

Korean labor law: Employment Relations by VISA Type

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I would like to look at the classification of 36 visa types under different categories, and then look at the types of visa granted for employment and what relationship exists between the Immigration Control Act and labor laws.

1. Visa types & current status of stay for each visa type¹

In order to understand more about the foreign nationals staying in Korea, it is necessary to know the types of visa available to them and the purpose and status of stay. A visa determines the economic activities (if any) that foreign nationals can conduct in their host country, and their status. The visa type makes it easy to recognize the purpose of their visit, whether or not they are allowed to engage in money-making activities, whether they have family relations in Korea, and whether they are overseas Koreans. The current Immigration Control Act places foreign nationals in one of eight categories (A to H) which are comprised of 36 visa types in total. Group A is related to official duties and includes those working in diplomacy and those conducting official government duties and the accompanying family of foreign nationals in this category. Group B refers to visitors for short-term stays such as tourists and those exempt from visa requirements due to bilateral conventions between countries. Group C includes those visiting for short-term activities such as broadcasting, short-term tourism, and short-term employment. Group D covers those staying long-term and professional personnel engaged in culture and the arts, those engaged in technical training, corporate investment, international trade, job-seekers, those studying abroad (including language studies), and media correspondents. Group E covers employment activities for professors, native language instructors/teachers, researchers, technology guidance supervisors, professionals (specific jobs with high salaries such as IT engineers, translators and lawyers etc.), non-professionals (such as simple factory jobs), and ship crewmen. Group F covers those staying long-term due to family relations. Group G does not cover any specific type of traveler, but is rather a temporary stay visa issued for emergency situations and others. Last, Group H includes those on working holidays and

¹ Lee Hee-Jeong, "Stay of Foreigners", 「Immigration Control Act」, Parkyoung Sa, 2016, pp. 127-188; Ministry of Justice, "Guide Manual of VISA Issuance", 2016; Ministry of Justice, "Translation of the Immigration Control Act" 2011.

employment of Korean foreign nationals.

2. Visa Categories²

(1) Group A: Official work related to relations with other countries

- 1) Diplomacy (A-1): Diplomats and consular post members, and their families.
- 2) Official business (A-2): Civil servants working for other countries or international organizations, and their families.
- 3) Conventions (A-3): People without alien registration according to various Conventions, and their families. A typical example is those staying in Korea under the SOFA (the US-ROK Status of Forces Agreement).

(2) Group B: Short-term stays without visa

- 1) Visa-exempted (B-1): Activities related to bilateral visa-exempt agreements between countries. Korea has entered into such agreements with 102 countries as of June 2015.
- 2) Tour & transit (B-2): Entering for the purpose of travel or transit.

(3) Group C: Short-term stays (90 days or less)

- 1) Temporary broadcasting (C-1): Temporary news gathering and broadcasting activities
- 2) Short-term visit (C-3): Business activities like market surveys, business networking, consultation, and contract-making, as well as travelling, transit, medical treatment, visiting relatives, goodwill sports matches, and participating in event or conferences, etc.
- 3) Short-term employment (C-4): Earning money by means of circus shows, advertisements or fashion shows, lectures, research, technical instruction, etc. for a short period of time.

(4) Group D: Non-employment professional and long-term stays

- 1) Culture & art (D-1): Activities related to academic and artistic studies without pursuing profit.
- 2) Study abroad (D-2): Studying as part of a regular curriculum at a junior college or higher education institute.
- 3) Technical training (D-3): Training at Korean companies.
- 4) General training (D-4): Studying the Korean language at a language institute; technology or skill training in a public research center; and interns with foreign companies.
- 5) News gathering (D-5): Journalist activities assigned or contracted by a

² Enforcement Decree of the Immigration Control Act, Attached Table #1 of Article 12

newspaper or other broadcasting company.

6) Religious activities (D-6): Missionary activities at branch offices or related religious organizations in Korea after assignment from a foreign religious or welfare group.

7) Overseas assignment (D-7): Assigned to associated or subsidiary companies after working at the head office of a foreign company for at least one year.

8) Investment (D-8): Foreign managers or engineers engaged in management and operation of foreign-invested companies according to the Foreign Investment Promotion Act; foreign entrepreneurs holding intellectual rights.

9) Trade (D-9): Foreign entrepreneurs involved in a trade business established in Korea.

10) Job-seeking (D-10): Those looking for jobs and holding qualifications sufficient for E-1 to E-7 visas.

(5) Group E: Long-term employment engaged in economic activities

1) Professor (E-1): Those engaged in education or research and instruction activities in technical colleges or higher, or equivalent institutions.

2) Language teaching (E-2): Those engaged in teaching foreign languages at foreign language institutes, elementary level or higher schools, etc.

3) Research (E-3): Those engaged in research and development of the natural sciences or industrial cutting-edge technology at various laboratories.

4) Technology instruction (E-4): Those engaged in providing professional knowledge regarding the natural sciences or technologies.

5) Professionals (E-5): Those with certification and engaged in fields recognized as professional by Korean law.

6) Artistic work (E-6): Those engaged in art activities such as music, painting, and literature, or in entertainment, performances, plays, sports, advertising or fashion modeling, etc., for the purpose of earning money.

