e-Labor News No. 132
Issue paper

Legal Framework for Foreign Migration in Korea*

Ki Sun Kim**

Introduction

Over the past 2 decades, Korea has shifted from being a labor-sending country to being a labor-receiving country. As the Korean labor market has faced labor shortages for production operations since the 1980s, domestic companies have continued to call on the government to allow the employment of foreign workers. In the 1980s, only foreign workers with special technology expertise could be hired in certain industries in Korea, in cases where domestic workers lacked required skills. In principle, employing foreign workers was banned until November 1991, when the government introduced a trainee program for companies making overseas investments. In November 1993, the government introduced an Industrial Trainee Program allowing domestic companies to hire foreign workers as industrial trainees.

Since the mid-1990s, a series of endeavors have been made in Korea to introduce the Employment Permit System in order to solve problems associated with the existing Industrial Trainee Program but have failed in the face of opposition from domestic businesses. Under the circumstances, beginning in April 2000 the government began to implement the Post-training Employment Program, which allowed foreign workers who have worked as industrial trainees for a certain period of time to be hired as workers. Initially, the training and employment period was set at 2 years of training and 1 year of employment. Following the amendment of the Regulations of the Immigration Control Act on April 18 and 27, 2002, the period was changed to 1 year of training and 2 years of employment. The Post-training Employment Program is similar to the Employment Permit System, in that under this system foreign workers are hired as workers in Korea for 1- or 2-year employment periods. In December 2002, the Employment Management System was introduced to manage ethnic Koreans with foreign nationalities working in the Korean service sector.

---

* This paper was presented at the 2nd KLI–ILSSA seminar, "Vietnamese Migrant Workers in Korea: With a Focus on the Legal Framework for Foreign Migration and the EPS Program," organized by the Korea Labor Institute (KLI), in cooperation with the Institute of Labor Science and Social Affairs (ILSSA) in Vietnam, in Seoul on December 17, 2012.

** Research Fellow, Korea Labor Institute.

As there was still a need to establish the Employment Permit System to ease labor shortages for production operations and to lay a solid foundation for the employment management system of foreign workers, the government enacted the Act on Foreign Workers' Employment, etc. (hereinafter referred to as the Foreign Worker Employment Act) on August 16, 2003, which became effective on August 17, 2004, allowing the employment of foreign workers in Korea. The Employment Management System, which confers cohabitation status on ethnic Koreans with foreign nationalities so that they may work in Korea, was later merged with the Employment Permit System. The existing Industrial Trainee Program was implemented in parallel with the Employment Permit System until the end of 2006 and was integrated into the Employment Permit System on January 1, 2007. In the same year, the Working Visit System was introduced for ethnic Koreans with foreign nationalities who are working in Korea.

This paper examines Korea's current systems for the employment of foreign workers and discusses pending challenges as follows.

Current Foreign Worker Employment Laws in Korea

Basic Principles of Foreign Worker Employment

Korea's current Foreign Worker Employment Act specifies several principles related to the employment of foreign workers that must be followed in order to supply foreign workers in a legal and transparent way to domestic industries experiencing labor shortages (see Yoo et al., 2004).

First, employment of foreign workers should be confined to manual labor. Under the Foreign Worker Employment Act, only low-skilled foreign workers are allowed to be hired on non-professional employment (E-9) and working visit (H-2) visas.

Second, foreign workers should be hired only to complement the domestic labor market. In other words, their employment should never have a negative effect on the domestic labor market. Accordingly, when domestic industries face a labor shortage, they should first hire from the pool of available older workers and female workers in Korea, in order to utilize idle manpower within the country, and only then hire foreign workers to address any labor shortage. In accordance with this principle, domestic employers are required to prove that they have made "sufficient efforts to hire domestic workers" when seeking a permit for the employment of foreign workers.

Third, foreign workers should not reside permanently in Korea. This principle of allowing only temporary residence in Korea is intended to prevent disruptions in the domestic labor market and to prevent chaos caused by the rise in social costs resulting from foreign

workers' marriage, childbirth, and child care. Under the Foreign Worker Employment Act, the maximum duration is set for employment of foreign workers and they are allowed to reenter Korea and be rehired after a 6-month hiatus from the time of their departure from Korea.

Last, foreign workers should be treated equally to and as fairly as Korean workers. In other words, legally hired foreign workers should not be subjected to unfair discrimination in the workplace, and they are protected just like domestic workers under the Korean labor laws. The Foreign Worker Employment Act contains a clause prohibiting discrimination against foreign workers, and it clearly stipulates that the foreign workers themselves—not their employers—should sign their employment contracts, recognizing them as workers in Korea, unlike the previous Industrial Trainee Program, which required employers of foreign workers to sign the contracts.

Main Contents

The Scope of Foreign Workers

The Foreign Worker Employment Act defines the scope of foreign workers in Article 2. According to this definition, "foreign workers refer to foreign nationals who provide labor or desire to offer labor to earn wages at a business or workplace in Korea." Depending on their occupation and period of stay, a certain group of foreign workers who are permitted to work in Korea are excluded from the scope in accordance with Paragraph 1, Article 18 of the Immigration Control Act. Exclusions include (a) foreign workers who obtain employment permits 9) for short-term employment (C-4),[1] 19) as professors (E-1),[2] or 25) on specific activity (E-7) visas[3] in accordance with Paragraph 1, Article 23 of the Regulation of the Immigration Control Act; (b) foreign nationals whose activities in Korea are not restrained in accordance with Paragraph 2–Paragraph 4, Article 23 of the Regulation of the Immigration Control Act;[4] and (c) foreign nationals who work in Korea on 30) working holiday (H-1) visa[5] in accordance with Paragraph 5, Article 23 of the Regulation of the Immigration Control Act.

1 Those who come to Korea to work temporarily to seek profits such as short-term performance, advertising, fashion model, lecture, presentation, research, and technology guidance activities (* 1 of the Regulation of the Immigration Control Act).

2 Highly qualified foreign nationals fulfilling the requirements specified under the Higher Education Act who wish to engage in teaching or research guidance activities at 2-year colleges or at other higher education institutions (* 1 of the Regulation of the Immigration Control Act).

