

Path Analysis and Enlightenment of Foreign Talents' Rights Protection in U.S. Universities

Hanwen Zhang

School of Education, Office of International Cooperation and Exchange
Northeast Normal University
Changchun, China

Abstract—With the deepening of economic globalization and talent internationalization, the demonstration role and radiation effect of “talents” have become increasingly prominent. U.S. universities are favored by high-end talents all over the world and this is inseparable from their complete system of rights protection. This paper adheres to the legal status of rights protection and applies the concept of ruling the country according to law. By selecting several U.S. universities as the research sample, it aims to construct a complete rights protection system for foreign talents working in Chinese universities. Through literature review, international comparison and investigation, it turns out that U.S. universities have rich and incentive-oriented salary system, broad and flexible-chosen benefits, complete and law-based intellectual property protection and scientific two-time performance evaluation. All these have great reference significance to China's talent-priority strategy and innovation-driven strategy.

Keywords—U.S. universities; foreign talents; rights protection

I. INTRODUCTION

On July 8, 1983, China's Comrade Deng Xiaoping delivered an important speech named “Utilizing Foreign Intelligence and Expanding Opening to the Outside World”. Since then, the amount of foreign talents working in China has been increasing year by year. In 2018, Chinese National Foreign Experts Bureau supported 3,873 projects for the recruitment of over 34,000 foreign talents and the majority of them work in universities. However, currently, despite of the rapid growth in number, these universities are actually trapped in a development dilemma. The concrete manifestation is that most foreign talents choose to leave after working for a short period. A series of negative chain reactions occur accordingly, such as limited effect, low working efficiency and great waste of human as well as financial resources. The fundamental reason lies in the one-sided pursuit of short-term benefits, neglecting the institutional construction of foreign talents' rights protection, thus losing the foundation for long-term development.

II. SIGNIFICANCE OF FOREIGN TALENTS' RIGHTS PROTECTION

The essence of international competition is the competition of talents. To form an internationally competitive talent system, the improvement of rights protection counts most. Within the

framework of rights protection, it mainly involves personal rights and property rights, which can be further divided into name rights, honor rights, intellectual property rights, parental rights, relative rights, salary, housing security and so on.

As the source of knowledge discovery and scientific innovation, universities have extensive exchanges, wide-range disciplines, and talents with diverse backgrounds. They not only serve as the main working place for foreign talents, but also are the important carrier of foreign talents' rights protection. By taking the internationalization of teachers as the starting point, universities can stimulate their internal viability, thus further push forward discipline construction. Moreover, it can enhance the international influence of China's theoretical actions on talent introduction and attract more outstanding foreign talents to work in China. Economically, a huge amount of talent cultivation costs is saved and valuable intellectual resources are injected into the country's economic development and social progress. Politically, some relevant international problems can be avoided in this way.

III. PATH ANALYSIS OF FOREIGN TALENTS' RIGHTS PROTECTION IN U.S. UNIVERSITIES

A. Establishment of Rights

The U.S. Congress passed an International Education Law in 1966, which confirmed the promotion of international cooperation and exchange as the state's educational will. In order to better protect the legitimate rights of personnel working in the U.S., the government updated William Wilberforce Trafficking Victims Protection Re-authorization Act in 2008. The Act reaffirmed to fight against human trafficking and labor abuse. In addition, it clearly declared that foreigners working in the U.S. enjoy the following legal rights, that is, to receive fair remuneration; to be free from discrimination; to be free from sexual harassment and sexual exploitation; to have a healthy and safe working environment; to seek help from trade unions, immigrants and labor groups; to abandon unfair treatment [1]. Meanwhile, the U.S. federal regulations on the minimum salary and the longest working hours have been strictly enforced [2]. In addition, all different states have promulgated relevant administrative regulations for foreign talents' rights protection. For example, in 2018, Massachusetts, where Harvard University is located, updated its original Equal Pay Act, clarifying what is illegal salary

discrimination and adding new measures to further ensure fairness and equality in the workplace [3]. Thus, a multi-level and well-connected system of rights protection is formed across the whole country.

