

Education-oriented Immigration in Japan and the Legacy of the 'Plan to Accept 100,000 Foreign Students'

Claudia Ishikawa

Education Center for International Students

Abstract

Japan's 'Plan to Accept 100,000 Foreign Students' proved an endeavour of unprecedented dimensions. Prime Minister Yasuhiro Nakasone's pledge in 1983 to increase the number of foreign students in Japan's higher education sector tenfold within a span of twenty years not only had serious ramifications for universities, higher education policy, and the MEXT budget. The project was also to prove an immense challenge for the Ministry of Justice Immigration Bureau, with consequences continuing to be felt in education-oriented immigration control policy today.

'Immigration for study purposes' is attracting increasing attention amongst student-importing nations. Supported by primary materials, this paper intends to track and interpret developments in the little-explored field of education-seeking immigration in Japan. Analysing changes in the relevant MOJ laws, regulations and notifications, the paper seeks to uncover the impact of foreign student policy on immigration developments and outcomes. Meriting particular attention are the MOJ's deregulatory drive of the late 1990s, which propelled foreign student numbers to their current levels, and the equally drastic U-turn to a policy of retrenchment in late 2003. Issues raised by the unprecedented influx of foreign students, including the jurisdictional blur between the Immigration Bureau and universities, the growing significance of foreign student labour, and a concern that foreign students may constitute a threat to the order of Japanese society are discussed. The paper concludes by a briefly deliberating on the legacy of the 'Plan'.

Keywords

Immigration control; education-seeking immigration; 'Plan to Accept 100,000 Foreign Students'

Contents

Chapter 1. Introduction

- 1.1 Background
- 1.2 Significance
- 1.3 Approach

Chapter 2. Policy Developments and Immigration Outcomes

- 2.1 The 1983 Policy Watershed
- 2.2 Transforming Policy Objectives into Immigration Law
 - 2.2.1 Developments Prior to the *ICRRA* Revision of 1989
 - 2.2.2 The Revised *ICRRA* and its Ramifications
 - 2.2.3 Foreign Students in the Revised *ICRRA*
- 2.3 The Impact of the Japanese Recession and Asian Financial Crisis of 1997~1998
- 2.4 Comment: Policy Objectives and Immigration Outcomes

Chapter 3. Signs of a Policy Reversal

- 3.1 A Change in Priorities
- 3.2 MOJ/MEXT Retrenchment on Foreign Student Admission
- 3.3 Comment: A Case of Hindsight

Chapter 4. Topical Issues in Education-oriented Immigration Control

- 4.1 Universities-cum-Government: Drawing the line
- 4.2 Foreign Students as Workers

Chapter 5. Conclusion.

- 5.1 Multifunctionalism Revisited

Selected Bibliography

Appendices

Appendix 1. Glossary of Legal Provisions

Appendix 2. MOJ Statistics on Education-oriented Immigration in Japan

Acronyms

ICRRA	Immigration Control and Refugee Recognition Act (出入国管理及び難民認定法)
LDP	Liberal Democratic Party (自由民主党)
MOE (~1999)	Ministry of Education
MEXT (2000~)	Ministry of Education, Culture, Sports, Science and Technology (文部科学省)
METI	Ministry of Economy, Trade and Industry (経済産業省)
MHLW	Ministry of Health, Labour and Welfare (厚生労働省)
MOJ	Ministry of Justice (法務省)
NPA	National Police Agency (警察庁)

Chapter 1. Introduction

1.1 Background

An increased flow in cross-border migration has been a conspicuous trend for the past two decades and this development, paralleled by demographic changes in major industrialised societies, has led to the growing significance of immigration control policies on a global scale. It is within this context of globalisation that, since the 1980s, the immigration laws of several industrialised countries were largely revised to reinforce a dual objective¹, namely 1) to firmly exclude

foreign manual labour, except where the admission framework regulating this type of labour is finely tuned to ensure that it is of a strictly ‘temporary nature’² and simultaneously, 2) to relax immigration control provisions that govern the admission of highly qualified foreigners (principally, HRST <Human Resources in Science and Technology>), who are regarded as a benign influence on the national economy, social infrastructure and internationalisation of their host country. Interestingly, the admission of education-seeking immigrants does not fit snugly into either line of categorisation. Such immigration can be considered to fall under both ‘temporary’ and (potentially) ‘qualified’ entry streams, and the duality inherent in its nature raises a policy dilemma for the relevant government agencies.

Japan, following Prime Minister Yasuhiro Nakasone’s ‘Plan to Accept 100,000 Foreign Students’ in 1983, officially joined the growing international bandwagon aiming to attract education-oriented immigration. And, indeed, current immigration statistics attest to the success of this particular immigration drive. If, in addition to ‘college students’, one considers ‘pre-college students’ and ‘foreign trainees’ to be engaged in the pursuit of an education³, then, as of 2004, 227,398 education-seeking immigrants were registered in Japan, constituting 11.5% of the resident foreign population of 1,973,747 <MOJ figures published in 2004>⁴). Notably, the education-seeking segment of the foreign resident population in Japan, (increasing from 125,817 in 1999 to 227,398 in 2004 <up 81%>), actually exceeds the total sum of foreigners holding an employment activity based residence status. If one considers resident ‘college students’ alone, then the respective numbers can be

¹ Japan’s *Immigration Control and Refugee Recognition Act* (出入国管理及び難民認定法) <Cabinet Order No. 319, amended by Law No. 79> of June 1, 1990 and Germany’s *Foreigner’s Act (Ausländergesetz – AuslG)* <Federal Law Gazette I, p. 1354> of January 1, 1991 are cases in point.

² Germany’s vocational trainees, project-tied workers and seasonal workers, and Japan’s Foreign Trainees and Technical Interns would constitute examples.

³ ‘留学生’, ‘就学生’, and ‘研修生’, respectively. *Table I(4)* pertaining to Articles 2-2 and 19 of Japan’s *Immigration Control and Refugee Recognition Act (ICRRA)* define these groups’ permitted activities to be the receipt of education or training.

⁴ 入管協会『平成17年度 在留外国人統計』(2005年).

seen to have more than doubled in the same five-year span from 64,646 (1999) to 129,873 (2004), comprising 6.6% of Japan's resident population of foreigners⁵.

It is precisely because Japan, where foreign residents constitute 1.5% of the total population, is ostensibly restrictive vis-à-vis immigration, that the implementation of an increasingly deregulated foreign student admission policy raises questions as to government policy and the ramifications thereof.

1.2 Significance

Generally, research on the legal framework of immigration control has, thus far, concentrated almost exclusively on labour immigration and the right to asylum. This study aims to break new ground by focusing on the important but neglected field of immigration into the higher education sector. Education-oriented immigration is significant to any country's national interests due to its inherent multifunctionalism. It simultaneously comprises 1) a form of diplomacy, 2) a potential source of income, 3) a side-door entrance to the unskilled labour market of the host country and, 4) an entry point to the host country's future immigrant body. In the long-term, it also aids the creation of an environment for sustainable investment, taking the form of human resource development.

And again, although foreign student policy is traditionally regarded as the terrain of the Ministry of Education, as has been demonstrated in Japan, issues governing the admission of foreign students, the regulation of their activities, including part-time work, period of residence and changes therein are, in principal, determined not by the Ministry of Education (MEXT), but by the Ministry of Justice's Immigration Bureau. It is the latter's deregulatory drive in the past decade, in particular, that has propelled foreign student numbers past the '100,000 Foreign Students' target launched in 1983.

1.3 Approach

This research, analysing relevant Ministry of Justice legislation, ordinances, notifications, white papers, policy reports and academic sources, intends to elucidate developments in education-seeking immigration within Japan's immigration control framework. The realisation of the Nakasone Plan cannot be considered an unmitigated success in Japan's immigration history. The sudden and large-scale admission of education-seeking immigrants, a direct consequence of what until 2004 comprised increasingly deregulated and simplified entry criteria, has bred an array of issues.

With the objective of interpreting junctures and problems in this field, the author wishes to clarify 1) policy issues concerning education-based immigration in Japan since the early 1980s, 2) corresponding amendments in the immigration law structure governing the admission of education-seeking immigrants, and 3) current issues in education-based immigration, as raised by these amendments, such as jurisdiction, participation in the labour market and national security. Finally, the author wishes to gauge the current state of law and policy developments within Japan, as they relate to the admission of foreign students.

The author focuses primarily on immigration control with respect to foreign students in Japan's higher education sector, i.e., those defined as 'college students' in *Table I(4)* pertaining to Articles 2-2 and 19 of Japan's *Immigration Control and Refugee Recognition Act (ICRRA)*, although 'pre-college students' are referred to where relevant. Whilst 'foreign trainees' are also defined under the *ICRRA* as being engaged in a form of education, issues revolving around their admission and permitted activities exceed the scope of this paper.

⁵ *ibid.*

Chapter 2. Policy Developments and Immigration Outcomes

2.1 The 1983 Policy Watershed

The virtues of education-oriented immigration have long been universally extolled. Succinctly put by Former U.S. Secretary of Defence William Perry, “Attracting foreign students...is a win-win-win situation. It’s a win for our economy, it’s a win for our foreign policy and it’s a win for our educational programs”⁶. Japan, too, more than two decades ago, categorically recognised foreign student policy, ‘to constitute an important form of national policy which, in addition to mutually raising the standard of education and research in Japan and other countries, engenders and promotes the spirit of international co-operation and understanding and, furthermore, contributes to the nurturing of human resources in developing countries’⁷.

