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A Reflection on the Chinese Green Card System

By XU Jia

I Introduction:

“Approved by the State Council on 13 December, 2003 and promulgated by virtue of Decree No.74 of the Ministry of Public Security and Ministry of Foreign Affairs on 15 August, 2004, Regulations on Examination and Approval of Permanent Residence of Aliens in China”¹, establishes the green card system in China. It aims to attract world talents who can make significant contributions to the particular field and in great need. The other main purpose is to attract foreign invest and encourage the rich to invest in China. However, they failed to achieve the desired result, because the regulation is too general and has very strict limitations. I propose to make more detailed and reasonable measures to better achieve its purpose and attach provide more favorable term to some particular group of people, such as people of Chinese origin and foreign experts.

II Background

Chinese government is adopting an opener policy since China’s reform. Early in 1986, the Standing Committee of the People's Congress adopted the Law of the People's Republic of China on Control of the Entry and Exit of Foreigners, in which states that “foreigners may be qualified to permanently stay in China if they wish.” However, it mainly served as an honor for those foreigners who have made special contributions

¹ How to Apply for a Chinese Green Card
<http://www.c2008.org/rendanews/displaynews.asp?id=1715>

to China, especially in political fields. It is not until 1986 that China started to grant permanent residence to foreign investors. There are many considerations taken by the government to lay down a regulation concerning the issue in order to better protect the nation's interest and comply with the world trend as well. China began to research on the topic by organizing a group of officials who are working on regulating the foreigners. They collect the legal texts of U.S. England, Japan, and Canada and form a summary report of their immigration systems to see what can be introduced to China. By studying the laws of those countries and analyzing the underpinnings of the laws and reasons behind it. After the draft was written, the group of people went to Guangdong, Zhejiang, Shanghai and other open cities to hold conversaciones and ask people's opinion. Then they came back to Beijing to revise the draft. Later, they sent the revised version to each department of ministry, as well as every high court, prosecutors and the central government. Then it was discussed by the NPC standing Committee. Those drafters were present on the conference of the inquiry meeting to answer questions and doubts from the committee members. As the laws and regulations finally come into existence, those drafters continue to investigate and solve the problems in implementing the regulation to see how effective the regulation is working. ²

After 2001 China's entry into WTO, Exit and Entry Administration Bureau, Ministry of Public Security, has taken six significant steps, and the most remarkable one is

² Song Guangyi, Reforms of Chinese Entry and Exit policy, published in People's Public Security

issuing green card to foreigners. “By the end of 2001, China had devised a plan to regulate a "Green Card" system. Subsequently, major cities including Beijing, Shanghai and Guangzhou issued related regulations.”³

It was not until August 15, 2004 that the Regulations on Examination and Approval of Permanent Residence of Foreigners in China were formally issued. The issuance of this regulation is an important step towards globalization. It can greatly facilitate foreigners' entry and exit of China and provide them with national treatment. It was warmly welcomed by many foreigners in China. There are public hearings held in big major cities before the regulation was promulgated as to know the requirement of foreigners and hear suggestions from them. Foreigners may have encountered problems in many aspects of life without green card. For example, they cannot buy tickets with normal price; their children cannot go to school without a sum of committal fee; they have trouble buying houses unless they show sufficient proof. As more and more foreigners choose to live in China, those problems have loomed larger. Without appropriate regulation, the problems cannot be quite settled. It may affect foreigner's decision to live and work in China. Furthermore, foreigners' interest cannot be guaranteed and may even lead to corruption or unsteadiness since some people may take advantage of the leak of law and make illegal transactions. The steps on issuing green card has been deliberated, drafted and revised a lot of times by the

³ How to Apply for a Chinese Green Card
<http://www.c2008.org/rendanews/displaynews.asp?id=1715>

China's Exit and Entry Administration Bureau, Ministry of Public Security. It is finally approved by the prime minister of the state council after the seminars of a group of law experts and meetings of foreigners who live in China.

“This is a significant move by the Chinese government to adapt to economic globalization, push forward reform and opening-up and the modernization of socialism still further, and normalize the regulation of examination and approval of permanent residence of aliens in China.”⁴

According to this regulation, foreigners with eligibility for permanent residence in China will be granted a certificate of identification commonly known as a "Green Card." The green card has eliminated the limitation of immigration in different areas in China, which is a remarkable improvement towards the free flow of the foreign talents.⁵

The regulation has 29 articles in all, specifying the explicit provisions on the prerequisites for foreigners wishing to apply for permanent residence permits in China, required supporting documents, steps to be followed, limits of authority, and cancellation of eligibility, etc.⁶ With the Green Card, You can

⁴ China begins to implement its own "Green Card" system
http://english.people.com.cn/200408/20/eng20040820_153939.html

⁵ Xiang Dang, Professor of Chinese People's Public Security University, The Road of Green Card, News Weekend 2004.9.13

⁶ How to Apply for a Chinese Green Card
<http://www.c2008.org/rendanews/displaynews.asp?id=1715>

- stay in China for an unlimited period of time
- enter and leave the country with your valid passport and Foreigner Permanent Residence Permits, with no need to obtain visas
- use the Green card as your single legal document during your time in China.
- have a card even more useful than the resettlement certificate or permanent residence certificate.

