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Z. Torebekova¹, B. Bokayev², Zh. Davletbayeva³¹PhD candidate, Suracuse University, USA²PhD, professor, Academy of Public Administration under the President of the Republic of Kazakhstan;³Candidate of Sociological Sciences, associate professor Academy of Public Administration under the President of the Republic of Kazakhstane-mail: ¹zulfiya1978@mail.ru; ²b.bokayev@apa.kz;³zhuldyz.davletbayeva@apa.kz**LABOR MIGRATION IN KAZAKHSTAN:
CHALLENGES AND OPPORTUNITIES**

This article considers the legislative basis for the implementation of labor activities in the Republic of Kazakhstan by citizens of foreign countries. The article provides an analysis of quantitative indicators of labor migrants, the conditions of their stay in Kazakhstan, as well as the difficulties associated with labor migration. Special attention is paid to informal labor migrants, the overwhelming majority of whom are citizens of Central Asian countries.

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Keywords: migrants, migrant workers, informal migrants, categories of migrant workers, a quota system.

INTRODUCTION

The integration of Kazakhstan into the world economy through trade and capital account liberalization brings the rapid development of the necessary institutions, transport networks, means of communication, etc. These transformations, in turn, have increased the flow of international migrants seeking employment opportunities in the country. Particularly, a visa-free regime for countries of Central Asia has enabled citizens of these countries to come to Kazakhstan not only for the purpose of tourism but also for employment. The creation of the Eurasian Customs Union of Belarus, Kazakhstan, Russia, and Kyrgyzstan also contributed to an increase of migrants in Kazakhstan.

Despite the development of the labor legislation aimed at the employment of migrants, the scope of official employment in Kazakhstan is limited to the recruitment of highly skilled workers and household employees. The employment of low-skilled workers mostly takes place in an unregulated legal field. The exploration of the real number of migrant workers is a complex problem due to the reluctance of migrants to register their labor activities. Migrants continue to come to Kazakhstan and find employment through unofficial intermediaries that often lead to the violation of labor and human rights of migrants.

This paper aims to analyze the situation in labor migration in Kazakhstan and to define existing opportunities and challenges for further development.

The main limitation of this context is a lack of clarity surrounding the current state of migration regulations given the absence of an updated central database.

MAIN PART**Terminology base**

The United Nations Migration Agency identifies a migrant «as any individual who is moving or has moved across a transnational border or within a country away from his/her permanent residency, regardless of the individuals' legal status; whether the movement is voluntary or involuntary; what the reasons for the movement are; or what the duration of the stay is» (UN, 1951).

The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families describes a migrant worker as «an individual who is to be involved, is involved or has been involved in a paid activity in a State of which he or she is not a national» (UN, 1990). They can be forced by different reasons (economic, family, political, and environmental) and have different legal status.

Kazakhstan's legislation understands labor migration as a temporary movement of individuals from other regions of Kazakhstan and from Kazakhstan, as well as within the region for implementing labor activity. The term «immigrant» is defined as a foreign person or stateless person who came to Kazakhstan for temporary or permanent residence. Whereas «migrant – an individual arrived into Kazakhstan and departed from Kazakhstan, as well as migrating within the country regardless of the reasons and time duration» (Law on Migration, 2011).

Legislation on the regulation of labor migration in Kazakhstan

The Constitution of the country guarantees the protection of the rights and freedoms of migrant workers in accordance with laws and international agreements. Labor immigration is regulated through annual quotas for migrant labor based on demand and input from local authorities. Foreigners can apply for these quotas independently. Work permit and visa categories are designed to specific migrant

groups, such as migrants who want to run their own business in the country and temporary labor migrants seeking job opportunities in private households.

The Law «On the legal status of foreigners» (1995) defines that the labor activities of foreigners in Kazakhstan are implemented according to the national regulations and international agreements.

According to the Labor Code (2007), any labor relations should be regulated by a contract. Working under an employment contract assures legal working days, day off, and waged annual vacation. Forced labor is allowed only by a court verdict or in conditions of disaster or military regime.

