

The potential of temporary migration programmes in future international migration policy

Martin RUHS*

A number of high-income countries have been considering the (re-) introduction or expansion of temporary migration programmes (TMPs) as a policy instrument for managing labour immigration. For example, the United States is contemplating the introduction of a new, large-scale guest-worker programme for Mexican workers. The United Kingdom is already experimenting with a new pilot scheme for the temporary employment of migrant workers in selected low-skill occupations in hospitality and food processing. Italy and Spain – two recent countries of immigration – are also actively pursuing TMPs, most of them within the framework of bilateral agreements with labour-sending countries in northern Africa and Latin America.

However, the re-emergence of TMPs is highly controversial in the academic and policy communities. Critics argue that such programmes are both unworkable and undesirable in a liberal democracy. This argument is primarily based on the fact that many of the past guest-worker programmes – most notably the *Bracero* programme in the United States (1942-64) and the *Gastarbeiter* programme in Germany (1955-73) – failed to meet their stated policy objectives, while generating a number of unanticipated consequences. These included the non-return and eventual settlement of many guest workers. The slogan “there is nothing more permanent than temporary foreign workers” has been a popular summary statement of the perceived failure of past guest-worker programmes.¹

* ESRC Centre on Migration, Policy and Society (COMPAS), University of Oxford, email: martin.ruhs@compas.ox.ac.uk. This article is based on a working paper prepared by the author for the Global Commission on International Migration (GCIM), with the support of the GCIM and the Economic and Social Research Council (ESRC).

¹ There is a plethora of studies providing empirical evidence for the “policy failures” of past guest worker programmes. For overviews, see, for example, Castles (1986) and Martin and Teitelbaum (2001).

The advocates of new and improved TMPs do not dispute the adverse consequences that such programmes have had in the past (see, for example, Schiff, 2004; Martin (2003)). What they do argue is that innovative policy designs could help to avoid past policy mistakes and generate significant benefits all round, including for migrant workers and their countries of origin. For example, in its recent report to the Secretary-General of the United Nations, the Global Commission on International Migration suggested that “states and the private sector should consider the option of introducing carefully designed temporary migration programmes as a means of addressing the economic needs of both countries of origin and destination” (GCIM, 2005, p. 16).

This article explores the potential of temporary migration programmes for helping to manage international labour migration in a way that is both practical and sensitive to the interests of all sides involved. More specifically, following a definition and brief typology of TMPs, the paper discusses whether and how such programmes can: (a) help high-income countries to meet their labour market needs; (b) provide people from low-income countries with better access to labour markets in higher-income states; (c) maximize the developmental impact of migration in countries of origin; and (d) address concerns in high-income countries about the permanent settlement of migrants and the diversity of their societies.² The discussion draws upon the outcomes and policy experiences of various past and existing TMPs. In conclusion, it identifies the core considerations and policies needed to formulate and effectively implement TMPs.

Temporary migration programmes: Definition and typology

Definition

Discussions of TMPs frequently suffer from confusion in the definition of such programmes. For example, critics sometimes seem to assume that, by definition, migrant workers admitted and employed under TMPs can never acquire permanent residence. Conversely, some proponents of temporary migration schemes appear to take for granted that migrants automatically acquire rights over time and that employment as a temporary worker is simply a first step toward permanent

² The distinction between low-income, migrant-sending countries and high-income, migrant-receiving countries is a convenient simplification. Of course, it is important to recognize that there is significant migration to middle-income countries, and also between low-income countries. In 2000, it was estimated that 37 per cent of the world’s international migrants lived in developing countries (IOM, 2005).

residence. Both of these assumptions are unhelpful because they introduce an immediate bias to how TMPs are evaluated.

This article uses a simple but strict definition of a TMP that could, in principle, provide the basis for a wide range of temporary migration policies. For the purpose of this article, the key feature of a TMP is that *residence and employment on the basis of a temporary work permit alone does not create an entitlement to stay permanently in the host country*. This definition obviously implies that migrants whose temporary work permits have expired, and who have not been accorded permanent immigrant status (see below), lose their right to residence in the host country and are thus expected to return home or migrate elsewhere.

At the same time, it is important to emphasize that the above definition does not exclude the possibility that some migrants admitted under TMPs may eventually be granted permanent residence in the host country. Rather than making this a right that migrants can acquire by virtue of their residence and employment on temporary work permits alone, it implies that *the granting of permanent residence for migrants on temporary work permits remains at the discretion of the host state*.

In principle, there is a wide spectrum of criteria that host states could use to decide whether to grant permanent immigrant status to migrants employed on temporary work permits. Furthermore, these criteria may vary over time and across countries. For example, a host country may decide – say, on economic grounds – to grant permanent residence to some or most migrants who manage to have their temporary work permits renewed for a certain number of years.³ Host countries may also grant temporary migrants permanent residence on non-economic grounds, such as marriage to a citizen or a permanent resident. A third and more extreme policy position would be never to grant permanent residence to any – or a certain category of – migrant workers admitted on temporary permits.⁴

While there are thus different approaches to the issue of permanent residence for migrants employed on temporary work permits, the common feature is that the granting of permanent residence by the host country is discretionary, i.e. based on particular criteria, rather than a specified period of residence in the host country alone.

Lastly, for the sake of clarity, it is worth emphasizing that the definition suggested above does *not* mean to make a normative statement

³ For example, under the United Kingdom's current main work permit programme for skilled migrant workers, migrants employed on temporary work permits may apply for "indefinite leave to remain" (i.e. permanent residence) after four years of employment in the country.

⁴ The current work permit policies of Singapore and many of the states of the Gulf Cooperation Council (GCC) are cases in point. In Kuwait, for example, there is effectively no possibility for migrants employed on temporary work permits to acquire permanent residence. In Singapore, the same applies for migrants employed on temporary permits for employment in low-skill jobs.

about whether or not migrants admitted under a TMP *should* eventually acquire the right to permanent residence in the host country.⁵ Its purpose is to facilitate a transparent discussion of TMPs that is based on an acknowledgement of the core feature of the theoretical concept of TMPs, namely, that a migrant's stay and therefore employment is temporary.

Typology

TMPs may take on a variety of forms and policy structures. Broadly speaking, such programmes may differ with regard to: (i) the mechanisms for *admitting* migrant workers, including the existence of bilateral recruitment agreements with sending countries; (ii) the policies for *selecting* migrants, including the required skill level for eligibility, and migrants' sector of employment in the host country; (iii) the *rights* granted to migrants after admission including the duration of, and conditions attached to, the work permits issued; and (iv) the primary policy *objectives*.

Mechanisms for regulating admissions

One may broadly distinguish between three modes of regulating the number of (annual) admissions under a TMP: quotas; economically oriented work permit fees; and *laissez-faire*. For example, in the United States, Congress sets an annual quota for the number of skilled and specialized migrants admitted under the H-1B programme.⁶ Annual quotas are also used in Austria, where they apply to both employment and residence policy (see the discussion in Cholewinski, 2005). In contrast, Singapore manages the size of temporary labour immigration by means of a system of "foreign worker levies" – payable by the employer for each migrant worker employed – that are specific to the sector of employment and the skill level of the migrant worker.⁷ Finally, before the enlargement of the European Union (EU), Ireland's temporary work permit system was a good example of a TMP based on *laissez-faire*, whereby the annual number of permits issued is simply determined by employers' demand for migrant workers.⁸ Each of these

⁵ Normative issues arising from TMPs are briefly raised in the conclusion to this article and discussed in more detail in Ruhs and Chang (2004).

⁶ The quota for 2004 was 65,000, excluding dependents who are allowed to join the H1-B visa holder in the United States.

⁷ See the web site of the Singaporean Ministry of Manpower at www.mom.gov.sg

⁸ Given Ireland's booming economy, the number of work permits for non-EEA nationals increased from less than 6,000 in 1999 to almost 48,000 in 2003, before declining – because of EU enlargement – to 34,000 in 2004 (see Ruhs, 2005a).

admission policies may or may not be accompanied by some sort of “labour market test” that aims to ensure that migrant workers are only admitted after employers have seriously and unsuccessfully searched for local workers to fill the existing vacancies.

