

Work Permits of Foreigners in Turkey and China

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Introduction

After deciding come to Turkey or China with the aim of working, foreigners¹ need to deal with the Turkish or Chinese authorities to obtain a work permit. Every foreigner who works in Turkey and China is required to have a valid work permit. Otherwise, a foreigner cannot legally work in either country². If a foreigner works illegally, the consequence will be penalties.

The aim of this study is to examine issues relating to work permits in Turkish and Chinese Law. This study will analyse the constitutional aspects of work permits for foreigners in both countries. Laws governing work permits in Turkey and China are another key issue that will be examined. In order to explain work permits, the study raises the following questions: What types of work permit procedures exist in the mentioned jurisdictions? What kind of permission is needed in order to work in these two countries? Is a work permit sufficient authorization for a foreigner to work? "Can foreigners work in any field or profession?"³

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¹ Who is a "foreigner"? The term "foreigner" will be used with some frequency throughout this article and needs to be defined. In Turkish Law, the Law on the Work Permit for Foreigners (Law No. 4817) defines the category of "foreigner". In accordance with Article 3, a "foreigner" is not a Turkish Citizen, as per the Turkish Citizenship Act. The Turkish Citizenship Act (No. 5901) defines "foreigners" as persons not in the bond of citizenship with the Republic of Turkey. See Art. 3/1(d) of the Turkish Citizenship Act. In Chinese Law, the term "foreigner" shall refer a person who does not have Chinese citizenship. See: Article 2 of the Rules for the Administration of Employment of Foreigners in China, http://www.jshrss.gov.cn/jyzjy/rjyy/zcfg/200710/t20071015_12794.htm (10 June 2012).

² Tian, J., "A New View on the Legal Nature of the Work Permit for Foreigners Working in China", in A Blog about China Civil and Commercial Laws Devoted for SMEs and Expats in Shanghai, <http://www.sinoblwg.com/?p=324>, (6 June 2012).

³ Tiryakiođlu, B., "Aliens' Right to Work under Turkish Law", <http://www.bilgintiryakioglu.av.tr/workpermit.html>(5 June 2012).

We will examine the both countries' constitutions as our first primary source.

I. Constitutional Aspects

The freedom to work is one of the fundamental human rights assured to each individual⁴. This basic right is considered to be among the public rights whose public law character outweighs its private law nature⁵. Pursuant to Turkish Law, Turkish citizens and foreigners have equal rights to the extent that fundamental rights are applied to them, with the exception of political rights⁶. However, the absolute equality between Turkish citizens and foreigners regarding the implementation of the right to work is not applicable, as it is subject to some restrictions in accordance with public safety, public welfare, and public health considerations.

Analysing the Constitution of the Republic of Turkey⁷, we can easily see that citizens and non-citizens have equal rights under the constitution. Article 10, which establishes that all individuals are equal without discrimination before the rule of law, is one of the fundamental norms enshrined in the constitution⁸.

Another significant regulatory element in the constitution is Article 48⁹, which governs the freedom of labour and freedom of contract, setting forth that everyone has the freedom to work and conclude contracts in the field of his choice. The establishment of private enterprises is free.

The principle of equality is broadly expressed in Article 10 of the constitution, yet this principle is narrowly referred to in Article 48 as the free-

⁴ Çelikel, A./Öztekin-Gelgel, G., *Yabancılar Hukuku*, 18th ed., Istanbul 2012, p. 125; Tiryakioğlu, B., "Türk Hukukunda Yabancıların Oturma ve Çalışma Hakkı", *Vatandaşlık ve Yabancılar Hukuku Alanında Gelişmeler (Bilimsel Toplantı)*, Istanbul, 24-25 September 1998, Conference Proceeding Book, Ankara, 1998, p. 165 (hereinafter referred to as Tiryakioğlu, Work Permit); Ekşi, N., *Yabancılar Hukukuna İlişkin Temel Konular*, 3rd ed., Istanbul, 2011, p. 85-86; Aybay, R., *Yabancılar Hukuku*, 2nd ed., Istanbul, 2007, p. 157-158.

⁵ Çelikel/Öztekin-Gelgel, p. 125-126; Tiryakioğlu, Work Permit, p. 165.

⁶ Tiryakioğlu, Work Permit, p. 149.

⁷ The Constitution of the Republic of Turkey numbered 2709 was adopted on 18 October 1982. Official Gazette No. 17863 Duplicated, Date: 9 November 1982. See: http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf (4 June 2012).

⁸ Equality before the Law: Art.10. "All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations." See: Ibid.

⁹ Freedom to Work and Conclude Contracts: Art. 48. "Everyone has the freedom to work and conclude contracts in the field of his/her choice. Establishment of private enterprises is free." See: Ibid.

dom of work and labour. This article is complemented by Articles 49 and 50. Article 49¹⁰ states that everyone has the right and duty to work, and Article 50¹¹ indicates that no one shall be required to perform work unsuited to his age, sex, and capacity.

