

Looking at the Laws that Affect International Education in Japan

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Abstract

The Japanese government recently announced a new international education policy to accept 300,000 international students by 2020. Also, the Ministry of Education, Culture, Sports, Science and Technology, and the Ministry of Economy, Trade and Industry have recently decided to collaborate in promoting more Asian international student graduates to remain in Japan to work and settle down. The government's "attractive" initiatives to make Japan a more competitive international educational environment promoting high quality academic education and an attractive work environment will depend on how Japan coordinates its laws to fit its policies.

This paper will focus on some of the laws and standards relating to the promotion and management of international education and international student policy in Japan, and examine the affects they have on the numbers of prospective international students entering Japan (Immigration Laws), how they affect the international students residing in Japan during their studies (Education and Housing Laws), and how they affect the international students after graduation or completion of his/her studies and in deciding to enter the job market (Employment Laws). The conclusion will cover the issue as to how these laws will either assist in the future of international education or become an impediment to the promotion of international education.

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I. Introduction

In January 2008, Prime Minister Fukuda announced that Japan will take an active role in internationalization by developing a new international education policy. A major goal in this policy is to accept 300,000 international students by 2020 and to have a majority of these students stay and work in Japan. In July, the Central Education Commission announced the plan and details of this policy.⁽¹⁾ In this plan, a national strategy will be established to promote internationalization of universities to strengthen their competitiveness and to enhance national security at the same time. The government will provide for a grand design for accepting 300,000 international students. In doing so, the government is expected to emphasize the following five points.

- 1) Forming a national strategy in creating an interest for study abroad in Japan: Recruitment of international students will be actively promoted by providing study abroad information overseas and establishing a study abroad advising system similar to that of the British Council;
- 2) Improving entrance exams and entry procedures to make Japan a more accessible place for study: Universities are urged to open up their doors to more international students by providing for September entrance in addition to the normal April entrance as well as providing for more flexibility in entrance exams to enable students to take them and come directly from their home country if accepted;
- 3) Advancing the globalization of universities: The government plans to designate 30 leading universities to advance this plan. These universities will need to maintain at least 20 percent international student population, 30 percent international faculty in a designated department of study, and have a goal of establishing at least 30 percent of all courses taught in English. Also, more exchange programs, credit transfer, short-term programs and double degree programs will be promoted;
- 4) Creating a comfortable environment for study: To ensure a safe and comfortable environment for study, more international student housing will need to be arranged using various available options. Universities, local regions, and the private sector will need to collaborate in providing

for exchange programs and care for families accompanying the international students;

- 5) Entering the society after completion of study: In order for international students to settle down in Japan, more internships and career counseling will be provided. The plan will enhance career placement opportunities of international students by setting a goal of 50 percent employment of all international student graduates. Also, more follow-up assistance will be given to students who return to their home countries to establish alumni associations.

A year earlier, the Ministry of Economy, Trade and Industry (heretofore, METI) and the Ministry of Education, Culture, Sports, Science and Technology (heretofore, MEXT) together started promoting a program that was called the Career Development Program for Foreign Students from Asia.⁽²⁾ It is a program that focuses on the development of mutual understanding and the development of economic relations between the Asian countries. International students from Asia who are selected for the program will attend separate Japanese Business Language courses, Business Culture and Management courses, and internships while engaged in his or her normal study program at the university. These students will also be given special support in career placement by matching up their career goals with Japanese companies cooperating with this program. There were 100 students on the program in 2007 and 800 students expected in 2008.

The combination of the new international education policy and a promotion of a new human resource development program will significantly improve Japan's attractiveness to the international student and competitiveness of international education in the international arena. However, unless there is proper coordination and an understanding of a common goal between the Ministries in promoting this international education policy, and a coordination of the laws that affect the execution, development and management of this policy, the goal may not be realized.

This paper will focus on some of the laws that will affect the promotion and management of the new international education policy. It will examine the affects they have on the numbers of prospective international students entering

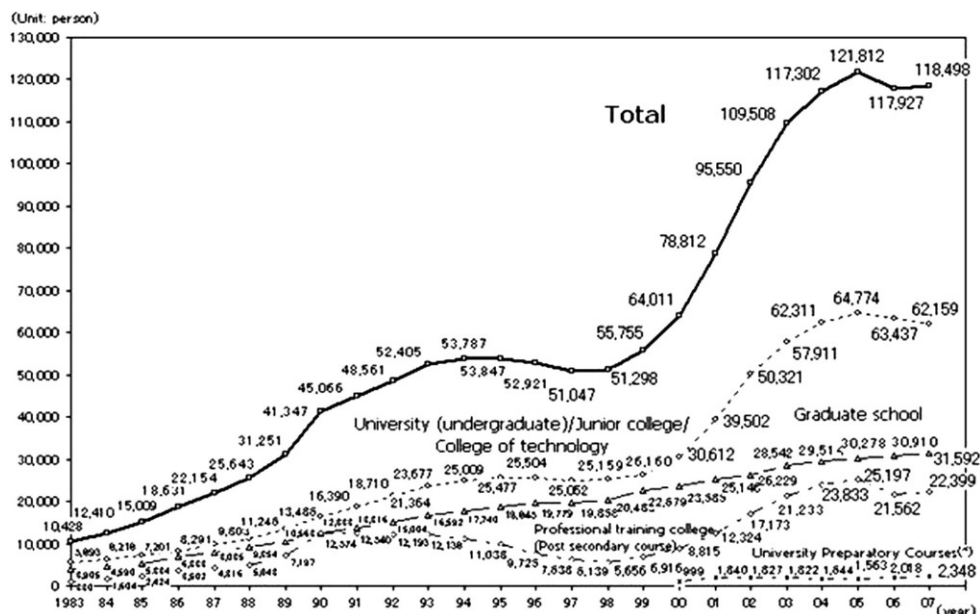
Japan, how they affect the international students residing in Japan during there studies, and how they affect the international students after graduation or completion of his/her studies and deciding to enter the job market. The conclusion will cover the issue as to how these laws will either assist in the future of international education or become an impediment to the promotion of international education.

