

# Labor Law and Policy Issues Relating to Foreign Workers in Japan\*

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This article analyzes law and policy relating to foreign workers in Japan. Immigration has been widely debated in Japan against a background of falling birthrates and an aging society, as well as globalization, while the issue of unemployment—including the unemployment of foreign workers—has become more pressing. This article attempts to interpret these policy issues, initially outlining the perspectives from which labor law and policy issues relating to foreign workers are examined (the two principles of selection and integration), and then considers legal issues relating to immigration law and labor and employment law, in the light of pointers provided by U.S. law. In regard to immigration law, which is the means of implementing the principle of selection, the article proposes that a Japanese version of the labor certification program, with full consideration given to the labor market, should be introduced. Furthermore, in regard to labor and employment law, which is the means of implementing the principle of integration, the article proposes clarification of the analysis framework of regulations prohibiting discrimination on grounds of nationality contained in Article 3 of the Labor Standards Act, and their application to employment discrimination, and the specific coordination of both principles in regard to the legal treatment of undocumented workers.

## I. Introduction

This article considers labor law and policy issues relating to foreign workers in Japan. The number of foreign nationals living in Japan was 2.22 million at the end of 2008, the highest it has been throughout history.<sup>1</sup> In addition, there are approximately 110,000 foreign nationals currently living in Japan in contravention of the Immigration Control and Refugee Recognition Act (hereinafter referred to as the Immigration Control Act),<sup>2</sup> the majority of who are thought to be working illegally.<sup>3</sup> Given these facts, it is estimated that

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<sup>1</sup> There were 2,217,426 foreign nationals registered in Japan at the end of 2008, equivalent to 1.74% of the total population (Japan Immigration Association 2009, 3).

<sup>2</sup> 91,778 foreigners who have remained illegally in the country as of January 1, 2010, added to the estimated number of illegal entrants, gives an estimated figure of between 104,000 and 113,000 people (not including foreigners engaging in activities outside the scope permitted by their status of residence). (Immigration Bureau, Ministry of Justice, <http://www.moj.go.jp/PRESS/100309-3.html> (accessed March 9, 2010)).

<sup>3</sup> Of the 32,661 people subject to forced deportation during 2009, 26,545 or 81.3% of the total were undocumented workers. Ministry of Justice Immigration Bureau, <http://www.moj.go.jp/PRESS/100309-1.html> (accessed March 9, 2010).

approximately 900,000 foreign nationals are now working in Japan.<sup>4</sup>

The challenge of ensuring a labor force sufficient to meet Japan's nursing and welfare needs, as the country experiences a declining birthrate and aging society, as well as maintain the productivity of its manufacturing output despite a declining population, is a contemporary policy issue. While on some levels the utilization of young people, women and the elderly in Japan, who have conventionally not been able to access sufficient employment opportunities, is being proposed as a solution to this problem, the idea of allowing foreign workers to immigrate to work in areas hitherto closed to them is also being considered.<sup>5</sup> Furthermore, given the developments in globalization within both economy and society, there is a current policy issue regarding not only the training of Japanese human resources but also the proactive immigration of a diverse range of highly qualified foreign nationals in order to maintain and strengthen Japan's international competitiveness.

From a medium to long-term perspective, while the creation of policy that ensures Japan will be properly resourced, both by Japanese and foreign nationals, is an increasingly important issue, there is also an urgent need to consider how to rein in the increase in unemployment of both Japanese and foreign laborers, which has resulted from the worsening employment situation caused by the economic downturn following the global recession.

This article attempts to interpret these policy issues, initially outlining the perspectives from which labor law and policy issues relating to foreign workers are examined, and then considers legal issues relating to the Immigration Control Act and labor and employment law, in the light of pointers provided by U.S. law, before giving forecasts in relation to each of these issues.

## **II. The Perspectives from Which Labor Law and Policy Issues Relating to Foreign Workers Are Examined**

Before entering into the main considerations of the article, I wish to clarify the perspectives from which labor law and policy issues relating to foreign workers are examined (see Figure 1).<sup>6</sup>

### **1. Selection and Integration**

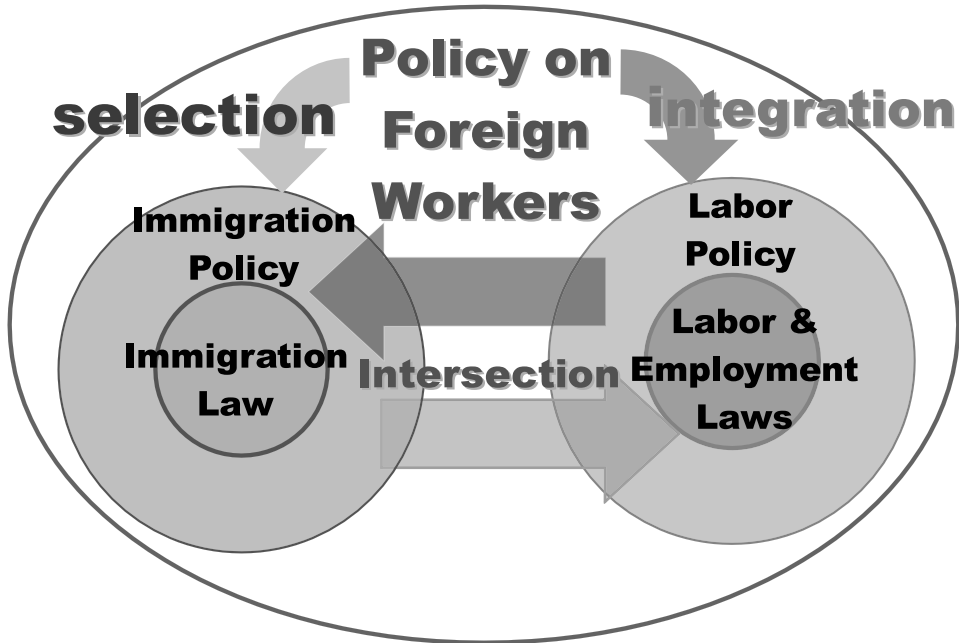
The first perspective is that of the principles of selection and integration, considered to be the basic principles of policy regarding foreign nationals. International legal convention

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<sup>4</sup> The number of documented workers was estimated at around 755,000 in 2006 (Ministry of Health, Labour and Welfare [2008, 34, 284]).

<sup>5</sup> As part of the recent debate on the issue of immigration, Nippon Keidanren suggests in its paper "An Economy and Society That Responds to the Challenges of a Declining Population" (October 14, 2008), available at <http://www.keidanren.or.jp/english/policy/2008/073.html> (accessed May 12, 2010), that highly qualified human resources should be allowed to immigrate within certain parameters.

