

The Changes and Innovations of the New International Labour Force Law about the Working of Foreigners in Turkey

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International Labour Force Law entries into force on 13 August 2016 and changed the previous act named the Law on Work Permits of Foreigners. This law's aims are to determine and implement the policies on international labour; regulate the principles and procedures on work permit and work permit exemptions given to the foreigners. Foreigners can only work in some professions which are not prohibited. The main rule is that foreigners who want to work at Turkey shall obtain a work permit from the Ministry of Labour and Social Security. But this main rule has an exception that the relevant foreigners can take the work permit exemptions to work. Some applications can be submitted through the authorised agent (this is the new provision brought by the new law). Besides, foreigners working at some services that require vocational qualifications shall obtain the pre-authorisation. For instance, if a foreigner wants to work as an instructor at university, it should be necessary to take this from the Council of Higher Education or if a foreigner wants to work as a teacher at private high school, Ministry of National Education gives this authorisation. This is one of the changes brought with the new law. The other changes are about the types of work permit. The conditions, entitled persons, the terms of durations of the four types of work permit are changed. This Law contains the specific provisions about working of the foreign students and the foreigners being within the scope of international protection. And also this law has specific provisions for the foreigners working in the free zones. The last change that should be mentioned is the implementation of Turquoise Card; the foreigners given this card have also same rights as Turkish citizens. The aim of this is to draw qualified manpower to Turkey.

Keywords: *Foreigners working conditions, work permit, the new law, the Turquoise Card.*

Introduction

The International Labour Force Law, number 6735 entries into force on 13 August 2016 upon its publication in the Official Gazette¹ and repealed the previous act named ‘the Law on Work Permits of Foreigners, number 4817²’. Until today, the implementation regulation has not been enacted but the articles of implementation regulation of previous act which are compatible with the new law have been still applied on related issues.

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¹ Official Gazette, 13.08.2016/29800.

² Official Gazette, 06.03.2003/25040.

This new law becomes the main law to apply the working of foreigners in Turkey and includes articles about the necessity to obtain work permit exemption; types of work permits; conditions, procedure and rejection reasons of application of work permit.

The International Labour Force Law's aims are to determine, implement and observe the international labour force policy and to specify the procedure and principles related to application of work permit and work permit exemptions given to foreigners (article 1).

In this study, we aim to examine the conditions and procedures for working in Turkey within the framework of new law.

Lastly, according to the number of work permit given to foreigners by nationalities in 2015, the first six countries were Georgia (8.524), Ukrainian (6.023), Russian Federation (2.936), China (2.882), Kyrgyzstan (4.274) and Syrian (4.019)³. Mostly, the foreigners worked in the sector of households as employers of domestic personnel (16.824), accommodation (10.500), creative, arts and entertainment activities (3.057), wholesale trade, except of motor vehicles and motorcycles (2.830), civil engineering (2.704), office administrative, office support and other business support activities (2.670), education (2.646), sports activities and amusement and recreation activities (2.016), retail trade, except of motor vehicles and motorcycles (1.847) and construction of buildings (1.719), etc.⁴

Totally, 64.547 foreigners took the work permit in 2015⁵. But, according to the news published in the internet, the number of foreigners applying to the work permit was 69.365; 60.421 foreigners took the work permit in 2016⁶. Mostly, Syrians (10.227), Georgian (6.268), Ukrainian (4.989), Chinese (3.396), Turkoman (2.805), Kyrgyz (2.720), Uzbek (1.965), Russian (1.702)⁷.

The Concept of “Foreigner” in Turkish Law

The International Law Institution used the expression “*foreigners/aliens*” in 1892. According to its expression, “*foreigners/aliens means an individual who does not have the nationality of the State in whose territory that individual is present*”.

This definition is criticised by the doctrine. One of the arguments is that legal persons are not included in the scope of this definition⁸. The other arguments are that this concept excluded the person who is not physically present in the territory of a State but is included within the jurisdiction of that State⁹.

³ Work Permits of Foreigners, pp. 13-14.

⁴ Work Permits of Foreigners, pp. 17-22.

⁵ Work Permits of Foreigners, p. 6.

