

# Summary of the Legal Position of Migrants in Japan<sup>1</sup>

Atsushi Kondo

## 1. Introduction: Brief History of Immigration Flows

Japan is an island country and immigration flows were not so frequent in the past, yet are now rapidly increasing in number. In Japan, the evolution of immigration flows can chronologically be divided into six periods after the major isolation period (1639-1853). American Commodore Perry with his frigates, so-called the "Black ships" exerted great pressure on Japan to open up for foreign trades and cultures. The Japanese government at that time concluded treaties of commerce also with other countries and regulated immigration.

Before World War I, Japan was referred to as an emigration country (1853-1945). Some 777,000 emigrants moved mainly to the USA and Latin American countries. However, after Japan colonised Taiwan in 1895 and Korea in 1910 and established the Puppet State of "Manchuria (north east of China) in 1932, a lot of these people migrated. This was basically considered to be an internal migration, not immigration, as all migrants were Japanese subjects. For instance, some of the Korean migrants chose to move to Japan, while others were forced to do so, in some cases against their will.

After World War II, the Supreme Commander of Allied Powers strictly controlled immigration and emigration (1945-1952). Japan abandoned all of its

colonies. When the war was over, about 2.3 million Koreans were living in Japan. About 75% of them returned to their original countries, but a large number of them could not help remaining in Japan partly due to the Korean War from 1950 to 1953. Under the 1947 Alien Registration Ordinance, Korean and Taiwanese residents were ordained as aliens. This Ordinance became the Alien Registration Law when the San Francisco Peace Treaty took effect in 1952. Pursuant to the 1952 Notice of the Ministry of Justice, Korean and Taiwanese residents lost Japanese citizenship without agreement, and this excluded them from various social welfare benefits.

During the rapid economic growth of the 1950s and 60s, the Japanese worked long hours. Japanese industries utilized homemakers, students and elderly students as part-time labor, had large domestic migration, and managed to run the automation systems without admitting foreign labor entering the country (1952-1981). The Japanese government's attitude toward foreign workers has since been basically twofold:<sup>2</sup> 1) foreign workers in professional and technical fields are accepted as much as possible; 2) no unskilled foreign workers are accepted, lest a far-reaching impact occur to Japan's economy and social conditions.

However, since the 1980s Japan underwent for the first time in its history a very large number of foreign residents. The Plaza Agreement on the revaluation of yen in 1985 caused Japan's bubble economy, labor shortage and the necessity for migrant workers. Since the ratification of the International Covenant on Economic, Social and Cultural Rights in 1979 and the accession to the Convention relating to the Status of Refugees (hereafter referred to as the Refugee Convention) in 1981, many social security laws have been revised and social rights were guaranteed for the refugees and aliens who had settled in Japan.<sup>3</sup> The recent Japanese immigration policy was altered under new 1981 Immigration Control and Refugee Recognition Act (hereafter referred to as the Immigration Control Act).<sup>4</sup> During this period (1981-1990), the Japanese

government retained strict control of immigration but accepted refugees and foreigners' rights improved.

Despite the revised Immigration Control Act in force in 1990, Japan's traditional policy of not opening the labor market to foreign unskilled workers remained basically unchanged. Yet three loopholes were established in recent years (1990-present). First, workers of Japanese origin are allowed to work without any restriction on activity through the "front door". This ancestry-based policy must be connected to the history from an emigration country to an immigration one and the idea of being an ethnic nation-state. Second, trainees are also employed as unskilled workers through the "side door". The formal and nominal purpose of trainees is to acquire technology, skills or knowledge at a public or private organisation, however, the trainee system is seen as an evasion of the law and a disguise of measures to recruit cheap unskilled workers. Third, it was said that undocumented foreign workers were present in Japan through the "back door" and satisfied the labor needs of small and medium-sized companies.<sup>5</sup> Presently, the Government is trying to reduce the number of undocumented foreign workers and increase highly skilled ones.

According to the 2006 UN Population Division Report,<sup>6</sup> around 191 million persons reside in a country other than where they were born (or they have the citizenship), which amounts to about 3 percent of world population. Almost one of every 10 persons living in the more developed regions (Europe, Northern America, Australia, New Zealand and Japan) is a migrant. However, the ratio of foreigners to the entire population is less than 2 percent in Japan. Japan can be regarded as a potential immigration country in view of the projected future labor shortage and aging.

## 2. Legal Concepts Used in National Legislations

Types of Migrant

The Ministry of Justice categorizes the entry-purposes by the residence-status as four kinds (temporary visitors, foreigners for working, foreigners for study, foreigners based on status).<sup>7</sup> However, this report had better not to cover temporary visitors. "Foreigners for working" refer to specialized and technical labor. "Foreigners for study" are students and trainees. Nevertheless considering the intention of trainee system, most trainees might be called "temporary working migrants" in practice. "Foreigners based on status" are spouses or children of Japanese nationals, spouses or child of permanent residents and quasi-permanent residents of ethnic repatriates (up to third generation descendants of overseas Japanese, most of whom arrived from Latin America). However, most ethnic repatriates are also "working migrants".

If I classify the types of migrants by the sorts of residence status, there are nine types (permanent residents, family reunification, specialized and technical labor, trainees, ethnic repatriates, refugees, asylum seekers, students, and others). Table 1 shows the classification by residence status and types of new entrants and residents. In 2005, the number of foreigners entering Japan was about 7.5 million. If we exclude re-entrants and temporary visitors from them, the number of new entrants was about 372 thousand. The number of resident aliens who stayed or would stay over ninety days in Japan and registered at the municipal office was about 2 million.