II. Promoting International Education and the Influence of Immigration Laws

In May 2007, a total of 118,498 international students were studying in Japan (see, Graph 1). The numbers of international students increased 10 times between a 20 year period from 1983 to 2003. In 1983, the government announced the 100,000 International Students Acceptance Plan⁽³⁾ that provided for the impetus in the nation's full-scale involvement in promoting an international education policy. Looking at Graph 1, one will notice that in reaching its goal of 100,000 students in 2003 and thereafter, the curves in the

Graph 1 : Statistics taken from Japan Student Services Organization website, October 1, 2008.

(http://www.jasso.go.jp/statistics/intl_student/data07_e.html)



graph reflect the process of promoting international education as an ongoing challenge of various obstacles. The gradual increase of international students from 1984 to 1990 reflects the increase of students studying at the Japanese language schools. There was an uncontrollable increase in the establishment of language schools because of the absence of an accreditation or certification system. In 1991, an amendment to the Immigration Control and Refugee Recognition Act (heretofore, Immigration Control Act) created a new category for students given the status of “Pre-college Student” for those attending Japanese Language Schools and Programs. This category separated them from the category of “College Student” that is normally referred to as international students attending universities.⁽⁴⁾ In dividing the status of residence, the Immigration Bureau intended to crack down on the non-accredited Japanese language schools approving non-qualified students to enter Japan. At the time, Japan was experiencing a “bubble economy” with many jobs available in the construction and fast food industries. Many of these Japanese language school students skipped school and illegally worked overtime in these jobs and overstayed their visa period. The total number of overstays were as high as 24,000 in 1994. To try to alleviate this situation, the Japanese language schools formed the Association for the Promotion of Japanese Language Education in 1989 to evaluate and certify the quality of Japanese language education; however, it would take some time before this Association received full recognition of its aims.

In 1994, the Immigration Bureau announced a policy to correct the uncontrolled situation with the Japanese language students.⁽⁵⁾ This policy was based on the conditions of acceptance and management of international students at each Japanese Language School. The Immigration Bureau would also require a strict review of each student’s financial status and prevent anyone from entering Japan that would have an objective other than to study. In examining the pre-college student trends of 1993 to 1999, Katsumi Shiraishi of the Asia Gakusei Bunka Kyokai observed that there was a dramatic decrease from over 27,000 pre-college students in 1992 to approximately 9,400 in 1996. And, in 1995, pre-college student visas for Chinese students dropped to a 30 percent level of approval. Shiraishi also

suggested that the trends of in-coming international students were dependent on the numbers of pre-college students in Japanese language schools and programs being approved to enter Japan.⁽⁶⁾ The reason for this is that at the time a majority of the universities in Japan recruited directly from these Japanese language schools and programs. At present, more and more universities are recruiting students from their home countries and having them enter the universities directly.

In January of 2000, there was a government notice sent to all universities and local education commissions from the international unit of the MEXT notifying everyone of a new simplified immigration procedure on international students and pre-college students.⁽⁷⁾ The simplified procedure consisted of a simplification of personal financial status documents of the applicant and an exemption of the university Acceptance Certificate and Enrollment Certification if the application was submitted by the university international officer with a proxy certification. The procedure also gave more discretion to the university international office and the administrative officer in charge. The reason for the change in procedure was the result of improvements shown in the quality of the Japanese Language Schools and a significant decrease of illegal overstays. As a result of this change in immigration procedure, the next three years experienced an increase of nearly 40,000 new students enabling Japan to reach the goal of 100,000 international students in 2003.

