

MANAGING THE IMMIGRATION AND EMPLOYMENT OF NON-EU NATIONALS IN IRELAND

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Studies in Public Policy: 19



2005

First published 2005
by The Policy Institute
Trinity College, Dublin 2, Ireland
www.policyinstitute.tcd.ie

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A catalogue record is available for this book from
the British Library

ISBN: 1-902585-17-8

Cover design by Ed Miliano, Dublin
Origination by Carole Lynch, Sligo
Printed by ColourBooks Limited, Dublin

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Executive summary

This paper aims to contribute to current debates about how to best manage the immigration and employment of non-European Union (EU) nationals in Ireland. Although taking a general approach that considers all potential avenues for migrating and taking up employment in Ireland, the paper focuses on *labour immigration policy*, as opposed to humanitarian policies that are concerned with refugees and asylum seekers. Furthermore, the emphasis of the discussion is on the *admission* and *employment* of migrant workers rather than on the equally important but analytically distinct issues of migrants' social and economic integration. In its discussion on the debate and design of Irish labour immigration policy, the paper addresses four key questions:

- 1 What have been the labour immigration flows and policies in Ireland?
- 2 What *are* the consequences of international labour migration to Ireland?
- 3 What *should be* the principles and objectives of Ireland's labour immigration policy?
- 4 What policies are best suited to achieve these objectives?

It is important to emphasise that this paper does *not* aim to give comprehensive answers to these questions; rather, it seeks to provide information and analysis to inform the discussion.

Immigration and the Irish labour market

Ireland's economic boom during the 1990s brought unprecedented levels of prosperity and helped transform it into a 'country of immigration'. Net migration to Ireland increased from 8,000 in 1996 to over 41,000 in 2002 and remained high at 32,000 in 2004 (all years ending in April). Most of the recent growth in immigration has been driven by a rapid increase in the inflow of non-Irish migrants, especially from outside the pre-enlarged European Union (EU15). The number of non-EU15 immigrants arriving in Ireland increased from less than 5,000 in 1995 to over 24,000 in 2002 and remained high at over 16,000 in the year ending in April 2004.

Importantly, the figures above do not yet take account of the significant number of workers from the new EU member states that have taken up legal employment in Ireland since EU enlargement on 1 May 2004 (over 50,000 between May-December 2004). This was made possible by Ireland's decision to grant accession state nationals unrestricted access to the Irish labour market immediately upon EU enlargement.

Among the various categories of non-EU nationals coming to Ireland in recent years, the great majority are workers (approximately 110,000 in 2000-04 excluding arrivals from the new EU member states since 1 May 2004), followed by asylum seekers (approximately 45,000 applications during 2000 to 2004), students and dependents (for whom time-series data are not available).

The majority of non-European Economic Area (EEA) nationals who have legally taken up full-time employment in Ireland since the late 1990s were admitted under the work permit system which, until recently, issued work permits for employment in a wide range of occupations, including low-skill jobs (approximately 100,000 new work permits issued during 2000 to 2004). A much smaller number of migrant workers entered on work visas/authorisations that facilitate the employment of migrants in selected specialised occupations only (approximately 10,000 work visas/authorisations issued during 2000 to 2004).

Some non-employment-based channels of immigration may also facilitate access to the labour market. For example non-EEA nationals who come to Ireland for the purpose of studying – as of April 2005 this needs to be for a minimum period of one year – are entitled to take up casual employment. In 2004, the number of non-EEA students was more than double the number of new work permits issued.

Of course none of the official figures above takes account of the unknown number of non-EEA nationals working illegally in Ireland. Despite an increase in the number of deportations (from 188 in 2000 to 663 in 2004) and a rise in the level of legislation aimed at combating the illegal immigration and illegal employment of non-EU nationals, it remains unclear to what extent the existing laws and measures are actually enforced. For example only three employers have so far been convicted of violating the Employment Permits Act 2003.

Work permit policies in Ireland, 1999-2004

Until April 2003 Ireland's work permit policies were almost entirely 'employer-led'. Local employers were essentially in a position to legally recruit as many non-EEA workers as they wished, from whatever countries they wanted, and to employ them in any job, regardless of the skill level required, once they were prepared to go through the work permit system's administrative procedure.

As a result, the number of work permits issued to non-EEA nationals increased dramatically from 5,750 in 1999 to 47,707 in 2003. Furthermore, it is known that approximately three out of every four permits issued in 2002 were for employment in relatively low-skilled and/or low-wage occupations, especially in the service sector. There was also great diversity in the composition of the migrant workforce employed on work permits at that time: in 2000-2003, work permits were issued to nationals from more than 150 countries. Workers from the ten new EU member states accounted for about a third of all permits issued during that period.

The publication of the Employment Permits Act in April 2003 – which facilitated the granting to workers from the ten countries acceding to the EU free access to the Irish labour markets immediately upon EU enlargement – marked the beginning of a more interventionist work permit system in Ireland. The government felt that its liberal policy toward workers from the EU accession countries required a more managed approach to regulating the number and selection of migrant workers coming to Ireland from outside the enlarged EU. This was primarily based on the expectation that local employers would be able to fill most of their vacancies after 1 May 2004 through recruitment of workers from within the enlarged EU.