Working Migrants

Indeed, the Immigration Control Act defines "working migrants" into fourteen categories of residence with permission to work. The Ministry of Foreign Affairs calls them Working Visas.<sup>8</sup> However, the numbers of the entrants who

Table 1 Types and Residence-Status of New Entrants and Residents (2005)

Types	Residence-status	New Entrants		Residents	
		Number	%	Number	%
Permanent Residents	Special permanent residents*	-	-	451,909	22.5
	Permanent residents*	-	-	349,804	17.4
Family Reunification	Spouses or child of Japanese nationals	24,026	6.4	259,656	12.9
	Spouses or child of permanent residents	990	0.3	11,066	0.6
	Dependent	15,027	4.0	86,055	4.3
Specialized and Technical labor	Entertainers	99,342	26.7	36,376	1.8
	Specialists in humanities or international service	6,641	1.8	55,276	2.7
	Intra-company transferee	4,184	1.1	11,977	0.6
	Engineers	4,718	1.3	29,044	1.4
	Instructors	2,954	0.8	9,449	0.5
	Professors	2,253	0.6	8,406	0.4
	Skilled labor	3,059	0.8	15,112	0.8
	Religious activities	846	0.2	4,588	0.2
	Researchers	607	0.2	2,494	0.1
	Investor and business manager	604	0.2	6,743	0.3
	Artists	245	0.1	448	0.0
	Journalists	248	0.1	280	0.0
	Legal and accounting service	2	0.0	126	0.0
	Medical service	2	0.0	146	0.0
Trainees	Trainees	83,319	22.4	54,107	2.7
Ethnic repatriates (& Refugees etc.)	Quasi-permanent residents	33,756	9.0	265,639	13.2
Asylum seekers	Temporary Refuge	0	0.0	30	0.0
Students	College students	23,384	6.3	129,568	6.4
	Pre-college students	18,090	4.8	28,147	1.4
Others	Diplomats and Officials**	27,624	7.4	-	-
	Designated Activities	16,958	4.5	87,324	1.3
	Cultural Activities	3,725	1.0	2,949	0.9
	Temporary Visitors	-	-	68,747	3.4
	Without Acquiring Status of Residence***	-	-	20,736	1.0
	Others****	-	-	15,353	0.8
Total		372,604	100.0	2,011,555	100.0

Source: Ministry of Justice.

Notice:\*No entrants can be granted the statuses as special permanent residents and permanent residents.

\*\*Diplomats and Officials are not required to register in the Alien Registration system.

\*\*\*Without acquiring a status of residence, some persons happen to stay after their renouncement of Japanese citizenship, birth, or other cause.

\*\*\*\*Others include registered irregular residents.

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belong to the categories above are rather limited except for those to the category of entertainers.<sup>9</sup>

On the contrary, a lot of ethnic repatriates enter and reside in Japan. The 1990 amendment of the Immigration Control Act introduced the special residence status with permission of work (quasi-permanent residence) for the second and third generation Nikkeijin (Japanese descendants) and their families. Although an official rationale for granting residence-work status to the Nikkeijin is to provide them with opportunities to visit relatives in Japan, there is also the hidden intention to stop further entrance of undocumented foreign workers and to solve the problem of a serious labor shortage at that time. That is why this was called the "front door" for the working migrants.

Additionally, there is a side door for trainees. As trainees (1 year) and as technical interns (2 years),<sup>10</sup> foreigners can stay for a maximum of three years. The aim of the trainee and technical intern system is the transfer of technology to developing countries, but the reality in many cases is a kind of rotation system of introducing cheap unskilled workers from abroad.

Furthermore, that is a back door for irregular residents (illegal residents).<sup>11</sup> Although the number of overstaying persons and irregular entrants was estimated about 170,000 and 30,000 in 2007, it is difficult to examine their exact number. Most of the irregular residents enter Japan regularly as tourists, and then work irregularly and overstay.

Resettlement

The statuses as spouses or children of Japanese nationals and those of permanent residents were newly introduced in the 1990 amendment of the Immigration Control Act. The Act does not refer to the concept of family reunification, but these statuses can be classified as resettlement for family members of citizens or permanent residents. Additionally, it should be noted that some of the spouses or children of the ethnic repatriates are granted the status as quasi-

permanent residents and they also may be classified as family reunifications.

Some ethnic repatriates are called Returnees from China. In 1972, Japan and China re-established their diplomatic ties. The Japanese government decided in 1973 to support those who want to return to Japan, and to grant full-scale supports for returning to Japan in 1974 when the transport by air between Japan and China was established. From 1972 to 2005, 20,150 returnees from China have resettled in Japan, and 182 returnees from Sakhalin and other places in the former USSR from 1989 to 2005 as well.

Indo-Chinese Refugees and Displaced Persons

The Indo-Chinese refugees and Displaced Persons from Viet Nam, Laos and Cambodia were accepted by the Cabinet Understandings. From May 1975 to January 1994, Japan provided temporary asylum to 14,332 persons, including 564 children born in Japan. Since 1994 temporary asylum permission for asylum seekers from Indo-Chinese countries had stopped and the Convention refugee recognition procedure has been applied to them. From 1978 to January 2002, 10,941 persons were permitted to resettle in Japan.

Refugees

Recognized refugees are normally granted residence permission of quasi-permanent residence of 1 or 3 years, renewable. Recently, asylum seekers from Afghanistan, North Korea and so on have become an issue of crucial concern. In the parliamentary discussion in October 2001, it was pointed out that the number of recognized refugees was too small in comparison with other countries.<sup>12</sup> The reputation of Japan's strict check of refugee recognition has possibly discouraged refugee applicants. The 2004 Amendment of the Immigration Control Act recognized the "Refugee Examination Counselors" as a third party to keep impartial appeal procedures for refugee recognition (Article 61-2-2-10),<sup>13</sup> and abolished the "sixty days rule" which has limited refugee recognition by

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restricting refugee applications within the fixed period after the entrance in Japan (Article 61-2-2-1). On the contrary, it introduces the "safe third country regulation" which refuse refugee applicants who have entered Japan directly from a territory where his/her life was unlikely to be in danger (Article 61-2-2-2).