⁶ <http://www.yabancidanismani.com/etiket/calisma-izni-2016-istatistikleri>.

⁷ <http://www.yabancidanismani.com/etiket/calisma-izni-2016-istatistikleri>.

⁸ Göğür (1979), p.5.

⁹ Aybay(2010), p. 24.

On the other hand, United Nations give the definition of “aliens” in “Draft Articles on the Expulsion of Aliens, with Commentaries 2014”¹⁰. In article 2/b of this draft, “*alien means an individual who does not have the nationality of the State in whose territory that individual is present*”. According to the paragraph 6 of UN Comments, “*this definition covers both “individuals with the nationality of another State and individuals without the nationality of any State”*”. So, stateless persons are included in the scope of this expression.

According to articles of 3/ü of the Law on Foreigners and International Protection and 3/I of the International Labour Force Law, foreigner means the person who does not have citizenship bond with the Republic of Turkey.

The common point of the definitions given by the International Law Institution and the Turkish Laws is “the bond of citizenship”¹¹.

Stateless persons (in other words individuals do not have nationality of any State), individuals under international protection (refugees, conditional refugees, subsidiary protection) and temporary protection and migrants are deemed to be foreigners in Turkey¹².

The Constitutional Basis of Freedom of Work in the Republic of Turkey

According to article 10/1 of 1982 Constitution of the Republic of Turkey¹³, “*everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds.*” Article 12 states that “*everyone possesses inherent fundamental rights and freedoms, which are inviolable and inalienable*”. So, the equality of everyone, such as citizens and foreigners is taken guarantee by the Constitution.

Article 48/1 of the Constitution held that “*everyone has the freedom to work and conclude contracts in the field of his/her choice*” and article 49/1 held that “*everyone has the right and duty to work*”.

All of these articles used the concept of ‘everyone’ included citizens and foreigners. In general, equality and generality system are adopted in Turkish Constitution for whom using the rights. However, citizens and foreigners are not equal for every rights and freedoms. For instance, the right to vote, to be elected and to engage in political activity only belongs to citizens (article 67/1). This situation is not contrary to the international law. Namely article 16 of the Convention for the Protection of Human Rights and Fundamental Freedoms¹⁴ allows states to restrict the political activity of foreigners.

On the other hand, article 16 of the Constitution adopted the general rule. According to this article, “*the fundamental rights and freedoms in respect to*

¹⁰ Adopted by the International Law Commission at its Sixty-Sixth Session in 2014, http://legal.un.org/ilc/texts/instruments/english/commentaries/9_12_2014.pdf, date of Access April 2017.

¹¹ Doğan(2016), p. 2.

¹² Çelikel&Gelgel (2016), p.17-27.

¹³ Adopted on 7 November 1982, Law Number 2709, Official Gazette 9 November 1982/17863.

¹⁴ Adopted in Rome on 4 November 1950; entered into force from 3 September 1953.

aliens may be restricted by law compatible with international law". Foreigners cannot do any business and work in any profession just devoted to Turkish citizens (article 9/ç of the International Labour Force Law).

The Meaning of Work Permit and Work Permit Exemption

Work permit and work permit exemption give the right to work and residence in Turkey (article 3/1/c of International Labour Force Law). There is no need to take extra work permit for the holder of work permit exemption (article 3/1/ç).

The holders of work permit and work permit exemption do not need to obtain residence permit; in other words, work permit and exemption subrogate residence permit (art.12/1).

The Obligation of Taking a Work Permit or Work Permit Exemption

Foreigners who want to work in Turkey should take work permit or work permit exemption from Ministry of Labour and Social Security before starting to work (article 3/1/b); otherwise it is forbidden to work (article 6/2). A foreigner employee who works without work permit or work permit exemption, may be fined as well as his employer by the Ministry of Labour and Social Security and this foreigner shall be expelled by Ministry of Interior (art. 23/3, 23/8).