The key work permit policies initiated since April 2003 include: i) the designation of selected occupational categories as ineligible for the purpose of new work permit applications; ii) the encouragement of local employers to give preference in their migrant worker recruitment decisions to workers from the EU accession countries (during November 2003–April 2004); and iii) the announcement by the Department of Enterprise, Trade and Employment (DETE) in August 2004 that it will no longer consider applications for new work permits for the employment of non-EEA nationals in low-skill occupations.

Together with EU enlargement, this shift towards a more restrictive and skills-based permit system contributed to a decline in

work permits issued, from 47,707 in 2003 to 34,067 in 2004. Looking at the issuing of new permits, the average monthly number of work permits issued during May–December 2004 (613) was the lowest since 1999. It is interesting to note, however, that this figure is approximately the same as the average monthly number of new permits issued to workers from outside the enlarged EU during November 2003–April 2004. This suggests that the opening up of the labour market to accession state nationals on 1 May 2004 may have reduced but certainly did not eliminate employer demand for work permits for workers from outside the EU.

Consequences of international labour migration

International labour migration generates a complex set of economic, social, political, cultural, environmental and other consequences for the receiving country, for migrant workers and for their countries of origin. The existing theoretical and empirical studies carried out for other countries suggest that these consequences are likely to involve both benefits and costs for all sides involved. The various impacts are also inter-related and *potentially* conflicting, which means that the relationship between them *may be* characterised by trade-offs.

Given Ireland's relatively short history of employing significant numbers of non-Irish migrant workers, the existing literature and information on the consequences of migration to Ireland – and the empirically relevant trade-offs involved – is extremely limited. There is, for example, no systematic evidence on how immigration has affected Ireland's economic growth, labour market (including effects on wages, employment and collective bargaining), public services and the fiscal balance more generally.

Similarly, it is clear that the rapid increase in immigration over the past few years is transforming Ireland from what used to be a very homogenous society to a more ethnically diverse and multicultural one. There is little research, however, on how these trends impact on Irish identity, i.e. on how Ireland's residents 'see themselves', and on whether these impacts are perceived as positive or negative.

There is also no systematic empirical research on wages received, or remittances made, by migrant workers in practice. The only existing study on this issue is based on the information provided by employers on the work permit application form. The job categories with the lowest weekly pay offered to work permit holders in 2003

were ‘personal and protective services in the domestic service sector’ (€253 per week – roughly equivalent to the minimum wage at the time) and certain low-skill occupations in agriculture (€286, approximately 14 per cent higher than the minimum wage at the time).

A significant part of the existing publications on migration to Ireland is concerned with migrant workers’ rights. Non-governmental organisations (NGOs), trade unions and elements of the public media have persistently reported anecdotes about violations of migrant workers’ rights, especially those pertaining to minimum wage and employment conditions of migrant workers employed under the work permit system. Again, notwithstanding what some interpret as strong anecdotal evidence, there has been little *systematic* data gathered to assess the extent of discrimination and migrants’ rights violations in Ireland. This lack of data is partly attributable to the fact that the DETE’s labour inspectorate claims that it cannot provide any data on the number of complaints made by, or on behalf of, migrant workers employed in Ireland.

Basic policy principles and objectives

Comprehensiveness. A discussion of Ireland’s current labour immigration policies needs to take a general approach that considers all channels of immigration, including non-employment based ones, that non-EU nationals may use to enter and take up employment in Ireland – legally or illegally.

Rationality. Policies should be based on an understanding of the multifaceted and inter-related consequences of international labour migration to Ireland. There is an urgent need to close the significant gaps in the evidence base on trends, patterns and impacts of international labour migration to Ireland. This requires more research and, as a necessary precondition, greater efforts to make more of the already existent administrative data available for analysis (e.g. work permits data and PPS data), and to generate new data where no administrative or other systematic data currently exist.

A balanced approach. In order to design labour immigration policies that are both viable and ethical, a case can be made for a balanced approach to the choice of policy objectives. Such an approach would

accept the need for labour immigration to create net benefits for the Irish economy and society and, at the same time, recognise the active promotion of the interests of migrant workers and of their countries of origin as a key policy objective.

Consideration of potential policy lessons from other countries. Given that there are many countries with much longer histories and experiences of debating and managing labour immigration, there is a clear need for Ireland to study the potential policy lessons from other countries. It is important to emphasise, however, that efforts to 'learn from the international experience' must not result in a search for 'best practices' that Ireland may import and implement wholesale. The fact is that there are simply no widely accepted best practices because few countries have managed labour immigration well. The objective should thus be to selectively learn from the positive and negative policy experiences of other countries.