Asylum Seekers

Before 1994, 5,668 Boat People from Vietnam had been permitted the temporary refugees; however, there have been no or just a few cases of such permission since then. Concerning the "asylum seekers" who applied for the recognition of refugee status and were waiting for the decision, the Immigration Control Act had no residence status of provisional stay for asylum seekers. The status of such asylum seekers was the same as that of undocumented migrants. However, after the critical discussion on Japan's negative attitude towards refugees and asylum seekers, the 2004 Amendment of the Immigration Control Act provided for the permission for a provisional stay (Article 61-2-4).

There were 4,882 applications at the end of 2006 under the operation of the Refugee Recognition system from 1982, of which 410 were recognized. In addition, as of the end of 2006 from the end of 1991, a total of 434 foreigners were granted special residence permission on humanitarian grounds such as a difficulty in going home due to the situation in their country yet they were not recognized as refugees. According to the information on the applicants for provisional residence permission in certain countries, the number of applicants in 2006 was 954, which was 2.5 times higher than in the previous year, however, only 34 people were granted refugee status. Therefore, it is not clear that recognized refugees will increase in Japan.

## 3. Acquiring the Status of Migrants

Sorts of Residence Status

As shown in the table 1, there are 23 sorts of residence status under which activities and residential terms are restricted. The detail criteria for their permissions are regulated by the Ministry of Justice Ordinance (No. 16 of May 24, 1990). Furthermore, there are 4 kinds of residence status under which activities are unrestricted. Among them, quasi-permanent residents, Spouse or child of a Japanese national and Spouse or child of permanent residents are required of the renewal of residence period. Only Permanent residents are unrestricted regarding both activity and residence.

In order to clarify the differences of the former 23 statuses and the latter 4 statuses, they are categorised as "permissible intake" and "permissible establishment" groups.<sup>14</sup> Persons with the latter 4 statuses (and special permanent residents) are authorised to work not only in skilled but also unskilled jobs.

Requirements for Permanent Resident Permission

Since 1991, persons from former colonies and their descendants have been granted special permanent resident status in accordance with the Special law on Immigration Control. Under Article 22-2 of the Immigration Control Act, the permission for a change to the status of permanent resident is left to the discretion of the Ministry of Justice when the applicant adjusts to the benefits of Japan and fulfils two legal requirements: 1) good behaviour and conduct; and 2) sufficient assets or skills to make an independent living. There are other practical conditions deriving from the administrative interpretation of Japan's benefits: 1) in cases of a child of Japanese or permanent residents, a 1-year continuous residential term is required; 2) in cases of a spouse of Japanese or permanent residents, a 3-year residential term is required; and 3) in cases of

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quasi-permanent residents and refugees etc., a 5-year continuous residential term is required. Otherwise, a 10-year continuous residential term is necessary to be allowed a permanent residence permit.<sup>15</sup>

ID Card

Under the Alien Registration Law, foreign residents are required to register their status and residence at the municipal office of the city, ward, town or village they reside, within 90 days of landing, or within 60 days after the birth of a child or renouncement of Japanese citizenship (Article 3). All the registered foreigners of 16 years of age or over are required to carry the certificate of alien registration (ID Card) with them and present it to officials (Article 13).

Prior to 2000, foreign residents were required to provide their fingerprints for the confirmation of their identity.<sup>16</sup> This was stipulated in the Alien Registration Law. Facing a number of the legal cases involving foreigners refusing to be fingerprinted, the Japanese government was forced to amend the Alien Registration Law numerous times. In 1999 an amendment bill of the Alien Registration Law demands the entire abolishment of fingerprinting. However, the 2006 amendment of the Immigration Control Act for the sake of preventing terrorism reintroduced the fingerprints and (facial and iris) authentication technology for personal identification at the time of landing with the exception of special permanent residents, young persons under 16 years, diplomats and officials.

Rights

The Supreme Court judgement on October 4, 1978 (the McLean Visa Renewal Case)<sup>17</sup> ruled that "according to international customary law, a state can decide on what kind of conditions to accept a foreigner in its own country, so long as there is not a special treaty on this matter". Regarding to foreigners' rights, the positive aspect of this judgement is that it established the principle that

foreigners have human rights as a rule with the exception of rights which by their nature must be limited to Japanese citizens. The negative aspects are that it deprived foreigners the right to political expression by its inherent nature, and citing this leading case, Japanese Courts ruled frequently that foreigners' human rights should be restricted within the residence status in the Immigration Control Act.

Rights of foreigners differ according to their statuses. They are categorized to the following three entrance gates model.<sup>18</sup> The first gate is passport and visa control for the status as non-permanent (regular) residents. The immigrants staying without satisfying the requirements of this gate are called irregular residents. The second gate is the permission for the status of permanent residents. The third gate is naturalization for the status as citizens. The Chart 1 shows the four statuses of immigrants and three gates in a receiving country. The more improved rights one enjoys, the further one goes from the first to the fourth. Permanent residents enjoy social and civil rights but usually their political rights are limited. Even irregular residents enjoy most of the civil rights such as the access to the court but limited are the right to reside and the freedom to choose their occupation.

Chart 1 Four statuses of immigrants and three gates in a receiving country.  
1) Irregular Residents < 2) Non-Permanent Residents < 3) Permanent Residents < 4) Citizens  
i ) Regularization ii ) Permanent Residence Permission iii ) Naturalization

In general,<sup>19</sup> there are few restrictions on foreigners in the acquisition of rights pertaining to property and establishing their own enterprises. Recently, many local governments opened doors for permanent residents to general administrative officials though managerial positions are still excluded and the Supreme Court confirmed this exclusive practice (Supreme Court judgement, Jan. 26, 2005). The Supreme Court decided that permanent residents' local

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suffrage does not violate the Constitution (Supreme Court judgement, Feb. 28, 1995) and about half of the local governments have asked for it, but the ruling party LDP is against it for reasons of its nationalistic ideology. In 2002-2006, more than two hundred local governments passed the regulations that allowed permanent residents to vote at local referendum.

