

Abaideldinov T.M.¹, Muxinova A.T.²

¹Candidate of Juridical Sciences, associate professor, e-mail: tleuhabyl@mail.ru

²senior lecturer, e-mail: akku-80@mail.ru

al-Farabi Kazakh National University, Kazakhstan, Almaty

SOME QUESTIONS OF LABOR MIGRATION IN THE REPUBLIC OF KAZAKHSTAN

Features of legal migrant workers work regulation are caused, first of all, by opportunities of General Work Society creation in our country based on the developed market economy, and also, in general, with change of legal and political system of the Kazakhstan society. Especially sharply there is a matter in connection with strengthening of integration processes within modern world politics and emergence of large economic blocks which participant of the Republic of Kazakhstan becomes. In particular, since January 1, 2015 the contract of the Eurasian Economic Union (EEU) creation directed to strengthening socially – economic processes between member countries has come into force: to formation of uniform commodity market, services, the capital and that is especially important, a manpower. In this context we consider necessary to note that the legal status of migrant workers in the Republic of Kazakhstan wasn't exposed to a complex theoretical and practical research. In this article we aimed to reveal some the theorist – application-oriented questions that arose in the sphere of labor migration, and also to render attempt in business assistance of elimination of those legal collisions which appeared owing to ratification of the international agreements by the Republic of Kazakhstan and to set their ratio with the national legislation. Research objective is studying of a legal status of workers – migrants, generalization and the analysis of separate aspects of their legal status, identification of legislative ways of regulation of work of workers – migrants, and also influence of their activity on improvement of institute of social partnership.

Key words: labor law, work, labor migration, worker, employer, internal migration, external migration.

Абайдельдинов Т.М.¹, Муксинова А.Т.²

¹з.ф.к., e-mail: tleuhabyl@mail.ru

²аға оқытушы, e-mail: akku-80@mail.ru

әл-Фараби атындағы Қазақ ұлттық университеті, Қазақстан, Алматы қ.

Қазақстан Республикасында еңбек көші-қонының кейбір мәселелері

Еңбек мигранттарының еңбек қатынастарын құқықтық реттеудің ерекшеліктері, алдымен нарықтық экономикаға негізделген жалпыға бірдей еңбек қоғамын құру мүмкіндігімен, сонымен қатар, қазақстандық қоғамның құқықтық және саяси жүйесінің өзгерістерімен түсіндіріледі. Әсіресе бұл мәселе қазіргі әлемдік саясатта интеграциялық процестердің күшеюіне байланысты және Қазақстан Республикасы қатысушысы болып табылатын ірі экономикалық блоктардың пайда болуы кезінде аса өзекті. Атап айтқанда, 2015 жылдың 1 қаңтарынан бастап қатысушы елдердің арасындағы әлеуметтік-экономикалық процестерді күшейтуге бағытталған, оның ішінде тауар мен қызмет көрсетудің ортақ нарығын қалыптастыру, ортақ капитал және ерекше маңызды мәселе ортақ еңбек ресурстарын қалыптастыруды көздейтін Еуразиялық Экономикалық Одақ құру туралы келісім-шарт күшіне енді. Осыған байланысты біздің ойымызша Қазақстан Республикасында мигрант-қызметкерлердің құқықтық жағдайы кешенді түрде теориялық және тәжірибелік тұрғыдан зерттелмеген. Бұл мақалада біз еңбек миграциясы саласында пайда болған кейбір теориялық мәселелерді анықтап, Қазақстан Республикасының халықаралық келісімдерді ратификациялау салдарынан пайда болған құқықтық коллизияларды жоюға және ұлттық заңнамаға сәйкестігін анықтауға тырыстық. Зерттеу мақсаты мигрант қызметкерлердің құқықтық жағдайын зерттеу, олардың құқықтық жағдайларының кейбір аспектілерін саралау,

еңбек мигранттарының қатынастарын заңнамалық әдістерін анықтау және оның әлеуметтік әріптестік институтының жетілдірілуіне әсерін зерттеу.

Түйін сөздер: еңбек құқығы, еңбек, еңбек миграциясы, қызметкер, жұмыс беруші, ішкі миграция, сыртқы миграция.

