

Fall 1995

Immigration Law in the Russian Federation

Kevin Tessier

Indiana University School of Law

Follow this and additional works at: <https://www.repository.law.indiana.edu/ijgls>



Part of the [Immigration Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Tessier, Kevin (1995) "Immigration Law in the Russian Federation," *Indiana Journal of Global Legal Studies*: Vol. 3 : Iss. 1 , Article 13.

Available at: <https://www.repository.law.indiana.edu/ijgls/vol3/iss1/13>

This Immigration Project is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Journal of Global Legal Studies* by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

Immigration Law in the Russian Federation

KEVIN TESSIER*

By 1993, the combined total of refugees and forced migrants in Russia exceeded two million.¹ This figure is surely an understatement since it takes into account only those forced migrants who are officially registered with the Russian Federal Migration Service (FMS).² The Russian Ministry of Labor and Employment predicts that the annual number of refugees and migrants entering Russia may triple over the next several years.³ The Federal Migration Service also estimates that approximately 500,000 illegal immigrants are living in Russia.⁴ Official estimates, however, have been criticized for underestimating the number of illegal immigrants, particularly those from China.⁵

Ethnic tensions have been a primary motivation for migration to Russia. Many newly independent states have enacted laws which favor the titular majority. For instance, restrictive citizenship laws in many former Soviet Republics require fluency in the native language as a prerequisite for

* J.D. Candidate, 1996, Indiana University, Bloomington; B.A. History, 1992, University of Redlands.

1. Sheila Marnie & Wendy Slater, *Russia's Refugees*, RFE/RL Res. Rep., Sept. 17, 1993, at 46, 48; 'Forced Migrants' Stretch Russia's Ability to Cope with Financial, Social Needs, 22 MIGRATION WORLD, No. 5, 1994, at 9.

2. The estimates of the number of refugees and forced migrants in Russia varies widely. This is due to the irregularity with which the government agencies supply statistical data and the considerable definitional ambiguity as to who constitutes a refugee or a forced migrant. Lev Gudkov, *The Structure and Character of Migration of Russians from the Former Republics of the USSR*, in THE NEW RUSSIAN DIASPORA: RUSSIAN MINORITIES IN THE FORMER SOVIET REPUBLICS 169, 173 (Vladimir Shlapentokh et al. eds., 1994).

3. Ramazan Abdulatipov, *Russian Minorities: The Political Dimension*, in THE NEW RUSSIAN DIASPORA: RUSSIAN MINORITIES IN THE FORMER SOVIET REPUBLICS 37, 41 (Vladimir Shlapentokh et al. eds., 1994). But see Gudkov, *supra* note 2, at 173-74 (arguing the number of refugees in Russia is exaggerated and confirming a more moderate estimate of 3 million refugees in Russia).

4. Besik Urigashvili, *Unwanted Ones*, RUSSIAN PRESS DIG., Sept. 22, 1994, at 5, available in LEXIS, World Library, CURNWS File.

5. Estimates of the number of illegal immigrants from China range from 200,000 to 2,000,000. Lee Hockstader, *Russians Fear Invasion of Chinese Traders*, WASH. POST, May 18, 1994, at A1. In the past 5 years alone, the number of Chinese immigrants living in Russia's Far East has grown fifty-fold. O. Zakharova et al., *Illegal Immigration in Border Regions of Russia's Far East*, RUSDATA DIALINE-BIZEKON NEWS, Dec. 30, 1994, available in LEXIS, World Library, CURNWS File. Some experts have estimated that in the eastern regions of Russia, Chinese immigrants could form the majority of the population within 20 years. Zhores Medvedev, *Keeping Russia's Far East*, MOSCOW TIMES, Jan. 6, 1995, available in LEXIS, World Library, CURNWS File. The number of Chinese immigrants in several border districts already exceeds the number of Russian citizens. *Id.*

citizenship.⁶ Since a large majority of ethnic Russians living in the “near abroad” have not learned the native language of the countries in which they live,⁷ these Russians are essentially denied citizenship. Denial of citizenship is a particular hardship in these countries since non-citizens do not have the right to own land, choose their place of residence, hold state jobs, or join political parties.⁸