Bilateral agreements

TMPs may be open to nationals of any country or operate on the basis of bilateral recruitment agreements or MOUs.⁹ Examples of the latter include the United States’ *Bracero* programme (for Mexican farm workers, 1942-64); Germany’s *Gastarbeiter* programme (bilateral recruitment agreements with eight different countries, 1955-73);¹⁰ and some of the recent TMPs introduced in Spain (including bilateral agreements with Columbia, Ecuador and the Dominican Republic since 2001) and in Germany (e.g. the MOU with Poland, facilitating a contract-worker scheme since 1996).

Required skill level

TMPs may also specify the skill level required for migrants to join the programme. In fact, most countries that use TMPs to manage labour immigration operate different programmes for skilled and low-skilled migrants. Examples include: the United States (the H1-B programme for workers in specialty occupations; the H2-A/B programmes for low-skilled foreign workers); the United Kingdom (the main work permit scheme for skilled workers; and a number of sector based programmes for the employment of migrants in low-skill jobs); and Singapore (“employment passes” are issued to highly skilled workers with wages above a certain level; “work permits” are issued to workers with wages below a certain level).

Sector of employment

In order to make up for sector-specific labour shortages, TMPs may admit migrants for employment in specified sectors only. For example, most seasonal programmes, such as seasonal agricultural worker schemes, are sector-specific. The United Kingdom has recently introduced a new Sector Based Scheme (SBS) for the temporary employment of migrant

⁹ There has recently been a significant increase in the number of bilateral recruitment agreements in OECD countries (for a recent review, see OECD, 2004).

¹⁰ Germany struck bilateral recruitment agreements with Italy (1955), Spain and Greece (1960), Turkey (1961 and 1964), Morocco (1963), Portugal (1964), Tunisia (1965) and Yugoslavia (1968).

workers in low-skill occupations in the food manufacturing and hospitality sectors.¹¹ Ireland issues work visas/authorizations for skilled migrants to be employed in a list of “shortage occupations”.

Duration of the work permit

The work permits issued under the majority of past and current TMPs are valid for a period ranging from three months to five years. Permits that are valid for less than a year are typically issued under seasonal programmes addressing strictly temporary (including seasonal) labour shortages. Examples include Canada’s Seasonal Agricultural Worker Programme (CSAWP) and the United Kingdom’s Seasonal Agricultural Workers Scheme (SAWS). Most of the traditional “guest-worker programmes” issued permits that were valid for at least one year. In most, but not all, cases such work permits were renewable, either for the same period that the initial permit was valid for, or for a longer period as was the case under Germany’s *Gastarbeiter* programme.¹² Some, but again not all, TMPs set a limit on the number of times that a temporary work permit can be renewed.¹³

Conditions attached to the work permit

Almost all TMPs require migrant workers to work for the employer specified on the work permit only.¹⁴ Other restrictions of migrants’ rights – especially the right to family reunion and access to public services – vary between countries and programmes.¹⁵ For example, Ireland grants temporary migrants the right to family reunion, but only if they can support their immigrating dependents without recourse to public funds. In the United Kingdom, a similar rule applies to skilled migrants.¹⁶ In both the

¹¹ In June 2005, however, the scheme was closed for the hospitality sector because of alleged abuses (see Home Office, 2005b) and the availability of workers from the new Member States of the European Union who have been able to work in the United Kingdom without work permits since the Union’s enlargement on 1 May 2004. The Government thus expects employers in the hospitality sector to meet all of their needs for low-skilled labour from within the enlarged European Union.

¹² Under the *Gastarbeiter* programme, work permits were initially issued for a renewable period of one year. After three years of residence, work permits could be issued for two or more years.

¹³ For example, the Swiss *Ausländerausweis B* programme issues work permits that are valid for one year and renewable for an unlimited number of times. In contrast, temporary work permits for low-skill migrants in Singapore are valid for two years and are renewable only once. Similarly, in the United States, H1-B permits for skilled workers are issued for three years and renewable only once.

¹⁴ The main exceptions are TMPs for highly skilled workers. For example, under the United Kingdom’s Highly Skilled Migrant Programme (HSMP), migrants are admitted into the country without having a prior job offer. Once they have found a job, they are free to change employers.

¹⁵ For a recent overview of the legal status and rights of migrants admitted for employment in selected European countries, see Cholewinski (2005).

¹⁶ Migrants employed on temporary SBS permits (for employment in low-skill jobs in hospitality and the food processing sector) cannot apply to bring dependents into the United Kingdom.

United Kingdom and Ireland, migrants' access to public services and benefits, including unemployment benefits, is regulated by the "habitual residency test", which means that migrants become eligible for certain benefits only after they have been in the country for a certain minimum period of time. For another example of restrictions of temporary migrants' rights, in Singapore, low-skilled migrants employed on temporary work permits do not have the right to marry, or cohabit with, a Singaporean or permanent resident. Obviously, no such rules apply to migrants in liberal democracies.

Policy objectives

Not all TMPs are exclusively driven by the goal of alleviating labour shortages in the host country. Other policy objectives have included: the reduction of irregular¹⁷ immigration (a major policy objective of many bilateral recruitment agreements struck by Italy and Spain); the promotion of special post-colonial or political relationships and of cultural ties and exchanges (e.g. the "Working Holidaymaker" schemes in Australia, Ireland, New Zealand and the United Kingdom); and the training of migrants (e.g. the "trainee schemes" in Switzerland).

Of course, it needs to be added that stated objectives of a TMP do not always correspond with the actual policy objectives in practice. For example, some countries have effectively used the Working Holidaymakers scheme or trainee schemes for the purpose of filling labour shortages. It is well known that the trainee schemes in Japan and the Republic of Korea have been used primarily for this purpose rather than to provide training for migrants. Australia, for its part, recently announced that it would significantly increase admissions under its Working Holidaymaker programme to help with seasonal harvest work.

The foregoing overview of the various dimensions of TMPs clearly shows that there is significant room for policy variation in such programmes. Of course, the optimal decisions on the various policy parameters will always critically depend on country-specific institutional settings and economic circumstances. So, rather than engaging in a detailed discussion of the advantages and disadvantages of different types of TMPs, the remainder of this article will focus on an evaluation of TMPs as defined above in the most general terms.

Helping high-income countries to meet their labour market needs

Most high-income countries of immigration now recognize the need for migrant labour at both the high- and low-skill ends of the labour

¹⁷ In line with ILO usage, this article uses the terms "irregular immigration" or "irregular migrants" instead of "illegal immigration" and "illegal migrants".

market. Examples of high-skill occupations requiring migrant workers include occupations in the health sector, information technology (IT), and finance. In many countries, migrants are also already filling vacancies in low-skill jobs in the hospitality sector, construction, cleaning, agriculture and food processing. The primary question is thus not any longer whether there is a need or, as economists prefer to call it, *demand* for migrant labour, but rather how big this demand is, and what policies are needed to meet it.

To answer the first question, it is necessary to recognize that, regardless of economic conditions and the number of vacancies advertised in a given economy, there is always a need for host countries to *manage the demand for migrant labour*. This is because the level of labour immigration that is in the interest of individual employers is unlikely to coincide with that in the best interest of the economy as a whole. More specifically, any assessment of the size of the required migrant workforce needs to take account of three considerations.

First, individual employers' demand for labour critically depends on the cost at which workers can be recruited and employed. Importantly, the cost of employing migrant workers is not only determined by employers' recruitment and wage costs but also by the employment conditions at which migrant labour is available. For example, if employers are in a position to lower costs by offering wages and employment conditions that are below minimum standards, the demand for migrants is likely to be higher than what it would be if employment laws were enforced. There is thus a need to make sure that the demand for migrant workers identified by employers is in fact a demand for workers who can be – and end up being – employed in compliance with existing employment laws and regulations.

Second, unless a decision has been taken to grant migrant workers from certain countries the right to employment in the host country without any restrictions,¹⁸ it is generally accepted that local workers should enjoy a right to preferential access to the national labour market.¹⁹ This means that any demand for migrant labour must be residual, i.e. demand for labour that remains after employers have made all reasonable efforts to recruit local workers. Any assessment of the demand for migrant workers must thus ascertain that employers have indeed made such efforts and that no local workers are available to fill the advertised vacancies.

¹⁸ Recent examples include the decisions of the United Kingdom and Ireland to grant migrants from the ten new EU Member States free access to the British and Irish labour markets.