The equality between citizens and foreigners may be limited by Article 16¹² of the Turkish constitution. Pursuant to Article 16, the fundamental rights and freedoms of foreigners may be restricted by law in a manner consistent with international law¹³. In this respect, Article 16 does, in fact, assure the protection of foreigners' fundamental rights and freedoms, due to the fact that legislators may only limit the fundamental rights of aliens in accordance with international law. For instance, the government may not differentiate between white and black, or tall/athletic and short/feeble aliens in terms of priority for job offers. In short, aliens may not be discriminated against based on their religion, race, sex, etc. However, restrictions, particularly regarding immigration and work permit procedures, may be imposed by the State. These restrictions shall be based on legal statutes and they must not solely be based on secondary regulations. In other words, legal restrictions may either be based on primary legislation or secondary legislation (regulations), as long as they are implemented on a legal basis.

In short, the Turkish constitution sets forth the principle of equality between citizens and non-citizens in Articles 10, 48, 49, and 50. Furthermore, Article 16 also gives assurance to aliens concerning the limitation of fundamental rights in accordance with international law.

Looking at the aforementioned constitutional regulations, aliens residing in Turkey may consider Turkey a convenient place to seek employment at any institution they like. However, the situation is not as easy as it seems, because legislators broadly interpret Article 16 to the extent that the government may apply legal restrictions with a number of laws and acts, such as the Law on the Work Permit for Foreigners (No. 4817)¹⁴ and the Foreign Direct Investment Act (No. 4875)¹⁵, both of which entered into force in 2003.

¹⁰ Right and Duty to Work: Art. 49. (As amended on 17 October 2001.)

"Everyone has the right and duty to work...."See: Ibid.

¹¹ Working Conditions and Right to Rest and Leisure: Art. 50. "No one shall be required to perform work unsuited to his age, sex, and capacity."See: Ibid.

¹² Status of Foreigners: Art.16: "The fundamental rights and freedoms of foreigners may be restricted by law in a manner consistent with international law."See: Ibid.

¹³ Tiryakioğlu, <http://www.bilgintiryakioglu.av.tr/workpermit.html> (5 June 2012).

¹⁴ The Law on the Work Permit for Foreigners numbered 4817 was adopted on 27 February 2003. Official Gazette No. 25040, Date: 6 March 2003.

¹⁵ Official Gazette No. 25141, Date: 17 June 2003.

In order to understand both Turkey and China's position regarding work permits for foreigners, we need to look at the Constitution of the People's Republic of China as well. Only when readers examine both constitutions' provisions regarding foreign workers together will the author's objective be fully achieved: to offer a comparison of work permits for foreigners in both countries.

As far as this writer is aware, there is no article in the Constitution of the People's Republic of China to regulate foreign workers or work permits for foreigners. In other words, the Chinese constitution does not regulate foreign workers. In accordance with Article 42 of China's constitution¹⁶, citizens of the People's Republic of China have the right as well as the duty to work. China's constitution does not mention the right of foreigners to work. The State encourages its citizens to take part in voluntary labour and vocational training. Similarly, in Article 47¹⁷, the constitution encourages the citizens of China to engage in scientific research, artistic creation, etc.

It would not be inaccurate to say that the Constitution of the Republic of Turkey seems to have a more liberal system with regard to the right to work for foreigners compared to the Constitution of the People's Republic of China. In the Turkish constitution, everyone has the right to work in Turkey. This rule establishes equity between citizens and foreigners.

II. Law Regarding Work Permits in Turkey

In Turkish Law, as mentioned above, there are two main pieces of legislation which regulate work permits for foreigners. The first is the Law on the Work Permit for Foreigners (LWPF) (Law No. 4817). The second is the Foreign Direct Investment Law (FDIL) (Law No. 4875). FDIL itself does not provide enough guidance on how to obtain work permits for foreigners. However, the Regulation on the Employment of Foreign Nationality Staff in Foreign Direct Investment¹⁸ prepared based upon Article 3/g of FDIL and Article 23 of LWPF regulates in detail how to obtain work permits for cer-

¹⁶ Art. 42. "Citizens of the People's Republic of China have the right as well as the duty to work.

...Work is the glorious duty of every able-bodied citizen.The state encourages citizens to take part in voluntary labour. The state provides necessary vocational training to citizens before they are employed." See <http://www.hkhrm.org.hk/english/law/const03.html>, (1 June 2012).

¹⁷ Art.47. "Citizens of the People's Republic of China have the freedom to engage in scientific research, literary and artistic creation and other cultural pursuits." See <http://www.hkhrm.org.hk/english/law/const03.html>, (1 June 2012).

