



# Mapping the Conditions of Stay and the Rationale for Entitlements and Restrictions for Family Migrants in Spain

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### IMPORTANT NOTE

The restrictions and entitlements covered in this report are influenced by government policy and are subject to regular change. The mapping report aims to straddle a fine balance in condensing the detail of these arrangements and yet still providing a usable summary. As such, relevant sources noted throughout the text should be consulted for an accurate detailed picture of current policy. The report is correct at the point of completion of the final version in January 2013.

The rules generally refer to the UK unless otherwise stated.

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# 1. Introduction

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The regulation of family migration has hitherto been a marginal aspect in Spanish legislation, since the primary focus has been on economic migration in function of the labour market. The Organic Law 4/2000, 11<sup>th</sup> of January, is the main legal instrument governing immigration and the rights of foreign citizens and their social integration in Spain. The Law has been modified by the Organic Law 8/2000, 22<sup>nd</sup> of December, the Organic Law 11/2003, 29<sup>th</sup> of September, the Organic Law 14/2003, 20<sup>th</sup> of November, and, most recently, the Organic Law 2/2009, 11<sup>th</sup> of December.

In 2000, Spanish legislation formally recognised family reunification as a right, establishing a distinction between family members of EU citizens and those of third country nationals (TCN). Whereas the former can directly obtain long-term resident permits for EU citizen family members, the latter's residency depends on meeting the specific conditions of *family reunification*. The *migration of families* also refers to the simultaneous migration of dependent family members alongside a primary migrant. However, the Spanish government limits this second option for family migration to only a select number of migrants, including the “non-lucrative stay” of high income TCNs<sup>1</sup> and high-skilled workers possessing EU blue cards<sup>2</sup>. Finally, since 2011, Spanish law recognised the right for family members previously residing in Spain without formal authorisation, to regularise their legal statuses on the basis of *family settlement*<sup>3</sup>. Together with the social

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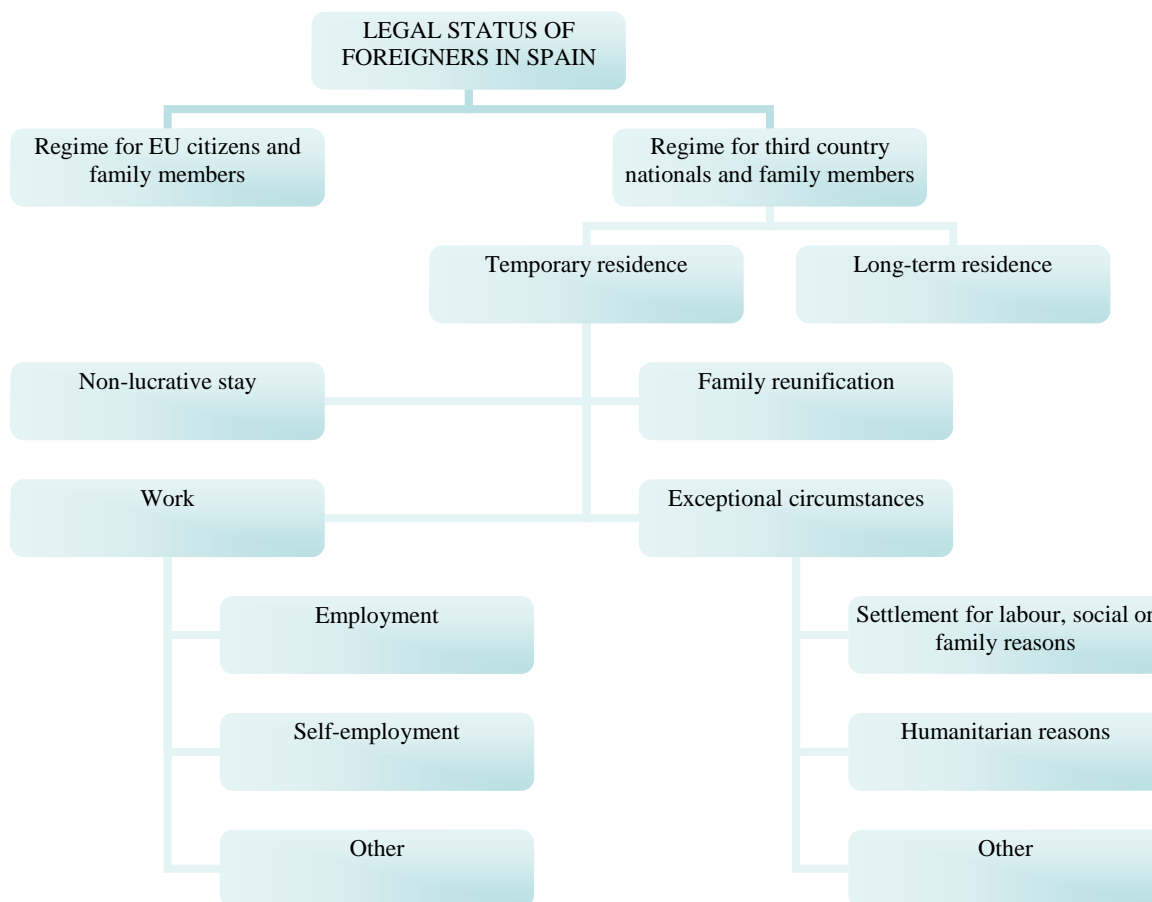
<sup>1</sup> The “non-lucrative stay” is a specific legal instrument regulating TCNs who are willing to stay in Spain without the right to work (Articles 30 and 31 of the Organic Law 4/2000, 11<sup>th</sup> of January).

<sup>2</sup> Please see Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents; Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research; Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment; Organic Law 4/2000, 11<sup>th</sup> of January, on the rights of foreign citizens in Spain and their social integration (articles 16 to 19); Regulation of the Organic Law 4/2000, adopted through the Royal Decree 557/2011, 20<sup>th</sup> of April (articles 52 to 58, 83 and 94).

<sup>3</sup> Organic Law 4/2000, 11<sup>th</sup> of January, on the rights of foreign citizens in Spain and their social integration (articles 31.3); Regulation of the Organic Law 4/2000, adopted through the Royal Decree 557/2011, 20<sup>th</sup> of April (articles 123 to 130); Instruction DGI/SGRJ/10/2008 on the authorizations for the temporary stay under exceptional circumstances, of children whose father or mother were originally Spanish.

and professional situation of the migrant, family ties define the third type of settlement programmes for migrants who are irregularly staying in Spain.