<sup>6</sup> The following basic perspectives are according to Hayakawa (2008b).



Source: Created by the author.

Figure 1. Perspectives from Which to Consider Legal Policy Relating to Foreign Workers

dictates that immigration to a country is not free for non-nationals, but rather that a country has the right to exercise its own discretion over whether or not to allow each foreign national to enter.<sup>7</sup> This is the principle of selection, and the criteria for selection are defined by each country in their immigration laws (in Japan’s case, the Immigration Control Act).

At the same time, policy regarding foreign nationals adopts, concurrent to the principle of selection, the principle of integration for foreign nationals who are admitted to a country according to the applicable laws. Integration in relation to foreign nationals who have entered and are residing in a country according to applicable laws means attributing to them the same basic status as nationals of the country in question, and not engaging in inappropriate discrimination towards them. This principle of integration is often reflected in international conventions in relation to national treatment,<sup>8</sup> etc., and is significant in establishing the rights of foreign nationals. Constitutions and laws in different countries have sought to regulate this in practical ways, and labor and employment laws are the means by

<sup>7</sup> Ashibe (2007, 92-93). Common lore and judicial precedent regarding the residence of foreign nationals also provide that the right to remain in a country is not constitutionally protected (McLean case, Supreme Court judgment, Oct. 4, 1978, *Minshu* 32-7-1223).

<sup>8</sup> The Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), etc.

which integration is functionally realized in the aspects of labor dealt with in this article.

## 2. The Combination of Immigration Policy and Labor Policy

As stated above, in terms of the aspects of policy relating to foreign nationals and labor (foreign labor policy), immigration law is the means of realizing the principle of selection, while labor and employment law is the means of realizing the principle of integration. The second perspective, then, is that immigration policy and labor policy based on these laws mingle with each other in realizing these principles. We can consider this through the approach to the Immigration Control Act from a labor policy standpoint, and also through the approach to labor and employment law from an immigration policy standpoint.

## 3. Balance and Coordination between Selection and Integration

The third perspective is that of achieving a balance and harmonization between the two principles at the point at which immigration policy and labor policy, which realize both selection and integration, collide.

Based on such perspective above, I will examine the state of Japanese law, with regard to immigration law and labor and employment law, and provide suggestions from U.S. law.

# **III. Foreign Workers and the Immigration Control Act—Realizing the Principle of Selection**

## 1. The State of Japanese Law

### (1) The Status of Residence System

Let us take a brief look at the way Japan's Immigration Control Act treats foreign workers.

According to the Immigration Control Act, the basic concept relating to the immigration and residence of a foreign national is the "Status of Residence" (see Table 1). As defined by the Immigration Control Act, foreign nationals are, in principle, permitted to enter and remain in Japan only if permitted to do so by their status of residence (Article 2-2), and unless they are given permission to renew it (Article 21), they may not remain in Japan longer than the period of their permission to stay. In addition, foreign nationals may not engage in any activity resulting in income or payment, other than those permitted according to the terms of their status of residence (Article 19).

Categories of status of residence that allow employment include "Permanent Resident," "Spouse or Child of Japanese National," "Spouse or Child of Permanent Resident" and "Long-Term Resident." These statuses are awarded based on the identity or position of the applicant, and persons holding these statuses are able to work in any kind of employment. Workers of Japanese descent are treated differently to other foreign nationals in that they have no restrictions placed on the type of work they can do, and they are able to work

Table 1. Statuses of Residence in Relation to Permission to Work, after Revisions to the Immigration Control Act

Status of residence defined by activity*			Status of residence defined by identity or position
Eligible for employment within scope of status of residence	Ineligible for employment	Dependent on designation by Minister of Justice	No employment restrictions
Diplomat	Investor/ Business Manager	Cultural Activities	Permanent Resident  Spouse or Child of Japanese National  Spouse or Child of Permanent Resident  Long-Term Resident
Official	Legal/ Accounting Services	Temporary Visitor	
Professor	Medical Services	Student	
Artist	Researcher	Trainee	
Religious Activities	Instructor	Dependent	
Journalist	Engineer		
	Specialist in Humanities/ International Services		
	Intra-company Transferee		
	Entertainer		
	Skilled Labor		
	Technical Intern Training (i)(a), (i)(b) (ii)(a), (ii)(b)		

\* Permission can be granted for employment outside the scope of status of residence by the Minister of Justice.

on the shop floor in manufacturing and other industries because they have been awarded the same status of residence as “Spouse or Child of Japanese National,” or “Long-Term Resident.”

Foreign nationals other than those mentioned above are permitted to immigrate if they have specialist technical skills, but immigration policy dictates that unskilled laborers are

not permitted to immigrate<sup>9</sup>, and so the scope of activities in which such foreign nationals can engage is defined by their status of residence. Categories of status of residence that permit working are restricted to highly specialist skills such as “Engineer,” “Specialist in Humanities/International Services,” etc., as well as “Diplomat,” “Professor” and other categories that indicate a commitment to public life. In addition to this, it is also possible to be awarded the status category of “Designated Activities,” where the scope of activity is defined by the Minister of Justice. Other categories of status of residence such as “Student” only permit working within the scope permitted as activities other than those permitted under the status of residence. In this way, the Immigration Control Act uses the status of residence system to restrict working by foreign nationals.<sup>10</sup>

Some of these statuses of residence have been acknowledged to require adjustments in the scope of immigration they allow, in consideration of the impact they have on Japanese industry and the lives of Japanese nationals from the perspective of immigration policy. For these categories, the criteria for being given permission to enter Japan are defined in the “Ordinance of the Ministry to Provide for Criteria Pursuant to Article 7, Paragraph (1), Item (ii) of the Immigration Control and Refugee Recognition Act” (hereinafter referred to as the Criteria Ordinance). Among those statuses of residence to which the Criteria Ordinance is applicable, those categories defined according to types of work activities are almost all covered by income criteria, in the form of legislation that foreign workers must “receive an equivalent or higher salary to any Japanese national doing the same work.” It is clear from this that the legislation seeks to minimize the impact of the criteria on the labor market, but within the Criteria Ordinance, there is no particular indication of how it should be judged whether a foreign worker is being paid an equivalent or higher salary to a Japanese one.

## (2) Prohibition of Illegal Work

Foreign nationals working without a status of residence that allows work under the Immigration Control Act (a work permit) are known as undocumented workers. Persons hiring undocumented workers, placing them under their control or sending them to work for others on a regular basis are liable to be prosecuted for facilitation of illegal work (Article 73-2, Paragraph [1]).