Абайдельдинов Т.М.¹, Муксинова А.Т.²

¹к.ю.н., доцент, e-mail: tleuhabyl@mail.ru

²ст.преподаватель, e-mail: akku-80@mail.ru

Казахский национальный университет имени аль-Фараби, Казахстан, г. Алматы

Некоторые вопросы трудовой миграции в Республике Казахстан

Особенности правового регулирования трудовой деятельности трудящихся-мигрантов обусловлены, прежде всего, возможностями построения Общества Всеобщего Труда в нашей стране, основанного на развитой рыночной экономике, а также, в целом, с изменением правовой и политической системы казахстанского общества. Особенно остро встает данный вопрос в связи с усилением интеграционных процессов в рамках современной мировой политики и появления крупных экономических блоков, участником которых становится Республика Казахстан. В частности, с 1 января 2015 года вступил в силу договор о создании Евразийского Экономического Союза (ЕАЭС), направленный на усиление социально-экономических процессов между странами-участниками: формированию единого рынка товаров, услуг, капитала и, что особенно важно, трудовых ресурсов. В этом контексте мы считаем необходимым отметить, что правовое положение трудящихся-мигрантов в Республике Казахстане не подвергалось комплексному теоретическому и практическому исследованию. В данной статье мы стремились выявить некоторые теоретико-прикладные вопросы, что возникли в сфере трудовой миграции, а также оказать попытку в деле содействия устранению тех правовых коллизий, которые появились вследствие ратификации Республикой Казахстан международных соглашений и установить их соотношение с национальным законодательством. Целью исследования является изучение правового положения трудящихся-мигрантов, обобщение и анализ отдельных аспектов их правового положения, выявление законодательных способов регулирования трудовой деятельности трудящихся-мигрантов, а также влияние их деятельности на совершенствование института социального партнерства.

Ключевые слова: трудовое право, труд, трудовая миграция, работник, работодатель, внутренняя миграция, внешняя миграция.

Introduction

Migration of foreign labor today is one of the main components of aggregate migration movements. Within 90% of all international migrants move to economically developed countries in search of permanent earnings [1]. In the context of globalization, a huge number of states get involved into the process of international migration, among them are the newest countries that emerged in the post-Soviet space, including the Republic of Kazakhstan. Migration as a moment of global interaction is considered an important problem in the modern world. The prerequisites for a full study of this problem are determined by its scale, embodied by the tendency to increase migration movements, socio-economic, political, sociocultural results of migration activities [2].

In recent years, the Republic of Kazakhstan has moved from the category of countries of origin of labor migration to a group of countries in which there is an active influx of foreign labor. The main

reason was the economic growth in our state since the 2000s and the related increase in the number of jobs, the growth of the level of wages and incomes of the population.

At present, there is a significant inflow of labor to Kazakhstan from outside due to:

1) Increased use of quotas for entry by oralmans (repatriates) from among ethnic Kazakhs, prior to the acquisition of state sovereignty of Kazakhstan residing outside of it and returning to their historical homeland for permanent residence;

2) Acquisition of a residence permit and citizenship by representatives of various ethnic groups from the former Soviet republics, persons born or formerly being citizens of the Republic of Kazakhstan or the Kazakh Soviet Socialist Republic, and members of their families;

3) Gradual increase in the annual quota for attracting foreign labor;

4) Increasing flows of labor migrants with unregulated status, primarily from neighboring states.

