

Introduction

Recent globalisation has brought many foreign workers to Japan. How to guarantee these foreign workers their rights is presently a very important legal issue. The Immigration Control and Refugee Recognition Act (hereafter referred to as the Immigration Control Act) regulates the fair administration of immigration control and the Alien Registration Law regulates the relation of residence and social position of foreigners living in Japan.² The immigration Control Act was enacted in 1951 and the Alien Registration Law was enacted in 1952, but both were revised many times.³ The American Immigration and Nationality Law was the model for the Immigration Control Act. Japan, however unlike its model, does not have a system to accept immigrants with permanent resident permits at the time of entrance. Some people who have entered the country with limited residence status can become permanent residents after a certain period of residence. In this regard, the Japanese system rather resembles that of the European immigration systems.

The Immigration Bureau in the Ministry of Justice is the central office in charge of Immigration services. The organisation of immigration services will be illustrated in the appendix 1. Under this Bureau, there are eight Regional Immigration Bureaux, five District Immigration Offices, eighty-nine Branch Offices (as local executive organs) and three Immigration Detention Centres (as accommodation facilities) pursuant to Articles 7 and 12 of the Ministry of Justice Establishment Law. The functions of the immigration control services consist of the following six categories of business and the Immigration Bureau consists of six divisions (General Affairs, Policy, Entry and Status, Adjudication, Enforcement, Registration). Additionally, it has the Refugee Recognition Section and the Data Processing System Development Office. Staffs of 2,374 concerned with immigration services were working at various offices in 1999. This number is about 1.5 times than the 1,600 in 1988.

The Japanese government's attitude toward foreign workers is basically twofold: foreign workers who are to be employed for their special skills are admitted as much as possible, while various issues concerning the admission of unskilled labours are to be

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² The Immigration Control and Refugee Recognition Act Enforcement Regulations and the Alien Recognition Law Enforcement Regulations etc. stipulate concrete procedural matters. Additionally, the Special Law on Immigration Control relating to Persons and their Descendants who lost their Nationality of Japan in accordance with the Peace Treaty with Japan (hereafter referred to as the Special Law on Immigration Control) and its Enforcement Regulations are important.

³ As for the historical regulations, see Yoshio Hagino, 'The Japanese Immigration System- An Introduction' *Nanzan Hôgaku* vol. 7, no. 2 (1983); Yoshio Hagino, 'New Japanese Immigration -Control and Refugee-Recognition Act of 1981' *Nanzan Hôgaku* vol. 8, no. 1 (1984); Shigeki Miyazaki, 'Die Rechtsstellung von Ausländern nach staatlichem Recht und Völkerrecht in Japan' in Jochen Abr. Frowein and Torsten Stein (eds.), *Die Rechtsstellung von Ausländern nach staatlichem Recht und Völkerrecht* (Berlin: Springer, 1987), pp. 727-749.

carefully studied.⁴ The following three fundamental tenets can be identified as the basis for Japan's current immigration policy: (i) Admitting foreign workers, on whatever basis, should be a last resort; (ii) No unskilled workers should be admitted; (iii) All foreigners should be admitted on a temporary basis only.⁵ Indeed Japan is one of few countries, which maintains remarkably strict migration control standards like that of Singapore, and a traditional policy of not opening the labour market to foreign unskilled workers.⁶ However, three detours⁷ were established in recent years. First, it is said that illegal workers⁸ are present in Japan not because they can slip through the government's strict control but the government turns a blind eye.⁹ The Japanese government is trying to satisfy the labor needs of small and medium-size companies by accepting foreign workers through the "back door".¹⁰ Since the 1990s a person who encourages illegal workers to engage in illegal work may be punished with imprisonment for up to 3 years and/or a fine of up to 2 million yen (Article 73-2 of the Immigration Control Act). Second, workers of Japanese origin are allowed to work without restriction of activity through the "front door". Third, trainees are also employed as unskilled workers through the "side door". The formal purpose of trainees is to acquire technology, skills or knowledge at a public or private organisation, however, the trainee system is seen as functioning as an informal measure recruiting cheap unskilled workers.¹¹

Historically, Japan experienced a major isolation period (1639-1853). Besides the migration among former Imperial Japan and its colonies,¹² immigrants were small in number but about 777,000 emigrants moved to mainly America and Latin American

⁴ Akio Shimizu, 'Japan' in Dennis Campbell (eds.), *International Immigration and Nationality Law*, vol. 2 (The Hague: Kluwer, 1994), JAP-I-3.

⁵ Wayne A. Cornelius, 'Japan: The Illusion of Immigration Control' in Wayne A. Cornelius et al. (eds.), *Controlling Immigration* (Stanford, Stanford University, 1994), pp. 386-387.

⁶ Hiromi Mori, *Immigration Policy and Foreign Workers in Japan* (London: Macmillan, 1997), pp. 1, 96.

⁷ There is another analysis to mention three programs: (i) Nikkeijin; (ii) trainees; and (iii) part-time "student" labor. Cornelius, *supra note 4*, pp. 395-401; Dietrich Thränhardt, 'Abschottung und Globalisierung. Die japanische Nichteinwanderungspolitik und ihre sozialen und politischen Kosten' *IMIS- Beiträge* 11 (1999), pp. 29-31.

⁸ The term illegal workers as used here refers to persons having engaged in an activity other than that permitted by the status of residence previously granted, as well as the overstay persons continuing such an activity. Kentaro Serita, 'Legal Status of Foreign Workers in Japan' *The Japanese Annual of International Law* 33 (1990), p. 83.

⁹ Takamichi Kajita, 'Characteristics of the Foreign Worker Problem in Japan', *Hitotsubashi Journal of Social Studies*, vol. 27, no. 1 (1995), pp. 10-13.

¹⁰ Takamichi Kajita, 'The Challenge of Incorporating Foreigners in Japan' in Myron Weiner and Tadashi Hanami (eds.), *Temporary Workers or Future Citizens?* (London: Macmillan, 1998), p. 145.

¹¹ Furthermore, college students can work up to twenty-eight hours a week during semester time and eight hours a day during vacation time. Pre-college students can work up to four hours a day during semester time and eight hours a day in July and August. There were many cases of illegal work. Recently Japanese government is inclined to control Japanese language schools for pre-college students. See Komai Hiroshi, *Migrant Workers in Japan* (London: Kegan Paul International, 1995), pp. 54-70; *Kokusai Jinryū* [The Immigration newsmagazine] 135 (1998), pp. 19-20.

¹² Japan colonised Taiwan in 1895 and Korea in 1910 and established the puppet state of Manchuria (north east of China).

countries (1853-1945).¹³ The Supreme Commander of Allied Powers controlled strictly immigration and emigration (1945-1951). During the time of advanced economic growth in the 1950s and the 1960s, the Japanese worked long hours and applied the automation system without admitting foreign labourers to the country. Since the 1980s, however, Japan has been experiencing an unexpected amount of foreign residents because high economic growth needs 'newcomers' from various countries. Foreigners staying in Japan for 90 days or more are required to register as foreign residents. According to the end of 1998 statistics, there were 1,512,116 registered foreigners in Japan, constituting about 1.20% of Japan's total population. The major foreign legal residents are Koreans (638, 828: 42.2%), Chinese (272,230: 18.0%) and Brazilians (222,217: 14.7%).¹⁴ Additionally, it is estimated that there were an estimated 271,048 over-stay persons at the beginning of 1999.¹⁵ The major irregular foreigners are Koreans (52,387), Filipino (42,547), Thai (39,513) and Chinese (38,296). It is said that in total, around 1,800,000 foreigners live in Japan.