Undocumented workers themselves are liable to punishment (Article 70) and forced deportation (Article 24), but the Minister of Justice is able to offer consideration of cir-

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<sup>9</sup> The Basic Plan for Immigration Control (1st Edition, 1992) sets out this policy, which is maintained strongly in the 2nd and 3rd Editions (2000 and 2005). The 4th Edition is released in March 2010, the policy is also basically maintained.

<sup>10</sup> In addition to these, “Special Act on the Immigration Control of, Inter Alia, Those Who Have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan” (hereinafter referred to as the Special Act) also defines a status of residence known as “Special Permanent Resident” to which no labor restrictions apply.

cumstances during the process of deportation, and if special permission for residence<sup>11</sup> is granted, the person in question may remain in Japan under the terms of the status of residence they were awarded (Article 50).

### (3) Recent Trends—Revisions to the Immigration Control Act

The revisions implemented to the Immigration Control Act and other related laws were passed by the 171st Ordinary Session of the Diet and was promulgated on July 15, 2009.<sup>12</sup> The “amended Act,” as it is hereinafter referred to, is outlined below.<sup>13</sup>

#### i. A New System of Residence Management

Many foreign workers of Japanese descent are engaged in shop-floor work in the manufacturing industries. They are working via employment agencies or contractors (some of which are illegal), and because of the unstable nature of the way they work, they often move frequently and are constantly changing jobs. Before the amended Act, there were often problems caused by the fact that the main residence of workers of Japanese descent and their families, registered under the terms of the alien registration system, which is based on the Alien Registration Act, did not accurately reflect the living status of these families. Because of this, the Alien Registration Act is abolished, and a new system of residence management, which integrates immigration control and residence management under the Immigration Control Act, is introduced in regard to medium to long-term resident foreign nationals.<sup>14</sup> The implementation of the new system is scheduled within three years of its promulgation (Supplementary provisions to the amended Act, Article 1).

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<sup>11</sup> Immigration Bureau, Ministry of Justice, “Guidelines relating to Special Permission for Residence” (revised July 2009). See <http://www.moj.go.jp/NYUKAN/nyukan85-1.pdf> (accessed March 9, 2010).

<sup>12</sup> “The law for partial amendment to the Immigration Control and Refugee Recognition Act and the Special Act on the Immigration Control of, Inter Alia, Those who have Lost Japanese Nationality Pursuant to the Treaty of Peace with Japan” (July 15, 2009, Act No. 79).

<sup>13</sup> Additionally, not only were the categories of status of residence “College Student” and “Pre-College Student” integrated as “Student,” but negligent employment of undocumented workers became the basis of employer sanctions (Article 73-2, Paragraph [2]). See Hayakawa (2009) for outline of amendments.

<sup>14</sup> Foreign Nationals residing legally for a medium to long term with a status of residence under the amended Act, excluding the persons described below, shall be subject to the new system of residence management: (1) Persons granted permission to stay for not more than 3 months, (2) Persons granted the status of residence of “Temporary Visitor,” (3) Persons granted the status of residence of “Diplomat” or “Official,” (4) Persons whom a Ministry of Justice ordinance recognizes as equivalent to the aforementioned foreign nationals, (5) “Special permanent residents” under the Special Act, (6) Persons with no status of residence.

ii. New Technical Internship Program

In addition, the Trainees and Technical Interns had been subject to increasing misuse, and the Foreign Training Program and the Technical Internship Program were revised<sup>15</sup> under the amended Act with the aim of dealing with the issue of how to protect existing trainees engaged in on-the-job trainings (OJT). As a result, any training including OJT is now basically considered to constitute a technical internship, and labor and employment laws apply, with the exception of orientation taking place immediately after arrival in Japan. In addition to this, the categories of status of residence relating to training (“Trainee”) and technical internship (as one of the categories of “Designated Activities”) were integrated into a newly created status of residence known as “Technical Intern Training.” The new system is to be implemented from July 1, 2010.

(4) Issues

As seen above, the Immigration Control Act uses the status of residence system not only to define the scope of immigration by foreign nationals, but also to restrict work done by foreign nationals while resident in Japan. The system allows the immigration of workers in specialist technical fields while denying access to unskilled laborers, thereby realizing the principle of selection defined in immigration policy. When considered from the perspective of the combination with labor policy, however, although the current legislation could be said to be giving consideration to the impact of foreign workers on the labor market due to the Criteria Ordinance, under the control of the Ministry of Justice’s Immigration Bureau, there is no system in place to assess the impact of individual foreign workers on the labor market.

2. Suggestions from U.S. Law

(1) Immigration Law and the Agencies Responsible for Its Implementation

Immigration law in the United States of America is based on the Immigration and Nationality Act of 1952 (INA), along with its subsequent revisions, the most important of which is the Immigration Reform and Control Act of 1986 (IRCA), which prohibits the knowing employment of undocumented aliens and introduces a system of employer sanctions (see 8 U.S.C.S. §1324a). The administration and operation of the INA are done by the U.S. Citizenship and Immigration Services (USCIS), which also has discretionary powers regarding eligibility for visas and changing to legal permanent residence status, etc., of the Department of Homeland Security, the Department of State (which issues visas to overseas

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<sup>15</sup> Conventionally, trainees engaged in trainings with the aim of gaining technical abilities were not subject to labor and employment laws, but under the amended Act, trainees engaged in programs including OJT other than those implemented by the government or agencies such as JICA were categorized as technical interns and were subject to labor and employment laws. See Hayakawa (2008c) regarding the debate relating to revision of the programs. See Hayakawa (2010b) regarding the interpretation of labor contracts for technical interns under the new system.



embassies) and the Department of Labor (which implements the Labor Certification Program), etc.

## (2) The Visa System

Visas, according to U.S. immigration law, are divided into immigrant visas and non-immigrant visas. “Immigrants” are generally defined as persons who move from one country to another with the objective of residing there permanently, but the INA assumes that any applicant not demonstrating their applicability for non-immigrant status to be an immigrant. Some types of immigrant visas, such as visas issued to immediate relatives of U.S. citizens, are not restricted in terms of the number issued each year, but some types, including (i) family-sponsored visas, (ii) employment-based visas, and (iii) diversity visas, which are restricted for foreign nationals visiting from countries with low visa allocations, and allocated by lottery, are capped in terms of number. For (i) and (ii) above, visa allocation is done by a process of priorities. Additionally, non-immigrant visas, which are for short-term stays, are broken down into complex categories.

## (3) The Labor Certification Program

### i. Outline

In the United States, the INA requires that certain employment-based immigrant visas be subject to the labor certification procedures.