One may wonder why the numbers of international students decreased in 2006. At the end of 2002, it was reported that a group of 198 Chinese students disappeared from Sakata Junior College in Yamagata Prefecture. It was later reported that the Junior College had been accepting international students at a substandard level to maintain student capacity norms to be able to stay eligible for government education grants.⁽⁸⁾ Furthermore, in 2003, the news reported several murders committed by international students from China. The extensive media coverage of these incidents created a negative public sentiment of the 20 year process leading up to the goal of 100,000 international students.⁽⁹⁾ The Immigration Bureau wasted no time in returning to the strict review standards established in the 1990s of entry applications for international students and pre-college students. As a result of the strict review,

in 2004, the numbers of new entries of international students decreased by 14 percent while the numbers of new entries of pre-college students decreased by 45 percent.⁽¹⁰⁾

In a move to improve the immigration system in general, the Ministry of Justice surveyed a number of groups (local governmental authorities with a significant number of foreign residents, education related groups, economic and industrial groups, labor unions, the Japan Bar Association, groups representing foreigners, the U.S. Japan Chamber of Commerce) to get their opinion of the present immigration system and suggestions on its improvement. Various committees under the Ministry have been involved in forming recommendations since 2005 for legislation to be presented by 2009 concerning the improvement of the entry system and the basic management of foreigners entering the country. The final recommendations were announced in March 2008.⁽¹⁰⁾ Based on discussions by internal committees and from various suggestions given by concerned groups and individuals, several major changes have been recommended. In relation to the promotion of international education, three points need to be mentioned. First, it was mentioned that the dual system of immigration management of national and local systems made it difficult for the government and especially the Minister of Justice to attain information about foreigners after entrance into Japan and especially information concerning any changes thereafter;⁽¹²⁾ therefore, the dual system should be merged into one national system. Second, the maximum period of stay for international students having college-student visas should be extended from three to five years. And third, it was recommended that if laws should to be tightened and enforced more strictly against violators, then foreigners (i.e., international students and international students with families) residing in Japan abiding by the laws and regulations and continuing to be good citizens should be able to enjoy improved local services (in compulsory education, medical care/insurance, welfare) as well as easier and abbreviated procedure (for extensions,⁽¹³⁾ reentry permits, etc.,...) on the national level.

The new 300,000 International Students Acceptance Plan calls for an increase of twice as many students in half the time compared to the previous 100,000 International Student Plan. MEXT and the Ministry of Justice will

need to work closely together to unify policy goals and to provide for an entrance system that will assist and not impede in the promotion of the new international education policy. It will be interesting to see how the upcoming new legislation will actually affect the policy in the future.

III. Internationalization of Education and the Living Environment: Developing Attractive Programs under Present Law

A. Developing Attractive Programs Under Present Law

To become approved as a university in Japan, the educational institution is required to establish the institution according to the “standards” set forth by the Ministry.⁽¹⁴⁾ These “standards” are referred to as the Standards for University Establishment (heretofore referred to as Standards⁽¹⁵⁾). The “Standards” establish detailed minimum requirements for establishing a university’s size (which includes property size and required campus facilities), limits on the numbers of students to be enrolled to each specific faculty, department and program, curriculum content (which includes details on required, prerequisite, and selective courses), credit value, numbers of credit allowed to be taken outside of the home institution, student graduation requirements, methodology of teaching, faculty personnel qualifications, staff organization and so on. In addition, there are similar “standards” for graduate schools, two-year colleges and professional schools. After approval, the “university” must follow all rules, regulations, ordinances, directorates, and laws passed by the government.

Although these laws establish the structure, form, functions of the university, and play a significant role in establishing a high standard of education, at times, these “laws” have been an impediment in free development and flexible reform of university education.⁽¹⁶⁾ For the Ministry, the promotion of uniformity of university education was paramount and the development of character and originality were not on its agenda making it difficult to implement dynamic and state-of-the-art programs that could assist in a university’s attempt to be competitive or even to internationalize. The Ad-hoc Education Reform Council established in 1986 recommended more relaxation of the Standards; however, the argument to having such a restrictive system

was to prevent a mass production of universities and to prevent the lowering of quality. Other than the School Inspection System, the Ministry did not have any quality assurance system to evaluate the quality of education maintained at the university after its initial approval.⁽¹⁷⁾

In response to this problem, in 1998, the University Council within the Ministry recommended to establish a third-party organization for university evaluation to check and maintain high standards after its initial approval. In April 2000, the National Institution for Academic Degrees (NIAD) was reorganized as the National Institution for Academic Degrees and University Evaluation (NIAD-UE) to conduct university evaluations in addition to its degree awarding functions.⁽¹⁸⁾ Now, there is expectation that more freedom will be given to higher education institutions to move in a more dynamic way to become stronger players in the rapidly changing global arena.

Relaxation of the Standards and other laws controlling education have been a slow process, however, recent amendments to the Standards to meet the periodic recommendations given by the University Council and the Central Education Commission have been significant in providing more opportunity for the advancement of internationalization.

According to article 28 of the Standards, students are allowed to take up to 60 credits⁽¹⁹⁾ outside of their home institution and can transfer these credits to the home institution and use them to fulfill graduation requirements.⁽²⁰⁾ These credits can be acquired within Japan at other universities or at universities abroad. With the change of credit transfer maximum increased from 30 to 60, it is now easier for universities to engage in more creative international programs (such as double or dual degree programs), provide more opportunity for students to study abroad for longer periods.

