FOREWORD

With the expansion of global trade and widening gap in wage levels and employment opportunities among countries, transnational migration of labor is becoming a more frequent phenomenon, a trend which is expected to gain greater momentum in future years. The economic and social repercussions of such migration of labor may manifest themselves in both the host countries as well as the sending countries. Thus, careful policy approaches to the issue have become extremely important. It is essential that rational and transparent policies and laws concerning labor migration are developed, in order to maximize the benefits and minimize the costs of using foreign labor.

Korea was an exporter of labor until the 1970's, but shifted to becoming an importer in the late 1980's when shortage of low-skilled labor became a visible problem in the manufacturing sector. This shift led to the adoption of the Industrial Trainee Program in the early 1990's, which invited low-skilled foreign labor not in the form of legitimate workers but as trainees. The Trainee Program, however, showed its limitations as a viable system, and in August of 2004, gave way to the Employment Permit System. This new System opened up opportunities for foreign workers to seek employment with legitimate worker status. It is especially significant in that it aims to achieve a better balance in supply and demand in the labor market, strives to minimize the number of cases of illegal foreign workers, and serves as an institutional framework for the protection of the human rights of

foreign workers. Still, the current Employment Permit System cannot instantly alleviate all the problems related to illegal employment of foreign nationals. Therefore, it needs to be supplemented by a labor management system for foreigners that is well-adapted to the Korean environment, whose preparation may require benchmarking corresponding systems in developed countries.

In light of this mandate, the Korea Labor Institute and the International Organization for Migration jointly created and published this Study that analyzes the various foreign labor policies of some relevant countries, in hopes of offering references for those states who, like Korea, are experiencing foreign worker issues for the first time, and assisting them in effectively developing policies on foreign labor. This Study investigates, compares and analyzes the trends in foreign labor, pertinent policy trends and administrative structures, and foreign labor systems in countries in Europe, North America, and Asia. It seeks to provide substantial lessons from success stories and failures alike for readers who are expected to derive far-reaching implications for foreign labor policies. The authors of this Study hope that what is contained herein would contribute to the development of foreign labor policies in all interested countries, including Korea.

The research behind this Study was graciously undertaken by Kil-Sang Yoo (Vice-President of the Korea Labor Institute), Kyu-Yong Lee (Specialist at the Korea Labor Institute), and Dr. June Jung-hae Lee (International Organization for Migration). Also, I hereby extend warm gratitude to Dr. Frank Laczko and all others involved from the International Organization for Migration, which offered valuable support for the preparation of this Study.

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INTRODUCTION

1. Background and Purposes of the Study

Amid increased international trade, trans-border labor migration has become more vigorous. This rapid international movement of workforce is well illustrated by the fact that the number of international migrants–those people living and working outside their country of birth or citizenship for 12 months and more–reached 175 million in 2000. If the world's migrant nation were in one place, "Migrant Nation" would be the fifth most populous country in the world after China, India, the United States and Indonesia (Martin, 2003). Moreover, when the WTO negotiations on trade in the service sector are settled, the cross-border movement of labor is expected to further accelerate.

In the international movement of labor in most of the developed world there is an overall rising trend of migration for employment purposes, especially in such areas as education, health care and computer technology. This trend is not just limited to areas requiring professional and skilled labor. There has been a significant rise in the number of programs to facilitate temporary labor migration.

Although international labor migration is now one of the primary concerns for most governments, each nation has developed highly individualized and different labor migration policy due to extremely

diverse features of international migration flow in terms of scale and characteristics. Yet, one common denominator is that host countries try to selectively introduce highly skilled workforce to maximize their economic and social effects. At the same time, they introduce unskilled foreign workforce on the minimum scale and on a temporary and transparent basis, so as not to undermine the domestic labor market and endeavour to minimize social costs by effectively managing them and ensuring that unskilled foreign workers return to their home countries without fail after a certain period of time. In this sense, labor migration policies of different countries may offer insightful implications to other countries.

Until the 1970s the Republic of Korea was one of the sending countries that benefit from sending their workforce overseas to earn foreign currency and yet from the late 1980s it became one of the host countries that supplement their domestic labor markets with foreign labor. Korea, which has preserved its tradition as a homogeneous country for a long time, introduced the Industrial Trainee Program where foreign labor is introduced as trainees, not as workers. However, under the industrial trainee system, foreign trainees were in reality engaged in labor, yet protection of labor rights and human rights of foreign workers faced a number of problems because they were formally recognized as “trainees” rather than “workers.” Moreover, as it was difficult to meet the entire demand for foreign labor only by utilizing the expedient industrial trainee system, the Korean government has been making efforts to improve its labor migration policy for a long time. However, it has not been able to achieve its objectives due to opposition from businesses that wanted to utilize industrial trainees with low wages. In the process, the proportion of undocumented migrants among all foreigners residing in Korea reached 80 per cent as of late 2002. As the issue of undocumented migrants emerged as a social problem, a national consensus was formed on the need for fundamental institutional improvement where foreigners are treated as workers, rather than as

industrial trainees, and are offered legitimate protection and undocumented migrants are minimized. This national consensus led to the enactment of the Act on the Employment of Foreign Workers in 2003 and, as a result, a guest worker system for foreign workers will be implemented from August 2004 in Korea.

Although the guest worker system where foreign workers are legitimately employed will be implemented in Korea, in order to ensure the successful establishment of the guest worker system, issues such as irregularities in the process of introducing foreign labor, excessive number of undocumented migrants and protection of human rights of foreign workers need to be resolved at an early date. In order to address these problems, henceforth, the guest worker system should be developed in a sophisticated manner based on the accumulated experiences of developed countries. In this context, through comparison and analysis of labor migration policies in advanced countries, this study is aimed at providing basic data necessary for the effective development of labor migration policies and systems to countries like Korea that utilize foreign labor, yet are faced with a number of problems.

The experience gained by major countries covered in this study will provide valuable lessons to developing countries, which, like Korea, will be transformed from sending countries into host countries. In addition to developing countries, labor migration policies and experiences of other countries will also provide valuable lessons to developed countries.

In this context, major issues that this report attempts to address are:

- What are the recent trends in labor migration in advanced countries?
- How is the introduction scale of foreign labor determined?
- What are the administrative structures of organizations in charge of labor migration policy and its enforcement?
- How have the mechanisms to utilize necessary foreign workforce been developed and what programs are currently used?

- What are the methods to select and manage foreign labor?
- What are the impacts of the introduction foreign labor on the domestic labor market?
- What are the institutional devices to prevent illegal labor migration and overstay?

2. Types of LABOR Migration Policies

Although considerable differences exist among countries, labor migration policies in general can be divided into supply-driven systems and demand-driven systems.

Under the supply-driven systems, foreign workers who are workforce providers lead the process of introducing foreign workforce. If foreigners wish to migrate, the host countries' screening processes are followed to select best quality foreign workforce from the pool of potential immigrants. For instance, in Canada, Australia and New Zealand, a points system is adopted where highly skilled immigrants seeking permanent migration to the countries are given points based on various requirements - including education, professional knowledge and skills necessary for relevant occupations, language proficiency, age, and assets which may affect successful adjustment after migration. Only foreigners with more than a certain level of points are allowed to migrate and get employed. This points system is considered to have certain advantages in enhancing transparency, consistency and efficiency of immigrant screening in that objective criteria deemed to bring long-term benefits to host countries are announced in advance and skilled immigrants meeting those requirements are selectively approved. However, the points system still does not accurately determine whether an immigrant who has migrated with high scores is the very person with the capabilities that an employer really requires. Furthermore, there is controversy over whether the criteria applied for determining points are the best criteria for selecting immigrants who could really contribute to the national economy.

The supply-driven system is mainly adopted in countries whose labor migration policy places importance on utilizing highly skilled immigrants on a long-term basis. However, even in the countries which have adopted a supply-driven system where highly skilled immigrants are selected on the basis of the points system and granted permanent residence, the points system is not applied to unskilled foreign labor. Unskilled foreign workers wishing to be employed in host countries that implement a supply-driven system may get employed for a certain period on a temporary basis if they directly apply for employment permits to the relevant government authorities of host countries and are granted permission.

On the other hand, under the demand-driven system, the process of introducing foreign workers begins when employers in host countries, who are the party demanding foreign labor, requests the government authorities for permission to employ foreign workers. The governments of host countries allow employment of foreigners on condition that employment of foreign workers does not undermine employment of local workers and does not have any negative impact on wages or working conditions of local workers. After being granted an employment permit, employers select and employ foreigners under the employers' responsibility within the scope of permitted numbers and in permitted areas. Such demand-driven systems are adopted in the United States, Germany, the United Kingdom, France, Korea, Taiwan and Singapore.

The demand-driven system is based on the logic that employers are in the ideal position to make the best decisions on the economic contribution of foreign labor and that it is the most desirable way for employers requiring foreign workforce to select and employ the necessary foreign workers. Thus, the demand-driven system has an advantage in that it is efficient in satisfying the needs of employers, the demanding party. On the other hand, the system has disadvantages in that the interests of employers may conflict with the interests of the overall national economy and if employers hire unskilled foreign workers

at low wages, it might lead to delays in corporate restructuring, possibly undermining national competitiveness in the long term. In addition, an excessive inflow of unskilled foreign workers may generate undesirable social costs.

In most of the countries that have adopted demand-driven systems, foreign workers are employed for a certain period of time on a temporary basis and job categories open to foreign workers are limited to specific areas. However, even in countries implementing demand-driven systems, restrictions on highly skilled foreign workers are drastically eased or there are no restrictions at all. Some countries even allow permanent residency of foreigners who have renewed their stay permits several times and have stayed in the country for more than a certain period of time. Furthermore, in the case of traditional 'immigration countries' such as the United States and Canada, a system exists whereby permanent residency is granted to skilled foreign workers at the initial entry point.

Although there are considerable differences in labor migration policies implemented by various countries, there is a common phenomenon that countries make an effort to select and utilize foreign workers who greatly contribute to the economic and social development of host countries. While countries actively attract professional technology-related and highly skilled foreign workers by offering incentives such as long stay status, they utilize unskilled foreign workers on a minimum scale and on a temporary basis through strict regulations, as unskilled foreign workers may put a burden on host countries in the long term and delay industrial restructuring. This is attributable to the fact that there is a high possibility that unskilled migrant workers may have negative impacts on employment, wages and working conditions of local workers.

3. Basic Principles of LABOR Migration Policies

Despite significant diversity in their labor migration policies, there

are certain common principles observed by countries and they are listed as follows:

The first principle is the principle of supplementing the domestic labor market. This is the principle of "employing nationals first" where foreign labor is introduced and utilized on a supplementary basis at a minimum level only in areas where there are no national workers available. Moreover, following this principle, the employment of foreign workers should not undermine employment opportunities, wages and working conditions of local workers. This principle is fairly universally adopted in most countries utilizing foreign workers. More specifically, by observing the labor market test where permits for foreign worker employment are granted only to employers who failed to employ national workers despite efforts to recruit them, the employment of foreign workers, instead of undermining or replacing jobs of national workers, resolves difficulties of domestic enterprises suffering from labor shortages, thereby preventing overseas relocation of domestic companies or decline in competitiveness.

The second is the principle of prevention of irregularities in sending foreign workers and transparency in procedures of selecting and introducing foreign workers. Irregular migration has become one of the major causes of illegal stay and illegal employment as foreign workers who have entered a country after paying excessive brokerage fees in the process of foreign labor introduction tend to overstay to compensate for the fees. In order to prevent irregularities in labor-exporting processes and to maintain transparency in procedures of selecting and introducing foreign workers, many host countries sign bilateral agreements with sending countries and ensure that the public sector is in charge of the selection and introduction of foreign workers, thereby eliminating any possibility of intervention and irregularities by private employment agencies. In Germany, France, the U.K. and Korea, public organizations are in charge of activities involving selection and introduction of foreign labor, while in Taiwan and Singapore, private employment agencies are in charge of those

activities.

The third principle is the principle of preventing permanent settlement of foreigners who enter a country for temporary employment purposes. If foreigners who enter a country for temporary employment purposes overstay, it is inevitable that the country will permit family accompaniment and permanent residency status in the long run. Moreover, permanent settlement of unskilled foreign workers generates huge social costs. In order to prevent these problems from arising, it is common to restrict domestic employment duration of foreign workers to a certain period of time. In the case of Germany, legal migrant workers who return to their home countries upon completion of their employment period are not allowed to reenter the country for employment purposes, while under the guest worker program in Korea foreigners are allowed to reenter the country and be employed again one year after returning to their home countries.

The fourth principle is the principle of equal treatment between national and foreign workers. This principle of equal treatment is stipulated in international conventions and generally adopted in all countries. Under the principle, foreign workers are entitled to equal protection as national workers in social insurance and application of labor-related laws. There is some misunderstanding that because of the principle of equal treatment between national and foreign workers employers should pay equal wages as national workers to foreign workers. However, as wages vary depending on productivity and work experience among national workers, differentiation of wages for legitimate reasons among foreign workers is also possible. However, unjust discrimination against foreign workers only because they are foreign workers is not allowed.

The fifth principle is the principle of prevention of undermining industrial restructuring. This signifies that the introduction of foreign workers should not have negative impacts on restructuring of domestic industries and enterprises. If foreign labor is utilized at low wages, businesses may become complacent, merely counting on

cheap foreign labor, and this may delay corporate restructuring, undermining competitiveness of the country and businesses in the long term. At present, amid the rapidly changing economic and social environment at home and abroad, countries and enterprises are continuously pushing for reforms and restructuring to enhance national and corporate competitiveness. Thus, the employment of foreign workers should not undermine revamping of industrial structures aimed at promoting a high value-added economy and advancement of industrial structures by merely sustaining uncompetitive declining industries in host countries. In the case of Taiwan, employers wishing to hire foreign workers are required to submit restructuring plans encompassing production facilities and working environment improvement plans when they apply for employment permits, and foreigner employment permits are granted only to employers who have significantly contributed to the national economy. In most countries, the principle of prevention of undermining industrial restructuring is not explicitly expressed in laws, yet it is a basic principle where consensus has been implicitly formed in implementing labor migration policies.

4. International Comparision Study on LABOR Migration Policies

4.1 Overview

Free movement of labor is guaranteed among European Union (EU) member states; thus workers of EU member states have a right to seek employment in other EU member states, a right to move to other EU member states for the purpose of employment, a right to reside in other member states for the purpose of employment, and a right to remain in other EU countries after the termination of employment if the household is financially self-supporting. Therefore,

all EU citizens are equally treated as nationals within the European Community in terms of employment, wages, working conditions, and dismissal. Despite the guarantee of free movement of labor among EU member states, however, due to cultural and language differences, the proportion of EU nationals who are either residing or employed in other EU member states is very low, amounting to only 1.5 per cent of all EU nationals.

The labor migration policy of EU member states is applicable to non-EU nationals. Employers are granted temporary work permits to employ foreign workers only for jobs that are not filled by nationals of each member state, EU nationals, or non-EU nationals whose stay in EU member states are already permitted. Employment of seasonal foreign workers and border commuters is also strictly controlled. Detailed labor migration policies vary from country to country within the EU.

The United States and Canada, North America's traditional host countries, have both similarities and differences in their labor migration policies. The most distinctive difference is that the United States adopts a demand-driven system where employers take the lead in introducing necessary foreign workers, whereas Canada adopts a supply-driven system where foreigners who have more than certain points based on a points system requirements apply for immigration themselves to Canada and the Canadian government selects and accepts promising immigrants.

In Asia, Japan, Korea, Singapore and Taiwan are the most representative labor-importing states. Among the states, Singapore and Taiwan have already implemented the guest worker system for foreigners, while in Korea the guest worker system will be implemented from August 2004. In Japan, discussions on the introduction of the guest worker system have been under way for a long time, yet the system has still not been introduced. The guest worker system adopted by Singapore, Taiwan and Korea is one of the representative models of demand-driven systems.

4.2 Organizations in Charge

Labor migration policy involves a wide range of activities including the government's policymaking on foreigners; entry visa-related work; selection of labor-exporting states and decision on the quota of foreign workers; signing of bilateral agreements with sending countries; confirmation of the obligation to employ national workers first and issuance of work permits; recruitment of foreign workers and education and training before their arrival; health check-ups; adjustment education and physical examination after entry; management and protection of foreign workers during their stay; social integration and complaint settlement; labor supervision and inspection on enterprises hiring foreign workers; crackdown on undocumented migrant workers and illegal employment and their repatriation to their home countries. These activities are dispersed among various ministries and organizations, thus close coordination and cooperation among related ministries and organizations is vitally important.

Concerning organizations in charge of labor migration policies in selected countries, it is a general practice that ministries in charge of visa-related work also take charge of policy on immigration of foreigners, while labor-related ministries take charge of policy on utilizing foreigners as workers. In some countries a committee is set up to comprehensively coordinate related policies as works related to labor migration policy require close cooperation among various ministries.

In general, public employment service organizations are in charge of such enforcement activities as confirmation of the employers' efforts to seek national workers, work permits for employers, recommendation of jobs for foreign workers, processing of foreign worker-related civil petitions and guidance and supervision of enterprises hiring foreign workers. Meanwhile, employment stabilization organizations and labor-related ministries take charge of

signing of bilateral agreements with labor-exporting states, and the establishment and management of computerized databases on foreign workers.

4.3 Mechanisms to Determine the Quota of Foreign Workers

In introducing foreign labor it is a very important and difficult issue how to measure the scale of labor shortages in the domestic labor market and the demand for foreign workers, and to determine what the appropriate level of introducing foreign workers is. Even in the case of countries that do not explicitly announce annual quotas of foreign workers it is a common practice that the government unofficially has an internal quota ceiling for foreign workers so as not to disrupt employment of local workers due to excessive inflow of foreign labor. However, the problem is what criteria should be used to determine the quotas for foreign workers.

The decision on how many foreign workers should be introduced in what sectors is made in consideration of the labor market situation for each sector. In other words, as foreign labor is introduced when there are shortages of labor in the domestic labor market, discussions on the scale of foreign labor introduction begin with the estimation of the scale of labor shortages in each sector. Even when demand for foreign labor is estimated by utilizing econometric methods, the estimation result is not directly used as the scale of foreign labor introduction. It is a common practice that the scale of foreign labor introduction is ultimately determined only after the political process in which the opinions of political circles, relevant government ministries and organizations, labor-management groups, academia and NGOs are reflected.

In terms of foreign labor quotas, countries are divided into two groups: namely, countries which have an explicit quota system for foreign labor and implement such a system; and countries which have not set any quotas or have only unofficial quotas. Most of the

countries with demand-driven systems such as Korea, the United States, Germany, Italy and France have set a total quota of foreign labor or quotas by sectors, as it is highly probable that demand for foreign labor may exceed an appropriate level if quotas are not set. Some countries have a dependency ceiling for foreign workers by sectors and additionally impose levies on employers to curb demand for foreign labor. On the other hand, in countries with supply-driven systems such as Canada, Australia and New Zealand there is no quota for foreign labor, as they can adjust the scale of foreign labor introduction with their points system.

Germany and Italy have ceilings for foreigner labor introduction by sending countries and by foreign labor introduction programs through bilateral agreements with sending countries. The United Kingdom does not have any total quota, yet has set a sectors-based quota for seasonal agricultural workers (in 2003 the quota was 25,000 persons) and sectors-based programs introduced from 2003 to resolve labor shortages in the food manufacturing industry and hotels and restaurants. In the United States the Federal Congress sets annual quotas for foreign labor, including immigrants and refugees and the Department of Labor sets quotas for each program. Yet, in some foreign labor introduction programs there is no quota. Taiwan and Singapore do not have any officially set total quota of foreign workers, yet have dependency ceilings by sectors and impose levies on employers to control the demand for foreign labor. In Korea the introduction of the levy system was discussed not only in academia (Yoo and Lee, 2002) but also in the process of legislating the guest worker system, yet the levy system was not reflected in the legislation.

In Canada which has adopted the supply-driven system foreign workers are introduced on the basis of a points system, and thus there is no quota. Yet, the country controls the scale of foreign labor by setting a ceiling on accepting immigrants of up to only 1 per cent of the entire population (approximately 310 thousand) annually. In addition, Canada announces every year the expected scale of

immigrants to be migrated the following year, making an indirect announcement on the scale of foreign labor to be introduced.

4.4 Selection of Sending Countries

As for methods of selecting sending countries, countries with supply-driven systems have a strong tendency to introduce foreign workers with more than certain points, irrespective of their nationalities, whereas countries with demand-driven systems tend to limit sending countries to a few states in consideration of cultural homogeneity with host countries.

In the case of Germany the country makes it a principle to introduce migrant workers from Eastern European countries by signing agreements with 13 Eastern European countries including Turkey. Taiwan imports foreign workers from five countries friendly to Taiwan including the Philippines, Thailand, Myanmar, Indonesia and Malaysia, yet quota by countries is not set and employers, the demanding party of foreign labor, are allowed to choose sending countries. Singapore classifies sending countries into non-traditional sources and North Asian sources, placing differences in allowable sectors, and places a priority on employment of Malaysian nationals due to its historical background of having been liberated from Malaysia and geographical location. Only foreign workers whose nationalities are Malaysia, Hong Kong, Macau, Korea and Taiwan are eligible for jobs in the manufacturing sector, while construction jobs are open to all foreign workers from Malaysia, non-traditional sources and North Asian sources. Employment of foreign workers in the service sector is only allowed to foreign workers from Malaysia and North Asian sources.

In the case of Korea, as of March 2004 there are 17 countries that send industrial trainees to Korea. Under the new guest worker system, Korea is expected to limit the number of sending countries to a

manageable few states, not including all 17 existing countries.

4.5 Mechanisms to Control the Demand for Foreign LABOR

In most cases, wages and working conditions in host countries, which are developed countries, are much better than those in labor-exporting developing countries. Under the circumstances, if mechanisms to curb the demand for foreign workers are in place, domestic employers would wish to employ a greater number of cheap foreign labor for unskilled jobs, while the inflow of foreign workers to host countries will increase to a great degree. Inevitably, jobs of local workers may be undermined by foreign workers. Therefore, host countries observe at least the following two principles to prevent local workers' jobs from being undermined by foreign workers. Firstly, discrimination in wages and working conditions between national and foreign workers is prohibited, thereby preventing employment of foreign workers on low wages. Secondly, employers wishing to hire foreign workers are given permission only after they make an effort to find national workers for a specified period through labor market tests at employment stabilization organizations and fail to find eligible national workers. In many countries, however, the labor market test, which examines employers' efforts to first employ national workers, is either operated just in formality, with little effect, placing more burdens on employers, or it is operated in too rigid a manner, causing civil petitions. Thus, in order to operate the labor market test in a flexible manner and in accordance with initial purposes, it is important to improve professionalism of employees at employment stabilization organizations.

However, there are many cases where the principle of banning discrimination in treatment between national and foreign workers, upon its application, produces ambiguous situations. For this reason, Taiwan and Singapore collect foreign worker levies, which amount to the difference between the wages of national and foreign workers,

from employers hiring foreign workers to curb the demand for foreign labor. Singapore implements a differentiated levy system where different levies are imposed depending on sectors and level of skills. For instance, more levies are imposed on unskilled foreign workers and jobs with a high possibility of being replaced by national workers. Meanwhile, Taiwan operates a levy system where only different levies are imposed by sectors.

5. Structure of the Report

This report is largely divided into two parts. In Part One, labor migration policies in major countries are comparatively analyzed centering on key issues, while in Part Two labor migration policies in selected countries are introduced by country.

Comparative analysis by key issues in Part One include: History of labor migration policy (Chapter 1); current trends of labor migration (Chapter 2); labor migration systems (Chapter 3); economic impacts of foreign labor introduction and protection of local workers (Chapter 4); measures to reduce illegal migration and overstay (Chapter 5).

Part Two introduces in sequence labor migration policy of France (Chapter 6); Italy (Chapter 7); the United Kingdom (Chapter 8); Germany (Chapter 9); Canada (Chapter 10); the United States (Chapter 11); the Republic of Korea (Chapter 12); Taiwan (Chapter 13); Singapore (Chapter 14); and Japan (Chapter 15).

Appendixes include international comparison of administrative structures in charge of labor migration policy and a summary table for labor migration policy in major countries.

PART ONE

Comparative Study on Labor Migration Systems

Chapter 1

HISTORY

1. European Background

Following World War II - the second time within a single generation that Europe had been engulfed in full-scale military hostilities - there was a concerted effort to find ways of preventing such devastation from ever happening again. Thus, it was suggested that if European nations combined their efforts and worked together on coal and steel production, which were viewed as the main resources required for fighting wars, for their mutual benefit, armed conflicts might thereby be prevented. Hence, six nations (France, Germany, Belgium, Luxembourg, the Netherlands and Italy) created the European Coal and Steel Community (ECSC) in 1951.

The success of the ECSC led to proposals to expand this form of co-operation to other areas. In 1957, the Treaty of Rome, establishing the European Economic Community (EEC) was signed by these same six nations. This was the foundation of the European Common Market, based on the premise that the integration of the markets for goods, services, capital and labor would enhance the welfare of all Common Market members.

The 1957 Treaty of Rome defined the free movement of workers as one of the four fundamental freedoms of the 'Single Market.' However, it took another ten years before the practical details of this concept were implemented and free movement actually granted to the citizens of the EEC. Table 1-1 provides a summary of the important dates relating to the EU's development and immigration policy.

The principle of free movement of workers, articulated as a fundamental freedom in the Single European Market, allows citizens in the community to work and live in any other member country, and includes four general principles applicable to citizens of any EU member country:

- The right to seek employment in other EU countries;
- The right to move to other EU countries for the purpose of employment;
- The right to reside in other EU countries for the purpose of employment, and
- The right to remain in other EU countries after the termination of employment if the household is financially self-supporting.

The right to seek employment means that EU citizens can stay in another member state for at least three months to look for a job. However, a statement issued by the European Supreme Court decreed that six months is appropriate in 'reasonable cases'. Employed EU citizens are also automatically entitled to a residence permit, although four nations (France, Germany, Spain and Italy) stopped requiring residence permits in mid-2000 for employed EU citizens.

The common set of legal rules in the European Community (*the aquis communautaire*) requires that there be equal treatment of all EU citizens in respect of employment, occupation, remuneration, dismissal and other conditions of work. In addition, the legal framework of the EU aims to minimize any barriers to labor mobility

by providing for the mutual recognition of educational standards and degrees, and the gradual harmonization of the member states' educational systems.

When viewed in total, the extent to which barriers to the mobility of labor and persons have been removed within the EU far exceeds

Table 1-1. Important Dates in the History of EU Immigration Policy

1957	Treaty of Rome (the EEC Treaty) defines the free movement of workers as a fundamental freedom of the Single Market.
1968	Full freedom of movement granted to workers of the six EEC founding members (France, Germany, Belgium, Luxembourg, Netherlands and Italy).
1971	Denmark, Ireland and the UK join the EEC (no transitional period for free movement of these countries' workers).
1981	Greece joins the EEC (Transitional period for free movement of Greek workers begins)..
1985	Schengen I - Agreement to commence the elimination of internal EEC borders.
1986	Spain and Portugal join the EEC (Transitional period for free movement of workers from these countries begins).
1988	End of the transitional period for the free movement for Greece.
1990	Schengen II - Agreement to abolish internal EEC borders Free movement extended to EEA membership countries (currently Iceland, Liechtenstein and Norway).
1991	Maastricht meeting and drafting of the Treaty of the European Union.
1992	End of the transitional period for the free movement for Spain and Portugal.
1992	Completion of the Single Market - no restrictions on the provision of services, self-employment, or the creation of businesses. Mutual recognition of education degrees.
1995	Austria, Finland and Sweden join EEC (no transitional period for free movement for these countries' workers).
1998	Treaty of Amsterdam (the EU Treaty) transforms the European Union from a community of states to a legal personality in its own right, capable of acting as a single entity in international affairs. This treaty defines once more the free movement of workers and persons a fundamental freedom of the 'Single Market'.
2002	Expansion announced which eight eastern European countries (Poland, Hungary, the Czech Republic, Slovakia, Slovenia, Lithuania, Latvia and Estonia) plus Cyprus and Malta will formally join the EU in 2004.

the efforts in other regional trade areas.

Nevertheless, the per centage of EU foreigners who reside and work in other EU member states is relatively small, accounting for just 1.5 per cent of the EU's population. This relatively low level of labor mobility across the EU (compared to that within the EU countries themselves) is probably the result of national, cultural and linguistic differences.

In fact, non-EU countries constitute the main source of foreigners in EU countries, even though the legal framework of the EU does not extend the same generous provisions of labor and personal mobility to non-EU citizens. The *aquis communautaire* explicitly requires the preferential treatment of EU citizens over non-EU citizens in the EU labor markets. Non-EU nationals can only be hired if it can be proved that the position cannot be filled by either EU nationals or by non-EU national who already possesses a residence permit in an EU country. Temporary work permits for non-EU nationals are only granted when a position is offered to a specified person with specific skills, and when this specific position cannot be filled with workers from either local or other EU labor markets. Restrictive conditions also apply to seasonal workers and border commuters.

Observers have noted that such regulations do not restrain the EU member states in any significant manner, since these terms in fact articulate the common practice existing within the member states.[1] Furthermore, although the *aquis communautaire* itself reflects the protective policies of the EU labor market, immigration from outside the EU still remains essentially within the control of the individual member states. This is explicitly highlighted in the General Declaration of the Single European Act establishing the Single

[1] Boeri et al.(2002), p.45.

Market. This instrument also states that “nothing in these provisions shall affect the right of member states to take such measures, as they consider necessary, for the purpose of controlling immigration from third countries.” This clearly leaves immigration policies vis-à-vis third countries within the domain of the individual member states. Thus, non-EU nationals do not have the right to full freedom of movement, nor can residence and work permits be transferred to other EU countries.

2. North American Background

Over the last two hundred years, immigration to North America has been dominated by immigration to the United States, even though immigration to Canada has not been insignificant either. Although the characteristics of the Canadian and the U.S. situations are not identical, the immigration flows and policies of Canada still largely mirror those of the United States.[2]

2.1 The United States

In the U.S. immigration matters were originally within the jurisdiction of the individual states, although Section 1, Article 8 of the U.S. Constitution gave Congress the authority “to establish a uniform rule of naturalization.” The early U.S. Congress passed the first U.S. naturalization law in 1790, granting citizenship to “free, white persons of good moral character” if they had been resident in a state for one year, and in the United States for two years, a period raised to five years in 1802. Also in 1802 Congress allowed “any court of record” to grant citizenship, triggering the proliferation of

[2] Martin(2003), p.37.

thousands of naturalization courts across the country with widely varying practices over the next century.

The most notable first efforts made by the U.S. to regulate immigration involved as series of federal and state laws to ban or tax Chinese immigrants. Chinese immigrants arrived in great numbers following the discovery of gold in California in 1848, and also provided a significant portion of the labor required to complete the western link of the first U.S. transcontinental railroad. Responding to this wave of Asian immigrants, the U.S. Congress passed the nation's first immigration restriction law in 1862 prohibiting American vessels from transporting Chinese immigrants to the U.S. It also created the Bureau of Immigration in 1864 to oversee importation of Chinese contract laborers. Some of the subsequent anti-Asian legislation, such as the Chinese Exclusion Act of 1882, remained in force until the end of World War II.

Asians were not, however, the only migrants who felt the effects of new legislative controls. An expansion of irrigation for agriculture in the western United States in the early 20th century, coupled with the Mexican Revolution (1911-1917) helped to both push and pull many Mexican peasants off of their land and migrate north to find work and/or to escape the violence of the civil war. The 1917 Immigration Act, which imposed a literacy test and head tax on prospective immigrants, effectively turned the existing - and still continuing - flow of northward-bound labor into illegal migrants. Despite these early attempts at controlling the Mexican-U.S. border, it is estimated that up to 10 per cent of Mexico's population had immigrated to the United States by 1930.

A new era in U.S. migration legislation dawned in 1921 with the introduction of a quota system, which is the basis of the current U.S. immigration policy. The original version prohibited immigration in excess of 3 per cent of the number of foreign-born residents of that

nationality already living in the U.S. as of 1910. However, in 1924, the Johnson-Reed Act significantly modified this system to reflect the desirability of certain nationalities.

This 1924 law severely restricted overall immigration into the United States, and effectively ended most immigration except from western and northern Europe. In fact, that attempt to limit immigration is often associated with the phenomenon of 'illegal immigration' in the U.S. It was also in 1924 that the U.S. Congress created the U.S. Border Patrol. In addition, the Immigration and Naturalization Service (INS) was established after a 1933 executive order combined the Immigration Service and the Naturalization Bureau into one agency.

With the advent in 1952 of the Immigration and Nationality Act a preference system was added to the quota system introduced under the Johnson-Reed Act. This gave preferable treatment to persons with skills needed in the United States, or to relatives of U.S. citizens.

The Hart-Celler Act of 1965 did away with the original quota system, though it kept much of the preference system, enhancing it so as to better facilitate the reunification of immigrant families and to attract skilled immigrants to the United States.

Under the current system, the INS assigns applicants for admission to the U.S. to one of several categories, each with its own quota. Immediate family members of U.S. citizens are guaranteed admission, but there are quotas assigned to extended family members of U.S. citizens, immediate family members of foreigners who are legal U.S. residents, persons who have skills in special categories, and refugees and asylum seekers.

Out of a total of 1,064,318 persons who legally immigrated to the United States in 2001, 64 per cent entered as family members of U.S. citizens or legal residents, 17 per cent entered as skilled workers, 10 per cent were refugees or asylum seekers and 9 per cent arrived under

other categories.[3]

Other admissions to the U.S. are possible under temporary work visas. The two most common classes of temporary work visas are for highly skilled workers and for short-term manual labor.

2.2 Canada

As mentioned earlier, Canada's immigration flows and policies more or less reflected those of the United States. When the U.S. barred Chinese immigrants in 1882, and Canada also took steps to limit Chinese immigration three years later in 1885. Canada, like the U.S., experienced a peak in immigration before the First World War. Like the U.S., it also allowed many displaced Europeans and refugees to immigrate immediately after the Second World War. Furthermore, Canada's "white only" immigration policy, which favoured migrants from Europe and the U.S., ended in 1962. This was three years before the Hart-Celler Act of 1965 removed a quota system in the United States that favoured European migrants. Figure 1-1 shows an overlay of historical data on Canadian and US immigration history.

In 1967, a 'points system' was incorporated into the Immigration Regulations of the Ministry of Citizenship and Immigration. This eliminated the last element of preferential treatment extended to Europeans who had enjoyed the right to sponsor a wider range of family relatives than other migrants. Visitors were also given the right to apply for immigrant status while in Canada. The Immigration Appeal Board Act was also passed in this same year, giving anyone who had been ordered to be deported the right to appeal (either on grounds of law or compassion) to a new Immigration Appeal Board.

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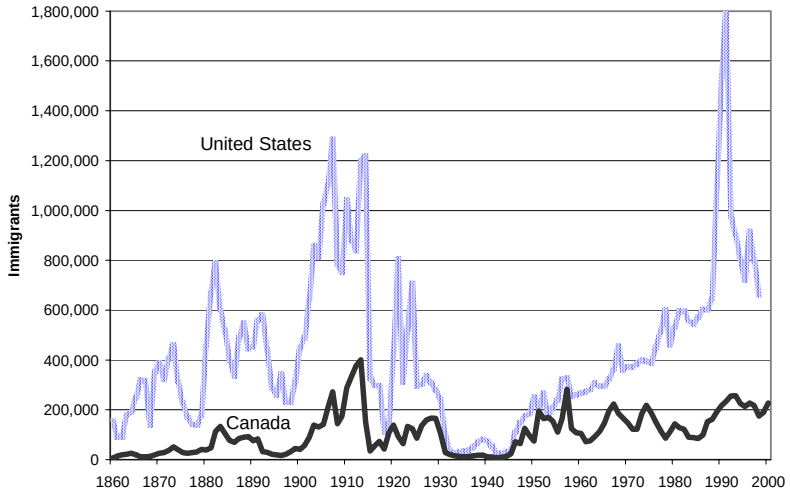
[3] U. S. Department of Justice, INS, 2002.

Figure 1-1. Immigration to the United States and Canada: 1860-2000



Source: Data from US INS and Canadian CIC - Martin, 2003, p.37.

The Immigration Act of 1976, which came into force in 1978, is essentially the basis of current Canadian immigration policy. This law identified objectives for the immigration program and caused the government to plan for the future, in consultation with the Canadian provinces. Immigrants were divided into four categories: independents, family, assisted relatives and humanitarian. Additionally, it created the Refugee Status Advisory Committee. Canada's Private Sponsorship of Refugees Program was also started in the same year.

In June 2002, the Immigration and Refugee Protection Act overhauled and replaced the Immigration Act, which had been amended more than 30 times in 24 years. Nevertheless, the 'point system' was retained and upgraded. A skilled worker who wishes to enter Canada is evaluated according to the categories of educational attainment (maximum of 25 points), proficiency in Canada's official languages (24 points), professional experience (21 points), age (10 points), pre-existing job or job-offer (10 points) and adaptability

factors (10 points). A score of 75 is considered a passing score, and generally qualifies an applicant for entry.

3. East Asian Background

Among Asian countries, Japan, Korea, Taiwan and Singapore transformed into labor-importing countries, achieving remarkable economic development after World War II. The Japanese economy enjoyed a long-term economic boom in the wake of World War II through to the early 1990s, while the Republic of Korea achieved rapid economic growth from the early 1960s. The earlier development of the Japanese economy inevitably resulted in an inflow of labor from neighboring countries, such as Korea, China and the Philippines from the 1960s. In a similar vein, economic development in Korea, Taiwan, and Singapore caused an inflow of workers from less-developed neighboring countries.

Unlike the United States and Canada, both of which started out as immigration countries, or European countries where the inflow of foreigners had been brisk from a long time ago, East Asian countries including Japan, Korea and Taiwan took a passive attitude toward the influx of foreign workers. As a result, despite the reality that unskilled foreign workers have still been flowing into these three Asian countries, they have for a long time maintained a policy that in principle they do not import unskilled foreign workers and, even when they import professional skilled workers, the import of foreign labor should be a last resort. In Japan, the entry and residence of foreigners are strictly managed under the Immigration and Refugees Recognition Act and the Alien Registration Law. Japan utilizes foreign labor through an overseas training system and Technical Intern Training Programs (TITP) based on the Immigration Control

and Refugees Recognition Act, instead of introducing a guest worker system for foreigners.

The influx of foreign migrant workers started to increase in Korea from 1987. However, like Japan, Korea prohibited the introduction of unskilled foreign labor in principle and employed foreign workers with a status of "trainees" by introducing the Industrial Skill Trainee Program for overseas invested firms in late 1991 and the Industrial Trainee Program in late 1993 on the basis of the enforcement decree of the Immigration Law. Upon the amendment of the enforcement decree of the Immigration Control Act, starting from April 2000, foreign migrant workers who worked for a certain period of time as trainees were allowed to be given employment. Moreover, starting from November 2002, the Employment Management System was implemented, allowing ethnic Koreans with foreign nationalities to work in the service sector. The most epoch-making law among Korea's legislation on foreign workforce is the "Act on the Employment Permit for Foreign Workers" enacted and promulgated in August 2003 and to be implemented from August 2004. The act carries great significance in that Korea's labor migration policy, which has until now not allowed unskilled foreign workers to be employed on a worker status, is transforming into a guest worker system in which foreign workers are to be allowed to be employed under the status of worker, as in advanced countries, and the process of introducing foreign workforce and regulating their stay can be managed in a transparent and reasonable manner.

Meanwhile, Taiwan enacted the "Migrant Employment Permit and Management Act," in May 1992, establishing an institutional mechanism to employ foreigners legitimately, while Singapore has been introducing foreign labor on the basis of a guest worker system since the 1970s.

Chapter 2

CURRENT TRENDS

1. Europe

Until the middle of the 20th century, Europe had experienced long and significant emigration. It is estimated that between 1820 and 1940 some 55 to 60 million people left Europe and moved to the American, Asian or African continents. Furthermore, within Europe itself large-scale internal migration occurred together with outbound movement. In addition, in the aftermath of World War I new countries were formed and caused large numbers of people, who suddenly found themselves in the wrong country, to move, prompting massive population exchanges.

After the World War II, however, the situation clearly shifted with Europe becoming one of the main receiving regions in the world. A historical overview of this new migration trend offers a classification of this period into four distinct phases of post-war migration. The first phase starts immediately after the war and continues until the 1960s. A second phase can be discerned after most of the western European nations achieved a state of full employment, which lasted until the first oil price crisis of 1973/1974. The third phase of migration coincided with rising levels of unemployment in Western

Europe and continued until the fall of the Berlin Wall. The collapse of the centrally planned economies in Eastern Europe marks the beginning of the latest phase in European migration.

1.1 Post-War Migration

The Second World War displaced an estimated 20 million people, among which some 12 million Germans, who found themselves in unwelcoming situations in Eastern Europe. This in itself accounted for about 10 million people moving to West Germany before the Berlin Wall's construction in 1961. In addition, there were instances of economically motivated migration, generally dominated by movements to the mother country from its territories or colonies abroad, e.g. from Algeria to France, or from India and Pakistan to the U.K., or from Suriname to the Netherlands. The independence of colonies also led many expatriates to return to, e.g., the U.K., France, the Netherlands and Belgium. Although a significant number of Europeans emigrated to the Americas, the overwhelming share of migration during this period occurred within Europe itself.

1.2 Migration in the Booming 1960s

The next phase of migration in Europe came about as unemployment virtually disappeared in the western European economies in the early 1960s. This labor shortage resulted in some western European nations opening their labor markets to foreign labor. During this period, the number of foreign-born people in Europe more than doubled from about 4 million in 1950 to 10 million in 1970. The main destination countries at that time were France, Germany, the U.K., Switzerland, Belgium and the Netherlands. The recruited workers were predominantly from

southern Europe and arrived from Italy, Greece, Portugal, Spain, Turkey and Yugoslavia, as well as from North Africa, notably from Morocco and Tunisia.

The immigrants coming to Belgium, the Netherlands, France and the U.K. at that time were most frequently from former colonies. Consequently, such immigrants and returning expatriates were often accepted as permanent settlers into Europe. On the other hand, Germany introduced temporary labor or guest-worker programs, which were often based on bilateral agreements with the sending countries. Workers were directly recruited in the source countries by German firms in close coordination with the Federal Employment Service. However, even though the work contracts and residence permits were temporary, the enforcement of returns on expiry was not strict and many temporary workers actually remained in Germany permanently.

1.3 An Era of Restrained Migration

The open and receptive attitude in Western Europe toward foreign labor changed abruptly following the onset of the oil crises in the early 1970s. These oil shocks affected the European economy, and persistent and increasing unemployment became an important issue. Active recruitment of foreign labor stopped.

However, migration did not stop for that reason. Although some observers characterize this period as an era of 'restrained migration' on the part of the European nations,[1] total migration into Europe actually increased during that time. The main channel for immigration to Europe changed to migration for family reunification and for humanitarian purposes. Additional growth in the foreign population

[1] Boeri et al.(2002), p.14.

occurred through natural population growth.

During that time, the southern European countries ceased to being sending countries and gradually became destination countries themselves. These countries, with their own impressive growth in per capita income, seemed to have become an acceptable 'second best' destination for many Africans and Asians for whom it had become more difficult to enter the richer countries in northern Europe.

1.4 Migration Following the Collapse of Communism

With the collapse of the centrally planned economies in Eastern Europe commenced a new phase of migration in Europe. This new phase began quite gradually as political reforms were put in place in Eastern Europe in the 1980s. It then surged after the Berlin wall fell in 1989, and peaked in 1993. A European recession in 1993 put an end to net migration from Eastern Europe.

Nevertheless, conflicts in Croatia, Bosnia-Herzegovina and Kosovo triggered massive migration flows into Western Europe.

On average, about 380,000 people left central and eastern Europe per year in the first half of the 1990s. The cumulative net migration into the EU from central and Eastern Europe has been estimated at 2.6 million people. Austria and Germany received the highest share of these migrants, attributable to their proximity to the source countries. In fact, about two-thirds of the EU's foreigners from central and Eastern Europe reside in Germany. During this same period, Germany also experienced large inflows of ethnic Germans (the so-called '*Aussiedler*') from the former Soviet Union, Poland and Romania. These people totalled some 2 million, but they are not always included in migration statistics since they are sometimes counted as 'returning nationals' instead.

Even though the east-west movement of people was the characteristic

Table 2-1. Citizenship of Children Born to Foreign Parents in Europe

Country	Is a child a citizen if born in the country's territory but to foreign parents?	Exceptions or notes
Austria	No	
Belgium	No	
Denmark	No	Except for children with unknown parents.
Finland	No	Except for children with unknown or stateless parents.
France	Yes	
Germany	Yes	However, only since 2000-one parent has to have lived in Germany for 8 years.
Greece	No	Except for children with unknown or stateless parents.
Ireland	Yes	
Italy	No	Except if child lives legally and uninterruptedly in Italy until age 18 years and then request citizenship.
Luxembourg	No	
Netherlands	No	
Norway	No	Except for children with unknown parents.
Portugal	No	
Spain	No	Except for children with unknown or stateless parents.
Sweden	No	
Switzerland	No	Except for children with unknown parents.
United Kingdom	No	Except if born before 1983, or is born to parent 'settled' in UK. The definition of "settled" is that the parent is free from Immigration control and has been granted the right to remain in the UK for an indefinite period.

Source: Source: Citizenship Laws of the World, US Office of Personnel Management, Investigation Services, IS-1 March 2001.

feature of the 1990s, it was not a defining component of the immigration picture in all countries in Western Europe. The U.K., relatively speaking, saw almost no effects from this surge of east European emigration. Britain's stock of foreign-born nationals did increase over this period, but from other established sources, and not as new flows from central and eastern Europe. France experienced almost no change in it foreign-born population during that time.

1.5 European Labor Market Composition of Foreign Labor Forces

There are difficulties in tabulating any comparison regarding the stocks of foreign nationals in Europe, and particularly stocks of foreigners as part of the labor force of various European countries. Citizenship in Europe is often generally conferred on the basis of *ius sanguinis* (by blood), but some of the major countries, such as France and recently Germany, confer citizenship based on place of birth, as is also the practice in Canada and the U.S. However, policy considerations in relation to the acquisition of citizenship change over time, thus for instance, in the UK, in 2003 a 21-year old resident who was born in December 1982 to foreign parents would be a British citizen, but another resident born in similar circumstances born only one month later in January 1983 would classified as be a foreigner.

Some of the situations that arose as a result of population movements may be quite complex. For example, as regards Germany there are now millions of 'returned nationals' (*Aussiedler*, referred to above), who returned after many years, even generations, spent mainly in the former Soviet Union, and who are no longer well acquainted with the German language, and may face practical problems at the workplace, similar to those normally confronting foreign workers, involving culture and language. At the same time, Germany's workforce

includes a significant number of second-generation foreigners who are born and educated in Germany and who are for all practical intents and purposes Germans, although not legally so.

Table 2-1 offers a summary of the various rules governing the citizenship of a child born to foreign parents in various European countries. It should be consulted together with the information contained in Table 2-2, which provides estimates of the numbers of foreigners working in Europe.

Keeping in mind the inaccuracies concerning such data, it can be

Table 2-2. Foreigners and Foreign Workers in Western Europe: 1998

	Total pop.	Foreign pop.	Foreign pop.	Total labor	Foreign labor	Foreign labor
	Pop(000)	Pop(000)	Per cent	Force(000)	Force(000)	Per cent
Austria	8,099	737	9.1	3,303	327	9.9
Belgium	10,253	892	8.7	4,261	375	8.8
Denmark	5,333	256	4.8	,938	94	3.2
France	57,095	3,597	6.3	26,016	1,587	6.1
Germany	82,247	7,320	8.9	27,714	2,522	9.1
Ireland	3,700	111	3	1,500	48	3.2
Italy	59,524	1,250	2.1	19,529	332	1.7
Luxembourg	430	153	35.6	234	135	57.7
Netherlands	15,762	662	4.2	7,172	208	2.9
Norway	4,459	165	3.7	2,233	67	3
Spain	40,000	720	1.8	15,917	191	1.2
Sweden	8,929	500	5.6	4,294	219	5.1
Switzerland	7,095	1,348	19	3,994	691	17.3
United Kingdom	58,079	2,207	3.8	26,641	1,039	3.9
Total / Average	361,005	19,918	5.5	145,748	7,835	5.4

Source: OECD, *Trends in International Migration*, Paris: OECD, 2000, p.41.

argued that the share of foreign residents in the total population ranges between 1 and 10 per cent in EU countries. Luxembourg is a notable exception as its share of foreign population is over 30 per cent of the total. But, when compared with the population composition in certain metropolitan areas (with particular characteristics not generally found throughout the country concerned as a whole), such as, the financial centres in Europe (e.g. London or Frankfurt), the share of foreigners is quite similar and no longer appears so exceptional.