After Japan ratified the International Covenants on Human Rights in 1979 and the Refugees Convention in 1981, many social security laws were amended and social rights were guaranteed for refugees and aliens who settled in Japan. Both treaties aimed for the equality of social rights between nationals and non-nationals. Indochina refugees, so-called boat people, are compared with the American Commodore Perry and his frigates "Black ships" because both of them influenced to open Japan to foreign intercourse.¹⁶ The Japanese feudal government had to change its isolation policy in 1853, in the same way the recent Japanese immigration policy was altered in 1982. The citizenship requirement clauses were eliminated from the National Pension Law and the National Health Insurance Law, etc. This has not solved the whole situation with foreigners, however. There are often remaining problems such as employment as public servants and voting rights for 'settled aliens (*teijû gaikokujin*)'.¹⁷ There is no official definition of *teijû gaikokujin*, therefore, there are several opinions on this terminology.¹⁸ All of them include the descendants of Korean and Taiwanese (approximately 600,000), who were previously subjects of Japanese colonies and also

¹³ The first emigration started to the kingdom of Hawaii in 1868, to the USA in 1869, to Peru in 1899 and to Brazil in 1908. See Mitsuru Shimpo, 'Indentured Migrants from Japan' in Robin Cohen (ed.), *The Cambridge Survey of World Migration* (Cambridge: Cambridge University Press, 1995), pp. 48-50.

¹⁴ Japan Immigration Association, *Zairyû Gaikokujin Tôkei* [The Statistics of Foreigners in Japan] (Tokyo: Nyûkan Kyôkai, 1999), p. 8.

¹⁵ According to the estimate made by the Immigration Bureau, the Ministry of Justice in 1999. *Nihon Keizai Shinbun* (March 28, 1999). According to the other estimate, it is said that the number of illegal entrants and overstaying migrant workers amounted to more than 400,000 in 1999. Catholic Diocese of Yokohama Solidarity Center for Migrants (ed.), *Survival manual: A Guide to Foreigner's Rights in Japan* (Tokyo: 3A Corporation, 1999), p. 3.

¹⁶ Hiroshi Tanaka, *Zainichi Gaikokujin* [The Settled Aliens in Japan] New. Version, (Tokyo: Iwanami Shoten, 1995), pp. 152-155, 164.

¹⁷ The Japanese term for the *teijû gaikokujin* is similar to Tomas Hammar's 'denizen'. See Tomas Hammar, *Democracy and the Nation State*, (Aldershot: Avebury, 1990), pp. 12-18.

¹⁸ One is 3-5 year residence based on the standard of naturalisation or the standard of the normal 4-year election period. Another is the requirement of permanent residence. The other is aliens whose status are permanent resident, spouse or child of a Japanese citizen, spouse or child of a permanent resident and quasi-permanent resident.

called ‘*Zainichi*’ (foreign residents in Japan) or ‘old comers’. These foreigners are guaranteed stable rights of permanent residence, but also shoulder many disadvantages due to their lack of Japanese citizenship.

Some rights are not accorded to foreigners in Japan.¹⁹ This position is grounded in the division of human rights and citizen’s rights in the French Declaration of the Rights of Men and Citizens. Also, traditional German status theory presented the negative, positive and active statuses of citizens without granting the third active position to foreigners.²⁰ Under the Japanese Constitution, there is no special regulation regarding alien’s rights. Therefore, there is a “Word Doctrine”, which accepts aliens’ rights as long as the titular of human rights clauses is “every person” instead of “national”. However, today’s dominant theory was established after the *McLean* case²¹ (Supreme Court judgement, Oct. 4, 1978), as “Nature Doctrine”, which accepts aliens’ rights so long as the nature of rights allows it. This is based on the universality of human rights and the constitutional principle of international co-operation. Furthermore, the distinction between permanent or long-term resident and short-term resident is important as well as the distinction between legal resident and illegal resident.

Therefore, permanent resident aliens are guaranteed rights as well as citizens with some small exceptions, but short-term resident aliens are not sufficiently guaranteed their rights, and irregular aliens encounter serious problems living in Japan.

1. Immigration Procedures

First of all, freedom of entry is not guaranteed for foreigners. Article 22-1 of the Constitution prescribes to guarantee the freedom of residence and movement in Japan, but it does not guarantee the freedom of entry for foreigners. According to international custom law, a state can decide on what kind of conditions to accept a foreigner in its own country, so long as there is not a special treaty (Supreme Court judgement, October 4, 1978; the *McLean* Visa Renewal Case).

There were visa exemption agreements with 58 countries as of April 1st 1999. Yet, in order to prevent frequent illegal over-stay persons from Pakistan, Bangladesh and Iran, visa exemption agreements with such countries were suspended.²² Generally, the

¹⁹ It has been pointed out that the right of entry into the country, social rights and voting rights are only given to citizens. However the recent situation is changing.

²⁰ Georg Jellinek, *System der subjektiven öffentlichen Rechte*, 2nd ed., 1919 (Tübingen: Scientia Verlag Aalen, 1979), p. 193.

²¹ An American language teacher, Mr. *McLean* was rejected his request of prolonging his residence permit due to his involving in the anti-Vietnam War movement. As a consequence, the judgement admitted the decision of the Minister of Justice. This is the leading case of alien’s rights. The positive side is to admit human rights to aliens as a rule with the exception of those rights which by their nature must be limited to Japanese citizens. The negative side is to refuse aliens the freedom of political expression based on its inherent nature. See Lawrence W. Beer and Hiroshi Itoh, *The Constitutional Case Law of Japan, 1970 through 1990* (Seattle: University of Washington Press, 1996), pp. 471-478.

²² Hidenori Sakanaka and Toshio Saito, *Shutsunyūkoku Kanri oyobi Nanmin Nintei Hō. Chikujō kaisetsu* [The Immigration Control and Refugee Recognition Act. Commentary], (Tokyo: Nihon Kajo Shuppan,

freedom of temporary visitors (for less than 90 days) is guaranteed without a visa. The visa exemption agreement is, however, not applicable to persons who intend to engage in an activity for remuneration or stay for 90 days or longer, and they are subject to strict screening.

The main parts of the immigration service will be illustrated in the appendix 2. Prior to entering Japan, foreigners who intend to work in Japan receive a visa corresponding to the purpose of their visit in their passports from a Japanese embassy or consulate abroad. Since 1989 there are two types of visa procedure. The first traditional procedure has eight processes and the second new procedure with a certificate of eligibility has only four processes (as explained in Appendix 3). For the landing examination by an Immigration Inspector, applicants need to establish that they fulfil the landing conditions. The Ministry of Justice Ordinance provides the landing examination criteria for each residential status.

For the purpose of speed and simplification of the landing procedure, the certificate of eligibility has been introduced. If applicants have it, they are deemed to conform to the requirement that their proposed activity is valid, and must fall within one of the activities of residential status stipulated in the Immigration Control Act.

If landing permission is not granted to the applicant alien, the Immigration Inspector must deliver the applicant to a Special Inquiry Officer for hearing. In the course of the hearing, the alien or a representative may produce evidence and cross-examine witnesses. Furthermore, the applicant may file an objection to the Minister of Justice.

There are 23 types of stay-status under which activities and residential terms are restricted. Diplomat, Official, Professor, Artist, Religious activities, Journalist, Investor and business manager, Legal and accounting services, Medical services, Researcher, Instructor²³, Engineer, Specialist in humanities or international service, Intra-company transferee, Entertainer, Skilled labour, Cultural activities, Temporary visitor, College student, Pre-college student, Trainee, Family stay and Designated activities.²⁴ These statuses are called Annexe Table I. The former sixteen are work visas and the latter seven are non-work visas.

Furthermore, there are 4 types of stay-status under which activities are unrestricted. Among them, Quasi-permanent resident,²⁵ Spouse or child of a Japanese citizen and Spouse or child of permanent resident require the renewal of residence period. Only Permanent residents are unrestricted regarding both activity and residence. These 4 statuses are called Annexe Table II. In order to clarify the difference between the

1994), p. 304.

²³ Activities to engage in language instruction and other education at elementary schools, junior high schools, senior high schools and so on.

²⁴ Activities which are specifically designated by the Minister of Justice for foreign individuals.