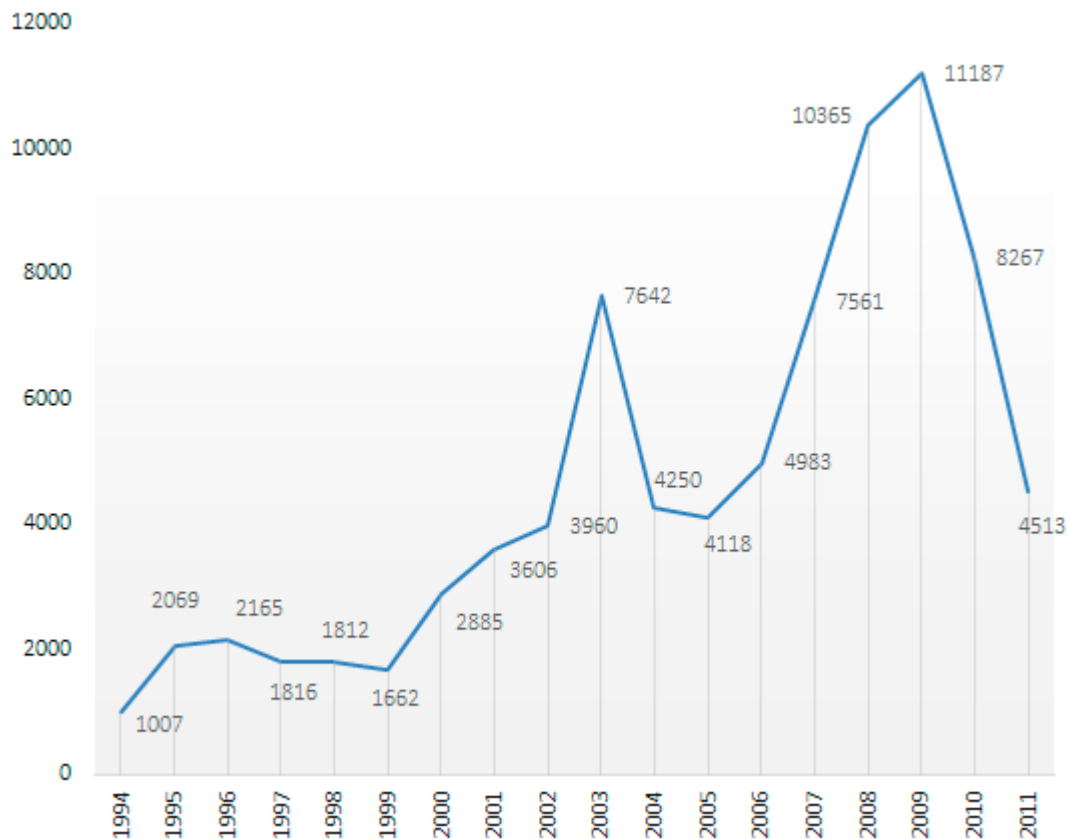


Figure 1 – Labor migration from Kazakhstan, thousand people

The Republic of Kazakhstan did not ratify the 1990 International Convention “On the Protection of the Rights of All Migrant Workers and Members of Their Families”, ILO Convention No. 97 “On Migrant Workers” 1949, and ILO Convention No. 143 “On Migrant Working Population” (Supplementary Provisions). At the same time, since 1993 Kazakhstan has been a member of the ILO, the country ratified 16 conventions of the International Labor Organization, including all 8 fundamental and 4 priority conventions of this organization. Along with the above conventions of ILO, Kazakhstan ratified a number of international conventions dealing with human rights and important in protecting the rights of migrant workers. In particular, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Convention on the Rights of the Child and its two Optional Protocols.

At the regional level, the Republic of Kazakhstan is a participant of a number of multilateral agreements within the framework of the Commonwealth of

Independent States (hereinafter referred to as the CIS) concerning labor migration. Among them, the 1994 Agreement “On Cooperation in the Field of Labor Migration and Social Protection of Migrant Workers”, the 2004 Agreement “On Mutual Recognition and Equivalence of Documents on Secondary Education (General) Education, Initial Professional and Secondary Professional (Special) Education” deserve special mention. Also, Kazakhstan signed bilateral and trilateral agreements on labor migration with Azerbaijan, Mongolia, Tajikistan, and Uzbekistan.

Problem statement

The Law of the Republic of Kazakhstan “On Migration of the Population” as of July 22, 2011 defines labor migration as a temporary movement of individuals from other states to the Republic of Kazakhstan and from the Republic of Kazakhstan, and also within the country for the performance of labor activity. Moreover, according to this law, foreigners who arrived in the Republic of Kazakhstan in the order of labor migration, not

related to the change of citizenship, must have a permanent place of residence outside the Republic of Kazakhstan, unless interstate agreements establish a different procedure. Therefore, the legislation of Kazakhstan excludes foreign citizens and stateless persons from the number of labor migrants who have received the right of permanent residence in the Republic of Kazakhstan (for a foreign citizen – a residence permit, for a stateless person – a certificate of a stateless person). In addition, the provisions of national legislation in the field of labor migration do not apply to foreign citizens and stateless persons: 1) who are on military service in parts located on the territory of the Republic of Kazakhstan; 2) members of diplomatic missions and international organizations; 3) those who are in school or work practice; 4) carrying out professional activities in registered religious associations; 5) representatives of accredited foreign mass media; 6) arriving in the Republic of Kazakhstan for the purpose of providing charity and humanitarian assistance, as tourists and for conducting business meetings; 7) members of crews of sea and river vessels, air, railway and motor transport.

