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Kuwait's Legal Framework of Migration

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Kuwait's Legal Framework of Migration

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Abstract: The following note offers an overview of Kuwait's regulatory framework of migration. It serves as a guide to researchers looking to navigate the system of laws and implementing regulations covering a broad range of migration-related issues from entry and exit conditions to rights and settlement, citizenship, and asylum.

Keywords: Kuwait; Laws and Regulations; Irregularity; Migration; Citizenship; Trafficking; Sponsorship; Labour Rights.

In recent years, Kuwait's legal framework of migration has undergone some changes in the areas of labour migration and human trafficking. The law on the residence of foreigners in the country, however, dates back to 1959 and continues to govern the residence and employment of migrants through the sponsorship system which requires that every foreign resident be sponsored by a local employer.

Kuwait's new labour law for the private sector was passed in 2010. The law affords new protections to both national and foreign workers in the country and is in better alignment with international standards. These protections include restricting the number of working hours per day to eight, setting overtime pay rates and restrictions, granting workers a weekly rest day and annual leave, as well as setting conditions for termination and rules for compensation.

In the year following the promulgation of the labour law for the private sector, Ministerial Decision No. 200 of 2011 Regulating Employment in the Private Sector was issued. Among other things, the

decision lists the conditions that need to be met by an employer in order to obtain a permit to employ a non-Kuwaiti worker; prohibits employers from recruiting a worker and subsequently refusing to assign him/her to work; requires the employer to pay the costs for repatriating the worker; and regulates the transfer of a foreign worker's work permit to another employer if the permission of the previous employer has been obtained subject to certain conditions.¹

In 2007 and 2009 the Labour Ministry issued two decrees prohibiting employers from confiscating workers' passports and permitting them to change jobs without a sponsor's consent, respectively. These laws exclude domestic workers from their scope of application.² A 2004 ministerial decree requires all licensed domestic labour agencies to use a standardised contract with employers and workers prior to recruitment, which offers some protection (albeit inferior) to domestic workers.³

In 2015, Kuwait enacted Ministerial Decree No. 68 of 2015. The decree deals with several issues including recruitment, employment, and work conditions. For example, it prohibits licensed recruiters and their associates (both inside and outside Kuwait) from charging domestic workers any fees in exchange for recruiting or employing them. Recruitment offices are also prohibited from using advertisement methods for their recruitment services, which classify domestic workers on the basis of their religion, gender, race or cost of recruitment, or using any practices that degrade their humanity. In terms of employment, the employer is required to pay the domestic worker the agreed upon wages at the end of the month and bear the expenses of the domestic worker's food, clothes, medical treatment, and accommodation. The employer is also prohibited from keeping any of the worker's documents including personal identification documents such as the passport or ID card without the worker's approval. Working hours are set at a maximum of 12 hours per day with rest periods, a weekly day off, and paid annual leave.⁴

The Implementing Regulations of the aforementioned Law on Domestic Workers were issued in the form of Ministerial Decision No. 2302 of 2016. The decision requires that work contracts for recruited foreign domestic workers mentioned in article 18 of Law No. 68 of 2015 be concluded using the form annexed to it; sets a minimum monthly basic wage of KD60 for domestic workers; and lays out the procedures for resolving conflicts between the parties to the domestic worker recruitment contract.⁵

As recently as 2013, the Kuwaiti Parliament enacted the Law on Trafficking in Persons and Smuggling Migrants, which prohibits and punishes human trafficking and smuggling in its various forms.