In some instances, however, the “Standards” are still a limiting factor in promoting internationalization. For example, MEXT does not approve of joint degree programs. Discussions on the issue of allowing universities in Japan to form joint programs have been going on for some time. There is no law or regulation “clearly” prohibiting a joint degree, however, the Ministry disallows such programs according to its interpretation of article 19 of the Standards. Article 19, paragraph 1 states, “Universities are required to establish the

necessary courses and adopt a systematic program of their own in order to achieve the educational objectives of each faculty, department, and/or course.” The Ministry’s interpretation is that a certification of a diploma requires courses to be developed by the (single) institution that awards it. Therefore, since a joint degree requires a development of courses from two or more institutions, and the degree itself is jointly signed by the cooperating institutions this cannot be approved by the Ministry. Just recently, however, it was announced that MEXT will be submitting an amendment to the School Education Law and the Standards to allow domestic institutions to form alliances to establish joint degrees for undergraduate and graduate education programs.⁽²¹⁾ According to the Asahi Shimbun, the Central Education Commission announced that the amendment was hoped to assist the progress of the university reform by enhancing the possibility of forming alliances and creating more attractive programs jointly. However, this amendment only allows for domestic institutions to form joint programs and does not include overseas institutions. Why this amendment did not allow for overseas institutions is not clear since joint programs and degrees with international partners could be used as an effective strategic tool in advancing internationalization. The Commission said that the amendment was to be presented to the Diet for consideration this year (October 2008) and expected the new system to take effect in 2010.

In September 2004 the Central Education Commission provided for a report titled, “Establishing a System for Foreign University Campuses in Japan and Overseas Campuses of Japanese Universities.”⁽²²⁾ In December of the same year, the Enforcement Regulations for the School Education Law was partially amended taking into account the recommendations of the report by including article 43 into the Standards. Article 43 states, “A university can establish overseas a faculty, department, or any other educational organization related to the institution in accordance to the laws established by the Minister of Education.” This amendment was implemented and effective on April 1, 2005.⁽²³⁾ Article 43 allows Japanese universities, graduate schools, 2-year colleges to establish undergraduate and graduate faculties, departments and other educationally related organizations of the institution overseas. Since very few

universities took advantage of this opportunity, the Minister of Education sent a notice to all institutions clarifying the system. The notice announced that 1) in principle, overseas organizations will need to provide for the proper facilities and faculty and staff personnel according to the numbers of students to be accepted; 2) the graduation diploma of the overseas campus will be the same certification as the home institution; 3) the faculty and staff personnel of the overseas organization will be directed and controlled by the president of the home institution. Before this amendment, Japanese universities were allowed to do joint research, exchange students and faculty, and establish overseas recruiting offices. However, if a Japanese university desired to establish an overseas campus, it could do so only by having a legal entity in the foreign country establish it for them. And, education that could be provided by Japanese universities was very limited since MEXT would only allow a limited number of courses to be offered and credits approved internationally.⁽²⁴⁾ Although still quite rigid, this recent amendment finally gives Japanese institutions of higher education a chance to internationalize on foreign ground. However, the fact that Japanese universities will still have to work within the framework of the Standards may somewhat limit the development of the most attractive and dynamic ideas for change.

B. The Living Environment: Improving the Housing Problem

An important factor in promoting international education exchange and in attracting international students is the living environment, especially housing.

In a mid-term report titled, “On a New International Student Policy,” from the Central Education Commission emphasizing the steps to be taken after 2003, one significant issue mentioned was the need to think about international student housing. This statement is even more important now that the government is promoting a dramatic increase of international students and to persuade these students to stay and work after completing their studies. According to the 2005 census, it was found that most of the pre-college students, international students, and other foreign nationals working in Japan lived in privately rented housing (48.3% in houses or apartments) or

accommodations owned by the companies that foreign nationals worked for (8.1%).⁽²⁵⁾

Housing problems experienced by international students and foreign nationals in general can be divided into two categories. The first involves problems occurring before moving into the accommodations and other problems occurring after moving in. The first category involves discrimination, and the requirement of a Japanese guarantor.⁽²⁶⁾ According to a government survey done in 2002 on the issue of how privately rented housing was managed, 25.3% of the landlords stated that they limited who could live in their accommodations. And, about half of these landlords stated that they have denied foreign nationals from moving into their accommodations. The most common cause of this discrimination is due to previous problems experienced by real estate agents and owners of privately rented apartments and houses. In reality, however, it is said that many decide not to accept foreign nationals into their accommodations because of the feeling of insecurity caused by the many reports and rumors of problems experienced by others.⁽²⁷⁾

The requirement of a Japanese guarantor when renting out an apartment or house is another difficult hurdle to clear. In 1998, Hiroshima University promoted a three-year project to attempt to persuade owners of privately rented apartments and houses to eliminate the guarantor system when renting their accommodations to international students in the Hiroshima region. A survey indicated that approximately 56% of the students lived in privately rented apartments (the other 44% comprised of: 15% in university-owned facilities; 14% in public housing; 7% in special international student designated flats; 3% in company owned accommodations; 2% in homestays; and 3% in others). The project initially established a committee on the international students housing issue called the Hiroshima Region International Student Housing Problem Communication Committee (heretofore, Communication Committee). Hiroshima University's idea was to have the Communication Committee coordinate communication between the university, international student and the owner of the rented out accommodations to prevent any problems from occurring (by providing the necessary orientations and communication in the necessary languages), and if a complaint or a

problem (about overdue rent or violations of community rules) did come up for discussion, the Communication Committee would try to resolve the complaint or problem as soon as possible. This project ended with mixed results. Some owners agreed to eliminate the guarantor system while others refused, some universities decided to establish a proxy system so that the universities could take the place of the student's guarantor, the city influenced by this project eventually decided to construct an International House housing several hundred international students and families.⁽²⁸⁾

There are no laws promoting or prohibiting the attachment of guarantors when signing a contract or lease for housing, however, most owners of privately rented apartments and houses require guarantors because they fear that in cases of an emergency or other problems they will need an intermediary to assist in the situation—namely, in cases of unpaid rent, damaged property, or some other conflict that may become difficult because of a communication barrier.

