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United Arab Emirates' Legal Framework of Migration

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United Arab Emirates' Legal Framework of Migration

Maysa Zahra

Abstract: The following explanatory note outlines the main legislative texts including laws, regulations, and cabinet and ministerial decisions, which govern the inward migration of foreigners to the United Arab Emirates and some elements of the outward migration of Emirati citizens.

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

Introduction

One of the most notable changes to the UAE regulatory framework of migration pertains to the issue of transfer of sponsorship. Cabinet Resolution No. 25 of 2010 and its implementing Ministerial Decision No. 1186 of 2010 have introduced greater flexibility to the transfer system. Under the new rules, an employee may transfer to another employer without the need to obtain a No-Objection Certificate (NOC) from his/her previous employer and without being subject to a six month ban if s/he is offered a salary of Dh5,000, Dh7,000 or Dh12,000 for high school diploma, diploma, or Bachelor's degree holders, respectively.¹

A number of federal and Emirate-level laws and regulations have been enacted to address labour issues including the introduction in 2005 of a mid-day break to protect construction and other outdoor workers from heat-related injuries, and the introduction of the Wage Protection System (WPS) in 2009, aiming to crack down on nonpayment of salaries in the private sector.² In 2012, the UAE Federal National Council approved a draft law to protect the rights of domestic workers (provisions include paid vacation and sick leave). However, the measure still awaits the president's signature.

In 2013, the UAE government amended Federal Law No. 51 of 2006 on Combating Human Trafficking. The amendments were introduced in a move to improve the protections offered to victims, establish harsher penalties for committing crimes defined under the law, and specify investigation and trial procedures in human trafficking cases. The UAE Labor Law is a Federal Law, which governs the employment of both nationals and non-nationals. It covers a number of aspects including contracts, wages, working hours, and leave. The law, however, is not applicable to foreign domestic workers.

Federal Law No. 6 of 1973 on the Entry and Residence of Aliens was last amended in 2007 and governs the stay of foreigners in the country, as well as their entry, exit, and grounds for their deportation. A foreigner may be deported, even if he is a holder of a residence permit, if his deportation is part of a court judgment, or if he has no evident means to earn a living, or if it is considered by the security authorities as required by public policy, security, or morals. The deportation order, which is issued by the Ministry of Interior, may include members of the foreigner's family who are supported by him.³

Legal Framework	Outward Migration	Inward Migration
General Legal References	• 1971, The Constitution of the United Arab Emirates.⁴ • 1972, Federal Law No. 17 of 1972 Concerning Nationality and Passports.⁵ • 2006, Law No. 51 of 2006 on Combating the Crimes of Human Trafficking.⁶	• 1971, The Constitution of the United Arab Emirates.⁷ • 1973, Federal Law No. 6 of 1973 on Entry and Residence of Aliens.⁸ • 1982, Ministerial Resolution No. 2/37 of 1982 Regarding the Level of Medical Care an Employer Shall Provide to Workers.⁹ • 1996, Federal Law No. 13 for 1996 Concerning Aliens Entry and Residence, Amending Some Provisions of the Federal Law No. 6 for 1973 Relating to Immigration and Residence.¹⁰ • 1997, Ministerial Decision No. 360 of 1997 Issuing the Implementing Regulations of Federal Law No. 6 of 1973 Regarding Entry and Residence of Foreigners.¹¹ • 2005, Law No. 23 of 2005 Regarding the Health Insurance Scheme for the Emirate of Abu Dhabi.¹² • 2006, Law No. 51 of 2006 on Combating the Crimes of Human Trafficking.¹³

