

# Reform of China Green Card System: A Comparative and Empirical Analysis

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**Abstract:** In recent years, with the declining of population dividend in China, not only the "talent war" in major cities has been on the rise, the campaign for international talent has also been launched. Through comparative study, it can be seen that China's green card system lags behind in terms of legislative ideology, legislative mode, legislative technology, management mode and integration system. The reform of the green card system should first be guided by the demand for international talents, funds and technology, shift from the control-oriented entry-exit management legislation to service-oriented immigration legislation. The legal system of green card examination and approval management should be improved; a flexible green card quota system and occupation list be set up, and the restrictions on access conditions be relaxed; the employer nomination system be established and a scientific green card applicant evaluation and screening system be introduced to truly reflect the market demand for foreign talents. The release of Draft for Comments on *Regulation on the Administration of Permanent Residence of Foreigner* in 2020 sets the goal for the reform of green card system. However, there is still room for further improvement in the legislative ideology, legislative system, access threshold, legislative technology, and integration of green card system.

**Keywords:** China, Green Card System, Threshold on Access, Service-Oriented Immigration Law, Draft for Comments

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## 1. Introduction

In recent years, with the number of people of working age decreasing year by year, the "talent war" among major cities has been staged in China. Its essence is the zero-sum game between the developed and underdeveloped regions, between the core cities and the majority of small and medium-sized cities on the stock of talents, resulting in a series of adverse consequences by siphon effect. Even worse, it could not fundamentally eliminate the contradiction between the urgency of talent demand and the long-term nature of talent training. Therefore, the report of the 19<sup>th</sup> National Congress of the Communist Party of China pointed out that "We should cultivate a large number of world-class scientists and technologists in strategically important fields, scientific and technological leaders, and young scientists and engineers, as well as high-performing innovation teams", which points out

the direction for solving the problem of talent shortage in China from the perspective of international vision. On February 27, 2020, the Ministry of Justice issued the *Regulation on the Administration of Permanent Residence of Foreigners* (Draft for Comments) (hereinafter referred to as "Draft for Comments")<sup>1</sup>, which aroused great attention and caused serious controversy among the public. The 14<sup>th</sup> Five-year Plan for National Economic and Social Development and the Outline of Long-term Goals for 2035, adopted in March 2021, once again made it clear that "we should improve the policy for foreign high-end talents and professionals to work and carry out research and exchange activities in China, reform the permanent residence system

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<sup>1</sup> Circular of the Ministry of justice on soliciting public opinions on the regulations of the people's Republic of China on the administration of permanent residence of foreigners (Draft for comments) [http://www.gov.cn/xinwen/2020-02/27/content\\_5484091.htm](http://www.gov.cn/xinwen/2020-02/27/content_5484091.htm), accessed on Jan. 1<sup>st</sup>, 2022.

for foreigners, and explore the establishment of a skilled migration system in China".<sup>2</sup> On March 16 of the same year, Xi Jinping, Party Secretary General of China, proposes "building an effective talent introduction and utilization mechanism to form an innovative situation in which talents from all over the world gather in China and compete freely!" [1] It can be seen the introduction of international talents has been included in the long-term goal of national development and has been highly valued by the top leaders of China. The reform of China's green card system is undoubtedly a good path to achieve this goal. Therefore, it is of great significance to study the status, problems and measures for improvement of China's green card system.

## 2. Research on China's Green Card System and Its Deficiency

### 2.1. Overview of Green Card System in China

The term "green card" was originated from the United States, also known as permanent residence permit. Although the green card system in different countries varies with each other in terms of provisions, the state will and social function embodied by the system are similar. The establishment of the green card system has promoted the wide flow of talents, funds and technology around the world, and has a significant impact on a country's politics, economy and culture. According to the World Migration Report 2020 released by the International Organization for Migration (IOM), the United States has been the most popular destination for immigrants with its advantages in economy, technology and education etc. By the end of 2019, it has absorbed 51 million immigrants and attracted the capital, technology and human resources brought about by the "immigration dividend". China, on the other hand, has long been one of the largest exporters of immigrants. By 2019, the number of Chinese people settled abroad was as high as 11 million, next only to India and Mexico.<sup>3</sup> To attract international talents and funds, the Ministry of Public Security and the Ministry of Foreign Affairs of China jointly promulgated *Measures for the Administration of Examination and Approval of Aliens' Permanent Residence in China* in 2004 (hereinafter the "Administrative Measures 2004"), but the effect is quite limited. According to statistics, by the end of 2016, the number of foreigners holding Chinese green cards just exceeded 10000.<sup>4</sup> According to the statistics of the United Nations, in 2019, there were 720300 foreigners living in China, accounting for 0.05% of Chinese population, lower than the world average of 1.6%, and even lower than the

average level of the developing countries.<sup>5</sup> It can be seen that, as a non-immigrant country in the traditional sense, the green card system in China cannot meet the development requirements of the new situation, and the newly established National Immigration Administration is also facing the shortage of system reserves, which is in great needs of nutrients from the theoretical and empirical research of scholars.

