THE 1992 EMPLOYMENT SERVICE ACT AND
THE INFLUX OF FOREIGN WORKERS IN TAIWAN
and Translation of the 1994 Implementary Provisions

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Abstract: The 1992 Employment Service Act, the first major law in Taiwan to legalize the hiring of blue-collar foreign workers, was adopted to stem the tide of illegal aliens while alleviating Taiwan’s labor shortage. The Act and its Implementary Provisions, however, have not resolved the problems caused by the influx of foreign labor. Taiwan’s foreign labor policy has not curtailed the influx of illegal aliens, and in an effort to resolve the labor shortage without recognizing the consequences of importing foreign labor, Taiwan has encouraged the continuation of labor-intensive industries and has indirectly perpetuated the continuation of employer abuses against foreign workers.

I. INTRODUCTION

The Republic of China on Taiwan ("ROC" or "Taiwan")¹ has experienced tremendous economic growth in the past few decades. With the rise of Taiwan’s industries in the late 1980s came a large influx of foreign workers. At that time, however, Taiwan had no laws addressing the importation of foreign labor and for several years was reluctant to pass any legislation regarding foreign workers. The 1992 Employment Service Act,² the first comprehensive law in Taiwan to legalize the hiring of blue-collar foreign workers, was eventually adopted after years of no regulation at all.

This Comment examines the development of Taiwan’s laws and policies regarding the importation of foreign laborers, focusing on the 1992 Employment Service Act and its Implementary Provisions.³ Part II of this

¹ The names "ROC" and "Taiwan" are often used interchangeably for The Republic of China on Taiwan.
³ On August 5, 1992, the government of Taiwan promulgated implementary provisions (enforcement rules or regulations) to implement the Employment Service Act. M.L. Yeh, Labor: Survey of Secondary Regulations, Lee & Li Bulletin (Law firm of Lee & Li, Taipei, Taiwan), Mar. 1993, at 20. These implementary provisions were amended two years later, and the revised regulations were issued on May 18, 1994. Implementary Provisions of the Employment Service Act, Aug. 5, 1992 (amended May 18,
Comment provides a background history of the events leading up to the enactment of the 1992 Employment Service Act, while Part III examines the Act and its Implementary Provisions, and critiques the effects of this legislation.

Taiwan's policy towards foreign laborers has been plagued with problems, which the 1992 Employment Service Act and its Implementary Provisions have not resolved. Taiwan's foreign labor policy has provided few protections against abuses suffered by foreign laborers and has also resulted in the continuance of labor-intensive industries, which could hinder the development of technological advances. The government of Taiwan wants to alleviate the labor shortage while stemming the tide of illegal workers and avoiding the difficulties that accompany the influx of foreign workers. Taiwan, however, has not achieved this objective through the enactment of the 1992 Employment Service Act nor the enactment of its Implementary Provisions.

II. A BRIEF HISTORY OF LABOR LAW AND FOREIGN WORKERS IN TAIWAN

A. Labor Law During the Era of Martial Law

The development and enforcement of labor law in Taiwan has advanced slowly, especially during the era of martial law imposed by the ruling Kuomintang Party ("KMT"). Under martial law, the KMT excluded native Taiwanese from executive and managerial posts in many areas of

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The KMT's declaration of martial law in Taiwan was followed by a massacre of approximately 30,000 native Taiwanese by the KMT police force in March 1947. James W. Soong, Taiwan and Mainland China: Unfinished Business, 1 U.C. DAVIS J. INT'L L. & POL'Y 361, 363 (1995); see KERR, supra, at 254-58, 291-310. The massacre was sparked by a riot on February 28, 1947 that began when the KMT police beat an old woman selling black market cigarettes, and marked the culmination of many violent confrontations between the KMT police force brought in from mainland China and local Taiwanese people. KERR, supra, at 190-254. For example, an incident that began as a shouting match between some Taiwanese hecklers and a few policemen prompted one of the policemen to fire shots at the group. The gunfire struck an innocent bystander, and without attempting to pursue the hecklers, the policemen proceeded to drag the bystander's body to the steps of the police station as a warning to the local Taiwanese people. KERR, supra, at 190-91.
government and government institutions, prohibited opposition parties from forming, and restricted the constitutionally guaranteed rights of free speech, press, and assembly. The KMT did not tolerate the formation of any organized groups, such as labor organizations, fearing that such groups would become a political force. Although several labor laws guaranteeing workers' rights existed under martial law, the KMT did not acknowledge these laws. For example, the KMT government subjected laborers to repressive labor legislation enacted in the late 1920s and 1930s, and did not permit laborers to form free trade unions. The period of martial law lasted from February 28, 1947 until July 1987.

The histories of the 1929 Labor Union Law and the 1984 Labor Standards Law demonstrate how laws purporting to guarantee workers' rights were promulgated by the government on paper but were not subject to enforcement until martial law was lifted in 1987. The Labor Union Law called for basic labor rights in order to protect the workers' interests. However, prior to the end of martial law, unions did not engage in genuine

5 Soong, supra note 4, at 363.
6 Kerr, supra note 4, at 482-83.
9 Winn, supra note 7, at 36-37, 40, 45-47, 50. Examples of the KMT's repressive labor legislation are the 1928 Labor Disputes Law and the 1930 Collective Agreement Law. See Winn, supra note 7, at 40, 46-47, 50. The Labor Disputes Law "was the first major piece of labor legislation passed after the KMT split from the Communist Party . . . . [I t was] generally interpreted to make strikes impossible." Winn, supra note 7, at 46-47. The Collective Agreement Law "purports to allow unions a say in the employer’s choice in hiring, [but] that privilege is effectively destroyed by the exceptions to it. The result is that the closed shop is impossible in Taiwan." Winn, supra note 7, at 50.
10 See Kerr, supra note 4, at 254-58; see also Tung-Pi Chen, supra note 4, at 104.
11 The Labor Union Law states that "[t]he purposes of a labor union shall be to protect the rights and interests of workers, to advance the knowledge and skill of workers, to develop productive enterprises and to ameliorate the livelihood of workers." Labor Union Law, art. 1.
bargaining with employers. The Labor Union Law was fraught with restrictions on the labor unions’ right to strike and their right to further union members’ interests through collective actions.

Likewise, the Labor Standards Law was enacted to address the concerns of workers in Taiwan; it also called for basic labor rights, such as an eight-hour workday, a safe working environment, a minimum wage, and overtime wages. Nonetheless, the Labor Standard Law’s goals of providing minimum standards for working conditions and protecting workers’ rights remained unenforced as late as 1987.

B. Gradual Changes in the Development of Labor Policies During the Late 1980s

Despite the fact that the Labor Standards Law remained unenforced for several years after it became effective, its promulgation seemed to reveal the government’s desire to steer labor law in a new direction. This law was the first comprehensive law addressing labor standards. The government enacted the Labor Standards Law hoping that it would help propel Taiwan from labor-intensive industries into technology-intensive industries. Prominent attorney Nigel Li surmised that the Labor Standards Law would also assist Taiwan in gaining a more favorable standing with the United States under the United States’ 1984 Trade Act. These policy goals of the Labor Standards Law showed that the government intended to

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12 Winn, supra note 7, at 43.
13 Winn, supra note 7, at 45.
14 Labor Standards Law, arts. 1, 8, 21, 24, 30. The Labor Standards Law states that it is enacted “to provide minimum standards of labor conditions, protect workers’ rights and interests, strengthen labor-management relationship, and to promote social and economic development.” Labor Standards Law, art. 1.
15 Labor Standards Law, art. 1.
16 Winn, supra note 7, at 51, 58; Shim Jae Hoon, To the Left, March!, FAR E. ECON. REV., Mar. 2, 1989, at 19.
17 Winn, supra note 7, at 51, 58.
19 Id. Attorney Nigel Li opined that “[w]ith the [Labor Standards Law] to improve working conditions for Taiwan’s workers, the era of Taiwan-made cheap-labor products seems doomed to pass away.” Id.
develop labor laws that would advance Taiwan's technology, perhaps encourage the use of automated methods, and enable Taiwan to become a greater presence in the international arena.

In January 1988, the government of Taiwan further promoted progressive labor laws by legalizing strikes for the first time in forty years. Although the Labor Union Law had officially recognized the right to strike in 1929, the Labor Disputes Law of 1928 had placed so many restrictions on the right to strike that most strikes were rendered illegal. The revised labor laws still rendered politically motivated strikes unlawful, but they nonetheless permitted a strike to be called if it was agreed upon by at least half of the members of a union and if the strike was reported to employers and labor officials seven days in advance.

Towards the end of martial rule, while changes in workers' rights were effected through the passage of new laws, other changes in labor relations were happening simultaneously. A survey conducted by the Taiwan Provincial Social Affairs Department demonstrated that the living conditions of Taiwan's laborers had improved in 1985 as a result of the government's health insurance program and employers' growing concern for the safety and working conditions of their laborers.

