

REGULARISATION OF UNDOCUMENTED MIGRANTS



INTRODUCTION

Irregular migration is a complex global phenomenon. Ireland, like all other countries, is challenged to respond in an effective and humane manner. There are an estimated 30,000 undocumented migrants living in Ireland. Undocumented migrants, including children, are at greater risk of exploitation, poverty and social exclusion, and often live in situations of destitution. Ireland can no longer afford to ignore this situation. A broad package of measures to address irregular migration is required. Internationally, regularisation of undocumented workers is recognised as a necessary part of a workable solution to irregular migration. This briefing paper sets out some of the key factors underpinning the rationale for a regularisation programme in Ireland.

IRREGULAR MIGRATION

Irregular migration generally refers to migration taking place outside a legal framework, i.e. people who enter a country or who remain in a country without legal permission from the State. People who find themselves in this position are referred to as undocumented or irregular migrants. Many migrants who are undocumented initially entered the country legally but became undocumented for a variety of reasons. Frequently, the most immediate association with the term 'undocumented' is with those Irish nationals living and working in the United States.

A key concern in the discussion on irregular migration is the lack of reliable data. A study funded by the European Commission estimated that there are between 2.5 and 5 million undocumented migrants in the EU⁰¹. Other research has estimated a figure of between 7 and 8 million. The discrepancy between these figures shows a lack of reliable information on irregular migration. In reality, larger figures are often used to support arguments for greater border security and migration control within the EU, generating fear and mistrust of migrants and leading to flawed policy development. It is important to unpack both the data and the terminology used when describing irregular migration, as it is a highly politicised issue.

Ping came to Ireland in 2004 as a registered student for an English Language College. She paid €5,000 to obtain a Student Visa in China. To support herself she worked part-time in a supermarket. In 2006 she became pregnant. The pregnancy was very difficult and she could not attend college for several months. Subsequently, her permission to remain was not renewed. She is undocumented since this time, working odd jobs to support herself and her child.

THE IRISH CONTEXT

Based on data from the Department of Justice, Equality and Law Reform (DJELR), there are approximately 30,000⁰² undocumented people in Ireland today, about 0.67% of the total population.⁰³ Irregular migration is a relatively new phenomenon in the Irish context, and is directly related to the rise in inward migration experienced since the mid 1990s. A poorly thought out and restrictive employment permit and immigration system helped to create the conditions for many to find themselves undocumented in Ireland. As the economy grew, so too did the undocumented population. Now that the economy is in decline, migrant workers and their families who have been living and working in Ireland for several years are at risk of becoming undocumented.

People from outside the European Economic Area (EEA) require legal permission to enter and remain in Ireland. There is variety of different permissions and visas administered by Government (see box) which specify the conditions and duration of the permission.

01 CLANDESTINO Project "Undocumented Migration: Counting the Uncountable. Data and Trends across Europe" <http://clandestino.eliamep.gr/>

02 The figure is compiled from DJELR data and based on figures from ICMPD on regularisations in the EU, January 2009.

03 Based on Central Statistics Office total Population data, April 2009.

The vast majority of EEA nationals enter Ireland with such legal permissions, but for a variety of reasons become undocumented. Such situations include workers who became undocumented as a direct result of exploitation, prospective students who paid school fees for non-existent or fraudulent schools; people invited to work in Ireland on the understanding that permits were secured for them; children born in Ireland to already-undocumented parents; visa over-stayers such as those on tourist visas, those who have become undocumented as a result of administrative failures and mistakes, and asylum seekers who have had their claim refused.

Permission to Remain in Ireland

Stamp 1: Employment permit holders, persons on business permission, persons on working holiday authorisation

Stamp 1a: Trainee accountants

Stamp 2: Overseas students on a full-time course of study. They have permission to work without a work permit, 20 hours term time, full time during holidays

Stamp 2a: Overseas students on a course of study not recognised by the Department of Education and Science. They have no right to work

Stamp 3: Visitors & Tourists, spouses of employment permit holders

Stamp 4: Spouses of EEA/ Irish National, persons granted refugee status, persons granted humanitarian leave to remain, persons granted long term residency, parents of Irish citizen child where parents were granted permission to remain in the State

Stamp 5: Leave to remain without condition as to time

Stamp 6: Dual citizenship

Temporary Permission to Remain - 3 to 4 month extension of permission to remain

Experiences of Being Undocumented in Ireland

MRCI has advocated for the rights of undocumented people since 2001. Many are working, paying taxes and trying to support themselves and their families. Once undocumented and labelled as "illegal", they live under tremendous stress and fear. They are denied access to social benefits or essential health services even when they have paid taxes and social insurance contributions. Many become homeless. They become isolated from their communities and cut off from visiting their families in their home countries. They are much more vulnerable to exploitation and mistreatment. Faced with few options, many are forced to stay in exploitative situations, fearing the risks of coming forward and losing whatever small income they may have. They fear state authorities, in particular the Gardaí, and are reluctant to report crimes such as domestic violence and racist incidents. For most, going home is not an option, as they and their families have lived and worked in Ireland for several years and have put down roots in Ireland and in their local communities.

Francisco's Story

In 2003 Francisco, a Brazilian national, was invited by a friend at the request of this friend's employer to come to work in a meat factory in Donegal. He was told that his employer would handle the paperwork. Being from a Non-Visa required Country, he and his wife and two children had no difficulties entering Ireland. He began working, was given a PPS number and was paying taxes and PRSI. He presumed his work situation was in order. However, six months later he discovered his irregular status. He approached his employer who told him that he would apply for a work permit, but this never materialised. Francisco continued to work in the factory until June 2009 when he was made redundant. His children are in school and his family has become part of the local community. Since June, the family have been left without an income. He cannot access social welfare payments despite more than six years of social insurance contributions.

