



VALUE-ADDED IMMIGRATION

Lessons for the United States
from Canada, Australia, and the
United Kingdom

RAY MARSHALL

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Australia, and the United Kingdom

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Preface

Employment-based immigration has become increasingly important for advanced liberal democracies such as Canada, Australia, the United Kingdom, and the United States. For most countries, these foreign worker flows are designed to overcome domestic labor shortages associated with economic development; aging populations; declining birth rates; the tendency of people with rising incomes to avoid menial, low-status work; and global skill shortages associated with technological and organizational changes.

Policies to regulate foreign worker flows reflect basic economic policies and institutions. In a more competitive global economy, most advanced liberal democracies—including Canada, Australia, and the United Kingdom—have developed migration policies to support value-added (productivity and quality) economic policies to maintain and improve per-capita incomes. To promote broadly shared prosperity, most advanced industrial countries have complemented value-added policies with strong social safety nets, universal high-quality education, and supportive labor market policies. These countries accept the basic economic proposition that markets are valuable institutions, but in highly competitive globalized economies, markets untempered by moderating policies and institutions will produce declining real incomes for many—if not most—workers and unsustainable inequalities in income and wealth.

Advanced liberal democracies such as Canada, Australia, and the United Kingdom have, in addition, supported their value-added economic agendas with complementary migration policies, including a shift in emphasis from family-based to employment-based migration; a greater emphasis on skilled migration; and the development of metrics, structures, and mechanisms designed to efficiently and flexibly adjust the flow of foreign workers to domestic labor shortages. Consistent with both political necessity and value-added principles, these countries have complemented foreign worker adjustment mechanisms with a variety of safeguards to prevent the depression of domestic wages and working conditions or the displacement of domestic workers. These labor protections also are compatible with the value-added principle that foreign workers should complement and not compete with domestic workers; adherence to this principle simultaneously garners greater public support and creates mutually beneficial or plus-sum outcomes. Measures designed to protect domestic and foreign workers include labor market tests as a precondition for importing foreign workers; minimum acceptable wage levels; and points systems to simultaneously calibrate labor market needs, foreign workers' chances for success in domestic labor markets, and national welfare. Consistent with its importance, these countries assign high-level national government officials the responsibility for employment-based migration.

The United States, like Canada, Australia, and the United Kingdom, is an immigration nation, increasingly dependent on migration for its economic and social welfare, but it has immigration policies that are almost universally regarded as dysfunctional. The United States does not have a guiding national economic policy for the flow of foreign workers, with the predictable outcome of an immigration system that depresses wages and working conditions and accelerates growing income inequalities; it does not adjust the flow of foreign workers to measured labor market shortages; it has almost no reliable data to measure the number and characteristics of migrants, their social and economic impacts, or chances of success in domestic markets, or to determine whether foreign workers compete with or complement domestic workers; it has no high-level federal official primarily responsible for employment-based migration; it has the largest unauthorized migration levels in the industrialized world; and it does too little to protect either foreign or domestic workers or the national interest.

Thus, in attempting to reform its immigration system, the United States has much to learn from Canada, Australia, and the United Kingdom, which have what are generally regarded as among the world's best-managed migration systems.

The comparative learning method used in this book is designed to discover basic principles and requires a consideration of the differences and similarities between the United States and other countries; a deep knowledge of the policies and institutions of all countries being compared; and an understanding that principles must be adapted to the realities in each country.

At the outset, however, it is necessary to note the use of some terms that do not have universal meaning. Commentators and public officials define international people flows in different ways. For many, "international migration" is the generic term for the global movement of people and "immigration" is often used in public and official documents and discussions to refer to both temporary and permanent movements of foreign-born people. Moreover, temporary migration is increasingly the first official stage in permanent settlement, or immigration. I therefore use "migrant" and "immigrant" interchangeably, along with the less ambiguous "temporary" and "permanent" foreign workers, the main focus of this book.

The organization of this book is straightforward: Chapter 1 discusses the immigration policies of Canada; Chapter 2, Australia; and Chapters 3 and 4, the United Kingdom. Chapter 5 summarizes the lessons learned from these three countries and applies them to employment-based immigration reform in the United States.

Acknowledgments

This book builds on work for the EPI immigration project, undertaken to develop factual and analytical support for immigration reform in the United States. Those of us involved in that project thought that principles derived from the migration research and experience in Canada, Australia, and the United Kingdom might, if adapted to American realities, provide useful ideas for U.S. immigration reform.

I benefited greatly from numerous discussions with Ross Eisenbrey and Ana Avendaño, my principal partners in the EPI immigration project.

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Ray Marshall
September 2011

Executive Summary

The United States, Canada, and Australia have long histories as “immigration nations.” But along with the United Kingdom, which has become an immigration nation in the last 35 years, Canada and Australia have explicit employment-based migration policies that are closely related to other economic and social objectives. In contrast, U.S. employment-based migration policies are chaotic and unconnected to specific national goals. Indeed, despite its importance to the American economy and society, U.S. foreign-worker policy is more implicit than explicit; it falls under the purview of many agencies rather than one single high-level federal agency and it is governed by laws that are not transparent, fair, enforceable, or sensible.

Efforts to reform U.S. immigration laws have much to learn from countries with more coherent, evidence-based, and effective policies. Australia, Canada, and the United Kingdom have developed similar techniques and metrics to better manage employment-based migration. Their systems share the following key characteristics:

- ***Coherent policies and programs designed to effectively manage and control migration, complement and support value-added economic policies, and minimize wage competition and the displacement of domestic workers.***
- ***High priority for migration policy within the government.*** In these three countries, migration programs are managed by high-level public officials with strong support from their prime ministers.
- ***Flexible annual goals or targets for immigration that emphasize economic migration, predominantly employment-based migration.*** These goals or targets can be altered at any time to reflect changing market conditions.
- ***Greater emphasis on economic migration and less emphasis on family-based migration.*** In contrast, the United States has continued to stress family-based immigration over economic migration.
- ***A two-step immigration system, which first imports temporary workers, then helps them qualify for permanent residency.*** International students studying in host country postsecondary institutions are particularly valued because they improve higher education, subsidize domestic students, contribute to national economies, and, if they qualify, make valuable permanent residents.
- ***Admission of foreign workers mainly for vacancies that cannot be filled by domestic workers.*** Unlike the United States, these countries have laws and regulations requiring employers to limit international recruitment to occupations in short supply or to offer jobs to resident workers before hiring foreign workers.

- *Provision to foreign workers of at least the same wages and working conditions received by similar domestic workers.*
- *The development of strong migration data and research support processes, both in-house and commissioned.*
- *Ongoing labor market research programs to identify and measure skill shortages.*
- *Points-based systems to give quantitative weights for preferred migrant selection characteristics.* These systems are more objective than decisions made by immigration officials, and their flexibility allows the mix of characteristics and total point scores to adjust migration to changing conditions.
- *Minimization of the use of temporary low-skilled or “guest worker” programs.* Restrictions on these programs recognize the difficulty of preventing the abuse of temporary migrants who are attached, or “indentured,” to particular employers who determine migrants’ wages and working conditions, whether they attain permanent residency, and whether they have the right to return.
- *Efforts to integrate migrants into the economy and society.*
- *Attention to balancing contending economic forces when crafting migration policies.* The evidence from Canada, Australia, and the United Kingdom suggests that opposition to migration usually will rise with unemployment, population density, or sudden uncontrolled surges in migration. Political leaders have worked to prevent resurgent anti-immigrant movements from inciting political and social unrest.

While political, cultural, and institutional differences make it impossible for the United States to precisely copy the employment-based migration policies of these liberal democracies, the country can heed some obvious lessons.

Lesson #1: Adopt a strategic vision for value-added immigration

If the United States wants to maintain and improve incomes, it should avoid low-wage competition in favor of the high-value-added strategies implemented by Australia, Canada, and United Kingdom. Policies to admit foreign workers should seek to improve productivity and innovation and overcome labor shortages, not to depress domestic wages and working conditions, displace domestic workers, or substitute migration for public and private investments in education and training.

Lesson #2: Assign high-level federal responsibility for employment-based migration

Responsibility for employment-based migration should be assigned to a high-level federal official, most logically in the Department of Labor, not scattered throughout the federal government. It would be inappropriate to give this responsibility to the Department of Homeland Security, because employment-based migration is primarily a labor market issue, not a law enforcement or national security issue.

Lesson #3: Appoint a high-level ad hoc commission to recommend measures to improve the efficiency and effectiveness of the employment-based migration system

The present U.S. employment-based migration system is grossly inefficient, primarily because of an inappropriate legislative framework, inflexibility in adjusting migration to labor market needs, poor matches between administrative resources and the magnitude of the problem, and ineffective enforcement of worker protections. From the successes and mistakes of Canada, Australia, and the United Kingdom, the United States can learn how to create smart regulations that enable the responsible agency to assemble the professional personnel, advanced technology, structures, and accountability and incentive systems required for a more effective employment migration system.

Lesson #4: Create a permanent, independent Commission on Foreign Workers

A critical component of an effective employment-based migration system is an independent data, research, evaluation, and advisory body to provide legislators and migration officials with objective, evidence-based, professional advice. An independent commission could establish definitions and measures of such factors as skills shortages, which would inform program design. A commission could also help program administrators ensure that they are collecting data crucial to policymaking, including data on work visa holders and their impact on communities, industries, and the U.S. economy.

Lesson #5: Enact comprehensive immigration reform

The effective management of economic migration requires comprehensive reform of the country's dysfunctional immigration system. Due to irrational operational control of borders, ineffective work authorization systems, and other failures, the United States has the industrialized world's largest pool of unauthorized migrants, which undermines legal foreign worker programs. Reforming the system requires a carefully orchestrated combination of carrots and sticks that would enable unauthorized migrants to earn legal status, increase the odds of deportation for ignoring opportunities to earn legal status, and make unauthorized entry into the United States more difficult.

Lesson #6: Reform and improve employment-based migration policies and programs

International experience suggests the following guidelines for an American foreign worker system based on high-value-added principles: (1) admit foreign workers mainly for vacancies that cannot be filled by domestic workers; (2) refuse to allow foreign workers to depress wages and working conditions or displace American workers; (3) refuse to permit the importation of foreign workers to substitute for the education and training of American workers; (4) clarify the enforcement authority for all foreign worker

programs; (5) continuously improve the administration of foreign worker programs; and (6) require labor recruiters to be registered and meet minimum qualifications.

Lesson #7: Reform temporary foreign worker programs

Reforming employment-based immigration in the United States includes reforming the country's existing temporary foreign worker programs. The H-1B, L, H-2, and Exchange Visitor (J visa) temporary worker programs share a common lack of sufficient oversight and do not promote the national interest or protect foreign or domestic workers very well. The H-1B program for foreign workers in "specialty occupations" requiring at least a bachelor's degree appears to enable employers to pay far below market wages, thus depressing domestic wages. L visas for intra-company transfers are virtually unregulated and used by some corporations to displace American workers and outsource American jobs. Reports of abuses in the H-2 temporary foreign worker programs are widespread, and some categories of the Exchange Visitor Program have become work programs that bear little resemblance to the cultural and educational exchange purposes for which they were designed.

The costs of the status quo call for action

Because the United States has allowed unauthorized migration to become large and deeply entrenched, it is very hard to change. Indeed, many immigrant advocates do not believe unauthorized migrant flows and pools can or should be significantly reduced, arguing that the benefits of such flows far outweigh the costs. But unlawful migration subjects migrants to increasingly serious and often fatal risks; perpetuates marginal, low-wage economic activities; undermines compensation structures and protective labor market institutions; forces migrants and their families to live uncertain and insecure lives outside our polity, social safety nets, and labor laws; generates social conflict that threatens democratic institutions and the rule of law; and will become more intractable the longer we wait to fix it.

The only sensible way to clean up the mess the United States has allowed to spread is to allow unauthorized migrants to earn lawful resident status by registering, taking their place at the end of the legal permanent residents' line, and paying reasonable taxes and fines. While critics argue that adjusting the status of unauthorized workers would "reward illegal behavior," this argument would have more credibility if U.S. immigration laws were fair, transparent, enforceable, and sensible. Paying heed to the experiences of three important, industrial nations that have addressed the same challenges more successfully with thoughtfully designed employment-based migration programs seems an obvious step in achieving a sensible migration system in the United States.

Acronyms and initialisms used in this book

Chapter 1

AFL	Alberta Federation of Labour
AGC	Auditor General of Canada
AIBEW	Alberta International Brotherhood of Electrical Workers
CBSA	Canadian Border Services Agency
CEC	Canadian Experience Class
CIC	Citizenship and Immigration Canada
COPS	Canadian Occupational Projection System
CPP	Canada Pension Plan
CREWS	Construction Recruitment External Workers Service
EA	Employment Agreement
EBM	employment-based migration
EIA	Employment Insurance Act
FARMS	Foreign Agricultural Resource Management Service
FSWP	Federal Skilled Worker Program
GA	Government Agent
HRSDC	Human Resources and Skill Development Canada
IRPA	Immigration and Refugee Protection Act
IRPR	Immigration and Refugee Protection Regulations
LIC	live-in caregiver
LMO	Labor Market Opinion
LSPP	Low-Skilled Pilot Project
MOU	memorandum of understanding
NIEAP	Non-Immigrant Employment Authorization Program
NOC	National Occupational Classification
OHSA	Occupational Health and Safety Act
PBS	points-based system
PNP	Provincial Nominee Program
POL	Policy Occupation List
PTs	provinces and territories
ROL	Regional Occupational List
SAWP	Seasonal Agricultural Workers Program
SWP	skilled worker program
TFW	temporary foreign worker
TFWP	Temporary Foreign Worker Program
UFCW	United Food and Commercial Workers

Chapter 2

AE	Approved Employer
AEGIS	Australian Expert Group in Industry Studies
ALP	Australian Labour Party
AMIC	Australian Meat Industry Council
AMWU	Australian Manufacturing Workers Union
ASCO	Australian Standard Classification of Occupations
CSL	Critical Skills List
DEEWR	Department of Education, Employment, and Workplace Relations
DIAC	Department of Immigration and Citizenship
DQ	degree qualified
ENS	Employer Nomination Scheme
ENSOL	Employer Nomination Scheme Occupation List
IELTS	International English Language Testing System
LA	Labour Agreement
LAB	Local Advisory Body
MIAC	Minister of Immigration and Citizenship
MIEU	Meat Industry Employees Union
MODL	Migration Occupations in Demand List
OMA	Office of Multicultural Affairs
PA	principal applicant
PBS	points-based system
PSWPS	Pacific Seasonal Worker Pilot Scheme
RSES	Recognized Seasonal Employer Scheme (New Zealand)
RSMS	Regional Sponsored Migration Scheme
SA	Skills Australia
SOL	Skilled Occupation List
SWP	Seasonal Work Permit (New Zealand)
TFW	temporary foreign worker
TQ	trade/vocational qualifications
WHM	Working Holiday Maker

Chapter 3

BNP	British National Party
EC	European Community
ECJ	European Court of Justice
EU	European Union
ICT	intra-company transfer
MAC	Migration Advisory Committee
PBS	points-based system

Chapter 4

ARK	Analysis Research and Knowledge Management Directorate
EEA	European Economic Area
ES	Established Staff
EU	European Union
GT	Graduate Trainee
HSMP	High Skills Migrant Program
ICT	intra-company transfers
JCP	Jobcentre Plus
MAC	Migration Advisory Committee
MNC	multinational company
NQF	National Qualifying Framework
PBS	points-based system
PSA	Public Service Agreement
PSWR	Post-Study Work Route
RLMT	Resident Labour Market Test
SOC	Standard Occupational Classification
SOL	Shortage Occupation List
UKBA	U.K. Border Agency

Chapter 5

CFW	Commission on Foreign Workers
DHS	Department of Homeland Security
DIAC	Department of Immigration and Citizenship (Australia)
DOL	Department of Labor
DOS	Department of State
EAD	Employment Authorization Document
EBM	employment-based migration
EVP	Exchange Visitor Program
FWP	foreign worker program
GAO	Government Accountability Office
IC	international company
ICT	intra-company transfer
INA	Immigration and Nationality Act
LTFW	long-term foreign worker
MAC	Migration Advisory Committee
OIG	Office of Inspector General
PBS	points-based system
SWT	summer work/travel
TFW	temporary foreign workers
USCIS	U.S. Citizenship and Immigration Service

CHAPTER 1

The Canadian Employment-Based Immigration System

Canada, like the United States and Australia, has a long history as an “immigration nation.” A major difference, however, is that Canada and Australia, as well as the United Kingdom (which has become an immigration country in the last 35 years) have explicit employment-based migration (EBM) policies closely related to other economic and social objectives. In contrast, U.S. EBM policies are more chaotic and are unconnected to specific national goals. Indeed, despite its importance to the American economy and society, U.S. foreign worker policy is more implicit than explicit; it falls under the purview of a variety of agencies rather than one single high-level federal agency; and it is governed by laws that are not transparent, fair, enforceable, or sensible.

In reforming U.S. immigration laws, we therefore have much to learn from countries with more coherent, evidence-based, and effective policies. Studying Canadian immigration policies and procedures is particularly useful because Canada arguably has one of the world’s best-managed and most innovative immigration systems.¹ Canada, for example, invented the points system to regulate economic immigration that has been emulated by Australia, the United Kingdom, and other countries. And despite the fact that Canada admits three times as many immigrants per capita as the United States, immigration enjoys a much higher level of public support in Canada than it does in the United States.² Greater public support for Canada’s immigration policy is due to a number of differences from U.S. policy: Canadian policy is better managed; more transparent; permits a much smaller unauthorized component; and is closely correlated with popular national objectives such as nation building, shared prosperity, economic competitiveness, social safety nets, multicultural diversity, social cohesion, and human capital formation. Other factors strengthening public support for Canadian migration policy are the policy’s emphasis on admitting foreign workers only for jobs that cannot readily be filled by domestic workers, and the system’s strong factual and analytical foundations. Such qualities make it difficult for critics to assert false claims about labor shortages or migration’s impact on the economy and society.

This is not to argue, of course, that the Canadian migration system is perfect. As this chapter will show, Canada has some serious problems and much to learn from

countries such as Australia and the United Kingdom. Indeed, the Canadian system has made serious policy mistakes based on faulty assumptions about the ability of migrants with human capital credentials to succeed in Canadian labor markets. Of particular relevance for current U.S. immigration reform debates, Canada's rapid expansion of temporary foreign worker programs has reflected the global experience: It is extremely difficult to import large numbers of indentured temporary workers while simultaneously protecting their rights and domestic workers' rights on the one hand and preventing employers from becoming dependent on migrants rather than recruiting and training domestic workers on the other. The Canadian experiences confirm the wisdom of democratic countries' historic preference for permanent immigrants with full civil, human, and labor rights. However, Canada is more willing than the United States to learn from its mistakes as well as from other countries' experiences, has significantly greater ability to correct mistakes, gives higher priority to comprehensive immigration policies, and has built-in processes to enhance flexibility and continuous improvement.

This chapter first outlines Canadian migration policies and structures and then discusses the employment experiences of Canada's recent migrants. It ends with a critique of the Canadian employment-based migration system.

Basic Canadian immigration policies

Canada's primary migration policy objective has been to "build the nation." A country with low population density,³ Canada has promoted immigration to populate open spaces and develop its natural resources. During the early 20th century, immigration supplemented rural-to-urban population shifts to create industrial workforces. During these years, education and skills were less important than manual labor. But with the emergence of a more globalized, knowledge economy, Canada, like most other advanced democratic countries, focused on attracting highly skilled, better-educated immigrants. And its generous welfare system gives Canada fiscal motives to attract immigrants with high economic benefit-to-cost ratios.

Evolution of Canadian policies

As in the United States and other countries, the evolution of Canada's immigration policies reflects changing social and economic conditions. From its founding in 1867 until the 1960s, Canada's paramount objective, besides populating its open spaces and expanding domestic markets, was to maintain the essential "British" character of its population. During the depression of the 1930s Canada greatly restricted immigration except from Britain and the United States. After World War II, Canada resumed a more expansive immigration policy designed to spur economic growth and overcome labor shortages while restricting immigration, according to its 1947 Immigration Act, to those who could be "most advantageously absorbed" into its economy and society.

During the 1960s, Canada abandoned its racial and national selection preferences in favor of choosing applicants regardless of place of origin, race, or culture. A points

system to select independent immigrants and nominated relatives was introduced in 1967. The points system (discussed below) recognizes education, training, skills, and other qualifications, thereby adding to the system's transparency and objectivity. The debate surrounding this shift reflects continuing tensions between meeting immediate labor market needs, protecting Canadian workers, and adhering to long-term economic and social policies and priorities.

By the end of the 20th century, promoting economic growth, protecting refugees, and reunifying families had become Canada's main immigration objectives,⁴ but the emphasis had shifted from family reunification to the entry and integration of skilled workers and their families. Canada, like other high-income countries, also saw immigration as a way to offset its aging population.

Although the main focus of this chapter is Canada's employment-based immigration system, Canadian authorities continue to stress the cohesion of economic, family, and humanitarian immigration, as well as the close relationships among migration, economic, and social policies.

According to Lenore Burton, director-general of Citizenship and Immigration Canada's (CIC's) Strategic Policy and Planning Branch:

... Canada's economic objectives for its immigration program contribute to a broader approach to immigration. The objectives identified in Canada's [Immigration and Refugee Protection Act] include those relating to Canada's commitment to supporting refugees, the promotion of international justice and security, the development of minority official languages communities, the promotion of a two-way approach to the integration of newcomers, as well as the enrichment of [the] ...social and multi-cultural fabric of Canadian society.⁵

Perhaps more than any other immigration nation, Canada has placed high priority on (and been more successful with) the integration of immigrants into its society and economy. According to Burton:

The Government of Canada is committed to reaching out to both Canadians and newcomers and is developing lasting relationships with ethnic and religious communities in Canada. It encourages these communities to participate fully in society by enhancing their level of economic, social, and cultural integration. It is our fundamental belief that all citizens are equal. Multiculturalism and common citizenship with its rights and responsibilities ensure that all citizens can keep their identities, take pride in their ancestry, and have a sense of belonging. Acceptance gives Canadians a feeling of security and self-confidence, making them more open to, and accepting of, diverse cultures. This belief and the social policy programs and legislation that support it have an important role to play in the integration and acceptance of newcomers and in the support of immigration from the Canadian public.⁶

Canadian multiculturalism

Multiculturalism, a highly contentious issue in Australia, the United Kingdom, and many European countries, has been a Canadian success story. According to some observers, however, this outcome is due mainly to history, geography, and luck, not to superior policies or national culture or character.⁷

Before the 1960s Canada's assimilationist policies succeeded because it was relatively easy for white European immigrants to gradually become indistinguishable from native-born Canadians in language, dress, religion, and liberal democratic values. The primary ethnic conflict involved French-speaking Quebec separatists, who resented the dominance of English-speaking Canadians. During the 1960s, in response to this separatist threat, Canada adopted a dual-language policy that re-emphasized the equality of English and French; made the government, including the civil service, bilingual; and stressed the duality of England and France as "founding nations."

However, this English-French duality ignored the country's growing nationality groups from other European countries and, after the adoption of the race-neutral immigration policy, from other continents. Settled white ethnics (Ukrainians, Finns, Italians, Germans, Dutch, and Jews) reacted to the English-French accord by mobilizing politically to demand recognition of broader ethnic diversity. In the words of political philosopher Will Kymlicka, "The formula which gradually emerged—namely, multiculturalism within a bilingual framework—was essentially a bargain to ensure white ethnic support for the more urgent task of accommodating Quebec (and indeed it has proven to be a very stable bargain)."⁸

The white ethnic acceptance of multiculturalism before the arrival of larger numbers of non-Europeans, nonwhites, and non-Christians meant that the fear that immigration would undermine Canadian national identity never acquired the force that it did in Europe or Australia. In other words, in Canada the acceptance of multiculturalism never implied the tolerance of illiberal practices such as the subordination of females, religious intolerance, or forced marriages. Indeed, the identification of multiculturalism with illiberal practices, which was divisive in other countries,

never arose in the initial debates in Canada. After all, the white ethnic groups who were demanding multiculturalism had been present in Canada for several generations...were typically well integrated...and were seen as proud and patriotic Canadians, as well as fully committed to the basic liberal-democratic principles of the Canadian state. More generally, they were seen sharing a common "Western" and "Judeo-Christian" [orientation].⁹

Canadian multiculturalism, which became official policy in 1971 and was included in the constitution in 1982, respects ethnic differences and accepts an obligation by public institutions (e.g., police, schools, government agencies) to accommodate ethnic identities. In exchange, ethnic groups are expected to embrace Canada's liberal democratic values. The European idea that multiculturalism meant a fundamental "clash of

civilizations” therefore never arose in Canada. If it had, Kymlicka argues, “multiculturalism would not have been adopted, or taken root.”¹⁰

The eventual backlash against multiculturalism never gained much momentum because, by the time the backlash came, during the 1980s and early 1990s, the policy was generally accepted by most Canadians, including ethnic minorities, and never implied an acceptance of cultural relativism or the kind of illegal practices that roiled other countries. Indeed, no Canadian immigrant group had ever demanded the right to engage in unlawful, illiberal practices.

Another major difference between Canada and many European nations is that Canadians never perceived their country’s small (less than 2%) Muslim population as a threat to basic national values. Indeed, the leaders of the Ismailia Muslims, who found welcoming refuge in Canada after being expelled from Uganda in 1972, declared in 2002 that “Canada is today the most successful pluralist society on the face of the globe.”¹¹

Geography also is an important part of the Canadian multicultural success story because Canadians never faced the threat of large-scale illegal migration, which is a major cause of anti-immigrant sentiment in other countries. Almost all immigrants to Canada come through air travel and therefore must have visas. Kymlicka argues that:

...in most Western countries, there is a strong moralistic objection to rewarding migrants who enter the country illegally or under false pretense (i.e., economic migrants making false claims about escaping persecution)....There is also a prudential objection to providing multiculturalism policies for illegal immigrants, since this may encourage yet more illegal migration....[M]uch of what is called “anti-immigrant” feeling in the U.S. or Europe is in fact anti-illegal immigrant feeling.¹²

Kymlicka believes that Canadians would have similar anti-immigrant attitudes if the country had a large unauthorized immigrant population, as suggested by the “hysteria that accompanied the appearance off the Canadian shore of boats containing a couple of hundred Chinese migrants in 2002. There was overwhelming support in the Canadian public for forcibly repatriating them to China, without allowing them to land and make asylum claims (which most Canadians assumed would be bogus).”¹³

Another factor in Canada’s acceptance of multicultural immigration, according to Kymlicka, was the country’s concentration of ethnic immigrants in relatively small groups, which meant that no large ethnic group could “challenge the hegemony of the national language and institutions” as Mexicans might do in the United States. In Canada, “...no immigrant group has either the capacity or a territorial/historical basis to contest the basic assumption that immigrants should integrate into the institutions of the existing society.”¹⁴

Kymlicka concludes that Canada’s successful multicultural policies are due to fortuitous factors and not entirely to “distinctive policies, laws, and institutions...”

rooted in distinctive ‘traditions’ of tolerance, so that accommodating diversity is now part of the ‘national ethos’ or ‘national character.’”¹⁵ “In fact,” he argues, “given these fortunate circumstances, Canada’s track record in accommodating diversity is really quite modest.”¹⁶

While Kymlicka presents valuable insight into the evolution of Canadian multiculturalism—especially the importance of history and geography—he underestimates the significance of Canadian policy as a causal force. Canadian leaders adopted policies within their historical and locational context that produced favorable outcomes. Their response to the Quebec separatists and white ethnic groups reinforced an accommodationist policy consistent with basic liberal democratic values and refused to define multiculturalism as a tolerance of illiberal practices that violate fundamental human rights and democratic values. Canadian leaders understood the instrumental value of their brand of multiculturalism as a way to subordinate Quebec separatists and radical opponents of Canadian pluralism. Canadian officials also saw the connection between a transparent, well-managed immigration system and public support for immigration. And they understood that the enormous advantages of immigration could be realized only by avoiding the deadly results of racial, ethnic, and religious conflict. This is not to argue, of course, that Canadian policy has been perfect because, as noted, there have been significant policy mistakes. But one of the Canadian system’s strengths is continuous improvement based on data and research, a process that gives policymakers the flexibility to both correct mistakes and adjust immigration to changing conditions.

Economic goals of Canadian immigration policy

In the 1960s and 1970s, Canada adopted a human-capital strategy for its points-based system (PBS) to attract skilled workers. Academic research suggested that better-educated workers could more readily adjust to an increasingly dynamic and competitive knowledge economy.¹⁷ Canadian policymakers assumed, in addition, that there would be growing international competition for these workers. And Canadian economists also favored a long-run, human-capital approach because in a dynamic economy it is hard to predict short-run changes in the demand for labor relative to job vacancies.

In 1995 Canada’s skills-based immigration program therefore shifted away from specific occupational shortages toward factors that research suggested were correlated with lifetime productivity and adaptability—e.g., education, language skills, experience in skilled occupations, and a formal job offer.¹⁸ During recessions, for example, Canadian authorities have maintained high levels of immigration—250,000 or more a year—despite slower economic growth and rising unemployment, “based on the view that immigration stability has long-term benefits that outweigh possible short-term difficulties.”¹⁹

However, Canada successively modified its immigration selection system to make it more responsive to market demand. It pursued this shift in response to persistent employer pressure for foreign workers to fill specific vacancies, as well as in response to research and experience which demonstrated that immigrants with general skills had

trouble finding jobs to match their skills. The mismatch between foreign workers' qualifications and specific job openings was exacerbated by cumbersome administrative processes that could require six years or longer to process foreign workers' applications. Canadian immigration policy since the 1990s has been dominated by a complex process of balancing often competing objectives: improving the speed and precision required to match migrants' qualifications with employers' specific job openings, on the one hand, and protecting the rights of foreign and domestic workers—a process that lengthens the immigrant selection process—on the other.

In an effort to better achieve these objectives, in 2002 the Immigration and Refugee Protection Act (IRPA) was amended to give higher priority to migrants with skills or competencies in demand. Changes included weighting educational qualifications more highly, reducing points for overseas work experience, and increasing points for language (English and French) proficiency.

Despite these changes, a number of factors caused the gap between the demand for and supply of labor to widen. These included the uneven quality of foreign credentials and the ability of skilled immigrants to accumulate enough points for entry without adequate language proficiencies to function effectively in the Canadian labor market; a growing backlog of permanent residency applications with waiting times of up to six years, far too slow for a dynamic economy; increased demand for foreign workers in a booming economy, especially in Western Canada; and the difficulty many immigrants faced in finding jobs compatible with their education and training.

These labor market mismatches strengthened political support for alternatives to the permanent immigration system that could meet employers' immediate needs. Two of these programs that bypassed the general skilled worker program were the Provincial Nominee Program (PNP) and the Temporary Foreign Worker Program (TFWP).

The Canadian government also has taken measures to improve the immigration system's administrative efficiency. In 2008, for example, legislation (Bill C-50) gave immigration authorities greater flexibility to adjust migration to labor market demand. Under the new law authorities can refuse applicants whose skills are not currently in demand, and this power has expedited the processing of applications to get skilled workers to Canada faster by reducing the application backlog and allowing a better match between migrants applying and skills demanded.²⁰ According to Citizenship and Immigration Canada, these changes “bring Canada in line with the practices of countries such as Australia and New Zealand, who are able to welcome skilled immigrants much faster, often in as little as six months.”²¹

The effectiveness of Canada's immigration strategies will be examined in Chapter 2 after we compare the Australian and Canadian immigration systems.

The legal and administrative framework

Canadian immigration policies and programs are based on the Immigration and Refugee Protection Act of 2002, which replaced the IRPA of 1976 and is amended periodically to address specific problems. Immigration is the primary responsibility of Citizenship

and Immigration Canada, which shares responsibility with Human Resources and Skill Development Canada (HRSDC) for foreign worker programs and labor market issues. In addition, CIC works closely with the Canadian Border Services Agency (CBSA), which manages Canada's ports of entry and prevents people from illegally reaching or remaining in Canada, and the Immigration and Refugee Board, an independent administrative tribunal that adjudicates immigration admission decisions, detention issues, and appeals and protection claims made within Canada.

Since Canada's constitution gives the provinces and territories concurrent responsibility with the federal government for immigration, provincial and territorial governments are CIC's primary partners, with "the shared goal...to make immigration programs responsive to the unique economic, social, and labour market needs of each province and territory."²²

Beginning with the Canada-Quebec Accord in 1991, the CIC has negotiated provincial and territorial agreements that provide for the Provincial Nominee Program, which allows provinces and territories to nominate immigrants as permanent residents for specific local labor market and economic development needs. Quebec is unique in having full responsibility for immigrant settlement and integration services, as well as for setting annual immigration targets and selecting immigrants.

The federal government is responsible for establishing selection criteria for settlement programs in the other provinces and territories, reunifying families, determining refugee claims within Canada, defining immigration categories, setting national immigration levels, and establishing admissions requirements.

Canada's immigration policies and procedures are based on extensive research, evaluation, and analysis, both by federal agencies and a government-supported independent research network.

CIC also cooperates with Statistics Canada to provide easily accessed statistics, including valuable longitudinal data,²³ to support immigration programs, evaluations, and research.

Immigration goals and targets

Canada has one of the world's highest rates of permanent immigration and relies heavily on foreign workers to boost its workforce growth. Around 2031, declining Canadian birth rates will lead to negative natural population growth, causing all population increases to come from immigration.

CIC is required to submit an annual report to Parliament that, among other things, sets targets for permanent immigration in the economic, family, and protected persons categories. **Table 1.1**, the CIC's 2010 plan, shows a total target range of between 240,000 and 265,000, with a range of 156,300 to 166,800 for the economic class, 63% of the total. The ranges for the economic class were 89,000 to 95,200 for the federal selected category; 28,400 to 29,500 for Quebec-selected skilled workers; and 37,000 to 40,000 for provincial and territorial nominees. About three-fourths of economic immigrants are in the skilled-worker category.²⁴

TABLE 1.1: Citizenship and Immigration Canada's immigration levels plan for 2010

Immigrant category	2010 ranges	
	Low	High
Economic class		
Federal selected	89,000	95,200
Federal skilled workers—75% of category		
Federal business—10% of category		
Canadian experience class—39% of category		
Live-in caregivers—12% of category		
Quebec-selected skilled workers *	28,400	29,500
Quebec business *	1,900	2,100
Provincial and territorial nominees	37,000	40,000
Total economic class	156,300	166,800
Family class		
Spouses, partners, and children	42,000	45,000
Parents and grandparents	15,000	18,000
Total family class	57,000	63,000
Protected persons		
Government-assisted refugees	7,300	8,000
Privately sponsored refugees	3,300	6,000
Protected persons in Canada and dependents abroad	9,000	12,000
Total protected persons	19,600	26,000
Others		
Humanitarian and compassionate/public policy	7,000	9,000
Permit holders	100	200
Total others	7,100	9,200
Total	240,000	265,000

Definitions:

Economic class—Persons selected as permanent residents for their skills and ability to contribute to Canada's economy.

Family class—Close relatives of a Canadian citizen or permanent resident who may be sponsored to immigrate to Canada. Relatives are primarily spouses, partners, dependent children, parents, and grandparents, but other family members may be eligible in certain circumstances.

Protected persons—Persons abroad or in Canada who have been determined to be Convention refugees (United Nations Convention Relating to the Status of Refugees and Protocol to the Convention) or in need of protection as defined in the Immigration and Refugee Protection Act.

Others—Persons who, in exceptional circumstances, are granted permanent status even though they would ordinarily not qualify, for example, in cases with strong humanitarian and compassionate considerations.

* Since posting, the Government of Quebec has updated the admission ranges for Quebec skilled workers and Quebec business to 32,800–33,900 and 1,800–2,000, respectively. This increase will be accommodated within the existing total planning range.

Sources: Adapted from Citizenship and Immigration Canada, *Annual Report to Parliament on Immigration 2009*, Table 1, and Office of the Auditor General of Canada, *2009 Fall Report of the Auditor General of Canada*, Exhibit 2.1.

TABLE 1.2: Categories of the economic class under which foreign workers may apply for permanent residency*

Category	Description
Federal Skilled Worker (FSW)	The FSW category selects immigrants for their skills. This category stresses education, English, or French language abilities, and work experience in some occupations included in categories 0 (managerial), A (professional), and B (technical and skilled trades) of the National Occupational Classification (NOC) system. Applications are assessed against a point system.**
Canadian Experience Class (CEC)	The CEC selects skilled temporary workers with Canadian work experience and international students with Canadian degrees and Canadian work experience; they may apply for permanent residency without leaving the country.
Quebec Skilled Worker (QSW)	The Canada-Quebec Accord grants Quebec the authority to set annual immigration targets and the responsibility for selecting skilled worker immigrants.
Provincial Nominee Program (PNP)	The PNP allows provincial and territorial governments to pre-select and nominate applicants based on their own selection criteria. However, Citizenship and Immigration Canada is responsible for the final selection decision.

* The economic class also includes the business categories of investors, entrepreneurs, and self-employed applicants. Live-in caregivers may also become permanent residents but they are first admitted to Canada as temporary foreign workers.

** For information on the point system, visit Citizenship and Immigration Canada's website at www.cic.gc.ca.

Source: Adapted from Office of the Auditor General of Canada, *2009 Fall Report of the Auditor General of Canada*, Exhibit 2.2.

Table 1.2 defines the various economic class categories under which skilled workers may apply for permanent residency.²⁵ The Canadian Experience Class (CEC) was introduced in 2007–08, when research showed that immigrants and international students with Canadian work experience adjusted more successfully than either immigrants without that experience or students with degrees from institutions in most other countries, especially those with non-English instruction. The CEC made allowances for immigrants' lack of experience if they had general qualifications in strong demand. This point will be discussed in more detail when we evaluate the Canadian economic immigration system and compare it with Australia's.

The CIC has adopted other measures to improve the fit between immigration and labor markets, including identifying priority occupations; assessing foreign qualifications; allowing the provinces and territories more discretion in selecting and nominating economic immigrants; and improving the economic immigration system's administrative efficiency. Indeed, the federal government attempts to continuously improve its immigration system's administrative efficiency to better respond to labor market needs.

Table 1.3: Permanent resident targets in CIC's 2008 immigration plan compared with actual number admitted, by category

Immigrant category	2008 plan target ranges	Number admitted
Economic class		
Federal skilled workers	67,000–70,000	76,964
Quebec-selected skilled workers	25,000–28,000	26,772
Business immigrants	11,000–13,000	12,407
Provincial and territorial nominees	20,000–22,000	22,418
Live-in caregivers	6,000–9,000	10,511
Canadian experience class	10,000–12,000	–
Total economic class (including dependents)	139,000–154,000	149,072
Family class		
Spouses, partners, children, and others	50,000–52,000	48,970
Parents and grandparents	18,000–19,000	16,597
Total family class	68,000–71,000	65,567
Protected persons		
Government-assisted refugees	7,300–7,500	7,295
Privately sponsored refugees	3,300–4,500	3,512
Protected persons in Canada	9,400–11,300	6,994
Dependents abroad	6,000–8,500	4,059
Total protected persons	26,000–31,800	21,860
Others		
Humanitarian and compassionate grounds/public policy	6,900–8,000	10,627
Permit holders	100–200	115
Total others	7,000–8,200	10,742
Category not stated	–	2
Total	240,000–265,000	247,243

Source: Adapted from Citizenship and Immigration Canada, *Annual Report to Parliament on Immigration 2009*, Table 2.

Table 1.3 shows the relationships between the CIC's 2008 permanent resident targets and the actual number admitted. Economic admissions were at or above the upper end of their range, while family class and protected persons admitted were below the lower end of their ranges. The protected persons and family categories are determined by events beyond a country's control and therefore are difficult to either predict or manage.²⁶

TABLE 1.4: Annual target immigration levels between 2004 and 2009 (thousands)

Class	2004	2005	2006	2007	2008	2009
Economic	132.0–148.0	132.5–148.0	126.0–143.0	141.0–158.0	139.0–154.0	140.3–156.6
Family	52.5–55.5	51.5–56.8	61.0–65.0	67.0–69.0	68.0–71.0	68.0–71.0
Protected persons	29.4–32.8	30.8–33.8	32.8–40.3	25.9–30.8	26.0–31.8	23.6–27.2
Others	6.1–8.7	5.2–6.4	5.2–6.7	6.1–7.2	7.0–8.2	8.1–10.2
Total	220.0–245.0	220.0–245.0	225.0–255.0	240.0–265.0	240.0–265.0	240.0–265.0

Source: Adapted from: Office of the Auditor General of Canada, *2009 Fall Report of the Auditor General of Canada*, Exhibit 2.1.

Table 1.4 shows that the overall annual permanent immigration targets changed little between 2004 and 2009, though the family and economic class targets rose and the protected class targets fell.²⁷ **Table 1.5** shows the heavy concentration of permanent residents from Asia among the top source areas.²⁸

Since the 1970s immigration has made Canada a more racially and ethnically diverse country. For example, non-Aboriginal racial minorities increased their proportion of the population from 1% in 1971 to 4.7% in 1981 and 10% in 1996.²⁹

Although race has become an issue, especially in the larger cities where most immigrants congregate, it has never reached the crisis proportions experienced by the United States, Australia, and the United Kingdom. Canadian polls nevertheless show a certain ambivalence: In 2000, 93% rejected the idea that nonwhites should not be allowed to immigrate to Canada, but 53% agreed that “Canada accepts too many immigrants from racial minority groups.”³⁰

Minorities constituted 75% of the immigrant flow to Canada between 1991 and 1996, and are projected to be 20% of the country’s population by 2016.³¹ In 1996 minorities made up over 30% of Toronto’s and Vancouver’s populations.

The largest source regions for Canadian permanent immigrants are Asia and the Pacific, which accounted for over 47% of the total in 2007 (Table 1.5). The relative proportions of family and economic immigrants have changed dramatically since the 1980s, when family-class immigrants were over twice that of the economic class.

As will be demonstrated later, the success of permanent immigrants depends heavily on the characteristics of both the principal applicants and their dependents. As **Table 1.6** shows, in 2007 dependents outnumbered principal applicants in every category except live-in caregivers.³²

TABLE 1.5: Permanent residents admitted in 2007, by source area

Region	Number	Percentage
Africa and the Middle East	48,570	20.51%
Asia and Pacific	112,660	47.58
South and Central America	25,890	10.94
United States	10,450	4.41
Europe and the United Kingdom	39,070	16.50
Source area not stated	118	0.05
Total	236,758	100.00%

Source: Adapted from Citizenship and Immigration Canada, *Annual Report to Parliament on Immigration 2008*, Table 5-B.

TABLE 1.6: Permanent residents (principal applicants and dependents) in 2009, by economic class category

Economic class	Total	Percentage	Principal applicants	Dependents
Skilled workers	97,857	74.56%	41,253	56,604
Business immigrants	10,179	7.76	2,808	7,371
Entrepreneurs	2,160	1.65	581	1,579
Self-employed	576	0.44	203	373
Investors	7,443	5.67	2,024	5,419
Provincial/territorial nominees	17,095	13.02	6,329	10,766
Live-in caregivers	6,117	4.66	3,433	2,684
Total economic class	131,248	100.00%	53,823	77,425

Source: Adapted from Citizenship and Immigration Canada, *Annual Report to Parliament on Immigration 2008*, Table 4.

Illegal immigration

Illegal immigration is not as serious a problem in Canada as it is in the United States or the United Kingdom. Experts estimate unauthorized immigrants at between 100,000 and 200,000.³³ Many of these are failed refugee claimants or people who overstay visas. Unauthorized workers are concentrated in the construction and hospitality industries. It is illegal for Canadian companies to hire undocumented workers, but the law is rarely enforced. According to Robert Blakely, director of Canadian Affairs for the Building and Construction Trades Department, AFL-CIO Canada office, illegal immigration “isn’t as big a problem [in Canada] as it is in the United States, but it is still

a problem... There are a fair number of people who are working in the underground economy in British Columbia, in Vancouver, and in Toronto, who are being paid less [than the legal minimum] and are being exploited."³⁴

We do not know precisely why illegal immigration is a less serious problem in Canada than in the United States. One factor clearly is that Canada has no large low-income labor-surplus country like Mexico on its border. But relatively tight border and immigration controls probably also deter unauthorized workers, as does the fairly liberal but tightly managed legal immigration system.

Foreign worker programs

Canada has a complex array of foreign worker programs, including a permanent Federal Skilled Worker Program (FSWP) and a Temporary Foreign Worker Program that is split between skilled and low-skilled. The TFWP is further divided into specific programs. The following sections discuss these programs, beginning with Canada's pioneering skilled-worker selection process.

The skilled worker selection process for permanent immigrants

Canada has several general requirements for permanent residency as a skilled worker. Applicants must demonstrate that they have sufficient financial resources to support themselves and their families. In 2008 the funds needed ranged from C\$10,168 for one family member to C\$26,910 for seven or more. Applicants also must undergo background and medical checks to determine if there are any legal or health barriers.

The points system

The specific requirements for skilled immigrants are determined by a points system based on education, training, experience, arranged employment, age, knowledge of the English and French languages, and personal adaptability. The specific number of points for each of these attributes for 2010 is listed in **Table 1.7**. The total number of points required for a skilled worker is 67, but that number has varied through time, starting with 50 when the points system was first introduced in 1967. The passing mark introduced by the IRPA of 2002 was 75.

The points system allows authorities to adjust the number and composition of immigration to the economy's specific requirements. There is, however, some disagreement over the weights given for various factors. For example, some Canadian employers and union leaders argue that the points overemphasize higher education and underemphasize trades certification.³⁵ Academic critics, by contrast, question, among other things, the years of full-time study required for those targeted as skilled tradespersons.³⁶

Some U.S. critics argue that a points system would discriminate against family class and less-educated immigrants. However, the PBS is sufficiently flexible to reflect a wide range of policy objectives, and PBS users can exempt family and other categories from the points system. Canada's points system, for example, only covers about

TABLE 1.7, Part 1 of 2: The Canadian points system chart for skilled workers (independent)

Education	Score
Ph.D. or master's and at least 17 years of full-time equivalent study	25
Ph.D. or master's and less than 17 years of full-time study	22
Two or more university degrees at the bachelor's level and at least 15 years of full-time equivalent study	22
Two- to four-year university degree and at least 14 years of full-time equivalent study	20
One-year university degree and at least 13 years of full-time equivalent study	15
Three-year diploma, trade certificate of apprenticeship, and at least 15 years of full-time equivalent study	22
Two-year diploma, trade certificate of apprenticeship, and at least 14 years of full-time equivalent study	20
One-year diploma, trade certificate of apprenticeship, and at least 13 years of full-time equivalent study	15
One-year diploma, trade certificate of apprenticeship, and at least 12 years of full-time equivalent study	12
Secondary school educational credential	5
	25 (max)
First language per ability (speaking, listening, reading, and writing)	
High proficiency (per ability): IELTS* 7.0–9.0	4
Moderate proficiency (per ability): IELTS 5.0–6.9	2
Basic proficiency (per ability): IELTS 4.0–4.9	1 (max 2)
No proficiency: IELTS less than 4.0	0
	16 (max)
Second language per ability (speaking, listening, reading, and writing)	
High proficiency (per ability): TEF** level 5–6	2
Moderate proficiency (per ability): TEF level 4	2
Basic proficiency (per ability): TEF level 3	1 (max 2)
No proficiency: TEF level 0–2	0
	8 (max)
Experience	
One year	15
Two years	17
Three years	19
Four years	21

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TABLE 1.7, Part 2 of 2: The Canadian points system chart for skilled workers (independent)

Age	Score
21 to 49 years old	10
Less 2 points for each year over 49 years old or under 21 years old	10 (max)
Arranged employment in Canada	
NAFTA and other international agreements, postgraduate work permit, or Arranged Employment Opinion (AEO)	10
	10 (max)
Adaptability	
Educational credentials for a spouse/common-law partner	
A spouse/common-law partner who would be awarded 25 points	5
A spouse/common-law partner who would be awarded 20 or 22 points	4
A spouse/common-law partner who would be awarded 12 or 15 points	3
Minimum one year of full-time authorized work in Canada	5
Minimum two years of full-time authorized postsecondary study in Canada	5
Points received under the Arranged Employment Factor	5
Family relationship in Canada	5
	10 (max)
The current passing points is 67 points out of 100 points	

* International English Language Testing System

** Test d'évaluation de français

Note: This points system chart is based on an applicant who chooses English as his or her first language. Those who choose French as their first language would use French as their first language in the chart.

Source: Adapted from Border Connections website table of data from Citizenship and Immigration Canada, "Points System Chart for Skilled Worker (Independent)," accessed September 15, 2011.

25% of all immigrants, and has separate requirements for family class immigrants and temporary workers (discussed below), some of whom can accumulate credit toward permanent residence.

It should also be noted that the points system incorporates family immigration by awarding adaptability points for the characteristics of immigrants' family members and spouses or partners. Indeed, Canada advises principal applicants and spouses or partners to assess their respective points and for the one with the highest point score to become the principal applicant.

Of course, the family/economic class dichotomy is not as rigid as the names imply. Skilled immigrants bring their immediate families, and skilled family members give principal applicants more points. Moreover, the categories define how immigrants enter a country, not what they do after they enter: people work and have family members in every category.

As will be discussed in the Canada-Australia comparisons in Chapter 2, some critics question the Canadian policy focus on skills-based immigration, introduced in the late 1980s and continued by the IRPA of 2002, which shifted the points system away from broad occupational shortages toward human-capital indicators of long-term earnings potential. These critics argued that failing to target specific occupational shortages in demand would lead to higher unemployment, “de-skilling” (i.e., immigrants taking jobs not requiring their education and skills), and lower wages for immigrants and natives. These criticisms were valid for the initial changes, but the Canadian system’s flexibility permitted it to be amended when research and experience demonstrated that the loose connection between immigrants’ knowledge and skills and the demand for labor was associated with rising unemployment, deskilling, and declining wages for recent immigrants. Changes made included raising passing scores, introducing the Canadian Experience Class, improving the verification of immigrants’ qualifications and credentials, and expanding the number of provincial nominees and temporary workers not covered by the points system. As we shall see below, however, these changes created other problems.

The Canadian points system likewise has been criticized for failing to adequately value international (as opposed to Canadian) work experience and account for the persistence of systemic racism. Research shows that racial minorities fare less well than white immigrants or natives in Canadian labor markets.³⁷ However, research sponsored by Statistics Canada found race to be less important when other factors are accounted for. For example, a 2010 study found that differences between immigrant and Canadian skills and earnings could be explained largely by differences in language proficiency and cognitive skills, as well as the lower returns to non-Canadian education. This study concluded that in terms of productivity differences, “immigrant/Canadian-born earnings differentials cannot be explained by discrimination, at least in this dimension.”³⁸

One of the measures CIC adopted to improve Canada’s immigration system was the Action Plan for Faster Immigration, launched in February 2008. This plan included Ministerial Instructions for eligibility criteria that applied to all new FSW applications after February 27, 2008. According to these instructions, applications are eligible for expedited processing if they meet one of the following criteria:

- include an offer of arranged employment
- are TFWs or foreign students living legally in Canada for one year
- are from a skilled worker who has at least one year of experience in one or more of 38 skilled high-demand occupations “under stress,” which includes occupations in the health, skilled trades, finance, and resource extraction industries

A persistent criticism of the Canadian immigration system is the time required to complete the application process, a problem that is primarily due to administrative

issues and immigration targets. However, altering the points system can change the eligibility of applicants in the queue. When targets are reached, Canadian authorities slow the application process. As illustrated in Table 1.3, the numbers of permanent immigrants admitted in the economic and others classes were within the planning target ranges, even though admissions in the subclass categories, such as federal skilled workers, were outside the target ranges, as were the more volatile “others” subcategories.

The Ministerial Instructions resulted from IRPA amendments (June 18, 2008) removing CIC’s obligation to process all applications received and authorizing the Minister of Citizenship and Immigration to issue instructions to CIC administrators about which applications to process. The Ministerial Instructions were developed through extensive consultation with HRSDC, Health Canada, the provinces and territories, 150 stakeholder organizations, and 500 other individuals and organizations.³⁹

As a result of these and other efforts to modernize the application system, by 2010 the CIC had reduced the FSWP backlog by over 30% and the total inventory by 12% and had outlined plans to expedite the application process and reduce backlogs.⁴⁰

CIC establishes the number of high-demand occupations “under stress” on the basis of the methodology discussed below. On June 26, 2010, the limit was set at 20,000 FSW applications in 29 occupations, with a maximum of 1,000 applications in each occupation. When the cap was reached for each occupation, applications were accepted only from “people with an existing offer of arranged employment.”⁴¹ As of March 28, 2011, 9,839 applications had been received toward the 20,000 cap. As noted, the CIC has the flexibility to adjust the number of occupations and the overall cap depending on market conditions.

The Canadian Occupational Projection System

As the previous discussion suggests, unlike the United States, Canadian foreign worker programs depend heavily on identifying current and future labor shortages. This section explains how these identifications and projections are made.⁴²

HRSDC uses the Canadian Occupational Projection System (COPS) to make 10-year projections of labor supply and demand by five skill/education levels and 140 occupational groupings. These projections are used to determine labor shortages and, in addition to foreign worker requirements, determine the need for education and training to help young people make education and career decisions. They also inform employers about projected labor supplies.

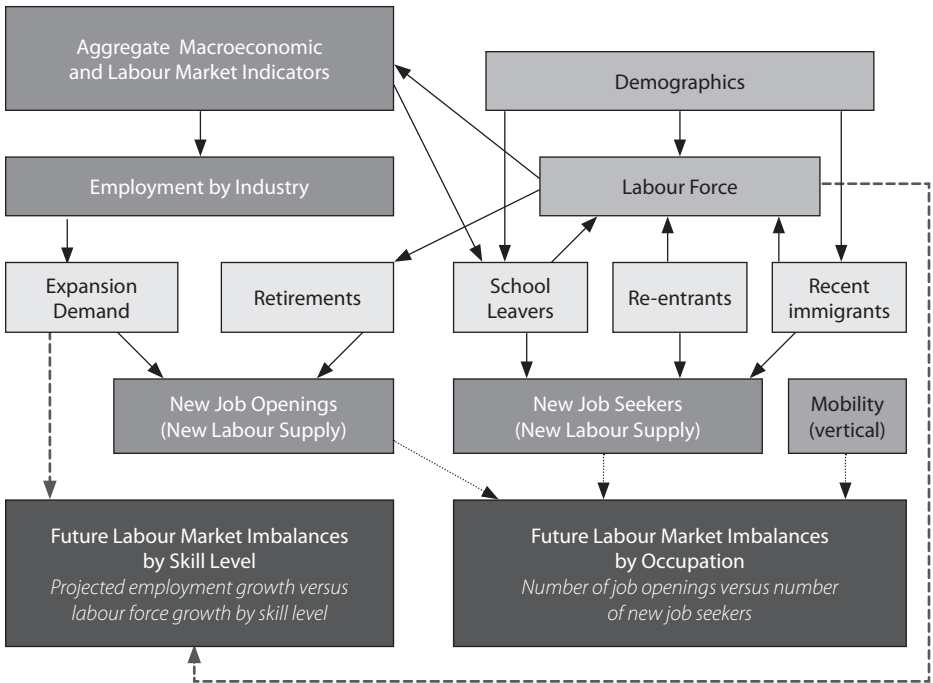
In preparing its projections, HRSDC uses a number of data sets, classification systems, and projection models, which collectively are known as COPS. The department’s analysts use the National Occupational Classification (NOC), which organizes more than 30,000 job titles into 520 occupational unit groups based on a four-digit code. The unit groups are then assembled into 140 minor three-digit groups, which are used in the COPS projection systems. The three-digit groups are organized into 26 major groups based on a two-digit code.

The NOC also classifies occupations by skill *level*, which corresponds to the type and/or amount of education and training required for an occupation, and skill *types*, based on the type of work ordinarily performed in an occupation.

A four-digit NOC code identifies the occupation. The first digit normally denotes skill type. For example, the number 7 as the first of the four digits identifies “trades, transportation, and equipment operators and related occupations.” The NOC also has four skill levels identified as A through D, primarily based on education and entry-level experience requirements. Skill level A usually requires university degrees, Level B usually requires college education or apprenticeship training, Level C requires one to four years of secondary education or up to two years of on-the-job training, and Level D requires no formal education but some on-the-job training. Many construction jobs are in the C or D NOC classifications, which mean many TFWs at these levels will have difficulty acquiring the 67 points required to become permanent residents.

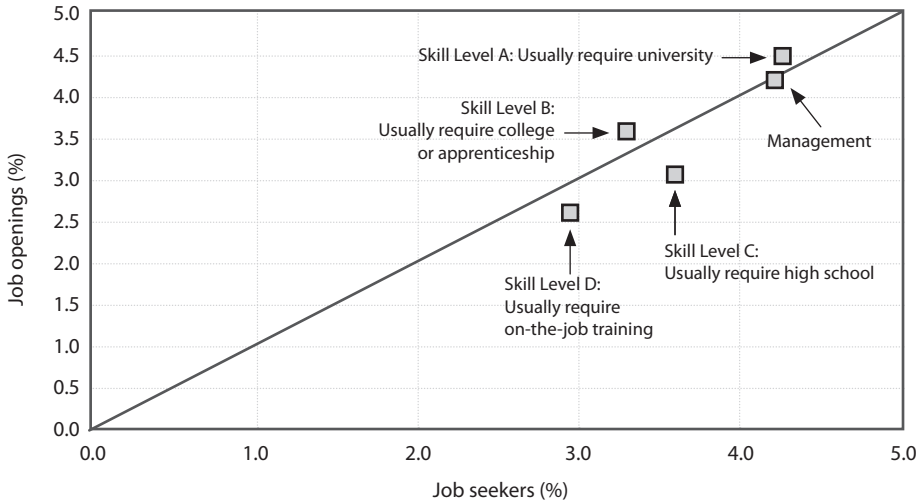
COPS’ structure for projecting labor market imbalances by occupation and skill levels is presented in **Figure 1-A**.

FIGURE 1-A: Structure of the Canadian Occupational Projection System



Source: Adapted with permission from Gilles Bérubé, “The Canadian Occupational Projection System.” PowerPoint presentation at the RIAL Workshop on Labour Migration and Labour Market Information Systems, February 24–25, 2009.

FIGURE 1-B: Job openings and job seekers by skill level* (as a proportion of the 2007 employment level), 2008–17



* The vertical axis shows, for a given skill level, the average projected annual level of job openings 2008–17 in proportion to the level of employment in that skill level in 2007 (the last historical year at the time of this projection).

