

# Twenty-first Century U.S. and Canadian Immigration Policies Compared

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**M**ore than a decade ago, the United States and Canada, like the other developed countries, began what has been called “the competition for tal-

ent.” These countries’ knowledge-based economies require large numbers of skilled workers, who cannot always be found domestically given low birth rates and because they cannot develop all the specialized labor they require themselves. In the face of this, they have designed different policies and actions to attract skilled migrants. These regulations determine which people will be selected, the criteria used to select

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them, how long they can remain, and what conditions or rights and obligations they will be subject to during their stay. This article seeks to answer two questions: What are the similarities and differences between U.S. and Canadian policies for entry of highly qualified migrants and what have some of the implications been?

The United States and Canada have long traditions of migration, but two different systems for attracting highly skilled workers. Canada's points system consists of choosing permanent or temporary migrants based on a government list of criteria, such as work experience, language skills, and level of schooling, among others. It is a system for accumulating human capital, since it seeks to increase the number of skilled workers, whose capabilities are considered fundamental for the economy long term.<sup>1</sup> The United States system, in contrast, is based on demand, and, accordingly, it is employers who choose workers according to their needs, in compliance with certain government regulations.

Most skilled immigrants enter the United States temporarily under annual quotas using a broad variety of visas. In the Canadian case, in contrast, an important number of skilled migrants enter permanently without any set annual limits. In the first case, the priority criteria for permanent entry into the United States is family reunification, which accounts for about 64 percent of admittances, while about 17 percent of permanent migrants enter under economic criteria. The latter category includes skilled workers, grouped into five categories: migrants with extraordinary abilities, professors, researchers and their families (spouses, children); professionals with advanced studies and their families; certain skilled and unskilled workers and their families; employees of international organizations and religious and media workers; and, lastly, researchers and their families.

In the United States, skilled migrants often enter temporarily, mostly for up to six years. A broad variety of visas exists, some with annual quotas.<sup>2</sup> Although these visas are granted for specific time periods, temporary immigrants can request permanent residency after a certain number of years at work.

In contrast with the U.S. case, for Canada, the priority is the entry of immigrants for economic reasons, who represent

60 percent of permanent entries. Among these immigrants are the highly skilled and their families. Family reunification represents about 25 percent of entries, and the remaining 15 percent are refugees and individuals admitted for humanitarian reasons. In 2001, the 1976 immigration law was reformed and the Immigration and Refugee Protection Act (IRPA) passed. One important legislative change placed greater priority on migration for economic reasons; also, the selection procedure for skilled migration changed in two ways: the number of points for choosing persons rose from 70 to 75 out of 100, and more emphasis has been placed on individuals' speaking English and French than on work experience.

In Canada, temporary migrants or residents are classified into different categories, but these are not as varied as in the U.S. system. The classification is carried out by Canadian Immigration and citizenship (CIC), and is made up of four groups: temporary workers, foreign students, migrants for humanitarian reasons, and others. Skilled migrants include students and temporary workers who enter via international accords (NAFTA and others like the GATS). Then there are workers who enter without a specific job offer, focused on research for the interests and benefit of the Canadian economy, and their family members. Finally, we find workers who have a specific job offer in a technological field.<sup>3</sup>

The two systems have advantages and disadvantages for the competitiveness of their respective economies and their labor market demand, as well as for the well-being and protection of migrant rights. Given their respective systems' limitations, both countries have sought alternatives. However, Canada has been more flexible in adjusting its immigration policies in accordance with labor market demand.

On the one hand, in the United States, specific market needs are met since the workers enter at the request of employers. However, a first obstacle has been that certain categories have a limited number of visas, which is adjusted using processes that can take a considerable time. For example, at several different times of economic growth, H1B visas have been insufficient to cover market needs, and some companies have opted for not prolonging their stay in the United States, but relocating in other countries, like Canada, where they can access and retain skilled immigrants.<sup>4</sup> In addition, to retain skilled workers who have entered temporarily, but who want to change to permanent status, they must request permanent residency visas, or green cards, which are limited in number and whose processing takes a long time. Only about 15 percent of these green cards are given to migrants who



work in specific economic sectors, and the wait time for getting one is approximately 4.4 years.<sup>5</sup>

Since the 1990s, some economic sectors like information and communications technologies have tried to change the system and create more flexible immigration policies to ensure greater and swifter access to immigrant labor. However, neither laws nor programs have been approved to change the quota system for skilled migrants. What has happened, rather, is that Congress has either increased or reduced the entry quotas through these visas, but these adjustments have been infrequent.

Given these difficulties, visas granted in the framework of NAFTA, the TN visas, have turned into an escape valve, since they last three years and do not require that employers request a permit to hire foreign workers.<sup>6</sup> By contrast, Canada's points system presents no problem of limited numbers of visas; in addition, more skilled migrants stay permanently because, as mentioned initially here, the system itself puts a priority on permanent residents for economic reasons. Nevertheless, given that immigrant selection usually does not include employers, immigrants are often admitted whose professional training does not correspond to labor market needs. At times, no clear standards exist for establishing the equivalence of schooling levels between immigrants and Canadian citizens.<sup>7</sup> This creates a dearth of workers needed in the labor market.