Consideration of international policy constraints. There are currently few substantial international constraints on the way Ireland determines the *number* and *selection* of migrant workers from outside the EU. Efforts to harmonise immigration policy at the EU level, for example, have met with very limited success. One important aspect of Ireland's immigration policy that is currently constrained by international instruments/policies however is the bundle of *rights* accorded to migrant workers after they have been admitted to Ireland. Ireland has ratified the International Labour Organisation's (ILO) Equality of Treatment Convention and is a state party to most of the UN's major human rights conventions and to the European Convention on Human Rights (ECHR).

Policy options

Re-adjusting Ireland's current work permit system

At least two separate measures are needed to strengthen and improve the effectiveness of the current work permit system. First, it will be necessary to significantly improve the effectiveness of the labour market test, i.e. the mechanism that checks for the availability of local (including accession state) workers before giving permission to employ migrant workers from outside the enlarged EU. Although Ireland's and other countries' experiences

have shown that effective labour market tests are notoriously difficult to implement, a first step would be to require work permit employers to offer wages and working conditions that correspond to – or exceed – the average wages and working conditions prevailing in that job category. This could help protect wages and employment conditions of competing local workers (including all EU nationals). It would also encourage employers to more carefully consider the alternatives (mechanisation, relocation abroad, etc) before employing non-EU nationals to fill labour shortages.

An improved labour market test could also be part of a two-tier system: in sectors or occupations which are verifiably known to suffer from shortages of local workers, some of the components of a labour market test (such as the requirement to actively search for local workers) could be waived; the remaining sectors/occupations would still be subject to a labour market test which could be more focused and therefore potentially more effective.

A second important measure necessary to improve the current work permit system is to make work permits portable *within a defined job category and after a certain period of time*. This would help protect migrant workers' rights by enabling them to more easily escape unsatisfactory working conditions than is currently the case. It would also increase the efficiency of the labour market by enabling migrant workers to better respond to wage differentials and 'carry their labour' to jobs where it can be used most productively.

A possible policy option to facilitate some degree of portability would be to allow a change of employer – within certain sectors/occupations and after a certain period of time – as long as the new employer makes a new application for a work permit. To make such a policy efficient, efforts could be made to inform migrant workers employed on work permits in Ireland about work permit vacancies notified to FÁS.

A second policy option would be to grant portability – again, within certain sectors/occupations and after a certain period of time – *without* requiring the new employer to make a new work permit application. Importantly, such a policy would need to be accompanied by measures that prevent employers from routinely replacing migrant workers whose work permits become portable with new migrant workers on new permits that do not allow a change of employers. This requires a careful monitoring of the number and employer recipients of new work permits issued.

Introduction of a permanent immigration programme

All of Ireland's existing labour immigration programmes for non-EEA nationals issue *temporary* permission to work and reside in the country. Naturalisation is currently the only effective way of acquiring the secure right to reside and work in Ireland on a permanent basis.

The absence of a permanent immigration programme is problematic for a number of reasons, not least because the offer of a temporary employment permit with no opportunity to gain the secure status of a 'permanent immigrant' other than through naturalisation may be a serious obstacle to Ireland's ability to continue to attract skilled and highly skilled workers.

In order to fill this obvious policy gap, Ireland could institute a 'points-system' – similar but not necessarily identical to those systems in use in Canada, Australia and New Zealand – that regulates both the 'direct entry' for newcomers and the process of acquiring permanent residency status for migrant workers already employed on temporary work permits. A points system can be a relatively transparent and flexible way of regulating admissions. It is important to note that a points system is only meant to regulate the acquisition of permanent residence. Given the importance assigned to individual characteristics rather than to an offer of employment as the principle factor deciding eligibility, it is inherently unsuitable for regulating the selection and admission of migrant workers on a temporary basis. Consequently, a points system is meant to *complement* rather than replace temporary employment permit programmes.

Increasing enforcement of employer sanctions and employment laws

One of the most important factors leading to illegal immigration and illegal working is the failure to effectively punish employers who illegally employ migrant workers. This is because, in contrast to all other immigration control policies, employer sanctions serve the important purpose of addressing the *demand* for illegal migrant labour. Without policies that minimise demand, policies aimed at minimising supply (border control, deportations) are likely to be much less effective than they could be.

There is thus a clear case for increasing efforts to enforce Ireland's existing employer sanctions. This is, of course, largely a question of resources, which in turn depend on the political will to enforce the law against employers.

Furthermore, the employment of non-EEA nationals registered as students needs to be more actively monitored and regulated. The government's recent announcement that, as of April 2005, access to casual employment will be restricted to those students who are attending a full-time course of at least one year's duration is an important step. Of course, as always, the policy will only be effective if it is systematically enforced. Another potential policy reform could include a more stringent system of accrediting/licensing and monitoring teaching institutions.

Finally, in order to more effectively enforce Ireland's employment laws, the labour inspectorate needs to take a more active role in collecting and evaluating systematic evidence on the employment conditions of migrant workers. A first step would be to record and publish the nationality of the workers making complaints about employment conditions to the labour inspectorate.