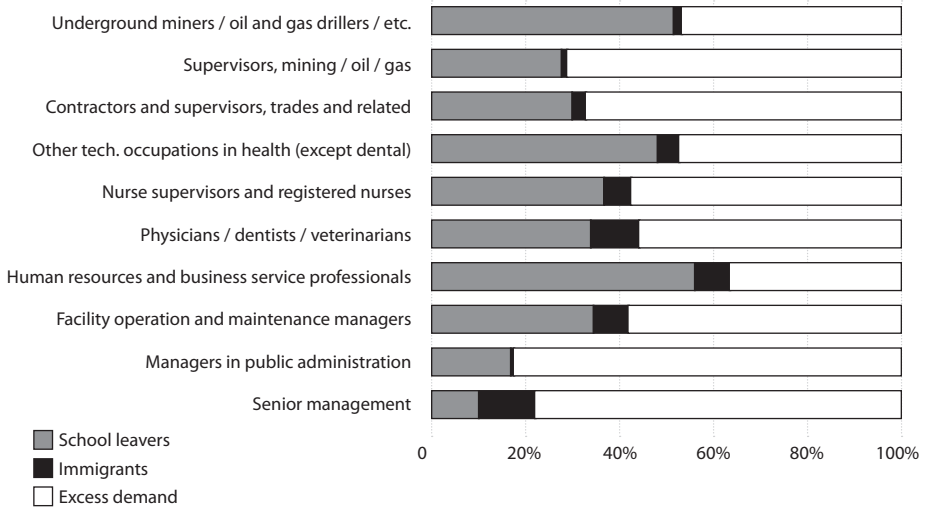
Source: Adapted with permission from Gilles Bérubé, “The Canadian Occupational Projection System.” PowerPoint presentation at the RIAL Workshop on Labour Migration and Labour Market Information Systems, February 24–25, 2009.

These 10-year labor supply and demand assessments involve two steps. The first is to review recent indicators of the balance between labor demand and supply—especially wage growth and unemployment rates. The second is to examine the projected gap between *new* demand and supply over the next 10 years. For skill levels, the employment demand due to economic growth is compared with labor force growth. For occupations, the number of new job openings from expansion and replacement demand is compared with the number of new job seekers from school leavers, immigration, mobility, and re-entrants to the labor force.

Work on the projections ordinarily starts in March, after economic data are released for the last quarter of the previous year, and is completed by June or July after consultations with provincial and regional labor market analysts.

Immigration is projected to account for an increasing share of labor force growth over 2008–17. But the school system will continue to be the main source of Canada’s new labor supply, well over four times the supply provided by immigration. These results underscore the importance of relating immigration to other labor sources, especially domestic education and training systems. An important policy challenge is to ensure that these labor supply sources complement and do not substitute for one

FIGURE 1-C: Excess demand versus new labor market entrants from the school system and immigration, 2008–17



Source: Adapted with permission from Gilles Bérubé, “The Canadian Occupational Projection System.” PowerPoint presentation at the RIAL Workshop on Labour Migration and Labour Market Information Systems, February 24–25, 2009.

another. The projections likewise warn against exaggerating the impact of immigration on workforce development.⁴³

Figure 1-B illustrates the projected relationships between job openings and job seekers by NOC skill levels. The 45-degree line shows the projected balances between job openings and job seekers. These results project more job openings than seekers for skill levels A and B and more job seekers than jobs at skill levels C and D, which usually require less education and training.

Labor demand is projected to be much greater than supply for contractors and supervisors, trades, and related workers, with most of the demand projected to replace retirement of the large postwar baby-boom cohort (as is the case with many U.S. occupations). Most of the projected supply will come from school leavers and a relatively small number from immigration, which is not projected to be as large as the number of emigrants. It should be noted, however, that Canada does not have actual statistics on emigrants, making it hard to calculate net immigration.

Figure 1-C presents 10 occupations whose excess demand presents significant challenges for Canada over the 2008–17 decade. For example, the figure shows that more than 50% of the new positions for underground miners and oil and gas drillers are projected to

be filled by people leaving school; a small percentage are projected to be filled by immigrants. More than 40% are projected to be left unfilled under these projections.

From COPS to Priority Occupation Lists

COPS, developed by the HRSDC from national statistical data, is the starting point for the CIC's priority occupation lists (POLs) contained in the Ministerial Instructions.⁴⁴ The methodology for constructing POLs has evolved over time, but the second set of Ministerial Instructions, released in June 2010, was based on the following factors, in addition to the COPS:⁴⁵

- ***Input from provinces and territories (PTs), stakeholders, and the public***—PTs are invited to submit lists of occupations projected to be in demand in their jurisdictions. As a general rule, the more an occupation is projected to be in excess national demand (as projected by COPS data), the less PT endorsement is required for its consideration for the occupation list. The reverse is true, as well: Some occupations projected to be in low or negative national demand are considered where sufficient PT demand is registered. As well, CIC holds online consultations to solicit input from stakeholders and the general public on factors affecting an immigrant's ability to succeed in Canada's labor market; key labor shortages expected to face Canada in the coming years; and avenues for addressing labor shortages, including but not limited to immigration.
- ***Operational data and experience with Ministerial Instructions***—Since the first set of Ministerial Instructions was issued in November 2008, CIC established a reporting and monitoring system for ongoing analysis of outcomes associated with the instructions, including monthly operational data analysis and reports from missions overseas, as well as an intradepartmental working group. These tools have positioned the department to not only monitor processing of instructions applications but also have provided an "early-warning system" for irregularities and unforeseen consequences, e.g., cases of oversupply, etc. In addition, detailed knowledge of the occupation composition of the inventory of federal skilled worker applications, while not a perfect indicator of sufficient supply to meet projected labor market demand, nevertheless provides an indication of whether there are sufficient applications to provide steady admissions for years.
- ***Foreign Qualification Recognition (FQR) target occupations***—Consideration is given to occupations that have been identified as target occupations under the "Pan-Canadian Framework for the Assessment and Recognition of Foreign Qualifications," a joint initiative developed by the federal, provincial, and territorial governments.
- ***Application of "sensitivity" criteria***—This factor considers the question of whether immigrants are a logical source of labor for responding to short- to medium-term demand in particular occupations. For example, certain occupations that are deemed to be in demand require significant experience and knowledge of the

Canadian context (e.g., senior government managers and officials), which would be unreasonable to expect from new arrivals to Canada. This factor is an acknowledgment that the COPS projections around excess demand do not presuppose that all of these needs can be met through immigration.

- **Occupational match rate (in regulated occupations)**—Another factor considered is the likelihood that a foreign-trained applicant in a given regulated occupation will find work in his or her profession, as explored in Statistics Canada’s report, *Immigrants Working in Regulated Occupations* (February 2010).

This methodology recognizes that shortages cannot be measured very well with top-down national statistical data, which must be supplemented with bottom-up data from the PTs, stakeholders, and the public. The methodology is constantly being improved with experience, better data, and specific occupational knowledge. As demonstrated in Chapter 4, the U.K.’s Migration Advisory Committee has developed a similar, though more formal, top-down, bottom-up methodology for determining the sensibility of using immigration to fill skilled occupational shortages.

Economic conditions of Canadian immigrants

As noted, Canada’s economic immigration selection system emphasizes the fit between immigrants’ characteristics and the economy. The better this fit, the faster immigrants will find employment that matches their qualifications. A good fit is a plus-sum process, benefiting both the immigrants and the country’s economy. Canada therefore has focused on developing criteria and processes, including the points system, to select economic immigrants most likely to succeed in the economy.

Because of data and methodological limitations, however, it is not always possible to pinpoint why immigrants have trouble adjusting, as was the case in the deterioration of immigrant earnings and employment conditions during the 1980s and 1990s.

Waslander, for example, found that males arriving in Canada between 1976 and 1978 had annual average earnings of C\$25,000 two to four years later; in 1995, by contrast, “a male immigrant who landed two to four years earlier earned only \$13 thousand.”⁴⁶ After a thorough analysis, Waslander concluded that the difference was due to several factors, including the changing ethnic makeup of immigrants, a drop in the returns to foreign education and work experience, and higher unemployment rates. However, much of the decline remained unexplained, though Waslander speculates that it might have been due more to changes in the Canadian labor market than in the characteristics of the new immigrants.⁴⁷

Other studies have found rising poverty rates among immigrants and “a pervasive downward trend in employment rates and earnings of newly arriving immigrants in most origin groups.”⁴⁸ In 1981, for example, immigrant men arriving since 1975 earned 79.6% as much as native-born men, but by 1996 relative earnings had dropped to 60%. For immigrant women the comparable figures were 73.1% and 62.4%.⁴⁹

Like Waslander, Reitz was unable to explain all of the deterioration in immigrants' employment and earnings. However, since education differences accounted for a large part of this decline, Reitz speculates that, even though Canada's points system selected immigrants with higher education levels, this education advantage was more than offset by dramatic improvements in *native* education.⁵⁰

As will be detailed in Chapter 2, some experts believe Canada's pre-2002 immigrant selection criteria, especially the de-emphasis on labor market demand, was an important factor in Canadian economic immigrants' worsening conditions absolutely and relative to their Australian counterparts. Later research shows that recent immigrants continue to underperform relative to Canadian natives, but also tend to narrow the performance gaps over time.⁵¹

To provide more complete and timely information on immigrant labor market experiences, Statistics Canada added questions to the January 2006 *Labour Force Survey* to identify immigrants. Jason Gilmore's 2007 study, based on these new questions, found that, while the Canadian labor market performance indicators were the strongest in 30 years, with record low unemployment rates and record high employment rates, most recent immigrants did not fare very well, though their conditions improved with time for men, but not for women. This survey found, for example, that immigrants who had been in Canada for less than five years had an unemployment rate twice that of natives, while immigrants who had been in Canada more than 10 years had rates similar to natives. There also were strong geographical differences: Immigrants in Alberta benefited from its strong labor market in 2000, while those in Quebec, with a less robust labor market, had more trouble. Women immigrants aged 25 to 54 also had higher unemployment and lower employment rates than native men or women in this age group regardless of how long they had been in Canada. Finally, the 2006 study found that, while unemployment rates declined progressively at higher levels of education for natives, immigrants living in Canada for five years or less had higher unemployment rates than natives regardless of education levels.

A follow-up report found similar results in 2007 and confirmed that the labor market differences between immigrants and natives became less pronounced the longer immigrants remained in Canada.⁵² The most notable exception was for African-born immigrants, whose labor market outcomes still trailed those of natives after 10 years.

The follow-up report found that immigrants' employment growth between 2000 and 2007 did not keep pace with their population growth, while native employment growth was more than twice their population growth, causing the native-immigrant gap to widen. Moreover, the 2007 immigrant unemployment rate rose slightly (by 0.1% to 6.6%), while the native unemployment rate fell 0.3% to 4.6%. These problems for recent Canadian immigrants were confirmed by longitudinal data, discussed in Chapter 2, which found progressively lower earnings and other labor market outcomes for successive cohorts of Canadian immigrants.⁵³

A 2010 CIC report summarizing the research on the reasons for the decline confirmed that, although skilled immigrants' earnings were higher than those of the less

skilled and increased the longer they were in Canada, their earnings had been declining absolutely and relative to natives since the 1980s.⁵⁴

The CIC's 2010 survey concluded that 40% of the decline was due to local labor market conditions and the other 60% to immigrants' human capital, including:

- the level of communications skills in English and French—this was an especially important requirement for university-educated immigrants
- declining returns to foreign education relative to Canadian education
- Canadian work experience—the return to foreign work experience had declined to zero⁵⁵

Research using longitudinal data also found that the countries of origin were significant sources of the declines, but that it was hard to disentangle the effects of source countries from human capital characteristics because of the lack of objective measures of language skills and educational achievement (as opposed to schooling) levels.

In June 2002 the CIC made a number of changes in its selection criteria for skilled workers designed to improve their labor market integration. These changes, together with more robust labor market conditions, improved immigrant labor force participation rates, which in 2008 were similar to or higher than those of the Canadian-born workers. According to the 2008 *Labour Force Survey*, immigrants with five years or less of permanent Canadian residency were only slightly less likely (68%) to participate in the labor force than the Canadian-born (70%). There was, however, a significant gender gap; among recent immigrants, men had much higher participation rates than women. Immigrants with more than 10 years of residence in Canada have smaller participation rates, reflecting the older age distribution of this group. Controlling for age (e.g., considering only those age 25–54), immigrants with 10 years' residence or more had participation rates of 86%, only slightly less than the Canadian-born (88%).

In 2006, according to the Organization for Economic Cooperation and Development (OECD), Canada also had a lower unemployment rate (7%) for the foreign-born aged 15–64 than other OECD countries except Australia (4.7%) and the United States (4.4%).

Emigration

Some analysts believe Canadian immigration policy objectives are nullified by heavy outmigration, especially to the United States, but also to other countries, including Hong Kong. DeVoretz, for example, argues that competition for skilled immigrants "...and the fact that immigrants ultimately select their destination country... imply a limited scope for Canadian immigrant selection policy as a national development tool."⁵⁶ Moreover,

Even if a skilled immigrant does choose Canada, the competition does not end, since over 30 percent of Canada's immigrants leave via many new exit doors....

Thus, Canada is not managing skilled immigration flows...it is simply recycling highly skilled immigrants...[to the] rest of the world.⁵⁷

The consequences are high churning costs for Canada while leaving the country “with a mediocre pool of immigrants.” DeVoretz suggests the need for a “more robust” *emigration* policy, including a contingency loan scheme to deter emigration and tax incentives to entice Canadian-born émigrés back to Canada.

DeVoretz raises an important point but does not document his case. It is not clear, for example, that the costs to Canada of its immigration policies outweigh the benefits, even if, as the evidence suggests, the qualifications of those who leave are higher than those who remain.⁵⁸ Whether it would be to Canada’s advantage to repatriate émigrés obviously depends on the costs relative to the benefits of the repatriation. The same calculus should be applied to using immigration to overcome domestic labor shortages, an area where the United States has much to learn from Canada, Australia, and the United Kingdom, which condition the importation of foreign workers on efforts to recruit and train domestic workers as well as evidence of shortages. Clearly, however, emigration should be more thoroughly studied by Canada and other countries.

As noted later, Canadian immigration officials continue to fund research and data to determine the characteristics of successful migrants. At the same time, however, Canadian authorities have continued to fine-tune their economic immigration system to ensure that it promotes the national interest while protecting Canadian workers.

Temporary foreign worker programs

Because of the advanced liberal democracies’ almost universal negative experience with temporary foreign worker programs, Canada approached this issue cautiously. Canadians were well aware of the difficulty in protecting inherently vulnerable TFWs from abuse or preventing their employment from undermining the conditions of domestic workers, especially when the TFWs are recruited by often unscrupulous labor brokers and indentured to particular employers.

Experience also shows that TFW programs usually precipitate illegal immigration when foreign workers overstay their visas and form networks with homeland friends and relatives, thereby creating conduits to accelerate illegal immigration.⁵⁹ Because of their experience in managing immigration, Canadian authorities felt that they could prevent the kinds of widely publicized abuses these programs have experienced in the United States, which has much weaker immigration controls.⁶⁰

The Canadian government therefore has greatly expanded its Temporary Foreign Worker Program, which now is larger and, since 2002, has grown much faster than the permanent Federal Skilled Worker Program. In 2008, for example, Canada admitted 76,964 skilled workers (SWs) and 204,783 TFWs. The number of TFWs increased by 124% between 2002 and 2008 and 26% between 2007 and 2008.⁶¹ The FSWP and TFWs are linked by the ability of TFWs to become permanent residents by acquiring the necessary points for admission, though, as noted below, some TFWs lack the qualifications to become permanent residents.

Foreign students

Canada also admitted 79,509 international students in 2008, who can become permanent residents through education and work experience. Canada allows foreign students in public and selected degree-granting private educational institutions to work on and off campus. Postgraduate foreign students from these institutions can work for up to three years, after which they are encouraged to acquire permanent status. In 2008–09 the CIC issued 18,300 work permits for postgraduate students, 10,400 of which were for off-campus work.

Canadian officials, like those in Australia and the United Kingdom, consider foreign students to be particularly attractive immigrants because they enrich educational institutions with new ideas and cultures and provide well-educated workers who are more likely to succeed because of their familiarity with Canada. Foreign students who pay full tuition and expenses likewise subsidize higher education for Canadian students. And international students boost Canada's high-value-added economic development strategy. As noted, Canadian policies assume increased competition for highly skilled workers in a knowledge-intensive global economy.

The international students program and the Canadian Experience Class illustrate another trend in the Canadian foreign worker programs: the tendency to link temporary and permanent immigration by encouraging at least some TFWs to become permanent residents, a situation that creates some inequities but could improve both the temporary and permanent foreign worker programs.

As noted earlier, with tightening labor markets, Canadian employers pressured the government to increase the number and availability of TFWs for jobs created by the rapid expansion of the energy and resource industries in Western Canada and by the 2010 Olympics in Vancouver. The Canadian government responded by expediting the application processes for TFWs to respond more quickly to employer demands.

The TFWP process

The TFWP is directed primarily at labor shortages that cannot be filled with Canadians who are either qualified or can be trained in a reasonable time. Before they can apply for work permits, employers must first obtain a Labor Market Opinion (LMO) from HRSDC certifying that the employment of foreign workers will not adversely affect Canadian labor markets.

The Immigration and Refugee Protection Regulations (IRPR), which implement the IRPA, also stipulate that, before issuing a work permit, CIC officers must determine, on the basis of the HRSDC's Labor Market Opinion, whether the job offer is genuine and if employment of foreign nationals is likely to have a neutral or positive effect on the Canadian labor market involved. And CIC officers in foreign missions must ensure that the job applicant is qualified to perform the work and intends to leave Canada when the work permit expires.⁶²

The IRPR list six factors HRSDC must consider in issuing LMOs: whether (1) the employer made adequate efforts to recruit or train Canadians (i.e., citizens or permanent

residents) to fill the jobs; (2) the wages offered are consistent with the prevailing regional wages for the occupation, and therefore are sufficient to attract and retain Canadians; (3) the working conditions meet generally accepted standards; (4) the work involved will result in direct job creation, job retention, or the transfer of skills and knowledge for the benefit of Canadians; (5) the TFW is likely to fill a labor shortage; and (6) the hiring of foreign workers will affect a labor dispute or hiring of any Canadian worker involved in such a dispute.

Once HRSDC approves the job offer, it forwards a copy of the LMO to the CIC and the employer, who then sends a copy to the foreign workers, allowing them to apply for work permits from the appropriate CIC visa post outside Canada or, if eligible, at a Canadian port of entry. Prospective foreign workers from more than 50 countries, including the United States, do not have to obtain visas. However, security checks and medical examinations are sometimes required.

Before applying for a TFW work permit, applicants must have a written job offer from an employer, prove that they meet the job requirements, and submit a copy of the LMO. However, a positive LMO does not guarantee applicants' rights to a job. They must also have proof of identity in the form of a valid passport or travel document that enables them to return to the issuing country and, if not a citizen of that country, proof of their immigration status in that country. Spouses or partners and dependent children also must obtain permission to accompany TFWs to Canada.

Pilot projects

Where there are severe shortages, HRSDC has established pilot projects to test ways to increase the labor supply. The earliest of these pilots, the Seasonal Agricultural Workers Program (SAWP), was developed to meet seasonal needs specific to the agricultural sector. This program was developed in cooperation with agricultural employers and a number of foreign countries, including Mexico and several commonwealth Caribbean countries. Because it reveals some of the advantages and disadvantages of seasonal foreign worker programs, the SAWP is discussed at greater length below.

Another pilot, the Construction Recruitment External Workers Service (CREWS), was designed to attract temporary foreign workers in occupations deemed by HRSDC to have severe shortages. CREWS was created in 2001 by the Greater Toronto Home Builders Association under an agreement with HRSDC and CIC to offer two-year visas to foreign workers in specific construction trades. CREWS was extended in 2003 for qualified temporary workers in the following trades: bricklayers, carpenters, cement finishers, construction laborers, form workers, framers, installers, drywallers, and setters.

The Seasonal Agricultural Workers Program

The Caribbean Seasonal Agricultural Program, adopted in 1966 and extended to Mexico in 1973, was considered a good example of the employment of foreign workers who, it was assumed, could be protected by bilateral governmental agreements, agents from the

TFW's home countries stationed in Canada, a labor agreement signed by workers and employers, and a web of protective labor laws and regulations. The SAWP limited the threat of illegal immigration because the TFWs could be counted on to depart at the end of the season, not only because that was the logical end of their employment but also because departure would strengthen the TFW's chances of being rehired. Because the Canadian SAWP is considered to be a model program for seasonal TFWs, it is instructive to examine this program in more depth.

The SAWP, originally the Caribbean pilot project, was based on a memorandum of understanding (MOU) between Canada and Jamaica to import 264 Jamaicans to harvest tobacco in Southern Ontario. The program subsequently expanded to Mexico and other Caribbean countries, as well as to other crops and provinces, though most SAWP workers are employed in Ontario and Quebec and most come from Mexico and Jamaica. In 2005, for example, there were 20,274 SAWP workers, 16,448 employed in Ontario and 2,667 in Quebec; 11,798 of these workers were from Mexico and 5,916 from Jamaica.⁶³

The SAWP was created despite Canada's general reluctance at that time to import less-skilled TFWs even though agricultural employers claimed that reliable supplies of Canadian workers were not available. By reliable, employers meant enough workers to meet their needs, especially at peak planting and harvest times. It was argued that Canadian workers were unwilling to work for low pay and under difficult working conditions because they had better opportunities or because they were unwilling to temporarily relocate. The political credibility of the SAWP nevertheless required employers to obtain LMOs specifying that Canadian workers were not available.

The Mexican and Caribbean workers had fewer opportunities at home and therefore were much more willing to take Canadian agricultural jobs, which could significantly improve their standard of living. Most of the SAWP participants are "named," which means they work in Canadian agriculture year after year.⁶⁴ The SAWP participants' home countries value this program as a source of employment and foreign exchange.

Canadian officials were well aware of the problems associated with the large and controversial Bracero program abandoned by the United States two years before the SAWP was created.⁶⁵

The SAWP sought to guard against these problems with agreements, structures, and managed migration processes to protect foreign and domestic workers. The MOUs upon which the SAWP is based specify that:

- SAWP migrants are restricted to agriculture and cannot displace Canadian workers or reduce their wages and working conditions.
- Foreign workers will be more expensive to employers than comparable Canadians. The cost premium includes the prevailing wage plus the costs of adequate accommodations and part of migrants' travel costs between their home countries and Canada. These requirements are designed both to protect Canadian workers and prevent the SAWP from being mainly a source of cheap labor.
- The SAWP workers should receive "fair and equitable treatment," which is interpreted to mean treating the migrants the same as Canadian workers.⁶⁶

The MOU provides, in addition, for an Employment Agreement (EA), signed by workers and employers, which defines the roles of the parties as well as the source countries' Government Agents (GA), who, among other things, are supposed to be responsible for protecting the SAWP workers' interests.

To receive an LMO, participating SAWP employers must satisfy the following criteria and processes:

- demonstrate good-faith efforts to hire Canadian workers through HRSDC or provincial hiring programs eight weeks before the start of the work
- offer foreign workers the same wages paid to Canadian workers
- pay foreign workers' airfare to and from Canada and their immigration visa cost recovery fees, although part of these costs can be recovered through payroll deductions
- provide free seasonal housing that has been approved by the appropriate municipal or provincial authority
- ensure that foreign workers are covered by workers' compensation and provincial health insurance during their stay in Canada
- sign an employer-employee contract covering the workers' wages and duties, as well as their transportation, accommodations, health care, and occupational safety and health conditions

SAWP workers are recruited by their originating countries, which assist workers with their applications and Canadian work permits.

SAWP employees must have a work permit stipulating the period of employment in Canada, which must be at least 240 hours in a six-week term, but cannot exceed eight months. A TFW under the SAWP is attached to a particular employer and cannot change employers without the approval of an HRSDC officer and the GA. While in Canada the migrant must live in accommodations provided by the employer on its property.

Problems with the Seasonal Agricultural Workers Program

Despite the SAWP's attempts to protect the interests of foreign and Canadian workers, there are a number of imbalances that skew the program against foreign workers. First, the EA is not enforced by the Canadian government and requires the foreign workers to take legal action to redress violations. This enforcement process is of questionable value because of the TFWs' limited resources and uncertain legal standing. Legal action not only might cause workers to lose their jobs and the ability to be "named" in subsequent seasons, but also to be repatriated for "non-compliance, refusal to work, or any other sufficient reason."⁶⁷

As Canadian labor lawyer Veena Verma noted, on the basis of a thorough study of the SAWP,

The vague language of the repatriation provision...allows the employer to arbitrarily remove workers from their property with no formal right of appeal. The implications of the premature repatriation provisions significantly undermine the migrant workers' ability to enforce any rights they may have....[I]f an employer decides to prematurely repatriate a worker, the only option for the worker is to either find employment on another farm through the worker's [GA] and approved by HRSDC, or to go home. It is extremely difficult, as the grower knows, for the worker to attempt any claim for damages for breach of contract in these circumstances.⁶⁸

A second problem with the SAWP is that the migrant's position is weakened by the absence of a path to permanent residency, despite many years of employment in Canada. As a result, these TFWs have permanent inferior legal and civil status in Canada.

A third problem with the SAWP is that the growers are much better represented than the migrant workers. The Foreign Agricultural Resource Management Service (FARMS) is a quasi-public growers' organization that helps administer the SAWP. Once approved by HRSDC, FARMS communicates orders for workers to source countries and maintains reports and statistical data on the program, maintains the only list of participating employers, and tracks the employment of individual migrant workers. FARMS also assists the GAs in mediating disputes between the migrant workers and individual employers. FARMS not only represents employers in policy discussions but also engages in "heated disputes [with the GAs] on the issue of wages and costs of the program to the employer."⁶⁹

The workers, by contrast, have no comparable organization. The liaison agencies for the source countries help administer the program, make policy inputs, resolve disputes, and perform other valuable services, including: "process approved requests for workers; provide worker orientation; inspect accommodations on the farms; investigate conflicts and disputes between workers and between workers and growers. [GAs] also provide general administrative services, such as processing tax returns and Workplace Safety Insurance Board claims."⁷⁰

The GAs' effectiveness is weakened by divided federal-provincial-territorial responsibility for labor matters. The GAs are supposed to interact with provincial officials, but that apparently is not happening: if the GAs believe there is a violation of labor law, they contact HRSDC for assistance, even though labor law is mainly a provincial responsibility.

Despite the GAs' important roles, worker advocacy groups have expressed frustration at the source country consulates' failures to respond to workers' complaints. This gap in services for the TFWs is filled by churches, community organizations, and unions, especially the United Food and Commercial Workers (UFCW), which actively organizes and brings legal action on behalf of agricultural and other migrant workers. The UFCW has opened four Migrant Agricultural Workers Centers in Ontario and one in Quebec, and these often provide services the GAs are supposed to handle.

The GAs' provision of important SAWP protections is further compromised by conflicting responsibilities: They are identified as neutral mediators, and therefore cannot be aggressive worker advocates, but they also must represent their governments' interests, which sometimes conflict with those of the workers. The source governments are interested in maintaining their participation in the program to maximize employment and remittances. Moreover, competition between source countries to supply workers greatly strengthens employers' bargaining power relative to these governments. It seems pretty clear that on balance the Canadian government is more responsive to the growers than to the TFWs. For example, HRSDC contends that "a healthy level of competition is a good thing for the program. The countries are anxious to supply labour to us and be responsive to suggestions that we make. The employer community is well served by that."⁷¹

Verma concludes: "The competitive structure and the [GAs'] interests in retaining placements have the effect of leaving the worker with no independent representation."⁷²

TFWs also have limited protections under Canada's federal and provincial labor and employment laws. The provinces have jurisdiction over occupational safety and health protections. And, despite farming being one of the most dangerous occupations, agricultural workers were excluded from the Occupational Health and Safety Act (OHSA). Ontario gave agricultural workers limited OHSA protections only after the UFCW challenged the constitutionality of their exclusion. Inclusion in OHSA gave agricultural workers the right to be informed about workplace dangers, have health and safety committees with members selected by workers in workplaces with more than five employees, refuse unsafe work, and be free from employer reprisals for exercising their rights. Surprisingly, however, unlike workers in less hazardous industries, agricultural workers do not have the right to be informed about, or trained to deal with, hazardous materials.

Labor relations also are provincial responsibilities, but in most jurisdictions agricultural workers do not have collective bargaining rights. As with the OHSA exclusions, the UFCW challenged the constitutionality of agricultural workers' exclusion from the 1995 Ontario Labour Relations Act. Unfortunately, the Supreme Court of Canada responded by ruling that agricultural workers have the right to form unions, but not to bargain collectively.⁷³ Following this decision Ontario allowed agricultural workers to form "employees' associations," but not trade unions, to negotiate agreements to regulate relations between employers and employees. The UFCW challenged Ontario's response because the exclusion from collective bargaining violates agricultural workers' rights to freedom of association and collective bargaining, internationally recognized fundamental human rights.

SAWP workers likewise have limited access to employment insurance under the federal Employment Insurance Act (EIA), which provides parental and maternity benefits and income support for workers who are temporarily unemployed. Agricultural workers are covered by the EIA's unemployment insurance provision, but, despite the fact that they pay premiums and can accumulate the necessary hours of work to be covered, SAWP workers are unable to collect benefits because they must be repatriated if they become unemployed and therefore cannot meet the EIA requirements of "being available for work

in Canada.” Similarly, SAWP workers ordinarily cannot receive sickness benefits if they have been repatriated because claimants usually must be physically in Canada.

By contrast, claimants for maternal and parental leave need not be physically in Canada, but the child must be born while the principal beneficiaries are working in Canada for them to be eligible. The UFCW has therefore successfully processed thousands of parental leave applications for Mexican SAWP workers.⁷⁴

Another federal program, the Canada Pension Plan (CPP), provides disability and reduced retirement benefits at age 60 or full benefits at age 65. SAWP workers are eligible to participate in this program if they earn C\$3,500 per year. Under international social security agreements SAWP workers may count pension credits in their home countries as periods of contribution to the CPP. And eligible SAWP employees do not have to be in Canada to receive pension benefits.

Addressing the shortcomings in SAWP

Managed TFW programs like Canada’s SAWP have several positive features to protect foreign and domestic workers and minimize illegal immigration, including labor contracts, the MOUs between Canada and the source countries, the source country GAs, legal protections for these workers in Canada, and the TFWs’ eligibility for some benefits available to all Canadian workers.

It is, however, a real stretch to argue that the rights of the TFWs are equal to those of Canadian agricultural workers, who can freely change employers, have access to more benefits and worker protections, cannot be expatriated almost at will and, at least theoretically, have equal political power with their employers. Similarly, expatriation denies SAWP workers realistic access to unemployment compensation, despite the fact that they are required to pay employment insurance premiums. Violations of their legal rights often can be prevented only through formal complaints, which are extremely rare because of the workers’ dependent status and the paucity of independent agents to represent their interests in the workplace or in the larger society.

Employers clearly have superior power relative to the temporary agricultural workers. Competition between source countries strengthens employers’ ability to play one country off against another, and the government views this competition as good for employers and the country, even though it weakens worker protections. Moreover, FARMS cannot be expected to be evenhanded in balancing worker and employer interests, and this bias undoubtedly accounts for the fact that the labor contract, a good thing, is virtually unenforceable, and the wording of the repatriation provision gives employers a fairly free hand, despite language that appears to protect workers’ interests.

Finally, it is a good idea for source countries to provide agents in Canada to protect SAWP workers, but the GAs’ power to achieve that objective is weakened by their conflicting roles as representatives of their countries’ interests in continuing their participation in the program and as mediators in the settlement of disputes where power is heavily tilted toward employers.

The SAWP's defects are to some degree due to the inherent weakness of TFWPs in protecting workers' interests. Because of these workers' indentured status and lack of a path to permanent residence and citizenship, it is hard for them to acquire enough power to counterbalance employers' inherent strength, though unions like the UFCW and interested community-based organizations attempt to fill the representation gap. One solution would be to enable these workers to join independent democratic labor organizations to represent their interests at work and in the larger society. Unfortunately, this internationally recognized human right is rarely available to SAWP workers. Another solution would be to amend the SAWP's structure and processes to better protect temporary foreign agricultural workers while they are in Canada.

Verma makes some persuasive recommendations designed to achieve this objective, including:

- Strengthen the ability of GAs to interface with provinces, as well as the federal government.
- Provide information to SAWP workers about where they can file complaints and the nongovernmental organizations that can help them, including the Migrant Worker Center and unions like the UFCW.
- Create more satellite service center liaison offices closer to farm worker communities.
- Amend the MOUs' operational guidelines to clarify the government agents' main role as an advocate for workers' interests.
- Clarify the repatriation provision to limit employers' ability to arbitrarily terminate and repatriate SAWP migrants and make it clear that the TFWs' refusal to accept unsafe work cannot be a cause for termination.
- Minimize arbitrary repatriation by providing at least a two-week waiting period. Workers should not be repatriated while legitimate complaints, as determined by an independent body, are pending. During this period, workers should be allowed to work for other participating employers.
- Ensure procedural fairness in enforcing various contractual and legal rights, including a timely and fair dispute settlement process paid for by the government.
- Strengthen migrant workers' rights to select representatives to protect their interests, as well as provide feedback to the GAs and the sending countries on working and living conditions and provide annual reviews of the SAWP to the Canadian government.
- Strengthen occupational health and safety enforcement by ensuring that termination or other reprisals will not result from workers' refusal of unsafe work, training GAs in OHS matters, regularly reporting health and safety matters to the GAs and publicizing OHS complaints, as well as government responses to those complaints.

Many of the changes to protect SAWP workers are equally applicable to other TFWs, whose numbers have escalated greatly since the SAWP and live-in caregiver programs were established in the 1960s.

Live-in caregivers

The live-in domestic caregivers program, like the SAWP, at first was largely for Caribbean TFWs, whose employment was for one year, later extended to two, and then three. The growth of women's employment outside the home, the reluctance of Canadians to accept menial domestic jobs, and employers' preference for TFWs caused a rising demand for foreign live-in caregivers. However, the live-in caregivers (LIC) program was problematic from the beginning because the largely female domestic workforce is clearly vulnerable to abuse, and these jobs ordinarily are neither temporary nor seasonal. Complaints about abuse therefore caused gradual improvements: As mentioned, the period of employment was extended to two years and then to three and, unlike the SAWP workers, the LICs are eligible for permanent residency if they work two years in a three-year period. Permanent residency causes workers to gain mobility, but before they attain that status, LICs become even more vulnerable to abuse because of employers' power to determine whether or not they qualify for permanent residency.

The Non-Immigrant Employment Authorization Program

Before the 1970s, Canadian TFWs were limited to the SAWP, the LIC program, and special temporary work permits for highly skilled foreign workers. During the 1970s, however, continuous pressures from employers for TFWs (skilled and less skilled) caused Canada to adopt the Non-Immigrant Employment Authorization Program. Although it was subsequently modified, the NIEAP, created in 1973, was based on SAWP and LIC experience and established the basic features of Canada's general TFWs: migrants were restricted to particular employers; could not apply for work permits from within Canada (to minimize chances of overstaying their visas); had to acquire work permits that stipulated their occupations, residences, and lengths and times of employment; and had to obtain written permission from immigration officials to change employers or conditions of work. Employers of TFWs also had to receive LMOs that, among other things, required employers to advertise in Canadian labor markets and pay prevailing wages. The TFWs were required to secure visas from CIC visa officers, who had to document that applicants were temporary workers who would leave at the end of their terms.

Acceleration of temporary foreign workers and programs

Beginning with the NIEAP, the TFWP began to change into a program with highly skilled streams for Canadian NOC levels A and B (education and training above high school) and less-skilled NOC levels C and D (high school or less and on-the-job training). TFW flows increased during the 1990s and were accelerated by the IRPA of 2002 and its implementing regulations, IRPR, which gave the Minister of Citizenship and

Immigration broad authority to designate temporary foreign work as necessary for the competitiveness of the Canadian economy.

By 2009 the combination of escalating demand for foreign workers resulting from robust Canadian economic development, the large backlog and long delays (over six years) in approving permanent worker applications, and the CIC minister's broad authority to approve TFWPs resulted in a rapid increase in TFWs in the following categories, each of which had different worker entitlements and requirements: academics, seasonal agricultural workers, film and entertainment workers, information technology workers, live-in caregivers (with separate programs for Canada and British Columbia), low-skilled occupations requiring at most a high school diploma or job-specific training, oil and construction workers in Alberta, and international student graduates from approved postsecondary Canadian institutions.⁷⁵ There also was a proliferation of TFW programs that do not require LMOs or work permits. In 2007, for example, 45% of the TFWs admitted to Canada did not require LMOs.⁷⁶

The largest group of TFWs admitted without work permits were business visitors (intra-company transfers) employed by foreign companies in Canada for up to two years. There are, in addition, 20 categories of special foreign workers who are not required to have work permits, including foreign officials, performing artists with limited engagements, journalists employed by foreign news companies to report on Canada, and religious ministers. In addition, the IRPR allows work permits to be issued directly to some foreign nationals without the necessity of LMOs. These permits include work authorized by international trade agreements, which complement Canada's immigration policies.

A 1997 agreement with the Software Human Resources Council developed a separate TFWP stream for the software industry which replaced the LMO process with a national confirmation letter recognizing seven software occupations that could not be filled with Canadians. TFWs who qualify for these occupations can receive work permits directly from CIC visa officers.

In 1998 Canada enabled the spouses or partners of skilled TFWs (NOC A, B, and skilled trades people) to work without a confirmed job offer or LMO.⁷⁷ In 2009 Alberta and Ontario authorized open work permits to dependent children of skilled TFWs.

These changes produced a dramatic increase in the number of TFWs, from 97,500 in 1983 to 302,300 in 2007, on the eve of the global recession.⁷⁸ The number of TFWs increased particularly rapidly in Alberta, where the number of entries more than tripled between 2004 and 2008, from 10,572 to 39,177; the number of TFWs almost doubled (from 24,222 to 46,955) in British Columbia during these years.⁷⁹

Low-skilled TFWs

Most of the TFWs admitted since the 1990s were in the skilled categories discussed above, but there also were dramatic increases in the number and proportion of low-skilled workers (NOC levels C and D, high school and less, or on-the-job training). TFWs with skill level C increased from 8,588 in 1998 to 19,866 in 2007; skill level D

TFWs increased from 750 to 8,473, while the share of TFWs in levels C and D rose from 14% to 30% for males and from 30% to 63% for females.⁸⁰

The move toward low-skilled TFWs likewise caused a shift in source countries: Over two-thirds of high-skilled TFWs were from Europe and the United States, while 59% of migrants from the Asia Pacific region and 85% from the Americas (except the United States) were in low-skilled occupations.⁸¹

Historically, high-skilled TFWs were preferred by Canadian officials for permanent residency and were encouraged to bring their families with them, while this practice was discouraged for low-skilled TFWs, whose spouses and children, unlike those of the high-skilled TFWs, were not given automatic open work visas. The low-skilled TFWs also were less able to pay for the transportation and support of their families in Canada, causing family separation to be problematic for the LICs and other non-seasonal low-skilled TFWs.

The Low-Skilled Pilot Project

The Low-Skilled Pilot Project (LSPP) was introduced in 2002 in response to persistent employer demands for low-skilled TFWs that could not be met through regular TFW processes. The LSPP operated alongside the SAW and LIC programs. To prevent damage to domestic workers and labor markets, the LSPP stipulated that TFWs were to be admitted only for jobs that could not be filled by Canadians and imposed a number of safeguards, including advertising for domestic workers and prevailing wage requirements. Employers also must pay travel costs for the principal workers, but the TFWs must pay travel costs for their dependents, who usually do not receive open work permits and are not eligible for permanent residencies through the Canadian Experience Class.

Low-skilled TFWs' best chance for permanent status is through the Provincial Nominee Program introduced in 1996, which requires employer nominations for permanent residency. The PNP requires LMOs, whereby HRSDC requires employers to demonstrate efforts to recruit Canadian youths, aboriginal people, recent immigrants, and people living in high-unemployment areas; sign employer-employee contracts; cover all recruitment costs; help the TFWs find suitable accommodations; pay airfare to and from the TFWs' home countries; provide medical coverage until the TFWs are eligible for provincial health insurance; and register the TFW with the appropriate provincial worker compensation/workplace safety insurance plans.⁸²

After 2006, a number of measures were adopted to enable the TFWP to more effectively meet employer needs, including the establishment of TFW units in major cities to help employers obtain LMOs and employment authorizations; and federal-provincial TFW working groups in Alberta and British Columbia to help meet employers' urgent labor needs. The latter involved the compilation of regional occupation lists (ROLs) of occupations "under pressure," where demand was high relative to supply, as determined by the methodology discussed above, and employers' obligations to recruit Canadians were reduced.

In 2007 the LSPP's name was changed to Pilot Project for Occupations Requiring Lower Levels of Formal Training. At the same time the low-skilled TFW work permits were extended to two years, and an expedited LMO pilot was introduced allowing eligible employers to hire TFWs in 12 occupations (extended to 28 in 2008) on an expedited basis.

Regional lists of occupations under pressure

As noted, HRSDC introduced the Regional Occupation Lists to facilitate the employment of temporary workers for jobs with certified labor shortages. The ROLs expedited the hiring of workers for occupations considered to be "under stress" in the provinces and territories, and the lists are posted on HRSDC's Foreign Worker Program's website. In hiring workers from this list, employers first advertise for Canadians for a briefer period than the usual two-to-three weeks. Employers hiring from ROLs must either advertise on the Government of Canada's Job Bank (or equivalent in the provinces and territories) for seven calendar days or else demonstrate that they have used appropriate alternative websites. Employers recruiting for less-skilled NOC occupations C or D must meet both conditions. Employers using the ROLs must still satisfy all other Foreign Worker Program criteria.

Critiques of the Temporary Foreign Worker Program

The rapid expansion of TFWs, especially those in the low-skilled stream, caused numerous problems for these programs, which elicited strong critical evaluations from a number of sources, including unions, academics, a standing committee of the House of Commons, and the Auditor General of Canada. An examination of these evaluations, along with their recommendations for improvement, deepens our understanding of these programs.

Union criticisms of the TFWP

As the number of TFWs multiplied and worker protections were relaxed, there was a rising chorus by community groups, academics, and, especially, local and national unions of charges of abuse.

Canadian unions generally accept the need for foreign worker programs to fill real shortages, but fault the Canadian immigration system for failing to adequately protect temporary foreign workers from abuse, paying too little attention to the requirement that employers hire and train Canadians first, and placing too much emphasis on higher education in the points system and too little on experience and skilled-trades training programs.⁸³ Union leaders also fear that employers' preference for temporary foreign workers will allow them to displace Canadians, reduce wages, and undermine working conditions. Because temporary foreign workers often are not adequately trained in

either their occupations or safety and health regulations and procedures, union officials were especially concerned about their vulnerability to accidents and health hazards.

A 2008 submission to the House of Commons Standing Committee on Citizenship and Immigration by an Alberta local of the International Brotherhood of Electrical Workers (AIBEW) expressed some common union concerns about the rapid growth of TFWs: Their number tripled in Alberta between 1997 and 2009 and, in 2006, exceeded the number of permanent immigrants for the first time.⁸⁴ Indeed, according to the AIBEW submission, in 2006 Canada had more “guest workers” than the United States. Local leaders were concerned about the qualifications and safety training of these workers, citing specific cases of TFW injuries and fatalities. The local’s leaders acknowledged the need for foreign workers, but thought there would be enough Canadian electricians over the 2008–13 period “to deal with upcoming construction.” They believed there should be much greater emphasis on training Canadians, especially through the apprenticeship system, and on recruiting underemployed youth, Aborigines, women, and workers with disabilities.

These leaders thought, in addition, that the Canadian “points system should be adjusted to recognize prior learning in a range of occupations. This would allow workers of various skill levels to immigrate to Canada, and become long-term contributors to our society.”⁸⁵ They concluded that:

Perhaps the best evidence for qualified trades’ people would be to allow work permits from the United States [under the North American Free Trade Agreement (NAFTA)]. In general they have similar building codes and practices, would have no language barriers, and use similar training systems. In the past Canadians have worked in the United States on a work visa program. With the United States being our largest trading partner and with their economy slipping we could provide much needed job opportunities. Should the need for temporary workers be recognized...this would be our first choice.

In addition to the advantages listed, these IBEW leaders might have added that U.S. and Canadian electricians are in the same international union. The Alberta local’s recommendations on this point would require amending NAFTA, which provides for temporary visas in the U.S., Canada, and Mexico for intra-company transferees of entrepreneurial business, investors, and professional workers, but not for the skilled trades.

The Alberta unions, like many labor and immigration experts, also feared that temporary workers would be exploited because their dependence on particular employers made them reluctant to complain about abuses.

These concerns led the Alberta Federation of Labour (AFL) to create an Advocate Project to assist temporary foreign workers. This project uncovered extensive abuses, including “poor wages and working conditions, trade certificate issues, illegal fees from brokers (between \$3,000 and \$10,000) [and] inaccurate citizenship promises.”⁸⁶ In response to these findings the Alberta Minister for Employment, Immigration, and

Industry admitted, “[W]e don’t know how to protect [TFWs] because we don’t even know who they are.”⁸⁷

The AIBEW recommended:⁸⁸

- allowing TFWs with two years’ employment within a three-year period to apply for permanent residency, as is currently done for live-in caregivers
- allowing TFWs to work for any qualified employer
- prohibiting employers or brokers from charging TFWs fees
- making employers’ housing obligations explicit
- requiring employers in the certified trades to provide proof of efforts to train domestic apprentices before being issued LMOs
- requiring, as part of the LMO approval process, that employers in certified trade occupations provide education, training, and language support for TFWs

In connection with a 2010 reevaluation of the TFWP by the provincial government, the Alberta Federation of Labour mounted a vigorous campaign to reform that program. The AFL wanted the provincial government “to play a more positive role in fixing what we think is a broken system.” Although the AFL’s president noted that since the TFW was a federal program “there is only so much the province can do,” he thought it was encouraging that the provincial government “is taking a second look at the [TFWP]... because it demonstrates that we’re not the only ones concerned that the program isn’t working in the broader interests of Canadians.”⁸⁹

The Canadian Labour Congress (Canada’s largest labor federation) at its 2008 convention called on the federal government to replace the TFWP with a comprehensive expanded permanent immigration program, halt the expedited LMO process, ban labor brokers and recruitment agencies, revoke LMOs for employers found to have exploited workers, establish more effective enforcement of labor standards aimed at protecting TFWs from labor brokers and employers, and eliminate work permits that tie TFWs to specific employers.⁹⁰

Academic evaluation

One of the most extensive scholarly studies of TFWP was by Fudge and MacPhail, who present the following assessments of three major mechanisms and regulations designed to protect TFWs:

1. The *employment contract* is of some value when employers voluntarily comply with its terms, and it is used by HRSDC officers in forming their LMOs. But, as noted in our discussion of the Seasonal Agricultural Workers’ Program, the contract heavily tilted toward employers, not enforced by governments, and virtually unenforceable by TFWs and their supporters. Indeed, the British Columbia Labour Relations Board characterized these contracts as “unenforceable application

forms.” Fudge and MacPhail conclude “The employment contract’s function is mostly symbolic...”⁹¹

2. Provincial *employment standards* cover all forms of labor law except for the federal employment insurance program. As noted earlier, the provinces generally exclude agricultural workers from collective bargaining coverage. Most provincial employment standards branches are “understaffed and under-resourced and...rely on employees to initiate complaints” for enforcement.⁹² According to Fudge and MacPhail, a spokeswoman for the Alberta Employment Immigration and Industry Department admitted that the provincial government does not monitor TFWs “because the bureaucracy on that one would be crazy,” but she admitted that the government recognized that there is a “real disincentive” for temporary workers to lodge complaints.⁹³
3. The proliferation of *recruitment agencies*, or labor brokers, has been one of the inevitable consequences of a rapid expansion of temporary foreign worker programs, particularly those with low levels of formal training. These agencies can perform valuable services because recruiting workers in their home countries and processing the paperwork to bring them to employers in receiving countries can be a long and complicated process, best done by specialists.⁹⁴

Unfortunately, the recruitment agencies are responsible for some of the worst and most pervasive worker abuses in the international labor market. These abuses persist because it is hard to regulate international labor brokers, especially when they are dealing with vulnerable foreign workers and employers who become highly dependent on them. Even where they are prohibited by law from doing so, recruiters often charge the TFWs exorbitant fees for finding jobs in addition to the fees they charge employers for recruiting workers. Even though it too is illegal, employers frequently find direct and indirect ways to deduct these fees from workers’ wages. There is international evidence that foreign workers often mortgage their homes or other assets to pay the recruiters’ fees and spend most of their time in Canada or other host countries working to pay off those debts. The Alberta Federation of Labour’s TFW advocate found that, “Brokers commonly charge TFWs thousands of dollars for their services, and often mislead the workers about immigration prospects, the nature of the work and other matters.”⁹⁵

Fudge and MacPhail concluded with respect to the TFWP that the “LMOs appear to be a formal rather than a substantive requirement.” Moreover, given the record of problems with the program, “it is not possible simply to assume either that employers are paying the prevailing rate or that they are not able to pass on the costs to workers. The fact that wages...in Alberta and British Columbia had not increased more than the wages in other occupations [despite the strong increase in demand] suggests that the low-skilled streams of the TFWP operate as a device to regulate the Canadian labor market by lowering wages and conditions of employment.”⁹⁶ Moreover, without adequate protections, “the effect of the low-skilled TFWP is to fragment and

segment the labor market by providing a pool of unfree workers.”⁹⁷ And “[t]he actual and potential exploitation of low-skilled [TFWs] undermines the legitimacy of the program both within and outside of Canada.... Currently the low-skilled TFWP represents an extreme version of labor flexibility; it provides employers with a pool of unfree workers who are disposable at will and with, until recently, little political cost to the federal or provincial governments.”⁹⁸

Government responses

The Canadian government’s initial response to these charges was to emphasize that the provinces were responsible for adopting and enforcing labor standards. In 2007, however, the Minister of Human Resources and Social Development conceded that the federal government had some responsibility for protecting TFWs and listed a number of measures designed to protect these workers, including MOUs with provincial governments to improve cooperation on labor standards, IRPA amendments to prevent the abuse and exploitation of TFWs, a mechanism to monitor employer compliance with TFWP terms and conditions, and formal processes to address non-compliance.⁹⁹

The critical reviews and the federal government’s response also led to provincial actions to protect TFWs. In Alberta, enforcement staff was added, a dedicated hotline was created for TFWs and their employers, and two advisory offices were opened to deal with TFW employment problems. “Most significantly, the labor standards branch conducted 290 worksite visits between December 1, 2007 and August 31, 2008” and “received 246 complaints from [TFWs]; the most common disputes involved wages, overtime, and general holiday pay.”¹⁰⁰

In a widely publicized case, Alberta’s provincial authorities discovered, while investigating the death of two Alberta tar sands temporary construction migrants, that the employment agency responsible for them had failed to pay 132 Chinese workers between April and July 2007. After investigating the death of the two workers, the Alberta government charged Horizon Oil Sands with 53 violations. In a revealing response to these developments, Alberta’s Minister of Employment and Immigration said, “[S]ome abuse of foreigners working temporarily in Alberta is unavoidable because of conditions in their home countries.”¹⁰¹

Manitoba has acquired a reputation for more forcefully protecting TFWs. The 2009 Manitoba Worker Recruitment and Protection Act requires the registration of TFW employers. And the MOU between Manitoba and the federal government provided that unregistered employers would be unable to obtain LMOs from HRSDC and provided for fines of as high as C\$50,000 for recruiting foreign workers without registration. Because of the division of responsibility for labor protections between the federal and provincial governments, this kind of coordination is required to strengthen the protection of TFWs.

There seems to be a consensus among experts that the effective regulation of international recruiting agencies requires cooperation between the sending and receiving countries. Based on this assumption and evidence from the Canadian Seasonal

Agricultural Workers and Live-in Caregivers programs, several Canadian provinces have consummated memoranda of understanding with the Philippine government, one of the largest source countries for Canadian TFWs. These MOUs are designed to protect low-skilled TFWs from abuses by recruiters and employers. The MOU between the Philippines and British Columbia requires that recruiting agencies be licensed, employers pay all recruiting and hiring costs, recruiting agencies provide TFWs with a written offer of employment setting out minimum employment standards, and recruiting agencies conduct mandatory orientation sessions with the Filipino TFWs concerning their terms of employment. Although these MOUs are not legally binding, the Philippines Overseas Office in Toronto is allowed to monitor TFWs hired pursuant to the MOUs to ensure their “protection and welfare” under provincial and Canadian law.¹⁰²

Standing Committee on Citizenship and Immigration recommendations

An investigation of TFWPs by the Canadian House of Commons’ Standing Committee on Citizenship and Immigration confirmed the findings by academics, unions, and migrant advocates with respect to the TFWP’s problems and proposed actions the federal government should take to fix those problems.

The committee confirmed the pervasive abuse by recruiting agencies, including testimony that these agencies:

- *charg[ed] workers a fee to bring them to Canada for nonexistent jobs, or for jobs from which they are laid off shortly after arrival;*
- *exaggerat[ed] the amount workers can expect to earn in Canada, sometimes grossly;*
- *provid[ed] translations of contracts that are inconsistent with the original English or French version in describing work and other details of employment;*
- *[gave] incorrect information about opportunities to obtain permanent resident status once in Canada;*
- *charg[ed] workers unconscionable fees for extra services, such as obtaining an extension of their work permit, transportation, housing, document translation or interpretation services;*
- *provid[ed] inaccurate advice about the possibility of family reunification in Canada, workplace standards and rights, language training, or other training or upgrading opportunities; or*
- *requir[ed] workers to change employers because the recruiter received a better offer from another employer.¹⁰³*

Despite laudable efforts by some provinces to protect TFWs, the standing committee received evidence that recruiters could circumvent provincial regulations by incorporating in another province or a foreign country. There also was evidence of lax law enforcement by provincial authorities. For example, a UFCW witness “even provided

the name of a recruitment agency that he claimed was blatantly violating provincial recruiter regulations... apparently without repercussion.”¹⁰⁴

In view of the inherent limitations of provincial recruiting agency regulations, the standing committee concluded that “the federal government needs to take steps to stop these practices.”¹⁰⁵

The committee recommended that the federal government provide better information to all parties about the laws protecting TFWs and regulating recruiting agencies and concluded that “making better use of existing legal provisions are solutions that respect provincial jurisdiction and have the potential to reduce worker vulnerability.”¹⁰⁶

The committee “...recommends that the government take all necessary steps to inform workers abroad of the legal provisions regarding recruiters in the province in question” and provide employers “the information they need to make a responsible decision in engaging a recruitment agency,” including:

- *A warning about unscrupulous recruitment agencies and descriptions of their shady practices in which they engage;*
- *Information about countries in which such problems are particularly acute;*
- *A statement of best practices against which an employer may judge the practices of a recruitment agency the employer is considering engaging; and*
- *Information about employers’ or employees’ liability for fees charged by recruitment agencies to the workers it places.*¹⁰⁷

It is especially important, according to the standing committee, that employers and recruiting agencies understand the prohibitions on the common practice of withholding TFW’s personal documents, particularly their passports and health cards.

The committee recognized that more than information and education are required to protect TFWs: Illegal conduct must be more aggressively prosecuted, and existing laws should be more vigorously enforced. For example, the IRPA makes it illegal to “knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception, or use or threat of force or coercion.” The use of “fraud or deception” appears to be a common practice by recruiting agencies and in Canada carries a fairly stiff penalty of a fine of “up to \$1 million or life imprisonment or both.”¹⁰⁸

Recruitment agencies also would be prosecuted under the Canadian Criminal Code, which prohibits human trafficking and provides a penalty of 10 years in prison for benefiting from trafficking. The Criminal Code provides a number of generic provisions that the standing committee believed:

could be used to prosecute specific forms of exploitation and abuse. These include offences such as fraudulent documentation, physical harm, abduction and confinement, intimidation, conspiracy, and organized crime.

Even [in] cases that do not involve physical harm, a criminal or immigration offence could be made out if the worker’s decision to come to Canada is based on the recruiter’s deception about conditions and opportunities that

*await the worker in Canada, or fear of threats posed to the worker or his or her family if they are unable to pay back debts incurred to come to Canada at the hands of a loan shark.*¹⁰⁹

The standing committee called attention to another major defect in Canadian worker protection legislation: the reliance on worker complaints for enforcement, a particularly problematic requirement for vulnerable TFWs who (as noted in our discussion of the SAW and LIC programs) risk repatriation for complaining about abuses.

The committee applauded advocacy services like those provided by the Alberta Federation of Labor, but argued that the federal government had “a role to play in employer monitoring and compliance in the context of the temporary foreign worker processes.”¹¹⁰ Since the TFWP was established by the federal government, it “has a continuing responsibility to ensure that the program is functioning properly.” The committee therefore recommended federal “monitoring teams to perform unannounced spot checks of working and housing conditions on [TFW] job sites. Visits of the monitoring team could be requested through a 1-800 number or via the internet.”¹¹¹ The federal government could report infractions to appropriate provincial authorities and place stays on removals of TFWs involved in ongoing investigations.

The standing committee had a number of recommendations to strengthen the penalties for employers “who systematically or egregiously violate provincial labour standards or the terms of an employment agreement,” including denying such employers access to TFWs for at least one year and for five years in “repeated or egregious cases.”¹¹²

Other committee recommendations included: exempting TFWs and their employers from contributing to employment insurance for which they were unlikely to receive benefits, removing the requirement that individuals with certain work permits live with or on the premises of the employer, and including a housing section on the hiring permit (which the committee recommended replace the LMO) application.

Other changes recommended by the standing committee were designed to refocus the TFWP on seasonal and truly temporary workers instead of long-term labor needs for which employers preferred immigrants. The number of TFWs had skyrocketed because of rising employer demand, the huge backlog of applications for permanent residence, and the points system’s focus on skilled workers.

Because of the TFWP’s inherent problems, the committee noted “widespread agreement that permanent immigration was more desirable...than using increasing numbers of temporary workers.”¹¹³

The committee noted, in addition, that the use of TFWs was only one way to resolve labor shortages; others included “improving the economic integration of immigrants and others on the margins of economic participation,” improving the operation of labor markets, training, and improved productivity.¹¹⁴ The danger in the easy access to TFWs was that migration would be substituted for activities like training and education that could be more important for national welfare. As will be demonstrated in Chapter 4, the United Kingdom has developed processes that force employers and the government to consider these alternatives before resorting to immigration.