Actually, the early 1980s, during which time the merits of education-seeking immigration were publicly acknowledged, constituted a watershed in Japan’s international education policy. The potential for the admission of a larger foreign student population had already partially been realised in the 1970s by China’s liberalisation and Malaysia’s ‘Look East Policy’, as well as by the taking-off of Japan’s ‘miracle economy’, which resulted in particularly Asia’s shift of focus from the Western world to this new economic superpower⁸. However, it was not until the proclamation of Prime Minister Yasuhiro Nakasone’s ‘Plan to Accept 100,000

Foreign Students’ in 1983 that measures to sharply increase Japan’s foreign student population began to be implemented both in terms of academic infrastructure and in the easing of immigration regulations⁹. Foreign student intake, which almost thirty years after the inauguration of the ‘Japanese Government Scholarship System’ in 1954 still languished at the 10,500 mark¹⁰, embarked upon an unprecedented ascent.

This development naturally leads one to enquire as to what factors lay behind the sudden action in government policy. Firstly, as outlined above, there was an increased perception of international competition for the latent benefits to the state of educating foreign students. Japan, now an economic powerhouse and watchful of the statistics of its competitors, possibly felt the need to set a publicly announced target, such as the admission of 100,000 foreign students by the year 2000. Although still lagging far behind the United States’ intake of 310,000 students, the attainment of this numerical objective, it was calculated, would put Japan on a par with France, another non-English speaking country with a strategic approach to the admission of foreign students, and well ahead of both the United Kingdom and Germany¹¹. Secondly, Japan in the early 1980s recognised that it was facing a demographic quandary. Its population of eighteen-year-olds was set to decrease as of 1993¹² and, indeed, the target number of 100,000 foreign students may have been calculated as a substitute figure for the estimated loss of 100,000

⁶ ‘Editorial: Asian Students in Japan’, *IHT/Asahi* (4 March 2005)

⁷ 総務省「留学生の受入れ推進施策に関する政策評価書（要旨）」p. 1, 平成 17 年 1 月.

⁸ 栖原 暁「日本の留学生政策」p. 165 in 駒井 洋（編著）『国際化の中の移民政策の課題』, 明石書店（2002）.

⁹ The proposal of the ‘Plan to Accept 100,000 Foreign Students’ was elucidated in 「21 世紀への留学生政策に関する提言（昭和 58 年 8 月 31 日）」（*Declaration Concerning Foreign Student Policy Towards the 21st Century <1983>*）, 「21 世紀への留学生政策の展開について（昭和 59 年 6 月 29 日）」（*Development of Foreign Student Policy Towards the 21st Century <1984>*）, and 「教育改革に関する第 2 次答申（昭和 61 年 4 月 23 日）」（*2nd Report on Educational Reform <1986>*）. It was the latter Report, as compiled by the Ad Hoc Council of Education Reform, that prompted the Cabinet Resolution of May 1, 1986 entitled, 「臨時教育審議会の第 2 次答申に関する対処方針について」（*Action Plan Concerning the 2nd Report of the Ad Hoc Council on Education Reform*）. Author’s translation.

¹⁰ 栖原 暁「日本の留学生政策」, *op. cit.*, p. 165

¹¹ Figures in the reference materials attached to 「21 世紀への留学生政策に関する提言」（see note 7） record the admission of foreign students in the relevant countries as follows: United States: 311,882; France: 119,336; West Germany: 57,421; United Kingdom: 52,889; Japan: 10,428.

¹² 『当初の「留学生受入れ 10 万人計画」の概要』, 文部科学省ホームページ（<http://www.mext.go.jp/>）.

domestic students in higher education by the year 2000¹³. Whether, in light of the booming economy, an ulterior motive, such as the import of a cheap manual labour force, played a significant role is open to debate. It should not, however, be considered a primary determinant in the drive to admit foreign students.

In order to achieve the 100,000 mark, Japan was required to shift its emphasis from funding Japanese Government Scholarship students to increasing the size of its independently-financed foreign student body. A ratio of 1:9 was envisaged, with independently-financed students forecast to burgeon from 8,436 in 1983 to 90,000 by 2000¹⁴. Accordingly, the Ministry of Education implemented a miscellany of measures to facilitate the attainment of the 'Plan', with particular attention focusing on the adaptation of the university infrastructure to meet foreign students' special educational needs. Additionally, plans were devised for the establishment of the Association of International Education, Japan (AIEJ), the promotion of Japanese language education both in Japan and abroad, the securing of accommodation for foreign students, a quota of scholarships (Honours Scholarships) for independently-financed students, and follow-up support pursuant to the repatriation of foreign students¹⁵. Significantly, in order to facilitate the realisation of the '100,000 Foreign Students' plan, the MOE secured a budget for the promotion of foreign student admission that was to swell from 7.7 billion yen in 1983 to 53.2 billion yen in 2003¹⁶, a seven-fold increase¹⁷.

2.2 Transforming Policy Objectives into Immigration Law

The 'Plan to Accept 100,000 Foreign Students' a project of substantial dimension, self-evidently called for close collaboration with other Ministries, in particular, the Ministry of Foreign Affairs (MOFA) for the overseas propagation of Japan's interests, and the Ministry of Justice (MOJ) which, enjoying jurisdiction over immigration matters, was pivotal to the success of the 'Plan'. In principal, in international customary law, it is a State's prerogative as to what foreigners to admit, under what conditions, and for how long. According to administrative interpretation in Japan, the State's prerogative is interpreted to lie with the Minister of Justice, with the rules governing the entry and departure of foreigners provided for in the *ICRRA*¹⁸.

2.2.1 Developments Prior to the *ICRRA* Revision of 1989

In terms of immigration control, at the time of the implementation of the Nakasone Plan in 1983, the approximately 10,500 foreign students in Japan resided under a '4-1-6' residence status¹⁹. Japan's residence status system for foreigners, had been in operation since the promulgation of the *Immigration Control Ordinance* on October 4, 1951 and, in the course of thirty years, with the exception of a few minor modifications, had been left largely untouched²⁰. Although, structurally, this remained the case until the substantial revision to the *Immigration Control and Refugee Recognition Act (ICRRA)* in 1989²¹, the 'Plan to Accept 100,000 Foreign Students' had obvious

¹³ 栖原 暁, *op. cit.*, pp. 166~167.

¹⁴ 『当初の「留学生受入れ10万人計画」の概要』 *op. cit.*

¹⁵ *ibid.*

¹⁶ One billion being taken to equal one thousand million in the British counting system.

¹⁷ 「留学生の受入れ推進施策に関する政策評価書（要旨）」 *op. cit.*, p. 6.

¹⁸ *ICRRA* <Cabinet Order No. 319>, Articles 1 and 2-2.

¹⁹ *ICRRA*, amended by *Laws No. 85* and *86* of January 1, 1982.

²⁰ *Cabinet Order No. 319*, in force from November 1, 1951. Prior to the establishment of this Ordinance, the criteria for admitting foreigners had been based on intended period of residence (temporary visitor; semi-permanent resident; permanent resident), rather than intended activity. 畑野 勇・倉島研二・田中信也・重見一崇・石崎勇一 『外国人の法的地位—国際化時代と法制度のあり方—』 信山社, 2000年, pp. 88~90.

²¹ *ICRRA*, amended by *Law No. 79*, in force from June 1, 1990

and immediate ramifications for education-oriented immigration policy.

First, in June 1983, a mere three months after the announcement of the 'Plan', *MOJ Circular No.665* was issued, pertaining to 'part-time work of foreign students studying at institutions of higher education'²². On the ground that foreign students, many of whom originated from developing countries, should be allowed, within specified limits, to cover their expenses through part-time work, 4-1-6 residence status holders were now automatically granted a permit to work for up to twenty hours per week along with the issuance of their visa. This development ran counter to the previous policy of not giving permission to foreign students to engage in part-work.

A second important development in immigration policy pertaining to foreign students, and one inextricably linked to the 'Plan to Accept 100,000 Foreign Students' was the Immigration Bureau's simplification of entry requirements to Japan for what are known as 'pre-college students'²³. Whilst Japanese language schools, precluded from the scope of the *School Education Law* and not officially accredited, were initially not considered by the MOE to constitute part of foreign student policy, the Immigration Bureau may have anticipated that, pursuant to the announcement of the '100,000 Foreign Student Plan', a considerable number of prospective 'college students' would first seek admission to Japanese language schools as a means of preparation for Japanese university entrance examinations²⁴. In 1984, application procedures for a

'pre-college' residence status were simplified with the instigation of the system of application for residence status by proxy²⁵. This in turn helped to generate the boom in the establishment of Japanese language schools and, consequently, foreign students attending Japanese language schools, who had previously been listed as 'Other' under the 4-1-16-3 residence status, now received a 'pre-college student' label²⁶ due to their growing presence.

The 'application by proxy' model was to be further refined in May 1987 with an amendment to the *ICRRA Enforcement Regulations*²⁷. Accordingly, a 'representative application system' (申請取次制度) was established which, aiming at a more streamlined and efficient processing of applications, permitted Immigration Bureau-approved individuals and institutions to complete a variety of immigration-related application procedures instead of actual applicants²⁸. Thus, in addition to applying for the initial 'college student' residence status, educational institutions were now, for example, authorised to apply for extensions of period of residence on behalf of their students.