Foreigners who may be Granted Work Permit Exemption

Some foreigners may be exempted from obtaining work permit. Some of them are:

- Foreigners who are allowed to work without obtaining work permit in bilateral or multilateral agreements or international conventions to which Turkey is a party (art.6/3).
- Foreigners who acquired Turkish citizenship by birth and lost the Turkish citizenship by obtaining renunciation permit (art.6/4).
- Board members, not residing in Turkey, of joint stock companies established in accordance with the Turkish Commercial Law, number 6102 (art.13/7).
- Foreigners working in schools, cultural institutions and religious institutions operating as subsidiaries of foreign diplomatic and consular representatives in Turkey (art. 14/1/a).

The Procedure and Assessment of Application to Work Permit or Work Permit Exemption

The Procedure of Application

The application of work permit and work permit exemption can be made from inside or outside of Turkey (art.7/1, 13/2).

The application from outside of Turkey should be made to the Turkish Embassy or Consulate in foreigner's countries of residence or citizenship. Turkish Embassy or Consulate forwards this application to the Ministry of Labour and Social Security (art.7/1). If foreigner applies for a work permit outside of Turkey, he/she shall submit their passport, photo and a copy of work contract to the Turkish Embassy or Consulate. Turkish Embassy or Consulate shall give her/him a reference number. This employee shall inform about this code to his/her employer. Within ten days, his/her employer shall make an electronic application to the Ministry. For making an electronic application, this employer enters that code and then scans and loads the required documents¹⁵. This process will be completed within thirty days. If the application is approved, the employer and employee are informed by generally e-mail. After taking the work permit, the employee shall enter the country within six months; otherwise this permit will be cancelled (art. 12/2) provided also that the employee's passport should not expire before sixty days after the expiration of the work permit¹⁶.

On the other hand, the application from inside of Turkey shall be directly made to the Ministry of Labour and Social Security. The application shall be electronic.

Once approved the application, employer shall fulfil his/her obligation stipulated by social security legislation however the provisions of international conventions about social security are reserved (art. 22/2).

Foreigners can make their applications of work permit through authorised intermediary. (art.7/2, 13/3).The term of 'authorised intermediary' is not defined in the law. But it can be said that the function of authorised intermediaries will to provide the application made regular and properly. Moreover, qualifications and framework of task of authorised intermediary will be determined by a regulation and this intermediary will be authorised by the Ministry of Labour and Social Security (art. 4/1/j). This is the new provision brought by the new law.

However, foreigners who want to work at free zones should apply for work permit to the Ministry of Economy (art.18/1). The places left outside the customs area are free zones. These zones are established to develop the international trade, export and to promote the investment and production and to speed up the foreign direct investment (article 1 of Free Zone Law, Number

¹⁵ See <http://www.calismaizni.gov.tr/html/yabanci-calisma-izni-basvurusu-nasil-yapilir>; and <https://turkishlaborlaw.com/work-permits-in-turkey>.

¹⁶ For general information, see <http://www.calismaizni.gov.tr/yabancilar>; <https://turkishlaborlaw.com>.

3218¹⁷). The Ministry of Economy shall evaluate the application and inform the Ministry of Labour and Social Security (art.18/1). Ministry of Labour and Social Security shall issue the work permit to these foreigners.

Foreign students studying at undergraduate and graduate level can work after completion of the first year of their studies while foreign students studying at higher education institutions can work after taking a work permit without any time limit (art.19/1,2). The procedure and principals about working of foreign students will be determined by the Ministry of Labour and Social Security upon the opinion of Ministry of Interior (art.19/4). If a foreigner completing his/her higher education in Turkey applies to the work permit within one year from the date of graduation, his/her application shall be evaluated in accordance with the international labour force policy (art.19/4).

To sum up, the discretionary power for obtaining work permit and work permit exemptions belongs to the Ministry of Labour and Social Security.

Extension of Work Permit and Work Permit Exemption

Extension of work permit or work permit exemption shall be made within sixty days from the expiry of the work permit and in all cases the work permit not expire. Otherwise, the demand of extension of work permit and work permit exemption will be rejected (art.7/3).

The Assessment of Application of Work Permit and Work Permit Exemption- the New Criterion is "International Labour Force Policy"

The change criterion for assessment of application of work permit and work permit exemption is that the Ministry of Labour and Social Security shall evaluate this application in accordance with the international labour force policy (art. 7/4, 13/4). If necessary, this Ministry can take an opinion from relevant public institutions and establishments. The Ministry of Labour and Social Security shall set up Foreign Application, Assessment and Observing System to follow and monitor foreigners and the effect of international labour (art.5/1).

