

Migrant Precarity under China's New Immigration Law Regime

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Introduction

Much scholarly and policy attention on Chinese migration issues to date has focused on the internal migration of rural migrant workers to the fast-growing coastal and regional cities. There has been considerably less attention to various forms of economic immigration to China from abroad. In recent times, the world's largest industrialising economy has seen new and diverse flows of short-term and longer-term immigration (Chung, Qi and Hou 2010). In 1978, only 229,600 foreigners (without Chinese nationality) had entered China that year (National Bureau of Statistics of China 2001). In 2014, there were 26.63 million inbound foreigners, many of whom include tourists, students, and business travellers (National Bureau of Statistics of China 2015). In the 2010 National Census (which for the first time included foreign nationals), there were 593,832 "persons with foreign nationalities" (excluding Hong Kong, Macao and Taiwan) lawfully residing in China for at least six months (National Bureau of Statistics of China 2011). Among this group, the number of persons engaged in paid employment has increased from 74,000 in 2000 to 220,000 in 2011 (Xinhua 2012).

Despite this continual rise in the number of foreigners in China, a legal framework to regulate their entry, residence, and employment has developed in a slow and piecemeal fashion. At the same time, there has been rising public concern over forms of 'illegal' immigration, as embodied in a politically prominent discourse of combating the 'three-illegalities' (*'sanfei'*) of illegal entry, illegal residence and illegal employment. In 2013, the national border inspection agencies investigated 2,996 cases of illegal entry/exit and another 49,200 cases of persons in violation of exit and entry laws and regulations (Ministry of Public Security Bureau of Exit and Entry Administration 2014).

Against this background, the introduction of the Entry and Exit Administration Law 2013 (EEAL) is underpinned by a key policy goal of tackling *sanfei*. Policymakers have considered this new legislation as a major reform in China's contemporary immigration regime since 1985. The EEAL introduces an array of restrictions on the entry, residence, and employment of foreigners (except for

highly skilled talent), penalties for violations, and notably, whistleblowing obligations on citizens to report *sanfei* activities. Furthermore, for the first time in Chinese immigration legislation, the term 'illegal work' is explicitly defined as encompassing three types of situations: Working without a valid permit, working outside the scope of occupation and not for the employer as prescribed in the permit, and foreign students working outside the prescribed scope of occupations and/or working hours.

Focusing on the regulation of 'illegal work' under China's new immigration regime, this chapter examines the ways in which immigration law produces a variety of precarious statuses that shape particular vulnerabilities in their employment relations and social protections. This chapter seeks to make a novel contribution to the heavily under-theorised scholarship on Chinese immigration law. To date, there have been few critical analyses of the laws and regulations concerning labour migration in China, particularly with regards to how immigration controls intersect with employment and social protections. The chapter also seeks to contribute to an emerging body of international and comparative socio-legal scholarship that is purposively aimed at exploring the complex interaction of immigration law and policy and labour law and labour market regulation. Finally, this inquiry also seeks to cast a spotlight on a (numerically) small but potentially important group of workers in China whose rights and interests have been marginalised, neglected, and undermined in the prevailing anti-*sanfei* public discourse.

Although the numbers of immigrants in the Chinese workforce may be considered as insignificant, the challenges of China's current demographic transition for its labour market have instigated pressing and critical public policy questions about the need to address imminent labour shortages. For much of the past two decades, rapid industrialisation in China has been able to rely on a large surplus pool of low-cost rural migrant labour. In a country that once had a surplus of low-skilled rural migrant labour, the 'factory of the world' is now faced with a rapidly contracting workforce in the context of an ageing population. The number of 'core' industrial workers, born in the 1980s and 1990s under the one-child policy, will decrease more quickly than other segments of the population. Some have forecasted that China will hit the Lewis turning point in 2025, with a projected shortage of 137 million workers by 2030 (Das & N'Diaye 2013).

The chapter begins by laying out the conceptual framework for understanding how precarious migrant statuses are 'constructed' through immigration laws and regulations. I then provide a contextual understanding of the evolving labour immigration regulatory regime in China since the 1980s. Following on, the relevant norms, processes, and institutions associated with the