Refugees and immigrants are also flowing into Russia to avoid economic hardship, armed conflict, and environmental disasters.⁹ One observer in Russia has noted, “Whether we like it or not, many of those who feel insecure in the newly independent states count on Russia. And should a calamity happen, it is to Russia that most of them would flock”¹⁰ Unfortunately, the economic opportunities in Russia are only a matter of degree. Russia is economically unable to cope with such a large influx of people.¹¹ If the number of refugees and immigrants coming to Russia exceeds low estimates, the Russian economy could collapse.¹²

Even without such a dire result, refugees in Russia could prove to be a volatile source of instability. Many refugees will be forced to live in sub-standard housing or camps and will be confronted with massive unemployment, thus creating fertile ground for extremist sentiment and movements.¹³ Sharp aggravations of the food and housing problems in Russia caused by refugees and immigrants may lower the living standards of native residents as well.¹⁴ Under these conditions, Vladimir Mukomel, chief analyst in the Department of Interethnic Relations in the Russian Federation,

6. Emil Payin, *The Disintegration of the Empire and the Fate of the “Imperial Minority,”* in THE NEW RUSSIAN DIASPORA: RUSSIAN MINORITIES IN THE FORMER SOVIET REPUBLICS 21, 28 (Vladimir Shlapentokh et al. eds., 1994).

7. Abdulatipov, *supra* note 3, at 38.

8. Payin, *supra* note 6, at 29.

9. Vladimir Terekhov, *Refugees and Migrants: How Can a Catastrophe be Averted?*, CURRENT DIG. OF THE POST-SOVIET PRESS, Feb. 2, 1994, at 6. Armed conflict emerged in recent developments as a primary source for the refugee flow to Russia. Following the November 1994 conflict in the breakaway republic of Chechnya, approximately 400,000 refugees fled to Russia. Michael Haney, *Refugees, Forced Migrants, and Asylum Seekers in the Russian Federation*, in WORLD REFUGEE SURV. 156 (1995).

10. Lilia Shevtsova, *Post-Soviet Emigration: Today and Tomorrow*, in THE POLITICS OF MIGRATION POLICIES: SETTLEMENT AND INTEGRATION, THE FIRST WORLD INTO THE 1990S, at 353, 361 (Daniel Kubat ed., 1993).

11. Gudkov, *supra* note 2, at 172-73.

12. *Id.* at 172.

13. Abdulatipov, *supra* note 3, at 41. See also Marnie & Slater, *supra* note 1, at 52.

14. Vladimir Mukomel, *Demographic Problems of Russian Adaptation in the Republics of the Former Soviet Union*, in THE NEW RUSSIAN DIASPORA: RUSSIAN MINORITIES IN THE FORMER SOVIET REPUBLICS 155, 164 (Vladimir Shlapentokh et al. eds., 1994).

described the refugee crisis in Russia as a “human time bomb” in which “social outbursts are practically guaranteed.”¹⁵

Ironically, the exodus of a large segment of their Russian populations may also threaten the economic and political stability of the newly independent states.¹⁶ Many of the ethnic Russians returning to Russia comprise a large share of these states’ technical elite.¹⁷ Such a large loss of specialists and skilled workers may create a sharp fall in industrial output and aggravate health care and infrastructure problems.¹⁸

Russia, however, has no program for assimilating members of the technical elite who have emigrated to Russia from nearby countries. As a result of this policy failure, “thousands of top-grade specialists are being scattered through various regions and are losing their skills since they can’t find jobs in their specialties.”¹⁹ Lidia Grafova, chairwoman of the private organization Coordinating Council for Assistance to Forced Migrants, has argued that “Russia’s migration ‘policy’ boils down to using refugees and migrants to plug up holes in dying collective farms and state farms.”²⁰

Since the Soviet Union was not historically a refugee-receiving country, successor states, such as Russia, have been confronted with refugee flows before they had the opportunity to create immigration or refugee laws.²¹ The Russian Federation began developing a coherent immigration policy in June 1992, when President Boris Yeltsin created the Federal Migration Service.²² The creation of this governmental unit was truly historic. Before the creation of the FMS, Russia had never had any immigration legislation, with the exception of old laws concerning foreign travel of Soviet citizens and

15. *Id.*

16. Shevtsova, *supra* note 10, at 362.

17. Gudkov, *supra* note 2, at 176.

18. Shevtsova, *supra* note 10, at 362.

19. Valentin Karkavtsev, *Wave of Russian Refugees Discomfits Russia: Does Russia Need New Russians?*, CURRENT DIG. OF THE POST-SOVIET PRESS, June 30, 1993, at 4.