Although the standing committee believed the TFWP should be refocused on its former role of importing temporary workers for seasonal and truly short-term jobs, until this refocusing is accomplished and the permanent residency applications backlog is reduced, the government should follow the committee's other recommendations to improve the TFWP by:¹¹⁵

- creating a TFW advisory board with “a broad mandate, including on-going monitoring, oversight, and review of the [TFWP]”
- “giving all TFWs the opportunity to apply for [permanent residence] status (modeled after the LIC program), an opportunity currently possible only through the PNP, CEC, and LIC programs”
- mandating that the TFW advisory board include family separation in its monitoring because low-skilled TFWs do not have the same opportunities as their skilled counterparts to bring their immediate family members with them
- making all TFWs' immediate family members eligible for open work permits, currently available only to those in the skilled stream
- working with the provinces to develop *bona fide* labor shortage lists and publicize these lists along with public comments about them; substitute a “hiring permit” for the LMO when employers apply for workers whose occupations are on the labor shortage lists
- “...disclos[ing] the method of arriving at each [prevailing wage] rate, including the statistics relied upon” to address widespread dissatisfaction with the way prevailing wages are calculated
- “discontinu[ing] making work permits of [TFWs] employer-specific and...mak[ing] such permits sector- and province-specific,” while permitting original employers to recover “the recruitment and associated costs from subsequent employers...on a pro-rated basis”
- creating a pool of funds for the emergency support of unemployed TFWs by levying a fee on employers in connection with hiring permits

The Auditor General's report

Because of its emphasis on immigration, the Canadian government provides for high-level administration by two cabinet departments and attention from other government agencies and officials as well as the provincial and territorial governments. Canadian authorities also require an annual report to Parliament by CIC's minister and periodic audits by the Auditor General of Canada (AGC). This unusual level of attention and transparency provides considerable data on the operation of Canada's foreign worker programs and promotes continuous improvement.

The AGC reports to the Canadian Parliament in 2000 and 2009 were generally thorough and objective and therefore help CIC, HRSDC, Parliament, and the public

understand the strengths and weaknesses of these important programs. These reports enable program improvements (for example an appendix to the 2009 report summarizes CIC's responses to AGC's recommendations) and, together with the CIC's research agenda and public review processes, contribute to Canadians' generally favorable opinion of their immigration system—in marked contrast to Americans' general displeasure with their more opaque and chaotic immigration policies and programs.¹¹⁶

The Canadian Experience Class Program

The 2009 AGC report praised the CIC for its “sound decision-making process” in designing the 2008 Canadian Experience Class (CEC), which improved the processes used to acquire highly skilled permanent residents. As noted earlier, the CEC was based on studies commissioned by the CIC which indicated that skilled workers with Canadian experience do better as permanent residents than those without it.¹¹⁷ Canadian experience was acquired mainly by serving in the skilled TFWP or studying at Canadian education or training institutions. The CIC's studies found, however, that only a small percentage of temporary foreign workers or international students applied for permanent residency. The department therefore developed the CEC as a more effective bridge between temporary and permanent programs. CEC-eligible applicants are no longer required to leave the country to apply for permanent status or meet the points system requirements. This process therefore allows students and temporary workers to acquire permanent status much faster and earlier than regular permanent skilled-worker applicants, who must navigate the points system and wait 12 to 18 months or longer for approval. The CIC therefore expects the number of CEC applicants to increase from 5,000 in 2009 to 26,000 in 2012.

In addition to its research basis, the AGC praised the CEC design's detailed options analysis as well as the CIC's assessments of CEC's risks and impacts on other programs.

Auditor General critiques of other CIC programs

The AGC was more critical of other CIC decisions. First, it concluded that program changes in recent years resulted in significant shifts in the types of workers admitted permanently without “properly assessing their costs and benefits, risks, and potential impacts on other programs and delivery mechanisms.”¹¹⁸

Second, the AGC “saw no evidence of any well-defined strategy” in the decisions that considerably increased immigrants admitted under the Provincial Nominee Program, whose minimum targets rose 471% between 2004 and 2009 while the minimum targets for the Federal Skilled Worker Program dropped 31%.

Third, the AGC noted problems with the rising number of temporary workers becoming permanent residents through the Live-in Caregiver and CEC programs. Since there are no limits on either the number of temporary foreign workers or international students, target levels for these classes should be adjusted annually to account for the number of permanent residency applications received from these workers.

Fourth, the AGC noted other problems associated with the PNP program, whose temporary foreign worker applicants are not required to satisfy the skilled-worker points system to become permanent residents. The CIC's projected target levels indicate that, unless changes are made, between 2009 and 2012 the PNP category could become Canada's largest source of economic immigrants, while the number of FSW immigrants could fall to 18,000 in 2012 from 68,200 in 2009. The AGC believed the CIC had not adequately planned for these changes and recommended that it adopt a longer-term strategic vision in setting annual immigration targets.

Fifth, the AGC faulted CIC for not following up on the promise in its 2004 *Report to Parliament* to "[develop] a national immigration framework in order to improve coordination with the provinces and territories and other stakeholders and ensure a flexible immigration program that meets Canada's objectives."¹¹⁹ The AGC thought the CIC needed a "strategic roadmap" to "facilitate the assessment of the potential impacts of proposed changes in immigration legislation, policies, and programs" and "to enable the immigration program to respond more effectively to future challenges" as well as to address problems with "the current delivery system, including rising inventories and delays in processing applications."¹²⁰ In 1999 the average processing time was 25 months. The CIC estimated in 2008 that it might take eight to 25 years to eliminate the inventory on hand.

Sixth, the AGC argued that strong structures and processes were needed to identify priority occupations eligible for the FSW program. However, it noted that in comparison with other countries, CIC had "not determined the process and mechanisms needed to ensure that the list of occupations in demand remains up to date and reflects the needs of the labour market."¹²¹ The CIC agreed with the AGC's recommendation to put in place "structures and processes" to ensure that its lists of priority occupations remain "relevant to the changing needs of the Canadian labour market"¹²² and reported that over the next two years it would consult widely on options, including an "external advisory body, such as the U.K.'s Migration Advisory Committee [MAC]."¹²³ (MAC will be discussed in Chapter 4.)

Seventh, the AGC found a number of problems with the TFWP. It was particularly concerned that CIC and HRSDC had not defined their "respective role responsibilities in assessing the genuineness of job offers and how that assessment is to be carried out. As a result, work permits could be issued to [TFWs] for employers or jobs that do not exist."¹²⁴ Moreover, "there is no systematic follow-up by either department to verify that...employers have complied with the conditions of their previous work permits." This creates risks to program integrity and could leave many foreign workers in vulnerable positions, particularly "those who are physically or linguistically isolated...or are unaware of their rights."¹²⁵ The AGC was particularly concerned about the vulnerability of live-in caregivers, whose isolation and dependence on their employers for their jobs and the opportunity for permanent residency made them especially vulnerable. In some foreign missions CIC officers thought job offers were being verified by HRSDC, while others said verification was a CIC responsibility but that their department lacked adequate knowledge to verify the genuineness of job offers. HRSDC officers confirmed

that they had the expertise “but were under the impression they did not have the authority to do so.”¹²⁶

Eighth, the AGC stressed the great challenges facing CIC in managing FSW applications. Rising inventories cause uncertainties for applicants, hamper efficiency because of the need to update applications after they are filed, and prevent timely responses to labor market needs. Application processing waits increased from an average of about 25 months in 1999, when the inventory was 330,000 skilled workers and their families, to 63 months in December 2008, when the inventory exceeded 620,000.

After the 2008 IRPA amendments, the CIC issued new eligibility criteria for processing, including the requirement that applicants either have one year of experience in one or more of 38 occupations in demand identified by CIC (reduced to 29 in 2010), have been a legal temporary worker or international student in Canada for one year or longer, or have an offer of arranged employment. To reduce inventories, CIC gave priority to all applications received under the new eligibility criteria, purged older applications, and allocated additional resources to process inventories.

The AGC found, however, that CIC had little success in reducing the pre-2008 backlog and did not base its inventory reduction strategy on sufficient analysis. In particular, the CIC could not adequately defend the new criteria for assessing FSW eligibility, especially its drastic reduction of the number of eligible occupations from 351 to 38 or the requirement of a one-year legal presence in Canada for TFWs or international students.

Ninth and finally, the AGC faulted CIC for not completing information technology upgrades, which had been underway for almost 10 years, noting that “efficiency gains will be seriously limited until [the IT system]...is implemented in missions abroad and CIC makes effective use of available technologies.”

The Auditor General's conclusions

The AGC concluded that “overall,” current CIC and HRSDC practices “do not ensure that foreign worker programs are delivered efficiently and effectively.” With the exception of the exemplary CEC program, key decisions have been made “without a thorough analysis of their costs, benefits, risks, and potential impacts on other programs.” Program changes have caused a shift in the types of FSW workers being admitted permanently. The AGC concludes, however, that “until it develops a strategic roadmap for the future and it evaluates the performance of existing programs, CIC will not be in a position to demonstrate that its programming best meets the needs of the Canadian labour market.”¹²⁷

The AGC was highly skeptical of the CIC’s initiatives designed to reduce FSW inventories, which were made “without sufficient analyses.” Until it provides careful monitoring, CIC could be “unable to process new applications within the 6 to 12 months it had forecast. In addition, the Department’s ability to reduce the inventory of some 635,000 applications on hand at the end of February 2008 could be significantly impaired.”¹²⁸

The AGC was concerned that problems with the TFWP “could leave many foreign workers in a vulnerable position.”¹²⁹ Moreover, the failure by CIC and HRSDC to define their respective roles could lead to fraudulent work permits. And neither department undertakes “systematic follow ups” to ensure that employers “have complied with the terms and conditions (such as wages and accommodations) under which the work permits were issued.”¹³⁰ The AGC concluded, further, that “The HRSDC’s practices in issuing labour market opinions do not ensure the quality and consistency of decisions.”¹³¹

The CIC had initiated some improvements in processing applications in its overseas offices, but the failure to adopt effective information technology has left “employees in offices abroad...buried in paperwork and spending a great deal of their time on clerical work.” Moreover, CIC “has not yet implemented a quality assurance framework to [ensure] that decisions made by its visa officers are fair and consistent.”¹³²

CIC’s response

Canadian officials give very careful attention to the AGC’s critiques; failure to respond can result in serious personal and political consequences.¹³³ The AGC’s function is to “ensure the government is held accountable for its stewardship of public funds.”¹³⁴ The gravity accorded the Auditor General’s reports contrasts markedly with the superficial agency responses to critiques by the Government Accountability Office in the United States.

By March 2010, CIC’s responses to the AGC’s recommendations included:

- ***Strategic Roadmap for Immigration***—CIC and provinces/territories are currently making progress on several elements of a strategic roadmap, including a joint vision for immigration and multiyear levels planning.
- ***Economic Immigration Program Evaluations***—CIC and HRSDC have initiated work on a joint, comprehensive evaluation of the Temporary Foreign Worker Program. The results of the evaluation will be tabled sometime in 2010–11. CIC is also carrying out a comprehensive evaluation of the Federal Skilled Worker Program. Other programs in the permanent stream will be evaluated according to the CIC Evaluation Plan.
- ***New Eligibility Criteria for the Federal Skilled Worker Program***—CIC has established mechanisms for monitoring and analyzing data relating to the new eligibility criteria contained in the Ministerial Instructions introduced June 26, 2010. Data gathered to date, in conjunction with stakeholder and public consultations, will help us ensure that the Instructions are meeting the twin objectives of improving labour market responsiveness and reducing the backlog of applications.
- ***Program Integrity of the Temporary Foreign Worker Program***—CIC and HRSDC continue to explore options for improving the TFWP, including changes to the Immigration and Refugee Protection Regulations that would introduce enhanced monitoring of employers’ compliance with program requirements and permit refusal of service in instances where the requirements have not been met.¹³⁵

Conclusions

Canada has been a pioneer in adapting employment-based migration to the needs of its economy, as defined by its high-value-added economic framework, which requires that the interests of Canadian workers be protected. As economic theory predicts, the selection of workers to fill shortages and complement domestic workers is a plus-sum process. Canadian law and regulations are designed to accomplish this goal by requiring domestic market tests, paying prevailing wages, and importing migrants to fill certified shortages. Economic research suggests that in the United States the overall impact of immigration on its native workers is small, but it reduces the incomes of lower-paid recent immigrants.¹³⁶ U.S. immigration thus contributes to growing inequality. Comparative research suggests that, unlike their American counterparts, Canadian immigrants are less competitive with natives and therefore have less impact on inequality.¹³⁷

Canada also has relatively transparent programs, comprehensive databases, and extensive research to support continuous improvement in its immigration policies and programs. The reports of the AGC and the Standing Committee on Citizenship and Immigration, union critiques, and academic research provide particularly valuable program improvement recommendations. As the AGC suggests, it would be useful for Canada to establish an advisory mechanism modeled after the U.K.'s Migration Advisory Committee, discussed in Chapter 4. Similarly, the fit between migrant characteristics and labor market requirements would be enhanced by more effective administrative processes employing modern information technologies, an area of concern for most employment-based migration regimes. This, however, is an area to which Canada has devoted considerable attention.

Canada could, however, benefit from more accurate emigration data to test the thesis advanced by Don DeVoretz, especially the cost of the “brain drain” and whether the emigration and repatriation program initiated by Quebec would be cost-effective for Canada. It seems clear from HRSDC's work that in some occupations emigration from Canada more than offsets immigration.

The Canadian evidence demonstrates the value of the points system in adjusting the flow of immigrants through time and changing market conditions. Canada, Australia, and the United Kingdom are developing effective two-step processes to admit migrants on a temporary basis until they qualify for permanent residence. All three countries have discovered the value of international students in strengthening their higher education systems and generating a pool of potential skilled permanent residents. Canada has, in addition, developed processes to deflect immigrants into sparsely populated areas and away from the major cities where they tend to congregate.

Canadian experience demonstrates, in addition, that an employment-based migration system must pay attention to the linkages between different parts of the system. For example, the PBS improved the foreign worker selection process, but an antiquated application approval process created huge backlogs that rendered that system inadequate for the needs of dynamic labor markets. The backlogs therefore partly justified

demands for programs, like the TFWP and PNP, that bypassed the carefully constructed points system and created backdoor means to acquire permanent residency. The explosive growth of TFWs without adequate monitoring and worker protection processes led to widespread charges of abuse of temporary workers and damage to Canadian workers.

In what is perhaps a singular achievement, Canadian authorities have maintained public support for the country's immigration policies through a combination of efforts, including:

- ***Embedding immigration in an overall economic and social framework and coordinating immigration with economic, labor market, education, and social policies.*** Canada, Australia, and the United Kingdom, on the basis of their value-added economic strategies, have, in marked contrast to the United States, increased the importance of economic immigrants relative to the family and humanitarian categories.
- ***Adopting flexible overall and specific immigration targets to guide particular immigration decisions.*** Targets provide greater flexibility than caps, but for Canada the targets seem to have become flexible caps.
- ***Developing metrics to determine the need for migrants overall and in particular jobs, occupational categories, and places.*** These metrics provide the bases for the HRSDC's LMOs and the admission of migrants to the provinces and thinly populated areas. The points system, pioneered by Canada, is a major advance in quantitative means to select migrants to fit national objectives.
- ***Employing data, pilots, and research to improve program performance, evaluate impacts, and maintain transparency.***
- ***Commissioning independent evaluations of immigration policies and programs such as those provided by the AGC and extensive networks of academic researchers.*** These evaluations strengthen credibility and transparency and stimulate programmatic improvements.
- ***Collecting timely, disaggregated, and longitudinal data to support research on immigrants and their impact on and integration into the Canadian economy and society, and provide more effective evaluation of immigration and TFW programs.***
- ***Matching employment-based migrants' human capital characteristics to employer preferences.*** If this is not done, immigrants are likely to have unfavorable employment outcomes. This conclusion will be confirmed in Chapter 2 when we compare the Canadian and Australian immigration experiences. Canada's experience has developed two important processes to improve the match between migrants' human capital characteristics and labor market requirements: (1) metrics like those included in the points system and the measurement of labor shortages; and (2) the temporary visas that serve as probationary processes for foreign students and workers.

While Canada has crafted an impressive employment-based immigration system, the AGC and standing committee reports, union criticisms, and research literature identified a number of areas for improvement.

First, the booming economy and the slow response in Canada's FSW processes to the increased demand for foreign workers created an opening for the rapid expansion of TFWs. Canada's experience confirms that governments have great difficulty in either protecting TFWs or preventing their employment from damaging domestic workers and labor market institutions. As the standing committee concluded, Canada's economic immigration program has become grossly unbalanced with the excessive reliance on temporary foreign workers, and it recommended that CIC refocus on permanent immigrants. In the meantime, the standing committee recommended that the TFW programs be improved and focused primarily on seasonal and short-term work. It also recommended that the linkages between temporary and permanent migrants be improved to enable all TFWs to become permanent residents, as is currently done for the LIC, CEC, and PNP programs.

Second, the AGC raised the question of whether a U.K.-style independent migration advisory committee would improve the Canadian system by providing greater credibility and independent expert advice and evaluation of such migration questions as: (1) Should Canada have an emigration policy? (2) Should Canada seek amendments to NAFTA to cover craft workers, as suggested by Canadian unions? (3) What can be learned from international experience to improve employment-based migration programs while protecting domestic workers and meeting employers' legitimate needs? and (4) What can Canada learn from international experience about the value of technology and "smart" regulations to improve the administration of employment-based migration programs?

Third, the AGC's critique suggested that a strategic roadmap would provide better guidance to the particular program components, as well as strengthen public and official understanding of the role of immigration in Canadian national policy. There is, in fact, a general articulation of the role of foreign workers, but not a strategic plan to transform this vision into reality. The consequence is a failure to adequately coordinate the work of the agencies—CIC and HRSDC—and apparent program inconsistencies, as when the CEC and provincial programs are permitted to circumvent the points system's controls.

Fourth, inadequate administrative procedures prevent timely application processing, and delays diminish the system's ability to respond to changing market conditions and cause serious problems for applicants, administrators, and employers. Administrative shortcomings likewise permit fraud and abuse, and lead to inadequate protection of Canadian and foreign workers from negligent or unscrupulous employers. As the AGC noted, this is an especially serious problem for vulnerable temporary foreign workers, especially live-in caregivers and workers in the lower-skill categories.

Fifth, the AGC noted that CIC made important program changes without adequate analysis or explanation—as when it moved from its human-capital policies by expanding the PNP and TFWP.

Sixth, union criticisms of the Canadian FSWP and TFWP have raised important points that need to be explored. For instance, the Alberta Employment, Immigration and Industry Minister's admission that the office could not protect TFWs because it didn't even know who they were points to a serious information gap in the system. The unions' Alberta Advocate Project supports the value of giving unions greater responsibility for sponsoring and protecting TFWs. This would be a good pilot project for the CIC and HRSDC. Furthermore, the AIBEW's assertions about NAFTA's limitations should receive careful consideration, as should its complaint about the Canadian foreign worker system's bias against craft workers, despite the evidence, cited in Chapter 2, that qualified crafts migrants actually have better labor market outcomes than do their college-educated counterparts.

Canada has produced an innovative employment-based migration system, with built-in processes for continuous improvement. Additional insights into EBM in general and the Canadian and Australian systems in particular will be discussed in Chapter 2.

ENDNOTES – CHAPTER 1

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CHAPTER 2

Australia's Employment-Based Immigration Policies

Australia provides another good case study of an “immigration nation” that has managed the influx of foreign workers to meet its economic and nation-building needs relatively well. It has the highest proportion of foreign-born population (24.6%) of any advanced industrial country, almost double that of the United States’ 12.5%. But, unlike the United States, Australia’s share of foreign-born migrants is the result of national policies rather than the unplanned consequence of porous borders and lax internal controls.

Australia’s employment-based migration, like Canada’s, is closely related to value-added economic policies designed to maintain and improve relatively high and broadly shared incomes in a more competitive global economy.¹ Again, designing an economic policy for immigration stands in contrast to the experience in the United States, where the lack of explicit national economic or immigration policies has produced low-wage economic and immigration practices in which the benefits of economic growth are very unevenly shared.

Australia also resembles Canada in its evidence-driven employment-based migration policies that use a points-based system (PBS), first developed in Canada, to adjust migration flows to economic objectives. Indeed, Canada and Australia have learned from each other, as well as from policy research, how to more effectively gear migration to economic objectives. As global competition intensified in the 1970s and 1980s, Australia, Canada, and most advanced countries shifted their immigration focus away from family and humanitarian categories toward importing more skilled workers. This shift was designed to support high-value-added strategies and avoid the inevitable polarizing outcomes of the low-wage policies followed in the United States. In Australia’s case, government-sponsored research confirmed that immigration to Australia increases average incomes, but the increase is larger if immigrants are young, proficient in English, and skilled in areas that are valuable to employers. Moreover, if immigrants are highly skilled, they increase employment, reduce unemployment, and raise the wages of less-skilled domestic workers.² The Australian experience, according to this research, “... contrasts sharply with that of the United States. Immigrants have less education relative to the average of the established population in the United States than they do in

Australia. Immigration to the United States tends to depress the relative incomes of poor Americans.⁷³ However, these analysts concluded, in the long run lower wages could increase employment of the poor, increase the skills of lower-paid workers, and therefore “reduce the depressing effects of low-skilled workers over time.”⁷⁴ But the positive, long-run outcome is uncertain and presupposes policies to facilitate upward mobility for low-income workers. High-value-added economic and immigration policies are more likely to improve all incomes, as well as reduce income inequality.

Like other countries with highly developed social safety nets, Australia has fiscal as well as economic reasons for preferring skilled workers. To more accurately measure this effect, the Department of Immigration and Citizenship (DIAC) developed a Migrants’ Fiscal Impact Model, which uses longitudinal data to provide a 20-year profile of migrants’ fiscal impact by visa class, labor force characteristics, and use of various government services. The 2007–08 estimates by Access Economics, a private research and consulting firm, concluded that “new migrants provide a substantial contribution to the Commonwealth government budget initially, and this contribution grows over time in real terms.”⁷⁵ The contribution is positive across almost all migrant classes, especially the employer-sponsored category. The exception is for family-parents visas, which are negative throughout the 20-year period, and the humanitarian or refugee category, which is negative for the first 12 years, but becomes positive thereafter. The total net fiscal impact for all categories of migrants is positive over the entire 20-year period, especially after 10 years. This model strengthens support for the concentration on skilled migrants by Canada, Australia, and the United Kingdom (discussed in Chapters 3 and 4).

Consistent with the importance of its evidence-based policies, Australia has very good data on immigration and assigns responsibility for migration to a cabinet-level department with a highly professional civil service. Moreover, immigration has always been an explosive political issue, requiring government officials to present reliable evidence that they are managing migration in the national interest.

Unlike Canada and the United States, Australia has carefully avoided large-scale, low-skilled temporary indentured worker programs that, even under the best of circumstances, have great difficulty protecting foreign and domestic workers, as was demonstrated in the Canadian case. Australia has developed what appear to be effective alternatives to the use of temporary foreign workers (TFWs) for jobs requiring relatively low skills; they include higher wages to attract Australians, family-based immigration, and a Working Holiday Maker (WHM) program to attract young, relatively well-educated foreigners for temporary and seasonal jobs for no more than six months for each employer and for no more than one year in Australia. A growing population of international students in Australia’s postsecondary institutions is also allowed to work at low-skilled jobs.

The growth in Australia’s agricultural, mining, tourist, manufacturing, and food-processing industries has put pressure on the government to relax its restrictions on lower-skilled migrants. The government therefore has adopted a seasonal agricultural workers pilot project for the horticulture industry and special Labour Agreements

(LAs) for the meat-processing and labor-recruiting industries. Both relax some of the restrictions on the number of unskilled foreign workers, but under carefully controlled conditions.

Australia's most controversial migration program is its temporary skilled workers program, developed during the 1990s and subsequently rapidly expanded and extended to some less-skilled workers. Australia's experience with this program—the Subclass 457 visa—provides useful insights into the advantages, disadvantages, and management problems associated with temporary worker programs for relatively skilled workers. The 457 visa has become one of Australia's most important and controversial foreign worker programs.

Although the focus of this chapter is Australia's employment-based migration policies, it should be noted that Australia, like Canada and the United Kingdom, conceives of immigration as a component of broader economic and social policy. All three countries started with “whites-only” immigration policies, which were formally abandoned during the 1960s. They all subsequently became much more racially and ethnically diverse, and this change necessitated policies to integrate these groups into their societies. However, for reasons noted in Chapter 1, Australia's and the U.K.'s multicultural policies and programs seem to have been much more controversial than Canada's.⁶

This chapter presents a brief historical background to Australian immigration policies, outlines the country's employment-based migration system, discusses the differences and outcomes of the Australian and Canadian systems after 1996, reviews the country's temporary foreign worker programs, and concludes with a summary of the lessons learned from these experiences.

Historical background

Because both Australia and Canada saw immigration as a way to fill vast open spaces and build their nations, they have similar immigration histories. During the 19th century both countries recruited mainly white European immigrants and restricted the entry of nonwhites. This was particularly true for Australia, since it was a European outpost in the Asia-Pacific region whose citizens and leaders were highly motivated to avoid being inundated by migrants from their heavily populated Asian neighbors. After World War II, during which the country faced the imminent threat of a Japanese invasion, Australia adopted a population expansion policy that its leaders thought was necessary for survival—a popular slogan was “populate or perish.”

During the 1960s and 1970s Australia abandoned its whites-only policy in order to attract more highly skilled workers, inventors, and entrepreneurs from Asia and elsewhere. Human capital formation became a particularly important objective with rapid globalization in the 1980s and 1990s, when Canadian and Australian policymakers concluded that they would need much better-educated workforces if their nations were to compete with the United States, Japan, and other countries through improved productivity and quality rather than through low wages. The education and skills of native Australians and Canadians were heavily geared to natural-resource, mass-production economies and

therefore were inadequate to support a high-value-added economic strategy. Both countries understood that their schools and domestic training institutions, which produced four or five times as many skilled workers as provided by immigration, were their main sources of skilled workers. But both countries concluded that properly managed immigration processes could complement domestic human resource development policies.

Canada and Australia, along with all other advanced industrial countries, confront declining birth rates and aging native populations. Natural population growth will decline, and net growth will become negative for both countries in about 25 years. Immigration is unlikely to reverse these trends, but it can improve the ratio of workers to non-workers, as well as contribute to knowledge and human capital development that enrich national innovation and wealth creation.⁷ And declining natural population growth and growing international competition give greater urgency to high-value-added economic strategies.

Because of its importance, Canada and Australia have given higher priority to immigration within their policymaking structures than has the United States. Both have cabinet-level departments with highly professional staffs that not only give immigration greater visibility, but also coordinate it with education, labor market, economic, and social policies. Both countries give high priority to economic migration, favoring the importation of skilled workers over family unification or humanitarian streams. Both Canada and Australia also have small numbers of illegal migrants in their populations and therefore can manage their immigration flows much more effectively than can the United States. And Australia and Canada are struggling to improve the administrative efficiency of their systems—an important requirement if immigration is going to meet the needs of dynamic labor markets.

Population diversity

Australia has been an immigration nation since the first British settlers landed there in 1788. These settlers displaced and decimated an estimated 500,000 Aborigines, whose ranks, according to some estimates, were reduced to about 50,000 by the end of the 19th century.⁸

From the very beginning, immigration was part of a balancing act to simultaneously settle the country and maintain Australia's national identity, which initially was that of a white Western society with democratic values and ideals.⁹ After World War II the national identity changed as shortages of British migrants forced Australia to expand its recruitment, first to Western and Southern Europe, and ultimately to the world, so that by 2006 it not only had the highest foreign-born population among Organisation for Economic Co-operation and Development (OECD) countries but also was very diverse, as can be seen in **Table 2.1**; by 2006 less than half of the foreign-born were from Europe (46.6%), while almost a third (32.3%) were from Asia, with small but significant representation from Oceania, Africa, and the Americas.¹⁰ The percentages of the five largest foreign-born groups in 2001 were United Kingdom, 35.2%; New Zealand, 8.7%; Italy, 5.3%; Vietnam, 3.5%; and China, 3.5%.

TABLE 2.1: Stock of Australian foreign-born by region, 1991 and 2006

	1991	Percent of total	2006	Percent of total
Africa	132,281	3.5%	248,733	5.6%
Americas	147,097	3.9	180,075	4.1
Asia	848,832	22.6	1,426,726	32.3
Europe	2,277,643	60.7	2,059,525	46.6
Oceania*	349,810	9.3	496,336	11.2
Total	3,754,841		4,146,037	
Foreign-born as percent of total		22.9%		23.9%

* The region of Oceania includes Australia, New Zealand, Papua New Guinea, and numerous other island states and archipelagos in the tropical Pacific Ocean.

Source: Australian Government, Australian Bureau of Statistics online databases; Migration Policy Institute Data Hub, accessed May 11, 2010.

TABLE 2.2: Entrants in permanent immigration categories, 1995–06 vs. 2000–01

	1995–96	2000–01
Family	46,458	56,366
Skill	20,008	114,777
Humanitarian	13,824	13,507

Source: Stephen Castles and Ellie Vasta, "Australia: New Conflicts Around Old Dilemmas," in Wayne A. Cornelius et al., *Controlling Immigration: A Global Perspective*, 2nd Edition (Stanford, Calif.: Stanford University Press, 2004).

This population diversity resulted from conscious immigration policy, which has had some enduring characteristics, the most important of which is tightly restricted foreign entry dictated by Australia's constant fear of overwhelming immigration by Asians.

At the same time as it officially abandoned its prohibition on the entry of non-whites, Australia started selecting immigrants mainly for economic reasons, especially after 1995–96, as indicated in **Table 2.2**.¹¹

In the 12-month 2009–10 period, Australia received 140,610 settler arrivals, an 11% decrease from the previous year. Of these, the largest contributing region was Southern Asia (17.7%), followed by Europe (16.1%), Oceania (15.4%), Northeast Asia (15.1%), and Southeast Asia (14.6%). The country that contributed the largest percentage was New Zealand (12.9%), followed by China (excluding special administrative regions (SARs) and Taiwan, 11.8%) and India (11.1%).¹²

The politics of immigration

Immigration has always been a political issue in Australia, but it became particularly important in the 1996 and 2001 elections. One area of contention is how to integrate immigrants and disadvantaged minorities into Australian society. The new immigrants found work but labor markets, communities, and schools were segregated.¹³ This issue became more important with the increasingly diverse Australian population after World War II. There was a potential for social conflict as the realities of the low-income immigrants and minorities' inferior conditions clashed with Australia's defining democratic ideals. This conflict was a particularly egregious problem for the highly egalitarian Australian labor movement. Between 1972 and 1975 the Australian Labour Party (ALP) government therefore abolished the last vestiges of Australia's whites-only immigration policies and introduced multiculturalism, whose immediate objective was to expand immigrant access to education and social services. The ALP believed that the creative advantages of a diverse society could be realized only if racial, religious, and ethnic conflicts were minimized and all people had equal access to education and economic opportunities. It was, according to the ALP, a basic responsibility of government to ensure this access. The ALP also supported multicultural institutions to represent the interests of, and deliver services to, various racial and ethnic groups, and an Office of Multicultural Affairs (OMA) was established to oversee those functions.¹⁴

The conservative Liberal-National coalition government, elected in 1996, objected to what it considered special treatment for immigrants and minorities. Based on statements by its leader, John Howard, that minority needs should not be placed above those of "ordinary Australians," there was concern that the government would abolish the multicultural program. But political and economic realities compelled the continuation, though in modified form, of the Labour government's programs. The Conservative government's leaders were concerned that anti-immigrant actions would not only generate explosive internal conflicts but also alienate highly desirable foreign students and businesses, important components of the value-added economic and skills-based immigration policies of both major political parties. Liberal Party leaders were critical of the ALP's handling of skills-based immigration, but not of the policy. In particular, conservative critics were concerned about immigrants' fiscal costs and pointed to research, discussed later, showing that skilled immigrants to Australia had high levels of unemployment and de-skilling, which implied that the system did not select successful immigrants. In 1996, for example, census data showed that, despite having higher education levels than natives, male and female overseas-born workers had unemployment rates of 9.0% and 9.7%, respectively, while comparable rates for all Australians were 7.8% and 7.4%, with rates of 6% and 5.8% for those from the United Kingdom and Ireland. Success varied widely with such factors as English language ability, age, gender, country of origin, and occupation, suggesting that the selection criteria needed to change to ensure greater and more immediate employment opportunities for immigrants. Thus, conservative politicians had to tread lightly between attacking the ALP's multicultural and immigration policies and avoiding identification with vocal anti-Aborigine and anti-immigrant sentiments in their own ranks.

This internal conflict erupted during the 1996 election campaigns with the emergence of Queensland Liberal Party candidate Pauline Hanson, who was highly critical of Aborigines, immigrants, and multiculturalism. As a consequence of her attacks on Aborigines, she was unendorsed by the Liberal Party, but she won nonetheless and in 1997 formed the One Nation Party. In her inaugural Parliament speech, Hanson warned of the “Asianization” of Australia and repeated her attacks on Aborigines and immigration, which some thought had growing political support, based on her election and the election of 11 One Nation members to the Queensland State Parliament. However, in October 1996 the Parliament passed a bipartisan resolution condemning racism. Hanson was subsequently jailed for election fraud, and although she was acquitted in December 2009, the One Nation Party was deregistered by Queensland’s Electoral Commission.¹⁵

Thus, what some hoped and many feared would become an anti-immigrant, anti-Aborigine political movement was eclipsed by opposition from the major political parties, which nevertheless remained alert to the possible resurgence of anti-immigrant and racist movements.

Asylum seekers, refugees, and illegal immigration

Asylum seekers and refugees are more controversial in Australia than are other immigrants. This is so because economic- and family-based immigration can be more tightly controlled, while the number of migrants seeking asylum is unpredictable, and these migrants are more likely to enter outside legal channels. Indeed, once they land in Australia, disappointed refugees and asylum seekers become a major source of illegal immigration, as they have in the United Kingdom.

Although Australia apparently has not had many unauthorized migrants, there is fear that their numbers will grow and threaten the country’s sovereignty, as they have in the United States and other countries. Australia seems more tolerant of visa overstayers, who often are from the United States and the United Kingdom, than of boat people from Asia and the Middle East. However, Australia has been relatively open to legal refugees, especially those from Vietnam, Cambodia, and Laos during the 1970s and 1980s.¹⁶

The boat people who came to Australia during the 1990s evoked a different reaction. These migrants were not as clearly in need of asylum as the earlier refugees. Indeed, people smugglers were bringing in both undocumented workers and refugees, some of whom previously had been in safe countries, and the practice fueled suspicion that seeking asylum was a cover to gain entry to Australia for economic rather than humanitarian reasons. The government expressed support for refugees who applied through legal channels, but condemned, and dealt harshly with, the boat people. The government adopted three principal deterrents: (1) a three-year temporary protective visa that did not convey the right to family reunification or permanent settlement; (2) the interdiction of boats at sea and the return of them to Indonesia, from which most came; and (3) the incarceration of asylum seekers in isolated and remote areas, where they sometimes were held incommunicado under harsh conditions.¹⁷

A celebrated incident in August 2001, the MV Tampa affair, probably influenced the outcome of the election held that November. The Tampa, a Norwegian cargo ship with a carrying capacity of 50, rescued 438 victims from a sinking ship controlled by people smugglers; 353 others died when the smugglers' ship sank in treacherous waters off the Indonesian coast, but neither Indonesia nor Australia would allow the Tampa to offload the survivors on its soil. When the Tampa, clearly in distress, entered Australian waters near Christmas Island without permission, it was boarded by Australian Special Forces. The asylum seekers were subsequently transferred to an Australian ship, the HMAS Manoora, and taken to Nauru. The government's actions were challenged unsuccessfully in court by the Victorian Civil Liberties Association, which argued that the refugees should have been processed in Australia.¹⁸ According to Castles and Vasta, before the Tampa incident, "A Labor victory had been predicted for the November election, but with asylum now the central issue, victory went to Liberal-National Prime Minister [John] Howard."¹⁹

The government subsequently enacted legislation to deny permanent residency, family reunification, and reentry rights for people entering Australia from a safe country; require a higher standard of screening for people who destroy their identity documents en route to Australia; and provide mandatory minimum five-year prison sentences for first-time people-smuggler offenders and eight-year terms for the second offense, with a maximum sentence of 20 years.²⁰

The Tampa incident reflected a dilemma for Australian authorities which has not been resolved despite John Howard's victory and subsequent legislation. Many asylum seekers are Iraqis and Afghans fleeing violence in those countries, as were the Tampa refugees. After they were denied refugee status in the Middle East, many went to Europe but some headed to Australia, often at the persuasion of people smugglers. The smugglers first brought the migrants to Indonesia and Malaysia, which have lax visa conditions for Muslims, and then organized enough refugees for a profitable boat trip to the nearest Australian territory, Christmas Island, which is closer to Indonesia than to Australia. Under traditional protocol, if refugees land on Australian territory they have the right to seek asylum. To avoid this outcome for the Tampa refugees and subsequent boat people, the Howard government concocted a new plan, prompted in part by criticism from Pauline Hanson and One Nation, which received about a million votes in the 1998 election. Public opposition to the boat people was caused partly by the fact that many were Muslims and partly from the belief that they were not genuine refugees, since they had passed through other safe countries to get to Australia.

The government resolved this problem by declaring Christmas Island, Ashmore Reef, and Cocos Island not to be in Australia's "migration zone," an action previously suggested by Pauline Hanson. The declaration applied the Border Protection Act of September 2001 retroactively.

Australia resolved the problem of the boat people refugees by an agreement with Papua New Guinea and Nauru to house the asylum seekers at Australia's expense, with the understanding that they would all be processed by Australian and U.N. High Commission for Refugee (UNHCR) officials and transferred to other countries, though

with no promise that they would be accepted by Australia. However, only New Zealand responded to Australia's request to take some of these refugees. Jupp reports that, of 1,509 held on Nauru between 2001 and 2005, 627 were accepted by Australia and 40 by New Zealand.²¹

From a political perspective, however, the Tampa affair dramatized Howard's declaration during the November election that "We will decide who comes to Australia and under what circumstances," a position that, according to Jupp, "had, of course, always been the case since the first major Act of the new Commonwealth, the Immigration Restriction Act of 1901. What was unique was detention on Nauru and Manus Island—from which escape is almost impossible—at Australia's expense and with the use of Australian staff."²²

The "Pacific Solution" nevertheless seems to have gained bipartisan political support, though unauthorized asylum seekers still risk the dangerous voyage in unseaworthy vessels to reach Australia. In December 2010, for example, 28 people died and 44 were rescued when a boat loaded with asylum seekers foundered on rocks in heavy seas off Christmas Island.²³ In response, the minority Labour Party government of Prime Minister Julia Gillard advocated the establishment of an overseas processing center in East Timor in order to deter asylum seekers from making these dangerous journeys. However, Green Party members of her coalition government have pushed for an end to both offshore processing and mandatory detention of asylum seekers.²⁴

In May 2011 Australia and Malaysia announced a swap plan, financed mainly by Australia, designed to stop the flow of unauthorized boat people to Australia. Under the plan, signed July 25, 2011, Australia was to send 800 boat people to Malaysia, where their claims would be adjudicated by the UNHCR.²⁵ In exchange, Malaysia would send 1,000 U.N.-certified migrants to Australia each year for four years. The asylum seekers shipped from Australia would have been allowed to work in Malaysia and receive education and health care. These benefits are not available to other asylum seekers in Malaysia, which has not adopted the 1951 U.N. refugee convention and where the treatment of U.N.-certified refugees is less favorable than for those accepted by Australia, which has ratified that convention. Asylum seekers not certified by the UNHCR would have been repatriated, forcibly if necessary.

However, in August 2011 the Australian High Court effectively blocked this agreement, ruling that, since the deal was not legally binding, there was "little scope [for Australia] to require Malaysia to uphold human rights standards."²⁶ Australia's immigration minister said that while the court's decision "was a blow, it does not undermine our resolve to break the people smugglers' business model."²⁷

Australia's immigration minister also reported that fewer boat people had attempted to land in Australia after this plan was announced. Critics of the plan accused Australia of "walking away" from its obligations under the U.N. refugee convention, and other critics accused Malaysia of discriminating against regular asylum seekers under this agreement by providing better treatment for those sent from Australia. However, in October 2011 Prime Minister Gillard announced that future asylum seekers would be processed on Australian soil.

Because of its explosive political nature, magnified by the impact of the Tampa affair, refugee policy has a greater impact on Australian immigration policy than the numbers (about 1.5% of the country's immigrants) warrant. It is the main component that Australian authorities cannot tightly manage. Refugee policy also threatens Australia's carefully nurtured image—at least since the end of the whites-only policy—as a welcoming nation.

Liberal party opposition leaders argued that the ALP had encouraged asylum seekers by reversing some of the Howard government's tough refugee policies, including denying asylum seekers the right to permanent residency and family reunification and charging them for the cost of their detention.

Public opinion on immigration

The political parties' leaders are constantly aware of their immigration policies' impact on public opinion, which has varied with economic, political, and social conditions. In 2010, however, polls showed that Australians generally supported the current level and composition of immigration. The emphasis on skilled migrants was particularly popular, favored by 87% of respondents.²⁸ Family reunification was favored by 78%; 46% said the current level of permanent immigration was about right; and 11% wanted to boost the numbers, while 39% wanted them reduced.

Respondents were most negative about unauthorized asylum seekers who arrive by boat: Two-thirds thought they should be sent home. However, 50% of respondents supported legal asylum seekers.

Public support for the ALP government's 2010 population projections was more divided. Total population had more than doubled—to 22 million—since 1961's 10.5 million level. The percentage of foreign born in the Australian population increased from about 17% in 1960 to 24.6% in 2009. Because of declining native birth rates, almost all of Australia's population increases will come from growth in net immigration, which was 129,017 in 2007–08 and 143,601 in 2008–09.²⁹

Population estimates of 36 million by 2015, a 61% increase, became a pivotal issue in Australia's 2010 election. ALP Prime Minister Kevin Rudd, elected in 2007, and Australian business leaders favored the target of 36 million. Although 75% of respondents wanted Australia's population to grow, 66% favored capping it at 30 million.³⁰ The Liberal opposition party was split on population growth, but its most vocal members opposed the ALP government's growth plans.

Kevin Rudd's ALP successor as prime minister, Julia Gillard, quickly moved away from Rudd's "big Australia" policies and instead proposed what she considered more sustainable growth, although she refused to set targets.³¹

The evidence thus suggests that most Australians support the country's current immigration and population policies, including the heavy focus on tightly controlled entry with an emphasis on importing skilled workers. The following section examines Australia's immigration system.

The Australian immigration system

The Australian immigration system is administered by the Department of Immigration and Citizenship, or DIAC (which had a number of earlier names), headed by a cabinet-level minister. Policy is made by the Minister of Immigration and Citizenship (MIAC) in conjunction with the prime minister and other cabinet members. The MIAC makes an annual report to Parliament that reviews developments during the past year and outlines future plans, including immigration targets. In developing the immigration plan DIAC officials consult with various stakeholders and hold open meetings throughout Australia. Because of immigration's political, social, and economic importance, there is considerable interest in these policy development processes.

The careful development of these plans, the consultation process, the small number of illegal immigrants, and abundant data and research seem to have resulted in broad public acceptance of the government's immigration policies, even though, as noted earlier, there also is some vocal opposition and latent tension. The major proponents of immigration expansion have been business groups, who tend to drive the economic immigration process, and unions, who support immigration as long as foreign and domestic workers' interests are protected. Opponents tend to be environmentalists (who are not unified on this issue) and nativist remnants of earlier whites-only immigration policies.³² There is, however, some expert disagreement over the importance of latent Australian racism.³³

Australian immigration activities for 2008–09 are summarized in **Table 2.3**.³⁴

International students

As the data in Table 2.3 indicate, international students have become an important component of Australia's skilled migration stream. Research has shown that foreign students who earn degrees from Australian institutions perform relatively well in the country's labor market. Not only do these students have desirable technical and professional skills, they also possess crucial country-specific knowledge and English language skills, which research also demonstrates are critical for rapid integration into the economy and society. Degree-qualified (DQ) students, in addition, have relatively high benefit-cost ratios because their parents and home governments finance basic education and English language training and their youth gives them longer working lives and (as research also shows) greater employer acceptance. Indeed, when they pay full expenses, foreign students subsidize the Australian postsecondary education system. Foreign students likewise play an important part in Australia's value-added economic strategies, which depend heavily on developing world-class education systems. In fact, education is Australia's third largest export industry, yielding about \$13 billion a year.³⁵

TABLE 2.3: Australian immigration activities, 2008–09

Category	Visas granted
Working holiday and work and holiday	194,103
Student	320,368
Temporary resident (other)	37,892
Temporary skilled migration (subclass 457)	101,280
Family stream outcome*	56,366
Skill stream outcome*	114,777
State/territory or employer-sponsored	59,214
Total migration program outcome*	171,318
Humanitarian	13,507

* Actual number of visas used under the total migration program, which includes the Family and Skilled programs and 175 special eligibility slots.

Source: Adapted from Australian Government, Department of Immigration and Citizenship, *Annual Report 2008–09*, Table 1.

Table 2.4A shows the distribution of student visa holder arrivals by region of birth. Over three-fourths (75.8%) of these international students were from Asia.³⁶ **Table 2.4B** shows the distribution of student visa holders for the top 10 countries in 2008 and 2009. By far the largest numbers were from India and China, which received 40% of all visas in 2008 and 44% in 2009.³⁷

The largest number of student visas were granted for higher education: 130,127 (47%) in 2007–08 and 133,990 (42%) in 2008–09. In 2007–08, 68,382 visas (25%) were for vocational education and training; 104,064 (32%) were for this category in 2008–09. About 11% of student visas (30,545 in 2007–08 and 36,721 in 2008–09) were for an intensive English language course for overseas students. As discussed later, Australia has tightened its English language requirements for immigrants in response to research finding that English language ability was a major determinant of economic immigrants' success.

As a consequence of these considerations, since 1999 Australia has made it easier for degree-qualified students with Australian credentials to acquire permanent status under the points system, discussed below. International students are now allowed to acquire work experience before they receive their degrees and without leaving the country for two or three years after graduation. The number of foreign students therefore increased rapidly after 1999, accounting for 52% of economic immigrants by 2005.³⁸ Although students usually become skilled workers after they graduate, as noted earlier, they are a source of less-skilled labor while they are in school.

The working holiday visas in the WHM program provide another source of relatively young (age 18 to 30), largely less-skilled labor. Young people can work and

TABLE 2.4A: Temporary entry: student visa holder arrivals by birthplace, 2009–10

Citizenship	Number	Percentage
Oceania	5,834	1.2%
Europe	33,468	6.0
North Africa and the Middle East	29,606	6.0
Southeast Asia	110,159	22.5
Northeast Asia	191,140	39.0
Southern Asia	69,561	14.2
Central Asia	288	0.1
Northern America	18,626	3.8
South America, Central America, and Caribbean	21,059	4.3
Sub-Saharan Africa	8,549	1.7
Former USSR	1,447	0.3
Not stated	3	-

Source: Adapted from Australian Government, Department of Immigration and Citizenship, *Immigration Update 2009–2010*, 2010, Table 3.3.

TABLE 2.4B: Number of student visa holders in Australia on June 30, 2008 and June 30, 2009 (by citizenship)

Citizenship	2008	2009	Percentage change
India	63,558	91,887	44.6%
People's Republic of China	65,411	76,060	16.3
Republic of Korea	22,028	22,444	1.9
Nepal	11,335	20,336	79.4
Malaysia	14,920	15,958	7.0
Vietnam	9,292	14,032	51.0
Thailand	11,539	13,536	17.3
Indonesia	10,911	11,608	6.4
Saudi Arabia	5,718	8,550	49.5
Hong Kong (SAR of China)	8,278	8,528	3.0
Total top 10	222,990	282,939	26.6
Total	317,897	386,523	13.9

Source: Adapted from: Australian Government, Department of Immigration and Citizenship, *Annual Report 2008–09*, 2009, Table 20.

vacation in Australia for up to 24 months provided they have a valid visa and funds to support themselves when they arrive. These visa holders work in holiday-related industries, thereby reducing the need for other low-skilled immigrant workers. Holiday visa holders are forbidden to work for any one employer for more than six months, a limitation that minimizes the exploitation of low-wage temporary workers as happens in the United States and other countries, where workers are indentured to a particular employer.

The WHM program, created in 1975, is thus a substitute for the importation of unskilled temporary migrants, since WHM visa holders perform much the same kind of work without the problems associated with less-skilled TFWs (e.g., exploitation, employer dependency, unscrupulous recruitment agencies, and illegal immigration) yet with many of the advantages, especially high mobility and willingness to do hard menial work. In their 2009 survey, Tan et al. found that 69% of the WHMs worked in mainly low-skilled occupations: farmhand (27%), waiter (13%), cleaner (8%), and kitchen hand (5%).³⁹ The WHMs were relatively well educated: 98% had at least finished high school, 54% had university degrees, and 21% had non-school qualifications. They also were relatively young: 88% were age 20 to 30. The median and average stay in Australia was eight months, but the length of stay varied by national origin: Japanese stayed the longest (median 11 months) followed by Koreans (median 10 months). The Canadian and Dutch had shorter stays, with medians just over six months.⁴⁰ The WHMs had relatively high earnings for the kind of work they did; the average hourly wage was \$16.20 when the federal minimum wage was \$15.80 an hour.⁴¹ Just over half (54%) of the WHMs were women.⁴²

Tan et al. found that “the WHMs create more jobs than they take, since they spend more money in Australia than they earn.” Moreover, “The WHM scheme enables employers to get better quality workers for the pay and conditions they are prepared to offer. In many ways WHMs play a similar role in the Australian labour market to full-time students who also take paid work.”⁴³ The relatively high Australian federal minimum wage limits the WHM’s impact on wages. Australian policy also minimizes the importation of low-skilled workers in order to give employment preference to low-skilled Australians, but in any case demand is expected to be low in a high-value-added economy.⁴⁴ In a 2008 survey employers were generally “happy” (52%) with the WHM program; the biggest problem they had was the “short maximum stay.” The top three features employers liked were “easy process,” “single employer extension to 6 months,” and “provides workforce.”⁴⁵

As will be noted later in our discussion of Australia’s Pacific Seasonal Worker Pilot Scheme, some horticultural employers preferred Pacific Islanders because they consider them a more reliable source of labor, though that had not turned out to be true by 2010.

On June 30, 2010 there were 99,388 WHMs in Australia, up from 78,642 in 2000–01 but down from 116,805 on December 31, 2009.⁴⁶

The regions of birth for the WHMs as of June 30, 2010 are shown in **Table 2.5**.

TABLE 2.5: Birthplace of Working Holiday Makers (WHM) participants, June 30, 2010

Birthplace	Number
Oceania	80
Europe	56,191
North Africa and Middle East	314
Southeast Asia	142
Northeast Asia	37,705
Southern and Central Africa	209
North America	3,613
South America, Central America, and Caribbean	534
Sub-Saharan Africa	580
Not stated	18
Former USSR	2
Total workers	99,388

Source: Adapted from Australian Government, Department of Immigration and Citizenship, *Immigration Update 2009–2010*, 2010, Table 4.6.

The two-step process

Australia has developed a two-step system to admit permanent foreign workers. First, special visas are issued to students and temporary workers, and second, the students and temporary workers accumulate points that can prepare them for permanent residency. Temporary visas are popular with employers because the process enables them to import workers more quickly to meet the needs of fast-growing industries such as natural resource development.

The employment of TFWs also gives employers a probationary period to determine the workers' organizational fit before sponsoring them for permanent residence. Temporary skilled workers are, in addition, a natural consequence of globalization and the growth of transnational corporations, the latter of which caused intra-company transfers to be an important source of skilled TFWs. Skilled TFWs are particularly important to Australian employers because the relatively small size of the Australian labor market limits the availability of leading-edge technical skills. As Australia becomes increasingly integrated into the global economy, migration officials seek to increase immigration to offset the emigration of highly skilled Australians, especially in the education and health industries.

For these reasons, the influx of temporary workers has grown rapidly since the last half of the 1990s.

TABLE 2.6: Economic migration program “skill stream” outcomes

Category	2007–08	2008–09	Percentage change
Employer sponsored	23,760	38,030	60.0%
Skilled independent	55,890	44,590	-20.2
State/territory sponsored*	7,530	14,060	86.7
Skilled Australian sponsored	14,580	10,500	-28.0
Distinguished talent	210	200	-4.8
Business skills	6,570	7,400	12.6
1 November**	2	–	–
Total	108,542	114,780	5.7%

Note: Numbers have been rounded and totals may not be the exact sum of the components.

* Includes state/territory nominated independent and skilled independent regional.

** Applications for November 1, 1993 visas closed on August 1, 1994.

Source: Adapted from Australian Government, Department of Immigration and Citizenship, *Annual Report 2008–09*, 2009, Table 5.

Immigration streams

Table 2.6 presents the skill stream outcomes for 2007–08 and 2008–09. The total increased from 108,542 to 114,780 (5.7%). There was a large increase in employer-sponsored (60.0%) and state/territory-sponsored immigrants (86.7%).⁴⁷ These categories will be examined below.

Australia’s migration program outcomes by categories for 2005–06 through 2008–09 and planning levels for 2009–10 are presented in **Table 2.7**. The planning levels reflect changes resulting from the recession which began in 2007; family-based migration was unaffected by the recession. There was a reduction in the total skilled category, but a slight increase in the business skills and Australian-sponsored (which includes skills-tested family members) categories. The skilled proportion of immigrants (including family members) was over two-thirds of the total between 2005 and 2009. The overall target for the migration program remained at 168,700 places, with 108,100 skill-stream places, 60,300 family places, and 300 special eligibility places.⁴⁸

The Minister of Immigration and Citizenship adjusted Australia’s 2010–11 immigration targets to reflect changing market conditions, and the overall effect was to “sharpen the focus of the skilled migration programs on areas of skills shortage, [and to] maintain the current overall size of the...program...” According to the MIAC, these changes support “a more demand-driven skilled migration program...in sectors and regions where there are shortages of skilled workers...in high demand that cannot be met from domestic sources.”⁴⁹

TABLE 2.7: Migration program outcomes for 2005–06 to 2008–09 and planning levels for 2009–10

Category	2005–06 outcome	2006–07 outcome	2007–08 outcome	2008–09 outcome	2009–10 planning levels
Partner ¹	36,370	40,440	39,930	42,100	45,000
Child ²	2,550	3,010	3,060	3,240	3,300
Preferential/other family ³	1,870	2,140	2,380	2,530	2,500
Parent ⁴	4,500	4,500	4,500	8,500	9,500
Total family	45,290	50,080	49,870	56,370	60,300
Employer sponsored ⁵	15,230	16,590	23,760	38,030	35,000
Skilled independent	49,860	54,180	55,890	44,590	41,600
State/territory sponsored ⁶	8,020	6,930	7,530	14,060	11,200
Skilled Australian sponsored ⁷	19,060	14,170	14,580	10,500	12,300
Distinguished talent	100	230	210	200	200
Business skills⁸	5,060	5,840	6,570	7,400	7,800
Total skill	97,340	97,920	108,540	114,780	108,100
Skill as percent of total program	68.1%	66.1%	68.4%	67.0%	64.1%
Total special eligibility	310	200	220	180	300
Total program	142,930	148,200	158,630	171,320	168,700

Note: Numbers have been rounded and totals may not be the exact sum of components.

Migration Program numbers do not include New Zealand citizens or holders of Secondary Movement Offshore Entry (Temporary), Secondary Movement Relocation (Temporary), and Temporary Protection Visas and are detailed at the top of planning range.

- 1 Includes spouse, fiancé, and interdependent. Net outcome as places taken by provisional visa holders who do not subsequently obtain permanent visas are returned to the Migration Program in the year that the temporary visas expire.
- 2 Includes child adoption, child dependent, and orphan minor.
- 3 Includes aged dependent, career, orphan unmarried, and remaining relatives.
- 4 Includes designated, contributory, and noncontributory parents.
- 5 Includes Employer Nomination Scheme, Labor Agreement, and Regional Sponsored Migration Scheme.
- 6 Includes State/Territory Nominated Independent Scheme and Skilled Independent Regional.
- 7 Includes brothers, sisters, nieces, nephews, nondependent children, working-age parents, grandchildren, and first cousins who have been skill tested.
- 8 Net outcome as cancelled visas are returned to the Migration Program in that year.

Source: Adapted from Australian Government, Department of Immigration and Citizenship, "Migration Program Statistics," accessed May 11, 2010.

The Australian points system

As noted, Canada developed the points system to admit permanent immigrants in the 1960s, and it was subsequently launched by Australia (1989), the United Kingdom (2001), and other countries. The points system has the advantage of providing greater transparency and precision to a country's immigration policies. It also has the advantage of flexibility in that it can be modified to reflect research and experience, as well as changing labor market conditions and policies. In Australia, as in Canada, the points system provided an objective alternative to the countries' former racial preference systems.

The comparisons in **Table 2.8** of Australian and Canadian immigration policies in 1999–2000 reflect the continuation of the human-capital model in Canada and Australia's movement away from that model, beginning in 1996, in favor of immigrants to fill specific Australian labor market shortages, pre-immigration testing for English language proficiency, working age under 45, Australian qualifications, willingness to locate in a low-population area, spousal skills, and those with sponsoring relatives in Australia.⁵⁰ The Australian skills test was both more specific and awarded more points for occupations on the Skilled Occupation List (SOL). As Table 2.8 shows, the Australian points system had more categories than the Canadian system. The extra categories offer the advantage of greater flexibility, but the disadvantage of greater complexity.

TABLE 2.8: Canadian and Australian economic category points tests compared (1999–2000)

Australian points test	Maximum points and percent weight	Policy comment (Hawthorne 2007)
Skill	60 (34%)	Awarded for post-secondary qualifications (university or trade), with pre-migration credential screening mandatory. Maximum points (60) awarded where training is specific to an occupation, and credentials are fully recognized by the relevant accreditation body; 40–50 points awarded for lower level and/or generic qualifications.
Age	30 (17%)	Age given a stronger points weighting than in Canada. Applicants must be under 45 years of age when applying.
English language ability	20 (11%)	Pre-migration and independently validated English language testing mandatory, with "vocational" scores required for reading, writing, speaking, and listening. Lower-level English ability permitted for sponsored migrants.
Specific foreign work experience	10 (6%)	Less weighting placed on this aspect relative to Canada, with no work experience required for former international students who have qualified in Australia.