Working in parallel, MOE policy drives in the late 1980s included the establishment of foreign student centres at national universities, the holding of foreign student fairs in selected Asian countries, and implementation of a tuition reduction/waiver system for independently-financed foreign students. It needs to be underscored, however, that it was the oft overlooked Immigration Bureau tactics that lowered the crucial initial hurdle of entry into Japan. Decisions to ease the administrative

²² 法務省管総第 665 号「大学等高等教育機関で勉学する外国人留学生のアルバイトに関する出入国管理行政上の取り扱いについて (参考通知)」1983 年 6 月 28 日。

²³ 就学生。

²⁴ 栖原 暁, *op. cit.*, pp. 171~176.

²⁵ 代理人申請。Importantly, language schools were now permitted to apply for the pre-college student residence status on behalf of their prospective students.

²⁶ The number of Japanese language schools rose from 49 in 1984 to 309 in 1988, increasing by a factor of six in the space of four years. (栖原 暁, *op. cit.*, pp. 174~175.)

²⁷ MOJ Ordinance No. 54 of 1981, 「出入国管理及び難民認定法施行規則」(昭和 56 年法務省令第 54 号)。

²⁸ 『改定 2 版 入管法 Q&A』出入国管理法令研究会 (編集), 三協法規, pp. 180~181.

burden of applying for a 4-1-6 residence status, to link prospective Japanese language school students to attainment of the 100,000 foreign student number, as well as the granting of permission to 4-1-6 and 4-1-16-3 residence status holders to work part-time, did much to advance the ‘Plan to Accept 100,000 Foreign Students’. Between 1983 and 1989 alone, the number of foreign residents holding a 4-1-6 (college student) status rose threefold from 10,428 to 31,251. Of these 31,251 foreign college students, 25,852 (83%) were self-financed²⁹.

2.2.2 The Revised ICRRA and Its Ramifications

The 1989 amendment to the *ICRRA* proved a substantial revision, affecting admission criteria of most foreigners in Japan, including students. The increasing pressures of globalisation provided the backdrop to the amendment: current provisions had failed to adequately respond to, on one hand, the internationalisation of Japanese industry and a concomitant demand for a larger and more diverse foreign labour force, and, on the other, an economic disparity between Japan and her neighbours that served to attract an increasing number of ‘irregular’ unskilled foreign workers, some entering under the guise of foreign students.

Admittedly, Japan retained the ‘residence status system’ provided for in Article 2-2 of the *ICRRA* as the legal framework from which to regulate the entry and residence of aliens. This, in essence, comprises a ‘positive list’ type of immigration system, whereby an alien may enter Japan if his or her intended activities or status comply with those defined in one of the categories (residence statuses) of *Annexed Tables I or II* of the *ICRRA*³⁰. One drawback of a ‘positive list’ immigration framework lies in its inflexibility in responding rapidly and effectively to the various shifts

in foreign labour demands and immigration policy. Indeed, between the implementation of *Immigration Control Ordinance* of 1951 and its partial amendment in 1989, not a single addition was made to the eighteen types of permissible residence statuses, despite the pressures of high growth and globalisation.

The 1989 revision to the *ICRRA* sought to remedy this problem and clarify admission requirements by 1) increasing the types of permissible residence statuses from eighteen to twenty-seven, 2) facilitating transparency through actually labelling residence statuses rather than classifying them by numbers (e.g., residence status ‘4-1-6’ became ‘college student’; 4-1-6-2 became ‘foreign trainee’), and, 3) specifically outlining the landing criteria for the acquisition of those residence statuses deemed to have a potential influence on Japanese industry and society, a category which includes foreign ‘college students’³¹.

2.2.3. Foreign Students in the ICRRA Revision

A translation both of the scope of permitted activities and landing criteria for ‘college students, as regulated by the amended *ICRRA* and related ordinances, is available on the MOJ home-page. Perhaps, of more significance than the actual substance of the provisions, is the fact that landing criteria and permissible activities were instantaneously clarified and disseminated through the 1989 revision. Moreover, a key innovation provided for in Article 7-2 of the revised *ICRRA* served to further facilitate the entry of foreign students into Japan, namely the introduction of the *Certificate of Eligibility for a Status of Residence*³².

Hitherto, persons intending to acquire the residence status of ‘college student’ were required, according to

²⁹ Student Services Division, Higher Education Bureau, MEXT, *Outline of the Student Exchange System in Japan*, (2004), p. 7.

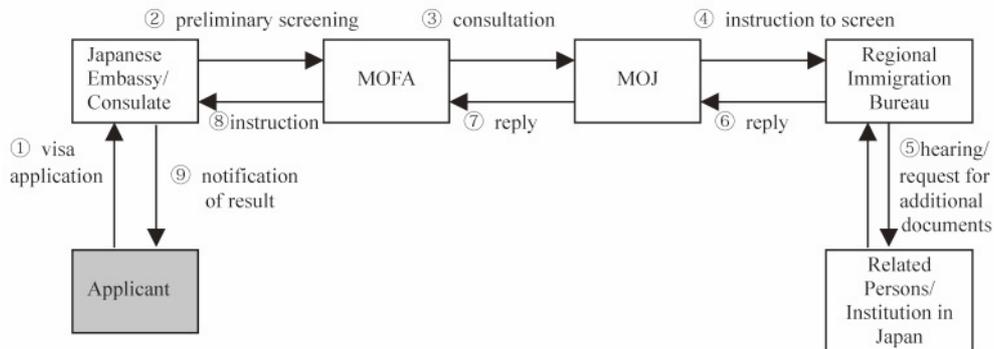
³⁰ *Annexed Table I* (Pertaining to Articles 2-2 and 19 of the *ICRRA*); *Annexed Table II* (Reference in Articles 2-2, 7, 22-3, 22-4, 61-2-2, 61-2-8 of the *ICRRA*).

³¹ Landing criteria are set forth in the *Ministerial Ordinance to Provide for Criteria pursuant to Article 7, Paragraph 1(2) of the Immigration Control and Refugee Recognition Act (MOJ Ordinance No. 16 of May 24, 1990)* < 出入国管理及び難民認定法第7条第1項第2号の基準を定める省令 (平成2年5月24日法務省令第16号) >.

³² 在留資格認定証明書.

Diagram 1. Procedures for 'College Student' Visa Application³⁴

A. Orthodox Procedure



B. Procedure via 'Application for Certificate of Eligibility'



Article 7-1, Clauses 1~4 of the *ICRRA*, to demonstrate that their intended activities fall within the purview of the activities detailed in *Annexed Table I*, as well as to satisfy the landing criteria set forth in *MOJ Ordinance No. 16*, a potentially time-consuming application process involving the local Japanese diplomatic mission, MOFA the MOJ and local immigration bureau with jurisdiction in the area of the host institution. The introduction of the *Certificate of Eligibility* system, as detailed in *Diagram 1*, greatly reduced both the waiting-time and administrative workload involved in the verification of the eligibility of applicants by permitting the applicant (if in Japan) or, more likely, a proxy (in this instance, the host university) to apply directly to the regional immigration bureau for

a *Certificate of Eligibility of Residence* with the relevant supporting documentation.

If the applicant was deemed to meet the requirements laid down in the landing criteria, he or she was delivered the *Certificate* to present to the Japanese diplomatic mission for the granting of a visa³³. It is more than conjecture to assume that simplified visas application procedures will have encouraged students contemplating study abroad to consider Japan amongst other study abroad options.

Another enticement to study in Japan comprised the establishment of a system entitled, '*Permission to Engage in an Activity Other Than That Permitted*

³³ 前田修身・本田庸二・能登八郎 編著『ビジネス必携 外国人の入国・在留手続き』法律情報出版, 2005年.

³⁴ 出入国管理法研究会 編『外国人のための入国・在留・登録手続きの手引 [7訂版]』日本加除出版, 2004年, pp. 60~61. English translation revised by author.

*under the Status of Residence Previously Granted*³⁵, basically a part-time work permit for foreign students. Albeit foreign students were no longer automatically issued with permission to engage in part-time employment, in line with the revision to the *ICRRA*, they were, upon application, allowed to work up to four hours per day during semester time, and eight hours per day during long vacations.

In the four-year period following the amendment proposal of 1989, MOE statistics attest that the number of 'college students' rose from 31,251 to 53,787, an increase of 72%.

2.3 The Impact of the Japanese Recession and Asian Financial Crisis of 1997-1998

Japan was on track to meet its 100,000 foreign student target and further deregulatory measures would probably have been unnecessary for the purpose of attaining this objective, had the country not suffered the parallel blow of 1) the worst recession in its post-war history, and 2) the Asian Financial Crisis of 1997~1999

The prolonged recession in this country has given rise to the label of 'Japan's Lost Decade'. It comprised the bursting of the bubble in Japanese stock prices in 1990 (by mid-1992, equity prices had fallen by approximately 60%) and the decade-long downward spiral of land prices. Indeed, real GDP growth in Japan since the early 1990s has averaged a mere one percent a year. Naturally, as confidence in the 'Look East Policy' and 'Japanese Miracle' shattered, foreign students could be expected to turn to more economically buoyant settings for their study abroad experience.