### 2.2. Research in China

As a non-immigrant country in the traditional sense, China's green card system was established late and the relevant research started late, but it basically reflects the evolution process and development trend of the green card system in China. In terms of the advantages, disadvantages and risks of migration, Liang Maoxin (1997) believes that international migration is the result of the comprehensive action of many factors such as economy, population, culture, nationality and even opportunity. [2] Li Qirong (2007) believes that the international flow of population is a "double-edged sword" that has a dual impact on both importing and exporting countries. Therefore, we should promote the rational flow of international population and reduce its negative impact. [3] From the perspective of system construction, Liu Guofu critically considered the problems existing in China's established permanent residence system for foreigners, and put forward suggestions for the improvement of skilled migration, investment migration and relative migration. [4] From a comparative perspective, Sun Haolei compares the laws and management systems related to permanent residence between China and the United States, summarizes the disadvantages of China's system, and puts forward some suggestions to improve China's permanent residence system in terms of legal system, management mode and visa system. [5] Mo Jianjian and Gao Jianxun provided reference for exploring and establishing the "green card" system with Chinese characteristics by comparing the three types of immigration "green card" systems of skilled immigration system, investment immigration system and relative immigration system in the traditional immigration countries, non-traditional immigration countries and emerging countries. [6] From the perspective of immigration governance, some scholars believe that international migrants, especially irregular migrants, may cause major security challenges, which are manifested in three aspects: homeland security, public security and cultural security. [7] Therefore, we should enrich the basic considerations of regulating international migrants and realize the organic balance between protecting international migrants' human rights and safeguarding national interests and public security. [8] It is an important issue that needs to be put on the agenda of the Chinese government to step up the formulation of relevant policies in line with China's national conditions on the basis

2Section 1 of Chapter 6 of the Outline of the 14th Five-year Plan of China.

3 See the official website of the International Organization for Migration: <https://publications.iom.int/books/world-migration-report-2020>, accessed on Jan. 25, 2023.

4See "Why has China's Green Card Become a Sweet Pastry", People's Daily (Overseas Edition): <http://world.people.com.cn/n1/2017/0815/c1002-29470071.htm>, accessed on Jan. 9<sup>th</sup> 2023.

5See How Many Foreigners are There in China? Global Times: <https://baijiahao.baidu.com/s?id=1660411896633066139&wfr=spider&for=pc>, accessed on Jan. 9<sup>th</sup>, 2023.

of full investigation, not only to allow overseas Chinese to play a positive role in China's social development in the new era through professional expertise and capital investment, but also to prevent the negative impact caused by their unreasonable increase and excessive agglomeration. [9]

### 2.3. Deficiency of Research

It can be seen from the above that the current domestic research on the green card system has a wide range and rich content, covering the advantages and disadvantages, development trend, system construction, talent recruitment, social security, and risk prevention of international migration, which demonstrates the present situation of green card system in China and reflects the social concerns to a certain extent. However, China's current research mainly focuses on the control of foreigners and lacks understanding of the important role of the green card system in international talent competition. Therefore, there are relatively few studies on how the government should construct the whole permanent residence system of foreigners from the macro view, there are basically no studies in line with the national talent strategy and the reform of national institutions, and the study on the Draft for Comments has not been seen. If we cannot understand the good intentions of the supreme authority, it is difficult for us to recognize the urgency of promoting China's green card system, and it is difficult to further explore the reform direction of China's green card system. Therefore, the research path of China's green card system reform should be to make an empirical analysis on the implementation effect and influencing factors of China's current green card system, to explore its operation mechanism, to interpret the Draft for

Comments from the perspective of national strategy for talent, and to put forward some valuable legislative and policy suggestions.

## 3. The Evolution of China's Green Card Legislation and the Difficulties Faced by the Current System

### 3.1. The Evolution of Green Card Legislation in China

China's regulations on green cards first appeared in the "Law of the People's Republic of China on the Administration of Entry and Exit of Foreigners" formulated by the National People's Congress in 1986 ("Entry & Exit Law 1986"), which made it clear for the first time that foreigners can enjoy the right of permanent residence in China. The establishment of the green card system is marked by the promulgation of the *Administrative Measures 2004*. In March 2018, with the adoption of the State Council's Institutional Restructuring Plan, the National Immigration Administration (NIA) was established, the preparation work for the Immigration Service Center was started in January 2019, and the release of Draft for Comments in February 2020 indicates that Chinese legislation on international immigration has entered a new stage. Therefore, China's green card system has experienced a process of continuous improvement from scratch, with legal principles and detailed provision, thus forming a complete system from legislative system to institutional implementation. See the following table for details:

Table 1. Legal System of China Green Card.

