

Chinese "Green Cards" – Green Light only for Qualified Foreigners

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I. Introduction

The Ministry of Public Security and the Ministry of Foreign Affairs jointly endorsed Decree No. 74 and issued the "Green Card Regulations"¹ on 15 August 2004. The regulations set forth the conditions upon which foreigners can obtain permanent residence in China. The issuance of these regulations indicates the official implementation of the "Green Card" system in China. This new "Green Card" policy is a significant move by the Chinese Government to adapt to economic globalization and normalize the regulation of examination and approval of permanent residence of foreigners in China.

Nowadays more and more foreigners opt to live and work in China, and long-staying foreigners number more than 200,000. Large cities like Beijing, Shanghai and Guangzhou have become increasingly international, and the foreign population of all three already exceeded 100,000 at the end of 2004.² Permanent residence status in China will help to accommodate China's urgent need for high-level overseas talent keen to invest, do business and conduct scientific, technological and cultural undertakings in the country. Green card implementation is a crucial and necessary measure on the part of the Chinese government as it will offset the problems China faces in relation to its own "brain drain". Encouraging foreign talent to enter and reside in China reflects the desire for international

exchange, and is also an indicator of economic strength.³

II. History and Legal Background

The words "Green Card" are borrowed from English and translated into Chinese as "lvka", which refers to a long-term residence permit for foreigners. For different countries, green cards are highly flexible in terms of time limit. They are permanent in some traditional immigration countries such as America, Canada, Australia and New Zealand. Green Cards of this kind are mainly granted to three groups: skilled workers, investors and those seeking reunion with their families. However, in traditional countries like Switzerland, Sweden and Denmark that bring in talented people, a long-term residence system with time limit is instituted for immigrant workers and professionals.

In China, before the carrying out of the "Green Card" policy, the residence permits were granted according to the Law on the Entry and Exit of Foreigners,⁴ adopted by the Standing Committee of the People's Congress in November 1985, and the Enforcement Regulations on the Entry and Exit of Foreigners,⁵ adopted by the State Council in December 1986 and revised in July 1994. According to these two legal documents, foreigners residing in China for six months to one year are given a "temporary residence permit" by the public security department. Those living over one year are given a "foreigner residence permit" with a time limit of one year, which can be extended after their certificates are checked and accepted by the designated public

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¹ Regulations on Examination and Approval of Permanent Residence of Foreigners in China (外国人在中国永久居留审批管理办法), August 15th, 2004, http://news.xinhuanet.com/zhengfu/2004-08/20/content_1835486.htm (visited September 13, 2005).

² ZHANG Hua, Chinese Green Cards Go Ahead, <http://www.chinatoday.com.cn/> (visited January 28th, 2005).

³ ZHANG Hua, Chinese Green Cards Go Ahead, <http://www.chinatoday.com.cn/> (visited January 28th, 2005).

⁴ Law of the People's Republic of China on the Administration of the Entry and Exit of Foreigners (中华人民共和国外国人入境出境管理法), November 22nd, 1985, <http://www.fmprc.gov.cn/chn/lsw/lswl/xgfg/t9777.htm> (visited September 13, 2005).

⁵ Enforcement Regulations on Law of the People's Republic of China on the Administration of the Entry and Exit of Foreigners (中华人民共和国外国人入境出境管理法实施细则), December 3rd, 1986, <http://www.fmprc.gov.cn/chn/lsw/lswl/xgfg/t9778.htm> (visited September 13, 2005).

security institutions.⁶ In addition, foreigners who need long-term residence in China because they invest in the country, or conduct economic, scientific-technological, and cultural cooperation with Chinese enterprises or institutions, or engage in other activities, can be granted long-term (the validity period ranges from one to five years) or permanent qualifications with approval from competent government departments.⁷ Therefore, permanent residence permits for foreigners already existed before the "Green Card" regulations were enacted. But they were rarely granted in practice and had the function of honorary awards. For instance, in 1986, a permanent resident permit was granted for the first time to a German national. This case was looked upon as China's first granting of a "Green Card". Then, in 1991, four foreigners got the certificate from the Tianjin Public Security Bureau for their outstanding contribution to Tianjin's economic development.⁸ By the end of 2004, statistics show that no more than fifty such permanent residence permits were granted to foreigners nationwide who had made a significant contribution to China's development.⁹

III. Qualifications for Applicants

The "Green Card" regulations in China have 29 articles, which include explicit provisions on the prerequisites for foreigners to apply for permanent residence permits in China, required supporting documents, steps to be followed, limits of authority, and cancellation of eligibility, etc. Foreigners can obtain permanent residence in China if they abide by Chinese laws, are in good health, have no record of breaking the law and fall into one of the following seven categories:

(1) Those who have had a stable direct investment in China successively for three years and have a good taxation record;

(2) Those who hold posts in businesses which promote China's economic, scientific and technological development or social progress, like positions or professional titles at or above the level of deputy general manager, deputy factory director, assistant professor, associate research fellow or their equivalent for a minimum of four years on the condition that their stay in China within the four

years is accumulatively no less than three years and they have a good taxation record;

(3) Those who have made outstanding contributions to China or have talents that are specially needed by China;

(4) Those who are spouses or unmarried children under the age of 18 of any of the persons from the above three categories;

(5) Those who are foreign spouses of Chinese citizens, or spouses of foreigners with permanent residence status in China, on the condition that their marriage is no less than five years and they have stayed in China successively for five years during which they have spent at least 9 months each year in China and they have a stable source of livelihood and housing;

(6) Those who are unmarried children under the age of 18 and are still dependent on their parents; and

(7) Those above the age of 60 who do not have direct blood relatives abroad and come to join their direct blood relatives in China on condition that they have lived in China successively for five years during which they have spent at least 9 months each year in China and have a stable source of livelihood and housing.¹⁰