Furthermore, in December 1987, the Labor Party, Taiwan's first labor-friendly political party, was formed by a group of leftist intellectuals and labor organizers seeking to expand the power of labor unions. At that time, only eighteen percent of workers were members of unions, and most unions existed only as groups within the plant or company itself, with only a minority of unions being external organizations. In addition, many

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22 Labor Union Law, art. 26; see Winn, supra note 7, at 45; see also discussion supra note 9.
23 Winn, supra note 7, at 45-47.
27 Tyson, supra note 26, at 10.
unions were affiliated with weak industrial and geographical union federations, and only a small percentage of union members were actually covered by collective bargaining agreements.\textsuperscript{29} Although unions were permitted to exist under the Labor Union Law, the Labor Union Law allowed for unlimited government supervision, which hindered the unions' abilities to further their members' interests through collective action.\textsuperscript{30} Taiwan did not yet recognize "Western-style labor rights," and wages were unilaterally set by employers.\textsuperscript{31} The Labor Party began accumulating support "as more workers' associations join[ed] amid a growing awareness of labor rights."\textsuperscript{32}

These gradual changes during the 1980s indicate that Taiwan was beginning to address issues concerning workers' rights. The great influx of foreign workers in the late 1980s and early 1990s put these issues to the test and forced Taiwan to evaluate both how it wanted to treat workers in general and how it wanted to treat foreign workers in particular.

\textbf{C. The Influx of Foreign Labor from Southeast Asia}

Illegal migrant workers from Southeast Asia began to pour into Taiwan as early as 1987\textsuperscript{33} because employers in Taiwan were offering comparably higher wages than employers in Southeast Asian countries.\textsuperscript{34} Taiwan suddenly found itself hosting a large number of low-wage workers from Southeast Asia who entered the country on tourist visas\textsuperscript{35} and worked illegally.\textsuperscript{36} Because Taiwan's industries mainly consisted of small

\begin{itemize}
  \item \textsuperscript{29} Id.
  \item \textsuperscript{30} Winn, supra note 7, at 43, 45. Unions only provided supplementary social services and did not "represent their members in genuine bargaining with their employers." Winn, supra note 7, at 43.
  \item \textsuperscript{31} Unions, supra note 21.
  \item \textsuperscript{32} Unions, supra note 21.
  \item \textsuperscript{34} See Julian Baum, Hiring and Firing: Labor Shortage Spurs Rethink on Foreign Workers, FAR E. ECON. REV., Apr. 16, 1992, at 15. In 1992, for example, wages in Taiwan were several times higher than wages in Thailand. Id. Filipino workers in Taiwan could earn up to ten times the wages they would have earned for comparable jobs in the Philippines. George White, Pacific Report; Laboring Over Workers; Rich Asia Nations Struggle Over How to Deal With Imported Help, L. A. TIMES, June 24, 1991, at D1.
  \item \textsuperscript{35} Jonathan Moore, Grist to the Mill, FAR E. ECON. REV., Apr. 5, 1990, at 20.
  \item \textsuperscript{36} Id.; see Taiwan: Official Urges Thai Job-Seekers to Take Care, BANGKOK POST, Apr. 16, 1990, available in NEXIS, ASIAPC Library, TAIWAN File [hereinafter Official Urges Care].
\end{itemize}
companies hiring from an unorganized workforce at the local level, it was
difficult for the government to locate illegal aliens.\textsuperscript{37} By 1987, it had been
reported that approximately 70,000 Filipino, Thai, and Malaysian laborers
had entered Taiwan illegally or overstayed their six-month tourist visas and
had taken jobs working in the textile, shoemaking, food processing, and
construction industries.\textsuperscript{38} In 1990, the government of Taiwan estimated that
there were 44,000 illegal aliens in Taiwan, including 17,000 workers from
Malaysia, 8,000 workers from the Philippines, 4,000 workers from
Indonesia, and 3,000 workers from Thailand.\textsuperscript{39} However, other estimates of
the number of illegal aliens in Taiwan at that time varied, reaching as high
as 200,000.\textsuperscript{40}

Taiwan's industries have welcomed foreign workers. Taiwan has
experienced severe labor shortages in recent years as a result of several
factors. First, many local workers in Taiwan have switched from assembly-
line positions to more technical, skilled positions at their companies,
resulting in fewer people willing to take assembly-line and heavy industry
work for the wages being offered.\textsuperscript{41} Second, Taiwan is in the midst of
several massive infrastructure projects pursuant to the Six-Year National
Development Plan, which is estimated to cost US$300 billion and to require
50,000 to 60,000 additional workers.\textsuperscript{42} The infrastructure projects are
scheduled to be completed by 1997.\textsuperscript{43} Finally, it has been suggested that the
work ethic in Taiwan has declined, as evidenced by the number of young

\textsuperscript{37} Moore, supra note 35, at 20.

\textsuperscript{38} New Labour, supra note 33.

\textsuperscript{39} Taiwan: Labour Shortage Boon for Thai Workers, BANGKOK POST, June 4, 1990, available in
NEXIS, ASIAPC Library, ALLASl File [hereinafter Shortage Boon]. Taiwan's Commission on Labor
Affairs ("CLA") provided the statistics. See discussion infra part II.D (discussing the CLA).

\textsuperscript{40} Moore, supra note 35, at 20. For example, one Thai official estimated that there were as many as
10,000 Thai laborers working in Taiwan. Shortage Boon, supra note 39.

\textsuperscript{41} White, supra note 34. Clarke Ellis, deputy director of the American Institute in Taiwan (a private
organization that provides embassy and consulate services for Americans with economic interests in
Taiwan), stated that it was becoming increasingly "difficult to find Taiwanese who want to take positions
as maids or ditch diggers." White, supra note 34.

\textsuperscript{42} See White, supra note 34. See also GOV'T INFO. OFFICE, REPUBLIC OF CHINA, THE 1994
National Development Plan was initiated in 1991 and was designed to relieve such problems as traffic
congestion and pollution as well as to enhance the overall quality of living. Id. at 203. The Six-Year
National Development Plan is a project that also involves some U.S. firms. See White, supra note 34. For
instance, in 1991, Bechtel Corporation and Kaiser Engineers International contracted to be general
consultants for the construction of a rapid-transit system in Taipei. White, supra note 34.

\textsuperscript{43} See Shortage Boon, supra note 39.
people who refuse to work at construction sites or in factories and "instead choose to remain idle." In addition, some labor unions contend that the influx of low-wage foreign labor is itself the cause of domestic labor shortages. That is, some unions argue that foreign workers keep wages depressed at substandard rates for which local laborers cannot afford to work. All of these factors have contributed to an increased dependence on labor from less developed Southeast Asian countries such as the Philippines, Indonesia, and Thailand.

D. Taiwan's Initial Labor Policies Regarding Foreign Workers

The great influx of foreign workers in the 1980s was an especially troublesome situation for Taiwan because Taiwan did not have any laws recognizing the status of foreign workers or regulating foreign workers. In 1987, a government agency was created to address labor issues, including the issue of whether or not the government should regulate foreign workers. The Commission of Labor Affairs ("CLA") was established by the Executive Yuan on August 1, 1987, as an exclusive bureau of labor affairs to improve the efficiency of the administration of labor relations.

The CLA is the highest government authority for labor affairs, governing such areas as labor relations, conditions, welfare, insurance,
inspection, and safety and sanitation. The responsibilities of the CLA include enforcing the revised 1984 Labor Standards Law, establishing new forums for redressing workers' grievances, and inspecting and monitoring working conditions.

Since Taiwan did not have any laws or regulations addressing the employment of foreign workers at the time the CLA was established, one of the goals of the CLA was to propose administrative measures or legislation defining the rights and obligations of both employers and foreign workers. However, government officials were reluctant to enact laws against hiring illegal migrant workers because the deportation of workers was not feasible and was also unpopular with local businessmen. At the same time, officials were reluctant to legalize foreign workers because it would further burden social services.

However, due to pressures from the private sector to begin the enormous infrastructure projects under the Six-Year National Development Plan, the government issued an administrative order in 1990 permitting employers to import foreign workers for certain jobs. The Executive Yuan agreed to allow foreign laborers to work in Taiwan, but only on construction projects for the Six-Year National Development Plan and only on the condition that they leave Taiwan once the projects were completed. The government also required that employers: (1) prove that they could not find any local workers for their jobs before hiring foreign laborers, (2) build separate housing for the foreign laborers, and (3) post a bond in the amount of five months' pay per worker with the government to guarantee that the foreign laborers would leave Taiwan upon completion of the projects. If a contractor's application for foreign labor was granted by the CLA, the

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51 Boatman et al., supra note 50.
52 New Labour, supra note 33.
53 Boatman et al., supra note 50.
54 Moore, supra note 35, at 20. Government officials found that the deportation of illegal workers was difficult to facilitate, as the workers did not have the money to return to their home country, and the government of Taiwan was unwilling to incur this expense. Moore, supra note 35, at 20.
55 Moore, supra note 35, at 20.
56 Moore, supra note 35, at 20.
57 See Shortage Boon, supra note 39.
58 Moore, supra note 35, at 20.
59 Shortage Boon, supra note 39.
60 White, supra note 34.
contractor could hire foreign workers, but only if certain qualifications were met. Foreign laborers had to be over twenty-one years old and single.\(^6\) Furthermore, if a foreign laborer married a local Taiwanese person, he or she had to leave Taiwan immediately.\(^6\)