B. Implementation of Rights

The federal government's laws and state governments' regulations have laid a solid foundation for foreign talents' rights protection. Besides, universities' institutional designs are the key to transforming legal rights into real rights, which is achieved through universities' policies on salary, benefits and intellectual property with regard to foreign talents.

1) Rich and Incentive-Oriented Salary System

Many world-top universities, such as Stanford University, spend over 50% of their financial income on salary. Both full-time and part-time foreign talents can obtain the same teaching and research status.

In terms of full-time foreign talents, their salary system is consistent with that of the native ones, mainly consisting of basic salary, annual growth salary and other one-time remuneration. At the end of each year, most U.S. universities will develop a salary growth plan for the next year based on applicable salary guidance policies, comprehensive budget and previous working performance to continuously increase talents' motivation. Although one-time remuneration varies slightly from university to university, it can be roughly classified into two types. The compensation ones are mainly used to pay for additional work beyond talents' original duties, like temporarily taking on the work of other talents or taking the responsibility of other higher-level talents. The incentive ones are more likely to reward outstanding performance and contributions through goal guidance and achievement recognition.

As far as part-time foreign talents are concerned, the U.S. government has made detailed regulations on their maximum working hours, specific salary sources in accordance with various working purposes to fully guarantee the normalization of labor market.

2) Broad and Flexible-Chosen Benefits

In the medical field, a national health insurance act, "Affordable Care Act", also known as "Obama Medical Act" came into effect in 2014. Under this legal framework, the federal government, state governments, insurance companies, universities and talents each party perform their own functions to improve the whole medical insurance system [4]. Foreign talents can choose freely on the insurance market and purchase favored medical insurance that meets the minimum standards. Besides, each eligible talent can apply for a valid Social Security Number-a nine-digit number issued by the U.S. Social Security Bureau. The number can be used to enjoy various social services, such as telephone communications, credit reporting and banking.

Each U.S. university also has its own personalized policies to offer an integrated package of benefits for foreign talents, including health and welfare program, tuition assistance program, child scholarship program, pension plan, deferred compensation plan, flexible financial account, career

development platform, and paid holiday. To achieve the notification of rights, universities also hold briefing sessions regularly for newly recruited foreign talents, provide them with orientation guidance, like visa regulations, health insurance requirements, tax liabilities and other available resources.

3) Complete and Law-Based Intellectual Property Protection

The U.S. government issued the International Education Law to guarantee the results of cooperative research. Relevant universities also attach great importance to intellectual property protection of their faculty and staff (including full-time foreign talents) as well as other personnel participating in university projects (including part-time foreign talents). The scope of application covers invention, works, trademark, tangible research asset, computer software and so on. In most cases, universities will comprehensively balance the interests among the public, the talents and themselves, and then formulate the basic principle of ownership. The result is attributed to the university if a large amount of university resources is used to conduct relevant research. Foreign talents will own intellectual property that is not developed in the course of or pursuant to a sponsored research or other agreement; and not created as a "work-for-hire" by operation of copyright law and not developed with the significant use of funds or facilities administered by the university.

As to the significant use of university resources, universities also have clear procedures to reduce the frequency of related disputes. For instance, MIT's corresponding department head will first conduct a preliminary review and then submit it to Technology Licensing Office. It is suggested that the final decision will be made by the vice president in charge of scientific research [5].

C. Supervision of Obligations

The rights of foreign talents are mostly positive human rights, that is, the relative parties need to be passive and non-infringing. And meanwhile, they must act positively, fulfill specific obligations and pay corresponding costs [6]. As Radbrunch said: "In the legal field, one's obligations are always based on the rights of others." [7] A review of foreign talents' obligations can better guarantee the realization of the whole groups' rights protection. These two parts complement each other.