Year	Legislator	Name	Main Contents
1986	National People's Congress	<i>Entry &amp; Exit Law 1986</i>	Permanent residence qualification for foreigner was created
2004	Ministry of Public Security and Ministry of Foreign Affairs	<i>Administrative Measures 2004</i>	Comprehensive and systematic provisions on permanent residence, which signifies the former enforcement of green card system in China
2012	Ministry of Human Resource and Social Security and other 24 ministry departments	<i>Measures for Relevant Treatments Enjoyed by Foreigners with Permanent Residence Status in China (hereafter "Treatment Measures 2012")</i>	Provisions on the rights and social welfares enjoyed by foreigner permanently residing in China, which expanded the system of China green card.
2012	NPC	The Exit and Entry Administration Law of the People's Republic of China ( <i>Exit &amp; Entry Law 2012</i> )	A replace of the <i>Entry &amp; Exit Law 1986</i> with a general provision of green card system
2013	State Council	Regulations of the People's Republic of China on Administration of the Entry and Exit of Foreigners ( <i>Regulations on Entry &amp; Exit 2013</i> )	Specific rules for implementing the <i>Exit &amp; Entry Law 2012</i>
2016	The General Office of CPC Central Committee and the General Office of the State Council	The Opinions on Strengthening the Administration of Permanent Residence Service for Foreigners ( <i>Opinions on Strengthening the Administration 2016</i> )	Further improvement of administration and service work of green card
2017	The Reform Leading Group of Central Committee of CPC	Reform Plan for Simplifying of Permanent Residence Permit for Foreigners	The "residence card" was upgraded to be "residence identity card"
2018	NPC	Institutional Reform Plan of the <i>State Council</i>	National Immigration Administration was set up
2020	Ministry of Justice	Regulations of the People's Republic of China on the Administration of Permanent Residence of Foreigners (Draft for Comment)	Exposure draft for public opinion on the administrative rules

Source: Compiled by the author

### 3.2. Difficulties Faced by China's Current Green Card System

Although China has made some progress on the construction of green card system, compared with traditional immigration countries, it can be found that there are still many problems in China's current green card system, whether in terms of legislative system, legal provision or specific operation, as follows:

#### 1) The purpose of green card legislation is not clear

Looking at the current legal system related to green card in China, its legislative concept is still staying at the traditional legislative stage, taking foreign talents as the management object for control and prevention. For example, the purpose of the *Administrative Measures 2004* is to "standardize the examination and approval management of foreigners' permanent residence in China"; the core of the *Exit & Entry Law 2012* is to "regulate exit/entry administration, safeguard the sovereignty, security and social order of the People's Republic of China, and promote foreign exchanges and opening to the outside world"; the purpose of the *Regulations on Entry & Exit 2013* is still to "for the purpose of regulating the issuance of visas and provision of services to, and administration of affairs of, foreigners who stay or reside within the territory of China". The main responsibilities of the NIA established in 2018 include "To be responsible for the management of foreigners' temporary residence, permanent residence, refugees and nationality, and take the lead in coordinating administration of illegal entry, illegal residence, illegal employment and repatriation of illegal immigrants", all of which focus on management, and the service-oriented concept is relatively scarce, and there is no mention of the long-term immigration integration system to ensure the smooth integration of foreigners into the host country. Obviously, they do not recognize the important role of green card system for national economic and social development, which does not coincide with the general trend of international migration.

#### 2) The green card legislation system is not complete

At present, China has no comprehensive laws specially designed for the approval and management of green cards. The *Exit & Entry Law 2012* only makes a general provision on the management of foreigners in the entry-exit, and the *Regulations on Entry & Exit 2013* just refines the management procedures of foreigners' temporary and permanent residence in China, and only the *Administrative Measures 2004* stipulates the substantive rights and obligations of foreigners permanently residing in China. However, as the main legal provision on the permanent residence system for foreigners in China, the *Administrative Measures 2004* is ministerial rules in terms of legal status, which is too low. In addition, although some other ministerial regulations and local rules also involve the provisions on permanent residence system, their contents are relatively scattered and fragmented. For example, the formulation subject of the *Treatment Measures 2012* involves 25

ministries. As there are too many governing bodies, the coordination of departmental interests is very difficult. Therefore, compared with comprehensive laws and regulations, ministerial measure is characterized by lower authority, insufficient stability and serious segmentation, and lacks the constructiveness, pedigree and unity of the law and is difficult to form a unified, standardized and perfect system, thus causing the low legal effect of permanent residence system. [10]