Since the accession to the Refugee Convention in 1981, citizenship requirements have been abolished in social security laws such as the National Pension Law, the National Health Insurance Law, the Child Rearing Allowance Law and the Child Allowance Law.<sup>20</sup> However, there still remains a problem with the national pension system, for example, foreigners, 60-years or older at the time of revision of the National Pension law (1986), could not receive the old-age pension. In addition, the 1990 notice from the Ministry of Welfare limited the "Livelihood Protection" afforded to foreigners to those in Annexe Table , namely, permanent resident, spouse or child of a Japanese national, spouse or child of a permanent resident and quasi-permanent resident.

In the case of an irregular resident, the Medical Treatment of Atomic Bomb Victims Law has characteristics of humanity and national compensation, thus, this Law is applied to irregular immigrants (Supreme Court judgement, Mar. 30, 1978). In practice, free maternity leave is guaranteed for irregular residents (Article 22 of the Child Welfare Law), as is medical treatment for their premature babies (Article 20 of the Maternal and Child Health Law).<sup>21</sup>

Obligations

Foreign residents who have lived continuously in Japan for 1 year or more must pay Income and Citizen Taxes of the same rates as Japanese residents. Other foreigners, with the exception of tax exemption due to a tax treaty, have, in principle, a 20% tax imposed on their income.

In general, foreigners must strictly obey the laws as well as citizens. However, in 1953, the Ministry of Education gave notice that parents of foreigners do not

have the obligation to make their children receive compulsory education in elementary schools and lower secondary schools. Some local governments still exclude children of undocumented residents from the schools but many local governments consider that "primary education shall be compulsory and available free to all" pursuant to Article 13 of the International Covenant on Economic, Social and Cultural Rights and Article 28 of the Convention on the Rights of the Child.

## 4. Guarantees of Migrants' Status

State Support

The Ministry of Justice deals with immigration control but there is no comprehensive Agency in charge of integration policy. In 2006 the Ministry of Internal Affairs and Communications afforded to local governments the Model Plan for the Multicultural Coexistence Promotion in Local Communities.<sup>22</sup> In addition, the Cabinet established general policy on 'Foreigners as Dwellers' in 2006 and the Ministry of Justice will reform the alien registration system and establish a new data system for foreign residents in 2008.

Local Government Support

Most of the integration policies are charged by local governments.<sup>23</sup> The appeal for *tabunka kyōsei*<sup>24</sup> (variously translated as multicultural living-together, multicultural symbiosis or multicultural coexistence) is becoming a slogan of their integration policy in the 2000s. Responding to the model plan of the Internal Affairs and Communications, many local governments have issued plans or guidelines with three parts: 1) communication support; 2) livelihood support; and 3) development of a *tabunka kyōsei* community including social participation of foreign residents. In 2007, Miyagi prefecture enacted the local government regulation on promoting *tabunka kyōsei* community.

Many local governments afford publications in foreign languages of daily life guides to foreign residents. Japanese language classes provided by local governments charge them very little and some are free. In some prefectures and cities with many foreign residents, free counselling, consultation on legal matters, and health checks are rendered to them by International Exchange Associations or NGOs.

Foreigners, registered in the Alien Registration system to be authorized for at least one year's residence, can rent public housing. However, foreign residents for seeking private rentals are in many cases still refused, therefore, some local governments have established a guarantee system to assist foreigners who are unable to find a guarantor on their own.

#### Program to Returnees from China

Japanese who had remained in China after World War and return home with their family members tend to face various problems in terms of Japanese language, living and employment after they resettled in Japan. To cope with such problems, since 1984, a program has been implemented to accommodate the returnees families in the Resettlement Promotion Centers for Returnees from China<sup>25</sup> for four or six months<sup>26</sup> immediately after they returned to Japan. Meanwhile they were given there lessons of basic Japanese and basic guidance on living. After the four or six months stay in the Centers, another program was started since 1988. In this program they commute from their home to the Training Centers for Returnees from China to Establish Self-sufficiency<sup>27</sup> for eight months to take further Japanese lessons and guidance on living and employment. In addition, since 1998, the programs of both Centers were extended to returnees from Sakhalin and other places in the former USSR. Nevertheless, with the decreasing tendency of new returnees, the number of the Centers is reduced. Integration of the returnees still remains controversial. The Support & Exchange Centers for Returnees from China have established and implemented

exchanging programs since 2001 and friendship programs since 2003 for building a bridge between the returnees and the original residents of the community.

From the viewpoint of privileged immigration policies, Aussiedler in Germany are often compared with Nikkeijin in Japan though they are different in some respects of integration policy.<sup>28</sup> We must pay attention to the fact that Aussiedler have similarities with Returnees from China, as far as both are classified as privileged integration policy.

#### Program to Refugees

Recognized refugees may benefit under the National Health Insurance Law and receive welfare assistance under the Livelihood Protection Law. The State-sponsored Indo-Chinese refugee resettlement program started in 1979. The Refugee Assistance Headquarters was set up under the Foundation for the Welfare and Education of the Asian People and was entrusted by the Government the work to help Indo-Chinese refugee to resettle in Japan. Since 2003, the Government expanded the support to the Convention refugees to promote their integration into Japanese society. The refugee resettlement program includes Japanese language education, social adaptation training, job referral service and financial support. The participation in this program can last up to 6 months. During this period, the beneficiaries of the program can receive full board accommodation at the International Refugee Assistance Center of the Refugee Assistance Headquarters.

The Refugee Assistance Headquarters provides support for asylum seekers, as well. Asylum seekers can be given free counselling service. In case of financial difficulties, they are given assistance with expenses for living, accommodation, medical matters and the accommodation at ESFRA (Emergency Shelter For Refugee Applicants).<sup>29</sup> However, most asylum seekers must find their accommodation by themselves since the Japanese government provides a very limited number of places, and offers them only for emergency cases.



