

**THESIS APPROVAL FORM**  
NAZARBAYEV UNIVERSITY  
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LEGAL LOW-SKILLED LABOR MIGRATION FROM KYRGYZSTAN TO  
KAZAKHSTAN: DID THE EURASIAN ECONOMIC UNION MAKE A DIFFERENCE?

ҚЫРҒЫЗСТАННАН ҚАЗАҚСТАНҒА БАҒЫТТАЛҒАН БІЛІКТІЛІГІ ТӨМЕН  
МАМАНДАРДЫҢ ЗАҢДЫ ТҮРДЕ КӨШІП ҚОНУЫ: ЕУРАЗИЯ  
ЭКОНОМИКАЛЫҚ ҚАУЫМДАСТЫҒЫ АЙЫРМАШЫЛЫҚ ЖАСАДЫ МА?

ЛЕГАЛЬНАЯ НИЗКОКВАЛИФИЦИРОВАННАЯ ТРУДОВАЯ МИГРАЦИЯ ИЗ  
КЫРГЫЗСТАНА В КАЗАХСТАН: ЕСТЬ ЛИ ИЗМЕНЕНИЯ ПОСЛЕ  
ВСТУПЛЕНИЯ В ЕВРАЗИЙСКИЙ ЭКОНОМИЧЕСКИЙ СОЮЗ?

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by

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### **List of Acronyms**

EEU	Eurasian Economic Union
CIS	Commonwealth of Independent States
IOM	International Organization for Migration
RK	Republic of Kazakhstan
USSR	Union of Soviet Socialist Republics
MEI	Minimum Estimated Index



### **Abstract**

The EEU policies simplified the procedure to obtain legal labor status for labor migrants from the member states. However, Kyrgyz workers in Kazakhstan are not able to enjoy these benefits. This thesis analyzes the EEU and Kazakhstani legislation regarding labor migration as well as opinions and experiences of Kyrgyz workers, experts, and officials. It is aimed to explain what factors hinder a positive effect of the EEU policies on legal low-skilled labor migration from Kyrgyzstan to Kazakhstan.

The EEU has not promoted the acquisition of legal labor status among Kyrgyz workers since many keep working without employment contracts. The gap between the law and reality is determined by a mismatch between the EEU policies and the domestic legislation of Kazakhstan. The issues of individual entrepreneurship and permanent residence which are critical for labor migrants working in the trading sector of Kazakhstan are not addressed by the EEU treaty. Hence, the procedure to obtain legal labor status is not simplified for Kyrgyz retail sector workers. In addition, they deem the process of acquisition of legal employment status according to Kazakhstani legislation complex and cumbersome. Consequently, Kyrgyz labor migrants work in the trading sector of Kazakhstan without the required documents.

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## **Chapter 1 The EEU as A New Opportunity for Labor Migrants**

On August 12, 2015, the Kyrgyz Republic entered the Eurasian Economic Union (EEU), joining Russia, Belarus, Kazakhstan, and Armenia. The EEU is a regional entity which promotes economic integration by ensuring the free movement of goods, services, labor, and capital, and engaging in the elaboration of coordinated, harmonized policies (International Crisis Group 2016).

Since the beginning of the 1990s, migration processes intensified in the territory of the CIS countries. Their nature differed radically from those observed in previous decades. The cardinal social and economic transformations caused intensive labor migration from Kyrgyzstan to other countries including the former republics of the USSR (Beishenaly and Pereboyev 2013). The state lost its productive potential: a sharp decrease in the number of jobs and decreased economic welfare led to an outflow of the population to more prosperous countries in the region. Kazakhstan became one of the main destinations for Kyrgyz labor migrants. Due to its geographical and cultural proximity as well as the state's economic development workers from Kyrgyzstan can be employed with relatively favorable conditions.

Labor migration in Central Asia cannot be viewed in isolation from the situation in Russia and in the world. Russia remains the main recipient of labor migrants from Uzbekistan, Kyrgyzstan, and Tajikistan. Although it is worth noting that the country's attractiveness declined due to the deteriorating economic situation, the devaluation of the ruble and more restrictive policies towards the foreign labor (IOM Report 2016). Hence, there is a decrease in the flow of labor migrants from the countries of Central Asia to Russia, which in turn may increase labor migration flows to Kazakhstan.

One potential positive side of the EEU is open access of member states' labor markets, which should promote labor migration – this may solve the problem of labor excess

in donor countries and a lack of workers in certain niches of recipient states. The demand for lesser skilled workers in many economically prosperous states is satisfied through international labor migration. In particular, construction and industrial sectors as well as services, cleaning and maintenance, care for children and old people are attractive for low-skilled labor immigrants. Generally, migration could be beneficial for both sending and receiving countries: the problem of job scarcity is relieved in a country of origin as well as remittances from labor migrants abroad helps economic development, whereas particular economic niches are occupied by immigrants in a destination state (“Labor Migration” 2015).

Citizens of the EEU should have easier access to a labor market in any member state. The EEU policies include a number of improvements for migrant workers: removing restrictions such as quotas and mandatory work permits, and recognition of diplomas from other countries. However, there are still contradictions and inconsistencies between legislation on labor migration and the treaty. The problem is the implementation of existing policies on the ground. The bureaucratic process to get a job may be unclear and complicated for labor migrants so that they prefer to work informally in the EEU states rather than with a labor contract. Assumed lack of legal literacy of migrant workers and insufficient communication between official institutions of a host state and labor migrants may result in low-level legalization among low-skilled foreign workers. Therefore, I’m interested in what obstacles prevent the EEU policies from having a positive effect on legal low-skilled labor migration from Kyrgyzstan to Kazakhstan.

### **What can the EEU member states expect?**

Immigration policy is the result of a compromise between various interest groups and stakeholders. Therefore, the content of policies may not reflect any one group’s real objectives and may be subject to differing interpretation and implementation (Czaika and de

Haas 2013). Generally, it is hard to say whether a policy is effective or failed ultimately since within its design there are so many interests and goals, and only some of the policy aims may be fulfilled (Rosenblum and Cornelius 2012; Czaika and de Haas 2013; Shah 2006; Chang 1998; Massey 1999; Chang 1998; Massey 1999).

A free labor zone is a special policy designed to ensure that labor migrants within a regional entity have the same access to the labor markets of member states as their citizens have. States choose a free movement of workers in the framework of a high-degree integration project and prefer legal labor immigrants from the states within the entity. Particularly, the literature on the EU, the only similar case to the EEU, shows that the enlargement of the EU in 2004 and 2007 led to a moderate increase of legal labor migration from new Central and Eastern European member states, mostly into the UK, Ireland, Sweden (Barrell, Gerald, and Riley 2007; Zaiceva and Zimmermann 2008). The literature on the Eurasian region emphasizes the need for stronger cooperation between states for a proper regulation of labor migration. The authors assume that a consistent institutional framework would improve the situation (Tishkov, Zayinchkovskaya, and Vitkovskaya 2005; Ivakhnyuk 2006). Given the EU example, the member states of the EEU could expect the EEU policies to encourage a rise in legal low-skilled labor migration.

Since the free movement of workers is one of the aims of the EEU, there are no official restrictions for workers to enter the labor market of Kazakhstan. If more people from Kyrgyzstan are coming to Kazakhstan, especially low-skilled workers who register and work legally, it may well suggest that the labor migration policies under the EEU work. However, there are still issues connected to the level of economic development and poor practices such as corruption and clientelism prevailing in the region that may prevent the EEU treaty from working.

Arbitrary and low-quality implementation of state policies may produce illegal immigration in the Eurasian region. Poor governance implies that official personnel such as migration service officers, border guards, and policemen regularly and systematically override the law in the sphere of migration and border regime (Reeves 2013). Clientelism, corruption (Ryazantsev and Korneev 2013; Ryazantsev and Bozhenko 2014), poor living conditions, exploitation, and harassment remain primary problems for labor migrants (Ivakhnyuk 2006; Tishkov, Zayinchkovskaya, and Vitkovskaya 2005; Chudinovskikh, and Denisenko 2014; Alpysbaeva, Abylkasimova, and Kalimova 2015). Therefore, new bureaucratic procedures for registration and starting to work officially in Kazakhstan could still be cumbersome for a labor migrant. In other words, official institutions and official requirements might not encourage labor migrants to obtain legal status. I'm going to look at a difference between legal norms and official procedures on the one hand, and practice on the other to examine whether migrants work officially, what they do in order to start working officially, why they may choose to have a job without required documents, and how state officials interpret and implement the legal norms, both EEU and domestic.

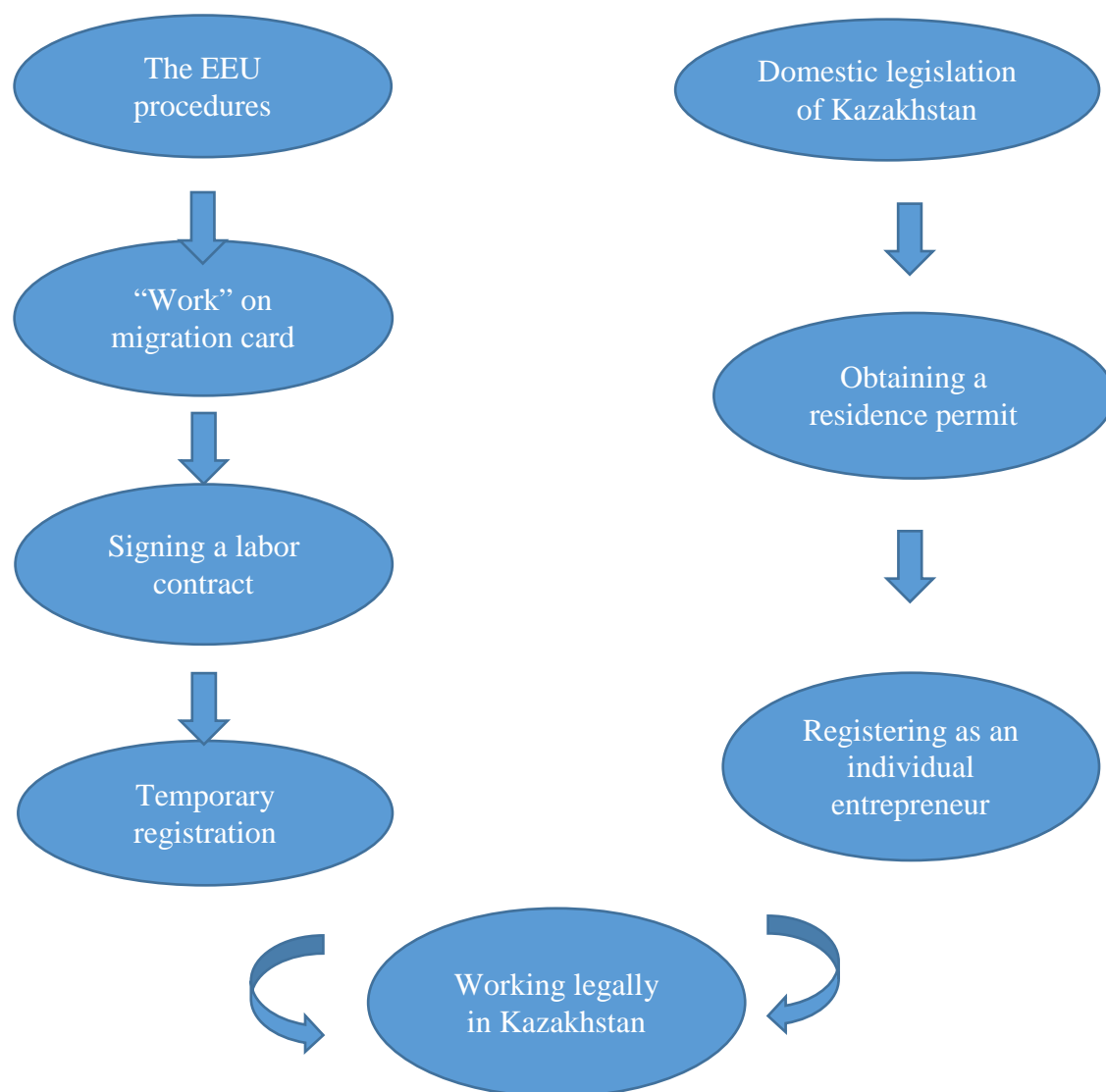
### **Simplified procedures, but no benefits**

Though the EEU treaty simplifies procedures for labor migrants, Kyrgyzstani workers do not have the opportunity to use these advantages. I argue that the EEU has not facilitated the acquisition of legal status among Kyrgyz labor migrants since they continue to work without labor contracts. In addition, they face obstacles to permanent residence and individual entrepreneurship, which the EEU policies do not deal with.

