

GUIDE TO RULES GOVERNING MIGRATION IN BILATERAL RELATIONS BETWEEN AMERICAN STATES

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2. Mandate

The Inter-American Juridical Committee decided by consensus, at the session of August 9, 2013, corresponding to 83th regular session, 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 the 84th regular session, 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.

Finally, during the 85th regular session, held in Rio de Janeiro, in August 2014, the Rapporteurship's document was adopted with the recommendation that it take the form of a guide to rules governing migration in bilateral relations between American states.

3. Considerations

- That, given the enormous difficulty of adopting an Americas-wide agreement on migration, it would be advisable to diversify the approach in such a way that each country can handle the issue separately with its adjoining or neighboring countries.
- That it is indispensable to regulate, in general and on an ongoing basis, the principal aspects of migration between neighboring states.
- That the rights to mobility and settlement, inside and outside countries, are inherent to human beings.
- That it 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 also leads to economic damages for the society that receives them.
- That it is advisable to envisage types of visas for the new cases resulting from proximity.
- That obtaining a visa 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 guide the actions and prevail in the decisions taken by national authorities having jurisdiction.
- That dual and multiple nationality best guarantee the rights of individuals, groups, and ethnic groups in border areas.
- That classifying a citizen of a neighboring country as an inadmissible alien to prohibit entry, return him/her to the home country, or deny a visa must be based on criteria of danger to the community and not on subjective or discriminatory appraisals.
- That cooperation and mutual assistance by adjoining or neighboring states 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 will also be useful for nationals abroad when they return.
- 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.

Based on the above considerations, following is a guide to rules governing migration in bilateral relations between American States.

CHAPTER I TEMPORARY MIGRATION

Rule 1 – Nationals of the neighboring country shall be able to work temporarily provided they are affiliated to a social security system and have the corresponding visa.

Rule 2 – Migration by groups of temporary workers 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.

Rule 3 – The minimum wage for temporary workers shall be the same as the national minimum wage.

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

Rule 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 from the school proving that the school year or its equivalent has been passed.

Rule 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.

Rule 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.

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

CHAPTER II

PERMANENT MIGRATION

Rule 9 – The requirements for obtaining an immigrant visa shall be similar or equivalent for neighboring countries and the paperwork simplified.

Rule 10 – The grounds for suspending and canceling a visa shall also be the same in the two countries.

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

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

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

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

CHAPTER III

RESIDENTS

Rule 15 – To apply for a permanent immigrant visa, 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.

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

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

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

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

CHAPTER IV

RECOGNITION OF NATIONALITY AND NATURALIZATION

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

Rule 21 – A permanent immigrant who has held the respective visa for four 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.

Rule 22 – Naturalization of a permanent immigrant whose spouse, child, father, or mother is a national of the country should involve simplified paperwork and the requirement for minimum duration of residency in the country should be cut by one half.

Rule 23 – The national who has been naturalized in the neighboring country shall keep his/her nationality of origin.

CHAPTER V SOCIAL SECURITY

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

Rule 25 – A self-employed person must be affiliated to a social security system in the country of immigration.

Rule 26 – To be affiliated to any kind of social security system in the country of immigration, the immigrant must present his/her identity document and provide the information that is requested.

Rule 27 – Students, scholarship recipients, trainees, and interns need to have social security coverage.

Rule 28 – The social security administration is required to provide the affiliated immigrant with those medical and hospital services for illness, maternity, occupational accidents, professional illnesses, benefits for the elderly and the disabled, and other stipulated benefits to which he/she is entitled, without any discrimination whatsoever.

Rule 29 – The social security administrations of neighboring states shall establish mechanisms for settlement and compensation for services provided to affiliated immigrants.

Rule 30 – The periods of time and contributions accumulated by the affiliate in the social security administration of his or her country of origin may be transferred to the social security administrations of the country of immigration for the relevant purposes.

Rule 31 – The retirement and pension funds can be accredited to the country of immigration.

Rule 32 – The social security administrations of the neighboring countries can draw up special agreements so that the active affiliate of one country, when he/she is passing through the territory of the other country, can benefit from healthcare services and protection.

Rule 33 – The social security administrations of the neighboring countries shall adopt a binational format for the affiliation booklet or card and common processing forms.

Rule 34 – The social security administrations of the neighboring countries shall standardize the delivery of services and shall set the same number of quota contributions required for retirement.

Rule 35 – The services provided to the affiliated immigrants shall be immediate without any waiting periods.

Rule 36 – The social security administrations of the neighboring countries shall simplify and standardize the paperwork for the affiliation of temporary or permanent workers, as well as for employer and affiliate contributions.

Rule 37 - The social security administrations of the neighboring countries may establish a binational technical committee, with the capacity to hear and settle application problems or complaints.

CHAPTER VI PROTECTION AND ASSISTANCE

Rule 38 – The neighboring countries shall establish management systems to identify jobs for temporary or permanent immigrants and for those nationals who wish to return.

Rule 39 – 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 each case shall be required, no periodical or occasional supplementary procedures shall be imposed, and no discriminatory requirements shall be created.