Prior to the 1990 administrative order, all blue-collar foreign workers in Taiwan were illegal because no law permitted employers to hire foreigners for manual labor, and no law granted foreigners legal status as laborers.\(^6\) This did not prevent foreign works from entering Taiwan. For example, the labor shortage in Taiwan became a "new 'gold mine' for Thai workers . . . ."\(^6\) That is, Thai workers in Taiwan were receiving higher wages in comparatively better working conditions than their counterparts in other countries, such as those in the Middle East.\(^6\) Thai workers had been filling the labor shortages in Taiwan, but officially, all Thai laborers in Taiwan were illegal.\(^6\) However, the government of Taiwan did not deport the Thai workers precisely because of the labor shortage.\(^6\) The 1990 administrative order now allowed employers to hire foreign laborers for certain construction jobs, but even so, the CLA stressed that the importation of foreign workers would not change the CLA's official policy of prohibiting foreign laborers from working in Taiwan.\(^6\)

As the 1990 administrative order only allowed employers to hire foreign laborers for specific construction projects, most foreign laborers in

\(^{61}\) Shortage Boon, supra note 39.
\(^{62}\) Shortage Boon, supra note 39.
\(^{63}\) See Shortage Boon, supra note 39. At that time, the government already allowed employers to recruit foreigners who were white-collar professionals, such as doctors, nurses, teachers, and engineers. Shortage Boon, supra note 39; see 1994 ROC YEARBOOK, supra note 42, at 368-69; see also Robin Winkler, Robert Lee & Andrew Ruff, New Passwords in the Visa and Work Permit Game: A Review of the New Visa and Work Permit Regulatory Framework in Taiwan, 12 U.C.L.A. PAC. BASIN L. J. 98, 110-12 (1993).
\(^{64}\) Shortage Boon, supra note 39.
\(^{65}\) Shortage Boon, supra note 39; see Baum, supra note 34, at 15.
\(^{66}\) Shortage Boon, supra note 39.
\(^{67}\) Shortage Boon, supra note 39. The government of Taiwan was particularly keen on allowing the Thai workers to stay because of the pending government construction projects. Shortage Boon, supra note 39.
\(^{68}\) Shortage Boon, supra note 39. The Vice Chairman of the CLA stated: "The [CLA's] policy does not accept foreign workers in order to protect the right of local workers. However, under present circumstances . . . it appears that Taiwanese workers are reluctant to undertake dangerous or dirty jobs. This [has] caused [the] delay of several projects [of the Six-Year National Development Plan] . . . [and consequently] the Executive Yuan recently agreed in principle to allow foreign construction workers to come to Taiwan for these projects." Shortage Boon, supra note 39.
Taiwan remained illegal. However, there was no legal penalty for employers who hired illegal foreign workers. The government did not move to pass any laws prosecuting employers who hired illegal workers and instead permitted foreign laborers to remain in Taiwan to work in the construction and manufacturing industries, and as domestic help.\textsuperscript{69} However, the government of Taiwan was reluctant to grant legal status to foreign workers, due to anticipated burdens on social services.\textsuperscript{70} Because the government did not officially regulate the employment of most foreign workers, many workers were vulnerable to exploitation by employers.\textsuperscript{71} For instance, labor recruiters often lured Thai and Filipino workers to Taiwan by promising them certain job opportunities, but upon arrival in Taiwan, the workers often found that the employer withheld their passports and portions of their salaries as "finder's fees," and further, that their jobs, wages, and living conditions were much worse than promised.\textsuperscript{72} In addition, the workers were not granted union protection, as illegal workers were not permitted to join labor unions.\textsuperscript{73}

Such abuses against Thai workers in Taiwan became so acute that one of Taiwan's senior Far East Trade Office advisers, Chang Tso-Wei, issued a statement warning Thai workers and the Thai Labor Department to be cautious about job opportunities Thai workers accepted in Taiwan.\textsuperscript{74} The Far East Trade Office adviser explained that although Taiwan did not yet have any laws recognizing the status of most foreign workers, the Taiwan government was unwilling to deport foreign workers because of Taiwan's labor shortage.\textsuperscript{75} The apparent implication was that Taiwan was not in a position at that time to protect the interests of Thai workers.

Although they were helping Taiwan become more competitive in the world market by accepting lower wages and poor working conditions, most

\begin{footnotes}
\item[69] Moore, supra note 35, at 20.
\item[70] Moore, supra note 35, at 20.
\item[71] Moore, supra note 35, at 20.
\item[72] Moore, supra note 35, at 20. For example, in recent years, many Thai workers have been cheated by job brokers who charge high commission rates but who either do not have any jobs for the workers once they arrive in Taiwan or do not have the jobs that they had promised the workers. Supara Janchitfah, Taiwan: Taking Risks Abroad, BANGKOK POST, Oct. 8, 1995, available in NEXIS, ASIAPC Library, ALLASI File. The Thai Labor Office in Taiwan reported that it received 1,056 complaints from Thai workers in 1994. Id.
\item[73] Shortage Boon, supra note 39.
\item[74] Official Urges Care, supra note 36.
\item[75] Official Urges Care, supra note 36.
\end{footnotes}
foreign workers were unable to claim any protection from the treatment they received from employers because of their status as illegal aliens. No organization—not even the International Labor Organization—was able to provide these illegal migrant workers with assistance. Private organizations and national agencies could not obtain accurate information about the number of illegal foreign workers in Taiwan. Illegal migrant workers have not been protected by the several international labor conventions that afford basic protections to legal migrant workers.

E. Reactions to the Influx of Foreign Labor During the 1980s

Labor union leaders vocally opposed the influx of foreign laborers as early as 1988. In September 1988, the Secretary General of the Chinese Federation of Labor, Chui Ching-Hwei, issued a statement decrying the hiring of foreign laborers for the construction industry. The Secretary General stated that with over 200,000 construction workers, there was no need to hire foreign workers for construction projects in Taiwan. He

77 In May 1944, the International Labor Conference adopted a declaration that defined the specific objectives and goals of the International Labor Organization ("ILO"). The ILO is charged with such objectives as achieving full employment and improving working conditions and living standards. In 1946, the United Nations recognized the ILO as a specialized agency. Nicolas Valticos & Geraldo W. von Potobsky, International Labour Law, in 1 INTERNATIONAL ENCYCLOPAEDIA FOR LABOUR LAW AND INDUSTRIAL RELATIONS, Int'l Labour Law 19 (1996). Taiwan is not a member of the ILO. 1995 HUMAN RIGHTS, supra note 24.
79 See Tasker, supra note 76, at 18.
80 Tasker, supra note 76, at 19. Several international labor conventions provide protections for migrant workers who are lawfully within a territory, such as the 1935 Maintenance of Migrants' Pension Rights Convention and the 1962 Equality of Treatment (Social Security) Convention. Valticos & von Potobsky, supra note 77, at 246-47.
81 See Union Leader Warns, supra note 45.
82 Union Leader Warns, supra note 45. The Secretary General stated that among the construction workers, there were 190,000 union members and approximately 40,000 non-union members. Union Leader Warns, supra note 45.
explained that the labor shortage in the construction industry was due to subcontracting by builders and not, in fact, due to an actual shortage of available workers.\textsuperscript{83} That is, the Secretary General was suggesting that because subcontractors offered such low wages, the labor shortage did not reflect a shortage of actual laborers but instead reflected a shortage of laborers who were willing to work for lower wages. He concluded that builders "should not cite any labor shortage as the reason for seeking imports of labor from abroad."\textsuperscript{84}

The Secretary General articulated additional reasons why Taiwan should not allow foreign workers into the country. He stated that many subcontractors paid lower wages to foreign workers and did not offer them reasonable employee benefits, which in turn made foreign workers feel that they were being discriminated against by local employers.\textsuperscript{85} He explained that this would not only mar the nation's image, but would also result in a loss of job opportunities for local workers, as local workers could not afford to accept the lower-wage jobs.\textsuperscript{86}

The influx of foreign labor created tension between businesses and labor unions. In general, businesses welcomed the lower-wage foreign workers while labor union members did not. Labor unions feared that: (1) the lower-wage foreign non-union laborers would make it more difficult for labor unions to successfully promote wage increases, and (2) union members would lose their jobs to the lower-wage foreign non-union laborers.\textsuperscript{87} Thus, businesses typically urged the government to relax restrictions on the importation of foreign workers, while labor unions urged the government to increase restrictions as well as crack down on foreign laborers who were working in Taiwan illegally.\textsuperscript{88}

In summary, because the importation of foreign labor was such a controversial issue, for a long time the government was reluctant to enact legislation to either legalize the alien workers or to deport them.\textsuperscript{89} During this period of inaction by the government of Taiwan, foreign workers

\textsuperscript{83} Union Leader Warns, supra note 45.
\textsuperscript{84} Union Leader Warns, supra note 45.
\textsuperscript{85} Union Leader Warns, supra note 45.
\textsuperscript{86} Union Leader Warns, supra note 45.
\textsuperscript{87} White, supra note 34.
\textsuperscript{88} Workers who were in Taiwan illegally included laborers who entered Taiwan legally, but who stayed on illegally after their tourist visas expired or after their jobs were completed. White, supra note 34.
\textsuperscript{89} Moore, supra note 35.
became vulnerable to widespread abuse by local employers. The controversy surrounding illegal aliens focused on the battle between labor unions who feared that the influx of foreign workers would undermine their fight to improve wages and working conditions for local employees, and local businesses who preferred hiring the alien workers at lower wages.