**Figure 1: Categories of legal status for stay of foreign citizens in Spain**



Source: Spanish government, General direction on immigration and emigration. Note that asylum seekers and refugees depend on another legislation.

In Spain, asylum plays a very minor role in terms of migration arrivals. Refugees, or people who benefit from subsidiary protection<sup>4</sup>, can reunify their family members and share legal status. Their situation will be considered apart from family migrants.

<sup>4</sup> According to the Spanish legislation, subsidiary protection is a specific type of protection granted to foreign nationals or stateless persons whose situation does not entitle them to benefit from the right to asylum, but, if they came back to their origin country, in the case of foreign citizens, or to the country where they lived before they arrived in Spain, in the case of stateless persons, they would be threatened by death, torture or indiscriminate violence if repatriated (Law 12/2009, 30<sup>th</sup> of October, on the right to asylum and subsidiary protection).

## SECTION ONE: Identifying Family Migrants

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### 2. Who are TCN family migrants?

As mentioned previously, family migration legislation in Spain is comprised of the three following categories: *simultaneous migration*, when family members settle at the same time as the primary migrant; *reunification*, when family members come to Spain after the independent migrant or to join a Spanish citizen or when partners meet abroad and form a family; and *family settlement*, when migrants have already settled in Spain and they have the opportunity to regularise their legal status for family unification reasons.

Whether the primary migrant is an EU citizen or a TCN is an important distinction for family migration. Considering family reunification, family members of citizens from Iceland, Liechtenstein, Norway and Switzerland, included in the European Economic Area benefit from the same conditions as family members of EU citizens. On 22<sup>nd</sup> July 2011, however, the conditions for TCN family members of Romanian workers and Romanian family members of non Romanian EU citizens changed due to the limitation of free movement from Romania to Spain (see the following section on rationales).



### 3. Admission criteria – general overview and contextualization

#### 3.1 Pre-entry admission policies

Figure 2: Pre-entry conditions and length of the first resident permit for family migrants

	<b>Pre-entry conditions?</b>	<b>Simultaneous Migration</b>	<b>Reunification</b>	<b>Family Settlement</b>
Family members of EU citizens (except Romania)	No conditions (e.g. do not have to justify criminal record)	Permanent resident permit (5 years)	Permanent resident permit (5 years)	Temporary residence and work permit for the migrant who was previously in an irregular situation (1 year)
Family members of TCN	Differentiated access to Spanish citizenship will dictate different possibility for family reunification	First permit limited to the length of independent migrant's permit	First permit limited to the length of the permit for the independent migrant	Same conditions as above

Source: *General direction on immigration and emigration.*

### **3.2 Reference to rights and duties and their rationale**

For any type of family migration, there is no reference to the rights and duties of family migrants within the Organic Law<sup>5</sup>. The rationale behind these lack of conditions is related to the dominant emphasis in Spain of shaping migration policies to service its labour market needs.

### **3.3 Differences between migrant national groups**

When the sponsor is not an EU citizen, his or her family migrants are subject to a number of additional conditions or constraints. Namely, they must present a certificate of a clean criminal record, their entrance into the Schengen Area must be pre-authorized, and they must not participate in a return programme to their countries of origin operated by the Spanish government<sup>6</sup>.

There are different conditions for access to Spanish citizenship according to the TCN groups, and these conditions impact family reunification in different ways. Migrants, including EU citizens, generally wait ten years until they can lodge applications for citizenship; however, historical ties mean that migrants from Latin America, Andorra, Portugal, Equatorial Guinea and the Philippines as well as people with a Sephardic Jewish family background, can apply for Spanish citizenship after two years of continuous legal stay. If migrants come from other countries— including if they are EU citizens – they have to wait ten years. Once primary migrants become Spanish citizens, reunification of their family members may be facilitated. In this case, family members will have direct access to the long-term resident permit, which will have to be renewed every five years (See Chart Two).

If the Spanish government authorises family reunification, family members make requests for a visa in person at the diplomatic mission or consular office of their countries of

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<sup>5</sup> Organic Law 4/2000, 11<sup>th</sup> of January

<sup>6</sup> Directive 2003/86/CE, 22<sup>nd</sup> of September, on the right to family reunification; Organic Law 4/2000, 11<sup>th</sup> of January, on the rights of foreign citizens in Spain and their social integration (Articles 16 to 19); Regulation of the Organic Law 4/2000, adopted through the Royal Decree 557/2011, 20<sup>th</sup> of April (Articles 52 to 58).

residence. Family members are given a two-month window that opens when the primary migrant receives notification from the Spanish government that his or her resident permit has been approved. Each visa application for family reunification requires the following conditions:

- A passport that is valid for at least four months.
- A certificate of a clean criminal record for each adult applicant.
- A copy of the primary migrant's notification of approval of resident permit
- Original documentation that proves the familial relationship, and, when necessary proof of, age and legal or economic dependence.
- A medical certificate stating that the family migrant is not affected by any quarantine-susceptible diseases recognized by the international health regulations.

## **4. Conditions of stay for family migrants**

With regards to possible conditions of stay, such as integration or language requirements, Spanish legislation does not refer to any specific requirements for family migrants. Nevertheless, local and regional administrations have adopted programs that migrants can voluntarily take up to facilitate their settlement. In Barcelona, for example, a programme to support family reunification includes three main types of activities. The first are oriented towards independent migrants, in order to help them with the practical aspects of the reunification process. Others are oriented towards parents, in order to facilitate and aid reunification with their children (which sometimes occurs after a lengthy period). The third and final aspects for new family migrants arriving in Barcelona are to learn more about their new receiving context through activities organized by the City Council. Other specific programmes have been implemented by other local and regional administrations.

Local administrations have also developed specific programmes for young family migrants in education and leisure, while women can receive training on public services and social and professional integration. This focus is consistent with the general structure of local policies that emphasises outreach to young people and women on the basis of their vulnerability.

### **4.1 Who do family migrants depend on?**

Although there is no data on who takes up the right to family migration, different groups are allowed to do so. As mentioned, Spanish legislation establishes a distinction between family migration by EU citizens and their family members and that by TCN. Among the second group, there is an additional distinction according to the legal status of the primary migrant. Whereas highly-skilled workers and high-income migrants with non-lucrative resident permits have the right to apply for simultaneous family migration, non-EU citizens with a resident permit in Spain can apply for family reunification after they have been staying regularly in the country for at least one year.