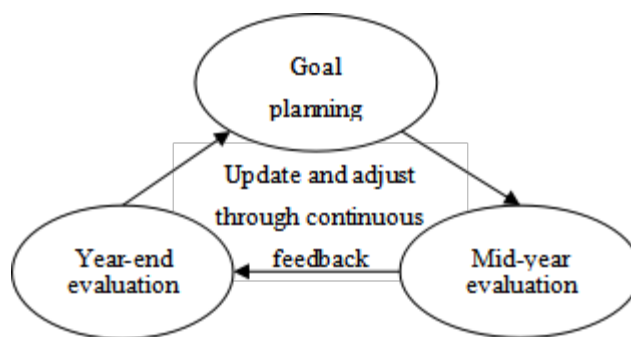


Fig. 1. Performance evaluation model in U.S. universities

For full-time foreign talents, U.S. universities adopt the result-oriented management system, which mainly involves

three stages (see Fig.1). The whole process highly emphasizes the two-way dialogue between supervisors and talents. External control is replaced by stricter, more precise and more effective internal control in this way. Thus, individuals' subjective initiative is fully motivated and teamwork is established for jointly realizing organizational goals [8]. For part-time foreign talents, U.S. universities implement the project reporting system to ensure that excellent results have been achieved through international mobility. Also these results will act as the important reference for project implementation in the next year.

1) *Scientific Goal Planning Lays Solid Foundation*

Scientific goal planning is the prerequisite for launching performance evaluation in an orderly way. The majority of U.S. universities fully respect the overall university mission and specific department tasks. Through interactive communication between supervisors and talents, each talent will form his or her own work target which is measurable, achievable, relevant and time-sensitive. As the primary reference, a corresponding relationship with university competency model is constructed as well. Therefore, a series of problems is solved effectively, including what, when and how would the expectations be completed.

2) *Communication-led Mid-year Evaluation Adjusts Work Focus*

In order to alleviate the pressure of year-end evaluation and improve the effectiveness of evaluation results, U.S. universities conduct supervisions on talents' working performance twice each year. During the process of mid-year evaluation, supervisors and talents mainly exchange opinions on completion of the work and progress of the development plan in the first half of the year. At the end of the discussion, supervisors promptly recognize talents' achievements, present relevant problems in a constructive manner for jointly exploring and confirming the work focus in the second half of the year. In this way, individuals' development focus becomes more relevant to the needs of organizational priorities.

3) *Comprehensive Year-end Evaluation Promotes Working Performance*

To ensure the reliability of evaluation subjects, U.S. universities apply three different models, which are talent self-evaluation, peer as well as support service objects mutual evaluation, and supervisor evaluation. The specific focus is concentrated on the completion status of annual performance and the direction of career development. As part of the personnel file, the evaluation results must be signed by both supervisors and talents to ensure the authenticity and recognition of the final results. If talents fail to perform their duties fully, or the evaluation results have not yet met the supervisors' expectations, supervisors are obliged to communicate with talents and give them a chance to correct. If the problem still cannot be solved, supervisors can take appropriate corrective actions, such as advice, verbal warning, written warning, final warning, disciplinary action and dismissal, with specific consent from the Chief Executive or Human Resources Professional. The actions taken mainly depend on the nature and severity of the problem, how the department has dealt with similar issues in the past, and other

situations that may be aggravated or mitigated as appropriate [9].

Rights protection aims to attract foreign talents, and obligation supervision is for better performing their functions. Only by properly handling the relationship between rights and obligations can we truly achieve a virtuous circle of talent work. Taking sound rights protection system and perfect performance evaluation system as the basis, U.S. universities become a quite popular place for high-end talents all over the world.