F. Addressing the Problem of Illegal Foreign Workers

Throughout 1991, the government of Taiwan seemed to lean towards relaxing restrictions on the importation of foreign labor in order to better regulate the activities of foreign workers. The government implemented a campaign to uncover the identity of illegal foreign workers by granting a tax amnesty for those who turned themselves in to be deported, in exchange for the right to return to Taiwan legally in the future. As a result, approximately 22,500 illegal foreign workers turned themselves in to the government.

In August 1991, the Chairman of the CLA discussed his plans to meet with the Philippines’ Chief of Immigration Affairs regarding a possible labor import agreement that would enable workers from the Philippines to work on Taiwan’s infrastructure projects. Finally, in October 1991, the CLA officially created a quota for the importation of foreign labor; the quota was set at 15,000 foreign workers for certain manufacturing sectors only. A CLA spokesman explained that because Taiwan continued to maintain such a low unemployment rate (1.8%), “a ban on foreign workers [was] no longer realistic.” It appeared that most local workers were

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90 Moore, supra note 35.
91 Moore, supra note 35.
93 Id. In 1992, there was still an estimated 20,000 illegal workers in Taiwan who had not turned themselves in to the government. Taiwan Bans Thai Workers, May Import from Vietnam, REUTER LIBR. REP., Apr. 7, 1992, available in NEXIS, ASIAPC Library, TAIWAN File. The government estimated that a total of 17,110 illegal foreign workers had been arrested and deported in 1992. 1994 ROC YEARBOOK, supra note 42, at 369.
96 Id.
employed, so there was no need to prohibit the entry of additional foreign workers.

Taiwan’s change of policy towards foreign workers coincided with changes made by other Asian nations.\(^97\) Hong Kong, Malaysia, Singapore, and South Korea had all been reluctant to legalize the importation of foreign labor for fear of creating social and economic tensions between foreign workers and local workers.\(^98\) All of these nations, however, began to relax their bans on foreign labor in order to advance their economic growth.\(^99\) The legalization of foreign workers also provided some relief to many illegal foreign workers who were now less vulnerable to exploitation by employers\(^100\) as they would be legally protected against employer abuses and would also be able to join labor unions.

\section{The Continuation of the Labor Shortage}

Even though the Executive Yuan allowed 15,000 foreign laborers into Taiwan to work in the manufacturing industry,\(^101\) labor shortages continued throughout 1991 and into 1992, forcing the government to delay major infrastructure projects such as the highway construction project and the Taipei rapid transit system project.\(^102\) Therefore, the government began to actively recruit workers from Indonesia, Malaysia, Thailand, and the Philippines to work in the construction industry.\(^103\) The government’s goal was to eventually “drive out an estimated 40-50,000 illegal foreign workers and replace them with legal contract laborers.”\(^104\) This new recruitment procedure, and the rules under which this recruitment would function, began under the 1992 Employment Service Act.

\begin{flushright}
97 \textit{Id.}
98 \textit{Id.}
99 \textit{Id.}
100 See Leah Makabenta, \textit{Asia: “Dragon” Economies Need Foreign Workers to Maintain Growth, INTER PRESS SERV., Dec. 6, 1991, available in NEXIS, ASIAPC Library, ALLASI File.}
101 Torchia, \textit{supra note 95.}
102 Baum, \textit{supra note 34, at 15.}
103 See Baum, \textit{supra note 34, at 15. Most of the workers who were recruited were from Thailand.}
104 Baum, \textit{supra note 34, at 15. By 1992, the government estimated that over 50,000 foreigners had either entered Taiwan illegally or had overstayed their visas. 1994 ROC YEARBOOK, \textit{supra note 42, at 369.}}
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III. THE EFFECTS OF THE 1992 EMPLOYMENT SERVICE ACT AND ITS IMPLEMENTARY PROVISIONS

A. The 1992 Employment Service Act

The 1992 Employment Service Act, the first major law in Taiwan to legalize the hiring of blue-collar foreign laborers, provided for the strict regulation of both white-collar and blue-collar foreign workers in Taiwan. Prior to the enactment of the Employment Service Act, the government allowed employers to hire foreigners who were white-collar professionals.105 The government of Taiwan promulgated the Employment Service Act hoping to alleviate the labor shortage and stem the tide of illegal workers while avoiding the difficulties that accompany the influx of foreign workers. The Employment Service Act and its Implementary Provisions, however, have not resolved the problems surrounding the influx of foreign labor. The government’s foreign labor policy has not curtailed the influx of illegal aliens and has instead perpetuated the continuation of labor-intensive industries. In addition, the government of Taiwan has implemented few protections against abuses suffered by foreign laborers.

1. The Objectives of the Employment Service Act

The Employment Service Act was promulgated on May 8, 1992.106 Its stated objective is “to promote the employment of nationals in the hope of strengthening social and economic development,”107 and its provisions strengthen the legal rights of employees, addressing such issues as job discrimination and the freedom to choose jobs.108 However, the Employment Service Act was also the first law of Taiwan to legalize the hiring of certain foreign laborers and impose sanctions on employers who

105 1994 ROC YEARBOOK, supra note 42, at 368-69; see Shortage Boon, supra note 39; see also Winkler, supra note 63. See discussion supra note 63 (discussing the white-collar professionals permitted to work in Taiwan).
107 Employment Service Act, art. 1.
108 Id. arts. 4, 5; Ryan Huang, Taiwan: New Law Passed to Ease the Way for Foreign Workers in Taiwan, BUS. TAIWAN, Apr. 27, 1992, available in NEXIS, ASIAPC Library, TAIWAN File.
hired illegal foreign workers,\textsuperscript{109} which were the primary objectives of the Employment Service Act.\textsuperscript{110} In the months following the promulgation of the Employment Service Act, the government of Taiwan enacted additional regulations detailing the implementation of certain sections of the Employment Service Act.\textsuperscript{111}

In preparation for the Employment Service Act's implementation, the CLA chairman warned of the Employment Service Act's sanctions against employers who continued to hire illegal aliens.\textsuperscript{112} The penal provisions of the Employment Service Act include the following sanctions:

\begin{quote}
[A]n employer hiring one illegal foreign worker [is faced] with fines of up to NT$90,000\textsuperscript{113} or six months imprisonment; those
\end{quote}

\textsuperscript{109} Employment Service Act, arts. 41-68; Huang, \textit{supra} note 108.

\textsuperscript{110} Huang, \textit{supra} note 108.

\textsuperscript{111} On July 27, 1992, the government of Taiwan promulgated regulations to govern items 7 through 9 in paragraph 1 of article 43 of the Employment Service Act. Regulations Governing the Approval and Employment of Foreign Nationals, July 27, 1992 (ROC) (pursuant to article 45 and to items 7 through 9 of the 1992 Employment Service Act) (copy of text on file with the PAC. RIM L. & POL'y J.) [hereinafter July 1992 Regulations]; Yeh, \textit{supra} note 3, at 21.


On August 5, 1992, the government of Taiwan promulgated enforcement rules to implement the Employment Service Act. Implementary Provisions, \textit{supra} note 3; Yeh, \textit{supra} note 3, at 21; see discussion \textit{supra} note 3.

On September 18, 1992, the government of Taiwan promulgated regulations under article 51 of the Employment Service Act. Regulations Governing the Collection, Spending, Custody and Utilization of the Employment Security Fund, Sept. 18, 1992 (ROC); Yeh, \textit{supra} note 3, at 21.

On November 30, 1992, the government of Taiwan promulgated regulations under article 44 of the Employment Service Act. Regulations Governing the Employment Permission and Administration of Foreign Nationals Hired by Mass Media Enterprises, Nov. 30, 1992 (ROC); Yeh, \textit{supra} note 3, at 21.


On January 20, 1993, the government of Taiwan promulgated regulations to implement paragraph 2 of articles 43 and 44 of the Employment Service Act. Rules Governing the Approval of Employment of Foreign Nationals Performing Specialized or Technical Work by Public or Private Enterprises, and Employment of Officers in Enterprises Invested or Incorporated by Overseas Chinese or Foreign Nationals, Jan. 20, 1993 (ROC) (copy of text on file with the PAC. RIM L. & POL'y J.); Yeh, \textit{supra} note 3, at 21.

\textsuperscript{112} Huang, \textit{supra} note 108.

\textsuperscript{113} "NT" refers to Taiwan's currency, the New Taiwan dollar. See 1994 ROC YEARBOOK, \textit{supra} note 42, at 225. US$1 is approximately equivalent to NT$27. See Foreign Exchange, SEATTLE POST-INTELLIGENCER, Apr. 2, 1996, at B5 [hereinafter Foreign Exchange].
employers found to have hired two or more illegal foreign workers can be fined up to NT$300,000 or three years imprisonment. In addition, those who are found mediating the hiring of illegal workers will be fined up to NT$1.5M or five years in jail.\(^{114}\)

The government explains that the Employment Service Act is meant to alleviate the labor shortage problem while avoiding the social problems that are created when foreigners live in a Chinese society.\(^{115}\) This statement suggests that the government is concerned about economic tensions, and perhaps even racial tensions, between local workers and foreign workers. It also appears that certain provisions of the Employment Service Act are specifically designed to prevent foreign workers from establishing local ties and from obtaining permanent residency status.\(^{116}\) For example, the Employment Service Act limits employment for foreign workers to one-year and two-year maximum terms,\(^{117}\) and prohibits blue-collar foreign workers from being married during their employment in Taiwan.\(^{118}\) The government cites to Taiwan’s population problem\(^{119}\) and an increasing crime rate\(^{120}\) as justifications for denying foreign workers permanent

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\(^{114}\) Huang, *supra* note 108. These sanctions are contained in articles 58 and 59 of the Employment Service Act.