Legal Framework	Outward Migration	Inward Migration
General Legal References		2013, Law No. 11 of 2013 Regarding the Health Insurance Scheme for the Emirate of Dubai.¹⁴
Entry and Exit	Visas UAE citizens do not need a visa to enter other Gulf Cooperation Council (GCC) countries.	Visas The requirements for entering the UAE for foreigners include holding a valid passport or travel document and a valid entry visa [Article 2, Federal Law No. 6 of 1973 on Entry & Residence of Aliens]. A foreigner entering the country by virtue of a visa or an entry permit shall leave it upon expiry or cancellation unless he obtained a residence permit during that period. For citizens of countries exempted from the visa condition, they shall leave within thirty days of entry unless they have obtained a residence permit [Art. 12, Federal Law No. 6 of 1973]. Foreigners may only be granted an entry permit or visa if they have a sponsor who resides in the country. The sponsor may be either a citizen or a resident [Art. 13(C), Ministerial Decision No. 360 of 1997].
Irregular Migration		Any foreigner who enters the UAE illegally is subject to a penalty of imprisonment for a minimum period of one month and/or payment of a fine of ten thousand Dirhams or more. The Court shall also order his deportation from the country. [Art. 31, Federal Law No. 6 of 1973].

Legal Framework	Outward Migration	Inward Migration
	Human Trafficking Under the Constitution, the enslavement of any person is prohibited [Article 34, The Constitution]. Penalizations: Whoever commits any of the human trafficking crimes as defined by the law shall be punished by temporary imprisonment for a term of not less than five years. The penalty shall be life imprisonment if any one of the following conditions is met: The perpetrator of the crime has created, organized, assumed a leading role in, or solicited others to join an organized criminal gang; the victim is a woman, child, or handicapped person; the crime is committed through deceit, involved the use of force or threat of murder or bodily harm or involved physical or psychological torture; the crime is committed by two or more people, or by an armed person; the perpetrator is a member of an organized criminal gang, or has consciously taken part in the activities of that gang; the perpetrator is the spouse, a relative, descendent, or guardian of the victim; the perpetrator is a public servant or commissioned with a public task; the crime is transnational [Art. 2, Law No. 51 of 2006 on Combatting Crimes of Human Trafficking].	
	International Agreements Regarding Irregular Migration ● United Nations Convention against Transnational Organized Crime (ratified on May 7, 2007) ● Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons (acceded to on January 21, 2009) ● Palermo Protocol against the Smuggling of Migrants by Land, Sea and Air (not a party)	
Rights and Settlement		Equality and Non-discrimination: The UAE Constitution guarantees the equality of individuals before the law and prohibits discrimination between citizens on the basis of origin, creed, or social status [Art. 25]. Residence: A foreigner entering the country by virtue of a visa or an entry permit must leave it upon expiry or cancellation thereof, unless he obtained a residence permit during that period. For citizens of countries exempted from the visa condition, they shall leave within thirty days of entry unless they have obtained a residence permit [Art. 12, Federal Law No. 6 of 1973]. The residence permit shall be issued for a period of three years, renewable upon expiry. The Director General of Nationality and Residence shall also issue

Legal Framework	Outward Migration	Inward Migration
Rights and Settlement		a residence card. If lost, the foreigner shall report this to the Directorate [Art. 17, Federal Law No. 13 of 1996]. Every foreigner whose visa or residence permit has expired or been cancelled and who has failed to either renew it – if possible – or leave within a period of thirty days of its expiry, shall be liable to a fine of 100 Dirhams per each day of illegal stay in the country. (Art. 21 of Act cited previously in this paragraph). Participation in Social Insurance Schemes is not mandatory at the Federal level. The Emirate of Abu Dhabi requires subscription to the health insurance scheme by non-nationals and their families residing in the Emirate. Every employer is required to provide health insurance coverage for all his employees/workers and their family members covering the employee's/worker's wife and three children under 18 years of age. Every sponsor must subscribe to the scheme for any person under his sponsorship from the date of his arrival to the State unless such a person is entitled to health insurance coverage through his employer [Articles 4 & 5, Law No. 23 of 2005]. In the Emirate of Dubai, the responsibility to subscribe to health insurance schemes falls on the employer for his non-national employees. It may also be extended to his family members at the employer's discretion. A sponsor is also responsible for ensuring that individuals under his sponsorship are insured, so long as they are not covered by an employer [Article 9, Law No. 11 of 2013]. Family Reunification may be granted to the wife of a sponsored foreigner if his monthly salary is 3000 Dirhams or more and accommodation is provided by the employer, or if his monthly salary is 4000 Dirhams (excluding accommodation). A