Occupation demand/ job offer	5 (9%)	In 40–50 point occupations, continuous employment required in a field on the Skilled Occupation List for two out of the three years preceding application.
Australian qualification	15 (9%)	Bonus points for Australian qualifications: at this time a minimum of one (later two) years.
Regional settlement/ low population	5 (3%)	Bonus points for willingness to locate in a low population area.
Spouse skills	5 (3%)	Bonus points for spouse skills.
Relationship to sponsor	15 (9%)	Bonus points for a sponsoring relation in Australia (skilled Australian sponsored category).
Maximum total	175 (100%)	
Pass mark	115 (66%)	For independents.

Canadian points test	Maximum points and percent weight	Policy comment (derived from Richardson and Lister 2004)
Education	25 (25%)	No requirement for credential screening or recognition by assessment bodies pre-migration. Points awarded for a wide range of attainments: from 5 points for completed secondary education to 25 points for a completed master's or Ph.D. degree
Age	10 (10%)	Maximum points awarded for applicants 21–49 years of age, with points lost for each additional year outside this range.
English/French language ability	24 (24%)	Ability in one or both languages required to be demonstrated by an approved language test or written documentation (allowing for self-assessment).
Work experience	21 (21%)	Points awarded for number of years in full-time paid work, in a field listed on the National Occupation Code.
Arranged employment in Canada	10 (10%)	Points awarded for a full-time confirmed job offer.
Adaptability	10 (10%)	Additional points awarded for spouse with minimum of two years post-secondary Canadian education; spouse with a minimum of one year's Canadian work experience; and/or a relative living in Canada who is a landed immigrant or citizen.
Maximum total	100 (100%)	
Pass mark	67 (67%)	

Source: Adapted from Lesleyanne Hawthorne, *Labor Market Outcomes for Migrant Professionals* (University of Melbourne, 2007). Hawthorne adapted the table from S. Richardson and L. Lester, "A Comparison of Australia's Immigration Policies and Labour Market Outcomes," paper presented at the National Institute of Labour Studies (Flinder University, 2004). For a comparison of economic category points tests in Canada, Australia, New Zealand, and the United Kingdom, see Hawthorne, "The Impact of Economic Selection Policy on Labour Market Outcomes for Degree Qualified Migrants in Canada and Australia," *IRPP Choices* 14(5), May 2008, Appendix.

The Canadian system awarded fewer points for skill and did not require specific occupations in demand (other than awarding 10 points for a confirmed job offer). Canada gave greater weight to English/French language ability and general work experience. Canadian points for adaptability also were more general than Australia's. The implications of these qualification differences will be discussed below.

The 2010 Australian skilled points test is presented in **Table 2.9**. More points are given for ages 18-34; English language proficiency; work experience closely related to the Migration Occupations in Demand List (MODL, added in 1999 as an addendum to the SOL and replaced by a new SOL in 2010, discussed later); Australian qualifications, regional study, and sponsorship by an Australian relative living in a designated area (for provisional visas only); nomination by a state or territorial government; and designated languages other than English.⁵¹ These changes resulted from fine-tuning based on experience and research, discussed later.

TABLE 2.9 (Part 1 of 3): Australian visa subclasses and points pass marks, 2010

Visa subclasses	Points pass marks
Skilled – independent (subclass 175)	120
Skilled – sponsored (subclass 176)	100
Skilled – regional sponsored (subclass 475)	100
Skilled – regional sponsored (subclass 487)	100
Skilled – independent (subclass 885)	120
Skilled – sponsored (subclass 886)	100
Skill	Points pass marks
For occupations where training is specific to the occupation	60
For more general occupations	50
For other general skilled occupations	40
Points for skill are determined through the Australian Skilled Occupation List. Applicants must have a nominated occupation from the SOL to qualify for skilled migration.	
Age at time of application	Points pass marks
18–29	30
30–34	25
35–39	20
40–44	15

TABLE 2.9 (Part 2 of 3): Australian visa subclasses and points pass marks, 2010

English language ability	Points pass marks
Proficient English – score of 7 or more in the English Language Testing System (IELTS) on each of the four test components or have scored a B level or greater in an Occupational English Test (OET) exam, where applicants take an OET exam as part of a skills assessment.	25
Competent English – hold a passport from the U.K., Canada, New Zealand, U.S. or Republic of Ireland, or have a score of six or more on all four components of the IELTS test.	15
Vocational English – applies if applicant has a trade occupation and does not hold a passport from a native English-speaking country (listed above). It requires a score of five or more on all four components of the IELTS test.	15
Work experience	Points pass marks
Work experience closely related to nominated 60 point occupation for three of the last four years	10
Work experience in any occupation on the Skilled Occupation List for three of the last four years	5
Occupation in demand/job offer	Points pass marks
Work experience closely related to the MODL listed nominated occupation for one of the last four years and an offer of relevant full-time employment	20
Work experience closely related to the MODL listed nominated occupation for one of the last four years	15
The Migration Occupations in Demand List is an addendum to the Skilled Occupation List, revoked in 2010 and replaced with a new SOL.	
Australian work experience	Points pass marks
Australian work experience closely related to nominated 60 point occupation for one of the last four years	10
Professional year closely related to the nominated occupation for one of the last four years	10
Australian qualifications	Points pass marks
Doctorate (min. two years)	25
Master's/honors with undergraduate degree (min. three years)	15
Degree/diploma/trade qualification (min. two years)	5

TABLE 2.9 (Part 3 of 3): Australian visa subclasses and points pass marks, 2010

Regional study criterion	Points pass marks
Met 2 years study requirement while living and studying in regional Australia	5
Partner skills criteria	
Applicants may receive these points only if their spouse satisfies the following criteria:	5
<ul style="list-style-type: none"> • Age requirement • English language ability • Qualification • Nominated occupation • Recent work experience and • Has a skills assessment by relevant assessing body 	
Nomination criterion	
Nominated by state or territory government	10
Designated area sponsorship criterion	
Sponsored by Australian relative living in a designated area (only available to provisional visa applicants)	25
Designated language criterion	
Professional level language skills in a designated language	5

Source: Adapted from Australian Visa Bureau, "Immigration to Australia: Skilled Points Test" Web page, accessed September 15, 2011.

In 2010 the DIAC announced revisions to the Australian points system effective July 1, 2011 (**Table 2.10**). The main changes resulted from econometric modeling; findings from Australia's ongoing longitudinal survey on labor market outcomes; and extensive consultation with stakeholders, experts, and the public. The major changes include:

- **Higher English language levels for migrants with more advanced skills.** Research has demonstrated that English language proficiency is a major determinant of migrants' ability to find work compatible with their skill levels. To receive English language points, applicants must have either proficient or superior language qualifications on the International English Language Testing System (IELTS). No points are awarded for a competent English score, which nevertheless is required for admission.⁵²

TABLE 2.10: Revised Australian points system (effective July 1, 2011)

Factor	Description	Points
Age	18–24	25
	25–32	30
	33–39	25
	40–44	15
	45–49	0
English language	Competent English – IELTS 6	0
	Proficient English – IELTS 7	10
	Superior English – IELTS 8	20
Australian work experience in nominated occupation or a closely related occupation	One year Australian (of past two years)	5
	Three years Australian (of past five years)	10
	Five years Australian (of past seven years)	15
Overseas work experience in nominated occupation or a closely related occupation	Three years overseas (of past five years)	5
	Five years overseas (of past seven years)	10
	Eight years overseas (of past 10 years)	15
Qualifications (Australian or recognized overseas)	<ul style="list-style-type: none"> • Offshore recognized apprenticeship • AQFIII/IV completed in Australia • Diploma completed in Australia 	10
	Bachelor's degree (including a bachelor's degree with honors or master's)	15
	Ph.D.	20
	Recognition of Australian study	Minimum two years full time (Australian study requirement)
Designated language		5
Partner skills		5
Professional year		5
Sponsorship by state or territory government		5
Sponsorship by family or state or territory government to regional Australia		10
Study in regional area		5
Points required to pass		65

Source: Adapted from Department of Immigration and Citizenship, "Introduction of New Points Test," Web page, November 2010.

The general theme of these changes, according to Jim Williams of the Australian Embassy in Washington, D.C., “is to offer a bit more to people with features that indicate likely higher preference in the labour market.”⁵³ Changes also more tightly define the qualifications for international students in order to overcome the problem of foreign students taking Australian courses with the “lowest common denominator” to easily acquire more points. Students will still get concessions for Australian qualifications, but only for acquiring qualifications in demand in Australia.⁵⁴ The new restrictions require that applicants have qualified Australian education for “at least two academic years (that is, 92 weeks as registered on the Commonwealth Register of Institutions and Courses for Overseas Students).”⁵⁵

- ***More points for Australian work experience***, which research shows is more highly valued by Australian employers. Similarly, no points will be awarded for an applicant’s occupation; previously, applicants’ occupations could give them up to half of the points needed to pass. And all applications must be for occupations on the new, more targeted SOL.⁵⁶
- ***Maximum age raised from 45 to 49 to accommodate accumulated experience***. However, no points will be awarded to applicants over age 44. Research indicates that “highly skilled migrants who come to Australia between the ages of 25–32 add the most benefit to the Australian economy in terms of lifetime earnings.”⁵⁷ This age bracket therefore will receive 30 points, the highest number for age; 25 points will be awarded for ages 18–24 and 33–39.
- ***More points for “certain higher level qualifications [education], as higher level qualifications generally result in increased earning capacity.”***⁵⁸ However, no extra points are added for master’s degrees “as research indicates that the labour market outcomes of previous skilled migrants have not been improved by holding a master’s degree.”⁵⁹

Skilled visa categories

Australian general skilled migration for *permanent visas* is divided into two main subclasses: independent (175) and state-, territory- or relative-sponsored (176). Skilled immigrants sponsored by a state or territory must remain in that state or territory for at least two years and meet other specific requirements. These visas counteract migrants’ tendency to congregate in large cities and provide geographical flexibility. There might, for example, be labor shortages in some regions, but not others.

DIAC also provides a skills-matching database to “improve migration outcomes by linking applicants with employers and/or with state and territory governments who might want to nominate them.”⁶⁰

Provisional visas, valid for three years, provide a pathway to permanent residence. The Regional Sponsorship (subclass 475) visa is points tested but has a lower pass mark and English language requirement. Provisional visa holders also must live, work, or study in the state, territory, or other designated area identified by postal codes. Australia

provides a provisional visa (485) for overseas students who have met the two-year study requirement but need additional time to qualify for a permanent visa. This visa is not points tested and is valid for 18 months.

Temporary visas for skilled immigrants, valid for 18 months, are for graduates of recognized universities. This visa is not points tested and is restricted to applicants under 31 years old who have completed a qualification at a designated university in a field in demand in Australia.

Employer nomination visas are for skilled occupations listed on the Employer Nomination Scheme Occupation List (ENSOL). Applicants must have worked in the occupation for at least two years, possess skills and qualifications considered equivalent to Australia's standards, and, in most cases, have three years post-qualification experience in the occupation or be nominated for a position with a base salary of \$61,920 for various specified computer occupations and \$45,220 for all others.⁶¹ Australians, like the British (see Chapter 4), consider compensation to be a convenient proxy for qualifications.

As noted earlier, Australia has given less priority to *family visas* since 1995–96 because many people with these visas have low skills relative to spousal/partner members of principal applicants for economic visas. Family members who accompany principal applicants under skilled immigrant programs are counted with those applicants. But Australian immigrants also can unite core family members (spouses or partners and dependent children and parents) on family visas. In 2008–09, 56,366 family-visa immigrants were admitted out of 171,318 total immigrants and 114,777 in the skill stream. The Minister for Immigration and Citizenship has maintained the planned targets for family migration at around 50,000, but raised the target to 56,500 for 2008–09 and 60,300 for 2009–10; it was lowered to 54,500 for 2010–11. The actual outcomes of family entrants in recent years were 50,080 in 2006–07, 49,870 in 2007–08, and 56,370 in 2008–09.⁶²

In 2008–09, 101,280 *temporary visas* (subclass 457) were granted to skilled workers and their dependents, down 8.4% from the previous year. This program, roughly comparable to the U.S. H-1B visa, is designed to respond quickly to market demand. Unlike the H-1B visa, subclass 457, discussed below, has no cap, but does have planning targets.

As noted earlier, the MIAC can adjust migration levels to market conditions. In March 2009, for example, the minister reduced permanent migration to around 172,000 from the original planning level of 190,000. In February 2010 the minister eliminated 20,000 migrant student applications to refocus on skilled jobs demanded by booming resource industries.⁶³ The MIAC said the diverted migration places would focus on health-care workers—including doctors and nurses—as well as engineers and mining occupations.⁶⁴ The cuts were a blow to the education sector, which was suffering from bad publicity accompanying recent attacks on Indian students in Sydney and Melbourne, as well as from claims that “tens of thousands” of Asian students were taking courses such as cooking, hairdressing, and accounting in order to gain Australian residency. There also were complaints that the large and popular student visa program

had motivated education providers to relax standards to attract students. As discussed earlier, effective July 1, 2011, the points system tightened the eligibility requirements for student visas.

The new Skilled Occupation List

In 1999 the DIAC created the Migration Occupations in Demand List for occupations in high demand relative to supply. Migrants in occupations on this list received 20 bonus points under the points-based system, priority processing, and unrestricted location choices. The MODL was revised twice a year.

In February 2010, the MIAC announced that, as a result of its review, MODL would be replaced by a more targeted skilled occupation list “to better meet the needs of the Australian labour market.” On May 17, 2010, DIAC released a Skilled Occupation List (SOL) that continued Australia’s emphasis on demand-driven skilled migration.

The new list of skills was based on advice from Skills Australia (SA), an entity established in 2008 “by the Australian Government to provide expert and independent advice on matters related to Australia’s current, emerging, and future workforce skills and workforce development needs.”⁶⁵ The new comprehensive SOL replaced the Critical Skills List (CSL), which became effective January 1, 2009, for all General Skilled Migration applications. The CSL gave priority processing to applicants in the construction, engineering, and medical fields and key information technology (IT) professions.⁶⁶

SA will update the SOL on an annual basis, “identifying occupations which are of high value and will assist in meeting the medium and long term skills needs of the Australian economy.”⁶⁷ Skills Australia’s advice is based on *Australian Workforce Future*, whose framework, criteria, and methodology “were developed in consultation with industry and other key stakeholders.”⁶⁸ The migrant skills program is used only for “medium to long term skill needs, which can’t otherwise be met through efforts and measures aimed at employing, training, skilling, and re-skilling Australians.”⁶⁹ The government asked Skills Australia to “...provide advice on the development of the new SOL...[to reinforce] the principle that the General Skills Migration program is designed to complement Australia’s own efforts to improve skill levels, educational outcomes and participation by Australians.”⁷⁰

In revising the SOL, SA first assessed all occupation unit groups in the Australia and New Zealand Standard Classification of Occupations against four criteria:

1. long lead time for skills that required extended learning and preparation over several years
2. high use of the skills for the intended purpose
3. high risk, where the disruption of the skills in short supply “imposes a significant risk to the Australian economy and/or community”

4. high information, “where the quality of information about the occupation is adequate to the task of assessing future demand and assessing the first three criteria”⁷¹

An occupation is considered “specialized” if it meets the fourth criterion and at least two of the other three.

In developing the SOL, SA relied on government data from a variety of sources, as well as “feedback from peak industry associations, Industry Skills Councils, and a range of professional associations...and stakeholders.”⁷² This is similar to the top-down, bottom-up methodology used by the Migration Advisory Committee in the United Kingdom, discussed in Chapter 4.

SA excluded occupations from the SOL if they were likely to be in surplus over the medium or long term; there were other, more appropriate and specific migration options (e.g., temporary skilled migration or employer- or state-sponsored migration); they required Australian citizenship; they were not sufficiently skilled or could be learned without a long lead time; or were niche occupations that could be more appropriately filled through regional- or employer-nominated migration.

Employer-sponsored migration

Australian employers can sponsor skilled foreign workers who already are on temporary visas under three plans or “schemes,” outlined below:

- ***The Employer Nomination Scheme (ENS) allows employers to sponsor foreign workers in Australia on temporary visas for permanent visas to fill skilled full-time vacancies.*** Before approving an ENS application, DIAC determines that the vacancy is genuine, the employer has a satisfactory record of training domestic employees and complying with immigration laws, and there is no adverse information against the employer or its officers. In addition, the nominated positions must be on the Employer Nomination Scheme Occupation List, provide at least three years’ employment, and “provide working conditions which are no less favourable than those provided for under the relevant Australian legislation and awards” and “will pay a salary that is at least the specified minimum...for the occupation...”⁷³
- ***The Regional Sponsored Migration Scheme (RSMS) allows employers in regional and low-population-growth areas to sponsor foreign workers for permanent residence to fill genuine vacancies.*** These nominations must first be certified by a Regional Certifying Authority. After certification, DIAC verifies that the employer has a satisfactory immigration and workforce relations compliance record and the nominee will be employed at a salary meeting at least the minimum prevailing condition in Australia.⁷⁴
- ***Labour Agreements (LAs) are formal agreements between an employer, DIAC, and the Department of Education, Employment and Workplace Relations (DEEWR) “allowing the recruitment of a specified number of skilled workers from overseas in response to identified skill shortages in the Australian labour***

*market.*⁷⁵ One of the LA's purposes is to prevent employers from substituting immigration for the education and training of domestic employees.

Under these three employer-sponsored immigration schemes, the nominated employees must meet all the requirements for permanent skilled visas.

Canada and Australia compared

A comparative evaluation of the Canadian and Australian economic immigration systems, co-funded by Canadian Immigration and Citizenship, Human Resources Services Department Canada, and Statistics Canada, provides valuable insights into the operation of these systems.⁷⁶ As noted earlier, Canada and Australia have similar histories and immigration policies, which diverged in the last half of the 1990s when Australia moved away from the general human-capital model. Canada's policies retained that concept, though beginning around 2005 Canada also made its economic migration system more responsive to short-run labor market demand (discussed in Chapter 1).

Since the 1990s, both Australia and Canada have imported relatively fewer family immigrants and more skilled immigrants who can make positive economic contributions: In 2004–05, 59.6% of Canada's and 58.0% of Australia's immigrants were in this category, compared with less than 20% for the United States. There have, however, been significant differences in Canadian and Australian immigrant flows, especially with respect to the origin and composition of skilled immigrants. In 2004–05 Canada attracted more immigrants from Asia, especially China (18%), India (11%), the Philippines (7%), and Pakistan (4%). Australia also has attracted many immigrants from China and India but, to better match immigrants with specific labor market requirements, imposed more rigorous language and skill standards, which were assessed before prospective immigrants' applications were accepted, and maintained strong immigrant flows from U.K./Ireland and South Africa. Australia's top five source countries in 2004–05 were U.K./Ireland (25%), India (13%), China (11%), South Africa (5%), and Malaysia (5%).

Another major difference was that Australia relied more heavily on foreign students educated there as a source of degree-qualified (DQ) immigrants. As noted earlier, this policy was based on research showing that, once they graduate, these students perform well in Australia's economy. Australia then developed a two-step process of attracting foreign students (and other temporary migrants) and then allowing them to become permanent residents after graduation. Indeed, by 2005, as noted earlier, 52% of Australia's economic immigrants were international students.

Australia and Canada illustrate the connection between family, humanitarian, and economic migrants. Many family members of highly skilled economic immigrants also have degrees and occupational certifications that make them more employable; therefore, both countries award points for family members' qualifications.

As noted, both Canada and Australia use points systems to select economic immigrants, though after 1996 Canada imported a constant flow of foreign workers even

during recessions and accepted economic applicants with general rather than specific skills, limited English/French language competency, and unrecognized qualifications in occupations that might not have high market demand.⁷⁷

Canada's general human-capital policies were based on academic research showing that people with more human capital and experience could adjust to changing conditions. This approach also posited that, since it was hard to predict the changing demand for specific occupations and skills, it was better to concentrate on basic knowledge and skills.⁷⁸

Because Australia, by contrast, sought immigrants with attributes that research and experience showed improved labor market performance, starting in 1996 it weeded out applicants who had less chance of employment in their chosen fields.

Using 2001 census data supplemented by longitudinal surveys, Hawthorne confirmed the validity of Australia's approach. The census data covered all foreign-born residents, while the longitudinal surveys covered those admitted by visa class, thus permitting a better evaluation of admission policies and practices.

Among other things, Hawthorne found from *census* data that:

- Degree-qualified migrants to Canada and Australia between 1996 and 2001 had similar levels of employment (65% and 66%, respectively), but Canadian migrants had substantially higher levels of unemployment (14.7% versus 7.8%);
- By 2001, the proportions of Canadian DQ migrants who had found professional work varied by countries of origin, ranging from 60% for South Africans, close to 60% for Australians and New Zealanders, over 50% for U.K./Irish and Northwest Europeans; and close to 50% for Americans.
- Of Australia's 1996–2001 DQ migrants, 26.2% were not in the workforce compared with 20.4% for Canada. According to Hawthorne, the Australian DQ migrants not in the workforce were “typically... learning English or securing credential recognition.”⁷⁹
- In both countries migrants with trade/vocational qualifications (TQs) performed well. In fact, in Canada 65% of 1996-2001 TQ migrants found work, compared with 62% for DQ migrants. The comparable rates for Australia were an impressive 73% for TQ migrants and 66% for DQ migrants. This outcome caused both countries to increase the levels of TQ migrants.
- The percentage of DQ migrants who found professional work after arriving in Australia also varied by countries of origin, ranging from 60% from U.K./Ireland, 58% from South Africa, 48% from New Zealand, and 48% from the U.S./Canada. By contrast, DQ immigrants from developing countries had more difficulty finding professional work in either Canada or Australia, which often forced them to “de-skill” or accept lower-skilled work. The difference, as noted, was that Canada accepted more DQ migrants from developing countries. The most important difference between Canada and Australia was the level of U.K./Ireland migration: 1.6% for Canada and

15.0% for Australia. Excluding U.K./Ireland, the proportions of migrants finding professional employment were similar: 28% for Australia and 30% for Canada.

- Among DQ migrants, females had less favorable employment outcomes than migrant or native males and nonmigrant females in both Australia and Canada.
- In most professions age is an important factor in the employment of both natives and DQ migrants: 25- to 44-year-old DQ males had the best employment experience of all migrants to Australia and Canada, especially if their degrees were acquired in an English-speaking country. As noted, these results led Australia to restrict applications from people age 45 and older and Canada to reduce points for applicants age 45 and older and applicants younger than 18.
- Hawthorne found that the 1996–2000 changes in Australia’s selection criteria produced dramatic results, while “Canada’s have stood still.”⁸⁰ Traditionally disadvantaged groups made major gains in Australia: Employment rates within six months for Eastern European principal applicants (PAs) increased from 31% to 79% between 1993–95 and 1999–2000; comparable gains for other nationalities were Philippines, 57% to 76%; India, 56% to 73%; and China, 45% to 61%. Data from 2006 show that 83% of Australian economic PAs were employed within six months of arrival, and 60% used their credentials and skills immediately. “Their salary levels have risen astronomically. Their average weekly wage is now AUD\$1,015 compared with AUD\$769 for Australian graduates in their first full time job.”⁸¹

By contrast, Canadian migrants’ wage outcomes “worsened to the point where it may take 20 to 30 years for principal economic applicants to achieve parity (if they ever do) with comparably qualified Canadians.”⁸² According to Hawthorne:

as summarized in a recent study, [Canadian] economic migration is newly associated with entrenched disadvantage: “[B]y the early 2000’s, skilled class entering immigrants [to Canada] were actually more likely to enter low-income and be in chronic low-income than their family class counterparts, and the small advantage that the university educated entering migrants had over, say, the high school educated in the early 1990s had largely disappeared by 2000, as the number of highly educated rose. What did change was the face of the chronically poor immigrant: by the late 1990s one-half were in the skilled economic class, and 41% had degrees (up from 13% in the early 1990’s).”⁸³

Hawthorne’s analysis of *longitudinal* data produced the following conclusions:

- Employment levels had improved substantially for economic principal applicants between the mid-1990s and 1999–2000 in Australia and for select Canadian PAs: (1) Australian principals’ work rate jumped from 57% in 1993–95 to 81% in 1999–2000; PAs’ family member work rates rose from 46% to 59%; (2) employment rates for Canadian PAs fell from 64% to 60% and from 57% to 36% for family

members, reflecting their lower education levels and less-developed source countries; (3) Australian PAs finding professional work rose from 55% to 60%; 85% were using their credentials within six months; and (4) only 32% of Australian PAs' family members found high-skilled employment by 1999–2000; 64% of employed family members were using their credentials within six months.

- Using a different data set, Hawthorne found that 54% of Canadian skilled immigrants had managerial or professional jobs by 1999–2000, compared with 32% in 1994–95.
- During the 1990s, economic immigrant employment rates for males and females rose in Australia and fell in Canada. In Australia employment rates improved for both males and females between 1993–95 and 1999–2000, but they rose faster for females, reducing the male-female gap. Employment rates for females rose from 49% to 71% while the male rates rose from 53% to 78%. By contrast, comparable Canadian employment rates five months after arrival for females fell from 63% in 1994–95 to 55.6% in 2000–01; the comparable Canadian male rates fell from 65% to 62%.
- Externally validated language screening was associated with greatly improved employment outcomes in Australia and Canada. The proportion of Australian economic PAs using English well or very well increased from 45% in 1993–95 to 73% in 1999–2000. In 2000–01 the employment rate for migrants with high English proficiency was 75% compared with 41% for those with low proficiency. Canada had similar results: In 1995–96 the employment rates within six months for economic PAs with English as their “only or best” language was 89%; the rates for those who knew English “very well” was 86%; “well,” 76%; and “not well,” 59%. Similar results were found for migrants' ability to find work six months after arrival using their professional qualifications: The comparable percentages were 61% for those who knew English very well compared with 60% (well), 44% (not well), and 37% (not at all). The difference, as noted, was that Australia's criteria were designed to select applicants with better English skills.
- Salaries had risen markedly for economic PAs in Australia by 1999–2000, but not in Canada: (1) for Australian PAs, 57% earned AUD\$674 or more a week in 1999–2000 compared with 39% in 1993–95; by 1999–2000, 76% of these PAs and 63% of their family members earned more than the median weekly wage (AUD\$154); and (2) trend data are not available for Canada, but Hawthorne believes earnings were significantly lower for PAs there than in Australia: Only 33% of skilled migrants were paid the median wage of C\$618 or more per week compared with 11% of their family members.
- Since the government had barred economic PAs from participating in publicly supported programs for the first two years, welfare dependency had virtually disappeared for Australian PAs and their families by 1999–2000. In Canada by 2000–01 8% of PA households relied on public assistance.

Hawthorne concludes from her studies of both census and longitudinal data that:

Canada and Australia represent highly comparable settlement sites...for degree-qualified migrants....Economic migrants however perform indisputably better in Australia post-arrival—their immediate work outcomes strongly correlated to longer-term labour market integration....Far greater proportions of new arrivals in Australia now than in Canada secure positions fast, access professional or managerial status, earn high salaries and use their credentials in work. In the process unprecedented numbers are avoiding the labour market displacement typically associated with select birthplace, language, age, and gender-related groups.⁸⁴

These outcomes confirmed the Australian immigration system's ability to reach its goals after 1996: "to select skilled migrants able to make an immediate contribution to the economy through use of their skills at an appropriate place in the labour market."⁸⁵ The experiences also validated the Australian government's decision to abandon the general human-capital model that had delivered "...Principal Applicants lacking in the 'knowledge economy' attributes employers sought (sophisticated English language ability, recognised credentials, and qualifications in fields associated with buoyant labour market demand)."⁸⁶

Conclusions on Australia-Canada comparisons

Since 1999, Australia has made "employability" a guiding principle to admit economic immigrants. Applicants therefore must undergo pre-migration screening for credentials and English proficiency and receive up to 20 points on the PBS for high-demand fields. As noted in Chapter 1, these and other research findings convinced Canada to move away from the general human-capital model embodied in IRPA 2002 toward attracting immigrants who could successfully integrate into the labor market. Changes to encourage this outcome included relying more on provincial nominees, adopting the Temporary Foreign Worker Program, reducing the number of shortage occupations to 29 (as of 2010) from 351, creating the Canadian Experience Category, introducing Ministerial Instructions as a flexible tool to meet Canada's immigration goals and respond more quickly to labor market processes, and improving the application and approval processes. The latter is very important because long delays in approving permanent migration applications cause employers and applicants to use the provincial and temporary worker processes that, as Canada's Auditor General reported, create imbalances and undermine the integrity of the skilled immigration system.

In interpreting these results it should be noted that they refer primarily to highly skilled and educated immigrants in the last half of the 1990s. Australia's better outcomes reflect the changes in its selection criteria during this period, including mandatory pre-immigration English language testing and credential screening, a shift to labor demand and field-specific selection, and a growing use of deregulated temporary migration, discussed in the following section.

It should be emphasized, however, that conditions in both Canada and Australia have changed since Hawthorne's study was released, especially changes made in 2006 to the Canadian immigration system. Furthermore, Hawthorne's study looked only at highly educated immigrants and therefore did not capture: (1) the broadly comparable employment rates for family and refugee immigrants in Canada and Australia; (2) the higher family and refugee participation rates in Canada compared with Australia; and (3) Canada's higher employment and income outcomes for refugees and humanitarian immigrants relative to Australia.⁸⁷

Despite these considerations, Hawthorne's comparisons reinforce two major conclusions from the research literature:

- Unless migrants' specific human capital attributes match employers' preferences, outcomes are likely to be unfavorable for them and host countries. The characteristics most important to employers in Canada and Australia are language ability and education backgrounds of university graduates; those from countries whose education is not highly valued by employers will have less favorable outcomes.
- An effective way to identify employer preferences and migrant adaptability is through the selection of temporary transitional migrants such as graduates of well-regarded domestic universities or highly skilled foreign workers with high-level language ability and recognized educational backgrounds who can demonstrate their adaptation to domestic conditions by living, working, and studying in the selecting country.

The 457 visa and other temporary foreign worker programs

Before the 1990s, Australia's economic migration system focused almost exclusively on attracting permanent immigrants. This changed dramatically during the 1990s, when the emphasis shifted to importing skilled temporary foreign workers and more recently to cautiously experimenting with less-skilled TFWs. The skilled TFW programs—the international student and 457 visa programs—were regarded as good first steps for migrants wishing to become permanent residents. The recent emphasis on less-skilled workers is in response to a growing demand for such workers in Australia.

As noted earlier, the greater use of skilled TFWs also reflected the growing internationalization of labor and product markets as well as business enterprises. A major category of skilled TFWs is intra-company transfers, which have enormous advantages to countries as well as employers but which have also given rise to serious abuses. This section will first discuss the most important of these programs—the 457 skilled TFW visa—and then examine the seasonal foreign worker pilot program and the use of Labour Agreements to more closely regulate the employment of lower-skilled foreign workers.

The introduction and rapid growth of temporary visas for skilled workers has been the most important development in the Australian migration system since the mid-1990s. As noted, before then the country's leaders had a strong preference for permanent

skilled immigrants who could strengthen Australia's high-value-added economic policies, support themselves and their families, and easily integrate into the economy and society.

A number of developments between 1995 and 2005 overcame Australia's resistance to temporary skilled migrants, though resistance continued to temporary visas for low-skilled workers. In addition to the globalization of labor and product markets discussed earlier, these developments included rapid increases in the demand for labor driven by Australia's booming economy, the inability of the skills-tested permanent immigration system to respond quickly to the changing demand for workers, and the research-based conclusion that temporary skilled migrants made better permanent residents than many who were admitted through the permanent immigration processes without first having worked or studied in Australia for several years.

Background of the 457 visa

Australia's main TFW program for skilled migrants—the Temporary (long stay) Business visa: subclass 457—was introduced in August 1996. Eligible workers can stay in Australia from three months to four years to occupy vacancies that cannot be filled locally.

The 457 visa applicants' skills must correspond to the Australian Standard Classification of Occupations (ASCO) levels 1–4 (managerial, professional, sub-professional, and trades workers). Employers in designated regional areas may sponsor foreign workers at lower ASCO skill levels 5–7 and at lower salaries.

Employers of TFWs must meet minimum salary requirements designed to prevent undercutting Australian wages and the exploitation of foreign workers. Employers also are required to cover some of the costs for visas, transportation, and medical insurance. Sponsors of 457 visa workers must have satisfactory records of training domestic workers and indicate how the TFWs would benefit Australia by, for example, creating jobs or expanding trade links.

The 457 visa is issued relatively quickly because no market test is required, even though the law and regulations stipulate that foreign workers are to be admitted only where no Australian workers are available. The 457 regulations attempt to accomplish this outcome by minimum salary regulations that, with the costs of recruiting TFWs, should cause the 457 workers to be more expensive than Australians, thus mitigating wage depression and the displacement of Australian workers. However, as will be discussed later, critics doubt the effectiveness of this process, which was introduced primarily in the interest of speed, not worker protections. Until September 2009, when market rates replaced them, the minimum salary levels were AUD\$43,240 for general occupations and AUD\$53,500 for some occupations in the IT industry.

Unlike the U.S. H-1B temporary skilled worker program, there are no caps on 457 visas, which also have less stringent certification requirements than permanent skilled worker visas, especially the requirement that a permanent foreign worker's credentials be certified by a recognized entity or association. The 457 applicants' overseas

qualifications can be certified by DIAC agents who, critics argue, not only lack the requisite knowledge for this task but, since the DIAC is encouraging the growth of 457 visas, might lack objectivity.

Applicants like the 457 visa because it provides quick and less rigorous entry to both temporary employment and permanent residency. Once it was introduced, the 457 visa became the favored vehicle of employers and immigration officers. For example, the number of employer-sponsored permanent visas increased from 5,314 in 2005–06 to 5,712 in 2006–07 and 8,264 in 2007–08. During these years the 457 visas issued for primary applicants were 39,530, 46,680, and 58,050, respectively. In December 2008 the stock of 457 principal visa workers in Australia was 82,500.⁸⁸ Secondary 457 applicants (i.e., spouses or partners) can accompany primary applicants and are allowed to work and study in Australia.⁸⁹

Statistical profile of 457 visa holders, 2009–10

In 2010, 457 visa holders came primarily from English-speaking countries; were heavily concentrated in New South Wales, Victoria, and Western Australia; and worked in the health care and social assistance (10,610), construction (7,920), information media and telecommunications (6,680), manufacturing (5,940), and mining industries (5,250). Salaries averaged \$80,000 a year (in Australian dollars) and ranged from \$57,800 for accommodation and food services to \$126,800 in mining.⁹⁰ The five industries listed above accounted for just over half (50.53%) of all 457 visa holders.

The total number of 457 visas granted in 2009–10 was 35,890: 18,900 primary and 16,990 secondary.⁹¹ The number of 457 visas granted peaked in 2005–06 at 71,150: 39,530 primary and 31,620 secondary. The 2009–10 457 visa levels were about in line with 2000–01 (36,900), 2001–02 (33,510), 2002–03 (36,800), well below 2004–05 (48,590) and the 2005–06 peak, and significantly higher than the levels for 1997–98 (30,880) and 1998–99 (29,320).⁹²

The top five citizenship countries, which accounted for just over half (50.95%) of all primary 457 visa holders in November 2010, were the United Kingdom (18,410), India (8,410), the Philippines (6,490), Ireland (5,100), and the United States (4,150).⁹³

The three leading occupations for 457 primary visas granted in 2010–11 were managers (15.6%), professionals (65.2%), and technicians and trades workers (14.7%).⁹⁴

The average total remuneration employers were obligated to pay for primary applications granted in 2009–10 is summarized in **Table 2.11**.

In a 2007 study of employers' perspectives on 457 workers, a review of research, some of which was sponsored by DIAC, found that results were generally favorable to Australian workers and government budgets.⁹⁵ This research found, in addition, that the temporary migration of skilled workers is an increasingly common practice in the global marketplace and that intra-company transfers of executives, specialists, and professionals were a major component of skilled TFW migration.

TABLE 2.11: Average remuneration paid by employers, by job category

Category	AUD
Managers	\$152,700
Professionals	91,900
Technicians and trade workers	72,800
Community and personal service workers	71,100
Clerical and administrative workers	86,400
Sales workers	72,700
Machinery operators and drivers	142,900

Source: Australian Government, Department of Immigration and Citizenship, *Subclass 457 State/Territory summary report, 2010–11, 2011.*

The 2007 study concluded that Australian employers of all sizes had adopted a global view of the labor market, mainly because the small size of the Australian workforce limits the availability of workers with specialized skills.

Employers of 457 workers are diverse in industry and size, and they include multinational corporations, hospitals, universities, religious bodies, and community organizations. Their motives for sponsoring TFWs include the inability to find the skills needed in Australia labor markets, though "...sometimes it is just easier and faster, although usually not less costly...."⁹⁶ By far the most important reason given by employers for sponsoring 457 workers was "required skills difficult to obtain in Australia." The least important were "lower cost" and the "high level of control" permitted by the 457 visa.⁹⁷

The modes of recruitment for skilled TFWs were primarily from other employees, advertising, and direct contact with the prospective TFW. "Migration agents were not often used for the recruitment of highly skilled migrants.... No employer indicated using recruitment companies engaged in running 'body shops,' bringing in large numbers of temporary workers and then hawking them around to employers."⁹⁸

Criticisms of the 457 visa program

As the number of 457 TFWs grew and the composition shifted to the trades and lower-skilled workers, criticisms mounted from unions, migration experts, members of Parliament, and official commissions.

In 2006, the Australian Council of Trade Unions and the Federal Labour in Opposition "vehemently oppose[d] this visa...arguing that it threatens jobs and training opportunities for Australians, undermines wages and working conditions and exploits foreign (non-resident) workers."⁹⁹ Migration expert Bob Kinnaird argued that, although the government did not make data on actual wage payments to 457 workers available, it was clear that employers often were required to pay only minimum wages, not

the actual market rates for occupations held by these workers. According to Kinnaird, between November 2003 and February 2006, “30 per cent of all 457 visas granted onshore were approved by DIMA [now DIAC] at or below the [official] 457 minimum salary.”¹⁰⁰ Moreover, he argued, many were not even paying the DIMA-approved rates, in breach of their sponsorship obligations.

Kinnaird maintained that the 457 program had had a particularly serious impact on the education and training opportunities for Australians: “Since 2001 the proportion of Australian computer science graduates unable to find full-time work has been at record or near-record levels (30–35%) and enrolments by Australian students in university IT courses have fallen by probably 50 per cent... There are now fewer Australians commencing IT courses than in 1996 when the Howard government first came to office.”¹⁰¹

Kinnaird believed the evidence supported the conclusion that “...some...ICT [information and communications technology] workers on 457 visas have become substitutes for Australian IT graduates.”¹⁰² He faulted DIMA for continuing to grant relatively large—and increasing—numbers of 457 visas in ICT “...[d]espite clear evidence of serious oversupply of domestic ICT graduates...”¹⁰³

Similar criticisms of the 457 visa program were made in a report issued by the Australian Expert Group in Industry Studies (AEGIS), University of Western Sydney, and the Australian Manufacturing Workers’ Union (AMWU). The AEGIS-AMWU report argued that the 457 visas reflected the government’s “major economic failure... to maintain an effective training and skills formation system.”¹⁰⁴ Moreover, according to this report, since 2001, companies using 457 visas have had no requirement to “attempt to fill the vacancy locally,” the TFWs have not been required to have “accreditation of overseas qualifications,” and employers have not been required to “demonstrate a training benefit to Australians.”¹⁰⁵

The AEGIS-AMWU report is particularly critical of the failure of the 457 visa processes to protect foreign workers, saying: “The restrictions on the movement of 457 visa-holders within Australia are dangerously close to creating a situation akin to ‘bonded labour.’”¹⁰⁶

Like Kinnaird, the report faults the 457 program for not paying market wages and argues that, except for mining in Western Australia, there is “no evidence in recent wage price movements to indicate critical trades skills shortages...”¹⁰⁷

After reviewing the quantitative evidence, the AEGIS-AMWU report concludes, “Temporary visas are being misused by the Federal Government and unscrupulous employers to provide a source of cheap, bonded labour.”¹⁰⁸ The authors argue, among other things, that the 457 program should be reformed to require the payment of market wages; increase the mobility of the TFWs, thus reducing their dependence on particular employers; require labor market tests and qualification certifications; and import foreign workers only to fill demonstrated shortages and give much greater weight to the recruitment and training of Australian workers.

Three leading Australian migration authorities likewise are critical of the relaxed standards for 457 visa holders as well as for the permanent employer-nominated skilled-worker visas (ENS and RSMS), and especially for the growing tendency of relatively

unqualified 457 visa holders to acquire permanent residency through employer-nominated permanent visas.¹⁰⁹

According to these analysts, in its early years the 457 visa was dominated by highly skilled, mainly managerial and professional workers transferred by companies in Europe, Japan, and the United States to enterprises in Australia. After their stay in Australia, a great majority of these employees either returned home or moved to other foreign assignments. This practice is still common for 457 visa holders from the United States, Japan, and Germany.

In recent years, however, 457 visa holders have included large numbers of migrants whose goal is to gain permanent entry without going through either the rigors of the points system or the time required to obtain a permanent visa. Many of these migrants are from Ireland, the United Kingdom, and South Africa, but an increasing minority is from Asia, including blue-collar workers in the construction and manufacturing industries. Even many professionals from low-income Asian countries can earn more in Australia in semi-skilled positions than they can as professionals in their homelands. The 457 visa has the added advantage of enabling migrants to work while they are qualifying for permanent residency.

A major problem with using the 457 visa as a pathway to permanent residency, according to Birrell, Healy, and Kinnaird, “arises from evidence that it allows employers to recruit workers who are willing to work at or close to the specified minimum salary rates that are well below market salary rates prevailing in the industry. The looseness of the regulations also allows the importation of workers who may lack the technical skills or English language skills required by most other employers, whether at trade level or above.”¹¹⁰

These experts report that, of 17,760 permanent-entry employer-sponsored visas in 2007–08, 16,070, or 90%, were issued to migrants who held 457 visas at the time of their applications.

“Any deficiencies in technical...or English language skills are thus being imported into the skilled permanent residence program via the lower standards that employer-sponsored visas are permitted.”¹¹¹ Moreover, to the extent that these workers are paid substandard wages, they “undermine the workplace standards and rates of pay of the mainstream workers.”¹¹²

The 457 regulations also have permitted employers to discharge higher-paid Australian workers and retain lower-paid 457 visa holders, a practice these experts believe is “increasingly likely to arise in the current financial and employment climate.”¹¹³ The 457 migrants’ dependence on employers for both their jobs and the chance to acquire permanent residency limits their ability to protest inferior wages and working conditions. The employers’ control over 457 workers is enhanced by the requirement that, to qualify for permanent residency, the visa holders must have worked in Australia for a minimum of two years, 12 months of which must be with the same employer.

The report of the Integrity Review Commission

In response to growing criticism of the 457 program, Australia's deputy prime minister and the Minister of Immigration and Citizenship appointed the Visa Subclass 457 Integrity Review Commission, chaired by industrial relations expert Barbara Deegan. Its final report was released in October 2008. Deegan reported "numerous examples of the exploitation of workers on 457 visas," but also found strong support for the continuation of a reformed version of the program. The Australian Council of Trade Unions reported that it "welcomes this review into the integrity of the...457 visa scheme. The current scheme fails to adequately protect the rights of temporary overseas workers."¹¹⁴

Deegan concluded: "It has been made clear during the consultation process that where a visa holder has permanent residency as a goal that person may endure, without complaint, substandard living conditions, illegal or unfair deductions from wages, and other similar forms of exploitation in order not to jeopardise the goal of permanent residency. These situations are exacerbated where the visa holder is unable to meet the requirements for permanent residency via an independent application."¹¹⁵

Addressing what many regard as the most serious issue, the Integrity Review report recommended that: "The Subclass 457 visa program should not be able to be used as a device to obtain long term residence in Australia for applicants who would not qualify under the permanent migration program....The temporary nature of the visa should be emphasised."¹¹⁶

The Integrity Review's other recommendations included:

- Gradually abolish minimum salary levels and replace them with such other mechanisms as market rate determination and collective agreements.
- Pay market rates for all visa holders with salaries less than \$100,000 per year.
- Include only professional, semi-professional, and trades occupations "requiring genuine skill" on the lists of occupations for which temporary visas may be granted.
- Require DEEWR to provide "a list of training options from which employers can choose in order to demonstrate a meaningful and focused commitment to training."
- Remove "regional concessions from the Subclass 457 visa program."
- Provide "more comprehensive information on pathways to permanent residency... designed to remove the perception that the...457 visa is a guarantee of permanency."
- Rename the 457 visa the "'Temporary Employment Visa'...to reinforce its temporary nature."
- Rebalance the "current procedures which give precedence to employer nomination for permanent residency for visa holders... to give greater weight to the length of time worked by the visa holder for any Australian employer..." Subclass 457 visa holders with a number of years of employment in Australia should not have "to

apply offshore for permanent residency in circumstances where the application is not supported by an employer.”

- Ensure that “variations to the English language requirements...only be available in exceptional circumstances by means of Labour Agreements [discussed below] containing appropriate safeguards.”

The Integrity Review Commission made a number of additional recommendations designed to prevent abuses by migrant “on hire” firms (labor agencies). The recommendations included making agreements with other governments to regulate these entities, prohibiting the collection of employment fees from migrants by either agents or employers, exempting legal practitioners and community organization staffs from migrant agent regulation, and stipulating that “Labour Agreements be retained as the only manner in which on-hire companies can sponsor under the...457 visa program.”

The government response to the commission’s report

In April 2009, the Minister of Immigration and Citizenship announced changes in the 457 visa program in response to both the Integrity Review report and the views of stakeholders on the Skilled Migration Consultative Panel.

According to the MIAC, “the 457 visa program plays an important role in the Australian economy. It is an uncapped temporary visa program entirely driven by employer demand for skills that are not available locally. It allows employers to access the skills they need, with the overseas workers then returning home when those skills are no longer required.”

The MIAC noted that the “457 visa program rapidly grew over the period 2003–2007 as a combination of the resources boom and a failure [by Australian governments and employers] to invest in training saw widespread skill shortages emerge across the economy.”

The minister cautioned, however, that the 457 program should complement and not, as critics had charged, replace domestic recruitment and training initiatives. The MIAC also acknowledged that with the growth of the 457 program “community concerns grew over the exploitation of overseas workers and the undermining of local wages and conditions after cases of some employers abusing the program emerged through 2005–2007. The vast majority of these cases involved trades’ level 457 visa holders with little or no English language skills who often lacked the technical skills claimed.”¹¹⁷

The measures taken by DIAC to improve the 457 visa were:

- indexing the minimum salary level to local wages
- implementing a market-based minimum salary, a key Deegan recommendation
- raising the minimum language requirement for 457 trade occupations and chefs from 4.5 to 5 on the IELTS

- progressively introducing formal skills assessments for trade occupations and chefs from high-risk immigration countries
- requiring employers “seeking access to the 457 visa to have a strong record of, or demonstrated commitment to, employing local labour and non-discriminatory employment practices”
- “[t]raining benchmarks to clarify the existing requirement” that “employers demonstrate a commitment to training local labour”
- extending “the labour agreement pathway to all [relatively low-skill] ASCO 5-7 occupations to ensure that employers...satisfy obligations on local training and employment”

The MIAC noted that, although offshore 457 applications had declined from 700 primary visas a week in the last half of 2008 to 430 in the first quarter of 2009, reflecting the global economic slowdown, the recession “has not diminished the need to restore confidence in the [457] program.”

Employer and employee 457 obligations after the reforms

Employers' main obligations after the 2009 reforms include the need to do the following:¹¹⁸

- Ensure that the terms and conditions of the 457 workers are “no less favorable” than those they provide Australians. The primary objective should be to protect foreign and resident workers by ensuring that labor costs are not the primary reason for importing foreign workers.
- Pay “reasonable and necessary travel costs to enable [457 workers] to leave Australia *if the costs have been requested* in writing” by the 457 worker or DIAC.
- Pay costs “incurred by the Commonwealth in locating and removing [the 457 persons or their dependents whose visas are no longer valid] from Australia if [the Minister of Immigration and Citizenship] has requested the payment by written notice.”
- Ensure that primary 457 workers do “not work in an occupation other than the occupation” for which they were nominated. “If employers want to employ 457 workers in a different occupation, they must file a new nomination.”
- Forbid employers from recovering recruitment or sponsorship fees from 457 migrants.

Employees' 457 obligations include the need to do the following:

- Notify DIAC of any change in circumstances. If 457 workers cease employment they must (1) find another employer willing to nominate them; (2) “apply for another type of substantive visa”; or (3) “leave Australia within 28 days” unless their visas “expire before that time, in which case [they] must leave Australia prior to visa expiry.”

- Work “in the occupation [they] were nominated for” and “for the sponsor, or an associated entity of the sponsor (except for exempt occupations).”
- Assume responsibility for all health care costs for themselves and their family (after September 14, 2009).
- For 457 primary applicants, achieve English language proficiency “that is equivalent to an International English Language Testing System test score of at least 5 on *each* of the four test components of speaking, reading, writing and listening. Prior to 14 September 2009 applicants required an average test score of at least 5 across the four test components.”

Additionally, 457 migrants “are considered to have ceased employment when either [they or their employers] give notice of intention to cease employment.” After 28 days from the notice, 457 workers may have their visas cancelled. If they abandon their employment “or are absent without leave (AWOL), [they] may be considered to have ceased employment.” After September 14, 2009 “457 visa holders who want to change employers...will not be required to apply for a new...457 visa; however, a nomination must be lodged and approved from [their] new employer sponsor.”

Australia applies essentially the same requirements for overseas-based 457 sponsors as it does for domestic employers, unlike the much more lenient U.S. requirements for L-1 visas for intra-company transfers.¹¹⁹ To become an approved 457 sponsor, “an overseas business must be seeking to...[sponsor] a 457 visa applicant/holder to establish...a business operation in Australia with overseas connections...[or] fulfill or assist in fulfilling a contractual obligation of the overseas business.”

Further, “where an overseas business has...an Australian business operation, it is the Australian business...that must apply for the 457 visa.”

Overseas 457 employers must meet the same conditions as an Australian business, including payment of market salary rates with one key difference: “...The nominated occupation must be a position in the business of the overseas...business sponsor—it cannot be with an associated entity of the sponsor.”

“The purpose of this difference is to prevent a multi-national company with a business operation in Australia from using its overseas business to become a...business sponsor (thereby circumventing the training and attestation requirements) and then placing the...457 visa holder in the Australian business.”¹²⁰

Critics were not persuaded that these changes had overcome 457’s basic problems. Birrell, Healy, and Kinnaird, for example, were critical of the government’s delay in introducing these reforms, despite “the gross defects in the 457 program disclosed by the Integrity Report,” and concluded that the “Government has...not addressed the most serious issue identified.... This is the way the 457 visa system is being transformed into a concessional avenue for permanent residence via the permanent entry ENS.”¹²¹

These experts also suggest that during the economic downturn employers might still have “powerful incentives” to sponsor lower-cost foreign workers or even to retain them while laying off Australian workers, a practice not precluded by the MIAC’s changes.¹²²

Conclusions on the 457 visa program

Australia's experiences with the 457 visa demonstrate how hard it is to prevent abuses of temporary worker programs even under otherwise exemplary migration management systems. The basic problem, of course, is the workers' dependency on employers, not only in maintaining their jobs or visa status but in becoming permanent residents. Dependency makes TFWs reluctant to complain about abuses, a serious problem in complaint-driven worker protection processes. Dependency also limits the TFWs' ability to either leave abusive employers or take advantage of better opportunities. And since TFWs cannot vote, they have limited leverage with public officials, who usually are more responsive to employers. DIAC responded to criticisms by strengthening enforcement resources and giving 457 visa holders somewhat more mobility, but these changes do not overcome the issues of basic dependency and lack of personal power, especially for TFWs seeking permanent residency.

A strong feature of Australia's employment-based migration is its close relationship to economic and social policies. This principle is recognized by Australia's insistence that migration not depress domestic wages and working conditions or substitute for domestic education and training programs. Enforcing this principle requires making strong employer recruitment and training programs a condition for the importation of foreign workers and ensuring that foreign workers are imported only when there are demonstrated labor shortages.

There is at least anecdotal evidence that the 457 visa does not meet these tests, a conclusion acknowledged by DIAC and supported by limited evidence presented by commissions and migration experts. We should also note that conditions imposed on employers cannot compensate for the government's failure to prevent the substitution of migration for public investments in education and training, which the Minister of Immigration and Citizenship conceded had happened in Australia.

The government also is responsible for ensuring that temporary worker programs do not undermine its permanent immigration programs. Australia has strengthened its immigration program by permitting students and temporary workers to become permanent residents. But to the extent that allowing 457 visa holders with substandard qualifications to become permanent residents depresses domestic labor standards, Australia compromises its exemplary high-value-added migration policies. The MIAC has attempted to overcome the 457 visa's problems by raising the language and technical qualifications for lower-skilled 457 visa holders and extending the use of Labour Agreements to strengthen worker protections.

Another strength of the Australian immigration system is its willingness to make evidence-based changes to correct problems and respond to changing conditions. Perhaps greater transparency, continuous improvement, and stronger foreign and domestic worker protections will enable Australia to maximize the advantages of this program, minimize its weaknesses, and retain public support for the program.

Labour Agreements

To both increase the flexibility in the admission of temporary workers and correct abuses, the Australian government has adopted Labour Agreements to adapt migrant wages, skills, and working conditions to the requirements of particular industries and permit the government to more closely regulate unacceptable industry practices. Labour Agreements, mainly applicable to industries with lower skill requirements, deviate from the specific 457 requirements, especially on qualifications levels and language requirements. The government considers Labour Agreements on a case-by-case basis.

The first of these agreements was negotiated in 2006–07 by the Australian Meat Industry Council (AMIC), the Meat Industry Employees Union (MIEU), and the government. This agreement replaces the 457 visa and, in April 2007, stopped the industry from importing 457 visa holders “because of breaches in the employment agreement,” according to the MIEU. The MIEU’s state secretary said that the “agreement will have more ability to make employers comply with the skills element of the visa” because “there’s levels of scrutiny and compliance from both the state and Federal government—under the old [457] system there just wasn’t sufficient compliance with the regulations.”¹²³ The AMIC-MIEU agreement was negotiated by John Howard’s coalition government, but the succeeding Labour government continued the use of these agreements, which specify foreign workers’ numbers, occupations, and employment conditions, but have concessions that include lower minimum salary levels and access to lower-skilled occupations. Labour Agreements provide flexibility not available under the standard 457 processes, but they also are criticized as being less transparent and in violation of the policy to only admit skilled temporary workers.

In response to this criticism, the Minister of Immigration and Citizenship announced in 2008 new processes to permit wider consultation in negotiating Labour Agreements, the only mechanisms to admit temporary workers available to some industries. The MIAC emphasized, however, that despite wider consultations, “no one will be given a veto right to block the approval of a Labour Agreement.”¹²⁴

The Parliamentary Joint Standing Committee on Migration recommended that DIAC commission research on “sectoral usage of the 457 visa program, commencing with the meat processing sector, with a view to further refining temporary skilled migration policy and...[the] 457 visa program with reference to specific industry needs.”¹²⁵ The government supported this recommendation, agreeing that, “The specific needs of some industries warrant the development of Labour Agreements [which] allow the... Government to stipulate certain requirements to the recruitment of overseas workers, which may not be applicable under the...457 visa program.”¹²⁶ The government response noted that the 2006–07 Meat Industry Labour Agreement “enables meat processing companies to regularise the status of existing overseas meatworkers on...457 visas where they can demonstrate the skills are not readily available in Australia.”¹²⁷ The Migration Regulations were changed in September 2007 to make “the Labour Agreement the only pathway available to access overseas meatworkers under the...457 visa program.”¹²⁸

This approach was extended to the on-hire (labor recruiting) industry in October 2007, and the extension removed that industry's right to use the 457 visa "to place overseas workers with unrelated businesses. A Labour Agreement is now the compulsory pathway for access to overseas workers for the on-hire industry. The agreement provides checks and balances to assist in managing prevalent practices such as 'benching' (not paying salary between contracts) and the underpayment of workers."¹²⁹

Seasonal workers

Even before the 457 temporary worker program for skilled workers was created in the mid-1990s, there had been calls for a "guest worker" program for low-skilled workers, but Australians—especially powerful trade unions—vigorously resisted these programs, fearing that they would inevitably lead to the exploitation of foreign workers, deterioration of standards, and growth of illegal immigration. Critics pointed to conditions in the United States, Western Europe, and even the Canadian Seasonal Agricultural Workers Program (discussed in Chapter 1) to bolster their case. For example, John Sutton, leader of the Construction, Forestry, Mining, and Energy Union, argued, regarding Australia's Pacific Seasonal Worker Pilot Scheme (PSWPS), that "the large movement of guest workers from the Asia-Pacific to our small labour market would have profound effects on the ability of governments or unions to uphold standards. This policy would lead to the 'Mexicanization' of our job market."¹³⁰ Like most Australian union leaders, Sutton favored recruiting and training domestic workers. Critics also pointed to the widespread charges of exploitation of the 457 workers, particularly those in the lower-skilled categories, discussed earlier.

Supporters of temporary programs for low-skilled migrants countered that Australia's much better managed migration program could avoid the American outcomes and even the shortcomings of the 457 visa program, especially its failure to require market wages and adhere to the "Australia First" principle of testing markets.

Some thought that the Canadian and New Zealand experiences with seasonal agricultural worker programs were better guides for an Australian program. However, critics argued, the Canadian SAWP program's outcomes were not as positive as supporters alleged because they included exploitation, health and safety problems, and poor living accommodations for the foreign workers. As noted, Canadian farmworker problems were exacerbated by the concentration of seasonal agricultural workers in Ontario, where they were excluded from collective bargaining and occupational health and safety protections—what union leaders called "Canada's shameful little secret."¹³¹

A more compelling example for Australian policymakers was the New Zealand Recognized Seasonal Employer Scheme (RSES), launched in 2007, which allows growers to import up to 5,000 Pacific seasonal farmworkers during peak harvest and planting times. The RSES replaced New Zealand's Seasonal Work Permit (SWP) program, which allowed growers to hire Pacific Islanders for up to nine months. The SWP, introduced in 2005, met employers' labor needs but was criticized for not protecting local working conditions. The RSES sought to overcome these problems by tighter controls on both

employers and the TFWs. In order to participate, employers had to receive Recognized Seasonal Employer (RSE) status, which required evidence of good management policies and practices and compliance with New Zealand's labor laws. Employers also had to commit to the recruitment and training of New Zealanders; pay the market wage rate; provide appropriate accommodations, food, and health services at a reasonable cost; and pledge not to use recruitment agencies that charge fees to workers.¹³²

Once they acquired RSE status, employers had to apply for an Agreement to Recruit, which required information on the location of the jobs they sought to fill; evidence of their efforts to recruit and train local workers; information on their foreign recruiting sources; a copy of their proposed labor agreements; evidence of the accommodations and other arrangements they proposed to provide; an agreement to pay half of the workers' return airfare and additional levies to defray the costs of repatriation for TFWs who violate their visas; and an agreement to allow Department of Labour officials to make site visits and audit their compliance with RSE requirements.¹³³

Once they receive their Agreement to Recruit, New Zealand employers can consummate employment contracts with foreign workers for no longer than nine months. The TFWs must be over 18 years of age, apply for a limited-purpose visa, have a return air ticket, and pass health and character checks.

