

## ANALYSIS

## Becoming “Legal” through “Illegal” Procedures: The Precarious Status of Migrant Workers in Russia

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### Abstract

Russia’s complex laws and elaborate procedures governing the status of migrant workers and a highly inadequate mechanism for their implementation push migrants to rely on numerous “intermediaries” who dominate the shadow economy of migration on the basis of their close connections with officials. The path to becoming “legal” require migrants to resort to a variety of semi-legal or outright illegal (“corrupt”) transactions through the intermediaries in order to “get things done.” Thus the laws and the informal or shadow mechanisms of their implementation, which have emerged to aid a “legalization” of migrant workers, thrive on keeping a sizable proportion of them in a quasi-legal status, continuously facing the threat of illegalization, criminalization and deportation.

### Chaotic Policy, Poor Implementation

Despite being the second largest destination for migrants after the USA, Russia lacks a concerted policy on migration. Noted migration scholar Sergei Abashin has described the migration policy of Russia as “chaotic and unaccountable.”<sup>1</sup> Civil rights activist Svetlana Gannushkina who heads *grazhdanskoe sodeistvie* sees it as directionless.<sup>2</sup> Sociologist Vladimir Malakhov describes it as lacking a rationale or economic logic, with a weak and inefficient mechanism for execution, which creates propitious settings for corruption to thrive.<sup>3</sup>

The Concept of the State Migration Policy of the Russian Federation, issued in June 2012 by Putin defined the broad trajectories and directions of the migration policy.<sup>4</sup> It acknowledged Russia’s growing need for migrant labor and its low migration attracting potential in comparison with other states and called for the need to improve the legal-regulatory base and living and working conditions for migrants.<sup>5</sup> Yet numerous laws and amendments passed since go against the directions outlined in the Concept. “The right hand signs one document and the left hand another,” commented Gannushkina on the lack of coordination between the Migration Concept and subsequent laws.

### Anti-Migrant Rhetoric and Ethnoracial Profiling of Migrants

The campaign for Moscow’s mayoral elections in 2013 unleashed a most virulent rhetoric against migrants, targeted largely at Central Asian migrants who constitute nearly 60–65% of the workforce in Moscow and other major cities in Russia. They tend to be less educated and lack proficiency in Russian, which turns them into the most convenient targets of ethnoracial profiling, subjected to frequent document checks, fines, detentions and deportations. They face the greatest pressures to prove their legality in a legal framework and political economy which thrive on an illegalization of migrants.

In a climate where rule of law does not operate, and the media and several public figures flag anti-migrant, particularly anti-Muslim rhetoric, it is the police and the officials who claim the prerogative of defining *who* is legal, and *what* constitutes a violation of the migration law. Judged by the anti-migrant rhetoric and propaganda which unifies the officials, media and ordinary people and anti-migrant bias of various laws and bureaucratic procedures, Russia, and Moscow in particular, may be one of the most inhospitable and even dangerous places for migrants in Europe. Central Asian migrants are also the most lucrative source of revenues and extortions for the police and Federal Migration Service (FMS) officials.

In response to the widespread campaigns to limit the number of migrants, introduce visa regime for migrants from Central Asia, and the disinformation about high levels of criminality among them, FMS has intensified a crackdown against “illegal migration.” It issued deportation orders for 65,000 foreigners in 2013 and barred another 500,000 from entering Russia for a period of 3 years. By October 2014, a total of almost a million migrants have been barred entry into Russia for 3 years for alleged “criminal” activities, most of which pertain to the violation of rules pertaining to their legal status in

1 <<http://jarayon.com/ru/index.php/component/k2/item/711-sergej-abashin-v-rossii-migratsionnaya-politika-imeet-khaoticheskiy-i-neposledovatelnyj-karakter>>

2 Svetlana Gannushkina, *Grazhdanskoe sodeistvie*, 14 May 2014. <<http://refugee.ru/migratsionnoj-politiki-v-rossii-net/>>

3 Vladimir S. Malakhov, “Russia as a new immigration country: Policy response and public debate,” *Europe Asia Studies* 66, 7 (September) 2014, pp. 1062–79.

