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Regularizing Immigrants in Spain: A New Approach

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Note: The following summary and preliminary analysis were written following the completion of the regularization application period, at a time when all applications had been submitted and 77 percent had been processed.

Extraordinary regularization programs granting legal status to unauthorized immigrants have recently come to the forefront of attention. Although it is increasingly debated whether such amnesties are a valuable immigration policy tool, many governments continue to use them in an effort to control and reduce irregular immigration, with varying degrees of success. Countries that have done so in the last quarter century include the United States, Canada, Belgium, France, Italy, Spain, Greece, and Portugal.

In Southern Europe specifically, Italy, Spain, Greece, and Portugal have repeatedly conducted regularizations of their unauthorized populations — completing a total of 14 programs in the past two decades. With a new program whose application period ended on May 7, 2005, Spain has just added a 15th program to the list.

Although similar in some ways to past experiences, the 2005 regularization program has several unique and noteworthy components. Most importantly, Spain's latest regularization program is part of a larger, more comprehensive approach to combating illegal immigration and employment.

Unauthorized Migration to Spain

In comparison to most other immigration-receiving countries, Spain has only recently witnessed significant foreign-born inflows — a reality reflected in rapidly shifting migration policies. The legal foreign-born population has quadrupled in less than a decade, rising from approximately 500,000 in 1995 to two million in 2004. As of December 2004, Spain had an estimated 1.2 million unauthorized immigrants.

The significant, if variable, proportion of irregular immigrants in Spain can be attributed to certain structural overarching factors. Most notably, Spain is characterized by a robust demand for low-skilled foreign labor. In addition, it has one of the largest informal economies in the European Union (EU), a narrow "front door" for immigrant admissions, and difficulties controlling irregular flows and stocks.

Additional factors that contribute to the inflow and permanency of irregular migration in Spain include a poorly managed and financed administrative bureaucracy for the management of immigration, well-developed migration networks, and geographic or cultural proximity to dynamic source countries.

The combination of these elements makes Spain an attractive country for unauthorized immigration and helps explain how over one million irregular immigrants accumulated in less than four years since the previous regularization program in 2000 to 2001.

A New, Comprehensive Approach

Spain's four previous extraordinary regularization programs — in 1986, 1991, 1996, and 2000 to 2001 — were part of larger legislative changes to migration policy. These previous programs succeeded in granting some immigrants legal status, yet proved insufficient in managing the country's increasingly complex unauthorized migration flows.

In addition, from 1994 to 1999 (excluding 1996), Spain regularized foreign workers through a separate quota system. The country also maintains a permanent, continuous (case-by-case) regularization program. As a result, regularization procedures have, until now, constituted the primary avenue for conferring legal status.

On December 30, 2004 the Spanish government passed a decree to modify certain aspects of the existing immigration legal framework, which, among other things, included provisions for a regularization program (termed "normalization") for employers and their foreign workers.

This reform's primary objective is to satisfy the existing demand for foreign labor through legal channels by widening these channels and, at the same time, cracking down on illegal employment.

The reform includes:

- A regularization program for some foreign workers.
- Strengthened immigration enforcement mechanisms (border enforcement, workplace inspections, and removals).
- Expanded and more flexible legal avenues for economic immigration.

In this model, the regularization program serves to first reduce the pool of irregular immigrants to a more manageable number. Then the government can embark on new policies that expand legal avenues of admission and strengthen immigration enforcement policies.

The regularization program is not intended to be a catch-all for irregular immigrants. Instead, the regularization program has been trumpeted as much as an economic policy tool as one of immigration policy.

Details of the Regularization and Larger Reform

Partly due to Spain's extensive experience conducting four extraordinary regularization programs in a span of 15 years, the 2005 program requirements are clearly and narrowly defined.

The regularization program's criteria are designed to encourage a significant portion of the underground economy to incorporate with the formal labor market, thereby ensuring equal competition between economic agents, increasing contributions to the public coffers, and limiting worker exploitation and abuse. As a result, only workers are eligible for regularization, and businesses, rather than the immigrants themselves, are responsible for filing applications (except in the case of domestic workers employed in more than one home).

