



**The Regularisation of Unauthorized Migrants:  
Literature Survey and Country Case Studies**

**Regularisation programmes in Portugal**

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## VII. Regularisation Programmes in Portugal

### **Background**

Portugal has only recently emerged as an immigrant-receiving society, having been throughout most of its history an emigrant-sending country. Indeed, there are an estimated 4.3 million Portuguese and people of Portuguese origin living abroad. Nonetheless, in the 1970s emigration slowed as a result of the European economic crisis and the end of the dictatorship in 1974. After Portugal joined the EU in 1986, these flows diminished further. Decolonization of its former PALOP (Portuguese-Speaking African Countries) states in the 1970s spurred immigration during that decade, while demand for labour in the '80s and '90s saw an increase in migrants coming from Africa, Brazil and Western Europe. Since 2000, migrants from Eastern Europe, specifically the Ukraine, have become one of the three largest foreign communities in the country, together with Cape Verdeans and Brazilians. The need for this migrant labour has been fuelled in part by the construction, manufacturing, cleaning and retail sales (Malheiros 2002).

It is within this context that in 2001 Portugal developed an immigration policy based on three "pillars:"

- To promote legal immigration based on the country's labour market needs;
- To integrate immigrants into Portuguese society;
- To combat unauthorized immigration through controlling the entry, stay and removal of undocumented foreigners (Esteves et al. 2003).

The evolution of this immigration policy is based on Portugal's recent experience with immigration, and on its three previous attempts at regularizing foreigners who are in the country without documents.

### **Legal channels for immigration into Portugal**

- **Short-term:** Foreigners wanting to work temporarily in Portugal must apply for a work visa that is valid for one year through the Portuguese Consulate. There are four types of temporary work visas: for sports and leisure professionals, highly skilled workers and technical professionals, independent workers, and for other types of paid workers. These visas may be renewed for two additional periods of one year each.
- **Long-term:** foreigners who want to work and live in Portugal on a long-term basis obtain a Residence Visa that allows them to work for a two-year period. The permit can be renewed for three-year periods. Portugal has different resident requirements for obtaining a long-term permit depending on the origin of the immigrant. Immigrants from CPLP countries<sup>1</sup> have a five-year residence requirement, while other immigrants from other countries need to have been living in the country for eight years.

It should be noted that the provision of the work visas is dependent on an annual governmental quota system for the entry of third country nationals into Portugal (Esteves et al. 2003). This quota system is based on a bi-annual report produced by the government on labour market forecasts.

By the end of 2001, there were 232,000 foreign workers in Portugal, 127,000 with temporary permits, and 105,000 with residence permits. Most of the immigrants who received

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<sup>1</sup> Community of Portuguese Speaking Countries

these permits were immigrants who work in low and unskilled sectors such as construction, domestic service, retail sales, and, more recently, agriculture.

**Demographic context and undocumented population**

At the time of Portugal’s first regularisation programme in 1992 there were approximately 123,600 foreigners in Portugal. By 2003, there were 419,600 foreigners living in the country. According to Esteves et al. (2003), 80 percent of Portugal’s population growth between 1991 and 2001 was due to net migration, not natural increase. By 2001, 44 percent of immigrants were from PALOP states, while Cape Verdeans accounted for 22 percent of the foreign born. In the last few years Ukrainians have become the largest group of foreigners with “permanence” status. It is difficult to secure estimates of the numbers of undocumented immigrants in Portugal. One scholar estimates that the annual flow of undocumented migrants is 5,000 (Jandl 2003), and the UN Commissioner for Human Rights (2003) reports the overall number may be between 35,000 to 50,000. The best way to estimate the number of undocumented immigrants may be through examining the number of applicants for the various regularisation programmes during the past 15 years.

**Table 12: Foreign Population in Portugal, 1990-2003**

Year	Foreign Population	Total Population (in millions)	Foreign population as percentage of total population
1990	107,800	9.8	1.1
1995	168,300	9.9	1.7
2000	208,000	10	2.08
2003	419,600	10.5	4.0

Source: SOPEMI (2003), UNPD (2002)

**Regularisation Programmes**

*1992-93*

Portugal’s first attempt at establishing an immigration policy occurred in the early 1990s, when it began implementing restrictive asylum and immigration laws as part of its requirements for entering into compliance with the Schengen Implementing Convention. As part of this immigration policy, Portugal agreed to tackle the problem of its undocumented immigrant population. It did this partially through a regularisation programme that ran from October 1992-March 1993. Although 80,000 people applied, only 38,364 were regularized. This programme was open to workers and non-workers alike who had been in Portugal before April 15 1992.