4 <[http://www.fms.gov.ru/documentation/koncept\\_mig\\_pol/](http://www.fms.gov.ru/documentation/koncept_mig_pol/)>

5 <[http://www.raspp.ru/about/docs/tematicheskie\\_dokumenty/koncepciya\\_gosudarstvennoj\\_migracionnoj\\_politiki\\_rossijskoj\\_federacii\\_proekt/](http://www.raspp.ru/about/docs/tematicheskie_dokumenty/koncepciya_gosudarstvennoj_migracionnoj_politiki_rossijskoj_federacii_proekt/)>

the country or for committing more than two “administrative violations” (often of petty nature such as violating traffic rules or public misdemeanors) over a three year period. About 40% of these are from Uzbekistan and 20% from Tajikistan.<sup>6</sup>

### Understanding “Illegal” Migration

Konstantin Romodanovsky, the Chairman of FMS, noted with pride that the various measures adopted in the current year are reducing “mass migration from Central Asia” and “effectively deter illegal labor migration and illegal labour activity.”<sup>7</sup>

It is questionable whether the number of migrants from Central Asia has decreased or whether the deportations and entry bans have reduced “illegal” labor migration. Most deportations and entry bans have no legal basis and do not allow migrants a right to appeal. In reality, most deportation orders are not carried out, and many migrants remain in Russia without valid documents, thus increasing the share of “illegal” migrants in the labor market and the society. Some of these are able to muster resources to buy new passports on the basis of a new identity from the numerous “legalizing” firms operating in Russia. A number of Uzbek citizens without valid documents were able to buy Tajik passports through one of such firms. Similarly, a large number of those issued entry bans opt to remain in Russia as long as they are able to avoid the gaze of the officials. Thus compiling and publicly releasing such statistics on deportations and entry bans is more a case of show of strength by the FMS and law enforcement officials to prove that they are efficiently executing policies and also to assure the anti-migrant attitudes rampant in the media and among ordinary people that migration is being kept “under control.”

What precisely is illegal migration? How do migrants become “illegal”? A more pertinent question is: how can a Central Asian migrant, who enters Russia legally under the visa-free regime and is authorized to remain up to 90 days after registering at the place of entry within seven days of arrival, become “illegal”? Given the high demand for “cheap and readily available” migrant labor in numerous sectors of the economy, why is it so difficult for migrants to obtain legal employment and maintain a legal status in Russia?

Russia’s complex laws and elaborate procedures governing the status of migrant workers on the one hand and the lack of a mechanism of their effective imple-

mentation on the other make it nerve-wracking for a foreigner to obtain the necessary documentation such as registration, labor patent, work permit or residency status by following the specified legal procedure. In order to procure the documents needed to live and work legally in Russia, migrants are forced to approach the numerous “intermediaries” (*posredniki*) who control access to information and to officials who can “get things done.” The intermediaries can be a broad range of people: lawyers, migrants’ associations, diaspora activists, legal and commercial firms offering a variety of documentation and “legalization” services, and individual fixers. These intermediaries and officials within the state administration, migration services, police, and security services are closely interlinked and form mutually profitable business arrangements by ensuring that migrants (and also Russian citizens) cannot obtain the necessary documents on their own by following the normal procedure.

Thus the process of becoming “legal” forces a migrant to enter into a variety of semi-legal or outright illegal (“corrupt”) transactions with intermediaries and officials. It is impossible to obtain the necessary documentation without resorting to quasi-legal or corrupt practices. This suggests that while the media and public opinion remains obsessed with the “threats” posed by “illegal migrants”, the anti-migrant attitudes and the spectre of “illegal migration” generate very lucrative business for the various officials and intermediaries and also allows the police and law enforcement officials to target migrants for extortions.

### Obtaining Documentation to Become Legal

Here is a basic list of documents that a migrant entering Russia under the CIS visa-free system requires in order to live and work legally: a temporary registration at the place of arrival (*registratsiia po mestu pribyvaniia*) within 7 days of entry, labor patent which authorizes migrants to work for up to one year for an individual (but not for a commercial firm), health certificate and copies of fingerprints required for getting the patents, work permits (for being employed by a commercial firm which has secured the quota to hire foreign workers), and a certificate of proficiency in Russian needed for a specified list of jobs. Those applying for permanent residency (also granted on the basis of quotas set annually by the FMS), long-term settlement, asylum, refugee status, citizenship and so on also have to go through a bureaucratic maze which is very challenging to navigate without paying intermediaries.