3 Those who wish to work in the activities specified by the Minister of Justice under the agreement with public or private corporations in Korea (* 1 of the Regulation of the Immigration Control Act).

4 Those who have residency status (F-2), permanent residency status (F-5), and overseas Koreans (F-4).

5 Foreign nationals from the countries that have signed the MOU or agreement on "working holiday visa" who stay in Korea mainly for sightseeing purposes but work temporarily to earn money to cover the sightseeing expenses, excluding those who find a job with certain qualifications required under the domestic law contrary to the intent of the MOU or agreement (* 1 of the Regulation of the Immigration Control Act).

The characteristics of foreign workers who are not subject to the Employment Permit System show that these foreign workers can hardly be replaced by domestic workers and can contribute to creating new job opportunities, and thus they receive resident status in Korea as a political consideration. In sum, the introduction, employment, and management of foreign workers in Korea are concentrated in the manual labor and unskilled professions.

Plan for Introducing a Foreign Workforce

The Minister of Employment and Labor is required to establish and announce a foreign worker introduction plan by March 31 each year via official press releases or qualified major daily newspapers after the Foreign Workforce Policy Committee deliberates and decides on the plan (Article 5 of the Foreign Worker Employment Act). The number of foreign workers to be introduced, the types of industries eligible to introduce foreign workers, foreign worker employment-allowance standards by workplace and their exceptions, additional selection of labor-sending countries, and other requirements should be specified in the announced plan.

The Foreign Workforce Policy Committee (hereinafter referred to as the Policy Committee) is established under the Prime Minister's Office to deliberate and vote on major issues related to the protection and management of foreign workers in Korea. The Policy Committee is in charge of deliberating and voting on (a) master plans related to foreign worker employment, (b) the types of industries eligible to introduce foreign workers and the number of foreign workers to be introduced, and (c) designation of labor-sending countries (hereinafter referred to as sending countries) and cancelation of such designation. The Policy Committee is composed of one Chairman and about 20 members: the Head of the Prime Minister's Office serves as the Chairman of the Committee, and Vice Ministers from the Ministry of Strategy and Finance, the Ministry of Foreign Affairs and Trade, the Ministry of Justice, the Ministry of Knowledge Economy, the Ministry of Employment and Labor, the Head of the Small and Medium Business Administration, and Vice Ministers from other government agencies designated by the President serve as members.

For efficient operation of the Policy Committee, the Working Committee for Foreign Workforce Policy (hereinafter referred to as the Working Committee) is established to discuss implementation of foreign worker employment policies and systems and ways to protect the rights of foreign workers (Paragraph 5, Article 4 of the Foreign Worker Employment Act). The Working Committee consists of one Chairman and about 25 members who represent employees, employers, public interests, and the government. The number of members representing

employees and employers shall be the same (Article 7 of the Regulation of the Foreign Worker Employment Act).

The current structure of deliberating and voting on foreign worker issues within the Policy Committee and Working Committee is considered to be adequate, as it incorporates and manages foreign workers under the National Employment Master Plan (Jeon, 2009, p. 294).

According to the number of foreign workers determined by the Policy Committee on September 19, 2012, the number of general foreign nationals (E-9 quota) is set at 62,000, and the number of overseas Koreans who stay in Korea to work (H-2) is set at 303,000 (see Table 1). Of the 62,000 general foreign nationals allowed, the number of new foreign workers is set at 52,000, and the number of reentering foreign workers is set at 10,000. For overseas Koreans, no quota is set; they are allowed to move freely between different professions (Ministry of Employment and Labor, 2012).

Table 1. *Number of Foreign Workers in Korea, 2013*

Category	No. (*N* = 62,000)	Manufacturing (*N* = 52,000)	Construction (*N* = 1,600)	Service (*N* = 100)	Agricultural/ livestock farming (*N* = 6,000)	Fishing (*N* = 2,300)
General (E-9)	52,000	42,600	1,560	90	5,600	2,150
Reentering workers	10,000	9,400	40	10	400	150

Under the current Foreign Worker Employment Act, manufacturing, construction, service, fishing, agricultural, and livestock industries are allowed to hire foreign workers.

In the manufacturing industry, companies with fewer than 300 full-time employees and capital of less than 8 billion won are allowed to hire foreign workers. In other words, small and medium-sized companies are allowed to hire foreign workers (Choi, 2008, p. 187). According to the employment-allowance standards by manufacturing site, small manufacturers with fewer than 10 employees are allowed to hire 5 or fewer foreign workers,[6] so that foreign workers can account for around 50% of the total employees at the company (see Table 2). However, the percentage of foreign workers is smaller in medium-sized and large companies.

6 The size of companies that can hire foreign workers under the Employment Permit System is determined based on the number of insured Korean employees (3 months on average).

Table 2. *Legally Allowed Number of Foreign Workers in the Manufacturing Industry, 2013*

No. of insured Korean employees	Legally allowed number of foreign workers	Limit on new employment permit
1–10	5 or less	3 or less
11–50	10 or less	
51–100	15 or less	4 or less
101–150	20 or less	
151–200	25 or less	5 or less
201–300	30 or less	
301 or more	40 or less	

In the construction industry, all Korean companies are allowed to hire foreign workers including ethnic Koreans with foreign (see Table 3). The legally allowed number of foreign workers for construction companies with an annual average construction cost of less than 1.5 billion won is five, whereas that of companies with an annual average construction cost of more than 1.5 billion won is calculated by multiplying the required-number factor (0.4) by each 100 million won of construction cost.

Table 3. *Legally Allowed Number of Foreign Workers in the Construction Industry, 2013*

Annual average construction cost	Legally allowed number of foreign workers	Limit on new employment permit
Less than 1.5 billion won	5 (factor not applied)	3 (factor not applied)
1.5 billion won or more	construction cost × 0.4	construction cost × 0.3 (up to 30 people)

In the service industry, the Special Employment Permit System allows the hiring of foreign workers in a total of 29 service sectors, including the restaurants and hotels, home-service, and caregiver sectors, whereas the General Employment Permit System allows the hiring of foreign workers in the disposal of construction wastes; collection and sale of recyclable materials; cold storage and refrigeration; book and magazine publishing; and music and other audio-content creation and distribution only (see Table 4). As in the manufacturing industry, the number of full-time employees hired by companies or the number of employment insurance subscribers is used to determine the number of foreign workers allowed per company. For home services, only one foreign worker can be hired as a personal caregiver or other home-service provider per household.