¹⁹ The definition of "local workers" varies across countries. A narrow definition includes citizens only. Broader definitions could include all permanent residents or even all nationals of a certain group of countries. For example, in any country of the EU, all nationals from within the EEA – the EU plus Norway, Iceland and Liechtenstein – enjoy an equal right to preferential access to the labour market vis-à-vis "third-country" nationals.

Third, another important reason for the need to manage the demand for migrant labour is that the employment of migrant workers is often only one of various possible ways in which employers may respond to perceived shortages of labour. The full range of potential responses includes: (i) increasing the capital- or technology-intensity of production; (ii) relocating to countries where labour costs are lower; (iii) increasing the working time of currently employed workers or trying to recruit inactive or unemployed local workers (which may require raising wages and/or improving working conditions); (iv) switching to less labour-intensive commodities or services; and/or (v) recruiting migrant workers. Not all of these options are available to all employers at all times (e.g. it is clearly impossible to relocate the work of waiters in hotels and restaurants), but many employers are likely to have at least some alternatives to the employment of migrant labour.

An employer's decision on how to respond to a perceived labour shortage will naturally depend on the relative cost of each of the available options. If the costs of employing migrant workers are very low, employers will not consider the alternatives. It could be argued, for example, that a ready supply of cheap labour may discourage some employers from modernizing production processes, and thus potentially lead to a situation where inefficient companies and industries remain viable only because they are "subsidized" by a cheap immigrant workforce.²⁰ This may be in the short-term interest of individual employers but not in the long-term interest of the host country's economy – hence the need to regulate the relative cost at which migrant workers are available to local employers. This would help create the right incentive structures for employers' decisions on how best to respond to perceived labour shortages. From this perspective, immigration can and needs to be considered as a tool of both labour market policy and industrial policy.

Many past and existing TMPs have not been successful at helping immigration countries to manage their demand for migrant workers in the ways described above. For example, temporary programmes have frequently failed in protecting the employment conditions of migrants. Often, they have also led to labour market distortions and the growth of structural dependence on the employment of migrant workers in certain industries. The latter has occurred because of labour market segmentation resulting from the emergence of "immigrant" sectors or occupations – typically hard and low-paid work – that become dominated by migrant labour and are eventually shunned by local workers.²¹

²⁰ Recent research by Lewis (2005, 2004) shows that growth in the supply of less-skilled labour has slowed the adoption of automation technology in selected manufacturing plants in the United States. For another example, see Martin and Olmstead's (1985) discussion of the mechanization controversy in United States agriculture.

²¹ For a discussion of the adverse consequences of five major guest-worker programmes, see Ruhs (2003).

Any efforts to use TMPs to manage (some of) the demand for migrant labour clearly need to learn from past policy mistakes. More specifically, at least three prerequisites must be met: (i) a strong policy commitment to enforcing immigration and employment laws, especially against employers; (ii) active regulation of the cost at which migrant workers are made available to employers; and (iii) more effective mechanisms for encouraging employers to search for local workers before demanding migrant labour.

Enforcing immigration and employment laws

The success of any TMP or general labour immigration policy critically depends on the host country's willingness and capacity to enforce the law strictly against all parties – recruitment agents, employers and migrant workers – who illegally circumvent the programme. In the absence of effective law enforcement, employers and migrant workers may indeed have very few incentives to join the TMP and will prefer (the continuation of) illegal employment arrangements instead.²²

Liberal and democratic host countries have a particularly poor record of enforcing the law against employers who illegally employ migrant workers. In 2002, for example, only 53 employers were fined for immigration violations in the whole of the United States (Cornelius, 2004). Similarly, between 1998 and 2004, only 17 employers were successfully prosecuted for illegally employing migrants under Section 8 of the United Kingdom's Asylum and Immigration Act 1996, the law preventing illegal work in the United Kingdom (Home Office, 2005c). In Ireland – a recent country of immigration – only three employers had been convicted of violating the 2003 Employment Permits Act by early 2005 (Ruhs, 2005a).

The failure to enforce sanctions against employers is widely agreed to be one of the most important factors in irregular immigration/illegal work and, ultimately, in the failure of labour immigration policies. This is because, in contrast to all other immigration control policies, employer sanctions serve the important purpose of addressing the *demand* for illegally employing migrant workers. Without policies that curb demand, policies aimed at minimizing supply (border control, deportations) are likely to be much less effective than they could be.

Clearly, to facilitate increased and more effective enforcement of employer sanctions, two conditions need to be met. First, effective imple-

²² This has been one of the main criticisms voiced against President Bush's initial proposal of introducing a new guest worker programme-cum-amnesty for Mexican workers seeking employment – or already employed – in the United States. The argument is that the policy will be ineffective unless irregular immigration is brought under better control.

mentation of employer sanctions needs to be *feasible*. Feasibility can be jeopardized by the spread of false documents, the rise of subcontractors and other intermediaries who often help evade enforcement, insufficient enforcement budgets, and insufficient co-operation between agencies (Martin and Miller, 2000). Most importantly, perhaps, employers need to be put in a position where they are able – and may be reasonably expected – to ascertain quickly whether a migrant has the right to work in the host country or not. Among other things, this requires policy-makers to provide employers with a clear list of documents that workers may provide to prove their right to work. It is also necessary to clarify the identity of the employer who can be held responsible for the violation of immigration and employment laws. This is particularly important in industries where employment relations are characterized by long chains of subcontracting, such as cleaning, construction and parts of the agricultural sector.

A second obvious requirement for effective enforcement of employer sanctions is a strong commitment and political will on the part of the host country's government to enforce the law against employers. There are signs in some countries that the commitment to enforcement is increasing,²³ but it clearly cannot be taken for granted. If employers demand migrant workers in numbers that are politically difficult or impossible to support, governments may be tempted to provide the demanded workers through "benign indifference" to irregular immigration rather than by expanding legal labour immigration. A frequently cited example of such benign neglect is the policy of the United States towards undocumented workers in agriculture, whereby internal and border enforcement efforts have been systematically relaxed during periods of high labour demand (Hanson and Spilimbergo, 2001).

It is also important to recognize that, in addition to enforcing legislation which pertains specifically to immigration and the employment of migrants, the host country must also take measures aimed at enforcing employment laws and regulations that apply to *all* workers, e.g. minimum wage regulations, health and safety regulations, protection of the rights to freedom of association and freedom from forced labour, etc. The non-violation of immigration laws – such as the requirement for employers to apply for work permits in order legally to employ some categories of migrants (e.g. non-EEA workers in the European Union)

²³ In the United Kingdom, for example, the Government says it intends to "develop closer joint working between departments responsible for enforcing workplace regulations. Departments are working together to develop a joint workplace enforcement team which will explore the scope for closer coordinated working between Government workplace enforcement departments to tackle both the use and exploitation of illegal migrant workers" (Home Office, 2005a, p. 30).

– cannot necessarily be taken as an indication of compliance with all the host country’s employment laws.²⁴

Regulating the cost of migrant labour

In order to create the right incentive structure for employers, TMPs could charge employers a monthly fee for each migrant worker employed under the programme. The fee would need to be set at a level high enough to provide local employers with sufficient incentives (a) to search for local workers who can be employed without paying the fee (this would effectively help protect local workers’ right to preferential access to the labour market) and (b) to consider alternative measures such as mechanization or outsourcing before considering the recruitment of migrant workers. If deemed necessary for the purposes of industrial policy, fees could be set at prohibitively high levels in industries considered to have lost comparative advantage to other, low-income countries.²⁵ The revenues from work permit fees could also be used to fund enforcement and integration assistance (Martin, 2003).

While most current and past TMPs have imposed administrative permit fees of some sort, Singapore has been among the very few countries to use economically determined fees to “micromanage” the inflow and employment of temporary migrant workers. According to Singapore’s Ministry of Manpower, “the foreign worker levy is essentially a pricing tool to bridge the wage differentials between foreign workers and local employees. It is primarily used to moderate the demand for foreign workers”.²⁶ For example, the current monthly levy for employing a skilled migrant in Singapore’s construction sector is S\$80; the corresponding levy for employing an unskilled construction worker from abroad is S\$470.²⁷

To implement fees effectively, two main challenges need to be overcome. First, the government of the receiving country needs to accept the proposition that the merits of micro-managing the employment of

²⁴ In Ireland, for example, the rapidly increasing employment of workers from the new EU Member States (“accession-state workers”) has been accompanied by a growing body of anecdotal evidence of unscrupulous employers’ illegal practices of employing accession-state workers in violation of Irish laws regulating minimum wages and employment conditions. In response, Irish trade unions and migrant organizations have been calling for a greatly increased number of labour inspectors (see ICTU, 2006).