The rights of the green card possessor seems very appealing to foreigners but the standard to get a green card in China is not easy.

“According to the regulations, eligibility for permanent residence mainly applies to high-level foreign personnel who hold posts in businesses which promote China's economic, scientific and technological development or social progress, foreign citizens who make relatively large direct investment in China, foreigners who have made outstanding contributions or are of special importance to China, and foreigners who come to China to be with their families.”⁷

Many foreigners who intended to apply for the card failed to meet the high standard. There are about 260,000 foreigners holding stable jobs, according to the State Administration of Foreign Experts Affairs and the Bureau figures shows, but up to Sept. 30, 2005, only 649 foreigners from 33 countries are granted the green card and

⁷ China begins to implement its own "Green Card" system
http://english.people.com.cn/200408/20/eng20040820_153939.html

1835 more people's applications are under review.⁸ So obviously, the fact is that very limited number of foreigners can get the green card.

This is partly because China is not an immigration country. The regulation is mainly to attract high-level foreign personnel and to perfect a regulation needs time. So far, the number of cities and counties open to foreigners reached 2,650, accounting for 92 per cent of the country's total. China is continuing to make efforts to open itself to the outside world and to introduce more international practices.

III Analysis

According to stipulations, foreigners eligible for permanent residence are those who:

1. hold senior posts in enterprise or institutions China
2. have large investment in China
3. live in China with their families for more than five years.”

Besides, those who made outstanding contributions or are of special importance to China may also be qualified. Holders of permanent-residence cards are allowed to live in the country for any length of time and travel in and out without visas. We can conclude that the main purpose of establishing the green card system is to aimed at meeting China's demand for high-level foreign personnel and foreigners' aspiration

⁸ Wu Yuehui, Easier for the Chinese to go abroad and Foreigners to Enter China, People's Daily, 2005.11.23

for permanent residence in China and more freedom in entering and leaving China.

However, the regulation is far from being perfect to reach its goal.

1. The regulation aims to attract outside investment.

According to Regulations on Examination and Approval of Permanent Residence of Aliens in China, Article 6, item “1. ...having direct investment in China, stable investment in China for three years in a row, and having a sound taxation record;”

“Article 7. The registered capital actually paid for investment in China by aliens mentioned in item 1 of paragraph 1 of article 6 of this set of regulations should meet any of the following terms and conditions:

1. having made investment of over USD 500,000 in industries of encouraged type as specified in the Catalogue of Industries of Foreign Investment released by the State;
2. having made total investment of over USD 500,000 in counties in the western part of the country or in counties which are major targets of poverty relief work undertaken by the State;
3. having total investment of over USD 1 million in the central part of the country;
4. having total investment of over USD 2 million in China.”⁹

Compared with the previous regulations, the Regulations on Examination and Approval of Permanent Residence of Aliens in China have specified the minimum requirement of investment for different areas and fields. This is a great improvement,

⁹ Regulations on Examination and Approval of Permanent Residence of Aliens in China <http://www.cnhubei.com/200601/ca982720.htm>

for it takes China's actual situation into account and can work as a lever by lowering the standard of those areas that maybe less appealing to investors, and give them more favorable conditions if they invest in those areas. It is evident that inland mountain areas usually are poorer than the coastal areas. And the China adopted the policy that is to let the eastern area develop and then provide resources and experiences for the western area at the beginning of its economic reform. As a result, because of the location advantages and preferential policy, there's an increasing gap between different parts of china. So label the different parts of China with different investment amount is a good way to help better allocate the investment. However, as China is developing quickly in all aspects, we have to adjust the amount of investment for those particular areas and fields. In order to make reasonable adjustment, we may make an annual report of those who obtained green card through investment, including the details of their field, location and the amount of their investment. We can see how this regulation is working and whether it is heading for the directions the legislator desired, which are to encourage more investment in fields and areas that are urgently needed to be developed.

2. A critical factor that guides the regulation is to attract talents all over the world.

According to Regulations on Examination and Approval of Permanent Residence of Aliens in China, "Article 6, item 2.... having assumed the posts of deputy general manager or deputy director of plants or higher level posts or posts of associate professors or associate research fellows and similar posts for more than four years in a

row, and the period of stay in accumulation being no shorter than three years and having sound taxation record;” and “Article 8. For aliens mentioned in item 2 of paragraph 1 of article 6 of this set of regulations, the units where they work should meet any of the following terms and conditions:

1. institutions subordinate to the various ministries under the State Council or to the provincial level people's governments;
2. major higher learning schools;
3. enterprises or institutions executing major engineering projects or major scientific projects of the State;
4. high-tech enterprises, foreign invested enterprises in encouraged type, foreign invested advanced technology enterprises or foreign invested export-oriented enterprises.”¹⁰