### Obtaining Legal Work: Patents and Quotas

There are basically two ways whereby a migrant from the CIS region can work legally in Russia: buy a labor patent

6 RIA novosti, 17 January 2014. <<http://www.themoscowtimes.com/news/article/65000-foreigners-deported-from-russia-in-2013/492843.html>>

7 “Glava FMS: pochti 1 million inostrantsev zakryt v’ezd v Rossiiu,” 23 September 2014. <<http://itar-tass.com/obschestvo/1460698>>

which allows them to work only for a household or an individual entity (*chastnoe litso*) or work for a company or business which has the authorization to hire foreign workers within the quota allocated by the Ministry of Labour and Social Protection. But do these two documents really allow migrants to become legal?

### *Buying a Labor Patent*

Russia introduced the labor patent in July 2010 which allows migrants arriving under the CIS visa free regime to obtain legal employment without having to depend on the employer for registration and legal status which had reduced them to the status of bonded laborers earlier. Another aim of the patent was to enable the state to earn revenues by drawing migrants from the informal economy into the official one.

Migrants can directly obtain a patent by registering at the local FMS office after supplying a copy of work

*Figure 1: Advertisement posted by an apparent Tajik or Uzbek firm offering “official registration” for citizens of the CIS and Russian Federation. There is a grammatical mistake: the word “ofitsial’naya” should have been used instead of “ofitsial’noe” indicating that the firm is run by migrants with limited knowledge of Russian (the text on the poster translates as follows: “Official registration / For citizens of CIS and RF / Labor permit / Patent / Health certificates;” the text above at the top of the tags with the telephone number reads “All documents.”).*

*Photo: Bhavna Davé*



contract with the employer (though this requirement is often not enforced) and making a payment of 1216 rubles a month (up from 1000 a month or equivalent to \$30 when it was introduced) or the corresponding payment for a quarter. Patent is initially given for a maximum of 3 months and can be renewed every month or three months depending on whether one is willing to pay for a month or for 3 months and is valid for up to 1 year. It cannot be renewed but the same migrant worker can buy a new patent. The patent only allows migrants to be employed with an individual entity (*fizicheskoe litso*) and not for a legal one (*juridicheskoe litso*). a package of measures for introducing a more complex and varied patent—allowing skilled migrants as well as foreign students to obtain employment with commercial firms albeit for a fee of up to 3000 rubles a month—is being debated in the Duma but it is doubtful if it will be passed and if it will constitute a “reform” of the existing system.

In theory migrants can obtain the patent on their own by following what is described as a simple legal procedure, but in reality the entire system pushes them to rely on intermediaries. Those desiring to obtain a patent on their own encounter hurdles at every step. The very first hurdle is obtaining a token to hold a place in the queue for acquiring the necessary application materials. Many migrants reported the presence of “tough Caucasians (*kavkaztsy*)” who stand as gatekeepers and control access to the token-dispensing machines and offer the desired place in the queue for a price. There is a deliberate ambiguity on whether the patent is to be filled by hand or typed and FMS officials frequently return the applications to migrants by pointing to petty mistakes and demand them to submit a new application. They often direct migrants to firms located nearby which “help” them with filling out the forms: needless to say, the officials have a stake in the revenues earned by such firms.

A person seeking to do all documentation on his own can spend several days in obtaining the application form, proof of registration and a copy of fingerprints. Applicants have to form a separate queue for having their fingerprints taken and for collecting the certificate. “There are a total of 38 finger-printing scanners all over Moscow and many of them do work efficiently all the time,” informed a migrants’ rights activist in late 2013. A payment of about 500 rubles to intermediaries facilitates a fast-track access for having fingerprints taken. Ready-made fingerprint copies are available through intermediaries for about 2000 rubles.

The price of a patent obtained through intermediaries ranges from 3500 to 6000 rubles: an established legal firm “Z” charges 4500 per patent, whereas some others firms may charge around 6000. “Sultan,” a Tajik

intermediary with a thriving business of offering registrations, patents and work quotas charges 3500 to those who come through known channels and 4000 to others.