The purpose of the Labor Certification Program is to avoid negative impacts on the domestic labor market through (i) denying U.S. workers the opportunity of employment and (ii) creating downward pressure on labor conditions such as wages. PERM regulations, which are discussed below, require, in regard to (i) above, the recruiting of U.S. workers; and in regard to (ii) above, the offering U.S. workers to pay at least the prevailing wage<sup>16</sup> (and the payment of at least the prevailing wage to foreign workers, if they are in fact hired). The Labor Certification Program is considered to be one of the labor market tests that ensure appropriate adjustments to supply within the labor market upon allowing foreign nationals to immigrate.

The scope of the Labor Certification Program covers the second and third priority categories of employment-based immigrant visas, which are categorized into five priorities. The second of these covers members of professions with (i) advanced degrees or their equivalent or (ii) exceptional abilities in the sciences, arts or business (those who are considered to further the national interests in the opinion of the Secretary of Homeland Security are exempted from labor certification procedures). The third of these covers (i) skilled workers with sufficient experience, (ii) professionals who hold bachelor’s degrees, and (iii)

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<sup>16</sup> PERM regulations state that the wage rate set forth in a collective bargaining agreement is considered to be the prevailing wage (20 C.F.R. §656.40 (b) (1)).

other workers in areas lacking labor force. Foreign nationals to whom this applies are required to obtain a labor certification before applying for a visa. The employer implements the procedures on behalf of the foreign national in question. Furthermore, labor certification is required not only for persons entering the United States for the first time, but also in order to change the status of persons already residing in the United States under non-immigrant status, etc., into legal permanent residents.

In comparison to this, priority workers, who are covered by the 1st priority, persons engaged in certain special categories, such as religious activities, etc., who are covered by the 4th priority, and investors, who are covered by the 5th priority, are not required to obtain labor certification (see 8 U.S.C.S. §1153).

## ii. Conditions of the Labor Certification Program

Labor certification is the process by which the Secretary of Labor issues proof to the Secretary of Homeland Security and the Secretary of State that the immigration of the foreign national in question meets the following conditions set by the INA (see 8 U.S.C.S. §1182[a][5][A][i]). Since there is a cap on the number of visas that can be issued, however, labor certification itself does not necessarily mean permission to the foreign national in question to undertake work.

- (i) There are not sufficient workers who are able, willing, qualified ... and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
- (ii) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

The criteria set by the INA to determine whether a foreign national meets the conditions above and the procedures of labor certification are specified by regulations issued by the Department of Labor. The Department of Labor regulations were revised in 2004, and Program Electronic Review Management or PERM was begun in 2005 (see 20 C.F.R. part 656). The original procedures were complex and took a significant amount of time to process (see Benson [2002]), but it is said that, in comparison, PERM regulations have streamlined the procedures, and the introduction of electronic applications has shortened the time required for processing.

## iii. The Labor Certification Program Procedures

Labor certification is processed in the following way.

Firstly, if a foreign national is appropriately qualified in a profession listed as experiencing a chronic shortage of human resources in Schedule A, they are automatically considered to be certified, and are not required to undergo the labor certification process.

If the foreign national is not eligible under Schedule A, they are required to undergo

the basic labor certification process. In this case, the employer wishing to hire the foreign national must first complete the pre-application procedure (which is discussed below), and the application is submitted electronically once they have attested to the requirements in the registration procedure. Next, the Department of Labor's Certifying Officer makes a determination as to whether the above conditions have been met, and decides whether to grant or deny the labor certification.

Under the terms of PERM regulations, the employer must complete the following steps before the application mentioned above can take place.<sup>17</sup>

Firstly, the employer is required to fulfill obligations regarding the recruiting of U.S. workers. Specifically, the employer must place recruitment advertisements twice in Sunday papers generally read in the region where employment is to take place. Furthermore, the employer must place a job order with a state workforce agency for 30 days. When recruiting, employers are not permitted to offer jobs at less than the prevailing wage, and they are not permitted to place requirements that surpass the commonly required level for the job in question, unless the job requirements can be shown to be arising from business necessity.<sup>18</sup> The steps must be conducted at least 30 days, but no more than 180 days, before the filing of the application. In addition, employers are also required to notify bargaining representatives, and if they have laid off employees in the same occupation within six months of the application, they are required to notify these employees of the recruitment, among other conditions. If a U.S. worker who meets the minimum requirements applies for the job, in principle, labor certification will not be granted.

#### (4) Temporary Labor Certification Program

##### i. Outline

The information above concerns labor certification required for certain types of employment-based immigrant visas, but there are also temporary labor certification programs, which are applied to certain types of non-immigrant visas, such as H-2A, H-2B, etc. The most common form of non-immigrant visas to which these programs are applied is the H-1B visa (issued to persons working in specialty occupations such as IT engineers).

##### ii. The Labor Condition Application Program (LCA)

Before applying for an H-1B visa, the employer must first file an electronic application to the Department of Labor, along with the following attestations. The attestations are

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<sup>17</sup> If labor certification is refused, a complaint may be lodged with BALCA (the Board of Alien Labor Certification Appeals). If the applicant has a complaint regarding BALCA's decision, it may be taken to judicial review at the federal court.

<sup>18</sup> See Marion Graham, No.88-INA-102, 1990 BALCA LEXIS 72 (BALCA, Feb. 2, 1990). If the application is for a professional occupation, employers must select three among ten additional recruitment steps of the PERM regulations.

(i) that the foreign national in question will be paid a minimum of the actual wage applicable to the job in question once employed, or alternatively will be paid the prevailing wage, whichever is the greater, (ii) that the working conditions will not adversely affect workers similarly employed, (iii) there are no strikes or lockouts within the scope of the occupational classification at the place of employment, and (iv) that notification of recruitment has been given to the bargaining representative (if any) or in the area around the place of employment at the time of the application being made.

Applications that meet the conditions stated above will be approved. The employer must then attach the LCA document to the application for an H-1B visa. The employer must also give a copy of the LCA document just after hiring to each foreign worker on behalf of whom they are applying for an H-1B visa. The employer is responsible for ensuring the realization of the attested conditions in regard to any foreign national given permission to immigrate.<sup>19</sup>

In this way, the LCA used for the non-immigrant visa H-1B consists only of a certain number of attestations, and the procedure is relatively simple. H-1B dependent employers,<sup>20</sup> however, who hire more than a certain proportion of H-1B visa foreign workers, can be subjected to additional conditions relating the recruitment of U.S. workers and other requirements. Criteria for determining the existence or otherwise of a negative impact by foreign workers on the domestic labor market differ depending on the visa type.