Categories of migrants arriving for work purposes are identified as following (Law on Migration, 2011):

1) Foreign workers – immigrants who translated within the internal translation and who arrived for independent employment by the professions demanded in priority branches of the economy for the term of no more than three years;

2) Business immigrants – immigrants who arrived for doing business according to the national laws;

3) Seasonal foreign workers – immigrants employed by employers to perform seasonal work, which due to climatic or other environmental conditions are carried out during a certain period (season), but not more than twelve months;

4) Labor immigrants – immigrants who entered to Kazakhstan as domestic workers to perform work (services) with employers – individuals in the household for the term of no more than one year.

Meanwhile, Kazakhstan is a member state of the main international agreements on human rights. It includes the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination, International Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading the dignity of treatment and punishment and the Convention on the Rights of the Child. The country has endorsed eight major agreements of the ILO. Through approving such worldwide treaties, the National Government has devoted itself at the state level to take actions and regulations consistent with its international duties as defined by these documents.

However, the country neither has endorsed nor signed the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The country has not ratified the ILO Migration Employment Convention (Revised) 1949, and the ILO Migrant Workers Convention (Supplementary Provisions) 1975. Kazakhstan is also not a party to the Statelessness Conventions (UN, 2018).

How to apply for a Kazakhstani work permit? Quota system

A work permit is issued by the Internal Affairs Agencies for the duration of the employment contract specified in the immigrant's application and can be issued for one, two or three months. The permit can be also extended for the period specified in the application. However, the maximum period of uninterrupted temporary residence of a foreign worker in Kazakhstan cannot exceed one year. A prerequisite for obtaining a permit is the advance payment of the individual income tax for indices for each month for which the permit is issued (Law on Migration, 2011).

Since 2001, the employment of migrant workers has started been regulated by a quota system. Every September employers submit an application to the resident government that transmits the data to the Labor Ministry. The Government based on the volume of applications determines the number of foreigners who can be hired to work in Kazakhstan. These data are published in December and refers to the following year. Such quotas correspond, on the one hand, to a certain percentage of the active part of the Kazakh population and, on the other hand, to the absolute number of the priority projects in the country. Quotas are divided by countries of origin and identified for each region of the country. The protection of the internal labor marketplace is an important goal of this scheme. The initial quota which was determined at the beginning of the 2000s was equal to 0.15 % of the active population, and then annually increased, reaching 1.6 % in 2008, after which it dropped to 0.75 % in 2010. Later on, there was a small improvement up to 1.4 % of the active population, and then again a decline was fixed (up to 0.7 %) in 2014 (Sadovskaya, 2014).

Currently, the national quotas consider a few categories of workers: top managers, extraordinarily competent professionals, skillful employees, and periodic agrarian labors. Those first 3 groups include jobs, requiring high qualifications. Migrants from Central Asian countries mostly occupy the last category.

Ways to acquire citizenship of Kazakhstan

The Law on Migration (2011) provides immigrants a promising framework for reaching long-term residency. Legal residents can apply for a permanent residence without a defined prerequisite length of residence. Immigrants can apply for citizenship after five years of stable residency or three years of marriage with a Kazakh citizen.

The Law on Migration also contains a family reunification scheme that after two years of residency permits permanent residents and immigrants who own a business in Kazakhstan to bring their partners, children, and parents into the country. Oralmans, or ethnic Kazakh repatriates, can also bring their family members to the country once they return to their historical homeland.

Migrants' access to health care services and education

Health. The Code on Public health and Health care system (2004) asserts the right to unpaid health assistance in cases of transferrable infections that are dangerous to others only for formal migrants. In the meantime, migrants and immigrants from the Commonwealth of Independent Countries, including, from Kyrgyzstan, Uzbekistan and Tajikistan, can get admittance to free health care in extra threatening situations, regardless of migration positions. In other cases, access to medical services is provided when paid for privately.

As the Ministry of Health has stated, according to expert estimates, between 300,000 and 500,000 to a million migrants annually work in Kazakhstan and that 15 % of them are sick with tuberculosis or are carriers of HIV (Liter, 2015). In most cases, migrants do not have knowledge about the severe consequences of these diseases. Moreover, representatives of care organizations assisting people in vulnerable situations claim that they experience great difficulty in establishing contacts with informal migrants from Kyrgyzstan, Tajikistan, and Uzbekistan since they are scared of being detained by the authorities (FIDH, 2016).

Education. According to the Law «On Education», children of migrant workers who have permanent residence permits are entitled to free education to the same extent as citizens of Kazakhstan. In addition, the order of the Minister of Education of 2010 ratifies the right to education of the children of migrant workers temporarily staying in the territory Kazakhstan. However, in 2012, the Ministry of Education of Kazakhstan issued a new order that excluded children of informal migrant workers from access to the public education system children of informal migrant workers.

