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ARTICLES

NEW PASSWORDS IN THE VISA AND WORK PERMIT GAME: A REVIEW OF THE NEW VISA AND WORK PERMIT REGULATORY FRAMEWORK IN TAIWAN

Robin Winkler†
Robert Lee††
Andrew Ruff†††

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I. INTRODUCTION

In the past two decades, as Pacific Rim countries have developed rapidly they have moved quickly to capitalize on comparative advantages, often in the form of low material and labor costs, by aggressively marketing their products in the West.¹ Less than thrilled with this burgeoning trade imbalance, Western nations have recently countered with market-penetrating measures of their own.² In addition to country-specific legislation, significant energies have been devoted over the course of the ongoing Uruguay Round of negotiations to broadening the scope of the Gen-

1. See, e.g., Jim Impoco et al., *Where Growth is Job One*, U.S. NEWS & WORLD REP., Dec. 21, 1992, at 70 (noting that exports from Malaysia, Singapore, and Thailand have increased 30% per year compared with an average of 10% growth in world trade and that U.S. trade with Asia in 1992 was three times more than its trade with Latin America in the same period and 50% more than its trade with Western Europe); Brian Kennedy, *Taiwan: Canadian Trade Minister Requests "Equal Market Access"*, Reuter Textline, Sept. 7, 1992, available in LEXIS, Nexis Library (reiterating the claims of Canadian Minister for International Trade Michael Wilson that Canada conducts 36% more trade with Asian-Pacific Economic Cooperation (APEC) nations than with Europe and that Canada maintains a 2 to 1 trade imbalance with Taiwan despite a 32% increase in Canadian exports to Taiwan over the previous year); Richard H. Soloman, *No More Bull in the China Shop; Why Clinton Has Made the Right Move on Trading with Beijing*, WASH. POST, May 30, 1993, at C3 (noting that China and Japan combined accounted for more than 81% of U.S. global trading deficit in 1992).

2. In the United States, for example, these measures have taken the form of the oft-maligned Special and Super 301 processes. See Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, Stat. 1107 (section 301 codified as amended at 10 U.S.C. § 2411 (1988)).

eral Agreement on Trade and Tariffs ("GATT") and in particular to providing GATT protection to service exports.³

Why services? Quite simply, this is an area in which the West enjoys an unequivocal comparative advantage.⁴ One need not look far beyond the influx of engineers, programmers, technicians, lawyers, investment bankers, and consultants into the Pacific Rim to realize that the West is expanding its export of a commodity which has long been a staple of its domestic economies. Thus, as the West holds out GATT as a carrot to developing powers such as Taiwan and the People's Republic of China ("PRC"), it is simultaneously seeking to ensure that GATT accession by these countries will provide an attractive package of market access on both sides of the Pacific.

Recent foreign efforts to expand sectors of the service markets in Taiwan were dealt a serious blow last year by the passage of the Employment Services Law.⁵ The immediate effect of the law was to render all foreign workers illegal by requiring them to apply for work permits without providing any administrative means to do so.⁶ Since then, the passage of a number of subordinate regulations has eased some of the pressure on foreign workers in Taiwan, but the experience remains a useful benchmark from which to measure employment services legislation either recently enforced or now being contemplated elsewhere in the Pacific Rim.⁷

3. See I. M. DESTLER, *AMERICAN TRADE POLITICS* 238 (1992) (noting that accord on the Uruguay Round of GATT talks would bring new service opportunities for the U.S. and the European Community); JOHN H. JACKSON & WILLIAM J. DAVEY, *LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS* 908 (2d ed. 1986) (noting that interest in services is new to international trade negotiations).

4. See, e.g., *Study Finds Expansion of Transnational Service Industries*, Xinhua General News Services, July 14, 1989, available in LEXIS, Nexis Library, ASIAPC File (noting that "the United States and Great Britain have gained a comparative advantage in the supply of most kinds of services").

5. CHIAO YEH FU WU FA [Employment Services Law] (1992) (Taiwan).

6. See, e.g., *Taiwan The Labor Service Law - Good Intentions, Uncertain Results*, Reuter Textline, July 27, 1992, available in LEXIS, World Library, ALLWLD File.

7. For a sample of the employment services legislation currently under consideration in Asia see: *18 Month Forecast of Operations Restrictions*, IBC, USA Licensing Inc., Political Risk Services, May 1, 1992, available in LEXIS, Nexis Library, ASIAPC File (noting restrictions on the hiring of foreign workers in Indonesia) *Limitations on Foreign Materials*, BUS. INT'L, Dec. 1, 1991, available in LEXIS, Nexis Library, ASIAPC File (discussing increasing difficulties attendant to receiving resident visas and work permits in Hong Kong); Siti Rahil, *Asian News - Singapore, Thailand; Illegal Thai Workers Rush to Leave Singapore*, Japan Economic Newswire, Mar. 23, 1989, available in LEXIS, Nexis Library, ASIAPC File (discussing the New Immigration Control Law in Singapore legislated in response to increased influx of illegal workers); *South Korea: Labour Ministry to Crack Down on Illegal Foreign Workers*, KOREA ECON. DAILY, Aug. 20, 1988, available in LEXIS, Nexis Library,

This article will examine the effect of local legislation on the export of services to the Pacific Rim using Taiwan's experience with the Employment Services Law as a test case. Part II discusses the general economic and political climate for immigration and naturalization in Taiwan. Part III outlines the general framework for issuing visas and work permits to temporary and resident visitors to Taiwan; Part IV reviews visa requirements and issuance procedures in Taiwan. Parts V, VI, and VII briefly outline the framework for immigration, deportation, and the appeals process in Taiwan. Parts VIII and IX outline the implications of property ownership and taxation on foreign visa and work permit holders. The article concludes by noting that discussions attendant to visa and work permit issuance in Taiwan appear to have become an integral part of broader trade-based discussions between the ROC and its trading partners.

II. GOVERNMENT ATTITUDES TOWARD IMMIGRATION AND NATURALIZATION

A. GENERAL BACKGROUND: ECONOMIC SETTING

Taiwan is located off the southeastern coast of the PRC. The island occupies a land area about the size of the Netherlands—approximately 36,000 square kilometers.⁸ A population nearing twenty-one million makes Taiwan one of the most densely populated countries in the world.⁹

Initially agriculturally based, the economy of Taiwan has become increasingly industrialized and export-oriented since the mid-1950s.¹⁰ In the 1970s and 1980s Taiwan established itself as an attractive target for foreign investment while building a solid industrial infrastructure and providing for a well-educated work force.¹¹ Taiwan's gross national product ("GNP") grew at an average rate of 9.1% in the 1960s and 10.2% in the 1970s,¹² accounting for Taiwan's appellation as Asia's "Economic Miracle."¹³ While this growth slowed along with the rest of the world's in the 1980s, Taiwan's GNP nevertheless continued to

ASIAPC File (noting South Korea's plans to introduce a licensing system for foreign workers).

8. EUROPA PUBLICATIONS LIMITED, *THE FAR EAST AND AUSTRALASIA* 227 (24th ed. 1992) [hereinafter *EUROPA*].

9. *Id.* at 227.

10. *Id.* at 233.

11. *Id.* at 234-36.

12. COUNCIL FOR ECONOMIC PLANNING AND DEVELOPMENT REPUBLIC OF CHINA, *TAIWAN STATISTICAL DATA BOOK* 28-29 (1992) [hereinafter *COUNCIL*].

13. DENIS FRED SIMON ET AL., *TAIWAN: BEYOND THE ECONOMIC MIRACLE* xvii (1992).

grow at a rate of approximately 8% per year.¹⁴ This impressive growth is expected to continue through the 1990s as Taiwan plays a larger role in the economic transformation of East Asia.¹⁵

Other important factors that should be noted about the Taiwan economy include: a per capita income which is expected to exceed US\$10,000 in 1992,¹⁶ the largest foreign exchange reserves in the world,¹⁷ and a positive trade balance with most of its trading partners.¹⁸ Partly as a result of these developments, the New Taiwan Dollar ("NT\$") has appreciated from a rate of NT\$40 to US\$1 in the mid-1980s to a rate of NT\$25 to US\$1 in 1992.¹⁹ In addition, Taiwan has moved away from its previous export orientation by opening up its markets through reduced customs duties and the elimination of some non-tariff barriers.²⁰ Taiwan is now the sixth largest trading partner of the United States,²¹ and although Taiwan has become the second largest importer in Asia, its imports have also grown by 8.74% within the last twelve-month period bringing its total imports to nearly US\$ twenty billion in the second quarter of 1993 alone.²² Taiwan's application to join the GATT is now pending before the World Trade Body.²³ Finally, Taiwan has embarked on a massive Six Year Development Plan of major investments to revamp its industrial infrastructure and construct public works.²⁴ This comes after a decade of government policies aimed at social, political, and economic liberalization.²⁵ The projects of the Plan are also designed to significantly improve the standard of living of Taiwan's citizens.²⁶

14. COUNCIL, *supra* note 12, at 28-29.

15. THE ECONOMIST INTELLIGENCE UNIT COUNTRY REPORT, 3d Q., at 6 (1993) (Taiwan).

16. EUROPA, *supra* note 8, at 232.

17. *Id.* at 234.