\(^{115}\) See Baum, *supra* note 34, at 15.

\(^{116}\) A foreign national is subject to the restrictions of the Employment Service Act unless he or she: (1) marries a national of the Republic of China and has a domestic residence and a permit to reside in Taiwan, (2) is a refugee who has been granted permission to reside in Taiwan, or (3) has resided lawfully in Taiwan for five years, has been lawfully employed continuously within Taiwan, and has demonstrated “exemplary behavior.” Employment Service Act, art. 48.

Taiwan’s Ministry of Interior may permit an alien to become naturalized if he or she: (1) has resided in Taiwan for a continuous period of five years or more, (2) is at least 20 years old and has acquired “disposing capacity under both Chinese law and the law of the applicant’s own country (lex patriae),” (3) has demonstrated good character, and (4) possesses sufficient property or skill to make an independent living. Nationality Law, Feb. 5, 1929, art. 3 (ROC), translated in *Judicial Yuan of the Republic of China, Major Statutes of the Republic of China* 132 (Nov. 1990).

\(^{117}\) Employment Service Act, art. 49.

\(^{118}\) July 1992 Regulations, *supra* note 111, art. 26; see Employment Service Act, art. 43. Under these regulations, foreign laborers who are domestic workers or construction workers are prohibited from marrying. July 1992 Regulations, *supra* note 111, art. 26. This seems to imply that such workers are not permitted to take advantage of article 48 of the Employment Service Act. See discussion *supra* note 116.

\(^{119}\) Baum, *supra* note 34, at 15. A 1992 survey by the United Nations shows Taiwan to be the second most densely populated country in the world. Baum, *supra* note 34, at 15.

\(^{120}\) George Wehrfritz, *Low-Cost Thai Workers Stir Controversy in Taiwan*, CHRISTIAN SCI. MONITOR, May 5, 1992, at 8. Although the government states that the crime rate has increased with the
residency. It appears that one of the objectives of the government is to maintain control over the activities of foreign workers in a manner that solves the labor shortage problem without encouraging foreign workers to immigrate to Taiwan.

2. The Employment Service Act and Foreign Workers

Under the Employment Service Act, foreign workers may only be hired if they are:

(1) Performing specialized or technical work;
(2) Chief executive of an enterprise invested or established by an overseas Chinese person or by a foreign person approved by the government;
(3) Teachers of public or registered private colleges or universities, or primary schools for foreign residents;
(4) Full-time teachers of foreign languages in short-term supplementary schools registered under the Act of Supplementary Education;
(5) Athletes or athletic coaches;
(6) Working in the areas of religion, the arts or entertainment;
(7) Family servants;
(8) Performing work that has been designated by the competent central authorities as necessary to important reconstruction strategies or economic or social development; or
(9) Performing other work that has been especially approved by the competent central authorities and for which local talent is lacking, necessitating the recruitment of foreign persons.

Foreign workers are not only treated differently from local workers as a whole, but foreign workers also receive different treatment from their fellow nationals depending upon which jobs they hold. Although these occupations are discussed under the same provision, they should be considered as two separate groups. Foreign workers qualifying under items

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121 See discussion infra note 141 (discussing the central level of government).
122 See Employment Service Act, art. 43.
7 through 9 above are treated differently from foreign workers qualifying under items 1 through 6, based upon whether the occupation is a generally white-collar occupation or a blue-collar occupation. It appears that the Employment Service Act is targeted primarily at blue-collar workers.\textsuperscript{123} First, if an employer wants to hire a blue-collar foreign worker (as specified under items 7 through 9), then an employer must initially try to hire local workers.\textsuperscript{124} There is no such requirement for employers seeking to hire white-collar foreign workers (as specified under items 1 through 6).

Second, the Employment Service Act makes clear that a foreign worker hired for a white-collar occupation (as listed under items 1 through 6) can be hired for a maximum duration of two years, unless the government allows the employer to extend the work permit for an additional year.\textsuperscript{125} However, foreign workers hired for a blue-collar occupation (as listed under items 7 and 8) can only be hired for a one-year term, unless the government allows the employer to extend the work permit for an additional year.\textsuperscript{126}

Third, foreign workers who are hired for blue-collar jobs listed in items 7 through 9 are prohibited from seeking a change in either jobs or employers.\textsuperscript{127} However, no such restriction is imposed upon foreign workers who hold white-collar occupations listed in items 1 through 6.\textsuperscript{128} Finally, foreign workers hired for the blue-collar jobs listed in items 7 through 9 can have their work permits revoked if they are living in Taiwan with their spouses and children, or if they marry during the term of their employment.\textsuperscript{129} Again, no such restriction exists for foreign workers hired for the white-collar occupations listed in items 1 through 6.

Some general restrictions are imposed on all foreign workers in Taiwan. An employer must report the foreign worker to the police if the employee has been absent without an excuse for three consecutive days, if the employer-employee relationship is terminated, or if the term of

\textsuperscript{123} Michelle Hsu, \textit{Taiwan: New Employment Law—Good Intentions, Uncertain Results}, BUS. TAIWAN, Aug. 31, 1992, available in NEXIS, ASIAPC Library, ALLASI File.
\textsuperscript{124} Employment Service Act, art. 43.
\textsuperscript{125} Id. art. 49.
\textsuperscript{126} Id.
\textsuperscript{127} Id., art. 50.
\textsuperscript{128} Id.
\textsuperscript{129} July 1992 Regulations, supra note 111, art. 26.
employment has expired.\textsuperscript{130} Furthermore, a foreign laborer's work permit may be revoked in various situations, including where the laborer refuses to participate in a health examination and where the laborer engages in work not indicated on the work permit.\textsuperscript{131}

The Employment Service Act provides that foreign workers may, under certain conditions, be exempted from the restrictions mentioned above.\textsuperscript{132} Foreign workers may qualify for the exemption if they are "persons of exemplary behavior who have been permitted to be continuously employed within the Republic of China, and have resided for five years in their dwellings."\textsuperscript{133} In light of this provision, the short employment terms afforded foreign workers under the Employment Service Act appear to guarantee that foreign workers will not be able to take advantage of this exemption. In fact, the government has admitted that the one-year and two-year maximum employment terms serve to ensure that a foreign resident will not be able to apply for ROC citizenship,\textsuperscript{134} which requires five years of continuous residency in Taiwan.\textsuperscript{135}

B. The Implementary Provisions to the Employment Service Act

On August 5, 1992, the government of Taiwan promulgated implementary provisions, or enforcement rules, to implement the Employment Service Act. These implementary provisions were amended two years later, and the revised regulations were issued on May 18, 1994.\textsuperscript{136} The Implementary Provisions clarify and expand sections of the Employment Service Act.

The most significant provisions of the Implementary Provisions involve work permits for foreign laborers. First, foreign workers must carry their work permits and passports or resident permits with them and must be prepared to present the documents for inspection at all times.\textsuperscript{137} Second, the

\begin{itemize}
  \item \textsuperscript{130} Employment Service Act, art. 52.
  \item \textsuperscript{131} Id., art. 54.
  \item \textsuperscript{132} Id., art. 48.
  \item \textsuperscript{133} Id.
  \item \textsuperscript{134} Julian Baum, *Toil and Trouble? Taiwan Adopts Liberal Stance on Migrant Workers*, FAR E. ECON. REV., May 25, 1995, at 56.
  \item \textsuperscript{135} Nationality Law, art. 3.
  \item \textsuperscript{136} Implementary Provisions, *supra* note 3.
  \item \textsuperscript{137} Implementary Provisions, *supra* note 3, art. 20.
\end{itemize}
central authorities, employment organizations, and the police force are required to go to the workplaces of foreign laborers, or to the places where it is suspected that illegal foreign laborers are working, in order to investigate any violation of the Employment Service Act or its regulations.\textsuperscript{138} These inspections may be carried out at regular or irregular intervals.\textsuperscript{139} The Implementary Provisions also explain what information an employer must provide when seeking to obtain a work permit for a foreign worker.\textsuperscript{140} These strict provisions regarding work permits and workplace raids clearly highlight the unyielding stance the government is officially taking with foreign workers.