The Aliens' Residence Law of 1959 and its implementing regulations form the legal basis for the residence of migrants and their dependents (if eligible under the law). Residence of labour migrants in Kuwait is contingent upon having a sponsor who controls various aspects of the migrant's stay in the country including his/her ability to change employer.⁶



Legal Framework	Outward Migration	Inward Migration
<p>General Legal References</p>	<ul style="list-style-type: none"> • 1959, Ministerial Decree No. 15 of 1959 promulgating the Nationality Law.⁷ • 2013, Law No. 91 of 2013 on Trafficking in Persons and Smuggling of Migrants.⁸ 	<ul style="list-style-type: none"> • 1959, Ministerial Decree No. 15 of 1959 promulgating the Nationality Law.⁹ • 1959, Amiri Decree No. 17 of 1959 issuing the Aliens Residence Law.¹⁰ • 1960, Law No. 16 of 1960 promulgating the Penal Code¹¹ • 1962, The Constitution of Kuwait.¹² • 1962, Law No. 11 of 1962 regarding Passports.¹³ • 1987, Ministerial Order No. 640 of 1987 issuing the Implementing Regulations of Law No. 17 1959 on the Residence of Foreigners.¹⁴ • 1992, Ministerial Order No. 2 of 1992 concerning Dependents Joining Foreigners in the Country.¹⁵ • 1999, Law No. 1 of 1999 on Alien Health Insurance and the Imposition of Fees Against Medical Services.¹⁶ • 2010, The Labour Law.¹⁷ • 2013, Law No. 91 of 2013 on Trafficking in Persons and Smuggling of Migrants.¹⁸

Legal Framework	Outward Migration	Inward Migration
Entry and Exit	Visas	Visas
	<p>Kuwaiti citizens do not need a visa to enter other Gulf Cooperation Council (GCC) countries.</p>	<p>Expatriates are prohibited from entering or departing Kuwait without a valid passport issued by the formal authority in his/her country. GCC nationals are exempted from this rule as they can use their national ID cards in lieu of a passport (Article 1, Amiri Decree 17/1959).</p> <p>The passport must be stamped with a visa issued by a Kuwaiti Consulate abroad (Article 2, Amiri Decree 17 of 1959).</p> <p>If a foreign national enters Kuwait for the purpose of a visit (and not residence) then he may remain in the country for one month without obtaining a residence permit. Should he overstay, he may be sentenced to one week imprisonment and/or paying a fine (Article 10, Amiri Decree 17 of 1959).</p>
Irregular Migration		<p>Providing residence to or employing a foreign national whose residence in Kuwait is illegal is prohibited (Article 12 bis, Amiri Decree 17 of 1959).</p> <p>A domestic worker's sponsoring employer must notify authorities within one week in cases of "absconding," or leaving the service of the employer without permission (Article 20, Ministerial Order No. 640/1987).</p> <p>A worker convicted of absconding may be fined up to KD600 or sentenced for up to six months in prison (Article 14, Amiri Decree 17 of 1959).</p>

Legal Framework	Outward Migration	Inward Migration
<p>Irregular Migration</p>	<p style="text-align: center;">Human Trafficking</p> <p>Penalizations: Any person convicted of committing the crime of smuggling migrants may be sentenced to up to 10 years of imprisonment and given a fine of 3,000-10,000 KD. The sentence is increased to up to 15 years of imprisonment and a fine of 10,000-20,000 KD in the following circumstances (Article 3, Law No. 91/2013):</p> <ol style="list-style-type: none"> 1. If the crime was committed by an organized crime group and the defendant has contributed to the establishment, organization or running the group or joined it willingly. 2. If the crime had a non-national element. 3. If the crime was committed by two or more people or by a person carrying a weapon. 4. If the defendant holds a public position in the country and he used that position to commit the crime or if the defendant has any influence over authorities responsible for the entry of foreigners into the country, borders, and ports. 5. If in committing the crime, the defendant used forged ID card or travel documents. <p>The law further penalizes hiding a person who has committed the aforementioned crime (Article 4) and penalizes those having knowledge of plans to commit the crime and failing to report it to the authorities (Article 7).</p> <p>The Kuwaiti penal law punishes smuggling a person in and out of Kuwait with the intention of enslaving him/her, or buying, selling or presenting him/her as a gift to another person, with imprisonment for a period of time not exceeding five years and a fine not exceeding KD375 or either of those two penalties (Article 185).</p>	
	<p style="text-align: center;">International agreements regarding Irregular Migration</p> <ul style="list-style-type: none"> • United Nations Convention against Transnational Organized Crime (ratified May 12, 2006). • Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons (acceded to on May 12, 2006). • Palermo Protocol against the Smuggling of Migrants by Land, Sea and Air (acceded to on May 12, 2006). 	
<p>Rights and Settlement</p>	<p>Equality and Non-discrimination: The Kuwaiti Constitution guarantees the equality of all people in human dignity and in public rights and duties before the law, without distinction as to race, origin, language or religion (Art. 29).</p>	