International labour force policy shall be determined with taking into consideration the decisions of Advisory Board of International Labour Force; the developments in the working life, sectoral and economic changes, the development plan and programs, the bilateral-multilateral agreements and international conventions to which Turkey is a party, public order, public security and public health (art.4/2). Advisory Board is composed of Minister of Labour and Social Security (the president of Board), Under-secretary of Ministry, Under-secretary of Ministries of European Union, Foreign Affairs, Interior, Economy, Development, Culture and Tourism and Directorate General of International Labour Force (art.4/4).

Lastly, the period of assessment shall be completed within thirty days if all required documents are submitted (art. 7/8).

¹⁷ Official Gazette 15.06.1985/18785.

Pre-authorisation

Pre-authorisation is needed for assessment of foreigners' application working in health and education services (art.8/1). These services are required professional qualification. The competent authorities for giving the pre-authorisation are Ministry of Health for foreigners demanding to work in health service and Ministry of Education for foreigners demanding to work in education service (art.8/2). However, foreigner who demand to work in higher education institution, such as universities or equivalent, Turkish Higher Education Council has the authority to give a pre-authorisation. This arrangement is one of the changes brought by the new law. Previously, just the foreigners wanting to work in pre-school, primary school or secondary school had to obtain pre-authorisation from the Ministry of Education.

The criteria to be taken as basis for the evaluation of the work permit of foreign teachers and foreign academicians, who took the pre-authorisation, are different. Foreigner academicians' applications are not evaluated according to international labour force policy and there is no need to be taken an opinion from relevant public institutions and establishments (art. 8/4).

Types of Work Permit

Actually, there are four types of work permit. But three of them –work permit for a definite period of time, work permit for an indefinite period of time and independent work permit- are held in article 10 entitled “types of work permit”. The other one –exceptional work permit- is arranged in article 16 entitled “exceptions”.

The articles on types of work permit are different from previous relevant articles of Law on Work Permits of Foreigner.

Work Permit for a Definite Period of Time

Work permit for a definite period of time is granted for maximum one year to foreigners to work in a certain place of business or in a certain job owned by a real person, legal entity or public institutions and establishments provided that it does not exceed the duration of foreigners' service contract or the work (art.10/1). After the legal working duration of one year, work permit for a definite period of time may be extended up to two years; after the legal working duration of one year, work permit may be extended up to three years on condition of working with the same employer. If a foreigner applies to extend his/her work permit for working with different employer, his/her application will be evaluated as a new application (art.10/2).

Previously, according to article 5 of Law on Work Permits of Foreigner¹⁸,

¹⁸ For the translation of Law on Work Permit for Foreigners see <https://turkishlaborlaw.com>.

‘after the legal working duration of one year, the duration of the work permit may be extended up to three years on condition of working in the same place of business and in the same job. After the end of three years, duration of the work permit may be extended up to six years, on condition of working in the same profession and at the disposal of a desired employer’.

According to the statistics made by Ministry of Labour and Social Security, the number of work permit for a definite period of time given to foreigners has been increased from 2011 until 2015. Namely, the number of work permit for a definite period of time granted in 2011 was 17. 318 while that number was 64.426 in 2015¹⁹. Besides, the numbers of work permit for a definite period of time granted in 2015 by education level were; 32.626 for primary education, secondary education and high school and 27.778 for bachelor level or equivalent²⁰.

Work Permit for an Indefinite Period of Time

Work permit for an indefinite period of time may be issued to foreigners who own a long-term residence permit²¹ pursuant to Law on Foreigners and International Protection, number 6458, art.42 or have legally worked for minimum eight years (art.10/3). If a foreigner fulfils all these conditions, it does not mean that he/she shall take this type of work permit; the discretionary power whether or not to give this type of work permit belongs to Ministry of Labour and Social Security. A foreigner holding a work permit or an indefinite period of time has same rights with a foreigner holding long-term residence permit. Without prejudice to acquired rights with respect to social security, and subject to conditions stipulated in applicable legislation governing the enjoyment of rights, foreigners holding a work permit for an indefinite period of time shall benefit from the same rights as accorded to Turkish citizens. However, foreigners holding a work permit for an indefinite period of time shall not have the right of vote and to be elected; to be employed in public service and shall not have obligation to perform military service (art.10/4). In contrast to foreigners holding long-term residence permit, foreigners holding work permit for an indefinite period of time have not the right to benefit the customs duties exemption when importing vehicles²².