The Japanese recession was compounded by the Asian Financial Crisis of 1997. This crisis, which first affected Thailand in July 1997 (although its advent had already been foreseen in 1996) seriously impacted currencies, stock markets, and other asset prices in several East Asian countries, generating severe economic slumps principally in Indonesia, South Korea, Thailand, Hong Kong, Malaysia, Laos and the Philippines. Although China (PRC), the principal repository of foreign students to Japan, was only marginally affected by the crisis, the economy of South Korea, the second largest exporter, was seriously dented. Taking into consideration that the composition of Japan's resident foreign student body, at any given time, is 90% Asian³⁶, the impact of this crisis, both real and psychological, should not be underestimated.

The Immigration Bureau reacted expediently. The domestic recession and consequent sluggish growth in foreign student numbers prompted two notable amendments to the *ICRRA Enforcement Regulations*: Firstly, in August 1994, the Immigration Bureau abandoned the requirement that the personal guarantor form, the submission of which comprised a prerequisite for a 'college student' visa as provided for in Annexed Table 3 of the *ICRRA Enforcement Regulations*³⁷, be accompanied by supplementary materials such as proof of employment, income slip, tax payment slip, and proof of 'seal' registration. This was followed in July 1995 by the deletion of items on the form concerning the obligation of the personal guarantor to cover the maintenance and travel costs of the 'college student', if the need arose. Significantly, in tandem with the decreasing significance of the personal guarantor, a new guarantor system for foreign students, namely the institutional guarantor was inaugurated³⁸. In view of

³⁵ 資格外活動 法第 19 条第 1 項・第 2 項。

³⁶ 入管協会 『在留外国人統計』。

³⁷ 本邦に居住する身元保証書（出入国管理及び難民認定法施行規則＜別表第三＞（第六条、第六条の二、第二十条、第二十四条関係））。

³⁸ 「留学生受入れ機関保証」。As alluded to in chapter four, the institutional guarantor system currently comprises a significant control mechanism in foreign student affairs.

the difficulty in finding personal guarantors resident in Japan, and the consequent use of ‘brokers’, the personal guarantor system had come to be regarded both as an impediment to the drive to attract 100,000 foreign students and as an incentive for criminal syndicate activity.

In 1995, however, it became apparent that foreign student numbers were stagnant, and that, in the absence of extraordinary measures, the ‘Plan to Accept 100,000 Foreign Students’ by 2000 would prove unattainable. Indeed, Immigration Bureau statistics indicate that between 1994 and 1997 the number of resident foreign students in Japan dipped from 61,515 to 58,271³⁹, hardly a precipitous drop, but enough to affirm that a publicly announced pledge would not be met. Alarmed by the trend, the Minister of Education set up a foreign student policy colloquium in December 1996 chaired by Esaki Reona, President of Tsukuba University to address the issue, and two months later, the ruling Government party, the LDP, breathed life into its Special Committee on Foreign Student Issues, chaired by Ohno Yoshinori, resulting in June 1997 in a report on ‘*The Promotion of Foreign Student Exchange*’⁴⁰. The Ministry of Justice Immigration Bureau was not to be left behind in this scramble. It took a particularly practical approach to realising the 100,000 foreign students plan, implementing an array of measures, the most noteworthy being listed below:

1. In December 1996, at the same time as the MOE established its foreign student policy colloquium, the Immigration Bureau abolished the personal guarantor system in its entirety (amendment to *ICRRA Enforcement Regulations*, Annexed Table 3).
2. In September 1998, the scope of ‘Activities not permitted under Status of Residence’, i.e., permission to work part-time was loosened. The daily permissible work ceiling of four hours,

deemed too restrictive, was amended to a more flexible twenty-eight hours per week. Moreover, as an application for a ‘work permit’ could now be submitted by the student’s institution in the capacity of representative, applicants did not have to undergo immigration procedures directly.

3. In October 1999, invoking a reduction in the application burden and simplified, more rational screening procedures, the Immigration Bureau extended the maximum residence period for college students from one to two years (amendment to *Annexed Table 2* pertaining to Article 3 of the *ICRRA Enforcement Regulations*). This revision comprised part of the ‘Three Year Plan for the Promotion of Deregulation’ (Cabinet Resolution of March 30, 1998)⁴¹. Simultaneously, the dependents of college students were also granted a maximum two-year residence period.
4. In January 2000, following the 1999 draft of the ‘Entry and Residence Screening Policy for College and Pre-college Students’⁴², a miscellany of application procedures relating to ‘college students were radically simplified *for those educational institutions deemed to be managing foreign student affairs appropriately*. For example, henceforth, where an institutional representative applied for a ‘certificate of eligibility of residence’ on behalf of a prospective foreign student, the only documentation required would comprise 1) the application form for the certificate, 2) two photographs, and 3) a statement demonstrating financial viability⁴³.
5. In April 2000, the dependents of ‘college students’ were granted permission to work in unrestricted occupations for a period of up to 28 hours per week, this, too, taking the form of ‘Activities not permitted under Status of Residence’. Citing strong demand from the ‘dependents’, as well as the Government’s

³⁹ 法務省入国管理局『平成10年版 出入国管理—21世紀の円滑な国際交流のために—』p. 181.

⁴⁰ 『留学生交流の推進について』；栖原 暁, *op. cit.*, pp. 162-163.

⁴¹ 「規制緩和と推進三カ年計画」, 14 法務関係 (平成11年3月30日閣議決定).

⁴² 「留学生及び就学生の入国・在留審査方針」, 1999年12月.

⁴³ 平成12年1月24日「今後の留学生及び就学生の入国在留審査方針について (通知)」, 12学留第2号

policy of positive acceptance of foreign students, the Immigration Bureau deemed that it could not fail to act⁴⁴.

MOJ Immigration Bureau white papers and the 2nd *Basic Plan for Immigration Control* buttressed this deregulatory trend. The 1998 white paper pointed out that the Immigration Bureau had actively contributed to the Government's fundamental policy to accept 100,000 foreign students by revising the relevant residence statuses, clarifying landing criteria and positively facilitating academic and cultural exchange⁴⁵. In 2003, the following edition continued to emphasise the 'promotion of academic, cultural and youth exchange and positive acceptance of college students and pre-college students', highlighting achievements in deregulation⁴⁶. This, in turn, echoed Part III, Section 1(3) of the *Basic Plan for Immigration Control* of 2000, which asserted that, 'it is desirable that more positive acceptance of college students and pre-college students into our country shall be promoted, since they are expected to play active roles in the future of our country as well as their countries'⁴⁷.

The rest of the story is well-documented. After stalling for a couple of years, foreign student numbers began their re-ascent, with registered 'college students' more than doubling between 1998 and 2004 from 59,648 to 129,873, the magic 100,000 having been surpassed in 2002. Undoubtedly, the Chinese economic boom will have boosted foreign student numbers; Chinese students now account for 70% of registered 'college

students', up from 54% in 1998. However, Immigration Bureau-propelled deregulation, as outlined above, will have done much to bolster even those numbers.

2.4 Comment: Policy Objectives and Immigration Outcomes

If one assumes that the objective of the 'Plan to Accept 100,000 Foreign Students' was simply a numerical target, then it would be difficult to denigrate the combined effort of MEXT/MOJ in accomplishing it. Furthermore, whether by accident or design, foreign policy kudos have been earned in the form of intellectual contribution to overseas students (and, indirectly, their home countries), 90% of whom hail from Asia. Indeed, despite the fact that the ratio of Japanese Government sponsored foreign students to privately-financed students has now ebbed from 1:4 to 1:10, this figure still compares favourably to 1:17 in France, 1:37 in Germany, 1:58 in the United Kingdom, and 1:189 in the United States⁴⁸.

However, a glimpse at other international figures signals comparative failure; rather ironically given the fact that 10% of foreign students in Japan can expect direct Government support, and a considerable portion of 'independently-financed' students benefit from government-related scholarships (e.g., 'Honours' or JASSO scholarships) and/or tuition fee waivers. *Table 1* shows the movement of foreign student numbers in selected OECD countries.

Whilst the rate of increase in foreign student numbers

⁴⁴ 法務省入国管理局『平成15年版 出入国管理—新時代における出入国管理行政の対応—』p. 119.

⁴⁵ 法務省入国管理局『平成10年版 出入国管理』p. 82.

⁴⁶ 法務省入国管理局『平成15年版 出入国管理』p. 117.

⁴⁷ 2000年3月24日法務省告示第119号『出入国管理基本計画(第2次)』(Basic Plan for Immigration Control (2nd Edition))

⁴⁸ 総務省『留学生の受入れ推進施策に関する政策評価(説明資料)』平成17年1月11日.

⁴⁹ Sources: Australia – AUSSTATS and Australian Education International <Part of DEST>; France – Ministry of Education; Germany – Wissenschaft weltweit <DAAD> (Whereas German figures for 1983 make no distinction between long-term foreign residents and foreigners residing in Germany for the purpose of study, figures for 2004 denote the latter.); Japan – MEXT/JASSO <Japan Student Services Organisation> (Readers should note that there is a conspicuous discrepancy between MEXT and MOJ statistics on foreign students.); United Kingdom – HESA; United States – Open Doors. 中央教育審議会『新たな留学生政策の回転について(答申)—留学生交流の拡大と質の向上を目指して—』平成15年12月16日.