In recent years, there is a system called “Weekly Mansion (a flat that can be rented out by the week)” which is furnished and does not require a guarantor to sign a contract to move in. The rent on the average is much more expensive than the normal apartment or house, however.

The second category involves problems after moving into the accommodations. There are various problems caused by differences of customs and contract laws of the home country and Japan, such as violation of trash collection rules, loud noises caused by late night parties, allowing people not included in the contract to room together and subletting without permission. The cause of these problems in many instances are directed toward the international students and foreign nationals, however, part of the blame can be directed toward the real estate agents and owners of the accommodation for not giving enough (comprehensible) information to the tenants before moving in. Because of inexperience many of the real estate agents and owners treat all foreigners the same without taking into consideration their country of origin, or the differences of their cultures and customs. A thorough explanation of the rules and laws and differences in the living environment with possible translations of documents or translations of the explanation would alleviate

much of the problems and/or misunderstandings. Insufficient explanations and ignorance of the different lifestyles of the international students and foreign nationals will lead to conflicts after moving in. An undesirable experience may end up with a future denial of foreigners.

In recent years, there are companies that will cover rent liability (for at least the first six months) and take the place of a guarantor. More and more students and foreign nationals are taking advantage of this kind of service. And, some real estate agents are preparing information sheets explaining trash collection rules and other information written in various languages to assist in the problematic areas to reduce the previous resistance of owners opening up their accommodations to international students and foreign nationals.⁽²⁹⁾ There are cities like Kyoto that are taking action to provide a more comfortable environment for international students and foreign nationals that reside in the city. The city's plan in improving the housing situation is in relation to the government's promotion in the Career Development Program for International Students from Asia. Since 67% of the international students and foreign nationals live in privately rented apartments and houses, and more international students are expected to come in the near future, the city has decided to focus on: 1) increasing the supply of affordable apartment rooms by developing the understanding of owners of rented accommodation; 2) securing international student housing by promoting the cooperation of universities, public administration, and the private sector using available property; 3) providing effective housing information using the internet; 4) providing for a hotline for any problems that occur between the international student and the landlord or local community, and to promote more active exchange between both parties to promote understanding; 5) utilizing the "Anshin Chintai Shien Jigyo" established in 2007 by the Ministry of Land, Infrastructure, Transport and Tourism to assist and secure housing for foreign nationals and their families.⁽³⁰⁾

For regions that have accepted a significant number of international students in the past, the Japan Student Services Organization (JASSO) has provided international student accommodation facilities to help absorb the increase.⁽³¹⁾

If Japan is to promote further acceptance of international students and promote their long-term stay to work and live, then efforts to improve the situation will need to spread throughout Japan.

IV. After Graduation: Employment Laws

When a student enters a university or even before that, the student will normally think about how to put his or her degree to good use, namely, his or her career plans will be of prime interest. So, in choosing where to study abroad, an important factor is whether or not the employment opportunities are favorable for international students.

One of the goals set forth by the 300,000 International Student Acceptance Plan is to find jobs for at least 50 percent of the international student graduates by 2020. To do this, universities will need to staff their career placement offices with professionals that can assist in advising and finding jobs for international students, something that has not been stressed thus far in the process of internationalization of educational institutions in Japan. Job hunting for Japanese students' normally begins in the third year of college by taking various guidance courses that are offered at the institution and requesting information from the companies directly. Company recruitment also begins a few months into the year (April) and acceptance is normally confirmed around the beginning of the second semester (September). In the past, international students were instructed in the same way without special treatment. The Nippon Keizai Dantai Rengokai (Nippon Keidanren) reported twice previously on the need to actively accept foreign workers.⁽³²⁾ Hiring international students after graduation of undergraduate or graduate studies would enhance the Nippon Keidanren's recommendations with people who have prior experience in living in Japan and familiarity with the culture before actually starting work in Japan.⁽³³⁾

The Career Development for Foreign Students from Asia that METI and MEXT are promoting is timely because it requires the active involvement of the university career placement office, the international office, and the local region support group that is involved in providing the coordination for matching the international student's goals with companies who want to hire

international students.

If a student decides to job hunt in Japan, and is accepted by a company,⁽³⁴⁾ he or she will have to have the company complete immigration procedures according to the Immigration Control Act to change the student's status of residence from "college student" to any one of the categories that is the most relevant with the occupation that he or she has been accepted to.⁽³⁵⁾ The categories for occupations listed in Supplement One and Two of the Immigration Control Act include: "diplomat," "public official," "professor," "artist," "religious activities," "journalist," "investor/business manager," "legal/accounting services," medical services," "researcher," "instructor," "engineer," "specialist in humanities/international services," "intra-company transferee," "entertainer," "skilled labor."