20. Lidia Grafova, *Who Will Fund Russian Refugee’s Resettlement?: Hostages of the Empire*, CURRENT DIG. OF THE POST-SOVIET PRESS, Sept. 15, 1993, at 7, 8. See also Aleksandr Susokolov, *Russian Refugees and Migrants in Russia*, in THE NEW RUSSIAN DIASPORA: RUSSIAN MINORITIES IN THE FORMER SOVIET REPUBLICS 183, 184 (Vladimir Shlapentokh et al. eds., 1994).

21. Lee Schwartz, *Geography of Human Resources in the Post-Soviet Realm: A Panel*, 34 POST-SOVIET GEOGRAPHY 219, 240-42 (1993).

22. Wendy Slater, *The Problem of Immigration into Russia*, RFE/RL RES. REP., July 1, 1994, at 39. The main function of the FMS is to monitor refugees entering Russia as well as ethnic Russians returning from the former Soviet Republics. *Id.* at 39-40. See also Keisha Gary, *The Immigration Effects of the Demise of the Soviet Union*, 7 GEO. IMMIGR. L.J. 891, 894 (1993).

regulations governing foreign citizens living in the Soviet Union.²³ Since the FMS was created, Russia has taken many additional steps to create a system of immigration laws. In March 1993, Russia implemented two important laws: The Law on Refugees²⁴ and the Law on Forced Resettlement.²⁵ Two months later, Russia acceded to the 1951 U.N. Refugee Convention and its 1967 Protocol.²⁶

The Law on Refugees defines who may be considered a refugee, the procedure for acquiring refugee status, and the different rights and duties which stem from such a status.²⁷ According to the law, a refugee is a noncitizen of the Russian Federation who has been forced to flee from his or her permanent country of residence due to “acts or threats of force or other forms of persecution committed against the individual based on race, national origin, religion, language or membership in a certain social or political group.”²⁸

The Law on Refugees also adopts an application procedure to attain refugee status. Any person who is within the borders of the Russian Federation and petitions for refugee status will be given a temporary house of residence. While the petition is considered, the petitioner may “use municipal medical services, receive food in conformance with established norms and receive monetary aid in an amount to be determined by the government.”²⁹

23. *Press Briefing by Russia's Federal Migration Service* (Official Kremlin Int'l News Broadcast, Sept. 14, 1994), available in LEXIS, World Library, CURNWS File [hereinafter *FMS Briefing*] (quoting Stanislav Konstantinovich Petrunin, Head of the Migration Control Directorate).

24. O bezhentsakh [On Refugees], *Vedomosti RSFSR*, Issue No. 25, Item No. 425 (1993) [hereinafter *Law on Refugees*].

25. O vyzhdenikh [On Forced Resettlers], *Vedomosti RSFSR*, Issue No. 12, Item No. 427 (1993) [hereinafter *Law on Forced Resettlers*]. In December of 1993, the FMS approved additional regulations to supplement the Law on Forced Resettlers. These additions introduced procedures to monitor and regulate the flow of migrants, register forced migrants, and issue identification of forced migrant status. Slater, *supra* note 22, at 43.

26. U.S. Committee for Refugees, *Russian Federation*, in *WORLD REFUGEE SURV.* 144 (1994).

27. Bella Sanevich, *The Russian Federation Laws on Refugees and Forced Resettlers*, 1 *PARKER SCH. J. E. EUR. L.* 105 (1994).

