

# Japan

## Overview of migration

As one of the major destination countries for migrants in Asia, there more than 2 million registered foreigners staying in Japan in 2013<sup>1</sup>. According to official statistics, an estimated number of 787,627 foreigners are currently working in Japan<sup>2</sup>.

While Japan actively promotes the migration of skilled workers in professional and technical fields, it has always been reluctant to take in “unskilled” migrant workers. However, the demand for such workers has been growing since the 1990s. This can be chiefly attributed to Japan’s low fertility rate and ageing population. This creates a labour shortage, which can particularly be felt by small and medium sized enterprises. Migrants are therefore needed to fill in the gap.

Notwithstanding the strong demand for “unskilled” migrant workers, the Japanese government remains reluctant to grant them legal recognition. Currently, only skilled and professional workers are granted formal working visas<sup>3</sup>, while “unskilled” foreign workers work as technical trainees. As of 2014, there are 145,426 trainees according to official statistics<sup>4</sup>. Most of them come from China, the Philippines and Vietnam<sup>5</sup>.

Due to the limited channels for labour migration, a considerable number of migrant workers have no choice but to overstay their visas and work in Japan as irregular migrants. According to the Japanese Immigration Bureau, there are around 62,009 over-stayers in Japan in 2013<sup>6</sup>.

## Relevant policies

### *The introduction of “Nikkeijins”*

In the wake of increasing labour shortage, Japan first opened the door to migration by allowing descendants (up to the third generation) of Japanese emigrants to apply for a long term resident visa and work in Japan. These non-nationals of Japanese descent, who are referred to as “Nikkeijin”, mainly come from Latin American countries such as

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<sup>1</sup> Japanese Statistical Yearbook 2015, Chapter 2, Table 2-14

<sup>2</sup> Ministry of Health Labour and Welfare, Report on foreign employment situation 2014. Available at <http://www.mhlw.go.jp/stf/houdou/0000072426.html> (in Japanese)

<sup>3</sup> See table in the “Numbers and statistics” section below

<sup>4</sup> Ibid at n2

<sup>5</sup> Ibid

<sup>6</sup> See press release by the Immigration Bureau on 27 March 2013. Available at [http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri04\\_00031.html](http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri04_00031.html)

Brazil and Peru<sup>7</sup>.

### *The Technical Intern Training Programme*

Other migrant workers enter Japan through the Technical Intern Training Programme launched in 1993. New arrivals are granted the status of “Technical Intern Training (i)” and will receive training for a maximum of 1 year. Upon completion of a skills test, they may change their residence status to “Technical Intern Training (ii)” and are entitled to stay for 2 more years<sup>8</sup>.

Amid growing demand for foreign workers to deal with projects related to the 2020 Tokyo Olympics, the Abe administration decided in 2014 to extend the period for which trainees can stay to 5 years. After their initial stay of three years as technical interns, trainees may extend their stay for another two years under the different visa status of “designated activities”. Alternatively, trainees can return to their home countries after the initial three-year stay and return at a later date to work for another 3 years under the “designated activities” visa<sup>9</sup>.

Under this training programme, migrant workers are prohibited from becoming permanent residents, which require continuous residence in Japan for at least 5 years.

Following an amendment of the Immigration Control Act, all technical trainees (first year trainees inclusive) are entitled to protection by national labour laws starting from July 2010. According to the Labour Standards Act, workers shall not work for more than 8 hours a day and 40 hours per week.<sup>10</sup> Among other things, they are also entitled to rest periods<sup>11</sup>, day-offs<sup>12</sup> and overtime payment<sup>13</sup>. Additionally, pregnant women have the right to take maternity leave<sup>14</sup>. The Minimum Wages Act equally applies to technical trainees. The wages they receive must not be lower than the minimum wage prescribed by each prefecture. Minimum wages set by specific industries may also be applicable. In 2015, the average minimum wage in Japan is 780

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<sup>7</sup> 17<sup>th</sup> session of the United Nations Human Rights Commission, 2011, “Report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante”, A/HRC/17/33/Add. 3