2. North America

2.1 The United States

Historically, the settlers who arrived in America before detailed immigration records were kept, were English-speakers from the British Isles. Irish and German immigrants dominated a second wave of immigrants, who arrived between 1820 and 1860. Their arrival was sometimes seen as a threat to the established Protestant communities in America, and a nativist backlash developed against Catholics in particular, and immigrants in general. A new wave of migrants arrived in the U.S. between 1880 and 1930, accounting for an average of 650,000 immigrants a year. Most of these new arrivals from southern and eastern Europe found jobs in factories in the cities of the Northeast and the Midwest. World War I reduced this wave of immigrants, and the numerical quotas legislated in the 1920s practically stopped it all together.

Figure 1-1 of Chapter 1 also shows data representing most of this history of migration into the US. The current wave of immigration can be seen to have been accelerated by the immigration reforms of 1965 that eliminated quotas based on the number of persons from each country already in the U.S. Instead, immigrants could enter the

U.S. if they had family here, or they had skills needed by the U.S. The 1965 immigration reforms had the effect of increasing immigration and shifted the major countries of origin from Europe to Latin America and Asia.

Later, in the 1990s, other changes increased the number of immigration visas available to foreigners entering the U.S. for economic or employment reasons, and added a diversity immigrant visa. This diversity visa was intended to compensate for the fact that the large number of migrants using the family reunification category to enter the U.S. was choking off new migration streams from Europe, Africa and other regions that sent relatively few immigrants in the 1970s and 1980s. Irish immigrants were one of the heaviest first users of these new diversity visas. During the 1990s, an average of 1,000,000 legal immigrants and an estimated 300,000 illegal immigrants entered the United States each year.[2]

Aside from legal immigrants, the United States also allows non-immigrant foreigners to enter to visit, work or study. For most categories of non-immigrant foreigners, there are no numerical limits on entry. In 2001, almost 33 million non-immigrants came to the U.S., with about 30 million either as foreign tourists or foreign business travellers.

The United States has a recod of utilizing non-immigrant foreigners to supplement its labor force during times of need. During the 1940s, there was a critical labor shortage in the United States(particularly in the agriculture sector) caused by the Second World War. The U.S. government established the Bracero Program in 1942 to address this need. This program assisted Mexican workers entering the U.S. agriculture sector. Under this system, laborers were contracted by U.S. growers to work on farms for one growing season

[2] Boeri et al.(2002), p.171.

before being required to return to Mexico. At its peak in 1956, this program delivered 445, 200 laborers annually to the U.S. agriculture industry. However, in 1964 this program was cancelled as the mechanization of U.S. agriculture industry reduced the sector's demand for manpower and, consequently, the political support needed to keep such a program alive in the face of pressure from American labor unions.

Higher skilled workers are also brought in as non-immigrants. During the 1990's "dot-com" boom labor demand in the computer industry far outpaced the local labor market supply. Hundreds of thousands of computer workers were brought in to fill this need under H-1B temporary work visas. This particular visa was issued to persons in speciality occupations requiring the theoretical and practical specialized knowledge obtained through a specific course of higher education. The visa allows the holder to stay in the U.S. for up to six years, and even to change to an immigrant visa status if sponsored by a U.S. employer who can attest that there are no suitably qualified U.S. residents available for that particular job. In 2001, the INS issued almost 200,000 IT-related H1-B visas, 71 per cent to programrs from India.

Low-skilled workers are also eligible for temporary non-immigrant visas; however, their popularity is not nearly as great as in the days of the Bracero Program. In 2001, about 28,000 temporary work visas were issued for agricultural workers (78 per cent to Mexican laborers). Mexico also provided 58 per cent of the 72,000 non-agricultural temporary laborers that received non-agricultural temporary work visas in 2001.

The racial and ethnic composition of the United States is now more diverse than at any other time in the nation's history. In 2000, the foreign-born population accounted for about 13 per cent of the U.S. population, a percentage value that doubled since 1960. In

addition, statistics from the U.S. Department of Labor[3] indicate that 12.5 per cent of the 141 million strong U.S. workforce in 2000 was foreign born. Between 1996 and 2000, when employment in the U.S. was rapidly expanding, the foreign-born accounted for a disproportionate share (nearly half) of the increase of 6.7 million new workers in America.[4]

Although the foreign-born population in the U.S. is from a wide range of countries from all over the world, the largest group is of Hispanic origin, making up about half the immigrant population in the U.S.

Studies have also found that Hispanics have spread around the U.S. faster than any previous wave of immigrants. In fact, some regions of the U.S. (e.g., Atlanta, Georgia and Raleigh-Durham, North Carolina) experienced a 10-fold increase in their Hispanic populations in the 1990s. Furthermore, as the foreign-born share of the U.S. labor force rises, there is evidence that more supervisors in the U.S. are learning "survival Spanish", and language schools report a growing demand for "construction" Spanish, "health-care" Spanish, "restaurant" Spanish and "fire fighter" Spanish.

2.2 Canada

Social and economic changes associated with the Industrial Revolution were important factors instigating the waves of immigration crossing the Atlantic to North America in the nineteenth century. While many Europeans went directly to the United States, a

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[3] Mosisa(2002), p.3.

[4] Evidence suggests that this rate of foreign-born contribution to the U.S. labor force growth may be under-reported. In other words, it is possible that foreigners contributed *more* than half of the U.S. labor force growth during this period, ibid, p.14.

portion of new citizens, especially from the British Isles and Ireland, headed for Canada.

In 1870, Canada was a very big country with not very many people in it - only about 3.6 million. At that same time, its geographically smaller southern neighbour (the United States) had a population that was 10 times larger. Furthermore, the U.S. had just acquired Alaska from Russia in 1867, and there was a strong expansionist sentiment in Washington D.C. urging the annexation of part or all of Canada by the U.S.[5]

Accordingly, Canada's political and business leaders felt that a heavily settled west provided at least some degree of protection against an American land grab. Government steps taken to inhabit western Canada included purchasing large tracks of privately owned land for use by settlers and then launching settlement recruitment drives in an effort fill up their empty space. Immigrants were even offered a free 160 acre (or 65 hectare) farm if they moved onto Canada's prairies. These efforts were successful in attracting European and American settlers, as well as eastern Canadians, to move to Canada's west.

Unfortunately, Canada's economy suffered greatly in the 1870s and 1880s, and this discouraged many of the new settlers. Canada was actually a country of net emigration until 1896. Many new settlers as well as established Canadians left Canada to occupy more southern and economically viable regions in the United States. Canada before 1896 has been referred to as "a huge demographic railway station" where thousands of people were constantly coming and going, but with departures that outnumbered arrivals.[6]

Government investment in the Canadian west began to bear fruit

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[5] Sauvé(1997).
[6] The Applied History Research Group, 1997.

in the mid-1890s. A Canadian transcontinental railroad plus seven treaties with Indian tribes in the region made it much easier for immigrants to move to the west and to prosper there. Furthermore, the worldwide economic boom of the 1890s pushed up wheat prices, so settlers now had an economically viable commercial crop to cultivate. The Canadian government also renewed its international promotion of the West to attract immigrants. Moreover, as the United States western frontier closed in the early 1900s, many North American-bound migrants diverted to Canada, as the "last best West."

However, as the supply of immigrants to Canada started increasing, a preference for certain types of immigrants began to emerge. The Canadian Ministry of Interior was known to prefer American immigrants, as they were experienced in living in the North America frontier areas and often brought their own capital. Nevertheless, Great Britain remained Canada's traditional source of immigrants, sending about two million migrants to Canada between 1901 and 1921. Central and eastern European farmers were also actively recruited by Canada for its western provinces.

Popular conventional wisdom of the day also suggested that only the 'sturdy' Northern races would flourish in Canada. Hence, only an average of 150 Negroes per year migrated to Canada between 1901 and 1911. East and South Asians were also discouraged through such devices as head taxes or the 'continuous journey' clause in the Immigration Act. Thus, by ensuring that there was no direct steam ship service from India to Canada, most South Asians could be refused entry on the basis of this statute.

Between 1891 and 1921, the population of Canada nearly doubled. By 1920, with a settled western region and clearly established borders with the United States, Canada's laissez-faire approach to immigration had disappeared forever. Immigration policies and laws developed to

actually restrict the admission of immigrants, with many of these policies devised to protect and strengthen Canada's English and French dual heritage.[7]

The first post-World War II immigration policy was issued in 1947. It articulated a goal fostering the growth of the population of Canada by encouraging immigration which would neither alter the fundamental character of Canadian society, nor exceed Canada's 'absorptive' capacity. Although there was a prevailing belief that Americans, Britons and Northern Europeans were preferable and more easily assimilated, the supply of immigrants from these sources could not meet the economic needs of Canada's booming 1950s economy.

Accordingly, agreements were negotiated with some South Asian states for a limited number of migrants from India, Pakistan and Ceylon (now Sri Lanka). Additionally, Canadian citizens started sponsoring overseas dependent relatives for immigration to Canada, as jobs were plentiful and such family sponsorships bypassed many of the hurdles found in 'normal' immigration procedures. After World War II, over 90 per cent of migrating Italians were sponsored relatives, and Italians became the ethnic group with the highest overall rate of sponsored immigration. In fact, almost 70 per cent of Canada's post-war immigrants were Italians. Family chain migration from Italy became so popular that by 1958 Italy actually surpassed Britain as the main immigrant group.[8]

The mounting pressure of family sponsored immigration (often low-skilled migrants), plus the desire to increase the Canadian population by attracting and fairly selecting the most skilled migrants who could rapidly contribute to Canada's economy, led to the development of Canada's 'points system' in 1967. This 'points system'

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[7] ibid.
[8] Canadian & World Encyclopedia, 1998.

established nine factors or criteria for independent applicants to enable skilled and unskilled immigrants, including Third World hopefuls, to enter Canada. This system has been revised and updated and is still used in the Immigration and Refugee Protection Act implemented in 2002.

Before the adoption of the 'points system,' the top five sources of immigrants to Canada were Britain, Italy, Germany, the Netherlands and Poland. Over 30 years later, this system allowed the immigrant stream to shift in accordance with changes in migrant supply and the economic needs of Canada. Thus, in 2002, the top five source countries for immigration to Canada were China, India, Pakistan, the Philippines and Iran.

In 2002, in addition to the 228,575 permanent migrants to Canada, there were also almost 88,000 foreign workers who entered Canada to work temporarily and thereby helping Canadian employers to mitigate skill shortages in Canada. They were generally required to have a work permit, usually valid for a specific job and length of time. These temporary workers provide a wide range of skills with 29 per cent of them being professionals. Intermediate and clerically skilled workers, including seasonal agricultural workers, make up almost an identical share of these non-immigrant workers. The two largest suppliers of foreign labor to Canada are the United States, which provides 23 per cent of these 88,000 foreign workers in Canada, and Mexico, which accounts for another 13 per cent.[9]

Seasonal agricultural workers who come to work temporarily in Canada are generally brought in under the Caribbean/Mexican Seasonal Agricultural Workers' Program. This program was first launched in 1966 to address acute labor shortages during the planting and harvesting seasons. It originated following negotiations between

9 Citizenship and Immigration Canada, March 2003.

Canada and Jamaica to facilitate the entry of Jamaican workers for temporary employment during the growing and processing of agricultural products during peak periods. Trinidad and Tobago and Barbados later joined the program in 1967. Furthermore, in 1974 an agreement was signed between Mexico and Canada, so Mexican workers also became participants in the program. Finally, in 1976, the program was extended to include the Organization of the East Caribbean States (Antigua & Barbuda, Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and The Grenadines).

The above statistics on temporary workers do not include all of the foreigners who travel into and out of Canada. In many cases, a foreign national can conduct business activities in Canada without a work permit. They enter Canada for business activities without entering the Canadian labor market. Such visitors may represent a foreign business or a government, are remunerated outside Canada and their principal place of business is outside Canada.

Additionally, under the North American Free Trade Agreement (NAFTA), citizens of Canada, the United States and Mexico can gain quicker, easier temporary entry into the three countries to conduct business-related activities or investments. All businesspersons covered by NAFTA in Canada are exempt from the need to obtain approval to enter the country. This means that Canadian employers do not need to have a job offer approved by the Canadian authorities before employing a U.S. or Mexican businessperson.

Statistics from Canadian census data showed that there were 5.4 million foreign-born residents (or 18.4 per cent out of a population of 29.6 million) in 2001. This represents an increasing trend and the highest value over the past 70 years.[10] At the same time, 3.2 million

[10] *Migration News*, Vol. 10, No.2, April 2003.

workers (or 20 per cent) in Canada's labor force were born outside of Canada. Immigration has been an important source of labor growth during the 1990s with immigrants representing almost 70 per cent of the total labor force growth during that decade.

In 1992, 1994, 1995, 1996, 1997, 1998, 1999 and 2000, Canada was ranked number one (1) by the United Nations Human Development Index as the best country in the world to live. With this in mind, thousands of people worldwide apply for immigration to Canada each year. Nevertheless, the Canadian government is still concerned over a potential shortfall of one million skilled workers over the next five years. It is one of the few immigrant-receiving countries that fails to obtain its desired amount of immigrants each year.

3. East Asia

Japan has actively encouraged foreign workforce in professional and technology sectors, while it has taken a very cautious attitude toward importing unskilled foreign labor. As of late December 2000, the number of foreign workers employed in Japan was estimated at approximately 709,000 and among them the number of foreign workers engaged in professional and technology sectors was 155,000, accounting for 21.8 per cent of the total number of foreign workers. In Japan, *Nikejins* -- who are ethnic Japanese residing overseas -- are allowed to work in Japan without any restrictions and the number of *Nikejins* stands at 233,000, accounting for 32.9 per cent of the total number of foreigners. Moreover, it is estimated that there are undocumented migrant workers, which accounts for 32.7 per cent of the total number of foreign workers in Japan. The fact that there are a number of undocumented migrant workers in Japan indicates that the legitimate supply of foreign labor is not functioning smoothly, despite the high demand in the labor market. In Japan, discussions on the

introduction of the guest worker system aimed at resolving the problem of illegally employed foreigners and build a transparent management of foreigners have been under way for a long time, yet the system has still not been introduced. In addition, it is estimated that there are approximately 54,000 foreign trainees in Japan. In principle, Japan's overseas training system is aimed at transferring Japan's technologies to developing countries. However, it is presumed that some of them are utilized as workers. As of 2000, as seen in Table 2-3, the number of foreign workers excluding the number of foreign trainees is extremely small, comprising only 1.1 per cent of the total employed and 1.3 per cent of the total workforce in Japan. If the number of foreign trainees is included, the corresponding figures are 1.2 per cent of the total employed population and 1.4 per cent of the total workforce, respectively.

Table 2-3. Migrant Workers in Three Asian Countries

(Unit: 1,000 persons, %)

	No. of employed people (A)	No. of salaried workers (B)	No. of migrant workers (C)	Proportion of migrant workers	
				C/A	C/B
Korea (2003)	22,096	14,625	389	1.8	2.7
Japan (2000)	64,460	53,560	709	1.1	1.3
Taiwan (2002)	9,454	6,771	304	3.2	4.5

Source: Kil-Sang Yoo, et al. (2004); Kil-Sang Yoo and Gyu-yong Lee (2002); OECD (2003f), Directorate-General of Budget, Accounting and Statistics, Executive Yuan, Taiwan.

Like Japan, Korea has also taken a prudent attitude toward the introduction of foreign workforce, yet it has been implementing a more proactive labor migration policy than Japan. From 1991, Korea responded to shortages of unskilled labor by introducing an Industrial Trainee Program, which was benchmarked from Japan. As criticism over employing foreigners on trainee status intensified, however, the Korean government attempted to abolish the Industrial Trainee

Program and introduce a guest worker system. Faced with strong opposition from businesses, which wished to utilize foreigners at low wages and insisted on maintaining the Industrial Trainee Program, however, efforts to enact legislation for the introduction of a guest worker system failed on many occasions. In August 2003, the government and businesses finally agreed to introduce a guest worker system, while temporarily maintaining the Industrial Trainee Program. This led to an enactment of legislation for introducing a guest worker system, opening a way to employ unskilled foreign workers on worker status as from August 2004.

As of late December 2002, the proportion of undocumented migrants among all foreigners residing in Korea reached 79.8 per cent. However, the figure decreased as low as to 35.5 per cent as of December 2003, as the government launched a strong crackdown on undocumented migrants from October 2003 to facilitate the implementation of a guest worker system and also implemented measures to legalize undocumented migrant workers who meet certain requirements. The Korean government is making a multi-faceted effort to reduce the proportion of undocumented migrant workers below 10 per cent with the implementation of a guest worker system as a turning point. As of late December 2003, as shown in Table 2-3, the number of foreign workers residing in Korea stood at 389,000, comprising 1.8 per cent of the total employed people and 2.7 per cent of the total number of salaried workers in Korea.

Taiwan and Singapore have pushed for a policy to employ foreigners based on a guest worker system to respond to labor shortages in their domestic labor market. The guest worker system for foreigners in Taiwan and Singapore is different from that of Western countries in the following areas. First, instead of setting quotas for foreign labor, they adjust the demand for foreign workers through the levy system and control the introduction scale of

foreigners by setting foreign labor dependency ratio compared to national workers by sectors. Second, in order to prevent permanent settlement of foreign workers and guarantee their return to their home countries for a certain period of employment, they implement a "security bond system" under which employers hiring foreign workers are mandated to put up security bond to the government in advance and they can get the money back when foreign workers return to their home countries. Third, instead of public organizations, they allow private employment agencies, i.e. profit organizations, to import foreign workforce. This system has an advantage in introducing foreign workers desired by employers in a prompt manner, yet has disadvantages in that it could cause foreign workers to overstay to compensate for excessive fees they paid to get jobs. As of 2002, the number of foreign workers residing in Taiwan, as shown in Table 2-3, accounts for 3.2 per cent of the total employed people and 4.5 per cent of salaried workers.

Chapter 3

LABOR MIGRATION SYSTEMS

1. Types of Labor Migration Systems

Although labor migration systems often vary greatly from one country to another, they can still be broadly categorized into one of two types of systems: supply-driven and demand-driven systems.

With supply-driven systems, the admission process is initiated by the migrants themselves and is followed by a screening process to choose the best applicant from the pool of potential immigrants. In Canada, Australia and New Zealand, for example, a points system is used to evaluate the combination of education, employable skills, language ability and other characteristics that these countries view as desirable for the successful integration of the candidate immigrant into their societies. Points are also frequently awarded for other ties to the new country, such as the presence of family members already living there. Nevertheless, points systems are primarily designed to test the likelihood of economic success. An applicant who meets these requirements and achieves the minimum passing points score, is admitted and granted authorization for employment.

On the other hand, in demand-driven systems, such as the one used in the U.S., employers initiate the process by first requesting permission to

Advantages & Disadvantages of a Points System

Advantages

Transparency

- Allows a self-assessment of the migrant's chances of being able to migrate;
- Enables policy makers and voters to better understand how immigrants are selected;
- Helps to ensure that the system is implemented consistently for all applicants.

Efficiency

- Promotes "self-selection", thereby preventing case overloads;
- Efficient means of assessing skills from which the host country will benefit over the long term.

Economic benefits

- Selects migrants who have a mix of skills. The test awards points to an applicant in such areas as work experience, education and language ability - measurable qualities that may help predict long-term success in the labor market;
- The cost of skill acquisition is mostly borne overseas rather than by the selecting Government.

Other benefits

- A country may add elements designed to meet its specific needs. For instance, if a country wants to populate a certain geographical area with skilled workers, the host country could give extra points to migrants willing to settle in designated areas;
- A point system enhances the "offer" made by the host country to the potential migrant;
- Under a "pooling" system, applicants who did not make the pass mark are kept in anticipation of an official reduction of the qualifying score;
- Evidence of better labor market outcomes for skilled immigrants relative to unskilled immigrants;
- Skills transfer to residents.

Disadvantages

Unclear long-term economic benefits

- Skilled migration may discourage local provision of training;
- Potential for over-supplying skills to the market;
- Evidence that the difference in earnings between family-based migrants and migrants selected for their skills disappears after 10 to 20 years;
- A points test cannot discern gradations of skills within a profession (other than work experience), an employer can, e.g., two journalists might be assessed similarly on a points test if their training and levels of experience are comparable, but one journalist may nevertheless be a better writer than the other. A computer programr who knows several programming languages would look the same on a points test as a programr who is adept in only one;
- Limited predictability of successful applicants. A person's potential for economic contribution is also governed by less tangible factors such as imagination, creativity, adaptability, motivation and resourcefulness, which a points test is not necessarily able to gauge;
- Measurable characteristics have a determining effect on the rate of employment of migrants; however, those with characteristics that are positively correlated with economic success fare better whether they are admitted through a points system, for humanitarian or family reasons, or by some other method.

Problem with validation of skills or qualifications

- Applicants' claimed qualifications must be validated;
- Possible problems with skills recognition or under-utilization of skills obtained overseas;
- Entry of unskilled or semi-skilled accompanying persons.

Political difficulty in starting such a program

- In the U.S., employers prefer the current relaxed and speedy system for issuing work permits (H-1B) for highly qualified foreign workers and are reluctant to support a points system that involves "uncertainty".

Source: Adapted from IOM, 2002.

hire foreign workers. This triggers a process for admitting the requested migrants. In demand-driven systems, governments frequently require employers to demonstrate that the migrant workers will not displace native workers from jobs or adversely affect wage or working conditions.

In most demand-driven labor migration countries, migrants are generally admitted as temporary workers and granted work authorizations for limited specified periods. Usually, they have no right to remain in the destination country beyond the period of authorized employment. However, this condition is often not applied to the more highly skilled workers. Furthermore, some countries have provisions to allow an international migrant to stay indefinitely if a permit has been renewed several times. There are also mechanisms for the direct admission of foreign workers for permanent settlement in the so-called traditional immigration countries of Canada and the USA.

Generally, the movement of the personnel of international companies from one country to another is a kind of demand-driven migration, and there are usually very few barriers to this type of admission. Likewise, companies requesting authorization to hire highly skilled foreign workers rarely encounter barriers to their entry.

Very restrictive admission policies are, however, typically directed towards the formal admittance of lesser-skilled international migrants for employment purposes. This is typically attributed to the fear in many countries that lesser-skilled immigration may depress local wages and working conditions and may actually take jobs away from native workers.

2. How to Measure the Need for Immigrants

Regardless of the type of labor migration system used in a particular nation, its fundamental *raison d'être* is to address a perceived

labor shortage. Accordingly, the starting point for any comparative analysis of migration systems has to include an evaluation of how such labor shortages are detected, assessed and predicted, as the perceived importance and duration of a labor shortage motivates authorities to introduce a labor migration system.

This section reviews some of the data sources based on which labor shortages are measured in selected countries and also the findings of such data sources.

Generally speaking, labor shortages are difficult to forecast. European labor market needs are currently determined in many different ways. It is quite possible for shortages to exist in one sector of an economy, or even in specific occupations, while overall unemployment is high. However, when assessing the tightness of a labor market, one must recognize the limitations of conventional sources of information on this topic. Specifically, (1) employer reports and surveys have to be treated with caution, as they are concerned with recruitment difficulties and not necessarily labor shortages per se. On the other hand, (2) sectoral and occupation-specific studies are much more precise snap-shots of the current situation, but are limited in their ability to accurately predict economic expansion or contraction and the related labor demand.

Hence, in addition to employers' reports and sector-specific studies, also reviewed here are occupation or sector-specific unemployment rates and macro economic studies that some European countries carried out.

Although some private sector employers may have definite opinions on this topic, they are frequently biased by their somewhat narrow assessment of data concerning the labor market or vacancies, and they tend to articulate views that reflect their immediate business interests. Moreover, businesses often take corrective action themselves by adjusting production, or by modifying their minimum

hiring qualifications when faced with a shortage of qualified workers. Accordingly, they may not report a shortage of workers in their industry.

Therefore, rather than solely relying on data supplied by employers, it is usually a better strategy to assess the tightness of labor supply by comparing actual employment rates with structural unemployment as labor market rigidities can themselves be a major cause of persisting unemployment combined with wage inflation.[1]

Unfortunately, information on structural unemployment is not readily available. An alternative indicator that can be relied on is to express unemployment rates in relation to vacancy rates for a particular field (i.e., the ratio of the number of vacancies and the number of employed people in a particular occupation). This is done in France with the 'occupational job seekers ratio', which is defined as the ratio of the number of people seeking employment in a specific occupation to the total number of both job seekers and employed workers in that particular occupation. This ratio, which was designed to provide a disaggregated measure of the tightness within the various labor markets, indicates that tightness has increased in the French construction and mechanical industries' labor markets (Direction de l'animation de la recherche, des études et des statistiques, 2001).

A similar instrument has recently been launched in the United States. The United States Bureau of Labor Statistics now publishes data under its Job Openings and Labor Turnover Survey (JOLTS)

[1] Research on regular job vacancy surveys indicates that labor shortages are not necessarily cyclical phenomena and are instead believed to be caused by a variety of factors, while being relatively insensitive to short- term economic cycles. In Europe, recent labor market data indicate that the labor shortages have not only become more and more acute over the years, but are going to remain in place despite the economic downturn that commenced in 2002. This will be particularly so in regard to the service sector, which is frequently cited as an area where European firms have trouble in recruiting workers (OECD, 2003e).

program that provide demand-side indicators of labor shortages at the national level. The JOLTS program collects information on the availability of unfilled jobs, which is an important measure of the tightness of labor markets and is a parallel indicator to more general measures of unemployment.

As the problems associated with an ageing working population loom larger[2], a number of European countries have commissioned macro level studies in order to evaluate current labor shortages. These studies estimate the availability of unused labor among the native and immigrant inactive and unemployed population, as well as the long-term need for immigrant workers. The findings of these research projects generally conclude that immigration can actually have long-term welfare-enhancing effects. Furthermore, such studies also tend to assign a high priority to efforts to mobilize the resident labor supply and to integrate the foreign population into the labor market.

In Germany, similar research (Süssmuth, 2001) has brought about an entirely new immigration law, the implementation of which is still

[2] Demographic changes are expected to aggravate the tightness of the European labor markets as the size of the working population shrinks. Consequently, policy makers will consider a variety of instruments to prepare for the decline in the working population. These policies could include increasing labor participation rates, postponing retirement ages and stimulating the labor market participation rate of women and of immigrants. Among these options, increased immigration has the immediate advantage of positively affecting the population's age and composition because of the generally younger age structure characteristic of economic migrants. As the fertility rate among immigrant women is often considerably higher than for local women, this can eventually contribute to stronger long-term population growth. However, the role of migration policies in addressing Europe's demographic challenges is limited and can only complement other policies. Furthermore, migration policies have historically been subject to a number of practical and political constraints (OECD, 1991). In fact, one of the more important considerations to be taken into account when attempting to utilize migration policies in order to address the shrinking European working population is that unrealistically (either politically or practically) high levels of immigration would be needed to produce a noticeable impact on the structure of Europe's ageing population (UN, 2000).

subject to lively debate. Some of its provisions include an adjustable migrant selection mechanism that rewards human capital, as well as mechanisms for attracting highly skilled workers.

Conversely, studies outside of Germany have generally not focused on the need for facilitating selective immigration through new laws. Nonetheless, such research is still often based on the idea that immigration might alleviate labor market tightness. In the United Kingdom, for instance, the Home Office utilizes existing surveys and data in order to identify and evaluate current and future labor market shortages, and to ultimately assess labor demand and skill needs (Department for Education and Skills, 2001). Moreover, in the U.K. evidence of labor market tightness is documented before a decision to facilitate the immigration of people with a particular set of occupational skills is taken and implemented.

Even though such macro economic studies may help to ascertain the overall positive effects of migration, or to establish the consequences of ageing and the expected effects of raising participation rates and lowering retirement ages on labor supply, they are still unable to calculate how many immigrants could and should be recruited into a country in order to meet labor market needs. Moreover, such macro-economic studies generally cannot predict the time during which such identified labor needs will last.

Answers to such questions are best sought by analysing sector level labor market developments or changes within specific occupations. Studies like these often try to determine the severity of current labor market tightness and how the situation may change in the near future. Various studies dealing with the shortages in the IT sector are examples of this type of research. However, such studies generally do not provide any assessment of the need for labor migration nor do they refer to migration policies.

Nevertheless, occupational level projections are generally much

more detailed than macro economic studies, and are valuable in assessing labor market trends. These kinds of projections can be broadly categorized into two groups. The first are the numerous studies that project employment growth, either for two, five or ten years ahead, but which do not provide any indications regarding labor shortages. An example of such research is the *Occupational Outlook Handbook* (Bureau of Labor Statistics, 2002) published annually in the United States. The second category of projections are those reports that advise and inform college graduates on labor market prospects. When well done, such surveys are particularly useful when attempting to forecast labor market tightness.

3. Labor Migration Policies Adapted to a New Kind of Labor Shortage

The situation faced by the selected countries today is quite different from that which confronted them immediately following the Second World War (see above, Historical Development). Since the mid-1940s, the employment structure by level of qualification has gradually evolved into a system of relatively highly qualified jobs. Additionally, by the end of the 1990s the IT sector had fully emerged and developed into an important sector in its own right, further reinforcing this tendency. Moreover, it is reasonable to conjecture that the ageing of the EU's population implies that the demand for highly qualified workers will continue, especially in the case of medical professionals. Therefore, it may be expected that the labor shortages in these countries in the next couple of decades will be most intense with respect to skilled and highly skilled jobs.

It is within this context that many countries have made legislative changes to facilitate the entry of skilled foreign workers. Most of these amendments to existing laws simply introduced greater

flexibility to existing migration policies. However, in some cases specific programs have been launched. It is interesting to note that these changes have not attracted very much criticism as could have been expected during an economic downturn that started in Europe in the second quarter of 2001.

In France and in the United Kingdom, decisions on foreign labor recruitment are generally made at the national or regional level in order to meet the demands of the labor market. The level of foreign labor recruitment is based on various labor market testing criteria, and there is a basic requirement that the wages for foreign workers must be similar to those paid to nationals with comparable skills working in the same occupation (a requirement common to most developed countries). However, for some occupations currently in demand the recruitment procedures have been streamlined to exclude "labor-market testing". Examples of cases where such modified recruitment procedures are used include IT specialists and, in some instances, biotechnology, medicine, healthcare and education professionals. In addition, France, together with some other European countries, has also changed its laws to allow foreign students to switch their visa status upon completion of their training allowing them access to the local labor market.

On the other hand, in the United States, which has a permanent immigration policy based instead on family preference, large numbers of highly skilled foreign professionals are allowed to work with renewable three-year non-immigration visas (H-1B). This temporary immigration of skilled professionals is subject to an annual quota that was increased from 115,000 to 195,000 until 2003. Other countries, such as Australia, Canada and New Zealand, which regulate permanent immigration with a points system that emphasizes an immigrant's employability (age, education, skills, work experience), have also recently taken measure to facilitate temporary immigration of skilled

labor.

Although the lion's share of migration facilitation measures taken has been directed at skilled workers, some countries (e.g., Italy and to a somewhat lesser degree the United States) have also allowed entry of unskilled foreign labor, chiefly in the agriculture, building and civil engineering, and domestic service sectors. Furthermore, visas for seasonal workers have also become quite common in several EU member countries, notably the United Kingdom.

4. Selection Mechanisms for Foreign Workers

It has already been pointed out that a great variety of employment-related immigration policies have been implemented among the countries reviewed in this report. The differences in these policies can often be traced to distinct overarching national philosophies regarding immigrant labor. Other differences in the implementation of immigration policies can be attributed to the unique labor requirements faced by each country. Differences appear also at the most practical level, in how nations actually choose or screen immigrants.

Whereas the South Korean migration system focuses on temporary labor migration, U.S. and Canada are 'countries of immigration' with a long-established tradition of permanent migration. The other selected countries are situated somewhere between these two rather distinct systems.

This section briefly reviews the main characteristics of immigrant selections mechanisms used by the selected countries. Detailed labor migration programs are included in Part II. Although some of these mechanisms are often associated with one or two particular countries, they are not exclusive to such countries. Countries use more than one tool, and combine particular features of several methods in their

attempt to produce the desired effect.

4.1 North America

Countries such as Canada and United States have long-established mechanisms for, and experience of admitting foreign workers for various employment purposes, both permanent and temporary.[3] With respect to labor migration, permanent visas are rather limited while temporary admission of foreigners has been increasing to the extent that in recent years more and more permanent immigrants initially enter through temporary programs and subsequently change their status. A growing convergence in admission procedures for temporary migrants in these traditional settlement countries as well as in Australia and New Zealand can also be observed.

These countries tend to consider not only the current and projected labor shortages, but also other concerns including demographic, economic and social developments. For instance, Canada is the only country where the actual inflows are below the planned ceiling for admission and where the government expends more resources on immigrants' integration than the prevention of irregular entries or for refugee processing. In these countries those who are admitted under a temporary status can, under certain circumstances, change their immigration status.

Nevertheless, both systems are also geared to respond to the needs of their respective labor markets. As already noted earlier, one of the major differences between these migration systems is that the U.S. system is demand-driven while the Canadian system is supply-driven. The former is based on detailed categories of preference for

[3] It should be noted however that in both countries the majority of entries are still of family migration, refugee flows, and others.

admission of foreign workers, whereas the latter is based on the applicant's qualifications as measured against a set of pre-determined criteria.

To be admitted as a permanent resident in Canada, anyone who is neither a family member of a Canadian citizen or a permanent resident, nor a refugee, has to submit to a points test to assess the individual's potential for both economic success and social integration. In the U.S., anyone who is neither a family member of a U.S. citizen or permanent resident, nor a refugee, needs to also show evidence of an offer of employment. Even so, some categories remain subject to quotas.

Whereas in Canada it is the public authorities who, upon receiving applications, proceed with the immigration procedure, in the U.S. it is the employers who initiate the process.

4.1.1 Employer-driven Selection - United States

The U.S. Immigration Act of 1990 established an elaborate preference system for both permanent and temporary immigrants.[4] The employment-based immigration categories laid out in this law constitute what is essentially an employer-driven immigration system.

Employers choose immigrants for economic reasons, and a job offer is essential to acquire permanent residence status in the U.S. under this system. Thus, most of those admitted to permanent residence in the employment-based categories are already in the United States. Such a system has some clear advantages and it is frequently argued that employers are the best placed to judge the economic contributions that an individual can make. Not surprisingly, employment rates among these immigrants are very high since they

[4] 'Immigrants' in US immigration law is defined as persons who are lawfully admitted to the US for permanent residence. Those aliens who are lawfully admitted to the US temporarily are 'non-immigrants.'

already have jobs and, generally, a supportive employer.

All temporary worker programs in the United States are also demand-driven and U.S. employers must submit petitions on behalf of foreign workers. However, the requirements for employers who intend to hire foreigners temporarily vary. For instance, employers petitioning to hire low-skilled workers through the H-2A and H-2B programs must first show evidence that they have been unable to hire U.S. workers for those jobs. In some cases, they must also provide support to foreign workers such as free housing and transportation. In contrast, employers wishing to hire foreign professionals through the H-1 program are simply required to attest that they have met certain labor conditions. In the case of professionals admitted under NAFTA and intra-company transferees, the foreign worker's education, skills and/or wage levels are sometimes considered sufficient to prevent adverse domestic impacts.

The most important categories are those for specialty occupations, which require a bachelor's degree (H1B, up to six years residence), intra-company transferees (L1, five to seven years residence), and treaty traders and investors. Close to 100,000 unskilled workers entered in 2001 under the H2A (temporary agricultural workers) and H2B (temporary workers providing other services) visas.

4.1.2 Points Test and Employment Authorization - Canada

The permanent admissions system in Australia, Canada and New Zealand operates in part by implementing a points test to grade and select immigrants on the basis of a system that reflects their potential for employability and integration in the receiving country. In the case of Canada, prospective immigrants who do not have close family ties or an established job connection, can still be granted admission based on the number of points they score regarding their skills, age and English/French language proficiency (see Annex 7).

Research in Australia found that a points system offered a number of advantages in the administration of immigrant applications. These include transparency, consistency and efficiency in the selection of immigrants, as the selection is based on an assessment of skills from which the host country is expected to benefit over the long term. The shortcomings include the fact that a points test cannot discern gradations of personal skills within a profession (other than length of work experience). Furthermore, a points system cannot take into account that a person's real potential for economic contribution is governed by less tangible and gradable factors such as imagination, creativity, or adaptability.

By law, those who are neither Canadian citizens nor permanent residents must obtain employment authorization to work in Canada. If they have a job offer and proof of qualifications, they can apply for the authorization, which is not subject to quotas and does not operate on a points system. Unlike in the U.S., where the employer needs to obtain a labor certification to employ a foreign worker, in Canada it is the responsibility of Human Resources Development Canada (HRDC) to ensure that there is no Canadian citizen or permanent resident available to fill the position.

However, the HRDC tries to facilitate the entry of labor migrants to reflect the current labor market demands by establishing labor shortages in close consultation with employers and other stakeholders in the economy.

4.2 Europe

European countries have recourse to a variety of instruments for the admission of foreign workers from non-EEA countries for employment purposes. The work permit systems, the main and most common means of entry for employment in European countries, are

extremely diverse regarding their purpose, requirements and their legal rules and provisions.

In Europe, employment related immigration is usually of a temporary nature and the governing policy objectives are, therefore, distinct from other immigration policies. Their objectives are based on labor market requirements and generally attempt to respond to the perceived demand for labor that cannot be met locally. Recruiting conditions may vary significantly depending on the respective countries and programs. France, for instance, requires both a minimum salary and education levels for foreign workers. The United Kingdom creates shortage occupation lists, which ensure that those occupations have facilitated work permit processing procedures. In the United States quotas are used to limit skilled migrant workers. Similarly in Italy quotas are established for mostly non-skilled workers in agricultural, construction, public works and other industrial sectors. Germany also uses quota system under the work permit system.

Even though the objectives of any temporary labor migration policy can be modified during an economic downturn, such a policy can still be a part of a broader long-term strategy. Some programs focus on specific occupations and usually seek to alleviate short-term imbalances affecting the local labor market, while on the other end of the spectrum there are more general programs that act to facilitate the mobility of highly skilled workers. Programs such as these are framed with a larger perspective that goes beyond current short-term labor requirements and acknowledges the reality of the globalization of the labor market for highly-skilled jobs. Policies based on this viewpoint are often found in programs that, for example, deal with the mobility of employees within multinational firms or business investors.

4.2.1 Flexible Selection Categories - U.K.

The United Kingdom provides one of the best examples of a work

permit system. As the main labor migration channel for entrance into the U.K., its Work Permits Scheme targets medium- and high-skilled workers. It was designed to facilitate the recruitment of foreign nationals (specifically non-EEA nationals) for employment in posts that cannot be filled from the resident labor supply. A minimum level of qualification is required, although these requirements can be altered and, in fact, have recently been lowered.

Work permits are granted for up to five years and remain specific to the employer. Nonetheless, it is always possible to ask for a new work permit, in which case no new labor market test is required even if the new application relates to an occupation not included in the 'shortage occupation list' (discussed below). This labor migration channel also allows the entry of dependants, although they are not allowed to work in the U.K. without a separate work permit application. There are no quotas on the number of work permits issued, and admissions under this program have steadily increased since 1994. In 2000, the number of entrants to the U.K. with such permits (67,100) accounted for 35 per cent of all labor migration entries.

The U.K. system is also quite flexible, and can even take into account temporary labor shortages for certain types of occupations. A "shortage occupation list" has been regularly published and updated since 1991 by the Department of Education and Skills, and applications for permits for the listed occupations follow a more simplified work permit processing procedure. Typically, this shortage list refers to a number of skilled posts in the fields of healthcare, education, engineering, biotechnology and information and communication technologies.

The preparation and modification of this list demonstrates the Government's efforts to formulate an informed migration policy based on research, statistics and stakeholder consultation. Entries on this list are based on decisions made following consultations with informed experts and/or on specialized studies, especially surveys of

employers. Furthermore, the government is also trying to improve sectoral labor market analyses by establishing of a number of sector-based panels to review shortages on an ongoing basis.

These sector panels now meet regularly with representatives from industry, key employers and representatives from relevant Government departments in order to assess issues such as levels of training, recruitment, skills and pay. There are currently six (6) Sector Panels covering ITCE (Information Technology Communications and Electronics), health, engineering, hotel and catering, teaching and finance. The use of the shortage occupation list in the IT and health sectors has had significant impacts not only on the numbers of permits issued, but also on the geographical distribution of work permits overall. It is also important to note that the United Kingdom was the only country to respond to the recent downswing in the new technologies and communications sector by removing the related occupations from the shortage occupation list. The U.K. was able to adjust to new market realities very rapidly, while other industrialized countries maintained their previously introduced policies for recruiting highly skilled professionals in this sector even as the demand for such labor evaporated.

4.2.2 Bilateral Agreements – Italy, Germany

The conclusion of bilateral agreements is another selection mechanism favoured by some European countries. Bilateral agreements are designed to ensure the transfer of labor from one country to another. They usually include the aims of the agreement, a definition of the labor concerned, the admission criteria, the terms of migration, the status of labor migrants, fair and equitable treatment clauses and annual quotas, where applicable.

Bilateral agreements, which are managed mostly by public authorities, both central and regional, present some advantages as

effective management tools. They can be customized for specific purposes and categories of migrants and can help to curb the flow of irregular migrants. Both sending and receiving countries share the burden of ensuring adequate living and working conditions for migrant workers, the monitoring of the terms of the agreement and a more active management of the pre- and post-migration processes. A recent OECD study in 2003 concluded that bilateral labor agreements have a positive impact on overall economic growth in host countries by providing flexibility for the labor market.

Italy, like the U.K., uses bilateral agreements to obtain necessary seasonal workers.[5] The Italian labor market is characterized by sectoral and regional fragmentation with much of the growth and demand for employment coming from very small firms and enterprises for low-skilled workers.

Bilateral agreements on migration, usually signed after a readmission agreement, are specifically related to seasonal work. Albania was the first country to sign such an agreement in 1997, together with a readmission agreement. Tunisia is the only other country to have signed such an agreement with Italy in May 2000. Tunisia had already addressed the question of readmission in an exchange of notes in mid-1998. Preferential quotas not exceeding 25 per cent of the overall quota are granted to countries actively involved in the fight against illegal migration to Italy.

Germany also uses bilateral agreements with sending countries. Germany signed bilateral agreement with Italy in 1955. After that bilateral agreement on migration has rooted as a tradition on Germany. Now thirteen middle and eastern European countries send

[5] Like the U.K., Italy also recruits foreign workers through a work permit system initiated by employers who have to guarantee adequate housing and the repatriation cost. The number of persons admitted is specified in annual quotas divided according to region, type of labor, job category and nationality.

Bilateral Agreements

Definition

All forms of arrangements between states, regions and public institutions that provide for the recruitment and employment of foreign short or long-term labor. States may use different titles for these agreements, such as employment treaties, labor agreements, recruitment treaties, migration agreements, agreements for the exchange of labor, etc., and this reflects the broadening of their content and mission.

Contents of a Bilateral Agreement

Bilateral agreements are designed to ensure the transfer of labor from one country to another. They usually include the aims of the treaty, the definition of the labor concerned, the admission criteria, the terms of migration, the status of labor migrants, fair and equitable treatment clauses and annual quotas (if applicable).

Trends

- Over 150 wide-ranging bilateral treaties are currently in force in OECD countries;
- The number of bilateral investment treaties quintupled in the early 1990s as a consequence of the newly opened borders of the countries of Central and Eastern Europe;
- A new wave of agreements appeared at the beginning of 2000 reflecting labor shortages in some former sending countries, e.g. Italy.

Characteristics

- In most of the Asian bilateral employment agreements the selection and transfer of workers is administered by private recruitment agencies (this is stipulated in the agreements), in other regions the public administration (central and/or regional) controls the process. There is substantial evidence that the involvement of government authorities in the administration of the process guarantees a better protection of workers, lower cost for the beneficiaries and stronger control over the performance of employers. Criticisms of private recruitment agencies include excessive charges, the failure to provide socially protected jobs and encouraging illegal migration;
- In the major European sending countries (Poland, Hungary, the Czech Republic, Bulgaria and Romania) the public labor offices recruit more labor for positions abroad than the private ones.

Impact

Impact assessments in receiving countries consider the question of how such agreements affect domestic workers, employers, the sectors involved, bilateral trade and investments and the ability to control irregular immigration. Viewed in terms of current economic realities, the answers to these questions can form the basis for a sound public policy.

- Overall economy - Bilateral labor agreements have a positive impact on economic growth in receiving countries by injecting flexibility into the labor market;
- Business sector - While large multinational companies are not active players in such arrangements, some of them benefit from project-tied bilateral treaties, e.g. in many countries they enjoy specific provisions for intra-corporate transfers. Agreements give opportunities to a broad range of companies, from large multinationals to small family enterprises;
- Labor market - During periods of economic growth the competition with domestic labor is not particularly noticeable and foreign workers can easily be absorbed by the labor market. The situation changes when the labor market situation is less favourable and competition intensifies if foreign labor is concentrated in certain sectors and/or regions.

The public will accept the short-term employment of foreign workers only if the labor market situation is taken into consideration, and bilateral agreements can serve this purpose. In most of the agreements the labor certification of employment opportunities ensures that domestic workers have first access to employment opportunities. Consequently, the domestic workforce is not negatively impacted so long as the foreign workers admitted are reimbursed and treated in a fair and equitable manner;

- Migration - The migration impact of bilateral treaties very much depends on the employers' behaviour. If it is in their interest that their workers return home, the control by public authorities is more successful and the agreements do not open the door to illegal migration. Empirical data indicate that bilateral agreements have a strong impact on the migration behaviour of migrants. In all cases there is a clear wish for longer-term contracts and/or easier access to new ones. The desire for permanent residence abroad, however, is marginal. This could be further substantiated by the fact that most of workers remit a percentage of their wages or invest in real estate in their home countries. With respect to control of irregular immigration, this can best be achieved through the development of policies that recognize and respond to legitimate labor shortages in the economy. Bilateral agreements are important tools of such policies.

Advantages

- Can be customized for specific purposes and categories of migrants (e.g. Italy, to curb the flow of irregular migrants);
- Both sending and receiving countries can share the burden of ensuring adequate living and working conditions, the monitoring of the agreement and a more active management of pre- and post-migration processes;
- Effective tool of migration management.

Source: Adapted from OECD, 2003b.

their workers to Germany based on bilateral agreements.

4.3 East Asia

Korea, Taiwan and Singapore in East Asia all have employer-driven foreign labor selection mechanisms. Taiwan, Singapore and Korea which are implementing a guest worker system for foreigners adopt demand-driven systems where employers take a lead in introducing foreign workers. Under the system, employers wishing to hire foreign workers are obligated to make an effort to hire national workers first for a certain period of time and permit for foreign worker employment is granted only when they fail to employ national workers.

In Taiwan and Singapore which have implemented a guest worker system for a long time, private employment agencies of labor-

importing countries sufficiently secure database on resumes of foreign workers seeking employment from private employment agencies of labor-sending countries, and provide the data to employers who are granted permission for foreign worker employment. Based on the information, employers select and hire foreign workers. On the other hand, Korea signed bilateral agreements with labor-sending countries and based on the agreement, in the first place, government organizations of sending countries recruit applicants wishing to get employed in Korea several times higher in number than designated numbers of foreign workers by countries and notify the results to Korean government organizations. Consequently, employers who are granted permission to employ foreign workers in Korea select and hire suitable applicants from the pool of foreign workers possessed by the government. In other words, Korea blocks the intervention of private employment agencies in the process of selecting and introducing foreign workers based on a guest worker system and instead allow public organizations to take charge. However, as for the introduction of industrial trainees, the Korean government allows employer organizations such as the Korea Federation of Small Business and the Construction Association of Korea to directly select and introduce trainees, and allocate them to companies wishing to accept trainees on a computer random selection basis.

In the case of Japan, as for foreign workers in professional and technology sectors, the demand-driven system is adopted where employers play a leading role in introducing them. However, as for *Nikejins* or ethnic Japanese living abroad, who are major sources of foreign workers in Japan, Japan adopts the supply-driven system where *Nikejins* are allowed to enter Japan regardless of whether they have employment contract or not. Under the circumstances, *Nikejins* can find jobs after entering Japan or get employed before entry through their relatives (Kil-Sang Yoo and Gyu-yong Lee, 2002).

