

〈Research Report〉

## Immigration easing or restriction?: A consideration of Japan’s foreign-worker acceptance policy\*

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### Introduction

In December 2018, Japan officially lifted the long-standing ban on immigration for less-skilled workers by revising the immigration law. Concurrently, the renewed foreign-worker acceptance policy featured a fresh pro-migrant program intent on multicultural inclusion. This monumental policy change garnered attention, both at home and abroad, as a tipping point toward reform of Japan’s awkward and flawed immigration policy. Do the latest legal and institutional changes attest to a fundamental policy shift toward open borders *and* society? Will the Japanese state readily reform its current acceptance system—fraught in terms of migrant protection and support—to be more open, just, and inclusive? This study examines the political implications of institutional development of Japan’s immigration policy, with a particular focus on the recent policy choices regarding foreign worker acceptance from a theoretical prism of historical institutionalism. I argue that, despite some pro-migrant reforms, the Japanese state upholds its “strict rotation” approach, keeping temporary labor migration under strict immigration control. This trajectory is defined as what some historical institutionalists call “regime stretching,” broaching ‘cosmetic’ changes in order to “diffuse and coopt criticism” while skirting major changes.

This empirical study uses the within-case, process-tracing method, or what Mahoney (2008) calls “causal process observation.” I trace the processes of institutional development in the policy area of immigration and integration during the period concerned (from the 1980s to present). The main unit of analysis is Japan’s institutions regarding immigration and alien residence control. The analysis is qualitative and data-driven, using government statements and documents, legislative and administrative records, political party manifestoes and meeting minutes, statistics, and interviews (unstructured) with knowledgeable groups and individuals about the issue.

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## The past trajectory of Japan's foreign worker acceptance policy

For decades, the government of Japan (hereafter “GOJ”) had been obscure about acceptance of foreign workers, especially less-skilled workers. The domestic labor shortage is increasingly acute and widespread across industries and regions. Policymakers attempted to meet the industrial demand for labor supply from overseas via a potpourri of heterodox methods, first opening “back doors” to irregular workers in the 1980s, and later “side doors” to co-ethnics (*nikkeijin*) from South America, and Asian “non-workers” (i.e., Technical Intern Training Program or *ginō jisshūsei* and international students). An orthodoxy for blue-collar migrants, or “so-called immigration” policy—quoting from the former premier Abe Shinzo (2013–2020)—was carefully avoided for fear of opposition from ethno-nationalists and xenophobes (Endoh 2019; Igarashi and Nagayoshi 2019).

The inarticulate immigration policy, compounded by the absence of an effective strategy for socio-economic and cultural integration of migrants and their families into the larger society, has sown much inconvenience: labor exploitation or abuse, the impoverishment of unemployed or under-employed foreign workers (and/or their dependents), limited access to public services (e.g., schools or hospitals), or their estrangement from the communities, to name a few. The migrants' hardships are attributed not only to abusive employers but also to the deeply flawed acceptance programs, or, fundamentally, the Japanese state's failure to reform the immigration system towards openness, equality, and inclusiveness (Akashi, 2014; Kibe, 2011; Tian and Chung, 2018).

Under mounting pressures to fix the faulty system—business demand for more foreign labor and the humanitarian outcry for better treatment of new members of the political community—, the Abe administration moved to revise the national immigration law. The bill of selective “acceptance of foreign workers with skills needed by the industrial areas with difficulty securing labor force” (“An Act to Amend a Part of the Act on Immigration Control, Recognition of Refugee Status, and the Establishment of the Ministry of Justice (hereafter “ICA”)” was passed at the 197<sup>th</sup> Diet on December 8, 2018 and implemented on April 1 of the following year (Kubo, Naito and Takahashi 2018). The law authorizes less-skilled migrants with the new visa category of Specified Skill Worker (SSW). The SSW visa program intends to deliver workers to specified industrial areas that “cannot secure workforce [domestically]” (MOJ 2019). Eleven out of these fourteen industries—all labor-intensive—are currently supported by trainees and students. The GOJ estimates about 345,000 migrants, all for the SSW-No. 1, a job type more menial than SSW-No. 2, to come from nine Asian nations within five years. For the first time in its postwar era, Japan opened its “front door” to basic foreign workers.