The general channel for *family reunification* applies to non-EU citizens with temporary or permanent permits in Spain. In this case, conditions are related to the legal and economic situation of the primary migrant, and require the guarantee of health insurance and appropriate housing conditions. The person who wishes to reunify family members must personally request temporary resident authorisation for them. In order to apply for family reunification, migrants should have been staying regularly in Spain for at least one year and their resident permit should last for at least one more year<sup>7</sup>. However, according to Organic Law 2/2009, in case of reunification of ascendants (65 years of age or more), the TCN migrant sponsor must hold a permanent resident permit. The applicant must present documentation justifying they have sufficient economic means to provide for family members through a job contract or information on other economic resources.

The 2011 changes to the Migration Law specify the amount of money required for family reunification, based on the Public Income Indicator with Multiple Effects (IPREM) (roughly equivalent to the minimum wage). For the first reunified family member, monthly income must represent at least 150% of the IPREM for the whole household. If the primary migrant wishes to reunify more than one family member, then income should represent at least 50% of the IPREM for each additional family member (see paragraph on pre-entry admission criteria, in the section on welfare benefits, for more details)<sup>8</sup>. Moreover, the primary migrant must have public or private health care insurance and be able to provide adequate housing conditions for family members. This last condition should be justified through a report issued by a local administration, with information on the legal agreements on the occupation of the house or apartment (e.g. tenancy agreement or property deed), details on the number of rooms, number of persons sharing the house or the apartment, and function of each room. The primary

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<sup>7</sup> The primary migrant can present the application for family reunification when he/she requests the first renewal of his/her initial authorization to stay in Spain for one year. If this renewal is authorized, it is granted for one more year. In this case, the reunification permit will only be issued when the renewal procedure is completed for the primary migrant.

<sup>8</sup> In 2011, the IPREM was equivalent to € 532.51. For the reunification of the first family member, the monthly income required to the primary migrant was € 798.77. For each additional family member, the household income should increase in €266.26 (50% of IPREM). So the monthly income of the primary migrant who applies for the reunion of three family members should reach at least €1,331.28.

migrant should request the report in the municipality where s/he is registered in order to benefit from public services in Spain. Such changes to conditions for family reunification may have been affected by the political debates on integration (see final section on rationales).

The evolution of the political debate has not however impacted the two other types of family migration. The second type of family migration, *simultaneous migration of primary and dependent migrants*, is recognised in Spanish law under very specific circumstances. Highly-skilled migrants (EU-Blue card holders) and holders of the special permit for researchers have the right to apply for the simultaneous migration of their family members. In practical terms, they may request reunification visas and resident permits for their family members when they apply for their own entrance visas and resident permits. In both cases, the procedure for reunification is similar to the ordinary reunification process; conditions are premised on economic income, health care insurance, and housing. In the case of high-income migrants with a non-lucrative resident permit, housing conditions are not included among the requirements.

The third type of family migration, *family settlement*, is possible for TCN who are parents of a child under 18 years of age with Spanish citizenship, or where children have a father or a mother who previously had Spanish citizenship. Irregular migrants could benefit from this type, especially if their child was born in Spain and could have direct access to Spanish citizenship. Nevertheless, access to this type of family migration is different for each national group. For example, in 2008 and 2009, some changes in the Constitutions of Ecuador and Bolivia made it possible for the children of their nationals who are born outside of the country to have direct access to the nationality of their parents, even when the births are not declared at the consular office. For this reason, when they are born in Spain, the children of Ecuadorians and Bolivians no longer have automatic access to Spanish citizenship. Before the constitutional changes, this access was permitted in order to prevent the children from becoming stateless. The second type of family settlement refers to children whose parents have lost or resigned Spanish citizenship,

mainly after they have migrated and settled in another country<sup>9</sup>. The 2009 Migration Law reform harmonised family settlement legislation to be in harmony with European Law.

#### **4.1.1 Implications of dependent status for access to resources or citizenship**

Until 2009, the only difference between family migrants and migrants with a temporary permit concerned their access to the labour market, chiefly because a resident permit on the basis of family reunification did not allow family migrants to work. Recently, this situation changed so that family migrants are not affected by many restrictions regarding their access to resources (see section of entitlements). On the contrary, in some local and regional receiving contexts, specific programs are implemented to promote their integration (see Work Package 4).

Like non-family migrants, family migrants' access to Spanish citizenship depends on their nationality. As mentioned before, if they come from Latin America, Andorra, Portugal, Equatorial Guinea and the Philippines, or they have a Sephardic Jewish family background, migrants can apply for Spanish citizenship after two years of continuous legal stay; if not, there is a waiting period of ten years for both TCNs and EU citizens.

#### **4.1.2 Exceptions and ending of the dependent status**

After five years of continuous, legal residence in Spain, reunified migrants can apply for a permanent resident permit. If they are able to gain Spanish citizenship, the dependent status of a family migrant will terminate altogether. If they do not apply for Spanish

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<sup>9</sup> This rule is based in the case law “Ruiz Zambrano v. Belgium 2011”, at the European Court of Justice. According to the ECJ: “Article 20 TFEU is to be interpreted as meaning that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen”.

See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009J0034:EN:HTML>

citizenship after five years of continuous and regular stay in Spain, reunified migrants can apply for a permanent resident permit. Since 2009, family migrants with employment contracts for full-time jobs with an annual income at least equal to minimum annual earnings may apply for an independent and temporary work permit with no time restriction. In this case, dependent descendants should be at least 18 years of age.

Spanish legislation permits three exceptions for reunified partners to obtain independent resident permits:

1. Post-separation or divorce, on condition of evidence of co-habitation for at least two years in Spain.
2. In cases of domestic violence.
3. After the death of the primary migrant.

Serious health issues are not considered an exception because access to the health care system is the same for family and non-family migrants (see section on entitlements).

## **4.2 Refugees and their family members**

According to the legislation on asylum, *Geneva Convention* refugees or people who benefit from subsidiary protection are allowed to share their legal status with family members who are staying in Spain, or reunify with those living abroad under specific conditions. Since applications for asylum or subsidiary protection can include different members from the same family, during the evaluation process, all the family members will benefit from a temporary resident permit while the case is being decided. If the asylum or protection claim is granted, all family members will be given equivalent access to benefits as the primary applicant. There is another exception for partners who separate due to domestic violence or abuse.



In the case of family reunification after a refugee claim has been lodged, family members will benefit from the same type of resident permit as the primary refugee, including potential labour rights (see section on entitlements). Since “chain reunification” or consecutive reunification is not permitted, a refugee’s reunified family members are not entitled to initiate or sponsor another reunification process.