The RSE requirements were so onerous that some employers were unable to qualify; disappointed employers who were willing to work toward meeting those requirements were awarded Transitional RSEs, which enabled the employer to hire seasonal foreign workers already in New Zealand for up to four months.¹³⁴

During the RSES's first year, 3,932 seasonal workers were employed. New Zealand and source-country governments judged the program a success in providing needed workers to New Zealand agricultural employers and jobs and income to improve the conditions of the seasonal workers, as well as to promote the development of the workers' home countries.

Despite the RSES's strict controls, during its first year the scheme experienced a number of problems with the exploitation of the TFWs, including lower-than-expected pay, disputed pay deductions, and poor accommodations. "The New Zealand government acknowledged these shortcomings and...announced a number of key changes to the RSES scheme. Of these, perhaps the most critical will be that future guest workers will have the right to change employers once in New Zealand."¹³⁵

On the basis of a detailed study, Savielle concluded that the RSES's main lesson was that "to be of benefit to employers and guest workers alike," these schemes "must be subject to the highest level of government regulation, monitoring and enforcement."¹³⁶

The Australian Pacific Seasonal Worker Pilot Scheme

The PSWPS was launched in August 2008, after extensive consultation and debate. Australian agricultural employers strongly supported the scheme, arguing that they regularly lost valuable crops because of labor shortages that could not be filled by Australians or the Working Holiday Makers program, which could not supply enough workers at the right time.

Under the PSWPS, up to 2,500 Pacific Islanders were to work for up to seven months in horticulture, picking, planting, and packing fruit. The pilot was scheduled for three years, with reviews at 18 and 30 months. The PSWPS workers gained entry into Australia through the existing 416 temporary worker program.¹³⁷

The first PSWPS workers arrived in Victoria and New South Wales in February 2009.¹³⁸ The pilot had two broad goals: (1) support Australia's Pacific region economic development objectives through the workers' remittances and employment and training experiences; and (2) help Australian horticulture employers meet their seasonal labor needs. The pilot proposed to grant visas to workers from Kiribati, Papua New Guinea (PNG), Tonga, and Vanuatu.

The pilot was administered by the Department of Education, Employment, and Workplace Relations, led by Julia Gillard, who became prime minister of Australia in 2010. However, the implementation was undertaken through a coordinated "whole-of-government" approach that included all departments and agencies of government, including DIAC.

Under the pilot's terms:

- Employment was restricted to horticulture.
- Employers had to demonstrate unmet needs for seasonal workers to avoid the displacement of Australian workers.
- Workers were employed by an Approved Employer (AE).
- Employers were required to pay a stipulated wage rate plus the full costs of international travel (half of which could be recouped by wage deductions), pay all of the workers' domestic transfer costs, and provide health insurance at least equal to Australian public health coverage.
- PSWPS workers were guaranteed at least six months of employment with at least 30 hours a week.
- The seasonal workers' visas would be valid for seven months in any 12-month period.
- Local Advisory Bodies (LABs) were established to advise on the suitability of employer applicants and oversee the pastoral care (housing, food, health care) of the PSWPS workers.

TNS Australia, a private research and consulting firm, was commissioned to evaluate the pilot against its domestic objectives. The Australian Agency for International Development and the Department of Foreign Affairs and Trade addressed the international aspects of the project.

The Australian Council of Trade Unions cautiously supported the program because it promised to promote Pacific Island economic and social development and because promoters agreed to controls similar to those of New Zealand's RSES. The Construction,

Forestry, Mining, and Energy Union, however, remained strongly opposed to the initiative because of what it considered to be the inherent problems with guest worker programs.¹³⁹

Even before the interim evaluation of the PSWPS, anecdotal evidence suggested some serious startup problems during its first year. The program did not supply workers before the 2009 harvest season started, which caused employers to complain about delays and red tape, especially restrictions on their use of labor contractors known to exploit workers. Some growers wanted to recruit workers themselves, but the PSWPS's regulations required them to use officially approved hire companies.¹⁴⁰ Growers also were concerned about the program's costs, though they had been warned that workers recruited through the PSWPS would cost more than local workers in order to protect labor standards for foreign and domestic workers. Employers also were legally required to pay the seasonal workers \$18 an hour, but, they argued, going through government-approved hire companies raised costs to \$22 or more an hour. The delays and costs in delivering workers caused some employers to resort to "dubious contractors, some of whom charged as little as \$15 an hour—but gave workers, many of them illegal, as little as \$9."¹⁴¹

The TNS Australia interim evaluation

As noted, the pilot project got off to a slow start, with only six companies and 56 workers (from Tonga and Vanuatu) participating by February 2010. Because of lack of demand, 44 of the 100 available visas in phase one were not used, and at two of the four locations receiving PSWPS workers weekly hours worked averaged less than the 30 guaranteed by the program.

TNS Australia's interim findings were that overall, the pilot's phase one was able to meet the needs of a small number of participating growers and provide substantial income to the few participating workers. Despite start-up problems, the pilot still had widespread endorsement, especially from peak horticultural organizations and PSWPS workers. The main issue for the project going into phase two was to increase participation by growers and AEs. The interim report also noted some issues limiting the demand for PSWPS workers, including the availability of alternative supplies of domestic labor because of the recession, the relative costs of employing PSWPS workers, growers' lack of awareness of the pilot, and some of the pilot's parameters, especially the guaranteed minimum hours and the seasonal workers' length of stay in Australia. These factors "may have prevented some growers and AEs from participating in the Pilot."¹⁴²

TNS Australia's factual and analytical support for these conclusions included information about the global recession, the trends in the horticultural workforce, and factors associated with the implementation and design of the project. As a result of the recession, the labor supply was increased by self-funded retirees, as well as by young people on WHM and student visas. There also apparently was an increased supply of undocumented workers that employers had incentives to hire because of the pilot's costs and regulations. Moreover, despite growing complaints about labor shortages, TNS documented a long-run decline in the demand for horticultural labor. There were,

in addition, important issues about the suitability of some AEs and PSWPS workers for horticultural work. Some AEs demonstrated limited understanding of the horticultural industry, some of the workers were not physically suited for this work, and others had limited motivation to meet expected production targets because of hourly compensation guarantees regardless of output.

Finally, the operation of the LABs generated consistent concerns from members of those bodies as well as from employers and workers. The LABs were supposed to provide oversight for the TFWs' living conditions and program monitoring, but they did not have the resources or authority either to accomplish these objectives or to place representatives in each PSWPS work site.

TNS suggested some changes in the pilot to "better engage growers and address the potential barriers to participation, ensure the quality and integrity of the Pilot," and adapt "better practice for further improving impacts and outcomes."¹⁴³

The DEEWR made a number of changes, including providing more choices for AEs to recruit seasonal workers and a new cost-sharing arrangement for AEs and workers. Among these changes:

- Instead of the six-month, 30-hours-a-week guarantee, AEs could guarantee six months at 30 hours, five months at 35 hours, or four months at 38 hours.
- AEs will continue to pay the full cost of the workers' travel up front, but instead of recovering 50% of these travel costs, AEs can contribute 35% of each Kiribati worker's return airfare, 50% of each Tongan worker's airfare, 55% of each PNG worker's airfare, and 80% of each Vanuatun worker's airfare.
- Previously, AEs paid all transfer costs from ports of arrival to the PSWPS's accommodations; after the changes they could recoup up to \$100 from each worker.

Conclusions on the PSWPS

These experiences show how difficult it is to construct temporary foreign worker programs for low-skilled seasonal agricultural workers while simultaneously meeting employers' needs, protecting foreign and domestic workers, and promoting national interests. Programs that adequately protect foreign and domestic workers tend to become so expensive that employers have incentives to hire unauthorized workers, and doing so risks undermining the national interest, domestic labor standards, and the rule of law. There also are serious implementation problems because of faulty forecasts of seasonal labor needs. The PSWPS seems to have overestimated the seasonal worker deficit for the 2009 season. Experiences with these programs also demonstrate the need to develop internal labor sources or mechanization and management practices to reduce the demand for seasonal foreign workers. These experiences likewise suggest the wisdom of allowing employers, workers, and their organizations to develop their own arrangements within the framework of simple but rigorously enforced national rules to protect the public interest, as was contemplated by the AgJobs program in the United States, part of the failed 2007 immigration reform proposals.

These experiences suggest, in addition, some ways to prevent TFW programs from being catalysts for massive increases in unauthorized migration, as happened in the United States after the large, supposedly temporary, mainly agricultural workers Bracero program that started in 1942 and ended in 1964. In addition to effective enforcement provisions, which are stronger in Australia and New Zealand than in the United States, other devices to limit unauthorized immigration include requiring the TFWs to have return airline tickets, making employers responsible for the costs of repatriating TFWs to their home countries (which, unless prohibited, can lead to unacceptable controls of TFWs by employers), ensuring return engagements for valued foreign workers who return home, and more effectively adjusting the supply of foreign workers to realistic assessments of demand.

These programs also require the TFWs themselves to have organizations that they control or other independent means to protect their interests.

Conclusions on Australia's immigration policies

Immigration has been a defining factor in Australia's history. Before the 1960s and 1970s, Australian leaders had the dual objectives of nation building by populating vast spaces and avoiding heavy Asian migration. After World War II, Australian immigration diversified from the country's United Kingdom and Irish origins to Western and Southern Europe and then to the world.

During the 1980s and 1990s, immigration became an important component of Australia's value-added economic development policies. These policies stressed the importation of skilled workers relative to the family unification and humanitarian categories.

Australia's immigration policy transformation in the 1990s was dramatic. In 1995–96 there were 2.3 times as many *family-based* as *skilled* immigrants, but in 2000–01 there were two times as many in the *skilled* as in the *family stream* migrants; the numbers of skilled immigrants was almost six times as high in 2000–01 as in 1995–99. However, family-based immigration did not decline absolutely—it increased by 21.3%, a fraction of the skilled migrant growth. It also should be noted, however, that the family members of skilled principal applicants are counted in the skilled rather than the family stream.

The rationale for emphasizing skills was to support value-added economic policies and maximize immigration's positive fiscal impacts. The Australian employment-based migration system was, in addition, fine-tuned during the last half of the 1990s to attract migrants who would make better adjustments to Australia's labor markets and larger positive contributions to the nation's economy. Research funded by the Canadian government confirmed the effectiveness of these changes.

Australian immigration policy has a number of characteristics that reflect its high status in the political system: It is administered by a cabinet-level minister and agency with a highly professional staff and close support from the prime minister; it has highly developed data and research support to assess its impact on the economy as well as to evaluate the immigration system itself; and it is closely correlated with economic, education, labor

market, and social policies. The coordination with education and labor market policies permits immigration to complement (and not substitute for) domestic human resource development activities, which are by far the most important sources of skilled labor.

Australia has been particularly successful at developing the tools and processes to adapt immigration to economic needs. Among the steps it has taken:

- The points system was fine-tuned to select immigrants who can succeed in the Australian economy. Points are adjusted to reflect evidence-based research and changes in labor markets.
- The regional sponsorship system adjusts skilled-worker needs to labor shortages in states and regions and reduces the tendency of immigrants to concentrate in large metropolitan areas.
- The Minister of Immigration and Citizenship sets immigration targets within an annual planning period, but has the ability to adjust them whenever market conditions change.
- The two-step process to admit migrants as students and temporary workers enables the selection of migrants most likely to succeed in Australia.
- The 457 program was created as a logical consequence of the globalization of labor and product markets and Australia's relatively small domestic workforce. Globalization greatly increased the involvement of transnational corporations in Australia's economy, and this created a strong need for intra-company transfers, which are accommodated by the 457 visa program. The small size of the Australian labor market and the emigration of skilled Australians caused employers of all sizes to depend increasingly on skilled migrants, making Australia's traditional preference for permanent skilled migrants less tenable. The 457 program has been controversial; its deregulation by the government led to widespread charges of exploitation of the TFWs, damage to Australia's labor markets, and a degradation of the skilled migration process. The government has attempted to reform this system, but it is too early to judge the effectiveness of these reforms. It is similarly too early to judge the effectiveness of the Pacific Seasonal Worker Pilot Scheme or the government's use of Labour Agreements to more carefully regulate the employers of less-skilled workers, but the political importance of migration and the Australian government process of continuous improvement are causes for optimism.

Australia has perfected a variety of processes and requirements to improve the fit between immigration and labor market requirements, including:

- mandatory pre-migration screening for credentials and language ability
- extra points for age, skilled occupations in demand, English language ability, and Australian experience
- enhanced flexibility by establishing various routes to temporary and permanent migration reflecting particular needs

The comparison with Canada confirmed the value of Australia's adjustments to its selection system after 1996. These comparisons were enhanced by both countries' longitudinal and cross-sectional census data on immigrants, though the absence of Canadian income data rendered that comparison less complete. The Australia-Canada comparison demonstrated that it was both possible and desirable to adjust immigration to the business cycle and specific employer preferences, and this finding prompted Canada to move its processes closer to Australia's.

Australia's employment-based migration system's focus on skilled labor does not ignore the country's less-skilled labor needs, though its labor market policies give preference to Australians for low-skilled jobs, which often are lower rungs on occupational ladders. Migrant sources of less-skilled labor include family stream immigrants, refugees, asylum seekers, and temporary workers, especially the young (18-30) working holiday migrants. Australia imports some less-skilled workers through the Labour Agreements and the 457 visas and is experimenting with a seasonal agricultural workers program that simultaneously promotes the development of the Pacific Islands and responds to employers' claims of labor shortages. Australia has learned from experiences in the United States and other countries that the temporary migration of less-skilled workers can lead to illegal immigration and impair the effectiveness of migration management systems. Without careful selection of skilled migrants, there is a danger that de-skilling will force many of these workers either into joblessness or jobs that do not utilize their skills, as happened before the changes made in Australia during the last half of the 1990s.

Political and social conflicts pose constant threats to migration policies in nations such as Australia that have moved relatively quickly from predominately British and European to diverse populations. Australia's fear of Asian domination provided strong public support for a tightly controlled immigration system. But the whites-only policy conflicted with worldwide changes in acceptable racial practices, as well as Australia's high-skills immigration policies, which dictated the importation of talented students, skilled migrants, innovative entrepreneurs, and high-net-worth investors from around the world, especially Asia. The fear of damaging this economic model moderated xenophobia and racism and kept these sentiments in check in the major political parties. Of course, racist and xenophobic sentiments also are incompatible with Australia's defining democratic ideals.¹⁴⁴

Australia's leaders have maintained broad political support for the country's immigration policies through a combination of tight controls, focus on skilled immigrants to support the high-value-added economic policies necessary to maintain relatively high living standards, evidence-based support for immigration policies, a high level of transparency in immigration policies and processes, and, especially, assurance to the public that the government is in control of immigration.

A serious unresolved problem for Australian leaders is how to reconcile the country's commitment to openness with the unauthorized attempts by boat people and people smugglers to land asylum seekers on Australian territory.

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CHAPTER 3

The Historical Background of Immigration Policies in the United Kingdom

Unlike Australia, Canada, and the United States, the United Kingdom—one of Europe’s most densely populated countries—is not a traditional “immigration nation.” Indeed, until the 1990s, it had a zero net immigration policy that allowed migration growth to just offset the continuing outmigration of British citizens, primarily to Australia, New Zealand, South Africa, and the United States.

As can be seen from **Table 3.1**, U.K. net migration escalated rapidly after 1985,¹ causing the United Kingdom to become an immigration country with almost as high a proportion of foreign-born population (11%) and workforce (13%) as the United States (12.5% and 15.5%, respectively). The difference, however, is that the U.K.’s foreign-born population increased much faster. And, although the U.K.’s migration controls are tighter than those in the United States, much of the recent increase in the U.K.’s foreign-born population was the unanticipated consequence of its decision to accept migrants from the Eastern European countries that joined the European Union in 2004.

Indeed, the rapid growth of the U.K.’s increasingly diverse foreign-born population caused immigration to become one of the country’s most important political issues. The U.K.’s inability to control a significant part of the migration flow, coupled with the emergence of anti-immigrant and racist sentiments that simmered just beneath the surface of British politics, forced the leaders of both major political parties to develop strategies to simultaneously integrate diverse foreign populations into society, maintain social peace, and relate migrants to the demand for labor in a much more knowledge-intensive and competitive global economy.

The Labour government, which took office in 1997 just as net immigration was escalating, stressed employment-based immigration as a way to simultaneously overcome pressing shortages of education, welfare, and health care specialists; maintain budget discipline, and reinforce high-value-added economic competitiveness policies.² A key part of this strategy, following the Australian and Canadian examples, focused on importing more skilled workers relative to less-skilled and family-based immigrants.

TABLE 3.1: Net number of migrants to United Kingdom, by five-year intervals, 1950–2005 (in thousands)

	1950– 55	1955– 60	1960– 65	1965– 70	1970– 75	1975– 80	1980– 85	1985– 90	1990– 95	1995– 2000	2000– 05
Net migrants	-500	-70	220	-250	-185	-50	-250	30	170	490	945

Source: Migration Policy Institute Data Hub, “Country and Comparative Data.”

The government also followed the Australian and Canadian examples of developing a points-based system (PBS) to admit skilled immigrants. A unique feature of the British system is the Migration Advisory Committee (MAC), an independent, professional organization initially created to prepare shortage occupation lists used in one component, or “tier,” of its PBS. MAC also provides the government evidence-based advice on migration issues, continuously evaluates and updates the PBS, undertakes in-house and commissioned research, and interacts with national and international migration experts on issues of common interest. MAC has, in addition, developed a unique methodology to support and evaluate the PBS’s operations and has contributed significantly to the conceptualization of methodologies to adapt immigration to the domestic labor force (discussed in Chapter 4). MAC’s work therefore provides valuable, detailed insights into the operation of the U.K.’s employment-based immigration policies.

This chapter develops the historical context to the U.K.’s immigration policies, and Chapter 4 examines MAC’s methodology and the operation of the PBS.

Liberal immigration policy yields to zero-net-migration growth

Until the 1960s, the United Kingdom had relatively liberal immigration policies within the British Commonwealth. The countries of the United Kingdom (England, Scotland, and Wales, which comprise Great Britain; and Northern Ireland) have consistently had free movement and settlement rights. And the British Nationality Act of 1948 affirmed the right of Commonwealth citizens, including those of newly independent Commonwealth countries, such as India and Pakistan, to settle in the United Kingdom.

This British Nationality concept, embedded in the 1948 act and designed to maintain Britain’s leadership of the Commonwealth, could not withstand the dramatic technological, economic, and political changes of the postwar world. The United Kingdom became much more attractive to citizens of less prosperous and politically unstable Commonwealth countries, who, because of improved information and transportation technologies, could easily learn about and take advantage of opportunities in the United Kingdom. Waves of immigrants established themselves, especially in London and other major cities, and provided a network for their friends, relatives, and compatriots to

follow. British employers—public and private—reinforced these networks by actively recruiting lower-cost labor from the Commonwealth countries.

Because of their geographic concentration and visibility, diverse population surges have invariably evoked xenophobic and racist sentiments among the more conservative parts of British society. In an effort to stifle the corrosive growth of racist and nativist political power and maintain control of settlement in the United Kingdom, Conservative and Labour party governments responded to these surges with successive measures to restrict immigration. The idea of zero-net immigration, supported by both parties before the 1990s, became the political cover for these restrictive policies, and it continues to have significant political and media support.

The tension between liberal Commonwealth immigration policies and zero-net immigration growth was exacerbated by migration surges from Commonwealth countries during the late 1950s. In the brief time between 1959 and 1961, for example, net migration increased from 21,600 to 136,400. Net migration growth from various countries during this period included a rise from 16,400 to 66,300 from the West Indies, 2,250 to 27,750 from India, 850 to 25,000 from Pakistan, and 1,400 to 21,250 from all other countries.³

These immigration surges were followed by a series of laws and regulations during the 1960s and 1970s to restrict the immigration and settlement rights of Commonwealth citizens. The Commonwealth Immigration Act of 1962 required entry visas and work vouchers for all immigrants except U.K. citizens and those with British passports. The 1962 act followed a political campaign to control nonwhite immigration from the New Commonwealth (the old Commonwealth countries were Australia, Canada, New Zealand, and South Africa).

In 1965, the Labour government imposed an annual quota of 8,500 workers from New Commonwealth countries, 1,000 of which were reserved for applicants from Malta. The 1968 Commonwealth Immigration Act controlled the entry of British passport holders without close connections to the United Kingdom. That act also permitted the government to impose a quota system for Asians seeking to settle in the United Kingdom after they fled Kenya following its independence in 1963.

The 1971 Immigration Act repealed, with a few exceptions, all previous immigration legislation and created strong control procedures, including new legal distinctions between the rights of those born in the United Kingdom or holding U.K. passports—who would remain free from controls—and people from the former British colonies, especially India, Pakistan, and the Caribbean, who became subject to immigration controls. Employment vouchers were replaced by work permits, the holders of which could neither bring their dependents with them nor acquire permanent residence. Thus, citizens of independent Commonwealth countries and U.K. subjects without close connections to the United Kingdom were treated as aliens for immigration purposes. The 1971 Act, which still provides the basic structure of U.K. immigration law, also gave the Home Secretary considerable powers to regulate immigration.

Political reaction to rising immigration in the 1960s and 1970s

Fears that the United Kingdom was becoming too diverse were fanned by the media and right-wing anti-immigrant organizations such as the National Front, which attacked the Conservative government for accepting Asians expelled from Uganda by Idi Amin in 1972.⁴ These attacks, exacerbated by the influx of Asians from Malawi in 1976, continued against the Labour government formed in 1974. Although the National Front did not achieve electoral success, the publicity generated from its fiery language and provocative marches in predominantly minority neighborhoods caused both the Labour and Conservative parties to take rhetorical and substantive action to limit its political power and convince the public that the government had immigration under control. Both Conservative and Labour governments sought to give immigration policies a less overtly racist tone; both also advocated measures to better integrate growing minority populations into British society.

The political volatility of immigration is suggested by the very significant 1968 “Rivers of Blood” speech opposing immigration and antidiscrimination legislation by Conservative MP Enoch Powell. Powell warned, “We must be mad, literally mad, as a nation to be permitting the annual flow of some 50,000 dependants, who are for the most part the material of the future growth of the immigrant descendant population. It is like watching a nation busily engaged in heaping up its own funeral pyre.”⁵

As a consequence of these policies, Powell said, the indigenous British population:

*found themselves made strangers in their own country. They found their wives unable to obtain hospital beds in childbirth, their children unable to obtain school places, their homes and neighborhoods changed beyond recognition, their plans for the future defeated; at work they found that employers hesitated to apply to the immigrant worker the standards of discipline and competence required of the native-born workers; they began to hear...more and more voices which told them that they were now the unwanted.*⁶

Powell concluded:

*As I look ahead, I am filled with foreboding. Like the Roman, I seem to see “the River Tiber foaming with much blood.” That tragic and intractable phenomenon which we watch with horror on the other side of the Atlantic but which there is interwoven with the history and existence of the [United] States itself, is coming upon us here by our own volition and our own neglect. Indeed, it has all but come. In numerical terms, it will be of American proportions long before the end of the century. Only resolute and urgent action will avert it even now.*⁷

Public reaction to Powell’s speech revealed vast attitudinal differences between British leaders and the public, whose reaction convinced both parties, especially the

Conservatives, of the necessity to craft immigration policies that would gain public support. The speech made Powell one of the U.K.'s most popular politicians, but led to his dismissal from the shadow cabinet by Conservative Party leader Edward Heath. A Labour MP said he would refer the speech to the Director of Public Prosecution, and the Liberal Party's leader said there was a prima facie case against Powell for incitement.⁸

While Powell was widely condemned by politicians, his speech garnered broad public support. London dockworkers struck to protest Powell's sacking. Gallup polls found that 74% agreed with his speech and only 15% disagreed; 69% said the Conservative Party leader was wrong to sack him and only 20% said he was right; before the speech, 75% said immigration should be restricted, and after the speech 83% said it should be restricted.⁹ According to many observers, the popularity of Powell's perspective was a critical factor in the Conservatives' surprise victory in the 1970 general election.¹⁰

Entry into the European Community

A decisive break with restrictive immigration policies came with the U.K.'s entry into the European Community in 1973. The U.K.'s membership allowed citizens from other member countries free access to the United Kingdom and signaled that the country would become more European and less Asian and African. EC membership also set the stage for unanticipated population surges when eight new East European countries (the A8) joined the European Union (EU) in 2004 and when Romania and Bulgaria (the A2) joined in 2007.

The immigration effects on the United Kingdom of the A8 countries' entry into the EU were much larger than expected. Initially, the government relied on an expert study that estimated net migration from the A8 countries at between 5,000 and 13,000 by 2008. However,

in total, more than 765,000 A8 workers—of whom two thirds are from Poland—have registered for employment in the UK since gaining free access to the UK's labour market...in May 2004. Although the WRS [Worker Registration Scheme] data include short and long term migrant workers, they underestimate the total inflow of A8 workers as a number of groups are exempted from the registration requirements, most notably self-employed persons and students....The WRS figures also exclude A8 nationals who choose not to register and those who do not take employment...[bringing the estimated total to] 1,500,000.¹¹

The government's estimates were so far off because its experts did not account for the immigration ballooning effect of only three EU countries—the United Kingdom, Ireland, and Sweden—becoming open to A8 migrants.

Fortunately for the British government, MAC made a more accurate assessment of the immigration effects of the entry of the A2 countries in 2007. Although MAC thought the impact would be minimal, it recommended restricting A2 migrants because of the recession that started at the end of 2007.

Continuing political importance of immigration

Since the 1970s, immigration has remained a major issue in British politics, as both the Labour and Conservative parties seek simultaneously to gain political advantage from the issue while repressing resurgent racist and nativist political forces. For example, Margaret Thatcher, who became prime minister in 1979, had criticized the previous Labour government for allowing too much immigration from the New Commonwealth countries. The Conservative Party's 1979 election manifesto promised to restrict immigration; curtail the right of settlement in the United Kingdom by people on temporary visas; limit the entry of immigrants' parents, grandparents, and adult children; severely restrict the issuance of work permits; and establish a quota system for all immigrants from outside the EC. The Thatcher government further sought to limit immigration by stipulating that the spouses of British subjects who had been born in, or had one parent born in, the United Kingdom could immigrate to the United Kingdom provided that the "primary purpose" of the couple's marriage had not been to settle in the U.K.

The British Nationality Act of 1981 (effective in 1983) marked the U.K.'s final break with its imperialist legacy and obligations. The act removed the right of automatic citizenship for people born on British soil and distinguished British citizenship from British overseas and dependent territorial citizenship. Under this law there is no right to British citizenship—it is given on a discretionary basis only and can be revoked for cause.

The flow of refugees

One of the reasons U.K. immigration is so controversial has been the influx—and feared influx—of refugees, who, as the Australian experience demonstrated, are harder to manage than economic migrants. The flow of refugees is volatile because the humanitarian and open-society policies of prosperous liberal democracies attract people seeking better economic conditions for themselves and their families, as well as people fleeing oppression and discrimination by less democratic or despotic regimes. Countries are especially vulnerable to a refugee emergency that results from their own military and foreign policies. It is, however, often difficult to distinguish political from economic refugees. In addition, the United Kingdom and other countries have less control of refugees because of binding international conventions.

The United Kingdom faced a flood of refugees and asylum seekers after the former Yugoslavian and Soviet systems collapsed during the 1980s and 1990s. Since the United Kingdom was more open to refugees than other EU countries, especially Germany and France, it was the destination of many refugees, and the influx prompted the United Kingdom and other relatively open countries to become more restrictive.

During the 1980s, the U.K. imposed stricter visa requirements on such countries as Sri Lanka, Bangladesh, India, Nigeria, and Pakistan. The 1987 Immigration Act required airlines and shipping companies to enforce immigration and visa laws or face fines of £1000 (about \$1,500) per passenger. In 1988, Parliament repealed the absolute

right of men who had settled in the United Kingdom before 1973 to bring in their families. Parliament also passed two laws designed to restrict the flow of refugees. The 1993 Asylum and Immigration Appeals Act created new “fast track” procedures to adjudicate asylum applications, reduced welfare benefits for asylum seekers, and permitted asylum seekers to be detained while their claims were being resolved. The 1996 Immigration and Asylum Act imposed additional restrictions on asylum claims, including further reductions in welfare benefits.

The number of asylum applications the United Kingdom received, excluding dependents, jumped to more than 90,000 in 2002 after having averaged between 20,000 and 40,000 in the early and mid-1990s. The number of claimants fell to just over 20,000 a year between 2005 and 2008. The number of asylum seekers, including dependents, was 30,545 in 2008.¹² In 2002, the United Kingdom received 15.2% of the world’s 555,310 asylum applications, more than any other country.¹³

As noted earlier, the United Kingdom countered increased asylum seekers with tough responses, including visa requirements for the principal countries from which the applicants came, stiff penalties against sea and air carriers who failed to properly document passengers, and stringent restrictions on asylum seekers who came to the United Kingdom. These restrictions included detention camps, expedited hearings for suspected fraudulent or improper claims, a “white list” of countries in which asylum seekers were not deemed to face serious persecution, reduced welfare benefits, fingerprinting to deter multiple applications, and dispersal policies to prevent asylum seekers from congregating in London. Layton-Henry concludes, “The reaction of successive British governments to the rise in applications has been to reaffirm refugee rights to asylum while at the same time doing everything possible to prevent asylum seekers from arriving at the borders and registering a claim.”¹⁴

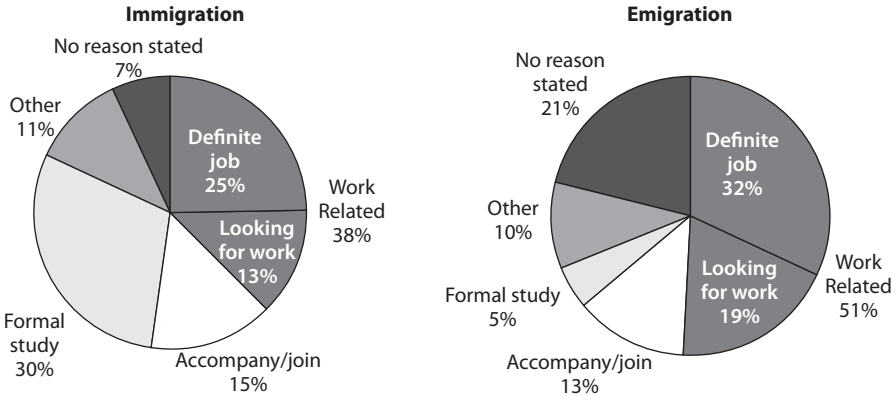
Despite successive governments’ efforts to control the numbers, it is estimated that asylum seekers represent between a sixth and a third of the total immigrant flow into the United Kingdom. Asylum seekers can apply to work for six months while their claims are adjudicated. They also become part of the workforce if they are granted refugee status or permission to remain in the United Kingdom. Most asylum applications are denied, but relatively few asylum seekers are deported, and they often remain in the United Kingdom as unauthorized immigrants.¹⁵

Recent immigration trends

Because of all of the restrictions outlined above, by the early 1990s the United Kingdom had acquired a reputation as a nonimmigration country: Governments of both major parties sought to keep net migration close to zero, so that immigration for family, economic, and humanitarian reasons about offset outmigration. Since 1983, when immigration exceeded outmigration, net immigration has been positive, but averaged about 54,000 a year until the last half of the 1990s.

There was, however, a dramatic increase in net migration after 1993, from 35,401 in 1993 to 108,800 in 1994, 177,800 in 1998, and 181,500 in 1999.¹⁶ In 2007, the United

FIGURE 3-A: Long-term international migration by reason for migration, 2008



Source: Adapted from Office for National Statistics, "Migration Statistics 2008," *Statistical Bulletin*, November 26, 2009, Figure 4.

Kingdom had a gross inflow of 577,000 and a net inflow of 237,000.¹⁷ Net migration increased sharply after 1997 and remained above 200,000 after 2004, except for a dip to 163,000 during the 2008 recession. This dip was due entirely to a sharp increase in emigration from 341,000 in 2007 to 427,000 in 2008; immigration increased from 574,000 in 2007 to 590,000 in 2008, mainly from Commonwealth and EU countries.

Figure 3-A shows that most (51%) emigration is for work-related reasons, but only 38% of immigration is work related; a relatively large (30%) proportion of immigration to the United Kingdom is for formal study, which has become a major British industry.¹⁸

Unauthorized immigration

Until recently, the United Kingdom has had very few unauthorized immigrants. The country's geographic separation from continental Europe and tight border controls made it relatively difficult to enter the country without documentation. The British government's policy of limiting net immigration to British nationals' dependents and people entering to meet the country's humanitarian obligations and economic needs was relatively successful until the 1990s, when a number of changes occurred. The channel tunnel, which opened in 1994, connected the United Kingdom to continental Europe, making it easier for migrants to enter without official permission. The booming British economy during the 1990s attracted people from less prosperous countries. And the value of illegal entry into the United Kingdom caused people smuggling to become

a lucrative criminal activity. The prosperous economy also drew numerous temporary visa holders, many of whom overstayed their visas. The surge in immigration during the 1990s augmented immigrant settlements, especially in and around London, and the settlements formed networks and supportive communities to harbor unauthorized immigrants and attract others from the sending countries.

The expansion of unauthorized migration occurred in part because the United Kingdom was poorly prepared to deal with either asylum seekers or illegal immigration. The country exercised relatively tight external screening, but authorities had limited control of migrants once they entered the country. Because the U.K. abolished entry and exit records in the 1990s, authorities had no idea what happened to visitors who simply melted into the population after their arrival.¹⁹ Unauthorized migrants could also function effectively within the United Kingdom because of the absence of stringent internal controls, especially identification cards common in other European countries.

It is, of course, difficult to acquire accurate counts of the number of unauthorized immigrants in the United Kingdom or any other country. One estimate commonly used is the number of apprehensions at the border, which rose from 3,300 in 1990 to more than 47,000 in 2000. About three-fourths of those apprehended were brought in by people smugglers.²⁰

A 2005 study, based on the 2001 census, estimated that there were about 430,000 unauthorized immigrants in the United Kingdom, which was about 9% of the foreign-born population. An update by London School of Economics researchers using the same methodology estimated the number of undocumented British residents at the end of 2007 at 618,000, with an estimated range of between 417,000 and 863,000.²¹

A 2009 report for the Mayor of London estimated the number of migrants in the United Kingdom illegally at 725,000, with perhaps 500,000 in London.²² These are not trivial numbers and show how rapidly unauthorized populations can grow.

The United Kingdom, like other liberal democracies, has trouble removing unauthorized immigrants who do not commit serious crimes; therefore, many who are denied asylum simply remain in the country. This ambivalence about removal was captured in the 1979 Conservative Party Manifesto that, seeking to distinguish the party from what it charged was an excessively lenient Labour Party, made a tough immigration stance the party's main issue: "We shall take firm action against illegal immigrants and over-stayers...but there can be no question of compulsory repatriation."

The politics of immigration today

A number of developments during the early years of the 21st century intensified immigration's political volatility. These include heightened concern about national security after the 9/11 attacks in the United States; the 2005 attacks on the London transit system; the unexpected and alarming riots in Bradby, Burnley, and Oldham in 2001; and widespread concern about the dangers facing unauthorized migrants (in 2002, 58 Chinese men suffocated in the back of a truck headed for the United Kingdom, and in 2004, 21 Chinese cockle pickers drowned in northwest England).

The political debate over immigration became more heated as a result of the recession that began in 2007 and uncertainty over whether Britain's EU participation reduced the government's ability to protect British workers' jobs. Workers' concerns were heightened by statistics showing simultaneous declining employment among British-born workers and rising employment of foreign-born workers. The foreign-worker issue is further exacerbated by uncertainties about the ability of the U.K. government and unions to protect British jobs, wages, and working conditions from the encroachment of companies employing foreign workers in the U.K. British unions have been particularly vocal in opposing the employment of foreign intra-company transfer (ICT) workers in large U.K. construction projects that provide many high-paying jobs. In 2009, British workers staged a series of protests and wildcat (unofficial) strikes at such projects. The British unions were careful to distinguish their support for the foreign workers from their opposition to contracts that do not give British workers equal access to British jobs or which do not offer prevailing U.K. wages and working conditions, as required by law.²³

Workers' frustration was heightened by media stories portraying the unions and their members as xenophobic, and by the legal confusion resulting from seemingly conflicting European Court of Justice (ECJ) rulings. A 1999 decision held that contractors could hire ICTs, but governments could require those companies to comply with local labor laws.²⁴ But this court decision and a subsequent one, confirming an EU directive, were called into question by two December 2007 ECJ decisions, known as the *Viking* and *Laval* cases, that seemingly gave the rights of employers of ICT workers priority over the rights of governments and unions to extend collective agreements to ICT workers.²⁵ In the United Kingdom, ICT workers are automatically covered by national labor laws, but not collective agreements.

The Labour Party, like the British unions, has had trouble expressing support for British workers without playing into the hands of the party's political opponents. This difficulty became an issue, for example, in the run-up to the 2010 elections, when Prime Minister Gordon Brown sought to rally his labor supporters with the slogan, "British jobs for British workers." Brown was ridiculed by Conservative critics for a slogan accused of being both incompatible with European law and providing aid and comfort to both the conservatives and the far right. At a debate in the House of Commons, Conservative Party leader David Cameron (who later became prime minister) produced two pamphlets bearing Brown's slogan, one from the British National Party (BNP) and the other from the National Front, both right-wing, anti-immigrant organizations.²⁶

Labour government officials thus have had a hard time walking a tight line between maintaining a liberal immigration policy and protecting British workers, their main constituents. They attempted to do this by making small adjustments in the PBS, discussed in Chapter 4, and making public pronouncements to reassure British workers (which, as the "British jobs for British workers" slogan demonstrated, was not always easy). The United Kingdom maintained restrictions on the entry of A2 nationals and continued the registration requirements for A8 migrants, thus denying these EU citizens

public benefits for 12 months. The Home Office also required employers of non-European Economic Area²⁷ migrants to advertise for two weeks in Jobcentre Plus (the U.K.'s employment service) for construction, hotel management, nursing, and primary school teaching jobs before advertising abroad. Employers had previously circumvented U.K. recruitment by advertising in obscure sources unlikely to be seen by British workers. The U.K. also imposed a new two-year "migrant tax" of £50 on visas.

In addition, Labour Party leaders attempted to prevent immigration conflicts and rising unemployment from strengthening the British National Party and other extreme right-wing groups. The BNP, for example, won 12 of the 51 seats on Barking and Dagenham Council in 2006, and two of its members were elected to the European Parliament in 2009. Ethnic minorities in the borough of Barking and Dagenham went from 5% to 35% of the population between 2000 and 2010, a trend that elicited considerable anti-immigrant sentiment, especially with 8% unemployment. According to one report, however, concerns about immigration were not restricted to this borough: "Fears about immigration are echoed across Britain, where new arrivals have added to a leap in population in the last decade. In a country that is already the most crowded in Europe, the prospect of even more growth inflames people's fears at a time of financial crisis and worries about terrorism."²⁸

During the first decade of the 21st century, immigration became one of the U.K.'s biggest and most volatile public policy issues. The proportion of adults who considered "immigration and race relations" to be the most important issue facing the country rose from less than 5% in the early 1990s to more than 40% by 2007. During 2000–07, immigration was reported to be the number-one concern of the British public, more important than the National Health Service, international terrorism, or law and order. And on the eve of the 2010 British elections, a *New York Times* writer reported that, "Britons everywhere identify immigration as one of their biggest concerns."²⁹

The Labour government sought public support for its policies by making economic immigration an important part of its high-value-added economic strategy, which required dramatic improvements in education and the National Health Service. Since the country could not produce enough teachers and health professionals at prevailing wages to meet these objectives, the government relied heavily on lower-paid foreign professionals to supply needed services.

The government hoped that importing skilled workers who were in short supply and adopting the points system, discussed in Chapter 4, would reassure Britons that it had immigration under control. British officials reacted to workers' fears of job and pay losses by creating safeguards to protect British wages and working conditions. Labour officials countered anti-immigrant political and media attacks by arguing that foreign workers were needed to meet labor and skills shortages and fill jobs British workers would not take, and they cited research which showed that immigrants generated positive economic benefits. Border and Immigration Minister Phil Woolas declared in 2009, "Migration only works if it benefits the British people, and we are determined to make sure that is what happens."

These reassurances were not entirely successful with the British public, which focused on the more visible unskilled foreign workers and refugees, especially in London and other large cities, not the skilled workers the government was recruiting. Polls showed mixed views of immigration's benefits: Only 37% of Britons agreed that "immigration is good for the British economy," while 40% disagreed; only 25% agreed that "We need more immigrants to do the jobs that British people don't want to do"; twice as many (50%) did not agree.³⁰

The Labour government responded by strengthening its control of immigration through:

- ***Tougher external visa controls.***
- ***The requirement that non-EU foreign residents obtain biometric identity cards.*** The cards were required for certain foreign students in November 2008 and other visa categories in March 2009. This identifier was scheduled to be extended to all non-EU migrants by April 2011.³¹
- ***More rigorous enforcement of the employer sanctions imposed by the Asylum and Immigration Act of 1996.*** This act imposes a £5,000 (about \$7,500) fine per illegal employee. There was only one successful prosecution under this act in 1998, 23 in 2000, but 91 in the six months through September 2008.³² As in the United States, the absence of a secure identifier made it hard to enforce employer sanctions because employers could claim they examined what appeared to be valid documents. The new biometric identifier could therefore facilitate the enforcement of employer sanctions.
- ***Enforcement of reporting requirements by public service providers.*** Public assistance to migrants, including nonemergency health care, is restricted. Public education authorities must provide services to the children of unauthorized immigrants, but they are not required to report the immigrants' status to immigration authorities.
- ***Regularization of the status of selected illegal migrants through administrative processes.*** For political and regulatory reasons, British authorities are unlikely to grant mass amnesty to unauthorized immigrants, since that move would not only be politically unpopular but also could incite large future flows in anticipation of additional amnesties. The government nevertheless has regularized the status of between 6,000 and 10,000 unauthorized immigrants a year in the last decade. These usually are long-term immigrants who have performed satisfactorily for 13 years or longer.³³
- ***Policies designed to integrate diverse immigrants into British society.***

TABLE 3.2: Shares of immigrants in British population, by ethnicity, 1991 and 2008

	1991	2008
Asians	3.3%	4.9%
Black	1.9	2.3
Chinese	0.3	0.4
Mixed	1.3*	2.8
Other	0.6	1.4

* 2001 data.

Source: Originally published in “United Kingdom: A Reluctant Country of Immigration,” on *Migration Information Source*, the online journal of the Migration Policy Institute (2009). MPI is an independent, nonpartisan think tank in Washington, D.C., dedicated to the study of the movement of people worldwide (www.migrationinformation.org)

Integration policies

Immigration has caused the British population to become more racially and ethnically diverse (**Table 3.2**). It was approximately 93% white in 1991 but only about 88% white in 2008. Because immigrants are younger, only 80.9% of Britain’s population under age 16 was white in 2008.³⁴

The growing diversity of the U.K.’s population has presented a unique challenge to the British government, which, before the 1990s, had no clear policies to integrate diverse racial and ethnic groups into society.³⁵ The prevailing historical attitude was that the benefits of British residence and citizenship were sufficiently strong to cause individuals and their families to integrate into British society without government intervention. This attitude was predicated on the early post-World War II experience in which a relatively few, fairly homogenous religious and ethnic immigrants were integrated into a much larger national population.

A number of developments gave greater urgency to the need for national and community integration standards. The most obvious was the rapid influx of nonwhite and non-Christian migrants. In 1953 there were only 50,000 nonwhites in the British population; by 1991 there were 3.1 million, 5.5% of the population, and in 2001 there were 4 million (7.1%). Because it is younger, the nonwhite population is growing much faster than the native white population. U.K.’s Office for National Statistics projected that the U.K.’s population would grow from 61.4 million in 2008 to 71.6 million by 2033, with roughly 45% of that growth coming from future net migration.³⁶ Potential conflict is caused by the heavy concentration of immigrants and minorities in England, which had 96.8% of all British immigrants in 2001, and London, which had 47%. Evidence suggests that new immigrants are becoming more regionally dispersed—especially those from Poland and Eastern Europe—but immigrants are still heavily concentrated in London.

The fact that nonwhites suffered higher poverty and unemployment and had inferior access to schools caused smoldering discontent in minority neighborhoods, which have erupted periodically in conflict. On the other hand, the upward mobility of some groups—such as the Chinese, Asians from East Africa, Hindus, and Sikhs—caused some poor native whites to blame immigrants for their lack of progress. This mixture was agitated by anti-immigrant and racist tabloids and political forces, and the combination created a highly combustible social and political environment. As their numbers grow, immigrants acquire more political influence, especially when allied with pro-immigrant labor, political, religious, and community groups.

British social tensions also have been strained by efforts to accommodate a growing Muslim population, which had reached 2.4 million by 2008.³⁷ Differences between the liberal democratic and some Muslim cultures were highlighted by the publication of Salmon Rushdie's *Satanic Verses* in 1988. Ayatollah Khomeini's fatwa calling on Muslims to execute Rushdie forced him into hiding. The event challenged British leaders to reconcile religious intolerance with the institutions of liberal democracy. The same challenge was presented to British Muslims, some of whom supported the fatwa while others, including the Council of Mosques in Britain, condemned it.

The British government's earliest response to racial conflict was to pass anti-discrimination legislation modeled to some extent on U.S. civil rights laws. During the 1990s the Labour Party reinforced and extended the antidiscrimination framework. And in 1998, the European Convention on Human Rights was incorporated into British law. Britons, like Americans, learned that institutional racism could not be effectively countered with ad hoc case law alone. Parliament therefore amended the Race Relations Law to require public authorities to take positive actions to correct inequalities in public employment through immigration and law enforcement, recruitment, employment, and the delivery of public services. Parliament also passed the Racial and Religious Hatred Act of 2006, making it unlawful to foment racial or religious hatred.

The government has, in addition, promoted cohesion through community projects, programs to link congregations and schools with ethnically diverse student bodies, and racially and ethnically mixed housing.

And the government has promoted citizenship for immigrants on the assumption that it would lead to greater immigrant identification with the United Kingdom. The 2009 Borders, Citizenship, and Immigration Act created a year-long probationary citizenship status to give immigrants time to become sufficiently proficient in English and other requirements for full citizenship. Interestingly, immigrants from poorer and less democratic countries are most likely to become citizens and acquire a British identity.³⁸ Perhaps this is because these immigrants identify less with their home countries and value British citizenship more than immigrants from more affluent countries.

In 2005–08, the British government transformed its diffuse economic immigration programs both to gain greater control of this form of immigration, which the government thought was relatively popular, and to communicate to the public that the government had immigration under control. This subject will be explored in depth in Chapter 4.

Prime Minister Cameron's attack on multiculturalism

The United Kingdom, like Australia and other liberal democracies whose population mixes have been dramatically transformed by immigration, has struggled with policies to gain the benefits of diversity while avoiding the deadly effects of racial and ethnic conflict. As noted, the U.K. has developed policies to prevent discrimination against minorities and permit cultural and ethnic autonomy while attempting to maintain social harmony and national identity. And, like Australia, the U.K. has provided public support to diverse religious and ethnic groups in an effort to achieve the dual objectives of tolerance for differences and a commitment to common national values.

But, as in Australia, British multiculturalism is a contentious political issue. As noted in Chapters 1 and 2, Canada and Australia have attempted to prevent social and ethnic conflict by encouraging groups to maintain their national and ethnic identities provided they subscribe to a common set of liberal democratic values designed to create national unity. Each prospective migrant signs a statement subscribing to Australian democratic values, and, as noted in Chapter 1, Canada has been relatively successful in avoiding conflict over multiculturalism.

Early in 2011, Prime Minister David Cameron attacked British and European multiculturalism which, he said, allowed some groups, especially militant Muslim extremists, to turn young Muslims into terrorists.³⁹ The prime minister said that the brand of multiculturalism espoused by British governments since the 1960s, which gave all groups the right to live by their traditional values, had failed to promote a sense of common identity centered in values of human rights, democracy, social integration, and equality before the law.

Cameron called on all European governments to be “a lot less...passive...and... more active” in fighting Islamist extremism, “a political ideology supported by a minority,” which has “real hostility towards Western democracy and liberal values.”

The prime minister believes the British should “properly judge these organizations” by asking some questions: “do they believe in universal human rights—including for women and people of other faiths? Do they believe in equality of all before the law? Do they believe in democracy and the right of people to elect their own government? Do they encourage integration or separation?...Fail these tests and the presumption should be not to engage with [these] organisations—so, no public money, no sharing of platforms with ministers...” Cameron believes, in addition, that the country “must stop these groups from reaching people in publicly funded institutions like universities or... prisons.”

But, Cameron argues, the British “must give voice to” and engage with Muslim groups “that share our aspirations.” Cameron argued that it was important to distinguish devout Muslims from extremists. “The ideology of extremism is the problem; Islam emphatically is not.” He thought the British experience with multiculturalism could be generalized to other countries:

Under the doctrine of state multiculturalism, we have encouraged different cultures to live separate lives, apart from each other and apart from the mainstream. We've failed to provide a vision of society to which they feel they want to belong. We've even tolerated these segregated communities behaving in ways that run completely counter to our values.

Cameron said many young Muslims identify neither with their parents' "staid" religious practices nor the values of liberal democracies. He contended, further, that the tolerance of completely unacceptable practices such as forced marriage leaves some young Muslims feeling rootless. "And the search for something to belong to and something to believe in can lead them to this extremist ideology... a process of radicalisation." In some mosques and chat rooms extremist attitudes are "shared, strengthened, and validated," providing a "sense of community that is otherwise lacking in the wider society."

To defeat violent Muslim extremists, Cameron argued that "...first, instead of ignoring this extremist ideology, we—as governments and as societies—have got to confront it, in all its forms. And second, instead of encouraging people to live apart, we need a clear sense of shared national identity that is open to everyone." The prime minister called for an end to the double standard that condemned the propagation of radical racist and undemocratic views among whites while tolerating them among nonwhites.

Cameron proposes a strategy of confronting and opposing the radical violent Muslim ideology to "make it impossible for extremists to succeed" by banning "preachers of hate from coming to our countries," proscribing "organisations that incite terrorism against people at home and abroad," being "shrewder in dealing with those that, while not violent, are in some cases part of the problem," and quit "showering" with "public money" organizations that "present themselves as a gateway to the Muslim community...despite doing little to combat extremism."

In addition to confronting and weakening militant extremist Muslim ideologues, Cameron believes "we must build stronger societies and stronger identities at home. Frankly, we need a lot less of the passive tolerance of recent years and a much more active, muscular liberalism, which believes in certain values and actively promotes them. Freedom of speech, freedom of worship, democracy, the rule of law, equal rights regardless of race, sex, or sexuality. It says to its citizens, this is what defines us as a society: to belong here is to believe in these things."

The "practical thing" governments must do "includes making sure that immigrants speak the language of their new home and ensuring that people are educated in the elements of a common culture and curriculum." Another practical thing is to create active participation in society and shift "the balance of power away from the state and towards the people." Coming together and working in neighborhoods will help form "common purpose" and "stronger pride in local identities."

British Muslim groups quickly condemned Cameron's speech. The assistant secretary general of the Muslim Council of Great Britain, "a major recipient of government money for projects intended to combat extremism," said Mr. Cameron had treated Muslims "as part of the problem as opposed to part of the solution."⁷⁴⁰

As reported in the *New York Times*, the Ramadhan Foundation, a Muslim youth group, “accused the prime minister of feeding ‘hysteria and paranoia’...the group’s chief executive said Mr. Cameron’s approach would harden the divide between Muslims and non-Muslims, ‘and we cannot allow that to happen.’”⁴¹

There also were predictable political reactions to the prime minister’s speech. Many on the right applauded what they regarded as the prime minister’s declaration of the end of multiculturalism. Some on the left accused him of writing political propaganda for the far right, as evidenced by the praise his speech received from nationalistic groups in Britain and France. Critics and even some supporters argued, in addition, that Cameron’s speech was obviously mainly political, with little pragmatic meaning. For political purposes, the prime minister invented a “mysterious” concept of “state multiculturalism” and yielded to politicians’ temptation to draw too sharp a distinction with the “failed policies of the past.”⁴² Bagehot, an influential *Economist* writer, for example, pointed out that much of what Cameron had to say “was not new,” citing a 2005 speech by the Labour minister in charge of community affairs, which “asked whether in its anxiety to avoid imposing a single British identity on diverse communities—multiculturalism had encouraged ‘separatism.’” And in 2006, Labour Prime Minister “Tony Blair gave a speech on multiculturalism that reads like a list of Mr. Cameron’s talking points. Both prime ministers called for tighter controls on Muslim groups receiving public funds, an entry ban on foreign preachers with sulphurous views, a tougher line on forced marriages and an expectation that all British citizens support common values, from the rule of law to a rejection of discrimination.”⁴³

Bagehot believes Cameron made his multicultural speech mainly to cater to a popular political position and because the prime minister thought the previous government did not follow through with its challenge to “non-violent extremism,” which “is often a ‘way point’ on the road to lethal radicalism. Mr. Cameron thinks multiculturalism has drifted from a tolerance of other cultures towards a tolerance of other value systems, some of them hostile to Britain.”

However, Bagehot believes Cameron’s argument is “muddled” because the stress on values must confront the tension between values and tactics. For example, some of the people needed to confront the “dangerous preachers” hold some “pretty unpleasant views” themselves, but are useful co-combatants because of their credibility in the Muslim community—which is why governments supported them in the first place. Moreover, “a lot of people outside the secular British mainstream reject at least some of Mr. Cameron’s list of non-negotiable values...[which] sits awkwardly with his ‘big society’ plans to deliver public services through community bodies, especially his enthusiasm for faith schools.”⁴⁴ Finally, “...for all Mr. Cameron’s talk of failed policies, something like state multiculturalism (i.e., offering public support while ignoring tricky differences in values) remains the British default response to religions other than Islam, whose angriest fringe has overwhelmed unmuscular liberalism.”⁴⁵

Bagehot concludes that “Mr. Cameron committed Britain to a national contest of values with radical Islamism. That would be ambitious even without the muddle that

underpins his challenge. Ignore his hysterical critics, and swooning cheerleaders. Mr. Cameron has much more persuading to do.⁷⁴⁶

Relative to Canada, the United Kingdom has the disadvantage of having to work out a coherent position on multiculturalism after a large and rapid increase in diverse populations has created a serious problem. Britain's challenge is exacerbated by popular opposition to "mass immigration" and the presence of extremist immigrant and anti-immigrant groups.

Conclusions

Beginning in the 1990s, the United Kingdom experienced a sharp rise in net migration, just about doubling the proportion of foreign born in the British workforce. Some of this increase was unplanned, especially the influx of refugees fleeing political disruptions in former Commonwealth states and Eastern Europe, and the rise in illegal immigration, mainly caused by disappointed asylum seekers and foreign visitors who overstay their visas, easier access to Britain because of the channel tunnel, and British reluctance to deport noncriminal unauthorized migrants.

Other large immigrant inflows resulted from policies that had unintended consequences. For example, the U.K.'s EU membership and openness to migrants from the A8 countries when only two other EU members allowed easy entry caused an unanticipated wave of immigrants. And the economic boom before the 2007 recession caused British officials to welcome skilled foreign workers. Similarly, the Labour government's economic and social objectives depended on dual inflows of skilled workers: low-paid but highly qualified public health, education, and research professionals to overcome shortages in these areas, and higher-paid skilled, private-sector workers to support high-valued-added economic competitiveness policies.

The growth and geographic concentration of ethnically and religiously diverse immigrants made social and political stability a priority for British leaders. These challenges were exacerbated by the absence of effective policies to integrate foreigners into British society and the need to contain small but vocal anti-immigrant and anti-minority political movements.

As the 2010 election neared, the government attempted to regain control of immigration, which had eluded British authorities since the early 1990s. The government adopted tough border and internal controls, restricted refugees to strict humanitarian and refugee cases, limited the admission of dependents to core family members, lowered the admission of unskilled workers, and developed a points system to calibrate the flow of skilled and highly skilled workers to the needs of the British economy. The points system will be examined in Chapter 4.

ENDNOTES – CHAPTER 3

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31. The future of the biometric identifier was placed in doubt by opposition from the Liberal Democratic Party, which formed a coalition government with the Conservative Party in 2010.
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CHAPTER 4

The British Employment-Based Immigration System

One of the most important innovations in British immigration policy was the points-based system (PBS) adopted in 2008 for the admission of economic migrants, mainly foreign workers, who constitute the great majority (64%) of the U.K.'s immigrants. The British PBS, modeled after Canada's and Australia's, contains a unique feature: an independent, professional Migration Advisory Committee (MAC) that provides the government evidence-based advice on economic immigration matters.

This chapter first analyzes the points-based system's structure and policy context. It then examines MAC's structure and functions, and then evaluates the PBS's two main tiers: Tier 1, highly skilled migration, and Tier 2, skilled migration.

Structure of the points-based system

The U.K.'s points-based system has five tiers:

- **Tier 1** includes highly skilled migrants (HSMs), to contribute to growth and productivity.
- **Tier 2** includes skilled workers with a job offer, to fill gaps in the U.K. labor force.
- **Tier 3**, which is for low-skilled workers, has been indefinitely suspended, based on evidence that there is no shortage of low-skilled labor that migrants can sensibly fill. The United Kingdom, like Australia and Canada, believes carefully selected skilled migrants have the greatest benefits and lowest fiscal and social costs for the British economy and society. The “British first” policy also means low-skilled jobs should be offered first to domestic workers, whose ranks have been augmented by European Economic Area (EEA) migrants, refugees, family-based immigrants, working holiday makers, students, and presumably a larger cadre of unauthorized workers than in either Canada or Australia but smaller than in the United States. Thus, despite a tendency of higher-income Britons to shun menial, low-skilled jobs—a universal trend in high-income countries—MAC and the U.K. Border Agency (UKBA) see no need to import low-skilled workers.¹

- **Tier 4**, for international students applying to study in the United Kingdom, was introduced March 31, 2009. The House of Lord's Select Committee on Economic Affairs reported that in 2006 there were about 309,000 international students in the United Kingdom, a much larger number than work-related immigrants (167,000) or the family members and dependents of immigrants (118,000).² Estimates of student visas for 2007 and 2008 were 358,000 and 227,000, respectively,³ together accounting for 14% of full-time higher education students and 43% of research postgraduate enrollees and contributing £2.5 billion a year in tuition.⁴ As noted in Chapter 3 (Figure 3-A), 30% of U.K.'s migrants in 2008 came for formal study. As in Canada and Australia, the United Kingdom considers students to be a good source of permanent residents because they have U.K. experience and strong English language skills, tend to become highly skilled workers, and make important financial and intellectual contributions to higher education institutions. Indeed, education is a major British industry.
- **Tier 5** includes youth mobility and temporary migrants who work in the United Kingdom for a limited period of time, primarily to satisfy noneconomic objectives but, as in Australia and the United States, are also a source of unskilled labor.