Citizens of the EEU member states entering Kazakhstan receive a migration card while crossing the border. When they enter, they have to fill in migration cards specifying the aim of their visit ("private", "work", "education", or "tourist"). In order to be eligible to work

officially in Kazakhstan under the EEU conditions, a Kyrgyzstani migrant is required to write “work” on the migration card. Labor migrants from the EEU member states have two options to work legally in Kazakhstan. One is according to the EEU simplified procedure, and another shows the way to be self-employed legally according to the domestic legislation of Kazakhstan (see Figure 1).

**Figure 1. Two Options for Kyrgyz Labor Migrants to Work Legally in Kazakhstan**



## **The EEU procedures**

A “work” migration card. According to the new EEU procedure, labor migrants who indicate “work” as their purpose of staying in Kazakhstan on migration cards make the first step to be able to work officially in the country. One should take into account that in order to work legally under the conditions of the EEU, only foreign workers with the “work” migration cards are eligible to sign contracts and register for the duration of their labor contracts in Kazakhstan.<sup>1</sup> However, if labor migrants do not indicate their purpose of staying, or for instance write “private”, they automatically are cut off from the benefits presented by the new EEU procedures.

A labor contract. In order to have benefits of the new EEU policies labor migrants are required to have a labor contract. The workers can sign an agreement with an employer in advance in their home country, or in the territory of the member state they plan to work after they cross the border. The presence of a labor contract allows a labor migrant to register for its duration (The EEU Treaty, Art. 97).

Registration. Foreign citizens who plan to stay in Kazakhstan for more than five days have to register (Law “On Migration of Population,” Art. 6). EEU nationals that have “work” migration cards have 30 days to register (The EEU Treaty, Art. 97). The duration of temporary registration is at most 90 days, whereas labor migrants from the EEU member states are eligible to register for the duration of their labor contracts. However, this is the case only for the workers with the “work” migration card and his/her employment agreement.

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<sup>1</sup> For Kyrgyzstani labor migrants the EEU conditions came to force from August 2015.



### **Specific Conditions to Work Officially in the Trading Sector**

According to experts, Kyrgyz citizens comprise one of the major parts of the foreign workers in Kazakhstan, and many work in the trading sector (i.e. bazaars).<sup>2</sup> Though Kyrgyz migrants can work for a seller if they sign a labor agreement in accordance with the EEU procedure, many of them choose to be self-employed, selling the goods brought from Kyrgyzstan to Kazakhstan. The migrants who work for themselves are not able to enjoy the EEU simplified procedures because conducting a trading activity in a bazaar requires them to register as an individual entrepreneur (Law “On Regulation of Trade Activity”, Art. 1).

According to the domestic legislation of Kazakhstan, foreigners first must get a Kazakhstani residence permit in order to be an individual entrepreneur (Law “On the Legal Status of Foreigners,” Art. 6). The residence permit gives foreigners the same rights and opportunities in the labor market as Kazakhstani citizens have (Law “On the Legal Status of Foreigners,” Art. 6). However, since the EEU treaty does not address the issues of individual entrepreneurship and residence there is no benefit of the common labor market for the self-employed Kyrgyzstani retailers.

The official data shows us some important points: the number of registered Kyrgyzstani citizens has risen, and more of them indicated “work” as the aim of staying in Kazakhstan on migration cards. Table 1 shows the overall number of Kyrgyzstani citizens registered temporarily in Kazakhstan from 2011 to 2016. The data suggest that there is a considerable increase in temporary registrations for the last two years, after the EEU treaty came to force in August 2015. While the number of Kyrgyzstanis registered rose by only 1.3% between 2013 and 2014, the registrations increased by 37.5% from 2015 to 2016. This trend suggests that the EEU policies promote a more intensive movement of people between the member states.

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<sup>2</sup> Interview with experts of non-governmental organizations who deal with labor migrants, Astana, December 2016.

**Table 1.** The Number of Citizens of Kyrgyzstan with Registration in Kazakhstan and Those Who Entered with “Work” Recorded on Migration Cards, 2012-2016<sup>3</sup>

	2012	2013	2014	2015	2016
<b>Registered temporarily</b>	103,001	93,127	94,313	114,385	157,277
<b>“Work” on migration card</b>	181	313	798	1,138	2,962

Note: Figures show only the number of temporary registrations. Kyrgyzstani citizens with residence permits in Kazakhstan are not included since they have permanent registration.

Source: State Migration Service of the RK, the Embassy of the Kyrgyz Republic in Kazakhstan, and Ministry of Internal Affairs of the RK.

According to the data on migration cards (see Table 1), it seems that the Eurasian Economic Union policies in the domain of labor migration could have promoted an increase in the number of Kyrgyzstani nationals that have the right to work in Kazakhstan. The number of people indicating the purpose of their visit as “work” almost tripled between 2015 and 2016, and there was a sixteen-times boost since 2012. However, Kyrgyzstani officials estimate the number of Kyrgyz workers in Kazakhstan is about 110,000-115,000 annually.<sup>4</sup> Taking into account that less than 3,000 nationals of Kyrgyzstan were eligible to work according to the EEU terms in 2016, the EEU did not grant any advantage to the majority of Kyrgyzstani labor migrants in Kazakhstan. Data from my interviews suggest that even though the EEU policies are aimed at easing the legal requirements for labor migrants from the member states it acknowledges that many Kyrgyz labor migrants still work without labor contracts.

Even though Kyrgyzstan has been a member of the EEU for a little more than a year, based on the qualitative study (interviews), I am able to provide transitional results that might be of interest. In my thesis, I am planning to shed light on the following research question: *what are the factors that hinder a positive effect of the Eurasian Economic Union policies on*

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<sup>3</sup>

<sup>4</sup> Email correspondence with the Migration Service of the Kyrgyz Republic, April 2017.

*Kyrgyz legal low-skilled labor migration into Kazakhstan?* The argument of my thesis is that the EEU has not facilitated the acquisition of legal status for Kyrgyzstani workers since they still work without labor contracts, and face extra obstacles in the labor market that the EEU policies do not deal with. Due to the gaps between the law and the reality caused by the omission of critical questions for the trading sector (i.e. the process to obtain permanent residence and individual entrepreneurship) and the complexity and expense of bureaucratic procedures, Kyrgyzstani labor migrants still tend to work without required documents.

## **Research Design**

The scope of the study. This section provides the definition of key terms and narrows the area of my study. This research has a specific focus on labor migration. According to the International Organization for Migration, labor migration is peoples' movement from one location to another with the goal of being employed ("Labor Migration" 2015).

From this broader group of labor migrants, my study is particularly concerned with low-skilled workers. "Low-skilled" is a term that can be attributed to the proficiency level necessary to perform certain work. The other possible conceptualization is related to the worker's educational level (Chaloff 2008). It is important to study low-skilled labor migration for several reasons. First of all, this category of workers is required in certain economic sectors such as construction, services, household, and agriculture (De Haas 2005; Fudge and MacPhail 2009). Also, they are a source of economic benefits for a host country. Low-skilled immigration reduces the cost of living for local population by decreasing the price for services such as gardening and housekeeping. Moreover, it might lead to the increase in wages of high-skilled employees working in this city (Cortes 2008; Kugler and Yuksel 2008). One more reason to focus on low-skilled foreign workers is that they are more vulnerable than their high-skilled colleagues. This type of workers tends to be less educated

and informed about their rights in general, and legal norms related to labor migration in particular. In addition, they are likely to be a subject of manipulation and exploitation by employers or police in a receiving state. These are the reasons why I would like to explore how policies affect low-skilled foreign workers.

Overall, I am interested in whether the EEU policies encourage low-skilled labor migrants to obtain legal employment status in a receiving country. For this case, I employ the definition of immigration policies as a government's statements of what it intends to do or not do (including laws, regulations, decisions or orders) in regards to the selection, admission, settlement and deportation of foreign citizens residing in the country (Bjerre et al. 2013, 4).

Methodology. In my thesis project, I am interested in the in-depth study of gaps between prescribed policies and their implementation in reality. Therefore, I will focus not only on official data and figures but also on experiences and opinions of migrants by using a qualitative method. The advantage of qualitative research is that it provides complex and rich depiction of people's experiences. It is concerned with interviewees' beliefs, behaviors, and opinions, as well as the character of relationships between individuals (Quinn Patton and Cochran 2002). One of the advantages of the mentioned method is close interaction between a researcher and a subject of the study during which interviewees are able to reveal their personal stories (Baxter and Jack 2008). Thus, a researcher can better understand the outcomes by knowing the motives and perspectives of the subjects themselves.

Taking into account the advantages of qualitative research methods, I used interviews to explore whether labor migration policies increase legal low-skilled labor migration. In addition, I think it was also critical to communicate with Kyrgyzstani labor migrants to learn their personal experiences and opinions about the effect of EEU labor migration policies on their lives and employment status in Kazakhstan.

In order to observe how the EEU policies affect low-skilled labor migration from Kyrgyzstan to Kazakhstan, and whether they encourage Kyrgyz labor migrants to acquire legal employment status, I conducted semi-structured interviews with 20 people from Kyrgyzstan. From this sample, 15 are labor migrants, and 5 people have either citizenship or residence of Kazakhstan. The interviews revealed information about the legal status of labor migrants, the reasons for its presence or absence, and whether the labor migrants experienced any improvements in working and life conditions due to the implementation of the EEU norms. By learning personal stories of migrants, I could find out why they were still working illegally and whether this fact was connected to the EEU policies. Besides, it was interesting to find out what was their perception about difficulties to work without required documents in Kazakhstan.

In addition to the interviews with people from Kyrgyzstan, I talked to 7 representatives of non-governmental, governmental, and international organizations, along with interviewing one independent researcher. These people are experts in the field of labor migration as they closely work with foreign workers, as well as participate in designing and implementing policies concerning migration in Kazakhstan. Therefore, their professional opinion and expertise is crucial for the assessment of overall labor migration from Kyrgyzstan to Kazakhstan.

Compared to the recruitment process of Kyrgyz people, recruiting experts in the field of migration had a completely different character. The experts and officials related to labor migration were mostly recruited by using official means of communication as emails, phone calls, and official requests. In addition, I used my personal network to interview state officials.

On the other hand, in order to reach out the Kyrgyz workers I visited markets and bazaars of Astana city, especially the places where migrants gather for social interactions. I

chose this location due to the fact that the largest proportion of Kyrgyz labor migrants work in the trading sector in Kazakhstan.<sup>5</sup> Moreover, it is easier for a researcher to get access to bazaars as they are public places where thousands of people come and go every day. However, other sectors of economy such as construction and agriculture, where Kyrgyz labor migrants are present as well, are not so easily accessible.

To gather more participants, I used the “snowball” method. I visited one non-governmental organization supporting labor migrants to get information about potential Kyrgyz workers interviewees. The employees of the organization shared contacts of some Kyrgyz who agreed to talk to me and recommended other Kyrgyz people working in the markets of Astana. Then, I managed to build trust with labor migrants in the bazaars by telling about the Kyrgyz I have already interviewed. In addition, I contacted Kyrgyz friends and relatives of my friends and my family acquaintances. Apart from face-to-face interviews, I had phone calls with Kyrgyz people who had the experience of working in Kazakhstan. I consider this method appropriate due to the fact that migrants can be reluctant to share their experience with a complete stranger.

When it comes to the interview process, I used semi-structured interviews with questions prepared in advance. The inquiries for labor migrants were divided into following sections: information about border passing procedures, information about work and living conditions, social and medical services. In addition, I asked experts and officials about the situation with migration prior to Kyrgyzstan’s admission to the EEU, and their opinions about the effects of the EEU policies on labor migration patterns.

After the interview responses were collected, I used an inductive method to analyze the data. I could observe general trends regarding my research question based on the answers given by labor migrants, experts, and officials. The interviews helped to explore the

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<sup>5</sup> Interview with an International organization expert, Astana, December 2016.

migrants' experiences, perceptions, and feelings, as a result, generated valuable data for qualitative analysis.