²⁵ For most high-income countries, this may apply to labour-intensive manufacturing and, more controversially, parts of the agricultural sector.

²⁶ Quoted from the web site of the Ministry of Manpower of Singapore at www.mom.gov.sg

²⁷ In the first quarter of 2005, the *average* monthly wage in Singapore’s construction sector was S\$2,680 (see www.singstat.gov.sg).

migrant workers by setting employer fees outweigh the costs associated with increased government intervention. This may be a difficult step for governments with a strong preference for *laissez-faire* and minimal intervention in the domestic economy. Second, there is a danger that some employers will illegally deduct work permit fees from migrant workers' wages. If this happens, the fees will achieve none of their intended objectives and will simply serve to reduce the wages of migrant workers. To prevent this, work permit fees need to be effectively enforced with credible and significant penalties for employers who pass the fees on to their workers, or who employ migrants illegally so as to avoid paying the fees altogether.

Implementing effective labour market tests

Labour market tests are mechanisms that ensure that local employers recruit migrant labour only after having made every reasonable effort to recruit local workers. Such tests have proved notoriously difficult to implement in practice, not least because employers have shown considerable ingenuity in ensuring that no local workers are found to fill their vacancies when it suits them (Martin, 2003). In the worst-case scenario, both employers and local workers are actually not interested in engaging in employment relationships. This could happen where employers have a predetermined preference for employing migrant workers, and where local workers prefer to live off unemployment benefits rather than accept low-wage jobs.

Clearly, without the right incentives and enforcement, any labour market test simply becomes a bureaucratic obstacle that serves neither employers nor local workers. Importantly, failure of the labour market test also leads to a situation where the number of migrant workers admitted is no longer aligned with the economy's actual demand for migrant labour.

One way of maximizing the probability of success of a labour market test is to require employers to advertise vacancies at a wage set by the government. In order to protect the job opportunities and employment conditions of local workers, the set wage level should at least equal the average wage (and working conditions) prevailing in the target occupation and/or industry. A complementary measure aimed at ensuring that the recruitment of migrant workers does not adversely affect local workers is to require that no local workers be laid off during a specified period before and after the employment of a migrant.

Of course, any policy to test the labour market before issuing work permits will only be effective if it is enforced. In particular, there is a need for post-hoc enforcement that monitors whether or not employers meet

their obligations. The United States “labour certification system”²⁸ is an example of a system where the lack of enforcement has been a major factor in enabling some employers essentially to bypass the labour market test. As a result, migrant workers are sometimes recruited even when it is not clear that there is a shortage of local workers (see Lowell, 2005).

The implementation of a *two-tier system* may also help improve the outcomes of a labour market test. Specifically, in sectors or occupations which are verifiably known to suffer from shortages of local workers, some of the components of a labour market test could be waived (such as the requirement to search actively for local workers),²⁹ the remaining sectors/occupations would still be subject to a labour market test which could be more focused and therefore potentially more effective. Other possibilities for testing the labour market and, more generally, assessing employer demand for migrant labour include auctions (see, for example, DeVoretz, 2002) and other market-based tradable permit systems (see, for example, Weinstein, 2002). Of course, these are just suggestions rather than tried-and-tested solutions. But there is a need to experiment with innovative policies that might be more effective than most current policies in gauging employer demand for migrant labour.

The basic conclusion to be drawn from the discussion so far is that the effectiveness of TMPs in helping host countries to manage demand for migrant labour critically depends on the design and implementation of innovative policies that avoid past policy mistakes. This will require experimentation, resources and, most importantly, recognition that TMPs will always require a significant degree of government involvement if they are to be effective in meeting some of the labour market needs of host countries.

It is also important to recognize that TMPs alone are unlikely to suffice as a way of managing the employment of migrant workers to that end in high-income countries. For example, the restrictions on residence and employment necessarily associated with TMPs may not be suitable for recruiting highly skilled and specialized migrant workers such as doctors and IT specialists because of significant international competition for

²⁸ Employers in the United States who wish to apply for an H-1B work permit need to *attest*, among other things, that they will pay the migrant worker the higher of the actual wages paid to other workers similarly employed or the prevailing wage for the occupation in the vicinity; and that the employer will provide working conditions for H-1B workers that will not adversely affect the working conditions of similarly situated “US workers”. Until recently, “H-1B dependent” employers – i.e. firms with more than a certain proportion of H-1Bs in their workforce – also needed to attest that: no “US workers” are laid off for the three months before and the three months after hiring of the H-1B; and that significant efforts have been made to recruit US workers (see <http://workforcsecurity.doleta.gov/foreign/hiring.asp>).

²⁹ This is already done in some countries including the United Kingdom where certain shortage occupations are exempted from the labour market test. See www.workingintheuk.gov.uk

their skills. This has recently been illustrated by the failure of Germany's "Green Card" programme to attract significant numbers of highly skilled migrants by offering strictly limited five-year work permits.³⁰ The effective recruitment of "foreign talent" probably requires an offer of permanent residence immediately – or at least very soon – after arrival.

Providing better access to labour markets in high-income countries

Today's international economic integration is primarily driven by international trade and capital flows, with foreign workers playing a relatively minor role in the workings of the global economy. In 2000, the ratios of exports and the stock of outward foreign direct investment to world GDP were 22.1 per cent and 18.7 per cent, respectively.³¹ By contrast, the ratio of the estimated total stock of migrants to total world population was only about 3 per cent – based on an estimated global stock of 175 million migrants, the great majority of whom are migrant workers (see UNPD, 2002). This asymmetry in the globalization process is, of course, largely a result of the fact that most high-income countries have pushed for the liberalization of international trade and capital flows, while at the same time maintaining restrictions on labour immigration flows. As another reflection of this differential policy approach, the governance and liberalization of international labour flows has – so far – not been given the kind of international institutional support that has been in place for liberalizing international capital and trade flows (through the World Trade Organization, for example).

In most high-income countries, *labour* immigration policies toward low-skilled migrant workers are significantly more restrictive than those adopted toward skilled and highly skilled migrants.³² This holds true for most traditional immigration countries (e.g. Australia, Canada and the United States) and, at least until recently, the United Kingdom and most of the European countries that carried out guest-worker programmes for

³⁰ A few months after the introduction of the programme in August 2000, the original quota was increased from 10,000 to 20,000. But between August 2000 and July 2003, just under 15,000 Green Cards were issued. For a discussion of these figures and the extent to which the German Green Card system can be considered a failure, see Kolb (2005).

³¹ In 2000, the ratio of FDI outward-flows to total fixed capital accumulation was 17.8 per cent (UNCTAD, 2001). Of course, FDI figures are not strictly comparable to figures of GDP and fixed capital accumulation. The idea here is to merely give an indication of the overall magnitudes under consideration, rather than identify the exact degree of the integration of international capital markets.

³² Note the emphasis on *labour* immigration policies. Of course, many countries' family-based immigration and asylum policies do result in the inflow of significant numbers of migrants possessing relatively low levels of skills. In many countries, including Canada and the United States, labour immigration policies constitute only a small share of overall immigration policies.

workers of all skill levels in the 1960s and 1970s.³³ Notable exceptions include Singapore and the resource-rich countries in the Persian Gulf. These countries are using TMPs to admit and employ relatively large numbers of migrants for employment in low-skilled occupations.