Concurrently, the Ministry of Justice (hereafter “MOJ”) announced official guidelines on the new acceptance program: “A Basic Policy for Implementation of the Institutions for the Designated Skill Residence Status,” the operation blueprint for the new visa program, and the “Comprehensive Measures

for Acceptance of and Coexistence with Foreign Workers,” instructions relating to the 126 programs designed to support workers’ amicable “coexistence” within Japanese society in terms of communication, everyday life, recruitment, and foreign resident control.<sup>1</sup> The program’s “coexistence” goal is bolstered by a large ¥13.4 billion (about US\$122.6 million) budget, far more generous than the past budget appropriations (for instance, ¥1.7 billion in 2012 or ¥1.9 billion in 2017), which suggests the Japanese state’s formal (if not genuine) commitment to openness and inclusiveness. Observing this and other policy changes, many conclude that Japan has become a nation of immigrants. (Liu-Farrer 2020; Green 2017).

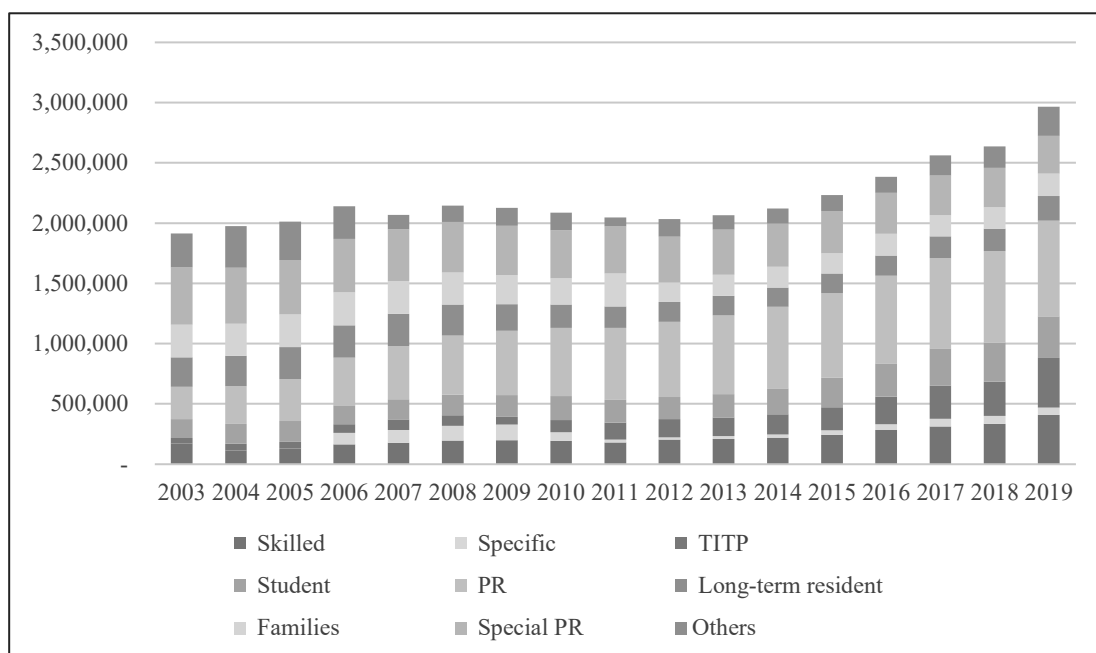


Chart 1: The Number of Foreign Residents by Visa Status (2003-2019)

Source: MOJ, zairyū gaikokujin tōkei [Statistics on Foreign Residents].

<https://www.e-stat.go.jp/statistics/00250012>.