Apart from primary sources, I used secondary data including official statistics provided by state and non-governmental institutions, laws (e.g. domestic Kazakhstani legal rules), bilateral treaties with Kyrgyzstan, the EEU treaty, and data from reports of non-governmental and international organizations.

This official data gave me a general picture about the number of people who had a temporary registration, and the number of people who indicated “work” the purpose of their visit to Kazakhstan on the migration card. On the other hand, I had really scarce quantitative data. Moreover, I faced many difficulties in obtaining official information. In particular, it was extremely hard to reach state officials. Although I managed to contact some of them through informal channels, several bureaucrats refused to participate in the research due to their inability to provide any information without permission from their superiors. Basically, in employment contracts of Kazakhstani state servicemen, there is the point according to which they are prohibited from sharing any information related to their professional activity.<sup>6</sup> It is required to receive the authorization from the top level officials in order to be able to take part in the interviews.<sup>7</sup>

In addition to this, official requests for interviews and statistics involved a lot of bureaucratic complexities, which turned into a long and daunting process. One of the delays emerged as a result of the official decision of the President to rename and restructure state institutions. As far as this reform happened during my data collection process, I had to spend extra time on re-addressing new requests to the re-named official institutions. However, after the long and tedious communications with university administration and state officials, I managed to get some official documentation necessary for these research purposes.

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<sup>6</sup> Remark of a group of officials, December 2016.

<sup>7</sup> Ibid.

Nevertheless, most of the required data were unavailable or inconsistent, so it was hard to make any strong inferences from the official data. Therefore, instead of relying on formal sources of information solely, it was important to compare them with the perspectives of state institutions, non-governmental organizations, and migrant workers.

I also referred to Kazakhstani domestic legislation in different domains including labor migration, residence, registration, trading activity, and individual entrepreneurship as well as the EEU labor migration policies. I compared how the laws are supposed to work in theory with their implementation in reality. Consequently, employing both primary and secondary data I can observe the gap between official procedures and the reality that we have in practice - what migrants supposed to do in order to start an official labor activity, and why they still prefer to work without required documents in Kazakhstan.

Ethical Considerations. My research involved human subjects, therefore it was necessary to undergo formal research ethic training and obtain permission from the Institutional Research Ethics Committee of Nazarbayev University. After I was given the permission, I started to conduct my interviews with state officials, experts, and labor migrants. Since the Kyrgyz workers were part of a vulnerable population, usually they were reluctant to communicate with me. That is why I found my interviewees through acquaintances, and with his/her recommendations migrant workers were more willing to share their own perspective about labor migration and procedures they were going through in order to work in Kazakhstan. Since the involvement of vulnerable population, verbal consent was the most appropriate way to gather volunteers for my research project. Also, the only document connecting me and them and containing their name would be a consent form. Therefore, in order to avoid intimidation of participants and preserve their anonymity, they did not sign any documents. The overall process of recruitment went in the following way: before conducting interviews, I asked for their verbal consent. After a verbal consent was



given, the actual interview process started. In addition, during the interview, the most convenient and less intimidating way to retain information from migrants and public servants was taking written notes.

## **Chapter Outline**

This Chapter introduced the general information about the EEU, its aims, and what the EEU member states would expect as a result of the policies in labor migration sphere. Further, the research question and argument of the thesis were presented. The section about research design described how the author conducted this research. The remainder of my thesis proceeds as follows.

Chapter two reviews the existing literature on why people migrate in general, how different state policies affect migration patterns, the difference between free trade zones and free labor zones, the consequences of opening a free labor market in the EU, and, finally, which local practices may impede effective labor migration regulation in the post-Soviet area. Even though a free labor zone is supposed to increase the number of legal labor migrants, arbitrary implementation of bureaucratic procedures can impede foreign workers from being legalized.

Chapter three analyzes the gap between law and the reality. To be more precise, the options for foreigners to work in Kazakhstan according to the domestic legislation are demonstrated. Next, this chapter describes how the EEU simplifies the procedure of obtaining legal employment status for labor migrants from the member states. Eventually, the factors that hinder the legalization of Kyrgyz workers are considered.

Chapter four demonstrates the findings from the interviews with Kyrgyz retail sector labor migrants in Kazakhstan. It presents the factors why Kyrgyz workers in the trading

sector continue to work without the required documents. Thus, this specific case supports my argument.

Chapter five makes some concluding remarks, summarizes my findings, discusses why they support my argument, and mentions methods and issues to examine and employ for further research, shows the contribution of my thesis.

## **Chapter 2 Setting Expectations for Migration Patterns**

Migration is a worldwide phenomenon. People always migrate, so it is interesting what motivates them to move, and how policies affect migration flows in different regions. Accounting for the present interconnectedness of all states, e. g. globalization, migration becomes a heavily debated topic among political and social scientists, economists, and policy makers in the contemporary world.

This literature review is divided for subsections about why people move, how policies affect migration patterns, how Free Trade Agreements are different from a free movement of workers' zone, and the process of migration in the post-Soviet space. First, I discuss push and pull factors such as structural, individual decision-making, and their mixture which are the general accounts of why people decide to migrate (Hagen-Zanker 2008; Borjas 1994; O'Hara, Ivlevs, and Gentile 2009; Marat 2009a; Uebelmesser, Geis, and Werding 2013; Fawcett 1989; Massey, Goldring, and Durand 1994; Pedersen, and Pytlikova, and Smith 2008). The motivations of migrants are understandable: they strive to find a job, have a better life, and provide help to their families or relatives left in a country of origin. However, it is only one perspective characterizing varying migration patterns.

Institutions such as the state, supranational bodies or international agreements affect the scope and extent of people's movement regionally and around the world. In particular, through different sets of policies they provide more access to a certain set of immigrants while restricting others from entering a destination country. There is a debate about policies' content and objectives, and whether they can determine effectiveness and control the flows of labor migrants. Generally, it is difficult to assess whether a policy is effective or not since different actors pursue various interests and goals during the formation process, consequently, some of the policy aims may be fulfilled and others may not (Rosenblum, and

Cornelius 2012; Czaika and de Haas 2013; Shah 2006; Chang 1998; Massey 1999; Chang 1998; Massey 1999).

Next, we narrow down our focus on free trade agreements and a free movement of labor zone in order to look how immigration policies work in such framework (Cornelius and Martin 1993; Fernández-Kelly and Massey 2007; Bacon 2014; Papademetriou 2003; Barrell, FitzGerald, and Riley 2007; Kahanec, Zaiceva, and Zimmermann 2009). The difference between Free Trade Agreements and a free movement of workers' zone is that increased migration flows result unintentionally from a decrease in wages and unemployment caused partly by free trade agreements and more generally by economic and demographic factors in the first case; meanwhile, the second one is a special policy designed in order to ensure people from member states have an access to work on the whole territory of the zone. Under the FTAs restrictive policies and border enforcement don't manage to contain high volumes of immigrants, illegal in particular; while states choose a free movement of workers within a profound integration project, and prefer legal labor immigrants from the states within the entity.

The process of migration in the Eurasian region is widespread since the Soviet times (Laruelle 2007). Moving from one place to another and adjusting to new societal norms is not easy and can be dangerous. In a legally weak regime, employers are willing to use immigrants' labor heavily, but reward them disproportionately, hence, illegal workers could become the subjects of exploitation, or corruption (Ivakhnyuk 2006; Tishkov, Zayinchkovskaya, and Vitkovskaya 2005; Chudinovskikh, and Denisenko 2014; Alpysbaeva, Abylkasimova, and Kalimova 2015).

The Eurasian Economic Union as the regional organization promoting a free movement of goods, capital, and labor may fit in the free movement of workers' model like the EU. Consequently, the member states of the EEU would expect an increase in legal low-

skilled labor migration between the member states. However, there are still issues connected to the level of economic development and poor practices such as corruption prevailing in the region (Reeves 2013; Ruget and Usmanalieva 2010; Ariu, Docquier, and Squicciarini 2016; Laruelle 2007; Dave 2014). Hence, new bureaucratic procedures for registration and starting to work officially in Kazakhstan may still be unclear for a labor migrant. Thus, I address a gap in the existing literature, and propose a question in need of exploring: *what are the factors that hinder a positive effect of the Eurasian Economic Union policies on Kyrgyz legal low-skilled labor migration into Kazakhstan?*

### **Why Do People Migrate?**

In the literature there are different explanations for why people start, continue, or halt to move from one country to another; increase/decrease in their number – in other words, push and pull factors of migration. Basically, we can divide existing interpretations between structural, individual decision-making, and a combination of macro and micro-level theories. Supporters of structural arguments (Mabogunje 1970; Zolberg 1981; Zelinsky 1971) emphasize economic factors motivating people to make rational decisions and move to places where income differentials and labor demand is higher (mostly to the urban centers of developed countries); as well as political setting and legal framework of a state (national security considerations, multicultural preferences, and national identity essence affect migration laws which result in different migration flows), and modernization process (social and economic changes) (Hagen-Zanker 2008). Moreover, even deteriorated economic conditions do not hinder migrant workers in search of earnings (Borjas 1994; O'Hara, Ivlevs, and Gentile 2009; Marat 2009a; Marat 2009b). Not only net earning differences among states influence international migration, also the factors such as the level of skills transferability and international differences in income inequality are significant (Borjas 1994).

The global economic crisis has a considerable effect on the CIS economies, especially for those that have no resources to maintain their economies self-sufficiently (O'Hara, Ivlevs, and Gentile 2009; Marat 2009a). The situation worsens in the states that heavily dependent on remittances such as Moldova and Tajikistan: some immigrants lose their jobs and are forced to return home because of unfavorable economic climate in developed countries. However, owing to the weak ability of donor states to create jobs within their borders more persons become labor migrants and move abroad despite the economic crisis has a negative impact everywhere (Marat 2009b). In addition, linguistic/colonial ties and geographic proximity are the factors that could increase the flow of migrants (Breunig, Cao, and Luedtke 2008). It implies that migrants consider the closest destinations in the first place which are most likely to be similar in terms of language or culture, or they prefer to move to the states with shared colonial past. For example, French-speaking Algerians or Moroccans tend to choose France as a destination country.

Micro-level explanations focus on the individual decision making of migrants. Particularly, it emphasizes a rational cost-benefit analysis; diversity of receiving society; the behavioral model (utilities of destination places are considered, but knowledge is limited, therefore decisions are not always rational); the value-expectancy model (subjective goals, e.g. security or wealth); family decision-making (Fawcett 1989) – to migrate with a whole family, or to send one member abroad in order to get remittances (Hagen-Zanker 2008). There is a positive effect of wages, healthcare and education systems on the decision to migrate to a specific country for a potential migrant (Uebelmesser, Geis, and Werding 2013). Generally, unemployment rate and a higher tax wedge play a negative role in selecting a destination point; in contrast, union coverage and unemployment benefits affect negatively on migration decisions of potential immigrants, while they have a positive effect to stay permanently for those who are already in (Uebelmesser et al. 2013).

A meso level theory (i.e. a combination of both structural and individual levels) studies networks of migrants in a destination country, past migration experiences of compatriots in the area, and socio-economic context (Massey, Goldring, and Durand 1994; Pedersen, and Pytlikova, and Smith 2008; Hagen-Zanker 2008; Fussel 2012). Informed migrants make strategic decisions in order to enhance their interests and have access to resources within the institution of migration under specific rules (Goss and Lindquist 1995). For example, if a potential destination country has migrant networks it is easier to make the decision to migrate there because they know people who can help and support. Once migration practices started then it is quite common to continue moving through the same route to the same destination points. These are the general accounts of why people decide to migrate. We should understand that it is only one perspective characterizing varying migration patterns. Furthermore, there are institutions such as a state, supranational bodies or international agreements that obviously affect scope and extent of people's movement regionally and around the world. In particular, they provide more access to a certain set of immigrants whereas restricting others from entering or not ensuring their rights in a destination country – institutions realize all of this through different policies depending on their goals. Now, I proceed to the role of policies - how do they coordinate, hinder or promote migration flows.

### **Effectiveness of Migration Policies**

In this research project, I'm interested in whether immigration policies have an effect on low-skilled labor migration. There is disagreement among social scientists about policies' content and objectives, and whether they can determine effectiveness and control the flows of labor migrants. Initially, to formulate an effective model of immigration policy is a complex and disputable issue. There are different conflicting interests as economic, cultural, and

international that should be all addressed in the process of policy design (Rosenblum, and Cornelius 2012).