Table 1. Number of Students in Higher Education: A Comparison⁴⁹

Country	No. of Foreign Students (1983)	No. of Foreign Students (2004/2005)	Foreign Students as % of Total Student Body (2004)
Australia	13,700	163,930	17.8%
France	119,336	approx. 240,000	7.6%
Germany	66,455	180,306	8.9%
Japan	10,428	121,812	2.6%
United Kingdom	52,889	318,400	13.9%
United States	311,882	565,039	6.6%

is commendable, Japan, more than two decades after the Nakasone pledge, still lags considerably behind its competitors. Indeed, a recent Australian Government report omitted to include Japan amongst even its Asian competitors in international education⁵⁰. Moreover, the low number of foreign students as a proportion of the total student body bespeaks an insular and uncompetitive higher education sector. Whilst Japan may have won the battle for 100,000 foreign students, it seems to have lost sight of the bigger game.

Chapter 3. Signs of a Policy Reversal

3.1 A Change in Priorities

In December 2003, the Central Council for Education's Sub-committee for Universities issued a much-publicised report entitled, 'Development of New Policies for International Student Exchanges'⁵¹. Remarking that foreign student numbers had doubled in the five years from 1998, and anticipating a further increase of 30,000 within the next five years as the direct consequence of 1) economic growth in Asia, especially China, with the concomitant desire to participate in higher education, 2) the ready admission by Japanese universities of foreign students due to a decrease in the Japanese student population and, 3) the Immigration Bureau's simplification of landing criteria, the report established

a new, cautionary direction for international student exchange. It was noted that, in the absence of a suitable framework for foreign student admission at universities, including appropriate screening examinations, academic guidance, and attendance registers, the hitherto lenient acceptance policy had resulted in both the admission of foreign students who lacked a desire to learn and cases of illegal work.

MEXT had switched course in its student exchange policy and the new guidelines recommended, 1) the promotion of reciprocal exchange, rather than simply the hosting of foreign students, and 2) more attention to the quality, rather than quantity of foreign students, and concomitant improvement in financial support taking the form of scholarships.

Hence, whilst a comparison of statistics continued to show Japan to be a laggard in the international competition for foreign students, in 2003/2004 the Japanese Government effectively put a brake on any increased admission. A miscellany of factors had contributed to this decision including, not only a general drop in achievement at host universities, but also increased public sensitivity to incidents involving foreign students, which were studiously reported by the media⁵² and in annual NPA crime statistics⁵³.

⁵⁰ Australian Education International, *Competitor Analysis: Australia and its Competitors in Education Export*, April 2003. Asian countries deemed competitors in the Asian education market were Singapore and Malaysia.

⁵¹ 中央審議会「新たな留学生政策の発展について—留学生交流の拡大と質の向上を目指して—」平成15年12月16日。

⁵² The Sakata Junior College Incident (December 2001), and murder by foreign students of a Japanese family in Fukuoka (*Asia Times*, November 4, 2003) comprise relevant examples.

⁵³ 警察庁『来日外国人犯罪の検挙状況（平成14年）』。

3.2 MOJ/MEXT Retrenchment on Foreign Student Admission

The MOJ, enjoying jurisdiction over the ‘maintenance of peace and order in society’, as well as the ‘immigration control of foreigners’, was not oblivious to these developments. A communication, dated November 11, 2003, from the Immigration Bureau to the Foreign Student Section of MEXT, intended to be transmitted to universities, set out a new, more rigorous screening policy for ‘college students’ and ‘pre-college students’⁵⁴. Reporting an increase in the number of foreign students turned ‘overstayers’, suggesting that crimes committed by foreign students had become a social issue, and stating that almost half of all cases of illegal work exposed by the police was performed by foreign students, the Immigration Bureau outlined a stricter screening policy for issuing *Certificates of Eligibility for Residence Status*. Henceforth, prospective students from countries which sent out a large proportion of ‘overstayers’ (specifically, China, Myanmar, Bangladesh, Mongolia), who applied to universities that had hosted a certain number of foreign students who, in the previous year, became ‘overstayers’, were required to provide the Immigration Bureau with the following documentation, as relates to Article 6 (2) of the *ICRRA Enforcement Regulations*:

1. A detailed account of personal financial resources. (A copy of bankbook or other certificate of money deposit that demonstrated income for the three-year period prior to application.)
2. Proof of Japanese language ability and certificate of graduation. (Where university courses were offered in Japanese, level two of the Japanese Language Proficiency Test <JLPT>.) This documentation was to demonstrate the applicant’s desire to study and academic ability.
3. Personal and education records. (Prospective students who had graduated five years or more prior to application were additionally required to

attach documents outlining their purpose of study and future career path. At issue was whether these applicants had a genuine intention to study.)

Stricter screening criteria by the immigration authorities fell in line not only with MEXT, but also general Government policy. Indeed, on December 18, 2003, the Second Ministerial Meeting Concerning Measures against Crime finalised the ‘Action Plan for the Realisation of a Society Resistant to Crime’⁵⁵. One of the Action Plan’s objectives was to halve the number of illegal foreign residents in the period 2004~2008. This objective affected the MOJ’s Immigration Bureau directly, and naturally had ramifications on foreign students deemed potential illegal residents, taking the form of more stringent landing examinations, as outlined above. Significantly, the Action Plan also called for the establishment of a ‘Revocation of Status of Residence’ system for foreign residents who had already managed to obtain permission for landing, a recommendation that was provided for soon afterwards in the amendment to the *ICRRA* of 2 June, 2004 (Law No. 73)⁵⁶.

The ‘Revocation of Status of Residence’ system, as set forth in Article 22-4 of the *ICRRA*, permits revocation of a residence status where the holder has made false statements regarding intended activities in Japan (Article 22-4-1(2)), submitted fallacious or forged records (Article 22-4-1(3)), or not engaged in the activities corresponding to that of the status issued for three months or more, without justifiable reason (Article 22-4-1(5)). Accordingly, ‘college students’ are subject to status revocation and the ensuing deportation procedures or departure orders (depending on the gravity of the offence) where, 1) they engage primarily in work, as opposed to study, 2) are found to have made false statements or submitted forged documents in their application for a ‘college student’

⁵⁴ 出入国管理局「在留資格「留学」及び「就学」に係わる審査方針について」事務連絡平成15年11月11日。

⁵⁵ 犯罪対策閣僚会議「犯罪に強い社会の実現のための行動計画」, 閣議決定, 平成15年12月18日。

⁵⁶ 在留資格取消し制度. In force from 2 December 2004.

residence status, or 3) are not attending classes.

Naturally, with respect to foreign students, the operation of the 'revocation of residence status' system relies heavily on the co-operation of universities to be effective. After all, it is universities which have been delegated the authority to screen applications, act as representative applicants for certificates of eligibility, process applications for part-time work, and check class attendance. Consequently, in addition to clarifying immigration procedures regarding foreign student affairs at regularly-held conventions attended by educational institutions, the Immigration Bureau has, since 2003, been calling to its offices, as a warning and for further guidance, those education institutions deemed not to be appropriately managing foreign student affairs⁵⁷.

The starkest indicator of the foreign student policy *volte-face* comprised a notification, dated 31 January 2005, from the Student Services Section of the Higher Education Bureau, MEXT to all Japanese higher and further education institutions⁵⁸. Emphasising recent developments, such as 'disappearances' of a number of 'college students', the increasing number of crimes and offences committed by this category of resident, and referring to a general drop in the academic achievements of foreign students, as reported by the MIC in its 'Policy Evaluation Report on the Promotion of Foreign Student Admission'⁵⁹, MEXT urged educational institutions to reinforce their infrastructure to comply with the following:

1. The conduct of rigorous application screening examinations. Foreign students were not to be recruited for the purpose of making up student numbers. Instead, their admission was to be determined by factors such as 'sense of purpose', 'desire to study', academic ability, and financial

resources.

2. The appropriate management of student records. Education institutions were reminded of their responsibility to keep student records and of the need to be aware of foreign students' attendance rates, academic grades, and employment activities. Long-term absentees or students failing to achieve satisfactory grades were to be warned, and those with no prospect of improvement, to be expelled. Furthermore, education institutions were urged to take appropriate measures to ensure that students who had withdrawn from university would repatriate.
3. The despatch of monthly reports to the Immigration Bureau of foreign students who had withdrawn from university, expellees, and those foreign students whose whereabouts were unknown.

'Positive acceptance' (積極的な受入れ) had given way to 'appropriate admission' (適切な受入れ).

3.3 Comment: A Case of Hindsight

The effect of the above measures was to stall new entries amongst foreign student numbers. The third 'Basic Plan for Immigration Control' shows that between 2003 and 2004 the number of new arrivals with the status of 'college student' dropped by almost 14% from 25,460 to 21,958, with new Chinese students decreasing disproportionately by 30%. The text of the Basic Plan, too, underscores the demise of the spirit of the 'Plan to Accept 100,000 Foreign Students'. Whilst hailing foreign students as 'ambassadors from the future', the Basic Plan underscores the 'significant number' of foreign nationals disguised as students whose real intention is to work, who work illegally, or 'commit crimes for financial and other reasons'. It speaks of the need for improvement in quality, both of the students themselves, and of the education institutions that

⁵⁷ 法務省入国管理局 編 『[平成 16 年版] 出入国管理』, 2004 年, p. 110 : 『[平成 17 年版] 出入国管理』, 2005 年, p. 132.