### Changes and continuities in the flawed immigration system

In the nine months following its implementation, the SSW program brought in 1,621 foreign workers from nine countries (as of the end of 2019). This tally is much lower than the official maximum projection of 47,000 foreign workers per year. In contrast, the number of Technical Intern Training Program (hereafter “TITP”) workers and student arrivals continues to increase, accounting for 45.7% of the total foreign workforce as of October 2019 (MHLW 2020). This means that Japan’s heavy dependence on foreign workers for the labor-intensive sectors has unchanged. Also unimproved were

the poor working and living conditions for these Asian workers. (Another problem is their sudden “disappearance,” ostensibly escaping their abusive employers and going “irregular.”) Further, there are other grave but untouched problems associated with *nikkei* South Americans, migrants’ dependents, especially children, or so-called “irregular (or undocumented) migrants.” For instance, how can Japan ensure their rights (workers’ rights as well as human rights) and integrate them into a larger society (especially in education and culture)? Should temporary workers be allowed family reunions after many years of stay or is a company free to dismiss them and send them home, as they did to *nikkei* South Americans in the 2000s, or following the economic crisis triggered by the Covid-19 pandemic? These quandaries, if left unsolved, are likely to impede Japan’s immigration policy in the long run. The hiatus between the state’s official willingness to be open and the exclusionary reality is too grave and harmful to migrants as well as Japan’s multicultural future. Is it still tenable to assume that Japan is on the right track for immigration liberalization and migrant incorporation?

Indeed, institutional shortcomings or voids in Japan’s immigration (and integration) policy are too multifaceted and complicated to be discussed in a significant way in this article. Therefore, I focus on the above-noted SSW program (qua immigration liberalization) as well as immigration control administration (qua restriction) by the Immigration Services Agency (ISA) and examine the political implications of these policies as well as the tacit intent of the Japanese state regarding immigration and frame them in the trajectory of institutional development of Japan’s immigration system.

In a nutshell, the SSW program is an integral part of Japan’s “strict rotation” policy that ensures seamless in- and out-flows of temporary workers without their long-term or permanent settlement. Perhaps the architects of the SSW program, the MOJ bureaucrats, squarely wished to mend the otherwise unsustainable migrant acceptance program.<sup>2</sup> As can be seen in the above-noted “Comprehensive Measures for Acceptance of and Coexistence with Foreign Workers,” the new program addressed perceived problems, particularly regarding TITP, in terms of wages (e.g., underpayment by many employers), working conditions (e.g., overwork and job change prohibitions), and human rights (e.g., poor living conditions, passport withholding, and physical or mental abuse). SSW workers are guaranteed wages and working conditions commensurate with Japanese nationals, free job and residential mobility, protection from exploitative brokers (via direct employment), and support from employers for “[migrant’s] comfortable living.”

Meanwhile, the SSW program treats less-skilled migrants as temporary (in other words, “disposable”) and provides them less privileges than to their high-skill peers. For instance, the SSW visa offers a path to permanency, but permanency is almost impossible for most basic migrants under what I call the “double-decker” structure.<sup>3</sup> Family reunions are also not allowed for SSW-No.1 workers (for less-skilled work), to the disadvantage of young migrants. (Endoh 2019; Milly 2019). In the eyes of the policy’s critics, it is the same wine (a de-facto guest worker program) in a different bottle. But this is

the MOJ's intended rendering. Justice Minister Yamashita Takashi's staff testified at the Legal Affairs Committee of the Upper House, that "the hurdle [from SSW-No. 1 to No. 2] is made fairly high" when questioned as to whether [the SSW double-decker system] would lead SSW-No. 1 workers to permanency (Urano and Uchiyama 2018).

In the past three decades, the ISA, a bureaucratic offspring of the MOJ since 2019 and the chief administrator of immigration including SSW visas, is augmenting its role as the nation's gatekeeper. The agency administers (1) immigration (or landing), (2) alien residence beyond ports of entry, and (3) deportation. Chart 2 tabulates newly-introduced major rules and institutions to liberalize (L) and restrict (R) immigration since 1989. The chart illustrates the trajectory of institutionalization of immigration restriction. In short, the ISA has been rigorous in flexing its stringent muscles against the "undesirable" foreign persons, almost in parallel to immigration easing (for details, especially about the enhancement of the alien residence control system, see Endoh 2019).