18. COUNCIL, *supra* note 12, at 196-200.

19. EUROPA, *supra* note 8, at 234, 237 (40:1 exchange rate); CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK 1992 385 (1992) (25:1 exchange rate).

20. EUROPA, *supra* note 8, at 234.

21. BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1992 at 800-03 (112th ed. 1992).

22. *Taiwan Registers Trade Surplus in 1993*, Central News Agency, Oct. 9, 1993, available in LEXIS, World Library, ALLWLD File.

23. CENTRAL INTELLIGENCE AGENCY, *supra* note 19, at 384.

24. THE ECONOMIST INTELLIGENCE UNIT COUNTRY REPORT, 2d Q., at 10 (1992) (Taiwan).

25. RAMON H. MYERS ET AL., THE FAR EAST AND AUSTRALASIA 228-30, 232-36 (1992).

26. Sheryl WuDunn, *Taiwan Sets Plan to Rebuild a Nation*, N.Y. TIMES, Oct. 27, 1991, at A1.

B. VISAS AND WORKING: THE LABOR MARKET FOR FOREIGN NATIONALS

Foreign nationals have played a significant role in the economic transformation of Taiwan. These foreigners include laborers, maids, part-time student workers, white-collar professionals, entertainers, teachers at both expatriate schools and local colleges and universities, engineers at local and foreign-invested companies and at government projects, managers, investors, and business persons engaged in all kinds of commercial activity. A natural outcome of Taiwan's entry into the dynamic economy of the world community is an increase in this foreign participation. In addition, an acute labor shortage²⁷ and a general increase in labor standards—maximum hours, unionization, labor insurance²⁸—has often resulted in local industries turning to imported laborers.²⁹ Furthermore, Taiwan has announced its goal of becoming a regional financial, transportation, and telecommunications center.³⁰ To realize this goal, experts are needed in many areas for which there are insufficient numbers of qualified local professionals. Therefore, many foreign professionals in areas such as trading, banking, insurance and financial services, accounting, law, and technical services have found the Taiwan market receptive to their services. However, their welcome into the private sector has not always been accompanied by complementary laws, regulations, and enforcement initiatives allowing for their legal employment.

C. VISAS AND WORKING: GOVERNMENT APPROVALS

One feature of the environment for foreign nationals seeking to reside or work in Taiwan is the absence of an independent government agency to deal directly with immigration and ancillary issues.³¹ This responsibility is divided among four govern-

27. *Pacific Watch: Taiwan*, N.Y. TIMES, Sept. 28, 1992, at D3.

28. See, e.g., *Taiwan Labor Laws Attempt to Protect Workers*, Reuter Textline, Aug. 16, 1993, available in LEXIS, World Library, ALLWLD File.

29. *Pacific Watch: Taiwan*, N.Y. TIMES, Sept. 28, 1992, at D3.

30. George White, *Pacific Report; Laboring Over Workers; Rich Asia Nations Struggle Over How To Deal With Imported Help*, L. A. TIMES, June 24, 1991, at D1.

31. Sterry Fang & John D. Weston, *Visa Regulations Boosts [sic] Investment*, CHINA NEWS, Jan. 18, 1993, at — ("No one government agency has over-arching jurisdiction to determine which agency must make a decision."). However, under the new KUNG MIN YING SHIH YEH P'IN KU WAI KUO TSUAN MEN HSING CHI SHU HSING KUNG TSO JEN YUAN CHI CH'IAO WAI SHIH YEH CHÜ KUAN SHU K'o CHI KUAN LI PAN FA [Rules Governing the Approval and Administration of Foreign Specialists and Technical Personnel Employed by Public or Private Enterprises and Ranking Executives Employed by Overseas Chinese and Foreign National-Invested Enterprises] art. 8 (Ministry of Econ. Aff. 1993) (Taiwan) [hereinafter *New Rules*], discussed *infra* Part III, all foreign professionals, investors, and technicians applying

ment agencies.³² The issuance of visas is handled by the Ministry of Foreign Affairs ("MOFA") in Taipei as well as through its consular and trade offices abroad.³³ Resident visas and some visa extensions are administered by the National Police Administration ("NPA") of the Ministry of Interior ("MOI").³⁴ Naturalization and nationality matters are handled by the MOI,³⁵ and overall responsibility for work authorization is given to the Council of Labor Affairs ("COLA") of the Executive Yuan, a branch of the central government.³⁶ Whether in connection with visa issuance or work authorization, written authorization must be obtained from the "competent authority."³⁷ What the competent authority is in any given case depends on the applicant's business or organization. For example, reporters and other persons affiliated with media must obtain approval from the Government Information Office;³⁸ teachers, from the Ministry of Education ("MOE");³⁹ and bankers, from the Ministry of Finance ("MOF").⁴⁰ Each of these authorities has its own set of criteria for approval.⁴¹

for work permits to the Ministry of Economic Affairs ("MOEA") can direct their applications through a single agency rather than through the various subordinate MOEA divisions.

32. See *infra* notes 33-36 and accompanying text.

33. WAI KUO JEN SHEN CH'ING TO TZ'U JU CHING CHÜ LIU CH'EN CHENG CHI T'ING LIU CH'EN CHENG SHENG CH'A YAO TIEN [Key Points for Screening Applications for Issuance of Multi-Entry Resident and Visitor Visas to Foreign Nationals] art. 4 (Executive Yuan as amended 1988) (Taiwan) [hereinafter Key Points].

34. WAI KUO JEN CH'U JU KUO CHING CHI CHÜ LIU T'ING LIU KUI TSE [Regulation Governing Entry, Exit, Residence and Stay of Foreign Nationals] ch. 3, art. 9 (Ministry of Interior 1990) (Taiwan) [hereinafter Entry and Exit Regulations].

35. KUO CHI FA [Nationality Law] (1929) (China); KUO CHI FA SHIH HSING HSI CHE [Enforcement Statute of the Nationality Law] (1929) (China). These laws date back to Sun Yat Sen's government on the mainland, before the flight of the Nationalists to Taiwan in 1949.

36. Employment Services Law, *supra* note 5, art. 6.

37. See, e.g., *id.* art. 12. "Competent authority" is the English translation of a widely used term of art in Taiwanese law. See, e.g., New Rules, *supra* note 31, art. 3.

38. See TA CHUNG CH'UAN PO SHIH YEH P'IN KU WAI KUO JEN HSÜ K'O CHI KUAN LI PAN FA [Regulations Governing the Approval and Administration of Foreign Nationals Employed by Mass Media Enterprises] (Govt. Info. Office 1992) (Taiwan).

39. See WAI KUO LIU HSÜEH SHENG KUNG TSO HSÜ K'O CHI P'IN KU KUAN LI PAN FA [Regulations Governing the Approval of Work and Administration of Employment of Foreign Students] (Ministry of Educ. 1993) (Taiwan) [hereinafter Employment of Foreign Students Regulations].

40. Letter from Robert Lee, Associate at Koo, Winkler, Hsu & Hwang, to Andrew D. Ruff, Editor-in-Chief, *UCLA Pac. Basin L.J.* (Apr. 7, 1993) (on file with the *UCLA Pac. Basin L.J.*). The MOF is currently in the process of drafting regulations for the granting of work permit approval. Although no regulations currently exist to govern work permit applications to the MOF, the MOF has been accepting these applications informally.

41. See sources cited *supra* notes 38-40.

D. VISAS AND WORKING: GOVERNMENT ATTITUDES

Until recently, the government did not have a well-articulated position on visas and immigration. This can be attributed to several factors, such as Taiwan's lack of a central agency in charge of visa and immigration matters, Taiwan's lack of formal diplomatic relations, and Taiwan's rapid political, economic, and social transformation. Although the regulatory framework outlined above has been in place with minor changes over the past four decades, regulations have traditionally been unevenly enforced. Generally, however, there have been few problems for foreign nationals working in Taiwan, even when they were technically in violation of their visa status.

