



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

Regularisation programmes in Spain

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VI. Regularisation Programmes in Spain

Background

Like many of its Mediterranean neighbours, Spain was largely a country of emigration until the early 1970s, when the worldwide economic crisis triggered by the oil shock decreased emigration and increased the number of immigrants arriving to the country. The late 1980s solidified the country's position as a receiver of immigrants for several reasons, including the closing of borders of other EU countries and Spain's admission into the European community, the economic and historical connections between Spain, Northern Africa and South America, and the growing underground economy that increasingly relied on immigrant labour (Ortega Pérez 2003).

While early legislation such as the 1985 *Ley de Extranjería* looked at migration as a temporary, successive immigration laws have recognized immigration as a permanent phenomenon and have sought to encourage the integration of foreigners into Spanish society. Nevertheless, like many European countries, the ECRI notes a xenophobic attitude that is perpetuated through the media (ECRI 2003). According to Zapata-Barreo (2003), it is difficult to find debate on immigration in Spain that views immigration--especially from non-EU countries--as a positive phenomenon, with the exception being employers in sectors that rely on immigrant labour.

Legal channels for Immigration into Spain

There are three types of residence permits for non-EU citizens (Zapata-Barrero 2003):

- traditional tourist permits of 90 days;
- temporary residence permits which are valid for more than 90 days but less than five years. These are allotted to those who either have a work permit, who can support themselves, who have lived in Spain for at least five years, or for humanitarian reasons;
- Permanent residence permits are given to those who have lived in Spain for at least five consecutive years with a temporary resident permit.

According to SOPEMI (2004), 118,700 temporary and long-term work permits were issued in 2001, up from 85,500 in 1998. As of January 2002, 627,795 immigrants had work permits, of whom 461,302 were from countries other than the EU (Zapata-Barrero 2003).

Demographic Context

Resident immigrants currently make up 2.7% of the Spanish population, and between 1995 and 2001 the country received 609,287 immigrants with legal status (Zapata-Barrero 2003). According to the Spanish Ministry of the Interior, in 2002 the largest numbers of foreigners currently came from Morocco, Ecuador, the UK, Colombia, Germany, France and China (in that order. Ministerio del Interior 2003).

Table 11: Spain: Foreign-born and Unauthorized Population, 1986-2001

Year	Number foreigners	Number undocumented	Total population	Foreigners as percentage of population
1986	293,200	N/A	38.5 million	0.76
1991	360,700	200,000	39 million	0.92
1995	499,773	150,000	39.9 million	1.25
2001	1,109,060	200,000	40 million	2.7

Source: Ministerio de Trabajo y Asuntos Sociales (2002), Reyneri (2001), Ortega Pérez (2003), United Nations Population Division

Regularisation programmes

Spain has had six major regularisation programmes since 1985; according to the government, each has been an attempt to simultaneously control the informal economy (which accounts for an estimated 20 percent of the country's GDP), gather information on and reduce the numbers of unauthorized immigrants in the country, and to correct for shortcomings of previous regularisation programmes. The following regularisation processes are referred to as "extraordinary regularisation procedures." Although there is a lack of literature on the longer social and economic outcomes of these programmes, it is possible to identify some of the strengths and weaknesses of the programmes.

1985 regularisation process

Spain's 1985 Law on the Rights and Freedoms of Foreigners in Spain viewed immigrants as temporary workers who needed to be regulated. Thus, the regularisation programme authorized under this law required foreigners to have a job offer, and to have been present in the country before 24 July 1985. Although the registration ran from 24 July 1985 to 31 March 1986, only 44,000 foreigners applied, and of those, only 23,000 immigrants were regularized. It is estimated that out of the total potential eligible population of foreigners, 50-75 percent did not even apply (Reyneri 2001). This process has been criticized for its slowness and lack of infrastructure as well as its inability to mobilize the immigrant community to apply for the programme. The law also made it difficult for immigrants to renew required permits, so that many immigrants reverted to unauthorized status after the permits expired (Ortega Pérez 2003).