Table 4. *Legally Allowed Number of Foreign Workers in the Service Industry, 2013*

No. of insured Korean employees	Legally allowed number of foreign workers	Limit on new employment permit
5 or less	2 or less	2 or less
6–10	3 or less	
11–15	5 or less	
16–20	7 or less	3 or less
21 or more	10 or less	

In the agricultural/livestock industries, foreign workers can be hired for crop cultivation, livestock farming, and other related services (see Table 5). The crop-cultivation sectors include controlled horticulture, special crop cultivation, facility/mushroom, fruit, ginseng, vegetables, bean sprouts, seed and seedlings, and other horticulture and cultivation of special-use crops; and the livestock industry includes milk cows, Korean native cattle, pigs, horses, elk, and poultry. The number of foreign workers for crop cultivation and livestock farming varies from 5 to as many as 20 workers depending on the size of the farming organization or household.

Table 5. *Legally Allowed Number of Foreign Workers in the Agricultural/Livestock Industry, 2013*

Category	Size of farming organization (Unit: ㎡)				
Crop cultivation (011)					
Controlled horticulture, special crop	4,000–6,499	6,500–11,499	11,500–16,499	16,500–21,499	21,500 or more
Facility/mushroom	1,000–1,699	1,700–3,099	3,100–4,499	4,500–5,899	5,900 or more
Fruit	20,000–39,999	40,000–79,999	80,000–119,999	120,000–159,999	160,000 or more
Ginseng, vegetables	16,000–29,999	30,000–49,999	50,000–69,999	70,000–89,999	90,000 or more
Bean sprouts, seed and seedling	200–349	350–649	650–949	950–1,249	1,250 or more
Other horticulture, cultivation of special-use crops	12,000–19,499	19,500–34,499	34,500–49,499	49,500–64,499	64,500 or more
Livestock farming (012)					
Milk cow	1,400–2,399	2,400–4,399	4,400–6,399	6,400–8,399	8,400 or more
Korean native cattle	3,000–4,999	5,000–8,999	9,000–12,999	13,000–16,999	17,000 or more
Pigs	1,000–1,999	2,000–3,999	4,000–5,999	6,000–7,999	8,000 or more
Horses, elk	250–499	500–999	1,000–1,499	1,500–1,999	2,000 or more
Poultry	2,000–3,499	3,500–6,499	6,500–9,499	9,500–12,499	12,500 or more
Other	700–1,699	1,700–3,699	3,700–5,699	5,700–7,699	7,700 or more
	No. of Insured Korean Employees				
Crop cultivation/livestock farming-related service sectors (014)	1–10	-	11–50	51–100	100 or more
Legally allowed number of foreign workers	5 or less	8 or less	10 or less	15 or less	20 or less
Limit on new employment permit	2	2	3	3	4

The fishing industry includes inshore fisheries, aquaculture, and the salt-making sector (see Table 6). For inshore fisheries, two to four foreign workers are allowed to be hired per ship depending on the type of fishery, or up to 40% of the crew. The number of foreign workers varies for aquaculture depending on the type of aquaculture and is set to three or less, five or less, or seven or less depending on the size of the aquaculture operation.

Table 6. *Legally Allowed Number of Foreign Workers in the Fishing Industry, 2013.*

A. Inshore Fisheries: Based on the Number of Fishing Vessels

Type of fisheries	Legally allowed number of foreign workers (excluding fishing vessels subject to the Seafarers Act)	Limit on new employment permit (excluding fishing vessels subject to the Seafarers Act)
Small purse seine fishery, offshore jigging fishery, coastal gill net fishery, offshore stow fishing, stick-held blanket net fishing, offshore damselfish net fishing, offshore eel fish trap fishery, offshore octopus fishing, fish trap fishery, inshore long line fishery, boat seine fishery, anchovy boat seine fishery	The number is limited to 4 foreign workers per ship up to 40% of the total crew members on the ship. But the number of foreign workers for boat seine fisheries is set to 8 or less per each business unit.	The number is limited to 2 foreign workers per ship up to 40% of the total crew members on the ship. But the number of foreign workers for boat seine fisheries is set to 3 or less per each business unit.
Offshore boat seine fishery (confined to Gangwon-do), fixed shore net fishery	The number is limited to 4 foreign workers per ship up to 40% of the total crew members on the ship.	The number is limited to 2 foreign workers per ship up to 40% of the total crew members on the ship.
Coastal gill net fishery, coastal enhanced stow net fishery, coastal seine fishery, coastal fish net fishery, coastal complex fishery, coastal lift-net fishery, coastal beam-trawl fishery	The number is limited to 2 foreign workers per ship up to 40% of the total crew members on the ship..	The number is limited to 1 foreign worker per ship up to 40% of the total crew members on the ship.
Diving fishing, fishing compartments	The number is limited to 2 foreign workers per ship up to 40% of the total crew members on the ship.	

B. Aquaculture: Based on the Size of Aquaculture Operations

		Limit on new employment permit	2 or less	2 or less	3 or less
Subparagraph 2, Paragraph 1, Article 8 of the Fisheries Act (Seaweed aquaculture)	Hanging culture	Size	199,999㎡ or smaller	200,000 –299,999㎡	300,000㎡ or bigger
	Sowing culture	Size	99,999㎡ or smaller	100,000–199,999㎡	200,000㎡ or bigger
Subparagraph 3–5 and 7, Paragraph 1, Article 8 of the Fisheries Act (shellfish	Hanging culture Mixed culture	Size	19,999㎡ or smaller	20,000–39,999㎡	40,000㎡ or bigger
	Sowing culture	Size	99,999㎡ or smaller	100,000–199,999㎡	200,000㎡ or bigger