Concerning overseas trainees introduced to Japan based on overseas training programs managed by private organizations, employer organizations such as the Chambers of Commerce receive applications for trainees from member companies and request the government or public organizations of trainee sending countries to recruit applicants 3-5 times in number. Once applicants are recruited, representatives of trainee accepting companies and employer organizations visit sending countries to conduct interviews and select final trainees. In other words, Japan also does not allow private employment agencies to intervene in the process of introducing overseas trainees and instead allows employers to visit sending countries and select trainees through interviews.

5. Some Management Issues Involved in the Selection Processes

All programs that attempt to address labor market shortages through immigration have their limitations. Specifically, they are bound by the rules of the immigrant selection process itself, and/or when they are obligated to observe specific agreements on international mobility. Accordingly, when attempting to evaluate the importance and the efficiency of any particular program for recruiting foreign labor, a fair assessment can be made only after reviewing the program's own particular objectives.

5.1 Establishing the Recruitment Targets

In an effort to establish the recruitment need for foreign labor, most of the selected countries simply calculate and impose a yearly immigration quota. Canada and the U.S. apply annual ceilings, planning levels or quotas to the annual number of permanent

admissions. Italy calculates a total quota, which is then broken down according to regions and industries. These calculations take into account economic forecasts, employer reports and regional unemployment rates. Italy also often fixes quotas in bilateral agreements with sending countries, whereas in the U.K. quotas are only used in part. Germany uses quotas by programs and total quota for each sending country. Taiwan and Singapore do not set total quota of migrant workers but set dependency ratio, and control the demand for migrant workers by the levy to the employers for employing each migrant workers.

The decision-making process for determining the size and distribution of quotas involves a number of different participants. In Italy, definitive numbers and the categories and nationalities of foreign workers allowed to enter the country are decreed annually by the Prime Minister. To determine the numbers and categories, the Ministry of Welfare carries out consultations with employers' associations, trade unions and other stakeholders. At the same time, the local and regional labor offices also submit their own estimates for foreign labor demand at a local level.

In the United States, the Immigration Act of 1990 sets the number of visas available for permanent immigrants entering the U.S. for employment reasons at 140,000 per year, including family members.

The establishment of an immigrant ceiling also serves planning purposes. However, the setting of an annual immigration ceiling could also become an occasion for public discussion and/or political dispute of the relative merits of increasing or decreasing immigration.

The determination of such quotas or ceilings does not guarantee that the target number of immigrants will be reached. For example, in the U.S. at present only about half of the annual 140,000 available visas are actually filled and there is a growing backlog of applicants waiting for approval. The reason for this backlog is the complicated

bureaucratic process involved in approving labor certifications and applications for admission. Specifically, in order to hire a foreign worker as a permanent resident, an employer must launch a recruitment process in accordance with Department of Labor (DOL) guidelines and which demonstrates that no similarly qualified U.S. worker is available. This process normally requires an attorney's help, and approval can take several years, as it must first be approved by the DOL and then by the Bureau of Citizenship and Immigration Services. Employers and immigrants generally become quite frustrated by the delays and tend to use temporary visa categories to bridge the gap between the decision to hire the worker and the government's grant of resident status.

5.2 Identifying the Best Candidates

Tradeoffs are often needed if programs are to achieve their objectives. In order to identify and choose optimum immigrants from a large pool of candidates, selection must be based on some quantifiable criteria to determine the "right candidates" that best match a country's migration policy objectives. Clear guidance is also needed to assess information provided by the immigrants themselves. Politically this is not always an easy task, particularly when the purpose of the migration policy is to support the long-term development of the labor market. The Canadian authorities, for instance, recently modified their points system in order to better assess those skills that are most important for the long-term integration into their labor market and into Canadian society as a whole (e.g., linguistic capacity, age, job experience). This modification, however, acted to the detriment of skills more directly geared towards the immediate short-term needs of the labor market.

Furthermore, the more detailed the selection criteria are, the more

costly the selection procedure becomes in terms of human and financial resources and recruitment time. Again, there must be tradeoffs between cost in terms of time and efficiency, in addition to any other targeted measure. Hence, countries that have chosen a point system must devote significant public sector human resources to the processing of the applications, as well as to the initial interviews, especially when attempting to test linguistic abilities. In addition, the overall effectiveness of the selection criteria itself needs to be monitored with the help of appropriate statistical tools.

In cases where employment-related immigration policies focus mainly on short-term labor-market adjustments, as is the case in European countries the Republic of Korea, Taiwan and Singapore difficulties in the selection frequently appear. In such cases it is important to be able to adjust selection procedures accordingly. In practice, however, it always takes time to properly validate qualifications and work experience and/or to assess language skills. Therefore, there is always the temptation to reduce controls and relax the selection criteria for the sake of adaptability and flexibility. However, this also reduces the effectiveness of the selection process.

A way to address this issue is for governments to delegate responsibility for part of the selection process (generally the validation of skills) to employers, while maintaining their own responsibility for determining the basic admission criteria. The advantage of such an arrangement would be that the recruitment of foreign labor is (theoretically) more closely linked to labor market needs. Furthermore, the time needed to process applications may be significantly reduced. However, it is possible for problems with this selection process to occur if the indirect costs of recruiting foreign labor are not properly covered (such as return transport charges to the sending country, the cost of social benefits due to the laborer in case of lay-off, etc.). In such cases, employers may not bear any

burden of failing to carefully select candidates, or unrealistically overestimate future labor needs. These problems are amplified (together with the adverse consequences for the receiving country) whenever the migrants themselves bear the administrative costs of the immigration procedure.

The adaptability of selection criteria to changes in the labor market is a critical element in the practical implementation of labor migration policies. As stated in an earlier section, it is very hard to objectively evaluate labor shortages. They are normally recognized observed after the fact and are extremely difficult to predict. This means that a migration policy should be updated regularly using up-to-date research and data on the current and projected state of the labor market. For a policy to be effective, institutional mechanisms that provide the rapid revision of selection criteria for certain occupations during changing economic conditions must be established. Recent experience shows the merits of such flexibility regarding IT specialists. During the first quarter of 2001, every developed country was considering new measures to recruit a greater number of foreign IT specialists and to keep their native specialists who were thought likely to emigrate. However, the situation was completely reversed in the second quarter of 2001 and there was suddenly a surplus of IT specialists, even among already recruited foreigners. Exemplary labor migration policy flexibility was demonstrated in this case by the United Kingdom. It was one of the first European countries to facilitate the entrance of foreign IT specialists and also to retract this position as soon as the economic situation began to deteriorate.

Another troubling feature of labor shortages is that their effects are not seen only within certain occupations, but they tend to be regionalized. This means that national migration policies must also have regional components. Some nations, such as France, let the decentralized offices of the Ministry of Employment control the real

needs at the local level. Italy defines regional immigration quotas by sector or employment type. In theory, this kind of quota system has the advantage of being comparatively flexible and at the same time capable of addressing the regional dimension of labor shortages. However, in practice, this kind of system is still quite difficult to maintain, as precise regional year-to-year forecasting is still needed.

Chapter 4

ECONOMIC IMPACTS AND PROTECTION OF LOCAL WORKERS

A wide range of economic effects result from migration. The main effects are likely to be felt in the labor market and public finance. As for the labor market, depending on the migrants' age and skill level, the effects could vary. The public finance sector may either benefit as the migrants may pay taxes and/or be burdened owing to additional public expenditures incurred for the migrants.

As there are various kinds of migrants not only in terms of age and skill levels but also duration and purpose of migration, there is no simple answer as to what the precise effects could be. Although there are some empirical studies on the economic impacts of migration on, for example, wages, conclusive findings are rare.

It is presented in this section a brief discussion of the major findings on the impact of migration on the labor market, that is, wage and employment.

1. Wages

It is generally accepted that if wages are determined by market forces, migration reduces wages and increases employment in the

host country, probably with increased unemployment for the period of adjustment, with the opposite effect in the country of origin. With less flexible labor markets, in the host country the effect on wages and employment is smaller and unemployment is likely to be greater and last longer.

Further complications arise when considering different types of migrants in terms of skill levels. When the size of the labor force and its skill composition change because of migration, average wages and the wage structure may also change, possibly resulting in inequality. If immigration is predominantly low skilled, the wages of low-skilled workers can be expected to fall, but there may be a resulting increase in demand for high-skilled workers and their wages would tend to rise.

These are, however, theoretical models of labor economics in regard to migration. Empirical proof or statistical correlations between migration and wages or employment are often weak and not well determined. Annexes 10 and 11 present the basic findings of some studies on the relationship.

Most of the econometric studies carried out in the United States and Europe also show that immigration does not significantly diminish the income of local workers, with the possible exception of certain groups (see Annex 11). In the case of the United States, the studies show that the labor market impact of foreigners is generally positive for all categories of labor except the migrants themselves, or, in the case of Europe, for certain groups possessing few if any skills. Given the similarity of their labor market characteristics, established and recently arrived immigrants are in direct competition with each other, yet even if the latter have an adverse impact on the wages of other immigrants, that impact is very slight.

Based on empirical analyses carried out in the United States and other countries, Friedberg and Hunt concluded that a 10 per cent increase in the fraction of immigrants in the population reduces

native wages by at most 1 per cent. Even those local workers who would be the closest substitutes for immigrant labor have not been found to suffer significantly as a result of increased immigration (1995 cited in OECD, 2002).

2. Employment

The role of foreign workers varies according to both the profiles of migrants and the economic conditions of the host country. The experience of foreign workers in the business cycle also seems to differ across countries.

While there is no obvious relationship between immigration and unemployment (see Annex 10), fears have often been voiced that new waves of immigration would cause a rise in joblessness amongst native-born population. These concerns are of particular relevance to some European countries where jobless rates are high and long-term unemployment is persistent. Nevertheless, the results of detailed empirical studies show that it is impossible to establish a systematic relationship between immigration and unemployment.

However, a general understanding can be made as follows:

In a period of expansion and sectoral labor shortages, immigration affects labor market equilibrium on two levels. First, it makes it possible to meet the expanding needs for labor, especially when those needs are rising very rapidly. Second, in the case of migrants with few if any skills, it enhances the hierarchical position of natives and reallocates local labor towards sectors that are more dynamic and on which society places higher value. This latter phenomenon is an illustration of the labor market segmentation theory, which holds that activities at the bottom of the social ladder are highly unattractive and reveal chronic labor shortages that foreign workers are prepared to fill. In countries in which the geographical and sectoral mobility of the

native population is limited, foreign workers can also infuse greater flexibility into the labor market and thus facilitate the market's growth. This is reflected in the greater inflows of temporary foreign workers over the past five years.

3. Protection of Local Workers

There are several domestic workers protection schemes available.

One of the principal methods is to test each application against the available pool of eligible workers interested in the job opening (a labor market testing, also called "labor certification" in the U.S., "job validation" in Canada).

In labor market testing, employers are to demonstrate two things to the government's satisfaction: first, that no eligible workers are available for the job in question and, second, that the employment of the foreign national will not depress the wages and working conditions of other workers in similar jobs. Both requirements have proved extremely cumbersome both on methodological and on administrative grounds. As a result, there is a slowly emerging consensus that questions the value and efficacy of processes that rely on case-by-case assessments for choosing labor-market-bound immigrants as increasingly at odds with today's competitive realities. More specifically, today firms often choose workers (domestic or foreign) because small differences in attributes (both in the quality and in the specificity of skills) can lead to substantial differences in the firm's ability to compete.

The United States filters most of its economic immigrants through this mechanism and applies it stringently. Recently a marked tendency has emerged towards simplifying the labor market tests required. Specifically, the U.S. Immigration and Nationality Act (INA) establishes a maximum quota of 140,000 "permanent" visas for

"employment-based" immigration. More than 90 per cent of such visas target well-educated and skilled immigrants and their immediate families.

Canada has moved away from tying skilled immigration to employment and towards selecting foreign workers on the basis of a combination of skills, experience, education and other characteristics that presumably maximize the probability of both immediate and long-term labor market, economic and social success. Accordingly, Canada tends to eschew most labor market tests.

These days, European governments also tend to agree that more flexible and progressive entry and residence arrangements should exist for highly skilled and qualified persons without labor market testing and with change of status possibilities and working rights for spouses and dependent children. This tendency is well reflected in the recent addition of labor migration programs in the selected countries (see Part 2).

While labor market testing is required before a foreign worker is allowed to enter a host country, the United States created a post-entry control mechanism by requiring employers to provide attestations. This method focuses on the terms and conditions of the foreign worker's employment.

Attestations are legally binding employer declarations about the terms and conditions under which a foreign worker will be engaged. Designed to reduce up-front barriers to the entry of needed foreign workers, while protecting domestic worker interests through post-entry auditing and enforcement of the relevant terms, attestations aim above all to balance the need to safeguard (and even advance) the interests of domestic workers in terms of wages and working conditions while also offering employers willing to play by pre-determined and agreed rules predictable access to needed foreign workers. Furthermore, they are also expected to respond more

directly to changing conditions in labor markets while requiring the least amount of hands-on engagement by the government in an area where both data and procedures are weakest. Whether attestations are in fact achieving these policy goals remains to be seen.

There are also other mechanisms that were initially designed to maintain a certain level of working conditions for domestic workers, such as minimum wages, employment protection legislation that can be considered here. Broadly speaking, a points test as used in Canada can be also considered a way to protect local workers.

Some countries, including France, impose minimum wages for immigrant workers. While intended as protection against excessively low wages, minimum wage legislation tends to make it more difficult for low-skilled workers to get work. Since in most countries the immigrant workers have a lower average level of educational attainment than nationals, minimum wages in those countries may have a disproportionate impact on the employment prospects of immigrants and may be part of the explanation for the differential in unemployment rates observed.

Employment protection legislation (EPL) is likely to slow labor market adjustment and tends to create an insider-outsider split in the labor market. While the links between EPL and labor market performance are not always clear cut, if EPL is particularly strict (OECD *Employment Outlook*, 1999) there is an increasing tendency to exempt temporary employment contracts from the full provisions of EPL in a number of countries.

Both EPL and minimum wage legislation, however, may encourage illegal employment to avoid their constraints. A casual link may be suggested between illegal migration and formal labor markets that are unfriendly to the low skilled. For example, in Italy and among the few countries where legal immigrants have an average education level at or exceeding that of natives, there are high numbers of unskilled

illegal immigrants working in low-paid jobs. The public authorities in these countries may tolerate this situation (thereby implicitly encouraging illegal immigration) because it occurs frequently among natives, too.

Chapter 5

MEASURES TO REDUCE ILLEGAL MIGRATION

Both North America and Western Europe have experienced a surge in legal and illegal/irregular migration over the past decade. While the former can partially be attributed to a relaxation of labor migration policies, notably in Canada, the U.S. and the U.K. under skilled migration schemes, conflicts, humanitarian disasters, geo-political events and socio-economic disadvantages in countries of origin have largely spurred the latter. For instance, peaks in the number of asylum applications in Europe have coincided with events such as the fall of the Berlin Wall in 1989 and the conflicts arising from the break-up of the former Yugoslavia in the early to late 1990s. Admittedly, the numbers of irregular migrants who finally reach destination countries in the west represent a fraction of the people displaced by conflicts, who initially seek refuge in neighbouring countries. However, there has been a marked increase in the number of irregular or undocumented migrants arriving in the west in recent years. Estimates suggest irregular migrants account for one-third to one half of all new entrants into developed countries, representing a

20 per cent increase over the past decade.[1]

In response, western governments have taken a number of measures to regulate and curb the flow of irregular migrants either through prevention, e.g., more stringent immigration legislation and increased enforcement, or though more positive measures such as liberal immigration policies or through status regularization schemes. Most of these governments seem primarily concerned to find ways to balance their need for legal labor migrants to boost their economies, and to fulfil their obligations under international conventions to protect refugees, while concurrently ensuring that irregular migrants who do not fall within either of these categories are not a burden on the state. It has been noted that the refugee regimes of the countries of the north have been fundamentally transformed over the past 20 years, shifting from a system designed to permanently resettle refugees of the Cold War period to a "non-entry regime" intended to exclude and control asylum seekers arriving from the south.[2] Arguably, these restrictive immigration policies have contributed to the occurrence of human smuggling and trafficking as migrants turn to organized criminal networks in order to enter their favoured destination countries.

1. Europe

1.1 Causes and Current Trends of Irregular Migration

Migration to Europe is not a new phenomenon and indeed has often been officially encouraged and tolerated when it has been in the

[1] IOM(2003b), p.58.

[2] Chimni B., Keeley C, quoted in Castles et al., *States of Conflict: Causes and Patterns of Forced Migration to the EU and Policy Responses*, IPPR, 2003, pp.45-46.

interest of the economy. However the presence of irregular and undocumented migrants arriving via human smuggling and trafficking networks, and the over-staying of visa entitlements has become a contentious issue for many western European governments over the past decade. A recent report by the London-based Institute for Public Policy Research (IPPR) identifies common features that can be perceived as the causes of forced migration. These push factors include the repression or discrimination of minorities, ethnic conflicts and human rights abuses, civil war and the number of internally displaced people relative to the total population and poverty. [3]

All the top ten countries of origin for asylum applications to the EU demonstrate most of these features (see Table 5-1). Ethnic conflicts throughout the 1990s in Croatia, Bosnia and Herzegovina and Kosovo resulted in almost 680,000 asylum applications from the Former Republic of Yugoslavia to countries in the EU between 1992 and 2001. Applicants from Romania come second with a total of 285,452 over this nine-year period, with a heavy concentration in the early nineties, representing a time when its minorities faced severe persecution. It was also noted that the majority of Turkish asylum seekers were Kurds fleeing both ethnic conflict and repressive conditions.

In absolute terms the UK received the highest number of asylum applications among the industrialized countries in 2002, receiving a total of 301,600 applications between 2000 and 2002, representing 19 per cent of all asylum claims made in 2002 (see Figure 5-1). The U.S. France and Canada follow closely behind in third, fourth and fifth positions.

Precise details on the scale and routes of irregular migration are quite difficult to come by owing to the clandestine nature of the activity.

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[3] Castles et al.(2003).

Table 5-1. Asylum Applications Submitted in the European Union:Top 10 Countries of Origin: 1992-2001*

Origin	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	Total
Yugoslavia, FR	210,907	88,228	47,683	46,105	32,001	40,994	71,185	83,444	36,564	22,816	679,927
Romania	115,556	87,145	21,422	13,943	8,964	10,300	8,450	7,811	6,954	4,907	285,452
Turkey	35,240	24,388	25,019	40,055	36,918	31,466	19,797	17,629	25,472	27,294	283,278
Iraq	11,085	9,892	9,789	14,806	22,295	35,173	31,216	25,328	38,852	40,577	239,013
Afghanistan	7,660	7,920	9,185	11,166	11,344	14,515	15,117	16,778	26,474	38,620	158,779
Bosnia and H.	13,231	62,000	20,717	13,524	5,126	6,059	7,959	4,577	9,655	8,486	151,334
SriLanka	13,667	10,632	11,198	11,537	10,060	10,694	9,072	9,858	11,615	10,010	108,343
Islamic Rep. of Iran	7,608	6,883	11,755	9,746	9,794	7,993	7,658	11,315	20,730	12,054	105,536
Somalia	13,551	11,155	11,728	11,498	6,892	7,397	10,425	12,285	9,401	9,871	104,203
Dem. Rep. of Congo	17,373	11,435	8,526	7,412	7,111	7,845	6,383	6,637	7,407	8,614	88,743

Source: UNHCR/Governments. Compiled by: UNHCR, Population Data Unit, PGDS.
Notes: * Countries included: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, UK
Denmark: Data includes applications lodged at embassies abroad.
Germany: The 1995-1997 figures include re-opened applications.

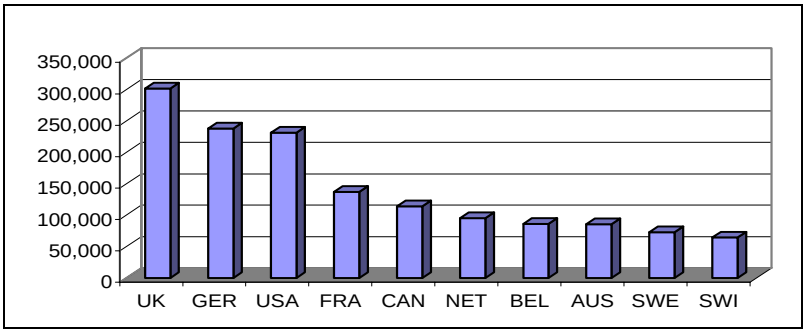
In 1999 irregular migration to the European Union was estimated to involve some 500,000 migrants annually, representing a nine-fold increase over the previous six years.[4] According to the United Kingdom Immigration Service Union, there are about one million irregular migrants currently in the U.K., while in France it is estimated that there are some 500,000 irregular migrants.[5] In the absence of any official count, indirect indicators may also be useful in assessing the scale of irregular migration flows. Within the EU it is reported that approximately one million irregular migrants applied for amnesties over the past five years. Another indicator used in the U.K. is the number of illegal border apprehensions. This figure rose from 3,300 in 1990 to 47,000 in 2000.[6]

Certain pull factors also contribute to making these countries the

[4] National Foreign Intelligence Board(2001), quoted in IOM(2003b), p.60.
[5] Ibid, p.253.
[6] Ibid, p. 60.

favoured destinations for irregular migrants, namely security, democratic governments, rule of law, strong economies, well-developed social welfare systems, or the demand for cheap labor. Geographical proximity, historical or family links and a common language also play an important part in the migration process. For instance, irregular migrants from eastern and southern Europe are more likely to go to Germany or Austria (proximity), North Africans tend to migrate to France, Italy or Spain (proximity and language) while the U.K. tends to attract migrants from many of its former colonies. Naturally, not all forms of migration follow these patterns, but nevertheless the rising numbers of irregular and undocumented migrants arriving in Europe have led some EU governments to adopt more restrictive immigration measures to control entries.

Figure 5-1. 10 Top Ranking Asylum Countries: Applications Lodged: 2000-2002



Source: UNHCR, *Asylum Applications Lodged In Industrialized Countries: Levels And Trends*, 2000-2002.

1.2 Policy Responses and their Effectiveness

Measures to regulate the numbers of irregular migrants entering the EU have been particularly noticeable since the early 1990s in reaction to the fall of the Berlin Wall and the break-up of the Soviet Union.

These policies were boosted in the aftermath of the conflicts in the former Yugoslavia and more recently in reaction to security concerns raised by the terrorist attacks in the U.S. in September 2001. Consequently, immigration has been subject to restrictive measures such as increased identity checks, more stringent conditions for granting residence and work permits, a revision of visa rules, the detention of foreigners subject to deportation orders and the adoption of tougher penalties for those who assist illegal migrants. Although individual national policies have sometimes led to contradictory immigration procedures, some common policy trends have been identified within the EU, such as, restrictions in the laws governing family reunifications, mixed marriages and the granting of political asylum.[7] Regarding the latter the general trend has been to restrict the protective status granted to refugees under the Geneva Convention by distinguishing between genuine refugees fleeing persecution, and economic migrants. In response to conflicts and humanitarian crises during the 1990s some of those refused refugee status were granted temporary residence until conditions in their countries of origin were stable enough to permit their return. Other recently adopted legislation and policy trends in the selected European countries are described below.

In France reforms of the immigration and asylum laws currently under way include streamlining the process of asylum applications to deal with unfounded claims more quickly by using a 48-hour fast-track procedure. Such claimants will not be granted temporary residence permits, social benefits or accommodation.

In Italy the 2002 Immigration Law has, among other things, facilitated the deportation process, prolonged detention periods and

[7] Council of Europe, Marie, Claude-Valentin, Preventing Illegal Immigration: Juggling Imperatives, Political Risks and Individual Rights, March 2003.

imposed a requirement for all non-EU nationals to be finger-printed when applying for or renewing residence permits.

In the U.K., following the fourth major overhaul of its immigration legislation within the past decade, the 2002 Nationality, Immigration and Asylum Act is expected to be endorsed by Parliament in October 2003. Some of its features include the speeding up of the asylum application process to avoid long-term settlement, restrictions on the right to appeal and accelerating the deportation of failed applicants. The introduction of identity cards is also under consideration amid criticisms that it will infringe personal privacy and deny crucial public services to undocumented migrants.

It has been observed, however, that such restrictive policies have also had negative side effects on migration patterns, particularly on potential migrants who are increasingly forced to rely on smugglers to gain access to the EU. National governments and the EU as such have been criticized for implementing policies that are too heavily geared towards prevention or enforcement, and a number of measures are now being taken, especially at EU level, to remedy this imbalance and address the root causes of migration. These include short-term measures to tackle the causes of forced irregular migration through preventive diplomacy, cooperation neighbouring states, temporary protection within the EU and orderly repatriation. Long-term measures include the promotion of human rights, humanitarian assistance, development aid and the creation of more opportunities for trade and investment.[8] The realization that the lack of a comprehensive and coordinated EU approach limits the effectiveness of immigration policies has led to common policy principles such as those expressed in the conclusions of the European Council meeting in Tampere in October 1999. These included a common European

[8] Castles et al.(2003).

asylum system which is expected to eventually lead to a common asylum procedure and uniform status for those granted asylum, fair treatment of third-country nationals and the more efficient management of migration flows from countries of origin, transit and destination.

Regarding the access of foreigners to the labor market, all the countries reviewed have recently implemented policies that favour the legal migration of skilled and unskilled labor. However, such initiatives are subject to certain restrictions such as the satisfaction of an EU-wide labor market test and temporary job contracts. The severest restrictions concern undocumented foreign nationals and irregular workers and their employers by subjecting them to employer sanctions. However, employer sanctions are an effective tool to control illegal work only when supported by adequate enforcement mechanisms. In the U.K. a maximum penalty of GBP 5,000 is imposed on an employer for "knowingly or negligently" employing people without a work permit.[9] But, this sanction has not served as an effective deterrent. Between 1997 and 2000 only 33 people were successfully prosecuted for breaching immigration laws.[10] Although employer sanctions have been authorized in France since 1946, there was little effort to enforce them until the 1970s. Indeed, some industries with a tradition of using illegal foreign labor and with significant political clout have sometimes been exempt from employment sanction enforcement. Generally, sanctions against employers and those abetting illegal immigrants can include a fine and/or imprisonment or barring their employment activity. Employees may face minor criminal or regulatory sanctions or removal to the border if found to be in an irregular residence status.

[9] Section 8, UK Asylum and Immigration Act, 1996.
[10] IOM(2003b), p.67.

The growing numbers of unaccounted undocumented migrants working underground, coupled with the failure of governments to detect and deport them, have led some governments to adopt measures that are not primarily aimed at enforcement. One of the most common means to achieve this has been through the regularization of illegally resident migrants.

Italy has by far the most frequent recourse to regularization schemes with four major regularization programs conducted in 1990, 1995, 1998 and 2002. During the first three nearly 750,000[11] irregular immigrants illegally residing in Italy had their status regularized, mainly from the Maghreb region, the Balkans and Asia. Such frequent regularizations were possible because of broad-based parliamentary support, and because each one was regarded as a one-off corrective procedure, necessary to rectify the defects of previous legislation. France's most recent regularization scheme was the result of the Chevènement Plan, initiated in 1997 to allow illegal immigrants to apply for residence and work permits and resulted in the regularization of some 90,000[12] irregular immigrants between 1997 and 1998. In the U.K. regularization is less common with the last formal regularization scheme occurring in 1977, resulting in only 462 permits issued.[13] However, taking into consideration its obligations under the European Convention on Establishment, a 1987 review of the Long Residence Concession (LRC),[14] made provisions for the

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11 Apap J. et al., "Regularisation of Illegal Aliens in the European Union: Summary Report of a Comparative Study", *Kluwer Law Internationa*, 2001.

12 Ibid.

13 Ibid.

14 The Long Residence Concession (LRC) is a provision under Article 3(3) of the European Convention on the Establishment of the Council of Europe, which provides that nationals of any contracting party, who have been lawfully resident in the territory of another party, may only be expelled for reasons of national security or threats to public order. The practice of the Home Office has been to apply this provision to all foreign nationals, however, a review of LRC policy in

regularization of illegal residents or overstayers who have been resident on British territory for at least 14 years. Since March 1999, this requirement has been reduced to seven years for families with young children. Critics of regularization processes, notably the UK, argue that it undermines long-term immigration policies and is unfair to those who arrive through official immigration channels. Although there is little evidence to suggest that regularizations have given rise to increased inflows of illegal migrants, frequent regularizations may encourage illegal entries in anticipation of a future amnesty.

2. North America

2.1 Causes and Current Trends of Irregular Migration

Both the U.S. and Canada are attractive countries of destination for potential migrants, partly as a result of a long history of accepting and inviting large numbers of immigrants and because of their reputations as open and democratic societies with large immigrant communities. It is estimated that over 65 million immigrants arrived in the U.S. between 1820 and 2000. In addition to about 800,000 legal immigrants accepted to the U.S. annually, an estimated 700,000 unauthorised foreigners make their way to the U.S. each year, taking the stock to about 8.5 million in 2000, or 3 per cent of the total population (see Table 5-2).[15] High-end estimates put the number of irregular migrants at 12 million.[16] Conversely, illegal immigration to Canada is minimal because of a liberal immigration policy and the fact

1987 broadened it further to allow persons with 14 years or more continuous residence of any legality (i.e. including illegal entrants and overstayers) to qualify for a grant of indefinite leave to remain, in the absence of any countervailing factors.

[15] IOM(2003a), p.21.

[16] IOM(2003b), p.58.

that it shares a border with a major immigration country.

Table 5-2. Unauthorised Foreigners in the US: 1980 - 2000

Year	Million	Average annual change
1980	3	
1986	4	167,000
1989	2.5	-500,000
1992	3.9	467,000
1995	5	367,000
2000	8.5	700,000

Source: Jeff Passel, Urban Institute.

The causes of irregular migration to North America are similar to those that drive migration to Western Europe, namely, conflict, political persecution, socio-economic disparities etc., although its geographical remoteness from the major sending countries sometimes also makes it difficult for migrants to reach their objective. The pull factors of migration to North America, especially employment opportunities, open and democratic societies etc., are, however, very strong and it has been documented that some migrants use Europe as a transit station before eventually migrating to North America. On the other hand, it's the proximity to South America presents some of the biggest challenges to irregular migration, which continue to dog many U.S administrations. There are currently between 4 to 5 million Mexicans in the U.S. and Mexico's National Population Council predicted in December 2001 that Mexico-U.S. migration will continue at between 400,000 and 500,000 per year for the next three decades, resulting in about 18.3 million in 2030 if present trends continue.[17] The main irregular migration flows into Canada is through the asylum applications, about 60 per cent of which arrive from the U.S., and migrants arriving by sea, mostly from China. Of the estimated 35,000

[17] IOM(2003a), p.35.

foreigners who seek asylum in Canada each year between 50 and 60 per cent are granted refugee status. Part of Canada's attractiveness to irregular migrants is its generous asylum system, generous social welfare and facilitated integration through state-sponsored programs.

2.2 Policy Responses and their Effectiveness

The U.S. and Canada have adopted quite different approaches in their management of irregular migration, leading to widely dissimilar results.

Canada is one of few countries that regularly spend more on integrating immigrants than on immigration enforcement and asylum processing. In 1998, it spent an estimated US$ 768 million on integrating some 200,000 immigrants, compared to the US$ 750,000 it spends annually on enforcement.[18] Its immigration system is largely based on legal admission channels for economic or independent skilled migrants (accounting for 56 per cent of the total flow of 227,400 migrants admitted in 2000), family reunification (31 per cent) and refugees (13 per cent).[19] The existence of a well-managed legal immigration system based on a points system has, in part, contributed to regularize economic migration to Canada, while ensuring that incoming migrants are an asset to the economy. Free trade agreement such as NAFTA and temporary worker programs, such as the Mexico-Canada guest worker program, also allow thousands of professional and agricultural workers to work in Canada for short periods of time, which partially removes the need to resort to illegal means of entry.

For the most part, however, Canada's proximity to the U.S. serves

[18] DeVoretz, D. J. and Laryea S. "Canadian Human Capital Transfers: USA and Beyond", RIIM Working paper Series, 98-18, quoted in Ibid, p. 36.
[19] Citizenship and Immigration Canada.

as a natural buffer to control the number of irregular immigrants. Under the 2001 Immigration and Refugee Act, foreigners arriving from a safe third country of transit, such as the U.S., may not apply for asylum in Canada. New measures to regulate immigration introduced in the U.S. in the wake of the September 2001 attacks and the resulting curtailment of some civil liberties, particularly regarding residents of Middle Eastern origins, led in subsequent months to an exodus of both legal and illegal migrants from the U.S. to Canada, challenging this new law.

Canada has come under mounting pressure from the U.S. to tighten its border controls after September 2001, which has since resulted in increased spending on border security and enforcement. Under the new immigration law, since July 2002, applicants for asylum have been photographed, finger-printed and interviewed before being released while their applications are being processed. Asylum applicants who arrive with false or no documents may also be detained. As from 31 December 2003 Permanent Residence (PR) cards will also be introduced as a compulsory travel document for all Canadian residents. It is expected that the cards will improve border security and the immigration process while also providing cardholders with secure and convenient proof of their permanent resident status.

Despite the existence of active immigration policies and labor migration programs to encourage temporary and permanent immigration, irregular migration to the United States has soared over the past two decades. Most of the measures to curb irregular migration have tended to focus on the U.S.-Mexico border, the source of numerous illegal border crossings. In the 2000 fiscal year (FY), 1.8 million people were apprehended by U.S. patrols (see Table

5-3).[20] The approach was largely based on deterrence and the increase in the number of border patrol agents employed by INS is evidence of this. Increased border patrol, however, has not been as effective as anticipated, resulting instead in many migrants resorting to smugglers or taking hazardous routes across deserts, leading to hundreds of deaths each year. Nevertheless, the INS estimates that it needs seven to ten more years and 3,200 to 5,500 additional agents, plus US$ 450-560 million in order to fully secure the U.S. border.[21]

Table 5-3. Border Patrol Agents and Apprehensions, Mexico-US Border. FY 1993-2000

	1993	1994	1995	1996	1997	1998	1999	2000	2001
Agents	3,389	3,670	4,337	5,281	6,261	7,292	7,645	8,475	9,000
Apprehensions (mn)	1.2	1.0	1.3	1.5	1.4	1.5	1.6	1.8	1.2
Agents, 1993=100	100	108	128	156	185	215	226	226	266
Apprehensions, 1993=100	100	81	105	124	113	125	132	132	99

Source: U.S. General accounting Office, 2001.

About 60 per cent of the estimated 8.5 million unauthorized foreigners in the U.S. are believed to have entered without inspection, while the remaining 40 per cent are overstayers. As in Europe, regularization has often been discussed as a way of legalizing undocumented migrants. Between 1987-88, some 2.7 million foreigners were regularized under the Immigration Reform and Control Act of 1986. More recently, under pressure from the Mexican government, it was proposed to legalize the four million or so undocumented Mexican residents in the U.S., however, sifting these

[20] Repeated apprehensions of the same person are recorded as individual apprehensions.

[21] U.S. General Accounting Office(2001), quoted in IOM(2003a), p.24.

from 8.5 million unauthorized workers proved to be problematic. The momentum behind this initiative quelled substantially after September 2001, coupled with the effects of a sluggish U.S. economy. However, the increasing acceptance of identity cards issued by the Mexican consulate for both legal and illegal Mexican residents in the U.S. sparked a heated debate in the U.S. Critics argue that this is regularization through the backdoor, is unfair to legal migrants and non-Mexican immigrants, and presents a security risk because of the possibility of forgery, while its supporters argue it is a secure form of identification that provides more benefits to migrants, whatever their status. With more South American governments petitioning the U.S. administration for recognition of their state-issued identity cards, it will be interesting to see if this evolves into an acceptable way of documenting irregular migrants.

Employment sanctions are also used in the U.S. as a mechanism to deter the employment of undocumented migrants. Under the 1986 Immigration Reform and Control Act, penalties are imposed on employers who knowingly hire foreigners without work authorization. Before hiring new employees, employers must complete a form affirming their eligibility to work and verify that that they possess a prescribed list of documents confirming their identity and work authorization. The two most commonly used documents are the driver's licence and the social security card, both of which are, however, easily forged. Consequently, employer sanctions have been largely unsuccessful in deterring the employment of unauthorized workers because the burden of proof lies with the authorities to show that the employer *knowingly* employed an undocumented worker. According to the U.S. General Accounting Office, in 1998 only 6,500 investigations of employers were completed, representing just 3 per cent of the country's estimated number of employers hiring unauthorised foreigners. The failure of employer sanctions can also

be attributed to a lack of political will to implement a more effective verification system.

3. Effectiveness of Regularization Programs

A number of factors influence a government's decision to embark on regularization programs. These can include the wish to avoid creating a dual labor market, to prevent the exploitation of foreign workers, to reinforce the legal order or to have a better idea of the scale and activities of irregular migrants in the country. Adopting regularization as a policy instrument to control irregular migration raises a number of questions regarding its effectiveness. For instance, the impact of regularization on fiscal revenues and expenditures, on wages and work conditions of foreign workers, on long-term immigration policies or on the inflow of undocumented migrants.

The common assumption is that undocumented migrants who work in the black economy do not pay taxes or other social security contributions, and bringing them into mainstream employment makes them taxable, consequently increasing revenues. On the other hand, there is an expectation that the granting of legal status will allow previously irregular migrants to avail themselves of public services to which they did not have access before, and to bring in family members who will present an additional drain on such services. However, experience in the U.S. and the U.K. shows that over half of undocumented workers were taxed and made social security contributions, often under the assumed name of the person whose identities were being used.

It is frequently argued that regularization paves the way for better-paid jobs in an open market. However, assessments in the U.S. suggest that migrants' occupational mobility is largely influenced by

their language skills and experience rather than their legal status.[22] Various studies have shown that legalization has no direct effect on wages because of systematic differences between legal and undocumented immigrants, e.g. better level of education, long employment records.[23] Furthermore, it has been found that legality has little effect on compliance with minimum wage laws and other labor standards when adequate enforcement procedures are lacking.[24] It is further argued that the impact of regularization on working conditions is not immediate. As noted in the U.S., most workers tend to stay in the jobs they held prior to regularization and received the same wages after being granted legal status. A degree of occupational mobility is, however, observed in France where some farm workers moved to low-wage manufacturing and service work, and also to the cities after legalization.

Undoubtedly, it is important to avoid repeating regularization programs so as not to encourage some migrants to enter illegally or to overstay their visas in the hope of being granted amnesty at a future date. Repeated regularization programs are also an acknowledgement of an ineffective immigration control system, and Italy is an example of a country that frequently uses regularization in an attempt to correct previous policy failures. On the other hand, countries such as the U.K. have avoided repeated use of regularization programs because of the perception that it rewards illegal immigrants and acts as a disincentive to choose legal forms of migration.

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[22] Manolo I. Abella, "Migration and Employment of Undocumented Workers: Do Sanctions and Amnesties Work?", in *Irregular Migration: Dynamics, Impact and Policy Options*, European Centre for Social Policy Research, 2000.

[23] Chiswick, B., *Feasibility Study for a Survey of the Employers of Undocumented Aliens in Chicago*, Survey Research Laboratory, University of Illinois, June 1980, quoted in ibid.

[24] Bailey, T. R., "The Influence of Legal Status on the Labor Market Impact of Immigration", *International Migration Review* XIX (2), 1985, quoted in ibid.

3.1 Lessons Learnt from Recent Regularization Programs

A large number of industrialized countries do not use regularization programs for some of the reasons cited above. Nevertheless, recent programs have been useful in providing invaluable information such as the scale of irregular migration in a country, the networks that enabled them to arrive and reside illegally and the industries in which they tended to be employed.

Some of the lessons that have been learnt from recent regularization programs include:[25]

- The beneficiaries of regularization programs tend to be young workers employed in sectors with a high concentration of foreign labor. In France and Italy three-quarters of those involved were under 40 years old, and n the U.S. 77 per cent were in this age category.
- Beneficiaries of amnesty programs come from the same region as legal migrants, reflecting trends such as the persistence of traditional immigration routes (e.g. from Mexico to the U.S. and francophone Africa to France) and also the emergence of new immigrants (e.g. Senegalese, Chinese and Albanians in Italy).
- Beneficiaries bring greater flexibility to the productive system, especially in the agricultural, manufacturing and construction sectors. In France and Italy, nearly half of those working in the manufacturing industry are amnestied immigrants.
- Some regularization programs show that beneficiaries can slip back into illegality. In Italy, for instance, the main beneficiaries of legalization programs were immigrants who had obtained legal status during previous amnesties. By contrast, in the U.S., most amnestied immigrants obtained residence visas and after four years were able to obtain permanent immigration status. The important factor here is the condition for renewing work or residence permits. Failure to renew permits inevitably results in an increase in the number of illegal immigrants.

The use of regularization cannot be expected capture or legalize

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[25] OECD Secretariat, “Some Lessons Learnt from Recent Regularisation Programr”, in *Combating the Illegal Employment of Foreign Workers: International Migration*, OECD, 2000.

the entire population of irregular migrants, however, the following principles are useful to consider when embarking on regularization programs:[26]

- The need for broad political support
- Fixed dates for eligibility to prevent anticipatory clandestine flows
- Eligibility rules for regularization must be based on equal treatment
- The post-regularization status must be assured
- The process should include a broad-based information campaign.

[26] Abella(2000).

PART TWO

Labor Migration Management Systems in Selected Countries

Chapter 6

FRANCE

For the past century, French immigration policy has served the threefold purpose of meeting the demands of the labor market by encouraging labor migration, promoting permanent immigration of foreign families to offset its population deficit, and ensuring the integration of these new arrivals into French society. Over the years, this policy approach has inevitably been affected by the political and economic realities of the time. For instance, in the post-World War II era low birth rates coupled with a depleted labor force prompted the recruitment of foreign labor from Belgium, Germany, Poland, Italy and Spain. A similar influx of migrants, especially from Algeria, was also observed during the period of decolonization during the 1950s and 1960s. In contrast, the 1973 oil crisis and the resulting effect on unemployment levels led to the introduction of measures to limit foreign employment, such as the imposition of sanctions on employers who hired illegal immigrants.

Persistently high levels of unemployment from the mid-70s to the early 90s led to significant policy reversals where immigration is concerned. The conservative Minister of the Interior, Charles Pasqua, introduced the so-called “zero-immigration” policy in 1993, which severely curtailed the right of family reunion, prevented foreign

students from accepting employment in France after graduation, enhanced the powers of the police to deport foreigners and abolished opportunities to appeal against asylum rejections. The rise of the far right since the late 1980s also contributed to the decline in immigration levels from 1994 to 1997, resulting in the lowest levels since the end of the war. In 1990 for instance, 102,400 legal migrants (including labor migrants, refugees and family reunifications) settled in France, compared to 55,600 in 1996.[1]

The so-called Pasqua laws caused a spate of protests and acts of civil disobedience during the mid-1990s that led to a review of immigration policies when the socialists gained control of the National Assembly in 1997. A major government-sponsored evaluation of the previous immigration legislation concluded that it deprived the country of valuable human capital by preventing professionals and students from settling in France, and made recommendations that were subsequently incorporated into new immigration laws in 1997 and 1998. This prompted a regularization process in 1997 and measures to facilitate the entry of foreign students and highly skilled migrants. More recently, the Chirac government tried to focus on the integration of foreign migrants to dispel racial tensions caused by the presence of foreigners and also to allow new immigrants to adjust to common cultural norms.

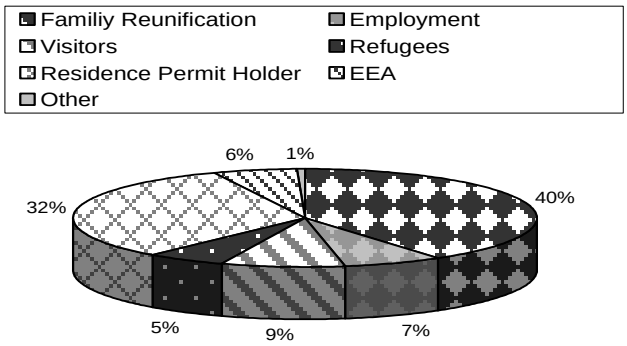
In addition to these political initiatives, a number of non-state actors have also contributed to the immigration debate, although these are usually split along issue lines, such as, residence, asylum, refugees, integration, anti-discrimination etc.

[1] Migration Policy Institute, *The Challenge of French Diversity*, Hamilton et al., May 2002.

1. Recent Trends in Labor Migration

According to the 1999 census there were 3.2 million foreign workers resident in France. The main reason for immigration remains family reunion, which concerned about 77 per cent of new immigrants from third countries and 42 per cent of those from the EEA, while employment-related migration from non-EEA and EEA countries accounted for 7 and 24 per cent, respectively.[2]

Figure 6-1. France - Permanent Immigration by Category, 2000



(unit: 1,000 persons)

Family Reunification	Employment	Visitors	Refugees	Residence Permit Holder	EEA	Other
38.5	6.4	8.4	5.2	30.8	5.4	0.6

Source: IOM(2003), adapted from Table III.10, OECD(2003a), p. 174, based on statistics from the OMI, Ministry of Interior, Office Français de Protection des Réfugiés et Apatrides (OFPRA) and Labor Force Survey.

Notes: Figures do not include the temporary immigration category, which includes some 83,000 asylum seekers, students, holders of APTs and trainees.
"Residence Permit Holder" refers to those who have been granted the private life and family residence card
"Workers" includes wage earners and self-employed
"Other" includes some 200 regularized foreigners

[2] OECD(2003a), p.173.

In 2000, about 60,000 non-EEA migrants entered France for paid employment, representing an increase of around 12 per cent from the previous year (see Figure 6-1). According to the *Office des Migrations Internationales* (Office for International Migration or OMI) the main geographical origins of labor migrants are sub-Saharan Africa (44%), Morocco (13.6%), Algeria (9.7%), and Tunisia (4.8%), with Asia and the Middle East accounting for 22 per cent. It was also observed that migration for permanent work principally concern highly skilled migrants, who work predominantly in the engineering, research and technology sectors, and that in recent years the level of professional qualifications of permanent migrant workers has risen.

2. Policy Developments

The decision to introduce a specific occupation-based labor migration program is often influenced by the public debate on labor shortages or signals from labor market institutions. For instance, measures were taken in 1998 to facilitate the recruitment of IT specialists due to the boom in the technology industry and the shortages it created. This fast-track immigration route was also made available to other highly skilled professionals. This category of foreign workers has since been subject to less stringent admission rules, including a waiver of the normal requirement to satisfy a labor market test. A similar program for nurses is currently being considered in response to national skill shortages in that sector.

3. Administrative Structure

The French immigration system is fragmented at both the governmental and non-governmental level. Three government ministries are responsible for implementing immigration policies. The

Home Ministry deals with questions relating to residence and asylum. Attached to it is the Office *des Migrations Internationales*, responsible for the recruitment policy of new migrants as well as the implementation of the return policy. The Ministry of Foreign Affairs (MFA) determines visa policy, while a third department, the Ministry of Social Affairs, Labor and Solidarity, is responsible for other issues, such as, integration and anti-discrimination policies.

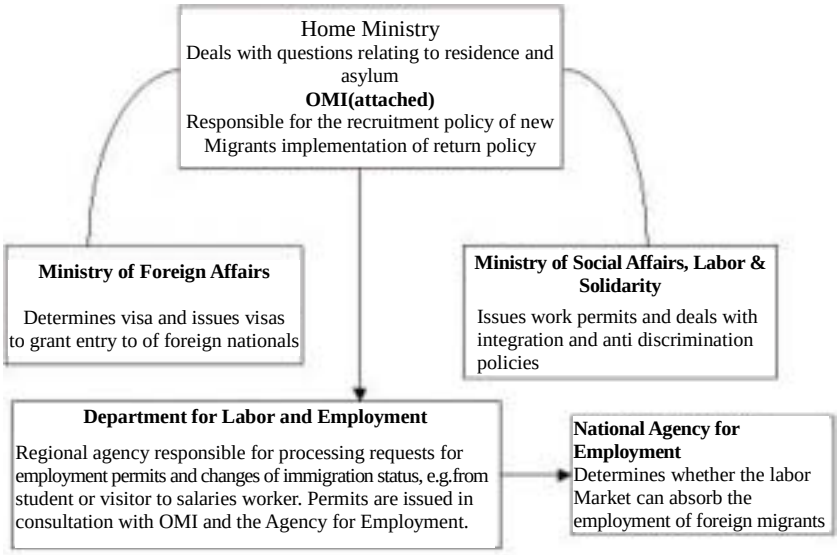
New rules and conditions to enter France for the purpose of employment, under the Code du Travail (Labor Law) of 2 January 1973 were introduced in the Chevènement Law on the entrance of foreigners and asylum seekers on 11 May 1998. This law amends elements of the Ordinance of 1945, which officially declared France open to immigrant workers and their families in order to boost its population. In order to enter France to engage in a professional activity, foreigners have to present a visa issued by the MFA, a work contract and a work permit delivered by the Ministry of Social Affairs and the Home Ministry.