1991 regularisation process

As opposed to the other regularisation processes, the 1991 programme was not created in conjunction with a new law on foreigners. This programme was targeted at regularizing immigrant workers who had been living and working in Spain since 15 May 1991, and well as asylum seekers whose applications were rejected or pending. Thanks to the involvement and support of immigrant organizations, this regularisation programme was more successful in encouraging immigrants to apply for legal status. Out of a total 135,393 requests, 109,135 were accepted (Apap et al. 2000). However, as in the previous regularisation programme, three years later anywhere from 26-50 percent of migrants had not renewed their permits (Reyneri 2001, Apap et al. 2000). According to Reyneri (2001), while this programme regularized a number of migrants, it may also have attracted more immigrants who immediately became unauthorized.

1996 Regularisation

Spain's third procedure was primarily geared towards immigrants who had fallen into irregular status by not renewing their documents from the previous regularisation procedures. To be eligible, an applicant had to be working in the country since January 1, 1996, have a working or residence permit issued after May 1986, or to be a member of the family of a migrant living in Spain before January 1996. It regularized 21,300 foreigners out of approximately 25,000 applications, 13,800 permits were work and residence permits, and 7,500 were residence permits. Of those who applied, 59 percent were people who had formerly held a residence and work permit, and 34 percent were from family members of immigrants who had permits (Reyneri 2001).

2000 Regularisation programmes

Spain undertook its fourth and fifth regularisation programmes in conjunction with additions to the immigration law of January 2000. The fourth programme ran from March 21 2000 to July 31 2000, and was open to foreigners who were in the country prior to June 1 1999, who had either a work permit or residence permit in the previous three years, or had applied for a work or residence permit (Díez Nicolás et al 2001). 153,463 out of 247,598 applicants were given permits during this time, and the majority of beneficiaries were those who worked in agriculture, domestic service or construction (Consejo Economico y Social 2004). The countries with the most beneficiaries were Morocco, Ecuador, Colombia and China.

The fifth regularisation programme was also established for those who could show "settlement" or "roots" in Spain. The requirements for successful applicants were the following: to have been in Spain prior to January 23 2001; to prove "roots" in the country, considered as either incorporation into the labour market, family ties with foreign residents or with Spanish citizens, and to not have any pending expulsion charges or be prohibited from being on Spanish soil. During this process, which ran during June and July 2001, 350,000 applications were filed, and 221,083 permits were issued. The beneficiaries this time were primarily those who worked in domestic service and construction, and were from Ecuador, Colombia, Morocco and Romania.

In its second report on Spain, the ECRI noted that despite ongoing efforts to regularise migrants, many face delays in renewing their permits, and so are in danger of falling back into irregular status (ECRI 2003). And while in addition to these regularisation procedures, since 1993, Spain has established a flexible quota system of foreigners for specific jobs to meet the demands of the labour market, these workers are only recruited from outside the country. This means that thousands of immigrants within Spain who are already working cannot apply for work permits, denying them access to regularising their status.

2005 Normalization Process

In January of 2005, citing a need to end illegal employment of migrants and to control the black market, the Spanish government announced a new legalisation process by decree, which they call "*Proceso de Normalización*", or "Normalization Process." This change in language indicates a shift in the way the government is attempting to publicly frame the regularisation of immigrants—from "legalisation," which to the public signifies a permanent bestowal of resident status, to "normalisation," which is less threatening term.

Registration for the program runs for three months, from 7 February 2005 through 7 May 2005. The program is unique in the demands it places on employers in the application process. To successfully obtain the work permit, which is valid for one year and renewable, a foreigner must apply through his/her employer. Employers must demonstrate that they are enrolled in and paying into Social Security, that they have no history of breaking immigration laws in the previous 12 months, and that they haven't been sanctioned for violating the rights of workers or immigrants. The employment contract varies in length, from a minimum of three months for agricultural workers, to a maximum period of twelvemonths for construction and hotel workers, to weekly contracts of 30 hours for domestic workers (Ministerio de Trabajo y Asuntos Sociales 2005).

Immigrants must have proof of registration with a local municipality in Spain before August 7, 2004 and to be in Spain at the time they apply. They must also have a work contract and a clean criminal record.

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