Illustrations of these "parallel" developments include: the criminalization of incitement of illegal employment [against employers] in 1990 and exposure campaigns of ICA violators from 1991 while preparing new visa status for talents and *nikkeijin* (foreign-nationals of the Japanese ancestry) in 1990; criminalization of overstays in 2000 and the campaign to "halve irregular stayers" starting in 2004, in parallel to the expansion of the TITP program to special economic zones in 2002; and the introduction of the mandatory Resident Card system, contemporaneous with the points-based system for talent migrants, both starting in 2012. With the revised ICA (Law No. 88 in 2016), the MOJ-ISA bloc augmented measures against "disguising residence" (*gisō taizai*) and attempts to immediately revoke the visas of those who "engaged in unauthorized activities," such as visa fraud, sham marriages, bogus asylum claims, or misdemeanors (such as a failure to update registration information).<sup>4</sup>

The ISA's pivoting to strictly managed migration led to large-scale removals of "unfavorable foreign residents." The number of foreigners whom the MOJ ordered deported (hereafter "deportees") surged during the 1990s, particularly from 1992 to 1994, with 203,846 individuals ordered to leave Japan.<sup>5</sup> Another surge came during the 2004–2006 period, with 168,933 foreigners ordered to be deported. The Koizumi Jun'ichiro administration (2001–2006), the MOJ, the police, and the Tokyo Metropolitan Government formed a joined taskforce to "halve unauthorized stayers within five years" subsequent to Japan's participation in international counter-terrorism efforts.<sup>6</sup> Even after the campaign period, more than ten thousand foreigners were ordered deported every year. The tally has been steadily rising recently, with the latest figures showing 16,260 deportation orders in 2018 and 19,386 in 2019.

The MOJ's statistics show the percentage of deportees charged with illegal stays according to their visa status: short-term stay visas (32.8%), TITP visa (24.0%), specific activity visa (16.7%), or student visa (13.4%) (MOJ 2019). The deportees were predominantly male (more than 67% in 2019). They originated from Vietnam (33.8%), China (22.0%), Thailand (11.8%), and other developing countries

(all data for 2019). Ostensibly these irregular migrants were basic temporary workers, —strongly needed by the Japanese economy (66.1% of males and females engaged in unauthorized work). They were economically needed, but their long-term settlement unwanted. The nation’s gatekeeper seems determined to put forth the state’s strict rotation policy as well as its own mandate for security, order, and safety, and thus flexing its restrictive muscles against “transgressors.”

## Concluding remarks

As of writing, amidst the Covid-19 pandemic, uncertainties about the future development of Japan’s immigration policy are looming. Cross-border human mobility, immigration included, is being arrested acutely. Further, worsening economic conditions and possible transformations in socio-economic activities, industrial operations, or employment, will inevitably compel the GOJ to adjust or modify its foreign worker acceptance policy. Perhaps it is too soon to make any critical assessment of the effectiveness of Japan’s renewed immigration policy. Nevertheless, by observing the past trajectory of the parallel development of institutions of immigration easing and restriction, compounded by the ISA’s pivoting to the latter, I tentatively conclude that Japan is likely to uphold its conventional strict rotation approach toward less-skilled migrants.

In his comparative study of Canadian and U.S. immigration policies, the historical institutionalist Triadafilos Triadafilopoulos presented the model of policy transformation from restrictionism to liberalization into three phases: “stretching” (i.e., procrastinating fundamental transformation), “unraveling” (i.e., reckoning existing shortcomings), and “shifting” (i.e., achieving transformation) (2010). Cast into this transformative trajectory, Japan’s reform movement has been stalled in the “stretching (of established policy essence)” stage, broaching ‘cosmetic’ changes in order to “diffuse and coopt criticism” while skirting major changes (Triadafilopoulos 2010, 174). For the immigration policy to be sustainable and successful, regime “unraveling” or “shifting” is arguably indispensable, involving a fundamental change in the current flawed immigration system for a diversified and inclusive Japan. A driver for such a radical change is unlikely to be endogenous, given the MOJ’s conservative temperament and its extrajudicial status (Endoh *forthcoming*). The force should come from outside then, via a broad political alignment among genuine reformers within the polity and bureaucracies and with civic allies. That has yet to be seen.