Especially in democracies, immigration policy is the result of a compromise between various interest groups and stakeholders, therefore, the content of policies may not reflect its real objectives, moreover, it is a subject to differing interpretation and implementation (Czaika and de Haas 2013). For instance, a politician could utilize anti-immigration public discourse in his/her campaign during elections, whereas the content of policies he/she would elaborate is very nuanced and may have the objective to reduce the number of migrants only partly or to encourage a certain type of immigration. Thus, to assess the effectiveness of a policy becomes even more complex due to ambiguity in its intended and actual effect (Czaika and de Haas 2013).

The immigration policies of different states seem similar in that they encourage high-skilled migration in order to enhance the economy, to prevent unwanted low-skilled and refugee immigrants from entering (because of public discontent), and to employ migration enforcement in order to stop unauthorized migration flows (Rosenblum, and Cornelius 2012). In contrast, admissions and integration policies vary in different states: economic visas - “demand-based” (employers can plead for foreign labor migrants), a “point system” (a potential immigrant gets points for particular characteristics), “hybrid”; family-based – reunification with family members; humanitarian visas; language courses, or multiculturalism are a part of integration activity (Rosenblum, and Cornelius 2012, 10-15).

The role of the state in the regulation of labor migration is mainly restrictive in nature and concerned with a sufficient number of workplaces and the level of wages for natives (Chang 1998; Massey 1999). There are authors who deem restrictive policies effective and those who argue they are not working. For one stream of the literature, the policies aimed to limit the flow of immigrant workers work at least partly. For example, in the Gulf states,



governments try to reduce the number of working non-nationals by denying access to some sectors of the economy, or setting obligatory medical insurance (Shah 2006). In the EU, authors indicate the increased capacity of states in detection, detention, and expulsion of irregular migrants as well as to close almost fully a legal labor market for them; at the same time, the capacity of illegals to use “identity manipulation” – false documents, and support of networks - has likely diminished (Broeders and Engbersen 2007). On the contrary, restrictive policies prove inefficient in the struggle with high labor migration, since the number of both documented and undocumented migrants (in spite of such harsh measures as border enforcement and workplaces inspections) continue to rise (Massey 1999). In a similar manner, the literature also suggests that policies, especially repressive ones, are useless against immigration since people still continue to move in search of work, and a higher quality of life (Carens 1987; Cvajner and Sciortino 2010; Anderson and Hancilová 2011). Overall, I cannot precisely say whether a policy is effective or failed. Its design includes so many interests and goals; consequently, some of the policy aims may be fulfilled, whereas others remain in question. Moreover, it is important to account for other migration determinants I’ve discussed earlier as push and pull factors, macroeconomics, and individual decisions while looking at the migration process. In the next section, we narrow down our focus on free trade agreements and a free movement of labor zone in order to look how immigration policies work in such framework.

### **Difference between FTAs and Free Movement of Workers Zones**

In the following portion of literature, I distinguish free trade agreements from free movement of workers zones. The main distinction is that the latter is a special policy designed to ensure that labor migrants within a regional entity have the same access to the labor markets of member states as their citizens have. Whereas the former organizations

increased migration flows are an unintentional result caused generally by economic and demographic factors.

The FTA is considered as one of the best approaches for a state in order to open access to partners' markets for its exporters by reducing barriers to its exports and protect its interests (Trade.Gov 2017). Do free trade zones promote easier access and favorable conditions to a labor market of member-states? Noteworthy, FTAs do not contain a special immigration regime, i.e. a free movement of labor is not implied. As regards North American Free Trade Agreement and its effect on labor migration patterns, scholars generally agree that it has resulted in a considerable increase of Mexican immigrants to the US, though, some of them argue that such consequences may be the result of other factors, for instance, economic crisis (Cornelius and Martin 1993; Fernández-Kelly and Massey 2007).

Interestingly, the prior-NAFTA literature suggested that labor migration from rural Mexico into the US wouldn't increase massively under the NAFTA framework: diversification of sources of income by Mexican farmers, US farmers' expansion into Mexico which aimed to create new jobs for the locals; the EU experience of no significant emigration under a free trade zone (Cornelius and Martin 1993). However, there is a paradox in the NAFTA formation; there is a simultaneous increase in capital mobility, and at the same time a more restrictive control over the movement of immigrant workers (Fernández-Kelly and Massey 2007).

Generally, free trade and immigration are closely interconnected; the former may stimulate the increase in the latter (Coha.org, 2007). As a result, a tight regulation of labor force coming into the US, as well partly because of 9/11 terrorist attacks, leads to the increase in Mexican immigrants, especially illegal because of well-developed networks of smugglers and fake documents producers (Coha.org, 2007). Furthermore, Mexican people were forced to move North since NAFTA came into force and lowered the price of corn, especially

agricultural workers which had no jobs or almost no income from the Mexican crop (Bacon 2014). On the contrary, FTA in North America is not the only source of intensive migration to the US, more powerful factors exceed it: a demand for Mexican workers in the US, expansive networks promoting migration, poor economic conditions in Mexico, and the demographic situation creating excess in labor force locally (Papademetriou 2003).

The EU is the most prominent example of a free movement of labor zone. Free movement of workers is one of the primary principles written in the Treaty on the Functioning of the European Union, Article 45. The citizens of the European Union are authorized to: “look for a job in another EU country; work there without needing a work permission; reside there for that purpose; stay there even after employment has finished; enjoy equal treatment with nationals in access to employment, working conditions and all other social and tax advantages.”<sup>8</sup> Policy formation and implementation are complicated by the complex nature of international migration which has its own dynamics; moreover, there is a necessity to coordinate the interests of member-states and all interest groups within them which is almost impossible (Castles 2004). Therefore, policies producing opposite (failed policies) results to the aimed ones is the outcome of the complexities: hidden agenda of politicians, contradictory interests, and immigration process itself. EU nationals can enter or live in other member-states without visas or permission for residence, however, the right to work in another member-state is not automatically given (Brady 2008). Furthermore, promoted labor migration policies can be a result of political preferences of European Parliament’s representatives rather than a reflection of economic interests and citizens’ concerns (Hix and Noury 2007). In the EU case, it is interesting to observe the effect of the free movement of workers after a join of new members in 2004 and 2007.

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<sup>8</sup> “Free Movement – EU nationals,” European Commission, accessed February 1, 2017, <http://ec.europa.eu/social/main.jsp?catId=457>

The extensive part of the literature covers the migration dynamics after the EU enlargement - entrance of 12 new member-states. We can divide these accounts into expectations – perception that East-West migration would be large in numbers and would threaten Western states labor markets (Hans-Werner Sinn 1999); and actual consequences – a moderate level of migration from Central Eastern Europe without negative economic effects (Barrell, FitzGerald, and Riley 2007). After EU 2004 and 2007 enlargement migration flows have actually increased to some extent from new members, particularly, into UK, Ireland, and Sweden because of the ultimate free access to their labor markets (Zaiceva and Zimmermann 2008). Other EU states pressured by social discontent and fears have introduced transitional agreements - restrictions to enter local labor markets for seven years revised after two and five years (Zaiceva and Zimmermann 2008).

There is not sufficient data to make a conclusion that migrant workers would displace locals from employment and decrease their wages (Kahanec, Zaiceva, and Zimmermann 2009). The evidence suggests that migration after the EU enlargement facilitates its growth perspectives by guaranteeing a better distribution of human capital, as well the migrants are not likely to become welfare recipients, and they are related to a large extent to the labor market (Kahanec and Zimmermann 2008). As we can see the difference between FTAs and a free movement of workers' zone is that increased migration flows result unintentionally from a decrease in wages and unemployment caused partly by free trade agreements and more generally by economic and demographic factors in the first case. Meanwhile, the second one is a special policy designed in order to ensure people from member states have an access to work on the whole territory of a zone. Under the FTAs restrictive policies and border enforcement don't manage to contain high volumes of immigrants, illegal in particular. In contrast, states in a high-degree integration project choose the policy of a free movement of workers, since they prefer legal foreign workers from the member states.

## **Migration in the Post-Soviet Space**

Population of the USSR was distinguished by intensive domestic migration. Those movements within the state mainly connected to labor migration and family visits (Tishkov, Zayinchkovskaya, and Vitkovskaya 2005, 3). People of the post-Soviet countries continue to move on a regular basis between Russia and Central Asia due to geographical closeness, linguistic/cultural similarities, and, eventually, a common past experience as one state (Laruelle 2007). Within the CIS, Russian Federation and Kazakhstan are the main centers receiving migrants in the post-Soviet space overall (Ryazantsev and Bozhenko 2014). Other former Soviet states and Central Asian republics represent donor countries.

After the USSR collapse, the production of industrial sector in the post-Soviet Republics has been decreased by almost two times, ethnic and territorial conflicts escalated, investments reduced, the official number of unemployed people made up 3.5 mlns, and a level of wages became considerably lower (Tishkov, Zayinchkovskaya, and Vitkovskaya 2005). Unfavorable economic conditions and unemployment, a low quality of life motivate people to move abroad, both into neighboring countries and overseas.

The quality of governance matters while implementing those migration policies (Reeves 2013; Ruget and Usmanalieva 2010; Ariu, Docquier, and Squicciarini 2016; Laruelle 2007; Dave 2014). There is something specific in the post-USSR states, in Russia in particular, in the way they regulate migration movement in cities by peculiar racialization legacies left after the late Soviet period as well as by the durability of a governance chaotic mode; as a result, the privatization of law and order is known as a notorious feature of the 1990s (Reeves 2013). The poor governance implies that official personnel such as migration service officers, border guards, and policemen regularly and systematically override the law in the sphere of migration and border regime (Reeves 2013). The very low wages of public

servicemen may be related to the high level of corruption. In addition, clientelism is one of the main reasons that can explain the regular use of “economically disadvantageous practices” (Ruget and Usmanalieva 2010).

Each of the CIS states has its own policies regarding labor migration and accounting for a free-visa regime between them it is a quite difficult task to regulate flows of immigrant workers. Specifically, in the Eurasian region, authors acknowledge the fact that arbitrary and low-quality implementation of state policies produce illegal immigration, as a result, such problems remain as clientelism, corruption (Ryazantsev and Korneev 2013; Ryazantsev and Bozhenko 2014), poor living conditions, exploitation, and harassment for labor migrants (Ivakhnyuk 2006; Tishkov, Zayinchkovskaya, and Vitkovskaya 2005; Chudinovskikh, and Denisenko 2014; Alpysbaeva, Abylkasimova, and Kalimova 2015). Insufficient domestic legislation fails to ensure human and social rights to migrants and to punish employers abusing these rights (Laruelle 2008, 8). Moreover, not recognizing the level of immigrants’ illegal employment from Central Asian republics to Kazakhstan leads to a lack of regulation and legalizing of low-skilled labor migration on the state level (Dave 2014). In other words, the states of the region face similar difficulties and problems: a large shadow economic sector, corruption, clientelism, exploitation of rightless migrants, ethnic tensions, a discontent of native people, and inappropriate regulation of labor migration – which all lead to the predominance of undocumented migration in the region.

### **Addressing the Gaps**

It is difficult to assess precisely whether a migration policy is effective or not. Part of the reason could be in its design which includes a number of interests and goals, consequently, some of the policy aims may be fulfilled and some not. The task is especially complex within a regional entity with a variety of stakeholders both on the national level and

between member states. For instance, the EU formulates a policy in any sphere accounting to the interests of different stakeholders in each state at first, and then tries to achieve a consensus on the issue among member states. The expected findings suggest that the EEU member states would expect that the EEU policies promote the rise in the number of legal low-skilled labor migrants. However, bureaucratic procedures for registration and starting to work officially would be still unclear or ineligible for a labor migrant. In other words, official institutions and official requirements would not encourage labor migrants to obtain a legal status.

Hence, a theoretical gap that I would like to address is a way to analyze whether the policy of free movement of workers promote legal low-skilled labor migration between member states. In other words, whether a free labor zone encourage low-skilled labor migrants to obtain a legal labor status. Empirically, I am going to study a specific institution in our region, the Eurasian Economic Union, which implements new labor migration policies, one of which is to promote a free movement of labor. There are few regional entities that have this kind of policy on agenda; hence, it is critical to study how the situation with legal foreign workers is developed. For now, scholars have said very little about the EEU policies and its' effectiveness for regulating regional labor migration. There is no surprise since it is a relatively new institution and it develops a new legal framework which aims to promote labor migration. Therefore, in order to analyze the effects of the EEU labor migration policies I'm going to look at official data and a difference between legal norms and official procedures on the one hand and practice on the other. The latter implies whether migrants work legally, what migrants are required to do and what they actually do in order to start working officially, and why they can still choose to work in the informal sector.