As part of a survey conducted by the Children's Fund of Kazakhstan, 25 % out of 360 surveyed migrants reported that their kids do not go to school. Among them, 45 % reported that the basic problem causing this situation is the lack of local registration (Vatlina, 2012).

While Kazakhstan is trying to attract international students to study in the country, foreign students are not eligible for government tuition grants, unless their countries of origin have a bilateral agreement with the Kazakh government (Law on Education, 2007). The Government sets a quota merely for the enrolment of students of ethnic Kazakh origin who are not citizens of Kazakhstan. Additionally, international students are not permitted to work during their studies at universities or to stay for work after graduation. Only students from the Eurasian Economic Union (Russia, Belarus, and Kyrgyzstan) are allowed to stay and seek job opportunities after graduation from universities.

The situation with migrants in Kazakhstan

As was mentioned earlier, since the beginning of 2000, due to improving the economic situation, Kazakhstan has become a country of immigration. According

to the United Nations, in 2015 more than 3.5 million migrants of all categories lived in Kazakhstan (UN, 2015). These numbers include both repatriation «Oralmans» and migration for personal reasons or as part of a university exchange, and labor migration flows, both settled and unregulated. According to these data, immigrants count for 20 % of the local population of the country, which was equal to 17.5 million people in 2015 (currently around 18.5 million). Across the former USSR, Kazakhstan is defined as the third country in receiving foreigners, following Russia and Ukraine, 11.9 and 5.1 million people correspondingly (World Bank, 2016).

In 2015, the Ministry of Internal Affairs reported that among 1,381,681 immigrants recorded by the government bodies 797,982 came from Uzbekistan (approximately 58 %), 114,385 from Kyrgyzstan (slightly more than 8%), and 33,036 from Tajikistan (slightly over 2 %), (MIA, 2016, FIDH, 2016). The number of migrants staying in an unresolved position is constantly growing. Most of the migrants live or work without settling their status; therefore, official statistics on migrant workers carried out by official authorities do not consider them. Currently, from about 300 000 up to 1.5 million unofficial migrants work in Kazakhstan (Ministry of Labor, 2018).

Immigrants from the countries of the Commonwealth of Independent States (former Soviet Union countries) do not need a visa for entry into the territory of Kazakhstan. Many of them, specifying their visit as «a private visit», «study» or «tourism», receive a temporary residence permit (registration), issued by the authorities and then work without a work permit. In this way, the enormous number of immigrants coming from the Commonwealth of Independent States is employed illegally in Kazakhstan, are not considered migrant workers. Officially, registered migrant workers constitute no more than 9.8 % of migrants of the total number of migrant workers from CIS countries. In reality, the citizens of Uzbekistan, Kyrgyzstan, and Tajikistan, count for around two-thirds of migrants (Ministry of Labor, 2018; IOM, 2018).

The main cities and regions of Kazakhstan that migrants with informal status, citizens of Central Asian countries, are heading to, is Nur-Sultan (the capital city of the country) and southern Kazakhstan (Shymkent, Taraz and Almaty regions).

According to the data of the National Bank, in 2018, the money transfers of the physical persons, who is sending the money transfers, were mainly sent to the residents of countries such as the Russian Federation, Uzbekistan, China, and Kyrgyzstan, and totaled about 60 % in the total volume of the money transfers from Kazakhstan (NB, 2018). Out of 242 million dollars transferred from Kazakhstan, 179 million dollars were sent to the Commonwealth of Independent Countries: Russia is in the first place in terms of receiving of funds (\$109.67 million), Kyrgyzstan is the second (\$29.40 million) and Uzbekistan is the third

(\$19.06 million). In the structure of other countries, the majority of the amount was transferred to Turkey (\$32.27 million), as well as China (\$9.95 million) and Germany (\$ 2.81 million), (NB, 2018).

The «black side» or challenges of the labor market in Kazakhstan

Most migrant workers whose status is unregulated are engaged in low-skilled labor. Migrant workers from neighboring countries of Central Asia, representing low skilled or unskilled labor, are coming to Kazakhstan almost exclusively for economic reasons, hoping to find a job and a salary more than what they can count on in their own country. They work on construction sites (mostly citizens of Uzbekistan), in agriculture in southern Kazakhstan, from March to November (mainly citizens of Uzbekistan and Kyrgyzstan), in the markets (mainly citizens of Tajikistan, Kyrgyzstan and, to a lesser extent, citizens of Uzbekistan), in leisure sites as well as in individual households.