<sup>8</sup> See Japan International Training Cooperation Organization webpage. Available at <http://www.jitco.or.jp/english/index.html>

<sup>9</sup> *The Japan Times*, “Foreign trainee program given OK for expansion”, 4 April 2014. Available at <http://www.japantimes.co.jp/news/2014/04/04/national/more-foreign-workers-to-be-allowed-to-work-in-construction-industry/#.Vahojfmqqkp>

<sup>10</sup> Labour Standards Act, Art. 32

<sup>11</sup> Labour Standards Act, Art. 34

<sup>12</sup> Labour Standards Act, Art. 35

<sup>13</sup> Labour Standards Act, Art. 37

<sup>14</sup> Labour Standards Act, Art. 65

Japanese Yen (approx. 6 USD) per hour<sup>15</sup>. Finally, employers are required by law to enter into social security insurance schemes such as the Workers Accident Compensation Insurance, Health Insurance and Welfare Pension Insurance.

The amendment also obliges receiving companies to provide specific on-the-job training to the trainees. The collection of guarantee money and the confiscation of passports are also prohibited. Receiving companies may be liable to a 5 year ban on accepting technical trainees if any of the above conditions are breached<sup>16</sup>.

#### *The admission of foreign nurses and caregivers*

It is also noteworthy that foreign nurses and caregivers have been introduced to Japan in pursuant to Economic Partnership Agreements (EPAs) with the Philippines, Indonesia and, more recently, Vietnam. According to the EPAs, persons qualified in the above countries may work as “assistants” in Japan for an initial period of 4 years. Upon completion of a national qualification examinations, they can stay for a further 3 years<sup>17</sup>.

However, very few foreign aspiring nurses and caregivers can pass the qualification exams, which are administered in Japanese. According to a report, only 37.9% foreigners passed the caregiver qualification exam in 2012, while the passing rate for all candidates was 63.9%. Similarly, only 11.3% foreign workers passed the nursing qualification exam, while the passing rate for all candidates stood at 90.1%<sup>18</sup>.

In order to address the shortage of caregivers in Japan amid rapidly ageing population, the government has recently proposed to admit foreign nurses and caregivers through two additional channels. First, the government decided to expand the Technical intern Training Program to nursing care. Foreigners with N4-level Japanese proficiency are eligible to join the training program, which lasts for 5 years. Secondly, the government plans to introduce a nursing visa, which caters exchange students who have passed Japan’s national exam for nursing care. The nursing visa lasts for a maximum of 5 years and is renewable<sup>19</sup>.

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<sup>15</sup> See Trading Economics webpage. Available at <http://www.tradingeconomics.com/japan/minimum-wages>

<sup>16</sup> Ibid at n8

<sup>17</sup> *Japan times*, “Caregiver trainee program coming up short, but options on table also daunting”, 19 April 2015. Available at [http://www.japantimes.co.jp/news/2015/04/19/national/caregiver-trainee-program-facing-challenges/#.VaXnS\\_mqqko](http://www.japantimes.co.jp/news/2015/04/19/national/caregiver-trainee-program-facing-challenges/#.VaXnS_mqqko)

<sup>18</sup> *Nippin.com*, “Foreign Nurses and Care Workers in Japan; Reform Needed”, 13 June 2012. Available at <http://www.nippon.com/en/currents/d00034/>

<sup>19</sup> Ibid at n17

## Issues

### *The exploitative Technical Intern Training Programme*

The Technical Intern Training Programme has long been criticized as fuelling exploitation of cheap foreign labour. Technical trainees often receive substandard payment and have to work excessively long hours. In addition, they face restrictions on their freedom of movement and private life. Violence in the workplace and sexual abuses, including rape, are also not uncommon<sup>20</sup>. However, victims are reluctant to report cases of abuse for fear of dismissal. Moreover, a number of employers prevent trainees from leaving by confiscating their passports, notwithstanding the express prohibition of such practice.

Despite the extension of national labour laws to all technical trainees in July 2010, the enforcement of labour law protections has been weak. Currently, the Japan International Training Cooperation Organization (JITCO) is charged with overseeing the Technical Intern Training Programme. However, according to a report by the Japan Times in 2014, of those receiving-companies blacklisted by the authorities for illicit acts, around 30 percent had not been visited by JITCO in the preceding three years. In other words, JITCO is “clearly not doing its job”<sup>21</sup>.