Of course, given the demand in high-income countries for migrant labour at the high- and low-skill ends of the labour market, restrictions on low-skill immigration have not prevented large numbers of workers from low-income countries, and employers in higher-income countries, from circumventing the law and entering into illegal employment arrangements. For example, both the United States and the United Kingdom – two countries that have in recent years been relatively restrictive with regard to the legal immigration and employment of low-skilled migrant workers – are known to host significant numbers of migrants working illegally in low-wage jobs.³⁴

The introduction or expansion of TMPs could significantly increase the (legal) access of workers from low-income countries to labour markets in many high-income countries, especially at the low-skill end of the labour market where the opportunities for legal employment are currently most limited. However, to do so in a manner that increases the *overall* benefits for migrants, it is necessary to implement measures that: (i) ensure that the migration costs (e.g. travel and recruitment costs) incurred by migrants under a TMP are lower than those they would incur by migrating illegally; and (ii) minimize the danger that improved access to labour markets in high-income countries leads to pressure on migrants' employment conditions and exploitation while employed abroad.

Controlling the costs of migration

To facilitate access to labour markets in high-income countries, the migration costs borne by migrants under a TMP need to be lower than those incurred by workers migrating and finding jobs illegally. This will only be achieved if the payments that migrants typically make to smugglers who help them to cross borders illegally are not replaced by payments to unscrupulous employers selling work permits to migrants.

³³ Because of EU enlargement, the Member States of the pre-enlarged EU (EU15) are about to become – or have already become – significantly more open to the immigration and employment of low-skilled workers from the ten new EU Member States. Ireland, Sweden and the United Kingdom have already opened up their labour markets to accession state nationals who now no longer require work permits to take up lawful employment in those three countries; the remaining EU 15 countries are required to do the same by 2011 at the latest.

³⁴ Of course, this is not to say that irregular immigration and/or illegal working occurs only in countries that do not offer sizable labour immigration programmes for low-skilled workers. The question of whether and how legal immigration opportunities affect irregular immigration remains contested.

Although there is no evidence on the incidence of this practice, the sale of visas and work permits is known to have been a problem under a variety of TMPs in several countries. Ending such practices will require strict law enforcement against employers who sell visas and effective regulation of the private migrant recruitment industry that operates in receiving and sending countries alike.

Safeguarding migrants' rights

It is important to recognize that any TMP necessarily involves at least some trade-off between the economic gains typically associated with access to labour markets in high-income countries, on the one hand, and restrictions of some of the individual rights of migrants, on the other. For example, to align labour immigration with the economic needs of the host country, migrants admitted under a TMP will need to be required to work within a specified sector of the host country's labour market (see the discussion below). This requirement obviously restricts a migrant's right to freedom of movement in the host country's labour market, a right enjoyed by most people in their home countries.

Workers in low-income countries – especially those with scant opportunities for earning a better living for themselves and their families – are likely to accept at least some restrictions of their rights in return for improved access to labour markets in high-income countries. In fact, given the wide income inequalities between high- and low-income countries, migrant workers are sometimes willing to trade economic gains for restrictions in personal rights to an extent that may well be considered unacceptable in most liberal democracies. Extreme examples are migrant workers from developing countries who choose to migrate temporarily to the oil-rich Gulf states and Singapore despite grave restrictions on many of their employment-related and other rights while they are employed in those countries.

Better access for workers in low-income countries to labour markets in higher-income countries also means better access for employers in high-income countries to workers in lower-income countries. In “flexible” labour markets with weak mechanisms for enforcing labour laws and regulations, the increased supply of low-skilled migrant workers may enable unscrupulous employers to offer jobs at inferior working conditions. In order to prevent TMPs from allowing an almost unlimited trade-off between migrants' rights and economic gains, this calls for special safeguards that go beyond the immigration and employment law enforcement measures discussed above.

One of the primary sources of migrants' vulnerability while employed under a TMP is the requirement that they work solely for the employer specified on their work permit. Migrants may then find it difficult or impossible to escape unsatisfactory working conditions (unless

they are willing and financially able to return home). This problem may be exacerbated by some employers' illegal practices of retaining migrant workers' passports and providing "tied accommodation", i.e. accommodation provided by the employer on the condition that – and as long as – the migrant keeps working for that employer. Obviously, this may give employers excessive control over migrant workers, and lead to exploitation.

Effective protection of migrants' rights thus requires at least some portability of temporary work permits, enabling migrants to change employers whenever necessary. As mentioned above, however, it is important to recognize that immediate, complete and unlimited portability – across all occupations and sectors of the host country's labour market – would undermine the alignment of the size and composition of economic immigration with what is likely to be a sector-specific demand for migrant labour. In addition, this may also substantially reduce the propensity of local employers to recruit migrant workers because the latter would be free to leave the employer who recruited them before at least part of that employer's recruitment costs have been recovered.

A more realistic policy objective would be to facilitate the portability of temporary work permits *within a defined job category and after a certain period of time*. The duration of the period after which permits become portable requires a realistic assessment of the time needed for employers to cover at least part of their basic migrant worker recruitment costs. Arguably, this period is unlikely to exceed six months. In this connection, it is important to note that it may not be desirable for employers to be given a guarantee that they can recover *all* their migrant worker recruitment costs. Indeed, such a policy could significantly reduce the risks associated with hiring migrant workers relative to those associated with recruiting local workers (who may leave the employer anytime, i.e. also before the employer's investment in the workers has been recovered). This, in turn, could encourage employers to recruit migrant workers over local workers.

In addition to making work permits portable within certain occupations/sectors and after a certain period of time, another important supplementary policy would be to make it a criminal offence for employers to retain their workers' passports. Yet another would be to provide information to migrant workers about affordable housing opportunities, if they exist, other than those offered by the employer.

Maximizing the developmental impact of migration on countries of origin

There is now a substantial and growing number of studies that analyse the impact of international labour migration on economic develop-

ment in migrants' countries of origin.³⁵ The major areas of impact discussed in the literature pertain to: the transfer of remittances; production and labour market effects arising from the departure and/or return of workers (including issues related to the "brain drain"); and fiscal impact.

A general conclusion that can be drawn from existing studies and the experiences of countries of large-scale emigration – such as Egypt, Mexico and the Philippines – is that, on its own, sending workers abroad is highly unlikely to be an effective "development strategy". Furthermore, it is widely agreed that the various effects of emigration can include both costs and benefits, with the overall impact often remaining ambiguous. A recent ILO report on migrant workers in the global economy thus concluded that "migration can contribute positively to development where a country is already poised to develop; it cannot, however, create such a condition" (ILO, 2004, p. 30).

Compared to permanent immigration programmes or irregular immigration, TMPs could influence the effects of emigration in two major ways, namely, by increasing remittances and encouraging return.

Increasing remittances

TMPs could increase remittances in three different ways. First, as discussed above, by providing workers from low-income countries better access to labour markets in high-income countries, TMPs could significantly raise the number of migrant workers legally admitted and employed in high-income countries. This, in turn, could increase the total amount of remittances received by sending countries.

Second, migrants who intend to return – especially those with families in their home countries – can be expected to remit more of their wages than migrants who intend (and are permitted) to reside abroad on a permanent basis. Although the empirical evidence on this issue is mixed, a recent review of the literature suggests that remittances initially increase but eventually decrease with a migrant's duration of stay in the host country, reflecting the counteracting forces of wage increases (which increase remittances) and increased detachment from the home country (lowering remittances) over time (see Lucas, 2004).

Third, if effectively enforced, TMPs should afford better protection of migrants' wages and employment conditions than would be the case if the migrants were employed illegally. And higher wages could lead to more remittances.

It is important to emphasize, however, that a higher volume of remittances does not necessarily translate into greater development. In

³⁵ For recent reviews, see Lucas (2005); Martin (2004); Commander, Kangasniemi and Winters (2004); House of Commons International Development Committee (2004); Ellerman (2003); and Van Hear and Sorensen (2003).

fact, the effects of remittances are generally held to be mixed, both in theory and practice.³⁶ On the one hand, the theoretical benefits of remittances include: an easing of foreign exchange constraints and improvements in the balance of payments; higher savings and investment capital, plus the multiplier effects from additional spending; improved access to education and health care funded by remittances; and social-capital formation, which may contribute to economic development. On the other hand, remittances that are predominantly spent on conspicuous consumption could increase inflation. It has also been suggested that remittances could harm economic growth by inducing a diminished work effort and labour supply on the part of their recipients (Chami, Fullenkamp and Jahjah, 2003).