Within the framework of the Immigration Control Act, the Japanese Labor Law does not restrict the type of work that a foreign national can engage in. There is one exception, however. According to a Supreme Court case decided in 2005, a Japanese nationality qualification requirement for promotions to executive positions (*kanri shoku*) in the Tokyo Municipal Government did not violate article 3 of the Labor Standards Law which states that the employer is prohibited in discriminating against a worker in setting wages, working hours and other working conditions for reasons of his/her nationality, religion or social background. The Court also mentioned that this rule did not violate the equality clause of the Constitution. This case was brought to court by a Korean who resided in Japan under the status of "special permanent resident". The Court reasoned that, under the Regional Public Civil Service Law there is no provision stating so, however, local ordinance and the local personnel authority regulations do not prohibit resident foreign nationals to take office as administrators. And, it is not unconstitutional or illegal to treat resident foreign nationals that have taken office at the local public entity differently if there is a rational reason for doing so.... In principle, it is assumed that a person with Japanese nationality takes office to be a regional civil servant authorized with public power....⁽³⁶⁾

In another alleged discrimination case, a foreign national who was a journalist argued that since Japanese journalists did not have a time period

limitation on their contract and he did, he was being discriminated against in violation of article 3 of the Labor Standards Law. The Tokyo District Court judged that establishing a contract period was not in violation of the law since the position was highly professional and since the wages for foreign nationals were considerably higher.⁽³⁷⁾

In recent legislation, the Koyo Taisaku Ho (*Employment Strategy Law*) was amended in 2007 to improve the management of foreign nationals who have appropriate legal status (article 4, paragraph 1, no.10). This law also established an obligation for the employer to assist foreign nationals in finding new placements when they are released or terminated from their jobs for reasons not related to fault of their own (article 8). Also, article 9 of the same law provides for the establishment of a government “Guideline for Employers to Appropriately Improve the Management of Foreign Workers.” This guideline establishes appropriate procedures and measures to be followed to improve hiring procedures and the work environment as well as to respect social insurance laws.⁽³⁸⁾ Article 28 will also require the employer to register to the government all foreign nationals hired (or terminated) at each company to verify the legal status (status of residence, period of stay, etc.,...) of them. It is hoped that these amendments will provide for a more attractive work environment for all foreign nationals that decide to work in Japan. These legal improvements come at a most convenient time when more international students are to be recruited and persuaded to work, and settle down in Japan.

One particular issue that should be mentioned here concerns the coordination of the Immigration Control Act and the Labor Law with the increased recruitment of international students and their eventual employment at Japanese companies. It is still not clear what kind of impact the restrictions of the Immigration Control Act will have on the interpretation and application of the Labor Law. For example, concerning the issue of the difference between the period of stay and the period of the contract, the Osaka District Court in 1994 denied the argument of a rational expectation of the continuation of employment and decided that a termination of the contract after end the fourth extension of the period of stay to be valid. One reason given for the validity of the termination was that the period of the stay for foreign nationals is limited

by the law.⁽³⁹⁾ Another judgment by the Tokyo District Court in the same year decided that the period of employment written in the contract could be interpreted to be just a formal qualification and that a contract would be subject to cancellation dependant upon a denial of extension of the period of stay.⁽⁴⁰⁾

Another issue concerns the transfer of positions after employment. If the company hires a foreign national under the status of residence of “specialist in humanities/international services,” but finds that this person may work better in another field or department which may entail a different working condition or wage, what can the employer or company do? This obviously conflicts with the Immigration Control Act that disallows any kind of work that is not within the scope of the approved status. The court has yet to decide on this matter.

The employment situation for foreign nationals is improving, and the work environment may be better than other countries, but many issues concerning the coordination between the laws and policies still need to be ironed out.

V. Conclusion

The new international student policy provides for the next big step forward in promoting internationalization in Japan to a higher level of maturity. By increasing the intake of international students, it will also assist in balancing out the decrease of college-aged students entering Japanese higher education caused by the decrease in the birthrate. From a recruiting perspective, it will also stimulate universities to change and encourage universities to create more attractive programs. Hiring international student graduates will also assist in filling the openings created by the retiring baby-boom generation.

At present, however, the rigidity of the system limits the most dynamic and possibly the most demanded international and domestic programs from being established. Although a monitored framework will be advantageous in maintaining higher standards, there needs to be some mechanism that will allow educational entrepreneurship that will enable educational institutions to be at the forefront of a competitive global environment. Recent developments

in quality assessment reviews and third party university evaluations should reinforce educational quality standards and cover for any future relaxation of the Standards for University Establishment.