In general, the legislation of Kazakhstan reflects the main exceptions to the subject of regulation of labor migration, specified in Article 3 of the Convention “On the Protection of the Rights of All Migrant Workers and Members of Their Families”, and includes in comparison with it several additional categories – military personnel, representatives of accredited media, religious missionaries. At the same time, there is no provision in the national legislation that excludes from the subject of regulation of labor migration “workers employed in a stationary coastal installation who have not been issued a residence permit and participation in paid activities in the State of employment”.

In the above-mentioned 1990 Convention, migrant workers are defined as persons who will engage in, are engaging in, or engaged in paid activity in a State they are not citizens of. In accordance with ILO Convention No. 143, the term “migrant worker” means “a person who migrates or migrated from one country to another, for the purpose of obtaining any work other than employed one, and includes any person who has lawfully entered into a Country as a migrant worker”. When comparing the above definitions with the formulation of the concept of labor migration contained in the legislation of Kazakhstan, it can be noted that international approaches cover both permanent and temporary labor migrants, and the International Convention on the protection of

the rights of all migrant workers and members of their families – and the so-called business Immigrants. In this sense, the provision of the Law of the Republic of Kazakhstan “On Population Migration” is closer to the concept of “migrant worker” under ILO Convention No. 143 of 1975, although the term “migrant worker” is used in the national law. It should also be noted that the Law dated December 20, 1991 “On the Citizenship of the Republic of Kazakhstan” provides for the possibility of an accelerated procedure for acquiring the citizenship of Kazakhstan for persons who have certain professions and who meet certain qualification requirements. The list of such professions and requirements is established by the Presidential Decree as of June 6, 2005. It includes a number of professions in the field of art, as well as the profession of an architect, biologist, doctor, geologist, geophysicist, pilot and navigator, chemist, teacher and other professions. However, in the strict legal sense, persons who have acquired the right to permanent residence in Kazakhstan, in accordance with national legislation cannot be referred to as labor migrants.

Research methods

The paper presented research methodology including analysis and synthesis, generalization and analogy. Also special and particular methods were used: comparative-legal, historical, method of prognosis in order to expose directions of legislation improvement in the area of judicial precedent and legal consuetude in the regulation of labor disputes. The concluding sections some suggestions which are connected with the improvement of current labor legislation and can be used in legislative activity of state bodies, in scientific work.

Since 2001, the demand for foreign labor in Kazakhstan is estimated on the basis of the quota for its involvement, which is established on an annual basis by the Government of the Republic of Kazakhstan. The procedure for approving quotas is based on the provisions of the Law on Employment of the Population as of January 23, 2001 and is regulated in more detail by government regulations. The size of the annual quota is established on the basis of proposals of local executive bodies, formed through the collection of information and analysis of the domestic labor market and the collection of applications of employers. Since 2004, the concerned central executive bodies (sectoral ministries and departments) are also entitled to submit proposals to the Ministry of Health and

Social Development regarding quotas for attracting foreign labor. Employers participate in the definition of quotas by applying to local executive bodies for the attraction of foreign labor in the next year. The

quota is defined as a share of the total workforce, namely in percentage of the economically active population of the republic according to the data for the previous year.