The establishment of the EEU has the official aim to promote a free movement of goods, services, capital, and labor. This results in the new set of policies in such spheres as

trade, customs, and labor migration among the member-states (Russian Federation, Kazakhstan, Belarus, Armenia, and Kyrgyzstan). In particular, the EEU is going to regulate a new common labor market, conditions to obtain a legal labor contract and job. It is interesting to examine whether positive changes, an increase in legal labor migration, take place, and whether these changes are determined by the new legal framework.

However, visa-free regime between the EEU countries makes unauthorized labor migration easier to proceed in the region. Basically, it is quite difficult to track what people are going to do after their arrival, whether they come to work, or for other purposes to stay in a country. Therefore, I'm interested in obstacles for a positive effect on legal low-skilled labor migrants from Kyrgyzstan to Kazakhstan after the changes in the labor migration regulation. I can look at the overall situation and migrant's experiences before and after 2015 since Kyrgyzstan joined the Eurasian Economic Union. I will observe how labor migration policies of the EEU are supposed to be implemented – the law, the view of state institutions and experts. Meanwhile, I can find out how these policies are seen by low-skilled labor immigrants. I'm interested in their communication with bureaucrats, experiences of bureaucratic procedures they go through, whether they have a legal labor status and, the reasons of its presence/absence. Do they see any difference in comparison with pre-August 2015? Thus, my thesis project is focused on what can impede a proper operation of the Eurasian Economic Union legal framework, its labor migration policies in particular, in order to increase a level of the legal low-skilled labor migration from Kyrgyzstan to Kazakhstan.

### **Chapter 3 The Gap Between Legal Prescriptions and the Reality on the Ground**



It takes time for legal amendments to be implemented in practice. The EEU has functioned for one and a half years; however, it seems that it has no effects on legalization process of Kyrgyz labor migrants in Kazakhstan. This Chapter analyzes why the EEU has not benefitted labor migrants from Kyrgyzstan coming to Kazakhstan. First, I review specifics of the domestic legislation of Kazakhstan in the area of registration of the Kazakhstani citizens and foreigners. Also, I show how the domestic legislation manages the labor migration, and which procedures are required for foreigners in order to start working officially in Kazakhstan. Then, I study the EEU labor migration policies, the recent implementation of which includes a simplified procedure of registration for labor migrants, permission to hire unlimited number of workers from the member states, a reciprocal recognition of diplomas, and access to medical and social services. Particularly, the EEU procedure to get a legal job in Kazakhstan is considered. Though the process to obtain legal status for labor migrants was simplified, foreign workers cannot utilize the advantages. Hence, I plan to analyze the factors that affect the low level of legalization of Kyrgyzstani labor migrants. Specifically, I discuss the legal procedures required to obtain legal labor status for foreign workers, and then look at the factors which impede their implementation in practice.

### **Domestic Legislation**

This section provides brief explanations of procedures that local and foreign people have to undergo in order to document their residence in Kazakhstan. Moreover, I will explain how the type of the registration granted to foreigners influences their employment opportunities in the state.

“Propiska” and registration. Kazakhstan as a part of the former USSR has the institution of “propiska” – a system of managed migration which requires citizens to register at places of their residence, work, or recreation (Buckley 1995, 897). During the Soviet times

the government had various reasons for implementation of this policy for registration: to keep a record of population, and to monitor the movement of unwanted elements like criminals and kulaks (1995, 902).

After gaining independence, Kazakhstan preserved this Soviet legacy of “propiska”. In present days, Kazakhstani citizens also have an obligation to obtain either a permanent or temporary registration (Egov.kz. 2017). Similar to the “propiska” that was required in the Soviet times, the former registration is for permanent residence, while the latter one is requested to register at a place of temporary residence. In order to stay officially in Kazakhstan, foreigners are obliged to have either a temporary registration or a residence permit (Law “On the Legal Status of Foreigners” Art. 4). Any foreign visitor who enters the country has to register temporarily within 5 days since his/her arrival (Law “On Migration of Population,” Art. 6). The duration of this registration is at most 90 days, and every three months one has to extend the temporary registration. In case a foreigner is planning to live permanently in Kazakhstan, he/she is able to apply for a residence permit, which is an official permit allowing a foreign national to stay legally in Kazakhstan for a period of 10 years (Law “On Identity Documents,” Art. 10; RK Decree No. 852; RK Decree No. 2101). Unlike temporary registration, obtaining the residence permit involves cumbersome bureaucratic procedures. In order to get residence of Kazakhstan, a foreigner is required to have a temporary registration along with an official document proving they have sufficient personal funds (RK Decree No. 1185, 2003).<sup>9</sup>

Foreigners working in Kazakhstan. My thesis is concerned with labor migration. Hence, I should introduce the key terms of the domestic legislation on labor migration (Law “On Migration of Population,” Art. 34). “*Foreign workers*” are immigrants invited by employers for employment in the territory of the Republic of Kazakhstan, (including intra

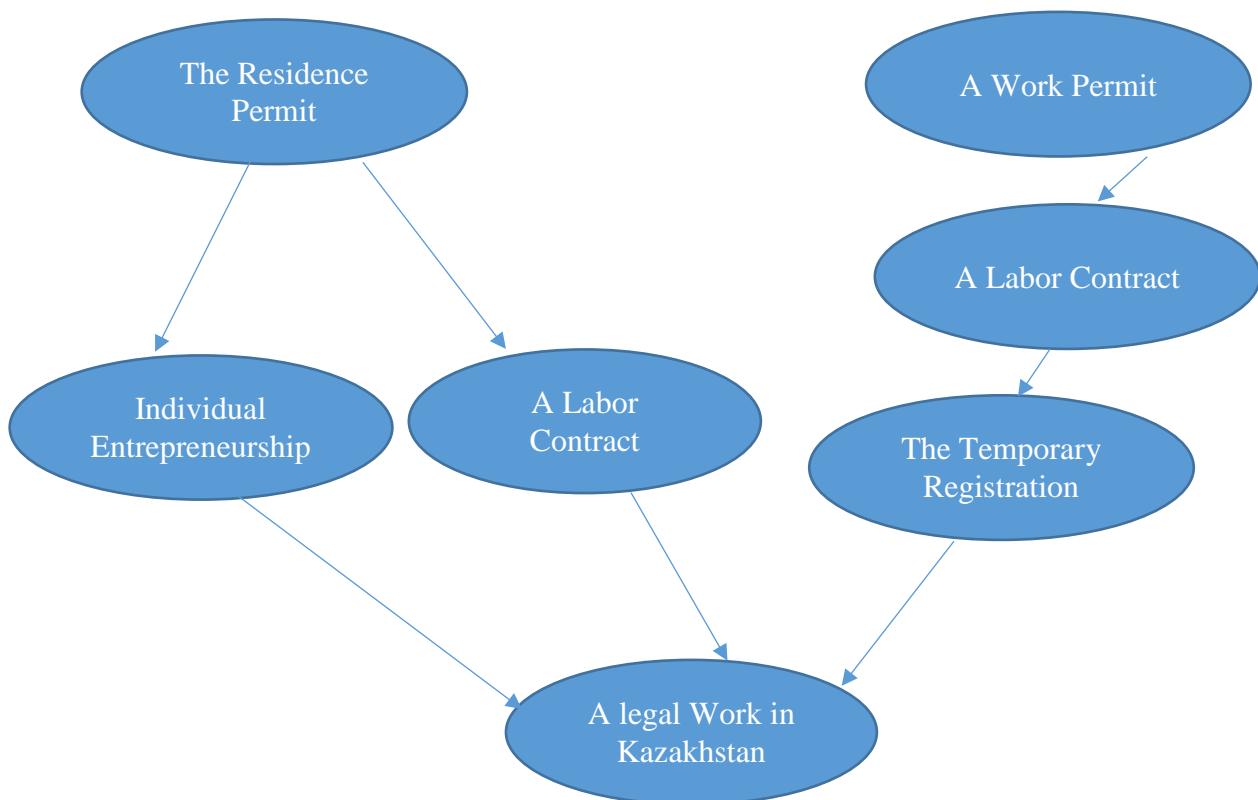
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<sup>9</sup> The sum of money on a bank account of a foreigner has to be 1320 MEI - about KZT 2,995,000.

corporate transfers). Meanwhile, “*labor immigrants*” are immigrants who arrive to Kazakhstan to be domestic workers.

Options for working legally for foreigners. Foreign workers have the opportunity to be involved in labor activity according to the domestic legislation of Kazakhstan. Residence and temporary registration provide different paths to employment, as shown on Figure 2.

**Figure 2. Options for Foreigners to Work Legally in Kazakhstan**



A residence permit is one the options that allows a foreigner to work legally in Kazakhstan. A holder of this official document has the rights and opportunities for employment similar to the citizens of Kazakhstan (Law “On the Legal Status of Foreigners,” Art. 6). For instance, this person can apply for any job present in the Kazakhstani labor market, sign an employment agreement, and work under the same conditions as nationals of Kazakhstan. Furthermore, the residents can register as individual entrepreneurs and start their own business in the territory of Kazakhstan (Law “On the Legal Status of Foreigners,” Art.

6). The other option is an official work permit granted by the government of Kazakhstan upon the request of a local employer. Because Kazakhstan aims to protect the local labor force, the government sets quotas to limit the number of foreign workers coming into country (Law “On Migration of Population,” Art. 37). Therefore, the employer must prove that Kazakhstani job market lacks specialists necessary for his/her field, and receive approval from the government to invite the required foreign workers. After this process, a foreigner gets a work permit, signs a labor contract, registers temporarily, and can start to work officially in Kazakhstan. This work permit for labor migrants cannot exceed twelve months (Law “On Migration of Population,” Art. 43). In addition, no employer can hire more than five labor immigrants at the same time (Law “On Migration of Population,” Art. 43-2).

### **The EEU policies**

The establishment of the Eurasian Economic Union in theory serves to simplify access to work and legal status for labor migrants. There are a number of improvements in the regulatory framework of labor migration on paper (The EEU Treaty, 2014). The parties eligible to the new legal framework are Russian Federation, Kazakhstan, Belarus, Kyrgyzstan, and Armenia.

I should introduce the main terms of the EEU legislation on labor migration. Along with the concepts of “*state of employment*” - the member state where a labor migrant carries out the work, and “*state of residence*” – the state where a labor migrant resides permanently. A “*migration card*” (see Figure 3) is the document that contains information about the citizen entering the territory of another member state, and serves to regulate his temporary stay in the territory of a receiving state. A “*labor contract*” is the agreement between a labor migrant and an employer which regulates working conditions and allows registering in the state of employment for duration of this labor contract. A “*worker of a member state*” is a person who is a citizen of a member state and who is involved in a legal labor activity in the

territory of the state of employment. A “*family member*” is a person to whom a *worker of a member state* is married, as well as children and other relatives recognized as family members according to the legislation of the state of employment. Finally, a new term “*education documents*” indicates diplomas and certificates recognized at a state level.

**Figure 3. Migration Card**

КӨШ-ҚОН КАРТОЧКАСЫ МИГРАЦИОННАЯ КАРТОЧКА № _____ MIGRATIONAL CARD	
Тегі/Фамилия/Surname	Кірі           Тіркеу № _____ «    »    20    ж. «    »    20    г. дейін Тіркеу жасаған орган _____ Лауазымды адамның қолы _____ м/о
Аты/Имя/Given name	
Азаматтығы/Гражданство/Nationality	
Келу мақсаты/Цель визита/Purpose of visit	
Қабылдайтын тарап Принимающая сторона Inviting party	
Тіркелген мекенжайы (облыс, қала, аудан, елді мекен, көпестің атауы, үй № _____, пәтер № _____)	
Адрес регистрации (область, город, населенный пункт, наименование улицы, дом № _____, квартира № _____)	
Home Address (region, city, district, settlement, street, building № _____, flat № _____)	
Бірге келетін балалар/Совместно следуют дети/Accompanying by children	
Қолы/подпись/signature	

Source: Migration Police of the Republic of Kazakhstan.