## 5. The Migrant and the Employer

Problems of Migrant Workers

The Nikkeijin workers are granted social rights. Indeed, they can enjoy the national health insurance mainly for the self-employed and the private corporate health insurance for company employees or public servants as do Japanese citizens. However, most of them are out of the health-insurance schemes in practice. One reason is that the Nikkeijin workers are not willing to join health insurance because of the compulsory welfare pension system join simultaneously, under which they would probably receive no benefit in the future because the contribution period required is for at least 25 years in general and bilateral pension agreements have only been concluded with Germany, the UK, the USA and Korea at the time of 2005. Another reason is that employers of small companies are not willing to pay the half of the private corporate health insurance premiums.

Entertainers are the largest group of foreign workers with working visas as specialists. In 2003, some 80,000 visas in a year are granted to Filipinos. Indeed, the majority of Phillipine women entered the country as dancers or singers. Virtually, however, they are mainly employed in the sex/entertainment industries.<sup>30</sup> Pursuant to the 2004 Anti-Trafficking Action Plan, the Ministry of Justice Ordinance regarding the criteria for entertainer applicants was amended in 2005. They are required to have undergone at the minimum 2 years' education or experience of the performance in arts.

Trainees do not have the right to get wages but some employers have used them as disguised laborers. These problems frequently involve associations, brokers and other intermediaries who abuse the Training Program and Technical Intern Training Program as a means of dispatching low-wage workers. Some trainees have disappeared from the training places in order to earn more money

than their allowance by engaging in the same work as undocumented foreign workers. Currently, trainee programs are criticized for exploiting foreign trainees as low-wage laborers. Therefore, the Health, Labor and Welfare Ministry wants to end unlawful labor practices through trainee programs and extends the technical intern program up to five years, while the Economy, Trade and Industry Ministry wants to maintain trainee programs to help smaller companies that are having tough difficulties of finding workers.

Regarding undocumented foreign workers, if a company employs more than five workers, even undocumented foreign workers are entitled to health insurance. In addition, the Worker's compensation insurance will be paid regardless of citizenship, but in the case of undocumented foreign workers, employers and employees are not willing to apply it for fear of the disclosure of the unauthorized employment. Furthermore, in the case of accidents involving undocumented foreign workers, the compensation for the lost benefit represents a serious problem due to the difference between the standard of Japan and the standard assumed for third world countries. The Supreme Court handed down the decision relating to the lost benefits from the wages earned in Japan for 3 years (Supreme Court judgement, Jan. 28, 1997). In the cases involving temporary visitors or irregular residents, some local governments have to pay for the emergency medical costs for foreigners who are supposed to have been injured in a public place during a trip under the Law concerning the Treatment of Sick Wayfarers and Wayfarers Found Dead. Recently some local governments and NGOs had to provide for their own expenditures. Since 1996 the state pays one third of the expenditure for the emergency medical care if the condition is serious.

Sanctions to Employers and Intermediaries for Unauthorized Employment

Since 1990, the Japanese government has taken measures against unauthorized employment. Under the Immigration Control Act, employers and

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intermediaries who encourage undocumented foreign workers to engage in unauthorized work may be punished with imprisonment for up to 3 years and/or a fine of up to 2 million yen (Article 73-2) and in the 2004 Amendment of Immigration Control Act a fine was increased up to 3 million yen. Under the 1999 Amendment of Immigration Control Act, the punishment for collective smuggling shall be imprisonment for up to 5 years and/or a fine of up to 3 million yen (Article 74-1), and in case of collective smuggling for the purpose of profit, the punishment shall be imprisonment for from 1 year up to 10 years and/or a fine of up to 10 million yen (Article 74-2).

Sanctions to Undocumented Foreign Workers

Since 1990, under the Immigration Control Act, undocumented foreign workers who engaged solely in unauthorized work may be punished with imprisonment for up to 3 years and/or a fine of up to 2 million yen (Article 70-4). In case of foreigners who engaged in unauthorized work but not solely engaged in it, for example when foreigners staying in Japan under the status of pre-college student have worked part-time without obtaining permission, they may be punished with imprisonment for up to 1 year and/or a fine of up to 200 thousand yen (Article 73) and in the 2004 Amendment the fine was increased up to 2 million yen.

## 6. State Protective Measures

Deportation

Under the Article 9 of the Special Law on Immigration Control, special permanent residents are protected from deportation except when they are sentenced to imprisonment for more than 7 years. Furthermore, their deportation is exerted only if the Minister of Justice finds that the vital interests of Japan is jeopardised by their crimes.

For other foreigners, Article 24 of Immigration Control Act stipulates various grounds for deportation. The following foreigners may be deported: 1) Irregular entry;<sup>31</sup> 2) Irregular landing; 3) Revocation of residence status by false statement and so on; 4) Overstay; 5) Unauthorized activity for residence status; 6) Aiding false document; 7) Trafficking in persons; 8) Aiding irregular entry; 9) Imprisonment for violation of the Alien Registration Law; 10) Minors' imprisonment exceeding three years; 11) Violation of the Marijuana Control Law and so on; 12) Imprisonment exceeding one year; 13) Business connected with prostitution; 14) Destructive violence; 15) Detriment to the interest or security of Japan.

Most undocumented foreign workers enter Japan regularly as tourists and so on, and then work irregularly and overstay.<sup>32</sup> In 2005, about 95 percent of those deported left Japan at their expense.<sup>33</sup>

Regularization of Irregular Residents

The Japanese government has never granted a general amnesty and definitely rejected the mass relief for irregular residents because such lenient measures can serve as a powerful magnet for accelerated flows of new irregular immigrants. However, a special permission for residence is stipulated in the Article 50-3 of the Immigration Control Act. If "the Minister of Justice finds grounds for giving special permission to stay" in individual cases of irregular residents, the former decision of deportation shall be cancelled and some kinds of residential status are given to them.