From August 2014 migrants arriving in Russia in order to obtain a patent are required to write their intention to work on the migration card upon entering the country. They cannot obtain a patent otherwise. Often the border officials fill out the migration cards for migrants, frequently writing the purpose of visit as “personal”, making mistakes or often “Russianizing” their names without the knowledge of the migrants. Rahmon from Tajikistan found his name spelled as Roman by the border official and had to pay 500 rubles to correct the spelling mistakes made on the card. He was told to go to Domodedovo airport which was the only place where such corrections could be made.

Although the patent was introduced to aid a legalization of migrant workers and reduce informal and illegal employment, it has had no visible impact on reducing the number of migrants employed informally, i.e., “illegally”. About 1.8 million migrants were working on patents in early 2014 and the number is likely to have exceeded 2 million by the end of the current year as many migrants are using the patent as a means of staying legal while they informally work in other jobs which pay a higher salary. Patent holders usually earn far less as wages earned as a domestic or household worker tend to be lower than in other sectors such as construction, cleaning, catering etc., where many migrants work informally without a work permit or labor contract.

About 40% of patent holders are from Uzbekistan, 20% from Tajikistan, and 15% from Kyrgyzstan. The remaining are from Ukraine, Moldova, Azerbaijan, and Armenia. As members of the CIS Customs Union citizens of Kazakhstan and Belarus have a privileged status in Russia’s labor market. As citizens of Georgia need a visa, they are not eligible for patents but can instead obtain a work visa.

### *Quotas for Work Permits*

In practice, it is very difficult for ordinary Russian employers to get the permission and the required number of quotas to hire foreign workers as big business, agencies and individuals connected with the FMS secure open a number of fictive firms (as one firm can obtain no more than 100 quota) and obtain quotas for each of these. After buying quotas wholesale, these large firms sell them to smaller firms and individuals for a much higher price.

The mechanism of setting quotas for hiring foreign workers is very complex and time-consuming, and the allocation of quotas by the Ministry of Labor and Social Protection among various businesses is non-transparent.

Rather than engaging in a proper consultation with business, employers, and experts—within Russia as well as in the migrant-sending states—the officials set the quotas which do not correspond to the logic of the labor market. As one migration scholar mentioned, “the numbers are taken from the lamp-post” (*‘tsifry berut ot fonarya’*), emphasizing the lack of congruence between the quota system and the demand for labor in various sectors of the economy. FMS officials have time to time proposed annulment of quotas and a package of amendments to the quota system are being debated in lawmaking circles. However, many of these pronouncements are declaratory and there is no clear indication as yet of significant reforms to the quota system or concrete proposals for scrapping the system.

In order to obtain permissions under the quotas for hiring foreign workers, employers or firms have to file an application (*podat’ zayavku*) between 1 November to 1 May for the following year (thus one filing for quotas for 2015 would have filed the application between 1 November 2013 to 1 May 2014).

The practice so far shows that several large firms and influential intermediaries are able to obtain a bulk of quotas. As large firms buy quotas wholesale, a sizable number of work places for which quota was secured actually remain unfilled. Moscow was allocated 155,000 work permits for 2013 of which only 70,000 were distributed among various firms and little information on the remaining ones was available. In 2014 about 110,000 work permits issued. An Uzbek migration lawyer who has his private law firm explained: “What this means is that the various *posredniki* with close connections with the administration on labour and employment in the Ministry of Labor would avail of the remaining 85,000 in order to resell them for profit.”

The rules and practice of distribution of quotas disadvantage small employers and smaller legal firms as the FMS prefers to deal with “its own preferred firms,” added Ibragim. He explained that FMS officials frequently find petty faults with application forms submitted by smaller firms, thus making them re-submit the paperwork which causes further delays and some of these firms simply run out of time to submit the forms by the deadline. While the preferred firms already have the insiders’ advantage in knowing how the forms are to be filled out.