		Limit on new employment permit	2 or less	2 or less	3 or less
aquaculture) (fish aquaculture) (complex aquaculture) (cooperative aquaculture)	Cage culture Pen culture	Size	9,999㎡ or smaller	10,000–14,999㎡	15,000㎡ or bigger
Subparagraph 2, Paragraph 3, Article 41 of the Fisheries Act (Inland/seawater aquaculture)	Tank culture	Size	6,600㎡ or smaller	6,601–8,250㎡	8,251㎡ or bigger
	Pen culture	Size	9,999㎡ or smaller	10,000–14,999㎡	15,000㎡ or bigger
Subparagraph 3, Paragraph 3, Article 41 of the Fisheries Act (Seed production fishery)	Inland seed production fishery	Size	990㎡ or smaller	991–1,652㎡	1,653㎡ or bigger
	Coastal seed production fishery	Size	59,999㎡ or smaller	60,000–99,999㎡	100,000㎡ or bigger
Subparagraph 1, Paragraph 1, Article 6 of the Inland Fishery Act (Aquaculture)	Inland aquaculture	Size	6,600㎡ or smaller	6,601–8,250㎡	8,251㎡ or bigger

C. Salt-Making Sector

Size of salt farm (㎡)	Legally allowed number of foreign workers	Limit on new employment permit
37,000 or less	2	2
More than 37,000	4	3

Employment Procedures for Foreign Workers

Overview. Under the Foreign Worker Employment Act, the Employment Permit System is implemented to allow domestic employers facing labor shortages to obtain an employment permit and hire foreign workers and to manage their employment in a systematic way. The Employment Permit System comprises two subsystems: the General Employment Permit System, which provides for the importing of foreign workers on non-professional employment (E-9) visas from sending countries with which Korea has concluded a memorandum of understanding (MOU), and the Special Employment Permit System, allowing the employment of

ethnic Koreans with foreign nationalities on working visit (H-2) visas regardless of the existence of a MOU.

Employment Permit System. The Minister of Employment and Labor signed MOUs with sending countries. In accordance with the MOUs, sending countries gather foreign job seekers; select qualified workers job seekers based on education level, career, Korean proficiency, and other objective criteria; prepare a list of qualified foreign job seekers; and send it to the Korean government or public organizations.

Korean employers who want to hire foreign workers on non-professional employment (E-9) visas must make sufficient efforts to seek domestic workers before applying for employment permit for foreign workers. Korean employers can apply for employment permit for foreign workers at the Korea Employment Information Service, under the Ministry of Employment and Labor, only when they are unable to find Korean workers. Under the Foreign Worker Employment Act, the period in which Korean employers should make efforts to find Korean workers was initially set to 1 month from the date of application, but it is now 14 days. The period is shortened to 7 days in exceptional cases when Korean employers make strong recruitment efforts using newspaper advertisements for 3 days or more.

The Korea Employment Information Service recommends foreign job seekers whose names are on the list provided by sending countries, and an employment permit is issued to those who are finally selected by domestic employers. Domestic employers sign a standard employment contract with selected foreign workers either directly or through an agency.

After signing an employment contract, Korean employers apply for and receive visas for those selected foreign workers from the Minister of Justice. Korean employers send a visa issuance certificate (or visa issuance approval number) to the selected foreign workers, who then submit it to diplomatic missions such as the embassy in their country to receive the actual visa. When foreign workers come to Korea, they must receive job training and finally begin to work at the workplace.

Table 7. *Changes and Overview of the Employment Permit System*

Changes
• Introduction of the Industrial Trainee Program (1993–2006)
o Foreign workers are working in Korea as industrial trainees: one year of training and two years of employment
o Korean employers are selected among registered SMEs in accordance with certain criteria
o *Korean employers are selected according to the points given for the amount of exports, technological prowess and the size of companies (i.e., companies should have fewer than 50 employees)
o The relevant organization in labor-sending countries selects qualified workers and designate workers to

Korean SMEs

- Selected industrial trainees (since the year 1995) are subject to the National Labor Relations Act (also subject to the Minimum Wage Act, the Occupational Safety and Health Act, and the Industrial Accident Compensation Act) but are not subject to some clauses of the Labor Standards Act (e.g., severance pay, bonus and yearly/monthly allowance)

- Many social issues arose in the course of operating the Industrial Trainee Program
  - As excessive costs are incurred by the private agency in labor-sending countries in the process of selecting trainees, some trainees came to Korea illegally without going through the selection process of the private agency, and there was also an issue of unfair discrimination against foreign workers and human rights abuses
- The Employment Permit System was introduced to solve such issues (August 2004)
  - The government-to-government MOU is signed to guarantee transparency in labor-sending process
  - Foreign workers are protected under the National Labor Relations Act just as domestic workers, preventing the issue of human rights violations
  - Korean SMEs have to make sufficient efforts to find Korean workers before applying for employment of foreign workers so that labor shortages can be addressed

Overview of the System

(1) Allowed companies: SMEs (with fewer than 300 employees and capital of less than 8 billion won), agricultural/livestock farming and fishery industries (with less than 20 tons) and construction industry

(2) Qualified foreign workers: foreign job seekers who have passed the Korean proficiency test in the labor-sending countries

(3) Relevant organizations: Ministry of Employment and Labor, Ministry of Justice, and Human Resources Development Service of Korea

(4) Employment procedures (Attachment)

(5) Korean proficiency test, make a list of job seekers (labor-sending country, Human Resources Development Service of Korea), offer a list of job seekers (Ministry of Employment and Labor) → issue an employment permit to an employer (Ministry of Employment and Labor) → Korean employers select foreign workers and conclude the employment contract (Korean employers send the standard employment contract to selected foreign workers and foreign workers receive and check the contents of the contract) → issue visa (Ministry of Justice, diplomatic missions in labor-sending countries) and foreign workers come to Korea → job training → foreign workers are dispatched to the workplace

Special Employment Permit System. Under the Foreign Worker Employment Act, the Special Employment Permit System was introduced to allow the employment of overseas Koreans. As differentiated from the General Employment Permit System, this system is called the Special Employment Permit System. The term "overseas Koreans" refers to those who have acquired permanent resident status in a foreign country or who are staying in a foreign country to acquire permanent resident status (Korean nationals residing abroad) and to Koreans who once possessed Korean nationality or their immediate descendents who have attained foreign nationality (ethnic Koreans with foreign nationalities). In the strict sense, ethnic Koreans with foreign nationalities are foreigners but enjoy preferential access to the Korean labor market thanks to their special linkage with Korea. Under the Foreign Worker Employment Act, ethnic Koreans with foreign nationalities who hold working visit (H-2) visas enjoy preferential

treatment. Korean companies can simply receive a special employment permit and hire foreigners who are in Korea on a working visit (H-2) visa which is prescribed by the Presidential Decree.