Siobhan's Story

Siobhan is 10 years old. She was born in Ireland to a mother who is undocumented. She is attending school and doing very well. Her school is aware of her irregular status but is supportive of her continuing in her education. She will, however, be unable to do any state exams and will have to leave without any possibility of attending college or working in the formal economy. Her mother cannot return to her home country and Siobhan identifies herself as Irish.

REGULARISATION

Regularisation is a process used by States to afford an undocumented person the opportunity to legalise their immigration status. It is usually attached to an agreed set of qualifying criteria. As a consequence, individuals are better able to realise their rights, contribute to the formal economy, and are less vulnerable to exploitation. Critics of regularisation often cite it as a 'pull' factor in migration, i.e. that regularisation encourages more irregular migration. There is, however, little evidence to support this claim and it has not been borne out in terms of research.⁰⁴

Regularisation is not just a concept put forward by migrant rights activists, but is a tried and tested solution used by many governments across the world. In the last twenty five years, within the EU and the US, over forty regularisation programmes have been implemented. From June to December 2009 alone, four regularisation programmes of varying size and impact have taken place in Belgium, Italy, Greece and Ireland. The fact that over forty programmes were put in place in the past ten years illustrates that it is far from an exceptional migration

⁰⁴ REGINE (Regularisations in Europe), *Study on practices in the area of regularisation of illegally staying third-country Nationals in the Members States of the EU*, International Centre for Migration Policy Development (ICMPD) Vienna, January 2009.

policy measure; indeed it has become a standard practice in developing migration policies. Reviews of these programmes reveal long term benefits to social cohesion and improved employment practices.

Past Regularisation Schemes in Ireland

Leave to Remain on the basis of an Irish Born Child (IBC) Scheme. Introduced in 2005 to respond to numerous applications for humanitarian leave to remain based on the Irish nationality of child. 16,693 people were regularised, with a 93.26% acceptance rate.

Undocumented Workers Scheme (Bridging Visa). Introduced for migrant workers who held a work permit in Ireland and found themselves undocumented through no fault of their own. This Scheme was implemented from October to December 2009.

POLITICAL SUPPORT FOR REGULARISATION

The Irish Government and families of the Irish undocumented in the U.S have long been campaigning for the regularisation of Irish people in the U.S. There is broad consensus among politicians acknowledging the need for a pragmatic approach. Civil society actors and a host of campaign groups, including the long-standing Irish campaigners in the U.S., welcome the stated political commitment to regularisation by the Obama administration. This has the potential to bring the estimated 12 million undocumented workers out of the shadows with clear and meaningful pathways to citizenship.⁰⁵ The Mayor of London, Boris Johnson, is championing the “Stranger into Citizens” campaign to regularise the estimated 500,000 undocumented workers in the UK.⁰⁶ It is clear that this type of reform is serious in its intentions and acknowledges the invaluable contribution that undocumented workers have made to their respective economies and societies.

Elements of good practice for Regularisation

Preparatory stage

Involves three elements: consensus-building, defining the application process, and promotion.

Implementation stage

Officials are trained and carry out the regularisation programme, crucially with the assistance of NGOs, voluntary and community groups.

Post-regulation stage

Involves compiling and analysing the data from the programme to gain insight into the size, demographic and labour market composition of the undocumented population (OECD 2000).

An opinion poll commissioned by Migrant Rights Centre Ireland and the Forum on Migration and Communications in 2007 indicated that three out of every four people in Ireland believe that the Government should give

undocumented migrant workers the opportunity to legalise their status.

Ongoing Regularisation Mechanisms

A once-off regularisation alone will not answer the problems of irregular migration in Ireland. Studies carried out elsewhere conclude that for a regularisation programme to be fully successful, it should be accompanied by an ‘ongoing mechanism’ that addresses the systemic failures that any large immigration system inevitably develops. An ongoing mechanism allows migrant workers under defined criteria to become regularised on a case-by-case basis. This ongoing mechanism would strengthen a well-managed migration system.

All but five EU Member States have had at least one regularisation programme, and twenty of the EU Member States possess a mechanism within their immigration systems to deal with irregular migrants in an ongoing way. The framework for an ongoing mechanism in the Irish system has essentially been developed through the Undocumented Workers Scheme (Bridging Visa). This scheme, administered between Oct and Dec 2009, established clear criteria and a process for applying to the Department of Justice, Equality and Law Reform for regularisation of undocumented migrants who had become undocumented through no fault of their own.

RECOMMENDATIONS TO ADDRESS THE SITUATION OF UNDOCUMENTED MIGRANT WORKERS AND THEIR FAMILIES

1. Design and implement a broad regularisation scheme inclusive of all categories of undocumented people in Ireland. This Scheme should draw on best practice and involve organisations representing the interests of undocumented migrants.
2. Embed the Undocumented Workers Scheme (Bridging Visa) as an ongoing mechanism within the Irish immigration system. This should include well-communicated application criteria and procedures.
3. Remove the provision for summary deportation in the Immigration Residency and Protection Bill.

⁰⁵ *Obama to Push Immigration Bill as One Priority*, The New York Times, Julia Preston, April 8th 2009.

⁰⁶ *Glaeconomics, Economic impact of the London and UK economy of an earned regularization of irregular migrants to the UK*: Greater London Authority May 2009.

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