

A BILATERAL AGREEMENT ON MIGRATION
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1. Mandate

The Inter-American Juridical Committee decided by consensus, at the session of August 9, 2013, corresponding to regular session No. 83, to incorporate into the following session's agenda the Rapporteurship on "Guidelines for migratory management in bilateral relationships of the American States," as part of the attributions envisaged in Articles 99 and 100 of the Charter of the Organization of American States and Article 12, subparagraph c) of its Statute, for the purpose of subsequently drafting the model bilateral agreement on migration; at the same session the Rapporteur who shall be submitting to the consideration of the Committee a preliminary document for review and discussion was designated.

At regular session No. 84, held in Rio de Janeiro on March 10-14, 2014, the "guidelines" were adopted and the Rapporteur was requested to proceed with the drafting of the document pertaining to the following phase, that is, presentation of the model bilateral agreement on migration in order to examine it in the 85th regular session and then submit it to the consideration of the OAS Member States.

2. Text of the proposed model for the bilateral agreement on migration

Conclusions:

- That it is indispensable to regulate, in general and on an ongoing basis, the principal aspects of the migration of between the parties.
- That the rights to mobility and settlement, inside and outside countries, are inherent to human beings.
- That is individually and socially useful to fulfill the drive for self-improvement of immigrants, who as a rule become stakeholders bearing and creating advancement.
- That migration must be considered and treated as a phenomenon that is eminently social, cyclical and permanent, with its own characteristics, not subject to any equivalencies in terms of the number of persons, quotas or periods.
- That the legal vulnerability of de facto immigrants leads to economic damages for both them and the society that receives them.
- That it is advisable to establish, by means of a bilateral instrument, types of visas for the various cases envisaged and to standardize paperwork.
- That obtaining visas must be facilitated as a way of preventing and stopping de facto immigrations.
- That temporary migration for labor purposes requires a treatment that is expeditious, simple, and timely.
- That the concept of family unity must steer the actions of the parties and prevail in

decisions taken by national authorities having jurisdiction.

- That dual and multiple nationality best guarantee the rights of individuals, groups, and ethnic groups.

- That classification as an inadmissible alien to prevent entry, return him/her to the home country, or deny visa must be based on the criterion of danger to the community and not on subjective or discriminatory appraisals.
- That cooperation and mutual assistance by the parties is necessary to effectively combat international crime for the sake of social peace and to prevent free and unfair resistance to immigrants.
- That the inalienable right of emigrants to return to their countries of origin must be guaranteed and provided with indispensable facilities.
- That recognizing studies, certificates, diplomas and degrees is an essential part of the guarantees that immigrants and their children require; it shall also be useful for nationals abroad when they return.
- That it is indispensable to offer economic assistance to human settlements where immigrants are concentrated in order to facilitate their integration into the community.
- That affiliation to any social security system is a guarantee that the immigrant, whether temporary or permanent, shall not be or become a public charge.

On the basis of the considerations enshrined herein, the governments agree to enter into the present agreement on migration, in accordance with the following provisions.

CHAPTER I TEMPORARY MIGRATION

Article 1 – The nationals of parties shall be able to work temporarily, permanently, or as day laborers, with social security affiliation as a requirement.

Article 2 – Temporary and collective labor migration shall be carried out by means of collective contracts, guaranteed by a labor contractor. The employer and labor contractor shall be jointly and severally responsible for the transportation, housing, social security affiliation, wages or salaries, other legally stipulated benefits, and return trip.

Article 3 – The parties shall set, by mutual agreement, the minimum wage for the temporary worker, in national currencies and it shall be revised periodically.

Article 4 – A temporary work visa shall be valid for one year.

Article 5 – A student visa shall be valid for one year and shall be granted either inside or outside the country, with the showing of a school enrollment or registration affidavit; it can be renewed for the duration of the studies upon presentation of the certificate proving that the school year or its equivalent has been passed.

Article 6 – A scholarship recipient visa shall be valid for the duration of the scholarship and shall be granted upon presentation of the written certification from the organization or entity awarding the scholarship.

Article 7 – A trainee or intern visa shall be valid for one year and shall be granted by the consul upon presentation of the written acceptance by the institution that will be receiving the trainee or intern.