In the following subsections, I consider the main components of the EEU policies on labor migration that are important for the purposes of my research. I outline the difference between the domestic legislation of Kazakhstan and the EEU policies, the benefits the new legislation provides for the labor migrants on paper. Next, the EEU procedure for obtaining legal labor status is presented. After that, I look at how the policies work in practice, and underline some minor improvements the EEU provides for the labor migrants.

### **The EEU Regulations: Benefits**

The domestic legislation of Kazakhstan and the new EEU policies on labor migration differ substantially. On paper there are a number of benefits for labor migrants' opportunities to work officially in one of the EEU member states. First, the EEU removes limits on the number of foreign workers that can be hired. According to Kazakhstani legislation, the government sets an annual quota for how many labor migrants and to which economic sectors employers have the right to attract.<sup>10</sup> In contrast, under the EEU legal framework, employers and the state service customers have the right to hire labor from the member states without limitations such as quotas (The EEU Treaty, Art. 97).

Second, the issue of work permits is critical. The main difference is that labor migrants from the states other than the EEU have to obtain work permits according to the domestic legislation. Meanwhile, Kyrgyz migrant workers are not required to obtain work permits in order to be engaged in labor activity in Kazakhstan.<sup>11</sup>

Third, the EEU policies modify the process of registration. The domestic law on labor migration provides only five days to obtain temporary registration. The EEU policies allow foreign workers from the member states to register within 30 days for the entire period of their labor contract, given they indicate "work" as the aim of their visit on their migration cards and have an employment agreement (The EEU Treaty, Art. 97).

Finally, according to the domestic legislation any education document has to be verified. National Accreditation Center of Kazakhstan is responsible for recognition of diplomas of foreign education institutions from secondary to higher education (Order No. 87 "On Recognition and Nostrification of Documents on Education" 2016). On the contrary, the EEU policies emphasize the fact that diplomas and certificates are recognized by member states on a reciprocal basis except for educational, legal, medical and pharmaceutical

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<sup>10</sup> Law "On Migration of Population," forbids a Kazakhstani individual to hire more than five foreign workers at a time (Art 43-2).

<sup>11</sup> Restrictions on employment for labor migrants apply only to strategic industries or industries that are critical for national security.

specialties (The EEU Treaty, Art 97). However, since my thesis is concerned with low-skilled labor migrants, the impact of mutual recognition of education documents is not relevant. Most low-skilled Kyrgyz laborers are involved in labor activities for which diplomas and certificates are not required. My respondents work in the markets, construction, and are engaged in business. Some of them have higher education and occupy professional positions in Kyrgyzstan. However, they first came to Kazakhstan in order to earn money as low-skilled labor migrants. For instance, one of the respondents reminisces: “I’m from Bishkek. I worked in the Ministry of Internal Affairs there. However, my salary was so low that I decided to go to Kazakhstan in order to earn some money for my family. I started to work odd-jobs, and then as a foreman for one construction company. I earned several times more, monthly, in comparison with my Kyrgyzstani salary.”<sup>12</sup>

### **Simplified procedure to obtain a legal labor status**

A “work” migration card. The new EEU policies simplify the procedure to become legal workers for nationals of the member states. The first step to undertake is to indicate “work” on the migration card as the purpose of visit during a border crossing process. However, if labor migrants do not specify their purpose of staying as work (many of them prefer to write “private” because they either do not have labor contracts at the moment or do not plan work legally), they are not eligible to enjoy the benefits presented by the EEU.

A labor contract. The second requirement is to sign a labor contract with an employer. They can arrange an employment agreement in advance in their home country, or in Kazakhstan after their arrival.

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<sup>12</sup> Interview with a Kyrgyz individual entrepreneur, the resident of Kazakhstan, Astana, January 2017.

Registration. EEU nationals with the “work” migration cards have the right to stay without registering for 30 days. Labor migrants can use this period to sign an employment agreement and then register for the duration of their labor contracts.

In order to utilize the benefits of the new EEU policies, labor migrants are required to follow the abovementioned procedures. One should take into account that in order to obtain legal labor status under the conditions of the EEU, only foreign workers with the “work” migration cards are eligible to sign contracts and register temporarily in Kazakhstan. The duration of the temporary registration depends on a term of these labor contracts.<sup>13</sup> (The EEU Treaty, Art. 97).

### **Policies in Practice**

In general, the presence of a visa-free regime among CIS states and the geographical proximity of Central Asian countries make it difficult for Kazakhstani governmental officials to regulate the process of labor migration from neighboring states. Migration flows from Kyrgyzstan to Kazakhstan are irregular, spontaneous, and circular. Therefore, it is almost impossible to detect who comes to work and who arrives for other purposes. For instance, it is difficult for the officials in Kazakhstan to find out whether the indicated purpose of visit of a Kyrgyz migrant is in accordance with his actual plans.

The new EEU policies promise many advantages for labor migrants from the member states, especially the simplification of the procedure to get legal labor status. However, despite the fact that Kazakhstani officials describe the development of the new regulations for labor migration to Kazakhstan as more accessible for labor migrants, many Kyrgyz workers continue to be involved in the labor activity without the required documents.<sup>14</sup> My findings

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<sup>13</sup> For Kyrgyzstani labor migrants the EEU conditions came to force since August 2015.

<sup>14</sup> Interview with a state official directly working with migrants, Astana, December 2017.



from the interviews with Kyrgyz labor migrants, experts, and officials suggest different explanations for that fact.

According to international organization experts, almost all of the migrants from Kyrgyzstan have legal registration.<sup>15</sup> The citizens of Kyrgyzstan as former Soviet citizens are familiar with the registration system.<sup>16</sup> Yet temporary registration does not allow them to work. Only a small percentage of the Kyrgyz registered in Kazakhstan have a “work” migration card that makes them eligible to get legal labor status, as I have shown in Table 1 in Chapter 1 of my thesis. A majority of my informants with whom I conducted the interviews work without the required labor documents.

There are several reasons why many Kyrgyz migrants do not obtain legal employment status. As a representative of an international organization suggested, many labor migrants may write on their migration cards the aim of visit as “private” instead of “work” because they felt that this option was familiar and reliable since many of them work informally in Kazakhstan for years. This was due to the fact that many of the Kyrgyz migrants have worked since the 1990s as “chelnoki,” or individuals who are involved in delivery of a small batch of goods from Kyrgyzstan and its quick retail in Kazakhstan.<sup>17</sup> This process requires frequent trips from one destination to the other, and selling goods without required documents in markets is illegal. Usually, the “chelnoki” indicated “private” as an aim of visit on the migration card.<sup>18</sup> Another reason for why Kyrgyz labor migrants do not indicate “work” as the aim of their visit is that at the time of crossing the border labor migrants do not have employment contracts.<sup>19</sup> They may not write “work” on the migration card because they

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<sup>15</sup> Interview with an International organization expert engaged in migration studies, Astana, December 2016.

<sup>16</sup> Interviews with Kyrgyz labor migrants, Astana, January 2017.

<sup>17</sup> Interview with a Kyrgyz labor migrant woman, Astana, December 2016.

<sup>18</sup> Interview with a Kyrgyz, the citizen of Kazakhstan at the moment, Astana, December 2016.

<sup>19</sup> Interview with an International organization expert, Astana, December 2016.

fear that they will not find a legal employment in Kazakhstan or will not be offered to a job. Finally, many migrants do not indicate “work” because they do not plan to work legally at all.<sup>20</sup>

Whatever their reasons, one non-governmental organization encourages Kyrgyz migrants to write their aim as “work” during the border crossing. However, the workers of this non-governmental organization feel that this measure is not very effective. Even though they note that more Kyrgyz labor migrants started to indicate “work” on their migration cards, many still do not. This may be due to Kyrgyz migrant workers’ general lack of knowledge about legal norms, domestic as well as the new EEU policies, and insufficient communication with official institutions responsible for the labor migration in Kazakhstan. As one of the employee of this non-governmental organization argues: “Mostly, the people who come to work here are from rural areas, they only have a secondary education, so they do not really know the laws and official procedures they should complete in order to work legally.”<sup>21</sup>

However, it is not only about the knowledge of laws. As my interviews indicate, there are also many Kyrgyz labor migrants who are familiar with the procedure of registration and its simplified version for the citizens of member states of the EEU.<sup>22</sup> Even though they are aware of the simplification of the process to obtain legal labor status, they are still unwilling to work with required documents due to cumbersome domestic legal procedures to get legal status. Hence, their tendency to not obtain legal employment status may depend not on their lack of awareness about the legal prescriptions but rather on the sector a labor migrant is employed in. The main sectors of employment of Kyrgyzstani citizens in Kazakhstan are

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<sup>20</sup> Ibid.

<sup>21</sup> Interview with a non-governmental organization expert directly dealing with Kyrgyz labor migrants, Astana, December 2016.

<sup>22</sup> Interview with Kyrgyz labor migrants, Astana, January 2017.

trade, seasonal work, construction, and the household.<sup>23</sup> The workers employed in construction may have more opportunities to get a work contract.<sup>24</sup> As my informant said, the migrants who are lucky to get a work contract from a Kazakhstani employer do not have to worry much about their legal status. Their employer is in charge of everything: transportation, signing of labor contracts, gathering required documents, getting temporary registration and paying taxes for workers, and housing. Nevertheless, the information from one interview is not necessarily an indicator that all Kyrgyz migrants in the construction sector get more contracts and are more likely to work legally in Kazakhstan. The findings from my interview suggest that the sector of work may affect whether Kyrgyz migrants obtain legal labor status. Analyzing other interviews, the situation in the trading sector seems to be much worse regarding the presence of employment agreements as I show in the next Chapter.

### **Advantage to Be an EEU member**

Interviews with primary stakeholders of the EEU policies, labor migrants from Kyrgyzstan, show that the membership in this regional organization has little or no impact on the improvement of their legal status in Kazakhstan. The personal stories of these people shed light on a positive, yet minor, change in their ability to move freely and conveniently from Kyrgyzstan to Kazakhstan. The EEU produced this improvement indirectly since the new policies did not prescribe how the process of border crossing should be organized. Still, I assume the formal entrance of Kyrgyzstan to the EEU may be the factor improving attitudes of officials and Kazakhstani border control towards citizens of Kyrgyzstan.

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<sup>23</sup> Interview with the international organization expert, Astana, December 2016.

<sup>24</sup> Telephone interview with a Kyrgyz labor migrant, January 2017: “The employers from Kazakhstan deliberately come to Kyrgyzstan in order to hire a team of cheap labor force for construction.”

Border crossing. Border-crossing is the initial stage for the beginning of labor activity by immigrants. It is critical to cross the border successfully, i.e. to pass all checks including documents, luggage, and inquiries about the purpose of a visit, and destination. After that labor migrants go to the place of their potential employment, register, and start working.

In the 1990s, crossing the border was a quite simple process which migrants regularly went through, and they only needed to show the identification card of the Kyrgyz Republic.<sup>25</sup> Respondents think that this was related to the collapse of the Soviet Union not long before the beginning of active labor migration, so people still had a feeling of belonging to one state. Although the 1990s was characterized by the establishment of new state institutions, customs service and border control, there were few obstacles to move around in the former USSR. It is noteworthy that many Kyrgyz people working in Kazakhstan since 1990s settled, got Kazakhstani citizenship or residence, and acquired property, which was quite affordable at that time according to the experience of my respondents. Generally, they continue to be engaged in the trading sector, and their working activity is legal since these Kyrgyz are citizens or residents of Kazakhstan. In spite of the fact that Kazakhstani Kyrgyz visit their country of origin regularly, they do not encounter the difficulties their co-ethnics struggle with. Furthermore, some of them have no idea or interest about changes and improvements in the labor migration regulation between two states or the operation of Eurasian Economic Union.

However, in 2000s, the situation changed dramatically. Citizens of post-Soviet countries became less desirable in the territory of Kazakhstan. All of my respondents indicated that border-crossing were one of the most stressful processes they encountered during their visits to Kazakhstan. Kyrgyz immigrants were subjected to thorough checks of their baggage, documents, and examination of immigrants and their photos on identification

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<sup>25</sup> Interview with a Kyrgyz, a citizen of Kazakhstan, Astana, December 2016.

cards. Moreover, Kyrgyz labor migrants emphasized poor treatment by border guards with guns and dogs. It was difficult for shuttle traders in particular. According to the words of one of my interviewees: “We were treated just like slaves or animals. There were long queues along the state border, and it took a whole day in order to enter Kazakhstan. They didn’t admit some of us at all.”<sup>26</sup>

In the period after 2015 when Kyrgyzstan had entered the Eurasian Economic Union, Kyrgyz immigrants saw considerable improvements regarding their Kyrgyzstan-Kazakhstan border crossing. Generally, the workers of the customs services and border control behave in a very polite way, the whole process takes a short period of time, and there are almost no queues. Furthermore, Kazakhstani Customs servicemen do not check luggage or handbags of Kyrgyz citizens now.