Since the late 1990s, the regularization for foreign spouses<sup>34</sup> of citizens or permanent residents has increased and the number of special residence permissions was 13,239 in 2004. Since 2000, the Minister of Justice have decided to allow regularization for long-term irregular resident families with school children with respect to the "best interests of the child" and the family unity. In the 2005 Amendment of the Immigration Control Act, victims of trafficking without

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proper papers will not be deported immediately but are granted special residence permission so that they can cooperate in the investigations against traffickers.<sup>35</sup> The immigration Bureau published the guidelines for special permission to stay, however the standard of 'extreme hardship in the life of their home country' is vague as positive factors for the humanitarian permission.<sup>36</sup>

Sanctions to Irregular Residents

Under the 1989 Immigration Control Act, if a persons who over-stay is considered as very vicious, he or she is punished with penal servitude or imprisonment of not more than 3 years or a fine not more than 300,000 yen, or is punished with both penal servitude or imprisonment and a fine (Immigration Control Act, Article 70). The Immigration Control Act was amended in 1999 and was enforced on February 18th, 2000. The first of its significant revisions was to establish a new penalty for irregular entrants. Up to then, irregular entrants have stayed in Japan for three years since they entered Japan, the period of prescription ran out, and criminal punishment could not be imposed on them even if they were deported in the same manner as over-staying persons. The newly-established criminal offence was called "unlawful stay" so that irregular entrants could be always punished with penal servitude or imprisonment of not more than 3 years or a fine not more than 300,000 yen (Article 70-2).

The second significant revision of the Immigration Control Act in 1999 was the extension of the refusal period of re-entry. Up to then, deported foreigners had not been allowed to re-enter Japan "for 1 year from the day of their deportation". The new Article 5-1-5 of the Immigration Control Act extended the refusal period to 5 years. Immigration Bureau stated that this extension was to prevent the increasing number of people from re-entering Japan after deportation.

Under the 2004 Amendment of the Immigration Control Act, the amount of fines against irregular entrants and over-staying persons was raised to 3

million yen. In addition, the refusal period of re-entry was extended to 10 years if deported persons have a past record of deportation.

Conflict

Faced with the concentrating habitation of foreign residents in some areas, Japanese residents have become much more doubtful about these foreigners, seeing them observing no rules relating to proper disposals of garbage, and some of foreign youngsters not attending school and involved in quarrels with Japanese youngsters. For example, in June 1997 tensions rose between Japanese residents and Brazilian residents in the Homi public housing estate in Toyota city.<sup>37</sup>

The Police have pointed out the number of crimes committed by foreign newcomers, the mass media have focussed upon. As a result of increasing crimes involving foreigners, some owners of shops, bathhouses or bars refused entry to all foreigners for fear of robberies and property damages. Indeed, the Courts ordered the owner of a jewelry shop (in Ana Bortz Case)<sup>38</sup> and the bathhouse (in Arudou Debit et.al. Case)<sup>39</sup> to pay 1.5 million yen and 3 million yen respectively for mental anguish based on racial discrimination. However, officials of local governments do not have enough power to prohibit racial discrimination and xenophobia.

## 7. Concluding Remarks

Japan is not a member of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, but it accessed to the International Convention on the Elimination of All Forms of Racial Discrimination in 1995. The Japanese Parliaments and local parliaments have not yet enacted the Anti-Racial Discrimination Act and Regulations. It should be pointed out that the enactment of such laws is an urgent need for the

society.

In the late 1980s, Japan's bubble economy and labor shortage caused the first heated debate as to whether Japan should be open or closed to foreign workers.<sup>40</sup> However, in 1988, the Minister of Labor published the sixth Basic Plan for Employment Policy and confirmed these two basic policies: 1) specialized and technical labor will be positively accepted; 2) dealing cautiously with the matter of accepting unskilled labor with thorough deliberation.

Why did Japan have so little immigration during its period of advanced economic growth compared with other developed countries? This will be explained in terms of the following four factors: 1) a large domestic mobility; 2) automation; 3) opening up the labor market for house-wives, students and elderly people as part-time labor; 4) long working hours. Additionally, Japan's peculiarity is explained by the following three reasons: 5) a dense population; 6) little available land; and 7) the myth of a 'monoethnic' state. Furthermore, 8) the collective memory of the isolation period (1639-1853) could be mentioned. Recently, however, Japan has turned away from its self-understanding as a 'monoethnic' state to a policy of cultural pluralism. The percentage of mixed marriages is increasing from 0.5% in 1970 to 6.1% in 2006. The number of labor force engaged in the agricultural industry has continued to drop from 14 million in 1960 to 3 million in 2005. The average of total working hours per capita also declined from 2,426 hours in 1960 to 1,775 hours in 2005 (as in the USA and the UK). The population is aging rapidly with less childbirth, and the total population is turned to decrease in 2005.<sup>41</sup>

In the early 2000s there was a second debate as to whether Japan should admit immigrants in order to improve the demographic situation of the aging society. Japanese society is now witnessing a rapid progress in aging and diminishing workforce. In 2000, the Report of the Population Division of the UN pointed out that "in order to keep the size of the working-age population constant at the 1995 level or 87.2 million, Japan would need 33.5 million immigrants from 1995

through 2050".<sup>42</sup> It is argued that there are two models of response to the problem of aging population. The first model includes "replacement migration" and the infusion of "temporary foreign workers". The second model shifts the state policy from a Fordist economy (labor-intensive industries with mass-production technology) to a Post-Fordist one (knowledge-based flexible production and service industries with information technology). Both models are not mutually exclusive and might best represent a coordinate policy sequence of short- and long-term adjustment.<sup>43</sup> Yet this argument is lacking the consideration of the decrease of consumer population who bear responsibility about social security and welfare. There is a tendency that the consumption tax (VAT) becomes main fiscal resources of the social security and welfare in Japan. Even if a decrease of working population can be covered by improving productivity, however a serious problem remains in the social welfare state where the consumer population is decreasing. Indeed, it is difficult to forecast the future industry structure and to accept such a mass immigration into Japan. However, even at present there is a tendency to increase foreign residents in Japan. Therefore, it should be noted that the construction of comprehensive administration and the enactment of a special law in order to integrate Japanese and foreign residents are of significant needs for Japan's society.