²⁵ Officially, it is translated into the Long-term residents but this status can be given just after arriving at Japan and has to be renewed every 6 months, 1 year or 3 years even if the renewal is with ease. Its special nature is the possibility to work without restriction in the same manner as permanent residents.

former 23 statuses and the latter 4 statuses, they are categorised as “permissible intake” and “permissible establishment” groups.²⁶ I would like to call the former “Work/Stay restrict permission” and the latter “Establishment permission”.

In the statistic of foreign labour force made by the Ministry of Foreign Affairs and Ministry of Justice, permanent resident, spouse or child of a Japanese citizen, spouse or child of permanent resident and trainee in the public (14, 000) and private (31, 500) sectors are excluded. The foreign labour force was estimated as shown in table 1.

Table 1 Estimates of foreign workers in Japan by status of residence, 1996

Thousand	
Status of residence	
Foreign workers with permission of employment by category	
Specialist in humanities or international service	27.4
Entertainer	20.1
Engineer	11.1
Skilled labour	8.8
Instructor	7.5
Intra-company transferee	5.9
Investor and business manager	5.0
Religious activities	5.0
Professor	4.6
Researcher	2.0
Journalist	0.5
Artist	0.3
Medical service	0.1
Legal and accounting service	0.1
Total	98.3
Estimates of students engaged in part time jobs	20.0
Estimates of Japanese descents engaged in gainful activities	211.2
Illegal workers	300.0
Total	629.4

Source: SOPEMI, *Trends in International Migration* (Paris: OECD, 1998), p. 130.

This result means that the main foreign labour force is consisted of Japanese descents (*Nikkeijin*) and illegal workers. Since 1990, small and medium sized enterprises without an overseas presence have been permitted to bring in trainees. A trainee is a non-work visa and whose activity is to learn and acquire technology, skills or knowledge at public or private organisations. Since 1993 however, ‘trainees’ who pass certain skill tests after a period of training, can become ‘technical interns’ thereby changing their residence status to come under the “designated activities” category and so becoming entitled to the same rights as Japanese workers. They are treated equally in terms of labour law such as the Labour Standard Law, the Minimum Wage Law and so on. The Japan International Training Co-operation Organisation (JITCO) supervises

²⁶ Mori, *supra note 5*, pp. 10-11.

the Technical Internship Program. In 1997 the maximum period of stay for technical interns was extended from two years to three.²⁷ Only about 10 % of trainees became 'technical interns' in 1996 and most trainees still have the actual function as chap unskilled workers.²⁸ The wage paid to these trainees by companies is about one-sixth of the normal wage, even if they work an eight-hour day plus overtime.²⁹

2. Labour law

Labour laws apply to foreign workers as well as Japanese workers. Article 3 of the Labour Standards Law of 1947 (LSL) stipulates that "employers must not discriminate wages, hours and other working conditions because of worker's citizenship, creed or social status". The LSL and the Labour Union Law of 1949 (LUL) are basic labour laws. The labour laws such as the Employment Security Law, the Worker Dispatching Law, the LSL even apply to illegal workers³⁰.

The LSL provides minimum standards for working conditions which employers must follow. For example, all employers must state clearly working conditions such as wage, working time and so on (Article 15). Employers are prohibited from offsetting advanced payment against the employee's salary or wages (Article 17), and from coercing workers forced savings (Article 18). Wages must be paid: in cash; directory to the worker; in full; at least once in a month; and on a definite date (Article 24). Basically, employers can not have employees work more than 8 hours a day, 40 hours a week, excluding breaks or meal time (Article 32). Employers who employ ten or more employees regularly must prepare the working rules in writing and submit them to the Labour Standards Inspection Office (Article 89). This office is providing supervision and guidance for employers to secure the working conditions required by law. In the case of violations which carry criminal liability, this office will report these violation to the Public Prosecutor's Office (Articles 101 and 102). Any part of a contract that falls below minimum standards is considered invalid. The employers may be penalised if they violate this law.³¹

The LUL entitles workers to organise and form labour unions to negotiate for the improvement of working conditions. Besides the LSL, protective labour laws include the Minimum Wage Law of 1959 (MWL), the Industrial Safety and Health Law of 1972 (ISHL) and the Worker's Accident Compensation Insurance Law of 1947 (WACIL).³² The MEL regulates the minimum wages which consist of those according

²⁷ SOPEMI (ed.), *Trends in International Migration* (Paris: OECD, 1999), p. 167.

²⁸ Hiroshi Komai, *Nihon no Gaikokujin Imin* [Foreign immigrants in Japan] (Tokyo: Akashi Shoten, 1999), p. 62.

²⁹ Katsusko Terasawa, 'Labor law, civil law, immigration law and the reality of migrants and their children' in Mike Douglass and Glenda S. Roberts (eds.), *Japan and Global Migration* (London: Routledge, 2000), p. 228.

³⁰ The Ministry of Labour Memorandum on 26 January 1988.

³¹ Osaka Bar Association (ed.), *Human Rights handbook for Foreigners in Japan in 18 Languages* (Tokyo: Akashi Shoten, 1992), pp. 17-27.

³² Tadashi Hanami, 'Japanese Policies on the Rights and Benefits Granted to Foreign Workers, Residents, Refugees and Illegals' in Myron Weiner and Tadashi Hanami (eds.), *Temporary Workers or Future*

to region and those according to industry. If employers violate these regulations, employees can appeal to the Labour Standards Inspection Office for correction or file a suit in court to demand payment of the unpaid balance. The ISHL aims at establishment of standard for protecting against industrial accidents and for promoting of comfortable working environment. In the case of industrial accidents, the WACIL entitles workers various benefits such as medical benefit,³³ temporary disability benefit,³⁴ physical handicaps benefit,³⁵ survivors benefit,³⁶ funeral rites benefit,³⁷ injury and disease pension³⁸ and dependent care benefit.³⁹ Insurance fees are paid solely by employers and workers are entitled to benefits whether or not the employer has paid the fees. In addition to the minimum benefits provided under the WACIL, workers are entitled to additional compensation based on the employer's liability of torts or employment contracts. However, the amount of damages is controversial in several civil lawsuits especially in the case of illegal foreign workers. How many years the damages should be calculated is based on the economic level of Japan or of the worker's home country. Furthermore, if trainees are not supposed to "work" as employees, the WACIL is not applied to them. If there is *de facto* employment instead of training, the WACIL could be applied. In any case, they are entitled to civil law damages against training institutions.⁴⁰

The Employment Security Law aims to satisfy labour force required for the industry by giving everybody an opportunity to take a post of suitable occupation for the capability, and to contribute to economic enhancement. This law also prohibits discrimination in occupation introduction and vocational counselling because of the citizenship of workers (Article 3). Under the Worker Dispatching Law of 1986, workers may be sent out to engage in 26 types of expert services or work that needs special management, including information processing and financial processing. As of fiscal year 1998 the total number of legal and illegal foreign workers was estimated to be about 670,000, equivalent to more than 1% of all the employed workers in Japan. The Employment Service Section for Foreign Workers tries to enhance the employment service and counselling available to foreign job applicants. With interpreters in the Hello Work facilities (formally called Public Employment Security Offices), as well as Employment Service Centre for Foreigners to deal exclusively with foreign students

Citizens? (London: Macmillan, 1998), p. 224.

³³ Actual expenses of medical care.

³⁴ Compensation for lost income as 60% of average basic daily benefit, in principle (the first three days are not paid).

³⁵ This is provided when a worker remains disabled because of the industrial accident. Disabilities are rated at different levels.

³⁶ Pension or lump-sum for the bereaved family.

³⁷ Funeral expenses in the case of death occurring at work.

³⁸ If the injury or sickness remains uncured after medical treatment for eighteen months and the worker's health condition is assessed to be higher than the third level of injury/sickness, such a worker will receive this pension in place of temporary disability benefit.

³⁹ Amount spent on family care costs (maximum amount: 108,000 a month for constant care and 54,000 a month for temporary care) or a fixed amount.