#### 3) The policy room of green card system is insufficient and the access threshold is too high

For a long time, as the most populous country and a non-immigrant country, China has taken foreigners permanently residing in China as the object of control to a certain extent. The policy room for green card is limited, and the high access threshold has deterred a large number of foreign talents who are willing to come to China for long-term development, which has become a constraint for China to attract foreign high-level talents. At present, the application conditions for employees based on the applicant's job title and tax records are debatable; the rigid regulations on the length of service and residence of foreigners in China limit the application qualification of talents in urgent need in China; the category of special personnel requires the world's top talents, talents with special skills and celebrities who have made significant and outstanding contributions to the national economic development and social progress or have great value to the country, including winners of world-famous award, world-famous scholars, entrepreneurs, athletes, artists, etc.<sup>6</sup> Most of these standards are set for top talents in the world. Foreigners who can meet these requirements are rare, which also makes China's green card once known as "the most valuable green card in the world".

#### 4) The assessment and review standard of green card system is unscientific and insufficient

China has not adopted the integral assessment system adopted by many countries in the world, but adopts the general examination and approval system, which is subjective in operation. Although the *Administrative Measures 2004* lists three categories of candidate applicants for permanent residence, the provisions are too simple. For example, the requirements for investors to "make direct investment in China, make stable investment for three consecutive years and have a good tax record", but what is "stable investment" is not interpreted; nor is there any quantitative standard for "good tax record". Although China has set up a permanent residence system for employees for the purpose of absorbing senior talents and outstanding talents, it is based on the applicant's position rather than profession, which is a kind of administrative rank in nature, and the definition of position varies in different countries, hence the dislocation. This is different from the occupation list system in the international market which is guided by

<sup>6</sup>See Para. 2 & 3 of Clause 2, Article 1 of Provisions for Implementation of the *Administrative Measures 2004*.

occupation demand of market force and adjusted from time to time. "Personnel having major and outstanding contributions to China or needed urgently by China " are too vague. Since there are no detailed and specific operating standards for the above provisions, the competent authorities are subjective in the evaluation of applicants, and thus leaves more legal loopholes for applicants who do not meet the requirements.

#### 5) Absence of immigration integration system

After foreigners obtain the green card, how to integrate them into the local society and culture circle is a problem which needs to be addressed by the host country. If the immigrants cannot understand and accept the local language, customs and living habits, and are incompatible with the local political, economic and cultural circles, they are not willing to stay permanently, let alone making full contributions to local social stability and economic development as the member of local society. Even worse, there also may be conflicts and contradictions between the immigrants and the local society, resulting in unstable factors. More often than not, its role is not constructive, but destructive, as is the case with immigration in European countries in recent years. Therefore, the immigration integration system will play a vital role in solving the problem of immigration adaptation. However, China does not pay enough attention to the immigration integration system. So far, China has no laws related to immigration integration. In practice, there are two wrong tendencies in the attitude towards foreigners permanently residing in China: super national treatment and discriminatory treatment. On the one hand, it makes a few foreigners think they have privileges in China and act recklessly, which leads to the concern and anxiety of the public; On the other hand, there are rigid restrictions on the exercise of rights by foreigners who abide by laws and regulations, which makes it difficult for them to truly integrate into China's economic and cultural system psychologically and make plans for long-term residence, thus affecting the implementation effect of China's green card policy.

The few immigration integration measures involved are mainly basic living and work convenience, such as house purchase, medical treatment, insurance, bank account opening, children's school enrollment, etc. Basically, these measures do not involve humanistic care at the spiritual level, and there are no requirements for the understanding of Chinese culture and Chinese traditional customs, thus it is difficult for foreigners to really integrate into the local economic and cultural system and make plans for long-term residence.

## 4. International Experience of Green Card System Construction

China is a non-immigrant country. The permanent residence system of foreigners was established late and the system is not sound. As a melting pot of immigrants, some

traditional immigrant countries such as the United States, Canada and Australia have a long history of immigration and a relatively complete immigration system, which is worth of our attention. In addition, there are some emerging immigrant countries. Although they were cautious about foreign immigrants at the early stage, with the emergence of domestic population aging, low fertility rate and shortage of high-tech talents, they gradually turned their attention to overseas talents, and formulated and reformed immigration laws or introduced permanent residence system to strengthen the competition for international talents. The practices of these emerging countries are more worthy of our reference. This paper will select two countries from each category as samples.