### 3. Forecasting Developments in Japanese Law—A Japanese-Version Labor Certification Program

Japan and the United States share an intention to protect their domestic labor markets from the negative impact of the immigration of foreign workers, which can result in worsening labor conditions such as the unemployment of national workers and reduced rates of pay. The Immigration Control Act, however, does not contain any aspect of coordination with the labor market when determining the right of individual foreign workers to immigrate. I propose that consideration should be given to the introduction of a labor certification program in Japan, albeit with consideration given to the differences between the U.S. and Japanese labor markets. In particular, a Japanese-version labor certification program should be considered in line with the creation of new categories of status of residence, including “Intermediate skills” (see Iguchi [2001, 190, 197]) and the broadening in scope of foreign workers immigrating under existing categories of status of residence, in the case of

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<sup>19</sup> LCA is a system based on the INA designed to ensure that the employment of foreign nationals on H-1B visas does not have a negative effect on the labor market, such as that of lowering wages or labor conditions for U.S. workers. It also has the effect of protecting the interests of foreign workers through enabling the Department of Labor to prosecute employers who contravene their attestations (see Hayakawa 2010a).

<sup>20</sup> The same applies to employers who have deliberately contravened or given fraudulent submission to LCA within the past five years.

accepting foreign workers where competition is created with domestic workers. Highly trained human resources, for whom immigration should be further promoted, on the other hand, should be exempted from the scope of this program.

The introduction of a system requiring attestation to labor conditions, such as that which the LCA used in the United States for the issuance of H-1B visas, should also be considered<sup>21</sup> when thinking about accepting foreign workers with limitation on their periods of residence, even if more detailed regulations than those used in the United States need to be implemented in regard to labor conditions. In such cases, employers who are thought to be in danger of misusing the system, through, for example, dependence on a relatively high proportion of foreign workers, could be subjected to additional requirements.

#### **IV. Foreign Workers and Labor and Employment Law—Realizing the Principle of Integration**

##### **1. The State of Japanese Law**

###### **(1) The Application of Labor and Employment Laws**

As has already been discussed, the principle of integration is realized basically through the requirement to treat Japanese and foreign nationals equally. At the same time, the impact of the status of residence system enshrined in the Immigration Control Act must be considered, even for legal workers in Japan. Labor and employment laws are applicable,<sup>22</sup> in principle, to foreign workers as well as Japanese, and providing it is implemented within the framework of the status of residence defined by the Immigration Control Act, labor and employment laws contain no restriction in regard to the employment of foreign workers. Rather, it is anticipated that foreign workers will be entitled to equality with Japanese workers, with Article 3 of the Labor Standards Act<sup>23</sup> prohibiting discrimination based on nationality, among other measures. In addition to this, the application of Japanese labor and employment laws do not, in principle, allow for any difference based on nationality.

Firstly, the protection of workers based on labor and employment laws are basically extended to foreign workers in Japan. If, for example, employment is being terminated, Article 3 of the Labor Standards Act prohibits the termination of employment based on the

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<sup>21</sup> According to the Tokyo District Court judgment dated July 7, 1992 in the *Yamaguchi Seito* case (*Hanrei Times* 804-137), the court decided not to recognize a document containing labor conditions submitted as part of an immigration application as a labor contract. The labor conditions attestation proposed here, however, would require this document to be submitted by the employer to the worker, which would avoid a similar problem.

<sup>22</sup> This debate assumes that, with regard to the application of laws to labor contracts with foreign workers, Japanese laws are applicable as mandatory provisions. See Yamakawa (1999, 23-25), Hayakawa (2008a).

<sup>23</sup> Article 3 of the Labor Standards Act: “An employer shall not engage in discriminatory treatment with respect to wages, working hours or other working conditions by reason of the nationality, creed or social status of any worker.”

reason that an employee is a foreign national. The Labor Contract Act prevents the misuse of an employer's right to terminate for both Japanese and foreign workers (Article 16 of the Labor Contract Act), and restricts the termination of employment during the period of a valid contract (Article 17, Paragraph [1] of the said Act). Furthermore, Article 3 of the Employment Security Act legislates the principle of equal treatment regardless of nationality in employment referral and vocational guidance.

## (2) Regulation of the Labor Market

### i. Employment Countermeasures Act

The Employment Countermeasures Act promotes the employment of foreign nationals in specialist and technical fields, as well as defining measures to promote improvements in the appropriate management of employment of foreign workers, the re-employment of workers who leave their jobs (Article 4, Paragraph [1], Item [x]) and measures to prevent illegal working by foreign nationals (Article 4, Paragraph [3]). At the same time, the Act also defines the responsibilities of employers, in terms of improvements to employment management in regard to foreign nationals, and the responsibility to support foreign nationals who have their employment terminated in finding another job (Article 8). Furthermore, when hiring or terminating foreign nationals, the Act also stipulates that employers must not only check their status of residence and period of residence, but also submit a report regarding the foreign national's employment with the Minister of Health, Labour and Welfare (the "System for Provide Notification of the Status of Foreign Workers") (Article 28, Ordinance for Enforcement Articles 10-12). In addition to this, Public Notice of the Ministry of Health, Labour and Welfare No. 276, issued August 3, 2007, defines "Guideline concerning Appropriate Approaches to Improving Management of Foreign Workers for Employers" (hereinafter referred to as "Guidelines on Foreign Workers") based on Article 9 of the Employment Countermeasures Act.

### ii. Safety Nets for Unemployment

Following the global economic crisis, the employment situation in Japan has worsened. This is a problem for foreign workers, too, and particularly for workers of Japanese descent, many of whom have lost their jobs. This section seeks to consider the safety nets available for foreign workers who have become unemployed.

Firstly, employers who terminate the employment of foreign nationals for reasons other than the employee's fault are required to offer re-employment support to any ex-employees who request it in the form of development of employment opportunities or other activities (Article 8 of the Employment Countermeasures Act. According to Article 1-2 Paragraph [2] of the Ordinance for Enforcement, this also includes cases where employees leave for reasons relating to the employer). This Article only obliges the employer to make efforts in this direction, but since there is a requirement to act in an equitable manner, when implementing re-employment support for foreign workers, employers are re-

quired to also offer the same measures to Japanese workers (where large numbers of employees are terminated, Article 24 of the Employment Countermeasures Act requires the employers to make a plan for re-employment support.)

Furthermore, if a foreign worker becomes unemployed, there is a serious problem surrounding the issue of whether they are eligible for payment of unemployment benefits from the employment insurance. Workers hired under the terms of the Employment Insurance Act are eligible for benefits regardless of nationality (Article 4, Paragraph [1]), indicating that other than cases where the worker is being covered under an unemployment insurance system in their own country, the Employment Insurance Act is also applied to foreign workers.