⁴⁰ Hanami, *supra note.* 29, p. 225.

and foreigners in professional or technical fields, and *Nikkeijin* Employment Service Centres to provide services to foreign workers of Japanese descent. Considering Japanese fewer births and an ageing population, harmonising working life with family life are being comprehensively and systematically promoted by the Ministry of Labour based on the Child Care and Family Care Leave Law. However, the Ministry of Labour keeps the basic policy “to accept foreign workers in professional and technical fields as much as possible, but to deal cautiously with the matter of accepting so-called unskilled workers with though deliberation, because such acceptance might have a far-reaching impact on our country's economic and social conditions”.⁴¹

3. Renewal of Stay

Aliens who wish to change their status of residence or stay longer than the original period of stay determined in the landing permission without changing their status of residence, must apply for permission for a renewal of period of stay (Immigration Control Act, Articles 20 and 21). This permission is granted by the Regional Immigration Bureau at the discretion of the Ministry of Justice. Generally, applications for renewal will not be approved if applicants have attained the purpose of their visit, if there is any problem arising from their residence in Japan or if documents submitted by applicants do not show reasonable grounds for permission to stay.

Under Article 22-2 of the Immigration Control Act, permission for a change of status to permanent residence is granted at the discretion of the Ministry of Justice only when applicants fulfil the following requirements and their permanent residence will be in accordance with the interests of Japan. The first legal condition is that the alien must have demonstrated good behaviour and conduct. The second legal condition is that the alien must have sufficient assets or skills to make an independent living. However, in case of refugees, they may not be required to fulfil the second condition and in the case of spouses or children of Japanese or permanent residents, they may not be required to fulfil either conditions. According to the administrative interpretation of "the interests of Japan", a 1-3 year residential term is required for children or spouses of Japanese or permanent residents. Otherwise, a 10 year residential term is necessary to be allowed a permanent residence permit.⁴² This extremely long requirement should be amended, however, it shows that the Japanese government officially opposes the settlement of foreign workers.

It should be added that there are two significant exceptions. First, some Koreans and Taiwanese who lost their citizenship of Japan on the basis of the Peace Treaty and their descendants are considered as special permanent residents stipulated by the Special Law on Immigration Control. They are specially protected from deportation except in instance when they have committed serious crimes or violated vital national interests. Also, second and third generation people of Japanese origin were granted quasi-permanent residence by the amendment of Immigration Control Act in 1990. Most of

⁴¹ See <http://www.mol.go.jp/english/outline/08-1.htm>.

⁴² Nobuyuki Koyama, “Zairyû Shikaku “Eijyûsha” nitsuite [On the Status of Premanent Resitents] *Kokusai Jinryû* [The Immigration Newsmagazine] no. 138 (1998), p. 26.

them, who are Brazilian or Peruvian, can work without restriction and the renewal of their residence permit is relatively easy.

4. Deportation

As mentioned previously, Koreans and Taiwanese and their descendants who lost their citizenship of Japan are protected from deportation except where they have been sentenced to imprisonment for more than 7 years. Furthermore, their deportation is only where the Minister of Justice has found that the vital interests of Japan have been jeopardised by the act of crime.⁴³

For other aliens, Article 24 of Immigration Control Act stipulates various grounds for deportation. The following aliens may be deported:

- (1) Those who entered Japan without a valid passport: Illegal entry⁴⁴;
- (2) Those who landed in Japan without any landing permission: Illegal landing;
- (3) Those who stay over the permitted period of stay: Overstay;
- (4) Those who violated the activity conditions of their residential status: Illegal activity;
- (5) Those who violated the conditions of their temporary landing;
- (6) Those who incited, instigated or aided illegal entry or illegal landing;
- (7) Those who are sentenced to imprisonment for violation of the Alien Registration Law;
- (8) Minors who are sentenced to imprisonment exceeding three years;
- (9) Those who are convicted of violation of the Narcotic Control Act and so on;
- (10) Those who are sentenced to imprisonment exceeding one year;
- (11) Those who engage in any business connected with prostitution;
- (12) Those who engage in acts of destructive violence; and
- (13) Those whom the Minister of Justice deems to have committed acts detrimental to the interest or security of Japan.

Statistics show that 49,566 foreigners were deported in 1997. Among the reasons were overstay (41,113), illegal entry (7,117), illegal landing (776), illegal activity (430) and violation of criminal laws, etc (130). 41,606 of those deported were illegal workers, and the major groups were Koreans (10,346), Chinese (7,810), Filipino (5,067) and Thai (4,487).⁴⁵ In 1998, 48,493 foreigners were deported, and 7,472 of those deported were illegal entrants. Major groups of illegal entrants by air were Filipino (1,295), Thai (1,181), Chinese (886) and Koreans (228), and major groups of illegal entrants by sea

⁴³ Yuji Iwasawa, *International law, Human Rights, And Japanese Law* (Oxford: Clarendon Press, 1998), p. 146.

⁴⁴ There is an amendment bill of the Immigration Control Act to establish a illegal entry crime and illegal entry persons shall be punished with penal servitude or imprisonment not more than 3 years or a fine not more than 300,000 yen at any time.

⁴⁵ Japan Immigration Association, *Statistics on Immigration Control 1997*, (Tokyo: Japan Immigration Association, 1998), pp. 84-85.

were Chinese (1,832), Filipino (119), Koreans (57) and Thai (25).⁴⁶ Apparently, most illegal foreign workers enter Japan legally as tourists and so on, and then work illegally and overstay.⁴⁷ More than 95 percent of those deported left Japan at their cost.⁴⁸

The Immigration Control Officer will start deportation procedures from the investigation of a violation. Then an Immigration Inspector will investigate the violation and this is the first instance for deportation. If a deportation suspect has an objection to the actions taken, he may orally request a Special Inquiry Officer for a hearing within 3 days from the date of the notification and this is the second instance. Furthermore, a suspect may file an objection with the Minister of Justice by submitting it to a Supervising Immigration Inspector within 3 days from the date of another notification and this is the third instance. Lastly, the Supervising Immigration Inspector shall immediately issue a written deportation order, upon receipt of the notification from the Minister of Justice of his decision that the objection is groundless (Immigration Control Act, Articles from 27 to 49).

If over-stay persons are considered as very vicious, they shall be punished with penal servitude or imprisonment not more than 3 years or a fine not more than 300,000 yen, or shall be punished with both penal servitude or imprisonment and a fine (Immigration Control Act, Article 70). The Immigration Control Act was amended and will be enforced on February 18th, 2000. The first significant revision is to establish the new penalty for illegal entrants. Up to now, illegal entrants have stayed in Japan for three years since they entered Japan, the period of prescription runs out, and criminal punishment cannot be imposed on them even if they are deported in the same manner as over-stay persons. The newly-established criminal offence are called "unlawful stay" so that they can always impose punishment on illegal entrants.

The second significant revision of the Immigration Control Act in 2000 is the extension of the refusal period of re-entry. Up to now, deported foreigners will not be allowed to re-enter Japan "for one year from the day of their deportation" (former Article 5-1-5). The new Article 5-1-5 of the Immigration Control Act extends the refusal period to five years. Immigration Bureau states that this extension is to prevent the increase of people who re-enter Japan after deportation.

Recently, because of this strict amendment of the law and 5-10 years living in Japan, a group of twenty-one over-stay persons from Iran, Bangladesh and Burma, made up of five families and two single persons, visited the Tokyo Regional Immigration Bureau to request the "special permission for residence".⁴⁹ Additionally, another group of seventeen over-stay persons also requested special permission of residence. They have

⁴⁶ Japan Immigration Association, *Statistics on Immigration Control 1998*, (Tokyo: Japan Immigration Association, 1999), pp. 54, 72-76.

⁴⁷ Helmut Loiskandl, 'Illegal Migrant Workers in Japan' in in Robin Cohen (ed.), *The Cambridge Survey of World Migration* (Cambridge: Cambridge University Press, 1995), p. 373.

⁴⁸ Hô mushô Nyûkoku Kanrikyoku, (ed.), *Heisei 10 Nenban Shuutsunyûkoku Kanri* [Immigration Control, 1998 ed.] (Tokyo: Ôkurashô Insatsukyoku, 1998), pp. 148.