### 4.1. Utilitarian Immigration System in the United States

In 1790, the U.S. Congress passed the first Naturalization Act, which allows any free white person of "good character," who has been living in the United States for two years or longer to apply for citizenship. The Immigration and Nationality Act of 1952 systematically stipulates the requirements and process of immigrating to the United States and becoming a U.S. citizen. The current Immigration Act of 1990 stipulates the immigration quota of various skilled talents with higher education and outstanding talents urgently needed by the United States, and sets priority levels for immigrants, to ensure the quality of immigrants and meet the objective needs of the market. The immigration policy of the United States reflects the high immigration rate and high talent rate, and emphasizes the selective immigration system to screen talents. Its main immigration system is the professional immigration system, that is, the system of obtaining the American green card through employment. Professional immigrants are divided into five categories: E1: Priority Worker and Persons of Extraordinary Ability; E2: Professionals Holding Advanced Degrees and Persons of Exceptional Ability; E3: professionals; E4: Certain Special Immigrants; and E5: investors. [11] The first four categories are mainly skilled immigrants, and the latter are investment immigrants. The quota of each type of professional immigrants shall be divided according to a certain proportion. The first three types of professional immigrants shall enjoy more visa quota, and it is stipulated that when the visa quota of the last two types of professional immigrants is in surplus, the first type of professional immigrants can be given priority. [12] Except the "Persons of Extraordinary Ability", the sub-category of "national interest waive" among advanced degrees, "special immigrants" and "investors" can directly apply for a green card, for other categories of immigration applicant, a labor certificate shall be obtained.

Since the beginning of this century, with the decline of competitive strength of the domestic enterprises in the United States, the U.S. government has successively adopted more accurate preferential policies for "high-tech talents" immigration. On the one hand, it has simplified the visa application procedures; on the other hand, the merit immigration category is established and the point counting

system is adopted, that is, it is scored according to immigration education, employment, length of residence and other factors. In January this year, the Biden government introduced a series of new measures aimed at attracting foreign students and professionals in the fields of science, technology, engineering and mathematics (STEM) to the United States, including launching a 36-month new training program for undergraduates and postgraduates in the STEM field (compared with 18 months earlier). 22 new research fields such as cloud computing, earth system science, data visualization and financial analysis will be included in the STEM optional practical training (OPT) program, allowing foreign students with a bachelor's degree or above in these fields to stay in the United States for up to 36 months. At the same time, USCIS updated the rules for national interest waive and exempted the labor permit application procedure, so that STEM professionals applying for a green card can get a green card faster.

The current green card system in the United States tends to serve the needs of talents and is based on the requirements of "education" and "skills". It is of positive significance to promote the economic development of the United States: first, a large number of highly educated engineers, scientists, professionals and entrepreneurs poured into the United States, injecting vitality and impetus into the development of science and technology and enterprise innovation in the United States, ensuring the sustainability of the leading position of science and technology in the United States; Secondly, the green card system in the United States has attracted a large number of students from foreign families with strong economic ability to study in the United States. While earning huge tuition fees to solve the problem of insufficient education funds, it encourages young and highly educated foreign students to stay in the United States after graduation, which not only saves the cost of childbirth and maintenance, but also helps to put off the coming of aging society. It is no exaggeration to say that the green card system of the United States has made great contributions to the United States in winning the world leading position in science, technology and economy.

#### **4.2. Preferential Immigration Treatment Based on the Point-Based System in Japan**

Japan's early legal system mainly included Immigration Control and Refugee Recognition Act, which is the basic law for immigration control and residency management. It also covers the Act for Establishment of the Ministry of Justice and other regulations that are related to the organization of the Immigration Services Agency, the basic plan for entry-exit management and the law on registration of foreigners, all of which focused on the entry-exit management of foreigners. However, with the serious aging of Japan's population and the small newborn population, in order to promote the sustainable development of Japan's economy and society, the Japanese government, drawing on the policy experience of developed countries, proposed the "preferential treatment

system for highly skilled professionals"<sup>7</sup> in 2012 and introduced three types of senior talents - "Advanced academic research activities," "Advanced specialized/technical activities," and "Advanced business and management activities" through the point-based system. The policy provides that foreigners who have held the "stay qualification" in Japan can apply to become highly skilled foreign professionals. Their activities in Japan mainly include academic research activities, highly skilled professional and technical activities and business management activities. According to the characteristics of the scope of activities, the Ministry of Justice has set a series of scoring standards such as "educational background", "work experience" and "annual salary" based on the point system. If the total score reaches the specified standard, it will be recognized as senior talents after being reviewed and approved by the Ministry of Justice, and more preferential treatment will be given to foreign highly skilled foreign professionals in terms of residence qualification, permanent residence right, spouse employment, etc. [13] At the same time, the residence period of talents is extended and the management of entry-exit system of foreigners is simplified, with the aim of improving the attraction of the country to overseas talents.