### **4.3 Definition of family ties**

The right for simultaneous or reunified family migration covers a married or a consensual union partner, descendants as well as ascendants above sixty-five years of age. In order to prove family ties, the legislation does not consider DNA tests. All documents proving ties should be officially certified and translated to Spanish.

### **4.4 Partners**

Until the last reform of the Migration Law in 2011, non-married couples did not have the right to family reunification. Non-EU citizens holding Spanish resident permits were allowed to reunify with a same-sex partner only if their union had been celebrated in Spain, Holland, Belgium, and Canada. Since 2011, however, the regulation allows the reunification of partners involved in any stable and intimate relationship in Spain, with no difference between homosexuality and heterosexuality. In the case of a non-formalised consensual union, the primary migrant needs to present some evidence that a stable relationship was established before the application for reunification.

The Spanish Migration Law does not allow reunification of two or more partners even if the country of origin allows this type of bigamous or polygamous union. By the same token, a divorced migrant who remarried will only be able to include his new partner and his/her relatives in the reunification process if he presents some evidence that the separation from his prior partner(s) has taken place.

## **4.5 Reunification of children**

TCN descendants may be reunified if they are a migrant or a migrant's partner's child and younger than eighteen years of age. With regards to EU citizens, the age limit is raised to twenty-one years of age or younger. The reunification of older offspring is possible if they are disabled and require parental care. The Spanish government also permits reunification of adopted children or children whose legal and unique guardian is the migrant or the migrant's partner.

## **4.6 Reunification of parents**

Parents who depend on the TCN migrant or the migrant's partner can be reunified if they are directly dependent on their child. Dependency is measured by remittances sent by the migrant or the migrant's partner during the year before the application, and must represent at least 51% of the National Domestic Product per capita in the country of origin. Reunified ascendants should be over sixty-five years of age. The reunification of younger ascendants can be considered on the basis of humanitarian reasons, such as physical disability.

## **4.7 Refugees and their family members**

Spanish asylum legislation recognises family life as a right for refugees and people who benefit from subsidiary protection. Parents or children could benefit from asylum or subsidiary protection, except if they are independent or have a nationality different from the primary refugee. Partners could also benefit from the specific legal status, except if they are legally separated, divorced, or have a nationality different from the primary refugee. Other family members could be included if evidence can prove that they depend on the primary refugee. A refugee can apply for family reunification even if his or her family members are already staying in Spain.

## **5. Under which conditions can the family migrant status be lost?**

There are a number of ways that a resident permit may be forfeited or lost. When the family migrants, including children, have come to Spain through family reunification, during the renewal process, the Spanish authorities will evaluate the application again and the family will have to respond to the same requirements as for the first application. The family reunification permit, which is always temporary, depends on the capacity of the primary migrant to cover the basic needs of his or her family members on an ongoing basis. During the renewal phase, s/he will once again need to prove he has health care coverage and is gainfully employed and/or has adequate economic means. The family reunification permit may be lost if the relation between the primary migrant and his/her partner changes, for example in case of divorce or separation during the first two years of staying in Spain. If they live outside of Spain for more than six months, family – as well as non-family - migrants may lose their resident permits. Recipients of an independent permanent permit are not allowed to leave Spain for a period longer than 12 months and risk losing their Spanish permit if they obtain authorisation to stay in another country.

Family members who have legal residence status in Spain on the basis of familial relations to a refugee may lose their legal status if the circumstances of the primary refugee change. Such changes may concern better conditions of stay in the country of origin, access to a new nationality or settlement in another country. The Spanish administration can decide to cancel the legal status of refugee if s/he poses a risk or threat or if his refugee status application included false information.

## SECTION TWO: Entitlements and Restrictions

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This section considers the rights of foreign nationals and their family members in the fields of employment, welfare benefits, education, health, housing and civic participation. Before turning to these entitlements and restrictions, some basic considerations should be explained about the relationship between access to rights and the legal statuses of foreign citizens, asylum seekers, refugees and their family members in Spain.

### 6. Asylum-seekers and refugees and their family members

During the application process, asylum seekers and their family members have the right to receive free medical care and legal orientation, together with attention from a translator. Other rights, such as the right to receive information on the procedure, depend on international agreements into which Spain has entered.

When asylum seekers are granted refugee status or subsidiary protection, they receive access to rights guaranteed by the *Geneva Convention*, EU legislation and Spanish national migration law. Rights for refugees and their family members include:

1. Protection against expulsion and return to the country of origin.
2. Access to information on refugees' rights and obligations in a language comprehensible to them.
3. Identity papers and the right to move freely throughout Spain.
4. The right to permanent residence and work permits, according to the Spanish Migration Law, along with access to public services for employment and the possible recognition of diplomas.

5. Similar access as Spanish citizens to education, medical care, housing, social protection and social services, welfare benefits, integration programs and professional training.
6. Access to voluntary return programs.

## 7. Foreign citizens and their family members

In Spain, access to rights mainly depends on the administrative situation of migrants either at the national level through allocation of residence or work permits, or at the local level through registration in the municipal register (*padrón*). There are no differences here on the basis of the nationality of migrants, except for the access to Spanish citizenship and the right to vote in local elections (Brey 2012).

All migrants with a *temporary or permanent resident permit*, including family migrants, can circulate within the country and work; they may even participate in local elections (provided a reciprocal agreement is in place). They have access to welfare benefits, public housing, specific benefits which depend on the local and regional administrations, and health care (although a 2012 legislative change partially limited this right in the case of irregular migrants and their families). In specific cases, access may depend on the number of years that a migrant has been registered in the *municipal register* since this will give some extra rights to social participation and education to both regular and irregular migrants. For children between six and sixteen years of age, education is compulsory. Even if they do not have a resident permit and they are not registered in the municipal register, all migrants have the right to receive identity documents, emergency medical care, social orientation, effective judicial protection and free legal orientation if needed.

## 8. Employment

Before 2009, TCN family migrants were banned from accessing the Spanish labour market during the first year of their stay in Spain. In December 2009, the Spanish Migration Law introduced some changes to grant access to the labour market for partners and children (16 years of age and older) of migrants who had benefitted from family reunification (see section on rationales).

A prerequisite for access to the Spanish labour market is the migrant's graduation in legal status from holding a temporary resident permit to a temporary work permit. Yet since 2009, a TCN with a resident permit granted on the basis of family reunification is allowed to seek and obtain job contracts without the requirement of a minimum period of stay. Once a family migrant is offered a job or an employment contract, s/he may apply for an independent and temporary work permit. More specifically, in order to obtain such a work permit, family migrants should have at least one job contract which will last for at least one year and which provides an annual salary equivalent or better to which is at least equivalent to the minimum national wage established by the Spanish administration. If they wish to start an entrepreneurial activity, family migrants will have the same rights and obligations as any other regular migrant. In this case, they should provide documentation attesting that their qualifications enable them to carry out the specific activity they wish to develop. They should also present required licences, business plans and documentation to prove that their economic resources are sufficient to catalyse their entrepreneurial activities.