### *Discrimination in the workplace*

In addition, migrant workers in Japan often face discrimination. Migrant workers are frequently paid less but have to work longer hours than their local counterparts. Unfair dismissals of migrants are also not uncommon. Extreme cases of blatant discrimination against migrant workers have also been reported. For example, Brazilian workers in a Nagoya company had to pay more in order to acquire uniforms and security accessories. Meals were also more expensive for foreigners in the cafeteria of the company<sup>22</sup>.

### *Limited access to education by migrant children*

The children of migrant workers can also be victims of discrimination in the context of education. While migrant children are “allowed” to enrol in Japanese public schools free of charge, they face various barriers including language and possible discrimination in schools.

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<sup>20</sup> Ibid at n7

<sup>21</sup> *The Japan Times*, “Japan’s foreign trainee program suffering from shocking lack of oversight”, 13 August, 2014. Available at [http://www.japantimes.co.jp/news/2014/08/13/national/japans-foreign-trainee-program-suffering-shocking-lack-oversight/#.Vac0p\\_mqqko](http://www.japantimes.co.jp/news/2014/08/13/national/japans-foreign-trainee-program-suffering-shocking-lack-oversight/#.Vac0p_mqqko)

<sup>22</sup> Ibid at n7

## Responses

In light of the increasing inflow of migrants, the Japanese government has been promoting “multicultural coexistence” (*tabunka kyosei*) since the last decade. Notably, in March 2006, the Ministry of Internal Affairs and Communications (MIC) published its “Report of the Working Group on Multicultural Coexistence Promotion” in response to the needs of migrants. A series of social policies were recommended to local governments, which covers, inter alia, housing, education, the labour market, health, and welfare<sup>23</sup>.

A number of local municipalities also cooperate with NGOs to promote cultural exchange by organizing regular cultural events such as the Brazilian Festival and Sticky Rice Festival, where national and foreign communities celebrate together<sup>24</sup>. It is hoped that such initiatives can promote mutual understanding and alleviate discrimination against migrants in Japan.

NGOs play a significant role in promoting migrant workers’ rights. As a national network of civil society organizations advocating for migrants’ rights, The Solidarity Network with Migrants Japan (SMJ) connects NGOs serving migrants in Japan. SMJ’s work include advocacy, networking and publicity. It also facilitates a number of projects that targets, among others, technical trainees, women migrants and migrant children<sup>25</sup>. In addition, a number of NGOs provide services to migrant children in order to address the hardships they face in relation to education. For instance, some provide specific training to newly-arrived migrant children in preparing for the entrance examination for high schools<sup>26</sup>. Other NGOs provide specific assistance to Technical trainees. The Tokyo-based Advocacy Network for Foreign Trainees, for instance, provides legal counsel to trainees in their own language, calls on unions to negotiate with companies and contracting organizations, finds lawyers to represent trainees in court, and shelter for trainees who stand up to their employers<sup>27</sup>. Other organizations provide information and consultation services to trainees. Some legal NGOs and lawyer associations, on the other hand, specifically provide legal assistance.

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<sup>23</sup> See Ministry of internal Affairs and Communications, “Report of the Working Group on Multicultural Coexistence Promotion”. Available at [http://www.soumu.go.jp/kokusai/pdf/sonota\\_b5.pdf](http://www.soumu.go.jp/kokusai/pdf/sonota_b5.pdf) (in Japanese)

<sup>24</sup> Ibid at n7

<sup>25</sup> See SMJ webpage. Available at <http://migrants.jp/>

<sup>26</sup> Ibid at n7

<sup>27</sup> *The Japan Times*, “Abuse rife within trainee system, say NGOs”, 7 December, 2010. Available at [http://www.japantimes.co.jp/community/2010/12/07/issues/abuse-rife-within-trainee-system-say-ngos/#.Vac0\\_fmqqkq](http://www.japantimes.co.jp/community/2010/12/07/issues/abuse-rife-within-trainee-system-say-ngos/#.Vac0_fmqqkq)