One of the few firm conclusions that can be drawn from the literature on remittances is that their effects – including their potentially positive impact on development – critically depend on their *use* in the labour-sending countries.³⁷ It can then be argued that, compared to irregular immigration, TMPs could encourage a productive use of remittances by offering migrants access to legal channels for transferring money to their home countries. Although sending remittances through legal rather than informal channels may not necessarily affect the overall volume of remittances (see Pieke, Van Hear and Lindley, 2005), money sent through legal channels has a higher probability of being saved in formal bank accounts and thus lead to productive investments by others in migrants' countries of origin.

Benefits from migrants' return

TMPs encourage the return of migrants after their work permits have expired. In theory, the return of migrant workers to their home countries can benefit economic development in a number of ways. First, it could help reverse some of the adverse effects associated with the emigration of skilled and highly skilled workers, such as doctors and nurses. Second, some workers may also acquire knowledge and skills abroad which may be transferred and used productively upon their return to their home countries. Third, returning migrant workers could use their savings to set up businesses and thereby generate wider developmental benefits for the communities in their home countries. Again, policies unrelated to the TMP itself, such as measures that help returning migrants to re-integrate and set up businesses, could make a big difference to the materialization of these potential benefits in practice.

³⁶ For a review of the potential benefits and costs of remittances, see Russell (1986).

³⁷ For discussions about how to maximize the development impacts of remittances, see Carling (2004) and Lowell and de la Garza (2000).

There is some evidence, albeit not clear-cut and undisputed, to suggest that TMPs can do more than permanent migration programmes or irregular migration to maximize the developmental returns to emigration for countries of origin. What is clear, however, is that TMPs can only succeed in doing so *if* they are accompanied by conducive policies in migrants' countries of origin including, say, measures that encourage a productive use of remittances. Of course, a critical assumption throughout the foregoing discussion has been that migrants employed under TMPs actually do return to their home countries after their work permits have expired. The policies required to help achieve this in practice are discussed in the following section.

Addressing concerns about the permanent settlement of migrants and social diversity in receiving countries

Many of the TMPs implemented in continental Europe in the 1960s and 1970s eventually led to the permanent settlement of guest workers, family reunion and the emergence of new ethnic minorities. The outcomes of Germany's guest-worker programmes are among the best-known and most frequently cited examples. Despite the official ending of recruitment in 1973, a significant number of guest workers chose to remain in Germany, and many of those who remained were soon joined by their family members. As a result, instead of declining as intended, the total number of resident foreigners in Germany actually increased from 4 million in 1973 to 4.4 million in 1985.³⁸ It was clear by the late 1980s that the guest-worker programme had turned Germany into a "country of permanent immigration", although this was officially acknowledged by the German Government only in the late 1990s.³⁹

The *Bracero* programme of the United States is another example of how a guest-worker programme can lead to levels of immigration that are significantly higher than initially intended. In contrast to Germany's experience, however, the *Bracero* programme did not increase the number of migrants through family reunification, but through irregular immigration that occurred both during the programme and, especially, after its termination. There is today an officially acknowledged population of almost 11 million undocumented migrants in the United States, including more than 6 million Mexicans (Passel, 2005). And the emergence of a large pool of irregular migrant workers is widely considered to be one of the primary legacies of the *Bracero* Programme (see the discussion in Martin and Teitelbaum, 2001).

³⁸ High birth rates were another important factor contributing to the increase in the number of foreigners in Germany during that period.

³⁹ For a discussion of similar developments in other European countries, see Castles (1986).

The experiences of the *Gastarbeiter* and *Bracero* programmes – and indeed those of most guest-worker programmes in liberal democracies – make it clear that any TMP will always generate pressures for permanent settlement of at least some of the migrants admitted as guest workers. These pressures may stem from a variety of sources including:⁴⁰

- unmanaged demand for migrant labour that becomes entrenched in the economy and may persist even during times of economic downturn;⁴¹
- the emergence of a migrant worker recruitment industry and migrant networks, both of which may help sustain and perpetuate migration flows – often in an illegal manner – even when the legal institutions and factors that caused the initial migration are no longer there;
- the importance of rights in liberal democracies and the resulting pressure from the judiciary and civil society to grant the right to permanent residence to migrants who have been working and residing in the country for a certain number of years; and
- migrant workers’ agency, i.e. migrants’ ability – as people rather than simple units of labour – to make independent decisions and, if necessary, change their plans based on new information and circumstances.

Given these pressures, it needs to be acknowledged that TMPs will never achieve “perfect rotation” of migrants and thereby completely avoid the permanent settlement of “temporary migrants”. This does not mean, however, that TMPs will inevitably lead to the permanent settlement of the majority of migrants admitted on a temporary basis.⁴² But in order to avoid the settlement of a significant number of workers with temporary work permits, the host country needs to pursue active policies aimed at managing the pressures described above.

Two such policies have already been discussed in this article, namely, measures to manage demand for migrant labour and strict enforcement of immigration and employment laws. Following an outline of additional incentives and enforcement measures that may facilitate return, this section concludes with a brief discussion of whether the facilitation of permanent immigration – on a *limited* and *conditional* basis – can be compatible with the basic objectives of a TMP.

⁴⁰ For a more detailed discussion of the factors that shape migration policy-making, see Castles (2004).

⁴¹ For example, the financial crisis in south-east Asia in the mid 1990s did not, as widely expected, lead to a significant decline in demand for migrant labour. In Thailand, for example, the shrimp industry continued to require workers from Myanmar because many Thai workers were no longer available to do this work – even when unemployed during an economic downturn.

⁴² It is frequently forgotten, for example, that the majority of Germany’s guest workers *did* return to their home countries.

Measures to facilitate return

A number of policies are needed to facilitate and maintain the general expectation of “temporariness” stay under a TMP. First, policies need to be in place to prevent a situation in which a foreign worker decides to overstay a temporary work permit because his/her savings target could not be achieved within the period of validity of the work permit. This requires strict enforcement against employers and recruiters who provide foreign workers with misleading information about employment conditions and living costs in the receiving country, and against employers who engage in “contract substitution”. This refers to the illegal practice whereby the migrant worker is issued with a new contract specifying lower conditions of work and/or pay upon arrival in the country of employment despite having signed an authorized contract prior to departure (ILO, 1999).

Second, temporary work permits must be issued for a period that allows migrant workers – especially those in low-wage occupations – to generate the net financial gains necessary to make migration financially worthwhile. For example, the United Kingdom’s current SBS schemes issue one-year work permits for employing migrants in low-wage occupations in the hospitality and food processing sectors. Yet it is highly questionable whether it makes any financial sense to expect Bangladeshi workers – the leading recipients of SBS permits – to work in a low-wage job in the United Kingdom for one year only.

Third, migrant workers with a valid work permit need to be given the right and opportunity to travel freely – or at the least without excessive restrictions – between the sending and receiving countries. This will help migrants maintain networks in their home country, and thereby increase the probability of their return.

Fourth, financial return incentives could include the transfer of migrant workers’ social security payments to their countries of origin. A recent study of the portability of pension and health care benefits for international migrants concludes that only 20 per cent of migrants worldwide currently work in host countries where full portability of pensions benefits (but not necessarily of healthcare benefits) to their home countries is assured. Indeed, the lack of portability of long-term social security benefits in many countries may hinder return migration and probably contributes to the informal employment of migrants in host countries (Holzmann, Koettl and Chernetsky, 2005).

Fifth, host countries could also open special savings accounts offering migrant workers the opportunity to save part of their wages at special, high interest rates on condition that the savings would only be released to migrant workers upon their return to their home countries. Such financial incentives have been tried before, with mixed success. The most infamous example is the United States’ *Bracero* programme,

which required a portion of migrants' earnings to be deducted for retirement in Mexico. This policy ultimately failed because migrants never received the money, and their claims for deferred wages have been under investigation for decades.

Sixth, employers could be required to make a financial security bond for each migrant worker employed, with the bond being confiscated if the worker does not leave the country after his/her work permit has expired. This system is currently in operation in Singapore, where employers of non-Malaysian workers need to make a security bond of S\$5,000 per worker employed. Of course, this measure can only work if it is possible to ascertain whether a migrant has actually left the country. It also raises a number of civil liberty concerns based on which security bonds have often been opposed in liberal democracies. It is interesting to note, however, that both the Government and the major opposition party in the United Kingdom have recently proposed the imposition of security bonds as a way of controlling irregular immigration and illegal working by migrants (see Home Office, 2005a).