#### Notes

- 1 This paper is a summary of the original one prepared for the national report on "The Legal Position of Migrants" at the 17<sup>th</sup> Congress of the International Academy of Comparative Law 16-22 July 2006, Utrecht, the Netherlands. The original will be published in the ICCLP Publications No. 10 (The International Center for Comparative Law and Politics at the University of Tokyo's Graduate School of Law and Politics). I wrote this paper to honour the contribution of Professor emeritus Tsuyoshi Kotaka to our Faculty of Law at Meijo University.

- 2 Additionally, it is said that another fundamental principle could be identified as the basis for Japan's immigration policy: 3) all foreigners should be admitted on only temporary basis. See Tsuda Gaku and Wayne A. Cornelius, 'Japan: Government Policy, Immigrant Reality' in Wayne A. Cornelius et al. (eds.), *Controlling Immigration 2<sup>nd</sup> ed.* (Stanford, Stanford University, 1994), pp. 449-50.
- 3 Yuji, Iwasawa, *International law, Human Rights, and Japanese Law. The Impact of International law on Japanese Law.* (New York: Oxford University Press, 1998), pp. 167-76.
- 4 Strictly speaking, the Immigration Control Order was enacted in 1951 and the name of "Order" was continued until the enactment of the Immigration Control and Refugee Recognition Act in 1981. As for the historical regulations, see Yoshio Hagino, 'The Japanese Immigration System An Introduction' *Nanzan Hōgaku* vol. 7, no. 2 (1983); Yoshio Hagino, 'New Japanese Immigration-Control and Refugee-Recognition Act of 1981' *Nanzan Hōgaku* vol. 8, no. 1 (1984); Shigeki Miyazaki, 'Die Rechtsstellung von Ausländern nach staatlichem Recht und Völkerrecht in Japan' in Jochen Abr. Frowein and Torsten Stein (eds.), *Die Rechtsstellung von Ausländern nach staatlichem Recht und Völkerrecht* (Berlin: Springer, 1987), pp. 727-49; Yasuzo Kitamura, 'Recent Developments in Japanese Immigration Policy and the United Nations Convention on Migrant Workers' *University of British Columbia Law Review* vol. 27, no. 1 (1993), pp. 113-32.
- 5 Takamichi Kajita, 'The Challenge of Incorporating Foreigners in Japan' in Myron Weiner and Tadashi Hanami (eds.), *Temporary Workers or Future Citizens?* (London: Macmillan, 1998), p. 145.
- 6 UN Population Division. *World Migrant Stock: The 2005 Revision.* Available at: <<http://esa.un.org/migration>>.
- 7 Hōmushō Nyūkoku Kanrikyoku [The Immigration Bureau in the Ministry of Justice], Heisei 16 Nenban Shutsunyūkoku Kanri [2004 Report on Immigration Control] (Tokyo: Ōkurashō Insatsukyoku., 2004) pp. 10-20.
- 8 HP of the Ministry of Foreign Affairs, "A Guide to Japanese Visas." Available at: <[http://www.mofa.go.jp/j\\_info/visit/visa/index.html](http://www.mofa.go.jp/j_info/visit/visa/index.html)>.
- 9 Recently, due to the anti-trafficking measures, the Ministry of Justice Ordinance on the residence status of entertainers was amended for their stricter immigration control in 2005. Compared with the alien registrations in 2004, the number of entertainers decreased by some 67 percent, on the other hand that of engineers increased by some 51 percent in 2006.
- 10 Regarding to the comparison between trainees and technical interns, see Yoko Sellek, *Migrant Labour in Japan* (New York: Palgrave, 2001), p. 71.
- 11 This paper uses the terms "irregular residents" or "undocumented foreign workers." In the UN and European organizations, the use of the word "illegal" in this context has been criticised because of its connotations with criminality. See W. R. Böhning, 'Regularising the Irregular' *International Migration* (1993), pp. 159-60; Ryszard Cholewinski, *Irregular Migrants: Access to Minimum Social Rights.* (Strasbourg: Council of Europe Publishing, 2005), p. 9.
- 12 Atsushi Kondo, 'The Development of Immigration Policy in Japan.' *Asian and Pacific Migration Journal* vol. 11 no. 4 (2002), p. 429.
- 13 Immigration Bureau, Ministry of Justice, *Refugee Recognition Administration 25 years in the Making* (2006), pp. 11-17. Available at: <<http://www.immi-moj.go.jp/english/keiziban/happyyou/NanminNinteiGyosei-E-1.pdf>>.
- 14 Hiromi Mori, *Immigration Policy and Foreign Workers in Japan,* (London: Macmillan, 1997), pp. 10-1.
- 15 Nobuyuki Koyama, 'Zairyū Shikaku "Eijūsha" ni tsuite [On the Status of