#### **4.3. Enlightenment of Green Card System of Foreign Countries to China**

Through the comparison of different types of green card systems in major countries, it can be seen that the implementation of green card policies in these countries is basically legislation first, system second, with supplement and improvement, and the effect is obvious in the introduction of talents and technology, which is good experience for China as a non-immigrant country. The details are as follows:

##### **1) Complete pragmatism is the purpose of legislation**

Influenced by the values of the supremacy of national interests, countries do not blindly and indiscriminately embrace immigrants, but selectively accept them. Taking the United States' Chinese Exclusion Act in 1882 to the Trump Administration's construction of a fence on the US Mexico border to prevent immigrants in 2018, it is not difficult to find that the change of the United States' policy towards immigrants is inseparable from its balance of its own political, economic and social interests. The United States would always reject foreigner it doesn't need, while spare no effort to introduce talents useful to the country. The pragmatic attitude is reflected incisively and vividly in the US immigration policy. Similarly, taking into account of China's national interest, it is necessary to differentiate the foreigners who are helpful to the nation and who are seeking a free-rider, so that the limited public resource will be allocated scientifically. [14]

##### **2) A complete legal system is the basis for operation**

At present, there are two main legislative forms of

<sup>7</sup>[https://www.isa.go.jp/en/publications/materials/newimmiaact\\_3\\_index.html](https://www.isa.go.jp/en/publications/materials/newimmiaact_3_index.html), accessed on Jan. 08, 2023.

international migration law: comprehensive legislation mode and separate legislation mode. The former is characterized by an independent immigration law to govern all matters related to immigration, including visa, entry-exit, residence, immigration integration and naturalization. Separate legislation mode such as China does not have a comprehensive immigration law to regulate immigration affairs. The entry-exit and residence of foreigners are governed by different laws and regulations. Countries with a long history of immigration, such as the United States and Canada, formulated immigration laws as early as the 18th-19th century. Today, some non-traditional immigration countries and regions, such as Britain, Germany, Hong Kong, South Korea etc., also have immigration laws. After years of practical application, modification and adjustment, the immigration laws of these countries have formed a complete system, covering basic laws, policies and management technical means, which involves all aspects of national social and economic life and has achieved good operation results.

### 3) Flexible immigration policy is the regulating valve

Any legal system formulated must be judged by the implementation effect. The establishment of green card system must serve the social and economic development of the country and make dynamic adjustment with the development and change of social economy. This requires the green card system to have a certain room for adjustment, so as to flexibly deal with emerging problems when the situation at home and abroad changes. Generally speaking, the general principles, categories, requirements and review procedures of green cards in the immigration laws of most countries and regions shall remain stable. However, other dynamic factors including the immigration quota, professional and vocational posts and application scheduling related to the management of green cards shall be flexible and need to be adjusted from time to time according to specific needs of the market.

### 4) The scientific evaluation system is the filter

Scientific evaluation can comprehensively review the applicant's personal ability and better judge the applicant's personal value. The examination and approval system of professional immigrants in the United States divides professional immigrants into five categories; Canada's credit point system scores the qualification of immigration applicants by factors; Australia's immigration system, which combines the occupation list and the points system, has been practiced for many years and proved to be effective. The complete and diverse immigration qualification evaluation system in these countries can help countries introduce talents according to demand and promote national economic development. Diversified immigration qualification evaluation methods can provide reference for China's permanent residence system in terms of application candidates and application standards, and make China's permanent residence system more specific and operable.

### 5) The service-oriented immigration integration system is a long-term guarantee

After foreigners enter the host country, how to integrate

them into the society and cultural circle, so as to produce a psychological sense of identity and belonging, and consciously serve the local social, economic and cultural construction is very important. From the experience and lessons of the above countries in accepting immigrants, we can see: first, setting specific requirements in terms of immigrants' application conditions such as language ability, financial strength and technical ability can lay a good foundation for immigrants to better integrate into the host country. Second, employment counseling, medical training, language training and other settlement services can be provided in the host country, and specialized institutions can be set up to guide the integration of immigrants when and where necessary. For instance, the Canadian Government set up the specialized agency to promote immigration integration; Non-traditional immigrant countries have also made different efforts in immigration integration, such as the international school opened in Singapore, the national integration plan promulgated by Germany and so on. During the lockdown of Covid-19, EU Member States have demonstrated flexibility, leniency and understanding with regard to the residence permits, temporary authorisations of stay and long-term/short-term visas, to prevent some third-country nationals from falling into irregular situations because of "force majeure" [15]. These immigration integration systems provide a good reference for China.