¹⁸ Official Gazette No. 25214, Date: 29 August 2003.

tain foreigners. The Regulation came into force in 2003. In order to obtain a work permit under both laws, certain conditions must be fulfilled. Even though there are two different laws regulating work permits for foreigners, work permits are issued to foreigners by one institution, the Ministry of Labour and Social Security.

Let's start with the Law on the Work Permit for Foreigners (Law No. 4817).

A. Law on the Work Permit for Foreigners (Law No. 4817)

LWPF sets forth the requirements for foreigners to obtain a work permit. Foreigners who want to work in Turkey have to obtain a work permit, as in China. In accordance with Article 12 of LWPF, a work permit shall only be effective upon a relevant employment visa and a residence permit having been obtained. According to said law, foreigners who intend to work and live in Turkey have to obtain a work permit, an employment visa¹⁹, and a residence permit. Having only a residence permit or an employment visa is not enough to work in Turkey legally²⁰.

A work permit application can be made either abroad or within Turkey. For foreigners residing outside Turkey, the application for a work permit should be made from the country of residence or the country of the foreigner's citizenship – that is, via the Turkish Consulate or Embassy. If foreigners hold a valid residence permit (except for residence permits for the purpose of study²¹) for Turkey that is valid for at least six months, then they can apply to the Ministry of Labour and Social Security directly for a work permit. "Applications for extension of a given work permit can be made in Turkey if accompanied by a valid residence permit"²².

"It is important to know that [the] employment visa procedure is double application in nature, that is while the employee puts a claim for"²³an employment visa from his country of residence via the Turkish Consulate, "the

¹⁹ Tourist visas, student visas, or employment visas themselves do not give the right to commence a job in Turkey.

²⁰ Çelikel/Öztekin-Gelgel, p. 131; Çalışkan, Y., "Mülteci ve Sığınmacıların Türkiye'de Çalışma ve Sosyal Güvenlik Hakları", *Journal of Law Faculty, Istanbul Kültür University* (2009), Y.8, V.8, Issue 2, p. 15.

²¹ For further details on residence permits and work permits for foreign students who come to Turkey to study, see: Sargın, F., "Türkiye'de Öğrenim Gören Yabancı Öğrencilerin Türkiye'ye Giriş, Türkiye'de İkamet Etme ve Çalışma Hakları", *MHB*, Y. 17-18, V.1-2, *Essays in Honour of Yılmaz Altuğ*, p. 317-354.

²² http://www.turkishconsulate.org.uk/en/work_visa.asp (1 June 2012).

²³ *Ibid.*

employer makes a simultaneous application in Turkey by submitting a file to...the Ministry of Labour and Social Security, Department for Work Permits for foreigners. There should not be more than [10] working days between the employee's and the employer's applications.²⁴

If all the necessary documents are submitted²⁵, the issuing process of the work permit will take around 30 days. After the work permit is issued by the Ministry of Labour and Social Security, Department of Work Permits, the foreigner must apply for an employment visa within 90 days at most. After obtaining a work permit and an employment visa, a foreigner who intends to work in Turkey has to apply for a residence permit through the Foreigners' Branch of the Local Police Department within 30 days of his/her arrival in Turkey and prior to the commencement of his/her work.

LWPF (Law No. 4817) introduces four types of work permits:

1. Work permits for a definite period of time
2. Work permits for an indefinite period of time
3. Independent work permits
4. Exceptional work permits

Let's look closely at the different types of work permits.

1. Work Permits for a Definite Period of Time

In accordance with Article 5 of LWPF, unless otherwise regulated by bilateral or multilateral agreements to which Turkey is a party, a work permit is granted for a maximum of a year. After a foreigner works legally in Turkey for one year, the validity of his/her work permit may be extended up to three years under the condition of working at the same workplace and in the same profession. At the end of this three-year period, the work permit may be extended up to six years under the condition of working at any workplace and in the same profession. This article also regulates work permits for a

²⁴ http://www.turkishconsulate.org.uk/en/work_visa.asp (1 June 2012). "If you apply for a work permit outside of Turkey, you need to sign a work agreement with an employer and submit it to the consulate along with your application. The consulate examines your documents and gives you a number. You inform your employer of this number, then your employer makes an online application to the ministry within 10 days of the number being assigned by the consulate." Çektir, B., "Getting a Turkish Work Permit", 8 May 2012, Today's Zaman, <http://www.todayszaman.com/columnist-279769-getting-a-turkish-work-permit.html> (4 June 2012).