The Special Employment Permit System was introduced as a means to eliminate discrimination against and to encompass overseas Koreans from China or the former Soviet Union who have been marginalized in the implementation of the Act on the Immigration and Legal Status of Overseas Koreans; thus its purpose was to provide overseas Koreans from China or the former Soviet Union with employment opportunities in Korea, enhance a sense of community with ethnic Koreans holding foreign nationalities, and lay a foundation for reciprocal development of both Koreans and overseas Koreans.

The Special Employment Permit System is also called the Working Visit System, as ethnic Koreans with foreign nationalities come to Korea on working visit (H-2) visas. Under the Immigration Control Act, ethnic Koreans with foreign nationalities who receive working visit (H-2) visas can receive job training offered by the Ministry of Employment and Labor, apply for employment, receive job placement services provided by the Korea Employment Information Service, or find a job on their own at companies that have a special employment permit. In addition, they can change their workplace simply by reporting it. Furthermore, the working visit (H-2) visa is a multiple-entry visa (valid for 5 years) that allows them to leave and reenter Korea without having to obtain a reentry permit, another one of the special benefits ethnic Koreans with foreign nationalities enjoy compared with other foreign workers.

Table 8. *Changes and Overview of Working Visit System*

Changes

- Implementation of the Employment Management System (Dec. 2002–2004)
  - o can enter Korea on relative visit (F-1-4) visa, obtain an employment permit and find a job in Korea
  - o The scope of industries allowed for employment was expanded to include not just the service industry but also the construction industry (Jul. 2004)
  - o The age is set to 40 years old or older →30 years old (May 2003)→25 years old (Jul. 2004)
  - o The existing Employment Management System is later incorporated into the Act on Foreign Workers' Employment, etc. (Jul. 2004)
- Introduction of the Working Visit System (Mar. 2007)
  - o Those who hold working visit (H-2) visa can freely enter Korea and seek a job in Korea

Overview of the Working Visit System

(1) Allowed companies: companies in the service industry, small-and-medium sized manufacturing companies (with fewer than 300 employees and capital of less than 8 billion won), agricultural/livestock and fishery industries and the construction industry

(2) Qualified foreign workers: ethnic Koreans with foreign nationalities who have relatives in Korea(and are invited by their relatives to Korea) and ethnic Koreans with foreign nationalities who don't have relatives in

Korea (but passed the Korean proficiency test and are selected in a computer drawing)

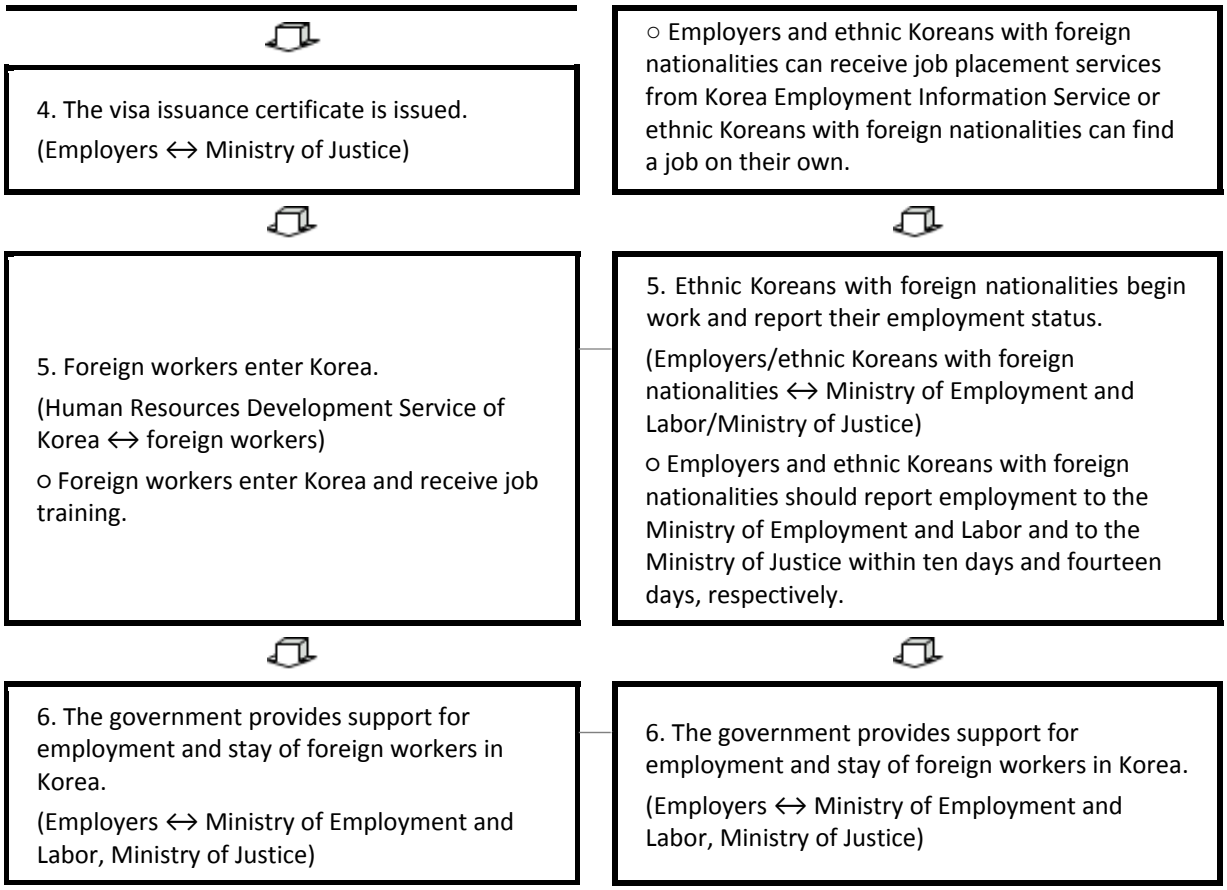
(3) Relevant organizations: Ministry of Employment and Labor, Ministry of Justice, and Human Resources Development Service of Korea

(4) Employment procedures (Attachment)
Issue visa and ethnic Koreans with foreign nationalities enter Korea (Ministry of Justice) → job training (Human Resources Development Service of Korea) and apply for employment (Ministry of Employment and Labor)→ Companies receive a special employment permit to employ foreign workers (Ministry of Employment and Labor)→ ethnic Koreans with foreign nationalities find a job on their own or receive job placement services (ethnic Koreans with foreign nationalities, Ministry of Employment and Labor)→ report employment status (Ministry of Employment and Labor, Ministry of Justice)

* Free movement between industries and workplaces are allowed.