⁴⁹ Japan Times (September 2, 1999).

worked and paid taxes, been injured in industrial accidents, or been to schools in Japan.

The Japanese government has never taken a general amnesty and definitely rejected the mass relief for irregular residents because such a generous measure can serve as a powerful magnet for accelerated flows of new irregular migrants. However, special permission for residence is stipulated in the Article 50-3 of the Immigration Control Act. If "the Minister of Justice finds grounds for giving special permission to stay" in individual cases of irregular residents, the former decision for deportation shall be cancelled and some kinds of residential status are given to them.

5. Re-entry

The third significant revision of the Immigration Control Act in 2000 is the extension of the validity period of re-entry permission. The new Article 26-3 stipulated that "the Minister of Justice shall determine a period of validity of the re-entry permission (including multiple re-entry permission) which shall not exceed three years from the date of issuance of the permission". This validity period are extended from one year to three years. The aim of this amendment is to adjust the age of international migration and therefore foreign residents will no longer bothering to visit the Immigration Bureau for the re-entry permission if they take necessary procedures for re-entry at the same time as the renewal of their visas.

Pursuant to the Article 26 of the Immigration Control Act, the Minister of Justice can give permission for re-entry when aliens, with intentions to return, leave Japan before their period of stay expires. However, persons who have been sentenced to imprisonment for one year or more, or persons deported within the past one year shall be denied permission to land in Japan (the former Article 5-1-9).⁵⁰ Therefore, re-entry for past irregular residents is restricted for one year. As stated above, this refusal period of re-entry prolonged from one year to five years in 2000 (new Article 5-1-9).

Since 1989, persons who encourage aliens to engage in illegal work by offering employment, who keep aliens under their control for the purpose of having aliens engage in illegal work or who mediate, as a matter of business, in illegal work will be punished with imprisonment for up to 3 years and/or a fine of up to 2 million yen (Immigration Control Act, Article 73-2). Even a mediating act done abroad is subject to punishment in Japan. The certificate of authorised employment is issued on application to foreign legal workers. By this certificate, the foreign workers concerned can easily confirm to the employer that they are authorised to work, while a bona-fide employer can make a judgement on what type of activities could be authorised to him under the law.⁵¹

It should be added that the re-entry of a special permanent resident is a significant issue

⁵⁰ Furthermore, paupers, etc. who are likely to become a charge on the government, or narcotics law or stimulants law violators shall be denied permission to land in Japan.

⁵¹ Japan Immigration Association, *A Guide to Entry, Residence and Registration Procedures in Japan for Foreign Nationals*, 5th ed. (Tokyo: Japan Immigration Association, 1998), p. 47.

in Japan. The Special Law on Immigration Control provides that re-entry permits should be valid for a maximum period of five years (as opposed to one year for other resident aliens). However, many Korean permanent residents refused fingerprinting against the requirements of the Alien Registration Law. If they travel abroad, they might be refused re-entry into Japan and lose their special permanent residence qualification after leaving Japan. Indeed a recent precedent⁵² does not recognise the freedom of re-entry for a foreigner, but the overriding opinion states that the freedom of re-entry should be affirmed in the case of a settled alien.⁵³

6. Administrative and political attitude

Under the system of alien registration administered by the immigration service, all foreign residents in Japan are required to register themselves at the municipal office of the city, ward, town, or village in which they live. This system is designed to secure fair and equitable control over foreign residents. From the beginning, however, there was strong criticism of the requirement placed on resident aliens to carry an alien registration card bearing their fingerprint as confirmation of an alien's identity at all times.⁵⁴ Facing a number of cases involving foreigners refusing to be fingerprinted⁵⁵, the Japanese government was forced to amend the Alien Registration Law numerous times. Initially, most foreigners were required to provide fingerprints of all ten fingers at each renewal.

Since 1993, besides permanent residents, foreigners residing for one or more years must provide a fingerprint of one finger at their first registration. The EU, by contrast, does not require fingerprinting, unless a refugee does not have a passport or other forms of identification. Thus there is also a demand in Japan to abolish the aliens' fingerprinting system. The amendment bill of the Alien Registration Law in 1999 demands the entire abolishment of fingerprinting duties. This abolishment has passed and will be enforced in 2000. Additionally, the obligation to carry a registration card remained in the bill and failure to comply with this duty may result in punishment with a fine not exceeding 200,000 yen. Therefore, the opposition parties proposed to abolish the carrying obligation for permanent resident aliens and change the punishment for other resident aliens from penal fine to administrative fine and government parties agreed with only the latter amendment.⁵⁶

Regarding the acceptance of foreign workers, administrative and political attitude are slowly changing because of the importance of living in harmony with Asia and the tendency of fewer children and ageing people in Japan.

⁵² Supreme Court judgement, March 26, 1998.

⁵³ Yoshio Hagino, *Kenpô Kôgi: Jinken* [Lectures on the Constitution: Human Rights] (Kyoto: Hôritsu Bunkasha, 1994), p. 205.

⁵⁴ Yasuaki Ônuma, 'Beyond the Myth of Monoethnic Japan', in The Committee to Commemorate the Sixtieth Birthday of Prof. Suh Yong-Dal (ed.), *Ajia Shimin to Kan Chôsenjin* [Asian Citizens and Koreans in Japan], (Tokyo: Nihon Hyôronsha, 1993), pp. 576-8.

⁵⁵ See *George Hicks, Japan's Hidden Apartheid* (Aldershot: Ashgate, 1997), p. 96.

⁵⁶ *Nishinihon Shinbun* (April 4, 1999), p. 30; *Asahi Shinbun* (May 13, 1999).

The Ministry of Foreign Affairs reported “the Mission for Revitalisation of Asian Economy: -Living in Harmony with Asia in the Twenty-first Century-“ in November 1999. It mentioned the “accept foreign workers” as followings. “There are strict restrictions on the immigration of foreign workers, even when they have expertise and skills that Japan could use. Japanese society is ageing rapidly and nursing care is becoming a major social issue, but there is currently no visa status for people providing nursing care and similar services. Japan has a shortage of people able to provide nursing care, and many of those who require it do not have the financial means to obtain it. The problems are growing increasingly serious in nature, and it is time to rethink our systems. We should recognise ‘nursing care provider’ as a visa category, substantially expand our recognition of certifications granted by the governments of other countries, and relax visa requirements and immigration screening criteria. Visa requirements and immigration criteria should be relaxed for nurses as well. These kinds of measures are completely different from allowing unrestricted inflows of foreign workers. It is essential for the vitality of the Japanese economy and society that we think more flexibly about the range of foreigner workers with special expertise and skills that Japan will accept”.⁵⁷

The Ministry of Justice is considering to the “nursing care provider”. Consulting with related Ministries, the Minister of Justice published the Second Basic Guiding Plan for Immigration Control. It is reported the some directions of this plan. There is a discussion to recognise ‘nursing care provider’ for elderly people as skilled workers. Additionally, it will enlarge to accepting various types of work as “technical interns”. Ups to now, fifty-five types of work such as machine, textile industry, construction have been admitted as technical interns. The plan is widening to hotel, agriculture and so on. It will be flexible to accept the engineer in the Info-com industry and changing the status from college students to workable status. The “establishment permission” such as quasi-permanent residents or permanent residents will be more easily given to long-term residents to make the society adjust for living in harmony with them.⁵⁸

There were some questions about future immigration policy in the House of Representatives Standing Committee on Justice on July 30, 1999. One representative of the Liberal Democratic Party (governmental party) asked the Minister of Justice to recognise the situation of Japan in south east Asia and manage to accept foreign workers in jobs which Japanese are not willing to engage. The other representative of the Liberal Party (governmental party) pointed out the total fertility rate (1.4%) Of Japan and asked the Minister to be more flexible of residence status adjusting to the age of fewer children and the industrial structure changing. The Minister replied that the present policy is to accept foreign workers in professional and technical fields as much as possible, but to deal cautiously with the matter of accepting so-called unskilled workers with though deliberation. However, he added that it is necessary to correspond with the future change keeping the base on this policy.⁵⁹

⁵⁷ <http://www.mofa.go.jp/policy/economy/asia/mission99/report/part1.html#part1-II-1>.