The Implementary Provisions outline the responsibilities of the different levels of government.\textsuperscript{141} The central authorities will oversee both the applications of employers seeking permission to hire foreign workers and the applications of employment agencies that bring foreign workers to Taiwan.\textsuperscript{142} The provincial authorities will oversee investigations of matters relating to foreign workers and will also assist employers seeking permission to hire foreign workers with internal recruitment matters.\textsuperscript{143} Finally, the municipal authorities are charged with the supervision and inspection of foreign laborers working in Taiwan.\textsuperscript{144}

The Implementary Provisions clarify which jobs qualify as "specialized" or "technical" work, one of the permitted occupations for a foreign worker under the Employment Service Act.\textsuperscript{145} An occupation is "specialized" or "technical" if it: (1) requires a certification or professional qualification, (2) involves importing equipment used for foreign merchants or involves technical research and development in an industry, (3) requires graduation in a related major from college or above and two or more years of related work experience, or (4) requires higher education or specialized

\begin{itemize}
\item \textsuperscript{138} Implementary Provisions, supra note 3, art. 21.
\item \textsuperscript{139} Implementary Provisions, supra note 3, art. 21.
\item \textsuperscript{140} Implementary Provisions, supra note 3, art. 19.
\item \textsuperscript{141} Implementary Provisions, supra note 3, art. 19.
\item \textsuperscript{142} There are three levels of government in the ROC: the central level, composed of the presidency, the five ruling bodies, the National Assembly, and other administrative offices; the provincial level, composed of regional governmental units; and the city and county levels, composed of the city and county governments. 1994 ROC YEARBOOK, supra note 42, at 100.
\item \textsuperscript{143} Implementary Provisions, supra note 3, art. 3.
\item \textsuperscript{144} Implementary Provisions, supra note 3, art. 4.
\item \textsuperscript{145} Implementary Provisions, supra note 3, art. 5; see Employment Service Act, art. 43.
\end{itemize}
training. This definition indicates that "specialized" or "technical" work essentially includes only white-collar occupations.

The Employment Service Act provides that when an employer seeking to hire foreign workers complies with the requirement of first seeking local workers, the employer must advertise the job locally stating "reasonable labor conditions." The Implementary Provisions explain that the term "reasonable work [or labor] conditions" refers to wages, salaries, and conditions, which are to be determined by the central authorities.

Finally, the Employment Service Act provides that if a white-collar foreign worker is married to a ROC national and has a permit to reside, then the foreign worker is exempted from some of the restrictive provisions of the Employment Service Act, such as being limited to certain occupations and having a maximum employment term. However, the Implementary Provisions make clear that if the foreign worker's marriage is dissolved before the worker receives ROC citizenship, then the worker is no longer eligible for the exemption.

C. The Effects of the Employment Service Act and Its Implementary Provisions on the Labor Movement

Several labor unions have opposed the Employment Service Act for a variety of reasons. The National Federation of Independent Trade Unions ("NFITU") opposed the passage of the Employment Service Act for social reasons, decrying it as a discriminatory and racist policy because foreign workers and local workers are not treated equally. As promulgated, the Employment Service Act adopts many of the same social restrictions as the 1990 administrative order, which allowed foreign workers to be hired as laborers in Taiwan only if they worked on the construction projects for the Six-Year National Development Plan, and only if they left Taiwan once the

146 Implementary Provisions, supra note 3, art. 15.
147 Employment Service Act, art. 43.
148 Implementary Provisions, supra note 3, art. 16.
149 Employment Service Act, art. 48.
150 Implementary Provisions, supra note 3, art. 18.
151 Baum, supra note 34, at 15.
152 See discussion supra part II.D (discussing the issuance of the 1990 administrative order).
projects were completed. For example, in order to discourage foreign workers from establishing ties with local people, the Employment Service Act and its regulations allow employers in the construction sector to require foreign workers to live in camps managed by the company. The regulations also allow employers to require foreign workers to register before leaving their company dormitories at night.

Even worse, laborers from Southeast Asia are sometimes paid less than half the wages paid to local workers for the same job. NFITU favors "equal pay for equal work" for foreigners. In April 1992, Thai workers found themselves backed by NFITU when the Thai government demanded that Taipei increase the wages of Thai workers in Taiwan. The Taiwan government reacted negatively and temporarily suspended approval of work permits for Thai workers.

Other labor unions oppose the Employment Service Act for a mix of economic and social reasons, fearing that permitting an influx of foreign workers would only serve to undermine local workers' wages and working conditions. In fact, many labor unions argue that if construction firms improved wages and working conditions, the firms would find local workers to fill their labor demands. That is, many labor unions suggest that construction firms presently exploit foreign workers by keeping wages low.

\[153\] See Shortage Boon, supra note 39.

\[154\] See Wehrfritz, supra note 120, at 8.

\[155\] See Baum, supra note 34, at 15. These employees are also forbidden to marry, bring relatives into Taiwan or change jobs. Wehrfritz, supra note 120, at 8. A group of Thai construction workers were actually sent back to Thailand because they had girlfriends in Taiwan. Baum, supra note 34, at 15.

\[156\] Baum, supra note 34, at 15. This practice could be in violation of the Employment Service Act, as the Employment Service Act provides that certain foreign laborers be given the same contract as local workers under the Labor Standards Law. Employment Service Act, art. 43. Among other things, the Labor Standards Law requires that wages are to be determined through negotiations with the employer and are not to fall below the minimum wage set by the Executive Yuan. Labor Standards Law, art. 21. In 1995, the minimum wage was NT$14,000 (US$550) per month. Baum, supra note 134, at 56, 58.

\[157\] Wehrfritz, supra note 120, at 8. Church social workers concerned about human rights also support the National Federation of Independent Trade Unions' position. Baum, supra note 34, at 15.

\[158\] Wehrfritz, supra note 120, at 8.

\[159\] Wehrfritz, supra note 120, at 8. In 1994, Thai workers once again found themselves backed by labor unions when the unions protested the deportation of two Thai workers who organized a strike in the construction industry. Taiwan: Labor Unions Protest CLA Move to Expel Foreign Strikers, CHINA ECON. NEWS SERV., Mar. 3, 1994, available in NEXIS, ASIAPC Library, ALLASI File.

\[160\] Baum, supra note 34, at 15.

\[161\] Baum, supra note 134, at 58.
Last year, the Alliance of Labor Groups ("Alliance") asked the government to enact legislation to end the importation of unskilled foreign workers. The Alliance explained that the presence of foreign workers not only prevents local workers from being hired, but also works as a disincentive for employers to improve working conditions; that is, employers no longer need to improve working conditions in order to gain employees because so many foreign workers are available and willing to take jobs with substandard working conditions.

D. The Effects of the Employment Service Act and Its Implementary Provisions on Foreign Workers

The Employment Service Act has not stopped the influx of illegal foreign workers. In addition, it has not cured the problem of local employers and labor brokers abusing foreign workers. Foreign workers still remain vulnerable to exploitation by employers who confiscate their passports, impose involuntary wage deductions, and extend their working hours without overtime pay. Labor brokers continue to demand exorbitant commission fees to be paid by monthly deductions from the foreign workers' wages. Labor brokers make such demands even when the job that the foreign worker ultimately obtains is a lower paying job with

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163 See discussion supra part II.E.
164 Tseng, supra note 162. Religious organizations have also joined labor activists in urging the government to introduce laws to protect foreign workers from mistreatment and exploitation by employers. Religious Group Appeals on Behalf of Foreign Workers, CENTRAL NEWS AGENCY, May 3, 1993, available in NEXIS, ASIAPC Library, ALLASI File [hereinafter Religious Group].
165 See Taiwan: CLA Opens Taipei Counseling Center to "Help" Foreign Workers, CHINA ECON. NEWS SERV., Dec. 15, 1995, available in NEXIS, ASIAPC Library, ALLASI File. As of December 1995, the Taiwan government estimated that 11,000 foreign workers had broken their employment contracts and were working in Taiwan illegally. Id.
166 See Philip Liu, Taiwan: Government Reviews Foreign Worker Policy, BUS. TAIWAN, July 18, 1994, available in NEXIS, ASIAPC Library, ALLASI File.
168 Liu, supra note 166. For example, labor brokers charge Thai workers anywhere from 70,000 baht to 100,000 baht for finding a job in Taiwan. Prapaiparn Rathamarit & Wuth Nontarat, Thailand: Gov'ts Urged to Solve Job Seeking Problems, BANGKOK POST, Oct. 19, 1994, available in NEXIS, ASIAPC Library, TAIWAN File. US$1 is approximately equivalent to 25 baht. Foreign Exchange, supra note 113.
conditions below the standards that the labor broker had promised to the worker.\textsuperscript{169}

Moreover, additional withholdings decrease the foreign workers’ earnings. Foreign laborers who work in Taiwan for fewer than 183 days are required to pay a twenty percent income tax.\textsuperscript{170} Foreign laborers who work in Taiwan for more than 183 days within a year are only required to pay a six percent income tax.\textsuperscript{171} Taxes, social funds, and a “fleeing fee” deposit are typically deducted from the workers’ earnings.\textsuperscript{172}

Many foreign workers cannot bear the pressure of owing a tremendous debt to labor brokers; many also cannot bear to let their families in the homeland know of their dire situations. As a result, some foreign workers commit suicide\textsuperscript{173} and some run away from their assigned jobs to find other employment.\textsuperscript{174} When foreign workers run away from their designated jobs, they have violated both their labor contracts and the Employment Service Act, and thus have become illegal aliens. If the authorities find them, they will be deported to their home countries\textsuperscript{175} and will no longer be permitted to work in Taiwan.\textsuperscript{176}

Contributing to the problem of abuse, the Taiwan government has not diligently enforced the Employment Service Act and its regulations.\textsuperscript{177} Foreign workers employed legally are to receive the same protections as local workers, but many employers refuse to provide any benefits, such as

\textsuperscript{169} See Janchitfah, \textit{supra} note 72. For example, one Thai worker in Taiwan stated in an interview that he used to work as a foreman in Singapore and passed all the skill tests required to work as a foreman in Taiwan, but that he was put to work as a construction worker instead. Janchitfah, \textit{supra} note 72.