Table 9. *Foreign Worker Employment Procedures*

Employment Permit System	**Working Visit System**
* After signing an employment contract, foreign workers receive a visa and enter Korea.	* receive visa before entering Korea, find a job and report their employment status
1. After conducting Korean proficiency test, the list of eligible foreign workers is drawn up. (the government of labor-sending countries ↔ the Korean government) ○ Based on the results of Korean proficiency test, eligible foreign job seekers are selected and registered on the list.	1. Working visit (H-2) visa is issued before ethnic Koreans with foreign nationalities enter Korea. (Diplomatic missions ↔ ethnic Koreans with foreign nationalities)
	2. Job training and application for employment (Ethnic Koreans with foreign nationalities ↔ Job training agency, Ministry of Employment and Labor) ○ After receiving job training, ethnic Koreans with foreign nationalities submit an application for employment at Korea Employment Information Service.
2. An employment permit is issued for selected foreign workers. (Employers ↔ Ministry of Employment and Labor) ○ After making sufficient efforts to find workers in Korea, employers can apply to hire foreign workers and then the employment permit is issued.	3. A special employment permit is issued. (Employers ↔ Ministry of Employment and Labor) ○ After making sufficient efforts to find domestic workers in Korea, employers can apply to hire foreign workers and then the special employment permit is issued.
3. An employment contract is signed. (Employers ↔ foreign workers) ○ The standard employment contract is signed between Korean employers and foreign workers.	4. An employment contract is signed after selecting qualified ethnic Koreans with foreign nationalities. (Employers ↔ Ministry of Employment and Labor, ethnic Koreans with foreign nationalities)



Management of Foreign Worker Employment

Employment period and duration of employment contract. According to Article 18 of the Foreign Worker Employment Act, the short-term employment period is set to as many as 3 years considering potential issues caused by the long-term stay of foreign workers. However, a foreign worker may be rehired once, for up to an additional 2 years (a) when the employer requests that the Minister of Employment and Labor allow them to rehire the foreign worker upon expiration of the 3-year employment contract, or (b) when the employer requests that the Minister of Employment and Labor allow them to rehire the foreign worker after the 3-year employment contract expires but before the foreign worker leaves Korea, in accordance with Paragraph 3, Article 12 of the Foreign Worker Employment Act, offering special reemployment opportunities to foreign workers in Korea (Paragraph 2, Article 18 of the Foreign Worker Employment Act). Meanwhile, Paragraph 3, Article 18 of the Foreign Worker Employment Act stipulates that foreign workers are not allowed to be reemployed in Korea within 6 months of their departure after being employed in Korea once.

In 2012, a new policy measure was drawn up for foreign workers whose 5-year employment period expires to allow them to reenter and be hired again after 3 months when

their employers submit an application for reentry and reemployment. This new policy measure is intended to enable domestic employers to retain skilled foreign workers while following the principle of not allowing non-professional foreign workers to reside in Korea permanently (i.e., foreign workers must return to their home country when a finite employment period expires) according to Paragraph 4, Article 18 of the Foreign Worker Employment Act. A reentry and reemployment opportunity (initial 3 years + additional 2 years of employment) is provided once to each foreign worker. Thanks to the new policy measure, foreign workers are now allowed to work in Korea up to 10 years: initial 3 years + additional 2 years of employment → (reentry into Korea after 3 months) → initial 3 years + additional 2 years of employment.

Hence, foreign workers now have the chance to work in Korea for a long period of time, contribute to Korea's national economic growth, and be assimilated into society to some extent. Accordingly, there is a need to seriously consider whether to allow those foreign workers to reside in Korea permanently. Because passive and reluctant approaches will not help address the issue, firm standards should be developed to determine whether to grant permanent status to those foreign workers or not. In this sense, there is a need to examine ways to grant foreign workers who have worked diligently in Korea for a long period of time permanent resident status to compensate them for their hard work and to prevent illegal immigration.[7] For instance, * 1 28—3 of the Regulation of Immigration Control Act stipulates that foreign nationals who reside in Korea on sojourn (D-7), special activity (E-7), or residence (F-2) visas for 5 years or longer shall be eligible for permanent resident status. There is a need to consider granting permanent resident status to eligible foreign workers who have been employed legally in Korea on non-professional employment visas or other qualified visas for 5 years or longer without changing their workplace and who have met their obligations to pay taxes and complied with domestic legal and social rules.

The duration of the employment contract between Korean employers and foreign workers was limited to 1 year. That means the employment contract must be renewed every year, although foreign workers were allowed to be employed for a total of 3 years. If Korean employers were not satisfied with the work of foreign workers, they could decide not to renew their employment contract after the 1-year contract period, a situation that could result in employment instability from the perspective of foreign workers, worsened productivity, and a high incidence of illegal immigration (Ko & Lee, 2010, p. 13). In October 2009, the clause on the foreign worker employment period was revised to eliminate the existing 1-year contract period

7 The same argument is made in "Changes and Challenges Facing the Employment Permit System," 2011, pp. 374–375.

and to allow domestic employers and foreign workers to sign and renew their employment contract within a period of 3 years (Paragraph 3, Article 9 of the Foreign Worker Employment Act). Meanwhile, Paragraph 2, Article 18 of the Foreign Worker Employment Act stipulates that the employment contract shall be signed and renewed within a period of 2 years in the case of reemployed foreign workers who have been allowed to extend their stay and employment in Korea in accordance with Paragraph 2, Article 18 of the Foreign Worker Employment Act (Paragraph 4, Article 9 of the Foreign Worker Employment Act).