Article 8 – Visas for temporary workers, students, scholarship recipients, interns and trainees cover family members who are the holder's dependents.

CHAPTER II

PERMANENT MIGRATION

Article 9 – The parties shall establish similar or equivalent requirements and reduced rights and shall simplify paperwork for obtaining a permanent immigrant visa.

Article 10 – The general regulation shall specify the requirements for a permanent visa as investor, professional, expert, technician, pensioner, rentier or other and shall indicate the causes for suspension and annulment.

Article 11 – The child of an immigrant, when he/she reaches the legal age of adulthood, shall independently seek access to the rights and guarantees of the parent.

Article 12 – The quality of permanent immigrant shall be valid indefinitely.

Article 13 – The request for a visa by a person on trial shall be suspended until the judge having jurisdiction rules on the case.

Article 14 – A rejected person may carry on with a visa application when he/she has met all requirements.

CHAPTER III

RESIDENTS

Article 15 – To opt for permanent immigrant status, the resident shall submit his/her identity document, police record, and the certificate proving he/she has been affiliated to the host country's social security system for more than six months.

Article 16 – An immigrant may apply for the identity document or the police record certification from the country of origin at that country's consulate.

Article 17 – To receive the visa, the resident will not have to return to his/her home country.

Article 18 – While the application for permanent immigrant status is being processed, the resident and his/her nuclear family cannot be expelled from the country.

Article 19 – The protected person can become a resident, for the purpose of obtaining immigrant status, by becoming affiliated to the social security.

CHAPTER IV

RECOGNITION OF NATIONALITY AND NATURALIZATION

Article 20 – A child born to immigrants in the territory of the other party may be entitled to the father's or mother's nationality by registering at the consulate of the parent's country.

Article 20.a – An immigrant who has held the respective visa for one or more years may opt for naturalization, including that of his/her under-age children and those children who are of age but subject to parental custody.

Article 21 – Naturalization of the spouse, child, father, or mother of a national should involve simplified paperwork and the requirement for minimum duration of residency in the country should be cut by one half.

Article 22 – Naturalization of nationals of the other party shall not be liable to payment of any charges or duties.

Article 23 – The national who has been naturalized in the other party shall keep his/her nationality of origin.

CHAPTER V

SOCIAL SECURITY

Article 24 – The employer shall be responsible for affiliating the temporary or permanent worker in the country of immigration to any social security system, whether state, private, or mixed.

Article 25 – The self-employed person must have social security coverage from the country of immigration.

Article 26 – To be affiliated to any kind of social security from the country of residence, the national from the other party must present his/her identity document and provide the information that is requested.

Article 27 – Students, scholarship recipients, trainees, and interns must have social security coverage.

Article 28 – The social security administration of one party may enter into agreements for the purchase of services with the social security administration, clinics, medical offices, or private health institutions of the other party to serve nationals.

Article 29 – The social security administration of one party is required to provide the national of the other party who is affiliated, those medical and hospital services for illness, maternity, occupational accidents, professional illnesses, benefits for the elderly and the disabled, and other stipulated benefits, without any discrimination whatsoever.

Article 30 – The social security administrations of the parties shall establish mechanisms for settlement and compensation for services provided to the members of the nationality of the other party.

Article 31 – The periods of time and contributions accumulated by the affiliate in any of the social security administrations of one party can be transferred to the social security administrations of the other party for the relevant purposes.

Article 32 – The retirement and pension funds can be accredited to the country of immigration.

Article 33 – The social security administrations of the parties can draw up special agreements so that the active affiliate of one party, when he/she is passing through the territory of the other party, can benefit from healthcare services and protection.

Article 34 – The social security administrations of the parties shall adopt a binational format for the affiliation booklet or card and common processing forms.

Article 35 – The social security administration of each party shall issue monthly reports on the services provided to the affiliates of the other party.

Article 36 – The social security administrations of the parties shall standardize the delivery of services and shall set the same number of quota contributions required for retirement.

Article 37 – The services provided to the affiliates of the nationality of the other party shall be immediate without any waiting periods.

Article 38 – The social security administrations of the parties shall simplify and standardize the paperwork for the affiliation of temporary or permanent workers of the other party, as well as for employer and affiliate contributions.