⁵⁸ 「外国人留学生の適切な受入れについて (通知)」, 16 高学支第 113 号, 平成 17 年 1 月 31 日. This document largely followed the recommendations of 第 4 次出入国管理行政懇談会 「人口減少時代における出入国管理行政の当面の課題～円滑化と厳格化の両立に向けて～」平成 16 年 12 月.

⁵⁹ 総務省 「留学生の受入れ推進施策に関する政策評価書」平成 17 年 1 月 11 日.

admit them, in terms of screening, management of enrolment, support services, and education. Moreover, increased co-operation between education institutions and immigration control administration is called for, in order to differentiate between ‘genuine’ and ‘bogus’ foreign students, and to act accordingly⁶⁰.

The sudden brake applied to foreign student immigration, as well as the abrupt shift in focus from ‘quantity’ to ‘quality’ is often taken as a sign that foreign student numbers have exceeded the capacity of Japanese educational institutions and immigration authorities to manage them. Why this should be the case when other OECD nations, including non-English speaking countries, manage to admit a far larger proportion of foreign students needs to be examined in a separate study, particularly in terms of academic infrastructure.

Undeniably, the speed and extent of Immigration Bureau deregulation in the 1990s, as well as the radical development that permits educational institutions to act as the ‘representative applicants’ of prospective students’ in a variety of procedures, has resulted in a variable and occasionally imprudent approach to admission by universities, especially those struggling with student numbers. Nevertheless, the recent Government policy of retrenchment, rather than remedying the problem, only serves to highlight a number of anomalies in foreign student policy and, in a broader sense, Japan’s immigration framework.

One point that needs to be reflected upon is that Government policy miscalculations and infrastructural inadequacies ought not to be concealed behind public cries intoning ‘foreign student crime’ and ‘foreign students as a serious social problem’⁶¹. Although the number of ‘overstayers’ who entered Japan as ‘college

students’ has increased from 5,100 in 2000 to 8,173 in 2005, the latter number still only comprises 3.9% of the total number of ‘overstayers’ (207,299), and should be considered to reflect the corresponding growth in ‘college student’ numbers (see *Appendix 2*). The accusation of increased incidents of crime, including vicious crime⁶², needs to be regarded in the same light. Indeed, whilst NPA statistics of 2005 indicate that the number of ‘college students’ (both legally and illegally resident) arrested for criminal offences between 2000 and 2005 slightly more than doubled from 501 to 1,090, of the 1,090 arrests in 2005, only twenty-one were classified as for vicious crimes⁶³. It is possible that the Immigration Bureau’s emphasis on rising crime amongst foreign students as a reason for tighter control, although not wholly illegitimate, is not altogether sincere. The prominence given to the rising crime rate may be intended to detract from policy and procedural failures.

And again, an assessment that absolves the Immigration Bureau from due responsibility, claiming that jurisdiction for policy-making lies not with an understaffed Bureau, but with government agencies, and in this case principally MEXT, ignores the effect of fine-tuning *ICRRA Enforcement Regulations*.

Chapter 4. Topical Issues in Education-oriented Immigration Control

There is an array of issues fundamental to the debate on education-oriented immigration, both conceptual (such as the impact of discretionary versus regulatory frameworks) and concrete (recourse to appeals and reviews, for example) that need to be explored in considerable depth, but which would benefit more from a comparative approach. This chapter touches upon two themes, ‘jurisdiction’ and ‘work’ that are particularly

⁶⁰ 出入国管理基本計画 (第3次) (*Basic Plan for Immigration Control (3rd Edition*)), 2005年4月7日法務省告示第222号, pp. 7, 14-15.

⁶¹ 『平成17年版出入国管理』 *op. cit.*, pp. 131-132; Immigration Bureau documents distributed to universities.

⁶² 出入国管理局「大学等に入学する留学生について」. Document attached to 「外国人留学生の適切な受入れについて (通知)」, 16高学支第113号, 平成17年1月31日, *op. cit.*

⁶³ 警察庁『来日外国人犯罪の検挙状況 (平成17年中)』平成18年2月1日.

conspicuous issues in Japan, and intrinsically related to the 'Plan to Accept 100,000 Foreign Students'.

4.1 Universities-cum-Government: Drawing the line

There exists in Japan a certain ambiguity in the jurisdiction over the admission of foreign students, in that the line which demarcates the functions of the Immigration Bureau and educational institutions has become increasingly blurred. Following the series of deregulatory enforcement measures outlined above, it is now educational institutions that serve as representative applicants, institutional guarantors, and which consequently bear much responsibility for the screening procedures that permit foreign students to enter the country. Indeed, notwithstanding the MEXT/Immigration Bureau admonishment of January 2005, educational institutions have, since they became 'institutional guarantors' in July 1995, been entrusted with duties to:

1. Where necessary, advise and guide foreign students in everyday life, to ensure the smooth progress of their academic work.
2. Supervise foreign students to ensure that they observe Japan's immigration and other laws and, in the event of any immigration-related problem arising, to contact the local immigration bureau immediately.
3. Advise foreign students to repatriate, or take other appropriate measures, in the event that they suspend their studies indefinitely or face difficulties in achieving their objective of entry to Japan⁶⁴.

Hence, especially with the recent emphasis on appropriate screening for admission (including financial feasibility), the maintenance of attendance registers, the reporting to immigration authorities of absentees, a thorough grasp of students' part-time work activities, confirmation of repatriation, where necessary, etc., educational institutions are, in fact, being required

to perform functions, some of which are traditionally carried out by immigration bureaus. Educational institutions have arguably become an extension of the Government.

Simultaneously, the deregulatory drive of the late 1990s, and particularly, in 2000, the radical simplification of application procedures for 'certificates of eligibility of residence', when submitted by institutional representatives posed a dilemma for educational institutions. A minority of universities and colleges suffering from an inadequate domestic student body have been tempted to abuse acquired discretionary powers, with dire consequences (a prime example being the Sakata Junior College Incident of December 2001). A more significant number of institutions will have admitted foreign students without the academic or advisory infrastructure to support the latter's stay in Japan. The resulting 'drop in quality', as demonstrated by a marked decrease in the percent of foreign graduate students earning degrees (90.5% to 68.9%, 1993~2002), and a parallel increase in foreign students leaving their studies (3.1% to 6.0%, 1998~2002)⁶⁵ has been blamed on 'bogus' students and errant educational institutions. However, the MOJ, itself, should reflect on the measures it devised for the promotion of the 'Plan to Accept 100,000 Foreign Students', which, could be argued to have facilitated these adverse developments.

The push for more rigorously applied screening and tracking procedures, implemented since 2004 may be viewed as an attempt by immigration authorities to rein in educational institutions and reset the jurisdictional balance. Nevertheless, the continued and reinforced utilisation of universities and colleges as extensions of immigration control, and the 'carrot and stick' approach taken whereby problem-free institutions are rewarded with fast-track

⁶⁴ 栖原 暁, *op. cit.*, pp. 178~179.

⁶⁵ 総務省「留学生の受け入れ推進施策に関する政策評価（政策の総合性を確保するための評価）〈ポイント〉〈評価の結果及び意見の通知〉」, 平成 17 年 1 月 11 日.

application procedures for foreign students, whereas ‘problematic institutions’ are penalised with additional documentation requirements, smacks of enforced collusion and dilutes the notion of universities as autonomous entities. Whilst educational institutions should rigorously screen the academic credentials of prospective foreign students and keep up-to-date enrolment registers, whether they should, for example, be required to take responsibility for 1) ascertaining the financial resources of applicants, 2) sending monthly reports on absentees and leavers to both MEXT and the Immigration Bureau and, 3) submitting applications for, and keeping records of, part-time work on behalf of foreign students, is debatable. Unfortunately, there has been no discernible forum between the Government on one hand, and educational institutions on the other, as to where the line that demarcates responsibility should be drawn.

The most recent addition to university involvement in immigration affairs, effective nationwide from February 2004, concerns foreign students who have graduated from their host universities, and who have, since the period of their university/college enrolment, been seeking employment in Japan. These foreign students may, upon graduation, apply to change their residence status from ‘college student’ to ‘temporary visitor’, and continue to reside in Japan for a maximum of 180 days for the purpose of continuing their search for employment⁶⁶. However, a prerequisite for the approval of this change in residence is a letter of recommendation from the prospective graduate’s host institution to the Immigration Bureau, verifying that the student 1) is already job-hunting, 2) has been advised not to exceed the hours of permitted part-time work and to observe other Japanese laws upon changing to a ‘temporary visitor’ status, and 3) is deemed a suitable candidate for the change of residence status. To what extent educational institutions have the

ability to foresee, or should bear any responsibility for subsequent immigration law violations of foreign nationals with whom they no longer have any association, has yet to be clarified. Notwithstanding the strong presence of the ‘guarantor system’ in Japan, this development, too, serves to demonstrate an increasingly intimate relationship between immigration authorities and educational institutions in the vetting and control of foreign student affairs, even where this impinges on extra-curricular or post-graduation activities. This collaboration should not be considered an entirely welcome trend in Japan, where the independent identity of, in particular, national university corporations is weak, and where vociferous lobby groups such as Britain’s UKCOSA, Universities UK, and IAS⁶⁷, which take up foreign student grievances against the Governmental decisions, are next to non-existent.

Whilst educational institutions should not act to undermine the integrity of immigration control, the Immigration Bureau may want to consider delegating responsibility less liberally, and deliberate the creation of a more transparent assessment tool for the admission of education-seeking immigrants.