If the Ministries of Justice, METI and MEXT coordinate their policies and laws to enable a significant increase in international students entering Japan in the near future, there will definitely be a demand for more housing. A significant portion of the present international student housing problem, as was mentioned, can at least partially be relieved by providing more information and awareness to those involved. In this regard, local governments and regions will also need to be informed and be aware of what to expect from the new policies and changes in the law. If Japan is to succeed in accepting the target number of students in the time span that has been stated, a serious effort in the internationalization of local communities in the suburbs will need to be promoted to alleviate any tension, prejudice, fear and/or disinterest that may exist in preventing the utilization of both public and private accommodation facilities.

The involvement of METI in promoting employment opportunities to international students graduating from Japanese universities will accelerate the process of internationalization of many universities, and will definitely help in convincing companies to actively hire international students for full time positions. As previously mentioned, at this stage, however, it is not clear what kind of impact the restrictions of the Immigration Control Act will have on the interpretation and application of the employment and labor laws. At times, we may need to rely on the judiciary to resolve the conflicts that arise from the different interpretations of the law and other legal disputes that may occur concerning employment issues.

This brief look at some of the laws affecting the promotion of international education exchange in Japan suggests that a serious promotion of internationalization of universities and a strategy to attract more international students from abroad will require a serious look into what Japan really wants and needs to do. And, that all entities involved with this engagement will have to work within the framework of the law. The success of the new 300,000 international student policy will depend on the coordination of the ministries in

developing unified government policies and creating laws to fit these policies to make the promotion of internationalization a smooth process.

Notes

- (1) See, http://www.mext.go.jp/b_menu/houdou/20/07/08080109.htm (last visited October 20, 2008). The report underlining the details of the policy being undersigned by the other Ministries (i.e., Ministries of Foreign Affairs, Justice, Health Welfare and Labor, Economy Trade and Industry, and Land and Transportation) reflects the importance of this policy. In the past, it was only the Ministry of Education, Culture, Sports, Science and Technology that proposed and executed such policies.
- (2) See, <http://www.ajinzai-sc.jp/asia.html> (last visited on October 20, 2008).
- (3) See, "Proposal of a Foreign Student Policy for the 21st Century," (formulated by the Roundtable Discussions for the International Student Policy for the 21st Century, August 1983) ; see also, "Development of the Foreign Student Policy for the 21st Century," (long-term guidelines formulated by the Foreign Student Issues Advisory Committee, June 1984) .
- (4) See, Law No. 319, Article 7, and Supplement 1, 2, and 3, Immigration Control and Refugee Recognition Act (1951) ; also see, Ministry of Justice Order No. 16 (1990) establishing a strict standard of review for new entries requiring a thorough check of the applicants financial status. Present statistics of international student's ("college student") do not include the numbers of pre-college students attending Japanese language schools and programs.
- (5) See, "Waga Kuni ni okeru Nihongo Shugakusei no Zairyu Jokyo to Kongo no Ukeire Hoshin (The Present Status of Japanese Language Pre-college Students and Acceptance Policy for the Future)," (Ministry of Justice, 1994) .
- (6) Shiraishi, K., "Ryugakusei su no Hensen to Nyukan Shisaku kara miru Ryugakusei 10 Man-nin Keikaku (Looking at the 100 Thousand International Student Acceptance Plan from the Standpoint of the Trends in the Numbers of International Students and Immigration Policy)" 61 ABK RYUGAKU Mail News 1-6 (2006) .
- (7) See, "Immigration Review Procedures for Foreign Students and Pre-college Students," (Notice No. 2, Academic International Unit, January 24, 2000) .
- (8) See, Asahi Shimbun article, February 12, 2002, p.37, reporting that 198 out of the 334 international students enrolled at Sakata Junior College disappearing from campus; also see, Asahi Shimbun article, February 26, 2002, p.33, reporting the increase of international students as being one of the reasons for the robberies and murders in Osaka and Oita. The Shukan Asahi Magazine, October 10, 2003, (p.174), had an article describing the murders committed in Fukuoka, noting that they were committed by three former Chinese students studying in Japan (one at a Japanese Language Prep-School; the second at a Training College; and the third at a private university). In April 22, 2004, the Asahi Shimbun (p.35) reported on the safety of Japan being threatened by the increase of crimes by foreigners.
- (9) The negative sentiment and strict immigration procedure is a result of the increase of harsh crimes such as robberies and murders. However, it is interesting to note that

contrary to the public image that international students are committing so many harsh crimes, in fact, the crime rate has been stable since the 1980s. See, Police White Paper; also see, Harada, G., “The Changing International Environment and Japanese Immigration Laws—From an International Education Exchange Perspective” (translated into Chinese) in INTERNATIONAL STUDENT EDUCATION IN CHINA AND JAPAN (Beijing Univ. of Languages, 2004) , pp.210-220.