The two main channels for a TCN's access to the Spanish labour market are the General System and the Collective Management of Hiring in the Countries of Origin (formerly the Contingent System). The first channel, the General System, is a mechanism of access to the Spanish labour market based on the employers' demands for workers in specific occupations for which there are no job-seekers. This channel generally requires an employer to offer a particular job to a named individual residing abroad on the condition that the job cannot be filled by Spanish or EU- citizens, or by TCNs who are regularly staying in Spain. The second channel, the Collective

Management of Hiring in the Countries of Origin, was developed by the Ministry of Labour and Social Security considering to address the domestic employment situation and current demands for specific occupations. Each year the Ministry estimates the number of jobs that could be covered hiring temporary foreign workers abroad during a limited period of time (Requena and Stanek, 2010)<sup>10</sup>.

The initial, one-year permit obtained by a TCN through either the General System and the Collective Management of Hiring in the Countries of Origin is usually limited to a specific occupation and province. Only after renewing an initial permit is the TCN able to obtain the same free access to other occupations and sectors as Spanish nationals and EU citizens, except for public employment. Reunified family migrants are not beholden to any restrictions, however, because the 2009 Migration Law allows migrants to search for a job once they are staying in Spain without the restrictions implicit to the General System and the Collective Management of Hiring in the Countries of Origin related to the national employment situation, regarding any economic branch and occupation.

Although TCNs are entitled to work in the public administration as contracted employees, they have limited access to civil service positions.<sup>11</sup> According to the Royal Decree 543/2001, EU-citizens, TCN whose spouses or dependent children<sup>12</sup> are Spanish or EU-citizens and non-EU citizens whose countries have signed treaties on free circulation of workers with the EU, are granted rights to access civil service positions. Nevertheless, the Spanish law does not allow the access for any non-Spanish citizen to the Spanish armed forces, law enforcement forces (i.e. National Police, Military Officers,

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<sup>10</sup> In July 2011, due to the considerable increase in the Spanish unemployment rate, the Government decided to re-introduce restrictions on labour market access for Romanian workers. Until 22 July 2011 Romanian workers has been granted the access to the Spanish labour market in the same condition as TCN workers. This restriction is not applicable in case of self-employed workers and does not affect the Romanian nationals and their family members who were employed in Spain or who were registered as jobseekers in the Public Employment Services in Spain before 23 July 2011.

<sup>11</sup> According to the Royal Decree 543/2001, EU citizens, TCNs whose spouses or dependent children (minors under 21 years of age or those who depend economically on a migrant) are Spanish or EU citizens and non-EU citizens whose countries have signed treaties on free circulation of workers with the EU, are granted the right to access to the civil service positions.

<sup>12</sup> This category includes children who are under twenty-one years old or depend economically on a migrant.

local and regional police officers), constitutional and governmental institutions (Parliament, State Council, Bank of Spain) and intelligence service agencies.

At the moment, there are no formal or administrative restrictions to the labour market based on language, minimum qualifications or literacy. As mentioned, the only exception concerns entrepreneurs' need to demonstrate relevant qualifications. The Migration Law's guiding principle of non-discrimination and equity between Spanish citizens and foreign nationals regularly staying in Spain has implications for employment prospects. Article 23 recognizes as discriminatory all conditions established by employers or the public administration that directly or indirectly restrict access to the labour market on the basis of national origin, race, ethnicity or religion. In addition, the 2003 Workers' Statute legislation includes *all* workers in its prohibition on discriminatory or unequal treatment on the same bases. According to this second legislation, all restrictions or unequal treatment regarding the access to employment, participation in trade unions, working conditions, professional promotion and access to self-employment are discriminatory on the basis of nationality, gender, race, ethnicity, and religion.

The work departments and provincial labour inspectorates carry out the monitoring of work and employment conditions of migrants. The regional operational program 'Fight against Discrimination' provides subsidies to organise and coordinate workers movements, hiring of workers and information on employment opportunities.



## 9. Welfare Benefits

### 9.1 General overview on the Spanish welfare system

The Migration Law guarantees the equality of rights for all foreign nationals who are regularly staying in the country. Specifically, Article 14.1<sup>13</sup> entitles foreigners who are regularly staying in Spain to access the same basic and specialised social services or benefits under the same conditions as Spanish citizens. With regards to some specific non-contributory benefits, the length of the regular stay is taken into consideration; as such, there are some differences here between migrants with temporary and permanent resident permits.

In Spain, the national welfare system combines both social insurance programs and universal programs. Under this regime, migrants in Spain can access welfare benefits in two main ways. On one hand, migrants authorised to work and their family members have access to social insurance based on their participation in the labour market and, hence, their contributions to the social security system. In other words, to receive a retirement pension or an unemployment benefit, workers must have contributed during a stipulated period of time, and the retirement pension or subsidy will be proportional to the duration and quantity of the worker's contribution. On the other hand, access to some limited pension and disability programs is not based on the contribution of workers. These non-contributory programs provide relatively limited benefits to their beneficiaries, who should have no other income. They cover both Spanish citizens and foreigners who are regularly staying in Spain with no contribution to the social security system.

### 9.2 Pre-entry admission criteria

Inclusion in the social security system is not compulsory for primary migrants in order to reunify their family members. However, primary migrants are expected to provide

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<sup>13</sup> This report considers Part 1 of Article 14 as it refers to the non-contributory sector controlled by the central government and regulated through the Social Security Law, while Parts 2 and 3 of Article 14 refer to the non-contributory benefits depending on the Autonomous communities.

economically for their family members and monetary social benefits that may be received by primary migrants are not taken into consideration as part of the economic resources required for reunification. The Migration Law makes an exception for renewing resident permits for reunified family members in that they may count monetary social benefits in their applications. According to the reformed Migration Law, when reunified family members apply for the renewal of their resident permit, sufficient economic means are still required, however, monetary social benefits can be taken into account in this case.