7) Particular activities (E-7): Those engaged in professional activities specifically designated by the Minister of Justice.

8) Non-professional (E-9): Those eligible for employment in Korea according to the Act on Foreign Workers' Employment, with non-professional skills.

9) Ship crewmen (E-10): Those with crew employment contracts on the condition of providing labor for 6 months or longer in companies that do business in accordance with the Maritime Transport Act or the Fishing Industry Act.

(6) Group F: Long-term stays due to family relations; investment immigrant

1) Family visitation (F-1): Those visiting relatives, family living together, dependent(s), or others; domestic workers hired by foreigners.

2) Resident (F-2): ① A foreign national spouse of a Korean national or their underage child, or the underage child of a foreign national with a permanent resident visa (F-5); ② Child born after marriage to a Korean national; ③ A recognized refugee; ④ A resident who has stayed for three years or longer with a D-8 visa.

3) Dependent family (F-3): Spouse or underage child of a D-1 to E-7 visa holder.

4) Overseas Koreans (F-4): ‘Overseas Koreans’ and ‘Koreans with foreign nationalities’. Overseas Koreans are Korean nationals with foreign resident rights, while Koreans with foreign nationalities are those who once had Korean nationality, or their children or grandchildren.

5) Permanent resident (F-5): ① Those with D-7 to E-7 visas or F-2 visas who have lived in Korea for more than five years; ② Spouses of Koreans or the permanent residents with F-5 visas who have lived in Korea for more than two years; 12 other cases as recognized by the Minister of Justice.

6) Marriage immigrant (F-6): ① Spouses of Korean nationals; ② Parents-in-law of a Korean who are raising a child of their daughter; ③ In cases where a foreign spouse has lost their Korean spouse through death, disappearance, or was divorced due to other reason not attributable to the foreign spouse.

(7) Group G: Miscellaneous (G-1). Unrelated to any of the above groups, this visa is generally used to deal with emergency situations.

(8) Group H: Working holidays & working visits

1) Working holiday (H-1): Visitors can travel and work in accordance with agreements or memoranda of understanding between Korea and other countries regarding ‘working holidays’.

2) Working visit (H-2): Overseas Koreans of at least 25 years of age engaged in permitted jobs.

3. Relationship between the Immigration Control Act & Labor Laws

The types of visa which allow employment are C-4 (Short-term employment), all visa types in Group E, F-2 (Resident), F-4 (Overseas Koreans, F-5 (Permanent resident), H-1 (Working holiday) and H-2 (Working visit). Foreigners are treated as equal to Korean nationals according to Article 6 (Equal Treatment), which works to prevent discrimination, but here it is difficult to judge whether illegal foreign workers are protected by Korean labor law. There are three types of illegal foreign worker: ① a foreign national working without the proper visa; ② a foreign national whose visa has expired; and ③ a foreign

national engaged in a job besides those allowed by his or her visa. Illegal workers are subject to punishment and are deported for violating the Immigration Control Act, but labor laws permit all rights given due to labor services provided by illegal workers, contrary to the Immigration Control Act. For example, even though an illegal worker had a work-related accident, he/she is protected by Industrial Accident Compensation Insurance, and entitled to severance pay and has the right to claim annual paid leave for work provided in advance.

In relation to this, the Supreme Court ruled the relationship between the Immigration Control Act and labor laws as follows: “The Immigration Control Act regulates that a foreign national intending to be employed in Korea shall attain a status of sojourn required for employment activities, and also regulates that no foreign national having the relevant status of sojourn shall work at any place other than the designated working place. Therefore, the purpose of this legislation was not simply to prohibit illegal stays by foreign nationals, but also to regulate the qualifications of eligibility for employment and block foreign nationals ineligible for employment to protect the domestic employment market from competition from ineligible foreign workers, manage the foreign workforce effectively, and protect domestic workers. This means that this law was enacted to directly prohibit employment of ineligible foreign workers in fact. The regulation restricting employment of foreigners is a control act to prohibit foreign nationals who are ineligible for employment from being employed. This is not a regulation to restrict the legal effect of labor rights that an illegal foreign worker without eligibility for employment has obtained by providing labor service, and the legal effect of labor laws concerning employment status.”³

4. Conclusion

Korea has grouped its 36 visa types into 8 categories (A to H). This classification is quite unwieldy for the average employer to understand. So, for the sake of employers who use foreign workers, it is necessary to reorganize these visa types according to new criteria such as the purpose for entry, whether or not the foreign nationals are engaged in economic activities, have family relations in Korea, and whether they are overseas Koreans or not. In particular, groups D and E, which include so many types, need to be simplified, so as to better manage so many similar jobs more easily. In addition, in the process of employing foreign nationals, the Immigration Office has too much discretionary

³ Supreme Court ruling of September 15, 1995, 94nu12067: Occupational accident case.

authority while the procedures for hiring are very complicated. Accordingly, I would like to suggest a method for managing foreign nationals where foreign professionals are classified according to their salary level, and that their employment should not be managed by the Immigration Office, but rather by the free market by means of levying a tax against Korean employers hiring foreign professionals.