Limitations in changing workplace. Before the Foreign Worker Employment Act was revised, it stipulated that foreign workers could not change their workplace arbitrarily but could change their workplace when (a) domestic employers wished to terminate the employment contract for justifiable reasons and did not wish to renew the contract after the termination of the contract, (b) they could not continue working at the same workplace because of the shutdown or closure of the workplace or for reasons not attributable to them, or (c) the employment contract was terminated or restrained for reasons attributable to employers and thus it was impossible to maintain normal employee relations with employers (Paragraph 1, Article 25 of the Foreign Worker Employment Act). In addition, the Act stipulated that foreign workers must leave Korea when they failed to obtain approval for a change of workplace within a period of 2 months in accordance with Article 21 of the Immigration Control Act and when they failed to apply for approval of a change of workplace within a period of 1 month after the contract expired (Paragraph 3, Article 25). The Act also stipulated that foreign workers could not change their workplace more than three times within a period of 3 years (Paragraph 4, Article 25) unless they were injured at the workplace or could not continue working at the same workplace for adequate reasons. Foreign workers who had reasonable reasons for changes of workplace were allowed to change their workplace as many as four times (Paragraph 1 and 2, Article 30 of the Regulation of the Foreign Worker Employment Act).

Under the circumstances, many people continued to argue that foreign workers should be allowed to change their workplace freely, without limitations. Because it was impossible for foreign workers to change their workplace unless employers were engaged in illegal activities, had terminated the employment contract, or had closed their workplace, they were likely to be subject to forced labor. Moreover, some pointed out that the 2-month job-seeking period was not sufficient to complete all the required procedures, ranging from application for approval of the change of workplace to job placement, to signing of the reemployment contract, to obtaining approval from the Minister of Justice, and changing workplaces because their workplace shuts

down or closes for reasons not attributable to them should not be counted as one of the three times they are allowed to change (Choi, 2008, pp. 201–203).

Such problems were addressed to some extent when the Act was revised. Under the current Foreign Worker Employment Act, the job-seeking period for foreign workers has been extended from 2 months to 3 months and can be extended if they are injured on the job, pregnant, or have given birth.[8] In addition, a change of workplace shall not be counted as one of the three times they are allowed to change workplace if their workplace shuts down or closes for reasons not attributable to them.[9]

Nonetheless, even after the law was revised, there remained criticism about whether to give foreign workers the freedom to change workplaces as frequently as they wish. Some argued that it is unreasonable to prohibit foreign workers from changing workplaces given that their Korean employers can terminate the employment contract when there are logical reasons and can choose to either renew or terminate the contract (Ko & Lee, 2010 p. 14). Others also pointed out that it is unfair that foreign workers who are employed in Korea under the General Employment Permit System cannot change workplaces as often as they wish whereas overseas Koreans who are employed in Korea under the Working Visit System are allowed to change workplaces freely (Jeon, 2009, p. 310).

Protection of Foreign Workers

Under the Foreign Worker Employment Act, foreign workers are recognized as "employees," and they sign employment contracts as employees. In other words, when domestic employers wish to hire foreign workers, they must use the standard employment contract required by the Ministry of Employment and Labor (Paragraph 1, Article 9 of the same act), and contract signing can be entrusted to the Human Resources Development Service of Korea (Paragraph 2, Article 9), which indicates that foreign workers enjoy the same rights as Korean

8 Paragraph 3, Article 25 of the Foreign Worker Employment Act: When foreign workers fail to obtain approval for the change of workplace (in accordance with Article 21 of the Immigration Control Act) within 3 months from the date of application (in accordance with Paragraph 1) or when foreign workers fail to apply for approval of the change of workplace within 1 month from the contract expiration date, they must leave Korea. However, when they cannot obtain approval for the change of workplace for justifiable reasons such as injury, disease, pregnancy, or childbirth, the period is recalculated from the date when the reasons disappear.

9 Paragraph 4, Article 25 of the Foreign Worker Employment Act: The number of changes of workplace (in accordance with Paragraph 1) shall not exceed three times within a specified employment period (in accordance with Article 18) and shall not exceed two times within an extended employment period (in accordance with Paragraph 1, Article 18) (Exceptions: when foreign workers change workplace for the reasons specified in Subparagraph 2, Paragraph 1, Article 25). However, the above limitation shall not be applied when there are unavoidable reasons prescribed by the Presidential Decree.

workers (who are subject to the Labor Standards Act) under the Foreign Worker Employment Act.

According to Article 22 of the Foreign Worker Employment Act, domestic employers shall not engage in unfair treatment of or discrimination against foreign workers.

Furthermore, it is possible to examine whether to allow foreign workers to subscribe to Korea's four major insurances (health insurance, industrial accident compensation insurance, national pension, and employment insurance). The Foreign Worker Employment Act includes a clause on foreign workers' health insurance. According to Article 14, domestic employers and their foreign workers can subscribe to the national health insurance as corporate subscribers in accordance with Article 3 and Paragraph 1, Article 6 of the National Health Insurance Act. The Industrial Accident Compensation Insurance Act does not include a particular clause excluding the application of the Act on foreign workers. The National Pension Act stipulates that the national pension shall be applied to foreign workers in some cases. That is, foreign workers who are working at companies subject to the National Pension Act and foreign workers residing in Korea shall automatically enrolled in the national pension as corporate subscribers or as regional subscribers unless they are otherwise regulated by the Presidential Decree. However, the reciprocity principle is applied so that the law of a labor-sending country shall be applied to Korean nationals as well.[10] Meanwhile, unemployment insurance is optional for foreign workers.

In addition to the four major insurances, a few more kinds of insurance are mandatory in the case of employment of foreign workers. These insurances are intended to facilitate the repatriation of foreign workers and to prepare them for loss of wages, disease, or injury.