### **9.3 Length of period for “non access to public resources”**

The access and length of benefits depend on the duration and quantity of the worker’s contribution. In case of the non-contributory benefits, access to those benefits depends only in some cases on the length of stay in Spain. For instance, only TCNs who stay regularly in Spain for a total period of ten years (and fulfil other requirements) are entitled to receive non-contributory pensions (ten years of previous residence, or for a non-contributory pension for disabled persons: five years of previous residence). On the other hand, there is no minimum length of regular stay before receiving specific non-contributory child benefits.

### **9.4 Children**

As in other Southern European countries, dependence on family is a distinctive feature of the Spanish welfare model. “Familism” posits that problems faced by individuals are mainly resolved through intra-familial transfers, both tangible and intangible, and through the sharing of resources and expenses (Moreno, 2010). “Familism” partially explains the following economic, social and health limitations on the benefits for families with children:

- Child benefit can be received for each child when the household total income is below the established minimum or in the case of serious physical or mental incapacity of the child (regardless of income). All regular migrants who fulfil the previous conditions are entitled to receive this benefit and no minimum length of regular stay is required.
- Single-payment benefit is payable for the birth or adoption of the third child and thereafter when the parents earn below the minimum annual income. All regular migrants who fulfil the previous conditions are entitled to this.
- Additional single-payment benefit payable for a birth or adoption in families with three or more children when the parents are single or disabled and earning below the minimum annual income.

## **9.5 Adults**

### **9.5.1 Unemployment benefits**

The amount and duration of unemployment benefits received by a worker will depend on the length and quantity of contributions to the social insurance system. In order to receive unemployment benefits, workers must have contributed for at least 365 days during the six years before unemployment. The amount of money received by the unemployed depends on the length of contribution to the Social Security system. In order to receive these entitlements, migrants need regularised stays and regular contributions to the Social Security system. All workers employed in the informal economy, which is larger in Spain than in North European countries, will be excluded from unemployment benefits. As mentioned before, there are no differences between family and non-family migrants when pertaining to unemployment benefits.

After unemployment benefits are depleted, the unemployed no longer have a right to receive further subsidy. Nevertheless, there are specific circumstances under which workers can receive non-contributory benefits; categories include:

1. Workers with family responsibilities who depleted their contributory unemployment benefits.
2. Workers who are over 44 years of age, without family responsibilities, who used up contributory unemployment.
3. Workers whose contribution periods do not entitle them to receive contributory unemployment benefit.

In these three cases, the amount received is 426€ per month. There are limited duration programmes to support those whose unemployment benefits have ended. The Spanish government rejected the possibility of extending this program to all unemployed in June 2012.

### **9.5.2 Illness and disability benefits**

Workers who are incapacitated during a limited period of time due to illness or an accident are entitled to a monthly benefit which is equivalent to the income received during the month previous to the illness or accident. The duration for this benefit is 365 days, which may be extended for another 180 days in specific circumstances. Beneficiaries of this entitlement are workers under 65 years of age who have contributed for at least 180 days during the five years prior to the illness. In the case of a workplace accident, no minimum period of contribution is required.

Workers who suffer from permanent disabilities are entitled to receive permanent economic subsidies if they are under 60 years of age and they have contributed to the Spanish social security system during the stipulated period of time of at least 1,800 days

during the ten years prior to the incapacity. Workers who suffer from permanent injury but are not incapacitated may claim for a single-pay economic assistance. The amount of money correlates to the type of injury. In addition, non-contributory benefits are provided to persons who are suffering from permanent disability (the degree of disability should be at least 65% unable to work), if they have not contributed the required number of days to the social security system and they are between 18 and 65 years of age.

## 9.6 Older people

In Spain, Social Security works as a “pay-as-you-go” system. The quantity of the retirement pension will depend on the worker’s labour history which is comprised of past wages, number of years of contribution and age of retirement. Each pension is established when a worker starts to contribute to the system, and it will not depend on economic, demographic or financial conditions at the time of retirement. Pensions will be awarded to workers who have contributed for at least fifteen years, at least two of which should be included during the fifteen years previous to retirement. They should have reached 65 years of age and have retired from the active labour force. However, early retirement pensions are available to workers from 61 years of age if they have contributed to Social Security over at least 30 years.

On the other hand, the Spanish welfare system provides non-contributory pensions for Spanish nationals and regular migrants who are over 60 years of age and whose annual income is below a minimum established by Government<sup>14</sup>. Regular migrants may benefit from non-contributory pensions if they have stayed in Spain for a total period of ten years, of which they must have remained for two consecutive years prior to applying for the benefit.

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<sup>14</sup> In 2012, the annual income below which a person is entitled to receive non-contributory pension was 5,007.80 €

## 9.7 Other benefits

Except for the pension system and unemployment insurance, which remain in the hands of the central government, other social protection policies can be provided to migrants through regional and municipal authorities. The Spanish central government develops the basic legislation governing these decentralised benefits, and is responsible for financial transfers to cover a portion of the costs of certain social protection programs. More specifically, the non-contributory system is divided into (a) the national system, linked to the Social Security Law, and (b) the regional system. The Constitution and particular regional legislations (*Estatutos de Autonomía*) dictate that social services be managed by autonomous regional governments. In this sense each territory has developed its own non-contributory benefit system (benefits for families, children, elderly benefits and disability benefits). Access to those benefits depends on each autonomous community and, sometimes, the local authorities.

## 10. Healthcare

The Spanish public health system includes three main areas: primary medical care, special medical care and emergency healthcare. The Spanish Migration Law applies to the general legislation in this area (Organic Law 4/2000, 11<sup>th</sup> of January, on the rights of foreign citizens in Spain and their social integration, considering subsequent modifications). In April 2012, the central government lead by the conservative party, *Partido Popular* (PP) introduced some changes to this legislation (see section on rationales).

From September 2012, only migrants who regularly stay in Spain can access all services, while irregular migrants only have access to emergency services. If they wish to have access to the publicly-funded primary and specialised services, direct payment will be required. Primary and specialised medical attention will be maintained for women during and after pregnancy, and for children less than 18 years of age, without any consideration of their legal status. This legislative change breaks with the general trend of universal healthcare based on municipal registers that was in place from 2000 until 2012. In this new context, migrants with temporary and those with permanent resident permits are treated equally. EU citizens and their family members with resident permits receive health care.

In addition, the social security system covers universally the costs related to health for all students enrolled in educational institutions in Spain who are below 29 years of age. The insurance covers all illness and accidents related to any schooling activity (including excursion, sport events, students meeting etc.). In the case of TCN, they should be regularly staying in Spain.