“I cross the border every three months, and I always have huge bags with goods to sell. Before the Kazakhstani border guards checked everything: my luggage, my purse, the photo in my identification card. I felt awful. But now, it takes few minutes to finish the whole process of border crossing. Moreover, they don’t rummage through my baggage or personal belongings. It is a real improvement for me.”<sup>27</sup>

Overall, the Kyrgyzstani citizens feel improvements when they cross the Kyrgyzstan-Kazakhstan border for the last two years. Whether they indicate the aim to “work” or choose “private” option, the procedure of crossing the border has become easier and more convenient. The workers of Kazakhstani Customs and the border guards treat the citizens of Kyrgyzstan differently than before August, 2015. It is likely the result of Kyrgyzstan entrance into the EEU.

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<sup>26</sup> Interview with a Kyrgyz labor migrant, Astana, January 2017.

<sup>27</sup> Interview with a Kyrgyz labor migrant, Astana, January 2017.

## **The EEU and Kyrgyzstani Labor Migrants**

In this Chapter, I demonstrated the legal ways to obtain legal labor status for Kyrgyzstani labor migrants in Kazakhstan. I also described how they have been changed after the EEU came to force. Particularly, there are the specific requirements in the domestic laws for foreigners to start working officially in Kazakhstan: it is required to obtain a work or residence permit. A work permit only allows a labor migrant to have a job for which there are no suitable locals according to the government, and consequently, a foreign worker is able to stay and work legally in Kazakhstan for a long period of time. In order to open a business or work in the labor market with the same privileges as Kazakhstani citizens a foreign citizen is required to have the residence permit.

The introduction of the EEU simplified legal labor status on paper in the following way. The labor migrants from the EEU member states are required to indicate “work” as the purpose of their visit on the migration card. This precondition further allows them to sign a labor contract in the territory of Kazakhstan. After that, the citizens of the EEU states are able to register within 30 days for the duration of their employment agreements.

There is the indirect improvement after the EEU started to operate. The Kyrgyz labor migrants emphasize the enhanced process of border crossing since the border control servicemen work more professionally. They spend less time for the check of their baggage and in queues; moreover, officials treat them with respect.

However, even though some improvements took place, the overall situation has not changed significantly. Many labor migrants are not eligible to get legal employment status and continue to work without the required documents. There are many reasons why this happens. Experts of the non-governmental organization claim that many Kyrgyz labor migrants are poorly educated and therefore lack the legal knowledge. Nevertheless, I encountered many Kyrgyz workers who know the domestic legislation on labor migration of

Kazakhstan as well as the new EEU policies, though they still do not obtain legal labor status.

I will discuss why this is the case in the retail sector where most of Kyrgyz migrants work in the next Chapter.

## **Chapter 4 Exploring the Life of Kyrgyz Labor Migrants in Bazaars: What Hinders Their Legalization?**

In the previous Chapter, I indicated that the procedure to obtain legal labor status introduced after the EEU came to force does not bring benefits to most Kyrgyz migrants. Furthermore, Kyrgyz labor migrants working in the retail sector, are not affected by the new policies.

In the following Chapter, I present findings from interviews conducted with Kyrgyz migrants working in the bazaars. The case of retail sector workers demonstrates a mismatch between the EEU policies and the Kazakhstani domestic legislation, which in turn hinders the legalization of Kyrgyz labor migrants. The main problem is that the EEU policies do not address the issues of individual entrepreneurship and residence. Consequently, Kyrgyz labor migrants working in the trading sector cannot obtain legal employment status, because they still must register as individual entrepreneurs. At the same time, according to Kazakhstani law, foreign citizens have no right to register as individual entrepreneurs without first obtaining a residence permit. Since the latter is difficult to get, many Kyrgyz labor migrants continue to work without required documents while selling their goods at bazaars.

I present my findings in the following way. First, I talk about how the domestic legislation of Kazakhstan sets obstacles for labor migrants in the trade sphere. Then, I discuss how the misinterpretation of the new EEU policies by official institutions promote a lack of acquisition of legal labor status among Kyrgyz labor migrants. Finally, I present my conclusion about how the gap between the Kazakhstani legislation and the EEU policies hinders the legalization process of the Kyrgyz retail sector workers.

### **Challenges to Trade Legally**

After the collapse of the USSR, the citizens of republics with poor and devastated economies rushed into relatively stable neighboring countries for higher incomes. Many Kyrgyzstani nationals were among those going to Kazakhstan in order to earn relatively more



than at home (Beishenaly and Pereboyev 2013). According to my informants, the most common way to earn was to be a “chelnok,” which meant to be engaged in delivery of a small batch of goods from the place of purchase or production and its quick turnover in a market. This business required regular trips along the same route. Majority of “chelnoks” have their own established places for selling their commodities, usually in markets. Most often, “chelnoks” make arrangements with the chief of a bazaar and rent a place where they sell goods without an official permit. This practice persists to this day.

In every city of Kazakhstan there are such markets (locals call them “bazaars”). Usually, the range of goods in the bazaar is similar to those in average supermarkets and malls, yet prices are lower. According to the experts of an international organization, Kyrgyz labor migrants dominate the retail sector of Kazakhstan.<sup>28</sup> In the bazaars of Astana, they sell the goods brought from Kyrgyzstan, such as textiles including tablecloths, socks, gloves, and other clothes.<sup>29</sup> These products are quite popular among the Kazakhstani population, hence there is a high demand for the goods produced in Kyrgyzstan.<sup>30</sup> Thus, Kyrgyz nationals are willing to come to Kazakhstan in order to retail their commodities and gain a profit.

Since most of Kyrgyz labor migrants in Kazakhstan are employed in the bazaars, I devoted my research to investigating the factors and conditions which hinder legalization process of migrant workers working there. Below I present the empirical evidence from 20 interviews with Kyrgyz migrants who are involved in the retail in Astana, demonstrating their opinions about why they continue to work without the required documents.

Many Kyrgyz working in the bazaars would like to get legal labor status.<sup>31</sup> Legal employment status would allow migrants to stay in Kazakhstan for the duration of a labor

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<sup>28</sup> Interview with one expert of the International organization engaged in research of migration in the region, Astana, December 2016.

<sup>29</sup> Observations in the bazaars, Astana, January 2017.

<sup>30</sup> Personal observations of the author.

<sup>31</sup> Interview with a group of Kyrgyz labor migrants, Astana, January 2017.

contract, or even permanently (Chapter 3). In contrast, my interviewees need to leave the country every three months in order to obtain a new migration card and re-register.<sup>32</sup> This process allows them to stay legally in Kazakhstan, but does not allow them to work legally. Also, if a labor migrant is working officially, he/she worries less about regular checks by the police. According to my respondents, during regular checks by the police, they run away from the bazaars and hide. The less lucky of them get caught and are obliged to pay a fine or bribe.<sup>33</sup>

However, there are factors that hinder the legalization of the Kyrgyz retail sector workers. Even though Kyrgyz nationals are able to sign a contract with an employer according to the EEU procedures and work legally in the bazaars, they prefer to be self-employed since they don't want to share the revenues, and it is the only source of living for them and their families.<sup>34</sup> However, in order to be engaged in a trading activity in the bazaars of Kazakhstan Kyrgyzstani citizens are required to register as individual entrepreneurs (Law "On Regulation of Trade Activity", Art. 1). This is the main obstacle for Kyrgyz labor migrants to obtain legal labor status.

There is a mismatch between the EEU policies and the domestic legislation of Kazakhstan regarding the ways to obtain legal labor status. Basically, the EEU policies do not address the issues of residence and individual entrepreneurship. The latter is necessary to sell goods in the bazaars Kazakhstan. Hence, the Kyrgyz retail sector workers have to adhere to the domestic legislation in order to work legally.

Requirements to work legally in the trading sector. First, Kyrgyzstani citizens need to obtain a residence permit (Law "On the Legal Status of Foreigners," Art. 6). One of the main conditions to get the residence is to provide the Kazakhstani authorities with the confirmation

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<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

that they have a certain sum of money in a bank account.<sup>35</sup> After the acquisition of the residence permit, Kyrgyz labor migrants have the same rights and opportunities in the labor market as citizens of Kazakhstan, including the ability to register as individual entrepreneurs, making them eligible to sell goods in the bazaars of Kazakhstan.

My respondents deem the procedure above complex and cumbersome. It takes several months first to obtain the residence permit, and then to register as an individual entrepreneur. However, the profit of the Kyrgyz “chelnoki” depends on their ability to sell their goods as soon as possible, and to go to Kyrgyzstan for a new batch. Especially, Kyrgyz retail sector workers are concerned with the requirement to have the considerable amount of money on their bank accounts. Some of them do not know the exact sum of money needed and even inflate the figure: “I should have about \$30 thousands to get the Kazakhstani residence. It is a huge amount of money. It is enough for buying a three-room apartment in Bishkek.”<sup>36</sup> According to my interviewees, they do not have such money because they always invest what they have previously earned to buy new batches of products.

Thus, my findings suggest that the retail sector in Kazakhstan creates a number of complexities for Kyrgyz labor migrants. First, only individual entrepreneurs have the right to sell their goods in the bazaars. Second, in order to register as individual entrepreneurs, foreigners need to be residents of Kazakhstan. The process is long and costs are high for Kyrgyz retail sector workers. Thus, the Kyrgyz labor migrants continue to work without required papers in the bazaars of Kazakhstan.

In the next section I will look at how misinterpretation of the new EEU policies can affect Kyrgyz labor migration.

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<sup>35</sup> About 3 million KZT as of 2017 (Chapter 3).

<sup>36</sup> Interview with a Kyrgyz labor migrant woman, Astana, January 2017.

### **Misinterpretation of the New EEU Legislation**

Migrants are a vulnerable population in any society. Labor migrants are especially prone to be a subject of abuse. This may happen because of a low legal literacy of labor migrants, a lack of communication between migrants and official institutions, inadequate training, and poor knowledge of the Russian language. In the case of Kyrgyz labor migration in the trade sector of Kazakhstan, misinterpretation of the new EEU policies by bureaucrats produced complexities for obtaining legal labor status. This may be another factor that explains why many Kyrgyz workers involved in the trade in bazaars still work without the required legal documents.

Representatives of international and non-governmental organizations dealing with labor migration shared a general perception that labor migrants may not know the laws of the receiving country very well. Vulnerabilities associated with not knowing the laws are a lack of awareness about rights, distrust of official bodies, and a lack of awareness of state entities' role in providing information and assistance (IOM Report 2011, 7-9). These factors increase the risk of ending up in the host country as illegals, without a work permit or official employment contract. Hence, foreign workers are not able to defend their rights, for example, they cannot demand their wages if there is no written agreement with their employer. In addition, migrant workers complain about the complex bureaucratic procedure to get registration through the migration police, frequent inspections, extortion of money and goods, and the rude treatment of enforcement agencies, for example, disrespect, boorishness, and sometimes abuse (IOM Report 2011, 8).

However, I found in the interviews conducted in the bazaars of Astana that many Kyrgyz retail sector workers are aware of Kazakhstani labor migration legislation. Still, this does not prevent them from experiencing disrespect and mistreatment of the state officials. Even though these Kyrgyz labor migrants knew the procedure how to get legal labor status in

the bazaar, and how to register as an individual entrepreneur in particular, they acknowledged that they did not follow the law. As I explained in the previous section, Kyrgyz retail sector workers consider the process of obtaining the residence of Kazakhstan very complicated and costly.<sup>37</sup> Consequently, the reason why Kyrgyz labor migrants in the bazaars do not tend to acquire legal employment status is not connected to their legal literacy.