Because of this wide array of departments and the fact that migrant workers have to deal with more than one ministry in order to obtain work and residence permits, the implementation of the immigration law has at times been incoherent and bureaucratic. Recent immigration laws have consequently sought to accelerate and facilitate the procedure.

Applications for work permits can be made to any one of the 95 regional departments for employment, *Direction Départementale du Travail, de l'Emploi et de la Formation Professionnelle* (DDTEFP or Department for Labor and Employment). The DDTEFP consults with *the Agence Nationale pour l'emploi* (ANPE or the National Bureau for Employment), which, supported by statistical data, may recommend against issuing work permits if the level of unemployment is considered to be too high. The application itself is

forwarded to the OMI for consideration.

Figure 6-2. France-Relevant Immigration AUTHORITIES and their Competences



4. Labor Migration Systems

4.1 Paid Employment

4.1.1 Combined Work and Resident Permit

French laws on labor migration are invariably linked to its residence laws. Indeed, it has been argued that today labor immigration to France may be considered an impossibility as, with the exception of a few professions (traders, artists and computer scientists) there is no work permit scheme as such. Instead, immigrants are granted a residence permit, which, depending on the category, determines whether one has the right to work or not.[3]

The basis of French residence laws is established in the 1945

[3] Niessen et al.(2003), p.166.

Ordinance governing the conditions of entry and stay of foreigners in France (*Ordonnance relative aux conditions d'entrée et de séjour des étrangers en France*). While in recent decades this decree has been flexibly used to respond to the needs of the labor market, its application, in effect, makes access to the labor market subject to obtaining a residence permit. There are, however, a number of laws specifically relevant to migrant workers. These include the July 1984 *Loi relative aux titres unique de séjour et de travail* (law relating to the rights of residence and work), the *Code du Travail* and, more recently, the *Chevènement Law*.

The aim of recent immigration laws is to make the process of labor migration easier and less bureaucratic. Generally, nationals outside the European Economic Area (EAA) must hold a residence permit in order to obtain a work permit, if they intend to stay in France for more than three months. Since 1984 the '*titre unique*' (single permit) to reside and work for one year or 10 years has replaced the previous system where one had to obtain residence card and a separate work permit. This cumbersome process often caught applicants in a vicious circle where one could not obtain a work permit without a residence permit and vice versa.[4]

Under current immigration laws all foreigners who intend to stay in France for longer than three months must, with a few exceptions such as diplomats, have residence permits. The type of residence permit granted, in addition to the reason for entry, determines whether one is eligible to work or not. There are three main categories of residence permits.

The temporary residence permit, *carte de séjour temporaire salarié* (CST), is a renewable permit valid for one year. It allows access to the labor market but is restricted to specific work categories and regions.

[4] ECOTEC(2000), p.96.

Migrants may be granted a temporary residence permit on the basis of proven family ties (*carte de séjour temporaire vie privée et familiale*) or as the foreign spouse or minor children of legally resident migrants who are entitled to family reunification. Migrants who can prove their habitual residence in France since the age of 10, or who have lived in France for more than 10 years, may also be issued a CST. This permit may also be granted to beneficiaries of regularization programs, or to migrants who find themselves in an irregular situation in France on humanitarian grounds. After five years of holding the CST, one is usually entitled to a residence permit.

The ten-year *residence permit (carte de résidence)* gives full access to the labor market. Also called the "salaried" permit, it may be used for any job in any region of France. The decision to grant a ten-year residence permit depends primarily on the length of the previous stay in France (i.e. five uninterrupted years and family ties). Dependent foreign children of a French national under the age of 21, the foreign spouse of a French national or the foreign parent of a minor who is a French national, may also be granted this type of residence permit. It is usually granted automatically, unless a threat to public order is established.

Migrant workers who are unable to satisfy the conditions for obtaining the CST, but who can obtain temporary authorization to work for a particular company for a specific period may be granted an *Autorisation provisoire de travail (APT)*, a temporary work permit. A temporary work and residence permit is granted for nine months and can be renewed once for a further nine months. This type of permit is often used as a channel for skilled migration, and about 7,500 temporary APT permits were issued in 2000 alone (see Table 6-1).

Individuals who come to France as visitors or students can later change their status to salaried workers, provided they have an employment contract. Applications for a change of immigration

status can be made to the DDTEFP, in consultation with the ANPE. The ANPE may refuse to grant a work permit if it considers that the national level of unemployment is too high. The permit itself is issued by the OMI.

Table 6-1. Migrant Workers Admitted for Employment in France, 1998-2000

	Temporary residence permits (*Carte de séjour temporaire* - CST)	Temporary work permits (Autorisation provisoire de travail - APT)	Seasonal labor
1998	4,149	4,295	7,523
1999	5,326	5,791	7,612
2000	5,990	7,502	7,929

Source: Office des Migrations Internationales(OMI).

4.1.2 Highly Skilled and Specialist Professions

In response to labor shortages in the IT sector in the late nineties, the Chevènement Law introduced a number of measures to speed up the application procedure for highly skilled migrants. Consequently, IT professionals and specialist professions such as scientists and artists, may be granted a CST or an APT for a specific job, subject to certain criteria such as level of education, practical experience in the field of employment and clean criminal records.

In 2000, over 2,600 work permits were issued to IT specialists of whom nearly 1,000 had temporary and the remaining permanent status.[5] This scheme is not subject to labor market restrictions or quotas. Holders may renew their permits with a view of obtaining permanent residence permits (*carte de résidence*). To change employers, applicants have to apply for a new permit and students graduating from IT-related courses may, under certain conditions, be permitted to switch status in order to work and gain permanent residence in France.

[5] Salt and McLaughlan, *Migration Policies Towards Highly Skilled Foreign Workers*, 2002, p.87.

In addition to the technical category other specialist permits include the scientific residence card (*carte de séjour temporaire scientifique*), granted to those legally entering France to conduct research or to teach at a scientific or academic institution. The artistic residence card (*carte de séjour temporaire profession artistique et culturelle*) is granted to artists or authors who hold a contract exceeding three months.

Under this scheme spouses are granted access to the labor market once they have been issued a temporary residence permit (CST). In order to avoid dependence on the State, the applicant must provide evidence of sufficient financial resources and adequate accommodation.

4.2 Other Migrant Categories

Foreign students in France may apply for work authorization, which, if granted, allows them to work part-time for a maximum of 50 per cent of the weekly or monthly legal working hours. Between 30,000 to 40,000 students take advantage of this opportunity each year. While in theory students are expected to return to their countries of origin on completion of their studies, an adjustment of their status is possible. This allows students to obtain a temporary work permit (CST or APT), with the possibility of renewal.

Seasonal workers may receive a temporary residence permit (CST), the length of which depends on the details of their work contract, which usually ranges from six to eight months.

Paid professional trainees must hold a temporary residence permit (CST) specifying that the position is a salaried one.

4.3 Exemptions from Work Permit Requirements

In addition to EEA nationals, nationals of Andorra, Monaco and Switzerland do not require a work permit to work in France. A

number of bilateral agreements between France and some of its former colonies also provide for some exceptions to the work permit rules. Algerians holding a CST are entitled to a residence permit if they prove they have been resident in France for an uninterrupted period of three years. Algerian students do not require work permits, but are limited to working for only three months each year, between July 1 and October 31. Special rules also apply to some francophone African countries based on bilateral agreements, e.g., Gabon, Central African Republic and Togo, which guarantee additional employment rights. Although Turkish nationals must have work authorization, they are given certain privileges under the EU/Turkey Association Agreement.

4.4 Self-Employment

Admission into France for the purpose of self-employment requires a long-term visa, evidence of professional qualifications in the form of a professional card, adequate housing and medical insurance, as well as family or private ties in France. Holders of residence permits are not required to hold a professional card. However, despite the liberalization of labor laws since the mid-1980s, certain professions are still restricted for foreign nationals. These include manufacturing and the sale of weapons, managing casinos, entertainment firms, private research agencies, fund management and certain activities in insurance, stock exchange and trade. More restrictive rules also apply to foreign nationals in the following professions - law, architecture, medicine (doctors, dentists, nurses), publishing and sports, all of which operate under reciprocity agreements and quotas.

Self-employed Algerian nationals are exempt from holding professional cards.

4.5 Rights and Benefits Granted to Permit Holders

The general trend with respect to the rights of labor migrants seems to be one of increasing parity between French, EU and other third-country nationals. This development has been partly due to international conventions and the respect of private and family life, guaranteed in Article 8 of the European Convention of Human Rights, and also provisions in national laws such as the 1945 Ordinance, the Chevènement law and the *Code du Travail*, all of which have contributed to make France's laws on family reunification some of the most expansive in Europe.

With respect to social and employment rights the *Code du Travail* provides for equal opportunities and prohibits all discrimination by the employer, without any distinction between nationals and foreigners. Since a 1990 Constitutional Court decision, later embodied in the Chevènement law, there has been equality in the granting of social benefits to national and non-national workers although a degree of discrimination still exists. Foreigners are, for example, excluded from employment in the civil service, normally reserved to French nationals. However, EU laws give European nationals access to jobs in public education, and hospitals have similarly modified civil service employment regulations.

A directive signed by the Home Ministry and the Department for Labor and Employment in January 2002 also contributed to facilitating access for foreigners to the labor market. Before the directive, only highly qualified third-country workers with an employment offer and a set annual salary were readily granted work permits. The regional office of labor and employment (DDTEFP) will usually turn down applications from foreign labor migrants if a French national or a registered unemployed foreign resident can fill the position offered. Under the terms of the new directive, the

DDTEFP is requested to take into consideration the technological and commercial advantages offered by the applicant. According to the directive, in order to remain competitive internationally French firms ought to be able to recruit foreigners who will be able to further such interests.

The January 2002 directive also facilitates access for students to part-time employment, and simplifies and accelerates the process for renewing work authorizations, especially for foreign students who have completed their studies in France and wish to remain because of an offer of employment.

The need for a selective skilled immigration system has dominated discussions among policy makers in recent years, especially in view of the anticipated reduction of the French labor force in the near future. New measures to facilitate labor mobility, such as the adoption of quotas or green cards such as those used in the United States, Italy and Germany are currently also under consideration.

Chapter 7

ITALY

Immigration became part of the national debate in Italy during the 1980s as a result of the country's transformation from a traditional country of emigration to a net receiver of immigrants. Regional conflicts in the Balkans led to an increase in the number of people seeking refuge in Italy, while its thriving economy attracted labor migrants especially from North Africa, but also Eastern Europe and even further afield from countries such as China and the Philippines. Its long maritime border and its proximity to some of its largest immigrant sending countries, such as Albania, led to an influx of undocumented migrants, which still continues to challenge the Italian government.

The government has implemented a number of measures to tackle Italy's problem of irregular migration. In the late 1980s it implemented its first amnesty program, which legalized some 118,000 irregular migrants. In 1990 the passing of one of its most comprehensive immigration laws, the Martelli Law, highlighted some of its growing immigration concerns and sought assistance at EU level to share the burden of patrolling its borders. New immigration laws in 1998, and various amendments in 2002 introduced drastic

measures to deal with illegal immigration, such as separating humanitarian and refugee issues from immigration policy, limiting admissions through the use of quotas, and increased enforcement mechanisms which resulted in more deportations. The 2002 Immigration Law also introduced new approaches to manage labor migration and family reunification cases. Meanwhile, combating discrimination and support for the integration of migrants have also gained prominence in immigration policy discussions.

Italy's use of bilateral agreements with major immigrant sending countries such as Albania, Tunisia and Morocco has also been instrumental in promoting the immigration dialogue between Italy and the sending countries, and helped to tackle the problem of illegal migration. Governments are rewarded for implementing policies to prevent illegal migration to Italy, and there is some evidence to suggest that this form of managed migration has reduced the flow irregular migration, especially from Albania.

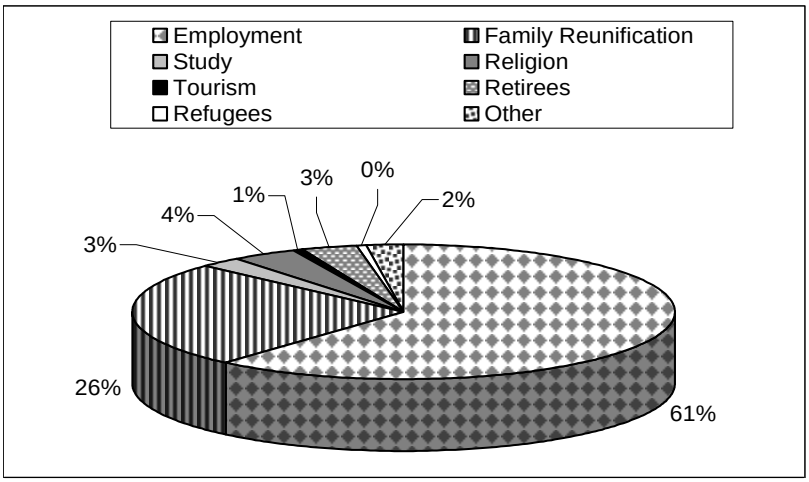
1. Recent Trends in Labor Migration

Of the 271,517 residence permits granted in 2000, 145,300 were new work permits, the others accounted for renewals.[1] Owing to the labor-intensive nature of the Italian economy, the demand for highly skilled foreign labor is relatively low. Consequently, requests for foreign workers tend to be for contractual work usually requiring low-skilled employees. According to pension data, employers requested an estimated 52.2 per cent of low-skilled migrant workers, while 46.8 per cent ask for highly skilled migrants.[2] In recent years, there has been support for policies favouring skilled workers such as IT workers and

[1] OECD(2003a), p.202.
[2] Ibid.

nurses, in response to labor market demands and shortages in these occupations. The frequent regularization of predominantly low-skilled irregular migrants also recognizes the fact that such a labor force is advantageous to the economy if they are "recognized and tax-paying".[3] Moreover, with most of these low-skilled professions proving unattractive for wealthier Italians, regularized migrants also serve the purpose of filling gaps in the labor market. For instance, the 2002 Immigration Law provides for the regularization of irregular migrants working as domestic workers, provided they have not been subject to deportation orders.

Figure 7-1. Italy - Immigrants by Category: 2000



(unit: 1,000 persons)

Employment*	Family Reunification	Study	Religion	Tourism	Retirees	Refugees	Other
850.7	354.9	35.7	55.1	8.5	45.3	6.3	31.7

Source: IOM(2003), adapted from Table III.15, OECD(2003a), p.201, based on statistics from the Ministry of Interior and the National Institute of Statistics (ISTAT), Italy.

Note: * Including self-employed and unemployed.

[3] Neissen et al.(2003), p.303.

2. Policy Developments

The 1998 Immigration Law also introduced a number of mechanisms at national and local level to monitor immigration trends and implement policy. It created three national bodies to oversee these activities. The Commission for Integration Policy was established within the then Ministry of Labor and Social Policy (currently the Ministry of Welfare), the National Co-ordinating Body within the Labor and Economics Council (CNEL) and a special advisory council within the Prime Minister's office (Consulta). A number of provincial immigration councils were also created.

The Commission for Integration Policy is composed of ministerial representatives and experts and was originally tasked with preparing an annual report and to provide advice. The *Consulta* is a plenary-style organization, which meets periodically to provide a forum for actors in the immigration debate. It is composed of representatives of stakeholders, associations, ministry experts, representatives of local governments and others. In addition to plenary sessions on specific topics, working groups also meet to prepare policy papers, which are then formally presented to the government for action. The local Immigration Council was designed as a broad-based provincial forum to discuss immigration trends and to coordinate local integration programs. Its membership, ranging between 9 and 50, is selected by the Ministry of Interior to ensure regional representation.[4]

The Italian Parliament adopted amendments to the 1998 immigration legislation in July 2002, in Law number 189/2002. This new Immigration Law introduced more stringent rules concerning the

[4] Neissen et al.(2003), p.307.

migration of non-EU nationals to Italy. Overall, the law increased the power of the Ministry of Interior to regulate non-EU migrant workers. Among others, the new measures linked residence permits to work permits, and required unemployed non-EU nationals to leave after six months, down from the previous twelve. The duration of work permits was also reduced from four years to two, and migrants had to be resident in Italy for six years before being able to apply for permanent residence, up from five years. Furthermore, to be allowed to remain in the country, non-EU nationals had to be fingerprinted and the right of family reunification was limited to first-degree relatives as defined below (see paragraph on "right to family reunion").

Although entry conditions for highly skilled migrants, such as university professors and professional nurses were relaxed under this new law, all other potential migrant workers had to have a residence contract, i.e. a permit based on a work contract in order to enter the country. Third-country governments were rewarded or penalized through quotas established in bilateral agreements for their cooperation with the Italian government, including the adoption of policies to reduce irregular migration, such as smuggling and trafficking. In 2002, bilateral agreements with Albania and Tunisia reduced their quotas to 3,000 and 2,000, respectively, down from 6,000 and 3,000 in 2001, while Morocco had its quota increased from 1,500 in 2001 to 2,000 in 2002.[5]

3. Administrative Structure

The Ministry of Interior is the administrative body responsible for the admission of foreign nationals to Italy. It operates through the

[5] OECD(2003d), p.9.

questura, provincial Public Security Departments, to ensure that immigrants meet all legal entry and residence requirements. Although provincially decentralized, the departments of the *questura* function as national agencies, not autonomous local entities.

The admission of foreigners is usually decided by an annual decree issued by the Prime Minister who establishes the maximum number of third-country citizens to be admitted into the territory, and the required criteria for granting a work permit. The *questura* can grant, deny or revoke work and residence permits when justified (e.g. when entry requirements have not been met).[6]

The law that defines immigration policies and regulates the admission of third-country citizens for the purposes of paid or self-employed activities is the 1998 Immigration Law (Framework Law or *Testo Unico*, Law n° 286/98), as amended in 2002.[7] Quotas are developed by the Ministry of Welfare,[8] the Ministry of Interior and parliamentary commissions, following directives contained in a program document, which is drafted every three years by the Council of Ministers and other concerned commissions and institutions. These include the National Council for Economy and Labor (C.N.E.L.), the permanent Conference of Co-ordination between State and Regions, the Representatives of the Regions, the autonomous provinces as well as other institutions and associations interested in immigration, integration and assistance.

The Prime Ministerial decree sets the maximum quota in accordance with the current immigration situation, i.e. number of work permits

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[6] owever there is a constitutional obligation preventing discrimination in employment between Italian and third country nationals

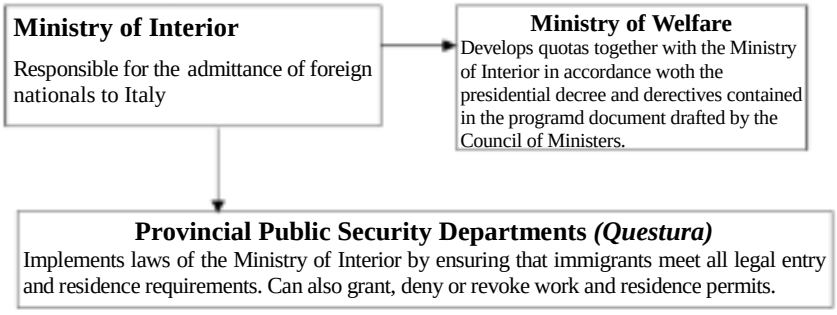
[7] Law 189/2002, also known as the Bossi-Fini Law after its initiators, was passed by the Italian Parliament on July 30, 2002, and came into force on August 26, 2002.

[8] Formerly known as the Ministry of Labor and Social Policy, the Ministry of Welfare is responsible for regulating the labor market and determining the annual quotas for the admission of third-country nationals.

and family reunification visas issued during the previous year. In 2001 the quota for labor migrants was set at 63,000.[9] The decree usually specifies the number of permits to be granted to salaried workers (including seasonal, contract and unlimited employment), self-employed professional migrants, and workers coming from countries that have signed special bilateral agreements with Italy, who are given certain priorities to enter the country for employment purposes. Specific occupations, such as nurses, are also mentioned occasionally, according to the needs of the labor market.

Employers and trade unions also play a significant role in influencing the labor market debate. Other important institutions are the Catholic Church, a number of largely centrist and leftist NGOs, immigration associations and regional elected representatives, all of which contribute to the debate on immigration quotas.

Figure 7-2. Italy - Relevant Immigration Agencies and their Competencies



4. Labor Migration Systems

4.1 Paid Employment

Amendments to the Immigration Law in 2002 introduced the

[9] OECD(2003a), p.202.

contratto di soggiorno per lavoro, the temporary working residence contract. This linked residence permits to a specific employer or a job contract and made them coterminous with the duration of the work contract. It is the responsibility of the employer to make a request for third-country workers by submitting an application to the Ministry of Welfare, subject to a labor market test. Under Article 18(4) of the 2002 Immigration Law, if no Italian or EU national responds to a vacancy notice after 20 days, the employer may contact the regional office, which is linked to the Ministry of Welfare, for a work permit for a third-country national. This nominative request must come from an Italian employer or a foreign national already resident in Italy. The application for a work authorization can be specifically for nationals enrolled on a list compiled as a result of existing bilateral agreements, or nationals in special employment categories who are coming to Italy to meet a specific labor demand. To be valid the application must include a guarantee by the employer to provide adequate accommodation and a commitment to cover the complete travel expenses for the employee.[10]

Permits may be granted for a limited or unlimited period and can be used for a different category of employment from the job for which it was initially issued, subject to formal conversion procedures. For unlimited work contracts, permits are granted for up two years and are renewable. For fixed-term employment contracts the permits cannot exceed one year, and permits for seasonal work are issued for nine months. Permits may be renewed at least 90 days before their expiration, through the *questura* according to the same conditions as

[10] In order to redress the problem of housing shortages, particularly in regions demanding labor, the 2002 Immigration Law requires employers to guarantee housing to each third-country national offered employment in Italy. The provision of travel expenses also ensures that the migrant worker does not become stranded in Italy after the termination of employment. Work permits are denied in the absence of such guarantees.

the original permit. Migrants may apply for a permanent residence card (*carta di soggiorno*) after they have been in Italy for at least six years on a temporary working residence permit. The permanent residence card grants residence in Italy for an indefinite period and can be renewed indefinitely, provided the applicant has sufficient financial means.

4.2 Work Permit Restrictions

The conversion of a work permit from a salaried to a self-employed permit and vice versa is only possible when the existing permit is due for renewal. Seasonal workers are restricted to working only in the employment category stated on their work permit. Student permits allow the possibility to work for a maximum of 20 hours per week and may be converted into a work permit if the request is made before the expiry of the permit itself.

According to Article 98 of the Italian Constitution, public employment is an exclusive national service and this area of employment is reserved for Italian, and more recently, EU citizens only.

Although the possession of a clean criminal record is not an express condition for the granting of a work permit, a third-country national who is considered to be a threat to public order will not be granted a visa or a work permit. Permits may also be revoked if a court passes a sentence determining that a foreign national presents such a threat.

4.3 Special Employment Categories

Immigration laws outline a list of professions for which migrant workers are easily granted work permits subject to the nominative

request process described above. These include company executives from ILO member states, translators and interpreters, professional trainees, employees of foreign companies operating on Italian territory, maritime workers, artists, athletes, journalists accredited in Italy, and au-pairs. This list is also responsive to labor market demands, which favoured information technicians in the late 90s and more recently has supported developments in the labor market to cater for the shortage of nurses. Employees under this scheme are not subject to quotas, but cannot change their occupation during their stay.

4.4 Rights and Benefits Granted to Salaried Work Permit Holders

According to the Immigration Law, the duration of the temporary work permit may not exceed two years. However, if workers become unemployed during this period they may still continue to reside in Italy for the remainder of their residence permit and are required to enrol in the provincial employment bureau. Furthermore, residence permits cannot be revoked for relatives of workers legally resident in Italy.

A number of social rights are attached to the work permit under Articles 34 to 46 of the 2002 Immigration Law, which guarantee certain benefits relating to health care, education, access to social housing, participation in public life and social integration.

The right to family reunion is guaranteed by articles 28 and 29 of the Immigration Act, which define family members as spouses, unmarried children under 18, disabled adult children and parents over 65 years of age with no other means of support. Although family reunification is not subject to quotas, the applicant must demonstrate the availability of suitable accommodation and possess an

employment contract for at least one year. Family permits allow access to social services, education, vocational training and the labor market.

Although the Immigration Law does not make any reference to trade union rights the constitution implies that trade union participation is for “workers” without distinguishing between national or non-national workers. With regard to salaried employment, equal treatment in relation to wages and social insurance similar to those provided to Italian citizens, is guaranteed.

Migrant workers may apply for Italian citizenship after 10 years of holding a permanent residence permit.

4.5 Self-Employment

With the exception of jobs reserved for Italian or EU nationals, any type of self-employment is permitted, subject to the annual Prime Ministerial quota. The Immigration Law also places a further limitation and stipulates sectors in which self-employed foreign nationals are allowed to work. These include activities of a professional, industrial, manufacturing or a commercial nature, which may involve the establishment of a company. Generally, third-country nationals who wish to migrate to Italy for the purposes of self-employment must demonstrate that they have sufficient resources to engage in their activities and meet certain prescribed administrative requirements. Applicants will also need to demonstrate that they have adequate income for subsistence and housing.

Consular representatives, in liaison with the Ministry of Foreign Affairs and the Ministry of Welfare, may issue a residence permit for self-employment through a certification process. Entry visas are issued after the requirements for granting resident permits have been satisfied. These include:

- A completed application form
- Relevant travel documentation
- An Italian or foreign insurance policy valid in Italy or registration with the National Health Service
- Documents attesting to adequate accommodation and income.
- The duration of self-employment residence permits is two years and subject to the same renewal conditions and employment restrictions as salaried work permits.

Most of the benefits relating to family reunification and social benefits granted to salaried workers are also applicable to self-employed permit holders.

4.6 Business Residence Permits

In addition to the salaried and self-employed residence permits, the immigration laws provide for a number of other permits including permits for business, medical treatment, family reasons, study and certain extraordinary circumstances, e.g. humanitarian considerations.

The business residence permit is granted to non-EU nationals entering Italy for commercial reasons. Additionally, professionals wishing to enter Italy temporarily for professional reasons can apply for the business residence permit. The duration of the permit corresponds with the length of the entry visa and cannot exceed three months. This type of permit does not allow the applicant to change their purpose of stay, and restricts activity to that which the permit is issued for. In addition to requirements for adequate health insurance, the *questura* may require the applicant to provide evidence of sufficient financial means for the duration of the stay and to leave Italy when the permit expires.

Chapter 8

UNITED KINGDOM

Recent years have seen increasing political priority being awarded to immigration and asylum matters in the U.K., reflecting a rise in the public importance of the issue. Public concern has focused on the rising numbers of unauthorized entries that have fuelled racial tensions in parts of the U.K., and forced the government to reassess its immigration policy. Several significant overhauls of immigration and asylum legislation have occurred in recent years to deal with these concerns, including the adoption of the Immigration and Asylum Act in 1999 and, more recently, the Nationality, Immigration and Asylum Act in November 2002. Included in this Act are radical new measures to accelerate the removal of violators of immigration laws, streamline channels of appeal and to tackle illegal working and organized crime, such as human trafficking and smuggling.

Concurrently, measures have also been taken to encourage and effectively manage opportunities for legal labor migration through the liberalization of labor migration schemes for both highly skilled and low skilled migrants in response to shortages in the labor market. The main labor migration trends have focused on removing obstacles to the issuing of work permits, extending temporary guest worker schemes for young people, and revising skilled migration schemes to be more

inclusive, e.g. by shifting the source of highly skilled migrants from the Old Commonwealth to the New Commonwealth states.[1]

1. Recent Trends in Labor Migration

Serious efforts have been made since the late 1990s to modernize and reduce the bureaucracy of work permit procedures to reflect global labor market trends, address specific skills shortages and respond to the needs of British businesses. A noticeable trend over the past few years has been the opening up of the U.K. labor market. Between 1993 and 1996 about 900,000 foreign nationals were working in the U.K. and by 2001 this figure had risen to 1.2 million, with around 40 per cent of this figure originating from within the EU.

However, since 1999 there has been an increase in the number of non-EU labor migrants and 2001 saw an increase of 13.9 per cent from the previous year, compared to an increase of 6.7 per cent from the EU.[2] The number of work permits issued for non-EEA nationals almost doubled between 1997 and 2001, from 43,655 to 81,065 over this period, excluding dependants (see Table 8). In addition, some 51,000 applicants were granted extensions to stay as work permit holders or trainees in 2001.

According to the 2000 Labor Force Survey, 7.9 per cent of all those in employment were foreign born, with a high concentration in the professional and managerial categories. The highest proportions of foreign-born workers were among health professionals (26.8%) and scientists (15.1%), reflecting current U.K. labor shortages.[3]

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1 OECD(2003).
2 OECD(2003a), p.275.
3 UK Office for National Statistics, *Labor Market Trends*, October 2001.

Table 8-1. Admissions of Work Permit Holders and Their Dependants, in the UK(Excluding EEA Nationals, 1997 to 2001)

(Number of persons)

	1997	1998	1999	2000	2001
All nationalities					
Employment for 12 months or more	16,270	20,160	25,005	36,205	50,280
Employment for less than 12 months (2)	27,385	28,020	28,405	30,740	30,785
Dependants of work permit holders	19,320	20,205	22,600	24,880	27,760
Total	62,975	68,385	76,010	91,825	108,825
of which:					
Europe	7,260	8,330	9,300	9,865	10,040
Americas	28,745	29,570	30,690	33,815	31,375
Africa	4,195	5,455	7,400	9,075	14,100
Indian sub-continent	6,105	7,935	8,690	13,875	19,750
Rest of Asia	12,700	12,095	13,990	17,925	23,645
Oceania	3,845	4,855	5,810	7,170	9,785
Other nationalities	125	145	130	100	130
All nationalities	62,975	68,385	76,010	91,825	108,825

Source: *Control of Immigration*, Statistics United Kingdom, 2001 (Home Office).

2. Policy Developments

The UK government's recent efforts to improve the management of migration flows, particularly in response to labor shortages in specialized sectors such as engineering, teaching and health care, can be illustrated by the introduction a number of measures to attract specialized labor through its Highly Skilled Migrant Program (HSMP). Unlike the traditional Work Permit Scheme, which places the responsibility of applying for permits on the employer and is subject to a labor market test within the EEA, individuals can apply for permits under the HSMP on their own initiative. This scheme is based on a points system in which scores are given on the basis of the applicants' educational qualifications, work experience, past earnings and other achievements in their particular fields.

In response to criticisms that the scheme did not adequately attract

the skills needed in the U.K., the scheme was further modified in January 2003 to place more emphasis on previous work experience, and revised the earnings thresholds applicable for individuals from low-income countries. The aim is to open the scheme to applicants with significant work experience and about 12,000 applications are expected as a result of these changes.

These recent reforms have been closely linked to the needs of British industry, and demonstrate the willingness of the Government to respond to the employers' demand for greater access to the international labor market. Consequently, the work permit scheme has been modified to allow more skilled workers into the U.K. Although those influencing the debate are mainly private sector companies, more liberalized opportunities in the lower skilled areas, such as agriculture, catering and construction, also indicate that the needs of companies in the marginal sectors of the industry are not being ignored. The introduction of the lower skilled Sectors Based Scheme in May 2003 illustrates this point.

Local authorities[4] have also been key to implementing changes in response to skills shortages in the public sector. The U.K. government's efforts at revising labor migration policies on an on-going basis has meant that acute shortages in the education and health services can be filled more easily through the recruitment of teachers and medical workers from abroad. Other concerned actors that have contributed to influencing labor migration policies and debates are trade unions and concerned non-governmental organisations (NGOs). These organizations play an important role in ensuring that the rights of migrant workers are protected without excessive exploitation by businesses.

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[4] The Local Government Association was formed in 1997 and represents the local authorities of England and Wales, a total of just under 500 authorities.

A 2001 White Paper highlighted some of the economic benefits migrants brought to the U.K., such as the creation of new businesses and jobs, and filling gaps in the labor market. While arguing that current legal migration programs were unable to meet skill shortages in some sectors, it nevertheless concluded that migration was "neither a substitute nor alternative for other labor market policies, notably those on skills, education and training."[5] These arguments have been the basis of recent U.K. policy on labor migration.

3. Administrative Structure

The Immigration and Nationality Directorate (IND) of the Home Office is responsible for immigration control regulating entry to, and settlement in, the UK, while its Work Permits U.K., part of the IND, is in charge of granting work permits for employment in the U.K. Prior to 2 April 2001, Work Permits was known as the Overseas Labor Service (OLS), which was part of the Department for Education and Employment. The OLS was responsible for examining requests and issuing work permits for paid migrant workers, while a separate unit in the Home Office, the Integrated Casework Directorate (ICD), processed applications for self-employed migrant workers.[6] The fact that the two departments sometimes pursued different policies, with the OLS primarily concerned with the economy, and the IND mainly with immigration control, often resulted in an incoherent approach to the granting of permits. For instance, the grant of a work permit did not always guarantee clearance to enter the U.K. Consequently, incorporating Work

[5] Glover et al., *Migration: An Economic and Social Analysis*, RDS Occasional Paper, No. 67, 2001.

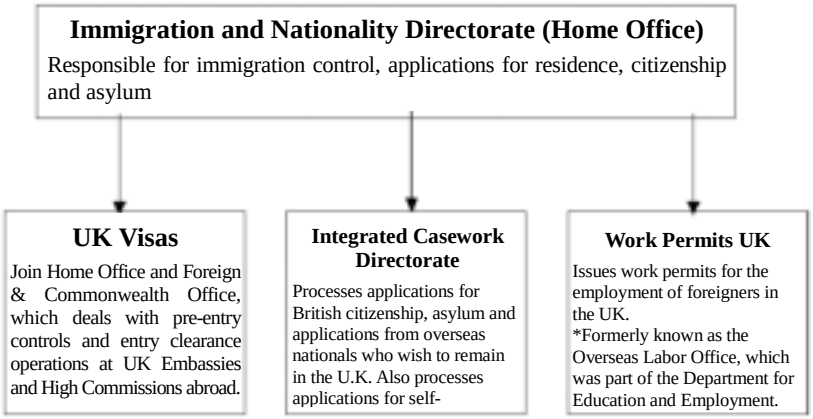
[6] Integrated Casework Directorate is still responsible for admitting third country nationals entering the UK for self-employment.

Permits into the IND has resulted in increased administrative efficiency and a better coordinated immigration service.

This change has been accompanied by a number of initiatives to modernize and streamline the bureaucracy of the work permit procedures to reflect the current global market, and to address specific skills shortages, especially in the healthcare, education and information technology sectors.

Created in 2000, UK visas is a joint Home Office and Foreign & Commonwealth Office Unit and runs the U.K.'s pre-entry control through the entry clearance (visa) operation at Embassies and High Commissions overseas.

Figure 8-1. UK Relevant Immigration Agencies and their Competencies



4. Labor Migration Systems

4.1 Paid Employment

4.1.1 Work Permit Scheme

The Work Permit arrangements enable U.K. based employers to recruit or train people who are not nationals of an EEA country.

They are designed to strike the right balance between enabling employers to recruit or transfer skilled people from abroad and safeguarding the interests of the resident work force. This assists employers in their business development and helps them overcome short-term skill shortages that could not be met by training resident workers.

Immigration rules require a non-EEA national taking up employment in the U.K. to have been issued a work permit before entering the country. Third-country nationals who have been admitted temporarily (e.g. visitors, students, and those admitted under the "working holidaymaker" arrangements) are not normally allowed to switch to work permit status. However, the government has recently implemented some reforms for students and working holidaymakers. Individuals cannot apply for a work permit on their own behalf and, when granted, the permit is sent directly to the employer. There are no quotas or limits on the number of permits issued.

Qualifying Criteria:

- Employers must be based in the UK
- There must be a genuine vacancy in the UK
- Employers need to demonstrate that there are no suitable resident workers available
- The pay should be at least equal to that normally paid for similar work in the U.K.

For business and commercial employment the applicant must have one of the following qualifications:

- A UK equivalent degree level qualification
- A Higher National Diploma (HND) that is relevant to the post on offer
- A HND that is not directly relevant to the post on offer plus one year of relevant work experience, or
- Three years of experience using specialist skills acquired in a job similar to the one for which the permit is sought, and a National/Scottish Vocational

Qualification (N/SVQ) at level 3 or above.

There are two types of business and commercial work permit categories: Tier One and Tier Two. This two-tiered work permit system was introduced in 1991 with the creation of the shortage occupations list.

Tier One applications deal with Intra-company Transfers (ITC), board level posts, inward investment and shortage occupations, and allows employers to dispense with labor market testing.

– ITCs allow multinationals to transfer employees of multinational companies to a skilled position in the U.K. To qualify for an ITC, the British company must have a direct link with the overseas company through common ownership. The vacancy should require an experienced employee who has essential company knowledge and at least six months experience working for the overseas company. The U.K. is currently party to agreements with a number of European countries (mainly candidate countries to the EU), which allow for the transfer of key personnel between a parent company in the country concerned and the subsidiary based in the U.K.
– The Board Level Posts is a category for senior board post or posts at equivalent level. The employee must have a personal daily input into directing the company at a strategic level and should also have senior board level experience.
– The Inward Investment category is aimed at companies for new vacancies that are essential to an inward investment project bringing jobs and money to the U.K. The minimum qualifying investment is GBP 250,000. A business plan providing full details of the investment is required with the initial application. The business plan should describe the details of the project and its duration, the number of jobs to be created, the amount expected to be invested and the reasons why the investment depends on employing the selected person.
– Shortage occupations are those recognized by Work Permits to suffer an acute shortage of suitably qualified workers within the resident labor market (including workers within the EEA). A shortage occupation list is drawn up in consultation with the relevant industries, and adjusted from time to time to reflect current labor market trends. In 2000, for instance, the list was altered to reflect shortages in the IT sector, leading to an increase in the number of work permits issued for this category between

2000 and 2002. With the downturn in the sector and labor market reports showing that there was a sufficient local pool of relevant skills, employment shortages in the IT sector were removed from the list in September 2002. Skill shortages have currently been identified in the engineering, healthcare and other occupations such as teachers, actuaries and veterinary surgeons.

The Tier Two category deals with all applications not falling under Tier One. Employers will need to demonstrate why a suitably skilled resident worker, or one who could have carried out the job with extra training, could not fill the position, and provide details of recruitment methods such as advertising through the appropriate medium. Applications may be refused if these requirements are not satisfied.

In addition to Tier One and Tier Two, there are two other categories that require work permit authorization.

The Sports People and Entertainers category enables employers to recruit current international performers of the highest standard who are able to make a significant contribution to entertainment or sport to work in the U.K. Work Permits will only issue permits for established sports people, entertainers, cultural artists and some technical specialists, if their employment does not displace or exclude resident nationals.

The purpose of Training and Work Experience Scheme (TWES) is to enable individuals to gain skills and experience through work-based learning that builds on their previous education and training and which they intend to use on their return overseas. The scheme enables employers to provide training for a professional or specialist qualification, or work experience to a person from abroad requiring permission to work in the U.K. A TWES permit holder cannot be used to fill a position that would otherwise be filled by a resident worker. TWES permits are issued where a genuine need exists for a person to do work-based training for a professional or specialist

qualification, or a period of work experience. Participants are not entitled to transfer to work permit employment, and would normally not be eligible for a work permit until they have spent a period of time outside the U.K. - 12 months if they were on a TWES permit for up to a year and 24 months if over one year. The pay and other conditions provided should be at least equal to those normally given to a resident worker undergoing similar training or work experience

4.1.2 Rights and Benefits of Work Permit Holders

Work Permit holders have the same employment rights as resident workers. Spouses and children under the age of 18 are permitted to join and take up employment in the U.K. as long as the permit holder remains in approved employment. In such cases, the relatives must first obtain the appropriate entry clearance. One of the key requirements for entry as a work permit holder is for the individual to be able to support and accommodate him/herself and any dependants without recourse to public funds.

After a 48-month actual presence in the U.K. on a work permit, migrant workers can usually obtain permanent residence. For this reason, work permits were usually not issued for more than four years. However, as many workers in the U.K. are required to travel abroad regularly, and do not spend 100 per cent of their time in the U.K., work permits are now granted for up to five years. It is presumed that after five years the worker will have spent 48 months in the U.K. and thus be able to obtain permanent residence. Once permanent residence has been granted, there are no more immigration-related restrictions on the work or business an immigrant may undertake in the U.K., and no time limits on staying in the U.K.

4.2 Other Temporary Labor Migration Schemes

4.2.1 Highly Skilled Migrant Program (HSMP)

This scheme was introduced in January 2002 as a 12-month pilot program in order to allow highly skilled migrants able to support themselves to enter the U.K. to find employment. Based on its success, it was decided to extend the program indefinitely. Similar to the Canadian scheme, applicants are assessed on a points system based on educational qualifications, previous work experience, past earnings and achievements in their chosen field. A specialist category also facilitates the recruitment of suitably qualified doctors to work as general practitioners in the U.K.

This scheme differs from the work permit scheme in that it does not require an employer to obtain a work permit for the individual before the applicant is granted leave to enter the U.K. Applications must normally be made abroad at a British Embassy, High Commission or by posting an application directly to the Home Office. However, persons already in the U.K. in work categories that can lead to settlement can apply to Work Permits while in the U.K. Successful applicants will be granted leave to enter the UK initially for one year. They are expected to find work quickly or to establish a business (self-employment) and, when employed at a level warranted by their skills, they are granted further leave to remain for an extended period. The scheme is not subject to quotas and allows changes in employment if evidence of employment at the appropriate skill level is provided. Migrants entering under this scheme will be able to apply for settlement after they have been in the U.K. as a highly skilled migrant for four years. Principal applicants may also seek entry for their spouses and dependent children, with their spouses having access to the labor market. Statistics from Work Permits indicate that in 2002 approximately 2,500 applications were received for the

scheme, 53 per cent of which were granted. A further 30 per cent of those initially refused were approved after reconsideration.[7]

4.2.2 Working Holiday Makers (WHM)

This program allows young unmarried Commonwealth citizens aged between 17 and 27 to enter the U.K. for a two-year period to take up incidental employment during their holiday. It currently attracts about 40,000 applicants each year. Participants are restricted to working either full time for about a year of their holiday, or part-time for the whole two years, provided they take a holiday at some stage. Participants are prohibited from engaging in business, taking up managerial positions, pursing a career in the U.K., providing services as a professional sportsman or an entertainer, or working as a medical doctor or a general practitioner. Certain exceptions are made to these rules to allow participants to teach or work as agency nurses.

Discrepancies among the admissions from rich and poor Commonwealth countries were highlighted in a 2002 White Paper (a government report). It was noted that approximately 96 per cent of participants in 2000 were from New Zealand, Australia, Canada and South Africa.[8] A consultation document issued in June 2002 included a proposal to make the scheme more inclusive. Another proposal was to extend the scheme to include non-Commonwealth countries, mainly from Central and Eastern Europe, although with the U.K.'s decision to lift employment restrictions for EU Accession Countries from the date of accession, this proposal may no longer be necessary. Other shortcoming of the program included the lack of accurate information about the type and period of employment, as well as the lack of an effective enforcement procedure of the work restrictions.

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[7] OECD(2003b).

[8] Working Holiday Makers Scheme: Consultation Document, Work Permits (UK), June 2002.

Amendments to this scheme, announced in June 2003, and effective from 25 August 2003, include raising the upper age limit from 27 to 30, removing existing employment restrictions and allowing a switch in status after 12 months in the U.K., to enable participants to take up work permit employment, if they satisfy the necessary criteria. Applicants will have to demonstrate that they have sufficient funds to be able to support and accommodate themselves in the U.K. without recourse to public funds, and are liable to paying taxes and social insurance. These changes represent a shift away from the cultural exchange origins of the program to one that seeks to provide a flexible labor force for the U.K. economy and meet its labor market needs.

4.2.3 Seasonal Agricultural Workers Scheme (SAWS)

The Seasonal Agricultural Workers Scheme (SAWS) allows overseas nationals to enter the U.K. and work in the agricultural industry to meet its demand for seasonal labor. As a youth mobility scheme it enables young people from non-EEA countries to visit to the U.K., to earn money and to learn about the culture and the language of the country during their stay. Applicants should be full-time students aged between 18 and 25. The majority of participants have traditionally come from Eastern Europe although the scheme is open to any nationality outside the EU.

The scheme operates all year round[9] and participants may undertake any agricultural work provided it is of a seasonal nature. No work permits are required, but participants must hold a work card issued by one of seven approved operators who administer the scheme on behalf of the Home Office. Visa nationals must also apply

[9] The Seasonal Agricultural Workers scheme, when first introduced, operated from May 1 to November 30 only.

for a visa. Applications should be made in the applicant's home country. Participants are allocated to specific farms although the scheme operators may move them to another farm if work runs out. Those already in the U.K. in another capacity may not switch to this category. Quotas are used to manage the numbers of people that may participate in the scheme. The quota for 2003 is 25,000.

4.2.4 Sectors Based Scheme (SBS)

In May 2003, Work Permits (UK) introduced a new low skilled work permit scheme, the Sectors Based Scheme (SBS). This program was established to deal with shortages in the food manufacturing and hospitality sectors to address recruitment shortages, particularly in the fish, meat and mushroom processing, and hotel and catering industries. The scheme operates under a quota system and follows existing work permit requirements. Permits may be issued when the employers have demonstrated that they have been unable to recruit resident workers for their vacancies. Qualifying overseas applicants should be aged between 18 and 30, and are granted entry to the U.K. to undertake specific positions. Changes of employment are only permitted when the type of job is of a similar nature.

Specifically designed as a temporary labor migration scheme without the possibility of permanent settlement, permits are issued for a period of 12 months. Applicants who wish to obtain another work permit will have to leave and stay outside the UK for at least two months. Out of the May 2003 to 31 January 2004 quota of 10,000 work permits per sector, 7,500 permits have been allocated to EU Accession Countries and the remainder to nationals of countries other than EU Accession Countries.

The SBS marks an important change in the U.K. labor migration policy, as its Work Permit Scheme since 1972, has not allowed the issuing of permits for low-skilled workers.

4.3 Self-Employment

The Integration Case-working Directorate of the IND is responsible for admitting third-country nationals to the UK for the purpose of self-employment. Work permits are not required for self-employment and different categories of applicants are subject to different requirements.

4.3.1 Persons Intending to Establish Themselves in Business

This business category refers to a person in a business enterprise as a sole trader, a partner or working for a company registered in the U.K.

Qualifying criteria:

- Entry clearance as a business person
- A minimum business investment of GBP 200,000, which may be invested as a cash investment, in shares or a combination of the two
- The investment must be the applicant's own money and cannot come from another source
- The applicant must have either a controlling or equal interest in the business, i.e. more than a 50 per cent interest, or be one of the partners or directors
- A detailed business plan showing the nature of the business, the level of investment involved, the number of jobs expected to be created and financial projections
- Sufficient funds to support and accommodate themselves and their dependants without recourse to other employment or public funds.

Self-employed businesspersons are usually granted leave to enter the U.K. for 12 months, with a restriction on their ability to take up employment. Extensions may be granted if the applicants demonstrate that they entered the country with a valid U.K. entry clearance as a businessperson, and demonstrate that the above-mentioned qualifying criteria have been met (e.g., accounts confirming that an investment of not less than GBP 200,000 has been

made into a UK-based business etc.). If all the requirements are met, an extension may be granted for three years. Leave to remain in the U.K. indefinitely may be granted after spending a continuous period of four years in the country, in addition to the submission of audited accounts for the first three years of trading and the management accounts for the fourth year. Spouses and dependent children under the age of 18 may apply for entry clearance to join the main applicant, provided they do not intend to stay in the U.K. beyond the period granted to the main applicant and will be supported without recourse to public funding.

4.3.2 Writers, Composers and Artists

Writers (authors, essayists, playwrights, poets and established and published journalists), composers (of music) and artists (painters, sculptors, international photographers, cartoonists and illustrators) may be exempt from work permit requirements if the following criteria are met.

Qualifying criteria:

- Entry clearance as a writer, composer or artist
- Established outside the U.K. and primarily involved in producing original work
- Work which has been published, performed or exhibited on its merit
- Intention to work as a self-employed person in the UK
- Ability to support themselves and any dependents during the previous year solely by working as a writer, artist or composer and ability to continue to support themselves in this manner.

If all these conditions are met and the applicant remains in the U.K. continuously for a period of four years as a writer, composer or an artist, an application for settlement with the same conditions and benefits as described above may be made.