In response to the social and economic issues arising from the growing numbers of foreign workers entering the country, the Taiwanese government took a major step toward "articulating" a visa and labor policy by adopting the Employment Services Law ("ESL"), passed by the Legislative Yuan, or parliament, in May 1992.⁴² Although the ESL covers everything from discrimination in the work place⁴³ to unemployment statistics,⁴⁴ the most controversial part pertains to foreign nationals working in Taiwan.⁴⁵

With the passage of the ESL, the employment setting for foreign nationals, and thus the entire visa and work situation, has taken on a completely different facade. Serious criminal penalties await employers who hire foreign nationals without first obtaining authorization.⁴⁶ Recent initiatives of the government, both preceding and following the ESL's passage, have resulted in a number of deportations, and the number of criminal charges are expected to increase.⁴⁷ While it should be underscored that the basic framework for visas and work authorization has remained the same before and after the enactment of the ESL, increased enforcement and the new legal basis for criminal sanctions for hiring foreign employees have forced many formerly complacent employers to reevaluate their employment policies.⁴⁸

42. Employment Services Law, *supra* note 5.

43. See generally *id.* ch. 3.

44. See generally *id.*

45. See generally *id.* ch. 5.

46. See *id.* ch. 6, arts. 58-59.

47. Robin J. Winkler, *Visas and Working in Taiwan: Recent Trends and Developments*, EUROVIEW, Apr.-May 1992, at 23, 27.

48. Robin Winkler supplied anecdotal evidence of this change from conversations with Taiwanese and foreign employers who consulted his firm for legal advice.

At the time of this writing, many of the implementation regulations under the ESL have not been issued.⁴⁹ Many of the interim measures in place prior to the passage of the ESL have been repealed.⁵⁰ The remaining interim measures, as well as some of the replacement regulations (the "New Rules"), are discussed in detail in Part III of this Article.

It is difficult to characterize the government's current attitude toward visas and employment for foreign nationals. Some factions within both the ruling and opposition parties support strict limits on the ability of foreign nationals to work.⁵¹ These factions have temporarily prevailed with the passage of the ESL. However, other factions and government agencies quickly noted the ESL's potential for impeding Taiwan's goals of internationalization and economic diversification. All factions agree that rational immigration and labor policies must be adopted in order to meet these goals. Divergence of opinions is expected to continue as to the role that foreign nationals should play in Taiwan's labor market.

III. "VISITOR" VISAS AND WORK AUTHORIZATION

The category of "visitors" includes tourists and business visitors (traders, investors, temporary workers, and intracompany transferees) as well as special-category visitors—students, scholars, and relatives. Because a discussion of visa issues is impossible without concurrently reviewing the applicable work regulations and approval requirements and procedures, these matters are also discussed in this Part.

One other feature of the visa and work authorization framework is the special status accorded to foreign nationals⁵² of Chi-

49. Among the regulations issued to date are those cited in *supra* notes 38-39. See also CHIAO YEH FU WU FA SHIH HSING HSI CHE [Implementing Regulations for the Employment Services Law] (Council of Lab. Aff. 1992) (Taiwan) [hereinafter ESL Implementing Regulations]; LU SHIH P'IN KU WAI KUO JEN HSÜ K'O CHI KUAN LI PAN FA [Regulations Governing the Approval and Administration the Hiring of Foreign Nationals by Lawyers] (Ministry of Just. 1992) (Taiwan).

50. See, e.g., KUNG MIN YING SHIH YEH SHENG CH'ING P'IN KU WAI CHI HUO CH'IAO CHÜ KUO WAI JEN YÜAN PAN FA [Rules Governing the Application for Employment of Foreign National or Overseas Chinese Domiciled in Foreign Countries by Public or Private Enterprises in the Republic of China] (Ministry of Econ. Aff. 1991) (Taiwan) (repealed) [hereinafter Old Employment Rules]; CHING CHI PU SHOU LI MIN YING SHIH YEH P'IN KU KUO WAI JEN YÜAN AN CHIEN SHENG CH'A TSO YEH YAO TIEN [Guidelines for the Screening of Applications Filed by Private Businesses to Employ Foreign Nationals or Overseas Chinese] (Ministry of Econ. Aff. 1991) (Taiwan) (repealed).

51. Statement of Ge Yu-Xing at American Chamber of Commerce Legislative Affairs Committee Breakfast June 12, 1992, Lai Lai Sheraton Hotel Taipei.

52. See generally KUO JEN JU CHIN TSAN SHIH T'ING LIU CH'ANG CH'I CHÜ LIU CHI HU CHI TENG CHI TSO YEH YAO TIEN [Key Points For Registration of

nese ethnic origin—that is, overseas Chinese. As the treatment of this group often differs from that of other foreign nationals, a separate section on visas and work authorization for overseas Chinese is included at the end of this Part.

A. OVERVIEW

The visa regulation applicable to most foreign visitors is the Regulations Governing Visas for Foreign Passports.⁵³ Four kinds of visas may be issued under these Regulations: diplomatic, courtesy, resident, and temporary.⁵⁴ Unauthorized work is prohibited regardless of which visa one holds and may result in cancellation of a visa and deportation for the visa holder and criminal sanctions for the employer.⁵⁵ It cannot be emphasized enough that for all the categories discussed below, holding a resident visa *does not* automatically entitle one to work. Working is only permitted if separately authorized.

B. TEMPORARY VISITORS⁵⁶

Temporary Visitor visas may be issued to persons who come to Taiwan for the following reasons with the intent to stay in Taiwan for less than six months: transit, tourism, visiting relatives, reporting, research and study, business negotiations, or other matters.⁵⁷ There is no longer a "commercial visa" in Taiwan. For visits of limited duration, business people enter Taiwan on a temporary visa.⁵⁸

C. VISAS GRANTED FOR THE PURPOSE OF EMPLOYMENT

All employers who wish to hire foreigners are required to apply for permission to do so.⁵⁹ The application for a work permit frequently must be filed with a visa application. Under the ESL, employment approval can only be issued for a minimum of six months and a maximum of two years.⁶⁰ Extensions of employment approval may be applied for at the end of each pe-

Nationals For Temporary and Long Term Stay and Household Registration] (Executive Yuan 1992) (Taiwan) [hereinafter Registration Key Points].

53. WAI KUO HU CHAO CH' IEN CHENG PAN FA [Regulations Governing Visas for Foreign Passports] (1987) (Taiwan) [hereinafter Visa Regulations].

54. *Id.* art. 4.

55. *Id.* art. 15.

56. Both "resident" and "temporary" visa holders are considered to be visitors to Taiwan. The principal distinction between the two visas lies in their duration.

57. *Id.* art. 12.

58. *Id.*

59. Employment Services Law, *supra* note 5, art. 42.

60. *Id.* art. 49.

riod.⁶¹ Under the provisions of the ESL, the following categories of employment are open to foreign nationals: specialized or technical work;⁶² heads of government-approved enterprises established or formerly supported by overseas Chinese or foreign persons;⁶³ teachers in public or registered private vocational or higher level schools or teachers in schools for resident aliens;⁶⁴ full-time foreign-language teachers at short-term supplementary schools registered in accordance with the Supplementary Education Law;⁶⁵ athletes and athletic coaches;⁶⁶ religious, artistic, or performance work;⁶⁷ household servants;⁶⁸ work that has been designated by the COLA as meeting the needs of important national construction projects or work that is necessary for economic or social development;⁶⁹ and other categories, the applicants for which are approved as special cases by the COLA because of the special nature of their work, a lack of similar talent in Taiwan, and a demonstrated need for their employment.⁷⁰

Two points should be noted in connection with these categories of workers. First, other than workers in these categories and a very narrowly defined set of exceptions, foreign nationals cannot be employed in Taiwan.⁷¹ This is relevant to the discussion of visas, as employment outside of these categories constitutes a vi-

61. *Id.*

62. *Id.* art. 43(1). Specialized work is defined in the New Rules as: "business expansion; market investigations; personnel training; operations management and related research work." New Rules, *supra* note 31, art. 5. Technical work is defined in the New Rules and includes research and development, product design, manufacturing design and consulting for equipment installation and maintenance. *Id.* art. 6.

63. Employment Services Law, *supra* note 5, art. 43(2). This category includes managers, directors and supervisors of companies that have "foreign investment approved" ("FIA") status from the MOEA. Key Points, *supra* note 33, arts. 2-3.

64. Employment Services Law, *supra* note 5, art. 43(3). This category covers persons such as visiting professors to Taiwan universities and primary school teachers at the American, Japanese and European schools in Taiwan.

65. *Id.* art. 43(4). This category covers the numerous so-called "cram schools" many of which socialize in foreign language instruction and are able to attract students by employing large numbers of native speakers. See PU HSI CHIAO YU FA [Supplementary Education Law] (1982) (Taiwan).

66. Employment Services Law, *supra* note 5, art. 43(5).

67. *Id.* art. 43(6). This category includes missionaries in Taiwan for both short- and long-term stays and visiting artists, musicians and other performers in Taiwan for short-term stays.

68. *Id.* art. 43(7). With the increased participation of women in the local labor force, as well as the trend away from the tradition of "three generations under one roof," a growing number of families employ household help from other countries. *CLA Moves to Ease Maid Shortage with Foreign Helpers*, Reuter Textline, Aug. 18, 1992, available in LEXIS, World Library, TXTFE File.

69. *Id.* art. 43(8). Regulations are pending on this category. They are expected to cover laborers in industries critical to the progress of projects in the six-year development plan.