²⁵ Foreigners residing outside Turkey must provide the documents mentioned below for their application;

1. The applicant's passport (with Turkish translation)
2. 6 passport-size photos
3. A valid work contract (with Turkish translation)

definite period of time for the spouse and children of a foreigner who obtained a work permit. The spouse or children who came together with the foreigner or came after the foreigner may get a work permit for a definite period of time under the condition of having lived in Turkey legally and without interruption for at least five years. One may reasonably argue that “this provision leads to unfair consequences,”²⁶ since it means that spouses and children are not entitled to obtain a work permit until they have lived in Turkey for five years²⁷. This article also gives authority to the Ministry of Labour and Social Security in order to expand or restrict the geographical area for which the work permit is valid, for a definite period of time.

2. Work Permits for an Indefinite Period of Time

Pursuant to Article 6 of LWPF, unless otherwise regulated by international agreements to which Turkey is a party, a foreigner who lives in Turkey legally and without interruption for at least eight years, or alternatively, a foreigner who has worked legally for a period of six years, may be eligible to obtain a work permit for an indefinite period of time. However, the conditions for obtaining a work permit for an indefinite period of time are completely different from those required to obtain a work permit for a definite period of time. The Ministry of Labour and Social Security does not have to consider labour market conditions and the conditions of working life when issuing a work permit for an indefinite period of time. The ministry also does not have to put any limit on the type of enterprise, profession, and geographical area for the holder of the work permit. On the other hand, in practice, a work permit for an indefinite period of time “is not really indefinite since Turkish law does not accept an indefinite residence permit”²⁸. As mentioned above, in order to work in Turkey legally, a work permit shall only be effective upon an employment visa and a valid residence permit having been obtained.

3. Independent Work Permits

As specified in Article 7 of LWPF, an independent work permit may be granted to a foreigner who wants to work independently and has resided in Turkey legally and without interruption for at least five years. The conditions set forth in Article 7 create major difficulties for micro entrepreneurs in particular. If a foreigner wants to come to Turkey to open a small shop, he cannot

²⁶ Tiryakiođlu, <http://www.bilgintiryakioglu.av.tr/workpermit.html>, (5 June 2012).

²⁷ Ibid.

²⁸ Ibid.

run the shop until he obtains an independent work permit, and he has to wait for at least five years to be granted a work permit.

4. Exceptional Work Permits

The main characteristic of this type of work permit is that it is not restricted by any time limits specified by the LWPF. This is why this is called an exceptional work permit. This type of work permit may be granted for certain categories of foreigners under exceptional circumstances. This work permit may be given to foreigners who have married a Turkish citizen and live together with their spouse under the union of marriage in Turkey; citizens of EU countries and their spouses and children; immigrants and refugees under Law No. 2510; foreigners who work at foreign consulates or embassies; etc.²⁹

²⁹ Article 8 of LWPF: Unless otherwise provided by bilateral or multilateral agreements to which Turkey is a party,
Without being contingent upon the time periods specified in this Law, working permission may be given:

- a) To foreigners who are married to a Turkish citizen and live in Turkey with their spouses within the union of marriage, or to foreigners who have settled in Turkey after their marriage has ended after a union of at least three years, and to the children thereof from a spouse who is a Turkish citizen;
- b) To those who have lost their Turkish citizenship within the framework of the 19th, 27th, and 28th articles of Turkish Citizenship Law number 403 [Law number 403 has been abrogated; please consult Turkish Citizenship Law number 5901, which replaced it] and their subordinates;
- c) To foreigners who were born in Turkey or have come to Turkey before reaching their majority according to their national laws, or if they don't have a nation, according to Turkish legislation; and who have graduated from vocational school, high school, or university in Turkey;
- d) To foreigners who are accepted as an immigrant, refugee, or nomad according to Residence Law number 2510;
- e) To citizens of European Union member countries and to the spouses and children thereof who are not citizens of European Union member countries;
- f) To those who are working in the service of diplomats and administrative and technical personnel who are commissioned in foreign governments' embassies and consulates in Turkey and in the representations of international organisations, and to the spouses and children of diplomats and administrative and technical personnel commissioned in embassies, consulates, and representations of international organisation in Turkey, provided that they are within the framework of the principle of reciprocity and they are restricted by the duration of the commission;
- g) To foreigners who will temporarily come to Turkey for a period of over one month with the aim of scientific and cultural activities, and for a period of over four months with the aim of sports activities;
- h) To foreigners in the position of key personnel employed in the purchase of goods and services; having work making or operating a facility; or with contract or tendering procedures by the Ministries and public institutions and establishments authorized by law. For English translation of Article 8, see also: http://www.yased.org.tr/webportal/English/yasal_duzenlemeler/kanunlar/lawonthe/Pages/LawOnthe.aspx (4 June 2012).