## Notes

- <sup>1</sup> Gaikoku jinzai no ukeire/kyōsei no tameno sōgōteki taiōsaku [A comprehensive measure for acceptance of and coexistence with foreign-born talents]. Available at: <http://www.moj.go.jp/content/001280364.pdf>
- <sup>2</sup> For instance, a high-ranking MOJ official admitted that the trainee and student visa systems were a “pastiche so as not to authorize foreign workers’ immigration.” Naoki Urano and Shohei Sasakawa (2018), “Shin zairyū shikaku, mienu zen-yō [Unclear picture of the new residence status].” *Asahi Shimbun* November 3.
- <sup>3</sup> The SSW status consists of two tiers: SSW-No. 1 for more basic skills, and SSW-No. 2 for more advanced skills. Currently, only construction and shipbuilding are designated as SSW-No.2, and both are on hiring freezes. Therefore, the two-tier mechanism rebuffs most temporary migrants from longer or permanent status since the more privileged No. 2 tier, including family reunion and quicker permanency, requires “as advanced skills as a talent visa” in Justice Minister Yamashita Takashi’s explanation.
- <sup>4</sup> Forty-five percent of those whose visas were revoked held student visas, and the authorities suspect that these foreigners were staying illegally after having left school. Ministry of Justice, Bureau of Immigration Control (2017) *Shutsunyūkoku kanri hakusho* [White paper on immigration control]. Report. Tokyo, p. 70. Available at: <http://www.moj.go.jp/content/001240071.pdf>
- <sup>5</sup> Source: MOJ, *Shutsu nyūkoku zairyū kanri gyōsei kankei tōkei* [Statistics on immigration and residence control administration], 1990–2019.
- <sup>6</sup> Hanzai taisaku kakuryō kaigi [Cabinet Meeting on Crimes] (2003), “Hanzai ni tsuyoi shakai no jitsugen no tameno kōdō keikaku [Action plans for practices towards crime-resistant society]” (December).

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Chart 2: Major changes in immigration and alien residence control regime

	Liberalization	Restriction		
		Immigration	Residence control	Deportation
1989 ICA revision				
1990	New visa status (for skilled workers, <i>nikkeijin</i> , etc.)		Mandatory authentication of aliens' work eligibility	
1993	Abolishment of finger-printing requirement for permanent residents TITP program started		Criminalize incitement of illegal employment [regarding employers]	Intensive campaign programs to expose foreigners violating the ICA started
2000			Criminalizing unauthorized stays	
2003		Cabinet decision on measures against international organized crimes	Halving unauthorized stays campaign	
2004			Revocation of residence status for an alien resident falsifying her info.	Heavier fines on overstayers
2005	Easing requirements for permanent resident visa; extension of period of residence for some visa	Strengthening requirements for entertainer visa		
2006	MOIAC declaration of promotion of "multicultural coexistence"	Biometrics requirement at immigration inspection		
		"Good behavior" added to requirements for <i>nikkeijins'</i> long-term residence visa		
2007	Started to accept EPA nurses and careworkers		Reporting on foreigner employment made mandatory (by MHLW)	

2009 ICA revision				
2009	Maximum period of residence extended from three to five years	Japanese-language test required for visa renewal of the third generation <i>nikkeijin</i>	Alien residence control system based on Residence Card established	Public-funded return of <i>nikkeijins</i>
2012	Points-based Preferential Immigration Treatment for Highly Skilled Foreign Professionals started			
2016	Fast-track visa approval system for skilled migrants	Strengthening measures against sham foreign residents		Measures against disguising residence; visa revocation against law-breakers
	Enacted the law on protection of TTP migrants			
2018 ICA revision				
2019	Specified Skilled Workers program started		Guidelines on strict management of school attendance of foreign students	Provisional release to de-crowd detention centers amidst Covid-19
	Cabinet decision on “Comprehensive Measures for Acceptance of and Co-existence with Foreign Workers”		Disqualifying TTP and SSW-1 visa workers for permanent residence	

Note: “Liberalization” includes protective measures.

Source: Composed by the author.