IV. ENLIGHTENMENT OF FOREIGN TALENTS' RIGHTS PROTECTION IN U.S. UNIVERSITIES TO CHINA

A. *Scientifically Delineate the Group Boundaries of Rights Protection*

Scientifically delineating the group boundaries of foreign talents is the foundation for safeguarding their legitimate rights. For foreign talents working in the U.S., the government has clearly defined different standards for different kinds of talents, and the standards are relatively high. By way of contrast, according to the document jointly issued by Chinese National Foreign Experts Bureau, Ministry of Foreign Affairs, Ministry of Public Security, Ministry of Human Resources and Social Security in March 2017, China applies a descriptive method to classify foreigners working in China into three categories: foreign high-end talents (category A), foreign professionals (category B), and foreign ordinary personnel (category C). Among them, foreign language teachers are subordinate to category B. In fact, China's intelligence introduction has gradually moved from the initial stage of increasing quantity to the development stage of improving quality and efficiency. The main trend for foreign talents working in universities has already changed from language teaching to professional research. Therefore, the current classification has actually expanded the application scope of relevant policies.

B. *Establish the Multi-party Collaborative Governance Model Centered on Foreign Talents*

In the U.S., foreign talents' rights protection is achieved through both the horizontal and the vertical network layout. From the horizontal perspective, all stakeholders have a clear division of functions, with macro control in the government, supporting services in the society, and implementation in the university. These three units cooperate with one another and work well together. As to the vertical side, the U.S. takes the federal government's laws as the guidance, supplemented by states' administrative regulations and universities' institutional policies to promote foreign talents' rights protection. However, the talent work in China lacks the guidance from the national basic law. The phenomenon of absence or offside functions occurs from time to time. Meanwhile, the participation of the society has been quite low, and the motivation of universities has not been fully stimulated. Therefore, foreign talents' rights protection is distributed in a point-like manner, and no systemic force is formed.

Foreign talents' rights protection is a scientific system covering national legal system, social comprehensive system and university internal system. In addition to adhering to the

principle of constructing socialism with Chinese characteristics, the Chinese government should respect the rules of market economy and talent growth, consider talents' scale, quality as well as structure as a whole and provide a wise top-level design. One important point is to strengthen the supply of effective regulations. The other is to reduce the intervention of administrative forces and give full play to the basic role of market with regard to the allocation of human resources. Social organizations should actively participate in the analysis and evaluation of foreign talents, strive to create sufficient employment opportunities for outstanding international students, and use various measures to facilitate their living, promote their professional development and deepen their understanding of Chinese traditional culture. Universities should take the competitiveness of salary, the richness of benefits, the incentive attributes of intellectual property protection and the fairness of performance evaluation into consideration. All these will do great help to forming a comprehensive rights protection system.

C. Construct the Internal Operation Mechanism of Foreign Talents' Rights Protection

The perfection degree of universities' institutional arrangement is closely linked with the realization degree of national policy intention. For foreign talents working in U.S. universities, rights protection spans the division of nationality, and is mainly determined by work qualification and work commitment. At present, the centralized management department of intelligence introduction at Chinese universities is the international department. Most foreign talents introduced cannot enter the formal personnel system, and there exist a series of problems like limited promotion channel and insufficient scientific research support. What's worse, single component of salary, lack of benefits, and weak awareness of intellectual property protection have also exacerbated the loss of foreign talents.

On the premise of clarifying overall strategic planning and development priorities, Chinese universities should reform their personnel employment system and establish the internal link between individual goals and university mission. During the process, they should stick to the fairness principle (ie, stress the equivalence of rights and obligations, avoid prejudice), the scientific principle (ie, have developmental insights, support the growth of interdisciplinary and emerging disciplines), and the embedded principles (ie, promote the consistency of talent goals and university strategy). A vertical linkage mechanism among colleges, a horizontal cooperation mechanism among departments, an innovation incentive mechanism and a performance evaluation mechanism should also be constructed

for forming a circular chain of "famous teachers - famous disciplines - famous universities".

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