To qualify under each tier, migrants must earn a specified number of points for such requirements as education, qualifications, current or prospective earnings, and funds to support themselves. Only Tiers 1 and 2 are eligible for permanent settlement. All others are temporary migrants. Tier 2 is the only means of general, non-EU skilled labor recruitment.

The policy context

The British government launched a PBS consultation in 2005 as part of a five-year strategy to refine the selection process for economic immigration, which, as in Canada and Australia, is overwhelmingly employment-based.⁵ The Home Office campaign banner launching the program proclaimed, "Controlling our Borders: Making Migration Work for Britain."⁶ The expressed aims of the PBS were to gain public confidence in the immigration system, fill skills gaps, attract highly productive and skilled people, increase investment, improve productivity and flexibility in labor markets, and ensure that people leave the United Kingdom at the end of their approved stay.

In 2006 the government stated that the system's main outcomes were to better identify and attract migrants with the most to contribute to the United Kingdom, create "a more efficient, transparent, and objective application process," and enable "improved compliance and reduced scope for abuse."⁷

The government believed, in addition, that the PBS would make the immigration system more readily understood by the public, which, as noted in Chapter 3, became increasingly hostile to rapidly increasing immigration after the late 1990s. The previous work permit system's complexity had increased as successive revisions produced over 80 different routes for non-European Economic Area (EEA) nationals to study or work

in the United Kingdom. Labour Party leaders also had concerns that the employer-driven work permit system did not adequately reflect the national interest in a high-value-added economic strategy.

As in Canada and Australia, the guiding objective of U.K. immigration programs is to support the government's policy objectives, specified in Public Service Agreements (PSAs), especially PSA 2, "to improve the skills of the population, on the way to ensuring a world-class skills base by 2020"; PSA 3, "to ensure controlled, fair migration that protects the public and contributes to economic growth"; PSA 1, "to raise the productivity of the U.K. economy"; PSA 6, "to deliver the conditions for business success in the U.K."; and PSA 8, "to maximise employment opportunities for all."⁸

Thus, immigration is an integral component of economic policy in the United Kingdom, as it is in Canada and Australia. Moreover, while there are important differences, there are close relationships between the Canadian PBS, adopted in 1967; the Australian PBS, adopted in 1989; and the U.K. system, adopted in 2001, for the High Skills Migrant Program (HSMP), which was replaced by Tier 1 in 2008.

The Migration Advisory Committee

Simultaneous to the consultations launching the PBS, the British government created an independent professional agency, MAC, to provide factual and analytical support for the PBS, especially through the Shortage Occupation List (SOL) that expedites the entry of skilled migrants, whose applications require job offers but not market tests. MAC has, in addition, elevated employment-based immigration on the government policy agenda and facilitated better coordination and role clarification between immigration, workforce development, economic, and other policies. MAC's research and evaluations—along with similar efforts by Canada and Australia—have contributed significantly to a growing body of knowledge about adapting migration to national labor markets. This subject will be examined in Chapter 5.

This section first outlines MAC's structure and mandates and then discusses the innovative methodology it developed to construct SOLs and examine other questions put to it by the government.

Structure and mandates

MAC was established in December 2007 "as an independent non-governmental public body to provide evidence-based advice to the Government on where shortages of skilled labour can sensibly be filled by immigration from outside the [EEA]" and to provide advice on other immigration issues requested by the government.⁹ MAC's advice is public, and the government can either accept or reject it. It is made up of five independent economists and a secretariat of 10, who were selected after public advertisement and competitive recruitment. Representatives of the U.K. Commission for Employment and Skills and the U.K. Border Agency, the agency within the Home Office responsible for immigration, serve on the committee.

MAC's advice is based on thorough and sophisticated economic analysis and, except for minor details, is usually accepted by the government. MAC conducts in-house research and commissions studies from academic and nonacademic experts on specific theoretical and practical questions related to its mandates, which have expanded since it was first established and subsequently continued by the coalition government elected in 2010.

MAC's work is concentrated primarily in Tier 1 (highly skilled migrants) and Tier 2 (skilled migrants), both of which were covered by the work permit system before the PBS was established. MAC has developed an effective methodology for establishing the Shortage Occupation List used for Tier 2 (discussed below) and evaluating the effects of various PBS components on immigration and the economy. It partially reviews the SOL every six months and conducts a complete review every two years; in 2009 MAC produced extensive evaluations of Tiers 1 and 2. MAC also advises the government on other issues. For example, because migrants' dependents work and influence the success of the principal applicants, the government asked MAC to examine the impact and conditions of PBS migrants' dependents. Unlike Canada and Australia, dependents are not a component of the British PBS. The government also asked MAC to assess the impact on immigration from the A8's admission into the EU in 2004 and the A2's in 2007.¹⁰

In addition, MAC was asked to recalibrate the points to attract HSMs in Tier 1, redesign the points and rules for admitting migrants under Tier 2, provide advice on whether to abolish the Worker Registration Scheme for A8 migrants, and advise whether A2 migrants should have free access to the British labor market. MAC also played a central role in determining and allocating the non-EU labor cap implemented by the Conservative-Liberal Democratic government elected in 2010, discussed below.¹¹

In addition to its in-house work, MAC's knowledge base is strengthened by its interactions with stakeholders; related government agencies; and an international network of immigration specialists, including representatives from Canada, Australia, and other EU countries with points-based systems, as well as from the United States and other countries without those systems.

MAC's methodology

MAC uses a top-down, bottom-up approach to assess job titles and occupations against three tests: skilled, shortage, and sensible. This method "combines the consistency and comprehensiveness of a 'top-down' approach, using national data, with a more granulated 'bottom-up' approach that uses evidence submitted...by...stakeholders. [MAC] refer[s] to the process of considering top-down and bottom-up evidence in combination as 'dovetailing,' and this process is key in determining the final recommended shortage occupation lists."¹²

For its skills and shortages assessments, MAC relies on the official Standard Occupational Classification, SOC 2000, with four levels of aggregation for science and technology professionals:¹³ major group: 2—professional occupations; sub-major group:

21—science and technology professionals; minor group: 212—engineering professionals; and unit group: 2122—mechanical engineers (353 occupations).

The most relevant level for determining the SOL is the unit group (2122) with 353 occupations. But, since the SOC does not disaggregate below the four-digit unit group level, MAC relies on its bottom-up procedures to collect information on the 26,000 job titles (e.g., aerospace engineer) within those 353 occupations. Since MAC includes job titles as well as occupations on the SOL, it supplements the national top-down data with bottom-up information collected through extensive field work. In 2010, for example, only one complete four-digit SOC occupation—chemical engineering—was included in the SOL. However, even where job titles are used, their four-digit SOC is still useful because some jobs within an SOC do not pass the “skilled” test.

MAC’s information is most useful when its top-down and bottom-up evidence point to the same conclusions, but because of different levels of disaggregation, information from one of its approaches will sometimes be more useful; earnings growth information, for example, might be more useful from national data than from sectoral or occupational organizations. Similarly, data on indicators such as on-the-job training and the innate ability required for specific jobs (like athletes or ballet dancers) are more likely to come from stakeholders than national data.

Generally, MAC includes job titles and occupations on the SOL if there is both good bottom-up and top-down evidence. If the top-down data do not confirm shortages throughout the occupation and bottom-up data show shortages in a job title that is part of a particular occupation, the job title is used.

The ‘skilled’ component

The definition and measurement of skills are important because, in keeping with its high-value-added economic policies, the British government restricts employment-based immigration largely to skilled workers. However, since there are no unique, objectively defined measures of skill, MAC has constructed its analyses and definitions from a large body of research and practical experience on labor skills and shortages, which it adapts to its objectives.

The starting point for MAC’s measure of skill is National Qualifying Framework (NQF) level 3 because, as discussed below, until it was raised to NQF level 4 in 2011, that measure was used to define skills for individual jobs under Tier 2 of the PBS. MAC then analyzes five main indicators relevant to skills assessment:

1. the skill level, defined in the SOC hierarchy
2. formal qualifications
3. earnings
4. on-the-job training or experience required for the job
5. the level of innate ability required

The first three indicators can be measured with top-down national data. An occupation is considered skilled if it meets the relevant threshold of two of these three top-down indicators. MAC relies mainly on bottom-up data to assess on-the-job training, innate ability, and earnings qualifications related to specific job titles.

The associated *threshold* values for the three top-down indicators of skill are:¹⁴

Formal qualifications: *[in 2010] [to be classified as skilled MAC requires] 50 per cent or more of the workforce within an occupation [to be] qualified to NQF level 3 or above. This was measured using the Labour Force Survey (LFS).*

Earnings: *[in 2010] median hourly earnings for all employees within an occupation need[ed] to be £10 per hour or more. This is measured using the... Annual Survey of Hours and Earnings (ASHE).*

The skill levels defined in the Standard Occupational Classification hierarchy: *The 4-digit SOC hierarchy classifies all occupations into one of four skill levels. For [MAC's] purposes, an occupation needs to be classified at skill level 3 or 4 (the highest skill levels) in SOC 2000 by the Office for National Statistics (ONS). Level 3 applies to occupations that normally require skills, experience or knowledge usually associated with a period of post-compulsory education but not at degree level. Level 4 relates to the so-called 'professional' occupations and managerial positions that normally require a degree or equivalent period of relevant work experience.*

Using these procedures, in 2008 MAC defined 192 out of the 353 occupations in SOC 2000's unit groups as skilled, and these represented 49% of the workforce.¹⁵

Identifying skilled occupations

As noted, since MAC's analyses defined skilled occupations as those at least NQF level 3, it first defined all occupations and job titles at that level or higher (NQF-3+).

MAC's analyses of occupations at NQF-3+ concluded that:

- Approximately 45% of the working-age population and half of the workforce had NQF-3+ or equivalent skills.
- The median hourly pay for all employees was approximately £10.14.
- SOC skill level 3 is not directly associated with NQF-3, but relates to occupations requiring a period of postsecondary education or training.

Through top-down national data, MAC defined an occupation as at skill level 3 if two of the following criteria are met: (1) 50% or more of the workforce was qualified at

level 3 or above; (2) median hourly earnings were £10 or more; and (3) the occupation was defined at SOC 2000 level 3 or 4.

MAC used its bottom-up approach to identify specific *jobs* that might be skilled within less-skilled *occupations* as well as to account for skill indicators that might not appear in top-down data.¹⁶

‘Shortage’ concepts

As in Canada and Australia, there is broad agreement in the United Kingdom that immigration to fill skill shortages has positive outcomes for migrants, employers, and countries and, with proper safeguards, few negative effects for domestic workers in host countries. Because it is important to identify and measure these shortages, MAC has developed a methodology for this purpose.

This section first explores some of the skill shortage concepts that have informed MAC’s work, followed by a discussion of the methodology it has developed to construct its Shortage Occupation List.

MAC first identifies two shortage concepts: static and dynamic. A *static* shortage occurs when demand for labor exceeds supply at current wages and working conditions. Under competitive market conditions, static labor shortages are temporary; if the wage is below the equilibrium level, less labor will be offered and wages will increase, causing more labor to be offered, and the temporary shortage will disappear.

In practice, however, impediments limit the ability of wages to rise enough to increase the supply of labor, thus creating a *dynamic* labor shortage. MAC identifies four categories of real-world labor shortages within the static-dynamic dichotomy:

- **Cyclical shortages** occur when—especially during growth phases of the economic cycle—wages or suitable labor supplies cannot keep pace with increasing demand because of such market frictions as “sticky wages.”
- **Structural shortages** occur when occupational or sectoral labor supplies do not match demand at prevailing wages for reasons unrelated to the economic cycle. If there are no market adjustment restrictions, in the long run rising wages should overcome these shortages.
- **Public sector wage restraints** can cause long-run shortages because wages are not allowed to rise enough to make these occupations attractive to resident workers. This shortage causes the British education, research, and social and health care industries to rely heavily on foreign workers who find these wages or the opportunity to become British residents more attractive than employment options in their homelands.
- **Rare skills shortages** occur when there are global shortages of workers with the skills demanded, either because of small numbers of those with particular innate abilities or because these skills are attained in connection with technological innovations that have not yet reached the country experiencing the shortage.

In its critique of the MAC classification system, Parliament's Home Affairs Committee developed three classifications of labor shortages it considered more useful for policy purposes:¹⁷ (1) highly specialized skills not available in the resident workforce; (2) unattractive wages and conditions; and (3) insufficient investment in skills.

The Home Affairs Committee did not identify a cyclical category, but it argued that the SOL should be used to overcome the short-term labor shortages implied by the cyclical classifications. MAC rejected this suggestion, arguing that, "It is not practical to try to micro-manage the economy in response to short term skill shortages which are often quite ephemeral. What is feasible is to identify...evidence of *sustained problems* which might be alleviated by use of immigrant labour" (emphasis added).¹⁸

Identifying shortages

MAC's 12 top-down shortage indicators, together with their associated data sources, are listed in **Table 4.1**. In determining whether an occupation is in shortage as defined by that indicator, MAC's metric is the median plus 50% of the median. Where the data distribution renders this measure inappropriate, the top quartile is used. An occupation must have greater than the threshold value to pass a particular shortage indicator.

An occupation is considered to have strong top-down evidence for shortage if it passes the threshold for at least 50% of the indicators. However, an occupation or job title is not deemed to be in shortage until bottom-up evidence has been reviewed.

MAC's bottom-up indicators are similar to those in its top-down analyses. The bottom-up indicators include:

- employer recognition of the reasons they are having trouble filling vacancies (employer-based indicators)
- above-average wage increases (price-based indicators)
- rising vacancy levels or rates (imbalance indicators)
- vacancies taking longer to fill than those in other occupations or jobs (imbalance indicators)
- employers using overtime and early promotions to overcome shortages (price-based indicators)

For two reasons, dovetailing the top-down and bottom-up evidence is a crucial step in MAC's analyses. First, top-down indicators do not in themselves provide incontrovertible evidence for or against a shortage; second, not all job titles within an occupation showing a shortage might be in short supply, and the top-down evidence might conceal skill shortages within particular job titles.

Table 4.2 presents the top 10 skilled occupations selected by MAC's top-down methodology in September 2008, ordered by the percentage of indicators passed.

TABLE 4.1: Indicators of shortage currently used by the Migration Advisory Committee

Indicator	Source	Frequency
Employer-based indicators		
E1 Percent skill shortage vacancies/ all vacancies	NESS	Biannually
E2 Percent skill shortage vacancies/ hard-to-fill vacancies	NESS	Biannually
E3 Percent skill shortage vacancies/employment by occupation	NESS and LFS	Biannually
Price-based indicators		
P1 Percent change in median hourly pay for all employees	ASHE	Annually
P2 Percent change in mean hourly pay for all employees	ASHE	Annually
P3 Return to an occupation, given NVQ3, controlling for region and age	LFS	Quarterly
Volume-based indicators		
V1 Percent change in unemployed by sought occupation	JCP	Monthly
V2 Percent change in employment	LFS	Quarterly
V3 Percent change in median hours worked for full-time employees	ASHE	Annually
V4 Absolute change in proportion of workers in occupation less than 1 year	LFS	Quarterly
Indicators of imbalance based on administrative data		
I1 Absolute change in median vacancy duration	JCP	Monthly
I2 Stock of vacancies/ unemployed by sought occupation	JCP	Monthly

Notes: MAC uses claimant count as its measure of unemployment in the indicators above. ASHE is the Annual Survey of Hours and Earnings, JCP is Jobcentre Plus, LFS is Labour Force Survey, and NESS is National Employer Skills Survey.

Source: Adapted from Migration Advisory Committee, *Skilled, Shortage, Sensible: A Review of Methodology*, March 2010, Table 5.1.

TABLE 4.2: Migration Advisory Committee's top 10 skilled occupations, September 2008

SOC 2000 description and code (in parentheses)	Total indicators passed	Total indicators available	Percent indicators passed	Employment estimates (thousands)
Officers in armed forces (1171)	5	6	83%	28
Molders, core makers, die casters (5212)	9	11	82	4
Photographers and audiovisual equipment operators (3434)	9	12	75	61
Musicians (3415)	8	12	67	32
Welding trades (5215)	8	12	67	87
Ship and hovercraft officers (3513)	6	10	60	17
Veterinarians (2216)	5	10	50	15
Engineering technicians (3113)	6	12	50	70
Midwives (3213)	5	10	50	37
Dancers and choreographers (3414)	5	10	50	6

Source: Adapted from Martin Ruhs, presentation to Economic Policy Institute skills shortages conference, May 20, 2009.

TABLE 4.3: Overarching objective for Public Service Agreements announced in budget, 2009

“Help people and businesses come through the downturn sooner and stronger, supporting long-term economic growth and prosperity.”

PSA 1: Raise the productivity of the U.K. economy.

PSA 2: Improve the skills of the population, on the way to ensuring a world-class skills base by 2020.

PSA 3: Ensure controlled, fair migration that protects the public and contributes to economic growth.

PSA 4: Promote world-class science and innovation in the U.K.

PSA 5: Deliver reliable and efficient transport networks that support economic growth.

PSA 6: Deliver the conditions for business success in the U.K.

PSA 7: Improve the economic performance of all English regions and reduce the gap in economic growth rates between regions.

PSA 8: Maximize employment opportunity for all.

PSA 20: Improve long-term housing supply and affordability.

Source: Adapted from Migration Advisory Committee, *Skilled, Shortage, Sensible: A Review of Methodology*, March 2010, p. 62.

The ‘sensible’ component

The sensible test is a critical component of MAC’s methodology, even though whether it is sensible to use immigration to fill labor shortages is a matter of judgment; employers, workers, public officials, and other stakeholders might disagree on whether immigration is the most sensible solution to labor shortages. MAC attempts to make this concept more precise by keeping its decisions as open and transparent as possible and defining “sensible” in terms of government objectives as presented in various Public Service Agreements. The PSAs for Budget 2009, for example, are presented in **Table 4.3**.

MAC notes that tensions between the PSAs might affect immigration decisions. For example, it may be sensible for immigrants to provide low-cost public services, but the “use of lower wage immigrant labour in the public sector may hinder the objective of raising the productivity of the U.K. economy, which requires a level playing field for the public and private sectors, wherever possible.”¹⁹ There also might be tension between employing low-wage public service immigrants and the objective of “upskilling U.K. resident workers and maximising employment opportunity for all.”²⁰ Similarly, there might be tension between long-run and short-run objectives. It might, for example, be sensible in the short run to import immigrants to prevent widespread failures in key business sectors, “[b]ut, in the long run, continued use of immigration to fill shortages may not be desirable if it reduces the incentives for U.K. resident workers to enter the occupation (for example, if immigration means pay does not have to adjust to reflect shortages) or for employers to upskill resident workers.”²¹

The advantage of the sensible test is that it highlights the relationships between immigration and other economic and social objectives and clarifies conflicting as well as complementary objectives.

Determining ‘sensible’

In deciding whether it is sensible to import immigrants for labor shortages, MAC considers four broad indicators: alternatives to migrant labor; the relationship between immigration and skills acquisition by the resident workforce; innovation, productivity, and competitiveness; and broader labor market and economic effects.²²

MAC’s alternatives to immigration, outlined in **Table 4.4**, might not be better than immigration. For example, offshoring could negatively impact resident workers. Policymakers also must recognize that there are “path dependencies” that have made employers reliant on foreign workers because the institutionalization of processes and investment and organizational decisions create strong barriers to adopting alternatives to the employment of migrants.²³

MAC argues that there is a logical case (though no systematic evidence) that a ready supply of immigrants reduces employers’ incentives to upskill domestic workers. Therefore, whether it is sensible to import migrants depends on the efforts employers are making to train domestic workers. However, if it takes a long time to train resident workers, importing foreign workers might be a sensible alternative, provided employers are making reasonable efforts to support the upskilling of domestic workers either in-plant or through outside training agencies (see **Table 4.5**).

TABLE 4.4: Is immigration ‘sensible’ given potential alternatives?

Criterion	Change that might indicate ‘sensible’	Bottom-up indicator of change	Top-down indicator of change
Recruitment efforts	High or increased spending and investment in recruitment	Spending on advertising, using different channels, EEA workers Using different labor pools, e.g., unemployed, part-time workers, EEA workers	Percent share of non-British
Attractiveness of employment package	Increased incentives for the current workforce to remain in occupation and for new recruits to enter the labor markets	Holiday allowances, bonuses, other benefits	Percent change in earnings
Increased working hours	Increased working hours of current workforce	—	Percent change in working hours
Capital substitution	Increased investment in technology to make production less labor- or skill-intensive	Installing labor-saving machinery	
Changing production methods	Changed production methods to make production less labor- or skill-intensive	Restructuring the production line	—
Outsourcing or offshoring	Increased use of contracting in or use of overseas sites	Evidence that employers are doing this	—
Current use of immigrants	High use of immigrants may mean it is difficult to respond to shortage in other ways, but may also mean employers are not doing enough to upskill U.K. resident workers	Current use of immigrants	Percent non-EEA immigrants in occupation

Author’s note: To determine whether employing immigrants is a more “sensible” response to a given labor shortage than alternatives, the Migration Advisory Committee looks at key aspects of the industry in question, which it calls “criteria” (column one). Certain trends in or features of that aspect (column two), placed in the proper context, may indicate that immigration is more or less sensible. To determine the direction of those trends or specific characteristics, MAC looks at practices in place by employers (bottom-up indicators) and aggregate statistics (top-down indicators). This chart outlines the factors that are considered, but there is no one-size-fits-all application or answer. For example, as MAC explains, a “large share of EEA labour in an occupation... might suggest that the alternative of recruiting from within the EEA is exhausted, but could equally mean that there is a significant stock of EEA immigrants that are skilled for the job and willing to move to the UK.”

Source: Adapted from Migration Advisory Committee, *Skilled, Shortage, Sensible: A Review of Methodology*, March 2010, Box 6.2.

TABLE 4.5: Is immigration ‘sensible’ given skills acquisition trends and potential?

Criterion	Change that might indicate ‘sensible’	Bottom-up indicator	Top-down indicator
Training	High or increased investment in training of current and future U.K. workforce	Employers working with schools/universities New training programs, apprenticeships	Percent of employees receiving training
Training length	A long training period would make it harder to respond quickly to shortages through training	Evidence of length of training required to become fully proficient	—
Availability of training or qualifications	If training for an occupation is not readily available this may increase the need for immigrants, but it may also indicate inadequate efforts by employers to ensure that qualifications are provided	Evidence that employers are working with their Sector Skills Council to develop qualifications	—

Author’s note: To determine whether employing immigrants is a “sensible” response to a given labor shortage, the Migration Advisory Committee essentially asks, “What efforts have or could be made to train and ‘upskill’ U.K. resident workers?” Specific “criteria” (column one) look at three aspects of training, trends in or features of which (column two) placed in the proper context, may indicate that immigration is more or less sensible. To determine the direction of those trends or specific characteristics, MAC looks at practices in place by employers (bottom-up indicators) and aggregate statistics (top-down indicators).

Source: Adapted from Migration Advisory Committee, *Skilled, Shortage, Sensible: A Review of Methodology*, March 2010, Box 6.3.

The innovation, productivity, and competitiveness criteria (**Table 4.6**) are very important to the U.K.’s high-value-added economic strategy. These criteria suggest what could be a spillover effect from highly skilled immigration: the introduction of new ideas and skills that help domestic workers improve productivity and innovation. This objective might be particularly important for immigrants with rare skills not readily available even in global labor markets.

As outlined in **Table 4.7**, it might not be sensible to bring in immigrants if they adversely impact resident workers’ employment, though it might make sense to import foreign workers for short-run delivery of critical public services or to prevent the failure of important businesses. By focusing on skilled labor, the United Kingdom avoids a problem experienced by the United States: the use of low-skilled immigrants to perpetuate marginal industries that otherwise would not be competitive in a high-value-added economy.

TABLE 4.6: Is immigration ‘sensible’ given innovation, productivity, and competitiveness trends and potential?

Criterion	Change that might indicate ‘sensible’	Bottom-up indicator	Top-down indicator
Productivity	Decreased productivity may indicate that it is sensible to bring in immigrants, but low productivity could imply scope to substitute labor with capital	Higher wastage Slower production process Reduced quality product Evidence of “low skills equilibrium” of labor-intensive production	—
Innovation	Risk of reduced innovation in a sector where immigration is a source of innovation may indicate that it is sensible to bring in immigrants	Emerging technologies overseas	
Competitiveness	Employment of immigrants may support international competitiveness of certain sectors through their skills and innovation, but it would not be sensible to bring in immigrants to maintain competitiveness only because of their willingness to accept lower pay	Sector requires highest levels of skills Immigrants bring different skills/innovation	

Author’s note: To determine whether employing immigrants is a “sensible” response to a given labor shortage, the Migration Advisory Committee considers the impact of access to immigrant labor on productivity, innovation, and international competitiveness in a given industry. Specific “criteria” (column one) look at the three aspects in turn, trends in or features of which (column two) placed in the proper context, may indicate that immigration is more or less sensible. To determine the direction of those trends or specific characteristics, MAC looks at practices in place by employers (bottom-up indicators) and aggregate statistics (top-down indicators).

Source: Adapted from Migration Advisory Committee, *Skilled, Shortage, Sensible: A Review of Methodology*, March 2010, Box 6.4

For the wider economic criteria, MAC reverses its emphasis on using bottom-up evidence to contextualize the quantitative top-down evidence: Since there are relatively few top-down quantitative indicators of “sensible,” these criteria are implemented on a case-by-case basis, and top-down data are used to contextualize the bottom-up evidence.

A ‘sensible’ illustration

The results of MAC’s September 2008 SOL review illustrate its methodology, as well as the methodology’s value to the government’s policy objectives. That review added

TABLE 4.7: Is immigration ‘sensible’ given economic and labor market effects?

Criterion	Change that might indicate ‘sensible’	Bottom-up indicator	Top-down indicator
Impacts on wages and employment rates	No adverse impact on wages, employment conditions, and/or employment levels	Steady or rising wages and employment conditions	Percent change in unemployment/inactive Percent change in wages
Business failure	Higher numbers of businesses failing may indicate that shortages cannot be filled, but there may be other causes and it may also be a natural market correction	Closure of businesses Reduced profits	—
Public service impacts	It may be sensible to bring in immigrants if public services are jeopardized, but in the longer term it would not be sensible for public services to rely on cheap immigrant labor	Reduced quality of public services Insufficient or reduced availability of public services (e.g., increased waiting times)	—
Other regulatory and economic context	Other reasons outside the control of employers that make it difficult or impossible to pursue alternatives	—	—

Author’s note: To determine whether employing immigrants is a “sensible” response to a given labor shortage, the Migration Advisory Committee considers the effects of access to immigrant labor on the wider U.K. economy and labor market. Specific “criteria” (column one) look at four areas of impact, trends in or features of which (column two) placed in the proper context, may indicate that immigration is more or less sensible. To determine the direction of those trends or specific characteristics, MAC looks at practices in place by employers (bottom-up indicators) and aggregate statistics (top-down indicators).

Source: Adapted from Migration Advisory Committee, *Skilled, Shortage, Sensible: A Review of Methodology*, March 2010, Box 6.5.

three complete four-digit SOC skilled occupations (civil engineers, ship officers, and quantity surveyors) to its shortage list because they passed five to six of its 12 shortage indicators, and bottom-up evidence supported these findings.

Math and science teachers were added along with specialist nurses; even though there was little top-down evidence for a shortage of secondary teachers and nurses, there was strong bottom-up evidence of shortages for math and science teachers and operating room (theatre) nurses.

Skilled chefs and case workers were added, even though the four-digit SOC code did not qualify as “skilled”; solid bottom-up evidence and compensation data suggested that these were skilled *jobs* within a low-skilled *occupation*.

Several occupations that employers claimed had shortages were not added, even though they passed 50% of the top-down indicators, because there was insufficient bottom-up evidence (e.g., welding trades and midwives). In other cases, employers asserted shortages but the occupations did not pass the required number of shortage indicators and there was no compelling bottom-up evidence (e.g., social workers and most skilled construction workers).

Finally, in some cases the top-down, bottom-up methodology found evidence of shortages (e.g., various textile trades and veterinary nurses), but MAC concluded that it was not sensible to add those jobs to the SOL because the evidence suggested that the importation of immigrants would undermine efforts to train, recruit, and retain U.K. workers. In general, if employers are not making adequate efforts to recruit and train resident workers for shortage occupations or jobs, MAC will not recommend their inclusion in the SOL.

MAC confirms its methodology

MAC's extensive consultations, observations, and research confirmed the validity of its definitions and use of the skilled, shortage, and sensible tests. As in Australia, there was concern that the recession that started in 2007 could cause migrants to displace and undercut wages and working conditions for U.K. residents. However, MAC noted that its flexible approach could avoid displacement and support skill acquisition for U.K. residents. MAC also thought its

*shortage test can examine whether future skill needs are likely to emerge, and our sensible test can consider whether there are alternatives to non-EEA immigration as a response to those needs. Longer-term considerations, for example investment in training programmes and qualifications, will necessarily play a strong role in decisions about whether future skill needs may sensibly be filled via immigration.*²⁴

Between September 2008, when the first SOL was issued, and March 2010, MAC completed three reviews of its Shortage Occupation List. Its evidence had become more detailed and its knowledge of particular occupations had improved, but MAC saw little need for fundamental changes in its approach. Its "overarching conclusion" was that its top-down, bottom-up approach "provides a suitable framework for identifying labour shortages in skilled occupations that can be sensibly filled in by...immigrants."²⁵ MAC also was "content that...the three tests of skilled, shortage, and sensible remain the most appropriate way to determine which occupations and job titles should be recommended for inclusion in, or removal from, the shortage occupation list."²⁶

MAC concluded, in addition, that its "indicator-based approach to all three tests remains valid. Neither our research nor evidence and opinion received from stakeholders suggests that there is a single reliable and universal measure of either skilled, shortage, or sensible."²⁷

Conclusions on the Migration Advisory Committee

There is little doubt that MAC has improved both the understanding and operation of the British points-based immigration system. The committee's technical competence, integrity, and credibility have given other government agencies a high level of respect for its work. Of course, improved data and analyses have not caused universal acceptance of its work—at least by Parliamentary committees—but have elevated the quality of the debates. And MAC's credibility undoubtedly has been enhanced by the fact that it has not been shy about criticizing either the government's policies or the conclusions reached by Parliamentary committees. Immigration is still a contentious issue in the United Kingdom, but much of the controversy relates to noneconomic immigration matters, not to the PBS.

In helping improve the PBS, MAC, especially through its “sensible” test, has clarified the relationships between immigration and other policies, made employment-based immigration more complementary to British economic and workforce development policies, and minimized immigration's negative effects.

MAC's methodology combines the rigor and consistency of the top-down data with the flexibility and contextualization of the bottom-up. Since there is no single “scientific answer” to many aspects of employment-based migration, especially shortage analyses, a degree of judgment is always required. Integrity, independence, technical competency, and transparency clearly are keys to MAC's success.

The operations and purposes of Tiers 1 and 2 of the points-based system

This section examines the operation and purpose of PBS Tiers 1 and 2, the most important of the system's five tiers for employment purposes. As noted earlier, Tiers 1 and 2 are the only tiers designed primarily for permanent settlement, though participants in other tiers who qualify can transfer into Tiers 1 and 2.

Tier 1, highly skilled workers

Tier 1 attracts and retains the “best and the brightest” to the United Kingdom by enabling highly skilled people who meet specific requirements to enter the United Kingdom without a job offer. This tier superseded the Highly Skilled Migrant Program, the U.K.'s earliest points-based process, and provides greater clarity about the requirements for the different subcategories of highly skilled migrants “in order to increase the predictability of the scheme, ensure consistency in entry decision-making, and reduce the number of unsuccessful applications, while increasing the security of the points system.”²⁸

The United Kingdom, like Canada and Australia, considers itself to be in intense competition with other countries, especially the United States, for highly skilled migrants.

Tier 1 has four routes for entry:

- general, for highly skilled workers
- post-study, for international graduates who have studied in the United Kingdom
- entrepreneurs, for migrants interested in establishing, taking over, or being actively involved in businesses
- investors, for high-net-worth individuals who make substantial financial investments in the United Kingdom

There are different criteria for each route, but the overall pass rate is 95 points. This pass rate includes mandatory 10 points each for competence in English and maintenance (adequate support funds).

Applicants may apply for Tier 1 in three ways: out of country, in-country in order to extend a stay, or in-country in order to switch in or out of one of the Tier 1 routes. The rationale for Tier 1 is supported by economic research, reviewed in Chapters 1 and 2, showing that skilled migrants are more likely to complement the skills of residents and have both a net positive fiscal impact and positive long-run growth and spillover effects.²⁹

MAC's research confirms the value of Tier 1's Post-Study Work Route (PSWR), which builds on the rationale for attracting highly skilled workers: Foreign students strengthen higher education by bringing knowledge of foreign markets, languages, and cultures, and providing a funding stream that effectively subsidizes the education of British students.³⁰ Foreign students also contribute to the British economy as consumers and workers. MAC cites research showing that international students generate at least an additional £0.50 for other U.K. industries for every £1.00 they contribute to universities.

Most important, Tier 1 supports the government's strategic objective to compete internationally for high-value-added industry and thus avoid the pitfalls of low-wage competition.³¹ In pursuit of this objective, the British government coordinates immigration with economic, education, and workforce development policies. MAC and the government are particularly concerned about the country's growing skills deficits relative to both its economic objectives and leading economic competitors.³² MAC notes that the U.S. is the exception to an effort by countries to restrict low-skilled immigration.³³ In 2010, as discussed later, the government attempted to correct a major problem with Tier 1—the tendency of these highly skilled migrants to use Tier 1 to gain entry to the United Kingdom without a job offer but then to work in low-skilled occupations.

The PBS's flexibility allows the points and qualifications to be altered to reflect experiences and changing conditions. **Table 4.8** shows how the points awarded in the previous Highly Skilled Migrant Program (HSMP) were changed with the creation of Tier 1 in 2008. Because the PBS's creators were mainly interested in attracting “the best and the brightest,” they dropped the 30 points previously awarded for a bachelor's degree and the 75 points awarded for an MBA.

The PBS also raised the beginning salary to between £20,000 and £23,000. The British PBS planners, especially MAC, like their Australian counterparts, consider

TABLE 4.8: Comparison of points available for the Tier 1 general route and HSMP selection criteria

	Qualifications	Points	Previous earnings (£000s)	Points	Age	Points	U.K. experience	Points
Original Tier 1	Bachelor's	0	£20–£23	15	30 or 31	5	Where previous earnings or qualifications have been gained in the U.K.	5
			£23–£26	20				
	Master's	35	£26–£29	25	28 or 29	10		
			£29–£32	30				
Ph.D.	50	£32–£35	35	27 or under	20			
		£35–£40	40					
		£40+	45					
Previous HSMP (Dec. 2006 to Dec. 2008)	Bachelor's	30	£16–£18	5	30 or 31	5	Where previous earnings or qualifications have been gained in the U.K.	5
			£18–£20	10				
	Master's	35	£20–£23	15	28 or 29	10		
			£23–£26	20				
	Ph.D.	50	£26–£29	25	27 or under	20		
			£29–£32	30				
			MBA	75				
	£35–£40	40						
£40+	45							

Note: The pass mark for the HSMP and Tier 1 according to the criteria in this table was/is 75 points.

Source: Adapted from Migration Advisory Committee, *Analysis of the Points-Based System: Tier 1*, December 2009, p. 70.

earnings to be a good screening proxy for qualifications, reasoning that employers are unlikely to pay workers more than they are worth. Earnings also are more precise measures than previous experience, though the United Kingdom, like Canada and Australia, values host country experience.

Changes in the PBS are recommended by MAC but actually made by the U.K. Border Agency, which has followed MAC's recommendations fairly closely. For example, on the basis of its research and methodologies discussed earlier, MAC's recommendations for Tier 1, listed in **Table 4.9**, reflected its belief that HSMs with only a bachelor's degree but higher earnings and more experience could be as valuable as a newly minted Ph.D.s without experience and high earnings. It therefore recommended changing the points for age and raising previous earnings levels to £150,000+ (about \$250,000).

TABLE 4.9: Points applicable for Tier 1 (general route), April 2010

Section	Highest qualification (or equivalent)/ points	Previous earnings/ points	Age/points	U.K. experience/ points		
A (75 points needed)	Bachelor's degree	30	Under £25,000	0	Qualification obtained in the U.K. £25,000 or higher earnings in the U.K.	
		5	£25,000–£29,999	5		
	Master's degree	15	£30,000–£34,999	35–39		5
		20	£35,000–£39,999	30–34		10
	Ph.D.	25	£40,000–£49,999	29 or under		20
		30	£50,000–£54,999			
		35	£55,000–£64,999			
		40	£65,000–£74,999			
45		£75,000–£149,999				
	75	£150,000 or above				
B	English language ability – mandatory points			10		
C	Maintenance (available funds) – mandatory points			10		

Source: Adapted from U.K. Border Agency, “Changes in Tier 1 and Tier 2 of the Points-Based System: Statement of Policy,” Home Office, April 6, 2010, p. 3.

The UKBA made minor changes in MAC’s recommendations “as a result of practical considerations and following consultations the Government has had with a wide range of sponsors, trade unions, and other stakeholder organisations.”³⁴

The UKBA also followed MAC’s advice and changed the initial time allowed for Tier 1 (general) from three years to two, “so that we can verify at an early stage that they are engaged in highly skilled work.”³⁵ After two years Tier 1 migrants will be allowed to extend their stay for another three years, after which they must either leave the country or be granted permanent residency.

As with the previous HSMP, Tier 1 (general) migrants do not have to have a job offer. The English language proficiency and personal and support funds (maintenance) requirements are mandatory. Like their Australian and Canadian counterparts, U.K. immigration authorities have found English language skills to be important predictors of migrants’ success in the labor market. Applicants can satisfy the language requirement by being a native of an English speaking country, passing an approved English language test, or holding a degree assessed by the U.K. National Recognition Information Centre as equivalent to a U.K. bachelor’s degree or above.

Migrants can apply via the Post-Study Work Route if they are in the United Kingdom on an approved study program or are students under Tier 4 of the PBS, student nurses, students re-sitting examinations, and students writing theses who want to switch to the PSWR. Students from outside the United Kingdom can apply for PSWR if they meet the points criteria.

TABLE 4.10: Points under the Post-Study Work Route

Post-Study Work Route (95 points required)	Has successfully obtained either:
	a U.K.-recognized degree at bachelor's level or above (20 points);
	a U.K.-recognized postgraduate certificate in education or professional graduate diploma in education obtained in Scotland (20 points); or
	a higher national diploma from a Scottish institution (20 points).
	Obtained the qualification at a U.K. institution that is either a U.K.-recognized or listed body; or on the Tier 4 sponsors register (20 points).
	Obtained the qualification while in the U.K. with student leave or as a dependent of someone with valid leave in an immigration category permitting the bringing in of dependents (20 points).
	Made the application within 12 months of obtaining the eligible qualification (15 points).
	English language* (10 points).
	Maintenance** (10 points).

* English language requirements may be met by either passing an English language test (equivalent to grade C or above at GCSE level or level 6.5 on the International English Language Testing System—General Training or Academic Module), being a national of a majority English speaking country, or having taken a degree taught in English.

** Maintenance is set at £2,400 plus start-up costs of £400. If there are dependents, maintenance for the first dependent is set at £1,600 and at £800 for each subsequent dependent.

Source: Adapted from Migration Advisory Committee, *Analysis of the Points-Based System: Tier 1*, December 2009, p. 25.

Table 4.10 illustrates how the requisite points can be achieved for the initial PSWR application. Successful Tier 1 applicants can bring specified dependents into the United Kingdom if applicants prove they can maintain their dependents. Tier 1 migrants are not eligible for most public funds.

Although Tier 1 is a temporary permit to reside in the United Kingdom, it also is a route to citizenship. There are three key routes to citizenship: highly skilled and skilled workers and their dependents under the PBS (economic migrants), family members of British permanent residents and citizens, and those granted humanitarian or refugee protection.

There are three stages in obtaining British citizenship: temporary residence, probationary citizenship, and British citizenship/permanent residence.

Although Tier 1 applicants are not required to have sponsors, employers must ensure that non-EEA Tier 1 nationals have proper documentation. Employers meet this obligation if the documents are not obviously false.

TABLE 4.11: Granted applications under Tier 1, September 2008 to August 2009

	In-country	Out-of-country	Total	Percent of total
General	31,879	17,883	49,762	54.0%
Post-Study Work Route	38,625	3,362	41,987	45.6
Entrepreneur	43	94	137	0.1
Investor	144	131	275	0.3
Total	70,691	21,470	92,161	100.0

Source: Adapted from Migration Advisory Committee, *Analysis of the Points-Based System: Tier 1*, December 2009, p. 68.

Table 4.11 shows the distribution of Tier 1 applications granted for 2008–09. This table demonstrates that, at least during its early stages, influenced by the recession, almost all (99.6%) of the applications are for the general and post-study routes.

Table 4.12 presents the top 10 nationalities applying for Tier 1. Indians are by far the largest users, though China is a close second for out-of-country PSWR applications.

Table 4.13 compares the relative weight of the different selection criteria for highly skilled immigrants with the PBS pass marks required for different countries. The United States gives little attention to programs to attract highly skilled workers. And the U.S. H-1B program for temporary skilled workers doesn't require employers to hire available, qualified U.S. workers. The U.S. H-1B program, unlike the U.K.'s Tier 1 route, attaches immigrants to particular employers, who can determine whether or not the H-1B workers acquire permanent residence. It also takes much longer for the H-1B worker to become a permanent resident (seven to 10 years or longer depending on country of origin) than it does for a Tier 1 (general) worker (five years).

The United States' First Preference EB-1 visa is a permanent, employment-based visa for people with extraordinary ability, or for outstanding professors, researchers, athletes, entertainers, and multinational managers or executives. EB-1 is a small but important program with an allocation of 40,000 visas (with no labor certification required), which is almost never reached. The United States also awards an uncapped O visa for individuals with extraordinary ability in sciences, art, education, business, or athletics, or a demonstrated record of extraordinary achievement in the motion picture or television industries, and who have been recognized nationally or internationally for their achievements.

There are two clear differences in the ways countries select highly skilled foreign workers: the number and type of criteria used and the extent to which applicants may substitute criteria. U.K.'s Tier 1 uses only four criteria (plus language and maintenance), while Australia uses 10. Australia allows the greatest flexibility in the total criteria used to reach the pass mark and the United Kingdom the least, partly because of the small number of criteria. Denmark is the only country that permits an applicant to qualify on the basis of education alone. All PBS countries use qualifications and age.

TABLE 4.12: Top nationalities for in-country and out-of-country Tier 1 approvals (percent of total), September 2008–August 2009

Top nationalities for in-country Tier 1 approvals (percent of total)		
Tier 1 general route*	PSWR	Entrepreneur
India (40%)	India (30%)	China (23%)
Pakistan (9%)	Pakistan (15%)	United States (16%)
Australia (8%)	China (15%)	India (12%)
China (6%)	Nigeria (7%)	
Nigeria (6%)	Bangladesh (4%)	Investor
South Africa (4%)	Sri Lanka (3%)	Russia (35%)
New Zealand (4%)	Malaysia (3%)	China (18%)
United States (3%)	United States (2%)	
Sri Lanka (2%)	Ghana (1%)	
Malaysia(2%)	Japan (1%)	
Top nationalities for out-of-country Tier 1 approvals (percent of total)		
Tier 1 general route*	PSWR	Entrepreneur
India (35%)	India (25%)	United States (24%)
Australia (12%)	China (24%)	Australia (12%)
Pakistan (9%)	United States (6%)	Pakistan (12%)
United States (7%)	Taiwan (5%)	India (11%)
South Africa (7%)	Japan (4%)	
New Zealand (6%)	Pakistan (4%)	Investor
Nigeria (5%)	Malaysia (3%)	Russia (28%)
Canada (2%)	Nigeria (2%)	China (15%)
China (2%)	Canada (2%)	Pakistan (7%)
Russia (2%)	Thailand (2%)	

Note: Table shows the top 10 nationalities for approvals under each of the Tier 1 routes between September 2008 and August 2009, split by in-country and out-of-country. Countries are not shown where fewer than 10 approvals were granted in the period.

* General route includes transitional cases and switchers.

Source: Adapted from Migration Advisory Committee, *Analysis of the Points-Based System: Tier 1*, December 2009, p. 69.

TABLE 4.13: Variable-to-pass-mark ratios in schemes for attracting highly skilled immigrants in six countries

Criterion	Ratio of maximum point available for criteria to overall pass mark						
	U.K. Tier 1 general ¹	Australia ²	Canada	New Zealand	Hong Kong	Denmark	U.S. ⁴
Education	66.7	56.7	37.3	53.6	56.3	105.0	R
Work experience	—	28.3	31.3	42.9	62.5	15.0	R
Prior work experience or education in country	6.7	61.4	14.9	25.0	—	10.0	—
Age	26.7	28.3	14.9	21.4	37.5	15.0	—
Language	— ³	28.3	35.8	— ³	25.0	35.0	—
Job offer	—	18.9	22.4	57.1	—	—	—
Spouse/partner characteristics	—	11.4	22.4	14.3	18.8	—	—
Previous or proposed earnings	60.0	—	—	—	—	—	O
Occupation in demand	—	18.9	14.9	14.3	—	15.0	—
Close relatives	—	8.3	7.5	7.1	6.3	—	—
Settlement stipulations	—	11.4	—	—	—	—	—
Total number of criteria for which points are available	4	10	9	8	6	6	—
Total points available in comparison to pass mark	160.0	271.9	186.5	221.4	206.4	195.0	—

1. Points (reported in Demetrios Papademetriou, Will Somerville, and Hiroyuki Tanaka, *Hybrid Immigrant-Selection Systems: The Next Generation of Economic Migration Schemes*, Transatlantic Council on Migration Working Paper, November 2008) have been updated to reflect current specification of Tier 1 general.

2. Australia has three visas within its points system, and the points required for each visa differ. We list the average variable-to-pass mark country across the three systems.

3. The United Kingdom and New Zealand make language proficiency a prerequisite to applying for a points test.

4. "R" in this column means that this category is required through the U.S. EB-2 visa. "O" means this category is considered as optional in support of an application.

Source: Adapted from Migration Advisory Committee, *Analysis of the Points-Based System: Tier 1*, December 2009, p. 76

TABLE 4.14: Points-Based System Tier 2 (certain routes) as of April 6, 2010

Section	Sponsorship	Points	Highest qualification (or equivalent)	Points	Prospective earnings	Points
A (50 points needed)	Job offer in a shortage occupation ¹	50	No qualifications	0	Below £20,000	0
			GCE A-level	5		10
	Job offer which passes Resident Labour Market Test ¹	30	Bachelor's degree	10	£20,000 – £23,999	15
			Master's degree or Ph.D.	15	£24,000 – £27,999	20
	Switching from a post-study work category ¹	30			£28,000 – £31,999	25
Intra-company transfer ²	25			£32,000 or above		
B	English language ability – mandatory points ³					10
C	Maintenance (available funds) – mandatory points					10
Pass mark = 70 points in total						

1. Tier 2 (general route) applications only.

2. Tier 2 (intra-company transfer) applications only.

3. Tier 2 (intra-company transfer) migrants only need to score points for English language ability if they are extending their stay in this category beyond three years.

Source: Adapted from U.K. Border Agency, "Changes to Tier 1 and Tier 2 of the Points-Based System: Statement of Policy," April 2010.

Tier 2, skilled workers with a job offer

Tier 2 is the main employer-driven component of the British employment-based migration system. Workers participate in five Tier 2 routes: (1) shortage occupation (SO), (2) resident labor market test (RLMT); (3) intra-company transfer (ICT); (4) sportspeople; and (5) ministers of religion.

The requirements for the main employment-based Tier 2 routes listed in **Table 4.14** were adopted by the UKBA in April 2010 following an exhaustive review by MAC.³⁶

Relying on its top-down, bottom-up methodology, MAC confirmed the advantages of the PBS and Tier 2. The PBS, according to MAC, provided a more coherent and simplified process for selecting skilled immigrants than the work permit system it replaced. It also was more efficient, transparent, and objective, thus greatly reducing the scope for abuse that characterized the more subjective work permit system.³⁷ As noted earlier, the previous system reflected employer interests more than the national interest. MAC

concluded, in addition, that the PBS demonstrated the efficacy of its flexible design by adapting reasonably well to the recession. Since they require a job offer, the various routes within Tier 2 automatically adjusted the flow of migrants to the reduced demand for labor as the recession deepened. MAC therefore saw no need to make fundamental changes in Tier 2, but did recommend some changes in the tier's design, especially in the intra-company transfer and resident labor market tests. MAC's conclusions on these components will be examined in more detail below.

Key features of Tier 2

Tier 2's key features include the following:

- Foreign workers must have a sponsor to qualify, and sponsoring employers must obtain a license from UKBA. Sponsors are charged a fee based on the company's size.
- When hiring an eligible non-EEA worker, a registered sponsor obtains a certificate for the specific job the foreign worker is recruited to fill. The Tier 2 migrant is attached to the sponsoring employer.
- The foreign workers cannot displace resident workers and must be paid prevailing wages.
- The sponsors are rated according to their performance and compliance with labor and immigration regulations. A-rated employers receive expedited treatment, while B-rated employers are subjected to closer scrutiny. Habitual and willful violators can have their licenses revoked or suspended.
- *The Resident Labor Market Test* is for jobs that cannot be filled through other Tier 2 routes or with EEA or U.K. residents. Sponsors must register RLMT jobs for four weeks with Jobcentre Plus (JCP).
- The *shortage occupation route* is for non-U.K. or non-EEA applicants who come to the United Kingdom for a specific vacancy on MAC's SO list (discussed earlier). Unlike the RLMT route, SO jobs are not required to be listed on the JCP. SO workers automatically receive the necessary points to pass: 50 points for the job offer together with the mandatory 20 points.
- As discussed below, MAC and the UKBA adopted several measures to prevent *intra-company transfers* from displacing U.K. resident workers or undercutting their wages and working conditions. One of these is a requirement that the ICT work for the multinational company (MNC) for at least a year before coming to the United Kingdom.
- Successful Tier 2 applicants must obtain a visa. They are allowed to stay in the country for two years and, if they meet the requirements, may obtain a three-year extension. After working in the United Kingdom for five years, Tier 2 workers, except for ICTs, can apply for permanent residency.

- Tier 2 workers can change jobs and work for up to 20 hours a week at a second job at the same level and in the same sector. If the second job is not in the same sector or is for more than 20 hours a week, Tier 2 migrants must make a new application to UKBA, obtain a new certificate of sponsorship, and meet the points test for the new job. Tier 2 migrants who wish to change jobs must file a “change of employment certificate” with the UKBA. Unless the new job is on the Shortage Occupation List the new sponsor must conduct a new Resident Labour Market Test. Tier 2 migrants must also file a change of employment application if they change positions with their original sponsors, unless the new position is on the Shortage Occupation List.
- The UKBA allows sponsors to attest to the accuracy of their applications but, to facilitate post-licensing audits, requires them to keep detailed information proving their compliance with the PBS.
- After six months, PBS migrants can bring spouses or partners and dependent children to the United Kingdom. Families must certify that they can support themselves and are denied access to public funds. In some cases, however, sponsors can act as guarantors for migrants’ support. Tier 2 spouses or partners are allowed to work at all jobs except doctors in training.

Tier 2, which became operational November 27, 2008, was originally for skilled workers at National Qualification Framework level 3, which generally requires formal education and training beyond secondary school but does not require a college degree. As noted below, in 2011 the Tier 2 qualification level was raised to NQF 4, which requires a college degree. Tier 2 workers also must “be paid at least the ‘appropriate rate’ that would be paid to a skilled resident worker doing similar work.”³⁸

Tier 2 applicants are awarded points according to the requirements presented in Table 4.14. The overall passing score is 70. A mandatory 20 points must be earned for English language ability and the availability of funds to support applicants and their dependents. At least 50 points must be obtained through factors in Part A of the table.

For the RLMT route, employers are required to test the resident (local) labor market by advertising in the JCP or other appropriate place for at least four weeks at a level of earnings the UKBA deems appropriate for the specific job.

Applicants switching from a post-study work category are graduates of certified U.K. higher education institutions and therefore part of the resident labor market; they are exempt from the RLMT, though they receive the same number of sponsorship points (30) as offered by the RLMT route. In order to claim the 30 points applicants must prove that they have worked for their Tier 2 sponsor for at least the previous six months under the Tier 1 post-study work category. Together with the mandatory language and maintenance points, these applicants need to earn 20 additional points from qualifications and earnings.

The intra-company transfer route is for multinational employees with at least 12 months’ employment with the sponsoring company before transferring to a skilled job in the company’s U.K. branch. Because of widespread complaints that the ICT route

TABLE 4.15: Certificates of sponsorship used under Tier 2, November 2008 to May 2009

	In-country	Out-of-country	Total	Percentage of total for all routes
Resident Labour Market Test	3,832	2,826	6,658	32%
Intra-company transfer	480	9,841	12,321	60
Shortage occupation	1,078	652	1,730	8
Total	7,390	13,319	20,709	100

Note: The above figures describe “used” certificates of sponsorship, where an application that corresponds to the certificate has been submitted but not necessarily approved. RLMT figures include those switching from a post-study category.

Source: Adapted from U.K. Border Agency, “Changes to Tier 1 and Tier 2 of the Points-Based System: Statement of Policy,” April 2010.

was being used to displace U.K. residents and undercut their wages and working conditions, in 2010 the UKBA restricted ICTs to temporary jobs in the companies’ U.K. branches requiring specialized knowledge and experience or the transfer of specific skills. Other changes included reducing the number of sponsorship points for the route from 30 to 25, increasing the required employment time with the company before transferring from six to 12 months, and splitting this route into the three subcategories summarized in **Table 4.15**.

Prevailing wages under Tier 2

In order to prevent displacing and undercutting U.K. resident workers, the UKBA publishes codes of practice specifying by occupation the minimum (going) rate Tier 2 employers must pay. These rates are defined as “equivalent to that which they would pay the domestic worker, were that worker available.”³⁹ These rates can be determined in one of two ways:

1. Industry-specific surveys conducted by recognized industry or professional bodies or sector skills councils.
2. Annual Survey of Hours and Earnings data at the 25th percentile by four-digit SOC. The SOC 2000, discussed earlier (scheduled to be replaced in 2011) covers all paid jobs in the United Kingdom.

Tier 2 routes

Table 4.15 shows that between the launch of Tier 2 in November 2008 and May 2009, ICTs accounted for 60% of the certificates used in the three Tier 2 routes; RLMT accounted for 32% and shortage occupations 8%. Table 4.15 also shows that just over

TABLE 4.16: Summary statistics of prospective earnings for jobs under Tier 2, November 2008 to May 2009

	First quartile	Median	Third quartile	Mean
Tier 2 total	£28,400	£35,500	£50,000	£71,600
Intra-company transfer	31,900	39,800	58,700	92,600
Resident Labour Market Test	24,500	30,000	39,900	38,500
Shortage occupation	20,000	25,000	31,400	31,700

Note: Summary statistics are rounded to the nearest £100. Analysis is based on used certificates of sponsorship issued under Tier 2. Prospective earnings are annual, including both the basic salary and allowance. Around 5% of salaries were not stated on an annual basis; assumptions have been made to calculate annual pay, and those with allowances on a non-annual salary are excluded for data quality issues. Where the salary period is not stated (for example, contract or performance-related pay), these are excluded from the analysis.

Source: Adapted from Migrant Advisory Committee, *Analysis of the Points-Based System: Tier 2 and Dependants*, August 2009, p. 78.

a third (36%) of the Tier 2 certificates used (20,709) were for migrants already in the country (7,390). These in-country applicants include those switching from the previous work permit system and the post-study category.

Just over half of all certificates of sponsorship under Tier 2 for the period covered in Table 4.15 went to Indian companies, which also account for 69% of ICTs; the U.S. accounted for 11% of all certificates, a distant second. For the RLMT and shortage routes, the distribution of nationalities is wider, with significant numbers from Australia, China, South Africa, Zimbabwe, and Pakistan.

MAC acknowledged various government officials' desire to have lower wages than would be produced by market forces in order to provide key public services, but noted that the substitution of immigrants has allowed for increased investments in domestic education and training, adding: "In the long run, further efforts should be made to upskill the U.K. workforce to do these jobs."⁴⁰

Table 4.16 presents summary statistics of prospective earnings for Tier 2 jobs from November 2008 to May 2009. ICT earnings are much higher than for other routes within this tier.

Evaluation of the RLMT

In its 2009 evaluation, MAC thoroughly examined Tier 2, especially the RLMT and the ICT; and both examinations—especially that of the ICT—elicited considerable public and stakeholder comment. The first question raised about these two programs was whether they should be discontinued and all skilled workers be required to enter through the shortage occupations route. MAC concluded that, while both routes should be improved, they serve unique and valuable functions and should be retained.

As the name states, the Resident Labour Market Test allows employers to hire foreign (i.e., non-U.K. or non-EEA) workers only if resident workers cannot be found at prevailing wage rates as determined by UKBA. Sponsoring employers must attest that they have properly tested the U.K. labor market and that they will pay no less than prevailing wages. In order to facilitate hiring, the U.K. system accepts attestation rather than verifying compliance in advance of the entry of foreign workers. This process gives employers considerable flexibility and simplicity in exchange for a rigorous post-entry compliance process, which includes audits (visits) by UKBA staff and stiff penalties, such as suspension and revocation of licenses.

The RLMT route is popular with employers because, unlike the shortages occupation route, it permits a quick test of the market for skills not on the shortages list and affords geographic as well as occupational flexibility.