Applications for the program could be submitted between February 7 and May 7, 2005. According to government officials and union representatives, approximately 800,000 of the estimated 1.2 million irregular immigrants in December 2004 were expected to be eligible.

The regularization program applies to foreign workers who have been residing in Spain for over six

Summary of Spain's 2005 Regularization Program

Primary Objective: Reduce illegal employment by regularizing foreign workers

Eligibility Criteria:

- Residence (and registry) in Spain since August 8, 2004;
- No criminal record;
- Future employment contract for at least six months (three months in agricultural jobs).

Application period: February 7, 2005 to May 7, 2005

Number of Applications Received: 690,679

Status Granted: One-year residence and work permit (renewable)

Noteworthy Characteristics:

- Employers responsible for regularizing foreign workers (except in the case of independent domestic workers);
- Unprecedented cooperation between Ministry of Interior and Ministry of Labor and Social Issues;
- Consensus and support from employer organizations, unions, and NGOs;
- All other immigration applications and benefits procedures are suspended until August 8, 2004;
- Regularization program is part of a larger, more comprehensive immigration reform.

months and have no prior criminal record in their home country or in Spain. Eligibility is also dependent on a future bonafide work contract of at least six months (three months for those working in agriculture). The program does not pertain to foreign children, spouses, students, the self-employed, or those with a residence permit only.

A one-year renewable work and residence permit is granted to eligible applicants once the contract is validated by the Social Security administration, following the first monthly tax contribution by the employer. During the application period, and for three months after, all other immigration-related applications and benefits procedures — even those for permanent residency — are suspended.

Furthermore, a new national employment catalogue that lists difficult-to-cover jobs that natives do not want has been created. Such jobs include domestic workers, cooks, truck drivers, and waiters and waitresses. The catalogue, organized by provinces, will be updated every three months and will serve as a green light for employment, replacing the current bureaucratic and lengthy process.

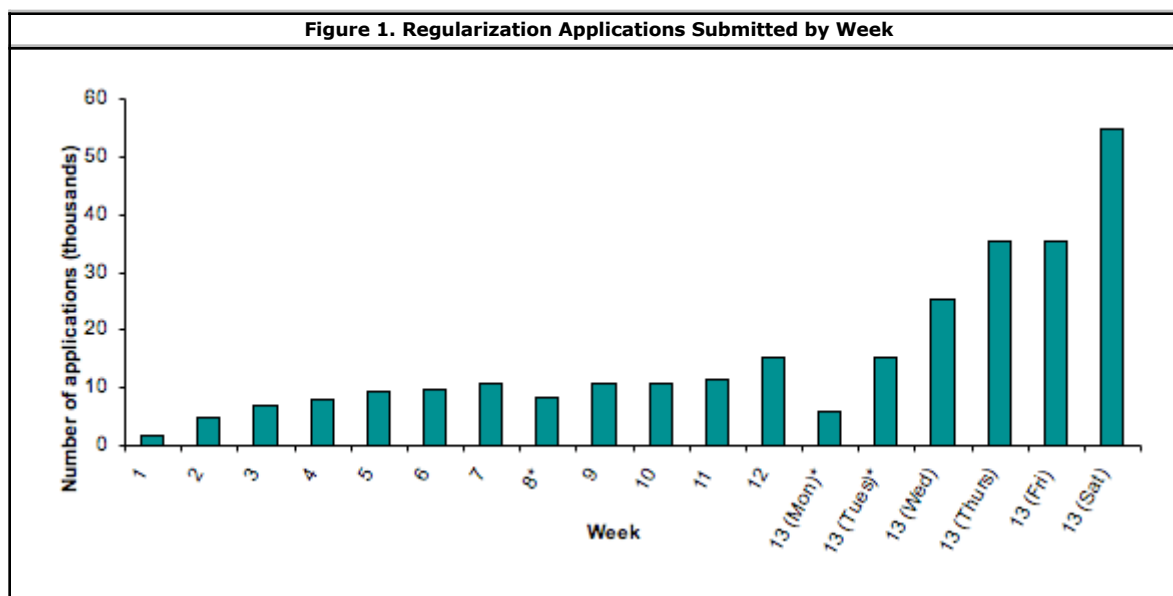
The current quota system will also become more flexible by granting a limited number of three-month visas that give immigrants the opportunity to seek employment in those sectors where personal contact is preferred (e.g. domestic service) over contract-in-origin mechanisms.