28. *Law on Refugees*, *supra* note 24, at art. 1, para. 1. The FMS intends to clarify the law by excluding economic migrants and persons displaced by ecological disasters from the definition of refugee. Haney, *supra* note 9, at 158. Despite this intention to narrow the scope of the definition of refugee, the FMS has also proposed an amendment to the Law on Refugees which would create an additional category of “temporary refugees” who have been denied refugee status in the Russian Federation but who cannot be deported for “objective reasons.” *Id.* According to the FMS proposal, “temporary refugees” would be offered refuge in the Russian Federation for up to six months. *Id.*

29. *Law on Refugees*, *supra* note 24, at art. 3, para. 2.

Finally, and more concretely, the law guarantees that a refugee cannot be returned involuntarily to his or her country of origin.³⁰

At first glance, these benefits seem very generous, but a closer examination reveals that they amount to little more than empty promises. Writing in the *Parker School Journal of East European Law*, Bella Sanevich has noted, "To begin with, it is unclear what municipal medical services are or will be left in Russia. Further, the 'established norms' of food rations are dangerously vague. Finally, monetary aid to be determined by a government that, among other things, is trying to stem hyper-inflation is hardly a boon."³¹ Similarly, the Law on Refugees extends the privileges of citizenship to refugees, but with the reservation that these rights may be rescinded by additional legislation.³² Though the Russian government may be unable or unwilling to actually extend these benefits to refugees, at least on paper, the Law on Refugees provides greater rights to refugees with respect to employment and housing than does the U.N. Convention.³³

Under the Law on Forced Resettlement, a forced resettler is a citizen of the Russian Federation who was forced to leave his or her permanent residence in Russia due to "threats of, or actual, violence against the person or family based on race, national origin, religion, language, or membership in a certain social group, or due to political beliefs regarding violence toward certain groups, massive disruption of the peace, and other actions that significantly violate human rights."³⁴ This definition, unlike the definition of refugee, recognizes that a person may leave an area if family members are threatened as well.³⁵ This broader definition of a forced migrant enables Russian citizens to more easily be recognized as displaced persons.³⁶ The new law entitles individuals who qualify as forced resettlers to a monetary subsidy until they are retrained

30. *Id.* at art. 8, para. 1. This guarantee is generally known as the right to nonrefoulement. See *Russian Federation*, *supra* note 26, at 146.

31. Sanevich, *supra* note 27, at 106. For example, near hyperinflation so thoroughly devalued the funding for the FMS that the agency's entire 1992 budget of 3 billion rubles was consumed by the construction of only 3,000 housing units. Schwartz, *supra* note 21, at 245.

32. Law on Refugees, *supra* note 24, at art. 5, para. 1.

33. Sanevich, *supra* note 27, at 109.

34. Law on Forced Resettlers, *supra* note 25, at art. 1, para. 1. Including within the definition of forced resettler those persons "who are persecuted based on their beliefs on the use of violence against certain groups, is very unusual." Sanevich, *supra* note 27, at 108. Sanevich believes that this clause was included in the law to emphasize that "people should not be punished for their thoughts no matter how evil they may be." *Id.*

35. Sanevich, *supra* note 27, at 108.

36. *Id.*

for a new job.³⁷ Individuals who cannot work due to an employment disability are entitled to free food.³⁸ However, neither of these benefits extend to individuals who qualify for refugee status.³⁹

The question of whether a person qualifies as a forced resettler or as a refugee is an extremely important interpretive issue. Unfortunately, this critical distinction has been plagued by vagueness and inconsistent application and interpretation.⁴⁰ Tatiana Regent, the head of the FMS, has said that the primary distinction between the two categories is whether the person fled from "zones of military conflict."⁴¹ Regent cited persons fleeing Tajikistan as "refugees rather than forced migrants."⁴² Her interpretation of a forced resettler was similar to what ordinarily would be considered an economic migrant.⁴³

Mikhail Arutynov, chairman of the Committee on Refugees for the Russian Supreme Soviet, indicated, however, that citizenship was the primary determinant in whether one would be considered a refugee or a forced migrant.⁴⁴ Arutynov said that refugees and forced migrants essentially flee their homes for the same reasons, but that Russian citizens and persons seeking Russian citizenship will be treated as forced migrants because forced migrants enjoy more extensive benefits and because Russia places a priority on protecting its own citizens.⁴⁵

On its face, the Law on Refugees seems to apply to all noncitizens of the Russian Federation, including noncitizens from countries other than the former Soviet Union, but in reality, "no non-Soviet national or stateless person has been granted refugee status in the Russian Federation."⁴⁶ The ambiguity in the

37. Law on Forced Resettlers, *supra* note 25, at art. 6, para. 1.

38. *Id.* at art. 5, para. 1.