Legal Framework	Outward Migration	Inward Migration
Rights and Settlement		number of categories are exempt from this condition and may be granted residence permits for their wives and children (unmarried females and males below the age of eighteen). These are teachers, imams, and bus drivers of various academic institutions [Article 31(D), Ministerial Decision No. 360/1997]. Access to Healthcare: Every employer employing fifty or more workers shall post the following information on the main entrance used by workers to enter the workplace: The headquarters of the clinic designated for the workers; the working hours of the clinic; and the addresses of the hospitals and specialist doctors entrusted with treating the workers and the times dedicated for treatment [Article 9, Ministerial Resolution No. 37/2 of 1982]. Freedom of Movement: The Constitution guarantees the freedom of movement and residence to citizens within the limits of the law [Article 29 of the Constitution].
Labour	Agreements regarding Labour Migration Bilateral Agreements: Memorandum of Understanding between the Government of Nepal and the Government of United Arab Emirates in the Field of Manpower (July 3, 2007); Memorandum of Understanding between the Government of the United Arab Emirates and the Republic of the Philippines in the field of Manpower (April 9, 2007); Protocol on China's Sending Doctors to the United Arab Emirates (1992); Protocol on China's Further Sending Nurses to the United Arab Emirates (1992); Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of the United Arab Emirates in the Field of Manpower Agreement (December 18, 2007); Memorandum of Understanding with India on Manpower Sourcing (2006); A revised Memorandum of Understanding with India on Manpower Sourcing (September 2011); Protocol to Streamline Admission of Indian Contract Workers by way of an Electronic Contract Registration and Validation System (April 2012); Memorandum of Understanding with Thailand in relation to Labour Force (November 01, 2007); Memorandum of Understanding with Pakistan on labour issues (December 2006); Agreement with Bangladesh on Cooperation in the Field of Manpower (2007); Memorandum of Understanding with Sri Lanka on Domestic Workers (May 27, 2007). International Agreements: 9 ILO Conventions ratified.¹⁵	

Legal Framework	Outward Migration	Inward Migration
Citizenship	Citizenship shall be withdrawn from any citizen who acquires the nationality of a foreign country [Article 15(C), Federal Law No. 17 of 1972]. Citizens may not be deported or expelled from the United Arab Emirates [Article 37 of the Constitution]. UAE nationality is protected by law. Citizens may not lose their nationality or have it withdrawn, save for exceptional situations, which shall be defined by law. [Article 8 of the Constitution].	Naturalisation: A naturalised citizen shall lose his citizenship in a number of cases including residing abroad continuously for four years without having a good reason for doing so. The withdrawal of nationality may be applied to his naturalised wife and children [Art. 16, Federal Law No. 17 of 1972]. Acquisition of UAE Citizenship: UAE citizenship may be granted upon request to a foreigner who meets the following requirements: any fully competent Arab who has resided continuously and legally in any of the member Emirates continuously for at least seven years prior to submitting a naturalization application on condition he has a lawful source of living, be well reputed and not convicted of a crime against honor or integrity [Art. 6, Federal Law No. 17 of 1972]. Citizenship may also be granted to a non-Arab foreigner who is fully competent and residing continuously and legally in any of the member Emirates for at least twenty years after the implementation of Federal Law No. 17 of 1972 and who meets the following criteria: He must have a lawful source of living; be well reputed; not convicted of a crime against honor or integrity; and proficient in the Arabic language [Art. 8, Federal Law No. 17 of 1972].
International Protection		The Extradition of Political Refugees is prohibited under article 38 of the Constitution. International Agreements Related to International Protection: The United Arab Emirates has not acceded to the 1951 Convention relating to the status of refugees.

Endnotes

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About the Author



Maysa Zahra holds a Master's degree in the Theory & Practice of Human Rights from the University of Essex (Human Rights Centre) in the United Kingdom. She previously studied International Relations at the Hebrew University of Jerusalem.

She worked as a legal researcher with the MATTIN Group, a voluntary human rights-based partnership in Palestine, researching provisions of third state and European Union legislation that create obligations corresponding to those that result from the customary international law on third state responsibility. She also participated in several lobbying interventions with the European Union aimed at promoting greater consistency between its contractual relations with Israel on the one hand and its human rights obligations on the other.

Contacts: MaysaZahra@gmail.com, Tel. (+971) 056 6597 790

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