- Permanent Residents] *Kokusai Jinryū* [The Immigration News-magazine] no. 138 (1998), p. 26. Prior to 1988, it was reported that the general requirement was that of a 20-year residence.
- 16 Yasuaki Ônuma, 'Beyond the Myth of Monoethnic Japan', in The Committee to Commemorate the Sixtieth Birthday of Prof. Suh Yong-Dal (ed.), *Ajia Shimin to Kan Choōsenjin* [Asian Citizens and Koreans in Japan], (Tokyo: Nihon Hyōronsha, 1993), pp. 576-8.
- 17 An American language teacher, Mr. McLean's request for renewal of his residence permit was rejected due to his involvement in the anti-Vietnam War movement. As a consequence, the judgement supported the decision of the Minister of Justice. See Lawrence W. Beer and Hiroshi Itoh, *The Constitutional Case Law of Japan, 1970 through 1990* (Seattle: University of Washington Press, 1996), pp. 471-8.
- 18 Tomas Hammar, 'Denizen and Denizenship' in Atsushi Kondo and Charles Westin (eds.), *New Concepts of Citizenship* (Stockholm: CEIFO, 2003), pp. 37-8.
- 19 Atsushi Kondo, 'Citizenship Rights for Aliens in Japan'. In Atsushi Kondo (ed.), *Citizenship in a Global World: Comparing Citizenship Rights for Aliens* (New York: Palgrave, 2000), p. 22.
- 20 In general, they are extended to foreign residents who stay for more than one year.
- 21 Solidarity Network with Migrants Japan (SMJ), *Living Together with Migrants and Ethnic Minorities in Japan* (Tokyo: SMJ, 2007), p. 77.
- 22 Ministry of Internal Affairs and Communications (2006). *The Plan for Multicultural Coexistence Promotion in Local Communities*. Available at: <[http://rleia.clair.or.jp/about/pdf/multiculture\\_eng.pdf](http://rleia.clair.or.jp/about/pdf/multiculture_eng.pdf)> .
- 23 Kashiwazaki Chikako, *Local Government and Resident Foreigners*. In Furukawa Shun'ichi and Menju Toshihiro (eds.), *Japan's Road to Pluralism* (Tokyo: Japan Center for International Exchange, 2003), pp. 72-82.
- 24 The *tabunka kyōsei* policy in Japan is different from the 'multiculturalism' in Canada, Australia and New Zealand where main targets were national minorities such as linguistic minority or indigenous people and are covering foreign residents. It has some similarity with the 'integration policy' in Sweden and Germany where main targets were foreign residents and are covering national minorities such as foreign-born citizens.
- 25 The names were the Resettlement Promotion Centers for Japanese orphans remaining in China after war since 1984 to 1994 when the support was expanded to Japanese women remaining in China after war.
- 26 The program was for four months until 2003.
- 27 They were established from 1988.
- 28 Betsy Brody, *Opening the Door. Immigration, Ethnicity, and Globalization in Japan* (New York: Routledge, 2002), pp. 87-95.
- 29 Assistance for refugee applicants started since 1995 and the Emergency Shelter started since 2003.
- 30 Hiroshi Komai, *Foreign Migrants in Contemporary Japan* (Melbourne: Trans Pacific Press, 2001), p. 27
- 31 There is an amendment bill of the Immigration Control Act to establish the crime of irregular entry and persons who enter irregularly are punished with a penal servitude or imprisonment of not more than 3 years or a fine of not more than 300,000 yen at any time.
- 32 Helmut Loiskandl, 'Illegal Migrant Workers in Japan' in in Robin Cohen (ed.), *The Cambridge Survey of World Migration* (Cambridge: Cambridge University Press, 1995), p. 373.
- 33 Immigration Bureau, 2006 Immigration Control. Tokyo: Immigration Bureau, Ministry of Justice, Japan, p. 61. Available at: <<http://www.moj.go.jp/NYUKAN/nyukan54-2.pdf>> .
- 34 Pursuant to the Ministry of Justice Circular on 30 July 1996, even if di-

- vorced persons with custody of children, including illegitimate children legally acknowledged to be Japanese by their respective Japanese parents, are regularized. Katsuko Terasawa, *Labor Law, Civil Law, Immigration Law and the Reality of Migrants and their Children*. In Mike Douglass and Glenda S. Roberts (eds.), *Japan and Global Migration* (London: Routledge, 2000), p. 233.
- 35 Atsushi Kondo, *Japanese Experience and Response in Combating Trafficking*. In Shiro Okubo and Louise Shelley (eds.), *Human Security, Transnational Crime and Human Trafficking: Asian and Western Perspectives* (Routledge, forthcoming).
- 36 *Hōmushō Nyūkoku Kanrikyoku* [The Immigration Bureau in the Ministry of Justice], (2006). *Zairyū Tokubetsu Kyōka ni kakaru Guidline* [Guidline for Special Residence Permission]. Available at: <<http://www.moj.go.jp/NYUKAN/nyukan52-1.pdf>> .
- 37 Yoko Sellek, *Migrant labor in Japan* (New York: Palgrave, 2001), pp. 215-8.
- 38 *Judgement of the Hamamatsu Branch of the Shizuoka District Court on October 12, 1999*. See Keiko Yamanaka, 'A Breakthrough for Ethnic Minority Rights in Japan: Ana Bortz's Courageous Challenge' In Mirjana Morokvasic et.al. (eds.), *Crossing Borders and Shifting Boundaries. Vol.1: Gender on the Move* (Opladen: Leske + Budrich, 2003), pp. 231-59.
- 39 *Judgement of the Sapporo Appellate Court on September 16, 2004*. See Arudou Debito, *Japanese Only* (Akashi Shoten, 2004).
- 40 See Haruo Shimada, *Japan's "Guest Workers"* (Tokyo: University of Tokyo Press, 1994), pp. 50-4.
- 41 Regarding the transformation of Japan's population and social conditions, see Atsushi Kondo, *New Challenges for Managing Immigration in Japan and Comparison with Western Countries*. In Atsushi kondo (ed.), *Migration and Globalization*, (Tokyo: Akashi Shoten, forthcoming).
- 42 Population Division, *Replacement Migration: Is It a Solution to Declining and Ageing Populations?* (New York: United Nations, 2001), p. 53.
- 43 Chikako Usui, *Japan's Demographic Future and the Challenge of Foreign Workers*. In Takeyuki Tsuda (ed.), *Local Citizenship in Recent Countries of Immigration* (Lanham: Lexington Books, 2006), pp. 39-59.