In addition, immigrants can obtain temporary family reunification permits after one year instead of after 18 to 24 months.

On the enforcement side, an estimated 500,000 inspections are expected to take place between May 7, 2005, the end of the application period, and December 31, 2005, with a maximum fine of up to 60,000 euros (\$76,000) per worker. An interministerial database that works to detect fraud is another enforcement mechanism that has been implemented. In previous regularization programs, fraudulent cases were harder to detect because application information cross-checking was not an option.

Early Data from the 2005 Program

Regularization applications increased throughout the 13 weeks of the application period, for a total of 690,679 applications (see Figure 1). Documentation requirements and the desire on the employers' part to present all employees' applications together help explain this trend. Obtaining a criminal background check from the foreign worker's country of origin was at times an especially lengthy procedure.



* Holiday

Source: *Ministerio de Trabajo y Asuntos Sociales, Spain*

Significant differences in the number of applications received in different regions were also observed (see Table 1). Part of this difference is due to the high concentration of immigrants in urban centers, namely Madrid, Barcelona, and Valencia. Also, certain sectors that have high levels of illegal employment and predominantly use foreign workers (e.g. construction, agriculture, and hotel and tourism) are unevenly distributed throughout the country.

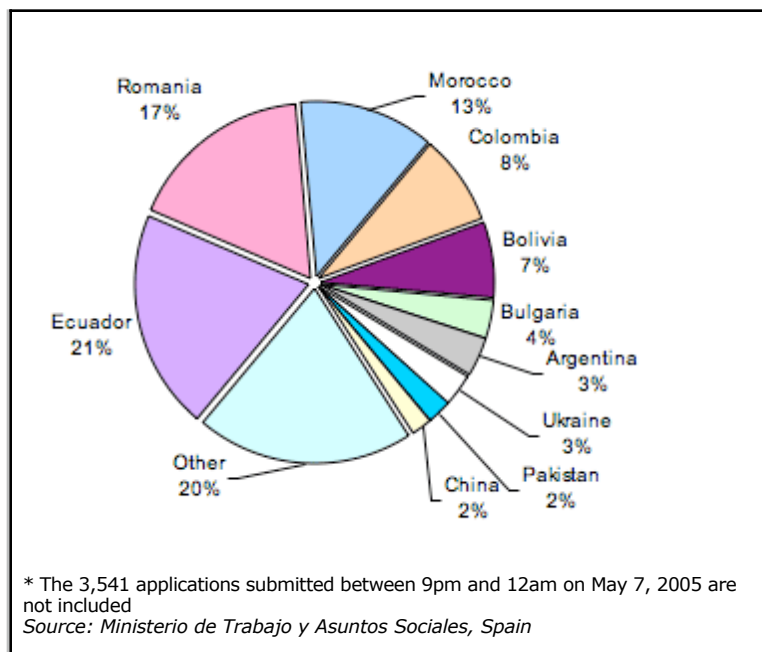
	Number Submitted	Percent of Total
Andalucía	84,372	12.28
Aragón	18,186	2.65
Asturias	2,776	0.40
Castilla la Mancha	26,608	3.87
Canarias	23,211	3.38
Cantabria	1,947	0.28
Castilla y León	11,420	1.66
Cataluña	138.537	20.16
Ceuta	66	0.01
Extremadura	2,932	0.43
Galicia	6,545	0.95
Islas Baleares	21,308	3.10
La Rioja	6,579	0.96
Madrid	170,784	24.85
Melilla	215	0.03
Murcia	43,732	6.36
Navarra	8,038	1.17
País Vasco	13,171	1.92
Comunidad Valenciana	106,711	15.53
Total	687,138	100

* The 3,541 applications submitted between 9pm and 12am on May 7, 2005 are not included
Source: *Ministerio de Trabajo y Asuntos Sociales, Spain*

Based on the data collected from submitted applications, enforcement authorities have a better sense of those regions especially vulnerable to illegal foreign employment and can organize their efforts accordingly. In addition to focusing on areas with a high number of applications submitted, enforcement authorities will also concentrate on areas with surprisingly low numbers (e.g. the autonomous communities of Ceuta and Melilla).