\textsuperscript{170} Janchitfah, \textit{supra} note 72.

\textsuperscript{171} Janchitfah, \textit{supra} note 72. Given the government’s desire to ensure that the foreign workforce remains a temporary one, it is unclear why the income tax is lower for those who work in Taiwan for a longer period of time. It may be that in order to take advantage of the 6\% income tax, a foreign worker must work for 183 days within one calendar year.

\textsuperscript{172} Janchitfah, \textit{supra} note 72. “Fleeing fees” serve to ensure that foreign laborers will not breach their employment contracts. Janchitfah, \textit{supra} note 72.

\textsuperscript{173} Janchitfah, \textit{supra} note 72. One Thai worker stated: “I want to jump from the expressway and commit suicide when I realize that working here is actually increasing my debts, plus high interest rates which my family will have to pay.” Janchitfah, \textit{supra} note 72.

\textsuperscript{174} Liu, \textit{supra} note 166. As of October 1995, it was estimated that one in every 14 foreign workers has run away from his or her designated job. \textit{Taiwan: Bounty Hunting}, CHINA ECON. NEWS SERV., Oct. 3, 1995, \textit{available in NEXIS}, ASIAPC Library, ALLASI File.

\textsuperscript{175} Liu, \textit{supra} note 166.

\textsuperscript{176} Employment Service Act, art. 54.

\textsuperscript{177} See 1995 HUMAN RIGHTS, \textit{supra} note 24.
medical coverage and accident insurance, to the foreign workers. This is compounded by the fact that conditions in small and medium sized factories are often dangerous because of old and poorly maintained machines.

The lack of enforcement of the Employment Service Act and the exploitation of foreign workers by employers and labor brokers will remain a problem, as the influx of foreign workers will continue to rise in response to Taiwan’s ongoing labor shortages. In April 1996, the government reported that over seventy-eight percent of foreign residents in Taiwan were laborers. As of May 1995, the CLA had received approximately 519,000 applications from employers seeking to hire foreign workers, and had approved 293,000 applications. Although it was estimated that there were already 250,000 foreign workers in Taiwan at that time, the CLA stated that it would accept another 8,200 applications for foreign workers. In October 1995, the CLA announced that it would allow an additional 30,000 foreign laborers to work in Taiwan. The government of Taiwan has also recently signed an agreement with Vietnam to import 1,000 workers from that country.

E. Taiwan’s Policy on Foreign Workers in Review

Taiwan’s policy on foreign workers has not curtailed the tide of illegal aliens. Instead, it has created two major problems. First, because the government has, in effect, encouraged the exploitation of foreign workers by allowing foreign laborers to be hired at low wages, it is possible that employers find it more cost-effective to retain labor-intensive techniques...
rather than to invest in automated systems. Taiwan’s foreign labor policies may therefore hinder the development of technological advances. The Employment Service Act and its regulations may indirectly encourage employers to keep wages and working conditions low so that local workers will refuse those jobs and thus perpetuate a continual labor shortage.¹⁸⁶

Second, Taiwan has encouraged the exploitation of foreign workers by importing foreign laborers without considering the effects of its policies on these workers. Taiwan has provided few protections for foreign workers against unscrupulous employers and labor brokers. Moreover, the Employment Service Act and its regulations promote a situation where foreign laborers are treated inhumanely. By threatening blue-collar foreign workers with termination of employment upon a change of job or employer, or upon getting married, the Employment Service Act and its regulations allow for the abuse and exploitation of foreign workers and discourage foreign workers from reporting such abuses. It seems that the government is reluctant to step forward either to stop employers and labor brokers from abusing foreign laborers or to enforce the Labor Standards Law with respect to foreign workers.¹⁸⁷

The government of Taiwan has taken an unrealistic approach towards foreign workers. In theory, many people are probably willing to go to another country for only a year or two in order to earn some money. However, when employers and labor brokers deduct most of the foreign worker’s earnings and mislead the worker into accepting a vastly different job than he or she was promised or a job with intolerable working conditions, it is unrealistic for the government to expect that the foreign worker will be able to comply with the Employment Service Act. That is, if foreign laborers are penniless after their employment term of one or two years, then they will need to stay in Taiwan to find another job because they will not have the money to return to their homeland or perhaps will be reluctant to return home empty handed. If laborers are working under substandard conditions at jobs they did not wish to take in the first place, then they will most likely leave their designated jobs to find others.

¹⁸⁶ See discussion supra part II.E (discussing how the hiring of foreign workers could, in effect, perpetuate a labor shortage).
¹⁸⁷ See Tseng, supra note 162. A 1995 report by the Council of Labor Affairs revealed that of 312 companies surveyed (all of which hired foreign laborers), almost 90% failed to meet the worker standards required by the Labor Standards Law. Tseng, supra note 162.
These situations result in many laborers violating the Employment Service Act and becoming illegal aliens. By ignoring the abuses of employers and labor brokers, the government has failed to achieve its objective in promulgating the Employment Service Act. The government's goal in enacting the Employment Service Act was to maintain control over the activities of foreign workers in a manner that solved the labor shortage problem without creating hostility between local workers and foreign workers and without encouraging foreign workers to overstay their work permits and visas. The government's goal has not been realized. The government's policies have, instead, fostered general labor unrest. Labor unions are agitated by the continuing allowance of foreign workers. Businesses are angered by the strict regulation of foreign workers after several years of leniency. And the inhumane treatment of foreign workers in Taiwan continues. The government's goal was perhaps an impossible one; 200,000 foreign nationals cannot pour into a country without becoming a part of it.

F. Perspectives for the Future

It seems that the government of Taiwan would like to become competitive with other technology-intensive industries.\(^{188}\) Given this objective, the government should encourage the development of technological advances. However, allowing employers to pay foreign workers wages that are lower than those paid to local workers acts as a disincentive for a business to abandon labor-intensive methods. Employers claim labor shortages in order to obtain government approval for hiring foreign workers. A debate exists over whether "labor shortages" derive from an actual lack of available workers or from the unwillingness of available workers to take jobs at certain wages. In either case, the government of Taiwan could avoid the perpetuation of labor shortages by requiring employers seeking to hire foreign workers to demonstrate steps to upgrade or automate the business and move away from labor-intensive techniques.\(^{189}\)

In addition, the government should discourage abuse and exploitation of foreign laborers. Although the government has plans to cease the

\(^{188}\) See discussion supra part II.B (discussing the government's policy goals in enacting the Labor Standards Law).

\(^{189}\) Tseng, supra note 162.
introduction of additional foreign workers into Taiwan, the fact remains that there are currently thousands of foreign workers in Taiwan. The government should take steps such as enforcing the Labor Standards Law for foreign workers as well as for local workers. The government should also enforce sanctions against employers and labor brokers who exploit foreign workers. If the government wants the influx of foreign workers to remain temporary, then it must move towards ensuring that foreign workers are not abused and exploited while they are working in Taiwan. The exploitation of blue-collar foreign workers only serves to prevent them from earning enough money to leave Taiwan. It also allows for labor importation to remain cost-effective for businesses that pay foreign workers substandard wages. Moreover, the exploitation of workers from Southeast Asia may increase tensions between Taiwan and its neighbors. It may be therefore be in Taiwan’s political interest to work with nations such as Thailand, Malaysia, Indonesia, and the Philippines to ensure that their citizens are being treated fairly in Taiwan.

IV. CONCLUSION

The Employment Service Act and its Implementary Provisions have not adequately addressed the problems resulting from the influx of foreign labor in Taiwan. The government of Taiwan has attempted to alleviate the labor shortage while stemming the tide of illegal workers and avoiding the difficulties that accompany the influx of foreign workers. Taiwan, however, has not achieved this objective through the Employment Service Act or its Implementary Provisions. There are still thousands of illegal foreign workers in Taiwan. Moreover, in an effort to resolve the labor shortage problem without acknowledging the consequences of importing foreign labor, Taiwan has encouraged the continuation of labor-intensive industries and has indirectly perpetuated the continuation of employer abuses against foreign workers. Given Taiwan’s ongoing desire to become an influential force in the international arena, Taiwan must proceed carefully and review its current policy on foreign workers.

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190 Taiwan: Entrance for Foreign Workers to be Closed, BUS. TAIWAN, Mar. 11, 1996, available in NEXIS, ASIAPC Library, ALLASI File.
APPENDIX

ADMINISTRATIVE (REGULATION) #29-10-006
IMPLEMENTARY PROVISIONS OF
THE EMPLOYMENT SERVICE ACT

On August 5, 1992 (ROC 81), the Council of Labor Affairs of the Executive Yuan's labor and professional order # 25492 of 1992 (ROC 81), the complete text of 22 Articles, was enacted and issued.

