

**Law Library Of Congress Global Legal Monitor: Immigration And  
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The *Global Legal Monitor*, an electronic publication of the Law Library of Congress, is intended for those who have an interest in legal developments from around the world. Globalization is a fact with far-reaching implications including an increasing number of international transactions. The Immigration and Nationality law section has been excerpted for this Feature Article.



## Immigration and Nationality

### AUSTRIA – Deportation of Illegal Aliens

On March 15, 2008, the Austrian Constitutional Court held that the deportation of an illegal alien is unconstitutional if it violates the guarantee of the family of article 8 of the European Human Rights Convention (Docket No. B 16/08 – 7, *available at* the Constitutional Court of Austria official Web site). In the case under consideration, the illegal alien was being deported for having committed a criminal offense, but she had been residing in Austria for ten years, part of the time legally and part of the time illegally, and she had three children and a divorced spouse who lived in Austria. Under these circumstances, the Court held that the immigration authorities had not adequately balanced the illegal alien's right to her family with the public interest in deporting illegal aliens.

This decision follows a landmark decision of the Constitutional Court of September 29, 2007 (Docket No. 383 Bundeskanzleramt [Federal Chancellery] Web site (last visited Apr. 18, 2008)) that had established that even a criminal conviction is not a sufficient reason to deport an illegal alien, if there are circumstances that make his family life protection-worthy. This Austrian decision quotes several recent cases of the European Court of Human Rights as having established a higher standard of protection of the family life of aliens. In Austria, the European Human Rights Convention (213 U.N.T.S. 221, official Web site of the Council of Europe (last visited Apr. 29, 2008)) ranks as a Constitutional law (Bundes-Verfassungsgesetznovelle, Mar. 4, 1964, Bundesgesetzblatt No. 164/59 (official source)).  
(Edith Palmer)

### BRAZIL/SPAIN – Protocol on Immigration

On April 1, 2008, in Madrid, Brazil and Spain signed a Protocol on Immigration designed to put an end to the recent diplomatic crisis involving tourists of both countries. According to the document, both countries agree, *inter alia*, that tourists not admitted into either country will be allowed to contact the local consulates in search of help; will have access to bathrooms and their luggage; and, to meet customs' requirements, will be able to withdraw cash from ATM machines installed in airports to facilitate such withdrawals to satisfy requirements of the customs offices. The two nations also decided to implement a special rapid communications system between their consular authorities regarding boarding issues and to reinforce police cooperation, including the exchange of police agents. Additionally, they reached a compromise on improving information campaigns on the legal requirements for admission to a foreign country. (*Paz é Selada no Papel*, O DIA ONLINE, Apr. 2, 2008.)  
(Eduardo Soares)

### CANADA – Immigration Reforms Proposed

A bill to create the Budget Implementation Act, 2008, currently in the House of Commons, contains provisions that are primarily aimed at reducing the backlog of almost one million applications for permanent residence that have been filed with Citizenship and



Immigration Canada (CIC) and speeding up the processing of workers skilled in occupations in demand. Canada already accepts a much higher percentage of skilled workers than the United States. In 2006, approximately 105,000 out of the total of approximately 250,000 new permanent residents were admitted to the country under this category. (CIC, *Facts and Figures 2006*, available at <http://www.cic.gc.ca/english/resources/statistics/facts2006/overview/01.asp> (last visited Apr. 17, 2008).) The family class, by contrast, accounted for only about 70,000 new immigrants.

Canada uses a points system in processing applications of skilled workers seeking immigrant visas. Prior to 2002, before he or she would qualify in the economic class an applicant usually needed a job offer for a position that no Canadian was willing and able to fill. However, Canada changed its policies to deemphasize this requirement, based upon studies that showed that persons with certain types of skills were most likely to become successfully settled in Canada regardless of whether they had arranged employment or not. The government has generally been pleased with the results, but recognizes that the change has created two problems. The first is that some skilled workers have not been able to find employment in their field of training and have ended up being underemployed in unskilled occupations. The second problem is that, by making more persons eligible, the new system has led to the creation of a large backlog of applicants.

In its budget bill, the government proposes to give the Minister for Citizenship and Immigration authority to fast-track applications from workers who have certain skills that are in demand rather than having to process applications in the order they are received. CIC would also no longer be required to process all new skilled-worker applications. (CIC, *About the Proposed Amendments to the Immigration System*, available at <http://www.cic.gc.ca/english/department/laws-policy/irpa-more.asp> (last visited Apr. 17, 2008).) The types of workers that could be fast-tracked and those whose applications would not have to be fully processed would be established in instructions issued by the Minister and published in the official CANADA GAZETTE.

The government's proposals have been severely criticized inside and outside of the House of Commons. Immigrant groups fear that family reunification will become even more difficult and time-consuming and that the changes will be used to "shut out immigrants of certain ethnic or religious backgrounds." The two largest opposition parties, the Liberals and the New Democrats, have charged the government with having an anti-immigrant agenda and seeking a "back-door way" to reducing immigration. (*Canada: Harper Sets Immigration Bill Straight*, NATIONAL POST (Toronto), Apr. 9, 2008, Open Source Center No. LAP20080410483002.) The government has denied these charges and has pointed out that record numbers of immigrants have entered the country over the past couple of years.