39. Sanevich, *supra* note 27, at 109.

40. See generally Haney, *supra* note 9, at 157-58. Haney attributes much of the inconsistent interpretation of the two laws to the absence of both the structures and the finances needed to cope with large numbers of refugees arriving in Russia and to the absence of a body of ancillary laws and regulations which inform officials how to implement the laws. *Id.* at 157. The Russian government is slowly implementing regulations needed to carry out its immigration laws. In September 1994, it issued a set of guidelines, "Regulations Concerning Work with Foreign Citizens," which supplements the Law on Refugees. *Id.* The FMS also intends to clarify the Law on Refugees by publishing an exhaustive list of reasons why a person could be excluded from either refugee or forced resettler status. *Id.* at 158.

41. *Russian Federation, supra* note 26, at 144.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. Haney, *supra* note 9, at 157. This is a significant development in the interpretation of Russian immigration law since the FMS estimates that at least 500,000 people from 46 countries not part of the former Soviet Union have fled to Russia and are seeking refugee status. *Id.* at 158.

new laws raises a serious possibility that any interpretive judgments will be made to favor Slav resettlers; based on these nationality concerns, the Russian government will be more willing to provide funding for the Law on Forced Resettlers.⁴⁷

Russia is also taking steps to deal with the problem of illegal immigration. The Russian Parliament, for example, amended the law on state borders to include a statute on immigration control.⁴⁸ A Presidential Decree implemented a similar measure.⁴⁹ In September 1994, the Russian Parliament passed two resolutions which formulated measures to prevent uncontrolled immigration into the Russian Federation.⁵⁰ The first resolution directs the FMS, the agency responsible for regulating immigration, to implement policies to prevent illegal immigration.⁵¹ The second resolution, "On Measures to Prevent and Reduce Uncontrolled External Migration," calls for a system of cooperation in which Russia, the CIS, and Baltic states enter into bilateral and multilateral agreements on immigration control.⁵² This resolution also introduces a quota system for asylum-seekers and refugees⁵³ and establishes twelve centers in

47. Sanevich, *supra* note 27, at 109-10. The Law on Refugees has been under intense reexamination by both the FMS and Russian legislators. A new version of the Law on Refugees is expected to be passed which will replace the current version of the law. Haney, *supra* note 9, at 157.

48. *FMS Briefing*, *supra* note 23 (quoting Vladimir Alexandrovich Volokh, Deputy Head of the Federal Migration Service).

49. *Id.*

50. *Id.*

51. *Id.* The resolution identifies 3 main tasks of immigration control: controlling entry into the territory of the Russian Federation, considering petitions for asylum, and preventing illegal immigration. *Id.*

52. *Id.* Russia has consistently insisted on international cooperation on immigration issues. Since 1993, the FMS has conducted negotiations with all the republics of the CIS and Baltic states on the issue of bilateral and multilateral agreements guaranteeing the rights of noncitizens. Aleksandr Bekker, *The Government: Migration Becoming a Problem of State Security*, CURRENT DIG. OF THE POST-SOVIET PRESS, Dec. 15, 1993, at 21. Russia concluded a bilateral agreement with Turkmenistan dealing with dual citizenship and migrants' rights. Vladimir Kuleshov, *Migrants' Rights Are Protected*, CURRENT DIG. OF THE POST-SOVIET PRESS, Feb. 2, 1994, at 7. Russia has discussed a similar agreement with Kyrgyzstan. Igor Rotar, *Diaspora: Askar Akayev on the Russian Problem*, CURRENT DIG. OF THE POST-SOVIET PRESS, March 23, 1994, at 26-27. Delegations of all the former Soviet Republics met collectively for the first time at an April 1993 conference in Moscow to discuss immigration issues. In November 1994, the Russian government ratified an international agreement, "Agreement on Aid to Refugees and Forced Migrants," which it negotiated with Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. Haney, *supra* note 9, at 158. The opportunity for further international cooperation presented itself when the United Nations High Commissioner for Refugees announced plans to hold an international conference in late 1995 or early 1996 on refugees and displaced persons in the former Soviet Union. Arthur Helton, *Russia's Returnees*, N.Y. TIMES, Feb. 13, 1995, at A18.