Finally, there is also a need for clear and effective procedures for punishing employers who employ migrant workers without valid work permits for removing migrant workers who illegally overstay their temporary work visas. The latter is likely to require the cooperation of sending countries. The latter could, for example, take measures to regulate their migrant worker recruitment industries and assist the return of migrant workers deported by the authorities of the receiving country. Of course, receiving countries could only solicit such support from sending countries if they operate liberal and orderly managed TMPs for migrant workers from those countries in the first place.

Are TMPs compatible with the permanent immigration of selected "temporary" migrants?

The definition of a TMP given in the introduction to this article stated that *residence and employment on the basis of a temporary work permit alone do not create an entitlement to stay permanently in the host country*. This means that a TMP can never give an upfront guarantee, or even raise the expectation, that a migrant admitted under such a programme will eventually and independently acquire the right to permanent residence in the host country. This, however, does not preclude the possibility that the host country might facilitate a strictly *limited* and *regulated* transfer of migrants employed on TMPs into permanent residence based on a set of clear rules and criteria.

For example, this could be achieved through a "points system" that regulates the granting of permanent residence to both applicants from abroad *and* migrants already resident and employed on temporary permits in the host country. Under such a system, additional points could be

awarded to applicants with current or past work experience in the host country. Such a system is currently in place Canada, for example.⁴³

To be eligible for permanent residence under Canada's points system, applicants must: (i) meet certain minimum work experience requirements, (ii) prove that they have the funds required for settlement, and (iii) earn enough points on six selection factors to meet the "pass mark". The six selection factors are education, language skills, experience, age, arranged employment in Canada and "adaptability" (including previous work experience and/or study in Canada). Importantly, applications are received from both non-residents and resident migrants currently employed on temporary work permits.

It has been argued that even a strictly regulated and conditional transfer of migrants on temporary permits into a permanent migration programme would undermine the basic idea of a TMP. This, the argument goes, is because it would give migrants an expectation of permanence when a TMP should in fact be trying to achieve the opposite, i.e. an expectation of temporariness.

While acknowledging that this may be a potential danger in theory, one may counter-argue that it need not necessarily be the case in practice. A well-designed mechanism for limited and conditional upgrading into permanent residence is unlikely to raise expectations about permanency as long as two conditions are met. First, the rules and criteria for upgrading from temporary to permanent residence/employment status need to be transparent and accessible to migrants prior to their migration and acceptance of a temporary work permit,⁴⁴ and second, the conditions that TMP migrants must fulfil in order to gain permanent residence need to be at least as strict as those imposed on non-resident applicants for permanent residence.

In addition to avoiding adverse effects on a TMP's objective of facilitating return, such regulated and conditional transfer of migrants employed under TMPs into permanent residence may generate distinct benefits for the host country. For example, compared to a non-resident worker applying for permanent residence, a resident migrant who fulfils all the criteria for admission to a permanent labour immigration programme would already have some experience of working and living in the host country, making him/her likely to integrate more quickly and successfully into the host country's society.

⁴³ For information about the Canadian "points system", see <http://www.cic.gc.ca/english/skilled/qual-1.html>

⁴⁴ In addition, migrants need to be prevented from expecting that the rules for upgrading will change in their favour. This may only be a minor complication in practice as the changes made to, say, points systems are usually incremental (e.g. change the number of points given for certain skills in response to changes in the host country's labour market) rather than so radical as to affect the eligibility of a large number of migrants over a short period of time.

Besides, it is simply necessary to accept that there will always be some migrants who join TMPs with the genuine intention of leaving on the expiry of their temporary work permits, but who change their intentions after working in the host country for a while. The possibility of conditional upgrading into permanent residence based on clear rules and criteria would give some such migrants the option of acquiring the skills required to fulfil the conditions of eligibility for permanent residence status. Of course, this would only be possible for migrants whose qualifications at the time of admission into the host country are such that they have a realistic hope of fulfilling those conditions by the time their temporary work permits expire. Still, the benefit for the host country may be to help relieve pressures for illegal overstaying.

Concluding remarks

This article has argued that temporary migration programmes (TMPs) can, in theory, generate significant net-benefits for receiving countries, migrants and their countries of origin. TMPs can help host countries to manage the demand for migrant labour; help migrants to gain better legal access to the labour markets of high-income countries; and help sending countries in their efforts to maximize the developmental benefits from emigration.

Achieving these potential net-benefits in practice, however, will almost certainly require a high degree of government involvement and intervention in the labour market. Some of the major policies required and discussed in this article include:

- the strict enforcement of immigration *and* employment laws, especially against employers who illegally employ migrants and/or violate minimum wage and employment regulations;
- the regulation of the cost at which migrants are made available to employers through the charging of monthly work-permit fees for each migrant employed, for example;
- the implementation of effective mechanisms that encourage employers to recruit migrant workers only after all reasonable efforts have been made to recruit local workers;
- the regulation or at least the monitoring of the migrant recruitment industry with a view to controlling migrants' costs of migration;
- the protection of migrants' rights by making work permits portable within certain sectors/occupations and after a certain period of time (in addition to enforcing employment laws);
- a mix of incentives and enforcement measures to facilitate the return home of migrants whose temporary work permits have expired.

It has also been argued that it may be mistaken to rule out *a priori* – as is frequently done in discussions about TMPs – the possibility of enabling a small minority of temporary migrant workers to upgrade into permanent residence status *based on a clear set of rules and criteria* (e.g. through a points system). As long as those criteria are transparent and at least as strict as those used to regulate permanent labour immigration of non-resident foreign workers, such a policy need not necessarily create an expectation of permanence among migrants who join the TMP.

However, pending evidence that all of the above policies *can* be effectively implemented in practice, the feasibility of TMPs remains contested. Any attempt to re-introduce new and expanded TMPs would therefore need to start with experimental pilot programmes that test some of the policy measures required to make such programmes work. Such experimentation with new TMPs has already begun in some countries.⁴⁵

Furthermore, to help avoid unanticipated consequences, the design and implementation of TMPs will need to set realistic policy objectives and proceed from a clear understanding of what TMPs can and cannot achieve. In particular, it needs to be recognized that TMPs will not suffice as the only tool for managing labour immigration. Similarly, they are unlikely to succeed in completely preventing the permanent settlement of all migrant workers admitted under such programmes. Moreover, unless they are accompanied by effective enforcement of immigration and employment laws, TMPs are unlikely to be an efficient way of reducing irregular immigration.

Finally, it is important to recognize that the introduction of new and expanded TMPs raises important ethical questions. As discussed in this article, residence and employment on the basis of a temporary work permit do not, on their own, create an entitlement to permanent residence in the host country. Furthermore, in order to make TMPs benefit host countries, it will be necessary to restrict migrants' freedom of employment to certain sectors of the host country's labour market. This means that, whatever the policy design, TMPs necessarily create a pool of workers whose rights are more restricted than those of permanent immigrants and citizens of the host country.

Can these restrictions of migrants' rights, and some of the other policies necessary to make TMPs work, be justified – and advocated – as desirable labour immigration policy measures in a liberal democracy? The answer primarily depends on one's preferred ethical framework for evaluating public policies. More specifically, from a normative point of view, support for a TMP requires acceptance of a situation in which migrants

⁴⁵ See, for example, the Sector-based Schemes (SBS) in the United Kingdom (Home Office, 2005b).

financially benefit from employment abroad at the “cost” of restricted rights in the host country. A normative approach that places a very strong emphasis on the equality of individuals’ rights is likely to have difficulty supporting such a “trade-off”, even if it is associated with substantial financial gains for migrants and their families.⁴⁶ This raises important and difficult questions about the compatibility of TMPs with the strong rights-based approach frequently advocated in the context of managing migration.

Taking a pragmatic view, it could be argued that carefully designed and effective TMPs could beat the existing alternatives of irregular immigration or permanent immigration programmes, at least as far as managing the international migration of low-skilled workers is concerned. Despite its widespread occurrence in many countries, irregular immigration is widely dismissed as an unsustainable labour immigration “policy” in the long term. At the same time, permanent immigration is unlikely anytime soon to become a politically realistic option for recruiting significant numbers of low-skilled workers in high-income countries. The current permanent immigration programmes in high-income countries benefit a few skilled migrant workers, but leave much larger numbers of low-skilled workers in low-income countries excluded from the global labour market.