Legal Framework	Outward Migration	Inward Migration
Rights and Settlement		<p>Residence: A foreign national may obtain a regular residence permit for a period that does not exceed five years as long as his passport is valid for the length of that period. Once the permit expires, s/he must leave the country, unless a request to renew the permit was submitted one month before its expiry. If the request is denied then s/he must leave within one week of being notified of the denial if the permit has already expired (Article 12, Amiri Decree 17 of 1959).</p> <p>Kuwait's family reunification policy is conditional upon the salary level of the worker. For workers in the government sector, the salary must amount to no less than KD450. As for workers in the private sector, the salary must amount to KD650 or more. Moreover, there is a limitation on the number of children (3) that can join the worker without having to pay a yearly residence fee (Article 1, Ministerial Decree 2/1992).</p> <p>Access to healthcare: The employer is required to obtain and pay for the foreign worker's health insurance policy. This condition must be met before the worker can be granted a residence permit (Article 2, Law No. 1 of 1999).</p> <p>Freedom of belief: The Constitution protects the right of people to practice their religion as long as it does not conflict with public policy or morals (Article 35, The Constitution).</p>
Labour	<p align="center">Agreements regarding Labour Migration</p> <p>Bilateral Agreements: Kuwait-Indonesia Memorandum of Understanding; Kuwait-Sri Lanka Trade Union Agreement on Workers' Rights; Kuwait-Egypt Technical Cooperation Agreement Concerning Labour Force Movement</p> <p>International Agreements: 19 ILO Conventions ratified.¹⁹</p>	

Legal Framework	Outward Migration	Inward Migration
<p>Citizenship</p>	<p>Citizens acquiring a foreign nationality lose their Kuwaiti nationality (Article 11, Law No. 15/1959).</p> <p>Nationality may not be withdrawn except within the limits prescribed by law (Article 27, The Constitution).</p> <p>Kuwaitis may not be deported from Kuwait or prevented from returning to it (Article 28, The Constitution).</p> <p>Kuwaiti nationality is granted to any person born to a Kuwaiti father regardless of his place of birth (Article 2, Law No. 15/1959).</p>	<p>Naturalization: Kuwaiti nationality may be granted by Decree upon the recommendation of the Minister of Interior to any person of full age satisfying the following conditions (Article 4, Law No. 15/1959):</p> <ol style="list-style-type: none"> 1. Lawfully residing in Kuwait for 20 consecutive years or 15 consecutive years for Arabs. 2. Having lawful means of earning a living, a good character and no criminal record for an honor-related or honesty-related crime; 3. Knowledge of the Arabic language; 4. Being qualified or rendering services needed in Kuwait; 5. Being a Muslim at birth or that he has converted to Islam according to the prescribed rules and procedures and that a period of at least 5 years has passed since he embraced Islam before the grant of naturalization. <p>Acquisition of a Kuwaiti passport: A non-Kuwaiti woman married to a Kuwaiti national may be issued a passport upon her husband's request if they have been married for five years and she has not been convicted of an honor-related or security-related crime (Article 17, Law No. 11/1962).</p>
<p>International Protection</p>		<p>The extradition of political refugees is prohibited under article 46 of the Constitution.</p> <p>International agreements related to international protection: Kuwait has not acceded to the 1951 Convention relating to the status of refugees.</p>

Endnotes

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