70. *Id.* art. 43(9).

71. *Id.* art. 43.

olation of one's visa status.⁷² A narrow set of exceptions applies only to students, persons married to Chinese nationals, refugees, and some long-term residents of Taiwan.⁷³

Second, as noted earlier, the "competent authority" varies, and each competent authority drafts its own regulations.⁷⁴ The first of such regulations was issued pursuant to the ESL in August of 1992.⁷⁵ Approvals, however, were being issued by other "competent authorities" based on regulations in effect prior to the ESL's effective date.⁷⁶

One of the most influential "competent authorities" for purposes of work authorization is the Ministry of Economic Affairs ("MOEA"). The MOEA's Rules Governing the Applications for Employment of Foreign Nationals or Overseas Chinese Domiciled in Foreign Countries by Public or Private Enterprises in the Republic of China⁷⁷ and Guidelines for the MOEA's Screening of Applications Filed by Private Enterprises for Employment of Foreign Nationals ("MOEA Guidelines") applied to a large number of foreign nationals seeking work authorization in Taiwan prior to the ESL. The Old Employment Rules and the MOEA Guidelines have now been replaced with the Rules Governing the Approval and Administration of Foreign Specialists and Technical Personnel Employed by Public and Private Enterprises and Ranking Executives Employed by Overseas Chinese and Foreign National-Invested Enterprises ("New Rules").⁷⁸

The New Rules divide employees into two broad categories: technicians and specialists.⁷⁹ Both categories require extensive documentation of the qualifications of both the applicant and the employer. For technicians, the employer must demonstrate that the employee will assist in improving the employer's technical operations or be involved in after-sales technical services.⁸⁰ Specialists must be involved in business expansion, market research, personnel training, or operations management and related research.⁸¹ Companies that employ foreign nationals as specialists are subject to higher minimum capital requirements than is nor-

72. *Id.* art. 62.

73. *Id.* art. 48.

74. *See supra* notes 38-40 and accompanying text.

75. *See* ESL Implementing Regulations, *supra* note 49.

76. *See, e.g.*, Old Employment Rules, *supra* note 50.

77. *Id.*

78. New Rules, *supra* note 31.

79. *Id.* arts. 4-5.

80. *Id.* art. 6(4), (6). Technicians are additionally defined as those with technical qualifications; importers providing equipment installation, guidance, or maintenance; technical inspectors; and manufacturing design workers. *Id.* art. 6(1)-(3), (5).

81. *Id.* art. 5.

mally required.⁸² Domestic companies that are newly established or have been in operation for less than a year must have at least NT\$5 million in paid-in capital, and similarly situated branches of foreign companies must have at least NT\$2.5 million in working capital.⁸³ FIA companies are currently exempt from these additional capital requirements.⁸⁴

The New Rules also apply to employees and management personnel. However, they do not govern investors, directors of foreign-invested companies approved by the Investment Commission, and representatives and employees of foundations. Such persons are not considered to be "working" in Taiwan.⁸⁵

Under the New Rules, all companies that employ foreign nationals are subject to the following requirements:

1. *Sales Volume*

While the Old Employment Rules include only a general requirement for a business plan, the New Rules set forth specific sales or turnover amount requirements for businesses. For example, businesses must realize at least US\$400,000 in commissions or register total revenues of NT\$10 million in the preceding year or on average over the latest three years.⁸⁶

2. *Other Requirements*

Companies may additionally qualify to employ foreign specialists under the New Rules if they satisfy one of the following conditions: they are a foundation whose expenses amount to at least NT\$5 million per year or whose establishment fund is no less than NT\$10 million; or they are an association with at least fifty members.

3. *Qualification Requirements*

The New Rules require a thorough review of the application of a foreign worker from the perspective of his or her academic qualifications and work experience.⁸⁷

82. *Id.* art. 9.

83. *Id.* art. 9(3).

84. Key Points, *supra* note 33, art. 2. Directors of approved foreign investment companies and country representatives of foreign companies are not considered employees but may be granted multiple entry visas subject to certain capital requirements. See *infra* notes 85, 90-93 and accompanying text.

85. See Key Points, *supra* note 33.

86. New Rules, *supra* note 31, art. 9(1)-(2); see Old Employment Rules, *supra* note 50.

87. New Rules, *supra* note 31, art. 10.

4. Numerical Limitations

The MOEA has the authority to decide both personnel and time limits on the basis of the business' size, its personnel plan, its operational performance, and its contribution to the economic development of the ROC.⁸⁸

5. Supervision of Employment Terms

MOEA approval is conditioned on its satisfaction with the terms of the employment contract, including salary and position.⁸⁹

D. VISAS ACQUIRED FOR THE PURPOSE OF INVESTMENT

Foreign investors may apply for temporary visas.⁹⁰ The authorities may question an applicant's frequent visa renewal or extended period of time spent in Taiwan and require the investor to obtain a resident visa. Under the Key Points for Screening Applications for Issuance of Multi-Entry Resident and Visitor Visas to Foreign Nationals ("Key Points"), shareholders and representatives of corporate shareholders in approved FIA companies can apply for resident visas.⁹¹ A single resident visa may be issued for an investment of at least US\$100,000.⁹² Applicants qualify for one additional resident visa for each additional investment of US\$500,000 or more.⁹³

It was not clear under the old regulations whether those granted resident visas to manage their investments in Taiwan would be deemed to be working in Taiwan and therefore also need to apply for a work permit to avoid the prohibition in the Visa Regulations against unauthorized employment. With the passage of the ESL this issue has become even more pressing as those who are found to be illegally "working" in Taiwan face deportation and their employers are subject to imprisonment and fines.⁹⁴

E. SPECIAL CATEGORY VISITORS

1. Relatives

Temporary or resident visas may be obtained for the purpose of visiting or spending extended periods of time with par-

88. *Id.* art. 13.

89. *Id.* art. 14.

90. *See generally* Key Points, *supra* note 33.

91. *Id.* art. 2.

92. *Id.* art. 2(1).

93. *Id.*

94. *See generally* Employment Services Law, *supra* note 5, ch. 6; *supra* text accompanying notes 46-47.

ents, grandparents, children, grandchildren, or spouses.⁹⁵ To obtain a resident visa in this category, the relative should be either a ROC citizen or a foreign national with residence status. Residence visas to visit siblings are generally not available without special approval from the MOEA.

In the past, those holding resident visas obtained for the purpose of visiting relatives were not permitted to work without authorization. As a practical matter, many of these people did and now continue to work, and the government has not shown an inclination to crack down on this category of illegal workers, although employers are now wary of hiring anyone without a work permit. Following the passage of the ESL, however, foreign nationals whose residence is based on marriage to an ROC citizen may apply for work permits through their employer.⁹⁶

2. *Students and Scholars*

Study and scholarship are approved activities for both temporary and resident visa issuance. Under the recently promulgated Regulations Governing the Approval of Work and Administration of Employment of Foreign Students ("Employment of Foreign Students Regulations"), two types of students are allowed to apply for work permits with the MOE: those studying in public or approved private institutions, or their attached language centers;⁹⁷ and those with approved status from the MOE.⁹⁸ In order to apply for a work permit, foreign students must have already completed a two-semester course of study (including one year at a language center), have excellent grades, and be approved by their schools as a research assistant, extern, or one with special knowledge or financial need.⁹⁹

Strictly speaking, in the past neither category of foreign student was allowed to work on a student resident visa. In order to work while studying, therefore, foreign students also had to apply separately for work permits and their applications would be considered independent of their student status. The ESL now allows students to apply for permission to work through their employers.¹⁰⁰ If their application is approved by the competent authority, the student candidate will be issued a work permit that

95. Entry and Exit Regulations, *supra* note 34, art. 24(6).

96. Employment Services Law, *supra* note 5, art. 48(1).

97. The seven recognized schools are: Chengchi University (Taipei); National Normal University (Taipei); National Chengkung University (Tainan); Tamkang University (Tanshui); Fujian Catholic University (Hsinchuang); Fengchia University (Taichung); and Tunghui University (Taichung).

98. Employment of Foreign Students Regulations, *supra* note 39, art. 2.

99. *Id.* art. 4.

100. See Employment Services Law, *supra* note 5, art. 47.

is derivative upon their student visa. Approved students may not work more than twelve hours per week except during summer and winter vacations.¹⁰¹ Foreign students applying through their employer for permission to work on the basis of their student visa are not bound by the categorical limits on employment under the ESL.¹⁰² However, a student must make a separate application for each employer.¹⁰³

Despite these controls, currently hundreds and perhaps thousands of foreign students in Taiwan study language and culture at institutions not approved by the MOE. Because the new Employment of Foreign Students Regulations have not expanded the number of approved schools,¹⁰⁴ until the MOE extends the approval to schools other than those specified above, students enrolled in unapproved schools continue to be unable to obtain legal employment on the basis of their student status alone.