In order to qualify under the investment category (see category one above), the minimum investment requirements, which the investor must satisfy, are investment of: US\$ 500,000 in the encouraged category of industries; US\$ 500,000 in China western region or in poor counties that the state has singled out for development; US\$ 1 million in China central region; or US\$ 2 million in China.¹¹

IV. Application Procedures and Documents

To apply for permanent residence in China, the applicant or the parents or guardians of unmarried children shall submit an application to the public security organ of the People's Government at the city level or the branch office or county office of the public security bureau of a municipality directly under the central government, which is in charge of the community of the applicant's major investment or long-term residence, and at the same time, provide the specified application documents.¹² After the public security organ receives the application, it shall investigate and verify the conditions of the

⁶ Art. 16 Enforcement Regulations on the Entry and Exit of Foreigners.

⁷ Art. 14 Law on the Entry and Exit of Foreigners; Art. 18 Enforcement Regulations on the Entry and Exit of Foreigners.

⁸ How to apply for a Chinese Green Card, <http://www.womenofchina.com.cn/> (visited July 10th, 2005).

⁹ China pondering its own "green card" system, <http://houston.china-consulate.org/> (visited July 10th, 2005).

¹⁰ Art. 6 para. 1 no. 1-7 "Green Card" regulations.

¹¹ Art. 7 "Green Card" regulations.

¹² Art. 17 para. 1 "Green Card" regulations.

applicant according to the specified prerequisites, and submit the application to the Ministry of Public Security for examination and approval. The public security organ shall decide whether to approve or reject the application for the permanent residence permit within 6 months of receiving the application.¹³

Upon the approval of the Ministry of Public Security, the applicant shall be granted a Foreigner Permanent Residence Permit by the Ministry of Public Security; To applicants outside China, a Foreigner Permanent Resident Status Confirmation Letter shall be issued by the Ministry of Public Security, with which they may apply for D Visas from a Chinese embassy or consulate abroad, and receive the Foreigner Permanent Residence Permits from the public security organ which handles their applications within 30 days of entering China.¹⁴ For holders of the previous resettlement or permanent residence certificates, they can go to the Entry-Exit Administration of the Public Security Bureau and change over to the new green card.¹⁵ The application documents include: valid passport or equivalent; health certificate issued at state level; credentials proving no criminal record by Chinese embassies or consulates; two passport photos and other relevant credentials if required.¹⁶

V. Validity

According to relevant provisions, there is no limitation on the period of stay of foreigners with permanent resident status in China, and they need not obtain visas and can enter and leave the country with their valid passport and Foreigner Permanent Residence Permits. For foreigners with the "Green Card" of China, the "Green Card" is their legal identity document during their stay in China and can be used alone. The Permanent Residence Permits for Foreigners are valid for five or ten years.¹⁷ Certificates with five-year validity are granted to minors, while certificates with ten-year validity are granted to adults.¹⁸ In case of expiration, loss, damage or content change of the certificates, the holders may apply for recertification. The public security organ may reissue certificates to them after confirmation that they have not lost permanent resident status, without going through the examination and approval procedures again.¹⁹

In order to safeguard national security and interests, and maintain the solemnity and authority of permanent resident status, the "Green Card" regulations stipulate that foreigners with permanent resident status in China will be deprived of such status in any of the following four circumstances: endangering national security and interests, being sentenced to expulsion from China by the People's Court, those who have gained permanent resident status in China by means of fraud, and those whose periods of residence in China do not reach the specified number of years²⁰. In any of the above-mentioned circumstances the Ministry of Public Security will confiscate the "Green Card" or declare it invalid.²¹

VI. Green Light for Qualified Foreigners

The application threshold is quite high. In Beijing alone, more than 2,000 foreigners have applied for the green cards, but after extensive enquiries only a few of them can meet the rigorous criteria.²² But it seems reasonable to set up such a high threshold for the foreign applicants, because China is traditionally a non-immigration country. Similar to the situation of other non-immigration countries, the issuance of the "Green Card" only to a small number of eligible talented foreign nationals is in conformity with the common international practice, and the practical situation of China.

Though foreigners, during their stay in China, are entitled to basic rights such as the right of the person, right of property and rights of employment and education, some political rights are reserved exclusively for Chinese citizens, such as voting and being voted for are not entitled to foreigners. Foreigners also cannot hold public office. But it is believed that the legal reform in China will continue the trend of China gradually relaxing its policies toward foreigners, so they can enjoy more freedom in employment, travel, accommodation, purchasing property, medical care and social welfare, etc. The new green card system will also be aimed at attracting back to China overseas Chinese with citizenship or permanent residence permits in other countries. The system will facilitate their return and allow them to keep their foreign citizenship while living and working permanently in China.

²⁰ According to Art. 20 "Green Card" regulations, foreigners who have obtained Permanent Resident Permits must spend at least three months each year in China. Those whose periods of stay can not reach three months each year must get approval from the responsible public security organ at the local level. But their total periods of residence in China should not be less than one year in successive 5 years.

²¹ Art. 24 "Green Card" regulations.

²² ZHANG Hua, Chinese Green Cards Go Ahead, <http://www.chinaday.com.cn/> (visited January 28th, 2005).

¹³ Art. 18 "Green Card" regulations.

¹⁴ Art. 19 "Green Card" regulations.

¹⁵ Art. 25 "Green Card" regulations.

¹⁶ Art. 9 "Green Card" regulations.

¹⁷ Art. 21 para. 1 "Green Card" regulations.

¹⁸ Art. 21 para. 2 "Green Card" regulations.

¹⁹ Art. 22 "Green Card" regulations.