- (10) See, Ministry of Justice, Immigration Bureau Statistics for 2005, <http://www.moj.go.jp/PRESS/060530-1/060530-1.html> (last visited October 20, 2008).
- (11) See, Final Report, “Aratana Zairyu Kanri Seido ni Kansuru Teigen (A Proposal for A New System for Managing Foreign Residents),” (Fifth Immigration Policy Conference, March 2008) .
- (12) A serious loophole related to this dual system is that a foreigner who is illegally residing in Japan (on the national level) could apply for an Alien Registration Certificate (on the local level) which can enable him/her to open up a bank account and /or sign a contract to buy a cell phone. In some instances, this kind of loophole can be used to engage in illegal activity.)
- (13) See, Final Report, *supra* note 11.
- (14) See, Article 3, School Education Law (amended June 27, 2007, Law No. 98). The specific provisions are laid out in the Daigaku Setchi Kijun (University Establishment Standards) which was established in 1956 and amendment several times thereafter.
- (15) See, MEXT Ordinance, No. 22, 2007.
- (16) K. Kitamura, GENDAI DAIGAKU NO HENKAKU TO SEISAKU (Tamagawa Univ. Publishing, 2005) , p.91
- (17) *Id.*, Kitamura, p.94.
- (18) See, A. Yonezawa, “The New Quality Assurance System for Japanese Higher Education: Its social background, tasks and future,” 2 RESEARCH IN UNIVERSITY EVALUATION 24-34 (2002) .
- (19) According to article 21 of the Standards for University Establishment, 1 credit is equivalent to 30 to 45 hours of study.
- (20) According to article 32 of the Standards for University Establishment, 124 credits are needed for graduation.
- (21) See, Asahi Shimbun, “Establishing Joint Faculties within a Multiple University Alliance? The Ministry Thinking of Amending the Standards of University Establishment” (online article) February 23, 2008 : http://www.shutoken-net.jp/2008/02/080225_7asahi.html (last visited October 20, 2008).
- (22) This Report was prompted by the results of a study done by a Research Committee on International University Qualification Standards in March of the same year. This committee recommended two important points concerning the development of higher education across borders. The first point is to approve the establishment of Japanese campuses of foreign universities if they have been approved by their home country. This is to promote internationalization of study opportunities in Japan. The second point that was emphasized was the approval of overseas campuses of Japanese universities. See, Material 3-1, University Discussion Section, Central Education Commission, September 20, 2004.
- (23) For graduate schools, see Article 33, Standards for Graduate School Establishment; for

- 2-year colleges, see Article 36, Standards for 2-year College Establishment; for Professional Schools, see Article 26, para. 1
- (24) See, “On a New International Student Policy,” (formulated by the Central Education Commission (2003)), http://www.mext.go.jp/b_menu/public/2003/03100701/001.htm (last visited October 20, 2008).
- (25) See, Census Statistics (2005).
- (26) See, Inaba, Y., “Nihon ni okeru Gaikokujin no Jutaku Mondai (Housing Problems Experienced by Foreigners in Japan),” 1350 JURIST 30-37 (2008).
- (27) *Id.*, p.31.
- (28) The project was one of three projects oriented to improve the study environment for international students residing in the Hiroshima region. Hiroshima region was selected as a model region for international student education exchange activities during the years of 1998-2000.
- (29) Inaba, *supra* note 22, p.33.
- (30) See, <http://www.pref.kyoto.jp/kokusai/1197012678160.html> (last visited October 20, 2008).
- (31) See, JASSO website for specific locations of the international student residences.
- (32) See, Nihon Keidanren, “Proposal on the Issue of Accepting Foreigners,” (2004); and, Nihon Keidanren, “A Second Proposal on the Issue of Foreign Human Resources,” (2007). The Keidanren recommended that Japan develop an economic society based on multiculturalism since every citizen in Japan could benefit from the diverse values, experiences and the intellectual knowledge of people from overseas. Recent discussion has promoted the program of hiring foreign nurses and health care workers.
- (33) However, see survey done by The Japan Institute for Labor Policy and Training, “Gaikokujin Ryugakusei no Saiyo ni Kansuru Chosa (Survey on Hiring International Students),” (2008). In this survey companies mentioned the reasons for not actively hiring international student graduates in the past. Some of the reasons include: international students being strongly assertive of one’s position; deficient in Japanese language proficiency; companies not prepared in accepting foreign workers (communication problem); and the company not taking an active position in hiring foreign workers, etc.,....
- (34) Detailed information on the above procedures can be found in “A Guide to Employment for Foreign Students 2009” compiled by the Japan Student Services Organization (JASSO). For general information on finding a job in Japan, see “For Foreign Nationals Wishing to Work in Japan,” compiled by the Public Employment Security Office of the Ministry of Health, Labor and Welfare.
- (35) The Immigration Control Act states that any foreign national that resides in Japan, unless otherwise stated by the law, must have been approved entrance into Japan, have acquired a status of residence or have been approved a change of status to reside in Japan (Article 2.2). And, according to Article 2.2, paragraph 2, the status of residence must be one of the categories designated in either supplement 1 or 2, and the content of the activities must be within the scope of the particular category and supplement.
- (36) See, Supreme Court Decision, Grand Bench, January 26, 2005, 1885 HANREI JIHO 3; for a case study on this decision, see, 1313 JURIST 13 (2006).
- (37) See, Tokyo District Court Decision, March 29, 2005, 897 ROHAN 81.

(38) See, Notice No. 276, August 3, 2007, Ministry of Health, Welfare and Labor.

(39) See, Osaka District Court Decision, 688 ROHAN 42 (1994).

(40) See, Tokyo District Court Decision, 666 ROHAN 61 (1994).