53. *FMS Briefing*, *supra* note 23.

Russia for the temporary placement of immigrants.⁵⁴ These centers will house immigrants until their immigration status is defined.⁵⁵

The tendency to subordinate national law on migrant rights to local restrictions on immigration is an emerging problem in Russian immigration law.⁵⁶ The *propiska* (residency permit) system presents a good illustration. The *propiska* system attempts to control migration by requiring registration with local authorities as a prerequisite for housing and employment.⁵⁷ Anyone moving from his or her place of permanent residence without obtaining refugee or forced migrant status thus risks a denial of benefits such as pensions and housing.⁵⁸ Yet many localities still enforce these laws,⁵⁹ despite two rulings by Russia's Constitutional Supervision Committee that the *propiska* system is incompatible with international law⁶⁰ and the enactment of national legislation supposedly abolishing this system.⁶¹ Moscow's mayor, Yurii Luzhkov, has been particularly adamant about enforcing the *propiska* system. During the crisis surrounding the shelling of the Russian Parliament building in October 1993, Luzhkov ordered the "cleansing" of all inhabitants without residence permits from the city.⁶² This and similar attempts to enforce the *propiska* system have resulted in serious human rights abuses.⁶³

Although the Russian Federation's immigration law is in its infancy and often appears fragmented and vague, Russia has begun to develop a coherent immigration policy. The Russian Federation's Law on Refugees and the Law on Forced Resettlers implicitly acknowledge that "Russia's role has changed from historically being the source of immigrants to other countries, to being

54. *Id.*

55. *Id.* One of the centers in the Perm region of the Ural Mountains has been reported to be more of a detention facility than a temporary housing facility. Observers have reported "extremely bad conditions" in the camp and speak of people "escaping" the camp, which is reportedly surrounded by barbed wire. Haney, *supra* note 9, at 159.

56. Slater, *supra* note 22, at 43.

57. *Russian Federation, supra* note 26, at 146.

58. Marnie & Slater, *supra* note 1, at 50.

59. See generally *Refugees Find Moscow Withdraws Its Welcome*, 22 *MIGRATION WORLD*, No. 1, 1994, at 3; *Russian Federation, supra* note 26, at 146-47; Slater, *supra* note 22, at 41. These laws are still enforced despite strong evidence that such laws do little to control migration to the big cities, inhibit the development of housing and labor markets, and may even violate Article 42 of the Russian Constitution which guarantees freedom of movement. Marnie & Slater, *supra* note 1, at 51.

60. Schwartz, *supra* note 21, at 244 n.20.

61. *Russian Federation, supra* note 26, at 146.

62. Slater, *supra* note 22, at 41.

63. *Id.* For reports of other human rights abuses associated with Russian immigration law, see Kenneth Roth, *Testimony Before the International Relations Subcommittee on International Operations and Human Rights*, Feb. 15, 1995, Federal Document Clearing House Congressional Testimony, available in LEXIS, News Library, CURNWS File.

the largest recipient of emigrants from the countries of the former Soviet Union.”⁶⁴ Addressing the most recent additions to Russian immigration law, the deputy head of the Federal Migration Service, Vladimir Alexandrovich Volokh, acknowledged the historic importance of this change: “We believe that these two enactments of the government mark a new and very important milestone in the development of our state. We are embarking on a civilized road as regards our approach to immigration problems. . . . [T]his highlights [the] fact that the Russian Federation is firmly committed to reform.”⁶⁵

64. Sanevich, *supra* note 27, at 105.

65. *FMS Briefing*, *supra* note 23.