B. Regulation on the Employment of Foreign Personnel in Foreign Direct Investment

The purpose of this Regulation is to determine the procedures and principles related to work permits for foreigners who wish to work in a company, a branch, or a liaison office in Turkey within the scope of the Law on Foreign Direct Investment (No. 4875). This Regulation shall be applicable to “foreign key personal” who work in FDIs and liaison offices that fulfil certain conditions. This regulation shall not be applicable to a foreign worker who is not considered “key personnel” in such an establishment. This brings us to the question of who is defined as “key personnel”? We need to examine the definition of key personnel proffered by Article 4 of the Regulation on the Employment of Foreign Personnel in FDIs.

In order to be considered “key personnel” within the scope of this Regulation, a foreign worker shall be an employee of a company established in Turkey as a legal entity and fulfilling at least one of the following conditions:

a) A person who holds at least one of the following positions or who is in charge of at least one of the following tasks, such as a shareholder, a chairman of the board of directors, a member of the board of directors, a general manager, a deputy general manager, a company manager, a deputy company manager, and similar positions.

1. Working in a company’s senior management position or executive position,

2. Managing all or a part of a company,

3. Supervising or controlling the work of auditors, administrative staff, or technical staff,

4. Recruiting new employees to the company or dismissing employees from the company.

b) A person who has fundamental knowledge and expertise regarding a company’s services, research equipment, and techniques or a person who has essential knowledge of a company’s administration.

c) A person who has obtained authorisation through a power of attorney in a liaison office (at most one person).

Moreover, the Regulation shall only be applicable to foreign key personnel employed in FDIs and liaison offices that fulfil certain conditions. If the foreign investment does not fulfil the stated conditions, then a prospective foreign worker who needs to obtain a work permit should apply for it

through the LWPF (Law No. 4817). In this case, we need to clarify what the conditions regulating these foreign direct investments are. The criteria for these investments have been defined in Article 4 of the Regulation. In accordance with Article 4, in order for employees to obtain a work permit under the Regulation, the foreign investment must fall under the framework of FDI Law No. 4875 and at least one of these conditions must be fulfilled by the company or the liaison office:

a) The turnover of the company or the branch in the last year must be at least 74.1³⁰ million Turkish Liras, provided that the total capital share owned by the foreign shareholders is at least 985.799 Turkish Liras.

b) The amount of exports realised by the company or the branch in the last year must be at least 1 million USD, provided that the total capital share owned by the foreign shareholders is at least 985.799 Turkish Liras.

c) At least 250 personnel registered with the Social Security Institution must have been employed in the company or the branch in the last year, provided that the total capital share owned by foreign shareholders is at least 985.799 Turkish Liras.

d) In the event that the company or the branch is to make investments, the minimum fixed investment amount shall be at least 24.7 million Turkish Liras.

e) The company should have at least one other foreign direct investment in another country than the country the main company is located in.

In accordance with Article 13 of the Regulation, provisions stipulated in Article 14/1(b) of LWPF shall not be applicable to key personnel to be employed within the scope of the Regulation. This means that for a period of four weeks, the Ministry of Labour and Social Security will not consider whether or not there is a person in Turkey with the same qualifications to perform the job in question. Also in accordance with Article 14 of the Regulation, Article 13/1 of LWPF shall not be applicable to key foreign personnel to be employed in foreign direct investments that fulfil the stated conditions. In other words, even if key foreign personnel are to be employed by the eligible FDI in any position which is outside the foreign employee's expertise, the Ministry of Labour and Social Security shall not obtain any assessment regarding the competence of the personnel from the relevant authorities.

³⁰ For current and updated the figures, see:http://www.csgeb.gov.tr/csgebPortal/yabancilar.portal?page=yatirim_kriter (4 June 2012).

C. Foreigners Cannot Work in Any Field or Profession

Foreigners cannot work every field or every profession in Turkey; they can only work in a field or a profession that is not forbidden to them³¹. Therefore, foreigners cannot apply for a work permit for any occupation or any field prohibited for foreigners, such as a midwife, veterinarian, pharmacist, lawyer, notary, judge or prosecutor³².

III. A Statistical Look at Work Permits in Turkey

It would be a good idea to examine work permits for foreigners from an empirical perspective and in a systematic way. The empirical analysis presented in this presentation is based on the Ministry of Labour and Social Security's Labour Statistics from 2011. The following table shows how many work permits of each type have been given to foreigners in recent years.

Years	Type of Permission				Total
	Definite	Extension	Indefinite	Independent	
2003	509	295	50	1	855
2004	4,843	2,222	226	11	7,302
2005	5,484	3,764	159	31	9,438
2006	6,691	3,774	120	18	10,603
2007	5,816	3,007	96	11	8,930
2008	6,999	3,583	107	16	10,705
2009	9,238	4,693	83	9	14,023
2010	9,338	4,760	101	2	14,201
2011	11,634	5,073	161	22	16,890

Table 1: Numbers of work permits given to foreigners by type and year
Source: Turkish Ministry of Labour and Social Security³³

The data provided here belongs to the period from the second half of 2003 (when the Law on the Work Permit for Foreigners entered into force) through 2011. In this statistical data, exceptional work permits have not

³¹ See: Article 7 and 15 of the Law of Foreigners' Residence and Travel in Turkey. Official Gazette No. 7564, Date: 24 July 1950.