Those who are able to obtain temporary residency (*razreshenie na vremennoe prozhivanie*) granted by the FMS for a period of up to 3 years or work permit have to undergo a mandatory health check by undergoing the specified tests. It costs about 1500 rubles and half a day to get these tests done at a clinic whereas about 1000–1200 rubles to obtain the health certificate from

intermediaries. Migrants who are granted a work permit now have to pass a Russian language test and also exams on knowledge of Russian language, history, culture and legal system from 1 January 2015. While it costs 5200 rubles to take a Russian language proficiency test, a language proficiency certificate can be obtained for 3500 or even for 2800 rubles if bought wholesale (at least 100 certificates).

Commercial firms or enterprises can hire migrant workers only if they have obtained the relevant number of work permits and the requisite quota for foreign workers. About 70% of migrants work for commercial firms and only about 10% of these are working under the work quotas (*kvoty na razreshenie na rabotu*), which means that the remaining are working “illegally”.

### **Working Informally: a Quasi-Legal Status**

Until December 2013 it was possible for migrants to cross the border (many went to Ukraine or Belarus, the nearest borders) and re-enter with a new migration card, which allowed them a new 90 day term, a new law which came into force from January 2014 allows foreigners to remain in Russia for only 90 days in one 180 days period, which means that they can re-enter Russia only after 90 days. The law is geared at limiting the number of migrants by stopping the practice of circular or shuttle migration which has allowed them to obtain unauthorized employment. It is also motivated by the pervasive perception that there are “too many” migrants and that most of them are working “illegally”, and pushing out Russian citizens from jobs due to their willingness to work for considerably lowered wages without any legal contract—a situation that suits most employers too well.

Even if the new restrictions reduce the number of migrants coming to Russia to work—which is doubtful—they are pushing more migrants into an “illegal”

or quasi-legal status. Migrants who are already working in Russia have 3 options after the completion of the 90 day limit: (1) return home and wait for 90 days before they are eligible to return to Russia, which will deprive them of earnings; (2) try to work elsewhere in the CIS (Kazakhstan the most likely destination, but the wages are smaller) and then return to Russia; (3) buy a patent which will allow them to remain in Russia for up to a year but without working for an individual employer. And the fourth option is to just remain “illegally” in Russia and negotiate their illegality through bribes.

### **Conclusions**

The labyrinth of Russia’s laws and bureaucratic procedures is not easy for even educated and informed Russian citizens to negotiate. Most migrants are not well-educated, do not speak Russian and do not have a good understanding of the prevalent rules and regulations. To go directly to FMS or the relevant authorities for documentation without help of brokers or intermediaries means encountering obstacles and delays at every stage. It is more efficient and economical to make a one off payment to an intermediary or a legal firm than to attempt to handle all documentation oneself.

In this climate, the distinction between “legal” and “illegal” migration is becoming increasingly arbitrary and untenable from a legal, normative and practical standpoint. However, officials and various government functionaries continue to exploit the arbitrary divide between the two.

Thus the numerous laws and shadow economy which have emerged to aid a “legalization” of migrants now thrive on keeping a sizable proportion of migrants in a quasi-legal status, continuously facing the threat of criminalization, illegalization and deportations.

#### *About the Author*

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Figure 2: Participants in the Russian March in Moscow on November 4, 2014 (on the official holiday of “national unity”) display various crude and primitive anti-migrant banners. This one says “Moscow does not believe in guests,” a word play on a famous movie title (the black-yellow-white flag was the official national flag of the Russian Empire from 1858 to 1883 and is currently associated with Russian nationalists and monarchists).

Photo: Bhavna Davé



Figure 3: This placard advocates introducing a visa regime for Central Asians, whose faces are caricatured (the text on the chest of the ‘dragon’ or ‘hydra’ reads “illegal migration”, the text on the red diagonal bar translates as “say yes to visas!”).

Photo: Bhavna Davé



Figure 4: This placard advocates entry bans for central Asians who are represented by brooms, rakes, and shovels, suggesting that they lack the humanity of other people (the text on the right-hand side of the placard translates as follows: “nobody is needed—get yourselves gone without a trace! We hate the ‘usefulness’ of your labor / Stas Dudev, Russian poet”; the text across the figures on the left-hand side translates as “refuse [them] entry!”).

Photo: Bhavna Davé