4.3.3 Investors

Qualifying criteria:

- Intention to make the U.K. their main home
- Minimum personal disposable income of GBP 1 million, which they intend to bring to the U.K., of which a minimum of GBP 750,000 should be invested in U.K. government bonds, shares, or loan capital in active U.K. trading companies
- Ability to support themselves and their dependants without recourse to public funds.

Foreign investors may not invest in offshore companies, banks or building societies. Initial entry clearance as an investor is for 12 months, with the possibility of a three-year extension, subject to evidence that the above requirements have been met. Investors may be able to apply for indefinite leave to remain after four years of continuous residence in the U.K.

4.3.4 Innovators

This two-year pilot scheme established in September 2000 targets entrepreneurs with new and creative ideas who want to set up business in the United Kingdom. The aim of the scheme is to attract and select entrepreneurs whose business proposals, especially in the area of science and technology, will lead to exceptional economic benefits to the United Kingdom. This category is distinct from other business categories because the applicants do not need to invest a set amount, do not have to invest their personal money and are assessed on the basis of their ability to bring exceptional economic advantages to the U.K. The applicants will need to demonstrate entrepreneurial abilities, technical skills and a good business plan, which will develop e-commerce or other new technologies in the UK.

Qualifying criteria:

- The proposed business must create two full-time jobs for people who are settled in the United Kingdom, which may be made up from a number of part-time jobs
- Possession of at least 5 per cent of the company shares, which must be registered in the United Kingdom
- Ability to support and accommodate oneself and any dependants without having to engage in other work or recourse to public funds until the business generates sufficient income
- Sufficient income available to finance the business for the first six months after arrival in the U.K.

If the application meets these requirements, it is assessed using a points system. To qualify, the applicant must obtain a minimum score based on previous business experience and evidence that the business plan is realistic and can generate jobs. Entry clearance as an innovator should normally be obtained before entering the U.K.; however, applications may also be considered once the applicant is in the U.K. Applications from persons who are in the U.K. as visitors will not be considered. Successful applicants are allowed to remain in the U.K. for 18 months, after which they can apply for an extension of up to four years, subject to satisfying the specified requirements. Leave to remain indefinitely may be granted after a continuous residence of four years. Spouses and dependent children may apply to enter with the applicant or to join at a later date.

Chapter 9

GERMANY

Germany is a typical example of a nation that has adopted the demand-driven system whereby stays of migrant workers and the number of migrants in the country. This posed as a social problem. As a result, Germany completely stopped introducing workers from a foreign country other than any of the member nations of the European Economic Community (EEC) as from November 23, 1973. However, the suspension of the importation of foreign workers could not prevent a new migrant worker from finding a job in Germany. For instance, a worker from an EEC country could find a job in Germany since people were granted freedom of movement among the EEC member nations. In addition, the migrant workers in Germany could invite their family members to visit the country, who were allowed to work in Germany after a required stand-by period. The refugees who entered Germany in great numbers in the 1980's and 1990's could also find employment upon obtaining a work permit. Despite these circumstances, Germany made agreements with East European countries at the end of 1989 and afterwards to introduce foreign workers under a work permit system. This may be interpreted not as a measure to solve the domestic labor shortage problems but as a move taken from political motives to integrate the East

European neighbors into Western Europe.

1. Recent Trends in Labor Migration

As of April 2001, the number of economically active migrants in Germany was 3,616,000 comprising 8.9 per cent of the country's total economically active population (40,550,000). The number of migrant workers was 3,074,000 or 8.3 per cent of the nation's entire working population (36,816,000). Of the total migrant workers, the production labor accounted for 57 per cent, the office workers 33 per cent, and the self-employed 8.7 per cent.

Table 9-1. Trends in Salaried Migarant Workers in Germany[1)]

(Unit: Thousand Persons)

Year[2)]	No. of Salaried Migrant Workers	Percentage of Salaried Migrant Workers[3)]	Workers with EU Nationality	Percentage of Salaried Workers with EU Nationality
1997	2,061.3	7.7	655.5	31.8
1998	2,073.8	7.5	656.9	31.7
1999	1,958.3	7.4	644.9	32.9
2000	2,060.0	7.0	649.5	31.5
2001	2,024.8	7.1	641.8	31.7
2002	1,960.0	7.2	618.2	31.5

Source: Bundesanstalt für Arbeit(2003).

Notes: 1) Number of all non-German salaried workers who are required to buy a social insurance policy (including salaried workers with EU nationality);

2) As of September each year for years 1997 through 2001, and as of June for 2002;

3) Percentage of salaried migrant workers out of the total salaried workers in Germany.

As of 2002, 10.5 per cent of the total salaried migrant workers in Germany were employed in the metal industry, 9.0 per cent in cleaning work, 6.2 per cent in office work (clerical assistants' work included), 5.6 per cent in sales, 5.3 per cent in warehouse management,

5.0 per cent in assembly work, 4.9 per cent in cooking, and 4.5 per cent in construction work. The distribution of the migrants by nationality showed that the greatest share or 27.5 per cent of them were Turkish, 10.1 per cent Italians, 9.4 per cent former Yugoslavians, and 5.6 per cent Greeks.

Migrant workers are subject to all German labor-related laws and regulations as long as they are legitimately employed in Germany regardless of their forms of employment. The levels of wages and other working conditions are set forth in the collective agreements of each industry in Germany, and apply also to migrants working in Germany under the work permit system. Migrant workers are equally protected with domestic workers in such a way that Regional Labor Offices check with the employers who intend to employ migrants, to see if their employment contracts guarantee the employees the levels of wages and other working conditions prescribed in the collective agreements.

Industrial accident compensation insurance applies to migrant workers from the moment they arrive in Germany. Medical insurance, nursing insurance and employment insurance also apply to migrant workers on equal terms with German nationals, and so the migrants must pay premiums for these insurances. But there are almost no cases of migrants receiving benefits from employment insurance because the migrant workers have to, in principle, go back to their home countries upon completing their employment in Germany. Annuity insurance is provided under separate annuity agreements concluded between the governments of Germany and other countries.

2. Policy Development

Germany first introduced migrant workers when it concluded an intergovernmental agreement with Italy in December 1955 to import Italian workers for German agriculture. Due to continued high

economic growth, Germany saw a steady rise in demand for labor. After 1961 when the Berlin Wall was put up, however, it became impossible for East German refugees to move to West Germany, causing the western country to suffer worsened labor shortages (Bischoff, 1992: 32-34; Reister, 1983: 18-19). In 1961, West Germany had to experience a labor shortage to the extent that more than 550,000 job vacancies could not be filled, and saw businesses paralyzed, and productions cut-a situation that would hamper steady economic growth. By industry, the construction and manufacturing industries suffered the most serious shortage of labor.

In an effort to place foreign workforce into regions and industries suffering labor shortage, the German government made interstate agreements on the introduction of foreign labor with Greece and Spain in 1960, with Turkey in 1961, with Morocco in 1963, with Portugal in 1964, with Tunisia in 1965, and with Yugoslavia in 1968. With these arrangements, Germany imported hundreds of thousands of foreign workers each year[1]. The cumulative total number of foreign workers introduced into the German labor market exceeded one million in 1965, and reached 2.5 million by 1973.

The foreign labor introduced in those years was so-called “guest workers” who were issued with a work permit to enter Germany for work in a specified business and at a designated workplace for an initial period of one year under the “rotation principle.” They were entitled to an extension of their work permit by a maximum of three years. The foreign workers who came to Germany during this period were basically of the most productive age (not more than 40 years of

[1] In addition to these countries, Germany made agreements with Japan, Monaco, Korea, etc., for intodution of workers from those countries, but the size of the labor was relatively small. From Korea, for example Germany imported mine workers (between 1963 and 1977) and nurses (in the 1970’s), with the total number of mine workers being less than 10,000 and that of nurses only about 20,000.

age) in good physical condition. They were required to have received a certain level of education and training, and to have the ability to carry out the job responsibilities assigned to them, but quite a few were in fact engaged in low-skilled (half-skilled) or unskilled work.

The method of introducing foreign labor was twofold: One was that the Recruitment Commission (Anwerbekommission), a special agency under the Federal Labor Administration, set up a branch office in each of the sending countries and selected successful applicants for work in Germany, and the other was that German firms selected foreign workers for themselves. Whatever method was taken, the domestic-worker-first employment principle prevailed, and it was possible to import foreign labor only when the wages and working conditions for the foreigners were set at the same level as that for domestic workers.

The German government, adhering to the rotation principle, originally planned to send the migrant workers back to their home countries upon completion of their employment for up to three years, but the plan was seldom realized due to opposition from the employers. The employers were hesitant to send the migrant workers back because they had already acquired a certain level of job skills, adapted themselves to their workplaces, and acquired a working level proficiency in the German language, while their newly arriving replacements would take up more of the employers extra time and money to settle and become skilled in their jobs. Meanwhile, the federal government also felt that the country needed skilled alien labor to insure sustained economic growth, and tacitly granted extension of the aliens' residence and work permit by another two years even when the three-year work permit expired. In addition, with the introduction of the Alien Act (Ausländergesetz) in 1965, migrants who had resided in Germany for more than five years were entitled to a permanent residence permit. As a result, the number of aliens

increased sharply from the mid-1960's spurred not only by the increase in the number of long-term resident alien workers but also by their spouses and children invited to join them in Germany, and their German-born babies.

As the number of aliens in Germany increased rapidly, the German government suspended on November 23, 1973 the recruitment of foreign labor from countries other than the EEC member nations. When issuing a new work permit or extending its valid period, the government would insure that the domestic labor market was thoroughly surveyed, that the period of validity of the work permit was extended within the limit of one year, and that the migrant was engaged in a specified business and worked at a designated workplace.

The efforts of the German government to suspend importing foreign labor and reduce the number of migrant workers bore fruit and the number of migrant workers decreased by more than 500,000 between September 1973 and September 1975, and dwindled to 1,860,000 in September 1978, representing a 25 per cent cut from the number before the suspension of the importation. Despite the decrease in the number of migrant workers, however, the total number of migrants remained unchanged.

Between 1973 and 1981, the number of migrant workers decreased by about 670,000 from the number in 1972, but the total number of migrants increased by more than one million during the same period. The main reason for this increase was that most of the migrant workers gave up returning home and invited their families to Germany, instead.

The government's migrant reduction programs began to work from 1983 so that the total number of migrants shrank to 4,240,000 in 1987, representing a decrease by some 400,000 compared with the number in 1982. However, the number turned upward again from the end of the 1980's when refugees flooded into the country from the Soviet Union and other East European countries.

Table 9-2. Trends in the Number of Migrants and Migrant Workers in Germany

(Unit: Thousand Persons, %)

Year	Number of foreigners		Number of migrant workers	
	Total	Ratio to Germany's entire population	Total	Ratio to Germany's entire working population
1959	-	-	166.8	0.8
1960	-	-	379.4	1.5
1961	686,2	1.2	548.5	2.5
1962	-	-	719.0	3.2
1963	-	-	829.2	3.7
1964	-	-	985.5	4.4
1965	-	-	1,216.6	5.7
1966	-	-	1,313.5	6.3
1967	1,806.7	2.8	991.3	4.7
1968	1,924.2	3.2	1,089.9	5.2
1969	2,381.1	3.9	1,501.4	7.0
1970	2,976.5	4.9	1,949.0	9.0
1971	3,438.7	5.6	2,240.8	10.3
1972	3,526.6	5.7	2,352.4	10.8
1973	3,966.2	6.4	2,595.0	11.6
1974	4,127.4	6.7	2,331.2	11.2
1975	4,089.6	6.6	2,060.5	10.2
1976	3,948.3	6.4	1,924.4	9.6
1977	3,948.3	6.4	1,872.2	9.4
1978	3,981.1	6.5	1,857.5	9.3
1979	4,134.8	6.7	1,924.4	9.3
1980	4,453.3	7.2	2,018.4	9.6
1981	4,629.7	7.5	1,929.7	9.2
1982	4,666.9	7.6	1,709.5	8.3
1983	4,534.9	7.4	1,640.6	8.1
1984	4,363.6	7.1	1,552.6	7.7
1985	4,378.9	7.2	1,536.0	7.5
1986	4,512.7	7.4	1,544.7	7.5
1987	4,240.5	6.9	1,557.0	7.4
1988	4,489.1	7.3	1,607.1	7.6
1989	4,845.9	7.7	1,683.8	7.9

Sources: Köther(2004).

Although it suspended introduction of foreign labor from November 23, 1973, Germany has been importing foreign workers since the end of 1989 under bilateral agreements with individual countries of Eastern Europe. The imported workers can work in Germany under the work permit system; but Germany's introduction

Table 9-3. Refugee Influxes into Germany

(Unit: Persons)

	No. of Refugees		No. of Refugees		No. of Refugees
1975	8,627	1981	49,391	1987	57,379
1976	11,123	1982	37,423	1988	103,076
1977	16,410	1983	19,737	1989	121,318
1978	33,136	1984	35,423	1990	193,063
1979	51,493	1985	73,832	1991	256,112
1980	107,818	1986	99,650	1992	438,191

Source: Köther(2004).

of East European labor has purposes and motives completely different from those of its importation of foreign workers in the 1960's and early 1970's[2]. The introduction of East European labor was designed to: 1) help the Middle and East European countries convert their systems into West European-style systems; 2) transfer technical know-how to East European businesses and workers, thereby assisting their home countries to achieve economic growth; 3) strengthen economic ties with the East European countries; and 4) control the influx of emigrants from the Soviet Union and other East European countries by introducing foreign labor through bilateral agreements, without which people from the former Communist countries would flood into Germany to the extent beyond control.

While importing foreign labor from East European countries through bilateral agreements, Germany enacted the "Regulations on

[2] Heyden, S.(1997), pp.29-30; Bosch / Zühlke-Robinet, S.(1999), pp.179-181.

the Exceptional Issue of a Work Permit to a New Migrant" on September 17, 1998, which allowed high-skilled migrants to work in Germany for a limited period of time. Additionally, in an effort to improve the nation's competitiveness, Germany invites foreign high-tech professionals to work for its information and communication technology (IT) industry since August 2002.

Today, there is a move in Germany to replace the policy of suspending the importation of foreign labor with a policy regulating the inflow of foreign workers (Köther, 2004). This policy changeover is based on the awareness that there will be an inevitable demand for young foreign labor in the future in a society that is aging and sees its population constantly decreasing. Germany sees that even if the demand for foreign labor is not great in the immediate future, the demand for high-skilled manpower could not be met domestically in the mid- or distant future. Given the situation, there is a need to introduce an employment/residence permit system that would allow young high-skilled foreign workers to settle in Germany on a long-term basis and become part of the German labor market. As an immediate step, Germany plans to relax the terms of recruitment for newly arriving migrant workers. However, since this measure should not impose an additional burden on the domestic labor market, the following two ways have been suggested to verify that the domestic labor shortage necessitates importation of foreign labor: One is that the Federal Labor Administration conducts a thorough survey (strengthen the current surveying practices) to see if the labor shortage can addressed with domestic labor, and the other that the businesses recruiting newly arriving migrants shoulder some of the financial burden by making a special contribution. The latter method is designed to solicit German businesses to train domestic workers to be skilled manpower, while the fund coming from these special contributions is used to support businesses with their employees' job training.

Germany is employing all possible means to suppress the demand for foreign labor, some of which are summarized below.

First, Germany, in principle, discourages the demand for and supply of foreign labor by limiting the ground for new importation of foreign workers, the types of business, industry and occupation they may be employed in, and the number of workers to be recruited.

Second, Germany suppresses the demand for low-skilled foreign workers by employing them only on a short-term basis and placing them only in specified industries (seasonal work, installation of an exhibit, etc.). General industries do not need foreign labor because their demand for low-skilled workers is already outpaced by the supply of employable migrants currently residing in Germany (refugees, and repatriated overseas Germans and their descendants, among others).

Third, Germany is applying stricter terms and conditions to high-skilled foreign labor for their employment in Germany. The country also requires local business firms to meet stricter conditions to employ high-skilled foreign workers. These measures are intended to improve the quality of both the supplier and consumer of high-skilled foreign labor.

Fourth, Germany requires industries that have high demand for foreign labor, to meet strict terms and conditions for their employment of foreign workers. Each individual firm is allotted a quota of migrant workers to employ.

Fifth, German law provides that the wage levels and working conditions for migrant workers shall be the same as those for domestic workers. This compulsory provision is designed to discourage the demand for foreign labor created from cost-cutting motivations, for the domestic enterprises would not opt for hiring migrants if the same working conditions were to apply to them as to domestic workers.

Last, Germany has a system under which the supply and demand of foreign labor are controlled by the Federal Labor Administration. If a domestic firm intends to recruit workers from a foreign country, it

must submit an "Application for Recruitment of Foreign Workers" to a Regional Labor Office (Arbeitsamt) for approval. However, firms are mandated to recruit domestic workers as long as they are available for recruitment. Moreover, all employment services for newly arriving foreign labor are handled only by the Federal Labor Administration.

3. Administrative Structure

General services for migrants including their entry into and residence in Germany are the responsibility of the Federal Ministry of Internal Affairs. This Ministry makes detailed regulations and basic guidelines for the implementation of migrant-related policies, and gives administrative instructions to local states, while the latter actually implement most of these regulations and instructions. The migrant Management Bureau, usually established in each city, is a local state agency and issues residence permits to migrants.

Policies related to the introduction of foreigners as labor force fall under the jurisdiction of the Federal Ministry of Economy and Labor[3], which is in charge of the country's employment policies. This Ministry is the primary agency in charge of the overall policy matters concerning the introduction of foreign labor, and makes intergovernmental agreements with other countries on the introduction of foreign workers.

The working-level agency for the implementation of migrant employment policies is the Federal Labor Administration (Bundesanstalt für Arbeit). The Central Employment Office (Zentralstelle für Arbeitsvermittlung, ZAV) of the Federal Labor Administration provides

[3] Restructuring the cabinet in the wake of the election of the new Prime Minister in September 2002, the federal government reorganized the Federal Ministry of Labor and Social Affairs and the Federal Ministry of Economy to crate the Federal Monostry of Health and Social Affairs and the Federal Ministry of Economy and Labor, thus combining labor affairs with economy.

services to German citizens for their employment abroad, or to migrants (especially those from an EU country) for their employment in Germany. The Regional Labor Offices (Arbeitsamter, 180 Offices nationwide) are a working-level agency to issue work permits. Any migrant who wishes to get a job in Germany must obtain a work permit from the Regional Labor Office that has jurisdiction over the region where the migrant intends to work. Before issuing a work permit to an migrant, the Regional Labor Office must (in an effort to examine the labor market in accordance with the domestic-worker-first employment principle) check up on the job in question to see if it can be taken by a domestic worker, and if the same level of wages and working conditions are being provided to the migrant as to a domestic worker.

4. Labor Migration Systems

Currently, Germany introduces foreign labor under different schemes based on intergovernmental agreements or the labor market conditions. They may be classified into schemes for guest workers (Gastarbeitnehmer)[4], service contract workers, nurses, short-term employees (seasonal workers or exhibit installation helpers), cross-border workers, IT specialists, and others. The schemes for guest workers, service contract workers and nurses are based on intergovernmental agreements, while the scheme for short-term employees has been introduced to meet the demand of the domestic labor market. The scheme for cross-border workers is designed to allow foreign workers of regions close to the German border to get a job legitimately in a specified German region, thereby preventing them from illegally working in Germany. The IT specialist scheme is founded on special regulations enacted to meet the demands of businesses and

[4] "Gastarbeitnehmer" may be translated into Korean to mean "trainee- worker" as he is employed in Germany for "learning by doing." He is different from a trainee because he is a worker.

improve the national competitiveness.

4.1 Guest Worker Scheme

Since 1991 Germany has concluded bilateral agreements with East European countries[5] to introduce guest workers. The purpose of the guest worker scheme is to help East European workers with their job training and improvement of language skills, not to alleviate the German domestic labor shortage. Therefore, Germany can bring in as many guest workers as it wishes to up to the limit set in the intergovernmental agreements, regardless of Germany's domestic labor market situation. Guest workers are subject to the rotation principle so that a foreigner who has once served as a guest worker cannot come to Germany again in his capacity as a guest worker.

The qualifications required of guest worker are as follows:

- The applicant for a guest worker should be able to prove that he has received training that would serve the purpose of the guest worker scheme, or has experience in a similar business area (for at least three years), and has some proficiency in the German language.
- Age limit: The applicant must be between 18 and 35 years of age (for applicants from Bulgaria or Romania) or between 18 and 40 years of age (for those from the other eleven countries).
- Anyone who has once worked as a guest worker in Germany cannot apply for the position again.

An employer who wishes to employ a guest worker must have a job trainer's qualification certificate or a "master" (Meister) certificate himself, or have a person on his staff who has such a certificate. He may employ one guest worker per every four regular German employees (4 to 1 principle).

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[5] They are ghirteen (13) countries, namely, Bulgaria, Romania, Albania, Estonia, Croatia, Latvia, Lithuania, Poland, Russia, Slovakia, Slovenia, Czech, and Hungary.

The ZAV is the sole agency responsible for the supply of guest workers. The labor affairs ministry of the sending country is to take applications for guest workers, and conduct interviews with all the applicants jointly with the ZAV to select the successful applicants within the quota allotted by Germany. The interviews are usually conducted in the sending country twice a year, and the successful applicants make an employment contract with their German employers, and get a work permit from the ZAV to enter Germany. The work permit carries on it such information as the name of the workplace where the guest worker is to work, the type of business he will be engaged in, and the length of his service. It is not possible for the guest worker to change his workplace. No fee is collected for guest workers from countries with which Germany made an agreement in the first half of the 1990's, but for guest workers from any of the countries with which Germany made an agreement in the mid-1990's (Estonia, Slovakia, and Slovenia), their German employer must pay to the ZAV a fee of 200€ per guest worker.

An employer may apply to the ZAV for employment of his personal acquaintance at his firm. For this, the employer should send an employment contract form to the applicant, who in turn should submit a copy of the contract form to the regional labor office of his country together with his guest worker application form. When the employer submits an application form to the ZAV for employment of the applicant, the ZAV may request the employer to submit documents necessary to prove that the guest worker can improve his job skills through his employment at the firm.

A guest worker should be hired as a skilled worker, not as a mere assistant requiring no special skill. He may be employed for up to one year, and if labor and management so agree, his work permit may be extended for another six months. The gross amount of his pay should be the same as that set forth in the collective agreement, and the employer should

provide the guest worker with adequate lodging. The labor-related laws and regulations of Germany and the industrial- level collective agreements apply to a guest worker, and he is covered by industrial accident compensation insurance upon his arrival in Germany.

Table 9-4. Number of Guest Workers Introduced under Intergovernmental Agreements

(Unit: Persons)

Country	Year of agree-ment	Quota of guest workers	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Hungary	1989	2,000	1370	1450	1289	1072	829	790	922	1226	1134	1072
Poland	1990	1,000	943	1002	967	722	654	576	592	654	858	786
Czech	1991	1,400	1577	1209	1224	754	381	330	422	701	796	652
Albania	1991	1,000	247	133	126	93	10	5	1	-	-	-
Bulgaria	1992	1,000	176	323	326	304	245	351	378	658	776	648
Latvia	1992	100	57	16	7	9	14	23	31	48	85	72
Romania	1993	500	562	531	526	507	395	412	523	1465	514	510
Russia	1993	2,000	-	65	96	116	78	73	83	82	78	65
Lithuania	1993	200	2	89	105	82	29	49	34	57	110	126
Estonia	1995	200	-	-	-	1	2	1	1	2	7	4
Slovakia	1996	1000	837	711	812	675	525	465	700	983	964	851
Slovenia	1997	150	-	-	-	-	3	8	18	15	16	24
Croatia	2001	500	-	-	-	-	-	-	-	-	-	54
Total		11,050	5,771	5,529	5,478	4,335	3,165	3,083	3,705	5,891	5,338	4,864

Source: Bundesanstalt für Arbeit, *Informationen für die Beratungs-und Vermittlung sdienste,* 2003, S.1143.

According to the agreements Germany made with other countries, as many as 11,050 guest workers may find employment in Germany each year, but no single year saw a similar number thus far. The reason for this poor record was that there were not many German employers who wanted to accept guest workers, and that there were only a limited number of qualified applicants with sufficient job skills

and language proficiency for a guest worker[6].

4.2 Service Contract Workers (Werkvertragsarbeitnehmer)

From the end of 1988 Germany concluded intergovernmental agreements with a total of 13 countries including some East European nations[7] and Turkey to provide a legal basis for German and foreign business firms to make service contracts (Werkvertrag), under which the workers employed by a foreign subcontractor of a German firm are given a chance to work in Germany. The detailed purposes of these intergovernmental agreements are:

- to help promote business cooperation between German and foreign firms;
- to assist foreign firms in improving their competitiveness in the global market;
- to promote economic exchanges between Germany and its partners to the agreement; and
- to help German firms make inroads into the market of the partner countries.

The agreements stipulate that the ceilings on the number of service contract workers should be set each year to induce them to return to their home countries after working in Germany for a certain period of time. The Federal Ministry of Economy and Labor sets the ceilings on the average number of service contract workers for one year between October each year and September the following year. The ceilings may vary according to the situation of the German labor market.

Service contract workers may be placed in any industry, but in fact are recruited only for the construction, meat processing, and mining industries.

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[6] Ibv. 09/03. April 2003, S.1143.

[7] They are Bosnia-Herzegovina, Bulgaria, Croatia, Latvia, Poland, Slovakia, Slovenia, Czech, Hungary, Macedonia, and Serbia and Montenegro (12 nations).

Table 9-5. Ceilings on the Number of Service Contract Workers for Each Contracting Country

(Unit: Persons)

Country	Date of agreement	Sept. 30, 1992	Oct. 1995 – (Sept.) 1996	Oct. 2002 – Sept. 2003	
				Total	Construction industry
Bulgaria	1991.3.12	4,000	1,690	1,660	1,660
Bosnia-Herzegovina	1989.	9,500	1,010	1,020	310
Croatia			5,100	4,990	2,220
Macedonia			490	520	170
Slovenia			1,960	1,970	1,070
Yugoslavia			1,680	2,580	700
Poland	1990.1.31	35,170	22,900	22,290	8,150
Latvia		400	380	400	400
Slovakia	1990.9.25	8,250	1,600	1,540	550
Czech	1990.9.25		2,940	2,940	1,280
Romania	1991.3.12	7,000	4,220	4,150	4,150
Hungary	1989.1.3	14,000	6,990	6,870	2,190
Turkey		7,000	5,890	5,750	5,750
Total No. of Persons		85,320	56,850	56,680	28,600

Source: Bundesanstalt für Arbeit, *Arbeitsamt Frankfurt*, 2003.

Table 9-6. Number of Foreign Service Contract Workers (As of September Each Year)

(Unit: Persons)

Year	1997	1998	1999	2000	2001	2002
Total	41,996	35,731	49,507	49,255	52,308	48,612
Workers from Eastern Europe	5,772	2,136	2,843	1,369	1,317	1,047

Source: Bundesministerium für Wirtschaft und Arbeit, *Statistik-Ausländisch Beschäftigte 2002*.

The foreign subcontractor must pay to the competent Regional Labor Office[8] a fee for the issue of work permits to service contract

[8] The work relating to the introduction of service contract workers is assigned to only three State Labor Administrations and their specified Regional Labor Offices,

workers introduced under an intergovernmental agreement. The fee comprises a basic fee of 200 euros that is paid for each new service contract, an additional fee of 100 euros for each supplementary contract (for extension of the period, replenishment of manpower, and amendments), and a separate work permit fee of 75 euros per worker a month during the contract period.

The work permit for a service contract worker is issued by a specific Regional Labor Office on condition that the worker works at one and the same workplace: The worker is not allowed to move to another workplace. The validity period of a work permit is usually two years, but may be extended for up to another six months if the service contract period exceeds two years. If the worker enters Germany for the first time, he may get a work permit valid for up to three years. A work permit becomes null and void upon expiration of the service contract. Exceptionally, however, senior or administrative workers (e.g., engineers or construction field supervisors) may get a work permit valid for up to four years.

Anyone who left Germany after serving as a service contract worker may get a work permit to work in Germany again only after a stand-by period of up to two years. If he worked in Germany for nine months or less, the stand-by period will be three months.

All workers working in Germany must buy a social security insurance policy, but the service contract workers are an exception. They are covered by the International Convention on Social Security or by the social security system of their own country.

each responsible for the issue of work permits to workers of specific nationalities. This scheme is designed to make an easy check on whether the ceilings on the number of workers for each country are honored, and to place the workers in the right places in consideration of the situation of the regional labor markets.

4.3 Nurses

The Federal Labor Administration has concluded an agreement with the Labor Ministry of Croatia and Slovenia, respectively, on the introduction of nurses. The purpose of the agreement was to help solve the problem of shortage of nurses in the German labor market, but in fact the number of nurses imported under this scheme was extremely small.

Foreign nurses who want to work in Germany should be either general nurses, infants nurses, or old-age nurses, must have completed a four-step job training program in their field, and must have a high level of proficiency in the German language.

The selection of foreign nurses is done by the ZAV. A German employer may request that he recruit an applicant he personally knows. The Regional Labor Office checks if a German employer has done all he could to recruit domestic nurses. The employer of foreign nurses must pay to the Regional Labor Office a fee of 250 euros per nurse.

Table 9-7. Number of Foreign Nurses Introduced into Germany

(Unit: Persons)

Year	1996	1997	1998	1999	2000	2001	2002
Croatia	388	287	123	74	137	314	353
Slovenia	10	2	2	-	3	4	8
Total	398	289	125	74	140	318	358

Source: Bundesanstalt für Arbeit, 2003.

The validity period of a work permit is one year, but may be extended. An migrant nurse must obtain a specialist certificate provided for in the German Nurse Act within one year after he/she was issued with a work permit. If a nurse fails to obtain a specialist certificate within one year, or has not even started to receive skill improvement training, his/her work permit shall not be extended,

4.4 Short-term Employment Scheme

Foreign workers introduced under this scheme are either workers employed in seasonal industries, or those working as helpers for the installation of an exhibit. The Federal Labor Administration has made agreements with the labor ministries of some specified countries of Eastern Europe (Poland, Romania, Hungary, Slovakia, Czech, Croatia, Slovenia, and Bulgaria) on the introduction of foreign labor for short-term employment in Germany.

4.4.1 Seasonal Workers

Migrants may work as seasonal workers only in the agriculture-forestry industry, hotels, restaurants, fruit or vegetable processing, or sawmills. They cannot work for more than three months, and should work at least thirty hours a week, and an average of at least six hours a day.

A business (except for fruit, vegetable, grapevine, hop, or tobacco cultivation) may employ seasonal workers for up to seven months a year.

Work permits may be issued to seasonal workers on condition that:
their employment does not have a bad influence on the domestic labor market (especially on its employment structure, and on specific regions or industries);
they are placed in jobs that cannot be filled by German workers, by foreigners or migrants who are treated equally with Germans in employment, or by migrants already residing in Germany with a work permit; and they are employed on working conditions that are not more disadvantageous than to German citizens.

The work of the introduction of foreign seasonal workers also falls under the responsibility of the ZAV of the Federal Labor Administration and the Regional Labor Offices. A seasonal worker must be 18 years of age or older. Normally, no special job skill is required of a seasonal worker as he would be engaged in just simple

labor. Proficiency in German is not required of a seasonal worker. However, if an employer requests language proficiency, the ZAV should take this into consideration when selecting foreign workers. Seasonal workers are obliged to buy a social security insurance policy while working in Germany. In 2002 work permits were issued to a total of 298,102 seasonal workers.

4.4.2 Exhibit Installation Helpers (Schaustellergehilfe)

Exhibit installation helpers are recruited, and their work permits issued, on the same conditions and through the same procedures as for seasonal workers, except for the validity period of their work permits. A helper can obtain a work permit valid for up to nine months a year; and if he worked for six months or more in a year, he cannot receive a permit for work as an exhibit installation helper the next year. In 2002 a total of 9,080 exhibit installation helpers were granted a work permit.

4.5 Cross-border Workers

Workers of Poland and the Czech Republic, on which Germany borders, may be issued with a work permit for work in a specified border region in Germany.

A cross-border worker may get a work permit if:

- he goes back to his country each day after work, or the job he intends to do requires not more than two days' work per week;
- the job he intends to do cannot be filled by a German national; and
- he submits a certificate of a regional labor office of his country proving that he does not receive any social benefits from his own country.

The German regions available for foreign cross-border workers are limited to some areas in Mecklenburg-Vorpommern, Brandenburg

and Sachsen States for Poles, and to some areas in Bayern and Sachsen States for Czechs. Work permits for these workers are limited not only to specific regions, but to specific workplaces and types of business, and are valid for one year.

Table 9-8. Number of Work Permits Issued to Cross-border Workers

(Unit: Persons)

	1999	2000	2001	2002
No. of Permits	8,835	9,375	9,957	8,964

Source: Köther (2003).

4.6 Specialists in Information and Communication Technology (IT)

Germany enacted the "Ordinance on the Work Permit for High-qualified Foreign Specialists in Information and Communication Technology (Verordnung über die Arbeitsgenehmigung für hoch qualifizierte ausländische Fachkräfte der Informationsund Kommunikationstechnologie, IT-ArGV)," which shall be in force for eight years from August 1, 2000 to July 31, 2008, to encourage high-skilled IT specialists to land a job in a German enterprise on a personal basis under the so-called "green card system." An IT Special Team has been set up in the ZAV to help those specialists find a job. The target number of IT specialists to be introduced into Germany is tentatively set at 10,000, but the Ordinance provides that the figure may go up to as many as 20,000, if necessary. The foreign IT specialists may take their family into Germany, who are also eligible for a work permit after a 2-year residence in the country.

An IT specialist can be recognized as such if he has graduated from a university or college majoring in an IT-related discipline, or proves that he has agreed with his employer on an employment

contract guaranteeing him an annual salary of at least 51,000 euros. An migrant student studying an IT discipline at a German university can also get a certificate that he can work at a German IT firm after his graduation from university.

Before issuing a work permit (so-called “green card”) to a foreign IT specialist, the Regional Labor Office should first check the domestic labor market to see if his intended job can be taken by a domestic worker.

The green card is issued initially for the employment contract period, but may be extended up to five years. If the migrant loses his job before the work permit expires, his residence permit is, as a general rule, also terminated.

Table 9-9. Number of Migrant IT Specialists: Between Aug. 2000 and Feb. 2003

(Unit: Persons)

	No. of Persons with A Work Permit		
	Total	Those Who Came from Abroad	Migrants Who Graduated from a German University
Eastern Europe	5,366	4,902	464
Asia	3,537	3,314	223
North America	421	148	273
South America	367	300	67
Other Regions	4,083	3,014	1,069
Total	13,774	11,678	2,096

Source: Bundesministerium für Wirtschaft und Arbeit, *Statistik-Ausländisch Beschäftigte 2003*.

4.7 Others

A foreigner other than any of those admitted into Germany under the above schemes may also be issued with a work permit for work in Germany in the following cases:

4.7.1 Workers seeking job training or skill improvement training

A work permit may be issued to a foreigner who has graduated from a German or foreign university and wants to work at a German educational institution or research institute for personal education or skill improvement training, who holds a scholarship from a state or public organization and is a specialist or leader in a specific field (In this case the work permit may be issued for the period of the scholarship.), or who is a job trainee or has completed a job training course, and meets certain other conditions.

A one-year work permit may be issued to an migrant if:

- he wants to work temporally in Germany while holding employment relations with a business firm in Germany and planning to work in a foreign country;
- he is a specialist supposed to work in a German-foreign joint-venture company established under an intergovernmental agreement, and is participating in a field training, job training or skill improvement training;
- he wants to work in Germany to improve his job skills necessary to implement an export transportation contract or a license contract; or
- he/she is under 25 years of age and wants to work as an au pair at a German-speaking home.

A two-year work permit may be issued to an migrant if:

- he has graduated from a German university or college, and is now going to practice; or
- he is a specialist or leader in a specific field, and is going to work under an intergovernmental agreement or an agreement between a German economic society and a foreign public organization.

4.7.2 Work permits issued for a fixed period with no restrictions as to the place of work

- An migrant worker who belongs to a foreign company and has been dispatched to Germany to engage in building prefabs, may be given a 12-month work permit.
- An migrant who is going to work as a teacher of a foreign language may be issued with a 5-year work permit.

- An migrant who is going to work as a professional cook may be given a 3-year work permit.
- An migrant may be issued with a 2 to 3-year work permit if he is a specialist of a multinational firm.
- An migrant may be given a maximum 3-year work permit if he/she is going to work for an migrant home.

4.7.3 Other types of migrant workers:

- Scholars engaged in researches or teaching;
- High-skilled specialists who contribute to the public good or whose qualifications conform to international standards set by an international agreement;
- Managerial-grade staff members or specialists of a foreign business firm operating in Germany;
- Specialists seeking to work in a German public welfare organization that serves migrant workers and their families;
- Pastors who want to work for migrant workers and their families; and
- Artists, acrobats, models, dress designers, etc.

5. Social Integration Policy for Migrant Workers

Germany realized the necessity for the social integration of migrant workers and their families only when well over 15 years passed after Germany started to introduce a large size of foreign labor into the country. Even after Germany stopped importing foreign labor, the number of migrants was still on the rise as the families invited by the migrant workers including more than two million guest workers were constantly increasing in number. Therefore, it became more difficult for Germany to send the migrants back to their countries of origin. Not only labor unions, churches and social welfare organizations, but also the local governments who had to directly confront the migrant problems, demanded that a social integration policy should be formulated for the migrants already exceeding 4 million in number. In response to the demand, the federal government established in 1978 the "Federal Commission for the Integration of Migrant Workers and Their

Families (Amt des Beauftragten der Bundesregierung für die Integration der ausländischen Arbeitnehmerinnen und ihrer Familien)[9]", the first government-level move toward social integration of migrants. Until 1998 the duties and power of the Commission were decided by the cabinet, but after 1998 they were to be laid down by law, which means that the issue of migrant integration can now go before parliament. Germany's social integration policy for migrants generally took the form of expanded social welfare facilities or services including schools, kindergartens, youth centers, job training opportunities, and counseling services. The principal target for integration was the migrants' second and third generations, and accordingly programs were introduced to help the young migrants get a normal school education and vocational training so that they may adapt themselves easily to German society and build good future prospects for jobs.

In a local level effort to support the integration policy in a region with many migrant residents, the local government keeps in it migrant representatives (Ausländerbeauftragter) to help their fellow migrants with German language training and cultural activities, provide information that may be of interest to their community members, and address the migrants' grievances.

Germany's integration policy for migrants residing long-term may be divided into three schemes, namely language integration, labor market integration, and social integration.

First, the language integration scheme gives free German language training to the migrants who have been resident in Germany for a prolonged period and those who are expected to stay for long. This scheme is designed to provide a basis for those migrants to integrate with German society and its labor market. The agency charged with this task

[9] From November 1998 this organization was renamed the "Federal Commission on Migrant Affairs (Beauftragte der Bundestegierung für Ausländerfragen)".

is the "German Language Society for Migrants (Sprachverband Deutsch für Ausländer e.V.)[10]", which in 2002 provided a total of 5,746 language courses to 81,806 migrants throughout Germany.

Second, the labor market integration scheme provides the migrants, like German citizens, with the programs supported by the employment insurance system. These programs may be divided into the program for adults and that for the youth. The program for adults includes job training, job creation projects, subsidies for self-employment, and support for participation in training courses. The program for the youth includes job training, skill improvement training, and as a special measure, job-preparing education courses (berufsvorbereitende Bildungsmaßnahmen) for migrant youths who have not completed formal compulsory school education. In the 1980's Germany planned to secure a certain number of seats for migrant youths for job training in companies that had job training programs. But this plan did not work because the companies were short of capacity for training even domestic youths.

Third, the social integration scheme is intended, among other things, to help migrants receive German citizenship easily. Related laws have been revised to pave the way for an migrant to acquire German nationality if he[11]:

- has been resident in Germany for at least 8 years (10 years in the past);
- has not committed any crime;
- can speak and write in German;
- can earn a living for himself and his family without receiving social or unemployment benefits;
- renounces his current nationality; and
- pays a fee of DM100 to DM5,000.

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[10] After the enactment of the new immigration law on October1, 2003, the German language training for migrants is conducted by the "Federal Bureau of Foreign Refugee Recognition (Bundesamt für Anerkennung ausländischer Flüchtlinge)".

[11] In the past an applicant was required to have resided in Germany for at least 10 years. In addition, he had to own a house, and his entire family fad to hold the same nationality.

Chapter 10

CANADA

Canada's skilled labor migration programs are largely supply-driven, which distinguishes them from the U.S. system. This means that the admission process is left to the migrant, who is assessed on a points system, which acts as an indicator of the potential for economic success and social adaptability. The regulations embodied in the recently adopted Immigration and Refugee Protection Act carry the dual mandate of closing the back door to criminals and other potential abusers of Canada's open immigration system, while opening the front door to genuine refugees and to the skilled migrants that the country needs. With recent census data indicating that immigration was the main source of population growth, it is likely that immigration will remain at the centre of policy planning and public debate for some years to come.

1. Recent Trends in Labor Migration

The existence of a long-established points-based migrant program in Canada has ensured that the majority of migrants can be considered as skilled or highly skilled migrants. In 2001, independent skilled workers and businesspersons and their relatives accounted for

about 60 per cent of the 250,400 immigrants admitted to Canada (see Figure 10-1).

According to the last census in 1996, 5 million, or about 17 per cent, of Canadian residents were born abroad, and accounted for 19 per cent of the labor force.[1] The census also revealed significant changes in the migrant source countries, noting a decline in the percentage of immigrants from Europe and a considerable increase in the number of immigrants from Asia and the Middle East. In 1981, 67 per cent of all immigrants living in Canada were born in Europe. By 1996, this proportion had decreased to 47 per cent. In contrast, the share of Canada's immigrant population born in Asia and the Middle East increased from 14 per cent in 1981 to 31 per cent in 1996, with over 50 per cent of all recent arrivals, i.e. those who arrived in Canada after 1991, coming from these regions.

Another observation was that recent immigrants had a higher level of education than native Canadians. About 34 per cent of recent immigrants aged 25 to 44 had completed university, compared with 19 per cent of the Canadian-born population in the same age group.

The number of employment authorization granted to temporary labor migrants has also been steadily rising, compared to the scale of permanent immigration. Over 91,300 temporary and seasonal workers (excluding students and asylum seekers) entered Canada in 2000, representing an increase of 5 per cent since 1999. The majority of temporary work permits were issued to nationals of OECD countries - U.S.A.: 27,000, Mexico: 9,900, United Kingdom: 6,700, France: 5,300, Japan: 4,300, Australia: 4,000 and Germany: 2,500.[2]

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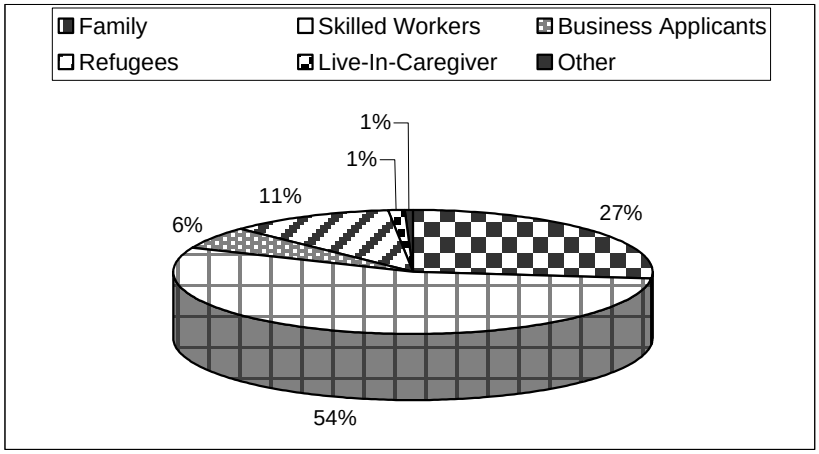
[1] Statistics Canada, Citizenship and Immigration Canada, http://cicnet.ci.gc.ca.english/index.htm.

[2] Ibid, p.156.

Figure 10-1. Canada: Immigrants by Category: 2001



(unit: 1,000 persons)

Family	Skilled workers	Business applicants	Refugees	Live-in caregiver	Other
66.7	137.1	14.6	27.9	2.8	1.3

Source: *Citizenship and Immigration Canada*, adapted from Table III.6 OECD, 2003, p.154.

Notes: "Skilled Workers" includes Independent and Spousal Authorisation Permit Holders.

"Other Immigrants" includes Provincial Nominees.

2. Policy Developments

Canada's points system was established under the 1976 Immigration Act to assess economic migrants against a set of criteria including level of education, previous work experience and age. Concerns during the 1990s that a high percentage of immigrants were getting too dependent on welfare despite passing the points test led to a review of the system in 1998, after an evaluation by an independent commission on citizenship and immigration. Some of its recommendations were included in the Immigration and Refugee Protection Act (also known as Bill C-11) that came into effect in June 2002.

Among others, Bill C-11 introduced significant changes in the selection procedure for skilled workers, especially for the provinces, with the exception of Quebec, whose selection criteria are established under the 1991 Canada-Quebec Accord. The new selection process placed more emphasis on education, previous work experience and language ability. These modifications included:

- Allocating more points for applicants with a second degree or professional qualification;
- Increasing the maximum number of points allocated for proficiency in English and French;
- Awarding points for applicants with one or two years work experience in order to attract young migrants who may have a high level of education but little practical experience;
- Adjusting the age scale to award maximum points to applicants between the ages of 21 and 49;
- Reducing the pass mark to 75 points in response to concerns that too high a pass mark would exclude many skilled immigrants.

In addition, regulations under the new Immigration Act also affected other categories of skilled migrants, as new definitional requirements for the business and entrepreneur categories were introduced, emphasizing that the applicant's wealth must have been legally obtained. For self-employed applicants, the requirement of a certain degree of experience was also included.

The integration of immigrants is an important part of Canada's long-term immigration policy because Canada, as a traditional immigration country, relies on immigration to sustain its economic competitiveness. In fact, Canada is one of the few countries that spend more on immigrant integration than on immigration prevention and asylum processing. In 1998, it spent an estimated USD 768 million[3] on integrating and resettling immigrants. At both

[3] DeVoretz and Laryea, quoted in IOM(2003a), p.36.

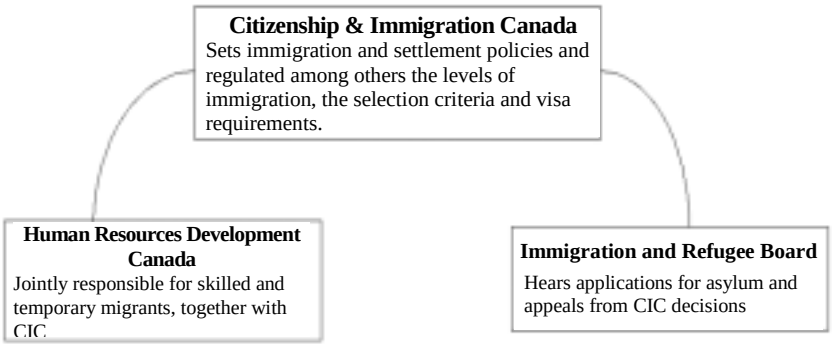
federal and provincial levels, a number of programs are implemented to facilitate the integration of immigrants into Canadian society, such as the Immigrant Settlement and Adaptation Program (ISAP), which provides counselling, language and job searching services for new arrivals.

3. Administrative Structure

Policies on immigration and settlement are the responsibility of Citizenship and Immigration Canada (CIC). It regulates, among others, the level of immigrant applications, the selection criteria and visa requirements and, together with the Human Resources Development Canada (HRDC), is responsible for skilled and temporary migrant workers who enter Canada. An independent body, the Immigration and Refugee Board hears applications for asylum and appeals from CIC decisions. The basis of Canadian immigration rules is the November 2001 Immigration and Refugee Protection Act, which came into force in June 2002, replacing the 1976 Immigration Act with simpler and more coherent legislation, reflecting contemporary Canadian values. Although CIC has overall responsibility over immigration policy, bilateral agreements with Quebec as well as a number of provinces allow their immigration officials to apply their own criteria when selecting immigrants, provided they are in line with current immigration laws.

Traditionally a country with high levels of immigration, the aim of the Canadian government is to admit 1 per cent of its population, or about 310,000 immigrants, each year. Unlike the U.S., Canada does not have a set quota for admitting immigrants. However, the Minister for Citizenship and Immigration issues an annual statement on the planned level of migration intake for the following year, based on an

Figure 10-2. Canada-Relevant Immigration Agencies and their Competences



anticipated number of people likely to enter under the existing regulations. On average, there are between 225,000 to 250,000 arrivals each year, and Canada has been described as "one of the only countries that constantly receives fewer immigrants than anticipated or desired."[4] Canada's open immigration policy can be attributed to sluggish population growth and a desire to boost its economy.