³² Çelikel, A., "Türkiye'de Yabancıların Çalışma İzni ve Ulusal Programda Öngörülen Düzenleme", MHB (2002), V. 22, Issue 1-2, (Essays in Honour of Prof. Dr. Ergin Nomer), p. 112-113; Çelikel/Öztekin-Gelgel, p.144-149; Ekşi, p. 93-105; Çalışkan, p.16.

³³ Republic of Turkey, Ministry of Labour and Social Security, Labour Statistics 2011, p. 146, http://www.cs.gb.gov.tr/cs.gbPortal/ShowProperty/WLP%20Repository/cs.gb/dosyalar/istatistikler/calisma_hayati_2011 (4 September 2012).

been considered. The other types of work permits regulated by LWPF have been taken into consideration.

Table 1 shows that the total number of work permits issued by the Ministry of Labour and Social Security has been gradually increasing each year (apart from 2007). If we compare the numbers of different types of work permits granted each year, we can see that there are far fewer independent work permits and work permits for an indefinite period than work permits issued for a definite period of time. Probably the reason for this result is the difficulty of obtaining independent work permits and work permits for an indefinite period of time. As mentioned above, the time period required for obtaining both types of work permits is very long, especially given that foreigners who want to be granted these types of work permits have to live in Turkey legally and without interruption. "Without interruption" means the foreigner should not leave Turkey for more than six months in the period of time specified in Article 6 and 7 of LWPF. This is not an easy thing to do. The statistics are consistent with Tiryakioğlu's view. As Tiryakioğlu states, independent work permits "...lead to unfair consequences since foreigners are required to wait 5 years to have the right to work independently"³⁴.

Let's move on to look at the number of work permits granted to foreigners in 2011 by type of permission and nationality of applicant.

Nationality	Type of Permission				Total
	Definite	Extension	Indefinite	Independent	
People's Republic of China	966	677	5	0	1,648
Russian Federation	1,270	158	4	0	1,432
Ukraine	1,084	188	6	0	1,278
United States of America	621	334	5	0	960
England	411	272	16	0	699
Germany	405	267	11	0	683
France	324	287	35	0	646
Indonesia	410	118	0	0	528

Table 2: Numbers of work permits given to foreigners in 2011 by type and nationality³⁵

Source: Turkish Ministry of Labour and Social Security³⁶

³⁴ Tiryakioğlu, <http://www.bilgintiryakioglu.av.tr/workpermit.html> (5 June 2012).

³⁵ The original table provided by the Ministry of Labour is much longer and includes other countries. The author has only considered countries whose total number of work permits granted is more than 500.

Table 2 shows that the highest number of work permits in 2011 was granted to citizens of the People's Republic of China. The total figure for this country is 1,648 work permits. The author is of the view that there is a correlation between the number of work permits given and the population of different countries. Also, since Table 2 does not show any independent work permits granted, we can reach the same conclusion here as that stated above, regarding the difficulty of getting this type of work permit. In addition, only a limited number of work permits were granted for an indefinite time period. The author believes that the time period required to live in Turkey in order to apply for these types of work permits is too long, and that the condition of remaining in Turkey "without interruption" is not easy to fulfil.

IV. Foreign Investors Face Some Problems

The Law on the Work Permit for Foreigners (No. 4817) and the Foreign Direct Investment Act (No. 4875) both entered into force in 2003. Since the Turkish market has seen an exceptionally high number of foreign investors as well as foreign workers in the past 10 years, these regulations have begun to be inadequate in the face of recent developments.

International investors may face problems with work permits in conducting business transactions in Turkey. For instance, companies with headquarters in their home countries may be involved in business transactions in Turkey, and may lawfully enter into business operations without having any branch in Turkey. However, these companies may not employ any foreign personnel under the company's name due to the fact that Laws No. 4817 and No. 4875 do not permit companies to recruit foreign employees without obtaining company tax and social security registrations based in Turkey. When applying for a work permit, foreigners are required to submit a trade registry gazette, tax certificate, social security contributions report, and balance sheet approved by the tax office, all of which may only be obtained from companies officially established in Turkey.