Previously, according to article 6 of Law on Work Permits of Foreigner,

¹⁹ Work Permits of Foreigners, p. 6.

²⁰ Work Permits of Foreigners, p. 10.

²¹ According to article 42 of Law on Foreigners and International Protection, long term residence permit shall be issued by the governorates, upon approval of the Ministry, to foreigners that have continuously resided in Turkey for at least eight years on a permit or, foreigners that meet the conditions set out by the Migration Policies Board. See the official translation of this law: http://www.goc.gov.tr/files/files/eng_minikanun_5_son.pdf, available on 10 April 2017.

²² Compared article 44 of Law on Foreigners and International Protection with article 10/4 of International Labour Force Law.

*'unless otherwise provided in the bilateral or multilateral agreements to which Turkey is a party, foreigners holding a long-term residence permit or have resided in Turkey uninterruptedly for at least eight years with a resident permit or have legally worked for total eight years may be given work permit for an indefinite period of time'*²³.

According to the statistics made by Ministry of Labour and Social Security, while the number of work permit for an indefinite period of time granted in 2011 was 132, this number was decreased to 117 in 2015²⁴.

Independent Work Permit

Independent work permit grants the right of work on the account of him/her to foreigners (art.3/1/a).

Independent work permit is evaluated in compatible with the international labour force policy. The Ministry take into account several criteria. These are, foreigner's educational level, professional experience, contribution to science and technology and contribution of foreigner's performance and investment to Turkish economy and employment (art.10/7). The independent work permit shall be issued for an indefinite period of time without being subject to time limits envisaged in article 10 (art.10/8).

In the time of enforcement of Law on Work Permits of Foreigner, article 7 held that independent work permit may be granted to foreigners who will work independently, on condition that they have resided in Turkey legally and uninterruptedly for at least five years²⁵.

According to the statistics made by Ministry of Labour and Social Security, while the number of work permit for an independent period of time granted in 2011 was 16, this number was decreased to 4 in 2015²⁶.

Exceptional Work Permit

It does not mean that a foreigner can work without taking work permit. Foreigners shall take work permit. But type of this work permit is exceptional work permit. It will be given exceptions on procedure of application of work permit and the reasons of rejection of application. Exceptional work permit is granted to foreigners who:

- Assessed as qualified labour force due to their educational level, wage, and professional experience, contribution to science and technology and such like qualification²⁷.

²³ The translation of Law on Work Permit for Foreigners, <https://turkishlaborlaw.com>.

²⁴ Work Permits of Foreigners, p.6.

²⁵ The translation of Law on Work Permit for Foreigners, <https://turkishlaborlaw.com>.

²⁶ Work Permits of Foreigners, p. 6.

²⁷ This paragraph is similar with article 5/1/a of Turquoise Card Regulation. The translation of this paragraph is at <https://turkishlaborlaw.com/international-workforce-law>.

- Assessed as qualified investor due to their contribution to science and technology, their level of investment or export value, volume of employment they provide and such like qualification²⁸.
- Employed in a project carried out in Turkey by an employer for a certain period of time.
- Reported to be Turkish noble by the Ministry of Interior and Ministry of Foreign Affairs.
- Have nationality of Turkish Republic of Northern Cyprus.
- Being under international protection (refugees, conditional refugees), temporary protection or stateless person or victims of human trafficking who benefit from victim support process.
- Are married with a Turkish citizen and live in Turkey with their spouses with marriage bond.
- Working without diplomatic immunity in the representatives of foreign states and international organisations in Turkey.
- Who have distinguished themselves with the success at the international level in the field of scientific, cultural, artistic or sport.
- Assessed as cross-border service provider being temporarily and for the purpose of providing any service in Turkey and her/his wage is obtained from a source outside or inside of Turkey (art.3/1/f).