In addition to this, Japan has a system of welfare benefits paid in regard to persons in need, where unemployment has become a more serious problem as re-employment is considered difficult, but the Public Assistance Act contains an Article dealing with nationality (Article 2) that limits welfare benefits to those holding the status of residence of “Long Term Resident,” etc., by applying the provisions *mutatis mutandis*.<sup>24</sup> As a result, it is extremely important that foreign workers do not fall into poverty due to the difficulty of re-employment, and proactive public administration support for re-employment is required. Labor administration has implemented the following measures in response to the recent economic crisis.

Firstly, the Cabinet Office established the “Council for the Promotion of Measures for Foreign Residents,” which compiled the “Promotion of Support Measures for Foreign Residents in Japan” (January 30, 2009, revised April 16, 2009) under the guidance of a partnership made up of related government departments and agencies.

As part of this, employment countermeasures, which are the responsibility of the Ministry of Health, Labour and Welfare, define support for re-employment particularly in areas where there is a high residential concentration of workers of Japanese descent, the “Emergency Employment Creation Projects” that take into consideration the needs of workers of Japanese descent and other long-term foreign residents, and “Employment Preparation Training for Foreign Residents,” which will allow foreign residents to brush up their skills<sup>25</sup>, including their abilities in Japanese language. Additionally, financial support has been made available for emergency responses implemented by local governments. In addition to the support measures outlined above, from April 2009 onwards, unemployed workers of Japanese descent who meet certain conditions and their family were given financial sup-

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<sup>24</sup> Persons holding a status of residence that indicates long-term domicile (“Permanent Resident,” etc.) are covered by the Public Assistance Act and may be awarded welfare benefits by applying the provisions *mutatis mutandis* (*Shahatsu* No. 382, May 8, 1954 [revised on January 4, 1982, *Shaho* No. 1 and *Shaenhohatsu* Nos. 50 and no. 51, October 15, 2001).

<sup>25</sup> Ministry of Health, Labour and Welfare, <http://www.mhlw.go.jp/houdou/2009/03/h0331-9.html> (accessed March 31, 2009).

port to return their home countries under the “Repatriation Support Project for Job-displaced People of Japanese Descent” (during fiscal 2009 only).<sup>26</sup>

### (3) Protection of Labor Conditions

#### i. Prohibition of Discrimination Based on Nationality According to Article 3 of the Labor Standards Act

As mentioned above, Article 3 of the Labor Standards Act prohibits discrimination on the grounds of nationality. If, for example, an employer who is restructuring their business uses the fact that a worker is a “foreign national” as grounds for terminating their employment, this is considered discrimination based on nationality and is prohibited by the above-mentioned Article. Since some forms of employment are appropriated only for foreign workers, however, in the case that these employees are terminated, it is difficult to say whether the termination has occurred because they are “foreigners” or because of the form of employment they were engaged in, and there is a need to establish and judge the intent to discriminate. The same Article, however, may be thought not to apply to hiring in general (Supreme Court judgment in the *Mitsubishi Jushi* case).<sup>27</sup> The progress made in regulation relating to prohibition in recruiting and hiring discrimination in Article 5 of the “Act on Securing, etc. of Equal Opportunity and Treatment between Men and Women in Employment” indicates a need for consideration of its applicability to hiring, including a debate on the legislative process.

#### ii. Court Judgments in Which Discrimination Was an Issue

An example of a court judgment in which discrimination against foreigners was an issue is the judgment given in the *Tokyo Kokusai Gakuen* case (Tokyo District Court judgment, March 15, 2001, *Rohan* 818-55), where the fixed-term employment period of foreign nationals became an issue. The court’s judgment was that since foreign teachers of the language school were on a different pay scale to their Japanese teachers, and being paid higher rates, it could not be argued that there was any clear demonstration of nationality-based discrimination.<sup>28</sup> In these court precedents, there has been a tendency not to determine the sort of discrimination prohibited in Article 3 of the Labor Standards Act, even where foreigners have been treated differently to typical Japanese staff, since their form of employment was also different.

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<sup>26</sup> Ministry of Health, Labour and Welfare, <http://www.mhlw.go.jp/stf/houdou/2r98520000003rnz.html> (accessed June 8, 2010). There had been 22,403 applications.

<sup>27</sup> Supreme Court judgment, Dec. 12, 1973, *Minshu* 27-11-1536.

<sup>28</sup> See also the Japan Times case, Tokyo District Court judgment, March. 29, 2005, *Rohan* 897-81.



#### (4) Application to Undocumented Workers

##### i. Outline

Undocumented workers are subject to deportation based on the Immigration Control Act. Since, however, they are also subject to protection in their current position under labor and employment law, there is a conflict in the policies of the two laws when it comes to the legal status of undocumented workers.

The application of labor and employment law to undocumented workers can be interpreted to indicate that the Labor Standards Act, Minimum Wages Act, “Industrial Safety and Health Act” and “Workers’ Accident Compensation Insurance Act,” among other labor protection acts, are also in principle applicable to undocumented workers. The Labor Union Act is also thought to apply in the same way (see Sugeno, Anzai, Nogawa [2006, 342]). The Employment Security Act is also thought to be applicable,<sup>29</sup> although Public Employment Security Offices do not provide any work placements that would result in illegal work. The Employment Insurance Act has no clear statement regarding the exemption of undocumented workers, but since they cannot be considered to be appropriately qualified for work (Article 4, Paragraph [3]), they cannot be defined as unemployed, and therefore in principle are thought to be ineligible for unemployment benefits.

Next, let us look at an example from the Supreme Court relating to damage liability in the case of a work-related incident.

##### ii. Supreme Court Judgment Relating to the *Kaishinsha* Case<sup>30</sup>

This case involved an undocumented worker from Pakistan, who claimed damages from his former employer based on violations of their responsibility to ensure safety, where the calculation of loss of earnings became an issue.

The Supreme Court determined that it was rational to calculate loss of earnings based on income generated in Japan during the time the plaintiff was able to work, or eligible for residence in Japan, and subsequently based on income in the assumed destination country (in most cases this would be the home country). In the case of persons remaining illegally in Japan without leave, since they are subject to compulsory deportation under the Immigration Control Act, and even taking into account the fact that some foreigners continue to reside in Japan illegally for a certain period of time, the Court’s judgment was that the period of time for which they could have worked in Japan could not be extended into the long term unless their residence and permission to work were legally compliant, through being awarded special permission for residence or other similar measures. In this case, therefore, loss of earnings were estimated based on what the worker had earned in Japan for a period of three years following the day he left the company where he was working before his acci-

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<sup>29</sup> See *Kihatsu* No. 50, January 26, 1988, etc.