To give an example of this, let's assume that there is a thermal power plant project undertaken by a Chinese company which intends to employ Chinese construction workers. In this case, the Chinese company may not employ any Chinese workers in Turkey prior to establishing a company

³⁶ See: Republic of Turkey, Ministry of Labour and Social Security, Labour Statistics 2011, p. 153-154, http://www.csgb.gov.tr/csgbPortal/ShowProperty/WLP%20Repository/csgb/dosyalar/istatistikler/calisma_hayati_2011 (4 September 2012).

branch, because it will not be able obtain work permits for its employees. In these situations, foreign companies generally go through a partner company that is licensed and established in Turkey in order to apply for work permits for their intended employees. Although it is not considered to be a rationale solution, this method is used to overcome the deficiencies of the law. Here, partner companies employing foreign employees will be under strict scrutiny by government officers from the Ministry of Labour and Social Security as well as auditors from the Social Security Administration. Auditors from the Ministry of Finance or police officers are also authorised and required to report any inconsistencies regarding illegal employment to the Ministry of Labour and Social Security. During these investigations, if there are any omissions or errors found with regards to foreigners' work permits, administrative penalties will be directly applied to the Turkish company employing illegal workers rather than to the company located abroad³⁷. In addition, the company applying for the work permit will also face wages and compensation claims, social security contributions, or tax debts claims.

Another example would be a company that was established abroad with a branch based in Turkey. This company may undertake business transactions and employ foreign employees in Turkey through this branch. However, according to the current legal regulations, the workers shall not be granted work permits if the parent company makes employment contracts directly with the employees (instead of through a branch based in Turkey).

The final example would be a parent company which considers opening a branch and employing a coordinator and an accountant, yet the branch may still not employ the intended foreign employees without em-

³⁷ In Turkish Law, in accordance with Article 21 of LWPF, the applicable administrative fines for 2012 areas follows: "For employers or employer representatives who employ foreigners without a work permit: 6,795 TL for each foreigner; For foreigners who work without a work permit: 679 TL; For foreigners who work independently without a work permit: 2,718 TL; In case of repetition, administrative fines will be doubled." See: <http://www.csgb.gov.tr/csgbPortal/yabancilar/eng/index.html> (7 June 2012). In Chinese Law, in the case of any situation involving an illegal foreign worker (without a valid work permit), there are two consequences. First, penalties might be imposed by the local labour department or local police. Second, the relationship between the foreign worker and employer is not considered as an employment contract anymore but is considered an independent contractor relationship. This means that a foreign worker cannot get the benefits provided by labour laws, such as severance pay, annual leave, etc. Furthermore, if any disputes arise between the parties, such disputes are not considered labour disputes. See Tian, <http://www.sinoblawg.com/?p=324> (6 June 2012).

ploying at least five Turkish employees for each foreign worker in the branch, in accordance with current regulations³⁸. Even though this will encourage foreign companies to employ Turkish citizens and will help develop the Turkish workforce, it will also create a burden on the foreign companies, if/when they consider hiring foreign employees.

V. Procedures for Applying for a Work Permit in China

China has the world's largest population and therefore it has the largest workforce in the world. China has to create enough jobs for its own people first and then let foreigners work in China. As a result, China does not permit foreigners to work in China freely. There are some restrictions in order to work as a foreign worker. China has accepted a licensing system to govern the working status of foreigners in China.

In 1996, China issued the Rules for the Administration of Employment of Foreigners (RAEF). The Ministry of Labour, Ministry of Public Security, Ministry of Foreign Affairs, and the Ministry of Foreign Trade and Economic Cooperation promulgated the Rules together³⁹.

According to the Rules, there are four main steps to work in China as a foreigner:

1. Obtaining an employment license,
2. Obtaining a Z visa,
3. Obtaining a work permit,
4. Obtaining a residence permit.

The employer should apply to the Municipal Labour and Social Security Bureau of Employment Affairs with various documents⁴⁰ in order to

³⁸ "...The provision of five Turkish citizens does not apply to foreign key personnel to be employed in companies, branches and liaison offices active within the framework of the Direct Foreign Investments Law, number 4875." See Çektir, <http://www.todayszaman.com/columnist-279769-getting-a-turkish-work-permit.html> (4 June 2012).

³⁹ Shang, S., "How to Get an Employment Work Permit and Visa in Shanghai, China", HG.org, Global Legal Resources, <http://www.hg.org/article.asp?id=5980> (4 June 2012).

⁴⁰ "Documents required for Employment License:
1. Application form for foreigners' employment in China.
2. Copy of business license AND registration certificate, copy of code certificate, copy of certificate of approval (for those foreign-invested companies only).
3. Complete resume of the applicant which shall [be written] in Chinese and sealed by [the] employer. And the resume should match requirements of [the] Chinese government.
4. The credentials or qualifications of the applicant required by the performance of the job (which could be reference letters or diplomas).
5. Copy of passport." See Shang, <http://www.hg.org/article.asp?id=5980> (4 June 2012).

obtain an employment license. After obtaining an employment license, the employer should send this document to a prospective foreign employee. The prospective foreign worker should apply with the employment license and other relevant documents for a Z⁴¹ visa at a Chinese Consulate in his/her home country or country of his/her residence in order to enter China for work. The prospective foreign worker may be subjected to a physical examination⁴² by the Entry-Exit Inspection and Quarantine Bureau in the airport prior to working in China. After entering China, the foreigner should apply to the local labour department with the relevant documents to obtain a valid work permit⁴³. After obtaining a work permit, a foreigner should also apply to the local police department to get a residence permit⁴⁴.

