

## MIGRATION IN BILATERAL RELATIONS

(Presented by Dr. Luis Moreno Guerra)

### MANDATE

The Inter-American Juridical Committee decided by consensus, at the session of August 9, 2013, corresponding to 83<sup>th</sup> 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 84<sup>th</sup> 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 a "Model Bilateral Agreement on Migration", to be reviewed during the next session.

Subsequently, at the 85<sup>th</sup> 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.

Finally, at the 86<sup>th</sup> regular session, held in Rio de Janeiro in March 2015, the Rapporteur was asked to make another change to the title of the document, calling it not a "Guide to Rules" but rather "Recommended Actions" addressed to American States on the subject of "Migration in Bilateral Relations."

### 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 fundamental human right and punitive, law-enforcement approaches discarded.
- 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 facilities for obtaining an "immigrant visa" be granted to avoid or reduce the number of "de facto" migrants.
- That the legal vulnerability of *de facto* immigrants also leads to economic damages for the society that receives them.

- 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 immigrants and ethnic groups in border areas, while at the same time avoiding cases of statelessness.
- 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.

## **RECOMMENDATIONS**

Based on the above considerations, it is recommended that the American States take the following steps with respect to “Migration in Bilateral Relations.”

### Temporary migrations

**1** – Authorize nationals of neighboring country to work temporarily provided they are affiliated to a social security system and have the corresponding visa.

**2** – Authorize migration by groups of temporary, sponsored by the employer and intermediary, if any, which the employer and labor contractor are jointly and severally responsible for the transportation, housing, social security affiliation, wages or salaries, other legally stipulated benefits, and return trip.

**3** – Check that the minimum wage for temporary workers is not less than the minimum wage.

**4** – Agree on the length of time for which a temporary worker’s visa is valid.

**5** – Grant student visas, 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.

**6** – Agree that a scholarship visa shall remain valid for the duration of the scholarship; when applying, the applicant shall present the written certification from the organization or entity awarding the scholarship.

**7** – Issue a trainee or intern visa upon presentation of the written acceptance by the institution that will be receiving the trainee or intern.

**8** – Allow for the visas for temporary workers, students, scholarship recipients, interns, and trainees to cover family members who are the holder’s dependents.

Permanent migrations

**9** – Standardize the requirements for obtaining a permanent immigrant visa and simplify the necessary paperwork.

**10** – Establish identical grounds for suspending and canceling a visa.

**11** - Grant an immigrant’s child, when he/she reaches the legal age of adulthood, the same rights and guarantees granted to the holder of the original visa.

**12** – Grant indefinite validity to permanent immigrant status, except in cases where it is revoked for just cause.

**13** – To suspend the request for a visa by a person on trial until the judge having jurisdiction rules on the case.

**14** – Allow someone whose visa application has been rejected to carry on with a visa application when he/she has met all the remaining requirements.

Residents:

**15** – Admit a national from a neighboring country who has been granted temporary protection as an established immigrant (“afincado”) with a view to he or she obtaining an immigrant’s visa by becoming affiliated to social security scheme.

**16** – Provide facilities for an established immigrant (“afincado”) to obtain the identity document or the police record certification from the country of origin at that country’s Consulate.

**17** – Agree to allow an established immigrant to obtain a permanent immigrant’s visa when he or she has submitted a certification that she or he has no criminal record in the country of origin and has been affiliated to the social security system of the receiving country for more than six months.

**18** – Prevent deportation of an established migrant while the application for a permanent immigrant visa is being processed.

**19** – Grant an immigrant’s visa without the need to return to the country of origin.

Recognition of nationality and naturalization

**20** – Encourage immigrants to register the births of their children with the consulate of the country of origin so that they have access to dual or multiple nationality.

**21** – Expedite the naturalization of permanent immigrants; nationality status acquired through naturalization shall cover the spouse, under-age children and those children who are of age but subject to parental custody.

**22** – Simplify the naturalization paperwork for relatives of the naturalized person who are dependent upon that person.

**23** – In the Naturalization Letter paperwork, dispense with the requirement to renounce the nationality of origin.

Social Security

**24** – Ensure that employers meet their obligation to affiliate temporary or permanent worker to any social security system, whether state, private, or mixed.

**25** – Make it possible for a worker on his or her own to affiliate to a social security system in the country of immigration.

**26** – Accept affiliation to any kind of social security in the country of immigration upon presentation of an I.D. and compliance with the required procedures.

**27** – Make sure that Students, scholarship recipients, trainees, and interns have social security coverage.

**28** – Make sure that Social Security offers the affiliated immigrant 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.

**29** – Sponsor mechanisms among social security administrations of neighboring states for settlement and compensation for services provided to affiliated immigrants.

**30** – Agree to the transfer of contributions to Social Security in the country of origin to the Social Security system of the country of immigration.