3. *Resident Visas Acquired for Medical Reasons*

Foreign nationals acquiring resident visas for medical purposes are not allowed to work in Taiwan. To obtain such a visa, foreign nationals must first prove that their conditions are not treatable in their home countries but are treatable in Taiwan.¹⁰⁵ On the basis of this proof the MOEA issues a certificate of permission. These certificates, however, do not permit a person to work in Taiwan.¹⁰⁶

4. *Resident Visas Acquired for Proselytizing*

Those applying for resident visas for religious purposes must apply with the MOFA.¹⁰⁷ They must prove they are qualified as religious professionals and that their religious organizations wish that they come to Taiwan.¹⁰⁸ These persons may not work in Taiwan.¹⁰⁹

5. *Resident Visas Acquired for Other Purposes*

Resident visas for "Other Purposes" are only issued to foreign nationals recognized as special cases by the ROC govern-

101. *Id.*

102. *Id.*

103. *See* Employment of Foreign Students Regulations, *supra* note 39, art. 5.

104. *See* Employment of Foreign Students Regulations, *supra* note 39.

105. Visa Regulations, *supra* note 53, art. 9.

106. *Id.* art. 15(3).

107. *Id.* art. 9.

108. *Id.*

109. *Id.* art. 15(3).

ment.¹¹⁰ An example is where a government agency has a pressing need to bring in a foreign technician or advisor.

F. OVERSEAS CHINESE: TEMPORARY AND VISITORS VISAS AND WORK PERMITS

1. *Overseas Chinese Born in Taiwan*

Overseas Chinese born in Taiwan who enter Taiwan under foreign passports are treated as foreign nationals for purposes of obtaining visas and work permits.¹¹¹ The status of persons holding ROC passports who have been absent from Taiwan for less than six years and who enter Taiwan on ROC passports will be unaffected upon their return to Taiwan. Those holding ROC passports who have been absent more than six years but who have not applied for foreign nationality must register upon their return to Taiwan and will then enjoy the same status as ROC citizens.¹¹² Those holding ROC passports who have been absent from Taiwan more than six years and who have applied for and received foreign nationality must register and reside in Taiwan for a full year before regaining full citizenship status.¹¹³ Prior to the expiration of the one-year period, the employment of such persons is subject to the same restrictions applied to the employment of foreign nationals.

2. *Overseas Chinese Born Abroad*

Overseas Chinese born abroad who enter Taiwan on foreign passports are treated as foreign nationals for purposes of obtaining either visas or work permits.¹¹⁴ Overseas Chinese not entering on foreign passports may acquire short-term entry permits by applying before their arrival in Taiwan.¹¹⁵ These entry permits are issued for a period of three months and may be extended once for an additional three months.¹¹⁶

Overseas Chinese not entering on foreign passports may also apply for long-term entry permits.¹¹⁷ These applications are accepted in one of four categories: (1) overseas Chinese with parents, children, siblings, or spouses who are local residents; (2) those with investments of NT\$1 million or more in Taiwan; (3)

110. *Id.* art. 9.

111. Registration Key Points, *supra* note 52.

112. *Id.* art. 3(1).

113. *Id.* art. 3(2).

114. Employment Services Law, *supra* note 5, art. 67.

115. Registration Key Points, *supra* note 52, art. 2. Applications should be filed with ROC embassies or government or trade offices in the countries from which the overseas Chinese depart.

116. *Id.*

117. *Id.* art. 3.

those with NT\$1 million or more in a Taiwan bank for at least one year; and (4) those belonging to overseas Chinese organizations and who have made significant contributions to these organizations.¹¹⁸ Those who acquire these permits and remain on the island continuously for one year acquire full rights and obligations of citizenship.¹¹⁹ Those who enter under short- or long-term entry permits are treated as foreigners under the ESL until they acquire ROC citizenship.¹²⁰

IV. VISA REQUIREMENTS AND PROCEDURES

A. GENERAL

Temporary visas are issued by the MOFA or, in foreign countries, by embassies and authorized agencies.¹²¹ Resident visa applications may be filed either in the MOFA Taipei office or in embassies or authorized agencies.¹²²

Temporary and resident visas are currently issued for single entry or multiple entry. Although no published regulations cover this point, the validity period of these visas depends on reciprocity between Taiwan and the visa-holder's country. The validity period is generally one year for resident visas and from one to five years for temporary visas.

Most of the day-to-day contact of foreign nationals with visa authorities in Taiwan is not with the MOFA but rather with the NPA. The NPA handles alien resident certificates, discussed below,¹²³ and most matters concerning temporary visits and residence in Taiwan.¹²⁴

B. TEMPORARY VISAS

Temporary visas allow the holder to stay in Taiwan for up to sixty days.¹²⁵ The visa may be renewed twice with the local police for a total stay of six months.¹²⁶ In the past it was common practice for local police stations to liberally grant visa extensions to foreign nationals holding visitor visas upon provision of an employment letter, proof of payment of taxes, or certification

118. *Id.*

119. *Id.* art. 5. Continuous presence is defined as continuous physical presence on the island of Taiwan with an allowed absence of 14 days total in the operative one-year period.

120. Employment Services Law, *supra* note 5, art. 67.

121. Key Points, *supra* note 33, art. 4.

122. *Id.* (resident visa applications submitted overseas are forwarded to the MOFA Taipei office for consideration).

123. *See infra* notes 131-32 and accompanying text.

124. *See, e.g.*, Entry and Exit Regulations, *supra* note 34, art. 5.

125. *Id.* art. 22.

126. *Id.*

from a local language school. The facial restrictions on working under a visitor visa went largely unenforced, and other than laborers, few foreign nationals were deported for violating the provisions of their visas.¹²⁷ Under the ESL, enforcement has become much stricter, and in most cases, extensions are no longer granted as a matter of course.

C. RESIDENT VISAS AND ALIEN RESIDENT CERTIFICATES

Resident visas are issued by the MOFA upon satisfactory evidence that the proper approvals have been obtained.¹²⁸ Holders of resident visas are required to apply for alien resident certificates ("ARC"s) within fifteen days of entering Taiwan on a resident visa.¹²⁹

Until the passage of the ESL, an ARC issued on the basis of employment was valid for not more than three years.¹³⁰ Although the new regulations governing ARCs have not yet been issued, presumably the ARC validity period will not exceed that for work approval. Where the term of an ARC was longer than the term of the resident visa, the holder of an expired visa but valid ARC would apply to the NPA for a "reentry permit," which could be presented in lieu of a valid visa when reentering Taiwan.¹³¹

In current practice, a certificate of current employment must be filed in conjunction with an application for a reentry permit where the ARC is issued in connection with employment.¹³² The company listed on this certificate must be identical to that in the applicant's original ARC.

D. CHANGE OF STATUS

The Visa Regulations do not directly address how foreign nationals should change their visa status when the purpose of their original visa has changed.¹³³ Article 15(1)(3) of the Visa Regulations, however, creates severe consequences for not registering changes in visa status.¹³⁴ It states that the MOFA may revoke a visa and notify the holder in the following situation: "Where, without written authorization from the competent authority, a person undertakes any compensated employment in

127. Winkler, *supra* note 47, n.1.

128. See Entry and Exit Regulations, *supra* note 34, art. 14.

129. *Id.* art. 9.

130. *Id.* arts. 11, 13 (up to three years); *id.* art. 12 (up to one year).

131. *Id.* art. 31.

132. See *id.* art. 32.

133. See generally Visa Regulations, *supra* note 53.

134. See *id.* art. 15(1)(3).

the Republic of China or engages in any activity that is different from the purpose as stated in the original visa."¹³⁵

Enforcement of this provision is left to the NPA.¹³⁶ Where the purpose of one's residence changes, e.g., one takes a new position with another company, a report must be made to the local police within fifteen days along with an application to register the change.¹³⁷ Current practice requires that documents similar to those required to obtain a resident visa from the MOFA or to obtain a reentry permit from the NPA accompany this application. Failure to report the "change in purpose" within the fifteen days (or additional ten-day extension) could result in a departure order.¹³⁸ These procedures are expected to be revised due to the passage of the ESL.

V. IMMIGRATION, CITIZENSHIP, AND NATIONALITY

A. GENERAL

If one views immigration as movement to a country with the intent to establish domicile in that country, immigration to Taiwan is largely limited to overseas Chinese and people from the People's Republic of China. The Chinese concept of nationality and citizenship is intimately tied to racial identity. This identity is manifest in the definitions of the terms "nationality" and "citizenship," which ultimately relate to the precise definition of the adjective "Chinese." While the Han race is the dominant group in both the People's Republic of China and the Republic of China, there are a number of minorities, including the Miao, Manchu, Uiger, Mongolians, and Tibetans, who are also considered to be Chinese. The ultimate legal determination of whether a person is a Chinese national may depend on the definition of the term "Chinese," but lawmakers have thus far declined to fix a meaning for this term.