4. Labor Migration Systems

4.1 Permanent Paid Employment[5]

4.1.1 Independent Skilled Worker Program

The program allows skilled migrants with education and work experience and the potential to establish themselves economically to find work and settle as permanent residents in Canada. The application may cover spouses and dependants, who, as long as they remain permanent residents, are granted access to the labor market

[4] IOM(2003a).

[5] Permanent residence status can be acquired through three main classes of entry: the "family class" entering on the basis of having close relatives in Canada, the "skilled worker and business classes" entering for employment and business reasons, and those entering as refugees.

and most of the social benefits available to Canadian citizens.

Qualifying criteria:

- Meet the minimum work experience requirements;
- Proof of sufficient funds required for settlement;
- Earn enough points in the six selection factors to meet the pass mark.

Points are awarded on the basis of education, proficiency in either one or two of Canada's official languages, level of professional experience, age, confirmed offer of employment in Canada and potential to adapt. Certain occupations are sometimes placed on a restricted list to protect the Canadian labor market. This means that the listed occupation cannot be used to obtain points under the work experience category in the application process. There are currently no restricted occupations or quota limitations for the program.

4.1.2 Quebec Skilled Worker Program

The Quebec government and the Government of Canada have an agreement that allows Quebec to select immigrants who best meet its immigration needs. Under the 1991 Canada-Quebec Accord on Immigration, Quebec is able to establish its own immigration requirements and select immigrants who will adapt well to living in Quebec. An applicant who wishes to come to Canada as a 'Quebec Skilled Worker,' must first apply to the Quebec government for a *Certificat de sélection du Québec*. After selection by the Quebecois authorities, a separate application has to be made to CIC for permanent residence. The application is then assessed based on Canadian immigration regulations. Quebec Skilled Workers are not assessed on the six selection factors of the Federal Skilled Workers Program, but on a different set of criteria prescribed by the government of Quebec.

4.1.3 Provincial Nomination

Citizenship and Immigration Canada has also entered into a series of bilateral agreements with interested provinces to permit the admission of a limited number of provincial nominees under provisions that exist in the current immigration legislation.

4.2 Temporary Paid Employment

4.2.1 Canadian Employment Authorisation

Temporary migration is facilitated through employment authorization. This allows the entry of foreign workers needed by employers to temporarily meet labor market shortages they are unable to fill from the domestic labor force. However, unlike the U.S. where the employer needs to obtain a labor certification in order to employ a foreign worker, in Canada it is for HRDC to ensure that no other Canadian citizen or permanent resident can fill the position. The basis for the authorization is the 1976 Immigration Act and the scheme is designed to regulate the admission of temporary labor migrants to Canada. Employers and industrial sectors, in consultation with officials from HRDC, determine labor and skills shortages, and CIC works closely with HRDC to facilitate the entry of labor migrants to reflect the current labor market demands. The system is not restricted by quotas and does not operate on a points system. With the exception of spouses of foreign students and refugees awaiting the conclusion of the status determination procedure, migrant workers must have a temporary job offer before they can apply for work authorization. Other eligibility requirements include the following:

- Possession of the relevant skills and qualifications required for the job;
- A medical examination if the applicant will be working in the public health sector;
- Proving to an immigration officer that the applicant does not intend to

settle in Canada permanently;
- A clean criminal record and pose no threat to public security.

The employment authorization is usually granted for three years with the possibility of extension, with some variations for certain work categories.

Most categories of migrants are exempt from obtaining validation of employment authorization, either because there is a clear benefit to the labor market or based on other relevant considerations. These include applicants in Canada for humanitarian reasons, persons entering under international agreements,[6] foreign students in financial need, employment related to research or education, diplomats, clergy workers, performing artists, crewmembers and athletes.

4.2.2 The Live-in Caregiver Program

A live-in caregiver is defined as someone who provides care to children, the elderly or the disabled in a private household. After working for two years as a live-in caregiver one can apply to be a permanent resident. The program exists as a result of a shortage of Canadian nationals or permanent residents to fill the need for live-in care and an important requirement is that employees must live in the employer's home. Other qualifying criteria include the completion of a high school education, satisfying certain employment or training requirements and proficiency in English or French.

4.2.3 Spousal Employment Authorisation Program

The Spousal Employment Authorisation Program became a

[6] Temporary entry requirements are eased for businesspersons under agreements such as the North American Free Trade Agreement (NAFTA), the Canada- Chile Free Trade Agreement (CCFTA) and the General Agreement on Trade in Services (GATS).

permanent part of Canadian immigration policy in November 2001 after it was launched as a pilot scheme in October 1998. Prior to 1998, spouses of highly skilled migrant workers were not guaranteed the automatic right to work. The aim of the scheme was to make Canada more attractive to highly skilled migrants and to inward investors. Under this scheme, spouses of migrant workers who come to Canada for jobs in highly skilled occupations (such as those in the managerial, professional or technical sectors) are permitted to work through a facilitated validation process. Employers under this scheme are not required to apply the labor market test and spouses are allowed to work anywhere in the country. The program is also open to spouses of temporary labor migrants who are admitted to Canada for at least six months. The duration of the spouse's authorization cannot exceed that of the main applicant, which may be up to three years and may be renewed. The scheme is not subject to quotas and does not operate by a point system.

4.2.4 Rights and Benefits Granted to Temporary Work Permit Holders

With the exception of applicants under the live-in caregiver program, there are no possibilities for permanent settlement for migrants entering Canada with a temporary employment authorization. Applicants may be accompanied by their spouses or dependants, who will usually require their own work authorization to be able to work in Canada. Temporary labor migrants are not entitled to the same benefits and rights as Canadian citizens, although they benefit from rights guaranteed under the Charter of Rights and Freedoms.

4.3 Self-Employment

4.3.1 Business Immigrants

This entry route is aimed at business immigrants such as investors,

entrepreneurs, the self-employed and their dependants, who are expected to develop the Canadian economy though investments and the creation of jobs. Following a review of the Business Immigration Program in 1999, the scheme was redesigned to simplify the administrative process and reduce the potential for abuse, while maximizing the economic benefits.

Qualifying criteria - Investors:

- Prior business experience, i.e. the management of a business and control of a percentage of the equity or the management of at least five full-time job equivalents per year for at least two years in the period beginning five years before the date of application for a permanent residence visa;
- A legally obtained minimum net worth of CAD 800,000;
- A written indication to an immigration officer of an already made or intended investment of CAD 400,000 in Canada.

This investment is placed with the Receiver General of Canada, and participating provinces then use it to create jobs and help their economies grow. CIC will return the investment to the applicant, without interest, approximately five years after the applicant becomes a permanent resident.

Qualifying criteria - Entrepreneurs:

- Prior business experience;
- A legally obtained minimum net worth of CAD 300,000;
- Control a percentage of the equity of a qualifying Canadian business equal to, or greater than, 33 1/3 per cent;
- Provide active and ongoing management of the qualifying Canadian business;
- Create at least one incremental full-time job equivalent for Canadian citizens or permanent residents, other than the entrepreneur and family members.

Applicants must meet these conditions for a period of at least one year and comply with them for three years after they become

permanent residents.

Qualifying criteria - Self-employed:

- Relevant experience in cultural activities, athletics or farm management, i.e. at least two years in the period beginning five years before the date of application for a permanent resident visa;
- The intention and ability to establish a business that will, at a minimum, create employment for the applicant;
- A significant contribution to cultural activities or athletics, or purchase and manage a farm in Canada.

Although there are no specific immigration conditions for this category as such, applicants must have enough money to support themselves and their family members after their arrival in Canada.

Chapter 11

UNITED STATES

As a country with large-scale migration challenges, the U.S. provides a wide array of labor migration models and policies, which in some form apply to most immigrant-receiving countries. A traditional country of immigration, it has a complex set of laws and regulations governing the admission of persons for permanent and temporary stays. The aim of U.S. immigration policy is to facilitate legal admissions, deter unauthorized migration, and enforce the removal of persons who violate immigration laws. The agencies responsible for implementing immigration policy are only partially successful in meeting these aims, largely as a result of the huge scale of the irregular migration problem.

While the U.S. public is proud of its immigrant antecedents, opinion polls indicate a preference for a reduction in current admission levels. In the wake of the September 2001 attacks, the government ardently pursued measures to deal with violators of immigration laws, insofar as they are suspected of posing a threat to national security. Where immigration, either legal or illegal, serves the purpose of meeting the demands of the labor market, both the government and businesses are reluctant to curtail inflows.

Employment-based immigration to the U.S.[1] This accounted for less than 15 per cent of permanent migration to the U.S. The immigrants under this category tend to be skilled workers. However, under this the category unskilled workers are limited to 10,000 per year. is largely demand driven. Employers may apply for work authorization permits for foreign worker to fill shortages in the local labor market if they can provide assurances that native workers will not be displaced or that wages and work conditions will not be adversely affected. With the recent U.S. economic downturn, however, some of its well-known labor migration programs are being reassessed.

1. Recent Trends and Policy Developments in Labor Migration

The Commission on Immigration Reform was established by the Immigration Act of 1990 with a mandate to review and evaluate the implementation and impact of U.S. immigration policy, and to report its findings and recommendations to the U.S. Congress. In its 1995 report to Congress, it made a number of recommendations on legal immigration through family and employment-based immigration for a specified time (e.g., three to five years), with the possibility for review.[2] One of its central recommendations was to shift the priorities for admissions away from unskilled to highly skilled immigrants. Immigrants were to be chosen on the basis of their skills, according to simplified procedures because the admission of highly educated immigrants would have a positive fiscal impact.

The number of professionals migrating to the U.S. under NAFTA, for instance, has increased in recent years, particularly those from

[1] Since 1992, employment-based permanent migration has ranged between 50,000 and 180,000 entries per year.

[2] US Commission on Immigration Reform, *Legal Immigration: Setting Prioritie*, 1995.

Canada (see Table 9). The number of Canadian professionals entering the U.S. under NAFTA rose to its highest level of about 90,000 in 2000, compared to 25,000 in 1994. By contrast, the number of Mexican professionals entering under NAFTA stood at around 2,300 in 2000, only about half of their entitlement of 5,500. From 1 January 2004, however, all numerical limitations under NAFTA will be removed, together with the requirement for U.S. employers to pay the prevailing wage and petition to employ Mexican professionals.

Table 11-1. Inflows of Canadian and Mexican Professional Migrants to the US under NAFTA, 1994 - 2002

(persons)

	1994	1995	1996	1997	1998	1999	2000	2001	1st half of 2002
Canadian Professionals	25 104	25 598	28 237	48 430	60 742	60 755	89 864	70 229	35 933
Spouses / children	6 707	7 436	7 868	14 687	17 202	15 504	20 799	14 725	6 130
Mexican Professionals	16	63	229	436	785	1 242	2 354	1 806	1 035
Spouses / children	11	13	57	172	313	431	728	555	292

Source: OECD, *Labor Migration to the United States*: *Programs for the Admission of Permanent and Temporary Workers*, 2003.

One of the most frequently used temporary visa categories is the H-1B non-immigrant foreign professionals, hired for qualified jobs in 'speciality occupations', for instance doctors, engineers, researchers, and computer professionals. At the height of the technology boom, businesses used the H-1B category extensively and lobbied Congress to pass 'the American Competitiveness in the 21st Century Act,' which increased the numerical cap to 195,000 until October 2003.[3]

[3] US Department of Labor Employment and Training Administration, www.ows.doleta.gov / foreign

The duration of an H-1B professional's stay was also prolonged to allow the worker's application for permanent residence to be processed. As shown in Table 10, however, spouses and dependent children actually account for more than half of the visas issued under employment- based immigration.

The recent U.S. economic downturn has, however, meant that the Federal Government is now under mounting pressure from trade unions to curb the number of foreign workers it allows into the U.S, notably in the technology and engineering sectors. In the absence of other congressional action, the cap on the number of foreign workers eligible for H-1B visas will revert to 65,000 in fiscal 2003-2004.[4] Currently, a number of bills are pending before Congress to reform the H-1B visa program, together with a proposal to impose a cap on the previously unlimited L-1 scheme. More controversially, a bill was introduced in July 2003, which proposes the complete abolition of the H-1B scheme in reaction to the slowing U.S. economy and rising unemployment, particularly in the technology sector. However, this bill encountered strong opposition from high-tech businesses who argue that it will adversely affect the economy by failing to provide a sufficiently skilled labor force. With rising unemployment levels, particularly in the technology industry, it is clear that some sort of a compromise may be required.

The arguments raised by the H-1B program illustrate the controversies surrounding efforts to manage migration. On the one hand, employers argue that to remain globally competitive the U.S. should take advantage of the global skills pool and remove immigration barriers that prevent skilled workers from coming to the U.S. On the other hand, critics of such programs argue that U.S. employers should do more to train U.S. workers to fill vacancies

[4] US Department of Labor Employment and Training Administration, www.ows.doleta.gov/foreign

before recruiting abroad. They argue that the heavy use of foreigners to fill vacancies in the U.S. will create a dependence on immigrant workers over time and discourage Americans from going into fields in which foreigners depress wages and limit opportunities.[5] Finding complementarities between these two approaches will help to contribute to an effective labor migration policy.

2. Administrative Structure

In the United States immigration is a federal responsibility. By statute, the U.S. Congress places a limit on the number of foreign-born individuals who are admitted to the United States annually as immigrants or refugees, although this practice has been criticized for its inflexibility and often politicized nature. As a result of a huge reorganization adopted by the Congress, under the Homeland Security Act of 2002, the functions of the Immigration and Naturalization Service (INS) were transferred to the newly created Department of Homeland Security (DHS) on March 1, 2003. A separate unit within the DHS, Bureau of Citizenship and Immigration Services (BCIS), inherits the operational functions of the former INS, and is responsible for naturalization, asylum and adjustments of status.

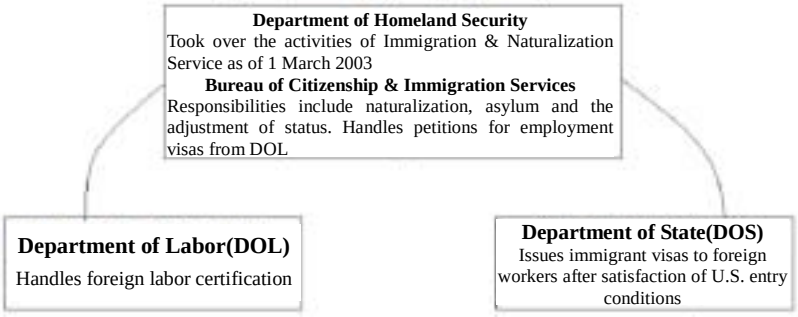
Hiring foreign workers for employment in the U.S. normally requires approval from several government agencies. First, employers must seek labor certification through the U.S. Department of Labor (DOL).

Once the application is approved (certified), the employer must petition the BCIS for a visa. Approval by the DOL does not automatically guarantee visa issuance. The Department of State (DOS) issues immigrant visas to the foreign workers for U.S. entry on

[5] IOM(2003a), p.20.

the condition that the applicants can establish that they are admissible to the U.S. under the provisions of the Immigration and Nationality Act (INA). The INA designates the Attorney General and the Secretary of State as the principal administrators of its provisions.

Figure 11-1. United States-Relevant Immigration Agencies and their Competences



Foreign labor certification procedures permit U.S. employers to hire foreign workers on a temporary or permanent basis to fill jobs essential to the U.S. economy. Certification may be obtained in cases where it can be demonstrated that there are insufficient qualified U.S. workers available and willing to perform the work at wages that meet or exceed the prevailing wage paid for that occupation in the area of intended employment. The program is designed to ensure that the admission of foreign workers to work in the United States on a permanent or temporary basis will not adversely affect the job opportunities, wages and working conditions of American workers. Due to the unwieldy and bureaucratic nature of the application and approval process, several thousand permanent immigration visas go unused each year, and there is a growing backlog of applicants waiting for certification.

3. Labor Migration Systems

3.1 Permanent Paid Employment

'Permanent Labor Certification' from the DOL is one of the avenues that allow an employer to hire a foreign worker to work permanently in the United States. In most instances, before the U.S. employer can submit an immigration petition to the BCIS, the employer must obtain an approved labor certification request from the DOL's Employment and Training Administration (ETA). The DOL must certify to the BCIS that there are no qualified U.S. workers available and willing to accept the job at the prevailing wage for that occupation in the area of intended employment. According to the DOL, permanent resident status granted as a result of employment accounted for 12.8 per cent of the total number of residence permits in 2000.[6]

The U.S. Immigration Act of 1990 established a multi-track preference system for immigrants, including the 'employment-based' immigration categories. This law distributes the 140,000 employment-based immigrant visas per year as follows:

Preference 1: Priority Workers (40,000 visas)

- Extraordinary ability (proven by sustained national or international acclaim) in the sciences, arts, education, business or athletics. No U.S. employer is required.
- "Outstanding" (internationally recognized and having at least three years of experience) professors and researchers seeking to enter in senior positions. A U.S. employer must petition for the worker.
- Executives and managers of multinationals (requires one year of prior

[6] U.S. Department of Labor, Bureau of International Labor Affairs, *Developments in International Migration to the United States: 2002. A Midyear Report*, Immigration Policy and Research Working Paper 36, 2002, p.4.

service with the firm during the preceding three years). A U.S. employer must petition for the worker.

Preference 2: Members of the Professions with Advanced Degrees and Aliens of Exceptional Ability in the Sciences, Arts or Business (40,000 visas). - A U.S. employer is required. However, the Secretary of Homeland Security can waive this requirement if it is in the national interest. Requires a labor certification.

Preference 3: Skilled Workers, Professionals and Other Workers (40,000 visas). - Labor certification is required.

- Skilled workers with at least two years vocational training or experience.
- Professionals with a Bachelor's degree.
- Other workers (unskilled workers). This subcategory is limited to no more than 10,000 visas per year.

Preference 4: Special Immigrants (10,000 visas). - This category includes ministers of religion and persons working for religious organizations, foreign medical graduates, alien employees of the U.S. government abroad, alien retired employees of international organizations, etc.

Preference 5: Employment Creation (investor) visas (10,000 visas). - For investors of at least USD1 million. However, a minimum of 3,000 visas is reserved for investors of USD 500,000 in rural or high unemployment areas. Investment must create employment for at least 10 U.S. workers. Investors are granted only conditional lawful permanent resident (LPR) status for two years; there are extensive anti-fraud provisions in the bill.

As shown in table 10 however, these visa allocations are seldom fully utilized.

The Schedule A Occupations list provides a catalogue of professions

for which the DOL has determined an insufficiency of U.S. workers who are able, willing, qualified or available for employment.

Table 11-2. Employment-based Immigration, by Preference, Fiscal Years, 1997 - 2000, US

	1997	1998	1999	2000
Total, employment 1st preference	21.8	21.4	14.9	27.7
Aliens with extraordinary ability	1.7	1.7	1.3	2.0
Outstanding professors or researchers	2.1	1.8	1.0	2.7
Multinational executives or managers	5.3	5.2	3.6	6.8
Spouses and children of 1st preference	12.7	12.7	9.1	16.3
Total, employment 2nd preference	17.1	14.4	8.6	20.3
Members of the professions holding advanced degrees or persons of exceptional ability Spouses and children of 2nd preference	8.4 8.7	6.9 7.5	3.9 4.6	9.8 10.5
Total, employment 3rd preference	42.6	34.3	28.0	49.7
Skilled workers	10.6	8.5	7.3	13.7
Baccalaureate holders	4.0	3.9	2.5	8.8
Souses and children of the above	19.2	15.6	13.2	22.7
Chinese Student Protection Act	0.1	-	-	-
Other workers (unskilled workers)	4.0	2.7	2.1	2.0
Spouses and children of unskilled workers	4.7	3.6	2.9	2.6
Total, employment of 4th preference	7.8	6.6	5.1	9.1
Special immigrants	3.7	2.7	2.3	4.4
Spouse and children of 4th preference	4.1	3.9	2.8	4.6
Total, employment 5th preference	1.4	0.8	0.3	0.2
Employment creation, not targeted area	0.1	0.1	-	-
Spouses of children of the above	0.2	0.2	0.1	0.1
Employment creation, targeted area	0.3	0.2	0.1	-
Spouses and children of the above	0.7	0.4	0.1	0.1
Total, employment preferences, principals	40.3	33.8	24.1	50.1
Total, employment preferences, dependents	50.3	43.7	32.7	56.9
Total, employment preferences	90.6	77.5	56.8	107.0
Percentage of total permanent settlers	11.3	11.7	8.8	12.6

Sources: US Department of Justice, Immigration and Naturalization Service, in OECD, 2003a.

Note: Figures expressed in thousands.

Schedule A also establishes that the employment of foreigners in such occupations will not adversely affect the wages and working conditions of U.S. workers employed in similar occupations. The occupations listed under Schedule A include:

1) Physiotherapists - who possess all the qualifications necessary to take the physiotherapist licensing examination in the state in which they propose to practice physiotherapy; and
2) Professional nurses - who have (i) passed the Commission on Graduates in Foreign Nursing Schools (CGFNS) Examination, or (ii) who hold a full and unrestricted licence to practice professional nursing in the state of intended employment.

A number of visas are also available each year to categories of priority workers who either possess extraordinary (proven through sustained national or international acclaim in the sciences, arts, business and athletics) or outstanding abilities (are internationally recognized and have at least three years of experience as professors or researchers). While the former do not require a petition from a U.S. employer, the latter do.

3.2 Temporary Paid Employment

Foreigners who are lawfully admitted to the U.S. for a specific purpose are defined in U.S. immigration law as “non-immigrants.” There are over 20 classes of non-immigrant visas. The vast majority of non-immigrants arriving in the U.S. are visitors for business and pleasure. However, some of them are playing an increasingly important role in the U.S. labor market. All temporary migration programs are demand-driven and U.S. employers must submit petitions on behalf of foreign workers. Most programs do not have numeric limits, with the exception of the H-1B scheme.

3.2.1 H-1B Speciality (Professional) Workers

The H-1B program allows an employer to temporarily employ a foreign worker in the U.S. on a non-immigrant basis in a speciality occupation. A speciality occupation requires the theoretical and practical application of a body of specialized knowledge and a bachelor's degree, or the equivalent in the specific speciality (e.g., engineering, physical sciences, computer sciences, medicine and health care, biotechnology and business specialities, etc.). Unlike the permanent labor certification program, the requirement to prove that there are no qualified U.S. citizens available for the job does not usually apply. This condition only applies to companies whose workforce includes at least 15 per cent H-1B workers and to employers who knowingly violated H-1B obligations within the last five years.

An H-1B certification is valid for the period of employment indicated on the Labor Condition Application for up to three years. However, a foreign worker can have H-1B status for a maximum continuous period of six years. After the H-1B entitlement expires, the foreign worker must remain outside the U.S. for one year before another H-1B petition can be approved. Certain foreign workers with labor certification applications or immigrant visa petitions in process for extended periods may maintain H-1B status beyond the normal six-year limitation, with one-year increments.

When the visa was first implemented in 1992, the ceiling had been set at 65,000. However, with growing employer demand the ceiling was raised to 115,000 for 1999 and 2000. In October 2000, the H-1B program was expanded for a second time to 195,000 annually for three years, beginning with 2001. However, the cap is scheduled to revert to 65,000 in October 2003.

3.2.2 H-1C Nurses in Disadvantaged Areas

The Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA) allows qualifying hospitals to employ temporary foreign workers as Registered Nurses (RNs) for up to three years under H-1C visas. The law currently does not provide for an extension of this time frame. Only 500 H-1C visas can be issued each year during the four-year period of the H-1C program (2000-2004). The sponsoring employer must pay a filing fee of USD 250 for each application filed with the DOL. The sponsoring employer must meet a determined set of criteria in order to employ foreign RNs, while the qualifying RN must:

- Have obtained a full and unrestricted licence to practice in the country where the nursing education was obtained, or have received a nursing education in the U.S.;
- (a) Have passed the examination given by the CGFNS; or (b) have a full and unrestricted licence to practise as an RN in the state where they will work, or (c) have a full and unrestricted RN's licence in any state and have received temporary authorization to practise as an RN in the state where they will work;
- Be fully qualified and eligible under the laws governing the place where the RN will work as a RN immediately upon admission to the U.S., and be authorized under such laws to be employed by the hospital.

3.2.3 H-2A Certification for Temporary or Seasonal Agricultural Work

The H-2A temporary agricultural program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring non-immigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature.[7] Before the BCIS can approve an employer's petition for such workers,

[7] "Temporary or seasonal nature" means employment performed at certain seasons of the year, usually in relation to the production and/or harvesting of a crop, or for a limited time period of less than one year when an employer can show that the need for the foreign workers(s) is truly temporary.

the employer must file an application with the DOL stating that there are insufficient workers who are willing, qualified and available, and that the employment of labor migrants will not adversely affect the wages and working conditions of similarly employed U.S. workers. Employers are required to provide, among others, free housing, meals or access to cooking facilities and transportation to work. Permits may be granted for up to a year and there are no limits on the number of workers accepted each year. Although the program is open to all nationalities, an overwhelming majority of workers come from Mexico each year.

3.2.4 H-2B Certification for Temporary Non-agricultural Work

The H-2B non-immigrant program permits employers to hire foreign workers to come to the U.S. and perform temporary non-agricultural work, which may occur once, seasonally, during peaks or intermittently. Furthermore, the job must be for less than one year and there must be no qualified and willing U.S. workers available for the job. There is a 66,000 annual limit on the number of foreign workers who may receive H-2B status during each BCIS fiscal year (October to September). The certification is issued to the employer, not the worker, and is not transferable from one employer to another or from one worker to another.

3.2.5 L-1 Intra-company Transfers

Intra-company transfers under the L-1 scheme allow migrant workers to work for their current employer or its subsidiary in the U.S., provided the employer has been continuously employed abroad for one of the past three years. Under the “blanket petition procedures” the prior work requirement is reduced to six months for companies who have had more than ten L-1 approvals within the last 12 months. L-1 visas are granted for a maximum of five years for

workers with specialized knowledge and for seven years for managers and executives.

In 2002, legislation was passed to grant work authorization to spouses of L-1 visa holders. The scheme is not restricted by quotas and is regarded as an effective way of transferring key personnel between affiliated companies in different countries. Employees under this scheme are, however, not entitled to receive the prevailing wage, and this has led to reports in recent years of companies exploiting the scheme in order to hire contract workers on a low wage. The L-1 visa is included the provisions of the North American Free Trade Agreement (NAFTA) and was included in recently negotiated trade agreements with Singapore and Chile, which are yet to be approved by the U.S. Congress.

3.3 North American Free Trade Agreement

This agreement between the U.S., Canada and Mexico came into effect in January 1994, replacing the US-Canada Free Trade Agreement (FTA). Under NAFTA four groups of businesspersons are granted temporary entry into the U.S. - business visitors, treaty traders and investors, intra-company transferees and NAFTA professionals. Although the first three categories are open to other nationals, the fourth category is reserved to parties to the agreement only. Entry requirements for Mexican professionals differ from those for Canadians owing to the pre-existing US-Canada FTA. While Canadian NAFTA professionals are not subject to a numerical limit, the current annual quota for Mexican professionals to enter the U.S. under the agreement is 5,500. U.S. employers also have to apply for labor certification, petition the BCIS and attest to paying the prevailing wage.

3.4 Self-Employment

3.4.1 B-1 Business Visitors

B-1 business visitors are prohibited from working in the U.S., but are admitted to engage in commercial activities not involving gainful employment and remuneration from a U.S. source (e.g. consultations and litigation). Holders of this type of visa are also allowed to import and export goods, carry out market and sales activities and participate in professional meetings and conventions. The B-1 visa is also included in NAFTA provisions and includes agreements with Singapore and Chile.

3.4.2 Rights and Benefits Granted to Temporary Work Permit Holders

Although there is a right to family reunion under some temporary labor migration schemes (e.g. the H-1B program), spouses of temporary work permit holders are generally not permitted to work in the US. Spouses of H-1B permit holders may be granted a special H-4 visa, which enables them to study in the U.S. H-1B permit holders also enjoy the same civil rights and labor protections as U.S. citizens, although they are not entitled to social security benefits. After six years on an H-1B visa, permit holders may apply for permanent residence.

Chapter 12

REPUBLIC OF KOREA

1. Recent Trends in Labor Migration

As of the end of December 2003, there were 388,816 foreign workers residing in Korea, 35.5 per cent of whom or 138,056 persons were presumed to be illegal foreigns. Of the total foreign workers in Korea, only 5.2 per cent or 20,089 persons were skilled workers, while the rest were low-skilled labor (see Table 12-1.). At the end of December 2003, the number of industrial trainees stood at 38,895, accounting for 10.0 per cent of the total foreign workforce, while the industrial skill trainees for overseas-invested firms numbered 11,826, accounting for 3.0 per cent of the total foreign workers. When put together, the total number of foreign trainees reached 50,721, or 13.0 per cent of the total foreign workers.

One thing noticeable about the trend in foreign workers should be that the number of undocumented foreigns increased sharply until August 2003. There were 48,231 undocumented foreigns in 1994, but the number went up to 289,239 in December 2002, accounting for 79.8 per cent of the total foreign workers in Korea[1].

[1] The reasons for the increase in the number of illegal foreigns in Korea are given in Yoo and Lee (2002).

The steady increase in the number of illegal foreigns signifies that the Korean policy on low-skilled foreign workers has failed. Realizing this belatedly, Korea enacted and promulgated the "Act concerning

Table 12-1. Trends in Migrant Workers by Residence Status

(Unit: persons, per cent)

	Total	Working visa	Trainee visa		Undocumented
			Trainees from overseas subsidiaries	Industrial trainees	
Dec. 1994	81,824	5,265	9,512	18,816	48,231
	(100.0)	(6.4)	(11.6)	(23.0)	(58.9)
Dec. 1995	128,906	8,228	15,238	23,574	81,866
	(100.0)	(6.4)	(11.8)	(18.3)	(63.5)
Dec. 1996	210,494	13,420	29,724	38,296	129,054
	(100.0)	(6.4)	(14.1)	(18.2)	(61.3)
Dec. 1997	245,399	15,900	32,656	48,795	148,048
	(100.0)	(6.5)	(13.3)	(19.9)	(60.3)
Dec. 1998	157,689	11,143	15,936	31,073	99,537
	(100.0)	(7.1)	(10.1)	(19.7)	(63.1)
Dec. 1999	217,384	12,592	20,017	49,437	135,338
	(100.0)	(5.8)	(9.2)	(22.7)	(62.3)
Dec. 2000	285,506	19,063	18,504	58,944	188,995
	(100.0)	(6.7)	(6.5)	(20.6)	(66.2)
Dec. 2001	329,555	27,614	13,505	33,230	255,206
	(100.0)	(8.4)	(4.1)	(10.1)	(77.4)
Dec. 2002	362,597	33,697	14,035	25,626	289,239
	(100.0)	(9.2)	(3.9)	(7.1)	(79.8)
Aug. 2003	391,424	32,671	12,288	40,082	306,382
	(100.0)	(8.4)	(3.1)	(10.2)	(78.3)
Dec. 2003	388,816	200,039	11,826	38,895	138,056
	(100.0)	(51.5)	(3.0)	(10.0)	(35.5)

Source: Ministry of Justice.

Note: Figures in ( ) refer to percentages.

the Employment Permit for Foreign Workers" in August 2003, under which low-skilled foreign workers may be employed as "workers", not as "trainees". Article 2 of the Addendum to the Act stipulates that measures shall be taken to legalize the illegal foreigns before the Guest

Worker System comes into operation. In accordance with this provision, a series of legalization measures were taken before November 2003[2]. Consequently, the number of illegal foreigns dropped suddenly from October 2003.

Table 12-2. Trend in Industrial Trainees (As of end of 2003)

(Unit: Persons)

			Industrial trainees			
	Total	Trainees for overseas-invested firms	Recommended by the Korean federation of small and medium businesses	Recommended by the national federation of fisheries cooperatives	Recommended by the construction association of Korea	Others
Total	103,056	24,229	70,9678	1,241	5,618	1,001
Deserters	52,335	12,403	38,547	583	422	380
Faithful trainees	50,721	11,826	32,420	658	5,196	621

Source: Ministry of Justice.

[2] Under the legalization program for illegal foreigns, any illegal foreigner who had resided in Korea for less than three years as of March 31, 2003, should be permitted to work in the industry designated by the Minister of Labor for a maximum period of two years, if he voluntarily reported to the relevant authorities and went through a specified procedure. Anyone who had lived in Korea for three years or longer but less than four years as of March 31, 2003, and departed from the country after voluntarily reporting to the competent authorities and going through a specified procedure, should be allowed to reenter Korea to work for up to a total of five years including the length of his previous residence in Korea before departure. However, an illegal foreign who had stayed in Korea for four years or longer as of March 31, 2003, should be urged to voluntarily depart from Korea before November 15, 2003,after which crackdowns should continue on illegal foreigns for forced departure

Table 12-2 shows the trend in the trainees for overseas-invested firms and the industrial trainees. At the end of December 2003, the total number of trainees was 103,056. Of them, 52,335 trainees (or 50.8 per cent) deserted their designated workplaces, making the number of legal trainees 50,721.

As of the end of December 2003, the number of illegal foreigns was 138,056. By nationality, the largest group was Chinese citizens, numbering 62,058 (or accounting for 45.0 per cent), 54.1 per cent of whom or 33,546 persons were Korean-Chinese. Second came Vietnamese (7.4 per cent), followed by Bangladeshis (6.9 per cent), Filipinos (6.5 per cent) and Indonesians (6.1 per cent) (see Table 12-3).

Table 12-3. Number of Illegal Foreigns by Nationalities (As of end of 2003)

(Unit: Persons, per cent)

Total	Chinese	Korean-Chinese	Vietnamese	Bangladeshis	Filipinos	Indonesians	Others
138,056	62,058	33,546	10,175	9,603	9,015	8,465	38,740
(100.0)	(45.0)	(24.3)	(7.4)	(6.9)	(6.5)	(6.1)	(28.1)

Source: Ministry of Justice.

Note: The figure in the ( ) represents the component ratio.

2. Policy Development

2.1 Low-skilled Migrant Workers

The rapid development of the Korean economy brought about exacerbating labor shortage problems since the late 1980's in the so-called "3D (D stands for difficult, dirty, and dangerous)" industries requiring low-skilled workers such as small manufacturing business and construction. Here rose the need for migrant workers. To cope with labor shortage, Korean government introduced the Industrial Skill Trainee Program for overseas-invested firms in November 1991,

which allowed overseas-invested companies to train workers employed by overseas subsidiaries of Korean corporations at the head office sites for relocation back to their original posts. The duration of stay for the industrial skill trainees under the program was six months, but could be extended up to six additional months.

2.1.1 Introduction of the Industrial Trainee Program

While the main beneficiaries of the Industrial Skill Trainee Program were the large overseas-invested enterprises, the small and medium-sized businesses still could not find a legitimate means of using foreign labor. Therefore, the Korean government introduced the Industrial Trainee Program for foreigners in November 1993 to help small businesses solve their problem of manpower shortages. The Industrial Trainee Program is a system under which foreigners are introduced as trainees for small and medium-sized manufacturing firms with 300 or less employees for a period of one year, and where necessary, the training period may be extended for another year. A total of 20,000 industrial trainees were introduced for the initial year of the Program for small and medium-sized manufacturing businesses. But the number increased steadily as shown in Table 12-4 below because the manpower shortages in the small and medium enterprises were so serious that the Program beneficiaries had to be extended to include the coastal fisheries in 1996 and the construction industry in 1997. Thus, the Program became the core of Korea's foreign labor policy by 2003.

The Industrial Trainee Program was criticized as a mechanism utilized to take advantage of migrant labor to address labor shortage problems under the guise of a trainee program. The migrant workers participating in the Program were officially classified as trainees, not employees, and therefore were not legally entitled to protection under Korean labor laws. On February 14, 1995, the government of Korea

established the Guidelines for the Protection and Management of Foreign Industrial Trainees to make legal and social welfare arrangements to protect migrant workers. Starting March 1, 1995, the industrial trainees became eligible to receive the benefits of the Industrial Accident Compensation Insurance and the National Health Insurance. In addition, some of the protective provisions of the Labor Standards Act and the Industrial Safety and Health Act were applied to the trainees. Furthermore, since July 1, 1995, the trainees have been subject to the Minimum Wage Law to be compensated accordingly for their participation in the Training Program.

Table 12-4. Sectors and Quata of Industrial Trainees

(Unit: thousand persons)

Year	Sectors	Total quota
1993	Manufacturing	20
1994	Manufacturing	30
1995	Manufacturing	50
1996	Manufacturing & coastal liners	80
1997	Manufacturing, coastal liners, & construction	82.8
2000	Manufacturing, coastal liners, & construction	84.5
2002	Fixed capacity system	145.5

Source: Ministry of Labor.

2.1.2 Introduction of the Post-training Employment Program

Many industrial trainees, however, departed from their workplaces, as they did not enjoy full legal protection under labor-related laws because of their status as "trainees," not as "workers," even though they were actually offering labor. Moreover, the limited number of trainees introduced under this program could not meet the demand of the manpower-hungry small and medium businesses for foreign workers[3].

[3] For details about the problems of the Industrial Trainee Program, refer to Yoo and Lee (2002), Im hyon-jin and Seol Dong-hoon (2000), and Park Young-beom (2000).

To mend this situation, the Post-training Employment Program was introduced in April 2000. Under this program, an industrial trainee who worked at a firm for two years without interruption should be qualified to reside and work in Korea for another year in his capacity as "worker," not as "trainee." In 2002, however, the training period of two years was shortened to one year, while the post-training working period was extended from one year to two years.

2.1.3 Introduction of the Employment Management System

The industrial trainees were placed only in the small and medium-sized manufacturing businesses, the construction industry and the agro-livestock industry, and were prohibited from engaging in the service industry. Nonetheless, many Korean ethnic foreigns were working illegally in the service industry. To accommodate the reality, the Korean government introduced in November 2001 the Employment Management System. Under the System, a Korean ethnic foreign of at least 40 years of age who has a third cousin or closer relative in Korea, who has a cousin-in-law or closer relative in Korea, who is listed in the family register of the Republic of Korea, or who is a direct ancestor or descendent of a Korean citizen included in the Korean family register, may find a job in Korea in six areas of the service industry: the restaurant business, business support services, social welfare services, cleaning, nursing, and housekeeping, for a period of up to three years in his capacity as "worker."

2.1.4 Introduction of the Guest Worker System

The foreign labor policies have so far experienced a series of revisions and changes, but none of them has provided a decisive solution to the foreign worker problems. For example, the Industrial Trainee Program, a strong pillar of the low-skilled foreign labor policy, has been criticized for employing migrant workers under the disguise

of trainees, thus failing to provide adequate protection for their human and labor rights. Because of these defects, the Program could not increase the number of trainees despite the sharp rise in the demand for foreign workers, ultimately resulting in an increased number of illegal workers. While the government was resorting to stopgap measures without providing a final solution to the foreign labor question, the number of illegal foreigns reached a whopping 80per cent of the total foreigns at the end of 2002, posing a serious social problem to be immediately dealt with. Under these circumstances, the country needed a new institutional device to ease the labor shortages of business firms and solve the illegal foreign worker problem.

The Korea government has tried to convert the Industrial Trainee Program into the Guest Worker System since 1995, but failed to do so because of the opposition of the business circle. However, a public consensus has grown that it is inevitable to have the Guest Worker System for migrant workers in order to alleviate the manpower shortages, cope with the problem of rapidly increasing illegal foreigns, and protect the human rights of migrant workers. As a result, the "Act on the Employment Permit for Foreign Workers" was enacted in 2003 to institute, among others, the Guest Worker System for migrant workers, which will enter into effect on August 17, 2004.

Under the Guest Worker System, anyone who wishes to employ a foreign worker may do so upon obtaining a permit from the Minister of Labor if he is unable to find a Korean worker. The period of an employment contract for a migrant worker shall, in principle, be one year, but may be extended to a maximum of three years[4].

Even after the Guest Worker System is introduced, the existing Industrial Trainee Program shall remain in force for the time being.

[4] For details concerning the Korean Work Permit System, refer to Yoo et al. (2003).

The Industrial Trainee Program is being maintained not only in consideration of the difficult position of the small and medium-sized business firms that have actually benefited from the Program, but also because it is practically not possible to apply the Guest Worker System to these smaller businesses in spite of their opposition. In the future when the Guest Worker System takes root, the Industrial Trainee Program is expected to convert into a pure skill training program for workers from developing countries.

2.2 Skilled Migrant Workers

Korea's Immigration Act allows for lawful employment of skilled migrant workers and migrant professionals. Such employment is sought by people who fall under the following seven categories and are issued with work permits to do so: professors (E-1), language instructors (E-2), researchers (E-3), technology instructors (E-4), specialists (E-5), arts and entertainment workers (E-6), and people engaged in special activities (E-7).

The Korean government takes on an active role in attracting qualified migrant labor in the field of state-of-the-art technology. Since November of 2000, the government eased regulations and requirements concerning legal residence in Korea to motivate foreigners highly-skilled in the areas of information technology, electronic commerce, e-business and other fields of advanced technology to work in venture enterprises in Korea that had high demands for such labor. The state support comes in the form of, among others, issuing multiple entry visas on a wider scale, extending the maximum length of stay, and authorizing engagement in activities other than those permitted in residence authorization documents, all regardless of nationality.

3. Administrative Structure

Until 2003 when legislation was enacted to introduce the Guest Worker System, the Policy Commission on Industrial Trainees (PCIT) have acted as the supreme body making policies on industrial trainees, and made major decisions on the number of industrial trainees and the type of industries to place the trainees in. Representatives of employers' associations and trade unions had participated in policy making process as members of PCIT. The new law on the Guest Worker System provides for the establishment of the Foreign Workers Policy Commission (FWPC) and the Foreign Workers Employment Commission (FWEC) as the supreme body making decisions on foreign workforce policies and the working body, respectively.

With the Foreign Workers Policy Commission established, the Policy Commission on Foreign Industrial Workers, which is empowered to make decisions on important matters relating to the existing Industrial Trainee Program, is expected to merge into the Foreign Workers Policy Commission, considering that the members of the two bodies overlap, and to ensure consistency in decisions to be made. In the future, therefore, the number of industrial trainees, designation of the countries to send industrial trainees, etc. will also be deliberated and decided by the Foreign Workers Policy Commission.

As the Industrial Trainee Program is operated by private entities, there have been criticisms that the government ministries are not active in handling the issue of foreign labor. Now that new legislation has been enacted, the government will directly manage foreign workers.

Above all, the Ministry of Labor will take charge of the work

concerning the employment of foreign workers. More specifically, the Ministry will look into the efforts made by business firms to seek national workers, arrange employment of foreign workers and transference of their workplaces, handle complaints of or relating to foreign workers, and guide and supervise the business firms that employ foreigners. Also, it will make bilateral agreements with sending countries, and set up and manage databases concerning foreign workers. Managing foreign workers' residence is the duty of the Ministry of Justice, which focuses on control and disposal of undocumented migrant workers.

The routine or practical work such as the selection and placing of industrial trainees has been done by such private agencies as the Korean Federation of Small Businesses, the National Federation of Fisheries Cooperatives, and the Construction Association of Korea. Now that Korea's policy on low-skilled foreign labor is being executed under a dual system, i.e., the Industrial Trainee Program and the Guest Worker System, the practical work relating to industrial trainees will continue to be in the hands of the above agencies regardless of the new legislation of 2003.

The Employment Security Centers, Korean local public employment offices, will take charge of issuing permits for employment of foreign workers and recommending qualified foreign workers to the employers holding an employment permit. The Human Resources Development Service of Korea, a public agency under the Ministry of Labor, will assist in making contracts for foreign worker employment, give job training to foreign workers, set up and manage databases concerning employment of foreign workers, conduct joint projects with migrant- sending agencies, and evaluate and guide migrant-sending agencies.

Given that there were a lot of doubts about the functions of the private training-related agencies, the new Guest Worker System does

not allow the participation of private agencies, committing public agencies to performing exclusively all the routine and practical work.

4. Labor Migration Systems

4.1 Industrial Trainee Program

The Immigration Act forms the basis of the Industrial Trainee Program: It stipulates the eligibility to stay in Korea for "those who have the qualifications for training set forth by the Minister of Justice and wish to take training at a business enterprise in Korea" (Article 10, Paragraph 1, of the Act), and provides for the legislation of the regulations on the protection and management of industrial trainees (Article 19, Paragraphs 2 & 3, of the Act).

Article 22, Paragraph 1, of the Guidelines for the Operation of the Industrial Trainee Program for Foreigners, a Public Notice of the Small and Medium Business Administration, stipulates mandatory provision of minimum wage-level training allowances, industrial accident compensation insurance, and medical insurance, for industrial trainees. Provisions on the protection of industrial trainees are set forth in the Guidelines for the Protection and Management of Foreign Industrial Trainees, an internal legislation of the Ministry of Labor. The Guidelines provide that "a trainee shall be given trainee status for his/her stay in Korea under the immigration laws and regulations, and in the event that the trainee is paid wages, allowances or any other forms of remuneration in return for his/her labor provided at the workplace while taking training, a trainee shall have the rights and duties of a worker within the limits set forth in these Guidelines" (Article 4). More specifically, Article 8 of the Guidelines stipulates that on the basis of the legislative spirit of the Labor Standards Act, the Minimum Wages Act, the Industrial Safety and

Health Act, the Industrial Accident Compensation Insurance Act, and the Health Insurance Act, the trainee shall be protected in the following manner:

- No violence or forced labor shall be allowed against the trainee;
- Training allowances should be paid regularly, directly, in full, and by means of a currency, and all the other overdue accounts should be settled;
- The training period should be honored, and the regulations on the breaks during working hours, holidays, overtime arrangements, night work arrangements, and the leave of absence be observed;
- Minimum wage-level pays should be guaranteed;
- Industrial safety and health should be provided; and
- The trainee should be covered by the industrial accident compensation insurance and the health insurance.

The Guidelines further provide that "the management of the enterprise shall guarantee the opportunities for the trainee to fully use the canteen, medical, educational, cultural, sports and recreation facilities" (Article 14), and that "the management should also make available lodging facilities for the trainee" (Article 7).

Detailed training conditions may be set by means of a contract between the trainee recommendation agency and the training company. But in any case, the minimum wage-level training allowances and the industrial accident and health insurances are guaranteed under these Guidelines. The trainer must pay the trainee the basic training allowances of at least the minimum wage level provided for in the Minimum Wages Act, and overtime allowances equivalent to 150 percent of the basic training allowances. The basic number of training hours per day is eight (four on Saturdays), and the number of training hours a month is 226 including paid holidays.

The Ministry of Labor enacted in 1999 the Guidelines for the Protection of Industrial Trainees from Overseas Subsidiaries. Under

these Guidelines, the Ministry encourages businesses to apply to industrial trainees at an overseas subsidiary company some essential clauses of the Labor Standards Act, and the provisions of the Minimum Wages Act, the Industrial Safety and Health Act, and the Industrial Accident Compensation Insurance Act, in the event that the trainees actually provide labor as a means to make up for the workforce shortages of the subsidiary's mother company in Korea, and are paid wages directly by the domestic mother company.

The quota of industrial trainees is 145,500 persons as of 2003. By industry, the number stands at 130,000 persons for small and medium manufacturing, 3,000 persons for coastal fisheries, 7,500 persons for construction, and 5,000 persons for agriculture and livestock farming. The industries that were accommodating industrial trainees as of 2003 are: 1) all manufacturing industries excluding tobacco manufacturing, publishing, and reproduction of recorded media; 2) coastal fisheries; 3) construction; and 4) agriculture.

The selection of sending countries and the determination of their quotas of trainees are carried out by the Ministry of Agriculture and Forestry, the Ministry of Maritime Affairs and Fisheries, the Ministry of Construction and Transportation, and the Small and Medium Business Administration, after deliberation by the Policy Commission on Foreign Industrial Workers. As of 2003, the sending countries of industrial trainees are 17: Nepal, Mongolia, Myanmar, Bangladesh, Vietnam, Sri Lanka, Uzbekistan, Iran, Indonesia, China, Kazakhstan, Thailand, Pakistan, the Philippines, Cambodia, Kyrgyzstan and Ukraine.

When the training contract is signed, the sending agency and the trainee recommendation agency should arrange and ensure the trainee's entry into Korea. Upon the trainee's arrival in Korea, the trainee recommendation agency gives him/her preliminary training for three days, during which period the trainee gets a medical checkup.

If the trainee is found medically unfit at the checkup, he/she will be deported.