If we look at Turkey and China in light of how they regulate the employment of foreigners, we can see some restrictions on foreign workers in both countries. Foreigners who wish to work have to obtain work permits in both countries. On the other hand, there are some significant procedural differences. For the sake of simplicity, we prefer to show some of main common points and differences in a table.

⁴¹ There are several types of visas in the Chinese visa system, including the L visa for sightseeing, family visiting or other private purposes, the X visa for education, the Z visa for work, the G visa which allows transit through Chinese territory, the C visa for members of international aviation crews, the D visa for permanent residency, and the J visa for journalists. See: <http://www.china-embassy.org/eng/hzqz/zgqz/t84248.htm> (4 June 2012). "Documents required for applying for residents' letter of Z visa: Copy of registration certificate (sealed by employer); Original of Employment License and Copy of Employment License pros and cons; Fill in the Application form on lineprint and sealed by employer; Copy of passport." Shang, <http://www.hg.org/article.asp?id=5980> (4 June 2012).

⁴² "Documents required for Physical verification:
 1. A valid original passport or travel document, and photocopies of the photo-page, expiry-date-page and info.-update-page of your passport or travel document
 2. Four recent 2-inch photos (full face without hat)
 3. Copy of company's registration certificate
 4. Original physical examination records issued by overseas medical institutions (done within last 6 months)." See Shang, <http://www.hg.org/article.asp?id=5980> (4 June 2012).

⁴³ "Documents required for Employment Permit:
 1. Two employment registration forms for foreign employees in China.
 2. Original alien employment license.
 3. Copy of employment contract. If the employer is [the] representative, [employer] shall provide original of [the] representative certificate and copy.
 4. A valid original passport or travel document, and copies of the photo-page, expiry-date-page, info.-update-page of your passport and number of passport or travel document (visa included).
 5. Copy of health certificate.
 6. Three recent 2-inch photos (full face without hat)." See Shang, <http://www.hg.org/article.asp?id=5980> (4 June 2012).

⁴⁴ Shang, <http://www.hg.org/article.asp?id=5980> (4 June 2012); Tian, <http://www.sinoblwg.com/?p=324> (4 June 2012).

Factors	Turkey	China
Requirement of an employment license	N/A	Yes
Requirement of an employment visa	Yes	Yes
Requirement of a work permit	Yes	Yes
Requirement of a residence permit	Yes	Yes
To be in good health (for foreign worker)	N/A	Yes
No criminal record (for foreign worker)	N/A	Yes
Can foreign students work in both countries legally?	No	No
Can families of foreign work permit holders work?	No	No
Can individual economic organizations and citizens employ foreign workers?	Yes ⁴⁵	No
Are there any available alternative dispute resolution methods (including arbitration) to resolve disputes among foreign workers, employers, and other authorities?	Yes (with limitations) ⁴⁶	Yes

Table 3: Some of the major differences and similarities between Turkey and China regarding work permits for foreigners

Conclusion

This study has reviewed the legal aspects of work permits for foreigners in Turkey and China. It has examined both countries' constitutions regarding work permits and laws governing work permits, and has explained how to obtain work permits in order to work legally in both countries.

Work permit procedures and principles have many common characteristics in both countries. Both China and Turkey have a restrictive structure for foreign workers⁴⁷. States should impose some limitations on foreign workers. However, the restrictions "should be limited to the areas which are related to matters of the internal and external security of the State."⁴⁸ Regulating work permits in line with equality between citizens and foreigners may attract increased foreign investment and qualified foreign workers to both countries.

⁴⁵ Subject to certain conditions.

⁴⁶ Turkish Labour Act No. 4857, published in the Official Gazette, Dated 10 June 2003, Numbered 25134. The Labour Act allows for the inclusion of an arbitration clause in an employment contract for disputes that arise from the termination of employment contracts. But this is only for individual employment contracts. Arbitration shall not be used for collective agreements, following the Turkish Constitutional Court's Decision. In 2005, the Court abrogated some parts of Article 20 of Act No. 4857. See: The Turkish Constitutional Court's Decision, Dated: 19 October 2005, Merit Number: 2003/66, Verdict Number: 2005/72.

⁴⁷ Possibly the reason for this is that there are a large number of unemployed people in both countries.

⁴⁸ Tiryakioğlu, <http://www.bilgintiryakioglu.av.tr/workpermit.html> (5 June 2012).