The RLMT is particularly useful for public-sector employers, whose relatively low wages do not attract enough resident workers to provide valuable public services, especially in health care, research, and education. And the RLMT is largely employer-driven: Applicants get 30 points for a job offer, which, with the mandatory 20 points for English language skills and maintenance, allows them to pass the entry test by earning points for qualifications and earnings. It would be hard for public employers, who have limited control of wage rates, to raise wages enough to attract resident workers. It therefore is not surprising that public service occupations dominate the Tier 2 RLMT certificates of sponsorship. Researchers receive many of the RLMT certificates, probably because a sponsor's request for a researcher with special knowledge and expertise named on a research grant is exempt from Tier 2's advertising requirements.

Despite its popularity, MAC received numerous complaints that the RLMT's administration and enforcement failed to ensure that resident workers had adequate access to these jobs. MAC therefore recommended, and UKBA approved, extending the required period to advertise vacancies before admitting foreign workers from two weeks to four. MAC also recommended changes to strengthen the enforcement of the RLMT.

Enforcement of the RLMT

Part of the UKBA's compliance program is to grade sponsors based on their performance and compliance with sponsorship obligations: Grades include A for exemplary and B for those who have violated labor laws or their sponsorship obligations. The process was introduced in November 2008, and in July 2009 UKBA reported that it had 15,506 A-rated sponsors, 476 B-rated sponsors, eight sponsors whose licenses had been revoked, and 15 who had been suspended (which means they cannot sponsor new employees until the UKBA completes its investigation). When employers are downgraded or have their licenses revoked, they are removed from the sponsorship register. However, the UKBA does not publicize changes in the register or fine offending sponsors.

Responses to MAC's call for evidence elicited concern about the scope for abuse permitted by the RLMT processes. Unions representing skilled workers were particularly concerned that the confirmation of compliance through attestation under the PBS was less rigorous than the information required in the previous work permit system. Moreover, according to one respondent, "While there is subsequent checking of the RLMT specifics in a random post hoc sampling, the overall level of scrutiny of the rigour of the RLMT is now comparatively low."⁴¹

Even employer respondents suggested "a more robust policing of sponsors applying the RLMT to demonstrate that migrant workers are not undercutting the domestic workforce."⁴² And the Home Affairs Committee of Parliament concluded: "the current RLMT does not seem to command confidence amongst jobseekers, employers or other commentators."⁴³

MAC explored various improvements to the RLMT, including "certification that the labour market test has been met before the application is submitted, as in some other countries such as Sweden, Denmark, and the US."⁴⁴ Although MAC thought certification would slow the process and create practical administrative problems, it recommended that the government consider this option as a way to prevent the displacement of resident workers or the undercutting of their wages and working conditions while meeting employers' labor market needs.

The original system assumed that it was better to have employers affirm that they had adequately tested the U.K. labor market and verify this attestation after workers are admitted than to check employers' compliance before they sponsor foreign workers. A major challenge is to develop a system that gives employers flexibility and convenience while protecting resident workers' wages and employment. Despite acknowledging room for improvement, the British enforcement process is much more demanding than that of the U.S. H-1B system, but not robust enough for RLMT's critics.

After a careful review of the evidence the UKBA decided to stick with its basic regulatory approach of licensing sponsors on the basis of rules and regulations to protect resident workers and the national interest and to allow employer attestation, reinforced with added resources for more rigorous monitoring and auditing of employers' records. It also was recommended that the top-down, bottom-up methodology be used to calculate and enforce the going wage rate, which continues as an important component of the Tier 2 enforcement regime.

The intra-company transfer route

As noted in Table 4.15, the ICT, which corresponds to the U.S. L visa, is a popular route for foreign workers to enter the United Kingdom. ICTs grew from 7,185 in 1992 (26.7% of total work permits) to 45,766 (52.3%) in 2008; ICTs accounted for 59.5% of all work permits in 2009.⁴⁵ The original purpose of this route was to allow "established employees of multinational companies...to be transferred to a skilled job in a UK-based branch of the organisation or to provide a service for a third party."⁴⁶

Under the previous work permit system ICT sponsors had to confirm (1) that the sponsored transferee “had company-specific knowledge and experience that [were] specifically required for the post on offer and that could not be provided by a resident worker,” and (2) “the pay and conditions had to be at least equal to those normally given to a resident worker doing similar work.”⁴⁷

It was hard for the UKBA to enforce the first condition, the lack of precision of which gave employers, who have much greater knowledge of their work than do regulators, much room to game the system and use transferees for work that could readily be done by U.K. residents. The government therefore substituted the requirement that the multinational corporation’s ICT applicant had to have worked for the company at least six months (later one year) in order to justify adequate company-specific knowledge and skills. The PBS also continued to rely on the prevailing-wage requirement to prevent undercutting residents’ wages and working conditions.

Criticism of the ICT grew with its increased use. The main charges of abuse were (1) six-months’ tenure rule violations in which multinationals brought in employees with less experience—often new graduates, to work on “complex IT projects, for which skilled and experienced resident workers were readily available”;⁴⁸ (2) the undercutting of resident workers’ pay and conditions by paying transferees less than the going rate and much lower than specified in certificates of sponsorship; (3) the employment of workers in different (perhaps unskilled) jobs than the ones named in the certificate; and (4) the use of the ICT—intended for temporary employees only—as a route to permanent residence and citizenship.

Stakeholders and experts also complained about the UKBA’s regulatory deficiencies in addressing sponsors’ abuse of the ICT route. Even employer respondents urged strengthened enforcement. For example, the CBI, the nation’s most prominent business organization, told MAC that “potential abuse of the system by unscrupulous firms must be addressed through targeted enforcement, not reform of the system itself.”⁴⁹ Tata, a large Indian user of ICTs, said: “There should, in our opinion, be a clear regime of sanctions, including the suspension or rescinding of sponsorship licences for serious, repeated transgressions of the rules. It is in all our interests for the new system not only to work, but also to be seen to work.”

According to the Professional Contractor Group, “The system for monitoring, reporting, and dealing with abuses...should be made more robust.” And the Immigration Law Practitioners’ Association noted the anecdotal evidence about ICT abuses and suggested:

Should further research back up such anecdotes, ILPA considers that the Government have ample measures in place that can be used to take such action as is deemed necessary: the immigration rules, the sponsor-licensing system, and the existing obligations on employers. Many of our members have reported that their clients have requested compliance visits, only to be told by the [UKBA] that this is not a priority.⁵⁰

Finally, the Parliamentary Home Affairs Committee reported in 2009 that the ICTs “give a significant amount of discretion to individual companies.... We therefore conclude that urgent and rigorous investigation is needed into the intra-company transfer route and possible abuses of this route....”⁵¹

MAC concluded that it did not have “firm evidence of outright abuse” of the ICT, but that “strong enforcement activity will allow better information [for the] detection of any abuse that is occurring.”⁵² MAC therefore recommended that the government “give consideration” to whether sufficient enforcement resources are devoted to this route and “whether the degree of transparency around enforcement of the system” is adequate.⁵³

The government’s problem in regulating the ICT is exacerbated by its complexity, as well as the program’s popularity with the U.K. government, business leaders, and multinationals. The complexity compounds the problem of separating abuses of the rules from abuses permitted by the rules. Just as with the U.S. L-1 program, a close analogy with the ICT, many of the abuses cited are due to limitations in the rules themselves, a shortcoming that requires changing the rules and adopting better regulatory designs, while others are due to violations of the rules, which requires better enforcement. The big difference between the L-1 visa and ICT is that U.S. authorities have almost no rules to protect American or foreign workers—it is perfectly legal to pay wages far below U.S. market rates and displace American workers, and there has been no serious attempt to enforce the law.⁵⁴ U.S. regulators therefore could profit from studying the U.K.’s ICT policies and experiences.

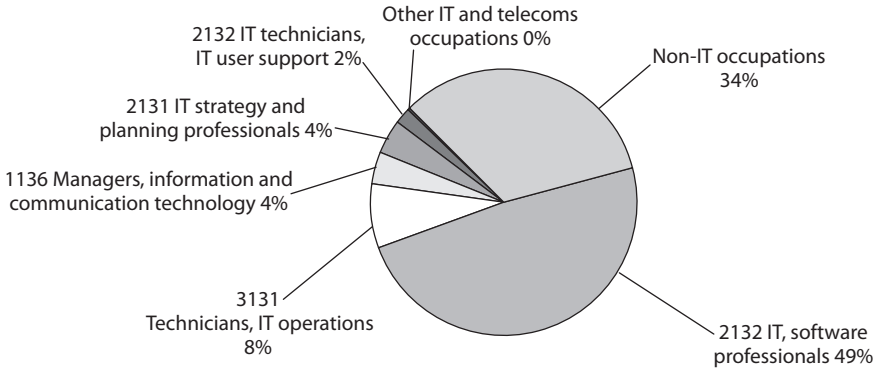
It must be acknowledged, however, that ICTs are difficult to regulate partly because of intrinsic conflicts associated with this route. Multinationals are under pressure in highly competitive markets to reduce costs and increase flexibility. They therefore will resist measures that force them to pay workers from lower-income countries U.K.-level wages; both the workers and their employers have motives to evade systems that give them the discretion to do so. It is, in addition, hard for any national government to regulate multinationals based in other countries.

ICTs also are not just for work—they are components of the multinationals’ training and career development programs. And foreign workers both impart and acquire knowledge. ICTs have company-specific knowledge if they have been with firms for a long time, but they also acquire knowledge of the customers’ businesses.

ICTs themselves not only acquire high-paying jobs and skills in the United Kingdom but, until 2010, were able to use the ICT route, which is supposed to be for short-term employment, as a valuable path to permanent residency and citizenship if they stayed in the country for five years.

For their part, U.K. regulators are conflicted between pressures to protect resident workers and a desire to attract investment from companies that depend on the ICTs. Regulators also are concerned that tough regulations will cause multinationals to shift some or all of their activities to the United States or other countries with lax regulations, which is an argument for enforceable international standards. And British employers fear that a tough regulatory stance to protect resident workers could cause other

FIGURE 4-A: Tier 2 intra-company transfers, by IT and telecommunications occupations, November 2008 to May 2009



Note: Labels show the proportion of intra-company transfers accounted for by IT and telecoms occupations. Occupations are classified at the four-digit level in SOC 2000. IT and telecoms occupations defined in e-skills (2008).
Source: Adapted from Migration Advisory Committee, *Analysis of the Points-Based System: Tier 2 and Dependants*, August 2009, p. 106.

countries to limit ICTs of British multinational companies access to their countries. The British government’s regulatory challenge is further compounded by the heavy concentration of ICTs in leading-edge industries, depicted in **Figure 4-A**, that the government would like to encourage.

For all of these reasons, MAC rejected abolishing the ICT route, though it acknowledged the need to limit abuses, and explored various alternatives to reconcile these competing pressures while protecting resident workers.

MAC decided that the ICT should not be a backdoor to permanent residency and citizenship, but recommended that the route be focused entirely on such short-run objectives as knowledge transfer in the United Kingdom and then to the employees’ home or other countries. MAC therefore recommended—and UKBA accepted—eliminating the pre-2010 residency formula of three-plus-two years and denying the ICTs the right to acquire permanent residency.

Recognizing that the new 12-month qualifying time might not be appropriate for corporate graduate trainees, MAC recommended a separate scheme for these transferees of three months’ prior company experience, but with a maximum stay in the United Kingdom of 12 months.

Table 4.17: Subcategories for intra-company transfers

	Established staff	Graduate trainee	Skills transfer
Purpose	To fill posts requiring established employees that would not otherwise be filled by resident workers	For new graduates who need to come to the U.K. as part of a structured training program	For new employees who will not fill a U.K. vacancy and are coming solely for skills transfer reasons
Points required	50 for attributes 10 for maintenance 10 for English language (if extending beyond three years)	50 for attributes 10 for maintenance	50 for attributes 10 for maintenance
Minimum skill level	S/NVQ level 3 and above	Graduate occupations only	Graduate occupations only
Minimum salary	Appropriate rate for the occupation	Appropriate rate for the occupation	Appropriate rate for the occupation
Previous experience required	12 months	3 months	None
Maximum length of leave	As Tier 2 (general route)	12 months	6 months
Switching to other categories	Permitted, but can only switch Tier 2 categories if changing employer	Not permitted	Not permitted

Source: Adapted from U.K. Border Agency, "Changes to Tier 1 and Tier 2 of the Points-Based System: Statement of Policy," April 2010, p. 11.

New ICT subcategories

In response to MAC's recommendation and its own consultations, UKBA split intra-company transfers into the three new subcategories outlined in **Table 4.17**, effective April 6, 2010. The Established Staff (ES) subcategory allows established employees to be transferred into U.K. branch positions requiring company-specific knowledge and that could not otherwise be filled by resident workers. Workers in this subcategory must have a minimum of one year's experience with the company. Time spent in the Graduate Trainee (GT) or Skills Transfer (ST) subcategories does not count toward the one-year experience requirement. The Established Staff subcategory does not lead to settlement in the United Kingdom, and ES applications can be extended for a maximum of three years.⁵⁵

ES employees are expected to occupy temporary jobs only; if the positions become permanent, employers are expected to recruit from the resident labor market. And ES employees cannot switch to Tier 2 (general) unless they wish to work for a different sponsor.

The Graduate Trainee subcategory allows multinational companies to transfer recently recruited graduates to the United Kingdom to participate in structured managerial or specialist graduate training programs. GTs must be employed at least three months before transferring to the United Kingdom, serve a maximum of 12 months, and cannot displace resident workers or fill long-term positions. GT positions are only for graduates in accelerated management or specialist training programs. Each company is limited to five GT positions.

The Skills Transfer subcategory enables new overseas recruits of multinationals to transfer for up to six months to the United Kingdom to acquire or impart skills and knowledge relevant to their new positions. ST employees cannot come to the United Kingdom to familiarize themselves with the companies' clients, culture, facilities, products, or processes. And these positions cannot be used to replace resident workers or fill permanent positions.

Evaluation of the shortage occupation route

MAC did not recommend changes in the Tier 2 shortage occupation route. It rejected the proposed option of eliminating the RLMT and ICT routes and relying exclusively on the Shortage Occupation List, which does not require a labor market test. MAC considered the changes in the ICT to be more appropriate and, as discussed earlier, its extensive top-down, bottom-up shortage methodology already tests the resident labor market. The application of RLMT to the shortage list therefore would unnecessarily burden both “employers suffering shortages and government resources.”⁵⁶

Finally, the Department for Business Innovation and Skills told MAC that it was important for the migration system to support demand for new and innovative industries “that will drive discovery and economic growth and where there are not enough skilled United Kingdom workers to meet demand.” MAC responded that its current methodologies for the shortage route are flexible enough to enable employers to satisfy demand in areas where U.K. labor supplies fall short.⁵⁷ Indeed, MAC’s methodology forces U.K. authorities and employers to consider the relationships between immigration, workforce development, and other policies. MAC also joined with the U.K. Commission for Employment and Skills to commission research on a conceptual review of skill shortages and needs.⁵⁸

MAC conclusions on Tier 2

MAC concluded its evaluation of Tier 2 by first confirming the benefits to high-income countries of focusing on skilled rather than unskilled workers; namely, skilled workers are more likely to be complementary to domestic labor and capital, have a higher positive net fiscal impact, and have positive spillover and growth effects.

MAC’s second major conclusion was that the PBS adjusted migrant labor supplies reasonably well to the recession, but recommended some technical adjustments to provide greater access by resident workers to U.K. jobs and to prevent abuses.

Finally, MAC noted that Tier 2 does not reflect either the British economy or a broad array of sponsoring employers. Tier 2 migrants are heavily concentrated in the information technology, health care, and education sectors, and a majority are intra-company transferees, with heavy concentrations in Indian companies.

The coalition government's cap on foreign workers

In November 2010 the coalition government, elected the previous May, announced the first permanent cap on non-EU workers allowed to enter the United Kingdom. During the run-up to the general election, Conservatives—the dominant party in the coalition—argued that high migration levels encouraged by the Labour government's policies had put pressure on public services and created tensions in local communities.⁵⁹ In the November announcements, which took effect in April 2011, the Home Secretary placed a limit of 21,700 highly skilled (Tier 1) and skilled (Tier 2) workers to be admitted, down from 28,000 in 2009. This action followed a temporary cap imposed in June while the government, with MAC's help, worked out the details of the permanent limits.

The specific limitations announced by the Home Secretary included:⁶⁰

- an annual limit of 21,700 for Tiers 1 (1,000) and 2 (20,700); the 1,000 under Tier 1 would be a new “exceptional talent” route
- the restriction of highly skilled entrants (Tier 1) to entrepreneurs, investors, and the exceptionally talented
- the requirement that all Tier 2 entries be at the graduate NQF level 4
- tightened entry requirements for Tier 4 (students)

The introduction of an annual limit was designed to “allow Britain to remain competitive in the international jobs market, while ensuring that migrant labour is not used as a substitute for those already looking for work in the UK.”⁶¹

The coalition government raised the ICT minimum salary levels (to £40,000 for those who stay in the United Kingdom for longer than 12 months and to £24,000 for those who stay less than 12 months), but did not impose a cap and left the Labour government's ICT reforms, discussed earlier, in place. Business groups had lobbied against a cap on ICTs.

The changes in Tier 1, highly skilled migrants, were in response to evidence that “approximately one-third of those coming through this route were actually doing low-skilled jobs once they were in the UK.”⁶²

Tier 2 visa applicants must be at university graduate level, sponsored by employers, and receive sufficient points for salary and skills to qualify for entry. In months when Tier 2 visas are oversubscribed, “those with the most points will qualify....”⁶³

In February 2011 MAC recommended, and UKBA accepted, an increase in the Tier 2 threshold. The new benchmark to be considered skilled was raised from NQF

level 3 to level 4—professional occupations requiring college degrees. This reduced the number of occupations qualifying for Tier 2 to 121 from 192, which cover the most skilled 39% of the labor market, down from 56%. The occupations excluded as a result of this change include retail managers, hairdressing and beauty salon managers, and laboratory technicians; those still covered include nurses, teaching professionals, civil engineers, and finance and investment analysts.⁶⁴

The changes in student visas, which account for two-thirds of migrants, were designed to correct abuses detected in reviews by MAC and the UKBA. By introducing “a system that is more selective and more robust,” the government “is aiming to stamp out abuse while continuing to attract the top students to our top universities.”⁶⁵ The Home Secretary estimated “that nearly half of all students coming [to the United Kingdom] from abroad are coming to study a course below degree level where levels of compliance with immigration requirements are not high enough.”⁶⁶

Before the prime minister’s announcements, MAC had advised the Home Office on how to limit the flow of workers under Tiers 1 and 2, as well as how to strengthen these tiers to make them more selective. It reiterated its concern that, in addition to the announced restrictions, “...action should be taken to give UK workers the skills to ensure that business can still recruit the people they need.”⁶⁷

In a speech on April 14, 2011, Prime Minister Cameron expanded on the government’s immigration policies, though his remarks were broadly interpreted as primarily a political statement designed to strengthen the Conservative Party’s chances in the upcoming elections by responding to the public’s growing opposition to “mass immigration.” There were concerns that the immigration issues would strengthen the National Democratic Party at the Conservatives’ expense.

The prime minister accused the previous Labour government of talking tough about immigration but doing nothing to prevent its rapid escalation and said it “actually inflamed the debates” by closing down discussion, “giving the impression that concerns about immigration were somehow racist.”⁶⁸ Cameron argued that the Labour government’s approach “created the space for extremist parties to flourish...” The prime minister acknowledged that “immigrants make a huge contribution to Britain,” but “for too long immigration has been too high. Between 1997 and 2009, 2.2 million more people came to live in this country than left to live abroad... and it has placed real pressure on communities... Not just pressure on schools, housing, and health care—though these have been serious...but social pressures too.” These social pressures have resulted from immigration that was too fast and large to permit communities to bond through “common experiences...forged by friendship and conversation...knitted together by all of the rituals of the neighbourhood, from the school to the pub.”

Cameron therefore proposed to “reduce net migration to the levels of the 1980s and 1990s” by placing “a cap on non-EU economic migrants,” “clamping down on illegal immigration” and “getting to grips with the asylum system...” He “remember[ed] when immigration wasn’t a central political issue in our country—and want[ed] it to be the case again.”

The prime minister rejected the myth that “we can’t control immigration.” One part of this myth, he argued, was “because we’re a member of the [EU].” But, according to Cameron, the EU “actually...counts for a small proportion of the overall net migration to the U.K. In the year up to June 2010, net migration...from EU nationals was just 27,000.” The prime minister admitted, however, that since the A8 countries joined the EU in 2004, “more than one million people from those countries have come to live and work in the U.K.—a large number.” Cameron argued, however, that “transitional controls should have been put in place to restrict the numbers...” And “if and when new countries join the [EU], transitional controls will be put in place.”

However, Cameron concluded, “when it comes to immigration...it’s the numbers from outside the EU that really matter,” totaling 198,000 net in the year up to June 2010. This figure can be more easily controlled and will be controlled through a cap of 20,700 skilled workers from outside Europe and the prevention of abuses in family, student, and asylum-seeking visas, as well as a crackdown on illegal immigration.

The prime minister also rejected the argument that immigrants were needed for jobs that Britons won’t do. He conceded that 75% of the 2.5 million British jobs created since 1997 had gone to foreign workers. But this was not because Britons could not do these jobs: “The real issue,” the prime minister argued,

is this: migrants are filling gaps in the labour market left wide open by a welfare system that for years has paid British people not to work. That’s where the blame lies—and [with] the last government who comprehensively failed to reform it....That’s another powerful reason why this government is undertaking the biggest shake-up of the welfare system for generations...making sure that work will always pay...and ending the option of living a life on the dole when a life in work is possible.

Prime Minister Cameron also rejected the argument that strict immigration controls would “deny British businesses...the talent they need to succeed,” arguing that his government had “thought incredibly carefully about how we can select and attract the world’s brightest to our shores. This was something the last government comprehensively failed to do.”

Cameron conceded that the Labour government introduced the PBS to select people by the level of their skills, but “failed to properly control it,” resulting in the abuses of Tiers 1 and 2 that the coalition government’s reforms, discussed earlier, were designed to eliminate.

With these reforms, the prime minister argued, “Britain will always be open to the best and the brightest from around the world and those facing persecution. But...our borders will be under control and immigration will be at levels our country can manage.”

The prime minister’s speech was immediately attacked as “unwise” and inflammatory by the Business Secretary, a member of the Liberal Democrats, the junior member of Cameron’s coalition government.⁶⁹

The Business Secretary told the BBC that Cameron's stand was "Tory Party policy only" and argued that the government's "changes in immigration policy may make it more difficult for companies to hire talented foreign staff." The Liberal Democrats had been criticized by their constituents for such Conservative policies as tripling university tuition fees and increasing sales taxes.

Prime Minister Cameron's statement clearly was designed to respond to widespread popular opposition to immigration, while hoping to reassure the Tories' business supporters with exemptions for intra-company transfers and university students. More objective observers pointed out that with immigration, as with multiculturalism, Cameron tried too hard to blame the Labour Party for the country's problems, especially "mass immigration." For example, Alan Travis, home affairs editor of the *Guardian*, pointed out the immigration turning point came in 1991, under Tory Prime Minister John Major, not with the Labour Party government that took office in 1997: From 1991 to 1997 net immigration was 2.5 million compared with two million during 1997–2009.⁷⁰ Moreover, as noted earlier, economic immigration had started falling before the coalition government took office in 2010.

The coalition's immigration proposals added to the Liberal Democrats' political problems, which already were strained by the government's austerity policies that slowed the U.K.'s recovery from the Great Recession. The Liberal Democrats were unlikely partners with the Tories in 2010, and were the major losers in the 2011 election.⁷¹

It remains to be seen, however, whether the coalition's policies will return net immigration to levels below 100,000 a year. Many observers are highly skeptical because, despite the prime minister's restrictive rhetoric, the largest groups of non-EU immigrants—students and intra-company transfers—are exempt from the caps, as are EU migrants, who are unaffected by Cameron's promise to restrict the entry of future European migrants. Moreover, while the coalition's policies are popular with right-wing conservatives, they are not popular with Liberal Democratic, Labour Party, and business leaders. It also is not clear how much net new foreign worker flows will be reduced by the government's reforms. Probably the greatest reduction in immigration pressures will come from the slow recovery caused by the government's austerity programs.

Conclusions on the British employment-based immigration system

The British government, after 2005, transformed its work permit system into more rigorous processes to gear foreign worker flows to the needs of the British economy. The government was concerned that the previous system was too amorphous and chaotic and left too much discretion—and consequently latitude for abuse—to public officials. And the previous system was largely employer-driven and therefore did not necessarily reflect the national interest.

Because of the aging of the British population, continuing emigration, and deficiencies in British education and training institutions, Labour Party leaders believed

immigration was necessary to promote high-value-added economic growth and competitiveness. The government's policies required, in addition, strengthening research, education, and the quality of health care, which, with tight budget constraints, could not be done well without relying on lower-wage foreign professionals.

Mounting opposition to immigration, caused by large and diverse immigration surges, especially after 2004, ignited a public backlash, making immigration one of the United Kingdom's most important political issues. It therefore was necessary for the government to develop a system that appeared to be rigorously controlled; fair, especially to resident workers, but also to employers and migrants; and clearly in the national interest.

The resulting points-based system appeared to meet these objectives. Tier 1 was designed to admit the world's "best and brightest" without the need either for a formal job offer or a test of the U.K. market. Tier 2 was designed primarily to attract skilled workers (although there is a suspended route, Tier 3, for less-skilled migrants), whose sponsors are obligated to meet rigorous labor market tests. The exception to this principle is for migrants with occupations on the SOL, which is easier to qualify for because applicants who satisfy the language and maintenance requirements automatically receive enough points to qualify if they have a job offer from employers, who are not required to test resident labor markets. The RLMT Tier 2 route is popular with public and private employers who are permitted to import foreign workers without a certified labor shortage, even though some of the shortages, especially in the public sector, were caused by wage suppression. The RLMT is based on the assumption that the inability to recruit resident workers is a direct shortage indicator. Whether or not this is true depends on the credibility of the market test, especially when employers prefer foreign to domestic workers.

Intra-company transfers are the most widely used of the Tier 2 routes, but they create daunting challenges for government officials, who are conflicted between the desire to attract foreign investors and the political need to preserve the employment and working conditions of British workers, reassure the public that national interests are being served, and protect British multinationals using ICTs in other countries.

Unfortunately for the creators of the British PBS, that system's introduction coincided with a deep recession, which some observers thought necessitated scrapping those parts of the system that did not require demonstrated labor shortages. Fortunately for the PBS's initiators, however, the PBS's launching also coincided with the creation of MAC, an independent, highly professional entity with the expertise and credibility to take a hard look at the PBS and advise the government as to whether the RLMT and the ICT should be scrapped in favor of the Shortage Occupation List, the most credible of Tier 2's routes.

After a rigorous analysis, MAC rejected these suggestions, arguing that there were continuing needs for the RLMT, the ICT, and Tier 1, each of which served unique and important functions. MAC also demonstrated that the PBS had adjusted reasonably well to the economic downturn. Frequent adjustments to the SOL reflected declining, though continuing, shortages. Moreover, as expected with rising unemployment, the RLMT made it easier to attract resident workers during the recession, even at suppressed wages. And, during the recession, the multinationals using the ICTs needed to transfer fewer workers. Indeed, the PBS clearly was more flexible than a U.S.-style

rigid, politically determined cap would have been. It is much easier to change the components of a points system to reflect changing experience and conditions, as the UKBA-MAC partnership did with the PBS.

With respect to enforcement, MAC clarified the basic options between a pre-entry certification system and an attestation process that subjected sponsors to rigorous requirements to which they could attest; clearly, the attestation system is effective only with strong post-entry enforcement strategies.

MAC concluded that numerous complaints that the ICT system had displaced British workers and undercut their wages and working conditions were difficult to prove, partly because it is hard to both monitor foreign employers and distinguish abuses *permitted* by a system's design and those *resulting from violations* of basic obligations. MAC therefore recommended an improved ICT design that will simultaneously prevent and better detect abuses.

Although the British PBS is too young to fully evaluate—and clearly is a work in progress—MAC's basic top-down, bottom-up dovetailing methodology and its skilled, shortage, and sensible tests are both logical and effective. MAC has exposed data weaknesses that could be overcome as the system evolves, and clarified the important relationships, complementarities, and inconsistencies between immigration and other important policy objectives. It is not surprising that Canadian immigration authorities, who invented the PBS, are considering the creation of an entity modeled after MAC. There is little doubt that the United States could benefit from adapting such a facility to American conditions.

Finally, it remains to be seen how much effect the changes announced by the coalition government in 2010–11 will have on the British immigration system. It is doubtful that the changes will be as extensive as Prime Minister Cameron's political rhetoric suggests. The proposed restrictions will not affect either immigration from EU members or the two largest groups from outside the EEA: international students and intra-company transfers. Moreover, the coalition government has continued to rely on MAC's expert professional advice. Much depends on whether the government continues to use immigration to support high-value-added economic policies while suppressing anti-immigrant political forces.

Chapter 5 assesses the implications of the British, Canadian, and Australian migration systems for the United States.

ENDNOTES – CHAPTER 4

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CHAPTER 5

Summary, Conclusions, and Lessons for the United States

The main objective of this survey of employment-based migration (EBM) policies in Australia, Canada, and the United Kingdom is to derive lessons for immigration policies, especially for the United States. These countries were selected because important similarities make their experiences relevant for the United States. One major similarity is the historical importance of immigration for these countries. This is particularly true of Canada and Australia, but also for the United Kingdom since the 1980s. Before then, the U.K.'s policy was zero-net migration: Immigration just about offset the emigration of British nationals. Once it became an immigration nation, the United Kingdom adopted some of the policies, institutions, mechanisms, and metrics that Canada and Australia had developed to ensure that migration achieved national objectives. Indeed, the United Kingdom added some important innovations.

Migration is, in addition, an increasingly important factor in workforce growth in these countries, as well as in the United States. This is so because all advanced industrial countries have low native birth rates, aging populations, and a tendency for people with rising incomes to shun menial or low-status work. And all relatively wealthy and politically stable countries are highly desirable destinations for migrants from poorer and more unstable places. Since Australia, Canada, and the United Kingdom are relatively open liberal democracies (like the United States) with histories of racist exclusion that contradict democratic ideals—they have struggled, though more successfully than the United States, to control illegal migration.

And Australia, Canada, the United Kingdom, and the United States have been forced to respond to the challenges of globalization. Historically all four countries had derived much of their wealth from natural resources and mass-production systems, which required mainly unskilled or semi-skilled manual labor. All therefore have had to develop policies and institutions to adjust to a more competitive and knowledge-intensive global economy, which places a premium on value-added economic policies and more highly skilled labor.

In gleaning lessons from these countries for U.S. migration policies, we must be mindful of the following differences:

1. ***Unlike the United States, these three countries have developed coherent, reinforcing economic and migration policies.*** They focus on high-value-added (productivity and quality) economic strategies designed to help them remain high-income countries in a more competitive global economy. They have, in addition, been more concerned than the United States with broadly shared prosperity. As a result, these countries assign high priority to migration policies that reinforce their economic and social policies.

Value-added migration policies seek to import workers with skills, knowledge, or a willingness to accept lower wages than domestic workers, but also to prevent foreign workers from *depressing* domestic wages and working conditions.¹ The United States and our three study countries have adopted these principles but execute them with varying degrees of proficiency. Every country has problems enforcing foreign and domestic labor protections, but U.S. labor standards are weaker than those of Australia, Canada, and the United Kingdom, and the United States is much slower to correct documented problems.

2. ***U.S. economic migration policies and processes are very different from those of Australia, Canada, and the United Kingdom.*** The United States has no national economic strategy to guide employment-based migration; the flow of foreign workers into the country is not carefully controlled, giving the United States by far the industrialized world's largest incidence of unauthorized migration in its population and workforce. Also there is no high-level federal agency responsible for economic migration or a highly professional civil service to manage the country's migration system.

The United States imports many more low-skilled migrants, is much less selective with skilled migrants, and gives employers much more discretion about migrant qualifications. There are no mechanisms to relate migration to any identifiable national economic interest. Economic immigration accounts for only about 20% of U.S. immigration, compared with over 60% for these three countries. And, instead of flexible targets, the United States uses rigid, congressionally mandated caps and quotas for most private-sector foreign worker flows, though as discussed below some temporary foreign worker flows have no quantitative limits.

These caps were intended to protect American workers, but the many lawful and unlawful exceptions cause the caps to be relatively ineffective and give an advantage to employers and immigration lawyers with the resources and incentives to game the system. The caps therefore do not protect American workers as well as the more flexible processes and admittedly flawed, but improving, worker protections developed by Australia, Canada, and the United Kingdom.

3. ***The United States is a much bigger country.*** The U.S. population is over five times that of the United Kingdom, nine times that of Canada, and 14 times that of Australia (see Table 5.1). The large size of the United States undoubtedly makes migration management more challenging, but also provides more resources and makes smart controls and good management practices essential.

Table 5.1: Population estimates for the United States, Canada, Australia and the United Kingdom, 2009

Country	Population	Foreign-born	Foreign-born as percent of population
U.S.	307,212,123	35,700,000	11.6%
Canada	33,487,208	6,200,000	18.5
Australia*	21,262,641*	4,900,000	20.7
U.K.	61,113,205	6,500,000	10.6

*There are some inconsistencies in data on foreign born for Australia. The World Bank population figure of 20.7% for 2009 is inconsistent with the 24.9% number from the Australian Statistics Bureau's 2007 statistic for population showing a total of 21,017,222 and 5,253,852 foreign-born.

Sources: Population data from World Fact Book. Percent of foreign-born population from U.S. Census Bureau, "The Foreign-Born Labor Force in the United States: 2007"; Statistics Canada, "Population by Immigrant Status and Period of Immigration, 2006 Counts, for Canada and Census Divisions – 20% Sample Data," 2006; Australian Historical Population Statistics, 2008; and "Immigration Watch International," February 26, 2009.

4. *The United States does not have a parliamentary system*, which not only makes it much harder to adopt and implement migration (or any other) policy, but also causes U.S. federal policies to be much less responsive to public opinion. Major differences are that parliaments elect their chief executives and do not allow procedural rules like filibusters to thwart the will of large majorities. The U.S. president has much less authority to formulate cohesive policies than a prime minister does. The British Parliament, for example, has given the Home Office considerable discretionary authority to manage the migration system. The government created an independent agency, the Migration Advisory Committee (MAC), by directive rather than by legislation. The creation of such an independent entity in the United States would be much more difficult and contentious, though every bit as important as MAC is to the United Kingdom. Similarly, immigration authorities in Canada and Australia have considerable discretionary authority to adjust migration to labor market conditions.

5. *The geography of Canada, Australia, and the United Kingdom, it can be argued, makes it easier for them to control migration.* None has a large, porous land border with a relatively undeveloped country like Mexico; Australia and Great Britain are islands, and Canada is bordered only by the United States, a large and wealthy nation.

While geography has had great historical significance for all of these countries, it is less important in an age of modern transportation, when people overstaying their visas make up a large and growing proportion of unauthorized migration.

Thus, the United States has a larger unauthorized population than Australia, Canada, and the United Kingdom not just because of different geographies, but also because these countries have developed superior migrant management

systems and have been less willing to surrender national sovereignty to employers and unauthorized migrants. A good guiding hypothesis is that, unless the United States significantly reduces the number of unauthorized migrants, it will have great difficulty developing an effective legal migration system.

Despite these differences, comparative analyses reveal some general principles for immigration reform by the United States. It cannot copy the migration policies of Australia, Canada, and the United Kingdom, but it can learn from them and adapt these lessons to American realities.

This chapter will first summarize some of the main features of employment-based migration systems in Canada, Australia, and the United Kingdom and then discuss the lessons from these experiences for comprehensive reform of U.S. foreign worker programs (FWPs).

Summary of employment-based migration in Canada, Australia, and the United Kingdom

As noted, Australia, Canada, and the United Kingdom have developed similar techniques and metrics to better manage employment-based migration. Indeed, there has been continuous joint and interactive learning among these countries. The main characteristics of their migration systems are:

1. ***Coherent policies and programs designed to effectively manage and control migration, complement and support their value-added economic policies, and minimize wage competition and the displacement of domestic workers.***
2. ***High priority for migration within their governmental structures.*** All three countries' programs are managed by high-level public officials with staffs of highly specialized career professionals and strong support from their prime ministers.
3. ***Flexible annual goals or targets for immigration overall, with major emphasis on economic migration, which is predominantly employment based.*** These goals or targets can be altered at any time to reflect changing market conditions.
4. ***Greater emphasis on economic migration and less on family-based migration during the 1980s and 1990s as they became more committed to high-value-added economic policies.*** The United States, by contrast, has continued to stress family-based immigration over economic migration. The United States also has much larger flows of low-skilled migrants, authorized and unauthorized, while Australia, Canada and the United Kingdom have focused primarily on skilled migration. These other countries all stress the use of alternatives for low-skilled migration, including recruiting and training domestic workers; pursuing technological innovation; and allowing international students, family members of skilled and family-based migrants, and refugees to work at low-skilled jobs. These countries' low-skilled migration programs are relatively small and carefully controlled, such as the working holiday maker programs for young, relatively

well-educated migrants, live-in domestic programs, and seasonal agricultural worker pilot programs.

5. ***A two-step immigration system to first import temporary workers who then can qualify for permanent residency.*** International students studying in host country postsecondary institutions are particularly valued because they improve higher education, subsidize domestic students, contribute to national economies and, if they qualify, make valuable permanent residents because of their youth, occupational qualifications, language skills, and familiarity with host country customs and institutions. Research findings confirm the value of this two-step process for nonstudent temporary workers as well.
6. ***Admission of foreign workers mainly for vacancies that cannot be filled by domestic workers.*** This has necessitated laws and regulations requiring employers to limit international recruitment to occupations in short supply or to offer jobs to resident workers before hiring foreign workers. Sometimes employers certify that they have tested domestic markets before they can sponsor foreign workers, and sometimes they are allowed to attest that they have and will comply with labor protections. Attestation speeds up the hiring of foreign workers but, to prevent abuse, requires careful recordkeeping, monitoring, and auditing.

The careful measurement of skills shortages also helps ensure that migrants are less likely to take jobs that can be filled locally.

The United States does not require employers sponsoring skilled workers or those with temporary exchange visitor (J) visas to test the market or develop shortage occupations lists, though employers of less-skilled migrants (H-2) are required to test the market.

Enforcement of “residents first” rules is contentious and difficult because governments are reluctant to second-guess employers. Our study countries nevertheless work hard to enforce these rules, both because it is politically necessary and because it helps ensure that foreign workers complement rather than displace domestic workers. The importation of foreign workers thus becomes a plus-sum or “win-win” process.

Even though the United States, like Canada, Australia, and the United Kingdom, has a “domestic workers first” rule for some foreign worker programs, legal loopholes, poor enforcement processes, and the availability of unauthorized workers and those exempt from this rule render this requirement relatively ineffective. Indeed, a cadre of law and consulting firms specializes in ensuring that no qualified Americans will be found for designated vacancies, and employers often select foreign workers even before applying for permission to import them.²

7. ***Provision to foreign workers of at least the same wages and working conditions as received by similar domestic workers.*** This rule is designed both to prevent foreign workers from depressing domestic wages and working conditions and employers from hiring foreign workers primarily for lower wages. Some programs require employers to incur higher labor costs for foreign workers as a simple screening

device to ensure that migrants have the stipulated skills, but mainly to prevent the depression of domestic wages.³

Wage requirements have been hard to enforce, chiefly because such wages are closely related to skills, for which there are no generally accepted definitions or measures. Employers often conflate skills with qualities such as loyalty and willingness to work hard, which are more common among migrants with fewer options than domestic workers.⁴

Employers likewise can misclassify foreign workers by paying highly qualified migrants entry-level wages. With the United States' H-1B and Australia's 457 visa programs, for example, the stipulated prevailing wages have been below market rates, which means the offered wages have depressed domestic wage levels. It was, however, much easier for the Australian Department of Immigration and Citizenship (DIAC) to adopt measures to correct this problem in 2010-11 than it has been for the United States to reform the H-1B and L-1 visa programs.

8. ***The development of strong migration data and research support processes, both in-house and commissioned.*** Canada and Australia have developed longitudinal data that are particularly valuable for understanding the characteristics that help migrants quickly find appropriate jobs. The success criteria are useful to the host countries and migrants alike. This research has found, for example, that the most successful migrants are relatively young (under 45); possess externally verified qualifications in high demand; are highly proficient in the host-country language(s); have experience and relatively high earnings in their qualifying occupations, preferably in the host country; and have dependents who also have high host-country language competency and in-demand occupational skills.

The United States lacks not only longitudinal data to make these evaluations, but also data on the number of legal foreign workers in the country at any given time, their characteristics, where they work, and how much they earn. Therefore, there is no accurate way to gauge their impact on American employment, earnings, and working conditions, or to determine the characteristics that predict successful adaptation to the American economy and society.

9. ***Ongoing labor market research programs to identify and measure skill shortages, which play an important role in the selection of economic migrants.*** All three countries have developed methodologies to define, identify, measure, and forecast skill shortages. These data are used for economic, education, workforce development, and student counseling purposes, as well as for migrant selection.

The U.K.'s independent Migration Advisory Committee has developed an innovative and effective methodology for constructing shortage occupations lists using top-down national data supplemented by bottom-up information from industry and occupational practitioners and stakeholders. The methodology is broadly supported by participants, elected officials, and the public. Of course, the determination of a skilled labor shortage does not grant automatic entry for skilled migrants in any of these countries. MAC, for example, applies

an important test before including an occupation on the shortage list: is it *sensible* to import migrants to fill the shortage? This test forces an examination of alternatives to migration, such as technological and managerial changes or the recruitment and training of domestic workers. The sensibility test does not prevent employers or policymakers from ultimately admitting migrants, but it clarifies the costs and benefits of the tradeoffs, and can indicate the need to pressure employers and public officials to adopt alternatives that are in the national interest. For example, if employers are not making acceptable efforts to train or recruit domestic workers, their applications to sponsor foreign workers can be denied. And public officials can be pressured to avoid substituting immigration for public human resource investments.

Although MAC's initial purpose was to measure labor shortages, its government mandate has expanded to include providing evidence-based advice on a wide range of issues related to migration and its impact on British labor markets. Since employers tend to exaggerate shortages and workers and their organizations tend to minimize them, it is important to have objective measures.

It should be emphasized, however, that MAC's advisory role supports and improves, but does not replace, the political decision process. In all liberal democracies immigration is a sovereign responsibility of national governments that should not be delegated to any particular interest group, appointed entity, or market process. The government makes the final migration decisions based on MAC's advice, data, and relevant research findings. In addition to approving, amending, or disapproving MAC's recommendations, the government adopts overall migration goals and objectives that support the government's value-added economic objectives.

Because of its objectivity and credibility, MAC's advice is almost always accepted by the government. It was created by a Labour government, but the succeeding coalition government elected in 2010 immediately sought MAC's advice about limiting the admission of skilled workers and reducing abuses in the intra-company transfer (ICT) and international students programs.

- 10. *Points-based systems to give quantitative weights for preferred migrant selection characteristics.*** The PBS was first developed in Canada during the 1960s, followed by Australia in 1989 and the United Kingdom in 2001. These systems have several advantages: They are more objective than decisions made by immigration officials, providing less room for special interests to game the system, and their flexibility allows the mix of characteristics and total point scores to adjust migration to changing conditions. These systems can be calibrated to reflect national interests and usually replaced employer-driven work permit systems because employers do not necessarily support national high-value-added policies. When there are limited visas relative to applicants, a points system enables a rational ordering of visa awards.

The criteria used by these countries' points systems include:

- education, both in source and host countries
- occupation
- qualifications of spouses or partners
- work experience, both in source and host countries
- language skills
- age
- employer nomination/job offer
- previous or proposed earnings or salaries
- presence of close relations
- settlement (financial support) requirements
- investment, with job creation requirements

The points-based systems in all three countries provide considerable flexibility to adjust points to improve the selection process, as Australia and Canada did after 1996; prevent abuses of the economic migration system, as the United Kingdom did in revamping the rules for international student and intra-company transfers in 2010; and adjust to the business cycle, as all three countries did during the recession that began in 2007. Indeed, when some political and economic leaders thought the recession had nullified the PBS's effectiveness, MAC's thorough analysis of how the PBS adjusted migration to the recession demonstrated that the system performed very well.

The United Kingdom fine-tuned the intra-company transfer rules in response to MAC's investigation, at the request of the government, of complaints that intra-company transfers were displacing residents, depressing their wages, and serving as a backdoor route to permanent residency. MAC recommended, and the government accepted, changes reflected in both the PBS and the intra-company transfer regulations to correct these complex and important problems.

The United States could learn a lot from the British experience about fine-tuning the L-1 intra-company transfer program. In the United Kingdom, as in the United States, many abuses by intra-company transfers were perfectly legal, and they required changes in the law or regulations, which, as noted, are easier to make in the United Kingdom than in the United States. There are almost no L-1 visa rules to protect domestic and foreign workers or the national interest.

We should note, however, that the points system does not apply to family- or humanitarian-based streams, or to some economic immigrants who are admitted on a temporary basis. When temporary migration is the first step in acquiring permanent residency, bypassing the PBS undermines the system's integrity as a means of selecting skilled permanent residents.

11. *Minimization of the use of temporary low-skilled or “guest worker” programs, which have had unfavorable outcomes in the United States and Europe.* It has been hard to prevent the abuse of temporary migrants who are attached, or “indentured,” to particular employers. In these cases employers not only determine migrants’ wages and working conditions, but also whether they attain permanent residency or, in the case of seasonal workers, the right to return. Lower-skilled temporary foreign workers (TFWs) are particularly vulnerable because they usually have fewer options, employment or otherwise, than higher-skilled workers do. These strong safety-net countries also have fiscal incentives to resist low-skilled temporary workers, who are likely to contribute less in taxes than they receive in social benefits. But the Australian 457, the U.S. H-1B and L-1, and the Canadian temporary skilled worker programs demonstrate that it also is difficult to protect skilled migrants, especially in the United States with its weak labor law enforcement system. However, even stronger complaint-driven enforcement regimes, such as Australia’s, are less effective with TFWs, who often are afraid that complaints about working conditions or labor law violations will cost them their jobs and their opportunities to acquire permanent status, or lead to deportation.

TFW programs likewise give rise to unscrupulous labor recruiters whose control over job opportunities, combined with foreign workers’ vulnerabilities, permit serious recruitment abuses.

In addition, temporary worker programs often result in unauthorized immigration, especially where there are large disparities in wages and opportunities between host and source countries, as was the case with the U.S. Bracero program and, to a lesser degree, the New Zealand and Australian seasonal agricultural worker programs.

Countries have minimized visa overstaying by providing incentives for foreign workers to return home. Such incentives include conditioning visa renewals on leaving when visas expire, requiring return airline tickets as a condition of employment, holding employers financially responsible for the apprehension and repatriation of visa overstayers, and operating stricter enforcement processes. The dilemma, of course, is that stricter and more expensive requirements could give employers and migrants stronger incentives to resort to unauthorized employment.

Australia, Canada, and the United Kingdom minimize the need for low-skilled TFWs by reducing low-wage employment through strong social safety nets and high minimum wages; providing alternative sources of less-skilled workers, such as family-based immigrants, refugees, international students, and young working holiday makers; and providing incentives to recruit and train residents. If authorized workers are not readily available, employers have incentives to employ unauthorized workers, as they did in Australian agriculture and the U.S. H-2A program, which has no cap but is underused because of the ready availability of unauthorized workers. The same is true of the American H-2B program, which does have a cap.

The main lesson of the Canadian and Australian temporary worker programs is that it is difficult for seasonal foreign worker programs to protect domestic and foreign workers. Such protections therefore need to be carefully structured, including

agreements that source countries will help limit recruitment abuses and that monitoring will be provided in the host countries. In these cases, to ensure that the focus remains on protecting migrants, the source and host countries' monitors and intermediaries should not have vested interests in perpetuating the seasonal or short-run worker programs.

Perhaps the most important means to prevent abuses are to give migrant workers the ability to change employers and to make labor agreements even more binding, as is done in Canada and New Zealand, which many consider to have model seasonal foreign worker programs.

Sponsoring companies resist allowing temporary workers to change employers because such freedom lessens the employer's control over workers and it also diminishes the employer's investment if it has paid all or part of the migrants' recruitment and visa costs. Regulators therefore must weigh the benefits of protecting workers' mobility against these costs to sponsoring employers. As noted in the Australian and Canadian cases, it is possible to accommodate these concerns.

Other measures to protect TFWs and domestic workers include hiring migrants only for vacancies that cannot be filled by domestic workers, or where there are certified shortages and relatively high prevailing and minimum wage requirements.

Regulatory processes can be effective only if they are based on a deep understanding of how migrant-intensive industries operate. It is especially important to take broader views of labor markets to distinguish wage depression from wage suppression; i.e., the importation of migrants to prevent wages from rising when demand is strong as opposed to when domestic labor supplies are limited by barriers to entry or training opportunities.

Public as well as private employers might want to suppress wages, as in the British health care and social service sectors, which use migrants to provide care at low cost instead of raising wages or increasing training to qualify domestic workers for vacancies. These alternatives to migration may or may not be in the national interest, but MAC's analyses made the causes of the shortages and the options for addressing them more objective and explicit by applying the *sensible* test.⁵

Similarly, public and private employers have used migration in lieu of investments in training and education, as with health care industries in many countries, including Australia, the United Kingdom, and the United States. Nursing shortages, for example, are caused not only by low pay but also inadequate training facilities, which cause thousands of qualified applicants to be rejected for nurse training in the United States.⁶ MAC's U.K. research shows that medical doctor shortages are caused more by the absence of training facilities than uncompetitive salaries.

The U.K. construction industry illustrates how a low-wage strategy can lead to a low-productivity, low-wage equilibrium and migrant dependency.⁷ With low wages and unattractive working conditions, U.K. employers created domestic labor shortages exacerbated by public and private underinvestment in training. The training costs to workers far outweighed the benefits of employment in an industry with suppressed wages. To further suppress labor costs, a large proportion of British

workers were classified as independent contractors, a move that exempted them from worker protections. Because of the “free rider” problem, individual employers have disincentives to train workers who can then work for other employers. This problem could be overcome with a combination of public interventions and cooperation among employers, but deregulation and the declining incidence of collective bargaining decimated the British apprenticeship training system in favor of narrowly trained workers whose limited skills restricted their mobility, productivity, and earnings. The shortages produced by this dysfunctional training system justified importing better-trained foreign workers who were willing (at least temporarily) to work for lower wages than domestic workers with comparable skills. MAC’s analysis made it clear why the construction industry had skilled worker shortages and clarified the options for overcoming them. The government subsequently made the recruitment and training of domestic workers a condition for importing skilled foreign workers, but this was no substitute for transforming British construction into a high-skilled, high-value-added industry.

- 12. *Efforts to integrate migrants into the economy and society.*** Australia and Canada have had tighter immigration controls than the United Kingdom, which experienced spurts of migration from the former Commonwealth countries following World War II and after the A8 countries joined the EU at a time when Britain was the most desirable destination of the only three EU countries open to these migrants. Britain also was an attractive destination because of its growing migrant communities, which offered ethnic or compatriot havens, migrant networks, relatively loose internal controls, and a booming economy. These factors and the opening of the Eurotunnel caused the United Kingdom to have arguably the largest unauthorized population among these countries and probably the most serious anti-immigrant political movement, though migration also has become an important political issue in Australia. These countries therefore are challenged with reaping the economic and social benefits of being immigrant nations while avoiding the deadly, debilitating effects of religious, ethnic, and xenophobic conflicts. This challenge can only be met with the types of well-managed migration programs being developed by these countries, complemented by policies that seek to integrate migrants into their economies and societies.
- 13. *Attention to balancing contending economic forces when crafting migration policies.*** The main supporters of employment-based migration are employers, who want migrants to overcome perceived domestic labor and skill shortages but, though rarely stated, want also to depress wages and suppress shortage-induced wage increases, a motive shared by public employers, who want to minimize the costs of delivering health care, education, training, and social services.

Labor organizations and their supporters are motivated to protect wages and working conditions for foreign and domestic workers. Worker opposition to migration tends to fluctuate with unemployment and perceived threats to wages and working conditions. Unions tend to favor larger migrant flows where they have

many actual or potential migrant members or where they can form political alliances with migrant advocacy groups. In most countries, including the United States, unions are often the most important organizations representing migrant workers.

Anti-immigrant groups are made up of diverse interests, including environmentalists, nativists, racists, and those who oppose large migrations for fiscal or social harmony reasons. The evidence from our three study countries suggests that opposition will usually rise with unemployment, population density, or sudden uncontrolled surges in migration, as happened in the United Kingdom. Political leaders in both the United Kingdom and Australia work to prevent resurgent anti-immigrant movements from inciting political and social unrest, an increasingly significant problem as migration becomes a more important component of social and economic policies and domestic populations become more diverse.

These countries' emphasis on skilled migration as a labor market residual—i.e., to import foreign workers to fill domestic labor shortages—selected through an objective, flexible, quantitative, transparent points system helps assure voters that the government has immigration under control. This goal is attained only if the migration system has a high level of integrity—i.e., the system really selects for hard-to-fill vacancies and does not displace domestic workers, reduce their wages, or undermine labor standards. As noted, where there are strong employer preferences for foreign workers, effective enforcement strategies are required to protect foreign and domestic workers and prevent abuses of the system.

The international evidence also underscores the importance of effective social as well as workforce integration. Liberal democracies cannot tolerate policies that violate basic human and civil rights, but must tolerate differences compatible with those basic values. Canada seems to have achieved this objective relatively well.

Lessons for the United States

This review of migration policy in Australia, Canada, and the United Kingdom has important implications for the United States. Most significantly, these experiences show that employment-based migration can be effectively managed to meet national objectives, a disputed proposition in the United States. It is true, of course, that U.S. employment-based migration policy is chaotic and opaque, lacks strategic vision, has produced the industrialized world's largest illegal component, and is not the primary responsibility of any high-level government official or entity. But all these issues argue for reforming the system, not that responsible immigration policy cannot be achieved.

It is true that the federal government is less responsive to both public opinion and democratic governance than parliamentary systems. But experience with important legislation—such as the civil rights laws of the 1960s, which also faced determined filibusters for more than 20 years—suggests that with leadership, public education, political organization and support, controversial legislation in the national interest can be enacted. Unfortunately, it often takes a crisis to give reform legislation a final push. Perhaps the United States can avoid even deeper social, political, and economic crises

than it now has by enacting comprehensive immigration reform, based on the following lessons from Canada, Australia, and the United Kingdom.

Lesson #1: Adopt a strategic vision for value-added immigration

The first requirement for an effective migration system is a strategic vision to guide component parts and programs. Countries that wish to maintain and improve their incomes and avoid low-wage competition in favor of the high-value-added strategies being followed by Australia, Canada, and United Kingdom therefore should admit foreign workers to improve productivity and innovation, as well as to overcome labor shortages, not to depress domestic wages and working conditions, displace domestic workers, or substitute migration for public and private investments in education and training.

Lesson #2: Assign high-level federal responsibility for employment-based migration

A strong case can be made for assigning employment-based migration to a high-level federal official, most logically in the Department of Labor (DOL). It is not appropriate to scatter responsibility throughout the federal government or put it in the Department of Homeland Security (DHS), because EBM is primarily a labor market, not a law enforcement or national security, responsibility.

After comprehensive immigration reform, which should include existing foreign worker programs, discussed below, a high-level federal agency should work with the new Commission on Foreign Workers (CFW), also discussed below, to improve the efficiency of the EBM system; elevate migration on the national policy agenda; and coordinate migration with education, workforce development, economic, and social policies and other functions. As noted in our study countries, properly managed migration can have positive effects on these other functions, but systems that are poorly managed, as they are in the United States, can have negative outcomes. At a minimum, the United States should clarify these negative outcomes—such as wage suppression and the reduction of incentives for recruiting and training American workers—even if policymakers decide, because of conflicting objectives, to allow the negative impacts to continue, as did the United Kingdom with wage suppression in the health care, education, and social service industries and the decimation of training and employment structures in the construction industry.

Lesson #3: Appoint a high-level ad hoc commission to recommend measures to improve the efficiency and effectiveness of the employment-based migration system

America's present system is grossly inefficient primarily because of an inappropriate legislative framework, lack of flexibility in adjusting migration to labor market needs, poor matches between administrative resources and the magnitude of the problem, and

ineffective enforcement of worker protections. The United States can learn from the successes and mistakes of Canada, Australia, and the United Kingdom about how to have smart regulations, especially if it assigns responsibility to a high-level federal agency to assemble the professional personnel, advanced technology, structures, and accountability and incentive systems required for a more effective employment migration system. The United States therefore should appoint a high-level ad hoc commission to recommend operational and administrative improvements to the immigration system.

Lesson #4: Create a permanent, independent Commission on Foreign Workers

One of the most important entities to create and maintain an effective employment-based migration system is an independent data, research, evaluation, and advisory body to give legislators and migration officials objective, evidence-based, professional advice about such matters as whether migration is the best or most sensible way to fill labor shortages, or whether and how the United States should establish a points system. Most experts agree that migrants can produce plus-sum, or win-win, outcomes for people and countries if they complement resident workers and fill jobs at prevailing wages and working conditions when domestic workers are unavailable. Unlike the three countries surveyed here, the United States does not have either agreed-upon definitions or measures of shortages, and this shortcoming allows policymakers to be easily persuaded by claims of labor shortages without convincing evidence. For example, the “evidence” often cited for a shortage of college-educated high-tech workers is the exhaustion of the 65,000 private-sector H-1B visa slots, sometimes within days after bidding opens. This clearly does not prove a shortage: It does suggest that there is a strong demand for skilled dependent labor willing to work for below-market compensation levels. H-1B workers are competitive with L-1 intra-company transfers, whose employers face almost no restrictions on their employment in the United States. Worse yet, there are no readily available data on the number of H-1B and L-1 workers and, because of the absence of reliable data, there are few credible studies of these visas’ impact on foreign and domestic workers or the economy.

The need for an independent commission

There is, therefore, growing support for an independent commission, though proponents differ over the scope, functions, and even the name of such a commission. Support has come from many sources, including the Independent Task Force on Immigration and America’s Future, co-chaired by Lee Hamilton and Spencer Abraham; the Council on Foreign Relations’ Task Force on U.S. Immigration Policy, co-chaired by Jeb Bush and Thomas McLarty III; the Brookings-Duke Immigration Policy Roundtable; and the Migration Policy Institute. The Senate Democrats’ outline for comprehensive immigration reform released in April 2010 provided for such a commission; the draft bill developed in 2010 by Senator Robert Menendez detailed a robust immigration commission;

and Congressman Solomon Ortiz proposed an independent commission with broad powers in his 2009 immigration reform bill.