References

- Carling, Jørgen. 2004. *Policy options for increasing the benefits of remittances*. COMPAS Working Paper No. 8. Oxford, University of Oxford, Centre on Migration, Policy and Society (COMPAS).
- Castles, Stephen. 2004. “Why migration policies fail”, in *Ethnic and Racial Studies* (Oxford), Vol. 27, No. 2 (Mar.), pp. 205-227.
- . 1986. “The guest-worker in western Europe: An obituary”, in *International Migration Review* (New York, NY), Vol. 20, No. 4, pp. 761-778.
- Chami, Ralph; Fullenkamp, Connel; Jahjah, Samir. 2003. *Are immigrant remittance flows a source of capital for development?* IMF Working Paper WP/03/189. Washington, DC, IMF.
- Cholewinski, Ryszard. 2005. *The legal status of migrants admitted for employment: A comparative study of law and practice in selected European states*. Strasbourg, Council of Europe.
- Commander, Simon; Kangasniemi, Mari; Winters, L. Alan. 2004. “The brain drain: Curse or boon? A survey of the literature”, in Robert E. Baldwin and L. Alan Winters (eds.): *Challenges to globalization: Analysing the economics*. Cambridge, MA, NBER, pp. 272-278.
- Cornelius, Wayne A. 2004. *Controlling unwanted immigration: Lessons from the United States, 1993-2004*. Oxford, COMPAS. Available at www.compas.ox.ac.uk
- DeVoretz, Don J. 2002. *A model of optimal Canadian temporary immigration*. Research on Immigration and Integration in the Metropolis, Commentary Series, No. 02-04. Vancouver, Vancouver Centre of Excellence.

⁴⁶ For a discussion of the ethics of labour immigration policy, see Ruhs and Chang (2004) and Ruhs (2005b).

- Ellerman, David. 2003. *Policy research on migration and development*. World Bank Policy Research Working Paper No. 3117. Washington, DC, World Bank. Aug.
- GCIM (Global Commission on International Migration). 2005. *Migration in an interconnected world: New directions for action*. Report of the Global Commission on International Migration. Geneva.
- Hanson, Gordon H.; Spilimbergo, Antonio. 2001. "Political economy, sectoral shocks, and border enforcement", in *Canadian Journal of Economics* (Oxford), Vol. 34, No. 3, pp. 612-638.
- Holzmann, Robert; Koettl, Johannes; Chernetsky, Taras. 2005. *Portability regimes of pension and healthcare benefits for international migrants: An analysis of issues and good practices*. Paper prepared for the Global Commission on International Migration, 23 May. Geneva, GCIM.
- Home Office (of the United Kingdom). 2005a. *Selective admission: Making migration work for Britain*. Available at www.homeoffice.gov.uk
- . 2005b. *Sector-based scheme review*. Available at www.homeoffice.gov.uk
- . 2005c. *Illegal working taskforce regulatory impact assessment for immigration, asylum and nationality Bill*. Available at www.homeoffice.gov.uk
- House of Commons International Development Committee. 2004. *Migration and development: How to make migration work for poverty reduction*. Volume I. Sixth Report of Session 2003–04. London, The Stationery Office Ltd.
- ICTU (Irish Congress of Trade Unions). 2006. *Congress opening statement in respect of labour market issues*. Available at <http://www.ictu.ie/html/news/2006%20talks/CONGRESS%20OPENING%20STATEMENT%20LABOUR%20MARKET%20ISSUES.pdf>
- ILO. 2004. *Towards a fair deal for migrant workers in the global economy*. Report VI, International Labour Conference, 92nd Session, 2004. Geneva.
- . 1999. *Migrant workers*. Report III (Part 1B), International Labour Conference, 87th Session, 1999. Geneva.
- IOM (International Organization for Migration). 2005. *World Migration 2005*. Geneva.
- Kolb, Holger. 2005. *The German "Green Card"*. Policy Brief No. 3 (Nov.), Hamburg, Migration Research Group/HWWA (Hamburg Institute of International Economics).
- Lewis, Ethan. 2005. *Immigration, skill-mix, and the choice of technique*. Working Paper No. 05-8. Philadelphia, PA, Federal Reserve Bank of Philadelphia.
- . 2004. *How did the Miami labour market absorb the Mariel immigrants?* Working Paper No. 04-3. Philadelphia, PA, Federal Reserve Bank of Philadelphia.
- Lowell, B. Lindsay. 2005. "Immigration as a labour market strategy in the United States", in Jan Niessen and Yongmi Schibel (eds.): *Immigration as a labour market strategy: European and North American Perspectives*. Brussels, Migration Policy Group.
- ; de la Garza, Rodolfo O. 2000. *The developmental role of remittances in US Latino communities and in Latin American countries*. Washington, DC, Inter-American Dialogue/Tomás Rivera Policy Institute.
- Lucas, Robert E.B. 2005. *International migration and economic development: Lessons from low-income countries*. Cheltenham, Edward Elgar.
- . 2004. *International migration to the high income countries: Some consequences for economic development in the sending countries*. Paper prepared for the Annual World Bank Conference on Development Economics – Europe, Brussels, 10-11 May. Washington, DC, World Bank.
- Martin, Philip L. 2004. *Migration and development: Toward sustainable solutions*. Discussion Paper No. 153. Geneva, ILO/International Institute for Labour Studies.
- . 2003. *Managing labour migration: Temporary worker programs for the 21st century*. Special lecture on migration. Geneva, ILO/International Institute for Labour Studies.
- ; Teitelbaum, Michael S. 2001. "The mirage of Mexican guest workers", in *Foreign Affairs* (New York, NY), Vol. 80, No. 6, pp. 117-131.
- ; Miller, Mark. 2000. *Employer sanctions: French, German and US Experiences*. International Migration Papers, No. 36. Geneva, ILO.

- ; Olmstead, Alan L. 1985. “The agricultural mechanization controversy”, in *Science* (Washington, DC), Vol. 227, No. 4687, pp. 601-606.
- OECD. 2004. *Migration for employment. Bilateral agreements at a crossroads*. Paris.
- Passel, Jeffrey S. 2005. *Estimates of the size and characteristics of the undocumented population*. Report of 21 March. Washington, DC, Pew Hispanic Center.
- Pieke, Frank N.; Van Hear, Nicholas; Lindley, Anna. 2005. *Synthesis study of informal remittance systems in Africa, Caribbean and Pacific (ACP) countries*. Report prepared for the United Kingdom’s Department of International Development (DFID) and the European Community’s Poverty Reduction Effectiveness Programme (EC-PREP). Oxford, COMPAS.
- Ruhs, Martin. 2005a. *Managing the immigration and employment of non-EU nationals in Ireland*. Studies in Public Policy, No. 19. Dublin, The Policy Institute/Trinity College.
- . 2005b. “Designing viable and ethical labour immigration policies”, in IOM, Chapter 10.
- ; Chang, Ha-Joon. 2004. “The ethics of labor immigration policy”, in *International Organization* (Cambridge), Vol. 58, No. 1 (Jan.), pp. 69-102.
- . 2003. *Temporary foreign worker programmes: Policies, adverse consequences and the need to make them work*. Perspectives on Labour Migration Series, No. 6. Geneva, ILO.
- Russell, Stanton. 1986. “Remittances from international migration: A review in perspective”, in *World Development* (Oxford), Vol. 14, No. 6 (June), pp. 677-696.
- Schiff, Maurice. 2004. *When migrants overstay their legal welcome: A proposed solution to the guest-worker program*. IZA Discussion Paper Series, No. 1401. Bonn, Institute for the Study of Labour.
- UNCTAD. 2001. *World Investment Report 2001*. Geneva.
- UNPD (United Nations Population Division). 2002. *International Migration Report 2002*. Document ST/ESA/SER.A/220. New York, NY, United Nations.
- Van Hear, Nicholas; Sorensen, Ninna. (eds.). 2003. *The migration-development nexus*. Geneva, IOM.
- Weinstein, Eric. 2002. “Migration for the benefit of all”, in *International Labour Review* (Geneva), Vol. 141, No. 3, pp. 225-252.