The data also provides a rich snapshot of the regularization applicant pool, which in turn provides a clearer picture of the recently arrived foreign working population. This group is very diverse in terms of country of origin (see Figure 2). Whereas regularization applicants work in many types of jobs, the great majority work in services or manual labor. Furthermore, every six out of 10 workers is a male, while the majority of females work in domestic services.

Figure 2. Top 10 Countries of Origin for Regularization Applications*



Preliminary Conclusions

Evaluating the success of a regularization process is exceedingly difficult and requires research on its mid- and long-term outcomes. In the case of Spain's 2005 regularization, it is too early to ascertain results, as the process is still underway at the time of this writing. Yet, some preliminary conclusions regarding the design and implementation can be drawn.

The 2005 regularization represents the first such program jointly operated by the Ministry of Interior and the Ministry of Labor and Social Issues. Pooling resources and dividing tasks reduced the burden of an extraordinary regularization program on any one agency. Furthermore, a consensus between employer organizations, unions, immigrant associations, and service providers was established before the program began, creating a climate of cooperation.

The few dissenters included members of opposition party Partido Popular and representatives of some EU Member States who feared the entrance of regularized immigrants to their countries. It is too early to tell if Member States' concerns will be realized, although security of employment in Spain and future immigration benefits should dissuade most immigrants from leaving, at least in the short-term.

Having attracted almost 700,000 applications, the public outreach campaign was viewed as a success. In addition to the various municipal centers providing information to applicants, over 700 points of assistance were established and operated for immigrants by those groups party to the consensus.

On the last days of the program, personnel were reinforced and office hours were extended to better administer the final rush of applications. A toll-free phone line and the ability to check the status of an application online made the program more accessible.

Despite its accessibility however, program requirements left out some otherwise eligible applicants. In order to prove the six-month residence requirement (meaning the foreign worker lived in Spain before August 8, 2004), the government depended solely on official registries, called "Padron Municipal de Habitantes."

In Spain, immigrants and natives alike may register in their municipality of residence to gain access to health care and social protection, regardless of their legal status. However, a number of immigrants are not registered because they are unaware of the process, they fear enforcement

authorities' access to the database, or their municipal government rejects their registration.

Some demonstrations and sit-ins were mounted in Barcelona and Madrid, both prior to and during the application period, to loosen the residency proof requirement. The ombudsman also joined efforts to solicit the use of other official documents.

With less than a month remaining in the application period, seven other official documents — such as an official health card, expulsion order, rejected registration application, or asylum application — were deemed applicable for registration "by omission."

Unlike the 2000 to 2001 regularization program, where residence could be proven via passport entry stamps, boarding tickets, utility bills, and other documents, only originals or notarized copies of documents that identify the individual and that the Spanish public administration had processed were deemed acceptable.

These stringent document requirements are part of a larger effort to detect and deter fraud during the program and beyond. The ministries of Interior, Labor and Social Issues, Public Administration, and External Affairs created a common database to check for potentially fraudulent cases associated with the regularization program.

Red flags are raised by newly created businesses; businesses that seek authorization of an excessive number of immigrants; individual employers contracting a large number of domestic workers; and employees not later registered in the social security registry. Required documents are also verified against their corresponding official database.

Through the use of these instruments, document fraud may have been lower than in previous regularization programs. However, a new "favor" climate was created in its place.

Accounts of sold work contracts, salary reductions to make up for new social security payments, and employees forced to pay their own social security taxes were stated by applicants to the press and those working to assist applicants during the program. A mechanism to allow workers to report employers was built into the program for those extreme cases where employers outright refused to regularize their foreign workers. As of August 2005, however, the denouncement process had not begun, and the effectiveness of this instrument is unclear.