The consequences of nationality in Taiwan are particularly important in determining rights and obligations under local laws for matters such as ownership of property, succession, and employment.¹³⁹ Nationality is also important in determining applicable law in matters involving private international law. This Part will review the laws and regulations governing nationality and citizenship, naturalization, dual citizenship, domicile, and residence.

135. *Id.*

136. Entry and Exit Regulations, *supra* note 34, art. 33.

137. *Id.* art. 9.

138. *Id.* art. 16.

139. *See infra* notes 158-59, 193-217 and accompanying text.

B. LAWS AND REGULATIONS

1. Constitution

Article 3 of the Constitution of the Republic of China states that “[p]ersons possessing the nationality of the Republic of China shall be citizens of the Republic of China.”¹⁴⁰

2. The Nationality Law

Nationality is determined under the Nationality Law and Enforcement Statute of the Nationality Law.¹⁴¹ The competent authority for matters concerning nationality is the MOI.¹⁴²

Under the Nationality Law, the following persons are Chinese nationals: (1) A person whose father was Chinese at the time such person was born; (2) a person who is born fatherless, if at the time of the father’s death, the father was Chinese; (3) a person of undetermined or stateless paternity, whose mother is Chinese; (4) a person born in China both of whose parents are either of undetermined nationality or stateless.¹⁴³

The following persons are automatically qualified to obtain ROC nationality: (1) A wife of a Chinese man, except where the woman retains her original nationality in accordance with the laws of her original country; (2) a child whose father is Chinese and has recognized the child; (3) a child whose paternity is undetermined, or where the father fails to recognize the child, a child whose mother is Chinese and has recognized the child; (4) a person adopted by a Chinese; and (5) a naturalized person.¹⁴⁴

The interpretation of the above provisions has largely focused on matters concerning the nationality of women who have married Chinese men.¹⁴⁵ In one case where a marriage under Swiss law was subsequently voided, it was found that the woman never obtained Chinese nationality.¹⁴⁶ Although the statute provides for reporting acquisition of nationality to the MOI, this reporting is not a condition of obtaining nationality.¹⁴⁷ For example, a woman whose Chinese husband passed away prior to her report to the MOI was considered to have obtained Chinese nationality.¹⁴⁸ Moreover, persons who had been “recognized” or

140. HSIAN FA [Constitution] art. 3 (1946) (Taiwan).

141. Nationality Law, *supra* note 35; Enforcement Statute of the Nationality Law, *supra* note 35.

142. NEI CHENG PU TSU CHIH FA [Organizational Law of the Ministry of Interior] art. 11(7) (Ministry of Interior 1987) (Taiwan).

143. Nationality Law, *supra* note 35, art. 1.

144. *Id.* art. 2.

145. Judicial Yuan Interpretation Nos. 401, 1111, 1727.

146. Judicial Yuan Interpretation No. 401.

147. Judicial Yuan Interpretation No. 1111.

148. *Id.*

adopted by Chinese were found to have automatically acquired nationality. Neither failure to report to the competent authority¹⁴⁹ nor even the termination of the adoptive status defeats this acquisition of nationality.¹⁵⁰

3. *Naturalization*

Foreign nationals satisfying all of the following qualifications may apply to the MOI for naturalization: (1) Having continuous domicile in the ROC for at least five years; (2) being at least twenty years of age, and in accordance with the laws of the ROC and the laws of the country of origin, having legal capacity; (3) being of good moral character; and (4) having sufficient economic means or talents to make a livelihood.¹⁵¹

Other persons who qualify for naturalization include the following: (1) A person who has resided continuously in the ROC for three years and whose parents were at one time Chinese, or whose wife is Chinese; (2) a person who was born in the ROC, and unless either of such person's parents were also born in Taiwan or mainland China, such person has resided continuously in the ROC for three years; or (3) a person who has previously resided in the ROC for ten years.¹⁵²

Persons who have made "an outstanding contribution" to the ROC may qualify for naturalization without meeting the requirements discussed above.¹⁵³

Wives and minor children of persons who are naturalized automatically also obtain Chinese nationality, unless such naturalization would be contrary to the laws of the country of the wife or minor children.¹⁵⁴ In such circumstances, the wife or minor child is required to relinquish his or her original nationality under the laws of his or her original country as a condition of obtaining Chinese nationality.¹⁵⁵ In addition, a child residing and domiciled in the ROC may apply for naturalization if the child's mother or father is Chinese, notwithstanding the lack of continuous domicile, age and capacity, and means to earn a livelihood.¹⁵⁶

To be effective, naturalization of an individual must be published by the MOI.¹⁵⁷ Such matters are published regularly in the *Presidential Gazette*.

149. Judicial Yuan Interpretation No. 1552.

150. *Id.*

151. Nationality Law, *supra* note 35, art. 3.

152. *Id.* art. 4.

153. *Id.* art. 6.

154. *Id.* art. 8.

155. *Id.*

156. *Id.* art. 5.

157. *Id.* art. 7.

4. *Limitations on Naturalized Nationals*

Persons whose spouse or children are Chinese nationals other than by virtue of the attributes discussed above¹⁵⁸ are subject to certain restrictions in occupation. Except in very limited circumstances such persons may not serve as: (1) a councillor in the Central Government, the head of any branch of government, or the head of a ministry or council; (2) a legislator in the Legislative Yuan or a member of the Control Yuan; (3) a plenipotentiary in an embassy or consulate; (4) a general in the armed forces; (5) a councillor of the provisional or local government; (6) a mayor of a special municipality; or (7) an official at any level of a self-autonomous region.¹⁵⁹

5. *Dual Nationality*

Taiwan is currently the thirteenth largest source of immigrants into the United States, accounting for more than 16,000 immigrants in 1992 alone.¹⁶⁰ In recent years, a growing number of Chinese from Taiwan have been migrating to other countries, with Australia, Canada, and New Zealand being the countries of choice.¹⁶¹ Economic and living conditions aside, many technicians and professionals feel that the opportunities for professional development abroad exceed those available in Taiwan¹⁶² and a significant number of graduate students choose to remain abroad after completing their studies.¹⁶³

158. See *supra* notes 143-57 and accompanying text.

159. *Id.* art. 9.

160. *Immigration Trends*, AMER. DEMOGRAPHICS INC., June 1993, available in LEXIS, Nexis Library, CURRNT File.

161. *English-For-Asians Call Back By Minister*, Xinhua General News Agency, May 3, 1993, available in LEXIS, Nexis Library, CURRNT File (noting that New Zealand's popularity as a destination *inter alia* Taiwan has become a problem for the New Zealand school systems); Kalinga Seneviratne, *Australia: Asian Immigration May Be Answer to Economic Woes*, Inter Press Service, Sept. 16, 1993, available in LEXIS, Nexis Library, CURRNT File (noting that Australia is a popular immigration destination *inter alia* for Chinese from Taiwan, but noting that numbers of immigrants have decreased recently due to Australia's restrictive immigration program as well as its current recession); Anne Swardson, *Visas for Sale! (Count Your Fingers): Canadian Migratory Program Under Fire From Some Who Got Burned*, WASH. POST, Aug. 30, 1993, at A12 (noting that Canadian immigration and investment incentives attracted the most attention from residents of Hong Kong and Taiwan Chinese).

162. Elizabeth Pezzullo, *Imported Talent*, U.S. NEWS & WORLD REP., Mar. 22, 1993, at 75.

163. *Id.* (noting that foreign-born students *inter alia* from Taiwan tend to stay in America following graduate education seeking positions as technicians or specialists).

This trend has changed in recent years with what has become known as a "reverse brain drain."¹⁶⁴ Large numbers of Chinese from Taiwan who have obtained citizenship abroad are returning to Taiwan to participate in the dynamic economic growth occurring in the region.¹⁶⁵

Under the Nationality Law, a person does not automatically lose his or her ROC nationality upon naturalization in another country.¹⁶⁶ Rather, the person must affirmatively relinquish ROC nationality through an application to the MOI.¹⁶⁷ Neither the Nationality Law nor the Enforcement Statute of the Nationality Law requires relinquishment of one's foreign nationality as a condition to naturalization in the ROC. Nevertheless, as discussed in Part III, taking on nationality of a foreign country or entering Taiwan on a foreign passport may have consequences for one's ability to reside and work in Taiwan.¹⁶⁸

VI. DEPORTATION

A. DEPORTATION UNDER THE ESL

The police authorities are empowered to deport foreign nationals for violations of the ESL or the Entry and Exit Regulations.¹⁶⁹

Under the ESL, foreign nationals who work in Taiwan without receiving work permission through their employer may be deported.¹⁷⁰ The police authorities set a time limit for foreign nationals deported under these provisions within which they must leave the country.¹⁷¹ Failure to leave the country within the time limit may result in compulsory deportation.¹⁷² The scope of police authority is quite broad, as the ESL permits the police to inspect any place suspected of employing foreign nationals.¹⁷³ Guidelines for police inspections had not been issued as of April 1993.