External migration. Balance. Regions of RoK. IIq 2015 (people)									
	Total			Urban			Rural areas		
	2015/II	2014/II	2011/II	2015/II	2014/II	2011/II	2015/II	2014/II	2011/II
Kazakhstan	-3 634	-2 339	4 429	-5 403	-3 534	-793	1769	1 195	5 222
Akmola	-201	-528	-106	-268	-354	-321	67	-174	215
Aktobe	-148	34	-37	-158	25	-20	10	9	-17
Almaty (region)	809	373	1 002	-59	-28	-28	868	401	1 030
Atyrau	112	151	184	59	105	132	53	46	52
East Kazakhstan	-1 377	-1 108	132	-1 208	-988	-857	-169	-120	989
Almaty	-334	-70	496	-334	-70	496			
Astana	134	435	220	134	435	220			
Zhambyl	-76	-20	25	-225	-287	-241	149	267	266
West Kazakhstan	-305	-178	-92	-243	-145	-51	-62	-33	-41
Karagandy	-1 370	-1 036	-551	-1 344	-936	-535	-26	-100	-16
Kostanay	-894	-726	-668	-591	-358	-186	-303	-368	-482
Kyzylorda	-32	15	22	-14	14	21	-18	1	1
Mangystau	1 350	1 212	2 175	6	30	300	1 344	1 182	1 875
Pavlodar	-1 051	-973	-486	-937	-852	-554	-114	-121	68
North Kazakhstan	-702	-905	-719	-387	-415	-378	-315	-490	-341
South Kazakhstan	451	985	2 832	166	290	1 209	285	695	1 623

Analyses Ranking.kz based on the data of CS MNE RoK

Figure 2

The labor migration quota system was introduced in Kazakhstan to protect the domestic labor market. Initially, the goal was to limit the involvement of foreign workers to foreign workers in high- and middle-skilled jobs (management personnel, specialists with higher and secondary specialized education, skilled workers). In recent years, the requirements for quoting foreign labor force applied in the country have undergone significant changes. Since 2015, quotas do not apply to citizens of the countries participating in the EEU, so they claim vacant jobs equally with citizens of the Republic of Kazakhstan and they are not allowed any quotas. This was done with the aim of forming a single market for goods, services, capital and labor.

The general legislative requirements for attracting foreign labor are established, as has been noted above, by the Law of the Republic of Kazakhstan "On employment". In more detail, they are regulated by rules approved by special resolutions of the Government of the Republic of Kazakhstan. Permission to attract foreign labor

is issued to the employer in Kazakhstan for the following categories of foreign workers:

- 1) The first category is the management team of the organization;
- 2) The second category is specialists with higher and secondary vocational education with documents confirmed in the established procedure;
- 3) The third category is qualified workers;
- 4) The fourth category is workers engaged in seasonal agricultural work in accordance with agreements on cooperation in the field of labor migration and social protection of migrant workers.

Obtaining a permit to employ foreign labor requires the employer to consistently pass through the following main stages:

- 1) search for proposals on the domestic labor market with the mandatory use of prescribed forms and compliance with the deadlines for their implementation;
- 2) obtaining permission for a certain number of foreign workers for the categories and qualifications indicated therein;
- 3) certification by the state body that issued the permit, of a roll-call list of foreign workers involved.

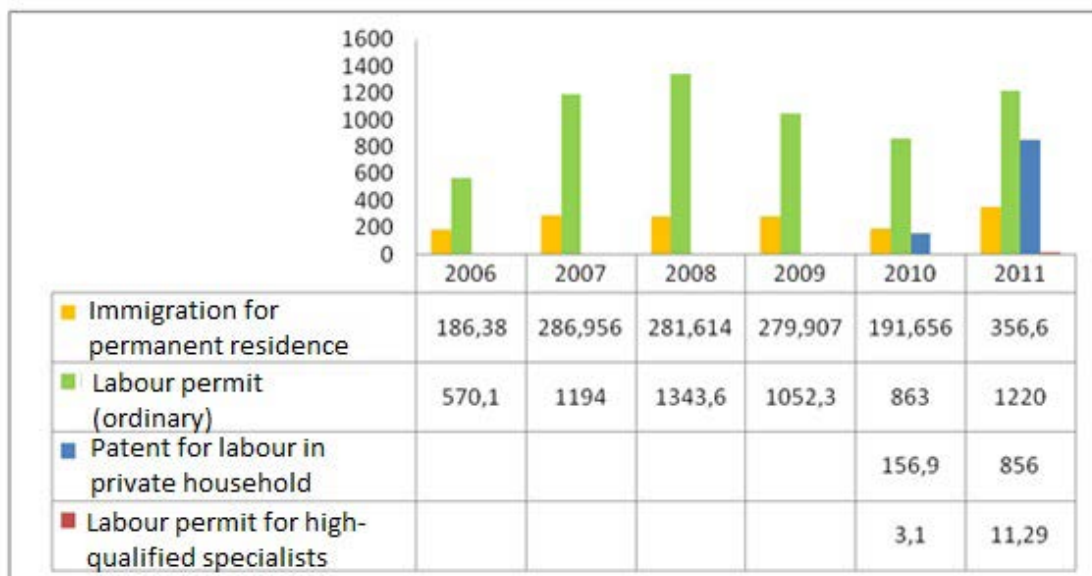


Figure 3 – Immigration and temporary labor migration in Kazakhstan, thousand people