## 11. Housing

Through Article 13 on the rights in the field of housing, the Spanish Migration Law establishes that foreigners with permanent resident permits (that can be obtained after five years of continuous legal residence) will benefit from the same rights as Spanish citizens (Organic Law 4/2000, 11<sup>th</sup> of January, on the rights of foreign citizens in Spain and their social integration, considering subsequent modifications). In the case of foreigners with temporary resident permits, the rights will depend on the public administrations responsible for this area, which are municipalities and regions. Apart from the financial situation of the household, which is the basic criteria to benefit from public housing, additional criteria may consider the number of years during which foreigners have been included in the municipal registers, the age (there are special conditions for young people, under a certain age, which can vary from one city to another) and household composition. On the contrary, irregular migrants are excluded from access to housing benefits. In any case, social housing provision is very limited in Spain.



## 12. Education

Article 9 of the Migration Law establishes conditions for migrants' access to rights in the field of education.<sup>15</sup> Access to pre-school education for children under six years of age depends on regional legislation but, in general terms, the main criteria include family income and the parents' work or home addresses. Enrolment in public pre-school centres is subsidised. All migrant children between six and sixteen years of age have a right and an obligation to receive a free education. In several regions and municipalities, they may also have access to specific transitional classes upon arrival in Spain. Children between six and sixteen years of age who studied in a foreign education system do not need to undergo a validation process before joining the primary or secondary education systems.

In 2007, the Spanish Constitutional Court established that the right to education should be guaranteed for all foreign students under 18 years of age, regardless of their migration status (STC 236/2007). Before then, the Migration Law had limited migrant children's access to education strictly to students less than 16 years of age. After Spain ratified the Convention on the Rights of the Child (1990), the authorities had to extend this right until 18 years of age. All students under 18 years of age are entitled to receive a diploma and apply for fellowships under the same conditions than Spanish citizens. When they are above 18 years of age, foreign students must have a resident or work permit to access non-compulsory education.

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<sup>15</sup> Organic Law 4/2000, 11<sup>th</sup> of January, on the rights of foreign citizens in Spain and their social integration, considering subsequent modifications.

## 13. Civic Participation and voting

Following changes to the Spanish Migration Law in 2000, the Conservative Party (PP) proposed restrictions on irregular migrants' rights to hold meetings, organise demonstrations, form associations, unionise and strike. The Constitutional Court in 2007 declared each of these measures unconstitutional, however, and the aforementioned rights were officially re-instated in 2009. As of 2013, there are no formal restrictions for migrants in local democratic participation, and membership in parties and non-governmental organisations (NGOs).

The right to vote and to stand for elections is possible for some migrants at the municipal level. During the May 2011 local elections, apart from EU citizens, potential voters included migrants from ten countries of origin<sup>16</sup> that had signed an agreement with the Spanish government for reciprocal voting rights (see section on rationales). The final list included Bolivia, Chile, Colombia, Equator, Paraguay, Peru, Cape Verde, Iceland, Norway and New Zealand. Migrants from those ten countries were able to vote on three conditions: (i) they were at least 18 years of age; (ii) they were registered in the Municipal Register; and (Alexander III) they had a permanent resident permit.

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<sup>16</sup> This list of counties that have signed reciprocal voting agreements with Spain is comprised of Bolivia, Chile, Colombia, Equator, Paraguay, Peru, Cape Verde, Iceland, Norway and New Zealand.

## SECTION THREE: EXPLORING RATIONALES

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In 2000, Spanish legislation recognised family reunification as a right. Nonetheless, family migrants face general restrictions based on their legal statuses (regular or not, temporary or permanent) and access to the labour market through the formal or informal economy. Non-family and family migrants' access to rights – and the restrictions on these rights – in Spain can be explained by *political and economic rationales, together with the public philosophies on integration*.

Political rationales here revolve around the relations between Spain and migrants' countries of origin and their family composition. Family migration depends on the nationality of the applicants. Whereas family members of EU/EEA citizens have direct access to a permanent resident permit, TCN family members must first apply for, and receive a temporary resident permit before permanent residence can be gained. With regards to TCNs, access to Spanish nationality can impact the prospects for family migration. If migrants originate from Latin America, Andorra, Portugal, Equatorial Guinea and the Philippines, or if they have a Jewish Sephardic family background, they can apply for Spanish citizenship after two years of continuous legal stay; however, all other TCN and EU citizens are obliged to wait ten years before their citizenship applications will be considered. Likewise, Article 13 of the Spanish Constitution only grants a right to vote if there is a reciprocal voting agreement in place between Spain and the migrant's country of origin.

When the unemployment rate and public deficit increased, particularly during economic crises, the Spanish government imposed new restrictions on family migrants as regards their rights to work. These restrictions have been sanctioned at the supranational level: for instance, the European Commission in 2009 allowed the aforementioned restrictions on Romanian migrants to Spain as they represent the main migrant group in the country. While access to the Spanish labour market was limited for this specific national group, reunified family members of TCN were allowed to access the Spanish labour market if they received a job offer regardless of their legal status. The rationale behind this

opening of the labour market to family migrants was to reduce household dependence on a single earner. This move coheres with the aims of the Strategic Plan for Citizenship and Integration (2007-2010) that was adopted by the Ministry of Labour and Immigration. Among other measures, the Plan aimed at fostering the economic and social integration of all regular migrants, including reunified family members (Vela Díaz 2011).

In April 2012, the Conservative Party administration introduced changes to the public health care system with an eye towards reducing the public deficit. One change was restricting access to primary and specialised health care services for irregular migrants, with some exceptions for pregnant women and children less than 18 years of age. Government argued that irregular migrants ought not to receive these services because their lack of participation in the formal labour market implies that they do not contribute to Social Security. NGOs, migrant associations and professionals from the health care system criticised this move for three primary reasons: first, several studies conclude that TCNs use the health care system less than Spanish citizens or EU citizens, especially those who retire in Spain; second, emergency services could collapse and contagious diseases that particularly impact migrants – such as tuberculosis – could be spread more easily among the population; and, finally, irregular migrants with severe illnesses – such as HIV/AIDs or cancer – could be left to die without access to medical care. For these reasons, some professional healthcare workers have declared that they will continue providing medical attention to all people in Spain, both within the health care system and through other channels. Considering these criticisms, new changes may be introduced to the legislation during the coming months, although more restrictions could be adopted due to the severe economic crisis.