Article 39 – To better fulfill the obligations of the present agreement, the social security administrations of the parties shall establish a binational technical committee, with the capacity to hear and settle application problems or complaints; the activities and responsibilities of the binational social security committee shall be governed by a special regulation.

CHAPTER VI

PROTECTION AND ASSISTANCE

Article 40 – The parties shall establish systems to manage and identify jobs for temporary or permanent emigrants and for those nationals who wish to return.

Article 41 – The immigrant shall have the same rights and obligations as those of the national, as a result of which no taxes shall be levied for this reason, no additional documents other than those specified in the present agreement or the general regulation shall be required, no periodical or occasional supplementary procedures shall be imposed, and no discriminatory requirements shall be created.

Article 42 – The national authorities having jurisdiction shall periodically identify the principal settlements of immigrants for the purpose of facilitating the provision of assistance as envisaged in the present agreement.

Article 43 – Training institutions shall plan and implement, by mutual agreement, on the basis of joint contribution or international funding, specific programs in communities comprised of immigrants and nationals of the place. The contribution of resources from the country of emigration shall be proportional to the number of its immigrant nationals.

Article 44 – The consuls of the jurisdiction shall provide assistance to temporary immigrants regarding their ties with employers and shall participate in negotiations for hiring and effective placement.

Article 45 – Embassies and consulates shall provide their country's national authorities having jurisdiction complete information about labor supply and demand in the country in which they operate, specifying required qualifications, length of job, wages, working hours, availability of housing and living expenses, transportation expenses, and explanations about existing risks.

Article 46 – The parties are required to set up mechanisms to facilitate the remittance of money earned from the immigrant's work to his/her home country.

Article 47 – The earnings from the immigrant's temporary or permanent work shall not be subject to taxation in the country of origin.

Article 48 – The worker of the other party, regardless of his/her status situation or status, and whether he/she leaves the country because of different needs, shall not waive his/her labor rights with respect to his/her employer.

Article 49 – National adult literacy programs shall include immigrants.

Article 50 – Each party shall facilitate community organization by immigrants from the other party and shall collaborate in the implementation of programs that have been agreed upon.

CHAPTER VII

STUDIES, CERTIFICATES, DIPLOMAS, AND DEGREES

Article 51 – Each party shall recognize the schooling completed by the immigrant from the other party, at the preschool, primary, secondary, vocational, college preparatory, university or professional specialization levels, whether for years, semesters, or quarters completed and passed.

Article 52 – For admission to schools of the other party, whether public, private or mixed, at the beginning of the year or at any time before and after, the requirements that must be met are as follows:

- a) Identity document; and
- b) Authenticated certificate of the last year, semester or quarter passed or registration or grade completion.

Article 53 – The certificates, diplomas, and degrees certifying completion of primary, secondary, vocational, college preparatory or university education granted by the national authority having jurisdiction of a party, after authentication or annotation, shall be recognized by the other party and shall enable their holders to continue their schooling in subsequent cycles.

Article 54 – The certificates, diplomas, and degrees for trades, crafts and technical competencies, whether from secondary school or pre-university, issued by the national authorities having jurisdiction from one party and recognized by the other party, shall enable holders to work in the fields for which they were prepared, even though they do not have the respective equivalencies.

Article 55 – Recognition of the equivalency of professional degrees shall guarantee the free exercise of the respective profession.

Article 56 – Consular annotation, authentication, or legalization of school certificates, diplomas, and degrees shall be free of charge.

Article 57 – The costs of enrollment, registration, tuition or other schooling fees, at all levels, for an immigrant, his/her spouse, and children shall be identical to those set for nationals.

Article 58 – Students, trainees, or interns shall be entitled to engage in paid, part-time activities.

CHAPTER VIII

RETURN

Article 59 – An immigrant domiciled for more than two years shall be entitled to take back with him/her household belongings, motor vehicle, working tools, savings and capital assets, which shall be tax and duty free; the general regulations shall specify requirements, restrictions, and procedures.

Article 60 – The parties shall establish mechanisms and procedures to facilitate the incorporation of the emigrant and his/her family.

CHAPTER IX

SPECIAL SITUATIONS

Article 61 – Every month each party shall provide the other with the list of immigrant visa applicants who have been qualified as inadmissible on the basis of the causes specified in the general regulations of the present agreement.