We can see that the regulations of acquiring green card are of very high standard and within very limited areas, despite the fact that one of the main goals is to attract outside talents to contribute to China’s development. Over the world, the green card system is playing an important role in talents competition between different countries. The immigration system in US, Canada and some developed countries have already successfully built a channel to attract talents from developing countries. This is particularly true in recent years, technical immigration accounts for a great portion of

¹⁰ Regulations on Examination and Approval of Permanent Residence of Aliens in China <http://www.cnhubei.com/200601/ca982720.htm>

the immigrants, which signifies the legalization and systemization of the basic policy to attract foreign talents. However, Chinese policy making regarding immigration is lagging behind. This has something to do with china's large population, but it is observed that now many non-immigration countries like Germany, Japan and Singapore are also using the green card system as a main tool to introduce talents. It is no doubt that if China can ease the entry and exit procedure; many talents are willing to settle in China. There are a lot that China can learn from those countries in policy-making and by studying other's model we can learn from their lessons and take in the valuable experience. Now china has established the system and should make full use of the tool to reverse the disadvantageous situation in talents competition.

As China is opening to the outside in a broader sense, there are many more areas that are going to be open to the world than ever before. As China enters WTO, it has to act in compliance with WTO rules, in which "China has agreed to open up the logistical chain of related services such as maintenance and repair, storage and warehousing, packaging, advertising, trucking and air express services, marketing, and customer support in three to four years."¹¹ Obviously, the list in the regulation cannot cover the ever increasing type of occupations and fields of work. For example, Jingzhou Tao, the Chief Representative of Coudert Brothers Law Firm, might fail to get the green card, for his condition doesn't meet the requirement above: "Law firm is not within the scope of enterprises; He is not the senior manager of an independent enterprise

¹¹ 《SUMMARY OF U.S.-CHINA BILATERAL WTO AGREEMENT》
<http://www.syiae.com/lunwen/list.asp?id=490>¹

and the type of the enterprise doesn't fall into the type of high-tech enterprises, foreign invested enterprises in encouraged type, foreign invested advanced technology enterprises or foreign invested export-oriented enterprises; he hasn't worked in the corporation for more than 4years, he is not qualified to apply for green card."¹²

Immediate revision of the regulation is necessary and crucial to achieve the purpose of the regulation. It would be quite useful to present a statistic of the application, with the information of their age, occupation, educational background. By looking at the pool, we can analyze the layout those applicants and those who finally get the green card. We can further adjust the policy according to the statistic by examining how well the policy is performing its goal.

3. There are some groups of people that need special attention regarding the green card issue.

Foreign citizen of Chinese origin and those Chinese who get green card in a foreign land are a group of people who are longing for the policy.

According to the recent statistic from the educational ministry, "from the year 1978 to 2002, the number of people who have studied abroad and then returned to China has

¹² The confusion of high standard
<http://zjfb.zjol.com.cn/gb/node2/node802/node240379/node253682/node253685/useobject15ai3252423.html>

reached 150,000. In the year 2002 about eighteen thousand people returned to China, which is an increase of 47% compared with the figure in 2001.” China should give them more favorable conditions concerning the green card. For example, by lowering the standard of length of staying in China, the Chinese students study abroad may be attempted to live and contribute more to their motherland. This policy will be effective in encouraging the students who have pursued their study abroad to come back to China to start the business.

Another common phenomenon is that some rich Chinese once immigrate to another country by investment, now they see China as a big market and want to invest in China. China is developing itself with an amazing speed; it has great attraction to potential investors, especially those with Chinese bloodline and those who are very willing to contribute to the development of their motherland. We shall be confident that with the improved policy, it will help more talents and investor of Chinese origin to come back. On this point, with a sound immigration system, the interest of the country and that of the people are consistent. A reasonable regulation can provide a win-win solution to both sides.

There are also some specific regulations regarding a particular group of foreigners, such as “Application for Residence Permit and Visa by Foreign Experts (Teachers) Working in China”. This policy is consistent with our state policy to attach great importance to education. It is a good way to give guidance on implementation as well

as classified category in implementing the regulation, which will make the regulation more flexible and specific.

IV Conclusion:

The green card system marks china's step into the stream of globalization regarding immigration issue. Since the industrialization and modernization, the more flow of population, the more industrialized the nation is. China has missed the trend that time. As China deepens its open-up policy and perfects its market economic system, China urgently need the foreign high level talents to invest, do business and participate in cultural exchange activities. At the same time, some foreigners also want to stay in China, do their business and live in the place they enjoy. There is no doubt that the Regulations on Examination and Approval of Permanent Residence of Aliens in China is warmly received and serves as a reflection of the global trend. However, China is still engaging in all around development, faced with a lot of challenges and opportunities at the same time. Personal and national interest should be taken into account and well-coordinated in the process of improving the immigration policy. How far we should open to the outside is not a headache question if we constantly inspect the result of implementing the regulations and make cautious adjustment.

Abstract:

The issuance of Regulations on Examination and Approval of Permanent Residence of Aliens in China marks the establishment of the green card system in China. It aims to attract world talents as well as foreign investment. It is a very important step concerning China's open-up policy, but we still have a long way to improve the newly-established system.