## 5. Way to Improve China's Green Card System and Suggestions on the Draft for Comments

At present, China is in an economic development era when the demographic dividend is gradually fading and the labor-intensive model needs to be transformed and upgraded. Therefore, how to build a legislative system for foreigners' permanent residence in line with national conditions is a tremendous task. The release of the Draft for Comments meets this demand in an overall situation, but it still needs to be improved in terms of legislative concept, legal model, access threshold and legislative technology.

### 5.1. A Transition of the Legislative Concept and Clarification of the Legislation Purpose of the Green Card System

At present, there is a fierce international competition for technical talents and funds, which are of vital importance for domestic economic and social development. The legislation concept, system operation and functional guarantee of the international green card system have played a vital role in attracting and retaining foreign talents and technologies. Therefore, we should rethink the legislative concept and purpose of China's green card system, and promote the transformation from control-oriented legislation to service-oriented legislation. It should be said that the promulgation of the Draft for Comments indicates that the focus of national legislation is changing from the entry-exit management of

foreigners to the service of foreigners' permanent residence, but the legislative purpose of Article 1 remains to be discussed. First of all, "in order to further expand opening to the outside world" is too macro abstract, and the role of green card system cannot be demonstrated; Secondly, "standardizing the management of foreigners' permanent residence in China and protecting the legitimate rights and interests of foreigners with permanent residence qualification"<sup>8</sup> mainly reflects the purpose of unilateral management, ignoring the mutual benefit of international talent introduction and service in the construction of green card system. Therefore, for the upcoming Regulations on the Administration of Permanent Residence of Foreigners, the legislative purpose of "in order to further expand the opening to the outside world, introduce foreign high-level talents, promote national economic and social development, standardize the administration of permanent residence of foreigners in China, and protect the legitimate rights and interests of foreigners with permanent residence qualification" can be established. At the same time, with immigration and visa as the core, we will link immigration management with China's politics, economy and culture, with a view to comprehensively solving the problems of access, residence, integration and naturalization, immigration approval and management, illegal immigration control and the protection of immigrants' rights.

## 5.2. Improvement of the Immigration Legal System

A sound immigration legal system is the key to the role of foreigners' permanent residence system. However, for a long time, China's permanent residence system for foreigners has not been complete, with low legal rank, separate and fragmented provisions. The permanent residence system for foreigners involves not only the examination and approval and supervision of foreigners entering and leaving China, but also all aspects of living and working in China, including the convenience of handling finance, foreign exchange, education, medical treatment, transportation, telecommunications, social insurance, accommodation registration, property registration, motor vehicle driver's license application and so on; foreigners permanently residing in China enjoy the right to equality in work and are eligible to participate in professional title evaluation and vocational qualification examination in accordance with relevant regulations; the equal rights to purchase commercial housing in China, to pay housing provident funds. These affairs need a comprehensive and complete law to better guide and coordinate various government departments and local people's governments, formulate supporting policies, provide financial budget support, and provide immigration management services. If the Draft for Comments is adopted, it will play a leading role in the construction of China's green card system to a certain extent. However, the affairs that may be involved in the permanent residence of foreigners in China are complex, which could not be covered by the

administrative regulations (such as legal disputes or crimes). In the long run, it is still necessary to further explore the comprehensive legislation of the law on permanent residence of foreigners, to clarify the rights and obligations of foreigners residing in China, to provide full protection to the rights of foreign talents in China, and to avoid supranational treatment and discriminatory treatment, so as to truly achieve equality between domestic and foreign residents.

## 5.3. The Flexible Immigration Policy and Reasonable Application Conditions Shall Be Established

In addition to formulating a comprehensive immigration law, supporting immigration policies and flexible management systems are also essential, which usually include immigration quota system, immigration occupation list system, employer guarantee system, etc. These systems have been practiced in many immigrant countries for a long time and have achieved good results. However, these systems have always been absent in China. Although the newly issued Draft for Comments mentioned the quota system and integral evaluation system, from the perspective of its wording, it is only a declarative legal language and has no substantive implementation plan, which still needs in-depth thinking and continuous practice.<sup>9</sup> China can set the immigration quota system according to the actual needs and learn from the practice of North American countries or European countries, set the upper limit of the quota every year, and make dynamic adjustments according to the actual needs. In addition, China can regularly publish the list of specialties needed by the country and the list of occupations in short supply according to the social and economic development, and adjust it according to the changes of the labor market, so as to clearly understand China's demand for international talents.