Foreigners being under International Protection

Foreigners demanding international protection but not having this status yet and foreigners having the status of conditional refugees in accordance with the Law on Foreigners and International Protection may apply to obtain work permit or work permit exemption from the date of application to international protection. Besides foreigners being under temporary protection may apply to obtain work permit or work permit exemption after six months from the date on which the temporary protection identity document is issued (art.17/1 of International Labour Force Law).

While Ministry of Labour and Social Security evaluates the work permit or work permit exemption application for foreigners being under international protection, this Ministry shall take the opinion of the Ministry of Interior (art.17/2).

Having a valid work permit or work permit exemption does not give the right to stay in Turkey to foreigners being under international protection and temporary protection (art.17/3) and also the right to work can be restricted in the aspect of province, duration, sector and profession by Ministry of Labour and Social Security. The Ministry of Labour and Social Security shall take an opinion from the Ministry of Interior and shall take account of international labour force policy (art.17/6).

²⁸ This paragraph is similar with article 5/1/b of Turquoise Card Regulation. The translation of this paragraph is at <https://turkishlaborlaw.com/international-workforce-law>.

Refugee means:

*“a person who as a result of events occurring in European countries and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his citizenship and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his former residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”*²⁹ (art.61/1 of Law on Foreigners and International Protection).

Conditional refugees means:

“a person who as a result of events occurring outside European countries and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it” (art.62 of Law on Foreigners and International Protection)³⁰.

Whereas the term of refugees used for foreigners coming from European countries, the term of conditional refugees used for foreigners coming from outside European countries.

On the other hand, according to article 91/1 of Law on Foreigners and International Protection,

*“temporary protection may be provided for foreigners who have been forced to leave their country, cannot return to the country that they have left, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection”*³¹.

According to article 91 of the Law on Foreigners and International Protection and article 7 of the Regulation on Temporary Protection, the conditions for foreigners to benefit from the temporary protection are:

- Foreigners have been forced to their country

²⁹ See the formal translation of Law on Foreigners and International Protection, http://www.goc.gov.tr/files/files/eng_minikanun_5_son.pdf.

³⁰ See the formal translation of Law on Foreigners and International Protection, http://www.goc.gov.tr/files/files/eng_minikanun_5_son.pdf.

³¹ See the formal translation of Law on Foreigners and International Protection, http://www.goc.gov.tr/files/files/eng_minikanun_5_son.pdf.

- This country is not in the Europe
- Foreigners seek immediate and temporary protection
- Foreigners arrive to Turkish borders in a mass influx situation or arrive individually during the mass influx.

For today, especially temporary protection is provided to Syrians in Turkey.

The Innovation: Turquoise Card

The aim of this is to draw qualified manpower to Turkey. It has been arranged in article 11 of International Labour Force Law and Turquoise Card Regulation on 23 March 2017³².

According to article 5/1 of Turquoise Card Regulation³³, Turquoise Card may be granted to foreigners who:

- Are assessed as qualified workforce due to their educational level, wage, professional experience, contribution to science and technology and such like qualifications,
- Are assessed as qualified investor due to their contribution to science and technology, their level of investment or export value, volume of employment they provide and such like qualifications,
- Scientists and researcher who have internationally recognised studies in the academic area and those distinguished in science, industry and technology, areas of which deemed strategic from the point of our country,
- Internationally reputed for their successes in cultural, artistic or sports activities,
- Contributing the recognition or publicity of Turkey or its culture internationally, acting in favour of the matters concerning Turkey's national interests.

Article 19/1 of Turquoise Card Regulation held that Turquoise Card owner shall benefit from the same rights provided by work permit for an indefinite period of time. But we believe that Turquoise Card owner shall obtain exceptional work permit due to the fact that article 11 of International Labour Force Law and article 5 of Turquoise Card Regulation on the foreigners who may be granted Turquoise Card are similar with article 16/a, b, h on the foreigners who may be granted exceptional work permit.