Conclusion

Migrant workers in Kazakhstan make a significant contribution to the development of their host countries and countries of origin – through the provision of services and competitiveness in destination countries, as well as financial injections in countries of origin. Migration helps in improving the quality of life of many migrants and their families. Many migrants, while doing the work, fill the niches in the national labor markets that local workers do not want or cannot master. Despite this, many migrant workers are being exploited and mistreated. Illegal migration is widespread. Protection of labor and decent working conditions for national personnel is an understandable political task.

Developing the right policies and legal regulations that are in balance with different interests and are effectively managing migration is a complex and difficult task, especially when it comes to the policy of admission of foreign labor.

The issues underlying the response policy in the countries of destination, with respect to the reception of foreign labor, employment and integration of migrant workers are related to the:

1) the identification, definition and forecast of labor shortages at the national level, for the performance of both qualified and unskilled work;

2) an analysis of the national labor market in order to understand whether labor migration can be a solution to some or all of the problems with

the shortage of labor resources created by negative demographic trends, in particular the reduction in the proportion of the working population, and also the subsequent impact on the availability of social benefits for future generations;

3) involving key partners – employers and trade unions – in the formulation and implementation policy;

4) protection of workplaces and working conditions for local staff in the event that quotas for attracting foreign labor force increase;

5) the necessary measures to ensure equality of treatment and prevent the exploitation of migrant workers in the workplace and society as a whole;

6) the necessary measures to prevent or reduce irregular labor migration, which are important for ensuring legality and confidence in formal procedures for the admission of foreign labor.

Politicians and policy makers face in their activities sensitive or serious tasks to convince the public of the need to attract foreign labor. We recommend studying international practices in the field of labor migration and considering the possibility of more targeted use of migration in order to meet the needs of the Kazakhstan labor market, first of all in qualified specialists and workers.

We also propose to consider the expediency and effectiveness of applying special conditions to employers attracting foreign labor, to pay for professional education and to train highly qualified local specialists and workers. Despite the fact that

education and professional training of Kazakhstani citizens is an important priority, improvements in this area should be achieved through other means. In particular, for this purpose, the initial offer of vacancies in the local labor market is used to ensure the priority rights of Kazakhstani citizens for employment in scarce specialties (occupations).

In order to improve the legal status of foreign employees, we consider it necessary:

1) to continue the development of national legislation based on international standards established by the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ILO Conventions No. 97 on Migrant Workers of 1949 and No. 143 on Migrant Workers (Supplementary provisions) as of 1975;

2) to bring national legislation in line with the International Covenant on Economic, Social and Cultural Rights, ILO Convention No. 87 on Freedom of Association and the Protection of the Right to organize in relation to the right of migrant workers to form trade unions and participate in their activities.

3) to conduct an analysis of sanctions for violations and practices of their application in order to ensure more appropriate treatment of violators in the field of labor migration, depending on the nature of the violations (work without permission, non-compliance with migration legislation, exploitation and promotion of illegal migration, including

human trafficking and organization of their illegal transportation across the border).

4) to minimize the restrictions on changing the place of work by labor migrants, especially in case of dismissal of workers in scarce specialties.

5) to create access to adequate housing, appropriate sanitary standards – employers of low-skilled workers should guarantee migrant workers access to adequate housing, adequate sanitary standards.

6) The treatment of illegal migrants – the UN Convention (1990) and the ILO Convention No. 143 contain provisions that are relevant to all migrant workers, to provide them with a basic level of protection, even when they immigrate or find employment through unofficial channels and cannot be legalized. This applies particularly to human rights, pay and working conditions, access to emergency medical care, access to education for children and rights in the event of detention or expulsion.

The proposed measures will allow regulating the needs of employers in foreign workers flexibly, and also successfully implementing the migration policy of the Republic of Kazakhstan. In addition, migration processes accelerate social and economic development and ensure the growth of the well-being of the population, which has been proved by experience of countries conducting an active migration policy.

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