4.2 *Foreign Students as Workers*

Another enigma regarding the direction of immigration policy as it pertains to foreign student admission concerns the inelegantly labelled *Permission to Engage in an Activity Other Than That Permitted under the Status of Residence Previously Granted* (資格外活動, 法第 19 条第 1 項・第 2 項). As already mentioned, foreign students first became eligible for automatic work permits (maximum 20 hours per week) following the announcement of the Nakasone Plan in 1983. Cynics may suggest that Japan, suffering from a shortage of manual workers in a high growth period, introduced the labour component to this residence status at a time when unskilled foreign labour was

⁶⁶ 「構造改革特区の第 2 提案に対する政府の対応方針」(平成 15 年 2 月 27 日構造改革特区推進本部決定).

⁶⁷ UKCOSA = Council for International Education; IAS = Immigration Advisory Service.

not permitted into the country, not even through the side-door⁶⁸. However, it seems more probable that the generous policy vis-à-vis part-time work was intended to attract independently-financed foreign students to study in Japan, and thereby boost foreign student numbers to meet the 100,000 target. Predictable abuses of the work permits ensued, resulting in an ostensible tightening of the system by immigration authorities in the revised *ICRRA* of 1989. Nevertheless, although foreign students were now obliged to actually apply for work permits and were restricted to a maximum of four hours of work per day during the semester and eight hours per day during long vacations, the cumulative amount of time that a foreign student could theoretically engage in work had, in fact, been extended by the revision. Furthermore, following the drop in foreign student numbers and subsequent deregulatory drive of the late 1990s, this daily permissible work ceiling was abolished, and foreign students were, upon application, permitted to work twenty-eight hours per week (September 1998), as were their dependents (April 2000).

As of 2004, the Immigration Bureau issued a total of 106,406 permits to *Engage in an Activity Other Than That Permitted under the Status of Residence Previously Granted*, a 79% increase over corresponding figures in 2000⁶⁹. It is reasonable to assume that the majority of these permits are being granted to education-seeking immigrants. Statistics for 2003 indicate that out of a sum of 98,006 part-time

work permits, 90,846 (93%) were issued to ‘college’ and ‘pre-college’ students⁷⁰, when such registered students totalled 176,070. Indeed, foreign students have been calculated to comprise approximately 11% of the 790,000 foreign workers in Japan (including an estimated 220,000 undocumented workers)⁷¹, a disproportionately large number, considering the nature of their designated activity.

In terms of permitted working hours, Japan’s part-time work policy for foreign students is, arguably, more magnanimous than that of some of its contemporaries. Both the United Kingdom and Australia stipulate a weekly twenty hour ceiling, and Germany entitles foreigners holding a ‘residence for educational purposes’ ‘to take up employment totalling no more than 90 days or 180 half-days per year’⁷². What is puzzling, given 1) the meticulousness of the recent measures aimed at tightening screening procedures vis-à-vis the admission of foreign students (including a scrutiny of students’ financial resources), and 2) official criticism that ‘a significant number of foreign nationals disguised themselves as ... students to enter and stay in Japan when, in fact, their real purpose was to work’⁷³, is that no move has been made to revise conditions pertaining to *Permission to Engage in an Activity Other Than That Permitted under the Status of Residence Previously Granted*. This, in turn, begs the question of whether Japan feels unable to dispense with the significant labour contribution that foreign students do, in fact, provide.

⁶⁸ See 「外国人労働者受入れの基本方針」 as based on 「第9次雇用対策基本計画（閣議決定，平成11年8月13日）」（latest amendment). The side-door for unskilled labour alluded to above primarily concerns the residence statuses of 1) ‘long-term resident’ (in this case, foreign national of Japanese descent) and, 2) ‘foreign trainee’, categories which were only utilised fully after the amendment to the *ICRRA* in 1989.

⁶⁹ 『平成17年版出入国管理』 *op. cit.*, pp. 39, 44~45.

⁷⁰ 法務省入国管理局「留学生、就学生等のアルバイトの推移」 in 経済産業省「外国人労働者の現状と課題」平成18年1月.

⁷¹ 法務省入国管理局「外国人労働者数（平成15年）」 in 黒木忠正監修，佐野秀雄・佐野 誠著『外国人労働者の雇用・研修生受入れ手続』日本加除出版，2005年.

⁷² UK = Immigration Rules (HC 395), para 57(v); DSP (Diplomatic Service Procedures) Ch 12.20; Australia = Migration Regulations, Schedule 8, Condition 8104/5; Germany = Residence Act (*Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet*), Section 16(3), 30 June 2004, BGBl 2004, 1950. NB. Nationals from other EEA countries, studying at British or German educational institutions have no restrictions placed on employment activities.

⁷³ 『出入国管理基本計画（第3次）』, *op. cit.*, p.14.

In line with the above, one area in which Japan does lead its competitors is in its facilitation of post-graduate foreign student integration into the Japanese labour market. Japan neither utilises a labour market test (Germany), nor a points system (Australia, and the UK as of 2007). Basically, provided that an employer can be found prior to, or within 180 days following graduation, and that the student's prospective job content corresponds to the broad-ranging activities permitted by the residence statuses of 'Specialist in Humanities/International Services', or 'Engineer', amongst others⁷⁴, no major obstacles exist. Indeed, in 2004, as many as 90.4% of the 5,820 applications by college or pre-college students for a change of residence status were approved⁷⁵. All in all, although the numbers involved in the change from student residence status to employment-based residence status will not suffice to reverse Japan's labour productivity or demographic problems, the lack of barriers placed on students' contribution to the labour market, either in the form of part-time work during their studies, or post-graduation employment, cannot be denied. What is incongruous here, is that foreign students are faced with the dichotomous policy of 1) a tightening international education sector and, 2) a continuously open labour market.

Chapter 5. Conclusion:

5.1 Multi-functionalism Revisited

So, what is the legacy of Japan's 'Plan to Accept 100,000 Foreign Students'? The numerical target has certainly been met. One could also argue that Japan has, to a limited degree, internationalised its higher education sector, both in composition and in content. Currently, 2.6% of Japan's student body is foreign, up from 0.4% in 1982; this comprises a larger proportion

of foreigners than for the population at large. Moreover, no one could deny that Japan has, over the last twenty years, contributed to the nurturing of human resources in developing countries through its open door approach to education-seeking immigration. Statistics for 2004 alone indicate that of the 21,958 foreign students who newly registered as 'college students', 17,155 (78%) hailed from Asia, South America and Africa. Japan can be justifiably proud of what has been labelled its intellectual contribution.

Nevertheless, despite these robust first steps, Japan's position as a provider in the global higher education market continues to be as precarious as ever. Even now, this country would need to double its intake of foreign students in order just to catch up with French statistics. However, far from considering further expansion, the Japanese Government, brandishing statistics on rising crime and dropping academic standards, has recoiled into the argument of 'quality over quantity'. Indeed, 2004 witnessed a drop amongst newly registered 'college students', for the first time in nine years, a development that will adversely impact foreign student numbers as a whole.

Interestingly, one argument entirely missing from the debate on education-seeking immigration in Japan is the alleged benefit that foreign students have on the economy of their host country. The UK's Home Office boasts that, 'international students are worth over five billion pounds to the UK economy'. In Australia, in addition to benefiting the local economy, foreign students pay six billion Australian dollars in tuition alone⁷⁶. By contrast, the Japanese Government speaks of the 'administrative cost' involved in the hosting of foreign students in financially stretched times, and of Japan's '*contribution* to human resources

⁷⁴ Refer to Annexed Table 1 of the *ICRRA*, pertaining to Articles 2-2 and 19.

⁷⁵ 『平成 17 年版出入国管理』 *op. cit.*, pp. 40~41. 52.4% of these are employed by small and medium-sized enterprises (SMEs) with a capital of fifty million yen or less. (黒木忠正監修, 佐野秀雄・佐野 誠著 『外国人労働者の雇用・研修生受入れ手続』, *op. cit.*, pp. 25~26.

⁷⁶ UK = Home Office, *Improving the Evidence on International Students*, 7 February 2005; Australia = Interview conducted at the DIMIA on 18 October 2005.

development'. The fact that, for example, charging realistic visa fees and ensuring that a larger proportion of foreign students pay full tuition, may result not only in the provision of improved immigration and university services, but could also deter a number of bogus students from lodging applications in the first instance, is not being given any serious consideration. In fact, Japan, in defiance of the international norm, seems to be moving in the opposite direction. In a country where the ratio of Government scholarship recipients far outstrips that of any of its competitors⁷⁷, recommendations are being made to further expand the scholarship base⁷⁸. Even METI recently proposed that a support framework should be established through which foreign students would be free to concentrate on their studies without having to engage in part-time work⁷⁹. Whether Japan could do without the roughly 90,000 foreign students supplying cheap and flexible part-time labour may be beside the point here. What is apparent, however, is that the idea of the 'brains business' has not taken hold in this country. Instead the denouement of the 'Plan to Accept 100,000 Foreign

Students' has, as its setting, a country in which both Government, and by extension, educational institutions have become increasingly bureaucratic, introverted and control-conscious. This is hardly what the plan seemed to intend.