## Numbers and statistics

### Total number of migrant workers 2014<sup>28</sup>

	Male	Female	Total
<b>Number</b>	409,250	278,377	787,627

### Number of migrant workers by countries of origin 2014<sup>29</sup>

Country	Number of migrant workers
<b>China</b>	311,831 (39.6 %)
<b>Korea</b>	37,262 (4.7%)
<b>Philippines</b>	91,519 (11.6%)
<b>Vietnam</b>	61,168 (7.8%)
<b>Nepal</b>	24,282 (3.1%)
<b>Brazil</b>	94,171 (12.0%)
<b>Peru</b>	23,331 (3.0%)
<b>G8 + Australia and New Zealand</b>	57,212 (7.3%)
<b>Others</b>	86,851 (11.0%)

### Key industries employing migrant workers in 2014<sup>30</sup>

Industry	Number of migrant workers
<b>Manufacturing</b>	272,984
<b>Wholesale and retail</b>	91,552
<b>Hotel and catering</b>	91,547
<b>Education</b>	52,671
<b>Information and communication</b>	31,581

### Types of visas in Japan<sup>31</sup>

Category	Visa
<b>Working visas</b>	Engineer
	Specialist in humanities or international services
	Intra-company transferee
	Skilled labour
	Business manager
	Highly skilled professional

<sup>28</sup> Ibid at n2

<sup>29</sup> Ibid

<sup>30</sup> Ibid

<sup>31</sup> June Advisors Group <<http://www.juridique.jp/immigration.html#status>>

	Diplomat/Official
	Professor
	Instructor
	Artist
	Religious Activities
	Journalist
	Legal/Accounting services
	Medical services
	Researcher
	Entertainer
<b>Non-working visas</b>	Student
	Trainee (Technical Intern Training (i))
	Technical Internship (Technical Intern Training (ii))
	Dependent
	Cultural activities
	Temporary visitor
	Designated activities
<b>Family related visas</b>	Spouse or child of Japanese National
	Long term resident
	Permanent resident
	Spouse or child of permanent resident

#### Summary of protections offered to migrant workers

Policy/Law	Available to migrant workers?
<b>Minimum wage</b>	Yes (approx. 6 USD/hour as of 2015)
<b>Maternity protection</b>	Yes
<b>National labour laws</b>	Yes
<b>Social security</b>	Yes
<b>Joining a trade union</b>	Yes
<b>Forming a trade union</b>	No
<b>Path to permanent residency</b>	No
<b>Path to citizenship</b>	No
<b>Access to public schools by children</b>	Yes

#### Ratification status of relevant conventions

Document	Year of ratification (if ratified)
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<b>ICCPR</b>	1979
<b>ICESCR</b>	1979
<b>ICERD</b>	1995
<b>CEDAW</b>	1985
<b>CRC</b>	1994
<b>Int'l Convention on the Protection of the Rights of All Migrant Workers and Members of their Families Migrant Workers</b>	N.A.
<b>ILO29 (Forced Labour)</b>	1932
<b>ILO105(Forced Labour)</b>	N.A.
<b>ILO87 (Freedom of Association)</b>	1965
<b>ILO98 (Collective bargaining)</b>	1953
<b>ILO100 (Equal remuneration)</b>	1967
<b>ILO111 (Discrimination in employment and occupation)</b>	1998
<b>ILO97 (Migration)</b>	N.A.
<b>ILO143 (Migrant Worker)</b>	N.A.
<b>ILO189 (Domestic Worker)</b>	N.A.

### Useful links

Japan International Training Cooperation Organization (JITCO)

- <http://www.jitco.or.jp/english/index.html>

UN report of the Special Rapporteur on the human rights of migrants

- <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/121/27/PDF/G1112127.pdf?OpenElement>

Solidary Network with Migrants Japan (SMJ)

- <http://migrants.jp/?lang=en/>





Source: Inter Press Service News Agency < <http://www.ipsnews.net/2014/04/japan-seeks-foreign-workers-uneasily/> >