Although the Draft for Comments provides that the recommendation system can be adopted for high-tech talents and talents in great need, which is a great progress, the institutions qualified for recommendation are limited to the competent departments of national key industries and regions, national key universities, scientific research institutes, high-tech enterprises and domestic well-known enterprises, thus excluding the majority of private enterprises and small and medium-sized enterprises, which cannot fully reflect the market demand, and the number of talents that can be attracted will be quite limited. Therefore, it is advisable to emulate the employer guarantee system in the traditional immigration countries and endow the employer with the right of independent employment of foreign talents under the condition that the employer assesses the substantive conditions of the applicant (such as language, education level, position, competency and contribution) and is responsible for the authenticity of documents; while the competent authorities only review the basic conditions of the applicants (such as physical health, no criminal record, etc.), so as to improve the approval efficiency and ensure the attraction of talents needed for

<sup>8</sup>Article 1 of Draft for Comments.

<sup>9</sup>Article 7 of Draft for Comments.



China's social and economic development.

#### **5.4. Legislation Technology and a Scientific Evaluation System for Green Card Shall Be Adopted in China**

At present, there are some problems in the evaluation criteria and methods for permanent residence applicants in China: the evaluation criteria and methods are single and rigid; the legal language is too rough and vague, the meaning is unclear, and the operability is low; the list of occupations is misplaced and cannot reflect the market demand. Despite of the above situations, the Draft for Comment still excludes the demand for foreign technical talents from small and medium-sized enterprises and private enterprises. These problems are also a large part of the reasons for the poor implementation effect of the permanent residence system. Therefore, improving the evaluation system is an important part of improving the permanent residence system. It is necessary to learn from the foreign immigration integral evaluation system, establish the integral evaluation system according to the needs of the labor market, evaluate the abilities of the various applicant, fix the score and the qualification line, and take the score as one of the references for qualification assessment and approval. Article 8 of the Draft for Comments provides that the National Immigration Administration, together with the Ministry of Science & Technology, Ministry of Human Resources & Social Security, shall timely formulate the integral evaluation system and clearly incorporate the integral evaluation system into the legislation. However, in view of the fact that the Draft for Comments does not specify the elements for appraisal, it is suggested an integral evaluation system be established by reference to the model of Canada, Australia and other countries from the aspects of language, education, work experience, working hours and adaptability, set scores for scoring, and delimit score lines according to the actual needs to screen and introduce talents, so as to give full play to the flexibility of the market and ensure the attraction of international talents needed by the country and society.

#### **5.5. Great Importance Shall Be Attached to the Immigration Integration System**

The mark to measure the real success of a legal system is whether it can achieve a reasonable balance between value and conflict. Immigration integration system not only involves the individual interests of immigrants, but also promotes the harmonious development and social progress of host countries. After the high-level foreign talents enter China, we should focus on how to coordinate the social integration problems caused by the entry of immigrants, so as to avoid the conflict between immigrants and their nationals. The *Opinions on Strengthening the Administration 2016* proposed promoting the social integration of permanent residents and strengthen social services, but there were no specific measures; Chapter IV of the Draft for Comments provides comprehensive and detailed provisions on the

services and treatment of foreigners permanently residing in China, including providing social integration services such as common language training, national knowledge, legal and policy consultation for foreigners permanently residing in China; services in handling finance, foreign exchange, education, medical treatment, transportation, telecommunications, social insurance, accommodation registration, property registration, motor vehicle driver's license application, etc.; the equality in work and the right to participate in professional title evaluation and vocational qualification examination in accordance with relevant regulations; the equal rights to purchase commercial housing in China, pay housing provident fund; and the right of children's education. If these rights and benefits can be implemented, foreigners permanently residing in China will have a sense of identity in psychology and action. However, the establishment and improvement of immigration integration system is a huge systematic project, which requires continuous efforts from all walks of life.

## **6. Conclusion**

Green card system is the product of the development of international economy and society at a certain stage. It not only has the traditional function of human rights protection and social management, but also an important means to achieve national economic objectives and talent strategy in the era of globalization. In fact, the consideration of attracting and integrating foreign talents runs throughout the evolution of the system. [16] It is not only the most effective means for developed countries to obtain the talents and capital they need, but also provides an alternative solution for nationality conflicts faced by single nationality countries. The results of the Seventh National Census released in 2021 show that China's aging population has further increased, and the population of the new generation has decreased precipitously. In the future, it will continue to face a huge gap in human resources, and the road of self-reliance will be tortuous and lengthy. Therefore, the reform of the green card system, especially the release of the Draft for Comments, and the proposal of "implementing a more open talent policy and building a scientific research and innovation highland gathering excellent talents at home and abroad" put forward in the Outline of the 14 Five-year Plan adopted at the National Congress, was just the acknowledgement of this realistic gap. It is anticipated that China's green card system will be established as early as possible.

## **Declarations**

### ***Availability of Data and Materials***

All data used is publicly available, as it pertains to media outlets.

### ***Competing Interests***

The authors declare that they have no competing interests.

### Authors' Contributions

Jianxun GAO is the author; Jianjian MO is corresponding author. The author(s) read and approved the final manuscript.

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