164. Teresa Watanabe, *Taiwanese 'Brains' Leave U.S.; Career Opportunities Help Lure Engineers Trained and Educated in America Back Home; The Trend Could Spell Trouble For U.S. High-Tech Industries*, L. A. TIMES, Dec. 29, 1989, at A1.

165. *Id.*

166. Nationality Law, *supra* note 35, art. 11.

167. *Id.*

168. *See supra* notes 111-20 and accompanying text.

169. Employment Services Law, *supra* note 5, art. 62; Entry and Exit Regulations, *supra* note 34, art. 33.

170. Employment Services Law, *supra* note 5, art. 62; *see also supra* text accompanying notes 46-48.

171. Employment Services Law, *supra* note 5, art. 62.

172. *Id.*

173. *Id.* art. 57.

B. DEPORTATION UNDER THE ENTRY AND EXIT REGULATIONS

Foreign nationals may be deported for any of the following reasons: (1) cancellation of visa; (2) failure to comply with proper entry procedures, such as failure to fill out an entry card; (3) failure of resident visa holders to report to the police authorities a change in their purpose for residing in Taiwan or failure to report to the police authorities within fifteen days of their arrival in Taiwan under a resident visa; (4) overstaying one's visa; (5) engaging in activities other than those sanctioned by one's visa; (6) issuance of a formal deportation order by government authorities under other laws of the ROC; (7) inability to support oneself in Taiwan; (8) endangerment of public order; (9) commission of a crime outside of the territory of Taiwan for which a circulatory order is published or for which punishment is imprisonment for a definite period; (10) any public dissemination of attacks on the president of the ROC, its government, or any of its officers; or (11) engaging in behavior that threatens to violate ROC laws or regulations.¹⁷⁴

In addition, the MOFA may cancel a foreign national's visa under the Visa Regulations, upon which the foreign national is then subject to deportation by the police authorities.¹⁷⁵ Such cancellation may occur for any of the following reasons: (1) violation of laws inside or outside of the ROC or prior deportation from the ROC; (2) making false statements or concealing important facts in one's application for a visa to the ROC; (3) working and being compensated in Taiwan without written permission of the competent authority or engaging in any activity not in accordance with the purposes stated in the visa application; or (4) engaging in activity inside or outside of Taiwan that will endanger the social safety or interests of the ROC.¹⁷⁶

The collective effect of deportation procedures in Taiwan is that foreign nationals find their conduct monitored by a number of authorities. In reality, many of these regulations have gone unenforced for some time. This was particularly true of regulations requiring written permission to work in Taiwan. Many foreign nationals remained and worked in Taiwan under tourist visas, which were extended regularly by the police authorities upon proof of having paid income taxes.

With the passage of the ESL, however, this relaxed posture has been replaced by requirements for strict compliance with visa and work permit regulations and more stringent monitoring pro-

174. Entry and Exit Regulations, *supra* note 34, art. 33.

175. Visa Regulations, *supra* note 53, art. 15.

176. *Id.*

cedures.¹⁷⁷ Deportations of both laborers and white-collar workers have increased since draft versions of the ESL were first circulated.¹⁷⁸ The passage of the ESL was followed by a period of official leniency in enforcing provisions. This leniency period ended in the middle of July 1992.¹⁷⁹ Although different government agencies have debated the breadth and advisability of stricter enforcement, the COLA has repeatedly voiced its determination to follow the letter of the law.¹⁸⁰

VII. ADMINISTRATIVE AND JUDICIAL REVIEW

A. GENERAL

There are five branches of government, or "Yuan," in the ROC: Judicial, Legislative, Executive, Examination, and Control. All administrative agencies discussed in this Article, e.g., the MOEA, the MOI, and the COLA, ultimately report to the Executive Yuan.

With the exception of the district and high court prosecutors, who are under the Ministry of Justice (MOJ) in the Executive Yuan, all court proceedings are ultimately accountable to the Judicial Yuan. Furthermore, the Administrative Court of the Judicial Yuan is the tribunal of last resort in matters involving administrative agencies. All matters involving visas, nationality and naturalization, work permits, and deportation orders are administrative issues and are initially handled within the administrative system.

B. THE APPLICATION PROCESS

1. Visas

The application process for visas has been outlined in previous sections of this Article.¹⁸¹ The competent authority is the MOFA.¹⁸²

2. Work Permits

The principal authority in charge of issuing work permits is the COLA.¹⁸³ The COLA, however, has delegated its authority

177. See *supra* text accompanying notes 42-48.

178. *Taiwan: The Labor Service Law - Good Intentions, Uncertain Results*, Reuter Textline, July 27, 1992, available in LEXIS, World Library, ALLWLD File.

179. *Id.*

180. Ryan Huang, *Taiwan: New Law Passed Ease the Way for Foreign Workers in Taiwan*, Reuter Textline, Apr. 27, 1992, available in LEXIS, World Library, ALLWLD File.

181. See *supra* notes 53-70 and accompanying text.

182. Key Points, *supra* note 33, art. 4.

183. Employment Services Law, *supra* note 5, art. 6.

to issue work permits to the governmental agencies which have authority over the relevant business sectors.¹⁸⁴ Foreign workers are required to apply through their employers for work permits with these agencies.¹⁸⁵ For example, banking, securities, and insurance personnel apply with the MOF; language teachers and students, with the MOE; lawyers, with the MOJ; broadcasters, with the Government Information Office; shipping and telecommunications personnel, with the Ministry of Transportation and Communication; and most general business personnel, with the MOFA.

C. APPEALS

The administrative appeals process is divided into three levels: appeal, reappeal, and administrative suit. Appeals from a MOFA denial of a visa application are appealed to the Ministry itself,¹⁸⁶ a reappeal is made to the Executive Yuan,¹⁸⁷ and an administrative lawsuit is filed with the Administrative Court of the Judicial Yuan.¹⁸⁸ The Administrative Court has only one level. Its decisions are appealable, and in some cases there may be an opportunity for a rehearing.¹⁸⁹

If a foreign national is denied a work permit by a government agency, an appeal is first filed with the competent authority whose jurisdiction includes this agency. If the visa or work permit was originally denied by a central competent authority, then the foreign national's first appeal should be to this authority. Appeals can only be maintained on the grounds that the decision of the government agency improperly administered or violated the law.¹⁹⁰ As government agencies are given full powers to issue and deny visas and work permits at their discretion,¹⁹¹ the likelihood of prevailing in such an appeal is quite small. Significantly, current practice allows for provisional implementation of an agency order while the appeal is pending.¹⁹² In visa and deportation matters, this is tantamount to a final disposition of the case, as the person in question may be deported before a case is finalized.

184. See, e.g., *id.* arts. 12, 35, 44.

185. *Id.* art. 44.

186. SU YUAN FA [Appeals Law] art. 3(7) (1969) (Taiwan).

187. *Id.*

188. HSING CHENG SU SUNG FA [Administrative Lawsuit Law] art. 1 (1975) (Taiwan).

189. *Id.* art. 28.

190. Appeals Law, *supra* note 186, art. 1.

191. Visa Regulations, *supra* note 53, art. 2.

192. Appeals Law, *supra* note 186, art. 23.

VIII. OWNERSHIP OF PROPERTY

A. OWNERSHIP OF LAND

1. *General*

By acquiring land, a foreign national may enjoy the same rights as a citizen of the ROC under the Land Law.¹⁹³ However, acquisition of land by foreign nationals in Taiwan is subject to three principal limitations: the kind of land which may be acquired; the terms and purposes of the acquisition of land; and reciprocity requirements.¹⁹⁴

2. *Limits on the Type of Land Which May Be Acquired*

Foreign nationals are prohibited from owning farm land, forest lands, fisheries, pastures, hunting grounds, salt fields, lands containing mineral deposits or water sources, land within fortified military areas, and land near national boundaries.¹⁹⁵

3. *Limits on the Terms and Purposes of Acquisition*

Foreigners wishing to lease or purchase land must first obtain the permission of the county government where the land is located and are only allowed to lease or purchase land to use as housing or to establish the following: stores, factories, churches, hospitals, schools for children of foreign nationals, embassies and other institutions serving the public interest, and cemeteries.¹⁹⁶

4. *Reciprocity Requirements*

Foreign nationals are not permitted to acquire land unless their country of origin grants the same rights to ROC nationals, either through treaty or on the basis of its domestic laws.¹⁹⁷ A showing that an ROC national has acquired real property in one's country of origin typically suffices to satisfy this requirement.

5. *Exceptions*

Independent of the restrictions articulated above, provisions of the Land Law allow foreign nationals to acquire land provided that special permission is granted by the Executive Yuan and the land is acquired for an industrial enterprise.¹⁹⁸

193. T'U T'1 FA [Land Law] art. 24 (1989) (Taiwan).

194. See *infra* text accompanying notes 195-199.

195. Land Law, *supra* note 193, art. 17.

196. *Id.* art. 19.