Rule 40 – The consuls of the jurisdiction shall provide assistance to temporary immigrants regarding their ties with employers and shall participate in negotiations for collective hiring and effective placement.

Rule 41 – 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.

Rule 42 – The neighboring countries shall set up mechanisms to facilitate the remittance of money earned from the immigrant's work to his/her home country.

Rule 43 – The earnings from the immigrant's temporary or permanent work shall not be subject to taxation in the immigrant's country of origin.

Rule 44 – An immigrant who leaves the country for whatever reason shall not forfeit his/her labor rights with respect to his/her employer.

Rule 45 – National adult literacy programs shall include immigrants.

CHAPTER VII

STUDIES, CERTIFICATES, DIPLOMAS, AND DEGREES

Rule 46 – The country of origin shall recognize the schooling completed by its nationals in the neighboring country, at the primary, secondary, vocational, college preparatory, university or professional specialization levels, whether for years, semesters, or quarters completed and passed.

Rule 47 – For admission of immigrants and descendants to schools, 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:

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

Rule 48 – The certificates, diplomas, and degrees certifying completion of primary, secondary, vocational, college preparatory or university education granted by the competent national authority in an immigrant's country of origin, after authentication or annotation, shall be recognized and shall enable their holders to continue their schooling in subsequent cycles.

Rule 49 – Authenticated or annotated certificates, diplomas, and degrees for trades, crafts, and technical competencies, whether from secondary school or pre-university, shall enable an immigrant to work in the fields for which he/she was prepared, even though they do not have the respective equivalencies.

Rule 50 – Equivalency of an immigrant’s professional degrees shall guarantee the free exercise of the respective profession.

Rule 51 – 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.

Rule 52 – Students, trainees, or interns shall be entitled to engage in paid, part-time activities.

CHAPTER VIII

RETURN

Rule 53 – An national domiciled abroad 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, subject to established requirements, restrictions, and procedures.

CHAPTER IX

SPECIAL SITUATIONS

Rule 54 – The neighboring countries shall establish basic and objective 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.

Rule 55 – Classification as an inadmissible alien disqualifies the person from opting for any kind of visa whatsoever.

Rule 56 – The return of nationals defined as inadmissible as immigrants shall be conducted with all the guarantees for security and respect for the person.

Rule 57 – A resident or immigrant alien cannot be concentrated or confined.

Rule 58 – Asylum and refuge shall be governed by international agreements currently in force for the neighboring countries.

Rule 59 – The neighboring countries shall join forces to meet the needs of displaced persons, to facilitate their return, or to grant them refugee status.

Rule 60 – An undocumented person or a person who is illegal or irregular may be subject to concentration, expulsion, or internment by order of the competent national authority, on previously determined grounds.

Rule 61 - A resident or immigrant alien cannot be returned or deported unless one of the causes set forth in the general regulations is applicable.

Rule 62 – 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.

Rule 63 – Repatriation shall be conducted safeguarding dignity and basic human rights, and under the responsibility of competent national authorities of the two neighboring countries.

Rule 64 – Quarantining of nationals of the neighboring country shall only be applied in justified cases, safeguarding the dignity and rights of persons.

Rule 65 – Conscientious objector deserters are entitled to receive refuge.

Rule 66 – National police, security, and crime control and prevention authorities shall report the presence, movements, and arrest of criminals who are nationals of the neighboring country.

Rule 67 – The neighboring countries shall commit to providing the assistance that is indispensable to prevent the entry of the persons described in the preceding rule.

Rule 68 – The government shall commit to prevent, hinder, punish, and redress all discrimination against the nationals of the other neighboring country.

Rule 69 – An immigrant who has under age children or dependents, spouse, or partner born in the country of immigration shall not be subject to deportation, return, expulsion, extradition, non-admission or internment.

Rule 70 – A fugitive shall not be admitted as a temporary or permanent immigrant.

Rule 71 – A person who has failed to fulfill military duty requirements is entitled to opt for an immigrant visa, after meeting the respective requirements.

Rule 72 – The neighboring countries 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 73 – The concepts of the principal terms used in the present agreement are defined in the Annex.

Article 74 – 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 75 – The competent institutions 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 migration provisions.

Article 76 – For migration purposes, 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.

Article 77 – The granting of immigrant visas and temporary or permanent immigrant status shall not be subject to any equivalency in terms of numbers between neighboring countries, nor shall it be subject to quotas or time-limits.

ANNEX

Definitions

For a better understanding and application of the proposed rules, 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 neighboring country whose freedom of mobility has been restricted by the national authorities, forcing him/her to stay temporarily in an enclosed compound or premises, for justified administrative purposes.

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, on previously established grounds.

Extraditee – National handed over to the other country 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 on previously established grounds.

Intern – A professional, technician, or student accepted for short-term, unpaid attachment (not employment) 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 regularize 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 country who benefits from temporary protection of the country's authorities or an international organization.

Quarantine – Time of required permanence of persons in a sanatorium, in the event of an epidemic or pandemic.

Refugee – The national of the neighboring country who receives protection, 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 on previously established grounds.

Resident – The national of the neighboring country 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 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 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.