<sup>30</sup> Judgment of the Third Petty Bench of the Supreme Court, Jan. 28, 1997, *Minshu* 51-1-78.

dent, and based on what he had earned in Pakistan before coming to Japan for subsequent years. This judgment is considered to demonstrate a ruling of the payment of damages to undocumented workers, while giving consideration to the position of the Immigration Control Act.

### iii. Recent Court Judgments

Examples of recent court judgments include Nagoya District Court's judgment dated August 24, 2005, *Komin* 38-4-1130. Here, the Court ruled it appropriate that the loss of earnings awarded after the death of a Filipino woman in a common-law marriage with a Japanese man, who was the mother of a child (the child has yet to acquire Japanese citizenship even though he was affiliated by the father after birth), should be calculated based on the average earnings in Japan of the woman at the time of her death, since the woman in question had stated her intention to remain in Japan in order to raise her child, and there was a significant possibility that this would take place. This judgment was apparently based on the precedent of the aforementioned *Kaishinsha* case, and was significant because it upheld the possibility of permanent residence in Japan.

Such judgments, which take into account the Immigration Control Act, are so far restricted to damage liability cases, and it is thought that insufficient consideration has so far been given to the application of labor and employment laws in the assistance of undocumented workers in cases where their employment has been terminated, etc.

## (5) Issues

From the perspective of the basic considerations above, it appears that labor and employment laws are in principle applied to foreign nationals, but the impact of the status of residence system under the Immigration Control Act needs to be considered in regard to the legal status of foreign workers. In addition to this, issues outstanding in Japanese labor laws include the following: (i) in cases where the discrimination based on nationality (Article 3 of the Labor Standards Act) is challenged, the court has a tendency not to find discrimination if the form of employment is different to that for Japanese workers. (ii) Furthermore, the same Article can be interpreted as not prohibiting discrimination in hiring. Additionally, (iii) labor and employment laws are in principle applicable to undocumented workers, but consideration is given to the legal status of the worker under the terms of the Immigration Control Act. Insufficient consideration is given to how assistance might be given to undocumented workers, or how to judge their eligibility for work.

## 2. Suggestions from U.S. Law

### (1) Application of Labor and Employment Laws

In principle, U.S. labor and employment laws are also applicable to foreign workers. There are no problems relating to persons working legally, and employment discrimination laws are extremely effective at ensuring the realization of integration.

## (2) Regulation of the Labor Market

U.S. labor market policy has been included in immigration law, as described above. The U.S. labor market law allows for the same regulation in regard to legal foreign workers as for U.S. citizens. For example, while unemployment insurance is not consistent nationwide, as it is provided by individual states, it is paid to foreign workers providing they meet the conditions of receiving the benefit. Since, however, undocumented workers are not considered to be able to and available for work, they are considered ineligible to receive these benefits.

## (3) Protection of Labor Conditions

### i. Employment Discrimination Laws

Title VII of the Civil Rights Act of 1964 prohibits discrimination on the grounds of race, color, religion, sex, and is the most important law preventing discrimination in employment. It also prohibits discrimination based on national origin.<sup>31</sup> Title VII, however, does not prohibit discrimination based on the fact that someone is a “foreign national,” in other words based on nationality. Providing they meet certain conditions, however, the U.S. Supreme Court has judged that discrimination against foreign workers equates to discrimination on the grounds of national origin as prohibited by Title VII (*Espinoza v. Farah Manufacturing Co.*)<sup>32</sup> On the other hand, IRCA prohibits discrimination on the grounds of nationality in hiring, recruitment, referral for a fee, or discharging from employment, although only for U.S. citizens and some legal permanent residents (see 8 U.S.C.S. §1346 [a]).

### ii. Prohibited Discrimination

The abovementioned Title VII prohibits discrimination based on national origin in employment, termination of employment or labor conditions, etc. (see 42 U.S.C.S. §2000e-2 [a]), including discrimination in hiring. It also states that defining criteria for English spoken with a foreign accent or physical traits can in some cases be judged as discrimination based on national origin, based on disparate impact doctrine. In contrast to this, the courts have been divided in different cases over whether or not “English-only” rules, which prohibit languages other than English from being spoken in the workplace, equate to discrimination based on national origin. Subsequent cases seem to veer towards such rules being illegal providing certain other conditions are met.<sup>33</sup>

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<sup>31</sup> Small businesses are exempt from the provisions of Title VII, but are prohibited from discrimination based on national origin by IRCA.

<sup>32</sup> 414 U.S. 86 (1973).

<sup>33</sup> See *Garcia v. Spun Steak Co.*, 998 F.2d 1480 (9th Cir. 1993), *reh'g denied*, 13 F.3d 296 (9th Cir. 1993), *cert. denied*, 512 U.S. 1228 (1994).

iii. The Burden of Proof

In general discrimination cases in the United States, there has been a clear definition of the allocation of burden of proof among the parties. The U.S. Supreme Court, in the intentional discrimination case *McDonnell Douglas Corp. v. Green*,<sup>34</sup> which was tried as racial discrimination under Title VII, demonstrated an analysis framework where initially, the plaintiff presented prima facie evidence, to which the defendant responded with reasons why this did not constitute discrimination, and the plaintiff responded by proving that these reasons were no more than pretexts. Furthermore, in *Klimas v. Department of the Treasury*,<sup>35</sup> which challenged employment discrimination on grounds of nationality as prohibited in IRCA, the 9th Circuit Court of Appeals used the analysis framework of the *McDonnell Douglas* case under Title VII focusing on national origin.<sup>36</sup>

(4) Application to Undocumented Workers

i. *Hoffman Plastic Compounds, Inc. v. NLRB*<sup>37</sup>

This case involved an order of the National Labor Relations Board (NLRB) in a dispute between a company and four of its union-supporting members who were laid off. The NLRB claimed that the employer violated the National Labor Relations Act (NLRA), and the employer was subjected to an order to cease and desist from future violations and a post-notice order and was additionally ordered to provide backpay and reinstatement to the employees. During the process of completing procedures to ensure legal compliance, it became clear that one of the plaintiffs was an undocumented worker. The NLRB recognized that there was no proof that the employer had employed the person in question while knowing of his undocumented status, and did not allow reinstatement of employment, but did order the employer to pay backpay up until the date when the employer found out that the plaintiff was undocumented. The appellate court supported this order, and so the employer took it to the Supreme Court, resulting in this case. The Court judged that in the case of a conflict between the NLRA and immigration policy, the NLRB order must be set aside, stating that granting the backpay that could not be earned lawfully was inconsistent with IRCA policy, in regard to which the NLRB had no authority. The Court judged that the NLRB had exceeded its discretion of remedies, and that the payment could not be upheld.

