wan, Hong Kong and Macao region of China shall follow the Rules for the Administration of the Employment in the Mainland of Residents of Tai Wan, Hong Kong and Macao.

Article 32 These Rules do not apply to the employment of foreigners in China's Tai Wan Hong Kong and Macao region.

Article 33 Individual economic organizations and private citizens are prohibited from employing foreigners.

Article 34 The labour administrative authorities of the provinces, autonomous regions and municipalities directly under the Central Government may formulate their own rules for implementation of these Rules in conjunction with the public security and relevant authorities in the locality, and report it to the Ministry of Labour, Ministry of Public Security, Ministry of Foreign Affairs and the Ministry of Foreign Trade and Economic Cooperation for putting on record.

Article 35 The Ministry of Labour shall be responsible for the interpretation of these Rules.

Article 36 These Rules shall enter into force as of 1 May 1996. The Provisions Concerning the Employment in China of the Foreigners Who Have Not Yet Obtained Residence Certificate and Foreigners Who Study in China jointly promulgated by the former Ministry of Labour and Personnel and the Ministry of public Security on 5 October 1987 shall be annulled simultaneously.