On May 18, 1994 (ROC 83), the Council of Labor Affairs of the Executive Yuan's labor & professional order #35430 of 1994 (ROC 83), was enacted and issued, amending Articles 5, 19, and 20.

ARTICLE 1.

These provisions are enacted according to the rules of Article 69 of the Employment Service Law (referred to as “this law” below).

ARTICLE 2.

Government agencies, various levels of public and private schools and professional training institutions, according to other laws or policies, may establish relevant units to deal with employment service business matters. These units must be under the supervision of the competent authority.

ARTICLE 3.

The Central Competent Authority shall manage the following matters:
1. The enactment of government policy, ordinances, plans, and proposals for citizens’ employment on a national basis.

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APPENDIX (continued)

2. The provision of information on the employment market on a national basis.
3. The determination of basic standards for work in employment service.
4. The supervision, coordination, and evaluation of employment service business matters on a national basis.
5. The education, training and licensing of employment service personnel.
6. The issuance of permits for and administration of employers who apply to employ foreigners.
7. The issuance of permits for and the administration of employment agencies acting as intermediaries in bringing foreigners to the ROC to work, or according to the rules, acting as intermediaries in bringing people from the mainland to Taiwan to work, or acting as intermediaries in sending citizens of this country (ROC) to foreign countries to work.
8. Other matters relating to employment of citizens and promotion of employment on a national basis.

ARTICLE 4.

The provincial and city competent authorities shall manage the following matters:
1. The establishment of provincial and city plans and independent enactment of regulations concerning citizens' employment.
2. The establishment or adjustment of provincial and city government employment service agencies.
3. The provision of information on the employment market on a provincial and city basis.
4. The utilization and regulation of provincial and city manpower.
5. The supervision, coordination and evaluation of provincial and city employment service business matters.
6. The training of provincial and city employment service personnel.
7. The investigation of and assistance in management of matters relating to the employment of foreigners in this country.
8. Assistance to employers, who are going to employ foreigner workers, in managing internal recruitment matters and issuance of proof of recruitment according to Paragraph 3, Article 43 of this law.
APPENDIX (continued)

9. Other matters concerning the employment of citizens and the promotion of employment.

ARTICLE 5.

The competent authority of the municipality (city), or county (city) shall manage the following matters:
1. The determination of employment discrimination.
2. The registration of workers who have been terminated and received severance pay, and assistance in their re-employment.
3. The granting of permission to citizens to work in private employment service agencies.
4. The supervision of private employment service agencies.
5. Assistance in and supervision of seeking employment opportunities and skilled people.
6. The supervision and inspection of foreigners working in the ROC.
7. Cooperation in referral for employment and professional training for those receiving social welfare.
8. Cooperation in other matters related to the employment of citizens.

The municipality (city) or county (city) competent authority, in order to determine employment discrimination, may invite concerned government units, labor groups, representatives from employer groups, and scholars to organize employment discrimination steering committees.

ARTICLE 6.

The Committee for Promotion of Employment Service established in accordance with Article 7 of this law, should, according to the circumstances of the employment market of each territory, study and discuss matters related to employment service and promotion of employment. The principal points for the establishment of the committee must be determined by the various levels of competent authorities.
APPENDIX (continued)

ARTICLE 7.

The mandatory fee to be received from the employer for examining candidates, referred to in Article 13 of this law, is the expense necessary for public employment agencies commissioned to manage the entrance exam.

1. The expense of advertising due to the commission to give the entrance exam.
2. The expense of developing the examination problems.
3. The fee for evaluating exams.
4. Site fee.
5. Administration fee.
6. The fee for printing and office supplies.
7. Postal fee.

ARTICLE 8.

When a public employment service agency discovers that an application of an employer seeking employees, or an employee seeking work, is not correct or complete, or is against the law, the agency shall notify the employer or employee that a correction is necessary.

If applicants do not make the corrections mentioned in the above paragraph, public employment service agencies must refuse to accept the applications.

ARTICLE 9.

The standard for determining who may receive social welfare in this law's Articles 15, 24, and 30 shall be in accordance with the regulations of the social welfare law. The provincial and city competent authorities shall set the standards for traveling expenses for those receiving social welfare, according to Article 15 of this law.
APPENDIX (continued)

ARTICLE 10.

Public employment service agencies shall periodically collect data on the salary changes and the situation in regards to labor supply and demand in their employment service business districts, and analyze data on future development. The organizations must also make a report to the provincial or city competent authority every six months.

The provincial or city competent authority must organize all the materials mentioned in the previous paragraph and submit a report to the Central Competent Authority to be used as a basis of reference in determining the regulation of labor supply and demand.

The basic work standards of the previous two paragraphs are to be determined by the Central Competent Authority.

ARTICLE 11.

When public employment service agencies provide information on employment, they must look at the physical and psychological condition of the one receiving the information, and also his or her inclinations and education and experience, etc. When providing employment information to those who are handicapped, public employment service agencies must also help such people participate in professional rehabilitation, or, according to their professional capabilities and interests, provide appropriate employment suggestions and aid.

ARTICLE 12.

Public employment service agencies, in order to aid schools in assisting and guiding their students, and to cooperate in making suggestions to graduates for employment or participation in professional training and assistance and guidance in work after they are employed, must set a yearly work plan and also on a regular basis discuss the work plan and the results of its implementation with the schools in the employment service business area.
APPENDIX (continued)

The Central Competent Authority, together with the Central Education Competent Authority, may, as needed, issue employment service handbooks for the different levels of schools.

ARTICLE 13.

The "handicapped," referred to in this law’s Articles 24, 25, and 27-29, means a person who has received the handbook on the handicapped according to the law on Aid to the Handicapped.

ARTICLE 14.

Reports prepared by employers, as provided in Article 34 of this law must include the names, gender, ages, domiciles, work responsibilities, and reasons for receipt of severance pay, and so on, of those who have received severance pay.

ARTICLE 15.

The specialized nature or technical nature of work referred to in the first sentence of the first paragraph of Article 43 of this law, is referring to:
1. The work that, according to the specialized professional and technical personnel examination law and its implementing provisions, requires certification or professional qualification.
2. Work involving: importing; the arrangement, direction, or repair of the tools and equipment used for foreign merchants; those who are engaged in the inspection of goods for export and those engaged in production, technical leadership, management training relating to goods for foreign merchants; and those who are engaged in raising the level of technical research and development in industry.
3. Work that requires graduation in a related major from college or above, from either a foreign or domestic college, and two or more years related work experience, before it may be undertaken.
4. Other work needing: higher education or specialized training; or the successful completion of a professional exam; or those who have served an
APPENDIX (continued)

apprenticeship or who have work experience or accomplishments; or those who are self-taught and have innovative ideas or special accomplishments, approved by the Central Competent Authority in concert with the central competent authorities of the public agencies.

ARTICLE 16.

The “reasonable work conditions” mentioned in the 3rd paragraph of Article 43 of this law refers to the salaries and other conditions determined after investigation of the circumstances of the employment market at the time, by the Central Competent Authority in consultation with business organizations and labor and employer groups.

ARTICLE 17.

The official foreign institutions stationed in the ROC mentioned in Article 46 of this law are the official foreign institutions that are referred to in Article 2 of the regulations concerning diplomatic privileges and immunities for official foreign institutions and their personnel in the ROC, that have been established on the approval of the Ministry of Foreign Affairs.

ARTICLE 18.

If foreigners hired according to the regulations of Item 1, Paragraph 1 of Article 48 of this law, end their marriage relationship during their work term and before receiving ROC citizenship, the regulations of Article 48 will no longer apply to them.

ARTICLE 19.

The work permit referred to in this law means the permit issued to the employer to hire foreigners, after going through the investigation of the Central Competent Authority or the competent authorities of the public agencies.
When an employer applies to the Central Competent Authority or the competent authority of a public agency to hire a foreigner, the application must make the following matters clear:

1. The employer’s name and the name of the person in charge, the address, the telephone and fax numbers.
2. The foreign employee’s name, nationality, gender, age, type of work, salary, passport number, work address and domicile in China.
3. Term of hire.
4. Other items as indicated by the Central Competent Authority or the competent authority of a public agency.

When the Central Competent Authority investigates and then issues a hiring permit, they must also notify the foreigner being hired. When the competent authority of a public agency investigates and then issues a hiring permit, they must also notify the Central Competent Authority and the foreigner being hired.

When a foreigner is hired for work under Item 1, Paragraph 1 of Article 43 of this law, and the hiring is also to aid in solving an urgent problem, a Paragraph I permit must be applied for within 3 days from the time the foreigner accepts the work.

ARTICLE 20.

A foreigner who has been hired must carry his work permit documents on his person to be prepared for inspection. Those (foreigners) that are staying more than six months must also, according to the rules, get a foreigner’s resident permit and carry it on their person. Before getting the resident permit, they must carry their passport on their person, to be prepared for inspection.
APPENDIX (continued)

ARTICLE 21.

The competent authority, competent authorities of public agencies, and the police must, at regular intervals, or irregular intervals, go to the work places of foreigners or to the places where it is suspected that illegal foreigners are working and investigate as to whether there are cases of violations of this law under Article 42, 49, 50, 52-54, or regulations of this law concerning foreign permits or methods of managing hiring (of foreigners).

ARTICLE 22.

These implementing provisions shall take effect the day they are issued.