**31** – Allow retirement and pension funds to be accredited to the country of immigration.

**32** – Support agreements between Social Security institutions of neighboring countries so that active affiliated members of one country, when he/she is passing through the territory of the other country, can benefit from healthcare services and protection.

**33** – Standardize/harmonize Social Security affiliation paperwork in neighboring countries.

**34** – Arrange for Social Security institutions in neighboring countries to offer a similar range of services and set the same number of retirement fund quota contributions for immigrants.

**35** – Make benefits available to affiliated immigrants immediately, without any waiting periods.

**36** – Cut the amount of paperwork for affiliating workers, be they temporary or permanent.

**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, with respect to immigrants' Social Security.

#### Protection and Assistance

**38** – Establish management systems to identify jobs for temporary or permanent immigrants and for those nationals who wish to return.

**39** – Guarantee for immigrants 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.

**40** – Offer to assist collectively hired immigrants in their relations with their employers, through consular officers who could take part in the bargaining and actual placement process.

**41** – Instruct national diplomats and consular officers to obtain and provide 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.

**42** – Facilitate arrangements for money earned by immigrants to be remitted back to the country of origin.

**43** – Exempt income from temporary or permanent immigrants' work from taxes in the country of origin.

**44** – Protect the labor rights of immigrants by ensuring that they are not forfeited when, for whatever reason, they leave the country.

**45** – Include immigrants in national adult literacy programs.

#### Studies, certificates, diplomas, and degrees

**46** – Once they have been authenticated or annotated, recognize studies completed by emigrants in their country of origin at the primary, secondary, vocational, college preparatory, university or professional specialization levels, whether for years, semesters, or quarters completed and passed.

**47** – Allow immigrants and their children to enter schools, whether public, private or mixed, at the beginning of the year or at any time before and after, upon presentation of Identity document; and authenticated certificate of the last year, semester, or quarter passed or registration or grade completion.

**48** – Recognize 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.

**49** – Allow immigrants to work in the area of their specialty, even if there is no equivalency with the country of residence.

**50** - Authorize immigrants to practice their profession once the equivalency of their degree has been established.

**51** – Ensure that the costs of enrollment, registration, tuition or other schooling fees, at all levels, are the same for both immigrants and nationals.

**52** – Agree to students, trainees, or interns engaging in in paid, part-time activities.

#### Return

**53** – Establish that the household belongings and working tools of emigrants returning definitively to their country after two or more years of absence shall be tax and duty free, subject to requirements, restrictions, and procedures established by the Parties.

#### Special Situations

**54** – Establish 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.

**55** – Disqualify anyone classified as inadmissible from obtaining any kind of visa.

**56** – Provide guarantees for the security of, and respect for, any person who is returned or classified as inadmissible.

**57** – Do not allow a resident or immigrant alien to be placed in a concentration camp or confined.

**58** – Make every effort to meet the needs of displaced persons, to facilitate their return, or to grant them refugee status.

**59** – Specify the grounds on which an undocumented, illegal, or irregular person may be subject to concentration, expulsion, or internment by order of a competent national authority.

**60** - Establish the grounds on which a resident or immigrant alien may be returned or deported.

**61** – Stay/suspend the expulsion of 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.

**62** – Safeguard the dignity and fundamental rights of persons being repatriated.

**63** – To quarantine of nationals of the neighboring country only in justified cases, safeguarding the dignity and rights of persons.

**64** – Report the presence, movements, and arrest of criminals who are nationals of the neighboring country.

**65** – Provide mutual assistance to prevent the entry of the persons classified as criminals by the neighboring country.

**66** – Commit to prevent, hinder, punish, and redress all discrimination against the nationals of the other neighboring country.

**67** – Refrain from expelling, deporting, returning, or interning immigrants whose under-age children, dependents, spouse or partner were born in the country of immigration.

**68** – Deny fugitives the status of temporary or permanent immigrant.

**69** – Adopt the binational passport as a prior step to facilitating and speeding up the adoption of the Andean, Latin American or regional passport.

General Provisions

**70** – Define the principal terms used in the recommended actions in an annex hereto.

**71** – Extend the benefits of a temporary or permanent immigrant visa to cover family members accompanying the holder and enables them to perform any trade, craft, profession, or paid legal activity.

**72** – 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.

**73** – Agree that 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 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.

**Border area:** Area composed of administrative districts along the Parties' borders with special rules favoring the inhabitants of those districts.

**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 in a judgment handed down.

**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.

**De jure emigrant:** Term used to describe a person who holds a residence, work, or student visa.

**De facto emigrant:** Term used to describe someone who lacks a residence visa.

**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, at the request of a competent authority.

**Family unity** – Legal guarantee protecting the nuclear family (parents and their children).

**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.

**Intermediary:** A person or enterprise supplying workers to one or more employers.

**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.