Article 62 – The general regulations shall establish the basic indicators for defining the following persons as inadmissible aliens: agitators, criminals, accused persons, provocateurs, persons with an arrest record, fugitives, seditionists, convicts, subversives, terrorists, and traffickers.

Article 63 – Classification as an inadmissible alien disqualifies the person from opting for any kind of visa whatsoever.

Article 64 – The return of nationals defined as inadmissible by the other party shall be conducted with all the guarantees for security and respect for the person; and the proceedings shall be specified in the general regulations.

Article 65 – A resident or immigrant alien cannot be concentrated or confined.

Article 66 – Asylum and refuge shall be governed by international agreements currently in force for the parties.

Article 67 – The parties shall join forces to meet the needs of displaced persons, to facilitate their return, or to grant them immigrant status.

Article 68 – An undocumented person or who is illegal or irregular may be subject to concentration, expulsion, or internment by order of the national authority having jurisdiction, for reasons specified in the general regulations.

Article 69 - A resident or immigrant alien cannot be returned or deported unless one of the causes set forth in the general regulations is applicable.

Article 70 – A person whose status is undocumented, illegal, or irregular and whose request for an identity document, passport, police record, or certificate of social security from his/her country of origin is being processed cannot be expelled.

Article 71 – Repatriation shall be conducted safeguarding dignity and basic human rights, and under the responsibility of competent national authorities of the two parties.

Article 72 – Quarantine shall only be applied in extreme cases, mutually agreed upon by the parties, safeguarding the dignity and rights of persons.

Article 73 – Conscientious objector deserters are entitled to receive refuge.

Article 74 – National police, security, and crime control and prevention authorities are required to draft monthly reports, as well as special reports whenever necessary, about presence, removals, and arrest of criminals from the other party; these reports shall be exchanged electronically.

Article 75 – The parties are required to provide the assistance that is indispensable to prevent the entry of the persons described in the preceding article.

Article 76 – Each party is required to prevent, hinder, punish, and redress all discrimination against the nationals of the other party.

Article 77 – An immigrant who has children under age or dependents, spouse, or partner born in the country of immigration shall not be subject to deportation, return, expulsion, extradition, non-admission or internment.

Article 78 – A fugitive shall not be admitted as a temporary or permanent immigrant.

Article 79 – A person who has failed to fulfill military duty requirements is entitled to opt for a visa, after meeting the respective requirements.

Article 80 – The parties shall adopt the binational passport as a prior step to facilitating and speeding up the adoption of the Andean, Latin American or regional passport.

CHAPTER X

GENERAL PROVISIONS

Article 81 – The specifications of the various provisions of the present agreement shall be developed in the general regulations.

Article 82 – The concepts of the principal terms used in the present agreement are defined in the Annex, which may be amended or extended by an exchange of notes.

Article 83 – A temporary or permanent immigrant visa covers family members accompanying the holder and enables them to perform any trade, craft, profession or paid legal activity.

Article 84 – Resident or immigrant aliens and naturalized persons shall be exempt from performing military service duties and paying compensation amounts.

Article 85 – Each one of the institutions having to do with migration shall train instructors in charge of preparing the staff who must discharge duties in the service centers along national borders, in seaports, airports and other public offices in charge of ensuring compliance with the provisions of the present agreement and its regulations.

Article 86 – For the purposes of the present agreement, a monogamous and stable relationship between two unmarried persons for no less than two years confers upon the couple the rights and obligations that national laws give to spouses; the general regulations shall establish the modalities whereby evidence of the relationship can be provided.

Article 87 – The granting of immigrant visas and temporary or permanent immigrant status shall not be subject to any equivalency in terms of numbers in one or the other party, nor shall it be subject to quotas or time-limits.

CHAPTER XI

FINAL PROVISIONS

Article 88 – This agreement shall enter into force thirty days after ratifications are exchanged and shall be in force indefinitely.

Article 89 – The parties may amend or denounce the agreement, upon prior notice ninety days ahead of time.

In witness whereof, the parties sign the present agreement in (*specify the language*), with two equally authentic documents, in the city and on the date already indicated.