According to a survey conducted by Kazakhstan organization «Public position» in conjunction with a member organization FIDH «Bir Duino – Kyrgyzstan», in the vast number of circumstances, migrants from bordering countries labor in extremely severe settings (FIDH, 2016). A working day, especially a hard workday lasts an average of twelve hours. In the meantime, the Labor Code of the country asserts for a maximum working time, which is a 40-hour workweek, and an eight-hour per workday. Migrants often are not allowed to take days off, and the number days off is less than the number established by Kazakhstani regulation (once or twice in a workweek). In addition, these migrants, including those with settled status, often do not know the rights associated with their work and, in particular, with paid leave and overtime work.

The situation of informal migrant workers differs not only in extreme working hours but also in much lower salaries in comparison with citizens of Kazakhstan or formal migrants with regulated status (average salary in 2016 in Kazakhstan was approximately 150,000 tenge, equivalent to 390 euro), (FIDH, 2016). Informal migrants are also often paid salaries delayed several days to several months, in particular, in peasant farms, where some owners pay salaries by the completion of the term. Expenses for the resettlement of migrant workers (for example, for food) may include the provision of housing and small plots of land on which migrants can grow vegetables for their own consumption or for sale. In such cases, migrants are fully reliant on the landowner since they need to wait to get a payment at the end of the harvest. Some migrants may receive merely part of their salary negotiated during the conclusion of the «oral work contract». Employers use a variety of tools to minimize or postpone the reimbursement mostly by referring to the arrangement of administrative documents of migrants working for them.

Unsuitable living conditions

In Kazakhstan's large metropolises, foreign employees, mostly informal migrants, are lack of sufficient resources to lease a house. To receive a temporary residence authorization, migrants try to legalize their stay in the country, using the assistance of official organizations, and indicating addresses where they do not actually live. In practice, migrants mostly live in remote areas, often in overcrowded conditions and deprived of sanitary equipment in some places. Informal migrants occupying in private landowners and families, often live where they work, in extremely unsuitable conditions, in a few square meters house up to 15 or 20 people. Moreover, these workers are kept at the workplace throughout construction. They have never shown in public places and remain at the construction site, where they work, eat, and sleep (FIDH, 2016).

Forced labor and human trafficking

Migrant workers with unsettled status are particularly disposed to any schemes of current oppression, including the forced labor. For example, the NGO «Sana Sezim» (Shymkent) reports that migrants from Uzbekistan continue to be victims of forced labor in South Kazakhstan, in particular, in the fields, at construction sites, as well as in private households (FIDH, 2016). In Kazakhstan, a practice prohibited by law is common, and involves employers collecting migrants' passports to keep them in their homes or on worksites. It is a spreading practice in areas of employment such as construction, service or domestic work. Deprived of identity documents, these workforces are often required to stay lacking proper payment.

According to the 2015 United States Department of State Trafficking in Persons Report, Kazakhstan is a «destination and, to some degree, a destination of human trafficking for sexual purposes exploitation and forced labor» (FIDH, 2016). Over the last decade, almost 1 200 people have been defied as targets of such operating in the country, 60 % of whom are nonresidents. Migrants can be trafficked for different purposes (FIDH, 2016). ILO claims that in 2012, 52 % of human trafficking evidence in Kazakhstan was aimed at forced labor, 48 % – at sexual purposes (mainly women from Central Asia), (FIDH, 2016). The United Nations reports that in 2010 and 2012, various public organizations of Kazakhstan identified 428 victims of trafficking, 269 of whom were women (FIDH, 2016). As for 2016, the Walk Free Foundation identified 81,600 people as victims of a different form of slavery in Kazakhstan (FIDH, 2016).

Victims of human trafficking often become so after their abduction by members of criminal networks who may be transnational either in the country of origin or in Kazakhstan. Some victims may succumb to enticements and false promises. In 2014, the Prosecutor's Office of Kazakhstan emphasized that the number of open court cases involving human trafficking, and the number of sentences due to violation of the Criminal Code of Conduct on Human Trafficking is growing every year.