The application for obtaining the Turquoise Card may be made outside of Turkey –for these foreigners shall apply to the Turkish Foreign Representation in their country of citizenship or legal stay- or directly through the Ministry Foreign Application, Assessment and Monitoring System (art. 6/1 of Turquoise Card). Application criteria and documents are determined in the Regulation

³² Official Gazette No.30007/ 14 March 2017.

³³ The translation of Turquoise Card Regulation, <https://turkishlaborlaw.com>.

(art. 8, 9). In general, in the assessment of Turquoise Card application, a point-based system shall be used. A point-based system will be established based on the qualification of foreigners and within the scope of the criteria determined by the Directorate General of International Labour Force in the aspect of international labour force policy (art.9/1, 11/1).

Turquoise Card will be issued provided that its first three years will be transitional period. If the condition of transition period is not cancelled until the end of this period, indefinitely Turquoise Card will be issued (art. 11/2 of International Labour Force Law; art.18 of Turquoise Card Regulation).

However, foreigners being under temporary protection cannot obtain the Turquoise Card (art.11/6 of International Labour Force Law).

Finally, Turquoise Card owners have no obligation to fulfil compulsory military service and have no right to elect, be elected and enter into public service; these owners are subject to provisions regarding the social security without prejudice to acquired rights. Moreover, provided that there is no obstacle as regards national security and public order, Turquoise Card owners and their spouses and minor or dependent foreign child of their or spouses may be acquired Turkish citizenship upon a proposal by the Ministry of Interior and decision of Council of Ministers (article 12/1/b of Turkish Citizenship Law, Number 5901³⁴).

Rejection of Application of Work Permit and Work Permit Exemption

According to article 9 of International Labour Force Law, the application for work permit shall be rejected when:

- a) the application does not comply with the international labour force policy;
- b) the application bases on the false and misleading document;
- c) the application relates to foreigners, whose reason for being employed is found insufficient;
- d) the application is for the occupation or profession that confined exclusively to Turkish citizens in other laws;
- e) the applicant does not have the necessary quality and expertise;
- f) the application cannot meet the assessment criteria prepared by the Ministry of Labour and Social Security;
- g) the application relates to foreigners notified by the Ministry of Interior as being in the scope of Law on Foreigners and International Protection, No. 6418, article 7 on foreigners who shall be refused to enter into Turkey; article 15 on foreigners who shall be refused taking a visa; article 54 on foreigners who are subject to a removal decision.
- h) The application is about the foreigners whose working in Turkey objectionable in the aspect of public order, public security or public health;

³⁴ Official Gazette 12.06.2009/27256.

- i) Except the favourable opinion of Ministry of Foreign Affairs, the applicant has the citizen of a country that is not recognised by or has no diplomatic relations with Republic of Turkey;
- j) The applicant is not made or completed within the legal application period of time.

Article 9/1/e does not apply to the assessment of the applications for work permit of foreigners receiving the pre-authorisation to work at health services and pre-school, primary school or secondary school (art.8/3). On the other hand, article 9/1/g, h, i does not apply to the assessment of the application for work permit of foreigners receiving the pre-authorisation to work at higher education institutions such as universities or equivalent (art.8/4) and demanding to work in the free zones (art.18/2).

Occupation and Profession Limited to Turkish Citizens

Foreigner' application is for the occupation or profession that confined exclusively to Turkish citizens in other laws, this application shall be rejected (art. 9/ç). These professions are³⁵:

- Customs consultancy
- Nursing care, dental surgery, veterinary, pharmaceuticals, director in charge in private hospital
- Attorney ship, notarial service
- Security officer in public and private corporation
- Exportation of fish, oysters, mussels, sponges, pearls and coral; diving; captainship, piloting within territorial waters
- Tourist guiding.

Conclusion

The most important arrangements brought by new Law are, the acceptance of new criterion –International Labour Force Policy- for assessment of application of work permit and work permit exemption and Turquoise Card. On the other hand, this new law is more responsive to daily needs in the aspect of working of foreigners being under international protection and temporary protection. This new law, different form the previous law, has specific provisions for working in some sectors and professional fields.

³⁵ <http://www.calismaizni.gov.tr/yabancilar/yabancilara-yasak-meslekler>.

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