The Foreign Worker Employment Act requires domestic employers to enroll in departure guarantee insurance, which facilitates the repatriation of foreign workers after the expiration of their employment contract, and foreign workers to enroll in return cost insurance. Departure guarantee insurance is a form of insurance or trust, akin to the retirement allowance system for domestic workers, intended to guarantee the payment of severance pay to foreign workers, who are the insured entity, or beneficiary of the insurance. Domestic employers who hire foreign workers must enroll in departure guarantee insurance and must make monthly payments (Paragraph 1, Article 13 of the Foreign Worker Employment Act). Failure to enroll in departure guarantee insurance is punishable by a fine of up to 5 million won (Penalty: Paragraph

10 National pension application by country (as of April 7, 2009): Countries in which the national pension is applied to foreign workers (three countries)—China, Philippines, Uzbekistan. Countries in which the national pension is applied to corporate subscribers but not to regional subscribers (five countries)—Kyrgyzstan, Mongolia, Sri Lanka, Indonesia, Thailand. Countries in which the national pension is not applied to foreign workers (seven countries)—Vietnam, Cambodia, Pakistan, Bangladesh, Nepal, Myanmar, East Timor.

1, Article 30 of the Foreign Worker Employment Act). In addition, domestic employers who are delinquent in their monthly payments of insurance premiums three or more times are subject to a fine of 5 million won or less (Subparagraph 5, Paragraph 1, Article 32 of the Foreign Worker Employment Act). Domestic employers should enroll in departure guarantee insurance within 15 days of the effective date of the employment contract and must make monthly payments for insurance as specified by the Minister of Employment and Labor. If foreign workers, who have been working for 1 year or longer, leave Korea because of the expiration of their employment contract or change workplaces, they are entitled to a lump-sum payment in accordance with the legal procedures in Korea. When domestic employers subscribe to the departure guarantee insurance, they are considered to have established a severance allowance system for their foreign workers based on Paragraph 1, Article 8 of the Employee Retirement Benefit Security Act (Paragraph 2, Article 13 of the Foreign Worker Employment Act). However, when the duration of employment is less than 1 year, the amount accumulated shall belong to the employers (Condition: Subparagraph 2, Paragraph 2, Article 21 of the Regulation of the Foreign Worker Employment Act). Meanwhile, because domestic workers are entitled to claim a payment any time they work for 1 year or longer, some people argue that the law should be revised to provide foreign workers who have been working for 1 year or longer with the same rights as domestic workers and to allow them to claim a payment when they quit a job (Choi, 2010, p. 110). Furthermore, foreign workers must enroll in return cost insurance to accumulate return costs (Paragraph 1, Article 15 of the Foreign Worker Employment Act). When foreign workers wish to return to their home country after the expiration of their employment contract, when they wish to return for personal reasons before the expiration of the employment contract, and even when, after having left their workplace, they wish to return to or are deported to their home country, all foreign workers are entitled to claim a lump-sum payment from their return cost insurance (Paragraph 2, Article 22 of the Foreign Worker Employment Act). Foreign workers must enroll in return cost insurance within 80 days of the effective date of their employment contract and must pay the total as a lump sum rather than monthly (Subparagraph 1, Paragraph 1, Article 22 of the Foreign Worker Employment Act). Foreign workers who fail to subscribe to return cost insurance are subject to a fine of 5 million won or less. When foreign workers claim a lump-sum payment, the return cost insurance company verifies their departure with the Head of the Immigration Office before making the payment.

In addition, employers must also subscribe to guarantee insurance, and foreign workers, to personal injury insurance. Guarantee insurance is designed to cover foreign workers against overdue wages, and the industries that are prescribed by the Presidential Decree—based on

business size and industry characteristics—are obligated to enroll in it (Paragraph 1, Article 23 of the Foreign Worker Employment Act). According to the Regulation, businesses or workplaces that are not subject to the Wage Claim Guarantee Act[11] or that have fewer than 300 employees are obliged to enroll in guarantee insurance(Subparagraph 1, Article 27 of the Regulation of the Foreign Worker Employment Act). Domestic employers must enroll in guarantee insurance within 15 days of the effective date of the employment contract and are subject to a fine of 5 million won or less if they fail to do so guarantee insurance (Paragraph 2, Article 30 of the Foreign Worker Employment Act). Foreign workers must enroll in personal injury insurance for foreigners (Paragraph 1, Article 23 of the Foreign Worker Employment Act). Unlike the industrial accident compensation insurance, the personal injury insurance for foreigners is intended to protect foreign workers in the case of illness or death. personal injury insurance Under the Foreign Worker Employment Act, foreign workers who are employed in the industries designated by the Presidential Decree must enroll in personal injury insurance. Under the Regulation, however, all businesses hiring foreign workers are subject to the provision (Paragraph 1, Article 28 of the Foreign Worker Employment Act). Foreign workers must enroll in personal injury insurance within 15 days of the effective date of their employment contract and are subject to a fine of 5 million won or less if they fail to do so (Paragraph 2, Article 30 of the Foreign Worker Employment Act).

References

Changes and challenges facing the Employment Permit System. (2011). *Journal of Labor and Employment Act, 22.*

Choi, Hong-Yeop. (2010). Employment contract relations under the Employment Permit System. *Labor Law Study, 18.*

Choi, Hong-Yeop. (2008). The status and issues relating to foreign worker employment. *Labor Law Study* (Seoul National University Research Society), *25.*

Jeon, Hyung-Bae. (2009). Foreign worker employment policy. *Justice* (Korean Legal Center), *109.*

Ko, Joon-Gi, & Lee, Byeong-Woon. (2010). Problems of the Revised Employment Permit System and Improvement Measures—Based on the act revised on Oct 9th, 2009—. *Journal of Labor and Employment Act, 18.*

11 Housekeeping services, small house-construction companies, and agricultural/fisheries industries fall into this category: (a) house construction companies, builder, electricians, ICT service providers, fire station construction companies, companies involved in small construction projects of less than 20 million won and of building a facility with a total floor area of 330m^2 or big repair project (except for cultural property repair companies); (b) housekeeping services; and (c) agricultural/forestry (except for logging business)/fishery/hunting businesses that are not registered as corporations and that have fewer than five employees.

Ministry of Employment and Labor. (2012). *2012 Plan on introduction of foreign workers.* Seoul: Author.

Yoo, Gil-Sang et al. (2004). *Analysis of low-skilled foreign workers in Korea* (Research paper). Seoul: Korea Labor Institute.