The preliminary training focuses on etiquette, trainee's rights and duties, remedies in the event of an infringement of the trainee's rights, industrial safety, and Korean culture, climate, transportation, finance and economy. Upon completion of the preliminary training, the trainee is handed over to his/her training company, which must get the foreign registration certificate for the trainee from the Immigration Office within 90 days of the trainee's arrival in Korea.

An industrial trainee is posted in a specific firm and therefore cannot change his/her training firm unless there is a good reason for the change such as the firm's suspension or complete closure of business. However, for a trainee whose training has been suspended due to his/her training firm's suspension or closure of business during the trainee's training contract period, the government should, in consultation with the trainee recommendation agency, etc., provide the trainee with necessary support such as the change of the training firm and the trainee's departure from Korea (Article 14 of the Ministry of Labor Guidelines).

When a trainee is departing from Korea upon expiration of the training contract, the training company must shoulder the transportation costs for the trainee's departure, and transport him/her to the airport or seaport of departure. In the event that the trainee leaves Korea before the expiration of the contract period of his/her own will or due to his breach of the training contract, he should go through some required procedures before departure. In this case, the trainee must pay the transportation costs for his departure.

4.2 Post-training Employment Program

After completion of one-year training, if a migrant industrial

trainee passes a specific qualifying examination for technical skills, he/she is given qualifications for work for two years at his/her original training company or at a company duly qualified.

To become a post-training employee, an industrial trainee should sign a post-training employment contract with his/her training company in the form of the standard employment contract made out by the Minister of Labor. The industrial trainee should also sign a post-training employment contract with the head of the training company he/she has been assigned to.

The head of an industrial training company who wishes to hire any of its industrial trainees as a post-training employee must make a post-training employment contract with the trainee by means of the standard employment contract. However, the industrial trainee may work at a company other than the company where he/she took training in the event:

- that the head of the industrial training company does not want to hire the industrial trainee as a post-training employee;
- that the industrial trainee cannot continue to work at the company where he/she took training for reasons not attributable to the trainee, such as the company's suspension or abolishment of business; or
- that the industrial trainee does not want to make a post-training employment contract with the head of the industrial training company where the trainee took training, on the ground that he/she experienced at the company such a clear breach of the training contract on the part of the training company, as delayed payment of training allowances, during the training period.

The most controversial social issues related to migrant workers have been the delayed payment of wages, industrial accidents, and the inhumane treatment of foreign workers. In view of the fact that the most serious of these issues is the delayed payment of wages, and pursuant to the provisions of the Labor Standards Act, the head of

the company under the Post-training Employment Program must, unless otherwise agreed upon between the contracting parties, pay his/her post-training employees all the wages in arrears and settle all other overdue accounts within 14 days after the expiration of the post-training employment contract. However, in the event that the post-training employee leaves Korea within 14 days after the expiration of the contract, the trainee shall be paid before his/her departure.

In an effort to solicit the post-training employees to complete their contract period at his/her company, the head of the company under the Post-training Employment Program must lay aside, in addition to the regular wages paid to the workers, a fixed amount of money every month to pay to the post-training employees when they are returning to their home country after completion of their post-training employment contract.

According to the Enforcement Ordinance (Article 24, Paragraph 5) of the Immigration Act, a post-training employee makes an employment contract with his/her employing firm in his/her capacity as a worker, and receives the same treatment and holds the same worker status as a domestic worker. However, a post-training employee must work at the same firm that he/she took training at, unless he/she has obtained the approval of the head of the firm, or has a good reason not to do so. Nevertheless, the post-training employee may work at another firm in case:

- that his/her employer wishes to terminate the post-training employment contract before the expiration of the contract, or refuses to renew the contract;
- that it is deemed impossible for the employee to continue to work at the firm for reasons not attributable to the employee such as the firm's suspension or closure of business;
- that it is deemed inappropriate for the employee to continue to work at the

firm in view of his/her bad medical checkup results; or
- that it is considered difficult to continue the post-training employment contract due to the employer's delayed payments of wages or breaches of important provisions of labor-related laws.

A post-training employee is given worker status for his/her stay in Korea under the Immigration Act, and is subject to the labor laws as are national workers. In addition, A post-training employee is eligible for the health insurance under Article 59 of the National Health Insurance Act, but the management of the business enterprise the post-training employee is working for is obligated to insure him/her for the health insurance by means of a post-training employment contract. In addition, the post-training employee is eligible for the employment insurance under Article 3 of the Enforcement Ordinance of the Employment Insurance Act. The National Pension does not cover industrial trainees and illegal immigrants. It only covers the post-training employees of those countries to which the principle of reciprocity applies in respect of such a benefit. Countries eligible for this benefit are Sri Lanka, Indonesia, China, the Philippines, Iran, Thailand, Mongolia, Kazakhstan and Kyrgyzstan (9 countries in all), and those excluded from the list of benefited countries are Nepal, Vietnam, Bangladesh, Myanmar, Pakistan, Uzbekistan, Cambodia and Ukraine (8 countries in all).

4.3 Guest Worker System

The Guest Worker System was legislated in late July 31, 2003 to be put into operation in August 17, 2004, and the detailed regulations for its enforcement are now being prepared. Following are the important points of the System as laid down in the law, and the prospects for its future development:

4.3.1 Size of Migrant Workers, Their Working Fields, and Sending Countries

The number of foreign workers to be imported under the Guest Worker System, their fields of work, and their countries of origin are determined by the Foreign Workers Policy Commission. But no details have been set yet, since follow-up measures are now being taken to implement the System that was legislated in July 2003. Nevertheless, the following businesses are expected to be the areas of work for the foreign workforce: small-and medium-sized manufacturing businesses with less than 300 employees; construction firms with an annual output worth 30 billion won or less; six service businesses (restaurant, business support, social welfare, cleaning, nursing and housekeeping services), agriculture and livestock farming, and coastal fisheries. Given that there has been criticism that the number of sending countries (17 in total) designated under the current Industrial Trainee Program is too large, eight countries have been designated as sending countries under the new Guest Worker System. In the case of the service industry, the Employment Management System in effect since 2002 has been merged into the new Guest Worker System. The service and construction industries are to be manned only with ethnic Koreans with foreign citizenship, since labor mobility is inevitable in the construction industry.

4.3.2 Employment Procedures

Any employer who wishes to hire foreign workers must offer jobs for domestic job seekers first through an Employment Security Center. In the event that the Employment Security Center cannot find successful domestic applicants despite its active publicity efforts, the director of the Employment Security Center must issue to the employer a certificate of labor shortage, which is valid for three months. The employer may then apply to the Employment Security

Center for the employment of foreign workers. The employer may pick up successful job seekers from among the foreign candidates recommended by the Employment Security Center, and get a permit to hire the foreign workers.

The public organizations of a foreign sending country must create a worker pool comprising a certain multiple of the quota for employment in Korea, on the basis of objective data such as the results of the workers' Korean language proficiency tests, their level of technical ability, and the results of a computer draw, and send the information to the relevant Korean government agencies on a regular basis.

When an employer with a permit to hire foreign workers applies for employment of foreign workers, the Employment Security Center of the Ministry of Labor must recommend to the employer qualified job seekers from among the foreign workers pool in a multiple of the number of persons requested, and the employer may choose the finalists from among the list recommended. The employer may either make an employment contract directly with the foreign workers, or commit the Human Resources Development Service of Korea to do it for him/her. The standard contract form must contain such conditions of labor as wages, hours of work, holidays and workplaces, as well as the contract period. The initial contract period may not be longer than one year, but may be renewed for another three years.

The employer submits to the Ministry of Justice the certificate of labor shortage and the standard employment contract form, and gets a visa authorization certificate, which should be sent to the foreign job seeker with whom the employment contract has been made. The foreign job seeker gets a working visa for Korea from a Korean overseas mission. After arrival in Korea, the foreign worker should receive preliminary training for work in Korea within certain number of days after his/her arrival. The employer may either directly apply

for the visa authorization certificate, and send the certificate to the foreign job seeker himself/herself, or commit the job to the Human Resources Development Service of Korea, a public agency under the Ministry of Labor assigned with the foreign workforce business.

4.3.3 Departure Insurance and Trust Funds, and Homecoming Expense Insurance and Trust Funds

The employer of foreign workers must buy a departure insurance policy or save up money in a departure allowance trust fund in favor of the foreign workers to help them leave Korea without fail upon expiration of the employment contract and assist them with a lump-sum allowance for their departure. This scheme is designed to alleviate the financial burden of small businesses coming from their payment of lump-sum retirement allowances, and to ensure the foreign workers' departure upon expiration of their contract period.

To meet the travel expenses for their returning home, foreign workers must have them insured or save up money in a trust fund. The purpose of this measure is to prevent an illegal stay of foreign workers by encouraging them to leave Korea upon expiration of their legal period of stay in Korea. The insurance amount will be paid only when a foreign worker returns home after the expiration of his/her legitimate period of stay or for other justifiable reasons.

4.3.4 Overdue Wage Clearance Guarantee Insurance and Accident Insurance

In order to cope with delayed payments of wages for foreign workers, housekeeping service businesses which are not governed by the Wage Credit Guarantee Act, and small businesses with a specified number of employees or less (e.g., 10 employees or less), where wage payment delays occur frequently, will be mandated to take an overdue wage clearance guarantee insurance policy.

In order to cover foreign workers' injuries or diseases, housekeeping service businesses and such small businesses as farming or fishery businesses with less than five employees, which are not obliged to become a policyholder of health insurance or industrial disaster insurance, will be mandated to buy an accident insurance policy.

4.3.5 Change of Workplaces under the Guest Worker System

Basically change of workplace of migrant workers under the Guest Worker System is not allowed. However, migrant worker is allowed to change the firm he/she is working for, when it is considered difficult for him/her to continue to work at the firm due to the firm's suspension or closure of business, cancellation of the permit for the firm's employment of foreign workers, or restrictions imposed on the firm's employment of foreigners. Specifically, the foreign worker may change his/her firm:

- when the employer wishes to terminate the employment contract for a good reason before the expiration of the contract, or refuses to renew the contract when it expires;
- when it is deemed impossible for the foreign worker to continue to work at the firm due to the firm's suspension or closure of business, or for other reasons not attributable to the worker; or
- when for reasons attributable to the employer, the permit for the firm's employment of foreign workers has been cancelled, or restrictions have been imposed on the firm's employment of foreigners.

If a foreign worker fails to get a permit for the change of his/her work or workplace in accordance with the provision of Article 21 of the Immigration Act, within two months after the date of his/her application for the change, or if he/she fails to apply for the change of his/her work or workplace within one month after the expiration of the employment contract, he/she must leave Korea. A foreign

worker may, in principle, not change his/her work or workplace more than three times during his/her stay in Korea.

4.3.6 Memoranda of Understanding (MOU's) and Agreements between the Korean Government and the Sending Countries

The Act on the Employment of Foreign Workers legislated in July 2003 provides for MOU's to be signed between the governments of Korea and the sending countries and between public agencies of Korea and the sending countries. This scheme is intended to assign the selection and export/ import of foreign workers to the public sector of the contracting countries, thereby paving the way for preempting involvement and trafficking by private sending agencies.

4.3.7 Protection of Migrant Workers

Article 22 of the Act on the Employment of Foreign Workers provides that "a foreign worker shall not be given discriminatory treatment on the ground that he/she is a foreigner." This provision paves the way for the foreign worker to enjoy equality of treatment with national workers.

Migrant workers under the Guest Worker System and the Post-training Program are equally protected as national employees in applying labor laws. Migrant workers can become members of trade unions or form their own. Since the Labor Standard Act is not applied to services at private houses in Korea, however, migrant women working in the cleaning, nursing and housekeeping services at private houses are not covered by the Labor Standard Act. If such services are supplied at business sites, the Labor Standard Act is applied to migrant women. Maternity protection is applied to legal migrant women. Because there is no chance to receive benefits from the National Pension Scheme, the public pension is applied to migrant workers based on bilateral agreement between Korea and the

sending country. Under the Guest Worker System and the Post-training Program, since there is little chance of migrant workers' unemployment in Korea, the coverage of unemployment insurance system to migrant workers is voluntary. If migrant workers want to be protected by the unemployment insurance, he is covered by the system.

Migrant workers are protected against discrimination based on race, ethnic origin, religion, sex, social status, ect. The Korean Constitution (Article 11) and the Labor Standard Act (Article 5) prohibit discrimination based on gender, nationality, race, ethnic origin, religion, and social status. Thus unequal treatment against migrant workers or women are illegal in Korea. Inequality of pay between men and women without good causes are prohibited in Korea by law (Article 11 of the Constitution, Article 5 of the Labor Standard Act, Article 8 and 9 of the Employment Act for Gender Equality).

4.3.8 Revocation of Employment Permits

An employer shall be deprived of his/her employment permit if and when: 1) an employer fails to comply with the terms for employment agreed upon prior to the arrival in Korea of the worker, including the terms on wages; 2) it is deemed difficult to maintain the employment contract due to the employer's violation of labor-related laws and regulations including delayed payment of wages; or 3) an employer obtained the permit by a trick or other fraudulent means. The employer whose employment permit has been revoked must terminate the employment contract with the foreign workers within 15 days after his/her receipt of the order of revocation.

4.3.9 Measures Taken Against Illegal Residence and Employment

With the Guest Worker System introduced by legislation in July 2003, it has now become possible to import legitimate foreign

workers, and therefore the existing undocumented migrant workers have been given legal status in accordance with the lengths of their stay. This legalization was partially based on the fact that if all the undocumented migrant workers are deported at one time, the nation will face a serious shortage of labor, and that it would be practically difficult to return them all at the same time. Judging that the success of the Guest Worker System is largely dependent on the solution of the undocumented migrant workers problem, the Korean government is showing its firmest determination ever to tackle the problem.

The undocumented migrant workers eligible for legalization are those who resided in Korea for less than four years as of March 31, 2003, numbering 227,000 persons in all. Of them, those who stayed for less than three years (162,000 people) will be allowed to work for two years under the Guest Worker System in the industries designated by the Minister of Labor. Meanwhile, those whose residence in Korea is less than three to four years (65,000 persons) may be issued with a visa authorization certificate by the Ministry of Justice after the Labor Ministry's confirmation of their employment. They are required to exit from Korea first, but can get a visa with the certificate for reentry into the country and work. In this case, however, they must not work for more than five years inclusive of the length of their previous stay before the exit.

The industries for which employment of migrant workers is allowed are the manufacturing, construction, coastal fisheries, agriculture and livestock farming, and service (restaurant, business support, social welfare, cleaning, nursing and housekeeping services) industries. Those undocumented migrant workers who are employed in an industry that is not on the above list, must move to one on the list with the arrangements of an Employment Security Center.

Those subject to deportation are undocumented migrant workers

who had resided in Korea for more than four years as of March 31, 2003. The deadline for undocumented migrant workers to depart Korea voluntarily is set on November 15, 2003, and if they do depart before that time, they will be exempt from fines. However, if they fail to do so, they will be subject to the government's crackdown. For an effective control of undocumented migrant workers, surveillance and punishment will be intensified especially on employers.

4.4 Skilled Migrant Workers Program

The Korean government has tried attract highly-skilled migrant workers. Since November 2000, the Korean government eased regulations and requirements concerning legal residence in Korea to motivate foreigners highly-skilled in the areas of information technology, electronic commerce, e-business and other fields of advanced technology to work in venture enterprises in Korea that had high demands for such labor. The state support comes in the form of, among others, issuing multiple entry visas on a wider scale, extending the maximum length of stay, and authorizing engagement in activities other than those permitted in residence authorization documents, all regardless of nationality.

Previously, only single entry visas were issued to those seeking jobs in Korea, and multiple visas were issued based on the principle of reciprocity or bilateral visa agreements with the country of which the applicant is a national. In November of 2000, however, restrictions were lifted to allow multiple entry visas to be issued regardless of any multiple visa agreement between countries. Eligible applicants include people seeking information technology-related jobs with venture firms and manufacturers in Korea and those with knowledge in information technology who desire working in the fields of electronic commerce and other e-business areas. Both of these groups of people

are required to obtain employment recommendations from the head(s) of relevant ministries (Ministry of Commerce, Industry and Energy, or Ministry of Information and Communication). Qualification requirements are as follows: experience of five years or more in information technology, electronic commerce, and e-business areas or a minimum of a bachelor's degree in a pertinent discipline and experience of two years or more in related fields.

The maximum length of stay fixed on a one-time basis at the time of residence authorization was extended from the previous two years to three years in November of 2002. Moreover, the policy revisions permitted unlimited stay upon processing of residence extension requests in the event employment contracts are renewed. In addition, while any activity other than those described in residence authorization documents and changes to the workplaces in respect of both location and number were not permitted prior to November of 2000, policy changes eased such restrictions, allowing a maximum of two more workplaces and additional activities as long as the original employer agreed to them.

Chapter 13

TAIWAN

1. Recent Trends in Labor Migration

As seen in Table 13-1 below, the number of foreign workers in Taiwan steadily increased since 1991, when it stood at 2,999. However, since peaking in the year 2000, the number has been slightly declining and as of late 2002, there were approximately 300,000 foreign workers in Taiwan, accounting for approximately 4.5 per cent of Taiwan's total number of paid workers.

Table 13-1.Trends in theNumber of Foreign Workers in Taiwan

(Unit: 1,000 persons, per cent)

Year	Number of foreign workers (A)	Number of paid workers (B)	Number of unemployed	A/B
1991	3	5,666	130	0.05
1992	16	5,856	132	0.27
1993	98	6,008	128	1.62
1994	152	6,160	142	2.47
1995	189	6,260	165	3.02
1996	237	6,287	242	3.76
1997	248	6,423	256	3.87
1998	271	6,555	257	4.13
1999	295	6,624	283	4.45
2000	327	6,746	293	4.84
2001	305	6,727	450	4.53
2002	304	6.771	515	4.49

Source: *Labor Statistics Yearbook 2002*. published by the Council of Labor Affairs, the Executive Yuan of the Republic of China.

Note: The figures reflect those of the end of each year.

Table 13-2 shows the current status of foreign workers in Taiwan by industry. As of late 2002, out of 300,000 foreign workers in Taiwan 51.6 per cent were engaged in the manufacturing sector, followed by nurses (37.5 per cent), construction (7.7 per cent) and domestic helpers (2.3 per cent).

Table 13-2. Categories of Foreign Labor in Taiwan

(Unit: person, per cent)

	End of 2002
Total	303,684 (100.0)
Manufacturing sector	156,697 (51.6)
Caregivers	113,755 (37.5)
Construction	23,341 (7.7)
Domestic helpers	6,956 (2.3)
Fishing crews	2,935 (1.0)

Source: Council of Labor Affairs, *Labor Statistics Yearbook* the Executive Yuan of the Republic of China

2. Policy Developments

Taiwan's labor shortage problem emerged when it experienced rapid economic growth, recording an annual growth rate of 10per cent since the 1970s and became serious in the mid-1980s. In response, in October 1989, the Taiwanese government permitted the employment of foreign workers in the construction of public facilities in the government sector. In late May 1992, the government enacted the "Migrant Employment Permit and Management Act," legalizing migrant labor in the private sector. In the beginning, migrant labor was limited to six categories, including some manufacturing businesses and construction. Later, the government expanded categories for the manufacturing sector allowing for foreign labor and, in addition to manufacturing and construction sectors, it added caregivers, domestic helpers and fishing crew to the categories for

foreign labor.

The basic guidelines of Taiwan's labor migration policy are as follows : First, in principle, foreign workers are temporarily allowed only for sectors and occupations with labor shortages. More specifically, (1) the supply of foreign labor facilitates investment and creates more jobs by easing labor shortages of small and medium-sized businesses; (2) foreign labor is aimed at enhancing national competitiveness and expediting construction in the public sector; (3) foreign labor supplied as domestic helpers and caregivers helps local homemakers participate in the labor market, if necessary 22.

Second, the quota for foreign workers in Taiwan is not fixed and the Taiwanese government decides the number by considering various factors, including Taiwan's economic development, economic cycles, the situation in the labor market and the supply and demand of different industries. However, the government sets ceilings by sector based on the principle of minimizing the number of foreignworkers, if possible. In addition, businesses hiring foreign workers are limited to those which contribute significantly to the national economy, and they should possess capital of more than NT$200 million.

Third, the Taiwanese government sets out basic principles regarding foreign workers, including the total number of foreign workers, their allocation by sector, allowable work categories for migrant workers, employment stabilization fees, and restrictions on the number of foreign employees by sector. At the same time, the government entrusts the signing of employment contracts between Taiwanese businesses and foreign workers to private employment agencies or businesses.

Fourth, countries from which Taiwan imports migrant workers from are nations that have friendly relations with Taiwan. Currently, there are five labor-sending states, namely, the Philippines, Thailand,

Myanmar, Indonesia, and Malaysia. The number of immigrant workers by country is not fixed and employers decide the nationality of their employees.

Lastly, the government has introduced a levy system in an effort to prevent worsening of working conditions for local workers as a result of import of foreign labor and to curb a possible large inflow of unskilled migrant workers.

3. Administrative Structure

Taiwan's government agency in charge of labor migration policy is the Foreign Labor Policy Evaluation Committee. The committee consists of 20 people from the Council of Labor Affairs, the Ministry of Transportation and Communication, the Council of Indigenous People, the Ministry of Economic Affairs, labor groups and the academic community, and they determine the direction of foreign labor policy. Major decisions include: 1) evaluation on supply and demand of labor, 2) evaluation on foreign labor's impact on society, economy, health and public security in Taiwan, 3) evaluation on the number of imported foreign workers, 4) evaluation on employment ratios and the number of foreign labor by sector, 5) review on application qualification for foreign labor, 6) discussions on other policies on foreign labor.

The Work Permit Division of the Employment and Vocational Training Administration at the Council of Labor Affairs of the Executive Yuan is in charge of the introduction and management of foreign labor. More specifically, the Work Permit Division processes work permit applications from foreign workers, issues work permits, manages foreign workers and private foreign labor manpower institutions, and imposes and collects employment stabilization fees.

4. Labor Migration Systems

Taiwan is one of the countries that run ademand-driven foreign labor recruitment system in which employers play a leading role in recruiting foreign workers. Taiwan hires foreign labor based on its work permit system. The Employment Services Act allows foreign labor in the following nine categories:

1) Professional or technical works
2) Those who are in charge of businesses invested or established by Chinese residents abroad or foreigners upon government approval
3) Teachers at public schools or private junior colleges and higher educational institutions that have complied with establishment requirementsor schools for foreign residents
4) Foreign language teachers for short-term supplementary classes established based on Supplementary Class Education Act
5) Sports coaches and athletes
6) Workers involved in religion, art, entertainment or performances
7) Domestic helpers
8) National infrastructure construction projects or projects designated by central government agencies to meet the need for economic and social development.
9) Other jobs allowed by central government agencies due to lackof local workforce because of the unique features of the work or jobs that require foreign employment.

Among the nine categories, those related to unskilled foreign workers are categories 7), 8) and 9). Among the three categories the majority belongs to category 8).

The quota of foreign workers is not explicitly set, yet there areunofficial criteria that the number of foreign workers should basically not exceed the number of the unemployed. As seen in Table

13-3, Taiwan controls the scale of foreign labor by fixing the foreign labor dependency ratio by occupation, instead of explicit quotas.

In principle, employers are required to submit applications for work permits, and yet in practice employment agencies prepare and submit the applications upon request of employers. Employers seeking to hire foreign workers visit employment agencies in Taiwan and select foreign workers[1] and submit their applications for work permits through the agency.

In return, employment agencies receive commissions[2] and carry out application procedures on behalf of employers.

Employers seeking to apply for a permit to hire foreign workers must file a registration for application for workers under reasonable labor conditions at public employment service centers located close to their

Table 13-3. Foreign Labor Dependency Ratio in Taiwan

	Dependency Ratio
Domestic helpers	No more than one foreign domestic helper per household
Fishing crews	An owner of a fishing boat of 20 tons or more is allowed to hire foreign crew members, provided that they do not exceed a third of the total crew on board.
Caregivers	One foreign caregiver per five patients
Construction workers	There are no restrictions.
Manufacturing workers	. As for businesses with less than 100 employees, foreign workers should not exceed 30per cent of total workforce. . As for businesses with 100 or more employees, the foreign labor qouta is calculated as follows: Imported foreign labor qouta= 100 persons×30per cent+(number of employees-100 persons)÷A

Source: Quoted from Im Hyun-jin, Seol Dong-hun (2000).

Note: According to the 1993 foreign labor quota calculation in the manufacturing sector, A refers to 10.

[1] Employment agencies in Taiwan possess resumes of foreign workers with a photo attached.

[2] In 1995, the commission was around NT$25,000 and as of October 2000 employment agencies agreed to NT$15,000 per person.

places of business,and from the following day employers should place an employment advertisement[3] for three days in a local newspaper. Employers are allowed to apply for a work permit only if there are no qualified workers available for seven days starting from the following day of the last day of the employment advertisement. If employers are unable to find workers despite efforts to hire local workers, then they are allowed to apply for a foreign labor work permit to the Work Permit Division at the Council of Labor Affairs by submitting documents[4] including a certificate to prove lack of local labor issued by newspapers and public employment service centers, and a report on plans to improveproduction facilities and working conditions. Foreign labor is only allowed in businesses that make a significant contribution to the national economy and with capital investment of NT$200 million.

Once an application for a work permit is accepted, the Work Permit Division of the Council of Labor Affairs reviews the qualifications of businesses concerned and decides whether to grant a work permit. Once the granting of a work permit is approved, the Work Permit Division notifies the employer to pay a security deposit[5] which amounts to two months wages (minimum wage) per worker. Once the employer pays the deposit, the Division issues a work permit.

Once a work permit is issued by the Work Permit Division at the

[3] Employment advertisements should include conditions such as type of work, number of employment vacancies, specialty areas, name of employer, wages, working hours, working place, employment period, meals provisions, as well as name, address and telephone number of public employment service centers which processed the employment registration.

[4] Application documents vary according to different businesses.

[5] Security Deposit covers costs including return air ticket, accommodation fees during the workers'stay until their return to their home countries, and costs generated by foreign workers who are forced to return to their home countries after being dismissed.If the deposit is not fully used, the remaining fee is given to employers and if the deposit is not sufficient to cover all the costs, the employers should pay the extra fees.

Council of Labor Affairs, employers are allowed to recruit qualified foreign workers. There are three ways for employers to recruit foreign workersrecruiting through employment agencies in Taiwan; visiting foreign countries and directly recruiting local workers there; and recruitingqualified workforce from their local factories in foreign countries and sending them to their headquarters in Taiwan. In most cases, however, employers seeking to hire foreign workers visit employment agencies and receive advice on work permit application procedures and foreign labor recruiting before they apply for a work permit. For this reason, in actual practice, foreign labor is recruitedthrough employment agencies, regardless of the issuance of work permits. Employment agencies in Taiwan are linked to employment agencies in labor-sending countries on a joint venture basis and possess databaseson detailed resumes of foreign workers by sending country and by sector. In this context, it is a general practice that employers of foreign labor visit and recruit foreign workers in relevant fields through employment agencies in Taiwan.

Employers hiring foreign workers should pay an employment stabilization fee which is used for unemployment insurance, vocational training and promotion of national employment. Non-compliance with security deposit and employment stabilization fee is sufficient grounds for cancellation of a work permit. As of September 2000, the employment stabilization fee per foreign worker is as follows:

If there are problems with foreign workers such asthose who have

Table 13-4. Employment Stabilization Fee per Foreign Worker in Taiwan

(Unit: Taiwan dollar)

Caregivers	Caregivers for mental hospitals	Public infrastructure construction workers	Private construction workers and fishing crew	Workers in manufacturing sector	Domestic helpers
600	1,100	1,400	1,500	1,600	2,300

Source: Work Permit Division, the Council of Labor Affairs

skills different from those stated on a work permit; those who fail to meet criteria of physical examinations; those who obtained a work permit based on other reasons or those who falsify documents, the work permit is revoked, and the foreign workers concerned are forced to leave Taiwan. Foreign workers are prohibited from leaving their workplace for another job and any violation leads to cancellation of a work permit and forced deportation.

A work permit may also be cancelled in cases where unskilled foreign workers bring their families and relatives to Taiwan to live together or where foreign workers marry Taiwan nationals during their employment period, or where female foreign workers get pregnant. The ban on the invitation of foreign workers' families and relatives can be seen as a measure to prevent prolonged stays in Taiwan and curb subsequent increases in social costs.

In addition, if employers fail to pay the employment stabilization fee, even after receiving a reminder of payment, or if employers designate foreign workers to engage in work in violation of such conditions as workplace, wage, and type of work of the permit, the work permit is revoked and businesses concerned are prohibited from rehiring foreign workers.

One of the reasons why there are illegal foreign workers is that they want to recover the tremendous costs they incur in going to work abroad.[6] The Taiwanese government does not carry out aggressive crackdowns on illegal foreign workers or impose strict punishment, if the number of illegal foreign workers is less than

[6] In the case of Taiwan, as there islittle difference in wages between foreign workers and local workers, most illegal foreign worker cases are generated when foreign workers leave their employers and do not return to their home country after the expiry of the employment rather than leaving their workplace during the legitimate employment period. In other words, it is known that legitimate foreign workers do not leave their jobs only becauseof high wages of illegal foreign workers. (Im Hyeon-jin, Seol Dong-hun, 2000)

certain criteria. Once the number exceeds the criteria, however, the government launches strong crackdown campaigns. As part of its measures to track down illegal workers, the Taiwan government offers rewards to successful reports of illegal workers of up to NT$200,000 to NT$300,000 and the rewards come from penalties collected from employers who have hired illegal foreign workers. If an employer hires one illegal foreign worker, the employer shall be penalized with a prison term of six months or less,or payment of a fine of NT$90,000 or less. If the number of persons illegally employed is two or more, the employer shall be liable to a prison term of no more than three years, or payment of a fine of NT$300,000 or less. Any person who recommends foreign persons to work for others illegally shall be penalized with a prison term of six months or less, or payment of a fine of less than NT$150,000. Any person whorecommends foreign persons to work for others illegally with the intention of making profits shall be penalized with a prison term of less than three years or payment of a fine of less than NT$600,000. Any person who frequently recommends foreign personsto work for others illegally shall be penalized with a prison term of less than five years or payment of a fine of less than NT$1,500,000. (Article 58 and 59, Employment Services Act)

Chapter 14

SINGAPORE

1. Recent Trends in Labor Migration

It is difficult to gather accurate information on the trends of foreign labor in Singapore, as the government of Singapore does not release any official statistics.

2. Policy Developments

Singapore, which experienced labor shortages from the early 1970s, started to import foreign labor on a limited basis. At first, the city-state placed a priority on recruiting Malaysiannational foreign workers, yet in the late 1970s when the labor shortage problem deepened, it started seeking labor from countries other than Malaysia.[1] The key features of Singapore's foreign labor policy are as follows:

First, the recruitment of skilled foreign labor is actively encouraged, while unskilled foreign labor is restricted only to areas where a need

[1] As of July 2000, there were 311,000 foreign workers in Singapore, accounting for 20 per cent of the total number of 1.5 million employed people (Labor Ministry, 2000).

exists.[2] Foreign workers whose monthly salaries are below S$2,500 are required to obtain work permits issued by the Ministry of Manpower (MOM)in accordance with the Employment of Foreign Workers Act to obtain a residence permit from the Immigration Authority. The duration of a work permit is two years and it is renewable for once up to a cumulative total of four years. During this period, if the foreign worker returns to his or herhome country, he/she is not allowed to reenter Singapore.[3] An employer of a work permit holder is required to pay a security deposit of SD$5,000 to the government, but an employer of a Malaysian national is exempted from the requirement.

Second, Singapore limits the number of countries that it imports labor from,and classifies labor-sending countries into Non-Traditional Sources (NTS) and North Asian Sources (NAS), making a distinction between allowable sectors.[4] Owing to its geopolitical location and historical background after being liberated from Malaysia, Singapore places a priority on Malaysian nationals in hiring foreign workers. The city-statehas different allowable sectors according to nationalities. More specifically, only foreign workers whose nationalities are Malaysia, Hong Kong, Macau, Korea and Taiwan are

[2] Singapore classifies foreign workers according to wage levels. More specifically, foreign workers with salaries of more than S$2,500 per month are categorized as professional and skilled workers, and others with monthly salaries of less than SD$2,500 are classified as unskilled workers. Visa issuance procedures and employment conditions differ according to the classification. As for skilled workers the Immigration Authoirty issues an Employment Pass for them in accordance with the Immigration Act. In general, skilled workers have no restriction on immigration and employment in Singapore and not only the period of stay can be extended,but also permanent residence can be granted to those who desire it.

[3] If work permit holders pass government-certified national skills tests, which are classification level two and higher of national skills tests, they are recognized as skilled workers and their work permit duration is extended to three years.

[4] Non-Traditional Sources (NTS) include India, Sri Lanka, Thailand, China, Bangladesh, Myanmar, the Philippines, and Pakistan, while North Asian Sources (NAS) include Hong Kong, Macau, Korea and Taiwan.

eligible for jobs in the manufacturing sector, while construction jobs are open to all foreign workers from Malaysia, NTS and NAS. Employment of foreign workers from NTS in the service sector is restricted and their employment is limited to contracts by Town Councils or the government's grass cutting contracts. The marine sector is open to all foreign workers from Malaysia, NTS and NAS.

Third, although Singapore implements a relatively open foreign labor policy, there are considerable restrictions on employment or settlement for unskilled foreign workers. The number of foreign workers allowed for each business is limited and the Singapore regulations stipulate minimum training periods for employment in the service industry. Moreover, unskilled foreign workers are not allowed to bring their families to Singapore and the permission of the MOM is required when they wish to marry Singapore nationals.

Lastly, in an effort to protect the labor conditions of local workers and prevent a large influx of unskilled foreign labor, Singapore has introduced the Foreign Workers' Levy system. When it was first introduced, the levy was imposed onlyon employers hiring foreign workers from NTS, but from 1989 the system was expanded to include all employers hiring workers of foreign nationalities, even including Malaysians.

3. Administrative Structure

In Singapore the MOM is in charge of devising and implementing foreign labor policy. Within the ministry there are two divisions which are responsible for foreign manpower issues in Singapore: namely, the Foreign Manpower Employment Division in charge of issues related to foreign labor employment, and the Foreign Manpower Management Division in charge of welfare of foreign workforce. The Foreign Manpower Employment Division comprises

the Work Permit Department in charge of unskilled foreign manpower and the Employment Pass Department in charge of skilled foreign manpower. On the other hand, the Foreign Manpower Management Division comprises the Employment Inspectorate Department in charge of illegal employment, dismissals, and any violations of foreign manpower regulations; the Well-being Management Department in charge of well-being and welfare of foreign workers; and the Corporate Management and Development Department whichsupports the entire division in the areas of office management, finance, training and human resource management.

4. Labor Migration Systems

Singapore is one of the countries that operate a demand-oriented foreign laborimport system where employers play a leading role in introducing foreign manpower. The city-state imports unskilled workers through the work permit system and skilled workers throughthe employment pass system.

Singapore encourages the introduction of skilled foreign manpower, while strictly controlling the inflow of unskilled foreign labor. It does not control the introduction of foreign manpower by limiting the total numbers, but by dependency ceilings by sector. More specifically, in principle, Singapore provides foreign labor to industries suffering from severe labor shortages such as construction, manufacturing, marine, service industries including hotels and domestic workers, yet it adjusts the demand by individualemployers of each industry and occupation by setting dependency ceilings by industry.[5] Yet, the Singapore authorities have not set any dependency ceiling for

[5] Singapore's current policy on unskilled foreign labor is aimed at discouraging the demand for foreign workers. It aims to reduce the dependency ratio from the current one national to five foreign workers to one to two over the next 10years.

domestic workers, as there is a need for the introduction of a large number of cheap foreign domestic helpers because there are few Singaporean nationals who wish to work as domestic helpers and the government needs to induce the participation of housewives in the labor market, the untapped labor force in Singapore.

In addition, the Foreign Workers Levy system is implemented to discourage employers'demand for unskilled foreign workforce.

Although the Singapore government is inevitably compelled to allow the import of foreign labor,it has implemented the security bond and foreign worker levy system in order to discourage over-reliance on foreign labor.

In order to provide resources for the management of foreign workers from NTS and guarantee their return to their home countries,[6] the Singapore government has mandated employers hiring foreign workers from NTS in all sectors to put up S$5,000 security bond per worker as from April 1993.[7]

In addition to the security bond system, the Singapore authorities are restrictingdemand for foreign workforce by considerably raising foreign worker levies on businesses with high dependency on foreign workforce. The system was first introduced in December 1980

[6] The security bond system is comparable to the security deposit system of Taiwan.

[7] Until March 1993, the Singapore government set different security bond amounts by sector and occupation and nationalities of foreign workers. At that time, the security bond for domestic workers was the highest at S$5,000 and the amounts for other sectors such as manufacturing, construction and marine industries differed,ranging from S$1,000 to S$3,000. The amount of security bond wasdifferently applied even in the same industry, depending on nationalities of foreign workers. For example, in the construction and marine sector, the security bond amounts for foreign workers from Thailand, the Philippines, and Indonesia was S$1,000, theamount for workers from Bangladesh, Sri Lanka, Hong Kong and Macau S$1,200, the amount for worker from India S$1,500, amount for worker from Pakistan S$1,700, the amount for worker from Taiwan S$1,600, the amount for worker from Korea S$2,200, the amount for worker from China S$3,000. Since April 1993, differentiationof security bond amount by sector, occupation and nationality was abolished.

Table 14-1. Foreign Labor Allowable Industries, Foreign Labor Ratios, Dependency Ceilings and Levy Rates

(Unit: Singapore dollar)

Sector	Dependency ceiling	Category of workers	Levy rates	
			Monthly	Daily
Manufacturing	Up to 40 % of the total workforce	Skilled	30	1
		Unskilled	240	8
	Between 40% and 50% of the total workforce	Skilled	30	1
		Unskilled	310	11
Construction	1 full-time local worker to 4 foreign workers	Skilled	30	1
		Unskilled	470	16
Process	1 full-time local worker to 3 foreign workers	Skilled	30	1
		Unskilled	295	10
Marine	1 full-time local worker to 3 foreign workers	Skilled	30	1
		Unskilled	295	10
Service	30% of total workforce	Skilled	30	1
		Unskilled	240	8
Harbor Craft	1 local full-time worker to 9 foreign workers	Certified Crew	30	1
	(Number of crews shown on Maritime and Port Authority Harbour Craft License) ×2	Non-Certified Crew	240	8
Domestic Worker	NA	NA	345	12

Source: Ministry of Manpower, *A Guide to Work Permits*, 2003,
Note: The levy rates apply from Jan. 1, 1999.

with a purpose to stem over-reliance on unskilled foreign labor and deterioration of working conditions for local workers, and to promote technology-intensive industries. At that time, a monthly rate of S$230 was levied per foreign worker in the construction sector. In 1982, the government raised the levy amount to 30% of the basic salary of foreign workers and expanded the categories of industries to include manufacturing, construction, marine industries and domestic workers. In 1987, the levy was imposed on employers hiring all work

permit holders. In January 1992 the Singapore government introduced the differentiation of the foreign workerlevy system. The government classified manufacturing businesses into ones with high and low dependence on foreign labor and applied different levy rates. Meanwhile, the government classified foreign workers in all sectors into skilled and unskilled workers and applied different levy rates. This system has continued through until the present day, as of 2001.

As shown in Table 14-1, employers hiring skilled foreign workers need to pay a monthly rate of only S$30 per worker, while employers hiring unskilled foreign workers have to pay different sectoral monthly rates of S$240-S$470 per worker. More specifically, the government imposes S$240 for foreign workers in the manufacturing, harbor-craft, and service sectors, S$295 for marine sector, S$345 for domestic workers, S$470 for construction,thereby discouraging market demand for unskilled foreign workforce. In a bid to attract more skilled foreign workers engaged in professional occupations and technology, the Singapore authorities implements a policy to lower the levy rates for skilled foreign workers on a continual basis.

Except for a prohibition on change of employer and limited working duration, foreign workers in Singapore enjoy a status specified in the Labor Act equal to local workers.[8] Like local workers, foreign workers are entitled to industrial accident compensation insurance and accident insurance. And in most cases, foreign workers are offered inexpensive housing facilities. Their wages are decided upon through negotiations with employers, yet as far as unskilled foreign workers are concerned, there is a monthly salary ceiling of S$2,500.

Meanwhile, in accordance with the Employment Agencies Act, Singapore allows licensed employment agencies to import and

[8] Domestic workers are not allowed to join labor unions as they are not regarded as production workers.

manage foreign workforce on behalf of employers.[9] In most cases, employers use private foreign manpower employment agencies, as it is time-and-cost-consuming for employers to go overseas to recruit foreign workforce and employers prefer to avoid any direct responsibilities for foreign manpower management.[10]

The Work Permit Division of the Ministry of Manpower revokes a work permit when foreign workers violate work permit provisions. Those whose work permits are revoked include 1) those who change a job or are engaged in other sectors specified on the work permit during employment; 2) those who desert their workplaces 3) those who are pregnant, contracted with venereal diseases or have not submitted medical certificates; 4) those who marry a Singaporean woman without permission from the government. When the controller of work permitsdecides to suspend or revoke a work permit for a specific foreign worker, he notifies the employer of the worker of the decision and the employer has to terminate the services of the foreign worker within nine days of receiving the notification and the foreign worker is obliged to return his or her work permit and leave Singapore within seven days of the termination of service. The Employment of Foreign Workers Act specifies that the termination of the services of a foreign worker shall not be subject to negotiation with a trade union representing the foreign worker and shall not be the subject-matter of a trade dispute or of conciliation proceedings or any method of redress.

Singapore is also confronted with the issue of illegal employment,

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[9] In accordance with the Employment Agencies Act, employment agenciesare required to deposit security of S$20,000 to the Ministry of Manpower. If the agenciesrecommend illegal foreign workers or violate provisions of operation places, commissions, and report obligations, the security is forfeited and their license is revoked.

[10] The Ministry of Manpower of Singapore offers information on licensed private foreign labor employment agencies, such as their listings, addresses, telephone and fax numbers,license numbers and license duration.

yet the government continues to enforce a strict crackdown and punishment on illegal foreign workers and employers hiring them. As for the punishment of illegal foreign workers, the Immigration Act stipulates that a foreign worker who remains in Singapore unlawfully for a period exceeding 90 days or unlawfully enters the city-state shall be liable to imprisonment for a period of three months to two years. Furthermore, in accordance with the Employment of Foreign Workers Act, employers hiring a foreign worker without a work permit shall be liable to a fine of not less than 12 months' levy and not more than 24 months' levy or to imprisonment for a term not exceeding 12 months. On a second or subsequent conviction, the employer shall be punished with a fine of an amount of not less than 24 months' levy and not more than 48 months' levy or imprisonment for a term of not less than one month and no more than 12 months. In addition to imprisonment and fine, an employer hiring an illegal foreign worker is not permitted to hire foreign workers for a year and shall be liable to frequent searches and inspections.

According to the Employment of Foreign Workers Act, an employmentinspector from the Ministry of Manpower, officials from the Immigration Authority and police officers may arrest without warrant illegalforeign workers. Moreover, the government has launched a neighbor monitoring system in the local communities and set up a crime-prevention committee to receive reports of illegal foreign aliens. Community centers in Singapore also receive such reports.

Chapter 15

JAPAN

1. Recent Trends in Labor Migration

As of late December 2000, the number of foreign workers employed in Japan was estimated at approximately 710,000, comprising only 1.3 per cent of the total workforce of 53.56 million in Japan. As shown in Table 15-1, the foreign workers are divided into categories of skilled workers those who are engaged in designated activities overseas college students and pre-college students[1]; Nikejins (person of Japanese decent); and illegal workers. The number of foreign workers engaged in professional and technology sectors who entered employment with a work permit was 154,748, accounting for 21.8 per cent of the total number of foreign workers. And there are technical interns who entered Japan with a training visa and have obtained a work permit upon completion of training program, and visa holders for designatedactivities who have obtained a work permit under the working holiday program in which applicants, under agreements between countries, are allowed to stay in Japan for a year and learn the Japanese culture, while working part-

[1] Other types of students refer to language students preparing for entering university, graduate school or junior college.

time. Their number stands at 29,749, comprising 4.2 per cent of the total number of foreign workers. Meanwhile, overseas college students and pre-college students who have entered Japan to study are allowed to work part-time for no more than 28 hours per week number 59,435, accounting for 8.4 per cent.

Table 15-1. Foreign Worker Trends by Residence Status in Japan

(Unit: person, per cent)

	1990	1995	1998	2000
Workers in engaged in				
Professional and technology sectors	67,983	87,996	118,996	154,748(21.8)
Designated activities (Technical Interns, etc.)	3,260	6,558	19,634	29,749(4.2)
College and pre-college students	10,935	32,366	38,003	59,435(8.4)
Nikejins	71,803	193,748	220,844	233,187(32.9)
Illegal workers	About 100,000	About 280,000	About 270,000	232,121(32.7)
Total	About 260,000	About 610,000	About 670,000	709,240

Sources: SOPEMI Report for Japan: Statistical Annex: December 2001, OECD.
Compiled by Japan International Training Cooperation Organization (JITCO), 2001, p.16.
Note: The figures in the parenthesis are ratios (per cent).

There are 233,187 Nikejins, which means ethnic Japanese, who are allowed to work in Japan without any restrictions, accounting for 32.9 per cent of the total number of foreign workers. In Japan the demand for unskilled workers, an area of serious manpower shortages, is mostly met by Nikejins, followed by technical interns and overseas college and pre-college students working part-time. However, even in Japan it is estimated that there are 232,121 illegal foreign workers, which accounts for 32.7 per cent of the total foreign workers in Japan. The illegal foreign workers are believed to be from mostly other Asian countries and to work in construction sites, production lines

and restaurants and bars. Among the 232,121 illegal aliens,those who entered Japan with a short-term visa and overstay are 173,051, comprising 74.6 per cent of the total number of illegal aliens. Meanwhile, those who entered Japan with training visas and deserted their workplaces,or overstayed, amounted to 3,004, accounting for 1.3 per cent of the total number of illegal aliens.

In addition to the 709,240 foreign workers, as of the year 2000, there were 54,049 foreign trainees in Japan. In principle, foreign trainees are not allowed to work, as they entered Japan to receive training, and not to work. However, it is presumed that some of them are partially engaged in work during the on-the-job training period.

2. Policy Developments

Japan welcomes foreign workers in professional and techonology areas to promotethe development of its economy and society and to keep with globalization. On the other hand, the Japanese government has been very cautious in importing unskilled laborers out of concern that they may have a negative impact on society and the economy. This policy has been maintained since the enactment of the Immigration Control and Refugees Recognition Act.

Since the 1950s, Japan achieved rapid economic growth and introduced an overseas training system to enhance the skills of workers at Japanese corporations overseas and transfer Japanese technologies to developing countries in Asia. By 1990, there were two types of training system: one wasimplemented by the government for international cooperation and the other was a training system where businesses investing overseas brought to Japan overseas workers and offered them the necessary skills-training and then repatriated them to their home countries.In other words, by 1990, on a private level, only corporations with overseas investment were allowed to bring

overseas trainees to Japan. However, in 1990 the Immigration and Refugee Recognition Act was drastically amended and not only big corporations with overseas investments, but also small and medium-sized businesses were allowed to introduce trainees from overseas if they had a proper training environment.

Recently, research and studieson the issue of converting the training system to the work permit system are under way in the academia.

3. Administrative Structure

An organization responsible for providing support for private training programs and Technical Intern Training Programs (TITP) introduced in 1993 is the Japan International Training Cooperation Organization (JITCO), established in 1991 under the joint jurisdiction of five Japanese government ministries: Justice; Foreign Affairs; Economy, Trade and Industry; Health, Labor and Welfare; and Land, Infrastructure and Transport. Approximately 70per cent of JITCO personnel are public servants from the five ministries and the remaining 30per cent are private people recruited through open competition. A half budget of the JITCO is financed by national subsidies and the remaining half is funded by fees paid by member companies. However, member companies do not pay commission to the JITCO following their introduction of trainees.

As for government-organized training programs, government ministries in charge of each training program, including the ministries of Foreign Affairs Economy Trade and Industryand Health, Labor and Welfare, are directly responsible for the programs and policy on Nikejin is managed by the Ministry of Health, Labor and Welfare.

4. Labor Migration Systems

4.1 Overseas Training Programs

4.1.1 Overview

As shown in Table 15-2, as of 2000, foreigner training programs in Japan are divided into government-led training programs organized by relevant government ministries and private training programs organized by purelyprivate businesses or related organizations. As of

Table 15-2. Current Status of Overseas Trainees Entering Japan: 2000

Programs of Trainees component ratio		Persons		per cent
Total		54,049		100.0
	Sub-Total	13,030		24.1
Government Organizations	JICA	7,791		14.4
	AOTS	4,547		8.4
	JAVADA	534		1.0
	ILO	158		0.3
Private Host	Sub-Total	41,019		75.9
	Supported by JITCO	Total	31,898	59.0
		Type 1	9,023	16.7
		Type 2	22,875	42.3
	Direct application	9,121		16.9

Source: "Technical Intern Training Program Status Report, JITCO White Paper 2001," September 2001, p.5, compiled by JITCO.