The opposition parties would like to separate the immigration reforms from the Budget Implementation Act, 2008 (Bill C-50, ss. 116-120, 39<sup>th</sup> Parl. 2d Sess.). However, the government has announced that it will oppose this measure. (Bruce Campion-Smith,



*Immigration Proposals to Stand; Amendments Won't Be Considered, Minister Says: Dion Declares Liberals Won't Support Bill 'As It Is,'* TORONTO STAR, Apr. 17, 2008, at A20.) This is significant because the Conservative government is a minority government that would be forced to call an election if its budget bill were defeated. If the immigration proposals were separated from the bill and defeated, the government would not be required to call an election. It therefore appears that the Prime Minister is either prepared to fight an election on the issue or is counting on one of the opposition parties deciding to side with the government to avoid an election at this time.

(Stephen Clarke)

### CHINA – New Visa Restrictions

On May 6, 2008, China's Ministry of Foreign Affairs (MOFA) admitted that more restrictive visa requirements had been introduced: “[w]e have made some arrangements according to usual international practice. That is, in the approval process we are more strict and more serious with the procedure,” spokesman Qin Gang told reporters at a regular press conference. (*China FM Spokesman Admits Changes to Visa Policy Ahead of Olympic Games*, AFP (Hong Kong), May 6, 2008, Open Source Center No. CPP20080506968167.)

Previously, the MOFA had denied any change in policy. No formal guidelines have been issued on the altered process, either, but it was reported in April 2008, in the ASSOCIATED PRESS and other news sources, that the Chinese authorities had tightened the visa rules, restricting many visitors to China to 30-day stays (instead of 90) and discontinuing the issuance of the flexible, multiple-entry visas that can be valid for a year. The Web site of Forever Bright Trading Limited, a China visa agency based in Hong Kong, states: “[we] are informed by the China visa office that effective from 15 Apr 2008 there will be no more multi entry (F) visas available.” It further states that those who still need visas can only apply for a single or double-entry visa (for which the duration of each stay is 30 days each) and “[a]ll this will stay in place until 17 Oct 2008.” (*Notice Board: Further Notice*, <http://www.fbt-chinavisa.com.hk/> (last visited May 6, 2008).)

According to Hong Kong travel agents, the shift in visa rules came in the aftermath of foreign attacks on China's human rights practices following the crackdown on anti-Chinese government riots in Tibet; one travel agency official speculated that the authorities want to “have a better control over the people coming in” as the Beijing Olympics near. (*Travel Agents Cite Shift in Chinese Visa Rules*, THE ASSOCIATED PRESS, Apr. 8, 2008, <http://www.msnbc.msn.com/id/24013515>.) The NEW YORK TIMES noted “[t]he new rules make it harder for foreigners to live and work in Beijing without applying for residency permits, which can be difficult to obtain” and complicate not only the lives of businesspeople in Hong Kong but also those in Taiwan, South Korea, and Singapore who are “used to crossing the border with ease.” (Andrew Jacobs, *Bracing for Games, China Sets Rules That Complicate Life for Foreigners*, Apr. 24, 2008, available at <http://www.nytimes.com/2008/04/24/world/asia/24china.html>.)



Qin Gang stated that China's recent visa policy had been duly arranged on the basis of past practice for the Olympics and international large-scale competitions as well as Chinese laws and regulations and that that this did not mean that multiple-entry visas had been completely suspended. According to Qin, "this policy may be carried out for a period of time, with the aim of ensuring that China has a safe environment." He stressed that the procedure for obtaining a China visa is more convenient than that of most other countries; for example, China does not require persons entering the country to be finger- or palm-printed or to have an iris or cornea scan. According to the MOFA Web site, "due arrangements" include requiring visa applicants to separately submit a letter of invitation, proof of family relationship, hotel reservation, and roundtrip airline tickets. China has not stopped issuing multiple-entry visas to applicants who meet the requirements, it adds, but officials will consider "the real need of the applicant" in granting them. (*Wai Jiao Bu: Zhongguo jinqi youguan qianzheng zhengce xi genju Aoyun guanli anpai [Ministry of Foreign Affairs: China's recent visa policy system accords with Olympics Practice]*, XINHUA, May 6, 2008; AFP, *supra*; see also *China Says It Tightens Visa Procedures Ahead of Olympics*, Newsfeed Researcher Web site, May 6, 2008.)  
(Wendy Zeldin)

### **SWEDEN – Labor Immigration**

It was reported in the Swedish press that on April 29, 2008, the Swedish government would present a bill on work-related immigration that would make it easier, beginning in mid-December, for people from countries outside the European Union to come to Sweden to work. Under the bill's provisions, persons who had found employment in Sweden would be allowed to stay in the country for an initial period of two years and then, if still employed, for an additional two years. After that time, they would be able to obtain a permanent residence permit and family members could join them. If the bill becomes law, rejected asylum-seekers may become labor immigrants instead, provided they have a job and the promise of future employment. It would be the responsibility of the Swedish Migration Board to ensure that there is no wage dumping.

According to Mikaela Valtersson, the group leader of the Environment Party, which supports the bill, its critics "are mainly worried because this eliminates today's bureaucratic review process. The major change will be that it us up to the employer to decide whether he needs manpower." The Environment Party had also wanted to have current illegal immigrants covered by the bill. The Social Democratic and Left parties as well as the LO (Swedish Trade Union confederation) oppose the legislation. (*Swedish Government to Propose Relaxed Regulations for Labor Immigration*, DAGENS NYHETER, Apr. 28, 2008, Open Source Center No. EUP20080429340009.)  
(Wendy Zeldin)