Another important instrument created to assist foreign workers' successful applications was built into the regularization program with less than a month remaining in the application period. Foreign workers whose applications were denied due to the fault of the employer (e.g. for not having paid their taxes in full, avoiding some Social Security payments, etc.) were able to present another work contract with a new employer. This modification, although expected to affect only a small percentage of denied applications, allowed otherwise eligible applicants to continue to seek legal status through the regularization program.

By committing employers to the regularization of their foreign workers, program designers more evenly distributed the responsibility of illegal employment to both the worker and their employer. Yet, the fact that each applicants' regularization is tied to their employer (except domestic workers employed in more than one home) could create an uneven relationship and, some fear, could force immigrants to accept substandard arrangements as a result.

Allowing domestic workers employed in more than one home to be eligible for regularization was hailed by many as a success; in doing so, the government recognized the often clandestine nature of the various types of domestic work. Although the data is not yet available as to how many immigrants applied and were regularized under this scheme, anecdotal evidence indicates a strong presence of applications from independent (as opposed to live-in) domestic workers. A future analysis of the number of applications and regularized workers in this program could highlight differences between these and employer-dependent applications.

Final Considerations

Generally speaking, the three-month regularization application period ran smoothly. Some early applicants have already received their identity card, and all applications are expected to be processed by the end of the summer of 2005. As of July 28, 2005, over three-fourths of all applications had been processed, and of those, 89 percent had received a favorable determination.

The two most significant problems encountered were the strict requirements for registration documentation and difficulties receiving criminal background records from foreign consulates. Although both issues were addressed during the program, critics felt that looser interpretations of the documentation requirements and an extended application period were necessary to elicit full participation from the eligible population.

Furthermore, critics contended that strict documentation requirements disproportionately hindered African immigrants and others who fled their home country and may have had trouble locating official documentation. A security-related concern was also cited with regard to the criminal background check requirement: by only soliciting country of origin and Spanish records, the government overlooked any charges or crimes committed in a third country.

At this point, there is little evidence to suggest that new unauthorized immigrants are entering Spain in hopes of benefiting from the regularization program. However, border enforcement authorities did, on several occasions, catch immigrants entering the country with photocopied Spanish registration forms in their names. Family members or others apparently registered foreigners not living in Spain in anticipation of a regularization program.

One main question at this stage is what will happen to those immigrants who applied, but were not regularized, as well as all immigrants who were ineligible for the program. After one year of legal status, immigrants can solicit temporary family reunification for spouses and children — the majority of the ineligible population. Rejected applicants have 15 days (90 in exceptional circumstances) to leave the country. Whether or not unauthorized immigrants actually leave will mainly depend on the strength of immigration enforcement efforts in the next few months.

It remains to be seen whether the newly regularized will fall back out of status, other unauthorized immigrants will find illegal employment in the future, the employer enforcement provisions will be successful, and new admissions schemes will work as planned.

Under this program, it may be easier for some immigrants to fall back out of status because of the strict requirement for future social security payments by the employer. At the same time, however, it should be easier for regularized immigrants to renew their work contracts and maintain legal status due to the identified need for foreign labor demonstrated in the new national employment catalogue. Furthermore, from the immigrants' perspective there is now an even stronger interest in maintaining legal status: to remain in the country (in light of expected increased immigration enforcement mechanisms) and to obtain family reunification benefits.

More than likely, unauthorized immigration and employment will continue to exist in Spain, just like in most other immigrant-receiving countries. However, the degree to which it exists and grows will depend on the success of the larger, ambitious new effort to reform Spain's immigration policy.

Through measures that aim to crack down on the informal economy, cut down on impractical bureaucracy, and give immigrants a legal option for admission, Spain hopes to better control unauthorized immigration and focus more attention on immigrant integration programs. If successful, Spain's current policy reform will provide insight into one way to strategically use regularizations to better fight illegal immigration.

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Maia Jachimowicz studied Spain's 2005 regularization program as a Fulbright scholar in Madrid. Previously, she was a research assistant at the Migration Policy Institute in Washington, DC. Maia would like to thank the Fulbright Commission for supporting her research in Spain.

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Additional Resources

Ministerio de Trabajo y Asuntos Sociales
Ministerio del Interior
Seguridad Social
Administración Pública

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