This judgment (hereinafter referred to as the *Hoffman Judgment*) was notable in that it rejected a remedy of backpay to an undocumented worker, who was employed illegally, on the basis of immigration policy. It could be said to have protected undocumented workers from the point of view of NLRA, while giving consideration to immigration policy

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<sup>34</sup> 411 U.S. 792 (1973).

<sup>35</sup> 1994 U.S. App. LEXIS 3064 (9th Cir. 1994), *cert. denied*, 511 U.S. 1147 (1994).

<sup>36</sup> See *Jiminez v. Mary Washington College*, 57 F.3d 369 (4th Cir. 1995), *cert. denied*, 516 U.S. 944 (1995).

<sup>37</sup> 535 U.S. 137 (2002).

when deciding on remedies.

ii. Trends in Court Cases since the Hoffman Judgment

Since the Hoffman Judgment described above, the range of scope of similar cases has been called into question. In such cases, as with the Hoffman Judgment, labor law has in principle been applied to undocumented workers, while judgments relating to remedies have been made in such a way as not to give approval to illegal work. Depending on the details of the remedies, however, some judgments have been made differently, with lower courts increasingly recommending the retrospective payment of unpaid wages for work made under the terms of the Fair Labor Standards Act (FLSA)<sup>38</sup> and damages awarded under the terms of Title VII and other laws preventing employment discrimination.<sup>39</sup> Laws relating to workers' compensations are mainly the jurisdiction of individual states, and various court judgments have been divided. A relatively high number of judgments, however, have been in favor of payment of lost wages to undocumented workers within certain parameters.

3. Forecasting Developments in Japanese Law

(1) Application of Labor and Employment Laws, and Regulation of the Labor Market

As seen in the examples above, there is a large degree of similarity between the United States and Japan in the way in which labor law plays the role of realizing the principle of integration in regard to foreign workers. In the United States, however, it is largely laws prohibiting employment discrimination that act to integrate foreign workers. Japan, in contrast, as described below, does not have such strong anti-discrimination laws as the United States, and should consider increasing its administrative support for the effective integration of foreign workers. This is already being done in some places, through support for re-employment, support for learning Japanese, etc.

(2) Protection of Labor Conditions

i. Article 3 of the Labor Standards Act

Article 3 of the Labor Standards Act prohibits discrimination based on nationality. The scope of this regulation is broader than Title VII prohibiting discrimination only on grounds of national origin. Little consideration has been given, however, to the definition of discrimination based on nationality. For example, the court in the aforementioned *Tokyo Kokusai Gakuen* case considered that, since the employer was paying foreign workers at a higher rate than its Japanese ones, disadvantageous terms relating to period of employment

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<sup>38</sup> See *Zavala v. Wal-Mart Stores, Inc.*, 393 F.Supp.2d 295 (D.N.J. 2005), *later proceeding at* 2008 U.S. Dist.LEXIS 74960 (D.N.J.), *recons. denied*, 2009 U.S. Dist. LEXIS 48353 (D.N.J. 2009).

<sup>39</sup> See *Rivera v. NIBCO, Inc.*, 364 F.3d 1057 (9th Cir. 2004), *reh'g denied*, 384 F.3d 822 (9th Cir. 2004), *cert. denied*, 544 U.S. 905 (2005), *motion granted*, 2006 U.S. Dist. LEXIS 16967 (E.D. Cal. Mar. 31, 2006), *rev'd*, 2010 U.S. App. LEXIS 6460 (9th Cir. 2010).

could not be construed as discrimination. Questions must remain, however, regarding whether or not the fact that one aspect of employment was advantageous discounts the possibility of intentional discrimination in other areas. The definition of discrimination has not been sufficiently considered in such cases, and here the U.S. example of distribution of burden of proof could be a source of reference.

ii. Prohibition of Employment Discrimination

As has already been discussed, it is considered that Article 3 of the Labor Standards Act does not prohibit discrimination in hiring, but in the future, perhaps consideration should be given to the possibility of applying this Article to discrimination in hiring, including the cases of Japanese workers. In that case, foreign nationals are subject to the employment restrictions placed upon them by their status of residence under the Immigration Control Act, and the introduction of a Japanese-version labor certification program would mean that an appropriate level of prioritization of domestic workers could be achieved within the scope of applicable foreign workers, for the sake of protecting the domestic labor market, which would not be subject to the prohibition of discrimination in hiring.<sup>40</sup>

iii. Administrative Support

From the perspective of the strength of legal regulations, however, it appears that Japanese law is weaker than U.S. law in the area of employment discrimination (The United States, for example, has a system of punitive damages). Even if foreign workers are subject to the application of laws relating to equality and regulations preventing discrimination, they are in a particularly weak position when their rights are infringed, and there is a need for public administration to provide integration support strategies. Specifically, the Guidelines on Foreign Workers should be strengthened, to make more practical measures possible by public administrators.

(3) Application to Undocumented Workers

In terms of the legal status of undocumented workers, Japan should learn from the U.S. law discussed above, and in principle, I propose that (i) labor and employment laws are applied, but (ii) in terms of remedies, the demands of immigration law are taken into consideration in order to ensure that decisions will not produce similar outcomes for undocumented workers as for those with permission to work. Under Japanese law, retrospective work (remedies for unpaid wages, etc.) should be granted, since it does not have any bearing on promoting illegal work in the future, but at the same time, remedies in regard to future work (reinstatement, etc.) must be judged so as not to indicate approval of illegal work,

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<sup>40</sup> Labor Certification Program in the United States includes legal permanent residents in the scope of its protected U.S. workers. A Japanese-version labor certification program should also include special permanent residents and permanent residents in the same category as domestic workers.

and remedies should only be offered if the worker can suitably prove a strong eligibility to be allowed to work legally. Furthermore, based on similar concepts to the framework demonstrated in the Supreme Court judgment in the *Kaishinsha* case noted above, in cases where an undocumented worker may have been able to work in fact for a certain period of time, it is recommended that a certain level of financial remedies be offered in regard to that period of time.

## V. Conclusion

In the current worsening employment climate, it is anticipated that new debates regarding the immigration of foreign workers will remain low priority for the foreseeable future. Over the long term, however, the issue will remain important, as Japan tries to work out how to manage its declining population in the future. Regardless of economic fluctuations, the issue needs to be considered in a long-term, not a temporary perspective. The recommendations in this article will be able to provide assistance in designing future policies on foreign workers.

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