⁵⁸ *Asahi Shinbun* (January 14, 2000).

⁵⁹ The Minutes of the House of Representatives Standing Committee on Justice, No. 25 (July 30, 1999).

7. Welfare

As a result of Japan's accession to the International Covenants on Human Rights in 1979 and the Refugees Convention in 1981, many social rights had to be, and indeed have been, extended to aliens. Citizenship clauses were eliminated from the National Pension Law, the Child Dependency Allowance Law, the Special Child Dependency Allowance Law and the Child Allowance Law etc.⁶⁰

Some problems still remain in the welfare system. Generally, persons registered through alien registration between 20 and 60 years of age are covered by the Basic Pension Scheme. However, if foreigners were over 35-year of age at the time of revision of the National Pension Law, and had paid their insurance charge, they could not receive the old-age pension because they lacked sufficient premiums period (25 years). Since 1994 foreigners can receive a lump-sum payment on the application within 2 months of leaving Japan.

The Livelihood Protection Law did not clarify the citizenship clause. Then, a notice from the social section's chief was issued. This notice limited application to Japanese nationals due to the interpretation of the term "national". According to the 1954 administrative guideline of the Ministry of Health and Welfare, however, it applied *mutatis mutandis* to registered foreigners and provided them with medical care. In fact, it was similar to the application of the Livelihood Protection Law because the central government paid the expenses for the local governments. However, the Immigration Control Act was amended in 1990, and at this time the Ministry of Health and Welfare issued a new directive. Now, the *mutatis mutandis* application covers only foreigners of the Annexe Table II, namely, permanent resident, spouse or child of a Japanese national, spouse or child of a permanent resident and quasi-permanent resident. Foreigners of the Annexe Table I are allowed to stay in Japan under the condition of not becoming a burden on the Japanese government, and they often leave their property and family in their home country.

Temporary visiting foreigners are excluded from the National Health Insurance Law. Originally this Law did not have a citizenship clause, but its enforcement regulation had included one until 1986. Now, Article 5 of this Law stipulates that persons insured are "those who have a domicile in communes or special wards". However, according to the administrative interpretation from 1992, these 'domiciles' must have a residence period of 1 or more years or they have to reside for 1 or more years via renewal of their temporary visas. Temporary visiting foreigners are also excluded from application of the National Pension Law.

In the case of an irregular resident, she is not covered under the National Health Insurance Law (Tokyo District judgement, Sept. 27, 1995). Since an irregular resident is not allowed to have a residence, even if she paid the insurance for her Japanese child

⁶⁰ Iwasawa, *supra note* 40, pp.167, 174.

covered under the National Pension Insurance. Practically, free maternity leave is guaranteed (Article 22 of the Child Welfare Law), medical treatment for physically handicapped children (Article 20 of the Child Welfare Law) and medical treatment for premature babies (Article 20 of the Maternal and Child Health Law) for over-stay persons.⁶¹ Legally Worker's compensation insurance will be paid regardless of citizenship, but in the case of over-stay workers, employers and employee are not willing to apply it for fear of the disclosure of the illegal employment. Additionally, if illegal workers are unemployed, they are not considered to be "unemployed" under the Employment Insurance law of 1974 because they do not have visas to seek work. Furthermore, in the case of an accident involving illegal foreign workers, the accounting of the lost benefit has a serious problem between the standard of Japan and the country of their citizenship. The Supreme Court based it on the wage standard of Japan only for 3 years and that of the home country for the remainder of years (Supreme Court judgement, Jan. 28, 1997).

In cases involving temporary visitors or irregular residents, some local governments have to pay for the emergency medical costs of foreigners who can be assumed to have fallen down by the roadside while travelling, according to the Law concerning the Treatment of Sick Wayfarers and Wayfarers Found Dead. It is required to have workable residential statuses in order to be covered under the Employee's Health Insurance scheme. Even if a foreigner has working status, small companies (less than 5 persons) and temporary workers are excluded from this insurance system. Additionally, some foreign workers are not willing to join this insurance because they must also simultaneously join their welfare pensions scheme, from which they can not receive payments in the future. Foreigners who work or reside in Japan, however, do not correspond to the word "wayfarers". Temporary or irregular residents are not covered under the public insurance system and they can not pay for the medical cost, therefore, some local governments and NGOs have to provide for their own expenditures.⁶² Since 1996 the state pays one third of the costs of emergency medical care for a condition which is fatal.⁶³

Today, a current problem is war-related compensation regardless of present citizenship. Korean soldiers and army genus have not been properly compensated.⁶⁴ The Japan - Korea agreement of 1965 settled the issue of compensation between the people of both

⁶¹ Emiko Miki, 'Gaikokujin no Iryô [Medical care for aliens]', in *Nihon Bengoshi Rengôkai Henshû Inikai* (ed.), *Teijûka jidai no Gaikokujin no Jinken* [Aliens' Human Rights in the Permanently Domiciling Time] (Tokyo: Akashi Shoten, 1997), pp. 897-88.

⁶² Akira Hatate, 'Gaikokujin no kodomo to iryô [Foreign children and their medical care]', in *Jiyû Jinken Kyôkai* [Japan Civil Liberties Union] (ed.), *Nihon de Kurasu Gaikokujin no Kodomotachi* [Foreign Children Living in Japan] (Tokyo: Akashi Shoten, 1997), pp. 87- 91, 99-102.

⁶³ Toshi Murata, 'Gaikokujin no rodo kankyo wo meguru horitsu mondai [Legal problems on the aliens' labour environment]', in *Nihon Bengoshi Rengôkai Henshû Inikai* (ed.), *Teijûka jidai no Gaikokujin no Jinken* [Aliens' Human Rights in the Permanently Domiciling Time] (Tokyo: Akashi Shoten, 1997), p. 109.

⁶⁴ If the plaintiff, Mr. Sok Song-Ki, had been Japanese, he would have received a cumulative total of 60 million yen for his injury (the loss of an arm). See Hiroshi Tanaka, 'Why is Asia Demanding Post-war Compensation Now?', *Hitotsubashi Journal of Social Studies*, vol. 28, no. 1 (1996), p. 10.

countries (Supreme Court judgement, July 15, 1994). Yet, the Japanese government is preparing to solve this problem in the near future.

8. Remittance

If foreign persons send money from Japan, they need to show the identification card such as passport or certification of alien registration. If they send more than 5 million yen, they need to fill in the form as to the sending person and its purpose. This identification proofing is started since April of 1999 in order to prohibit “moneylaundering”. The price of the commission of a bank is 2,500 yen if the amount of sending money is 5 million or less. It will be 0.05% of sending money in the case of over 5 million yen. The Japanese Government applies no vital institutional restriction on remittance, which may induce official sending from persons working overseas, whereas in many countries sending labour various measures are taken to impose a specified amount of surcharge on legal remittance transaction.⁶⁵ Additionally, formal remittance ways of transferring through a bank account or telegraphic communication will take several days.

Therefore, many migrant workers are sending their money secret, quick and cheap unofficial ways. People are fond of carrying money with themselves on boat or asking friends to carry money to North Korea. Recently, some foreign regular or irregular residents have established “underground banks” without legal permission for the remittance to South Korea, China, Nepal, Thailand and so on. They earn a commission of 0.33-1% of the total sending money and change money in the underground market. It is reported that the cost of informal remittance to South Korea through these underground banks might be about 7.7% of the cost charged by formal banks.⁶⁶ Underground brokers can send the money to the receiver in about one day from pooled money in the receiving country and sometimes they carry large amounts of money themselves for the supplement of the pooled money. Since 1997, managers of the “underground banks” have been arrested in 15 cases and it is reported that around 100 billion yen was remitted illegally through these underground banks.⁶⁷ For example one Chinese was sentenced to two years imprisonment and fined 700,000 yen and another was sentenced for one year and a half and fined 700,000 yen by violation of the Bank Act.