Notes: JICA (Japan International Cooperation Agency), AOTS (The Association for Overseas Technical Scholarship), JAVADA(Japan Vocational Ability Development Association), ILO (The ILO Association of Japan Inc.)

1) Type 1: Type implemented by a company itself.
   Type 2: Type implemented through the medium of an accepting organization
   Type 1 refers to the acceptance of trainees being undertaken solely by companies with the support from the JITCO, whereas Type 2 refers to the acceptanceof trainees being undertaken by organizations such as chambers of commerce, public-service organizations and member companies cooperating together as a group with the support of JITCO.
2) Direct application refers to a case where companies with overseas investment or small and medium-sized businesses receive trainees without support from the JITCO.

2000, among the total overseas trainees, 24.1 per cent were from programs on the government level and 75.9 per cent were from private training programs.

There are four types of overseas training programs on the government leveltraining programs organized by the Japan International Cooperation Agency (JICA) under the Ministry of Foreign Affairs; training programs through the Association for Overseas Technical Scholarship (AOTS) under the Ministry of Economy, Trade and Industry; training programs organized by the Japan Vocational Ability Development Association (JAVADA) under the Ministry of Health, Labor and Welfare; and training programs through the Japan ILO Association.

Training programs on the government level are implemented as part of technical cooperation between the Japanese government and developing countries, and the Japanese government thus subsidizes all or part of the training costs.

There is no quota for trainees, interns, and Nikejins and there is also no quota by country.

4.1.2 JAVADA (the Japan Vocational Ability Development Association)'s International Youth Vocational Training Scheme[2]

The International Youth Vocational Training Scheme has been implemented since 1989 with the aim to support the economic development of developing countries by providing youths of developing countries with opportunities to learn skills necessary for economic development and promote harmonious development of the globaleconomy and society. The scheme is supervised by the Overseas Training Promotion Deaprtment[3] under the Overseas

[2] Pre-college students refer to language students preparing for entering junior colleges, colleges or graduate school.

[3] There are two departments in charge of foreigner-related issues at the Ministry of Health, Labor and Welfare - the Foreign Workers' Affairs Division of

Cooperation Division of the Human Resources Development Bureau of the Ministry of Health, Labor and Welfare and implemented by the JAVADA.[4]

Eligible trainees for the training program are those from developing countries in Asia, including China, Indonesia, Thailand, Malaysia, the Philippines and Vietnam and the JAVADA selects promising applicants who meet the following criteria:

- Aged between 18 and 25
- Educational background of high school graduate and higher, and with experience in the training areas or who have received such training
- A command of the Japanese language
- Healthy physical and mental conditions
- Those who immediately return to their home country upon completion of their training in Japan and who are arranged to be employed as workers with particular skills at companies where they can utilize their acquired skills[5]
- Exemplary and promising youths expected to become skilled workers and deemed suitable for trainees and recommended by related organizations or companies of trainee-sending countries

All training programs are implemented at accepting firms and most

Employment Security Bureau and the Overseas Training Promotion Department under the Overseas CooperationDivision of the Human Resources Development Bureau. The former takes charge of foreign workers and the latter foreign trainees. It is necessary to keep in mind that the Human Resources Development Bureau, not the Employment Security Bureau, is in charge of trainees as foreign trainees are not workers but trainees.

[4] JAVADA was established in 1979 in accordance with Vocational Skills Development Promotion Act with an aim to promote the development of vocational capabilities of workers. It conducts skills certification tests, creates a social atmosphere of respect for skills, provide information on vocational skills development to businesses and implements International Youth Vocational Training Scheme. As of February 2002 JAVADA has headquarters as well as 47 vocational skills development associations at 47 prefectures across the country.

[5] As employment as technical workers should be arranged, in reality, only foreigners who are working at a company are entitled to apply for the training program.

of the companies offering training are small and medium-sized businesses. Training duration is 9 to 21 months. The 21-month training program comprises a 3-month orientation training, a 6-month basic skill training course and one-year on-the job training.

Overseas trainees are offered two-way air tickets, training preparation fund of 30,000 yen and monthly training allowance of 50,000 yen. Half the costs of air tickets, initial medical examination fees after arrival in Japan, training preparation fees, and training allowances are all subsidized from the government coffers. As for training costs incurred by companies offering training, the government subsidizes a half for the first 3-month orientation training and a third for the basic training period. The government subsidies to trainees and companies are offered through the JAVADA. During the on-site training period, the monthly training allowance of 50,000 yen[6] and other training costs are all paid by companies concerned and there are no government subsidies. Businesses offering training programs should pay training costs other than government subsidies and provide free accommodations and meals to trainees. In the event of diseases and injuries of trainees during the training period, the JAVADA is insured by the overseas travel accident special insurance.

4.1.3 International Skill Development Scheme by ILO Association of Japan Inc.

The International Skill Development Scheme is a government-level training program thatwas launched in 1972 for the purpose of contributing to the national development of developing countries. Under the scheme, workers employed at private businesses of developing countries are invited to Japan and receive training at

[6] As of 2001, the minimum daily pay in Tokyo was 5,597 yen, and thus the monthly training allowance of 50,000 yen is less than a third of the minimum wage.

private companies. Trainees for the program are those who are deemed qualified and necessary to receive the training and recommended by local cooperation organizations including businesses, labor unions and government agencies, and those who are employed at businesses of trainee-sending countries[7] and deemed suitableto receive the training. Promising candidates for the program should meet all the following criteria: educational background of high school graduate or higher those aged between 18 and 35; those who are expected to play a leading role in the economies of dispatching countries after returning to their home country; those who have a command of the Japanese language in principle; and those who are healthy in mind and body.

The program is run by the Overseas Training Promotion Department under the Overseas Cooperation Division of the Vocational Skill Development Bureau under the Ministry of Health, Labor and Welfare and implemented by the ILO Association of Japan, Inc.[8] in cooperation with related employment and vocational skill development organizations. The training period is 9 months, comprising a 3-month orientation and 6-months in-plant training. During the orientation period, Chiba poly-tech center, one of the training centers of employment and skill development organizations, offers Off-JT training on Japanese language and basic skills. Costs generated during the orientation period, such as instructor fees and other administrative

[7] In this context, those who are not employed in trainee-sending countries at the time of application, such as unemployed people, are not eligible for the program.

[8] The ILO Association of Japan, Inc. is a public-service corporation established in 1949 in cooperation with labor, businesses and the government for the purpose of carrying out international exchange programs in the labor sector. More specifically, the corporation collectsand disseminates overseas labor information, conducts technical cooperation programs such as accepting technical and skill trainees from overseas, and organizes seminars to offer a better understanding of labor conditions in Japan to other countries. However, unlike its name, the ILO Association of Japan, Inc. is not related to the International Labor Organization (ILO).

costs, are subsidized by the government in the form of subsidies given to employment and skill development organizations. As for the monthly training allowance of 63,000 yen, insurance premiums for trainees, two-way air tickets, and training preparation fund of 30,000 yen, which is given to trainees when they enter Japan, the government subsidizes three- fourthsof the costs from the general budget. The 6-month in-plant training is conducted at businesses accepting trainees in the form of Off-JT and OJT training. Three fourths of the in-plant training costs, training allowances for the 6-month period, and three-fourths of insurance premiums for trainees are subsidized from the general account. Companies accepting trainees should pay the remaining one-fourth of the costs not subsidized by the general account and subsidies for employment and skill development organizations. Companies are required to pay the costs to the ILO Association of Japan, Inc. every month, and the Association, in turn, pays the costs to trainees.

Businesses eligible for the International Skill Development Scheme are limited to those which agree to the scheme, accept overseas trainees and conduct certified job training in accordance with the Vocational Development Skill Development Act, and those businesses or organizations which are able to conduct the same level of vocational training and are recognized to have the ability to conduct the training on a continual basis with stable financial conditions.

In order to ensure effective implementation of the scheme, the ILO Association of Japan, Inc. overseas foreign trainees employed at businesses from cooperation organizations of sending states and recommendsthe trainees to businesses; subsidizes training expenses for businesses accepting trainees and the Chiba polytechnic center; supervises and offers guidance to trainees and conducts evaluations on the effectiveness of training by tracking graduates of the program

after they return to their home countries.

Companies accepting trainees should offer accommodations and meals to trainees during the in-plant training period. Moreover, the businesses should be equipped with the facilities necessary for training and allocate more than one instructor with a license from the Vocational Training Guidance Bureau per 10 trainees and training hours should be within 44 hours per week. As for allocation of training hours, in principle, theoretical training hours should exceed 25 per cent of total training hours.

From 1979, when the program was initiated, until 2000, a total of 4,432 overseas trainees received training under the scheme and four trainees did not complete the program. Whereas businesses participatingin the International Youth Vocational Training Scheme by JAVADA are mostly small and medium-sized companies, businesses participating in the International Skill Development Scheme are mostly large companies.

4.1.4 Overseas training programs organized by the private sector

Training programs in the private sector are run by the Overseas Training Promotion Department of the Overseas Cooperation Division of Human Resources Development Bureau under the Ministry of Health, Labor and Welfare. Meanwhile, the JITCO provides comprehensive support and guidance to private groups and companies conducting training programs and protects trainees. Training programs are conducted at private groups and businesses.

Qualifications of trainees for training programs in the private sector are as follows.

- The technology, skills, and knowledge that the trainee is to obtain in Japan must not be of the type that could be obtained mostly through repetition of

simple work.[9]

- The trainee must be at least 18 years old of age and he or sheis expected to engage in a job requiring the technology, skills, and knowledge obtained in Japan after returning to his or her country of nationality or habitual residence.[10]
- Trainees who needs to receive training in Japan to improve their current technical and skill levels.
- Trainees should be recommended by regional public organizations or other corresponding organizations.
- In principle, trainees should have experience in the same field of work as they are to receive training in Japan.

Businesses with overseas investment are allowed to accept trainees independently, yet businesses without overseas investment are allowed to import trainees onlythrough 1) three organizations for small and medium-sized businesses, namely, the chamber of commerce, the commerce and industry committee and the small and medium-sized business association; 2) vocational training corporations; 3) the agricultural cooperative association; and 4) public-service corporations.

As for the number of trainees allowed, businesses with overseas investment accepting trainees independently are allowed to acceptwithin five per cent of their total full-time workforce. As for businesses accepting trainees through other organizations, 15 trainees are

[9] According to internal guidelines of the Ministry of Justice of Japan, jobs subject to national technical certification tests are interpreted as work other than jobs of repetition of simple work.

[10] In this context, those who are not employed in sending countries such as unemployed people and new graduates are not eligible for Japan's training programs. In order to prove that trainees are guaranteed to return to their previous work upon the completion of training programs, the Japanese authorities require trainee applicants to submit work certificates and recommendations by relevant administrative agencies, which are issued after the administrative agencies confirm that trainee applicants are guaranteed to be reinstated to their original posts after the training programs.

allowed for businesses with 201-300 full-time employees and 10 trainees for businesses with 101-200 full-time employees, 6 trainees for businesses with 51-100 full-time employees and 3 trainees for businesses with less than 50 full-time employees. If agriculture-related businesses accept trainees through an agricultural cooperative association or public-service corporations in charge of agricultural technical cooperation, no more than 2 trainees are allowed. (Compiled by International Training Cooperation Organization, 2001, p.5)

Concerning selectionand acceptance procedures of overseas trainees, first, 800 organizations including chambers of commerce, small and medium-sized business associations in Japan accept applications for importing overseas trainees from member companies. And then the 800 organizations request national or regional organizations of trainee sending countries to recruit applicants 3-5 times in number among workers employed at occupations which accepting companies wish to take from. Once applicants whose number is 3-5 times higher than the original number are recruited, representatives of accepting companies and trainee accepting organizations visit sending countries to conduct an interview and select final trainees.[11] Once trainees are selected, they should receive preliminary training in the Japanese language and basic information and skills necessary for training for more than 160 hours in sending countries. The training is conducted at national organizations or organizations and groups recognized by nationalorganizations in the sending country. During the procedures of selecting and accepting

[11] As companies and related organizations in Japan, the direct demand party, select finalists through an interview out of applicants 3-5 times larger than the final number, there is no need for a trainee allocation process as required in Korea. Although companies are not obliged to visit sending countries and conduct interviews, it is a general practice that companies and organizations visit and carry out interviews to recruit better manpower.

trainees, the JITCO offers indirect support such as providing information on sending organizations in foreign countries and on the training system. Direct activities are conducted by 800 organizations. Private employment agencies are prohibited from recruiting and importing overseas trainees, thereby preventing transgressions associated with sending trainees. Once trainees enter Japan, 800 organizations which imported overseas trainees offer off-JT (off-the-job training) for three months and transfer the trainees to accepting companies where OJT (on-the-job training) is offered. The Off-JT should be conducted for more than one-third of the entire training period.

As of late 2000, the number of trainees supported by the JITCO stands at 31,898 and among them there are 16,330 males, accounting for 51.3 per cent. By nationality, the largest group is Chinese, making up 65.9per cent of 21,036. As for the composition of accepting companies'scale of employees, companies with 1-49 employees comprise 42.7 per cent, companies with 50-99 employees comprise 14.5 per cent, companies with 100-199 employees comprise 11.0 per cent, companies with 200-299 employees comprise 5.3 per cent, companies with 300-399 employees comprise 8.9 per cent and companies with more than 1,000 employees comprise 17.6 per cent -- reflecting the fact that mostly small and medium-sized businesses participate in the JITCO training program. (Compiled by the JITCO, 2001) Training work is all related to the manufacturing industry. Concerning the composition of overseas trainees by training duration, 12-month training accounts for 74.5 per cent, 6-month programs for 8.6 per cent and training duration of more than 12 months 0.7 per cent, reflecting that the 12-month training program is predominant.

Overseas trainees are offered a monthly training allowance to defray living costs in Japan. In addition to the training allowance,

accepting companies are required to pay roundtrip air tickets,[12] training implementation costs, housing costs, and insurance. 93.8 per cent of the training allowance is paid by Japan, while training allowances for 1,975 trainees or 6.2 per cent are paid by sending countries. As of 2000, the monthly training allowance is 79,210 yen, which corresponds to approximately a half of the minimum wage. In particular, training allowances for trainees accepted through organizations supported by the JITCO is 71,337 yen which is about 45 per cent of the minimum wage. (Compiled by the JITCO, 2001)

Japan has the following mechanisms to prevent trainees from deserting their accepting companies.

First, in the process of recruitingtrainees, representatives from accepting companies and accepting organizations visit sending countries and conduct interviews to select trainees who have the least possibility of deserting their workplace,out of the trainee applicants whose number is 3-5 times larger than the final number of trainees selected.

Second, the Japanese authorities try not to receive recommendations from related organizations of sending countries that recommended deserting trainees and restrict the import of trainees from sending countries with a record of a large number of deserting trainees, thereby making sending countries recommend trainees with a low possibility of desertion.

Third, the Japanese government holds accepting organizations and companies responsible for the management of trainees and grants permission to import trainees only to companies and organizations that are able to manage overseas trainees. Accepting companies are

[12] As for roundtrip air tickets, whenthe trainee returns to his or her home country upon completion of training program, the accepting company pays the cost. When trainees return to their home countries upon completion of the technical internship programs, the trainees themselves should pay for the ticket. Illegal stayers or trainees who desert should pay the air ticket themselves.

required to provide not only facilities needed for training but also accommodation facilities, and to take out insurance for the safety and hygiene of trainees, and ensure their protection by appointing a person responsible for offering guidance on living in Japan.

Fourth, trainees should not be engaged in the repetition of simple tasks,and they should be employed at companies with close relations with Japan such as trade relations between accepting companies in Japan and companies which hire the trainees in sending countries. Furthermore, the trainees should expect to be reinstated to their original posts after they return to their home countries. By applying these measures, Japan excludes from the list of trainees applicants with a high possibility of staying in Japan on a permanent basis.

Fifth, trainee-accepting companies are required to devise trainingplans and conduct training according to the plans. Companieswhich make trainees engage in work instead of training are prohibited from importing trainees for three years. Moreover, employers hiring illegal aliens are punished with imprisonment of up to three years or a fine of up to 2 million yen.

Due to the aforementioned mechanisms, the number of desertingtrainees as of 2000 was 3,004, constituting a very low percentage.

4.2 Technical Intern Training Program (TITP)

The Technical Intern Training Program was instituted in April 1993 and under the program, overseas trainees who pass skill evaluation tests upon completion of a training program of more than 9 months, mostly 12-month training programs, are allowed to practice technology and skills at the same company with a worker status under an employment contract for a period of up to 2 years and 3 months (mostly two years). During the regular training, the trainees' status is

“training” and they receiveoff-JT and OJT as a trainee status. On the other hand, during the intern training program, they practice technology and skills as a “worker” and they are entitled to protection equal to nationals in the application of the Labor Law. In principle, traineeswho wish to receive the intern technical program upon completion of the regular training are required to work at the same company as an accepting company and they are prohibited from moving to another company. If the accepting company goes bankrupt, organizations which imported the trainees recommend another company for the intern training program.

As shown in Table 15-3, the number of overseas trainees who moved onto intern training programs upon completion of the regular training programs has been on the rise recently and the number between 1993 and 2000 stands at 48,000, constituting one- fourth of the total number of trainees.

Table 15-3. Number of Trainees Who Moved onto Technical Intern Training Program upon Completion of the Regular Training Programs

(Unit: person)

1993	1994	1995	1996	1997	1998	1999	2000	Total
160	1,861	2,296	3,624	6,339	13,066	11,032	12,395	48,546

Source: The Ministry of Justice, Japan.

Among technical interns, there were 2,233 deserting interns between 1993 and 2000, including 869 in 2000. Accepting companies are required to provide meals and accommodation and training allowance to trainees, yet they are not obligated to provide accommodation and meals to interns. Instead, they have to provide wages to interns. As for wages for technical interns, as of 2000 three-fourths of technical interns earned monthly wages of 110,000 yen to 130,000 yen and 16.5 per cent earnedless than 110,000 yen per month.

Overtime pay and night-work pay excluded, most technical interns earn a little less than the minimum wage. (Compiled by the JITCO, 2001, p.22)

Similar to the policy on overseas training programs, the policy on technical intern training program is run by the Overseas Cooperation Division of the Human Resources Development Bureau under the Ministry of Health, Labor and Welfare. The maximum period of training and the technical intern program is three years. There are no national subsidies for the technical intern program, yet a half of the finances of the JITCO, which provides support for the technical intern training program, are subsidized by the government.

4.3 Nikejin

Nikejin refers to descendants of Japanese who immigrated overseas, especially to Brazil and Peru. Nikejins are allowed to work in Japan without any restrictions and shortages of unskilled labor in Japan are mostly resolved by the supply of Nikejin labor.

Nikejin enter Japan with a status of 1-3 years residence, yet their stay can be extended on a continual basis as long as there are no mitigating factors such as criminal records.

As of late 2000 there were 233 thousand Nikejins residing in Japan. Among them Nikejin from Brazil are approximately 40,000, forming the larges percentage, followed by Nikejin from Peru of approximately 40,000. About 40 per cent of Nikejinshave worked in Japan for more than seven years.

Nikejins are free to work in Japan without any employment permit and approximately 80 per cent work in the manufacturing sector. As for routes for Nikejinto find a job in Japan, some are employed through their relatives, and the liaison office in San Paolo, Brazil, in collaboration with the public employment stabilization center in Japan

recommends and helps them find a job. In other cases, Nikejins enter Japan with a travel visa and get a job in Japan. At 65 public employment stabilization centers with high percentages of Nikejin, Spanish and Portuguese interpreters are allocated to facilitate Nikejins' employment. The centers also have a separate Nikejinemployment section.

There are no restrictions on the total number of Nikejins allowed to enter Japan, and the Nikejin quota by company and their employment is subject to market supply and demand. Wages of Nikejin are similar to Japanese working in the same category of jobs. Although there are no restrictions on the number of Nikejin employed, the number of Nikejin is maintained at appropriate levelsfor reasons such as most Nikejins' poor command of Japanese, despite Japanese employers' preference for Japanese-speaking people, and high living costs in Japan. Unlike trainees, Nikejins are not offered accommodations and meals.

Policy on Nikejin is the responsibility of the Foreign Workers Employment Policy Department under the Ministry of Health, Labor and Welfare.

ANNEX 1. Administrative Structures

	Canada	France	Italy	United Kingdom	United States
Legislative Basis	Immigration & Refugee Protection Act (IPRA), June 2002	*Code du Travail* (Labor Law), 1973 Chev?nement Law, May 1998	Immigration Law (also known as the *Testo Unico*, Law no. 286/98), 1998, amended in 2002	Immigration and Asylum Act 1999 Nationality, Immigration and Asylum Act, 2002	Immigration and Nationality Act, 1952 Homeland Security Act (HSA), November 2002
Relevant Agencies	Citizenship and Immigration Canada Human Resources Development Canada Immigration & Refugee Board	Home Ministry - *Office des Migrations Internationales* Ministry of Foreign Affairs Ministry of Social Affairs, Labor & Solidarity	Ministry of Internal Affairs Provincial public security departments *(questura)* Ministry of Welfare	Home Office Immigration and Nationality Directorate Work Permits U.K.	Congress Department of Homeland Security (DHS) Bureau of Citizenship and Immigration Services (BCIS) Department of Labor Department of State

ANNEX 2. Temporary Labor Migration Systems in France - Selected Sectors

Program Name	Industry Sector(s)	Duration of visa(s)	Skill and Related Requirements	Quota / Labor Marker Test	Family
Temporary Residence Card or *carte de s?jour temporaire salari?* (CST).	-	1 year - limited to region and a specific job, with possibility of renewal.	Employer must apply for work permit. May also be granted on the basis of family ties or length of stay.	No Facilitated access to labor market for nationals whose governments have bilateral agreements with France.	Yes, subject to the provision of adequate income and housing. Family members granted access to the labor market as soon as they are issued with a private and family residence card (*carte de s?jour temporaire vie priv?e et familiale*).
Long Term Residence Card or (*carte de r?sidence*).	-	10 years, valid for all regions and any job.	May be granted after five uninterrupted years on a CST, or to dependent foreign children of a French national under the age of 21, the foreign spouse of a French national or the foreign parent of a minor who is a French national.	No	Yes - same conditions as above
Provisional work permit or *Autorisation Provisoire de Travail* (APT).	Business/Commercial - often used as a channel for skilled migration.	Nine months, with the possibility for renewal once for a further nine months. Also a possibility to obtain a ten-year residence card after the first year.	Skills as appropriate. Usually issued to migrant workers who are unable to satisfy the conditions for obtaining the CST but can obtain temporary work authorization to work for a particular company for a specific period.	No - but work authorization can be refused if unemployment rate in the sector is considered to be too high.	No
Specialist Professions	Science - scientific residence card (*carte de s?jour temporaire scientifique*) and the arts - artistic residence card (*carte de s?jour temporaire profession artistique et culturelle*).	Duration of a CST or an APT with the possibility to obtain a ten-year residence card after the first year.	Skills as appropriate.	The scheme is not subject to labor market restrictions or quotas.	Yes, subject to the provision of adequate income and housing. Family members granted access to the labor market as soon as they are issued with a private and family residence card.

ANNEX 3. Temporary Labor Migration Systems in Italy - Selected Sectors

Program Name	Industry Sector(s)	Duration of visa(s)	Skill and Related Requirements	Quota / Labor Marker Test	Family
Working Residence Contract or *contratto di soggiorno per lavoro.*	-	9 months for seasonal employment, 1 year for fixed-term employment contracts, and 2 years for unlimited contracts, renewal possible. Migrants may apply for a **residence card**, *carta di soggiorno*, after they have been in Italy for at least six years on a working residence permit.	Skills as appropriate.	Yes - as specified in Presidential decree. Quota for all sectors in 2001 was 63,000. If there have been no Italian or EU applications to a vacancy notice after 20 days, a work permit may be obtained for a hird-country national.	Yes - subject to the availability of adequate income and housing.
Bilateral Agreements	Seasonal work	Usually up to 9 months.	Skills as appropriate but usually low skilled.	Yes - as specified in residential decree. E.g. in 2002 the quota for Albania was 3000, Tunisia - 2000, Morocco - 2000.	No

ANNEX 4. Temporary Labor Migration Systems in the United Kingdom - Selected Sectors

Program Name	Industry Sector(s)	Duration of visa(s)	Skill and Related Requirements	Quota / Labor Marker Test	Family
Work Permit	Business and commercial employment. Shortage occupations - currently in engineering, teaching and healthcare sectors. Sports people and entertainers. Training and Work Experience Scheme (TWES)	5 years Permanent residence granted after 48 months of being physically in the UK on a work permit. Permits are issued in line with the contract up to a maximum of five years, but may be limited when employers do not provide sufficient information. Varies - depends on the period of training.	Degree level qualification or equivalent, although relevant vocational qualifications may also be considered. Employer must be based in the U.K TWES participants are not entitled to transfer to work permit employment. Normally not eligible for a work permit until they have spent a period of time outside the UK - 12 months if they were on a TWES permit for up to a year, and 24 months if over a year.	Not subject to quota, but employer needs to demonstrate that there are no suitable resident workers available.	Yes - subject to the availability of adequate income and housing without recourse to public funds. Spouses and dependent children are also granted access to the labor market, provided permit holder remains in approved employment.
Highly skilled migration program	Various skilled sectors including information technology and healthcare.	Initially for a 12-month period, permanent residence is granted after 48 months of continuous residence and employment in the U.K.	Scheme assessed on a points system based on level of education (usually degree level and above, although vocational and professional qualifications will be accepted where relevant), previous work experience, past earnings and achievements in their chosen field.	Not subject to quotas or labor market testing. Applicant does not require a work permit to enter the U.K.	Yes - subject to the availability of adequate income and housing without recourse to public funds. Spouses and dependent children have access to labor market and are subject to the same conditions of entry and stay as the principle applicant.

ANNEX 4. (Continued)

Program Name	Industry Sector(s)	Duration of visa(s)	Skill and Related Requirements	Quota / Labor Marker Test	Family
Working holidaymakers	Participants were previously prohibited from engaging in business, taking up managerial positions, pursuing a career in the UK, providing services as a professional sportsman or an entertainer, or working as a doctor or a General Practitioner in medicine. Since June 2003 these employment restrictions no longer apply.	Participants may be able to switch their employment status to work permit employment after being in the U.K. as a working holidaymaker for 12 months.	Scheme is open to unmarried Commonwealth citizens aged between 17 and 30. Applicants will have to demonstrate that they have sufficient funds to be able to support themselves in the UK for two months without recourse to public funds.	Not subject to quotas or labor market testing.	No, although potential for family reunification once participants switch to work permit employment.
Sectors Based Scheme	Food manufacturing and hospitality sectors, particularly in the fish, meat and mushroom processing, and hotel and catering industries.	Permits are issued for a period of 12 months. Applicants who wish to obtain another work permit will have to remain outside the UK for at least two months.	Qualifying applicants should be aged between 18 and 30. Change of employment is only permitted when the type of job is of a similar nature.	The quota from May 2003 to 31 January 2004 is 10,000 permits per sector. Permits may be issued when the employers have demonstrated that they have been unable to recruit resident workers for their vacancies.	No
Seasonal Agricultural Workers	Agriculture	Scheme open all the year round, but work must be of a seasonal nature.	Students from non-EEA countries in full-time education, aged between 18 and 25. No work permit required but participants must hold a work card issued by an approved operator.	Quota for 2003 is 25,000.	No

ANNEX 5. Temporary Labor Migration Systems in Canada - Selected Sectors

Program Name	Industry Sector(s)	Duration of visa(s)	Skill Requirements	Additional Information / Other Requirements	Family
Temporary Foreign Worker Program	Varied (information and communication technology, manufacturing, education, etc.)	Up to 3 years	Yes, as appropriate	Applicant must have a temporary job offer in Canada before applying for employment authorization (EA). Employers or industrial sectors that need significant numbers of temporary foreign workers can work with Human Resources Development Canada and Citizenship and Immigration Canada to validate a number of foreign workers under a single set of negotiations.	Yes. Spouses can also work legally.
Seasonal Agricultural Worker Program with Commonwealth Caribbean	Harvesting fruits, vegetables and tobacco	3 years maximum (renewable)	Yes	Caribbean workers must pay a 25 per cent “tax” (forced savings) for each period to cover the cost of administering the program.	Yes
Seasonal Agricultural Worker Program with Mexico	Harvesting fruits, vegetables and tobacco.	6 weeks to 8 months	Applicant should be a farmer by profession. Credentials are pre-screened.	Employer pays transportation costs up front, provides accommodations, pays minimum wage and takes deductions for unemployment insurance, taxes and pension fund payments. Mexican workers pay a 4 percent “tax” per pay period. Employees' last paycheque is withheld and a tax refund offered to encourage return to Mexico.	No

ANNEX 5. (Continued)

Program Name	Industry Sector(s)	Duration of visa(s)	Skill Requirements	Additional Information/ Other Requirements	Family
NAFTA Business Visitor	Business visitors, professionals (including university professors), intra-company transferees or traders and investors.	Up to 6 months or length of time required to fulfil service obligation; Investors have no time limit	Applicants must be Mexican or U.S. citizens; must qualify for one of the four business criteria described in the NAFTA (see NAFTA Industry Sectors column); must be seeking temporary entry only, and must meet the general requirements covering temporary entry into Canada.	The NAFTA has no effect on a post-secondary institution's policy to "hire Canadians first".	Yes, but spouses must go through the regular job validation process required for all temporary workers to Canada.
General Agreement on Trade in Services, Business Visitor	Business	Duration of negotiation, service or meeting	Must be a business person from a GATS member nation with primary income outside of Canada	Applicant is exempt from the Employment Authorization requirement and cannot receive remuneration from Canada or sell goods or services directly to the public.	No
Trainees	Business	Duration of training	As defined by Canadian company	Training must be with a Canadian parent company or a subsidiary.	No
Live-in Caregiver Program	Child care, care for the elderly and the disabled	1 year (renewable)	High school diploma or equivalent; 6 months training or 12 months experience; English or French language ability	None	No
Foreign Tour Operators	Tourism	Length of tourist activity	Certified Tour Operator	Requires an Employment Authorization issued by Human Resources Development Canada (HRDC)	No

Sources: Center for Immigration Studies (2002); CIC-www.cic.gc.ca/english/visit/index.html; www.cic.gc.ca/english/visit/gats_e.html); IOM, (2003b).

ANNEX 6. Temporary Labor Migration Systems in the United States - Selected Sectors

Program Name	Industry Sector(s)	Duration of visa(s)	Skill and Related Requirements	Additional Information / Other Requirements	Family
B-1	Business	Up to 6 months	Employment by a foreign firm or entity.	Visa holder can only conduct business on behalf of an overseas employer.	No
E-1 and E-2	Business	Up to 2 years with indefinite extension	Visa is for business owners, business managers and employees	Visa holder must be in the U.S. to oversee or work for an enterprise that is engaged in trade between the U.S. and a foreign country (E-1) or that represents a substantial investment in the United States (E-2).	Yes
H-1B	Information and Communication Technology, Research, Speciality Occupations	Three-year, one-time renewable visa. Maximum 6 years	As required by the employer	Workers receive the same wages and benefits as U.S. workers.	Yes, but no derivative work permit
H-1C	Nursing	Three-year, non-renewable visa.	Applicants must hold a nurse's licence in the home country or in the U.S., have passed the appropriate exam or be a licensed nurse in the state of intended employment and be fully eligible to practise nursing in the state of employment immediately on entry into the U.S.	Hospitals hiring H-1C nurses must file an attestation with the Department of Labor, stating that the employer is a hospital located in a disadvantaged Health Professional Shortage Area and that, since 1994, at least 35 per cent of its patients are entitled to Medicare and at least 28 per cent to Medicaid. Nurses receive the same wages and benefits as do U.S. workers; H-1C nurses can never be more than one-third of the registered nursing staff.	Yes

ANNEX 6. (Continued)

Program Name	Industry Sector(s)	Duration of visa(s)	Skill and Related Requirements	Additional Information / Other Requirements	Family
H-2A	Perishable agriculture (e.g. fruit, vegetables, tobacco and horticulture)	Valid for up to one year with extensions totalling three years.	Unskilled or low skilled	Employers must pay an enhanced minimum wage (Adverse Effect Wage Rate), provide housing, transportation, meals or access to cooking facilities, and offer a written contract guaranteeing work for 3/4 of the stated period.	No
H-2B	Non-agricultural sectors (e.g., hotel, restaurant, construction, landscaping, health care, manufacturing and transportation)	Valid for up to 1 year with two possible, but rare, extensions.	Variable	Both the job and the stay of the worker must be temporary. Employers must pay the higher of the minimum or prevailing wage.	No
H-3	Trainee	Period of training, up to 2 years	Applicant must be invited by a U.S. individual or organization.	Training received in the U.S. must not be available in the applicant's country. Any work done while in the U.S. must be incidental and necessary to training.	Yes, but no employment allowed
J-1	Exchange visitor in cultural programs	Decided by the duration of the program	Must be a teacher, trainee, medical student, college professor or researcher.	Sponsor must be accredited through the exchange visitor program designated by the U.S. State Department. May be required to return to the home country for two years after completion of status for a change of status to be allowed.	Yes, but no derivative work permit

ANNEX 6. (Continued)

Program Name	Industry Sector(s)	Duration of visa(s)	Skill and Related Requirements	Additional Information/ Other Requirements	Family
L-1	Business	Coming to new office - up to 1 year. Coming to an existing office - up to 3 years (renewable). Maximum stay, 5 to 7 years.	Employee must have been employed with the foreign company in an overseas location for at least 1 year during the past 3 years.	Under the L-1 "Blanket Petition Program" a company has only to receive one approval from the INS to transfer a certain number of executive, managerial and professional employees.	Yes
M-1	Vocational and non-academic students	Up to one year or for the period necessary to complete their course of study plus 30 days thereafter to depart, whichever is less.	Visa holder must have been accepted by an approved school in the United States.	Applicants must possess sufficient funds or have made other arrangements to cover expenses and have sufficient scholastic preparation and knowledge of the English language to pursue a full course of study.	Yes
Q-1	Exchange visitor in the sciences, art, education, business, athletics, training or cultural exchange, au-pair,	Duration of the exchange program up to 15 months	Demonstrate that the applicant is at the very top of the relevant field.	The international cultural exchange program must be accessible to the U.S. public and can have both a cultural and work component.	Yes
R-1	Religious Workers	Valid for an initial period of up to three years, and can be extended for two years, for a total of five consecutive years.	Ministers of religion, religious professionals and other religious workers	The visa holder must be a member of a religious denomination that has bona fide non-profit status in the United States.	Yes
TN	Professions on the NAFTA Occupations List	Valid for 1 year; may be renewed indefinitely through yearly increments.	Must be a Canadian (TN-1) or Mexican (TN-2) citizen.	Mexican citizens must meet the basic H-1B visa requirements in addition to TN requirements to qualify.	Yes, but no derivative work permit

Sources: Bender's Immigration and Nationality Act (2001); Chang and Boos (2001); Congressional Research Service (2001); Farm Worker Justice Fund (2001); Immigration Support Services - www.immigrationsupport.com; US Department of State (2000); Visa Now - www.VisaNow.com); Zhang, Bush, Gao and Associates - www.hooyou.com/nonimmigration/b1.html; www.hooyou.com/L%20visa/ Benefit%20of%20L% 20visa.html.

ANNEX 7. Main Types of Work-related Immigration Programs in Canada, France, Italy, the U.K. and the U.S.

Type of program	Sub-categories	Selected programs in countries reviewed	Main objective of the program	Quota	Main selection criteria			Regulator of the selection process (excluding verification of minimum criteria)
					Points system	Minimum wage rule	Education, professional experience	
Permanent Immigration	Multidimensional selection with a points system	Canada (*Independent Skilled Workers*)	Economic development and population growth	No	Yes	-	Yes - Assessed through points system	Public authorities: Federal authorities or provincial government
Permanent immigration	Oriented towards labor market needs	U.S. Green Card Program	Economic development	Yes	No	-	Yes	Employer -job offer needed
Temporary Immigration for Employment Associated with Labor shortages	Specific programs for the Information & Communications Technology sector	France, Italy, U.K., Canada, U.S.	Fill short term labor market shortages	U.S.	No	France	Relevant professional experience	Employer (job offer needed), Italy - annual presidential decree
Temporary Immigration for Employment Associated with Labor shortages	Multi-sectoral programs	France (*Provisional residence card*), Italy (*Working residence contract*), U.K. (*Work Permit Scheme and Highly Skilled Migration Program - HSMP*), Canada (*Employment Authorisation Scheme*) USA (*H-1B program*)	Labor Market (short term)	U.S. (H-1B) and Italy	Yes, in the U.K (HSMP)	France, U.S. - salary must not adversely affect local wages	As relevant for position, but usually degree-level education or specialized professional qualifications (U.K., Canada & U.S.)	Employer (job offer needed) except under the HSMP

ANNEX 7. (Continued)

Type of program	Sub-categories	Selected programs in countries reviewed	Main objective of the program	Quota	Main selection criteria			Regulator of the selection process (excluding verification of minimum criteria)
					Points system	Minimum wage rule	Education, professional experience	
Temporary immigration for employment associated with labor shortages	Seasonal workers and trainees	France, Italy, U.K., Canada, U.S.	Labor Market (short term)	Variable	No specific criteria			Usually regulated according to bilateral agreements by public authorities or employer
Temporary Immigration (other cases)	Investor	Canada, U.K., U.S.	Economic development	No	Some minimum criteria may be considered, but the main criteria are related to financial resources			Public authorities: federal authorities or provincial government
Temporary immigration (other cases)	Temporary permit to seek employment	U.K. - HSMP	Economic development	No	Yes		Yes - Assessed through points system	Public authorities
Temporary Immigration associated with International Agreements	GATS (e.g. intra-company transferees)	Most OECD countries	International trade development	No	Key personnel for the multinational firm			No regulator
Temporary immigration associated with international agreements	Other multilateral agreements that include international mobility of workers	NAFTA, EU, EEA	Regional integration	Yes for Mexicans in the United States under NAFTA	Criteria in terms of occupation in the case of NAFTA, but no criteria in other cases			Employer (job offer needed) for NAFTA, otherwise no regulator

Source: IOM, adapted from OECD 2003b

ANNEX 8. Overview of the Main Studies on Immigration and Unemployment

Reference	Country studied	Data	Model	Main findings
Muller and Espenshade 1985 "*The Fourth Wave: California's Newest Immigrants*"	United States	1970 et 1980 censuses in 247 urban areas and sub-sample of 51 regions in which Mexican immigration is greatest. Proportion of persons of Mexican origin in the total population.	Estimating the unemployment rate for blacks as a function of the proportion of Hispanics, trends in the total population, the percentage of blacks with secondary education and the white unemployment rate.	No effect from immigration of Mexican origin on the unemployment rate for the black population in spite of the fact that labor supply from both communities is similar.
Card 1990 "*The Impact of the Mariel Boatlift on the Miami Labor Market*"	United States	Examines the impact of the arrival of some 125,000 Cubans, largely unskilled, in May 1980 in Florida. The "Mariel flow" increased the population of Miami by 7%. Data are from the Current Population Survey.		Apparently Cubans alone (i.e. neither unskilled other Hispanics, nor blacks or whites) were significantly affected by this flow. But the growth of Miami's population is lower, indicating a fall from other sources of immigration.
Altonji and Card 1991 "*The Effects of Immigration on the Labor Market Outcomes of Less-Skilled Natives*"	United States	1970 and 1980 censuses in 120 cities of population aged 19 to -64, r-olds not in education. Proportion of immigrants in the total population.	Cross-sectional estimation of the participation rate, the employment rate and weekly wages of unskilled native workers. The migration variable was used to check any endogenous effects.	Marginally significant positive effect from the migration variable on employment, but the effect on wages was negative (elasticity 1.2).
Hunt 1992 "*The Impact of the 1962 Repatriates from Algeria on the French Labor Market*"	France	Review of the impact of the repatriation of 900,000 settlers ("*Pieds noirs*") from Algeria in 1962. The total labor force increased by some 1.6%.		The author estimates that a one percentage point rise in the proportion of returnees in the labor force reduced regional wages by 0.8 points and increased the native unemployment rate by 0.2 points.

ANNEX 8. (Continued)

Reference	Country studied	Data	Model	Main findings
Simon, Moore and Sullivan 1993 "*The Effect of Immigration on Aggregate Native Unemployment: An Across-City Estimation*"	United States	Aggregate data on the main U.S. cities over the period 1960-1977. Annual immigration rates by city.	Estimations of the impact of immigration, with various time-lags on the levels or trends in unemployment.	Regression analysis using immigration lagged by one year shows that immigration has no significant effect on the unemployment rate. A very slight positive effect is obtained when changes in unemployment rates are considered over two years.
Marr and Siklos 1994 "*The Link between Immigration and Unemployment in Canada*"	Canada	Quarterly longitudinal data for the period 1961-1990. Number of immigrants in all categories combined.	Estimation of a non-parametric model examining the unemployment rate as a function of the number of immigrants, GNP, the money supply and an energy cost indicator. Two periods are considered: 1961-1978 and 1978-1985	Over the period 1961-78, no immigration effect on unemployment is found. Over the more recent period, however, the authors show that past immigration significantly affects the current unemployment rate. In part, these findings may reflect the change in migration policy between the two periods.
Gross 2000 "Three Million Foreigners, Three Million Unemployed? Immigration and the French Labor Market"	France	Quarterly longitudinal data between 1974 and 1995, adjusted for the 1981 regularization program. Rates of worker immigration and family immigration.	1- Long-term relation estimated by a 4-equation VAR model: unemployment rate, real wages, female participation rate and migration. 2- Short-term relation estimated by an error-correction model in which the migration variable is assumed to be exogenous.	Immigration has a strong adverse effect on unemployment over the long term (even allowing for family immigration) and a positive, albeit very slight, effect in the short term.

Source: Adapted from OECD, 2002.

ANNEX 9. Overview of the Main Studies on Immigration and Wages

Source	Data	Function	Labor categories defined	Main findings
Grossman (1982)	US Census 1970	Translog	Nationals 2nd generation nationals Immigrants	Effect of a 10% rise in the total number of foreigners on the wages of: 2nd generation -2%; nationals -3%
Borjas (1983)	Survey of Income and Education 1976	Generalised Leontief Endogenous labor supply	Whites Blacks Hispanics	Blacks and Hispanics are complementary. Hispanics and whites are also complementary. Slight econometric evidence of black/white substitutability.
Chiswick & Miller (1985)	Censuses in five countries: United States, United Kingdom, Canada, Australia and Israel	CES	M Migrants N Natives	Strong substitution nationals-migrants. The greater the supply, the lower the relative income of immigrants.
Geary & Grada (1985)	Time series of immigration data and economic variables	VAR model, determination of a Granger causality	Foreigners Nationals	Adverse but modest effect from immigration on wages; Granger causality of a change in immigration on wages.
Muller & Espenshade (1985)	US census, 1970 1980			Complementarity immigrants-natives. Mexican immigration has little impact on the income or unemployment of black households.
Borjas (1986)	Public Use Sample 1/100 1970, US Census PUMSA 1/20 1980	Generalised Leontief Endogenous labor supply	Immigrants (men) White natives (men) Black natives (men)	No effect from male immigration on white men's wages. Complementarity with black men.
Borjas (1987)	US Census 5/1 000 1980	Generalised Leontief Endogenous labor supply	WN White natives BN Black natives HN Hispanic natives AN Asian natives WI White immigrants BI Black immigrants HI Hispanic immigrants AI Asian immigrants F Women	A 10% increase in WI lowers WN wages by 0.3%. A rise in HI raises BN wages by 0.1% and HN wages by 0.2%. No effect on WN.

ANNEX 9. (Continued)

Source	Data	Function	Labor categories defined	Main findings
Garson, Moulier-Boutang, Silberman & Magnac (1987)	1985 French employment survey	Generalised Leontief	G1 French G2 North Africans G3 Migrants from other countries G4 Spaniards, Portuguese, Turks, Yugoslavs Citizens of EEC 10, Switzerland and Austria are excluded	G2, G3, G4 complementary to G1. Very slight effects on wages from a 10% increase in any of these groups.
Bean, Lowell & Taylor (1988)	US Census 1980 five states in the south-western United States	Generalised Leontief Endogenous labor supply	Mexican immigrants entered prior to 1975 Mexican immigrants entered after 1975 Mexican natives (men) Black natives (men) Other natives (men) Women	Effect on wages of a 10% increase in illegal Mexican immigrants: White natives 0% Black natives +0.1% Hispanic natives +0.2% The effect of legal Mexican immigration on white wages is negative and slight.
Altonji & Card (1991)	US census (1980)	Regression with instrumental variables Effect of the % of immigrants	Unskilled white and black men and women (fewer than 13 years' schooling)	Adverse effect of immigrants in the local population on the wages of unskilled native workers, significant especially among black men. A 10% increase in immigration reduces wages by 0.86%.
Butcher & Card (1991)	CPS, US CPS 1979,1980, 1988 and 1989	Cross-cities or longitudinal regression Effect of the % of immigrants	Effect on the first and last percentile of the log-wages distribution	An increase in immigration has a non-significant effect on the lowest wages and a positive effect on the highest wages.
Lalonde & Topel (1992)	US Census (1970, 1980)	Regression Effect of the influx of new immigrants	Young black men Young Hispanic men	A 50% increase in immigration leads to a 3% drop in the wages of “new” already settled immigrants. The impact is greater for young black men.

ANNEX 9. (Continued)

Source	Data	Function	Labor categories defined	Main findings
Gang & Rivera-Batiz (1994)	US Census, Eurobarometer Netherlands France United Kingdom Germany	Translog	Nationals Foreigners or immigrants Various ethnic minority groups	Unskilled labor, education and experience are found to be complementary for the entire population in the United States and in Europe. This explains why the effects of immigration are so complex. In Europe, the various ethnic groups supply labor having very low substitutability for that of nationals (except for Asians in France: elasticity -0.1). In the United States, complementarity effects between immigrants and nationals from the various communities dominate as well.
Borjas, Freeman & Katz (1996)	US Census 1980 and 1990	Comparative estimates of a wage equation factoring in regional variance and immigration effects via a so-called "factor proportion" approach.		The regression shows wages to be positively correlated with the percentage of immigrants, except for men in 1980. However, the findings are not very robust. With the other method, the authors show that immigration is responsible for roughly 30% of the earnings decline for high school dropouts between the two dates.
Margo (1997)	Historical data on the California Gold Rush	Dynamic labor market adjustment model	Sample of US army employees	Wages dropped significantly at the beginning of the influx of immigrants (1848-1852) and then remained constant.
Camarota (1998)	Current Population Survey (June 1991)	Regression contextual and individual explanatory variables Effect of the percentage of immigrants on employment for each occupation.	Total employment Unskilled employment	Immigration exerts downward pressure on wages: A one percentage point (about 10%) rise in the proportion of immigrants translates into a 0.5% drop in the average wage and a 0.8% decline in unskilled wages.

ANNEX 9. (Continued)

Source	Data	Function	Labor categories defined	Main findings
Butcher & DiNardo (1998)	US Census 1960, 1970, 1980, 1990	Estimation of immigration impact on the income distribution of nationals and immigrants		The authors show that if the wage structure had not shifted between 1970 and 1990, there would have been little change in the earnings differential between natives and immigrants. The influx of immigrants over the period is therefore not responsible for changes in the relative distribution of wages.
Pedace (1999)	US Census 1980, 1990	Regression Assumes a segmented labor market: primary-secondary Effect of the percentage of recent or longer-established immigrants	White men Black men Hispanic men White women Black women Hispanic women	An increase in the proportion of immigrants in the primary sector generally feeds through to higher wages. In the secondary sector, wages are positively correlated with the proportion of foreigners, with the exception of Hispanics (men and women) and black women. In all cases, the effects are slight and not robust.
Jayet & Rajaonarison (2001)	France: 1990-1997 employment surveys SEDDL regional database	Regression Effect of the % of: Naturalized French North Africans EU foreigners Other foreigners	Men and women by socio-professional category	Significant, positive but slight effect of the presence of foreigners on the wages of men and women. The findings are less robust when looking specifically at North Africans or citizens of southern European countries. At the level of socio-professional categories, the (still positive) relationship seems to be validated only for skilled male workers.

Source: Adapted from OECD, 2002.