In spite of voicing misgivings over the legacy⁸⁰, however, Japan may want to reflect positively and build upon the strengths of its education-oriented immigration policy. On the domestic front, Japan, has acquired a potential workforce, running into the thousands, that is highly-skilled and internationally-minded, at a time productive workers in this country are on the decline. Externally, intellectual contribution to developing nations, taking the form of a transfer of knowledge has been set in motion, and the human resources thus nurtured will, in turn, feed the creation of sustainable environment for Japanese overseas investment. Indeed, in spite of a series of incongruities in the implementation of policy, from the perspective of multifunctionalism in immigration policy, the 'Plan to Accept 100,000 Foreign Students' is not without its successes.

Selected Bibliography

- 黒木忠正監修, 佐野秀雄・佐野誠著『外国人労働者の雇用・研修生受入れ手続』日本加除出版株式会社, 2005年
栖原 暁「日本の留学生政策」『国際化のなかの移民政策の課題 講座グローバル化する日本と移民問題 第I期第1巻』明石書店, 2002年
畑野 勇・倉島研二・田中信也・重見一崇・石崎勇一『外国人の法的地位』信山社, 2000年
前田修身・本多康二・能登八郎 編著『ビジネス必携 外国人の入国・在留手続【全訂】』法律情報出版, 2005年
入管協会『〔平成17年版〕在留外国人統計』, 2005年
第4次出入国管理政策懇談会「人口減少時代における出入国管理行政の当面の課題～円滑化と厳格化の両立に向けて～」2004年12月
出入国管理法令研究会編『外国人とための入国・在留・登録手続の手引 7訂版』日本加除出版, 2004年
法務省入国管理局編『〔平成16年版〕出入国管理』, 2004年

⁷⁷ Japan = 1:10.2; France = 1:16.8; Germany = 1:37.3; Australia = 1:39.2; UK = 1:58.5; US = 1:189.1. 総務省『留学生の受け入れ推進施策に関する政策評価』, *op. cit.*, p. 3.

⁷⁸ 『出入国管理基本計画(第3次)』, *op. cit.*, pp.14~15.

⁷⁹ 経済産業省「外国人労働者の現状と課題」, 平成18年1月 in 第16回 GISPRI シンポジウム『21世紀日本社会は外国人をどう迎えるのか～人口減少社会の自足可能な移民政策～』, 国連大学2006年1月31日.

⁸⁰ E.g., 坂中英徳氏講演会(外国人政策研究所長・元東京入国管理局長)「日本の留学生受入政策の歴史・現状・課題」, 名古屋大学, 2006年6月22日.

法務省入国管理局 編 『〔平成15年版〕 出入国管理—新時代における出入国管理行政の対応』, 2003年
出入国管理法令研究会 『〔改訂2版〕 入管法Q & A』 三協法規, 2000年
法務省入国管理 編 『〔平成10年版〕 出入国管理—21世紀の円滑な国際交流のために』, 1998年
Higher Education Bureau, Student Services Division, MEXT, Outline of the Student Exchange System in Japan
(May 2004)
文部科学省「当初の「留学生受入れ10万人計画」の概要」 www.mext.go.jp/b_menu/
文部科学省高等教育局学生支援課「外国人留学生の適切な受入れについて(通知)」16高学支第113号, 2005年1月
31日
平成16年度中部・近畿地区留学生交流研究協議会「法務省資料」, 2004年6月
中央教育審議会「新たな留学生政策の展開について(答申)—留学生交流の拡大と質の向上を目指して」2003年12
月16日
文部科学省高等教育局学生支援課「在留資格「留学」及び「就学」に係わる審査方針について」事務連絡, 2003年
11月21日
総務省「留学生の受入れ推進施策に関する政策評価書(政策の総合性を確保するための評価)〈ポイント〉」2005
年1月
総務省「留学生の受入れ推進施策に関する政策評価書(説明資料)」2004年10月
「来日外国人犯罪の検挙状況(平成17年中)」 <http://www.npa.go.jp/index.htm>, 2006年2月1日
UKCOSA, *Manual 2005: A Guide to Regulations and Procedures for International Students*
Home Office, *Improving the Evidence on International Students: A joint project to assess the impact of increased
immigration charges on international students* (February 2005)
Department for Education and Skills/Home Office/British Council, *International students working in the UK: What
you need to know* (2002)
DAAD, *Informationen zu den rechtlichen Rahmenbedingungen für die Ausübung einer
Erwerbstätigkeit von ausländischen Studierenden und Wissenschaftlern* (2005)
AEI (Australian Education International, *Competitor Analysis: Australia and its Competitors in Education Export*
(April 2003)
Department of Immigration and Multicultural and Indigenous Affairs (DIMIA), Fact Sheet 50: Overseas Students in
Australia, www.immi.gov.au(December 2004)

Appendix 1. Glossary of Relevant Legal Provisions

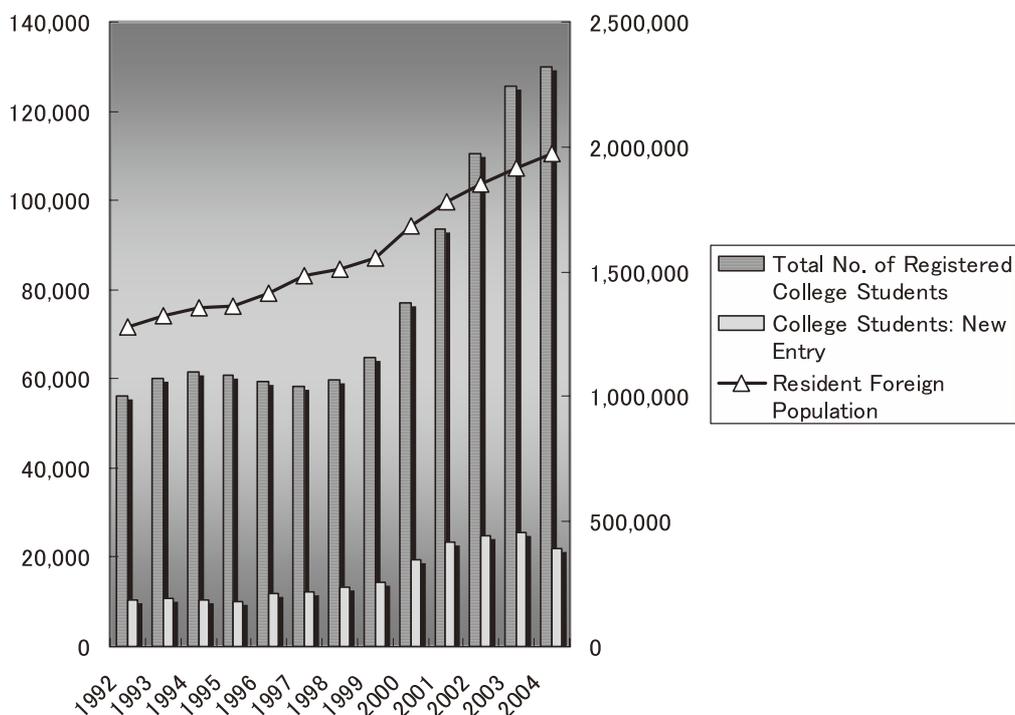
出入国管理及び難民認定法 (*Immigration Control and Refugee Recognition Act <ICRRA>*)1951年10月4日政令
第319号, 改正1990年6月1日法79号, 改正2004年6月2日法73号
出入国管理及び難民認定法施行規則 (*ICRRA Enforcement Regulations <Ministry of Justice Ordinance
No.54>*)1981年10月28日法務省令第54号
出入国管理及び難民認定法 第7条第1項第2号の基準を定める省令 (*Ministerial Ordinance No.16 to Provide for
Criteria pursuant to Article 7, Paragraph 1(2) of the ICRRA*) 1990年5月24日法務省令第16号
1992年6月8日法務省告示第319号
出入国管理基本計画 (*Basic Plan for Immigration Control*)
2000年3月24日法務省告示第119号
出入国管理基本計画(第2次) (*Basic Plan for Immigration Control (2nd Edition)*)
2005年4月7日法務省告示第222号
出入国管理基本計画(第3次) (*Basic Plan for Immigration Control (3rd Edition)*)

Appendix 2. MOJ Statistics on Education-oriented Immigration in Japan

Table 1. Registered College Students since 1992: The Numerical Trend

Year	Resident Foreign Population	College Students: New Entry	Total No. of Registered College Students	+/- Over Previous Year (%)	College Students as % of Resident Foreigners
1992	1,281,644	10,368	56,309		4.4
1993	1,320,748	10,722	60,110	6.8	4.6
1994	1,354,011	10,337	61,515	2.3	4.5
1995	1,362,371	10,155	60,685	-1.3	4.5
1996	1,415,136	11,717	59,228	-2.4	4.2
1997	1,482,707	12,404	58,271	-1.6	3.9
1998	1,512,116	13,478	59,648	2.4	3.9
1999	1,556,113	14,446	64,646	8.4	4.2
2001	1,778,462	23,416	93,614	21.6	5.3
2002	1,851,758	24,730	110,415	17.9	6
2003	1,915,030	25,460	125,597	13.7	6.6
2004	1,973,747	21,958	129,873	3.4	6.6

Graph 1. 'College Students' as a Proportion of All Resident Foreigners: 1992-2004



Sources:

総務省統計局統計センターホームページ (<http://www.stat.go.jp/index.htm>)

法務省入国管理局 『[平成17年版] 出入国管理』, 2005年

法務省入国管理局 『平成10年版出入国管理—21世紀の円滑な国際交流のために—』, 1998年