Generally, short-term and single foreign workers intend to return to their home country and are willing to take on extra work and limit consumption to the minimum in order to maximise saving or remittance. In contrast, long-term and family reunified foreign workers intend to settle in the host country and the willingness to send remittance will decrease. Therefore, the average amount of remittances per newcomer has decreased from 830,205 yen in 1980 to 173,329 yen in 1992 with some fluctuations affected by the economic ups and downs in Japan.⁶⁸

⁶⁵ Mori, *supra note 5*, p. 83.

⁶⁶ *Mainichi Shinbun* (March 1, 1999), p. 7.

⁶⁷ *Nihon Keizai Shinbun* (March 2, 1999), p. 12.

⁶⁸ Mori, *supra note 5*, pp. 80, 84.

Concluding Remarks

In the 1990s, reports on foreign criminals have been increasing in the media. The National Police Agency categorises foreigners into two types: (1) Newcomers (*Rainichi gaikokujin*), and (2) other foreigners. Newcomers are foreigners in Japan, but are neither settled aliens, U.S. Forces persons concerned nor persons of unknown residential status. Table 2 shows statistics in relation to the numbers of arrested newcomers, excluding traffic violations, and serious crimes such as murder, robbery etc.

Table 2: Criminal Statistics for General and Newcomers

		1990	1991	1992	1993	1994	1995	1996	1997	1998
Crime	General	293,264	296,158	284,908	297,725	307,965	293,252	295,584	313,573	324,630
	Newcomer	2,978	4,813	5,961	7,276	6,989	6,527	6,026	5,435	5,382
Serious Crime	General	4,723	4,687	4,709	5,190	5,526	5,309	5,459	6,633	6,949
	Newcomer	111	126	185	246	230	201	212	213	251

Source: The National Police Agency, The White Paper on Police; The Research and Training Institute in the Ministry of Justice, The White Paper on Crime.

The number of crimes committed by foreigners started to increase in 1991 mainly due to the increase in crimes committed by visiting foreigners. In April 2000, Tokyo Governor Shintaro Ishihara, co-author of "A Japan That Can Say No," indicated the possibility that "many *sangokujin* (third-country nationals) who entered Japan illegally" would riot in the aftermath of natural disasters, he has repeatedly emphasised the negative impact of illegal foreigners on public security. Ishihara's comments prompted general denunciations from leading politicians and media, but many residents sent supportable comments to the Governor. The Governor's remarks likely constitute an infringement of the International Convention on the Elimination of All Forms of Racial Discrimination, which stipulates that the signatories "shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination."

In 1996, the rate of those convicted in foreigner cases with interpreters or translators available was 10.1 percent of the total defendants convicted, and 82.9 percent of the defendants convicted in foreigner cases. The numbers of class F prisoners (those who need different treatment from Japanese) increased between the years of 1986 to 1995, but decreased in 1996 to 279.

The problems that need to be resolved are those such as securing a sufficient amount of interpreters, and the restraint of sensational reports on 'Foreigner Crime'. The Japanese government had been willing to assimilate the old-comers and exclude newcomers. However, the integration policy based on cultural pluralism is gradually being applied in local and national governments.⁶⁹

⁶⁹ Atsushi Kondo, *From the 'Monoethnic' State to Cultural Pluralism in Japan*, Center for Pacific Asia

Ethnic education has not been adequate enough to secure the right to receive an education. The General Association of (north) Korean Residents and the (south) Korean Residents Union run their own schools, which employ a bilingual Japanese and Korean curriculum.⁷⁰ The Japanese government has refused to accredit these schools and therefore these students have not been able to take the entrance examination for national universities. Recently, however, many universities are opening their doors to these students. There is a serious education problem for newcomers, however. According to the survey of 1993, 10,450 children in compulsory education (elementary schools and junior high schools) needed additional language training.⁷¹ Under the present conditions, it is difficult for foreign students to learn even the Japanese language. Most schools do not take any measures for their native language education. In a few local governments, Portuguese and Spanish teachers were hired part-time by a city to teach Japanese origin Brazilian and Peruvian students. Even if these *Nikkeijin* keep moving between Japan and their home countries periodically, both acquisition of the Japanese language and native language maintenance will become difficult for their children.⁷² Gradually, through their experiences there is a growing awareness regarding multiethnic education.

Additionally, there has been a problem of ethnic discrimination in employment. About 90 percent of Korean residents used a Japanese name as an alias in order to avoid discrimination at work and school as recently as 1992.⁷³ Fortunately however, Japanese society is changing. A Korean resident using a Japanese name as an alias was accepted for employment but immediately released because of his citizenship. This person brought a lawsuit against this company and won in 1974. In another case a Korean resident was accepted as a legal trainee to become a lawyer without applying for naturalisation in 1977.

It has been difficult for foreign residents to find employment as public servants who "participate in the exercise of public authority or formulation of public will", although the legal bases for citizenship requirement are not so clear except for Diplomat Law, etc. Gradually, public service posts such as public university professorships, doctors, nurses, mail delivery staff workers in post offices, and lectureships in schools are opened to non-citizens. In 1992, approximately 30 % of municipalities abolished the nationality requirement for general administrative officials. In 1996, the city of Kawasaki abolished the citizenship requirement for posts in general

Studies at Stockholm University, Occasional Paper 38 (1998).

⁷⁰ John C. Maher and Yumiko Kawanishi, 'On being there: Korean in Japan', in John C. Maher and Kyoko Yashiro (eds.), *Journal of multilingual and multicultural development*, vol. 16, 1-2, Multicultural Japan, (1995), pp. 89-90.

⁷¹ Mori, *supra note* 5, pp. 203-4.

⁷² T. Kajita, 'Nature de l'immigration au Japon' *Revue de l'institute de Recherches Politiques et Économiques sur le Japon contemporain* 1 (1996), p. 116.

⁷³ Hanami, *supra note* 29, p. 139. Until the amendment of Nationality Law and administrative guidance on naturalisation in 1986, the naturalised citizen have to choose Japanese name. See further Mitsushi Sugihara, 'The Right to Use Ethnic Names in Japan', *Journal of Intercultural Studies*, Vol. 14, No. 2 (1993), pp. 12-33.

office work, the first time this was done in a large city.⁷⁴ The District Court refused a Korean public health nurse the right to apply for section chief (Tokyo District Court judgement, May. 16, 1996). Yet the Appellate Court approved her right and confirmed that the constitutional principle of popular sovereignty⁷⁵ does not prevent foreign residents (especially permanent residents) from being employed in a managerial position if it does not have a decisive competence (Tokyo Appellate Court judgement, Nov. 26, 1997).

As for electoral rights of national suffrage, the citizenship requirement is constitutional according to a Supreme Court judgement (Feb. 26, 1993). In the case of local suffrage, the Constitution does not guarantee nor prohibit local suffrage of aliens such as permanent residents. The Supreme Court left it as a matter of legislative adjustment (Supreme Court judgement, Feb. 28, 1995). This decision was an epoch-making one, giving a signal to the Diet that the introduction of local suffrage of permanent residents is possible by statutory legislation without constitutional amendment. There have been more than 1,400 resolutions in the local assemblies asking for a change in the law to introduce alien's political rights at the local level in Japan. The ruling party was not willing to introduce the alien's vote but after the President of South Korea came to Japan in 1998, the political climate changed. Opposition parties submitted a bill to introduce local voting suffrage for aliens and the Prime Minister expressed a positive opinion on this matter. Public opinion and the opinion of the representatives of the national Parliament appear to be in favour of the denizen vote.⁷⁶ In 2000 two governmental parties submitted the new bill on local suffrage for permanent residents except for Koreans who do not have South Korean citizenship because there is no diplomatic relations between Japan and North Korea.⁷⁷ However, this exclusion has a serious problem of citizenship discrimination.