Commentators consider this programme a failure for a number of reasons, including insufficient publicity and outreach to potentially eligible immigrant populations, administrative and bureaucratic incompetence in processing applications, corruption among officials, and the difficulty of applicants in meeting all requirements (FECL 1998, Falcao 1998)

*1996*

Portugal’s 1996 exceptional regularisation programme ran from June-December 1996, and was largely a response to a shift in the country’s ruling political parties from liberal to socialist. The new Socialist government started reforming immigration policy, which included this process of

regularisation.<sup>2</sup> 35,000 migrants applied, and 31,000 permits were approved (FECL 1998). Successful applicants had to prove that they were involved in a professional activity, had a basic ability to speak Portuguese, had housing, and had not committed a crime. However, in this programme a distinction was also made between applicants from Portuguese-speaking countries, who could apply if they had been in the country since December 31 1995, and those from non-EU states, who had to have been in the country prior to March 25 1995 in order to apply. As a result, 67 percent of the immigrants regularized under this programme were from PALOP states (Esteves et al. 2003).

Although this programme was an attempt to improve on the previous one's shortcomings, and although more NGOs were involved in the process, it has been criticized on several grounds. First, human rights and immigrant organizations were concerned about the preferential treatment given to applicants from PALOP countries. Second, the information campaign that was to accompany the programme has been deemed inadequate, and there were reports that undocumented immigrants were actually arrested at some application centres. Finally, bureaucratic delays were again a problem (FECL 1998, Esteves et al. 2003).

### 2001

The inadequacies of the 1996 regularisation programme became apparent as the presence of undocumented immigrants grew, due in part to the growth of trafficking networks and to the fast and significant expansion in the presence of Eastern European immigrants. As a response to this growth and also to the pressure of certain employers who wished to hire regularized workers, decree-Law no. 4/2001 created a regularisation programme that ran from January-November 2001, and aimed at regularizing immigrants already working in the country. However, this programme was different from the previous ones in requiring applicants to have a valid work contract. This one-year permit is known as a "permanence" permit. If applicants obtained work, they were allowed the possibility to renew their visas up to four times. If the immigrant lives in Portugal for this five-year successive period, he/she becomes automatically entitled to permanent residence. Approximately 170,000 permits were authorized during this time, the majority of them to Ukrainians (63,500) and Brazilians (36,600). In its second report on Portugal, the Council of Europe (2002) expressed concern over the difficulties authorities were having in implementing the legislation, including the fact that since having a job is a prerequisite for obtaining and keeping the permit, immigrants often accept employment where they are exposed to abuse.

Decree-Law no. 34/2003 of February 25 ended the permanence permit system, replacing the system with recruitment of foreigners living outside of Portugal (as described above). This system has been criticized by the UN High Commissioner on Human Rights (UNHCR) as increasing the possibility for migrants to remain in an irregular and therefore precarious status (Gils-Robles 2003). The UNCHR also criticized the processing time for applications. In addition to calling on the General Inspectorate of Labour to provide greater supervision over the programme, the UNCHR has made the recommendation to the Portuguese government to either extend the permit renewal period to two years or to allow a six-month grace period after the expiration of the permit to allow immigrants to find work.

The limitations of this programme have also been criticized by academics (Esteves et al. 2003), who point out that Portuguese employers are not likely to go to the trouble or recruiting outside of the country, when there exists a readily available (and undocumented) migrant labour pool. In addition, the limitations placed on the civic rights of those holding temporary permits

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<sup>2</sup> e-mail correspondence from Jorge Malheiros to Amanda Levinson, July 7, 2004.

is likely to create inequality among immigrants living in the country, since permit holders are not considered to be residents (not even temporary or short-term ones) in Portugal. In general, the effectiveness of these recent policies in reducing irregular immigration has been questioned.

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