Given this, starting in 2001, Canada's different governments have introduced changes to their laws and programs to deal with some of the obstacles created by the points system itself. In general, with the 2001 law, the category of economic migration broadened out to include not only skilled and

business immigrants, but also those requested by the provinces in accordance with their specific economic needs, migrants who do not have to go through the points system at all.

In 2008, an immigration reform was passed, Law C50, to reduce processing times for the entry of skilled migrants and their families. In addition, the Ministry of Immigration was given the power to issue instructions to immigration officials about which requests should be processed first due to economic needs, in order of their priority.

At the same time, different Canadian governments promoted a series of programs and measures to facilitate the hiring of both temporary and permanent skilled migrants at times of high demand for labor. For example, entry times for permanent residents under the Federal Skilled Worker Program were reduced, and the Provincial Nominee Programs were promoted. The first of these were created in 1999 to give provinces the ability to choose some of their economy-based permanent residents in accordance with their productive needs. Another measure was the creation of the Expedited Labor Market Options and the Lists of Occupations under Pressure; as the latter's name indicates, these are lists of jobs published by the provinces for temporarily recruiting foreign workers for specific kinds of work.

The provinces also developed the Pilot Project on Post-graduate Employment for International Students, based on the idea that Canadian academic institutions' global competitiveness should be improved and that a model of insertion into the labor market nationwide with pilot projects compatible with immigration laws was needed.<sup>8</sup> This measure was presented as an alternative to the limitations faced by immigrants in revalidating their educational certificates issued by their countries of origin in order to favor candidates for permanent immigrant status who had been educated in the destination country.

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With regard to temporary immigration, important changes were also made through the Canadian Experience Class. This allows foreign students in Canada and temporary workers the possibility of acquiring permanent residency. They do not have to go through the points system, but must have two years' experience—this was reduced to one in 2012—and have a working knowledge of English or French.<sup>9</sup>

Finally, different authors have agreed that both countries' immigration systems have had both positive and negative effects on skilled workers. In the United States, one of the risks for immigrants and the protection of their rights is that selection by employers without appropriate regulation can foster paying low wages to reduce costs. In addition, policies can hin-

der workers' mobility between companies, creating dependency on a single employer.<sup>10</sup> At the same time, while in the U.S. case temporary visas for skilled immigrants are often a way of staying permanently, the processes for obtaining permanent residency are slow and have long waiting lists.

In the Canadian case, the number of immigrants with higher levels of schooling has increased. The immigration policies seem to have been effective, since they have fulfilled their objective of attracting more skilled labor. At the same time, despite the high education levels of immigrants who are accepted, they do face different obstacles, such as the time it takes them to get a job, the kind of jobs they get, and the pay they receive.<sup>11</sup> **NM**

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#### NOTES

<sup>1</sup> Demetrios G. Papademetriou and Madeleine Sumption, "Rethinking Points Systems and Employer Selected Immigration" (Washington, D. C.: Migration Policy Institute, June 2011), p. 2.

<sup>2</sup> The visas extended to skilled workers include the H1B visa, for professionals and highly trained workers in specialized jobs, which can be granted for up to six years; O visas, granted to workers with extraordinary capabilities; P visas, for recognized athletes or trainers in exchange or cultural programs; Q visas, given to workers in cultural exchanges; and R visas for religious. TN visas also exist for the mobility of professionals in terms of the North American Free Trade Agreement (NAFTA); L-1 visas for transfers of personnel inside companies; and E-1, E-2, and E-3 visas for the movement of investors and their spouses and children. Department of Homeland Security (DHS), "Yearbook of Immigration Statistics," <http://www.dhs.gov/yearbook-immigration-statistics-2012>, accessed November 21, 2014.

<sup>3</sup> Government of Canada, "Canada Facts and Figures: Immigrant Overview," Department of Citizenship and Migration, <http://www.cic.gc.ca/English/resources/statistics/facts2012/index.asp>, accessed November 21, 2014.

<sup>4</sup> Demetrios Papademetriou and Madeleine Sumption, "The Role of Immigration in Fostering Competitiveness in the United States" (Washington, D. C.: Migration Policy Institute, June 2011), p. 9.

<sup>5</sup> *Ibid.*, p. 11.

<sup>6</sup> Isabel Studer and David Orozco, "Mercados de trabajo y capital humano en América del Norte: oportunidades perdidas," *Foro Internacional* vol. 52, no. 3 (July-September 2012), p. 607.

<sup>7</sup> Jacques Ramírez, "La migración calificada: el caso de los ecuatorianos en Canadá," Caracas, OIM-SELA, 2009.

<sup>8</sup> Fernando Neira, *Los migrantes latinoamericanos calificados en Canadá: una mirada a su situación actual* (Mexico City: CIALC, UNAM/Eón, 2011).

<sup>9</sup> Delphine Nakache and Paula J. Kinoshita, "The Canadian Temporary Foreign Worker Program: Do Short Term Economic Needs Prevail over Human Rights Concerns?" *IRPP Study* no. 5, May 1, 2010, p. 10.

<sup>10</sup> Papademetriou and Sumption, "Rethinking Points ...".

<sup>11</sup> Several authors quoted in this article have agreed on this point even though they have studied groups of migrants of different nationalities.