One factor that can affect a lack of legalization among Kyrgyz workers in the trading sector may be misinterpretation of the new EEU policies by state officials. One Kyrgyz entrepreneur (the citizen of Kazakhstan) telling his story during our interview revealed this problem:

“I have several places in the bazaars of Astana where I sell textiles from Kyrgyzstan. I hire fellow Kyrgyz as sellers and other workers to help me. Three of them worked illegally for me for a long time. During the regular checks by the police I had to pay bribes for my illegal workers. In 2015, Kyrgyzstan joined the EEU and consequently Kyrgyz workers did not need work permits anymore. I decided to legalize my employees. I went to the office of the responsible state body where I couldn’t get help because the officials were confident that people involved in the trading in the bazaars must be individual entrepreneurs. The bureaucrats said there was no need for labor contracts because my Kyrgyz workers are required to register as individual entrepreneurs. Fortunately, I had an acquaintance working for one non-governmental organization supporting labor migrants. Together we could reassure the authorities, and indicated the article [art. 97] of the EEU treaty that allowed me to sign contracts with Kyrgyz workers.”<sup>38</sup>

The officials were not fully aware of the EEU procedure of hiring workers from member states. The employer took the responsibility to explain to bureaucrats how the law works. However, other employers may not want to deal with state agencies. Another Kyrgyz

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<sup>37</sup> It is necessary to register as an individual entrepreneur (see Chapter 3).

<sup>38</sup> Interview with a Kyrgyz entrepreneur (the Kazakhstani citizen), Astana, December 2016.

individual entrepreneur living in Kazakhstan was not willing to bother in order to hire citizens of Kyrgyzstan: “Why should I hire Kyrgyzstani citizens? It is a huge responsibility to register them as workers, a lot of bureaucratic procedures, and time consuming. The simple way is to employ local workers.”<sup>39</sup>

The problem is that officials may not thoroughly know the EEU policies. They know that the employment options for labor migrants expanded.<sup>40</sup> After the EEU started to operate, workers from the member states are able to be employed by individuals, legal entities, in households, and even in state institutions. However, the official institutions were not informed that the trade sector labor migrants can sign a labor contract with a Kazakhstani entrepreneur, and hence, to obtain legal labor status according to the simplified EEU procedure.<sup>41</sup> The officials may misinterpret the EEU policies, and primarily rely on the domestic legislation which has been the only tool to regulate labor migration for the last 20 years.<sup>42</sup>

Nevertheless, the data from one interview do not necessarily indicate that all officials are poorly informed about the content of the new EEU policies on labor migration. My evidence may only suggest that labor migrants have the opportunity to work legally in the bazaars if individual entrepreneurs (citizens or residents of Kazakhstan) hire them and sign employment contracts. Even though labor migrants and their employers are aware of the legal procedures required to obtain legal labor status, officials may misinterpret the new EEU policies and hinder the process of legalization. Thus, Kyrgyz workers continue to register temporarily in Kazakhstan, and to be involved in a trade activity illegally. One of the potential reasons for that may be that for Kyrgyz labor migrants it is difficult to find and sign

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<sup>39</sup> Interview with a Kyrgyz entrepreneur (the Kazakhstani resident), Astana, January 2017.

<sup>40</sup> Interview with an official, Astana, December 2016.

<sup>41</sup> Interview with a Kyrgyz entrepreneur (the Kazakhstani citizen), Astana, January 2017.

<sup>42</sup> Law “On Regulation of Trade Activity” requires that in order to conduct a trading activity one needs first to register as an individual entrepreneur.

a contract with an employer since entrepreneurs in the trading sector may not be willing to deal with bureaucracy to legalize their foreign workers. Furthermore, even after successfully signing a contract, Kyrgyz retail sector workers may encounter officials misinterpreting the EEU policies which may undermine the acquisition of legal employment status.

### **Why Labor Migrants in Retail Sector Still Work Without the Required Documents**

This Chapter demonstrated my findings from interviews conducted with Kyrgyz retail sector workers. Most Kyrgyz labor migrants are involved in the trading sector of Kazakhstan. My respondents working in the bazaars still encounter challenges to sell their goods legally. First, though Kyrgyz retail sector workers are able to sign a contract and work for an employer according to the EEU terms, many of them prefer to work for themselves. Self-employed Kyrgyz cannot enjoy the EEU advantages since they need to obtain permanent residency and register as individual entrepreneurs in order to conduct trading activity in Kazakhstan.

Kazakhstani domestic legislation determines the procedure for foreigners to get a residence permit. This requires proving they have sufficient personal funds. Consequently, after completing this domestic legal procedure, a resident of Kazakhstan has the right to register as an individual entrepreneur.

However, my findings suggest that the procedure to obtain legal status is cumbersome and expensive for Kyrgyz retail sector workers. The necessary sum of money at a bank account to obtain the residence permit is enormous for many Kyrgyz working in the bazaars. They are not able to collect and present this amount of money because they always invest what they have previously earned to buy new goods for retailing. Hence, many Kyrgyz workers continue to sell their goods without required documents in the bazaars.

One of my interviews also revealed the problem of misinterpretation of the EEU policies by state officials. The official institution was not aware of the opportunity of Kyrgyz retail sector labor migrants to sign a labor contract with a Kazakhstani entrepreneur, and hence, to obtain legal labor status according to the simplified EEU procedure. Meanwhile, some employers in the markets of Kazakhstan are not willing to hire labor migrants because of the red tape to get legal status for them. Even though labor migrants in the bazaars have a right to have a labor contract the official institution may hinder the process of their legalization by misinterpreting the new EEU policies.

In sum, the EEU does not simplify the procedure to obtain legal labor status for the Kyrgyz retail sector workers since there is the mismatch between the EEU policies and the Kazakhstani domestic legislation. Specifically, the issues of individual entrepreneurship and residence are not addressed in the EEU treaty. These omitted issues along with complex and cumbersome domestic procedure of legalization prevent Kyrgyz retail sector workers from obtaining legal employment status.



## Chapter 5 Concluding Remarks, Issues for Further Research, and Contribution

The Eurasian Economic Union is a regional organization which operates for about two years. The member states are the Kyrgyz Republic, Russia, Belarus, Kazakhstan, and Armenia. Its main goals are to promote the free movement of goods, services, labor, and capital. One of the promising features of the EEU is the policy of free movement of workers. It can help donor states to gain economic benefits from labor migrants, and receiving countries can fill the niches in the labor market that locals are not willing to occupy.

Due to a number of factors such as a free-visa regime, corruption, and clientelism prevailing in the post-Soviet space, it has always been difficult to regulate labor migration. One of the expectations placed on the EEU was that after the introduction of the EEU policies the number of legal migrant workers in the region would also rise. The policymakers hope that the EEU in this sense will mirror the success of the European Union, where implementation of a free labor zone increased the number of legal labor migrants flowing from one member-state to another. However, in the reality the EEU has not helped to resolve the problem of illegal migration in the short term, as there are many people who still prefer to work informally. The problem is especially acute in the trading sector of Kazakhstan where a lot of Kyrgyz migrants are involved in labor activities without the required documents. Due to this discrepancy between expected policy outcomes and the situation in reality, my work is focused on the following question: *what factors hinder a positive effect of the EEU policies on legal low-skilled labor migration from Kyrgyzstan to Kazakhstan?*

This thesis argues that the EEU does not promote the acquisition of legal labor status among Kyrgyz workers since the latter continued to work without contracts and encounter the barriers that the EEU policies do not address. The gap between the law and the reality was determined by the omission of the issues of individual entrepreneurship and residence that are critical for Kyrgyz working in the trading sector of Kazakhstan. Specifically, the omitted

issues in the EEU treaty, and the complex and cumbersome domestic procedures to obtain residence and registration as an individual entrepreneur result in Kyrgyz labor migrants working without the required documents.

While doing the research, I employ qualitative research methods. In particular, I conduct 20 interviews with people from the Kyrgyz Republic, who either are labor migrants or hold residence/citizenship of Kazakhstan. The interviews reveal the information about the legal labor status of participants, the obstacles to get the required documents, their opinion about the EEU policies, and whether implementation of these policies have any effect on their work and life in Kazakhstan. In addition to conversations with Kyrgyz people, I conduct 7 interviews with experts in the field of migration who work in the governmental, non-governmental and international institutions. The respondents share their professional expertise and provide their opinion regarding the situation of labor migration from Kyrgyzstan to Kazakhstan in general, and the impact of the EEU policies on this issue in particular. Furthermore, I use secondary sources of data – the laws and official statistics offered by state institutions. Although the official data are scarce, it contains the numbers of Kyrgyzstani citizens who registered temporarily, and indicated “work” as the purpose of their arrival to Kazakhstan on migration cards.

The main findings of this research are drawn from the interviews conducted with Kyrgyz retail sector workers. Though Kyrgyz labor migrants have the right to sign a contract and work for an employer under the new EEU conditions, many of them prefer to work for themselves. However, self-employed Kyrgyz are not able to enjoy the EEU benefits because they are required to register as individual entrepreneurs in order to conduct trading activities in Kazakhstan.

Kyrgyz working in the bazaars of Kazakhstan are willing to work legally, however, they face obstacles to obtain legal labor status. The explanation I propose emphasizes the

mismatch between the EEU policies and the domestic legislation of Kazakhstan. The EEU does not address the issues of individual entrepreneurship and residence which are necessary in order to sell goods legally in the bazaars. Hence, the Kyrgyz retail sector workers have to adhere to Kazakhstani domestic legislation.

According to the domestic legislation, foreigners first need to get the residence permit in order to start an own business in Kazakhstan. The main condition to become a resident of Kazakhstan is to confirm they have sufficient personal funds. If this legal procedure is completed, Kazakhstani residence gives foreigners the right to register as individual entrepreneurs.

However, Kyrgyz retail sector workers consider the above process as cumbersome and expensive. They are especially concerned with the required sum of money at a bank account to obtain the residence permit. It is out of reach for many Kyrgyz working in the bazaars since their profits are always invested to buy new goods for retailing. Consequently, many Kyrgyz workers prefer to sell their goods without required documents in the bazaars.

My findings support the argument of the thesis that the EEU has not promoted the acquisition of legal labor status among Kyrgyz workers since they keep on working without employment contracts and encounter barriers the EEU does not deal with. The mismatch between the EEU policies and the domestic legislation of Kazakhstan determine the gap between the law and reality. The EEU does not address the issues of individual entrepreneurship and residence required to sell goods legally in the bazaars. Hence, Kyrgyz retail sector workers are not eligible for the EEU simplified procedure to obtain legal labor status. Thus, they continue to work in the trading sector of Kazakhstan without the required documents.

This study needs further research. First, I conduct the interviews with Kyrgyz labor migrants and employers working only in the trading sector in Kazakhstan. That is why it

would be useful to talk with Kyrgyz workers in other sectors, for example, construction, household, and agriculture in order to demonstrate how the overall situation with labor migration is developing. They would add to the information about legal labor status, the obstacles to get the required documents, opinions about the EEU policies, and whether their implementation affected their work and life in Kazakhstan. Consequently, I could observe whether the barriers Kyrgyz retail sector workers face to obtain legal labor status were specific, or applicable to other sectors of work as well. Also, this research can be improved by observing different regions and cities of Kazakhstan other than Astana. Hence, a sample size of Kyrgyz labor migrants interviewed would be bigger.

Another improvement that can be accomplished in the next studies about low-skilled labor migration within the EEU is to acquire more quantitative data. In addition to the number of temporary registrations and the “work” migrations cards of Kyrgyzstani citizens, other data, official and experts’ estimates, could show us a bigger picture. In order to assess a scale of the problem with legalization of labor migration in the EEU it is necessary to know how many Kyrgyz actually work in Kazakhstan, in which sectors of economy, how many of them are individual entrepreneurs, and work with labor contracts, and estimates of illegal labor migrants.

After a while the situation with low-skilled labor migration should be reassessed. The EEU has operated for about two years, which is a very short time period to make any serious conclusions about the effectiveness of the policies. We should wait and observe some improvements and changes in the EEU policies for a longer period.

The studies on the EU have shown a relative success of the free movement of workers’ policy, that is the flows of legal labor migrants increased among member states. Hence, developing states united under the framework different regional organizations are willing to employ similar policies. They hope for successful outcome as the EU has.

However, a limited number of researches on the free labor zones are devoted to organizations other than the EU. It is not clear whether and how these policies work in other entities consisting of developing countries. That is why my contribution to the literature is studying the EEU, the example of a regional organization established by developing states. There is a necessity to explore how already successfully implemented EU policies, for instance, a free labor zone, are developing in the context of developing states, and what effect these policies have in the short- and long-term. Further, policymakers could understand the drawbacks, how they should address them, and the ways of adjusting successful policies (in other framework) to a local reality, domestic legislation and procedures.

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