Furthermore, citizenship system should be amended for admitting dual citizenship. It is reported that more than 230,000 individuals were naturalised in Japan from 1945 to 1993. Most of them are old-comer Koreans (75.9%) and Chinese (19.4%).⁷⁸ According to the Nationality Law, a possible interpretation is that the Japanese naturalisation system does not need assimilation requirements.⁷⁹ Yet strict assessment of assimilation into the Japanese lifestyle and being master of Japanese language is required under the administrative guidance on naturalisation.⁸⁰ More than fifty application forms have to

⁷⁴ However, this effort excludes firemen and prohibits promotion to management positions.

⁷⁵ All public power emanates from the people defined as all persons who have Japanese citizenship. This principle is called *souveraineté national*.

⁷⁶ Takashi Ebashi, 'Gaikokujin shimin no chiho sanseiken [Local voting rights for alien citizens]', *Nihon Bengoshi Rengôkai Henshû Linkai* (ed.), *Teijûka jidai no Gaikokujin no Jinken* [Aliens' Human Rights in the Permanently Domiciling Time] (Tokyo: Akashi Shoten, 1997), pp. 114-5.

⁷⁷ *Mainichi Shinbun* (January 22, 2000).

⁷⁸ Kazumi Moriki, *Kokuseki no Arika* [The Whereabouts of Citizenship] (Tokyo: Akashi Shoten, 1995), p. 256.

⁷⁹ SOPEMI, *Trends in International Migration, Annual Report 1994* (Paris: OECD, 1995), p. 63.

⁸⁰ Yong-dal Kim, *Zainichi Chôsenjin no Kika* [Naturalisation of Koreans in Japan] (Tokyo: Akashi Shoten, 1990), pp. 90-1.

be submitted⁸¹ and applicants were forced to adopt a Japanese name. However, an amendment of the Nationality Law in 1985 had eliminated the phrase ‘Japanese name only’ in the administrative guidance on naturalisation. Nevertheless, it is still necessary to write the name with Japanese characters (*kanji*, *hiragana* or *katakana*). Since 1994, there were judgements to admit double names that combine both family names in cases of international marriage.⁸² Individuals with dual citizenship are increasing as a result of international marriages (around 4 percent of the marriages at present in Japan). In recent time, about 80 percent of Korean residents marry Japanese, and almost 8,000 children are born to Korean and Japanese parents annually.⁸³ Under the 1985 revision of the Nationality Law, children with one Japanese parent could have dual citizenship, but they must choose either Japanese or foreign citizenship before they reach 22 years of age. This optional obligation system was introduced as the result of an amendment from the *patrilineal jus sanguinis* to *patrilineal and matrilineal jus sanguinis* principle.⁸⁴ It has been emphasised that dual citizenship has many disadvantages: friction from different diplomatic protection rights between countries, conflict of loyalties, inefficiency in immigration control, bigamy due to difficulties in establishing personal identity, and confusion of civil international law relations.⁸⁵ In spite of the fact that they have lived more than 50 years in Japan, many Koreans refuse naturalisation. The reason is that they do not want to lose their Korean ethnic identity, which is connected with citizenship. It should be added that they do not want to forget the history of Japanese colonisation, when they were forced to have a Japanese citizenship and Japanese name.

Additionally, there are about 2,186 registered stateless persons in Japan.⁸⁶ In the *Andere* case, whose father was unknown and mother was missing after his birth, the interpretation of Article 2 (3) of the Nationality Law, which stipulated that “If both parents are unknown”, a child born in Japan can acquire Japanese nationality became a problem. The District Court approved that the child be granted Japanese nationality, but the Appellate Court refused it on the grounds that his mother probably had Filipino nationality. However, the Filipino government denied it because her lack of a passport. In the end, the Supreme Court approved that the child be granted Japanese nationality. The reason was that the clause “if both parents are unknown” which was interpreted as,

⁸¹ Toshiko Ôta et al., *Koseki, Kokuseki to Kodomo no Jinken* [The Family Registration, Citizenship and Rights for Children] (Tokyo: Akashi Shoten, 1995), p. 172; Tsuguhiko Yokô, *Kaitei Kika Tetsuzuki no Tebiki* [Revision of the Naturalisation Procedure] (Tokyo: Nihon Kajo Shuppan, 1995), pp. 119-20.

⁸² Kazuaki Tezuka, ‘Gaikokujin Teijû Mondai no Yukue’ [The Prognosis of the Problem on Domiciled Aliens], in Nihon Beigoshi Rengôkai (ed.), *Teijû Jidai no Gaikokujin no Jinken* [Aliens’ Rights in a Period of Domiciliation] (Tokyo: Akashi Shoten, 1997), p. 134.

⁸³ John C. Maher and Yumiko Kawanishi, ‘Maintaining Culture and Language: Koreans in Osaka’, in John C. Maher and Gaynor Macdonald (eds.), *Diversity in Japanese Culture and Language* (London: Kegan Paul International, 1995), p. 170.

⁸⁴ As for the history of the Japanese citizenship, see Yoshio Hagino, Recent Development of the Nationality Law of Japan, *Nanzan Hôgaku*, vol. 8, no.2 (1984), pp. 1-9. As for the guideline of Japanese citizenship, see Ryoichi Yamada and Fumiaki Tsuchida, *An Easy Guide to the New Nationality Law* (Tokyo: The Japan Times, 1985).

⁸⁵ Kiyoshi Hosokawa, ‘Amendment of the Nationality Law’ *The Japanese Annual of International Law*, no. 28 (1985), p. 20.

⁸⁶ Japan Immigration Association, *supra note* 13, p. 6.

“if both parents are undetermined”(Supreme Court judgement Jan. 27, 1995). In order to eliminate the occurrence of stateless persons, this clause should be revised as “if a child does not acquire nationality by the Nationality Law of his or her own parents’ country”.⁸⁷ Over-stay parents are unwilling to go to the civil registration office for fear of deportation. Thus, there is no precise data of stateless children.

Lastly, regularisation of long-term irregular residents including children who attend Japanese schools is a significant problem to be solved. Since the bubble economy in 1980s, many foreign workers came to Japan and over stay for working jobs. It is estimated that Japan needs to accept many immigrant workers because of the shortage of labour force in the next fifty years.⁸⁸ However, the Ministry of Justice does not want general amnesties for illegal workers for faring to be the magnet for further undocumented immigrants. The Minister has discretion to give the “special permission for residence” for long-term irregular residents on humanistic grounds and so on. Most precedents of the “special permission for residence” by the Ministry of Justice have been given to the case of spouses or parents of Japanese citizens. Historically speaking, the Japanese Government has authorised special permission for residence on humanistic grounds to hundreds of Koreans who entered Japan "illegally," recognising that they established their home base in Japan. Presently, the protection of children's rights is the significant issue for this permission. Hundreds of Japanese and foreign academic researchers appealed for the Japanese Government to grant special permission for residence to irregular residents including children.⁸⁹ Children should not be held responsible for overstaying and they attend Japanese schools, have close Japanese friends and speak only Japanese. The Minister of Justice must respect the International Convention on the Rights of the Child, which the Japanese Government ratified in 1994. Deportation of these children would be a serious violation of their human rights. The Minister decided to give special permission for residence to families with school children who have learned Japanese for many years and can not manage the language of their countries of origin because their deportation will bring them hardship to live. At last, in February 2000, the Ministry of Justice granted special permission for residence to four long-term irregular resident families with school children.⁹⁰ This precedent will bring many similar requests for regularisation, even if it remain the problem of uncertain requirements of special permission. The next significant problem for Japan is to make a rule for how to accept foreign workers through the front door and how to integrate them in the society.

⁸⁷ The similar clause is regulated in France, Italy and Spain. See Yasuhiro Okuda, *Kazoku to Kokuseki* [the Family and Citizenship] (Tokyo: Yūhikaku, 1996), p. 63.

⁸⁸ The UN Estimation of the Population Dynamics, See *Mainichi Shinbun* (January 13, 2000).

⁸⁹ *Asahi Shinbun* (November 11, 1999).

⁹⁰ *Japan Times* (February 3, 10 and 15, 2000).