197. *Id.* art. 18.

198. *Id.* art. 21.

B. PERSONAL PROPERTY

In principle, the ROC makes no distinction between ROC nationals and foreign nationals for the purpose of acquiring personal property.¹⁹⁹ As a practical matter, however, it is difficult, if not impossible, for foreign nationals without a resident visa and ARC to acquire motor vehicles or to open bank accounts.

IX. TAXATION OF FOREIGN VISITORS AND IMMIGRANTS

A. GENERAL

Taiwan's tax system can be roughly divided into direct taxes (on income and land) and indirect taxes (value added tax ("VAT") and the commodity tax). Each tax is regulated by a specific tax law. The MOF is the highest administrative agency in charge of tax matters.²⁰⁰ Local administrative authorities are empowered by the MOF to collect taxes.²⁰¹ This Part will concentrate primarily on personal income tax laws as they apply to foreign residents and visitors in Taiwan.

B. BASIC RESIDENT AND NONRESIDENT TAXATION

A foreign national's visa status has no bearing on his or her tax liability.²⁰² Rather, the total days he or she is present in the ROC during the year determines classification for tax purposes. The cut-offs are 90 days and 183 days.²⁰³

C. RESIDENTS

A foreign national is deemed a resident for taxation purposes if he or she resides in Taiwan for 183 days/or more from January 1 to December 31.²⁰⁴ Residents must file tax returns between February 1 and March 31 of the following calendar year.²⁰⁵ Spouses must file joint returns, although they may choose to compute the tax on their salaries separately within the joint return.²⁰⁶ Foreign residents wishing to leave Taiwan for a short pe-

199. See generally MIN FA TSUNG TSE SHIH HSIN FA [Charter of the Principles of the Civil Code] art. 2 (1989) (Taiwan).

200. TS'AI CHENG PU TSU CHIH FA [Organization Law of the Ministry of Finance] (1991) (Taiwan).

201. SHUI CHUAN CHI CHENG FA [Tax Collection Law] art. 3 (1990) (Taiwan).

202. SO TE SHUI FA [Income Tax Law] art. 7(1) (1989) (Taiwan).

203. *Id.*

204. *Id.*

205. *Id.* art. 71. It is possible to obtain an extension to April 30 if one is unable to meet the March 31 deadline. *Id.* art. 72. Tax returns should be filed with the local tax authority within the district where the foreign national resides. *Id.* art. 71.

206. *Id.* art. 15.

riod of time must first obtain an income tax certificate, which is issued upon proof of payment of the current year's taxes or upon appointment of a tax guarantor who is a resident of Taiwan.²⁰⁷ The certificate is generally valid through the end of the current tax year.²⁰⁸

Taiwan employs a progressive income tax whose levels and rates are determined annually by the Legislative Yuan.²⁰⁹ In 1991 the tax system was comprised of five levels with rates ranging from 6% to 40%.²¹⁰ Residents are taxed on the basis of their taxable income, computed by subtracting standard or itemized deductions and exemptions from total Taiwan source income.²¹¹ Taiwan source income is considered to be all salaries or wages paid for services rendered in Taiwan, including those wages originating from outside of Taiwan, as well as income from rentals, commissions, and practitioners' fees.²¹²

D. 90-TO-182-DAY NONRESIDENTS

A foreign national remaining in Taiwan for more than 90 but less than 183 days a year is subject to a 20% withholding tax on his or her Taiwan source income.²¹³ Dividends from investments in companies limited by shares and approved by the Investment Commission are taxed at 20%,²¹⁴ while dividends from investments in non-FIA companies are taxed at 35%,²¹⁵ as is income from any property transaction.²¹⁶

E. LESS-THAN-90-DAY NONRESIDENTS

Income paid from outside of Taiwan is not considered to be source income for people who remain in Taiwan less than 90 days so long as it is not deducted for tax purposes as an expense by an ROC employer.²¹⁷

207. *Id.* art. 72(1).

208. *Id.*

209. *Id.* art. 5.

210. *See generally* CHUNG HUA MIN KUO PA SHIH NIEN TU SO TE SHUI SHUI LÜ T'IAO LI [ROC Schedule of Income Tax Rules 1991] (Ministry of Fin. 1991) (Taiwan).

211. Income Tax Law, *supra* note 202, art. 13.

212. *Id.* art. 8.

213. *Id.* art. 8(3).

214. KO LEI SO TE K'OU CHIAO LÜ PIAO CHUN [Standard Income Withholding Tax Rates] art. 3. (Ministry of Fin. 1989) (Taiwan).

215. *Id.* art. 3(1).

216. *Id.* art. 6.

217. Income Tax Law, *supra* note 202, art. 8(3).

F. PENALTIES AND APPEALS

Local tax authorities are empowered by the MOF to levy taxes against a foreign national suspected of under-reporting his or her taxable income paid from outside Taiwan.²¹⁸ These levies may be appealed by filing a tax refund form with a certificate, certified by a Certified Public Accountant or by the local tax authorities, that proves the amount of income paid from outside Taiwan.²¹⁹ Foreign nationals may employ the same methods to appeal any other decisions by the local tax authorities regarding the amount of taxes due.²²⁰ Continued disagreements between a foreign national and the local tax authorities may be appealed to the MOF.²²¹ This appeal will be considered so long as at least one-half of the total tax liability assessed by the local authority has been paid.²²²

Penalties for under-reporting taxes may be assessed at up to 200% of the amount of the error.²²³ If the foreign national reports the error, he or she is only liable for the interest on the error.²²⁴ All late filings are penalized at the ROC time deposit prime rate on the amount of tax liability.²²⁵ Penalties for failure to file a tax return may be assessed at 300% of the amount of tax liability.²²⁶ Failure to pay taxes may result in an order restricting a foreign national's ability to leave Taiwan until full payment has been made.²²⁷

X. CONCLUSION

When the Employment Services Law passed in 1992, it aroused considerable concern in the expatriate community in Taiwan. These concerns became the subject of a number of formal and informal discussions and conferences continuing throughout the summer of 1992. The locus of a number of these discussions was the American Chamber of Commerce in Taiwan ("ACCT"), which served as a conduit for the concerns of expatriate professionals. Through the ACCT, pressure was brought to bear on a number of local politicians to expedite the passing of subordinate regulations under the ESL so that foreign workers would have a means of applying for work permits and to lobby

218. *Id.* art. 80.

219. *Id.* art. 83.

220. Tax Collection Law, *supra* note 201, art. 35. (1990) (Taiwan).

221. *Id.* art. 38.

222. *Id.* art. 39(2).

223. Income Tax Law, *supra* note 202, art. 110.

224. Tax Collection Law, *supra* note 201, art. 48(1).

225. *Id.*

226. Income Tax Law, *supra* note 202, art. 110.

227. Tax Collection Law, *supra* note 201, art. 24.

for the leniency of these regulations. The promulgation of a number of the ESL-related regulations discussed in this article is testimony in part to the success of the ACCT lobbying efforts. However, the price of this success has been to bring visas and work permits fully within the scope of trade-related negotiations in Taiwan.

In May 1993, when Taiwan was forced to amend its Copyright Law in response to U.S. Special 301 pressure,²²⁸ Taiwan may have cashed in its new negotiation chip. It was rumored, at the time, that ROC officials were unhappy with the ACCT's weak defense of Taiwan intellectual property protection in the face of U.S. pressure. At least one official known to the authors commented that the ROC had expected more support from the ACCT, especially given the rapid promulgation of regulations under the Employment Services Law. On June 8, 1993, the American Chamber of Commerce in Taipei resigned its membership in the U.S. Chamber of Commerce (COCUSA) effective June 30.²²⁹ In its letter of resignation, the ACCT cited the failure of the United States to consider "local political, social and economic factors" in taking Special 301 action against Taiwan.²³⁰ It stressed the importance of ensuring that "the position of the American Chamber in Taipei be clear, and not confused with the views of COCUSA."²³¹

The message to be taken from the disaffiliation of the American Chamber in Taipei is far from clear. It appears, however, to signal a broadening of the scope of factors that must be considered in formulating a balanced trade policy. This scope now fully encompasses the provision of services as well as the precursive need to clear the hurdles of employment services legislation.

228. See CHUNG HUA MIN KUO CHU TSO CH'UAN FA [Copyright Law of the Republic of China] art. 87 bis (Ministry of Interior 1993) (Taiwan). For the latest version of 301 legislation see Omnibus Trade and Competitiveness Act of 1988, *supra* note 2. Section 301 is the primary extra-GATT market-penetrating measure currently employed by the United States.

229. See Letter from William S. Botwick, President of the American Chamber of Commerce in Taipei, to Dr. Richard Leshner, President of the U.S. Chamber of Commerce (June 8, 1993) (on file with the *UCLA Pac. Basin L.J.*).

230. *Id.*

231. *Id.*