Political debates on integration also play a role in shaping the conditions for family reunification in Spain. Prior to the March 2008 general election, the Councillor on migration and citizenship in the regional government of Valencia proposed to implement a contract for the integration of migrants. In order to maintain social cohesion within the region, the Councillor's aim was to ascertain the commitment of migrants living in

the region to living according to Spanish values based on human rights and democracy<sup>17</sup>. The Councillor made this proposal following the Conservative Party leader's announcement of his intention to establish a special visa requiring migrants to provide evidence for their capacity to integrate. Interestingly, since the special visa was partially justified by referencing similar initiatives adopted in other European countries, there is evidence here that the political debate in Spain is sometimes influenced by external factors. In the Spanish context, capacity to integrate was vaguely defined according to migrants' willingness to adapt to local customs, including opposition to disfavoured practices such as polygamy or female genital mutilation<sup>18</sup>. This debate about the special visa revolved around irregular migrants and some cultural importation of their customs, but it also touched on the requirements for family reunification of both primary and dependant migrants. When the Socialist Party (PSOE) won the elections, however, the special visa measure was withdrawn from official consideration.

Importantly, migration and integration were also salient political issues prior to the May 2011 regional and local elections, particularly in Catalonia (Garcés, Franco and Sánchez 2012). For instance, the City Councils of Vic (in Barcelona) and Torrejón (in Madrid) openly questioned the registration of irregular migrants in the municipal register (*padrón*) in order to access public services, especially health and education. Nevertheless, this measure did not result in any formal modification to law. In addition, several City Councils implemented a prohibition on wearing the *burqa* or the *niqab* in public spaces and buildings. Finally, and more directly linked to family reunification, the City Councils of Hospitalet and Salt requested in 2010 to modify legislation regarding local governments' reports on the situation of migrants. In case of family reunification, as mentioned before, local authorities should certificate if primary migrants are providing adequate housing conditions for family members and the degree of social integration of migrants who are staying irregularly in Spain. Both City Councils requested that their evaluations have a binding effect on migrants' receiving rights to family reunification or regularisation. The City Councils also requested for the evaluation to consider offenses committed against local legislation around living together and public-spiritedness.

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<sup>17</sup> *Público*, "Valencia exigirá a los extranjeros firmar un contrato de integración", 28/04/2008.

<sup>18</sup> *Público*, "Los inmigrantes tendrán un 'visado por puntos' si gana Rajoy", 08/02/2008.

Meanwhile, in Barcelona, during the electoral campaign previous to the local elections, political candidates from both the Conservative and Socialist parties proposed to implement a contract for the integration of migrants in several municipalities in the Barcelona metropolitan area. In Catalonia, the orientation of the political debate on migration, which considers the possibility to limit the conditions for family reunification, can be partly explained by the existence of a political party against migration, called *Plataforma per Catalunya*.

Linked to these debates, in 2011, the Government introduced the new concept of 'effort for integration' in the Migration Law. The concept was introduced in relation to the three following aspects of migration and integration in Spain: (i) the renewal of temporary resident permits, which concerns migrants who are candidates to reunify their family members; (ii) the social settlement program available for irregular migrants, on the basis of their social situation; (Alexander III) and access to education, professional training and labour market for unaccompanied minors. The implementation and evaluation of the 'effort for integration' does not depend on the local authorities but on the regional governments. In the regional context of Madrid, two instruments have been implemented in order to evaluate the 'effort for integration' in the case of migrants who are applying for renewal of their resident permits and for the regularisation of their situations through the social settlement program. Since February 2012, they have been receiving training on the Spanish Constitution, the labour market, legislation on migration and integration goals, and the public resources available to them. Migrants whose mother tongue is not Spanish must pass a Spanish language oral exam (Brey 2012). In Catalonia, some restrictions have been introduced through the visual control of housing conditions and the limitation of the square meters available for each person<sup>19</sup>.

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<sup>19</sup> Source: <http://www.legaltoday.com/practica-juridica/civil/familia/cataluna-pone-en-practica-nuevos-requisitos-para-la-reagrupacion-familiar-el-arraigo-social-y-la-renovacion-de-residencia-temporal>

## CONCLUSION

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In Spain, *access to rights* mainly depends on the legal status of foreign nationals and whether they are regularly or irregularly staying in the country. In some cases, extra conditions are imposed that are based on the period of registration in the municipal register and the period of regular stay in Spain. This last criterion distinguishes between migrants with a permanent versus a temporary permit. Their access to the labour market also introduces some differences between migrants who work in the formal versus the informal economy.

With regards to family migrants who are staying in Spain, only family settlement program candidates are excluded from accessing some rights as they do not have a resident permit. No restrictions specifically affect only family migrants with a resident permit; they experience the same restrictions as other migrants, based on their resident permit. In local and regional contexts, some programs are aimed at facilitating social integration, particularly in the cases of reunified women, children and youth. Family migrants with a temporary resident permit have access to welfare benefits depending on their economic contributions and period of stay; public housing depends on income and period of registration in the municipality; and voting rights in local elections depends on nationality, period of stay and period of registration. On the contrary, migrants who are regularly staying in Spain have open and complete access to employment, health and education. These restrictions and variegated accesses to rights can be at least partially explained by economic and political rationales and philosophies of integration.

There are also some differences between the family reunification of foreign citizens by TCN and EU/EEA citizens during the pre-admission process that impact the first resident permit. Since July 2011, access to the reunification process for Romanian migrants has been re-established and is once again similar to TCNs. TCNs wait ten years before applying for citizenship after receiving a temporary resident permit. The situation for Romanian migrants and other TCNs contrasts with select other nationality groups that benefit from a privileged position of only two years' wait before applying for

citizenship. Each of these tiers of access disparately impacts the possibility for a swift family reunification process. Easier access to nationality may have some consequences on an easier access to reunification for their family members.

The 2008 economic crisis led to a series of changes in Spanish migration policies. The political debate impacted family migrants' authorisation to arrive and stay in the country more so than their entitlements to rights. In 2012, if EU citizens and their family members wish to obtain a Spanish resident permit, they need to first establish health coverage through an employment contract or a private insurance. In 2010, some municipalities questioned the content of the reports through which the economic and housing conditions of primary migrants are evaluated when they wish to reunify their family members. In local contexts, discretionary practices have become more complicated to control, and civil servants are adopting different criteria for evaluating similar situations.

In September 2012, the Spanish political debate was monopolised by discussion of the public deficit, high rate of unemployment and intervention by the European Union. The economic crisis makes the situation highly unpredictable with regards to the rights of family and non-family migrants. As a consequence of the public deficit, programs for reunified family migrants may suffer from diluted integration services. In addition to the 2012 restrictions on access to healthcare for irregular migrants, further changes may be introduced by the Conservative party during the coming months in 2013, depending on the evolution of the economic and political context.



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