There is ample precedent for independent professional commissions and boards to advise Congress and the president. Indeed, it is hard to imagine Congress making monetary or trade policy without the professional research, data, advice, and recommendations from the Federal Reserve Board or the International Trade Commission. As the Council on Foreign Relations' Task Force on U.S. Immigration Policy observed:

Although immigration is every bit as important as trade for the U.S. economy, the institutional expertise on immigration policy is a fraction of that of the trade world. Trade policymakers call on a staff of several hundred economists and other experts at the independent U.S. Trade Commission for background investigations into the effects of trade on specific industries and segments of the economy.⁸

The new Commission on Foreign Workers (CFW) could also look to Canada, Australia, and the United Kingdom for examples of how analyses based on good data and strong labor market research and evaluation methodologies support effective foreign worker policies and processes. The transparencies provided by these analyses inspire relatively high public support for admitting temporary and permanent migrants because people have more confidence that immigration policies are maximizing the public welfare and minimizing the negative impacts. These three countries have produced much better data than the United States, though the work of the U.K.'s Migration Advisory Committee is particularly appropriate. As noted earlier, MAC's professional competence and credibility have given it broad bipartisan political support.

The commission's structure and purpose

The CFW would have five members, no more than three from any political party, appointed by the president with the consent of the Senate for staggered seven-year terms. Appropriate cabinet officers and agency heads should be ex-officio members. Commissioners would have expertise in migration-related disciplines and be supported by a professional staff. They also would have the authority to commission research and form support and advisory networks.

The CFW would develop and disseminate data and information, supplemented by input from trade, occupational, industry, labor, professional, and regional organizations modeled after MAC's top-down and bottom-up methodology.

The commission would report to the president and Congress at least once a year. Congress could approve, reject, or amend the commission's recommendations.

The commission's specific mandates

The CFW would have five specific mandates. First, it would provide much better data, research, and advice on foreign worker matters to Congress, the president, and the

public. As noted, the United States currently lacks the most basic reliable and timely data and analyses on this important subject. Without this information, the admission of migrants could do as much harm as good. With it, foreign workers could reduce labor shortages, increase productivity, improve the conditions of foreign and domestic workers, and benefit employers and the overall economy.

Second, the commission would recommend more rational and flexible flows of foreign workers. With present U.S. policies, changing foreign worker quotas—some of which were established over two decades ago—requires highly contentious and inflexible congressional action based on opaque political considerations unsupported by credible data and analyses. This process cannot meet the changing needs for foreign workers in dynamic and diverse labor markets.

Third, the commission would provide greater visibility and transparency for foreign worker flows, which (because of declining birth rates and the aging of the U.S. population) will be the main source of future workforce growth. The commission could also link foreign worker flows to labor market, economic, education, and social policies.

As noted, experiences in other countries demonstrate that objective data and analyses, visibility, and transparency inspire greater public acceptance of migration. Indeed, although support for foreign migrants generally diminishes with rising unemployment, Australia, Canada, and the United Kingdom appear to have adjusted their foreign worker flows to changing labor market conditions reasonably well in a period of global recession. The dysfunctional U.S. foreign worker system, by contrast, undermines public confidence in federal governmental institutions and makes migration policy much more contentious.

Fourth, the commission would assess—much more effectively than is now possible—the effects of proposed immigration reforms on future foreign worker flows. It would be extremely bad policy, for example, to launch a new temporary foreign worker initiative before fixing the seriously flawed programs now in place, assessing the labor market impact of pending immigration reforms, and developing effective processes to determine labor shortages and test the market for available qualified Americans.

Fifth, the commission would elevate migration on the national policy agenda. Although it clearly has important implications for America's future, managing foreign worker flows is not the key responsibility of any high-level U.S. federal agency. For most economic and social policymaking bodies, employment-based migration is an afterthought in basic administrative and planning functions.

There is, moreover, little coordination between migration and overall labor market, economic, education, or social policies. Thus the United States often substitutes migration for more effective education, training, recruitment, and management policies. Indeed, advocates for larger temporary and permanent foreign worker programs often cite poor education and training systems to justify higher levels of temporary and permanent migration to the country.

A response to CFW critics and skeptics

Critics of a Commission on Foreign Workers argue that the free market—not a government commission—should be used to adapt foreign worker flows to employers’ labor needs. While market forces must be considered in any foreign worker adjustment process, few, if any, informed advocates believe that migration should be controlled by unfettered competitive market processes, which would not work very well without the institutional and legal framework established by public policies. Indeed, no advanced democratic society permits unrestricted competitive market forces to govern labor markets, though smart regulatory processes would, whenever sensible, work with market forces instead of against them.

Other critics argue that foreign worker flows into the United States are caused by such powerful economic and labor market forces that they cannot be managed by democratic governments, even with the help of evidence-based research and advice. These views derive some credence from the U.S. experience because, at least since World War II, the United States has not managed the flow of foreign workers very well. The present migration networks, institutions, and processes—especially the parts that perpetuate the flow of unauthorized workers—might have gained too much momentum or “path dependency” to be reformed. In this view, the most America can do is create a large temporary foreign worker program to legalize and perpetuate the current flows, authorized and unauthorized. However, the experiences of other liberal democracies suggest that the United States could dramatically improve its migration system, though its dysfunctional political and governmental processes make this a daunting challenge. The CFW as a component of comprehensive immigration reform could greatly improve the present system.⁹

Employers often contend that they, not an appointed commission, are better suited to select foreign workers to meet their needs. However, the power to select foreign workers should not be delegated to employers who, even according to competitive business doctrine, cannot be relied upon to protect the interests of either workers or the nation. Instead, the task of adjusting foreign worker flows is a sovereign responsibility best left to Congress. A professionally staffed, properly resourced CFW would enable Congress to optimize migration policy’s benefits for workers, employers, and the nation while simultaneously easing the divisiveness that has marked this issue for far too long.

Of course, an effective migration policy must factor in employers’ legitimate interests in recruiting foreign workers for jobs that cannot readily be filled by domestic workers at prevailing wages, benefits, and working conditions. And the CFW, like the British MAC, should seek heavy input from employers and other labor market participants in its analyses. Indeed, managing foreign worker flows effectively would include policies that induce as much self-regulation by employers and workers and their organizations as possible. The CFW would not administer foreign worker programs, but its evidence-based research, data, and recommendations could allow the administration and Congress to perform their functions with greater transparency and effectiveness.

The Chamber of Commerce of the United States concedes that it would be “fine” to create a commission to issue recommendations on the annual level of employment-based immigrants. “However,” it argues, “to give a commission the authority to have such recommendations become law unless the Congress could pass a law within a certain timeframe provides the unelected and unaccountable [commission] too much power.”¹⁰

There are several things wrong with this argument. First, as noted, Congress, not the commission, would cause the CFW’s recommendations to become law, just as it does with agencies such as the U.S. Sentencing Commission and recommendations on annual goals for refugees. The procedure for Congress’ acceptance, rejection, or modification of a commission’s recommendations is for legal and administrative efficiency, flexibility, and convenience, not the delegation of congressional authority to an unelected commission.

It is true, of course, that the CFW would be unelected, but it definitely would be accountable to elected officials and the public, as are existing commissions, boards, and bureaus. The Chamber of Commerce would vest the powers to select foreign workers mainly in employers, who are neither elected nor accountable.

Other objections to an independent commission come from politicians and editorial writers whose comments suggest that they have not examined the rationale for these bodies very carefully. For example, a *New York Times* editorial (June 27, 2009) expressed serious reservations about commission proposals that, it alleged, were based on the assumption that migrant flows could be turned on and off “like a tap,” or that such a mechanism can be designed to fully protect workers’ rights and dignity.

No informed observer could believe that the flow of migrants can be turned on and off like a tap, but the experiences in Canada, Australia, and the United Kingdom demonstrate that foreign worker streams could be adjusted to dynamic labor market conditions much better than is done by America’s present inflexible and opaque policies, mechanisms, and institutions. Nor can it plausibly be denied that better data and analyses could greatly improve both the quality and flexibility of congressional foreign worker decisions.

The *New York Times* is correct in saying that no commission could fully protect domestic and foreign workers’ rights and dignity. Indeed, that would not be its purpose—those functions would be assigned to other agencies, especially the Department of Labor. There can be little doubt, however, that agencies mandated to protect workers’ rights would function more effectively with the help of a highly professional independent commission as a component of comprehensive reforms of our broken migration system.

Some skeptics doubt that the CFW could avoid being politicized or captured by special interests. That challenge deserves further analysis, discussion, and debate. It would be particularly useful to examine why some U.S. and foreign commissions and boards have been more politicized and co-opted than others.

Independence can be strengthened by creating a highly professional, evidence-based culture, as the Bureau of Labor Statistics has done for many years. Independence also is strengthened through selecting highly respected professional members who serve for long, staggered terms that do not coincide with those of any

administration, and ensuring a high level of visibility and transparency in the commission's deliberations.

The evidence is mixed on how requiring members from different political parties affects a board's politicization. This is a requirement for members of the National Labor Relations Board, which has become highly politicized, but not of the International Trade Commission or the Federal Reserve Board, which appear to be less politicized. The politicization of a commission probably reflects the intensity of the country's division and the division of the two main political parties on its mandated responsibility, but careful attention to structure might help ensure independence.

This does not mean that the CFW's deliberations on the level, characteristics, and flow of foreign workers can or should be divorced from politics. That is the reason the final decision on the commission's recommendations should be left to Congress and democratic political processes. The commission's responsibility would be to clarify the benefits and costs of political choices and indicate the extent to which these choices violate established operating principles. Better data and analyses also could show how the foreign worker management processes could improve political decisions. A good example of this is the U.K.'s decision to import foreign teaching, health, and social service professionals to overcome immediate shortages of these workers and keep the costs of these important services from rising. This political decision prevents solving shortages through rising salaries and weakens the "Britons first" principle. MAC carefully explained this dilemma to the Labour government, but also demonstrated how the points-based system for selecting migrants could be modified to accommodate the government's political decision. MAC has maintained its independence through highly professional analyses; its credibility is enhanced by an apparent willingness to disagree with political decisions unsupported by evidence.

An independent, professional CFW should be an important component of comprehensive immigration reform. Indeed, the commission should be established and operational before any substantive changes are made in current foreign worker programs. The United States should, however, immediately improve the enforcement of the rights of foreign and domestic workers, modernize administrative procedures, and strengthen data relevance and reliability.

Assessing the labor market effects of comprehensive immigration reform

As noted, one of the CFW's most important early assignments would be to assess the labor market impact of comprehensive immigration reform before any changes are made in existing foreign worker programs. A large new "guest worker" or temporary worker program should be resisted not only because, as international experience shows, it is hard for such programs to protect foreign or domestic workers and the national interest, but also because there is no credible evidence it will be needed if comprehensive immigration reforms are enacted that would (1) fix the problems with existing foreign worker programs; (2) reduce the unauthorized migrant population; (3) increase the pool and flow of authorized workers; and (4) create the sensible border, internal controls,

and work authorization systems required to prevent future large flows of undocumented migrants.

International experience suggests that it is hard to have an effective legal immigration system with the number of unauthorized workers the United States now has. If it adjusts the status of, say, 8–10 million unauthorized migrants and allows them to reunite with their families, the United States will automatically have large, but unknown, legal migrant flows.

The employment effects of family-based immigration

Another CFW assignment would be to assess the employment effects of family-based immigration, which constitutes about 60% of U.S. immigration. The family/economic immigration dichotomy applies only to how foreign nationals are admitted to the United States, not what they do after they arrive. Most employment-based migrants have families, and most family-based immigrants will eventually work. And adjusting the status of unauthorized workers will lead to future flows of family members. In assessing future labor supplies, it therefore is necessary to estimate the number of workers that might result from all migrant flows—refugees, families, and diversity migrants—not just those admitted specifically for employment purposes.

The United States not only lacks information on future labor flows but also information on labor shortages. Congress therefore should create a Commission on Foreign Workers to make these assessments before changing existing foreign worker programs.

A points system?

Another early assignment for the CFW would be to determine whether a points system should be part of a reformed employment-based migration system. A points system, used by Australia, Canada, the United Kingdom, and other countries, can be an effective tool to calibrate migration with local labor market requirements. It has the advantage of balancing stakeholder and public interests by weighting the system's components. A points system is more objective and flexible than caps on foreign worker categories, as with the United States' H-1B and H-2B programs. The basic H-1B cap for private-sector skilled migrants, set in 1990, requires congressional action to change and has remained static (except for temporary periods) despite monumental labor market, technological, and economic changes. Indeed, the numerous exceptions to the cap, along with the ability of H-1Bs to extend their visas for up to 11 years or longer and international companies' ability to access unlimited L-1 and J-1 visas, cause the caps' effect on the number of foreign workers to be very limited. As noted in all three study countries, points system components can be changed quickly, as can annual migration targets—overall and in each category. It also was noted that the points system is more objective and transparent than a system that relies on discretionary, administrative decisions.

The PBS likewise facilitates quantification and automation in visa administrative processes, a feature that could greatly increase efficiency. As noted in all of our cases,

especially the Canadian, efficient processing reduces backlogs and makes employment-based migration more responsive to market conditions.

The CFW should work closely with Congress and the administration on the qualifications included in a PBS (or for admission to the United States even if a PBS is not adopted). It would be useful to consider whether the present limited skilled-worker qualifications (largely determined by employers) adequately protect workers' and national interests. For example, most countries include language competence in their points system because evidence shows it to be an important factor in migrants' adjustment in the host country as well as to work. Employment-based migrants are not just workers but are also residents of the United States. We therefore should select people to reflect national as well as employers' interests. The only requirement for the basic H-1B visa is a "specialty occupation" requiring at least a bachelor's degree. The 20,000 visas added in 2004 give priority to graduate degrees, but there is no evidence that there is a shortage of either college graduates or even people with master's and Ph.D. degrees. The L-1 visa for intra-company transfers is for specialized company knowledge, but requires no academic or other qualification, despite the fact that the L-1 often substitutes for the H-1B visa and both can be pathways to permanent residency.

Some business organizations opposed the points system proposed in the 2006–07 U.S. comprehensive immigration reform legislation because, they argued, a points system would substitute the government's decisions on the qualifications of migrant workers for theirs. As noted, however, no democratic country will leave these decisions entirely to employers.

Although a PBS is designed to reflect national interests and not those of any particular stakeholder, employers have very active participation in all of these systems, which award a significant percentage of points for job offers.¹¹ And if employers are heavily involved in the consultation that produces points systems, it is hard to imagine that such a system would be less beneficial to employers than the present rigid, uncertain, and inefficient foreign worker programs.

Some family-based-immigrant advocates oppose a points system because they believe it would reduce the number or proportion of family visas. It should be stressed, however, that the political decision to favor economic migration has nothing to do with a points system, which is merely a tool to quantify and assign politically determined weights to an EBM migration system. And, as noted, in Australia more points are given to primary or principal applicants with qualified family members. Furthermore, Canadian migration authorities suggest that prospective immigrants and their spouses or partners each assess their points and assign the one with the most points as the principal applicant. Canada gives added points for qualified spouses or partners; in Australia qualified spouses and partners of primary applicants are counted as skilled migrants.

In sum, a PBS is a decision *tool*, not a decision *process*; the weights for various factors in the system are a function of policy. Moreover, points systems are used mainly for economic and not family migration.

Lesson #5: Enact comprehensive immigration reform

The effective management of economic migration requires comprehensive reform of America's dysfunctional immigration system. There is broad agreement that such a reform requires a comprehensive constellation of interrelated components, no one of which is likely to succeed without the others. First, unauthorized immigration in the United States must be reduced by rational operational control of borders, internal visa processes with an effective work authorization system and a secure identifier, and meaningful penalties for violations.¹² But border enforcement alone will not stop unauthorized migrants, a growing proportion of whom enter lawfully but overstay visas. Without effective visa controls, the estimated 50 million U.S. visitors each year provide a ready opportunity for unauthorized migration. Similarly, an effective work authorization system is required because most unauthorized migrants want to work. The current system is ineffective because it permits 22 different, easily counterfeited identifiers and puts employers, who have neither the will nor the means to enforce the law, in charge of the process.

Second, the United States must find some way to dry up the industrialized world's largest pool of unauthorized migrants. Why? For one thing, the presence of a large, unlawful supply of labor undermines legal foreign worker programs. If employers have a ready unauthorized alternative to the H-2A agricultural or H-2B nonagricultural worker programs, they are much less likely to accept the added time and expense required for these legal programs. Also, many foreign workers will prefer the illegal system if it is more accessible than the legal alternative; viable legal options for workers and employers could therefore greatly reduce the motive to engage in illegal behavior. Finally, with the relatively few unauthorized workers in Australia and Canada—or even the larger numbers in the U.K.—unauthorized immigration is more manageable and provides weaker networks and havens for present and future unauthorized flows.

The only practical way to reduce the pool of unauthorized migrants is through a three-pronged approach of (1) enabling these migrants to earn legal status; (2) increasing the probability that those who ignore the opportunity to earn legal status will be deported; and (3) making unauthorized entry to the United States more difficult. Without this carefully orchestrated combination of carrots and sticks there is a risk that legalization would either encourage unauthorized flows of people hoping for legal status in the future or drive unauthorized migrants deeper underground where they would be even more vulnerable and their employment could further damage labor protections and institutions, as well as the rule of law.

Earned legalization is complicated both politically and logistically. Opponents argue that earned legalization is amnesty that rewards illegal behavior. It is true, of course, that millions of migrants have entered the United States without permission, which offends the rule of law. The problem, however, is that U.S. immigration laws were not only ineffective, but were largely ignored for many years, a condition compounded by myths that minimized the problem, myths such as the assertion that undocumented workers only take jobs that Americans won't take. It is true, of course, that

Americans with options, like all residents of wealthy countries, shun inferior jobs, but there are options for filling these jobs—such as improving them. There also are alternatives to unauthorized workers, such as working holiday programs; the use of domestic workers; and reliance on legal sources of foreign workers, such as international students, family-based immigrants, refugees, and participants in foreign worker programs. Another myth is that the unauthorized migrant flows have gained so much momentum that there is nothing that can be done about them. As with all myths, this one contains an element of truth: The United States has allowed the problem to fester for so long that it will be hard to correct. The international evidence suggests, however, that migration can be managed, especially if the United States greatly reduces the pool of unauthorized workers and develops a sensible legal migration system. Allowing unauthorized migrants to earn legal status is the only practical and humane way to deal with a problem that was created by Congress and the president, with the aid of special interests, including employers, immigrant rights advocates, elected officials, and Mexican and other foreign governments. Unauthorized migrants were therefore justified in believing that, until the attacks of 9/11, the United States was not serious about enforcing immigration laws. Changing this mindset therefore is a challenge to the competence of the federal government, as well as national sovereignty.

Lesson # 6: Reform and improve employment-based migration policies and programs

In addition to establishing the CFW, outlined above, international experience suggests the following guidelines for an American foreign worker program based on high-value-added principles.

- 1. Admit foreign workers mainly for vacancies that cannot be filled by domestic workers.*** Develop practical tests to determine the availability of American workers, including (a) advertising and recruiting for vacancies; (b) calculating labor shortages and other metrics using top-down statistical information supplemented by bottom-up information from stakeholders; national, state, and local research; and workforce development organizations; (c) admitting foreign workers only if that is the most *sensible* way to overcome the shortage; and (d) abolishing arbitrary caps in favor of flexible annual targets based on advice from the CFW. As the Australian and Canadian experiences show, flexible targets could become *de facto* flexible caps.
- 2. Do not allow foreign workers to either depress wages and working conditions or displace American workers.*** Specifically: (1) adapt market-based prevailing wage requirements for selected occupations, supplemented by fees sufficiently high to be presumptive screens that deter admitting foreign workers merely to gain a labor cost advantage; (2) require pre-migration tests for English language and occupational qualifications to prevent misclassifications to lower occupations, as well as to ensure that qualifications match shortages or other criteria for the admission of

foreign workers; and (3) develop flexible enforcement processes, like attestation of compliance with stipulated standards, supported by careful monitoring and auditing, with expedited processing and self-regulation for exemplary sponsors.

3. ***Do not permit the importation of foreign workers to substitute for the education and training of American workers.*** Carefully assess the impact of foreign-worker-induced wage suppression on domestic education and training enrollments, and coordinate migration with workforce development and education programs as a sensible alternative to migration. This latter step should include making efforts to train and recruit domestic workers a condition for sponsoring foreign workers, as is done in Australia and the United Kingdom.
4. ***Clarify the enforcement authority for all foreign worker programs.*** Give the Department of Labor adequate resources and authority to protect foreign and domestic workers.
5. ***Continuously improve the administration of foreign worker programs.*** The first step would be to simplify the foreign worker categories. For example, all existing foreign worker visas could fit into the following categories:

- **Exceptional foreign workers**, for which there would be, as now with the O visas, no caps on admissions.

- **Temporary foreign workers**

Short-term and seasonal foreign workers (i.e., less than one year) with safeguards to protect foreign and domestic workers and the national interest.

Long-term (for one year or longer) temporary foreign workers (LTFW). Measures to protect long-term temporary workers include using a points system to facilitate their selection: permitting them to apply for permanent residency after a period of acceptable work experience; allowing them to change employers after a period of no longer than one year; and allowing them to bring their immediate family members, who could study and work in the United States if they do not reduce wages or displace domestic workers.

Intra-company transfers. The program would carefully define and restrict the categories, adopt prevailing wage standards that reflect market rates, and prohibit displacement of domestic workers.

- **Permanent foreign workers** (permanent residents)

Abolish caps and country quotas and introduce flexible targets and selection procedures (perhaps a points system) calibrated to the long-term needs of a value-added economy.

Formalize a two-step system to allow qualifying LTFWs and graduates from American postsecondary institutions to apply for permanent residency within two years of graduation. Have the CFW determine whether this rule should

apply to all foreign graduates of approved institutions or only those in fields with projected intermediate- or long-term shortages.

Give extra credit for English proficiency, previous earnings levels, and the qualifications of secondary applicants (i.e., family members).

The second step in improving the administration of foreign worker programs is adopting measures to promote the continuous improvement of foreign worker programs, including pilot projects to test ideas, data collection for all programs, continuous evaluation and improvement, and research and evaluation of the impacts of FWP on labor markets.

- 6. *Require labor recruiters to be registered and meet minimum qualifications.*** Recruiters would be prohibited from charging fees to foreign workers and required to produce written, enforceable contracts with both employers and foreign workers that would stipulate the wages, hours, working conditions, payment of travel and other costs, and length of employment. The United States should consider agreements with major source countries for seasonal workers, as is done by Canada and Australia.

Lesson # 7: Reform temporary foreign worker programs

The H-1B, L, H-2, and Exchange Visitor (J visa) temporary worker programs do not promote the national interest or protect foreign or domestic workers very well. Instead of creating new temporary worker programs, these visas should be reformed.

H-1B visas

The H-1B program is for foreign workers in “specialty occupations” requiring at least a bachelor’s degree. H-1B employers do not have to test markets for the availability of American workers, but they do have to “attest” to certain actions designed to prevent harm to resident workers, including displacement and wage depression.

The number of regular, private-sector H-1B visas is limited to 65,000 a year plus 20,000 for graduates of American colleges and universities with graduate degrees (master’s or above). H-1B employers are exempt from the annual cap if they are institutions of higher education or a related or affiliated nonprofit entity, nonprofit research organization, or government research organization.

The H-1B visa is issued for three years and may be renewed for an additional three-year term and then, for visa holders who have applied for permanent residency, for indefinite additional one-year terms until their applications are adjudicated, which can take four years or longer.

Problems with the H-1B visa program

The H-1B program is less effective in promoting the national interest or protecting foreign and domestic workers than TFW programs in our study countries, for four reasons.

First, as the U.S. Government Accountability Office (GAO) has confirmed, there are limited data on the number of H-1B workers or their characteristics to evaluate the program. Indeed, data limitations prevent immigration authorities and Congress from knowing how many H-1B workers there are at any one time. Major problems are caused by fragmented federal responsibility for the program and the fact that agency data systems are not linked. Additionally, H-1B workers are not assigned unique identifying numbers to facilitate tracking them.¹³

Second, restricted agency oversight weakens U.S. worker protections. According to the GAO, the “Department of Labor’s review of H-1B applications from employers is cursory and limited by law to only looking for missing information and obvious inaccuracies. Yet a recent Department of Homeland Security study reported that 21% of the H-1B petitions they examined involved fraud or technical violations.”¹⁴ As our country studies confirm, attestation without careful auditing is unlikely to protect workers’ wages and working conditions.

Third, federal agencies are not authorized to hold employers responsible for violations by staffing companies, despite the fact that DOL’s “investigative office reported receiving the bulk of their complaints from H-1B workers contracted by staffing companies.”¹⁵ The GAO found that staffing companies are among the less than 1% of employers that hire almost 30% of H-1B workers. And the GAO learned that “at least 10 of the top 85 H-1B-hiring employers in...2009 participate in staffing arrangements, of which at least 6 have headquarters or operations located in India.”¹⁶ The most common complaint about staffing companies concerns their failure to pay workers when they are “benched” because the companies had no job placements for them, despite the fact that this practice is illegal.¹⁷

Fourth, statutory changes in the H-1B program have “increased the pool of H-1B workers beyond the cap and lowered the bar for eligibility. Specifically, these changes have increased the available exemptions to the cap; offered unlimited extensions on the visa while holders apply for permanent residency; and broadened the job and skill categories for eligibility.”¹⁸ Even though this visa was created to attract exceptional foreign workers, 54% “of employers requesting H-1B workers between June 2009 and July 2010 categorized their prospective H-1B workers as receiving entry-level wages, although we cannot tell whether this trend reflects lower skill levels or other factors.”¹⁹ However, other research has shown that the prevailing wage requirement has so many loopholes that actual wages are well below market rates.²⁰

The GAO found, further, that H-1B qualifications have been weakened through time. The Immigration and Nationality Act (INA) of 1952 established the H visa for temporary foreign workers of “distinguished merit and ability” who were coming to the United States to perform exceptional temporary services. In 1990 the INA was amended to reduce the temporary nature of the visa and lower the qualifications of migrants who perform services in “specialty occupations” requiring at least a bachelor’s degree.

In addition, worker protections are weakened because employers are not required to test the market before they hire H-1B workers—in fact, many employers have selected the foreign workers they wish to hire before they apply for permission to do

so, knowing these applications will almost always be promptly approved. Employers “attest” that they will comply with the H-1B visa’s weak requirements, well aware that in almost all cases the Department of Labor is prohibited by law from conducting random audits to verify compliance and lacks subpoena power to demand records needed for verification.²¹ Qualifications and compensation consequently are determined pretty much by employers with very limited provisions to protect foreign or domestic workers and the public interest.

American workers also are supposed to be protected by the temporary nature of the H-1B visa and the annual cap of 85,000. But, because of migrants’ ability to extend these visas indefinitely while their permanent residence (green card) applications are being adjudicated, the H-1B has become virtually a permanent visa. It therefore is deceptive to argue that the annual cap protects American workers.

When extensions are counted, in recent years the number of H-1Bs not subject to the cap has far exceeded the number subject to it; the proportions not subject to the cap were 48.9% in 2000 and 64.6% in 2009.²² And, because the L-1 visa—which has no cap and even weaker worker protections—can be substituted for the H-1B, we must add these visas to the total. According to the GAO, international companies (ICs) unable to receive H-1Bs because of the cap can employ those workers overseas for a year to qualify them for L-1 visas.²³

Recommendations for the H-1B program

The H-1B visa does not adequately protect foreign or domestic workers or the national interest. Foreign workers’ dependence on employers for both their jobs and permission to remain in the United States make them reluctant to complain about abuses²⁴ except in the most egregious cases, like illegal “benching” by hiring companies.

Moreover, the lack of an adequate standard enables employers to pay “prevailing” wages far below market wages, thus depressing domestic wages.²⁵

What should we do in the short term to improve the H-1B visa?

1. ***Adopt and enforce a clear standard.*** H-1B workers will only be admitted if they complement and do not displace American workers. Specifically, the program should:
 - Require either labor market tests or attestation. If attestation, remove all restrictions on the DOL’s ability to conduct random audits of H-1B employers, and require companies to keep records documenting compliance with their attestation. DOL should have subpoena power to compel the production of records. Indeed, the DOL’s ability to protect H-1B workers should at least equal its ability to protect domestic workers, which currently is not the case.
 - Create a labor exchange to facilitate job changes by H-1B workers.
2. ***Create a secure hot-line system to allow H-1B workers to register complaints against their employers.***

3. ***Adopt market-based prevailing wage requirements and additional fees designed to ensure that low wages are not the primary reason for the importation of skilled workers.***
4. ***Prohibit staffing companies from deriving revenue mainly from sponsoring and hiring out either H-1B or L-1 workers.***
5. ***Restore the temporary nature of H-1B visas:***
 - H-1Bs should be available only where there is a demonstrated shortage either by a market test or calculations of shortages.
 - Stays should be for a maximum of five years—successive two- and three-year terms—after which workers should be allowed to qualify for permanent residency.
 - After one year the H-1B worker should be allowed to work for any employer, though the new employer must have a job in the shortage occupations list or test the market before hiring the H-1B.

What long-term improvements should be made to the H-1B visa program?

1. ***Undertake research to determine the relative merits of the United States' limited qualifications requirements for H-1B workers,*** which are rare among advanced industrial economies.
2. ***Remove the caps on employment-based temporary and permanent skilled workers and shorten the permissible length of stay for TFWs to five years.*** This change would reduce the pool of H-1Bs; if the cap were removed from the employment-based green cards, the number of such visas could increase while the number of H-1Bs fell and the transition from H-1B to legal permanent resident could be much faster.
3. ***Dramatically improve the database for employment-based migration.*** Link all agency data and assign unique numbers to employment-based migrants to permit tracking and analysis of economic performance and impact. Launch research and pilot projects to improve performance of the EBM system.

The L visa program

Congress should carefully examine intra-company transfers (L visas) to protect the national interest in encouraging the entry of international companies as well as the conditions of foreign and domestic workers. These visas are important because they facilitate investments in business creation, technology and knowledge transfers, and business operations by foreign-based international corporations in the United States. However, some international corporations use these virtually unregulated visas to displace American workers, reduce compensation, undermine working conditions, and outsource American jobs.²⁶

There are three intra-company transfer visas for companies that operate in the United States and at least one other country:

- L-1A visas allow managers and executives who have been working for the employer at least one year to work in a U.S. branch or subsidiary for up to seven years.
- L-1B visas allow employees with “specialized knowledge” of the company’s product, service, and procedures and who have been employed by the company for at least one year to work for the company’s U.S. branch or subsidiary for up to five years. There is no limit on the number of L-1A or L-1B visas.
- L-2 visas are for dependents of L-1 visa holders. Spouses of the L-1 visa holder can work in the United States at any job for the minimum wage provided they obtain an Employment Authorization Document (EAD) from DHS or complete the I-94 Form required for entry into the United States and provide proof of marriage.

L-1 visa holders can become permanent U.S. residents only with the approval of their sponsoring employer. Similarly, the prospective TFW must be sponsored by an employer, who petitions U.S. Citizenship and Immigration Services (USCIS) for the L-1 visa, which USCIS is required to grant or reject within 30 days; for an additional fee of \$1,000, the petition can be approved or rejected in 15 days. USCIS often does not meet the mandated 30-day requirement, but has a money-back guarantee to meet the expedited 15-day limit. Since USCIS is funded almost entirely (90%) by fees, it has an obvious perverse incentive to miss the 30-day requirement and concentrate on the expedited 15-day petitions.

International companies with at least 1,000 employees in the United States or annual sales of at least \$25 million are eligible for “blanket petitions” for multiple L-1 recipients. Individuals covered by these blanket petitions receive less official scrutiny, which isn’t much of a concession since regular L-1 petitioning companies can “attest” that their employees are qualified. L-1 workers are not required to meet any compensation qualifications, nor—with the exception of blanket L-1B applications—any educational qualifications; also there are no prohibitions against displacing American workers.

Problems with the L visa program

Evaluations of the L-1 visa’s impact are limited by the absence of data on L-1 or L-2 participants. There is no public information on which foreign corporations have blanket petitions, the number of L-1 blanket visas granted each year, or the number of L-2 visa dependents who accompany them. In fact, the exact number of L-2 visa holders working in the United States is impossible to calculate from available data. What we do know is that the number is not trivial; data analyzed by Daniel Costa of the Economic Policy Institute for 2003–09 suggested that “as of December 31, 2009 there were as many as 321,109 to 433,844 valid L-2 visas.”²⁷

And as with H-1B visa holders, there are no data on the number of L-1 visa holders currently in the United States, their characteristics, where they work, how long they

have been in the country, or how much they earn. The State Department's data on L-1 visas show that the number issued has skyrocketed since 1990, when 14,342 L-1 visas were issued. In 2008, 84,078 were issued, an increase of 486%; between 1990 and 2009, 1,856,401 L visas were issued.²⁸ In 2009, 40.3% of L visas were granted to Indian applicants, although India accounted for only 0.19% of foreign direct investment in the United States.²⁹

Although data limitations make it impossible to evaluate the L visas as thoroughly as MAC has evaluated ICTs in the United Kingdom (Chapter 4), we do have anecdotal evidence that many U.S. workers have been displaced by L-1 visa holders, who are paid as little as one-sixth as much as the Americans they displace. In one of the most notorious (but not isolated) cases, American workers were required to train their foreign replacements as a condition for severance pay.³⁰

Other abuses of the L-1 visa include:

- Substituting the L-1 for the H-1B visa. Indeed, immigration lawyers even advertise the benefits for employers of substituting L-1 for H-1B visas: no “labor restrictions, numerical limits [or] regulatory oversight.”³¹
- Allowing L-1 beneficiaries who have no intention of remaining in the United States to park family members here, where qualifying spouses can work without restrictions. A 2006 report from the DHS Office of the Inspector General stated, “That almost any foreign business proprietor can effectively petition himself and his family into the United States may not be in accord with Congressional intent.”³²
- Taking advantage of the lack of clear definitions of “specialized knowledge” and verification of qualifications of “managers and executives.” These omissions make it difficult for regulators to prevent even the L visa abuses that are subject to regulation.
- Subcontracting foreign workers to unrelated companies in competition with American workers. This kind of abuse is made possible by the fact that there are no limits on the number of L-1 visas a company can have.

The inability of bipartisan efforts by Senators Richard Durbin (D-Ill.) and Charles Grassley (R-Iowa) to eliminate the most obvious defects in the L-1 visa program is a testament to the power of the employer-IC-immigration lawyer lobbies and the difficulties in passing any migration reform legislation in the U.S. Congress.

Recommendations for the L visa program

Steps for improving the L-1 visa program include:

- Restrict this visa to foreign workers filling jobs that are closely related to the foreign corporation's work and where it is verified that no qualified U.S. workers are available.

- Clearly define the categories of workers eligible for L-1 visas (e.g., managers and executives, professional and technical workers, and trainees) and specify qualifications and minimum salary requirements for all except short-term trainees. High minimum salary requirements are an effective way to prevent misclassification and protect domestic compensation levels. Develop clear rules for each subcategory of L-1 visas, modeled after the U.K.'s 2010 intra-company transfer reforms.
- Compile and publish accurate and timely data on all L visa beneficiaries, including salary levels, occupations, and industries. These data should be disaggregated to L-1A, L-1B, L-2, and blanket visa categories.
- Limit all U.S. ICT workers' employment to the occupation or category stated in their L-1 visa petitions.
- Specify that L visa holders cannot displace U.S. domestic workers and do not allow L-1s to fill jobs where resident U.S. workers have been dismissed in the past six months.
- Give the Department of Labor the primary responsibility for enforcing rules designed to prevent the displacement or depression of wages and working conditions for domestic workers. It makes no sense for DOL to monitor H-1B enforcement, for the DHS to monitor L visa enforcement, and for the State Department to monitor exchange visitor work activities. The DOL is the appropriate agency for all foreign labor programs and should be allowed to adequately carry out its responsibilities.
- Since there are hundreds of thousands of L-2 dependent spouses working in the United States, they should be restricted to occupations for which no resident workers are available as determined either by shortage calculations or labor market tests.
- To prevent outsourcing and subcontracting of L-1 visa holders, limit their employment to the worksites of their original sponsors and sponsors' subsidiaries, affiliates, or product or service customers. "Body shops" should not be allowed to sponsor L-1 workers for hire.
- Except where a bona fide labor shortage has been identified by the DOL or the CFW, limit the number of L-1 and H-1B workers that an international company can employ to 20% of its workforce.

H-2 visas

The United States should resist a large-scale TFW program for jobs requiring high school education or less. Priority should be given to reforming the existing H-2A (agricultural) and H-2B (nonagricultural) programs.

Special efforts should be made to test the market for H-2 programs and monitor employer compliance with the program's rules to prevent the widespread abuses attributed to these programs, especially H-2B.³³

Compensation packages should be based on Davis-Bacon service contracts, or other acceptable prevailing wage measures, plus fringe benefits. The guiding principle should be to require wages sufficiently high to attract domestic workers and ensure that a shortage of qualified domestic workers, not low wages, is the primary reason for importing lower-skilled (i.e., jobs requiring high school education or less) foreign workers.

Special attention should be paid to requiring that labor recruiters be registered and bound by codes of conduct, including enforceable labor agreements with the TFWs, and bonding to ensure compliance.

Employer associations, unions, and joint labor-management associations should be allowed to sponsor H-2 workers along the lines of the AgJobs proposal that was part of the 2006–08 comprehensive immigration reform efforts. Framers of a seasonal agricultural workers program could benefit from the Canadian, Australian, and New Zealand experiences, especially the regulation of labor contractors, measures to prevent seasonal workers from becoming unauthorized migrants, enforceable labor agreements, the ability of workers to change employers, agreements with source countries, and a safe and effective means to address grievances.

The H-2B visa program needs to better protect nonfarm, lower-skilled domestic and foreign workers. This objective could be achieved by restricting these workers to employers who have met realistic market tests or to shortages certified by the CFW. Employers of H-2B workers should be graded, with points awarded for recruiting and training domestic workers, complying with labor and migration laws, and following best-practice human resource management policies. All hiring firms, recruiting agencies, and labor brokers should be registered, though employers would be allowed to hire H-2B workers directly. Workers should be free to work for another qualified sponsor after working for a sponsoring employer for at least six months.

All H-2B workers should receive written contracts enforceable in courts or administrative agencies and be free to file complaints through a hotline enabling a DOL or other appropriate official to receive and investigate the complaint. It should be a criminal offense for employers or labor brokers to confiscate H-2 workers' travel documents or passports.

The cap for H-2B visas should remain until the CFW is operational, at which time CFW should recommend appropriate annual visa targets based on objective assessments of labor shortages and whether it is sensible to import migrants for those shortages. H-2B workers should be limited to initial two-year visas, renewable for three years and, if they are in shortage jobs or occupations, should be eligible to qualify for permanent residency.

The Exchange Visitor Program

The Exchange Visitor Program (EVP), supported by the J visa, has become America's largest temporary foreign worker program, with more than 300,000 participants annually. This program was created by the Fulbright-Hays Mutual Education and Cultural Exchange Act of 1961 and was originally intended to "enable the Government of the

United States to increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchange...³⁴ However, some categories of the EVP, created pursuant to the 1961 Act and subsequent State Department regulations and congressional authorization, have become work programs that bear little resemblance to cultural and educational exchanges. Moreover, the J visas do not require certification from the Department of Labor, labor market tests to prevent the displacement of American workers, or the payment of market wage rates. Indeed, as the GAO, the State Department's Office of Inspector General (OIG), and investigative reporters have confirmed, the J visa's administrators do very little to protect American or foreign workers.

The J visa program, in addition, operates in direct competition with H-1B, H-2B, and other TFW programs, but has the advantage to employers of lower wages, benefits, and worker protections and less governmental oversight. The program has, in fact, created a very profitable labor recruitment system, perpetuated and enlarged by a strong political lobby that operates with little supervision or oversight from the State Department, and it contains institutionalized conflicts of interest between the various participating administrative components that make it difficult to identify or correct problems and abuses.³⁵ In essence, because of limited oversight and monitoring from the State Department, program sponsors evaluate themselves. And almost no operational data are available to permit analysts, administrators, and the public to evaluate this important program.

Despite what appear to be deliberate data limitations, research by Costa lays out essential facts about the J visa program.

First, the EVP contains 16 categories ranging from professors and research scholars to camp counselors and au pairs. There are two categories of J visas: J-1 for primary participants and J-2 for the spouses and dependent children of J-1 beneficiaries. J-2 beneficiaries may work in any occupation provided they receive work authorization from USCIS. There are no caps or other restrictions on the number of J visas that can be issued each year.

Second, the time limits for J visa holders vary by category: K-12 school teachers may stay for up to three years, postsecondary students for one to three years (or the entire duration of a degree-granting program), interns and trainees for 12 or 18 months, and summer work/travel (SWT) postsecondary students for four months. All EVs have an additional 30 days to travel before they return home after their program has ended.

Third, the main actors in the EVP are sponsors, who are responsible for identifying EVs overseas, administering the program in the United States, monitoring EVs while they are in the United States, ensuring that participants' employers comply with rules and regulations, and submitting an annual summary report to the State Department describing and evaluating program activities. Sponsors can include state, local, or federal agencies; international organizations of which the United States is a member and which have offices in the United States; and reputable organizations headquartered in the United States, including for-profit and nonprofit corporations and other legal entities.

Fourth, the number of J visas has increased dramatically, from 27,910 in FY 1962, the program's first year, peaking at 392,089 in FY 2008, and declining to 353,602 in FY 2010; 32,642 in that year were J-2 visas.³⁶ The State Department does not list J-1 visas by category, but Costa has determined from GAO and other sources that the largest category was the SWT, which totaled over 140,000 during FY 2006-08. The number of J-1 visas sponsored by nongovernmental entities in 2010 was 307,369; **Table 5.2** shows their distribution by major activity/occupation.

Costa reviewed evidence from GAO, the State Department's OIG, and investigative media sources concerning the J visa program and found a variety of problems.

1. ***Regulations that are inconsistent with the authorizing legislation***, provided little guidance as to what constituted legitimate educational and cultural exchanges, and were so broad as to allow "almost any type of work...to be interpreted as training."³⁷ Sanctions were inadequate "to control the activities of sponsors who incorrectly implemented the program."³⁸
2. ***Deficient management and oversight by the State Department***, including insufficient information and staff to adequately manage or monitor the program; failure to investigate potentially serious problems; insufficient information from sponsors; inadequate auditing of sponsors' reports; an obvious reliability problem when the State Department's staff "has to rely heavily on the full and truthful disclosure of events by sponsors;"³⁹ and a failure to investigate or keep records of participants' complaints.
3. ***The displacement of U.S. workers and the degradation of other TFW programs***. In some cases trainees were placed primarily in work programs where they were "cheap labor under the guise of training." Fully qualified foreign workers were placed in such industries as dairy farming, construction, horticulture, and auto body repair. Au pairs were employed in full-time positions for which H-2B labor certification would normally be required; and the GAO "concluded that the au pair program is 'essentially a child care work program.'"⁴⁰
4. ***Strong financial incentives for sponsors and their partners to perpetuate and enlarge the J visa as a work program***.
5. ***Inadequate management and oversight, which has led to the exploitation of EVP participants***.⁴¹ A 2010 report published by the Associated Press found that many foreign students pay recruiters to help find work, but wind up with inadequate employment, pay, and living conditions; students living under deplorable conditions and working for net pay "of \$1 an hour or less;" are "routinely...threatened with deportation or eviction if they quit, or...complain too loudly;" "strip clubs and adult entertainment companies openly solicit J-1 workers, even though government regulations ban students from taking jobs 'that might bring the Department of State into notoriety or disrepute;" and J visa participants are assigned to work in areas and occupations with high levels of unemployment and with no consideration for their impact on U.S. workers.

Table 5.2. Number of J-1 visas sponsored by nongovernmental entities, 2010

Summer work/travel	132,342
College and university student/intern	40,492
Research scholar	27,612
Secondary student	26,509
Short-term scholar	18,396
Camp counselor	17,190
Intern	16,054
Au pair	13,297
Trainee	8,727
Specialist	2,216
Alien physician	1,997
Professor	1,313
Teacher	1,224
Total	307,369

Source: Adapted from Daniel Costa, *Guestworker Diplomacy: J visas receive minimal oversight despite significant implications for the U.S. labor market*, (Washington, D.C.: Economic Policy Institute, 2011), Table 1

6. Substantial labor cost and control advantages for employers who hire J visa holders. The compensation rule requires sponsors to “inform program participants of Federal Minimum Wage requirements and ensure that at a minimum participants are compensated at the prevailing local wage, which must meet the applicable state or Federal Minimum Wage requirements...including payment for overtime....”⁴² However, the rule does not define or specify a methodology for calculating “prevailing wages” and has no wage enforcement mechanism. Without these requirements “employers are able to legally pay exchange visitor workers less than either the statutorily defined ‘prevailing’ wage or true ‘market’ wage...i.e., they can pay wages below the average wage earned by U.S. workers in the same occupation in the same geographical region.”⁴³ In addition to paying below-market wages, J-visa employers receive considerable cost savings from being exempt from any health-care costs or Medicare, Social Security, or federal unemployment taxes, which could amount to at least 15% of payroll.

Employers of J visa holders also benefit from the indentured status common to most TFW programs. Many EVP participants do not have jobs before coming to the United States, often incur considerable debt to get here, and are heavily dependent on their U.S. employers. If participants are dissatisfied with their wages and working conditions, they “cannot easily switch employers, making them afraid to risk firing and deportation

by complaining about low wages or poor working conditions. These factors cause exchange visitors to become, in essence, indentured servants to their employer.”⁴⁴

The J-1 visa is thus cheaper and easier to obtain than other temporary work visas, which require such procedural safeguards as labor market tests, prevailing wage determinations, and labor condition applications from the Departments of Labor and Homeland Security. Other TFW visas also require the payment of fees and legal costs, which could amount to hundreds of thousands of dollars. These advantages are advertised by J-1 recruiters. For example, one recruiter posted videos explaining that, “The nice thing about the J-1, it’s quick to get, and it’s easy for...employers to obtain... because all are handled through the State Department and the typical employee can get to the U.S. in six weeks.”⁴⁵

Costa concludes: “In sum, because the Exchange Visitor Program’s J-1 visas are so cheap, easy, and quick to get relative to other guestworker visas and student visas that allow employment, and because they are uncapped by law, they effectively diminish the integrity of the other [TFW] programs...that require management and oversight by the Department of Labor and U.S. Citizenship and Immigration Services within DHS.”⁴⁶

The Hershey Strike

The first strike to take place over J-1 wages and working conditions occurred on August 17, 2011, when more than 200 foreign students walked off the job at a Hershey Company packing plant in Palmyra, Pa.⁴⁷

About 400 students had been placed at the facility by the California-based Council for Educational Travel U.S.A. (CETUSA). Before walking out, the students presented a petition to a management representative in which they complained of low wages, poor working conditions, high rent, and other costs that made it hard for some of them to earn enough to offset visa and other costs, which ranged from \$3,000 to \$6,000. A student from Islamabad who earned \$8.35 an hour told the *New York Times* that “after fees and \$400 a month for rent...were deducted from her paychecks, she often takes home less than \$200 a week. ‘We are supposed to be here for cultural exchange and education, but we are just cheap laborers.’”⁴⁸

The students were aided by the National Guestworker Alliance, the Pennsylvania AFL-CIO, and the Service Employees International Union. Resolutions of the complaint were hampered by the several layers of responsibility for the plant—which was not operated directly by the Hershey corporation. The plant had previously been unionized, but was closed and reopened with nonunion contract workers, including the J-1 visa holders supplied by CETUSA; the organization brought about 6,000 J-1 students to the United States in the summer of 2011.

The CEO of CETUSA said he had tried unsuccessfully to respond to the students’ complaints. “We are not getting any cooperation...We are trying to work with these kids. All of this negativity is hurting an excellent program. We would go out of our way to help them, but it seems like someone is stirring them up...”⁴⁹

The Hershey strike is unusual because J-1 workers ordinarily are afraid to complain for fear of losing their jobs and being deported. Indeed, the Palmyra contractor's management is reported to have made such a threat to the J-1 workers before they walked out.⁵⁰

CETUSA offered the students an expense-paid trip to U.S. landmarks, but the leaders of the protest declined, "saying they are asking for decent pay and working conditions, not a holiday."⁵¹ Exel, Hershey's logistics contractor for the Palmyra facility, told the plant's immediate contractor to stop hiring J-1 students.⁵²

Conclusions on the J-1 visa program

Costa summarizes his extensive research and review of the J-1 program as follows:

- The EVP "lacks protections for U.S. workers."⁵³
- The State Department's "authority to create new guestworker programs is unrestricted and overbroad."⁵⁴
- "Significant financial incentives for J visa sponsors and their partners are inappropriate and an obstacle for reform."⁵⁵
- "The system of management, data collection, oversight, compliance, and enforcement in the [EVP] is fundamentally flawed."⁵⁶
- "...because J-1 visas allow full-time employment in the United States, and authorize more [TFWs] annually than any other visa program... The [EVP] has become a form of 'guestworker diplomacy,' a version of diplomacy that can broadly impact the domestic labor market, despite the fact that State's mandate and expertise are fundamentally outward looking.... Thus, the department's lack of expertise in labor market dynamics, combined with its primary concern to conduct diplomacy and foreign affairs, likely mean that the department does not realize the impact of an additional 300,000 workers per year in the labor market on U.S. workers, or does not care, because it is concerned only with conducting *foreign* affairs."⁵⁷

Educational and cultural exchange programs are important and commendable components of U.S. foreign policy. However, a program that permits the exploitation of foreign workers and enables their use to depress American wages and working conditions could do more harm than good to relations between the United States and other countries. It is also doubtful that the State Department has either the expertise or the institutional inclination to protect wages and working conditions and adequately regulate employers and labor recruiters. The dual-purpose nature of the EVP requires cooperation and coordination of the Departments of State and Labor. The work aspects of the program should therefore be regulated by the Department of Labor, which should prevent employers from using the J visa simply because it is cheaper and easier to obtain than other work visas.

Conclusions on lessons from Canada, Australia, and the United Kingdom

Because of continuing economic and technological change, aging populations, declining birth rates, and the tendency for people to avoid low-status jobs as incomes rise, foreign worker programs have become increasingly important to the United States and other advanced, liberal democracies. In addition to meeting quantitative workforce needs, migration can stimulate quality, productivity, and innovation—very important requirements for countries that wish to maintain and improve their residents' real incomes and living standards.

To realize the rich benefits from migration, countries need to integrate migrants into their communities and workforces in ways that minimize potentially toxic racial, ethnic, and social conflicts. In addition to effective integration programs, maximizing the benefits and minimizing the costs of migration requires countries to manage migrant flows in ways that support high-value-added economic and democratic political and social objectives. These objectives require, in turn, policies, programs, and processes to adjust migration to employers' legitimate needs for workers with skills not readily available in domestic labor markets. A guiding principle, confirmed by economic theory, is that the admission of migrants to complement domestic workers produces plus-sum, or win-win, outcomes. By contrast, importing migrants to displace domestic workers and undermine wages and working conditions will cause some workers to lose and others to gain, which not only is incompatible with high-value-added principles but also will lead to social conflict and increased resistance to migration.

In reforming its dysfunctional foreign worker programs, the United States has much to learn from Australia, Canada, and the United Kingdom—their mistakes as well as their exemplary initiatives. These are liberal democratic countries with high-value-added economic and social policies designed to function in a highly competitive global information economy on terms that enable their residents to maintain and improve their incomes and that promote shared prosperity. To sustain such policies these countries developed migration programs designed to garner broad public support and dampen anti-immigrant sentiment that lurked just below the surface, especially in Australia and the United Kingdom. They likewise attempted to manage migration to support their economic policies, while protecting domestic and foreign workers and persuading voters that the government had migration under control. These governments therefore developed transparent policies supported by data and research to help measure shortages and protect foreign and domestic workers.

These three countries have a number of common characteristics: high-level government responsibility for employment-based migration; selection processes based on data, research, and metrics—especially the points system—to carefully calibrate migration with their high-value-added economic and social policies; a shift away from family- to skill-based migration to ensure the largest value-added and smallest fiscal costs; acceptance of temporary low-skilled migrants for low-skilled jobs only after alternative domestic and highly specialized foreign sources of workers are explored; relatively

tight controls to minimize unauthorized migration; and continuous improvement based on high levels of data, research, evaluation, and pilot projects. This research greatly improved migrant selection to meet measured shortages and difficult-to-fill vacancies, and improved the chances that migrants would succeed in their societies and economies. These research and evaluation activities justified these countries' cautious resistance to large-scale "guest-worker" programs for jobs requiring limited education and skills.

Because of political, cultural, and institutional differences, the United States cannot copy the employment-based migration policies of these liberal democracies, but there are some obvious lessons, including the need for a strategy or vision to guide migration decisions; high-level federal responsibility for employment-based migration commensurate with its growing importance; more targeted migration flows to overcome labor shortages that cannot readily be met from the domestic workforce; reform of existing foreign worker programs to meet demonstrated labor requirements and an "Americans first" strategy; an examination of sensible alternatives before recruiting foreign workers; and, most important, an independent, highly professional Commission on Foreign Workers to provide research-based advice to Congress and the administration, including the data and research needed to improve existing programs. There is almost universal agreement that the United States currently lacks the data needed for the most elementary understanding of the magnitude, characteristics, need, and impacts of existing employment-based migration programs, which currently do not serve workers, most employers, or the nation very well. Existing EBMs are, however, a bonanza for immigration lawyers who know how to game the system and for multinational corporations and domestic employers motivated to undercut wages, outsource jobs, displace domestic workers, and gain an advantage over employers unable or unwilling to game the system.

Finally, international experience suggests that the United States is unlikely to have an effective legal foreign worker system unless it greatly reduces its large and increasingly secular (despite a slight recession-induced reduction since 2007) pool of unauthorized migrants. There are close relationships between authorized and unauthorized migrant flows. For one thing, legal flows based on labor market realities can help reduce unauthorized flows, especially with complementary border and visa controls and secure work authorization systems. Also, as long as unauthorized workers are an option, employers and foreign workers who have adjusted to migrant networks and institutions will be reluctant to accept more burdensome rule-based legal foreign worker systems. Finally, it is hard to enforce labor and immigration laws if unauthorized workers can find sanctuary outside the legal system, sustained by people who consider the present immigration system unfair, chaotic, unenforceable, and not very sensible.

Because we have allowed unauthorized migration to become large and deeply entrenched, it is very hard to change. Indeed, many immigrant advocates do not believe unauthorized migrant flows and pools can or should be significantly reduced, arguing that the benefits of such flows far outweigh the costs. I do not agree with this argument, though I know from long experience and study that reforming the system will not be easy. I also am persuaded that unlawful migration subjects migrants to increasingly

serious and often fatal risks; perpetuates marginal, low-wage economic activities; undermines compensation structures and protective labor market institutions; forces migrants and their families to live uncertain and insecure lives outside our polity, social safety nets, and labor laws; generates social conflict that threatens democratic institutions and the rule of law; and will become more intractable the longer we wait to fix it.

The only sensible way to clean up the mess the United States has allowed to fester is to allow unauthorized migrants to earn lawful resident status. This could be done by registering, taking their place at the end of the legal permanent residents' line (which should be sped up), and paying reasonable taxes and fines to satisfy those who argue that adjustment of status is "amnesty" that rewards illegal behavior. This argument would have more credibility if U.S. immigration laws were fair, transparent, enforceable, and sensible. But since they are not, it makes sense to reduce the pool of unauthorized immigrants by allowing people to earn legal status.

This, however, is one of the trickiest parts of immigration reform, requiring a carefully orchestrated combination of carrots and sticks. The carrot would be the ability for unauthorized migrants to adjust their status. The stick would be to greatly increase the probability that those who do not register will be deported. This would require a much more effective immigration enforcement system, but the reward would be legal status for migrants and smaller pools and flows of unauthorized migrants. The threat from botching the legalization process—as happened in 1986—would be to accelerate unauthorized flows of people seeking future amnesties or, unless the enforcement and adjustment-of-status processes were highly credible, to drive unauthorized migrants deeper into the underground economy, where labor, migration, and criminal laws are much harder to enforce. The result would be serious damage to social cohesion, democratic institutions, and the rule of law. There is, therefore, no sensible alternative to fair, humane, and effective adjustment-of-status processes.

As comprehensive immigration reform takes effect, the Commission on Foreign Workers should assess the reform's labor market impact and recommend a much more effective American foreign worker system that would meet employers' needs, protect foreign and domestic workers, and support value-added economic and democratic social policies.

ENDNOTES – CHAPTER 5

1. However, these countries, like the United States, are less concerned about preventing wage suppression, i.e., using migration to prevent wages from rising because of labor shortages.
2. Philip Martin, “The Need for Migrant Labour: U.K.-U.S. Comparisons,” in Martin Ruhs and Bridget Anderson, eds., *Who Needs Migrant Workers* (Oxford University Press, 2010), pp. 295–322.
3. Examples of this practice include the British PBS’s Tiers 1 and 2 (highly skilled and skilled worker programs), the Australian 457 temporary skilled worker program, the New Zealand Recognized Seasonal Employer Scheme, and the Australian Pacific Seasonal Worker Pilot Scheme.
4. *Who Needs Migrant Workers*, op. cit.
5. See Stephen Bach, “Achieving a Self-Sufficient Workforce? The Utilization of Migrant Labour in Health Care,” and Jo Moriarity, “Competing With Myths: Migrant Labour in Social Care,” in *Who Needs Migrant Workers*, op. cit., pp. 57–153.
6. Lindsay Lowell, Economic Policy Institute conference on labor shortages and immigration reform, Washington, D.C., December 9, 2010.
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About the Author

RAY MARSHALL was U.S. secretary of labor in the Carter administration. He is professor emeritus and holder of the Audre and Bernard Rapoport Centennial Chair in Economics and Public Affairs at the LBJ School of Public Affairs at the University of Texas at Austin. He is an author of more than 30 books and monographs, including *Thinking for a Living: Education and the Wealth of Nations* (Basic Books 1993), *The Case for Collaborative School Reform* (EPI 2008), and *Immigration for Shared Prosperity: A Framework for Comprehensive Reform* (EPI and Agenda for Shared Prosperity 2009). Marshall is one of the founders of the Economic Policy Institute and currently serves on EPI's board.

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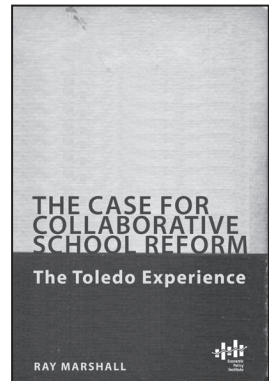
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