Between 2012 and 2013, 617 human trafficking facts were identified, 332 people were convicted; whereas in the 10 months of 2017, 276 cases were identified with human trafficking (FIDH, 2016, 2018). Unfortunately, these numbers are not able to demonstrate the magnitude of this phenomenon since the total number of victims has not been recognized. Due to the fear of reprisal, threats, and intimidation by those who are responsible for human trafficking, or fear of becoming a victim of corruption by representatives of law enforcement, not all victims appeal to justice.

What needs to be done?

In order to provide adequate conditions for labor migration in Kazakhstan the national government needs to take the following measures:

- to ratify the International Convention on the Protection of the Rights of All Migrant Workers and their families, and the International Labor Organization’s conventions on Migrant Workers (1975), on Decent work for domestic workers and migrant-workers (2011);
- to take necessary measures to guarantee the openness of information regarding existing migration processes in Kazakhstan and its availability to public organizations to optimize the provision of all migrant workers’ right;
- to ensure all migrants working at construction, agriculture, services or trade, legalizing their position in a sustainable manner, amend immigration and labor laws, creating the necessary provisions for issuing a work permit;
- to provide guidance on essential rights of all foreign workers, comprising household and cyclic-agricultural workers, on compliance with safety measures, for reasonable working time, weekends and holidays;
- to create a direct complaint system accessible to all victims of abuse; respond quickly on reports of troubles of the rights of all immigrant workers;
- to strengthen the monitoring system of migrant labor conditions by allowing representatives of labor inspectorates to make frequent and unplanned monitoring of small, medium and large enterprises and highlighting the necessary financial resources and human resources;
- to provide all children regardless of legal status parents with access to public schools;
- to extend the scope of recipients of free health care in transferrable infections cases;
- and other measures.

CONCLUSION

Kazakhstan offers a comprehensible legal framework for migration, based on the Law on Migration (2011). The law regulates internal migration, outlines categories of migrants, and lays out detailed immigration measures. However,

current migration legislation does not explicitly address the issues of informal migrant workers who constitute an overwhelming majority of the working migrants in the country. These migrants are in an especially weak position, and frequently employed in difficult conditions and become targets of exploitation, mental and physical abuse; involuntary labor or human trading. The precarious position also restricts their kids’ entree to public school, and the whole family’s access to the medical service.

Legislative and institutional changes, as well as the development of inter-agency and international cooperation, could improve the regulation of labor migration, and the system for protection of migrant workers’ rights in Kazakhstan. Civil participation can also be helpful in improving this area of the national law.

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Қазақстандағы еңбек миграциясы: мүмкіндіктер мен қиындықтар

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Трудовая миграция в Казахстане: возможности и вызовы

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Бұл мақалада шетел азаматтарының Қазақстан Республикасында еңбек қызметін жүзеге асыруының заңнамалық негіздері қарастырылады. Мақалада еңбек мигранттарының сандық көрсеткіштеріне, олардың Қазақстанда еңбек ету жағдайларына, сондай-ақ еңбек мигранттар кездесетін қиындықтарға талдау жасалады. Негізгі назар бейресми қызмет атқарып жатқан шетел азаматтарына, оның ішінде сол азаматтардың басым бөлігін құрайтын Орталық Азия елдерінен келген мигранттарға аударылады.

Мақала Қазақстан Республикасы Білім және ғылым министрлігінің 2018–2020 жылдарға арналған ғылыми жұмыстарды гранттық қаржыландыру шеңберіндегі № АР05136246 «Қазақстан

Республикасының көші-қон саясатын елдің интеллектуалды әлеуетін дамыту контекстінде жаңғырту» жобасы бойынша даярланған.

Данная статья рассматривает законодательные основы осуществления трудовой деятельности в Республике Казахстан гражданами зарубежных государств. В статье приводится анализ количественных показателей трудовых мигрантов, условия их пребывания в Казахстане, а также сложности, с которыми связываются трудовые мигранты. Особое внимание уделяется неформальным трудовым мигрантам, подавляющее большинство которых, составляют граждане стран Центральной Азии.

Статья подготовлена в рамках грантового финансирования научных исследований Министерства образования и науки Республики Казахстан на 2018–2020 гг. по проекту № АР05136246 «Модернизация миграционной политики Республики Казахстан в контексте развития интеллектуального потенциала страны».