By the government of country A

By the government of country B

ANNEX

Definitions

For a better understanding and application of the agreement, the following definitions listed in alphabetical order are hereby adopted.

Accused – Person who has been called to trial by a judge having jurisdiction.

Affiliate – Worker benefiting from social security coverage.

Alien – Any person who does not hold the country's nationality.

Benefits – Social security allowances, whether in cash or in kind, to the affiliate or next of kin in case of decease.

Concentrated person – The national from the other party whose freedom of mobility has been restricted by the authorities, forcing him/her to stay temporarily in an enclosed compound or premises, for administrative purposes detailed in regulations.

Convict – Person who has been convicted and sentenced by an authority having jurisdiction.

Criminal – Person who has committed a crime and it has been so declared by the authority having jurisdiction.

Day laborer – Person who provides his/her services in farming activities.

Defendant – Person against whom legal proceedings have been filed by an authority having jurisdiction.

Deportee – Alien whose transfer to his/her country of origin has been ordered by the national authority having jurisdiction.

Displaced person – Person who is forced to abandon his/her country of origin because of famine, disaster, violence, war or other calamities.

Draft Evader – A person who is punished for refusing to perform military service.

Emigrant – National who leaves his/her country for the purpose of settling abroad.

Employer - Person or entity for whose account or at whose order a job is performed.

Expelled person – Alien taken out of the country or forced to leave the country, for reasons specified in the regulations.

Extraditee – National handed over to the other party for trial or serving a sentence.

Family unity – Legal guarantee that prevents the nuclear family from being broken up.

Fugitive – Person who has fled from justice or a penitentiary where he/she was serving his/her sentence.

Illegal – Alien who enters the country surreptitiously or who stays in the country after his/her permit or visa has expired.

Immigrant – Alien who settles in the country under the protection of one of the categories for migration visas.

Inadmissible alien – Alien who is denied entry into the country or a visa for reasons specified in the regulations.

Intern – A professional, technician, or student accepted for short-term, unpaid attachment at an institution in another country to observe and learn in his or her field of training.

Internee – Alien who must remove him/herself from the periphery or border to other places inside the country for legal, regulatory, humanitarian, or security reasons.

Irregular migrant – Alien who has not complied with certain administrative procedures to substantiate his/her stay in the country.

Labor contractor – The middleman who provides one or various employers with workers.

Migrant – Person who changes his/her residence from one country to another.

National – Person who has legal ties with the State, as a result of *jus sanguini*, *jus soli* or naturalization.

Naturalized person – Alien who willingly and after meeting legal requirements receives the nationality of the country where he/she is residing.

Nuclear family – Family group comprised of the spouses, couples, parents, children, and the family members dependent on the head of the household.

Pensioner – A person who collects a monthly pension for life, which ensures the beneficiary and family members a subsistence income.

Protected person – The national from the other party who benefits from temporary protection of the country's authorities or an international organization.

Quarantine – Time of required permanence of persons coming from the territory of the other party in a sanatorium, in the event of an epidemic or pandemic.

Refugee – The national of one party who receives protection in the territory of another party, when he or she is persecuted for reasons of ethnicity, religion, nationality, conscience, sexual choice, for belonging to a social group, for his/her political views, or for other reasons of intolerance.

Rejected person – Alien who has been denied visa or entry into the country for reasons specified in the regulations.

Resident – The national of the other party who has settled in the country without visa protection.

Retiree – Beneficiary of a disability or old age pension.

Returned person – Person handed over to the authorities of his/her country at their request and for reasons that were fully substantiated.

Returnee – The national who has been returned to his/her country by the other party at the request of the competent authorities.

Risks – Events not depending on one's will, leading immediately or eventually to an imbalance in the health or finances of the insured party and his/her family.

Social security – Institution aimed at providing personal risk coverage.

Trafficker – Person engaged in the illegal trade of narcotics, psychotropic drugs, arms, trafficking in adult persons, children, organs and any other good or service whose trade is forbidden.

Trainee – A professional or technician accepted at an institution in another country for short-term, unpaid practice related to his or her training.

Undocumented immigrant – Alien who does not have the papers to accredit his/her identification.

Worker – Person who voluntarily pledges to provide a licit service or carry out a job in exchange for payment.

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