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CARIM INDIA – DEVELOPING A KNOWLEDGE BASE FOR POLICYMAKING ON INDIA-EU MIGRATION

Co-financed by the European Union

Highly Skilled Indian Migrant Population in Spain

Germán Gómez Ventura

CARIM-India Research Report 2013/39



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CARIM-India
Developing a knowledge base for policymaking on India-EU migration

Short Research Report
Highly-Skilled Migration Series
CARIM-India RR2013/39

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CARIM-India – Developing a knowledge base for policymaking on India-EU migration

This project is co-financed by the European Union and carried out by the EUI in partnership with the Indian Council of Overseas Employment, (ICOE), the Indian Institute of Management Bangalore Association, (IIMB), and Maastricht University (Faculty of Law).

The proposed action is aimed at consolidating a constructive dialogue between the EU and India on migration covering all migration-related aspects. The objectives of the proposed action are aimed at:

- Assembling high-level Indian-EU expertise in major disciplines that deal with migration (demography, economics, law, sociology and politics) with a view to building up migration studies in India. This is an inherently international exercise in which experts will use standardised concepts and instruments that allow for aggregation and comparison. These experts will belong to all major disciplines that deal with migration, ranging from demography to law and from economics to sociology and political science.
- Providing the Government of India as well as the European Union, its Member States, the academia and civil society, with:
 1. Reliable, updated and comparative information on migration
 2. In-depth analyses on India-EU highly-skilled and circular migration, but also on low-skilled and irregular migration.
- Making research serve action by connecting experts with both policy-makers and the wider public through respectively policy-oriented research, training courses, and outreach programmes.

These three objectives will be pursued with a view to developing a knowledge base addressed to policy-makers and migration stakeholders in both the EU and India.

Results of the above activities are made available for public consultation through the website of the project: <http://www.india-eu-migration.eu/>

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1. Policy Framework on highly skilled workers: recent and current

Indian Community in Spain

The total Indian community in Spain was estimated to be roughly 35,000 in 2012. However, this increases to 50,000 if we add the numbers provided by the Indian embassy and consulates in Spain on PIOs (persons of Indian Origin). Most early Indians travelled to Spain from Africa while others came from India and even from Japan and Southeast Asia. Several Indian businessmen and traders migrated to Canary Islands after World War II when the Islands were declared free port following the imposition of import and foreign exchange restrictions in Spain. In recent years, the links between both countries have grown, fostering a dialogue between the peoples of India and Spain and achieving a greater level of co-operation and mutual understanding. Proof of this are the creation of the *Casa de la India* in Spain, with its head office in Valladolid, as a centre for the promotion and dissemination of Indian culture in Spain¹, or the Spain-India Council Foundation, with the aim of promoting and strengthening bilateral relations.²

Highly qualified Indian migrants in Spain, rather than responding to market demand, are a consequence of the flow of workers that accompany the processes of internationalization of business networks and the trans-nationalization of services.³ This recent flow of highly skilled Indian migrants do not normally display a desire to settle in Spain and, despite the limited numbers of this flow, it stands out among the current of non-EU highly qualified migration to Spain.

Spanish legislation for Highly Skilled foreign workers

Current legislation in Spain covering foreign workers, concerning its rights, freedoms, entry requirements, residence, exit and incorporation into the labour market, is diverse and in continuous development. It has been recently amended in order to adapt to the latest European Union regulations. At the moment, there is no bilateral agreement between Spain and India granting special status to highly skilled Indian migrants in Spain, so the general norms for non-EU high qualified professionals are to be applied in respect to Indian workers too. The main features of the legislation are contained in the following:

- Spanish Constitution (Articles 13.1, 10.1 and 10.2);⁴
- Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and their social integration, of January 11, which was amended by Organic Laws 8/2000 of December 22, 11/2003 on September 29 and 14/2003 of November 20. Pursuant to the mandate of the Third Additional Provision of Organic Law 14/2003, it was issued a Regulation for Foreign Workers of December 30, 2004, which was amended by Royal Decree 1162/2009 of July 10;
- The latest reform of the Organic Law on Foreign Workers was approved on December 11, 2009, adopting community standards of Council Directives 2005/71/EC of 12 October 2005, on a specific procedure for admitting third-country nationals for the purposes of scientific research, and 2009/50/EC of 25 May 2009, on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment;

¹ http://www.casadelaindia.org/indianet/cm/setLocale?dvRegLocale=en_UK&pgseed=1380539345305.

² <http://spain-india.org/en>.

³ The number of student residence authorizations given to India citizens has not surpassed 500 a year. See Ana López-Sala, *From Traders to Workers: Indian Immigration in Spain*, CARIM-India RR 2013/02, RSCAS, European University Institute (2013), pp. 15.

⁴ Spanish Constitution, EN version:
http://www.lamoncloa.gob.es/IDIOMAS/9/Espana/LeyFundamental/titulo_primer.htm.

- The most recent Regulation is from April 20, 2011 and was approved by Royal Decree 557.⁵ In its Chapter V regulates the temporary residence and work permit of **highly qualified professionals**. It also refers to highly qualified immigrants, among others, in Article 25 *bis* (visas), Article 32 (long-term residents and blue card holders) Article 38 *ter.* (residence and work of highly qualified professionals) and Article 40 (exemption from the national employment situation for positions of trust of management and highly qualified professionals).

Sectoral focus of the Policy on Highly Skilled Migrants

In relation to highly skilled workers policies in Spain, there are specific regulations contained in the **Resolution of the Ministry of Labour and Social Affairs of February 28, 2007**,⁶ which states which are the requirements for the entry of foreigners, whose professional activity involves matters of social or occupational interest or research or teaching jobs.

The resolution applies to:

- a) Managerial or highly qualified personnel for companies that can provide, together with a descriptive report on their activity, specific documents evidencing its purported business nature.⁷
- b) Highly qualified technical or scientific personnel to conduct research work, contracted by a Public Administration or an organisation in which it has a majority interest, as well as foreign teachers hired by a Spanish public university, provided that they can present required documents along with the report describing the activity for which the research personnel are being contracted.⁸
- c) Highly qualified technical or scientific personnel, contracted by the university, R&D centres, or business entities, hired to do research work or for participation in development activities.⁹
- d) Artists, or group of artists, of international renown or participating in an international artistic project, together with the personnel necessary for its performance, who come to Spain to give performances of cultural interest, contracted by companies.¹⁰

⁵ <http://www.boe.es/boe/dias/2009/12/12/pdfs/BOE-A-2009-19949.pdf>.

⁶ <https://www.boe.es/boe/dias/2007/03/16/pdfs/A11258-11261.pdf>

⁷ The documents to be provided, can be one of the following: i) a certificate from the General Treasury of the Social Security (TGSS), stating that it has a workforce of over 500; ii) a certificate from a financial auditor or audit company, indicating an annual net turnover in excess of 200 million euro in Spain, or that their equity or shareholders' equity in Spain is over 100 million euro; iii) an Investment Registration Certificate, indicating an average annual gross foreign investment of not less than 1 million euro in the past 3 years; iv) A favourable report from the Ministry or competent regional authority, in the case of small and medium sized companies, stating that the business activity falls within one of the following strategic sectors: information and communication technologies, renewable energies; environmental; water and water treatment; social sciences; biopharmaceutical and biotechnology; or aeronautics and aerospace.

⁸ They shall present the following documents: i) evidence that the organisation's purpose is to promote and develop research; ii) evidence that the organisation is majority-owned by a regional Public Administration. Teachers hired by a Spanish university shall provide confirmation from the university dean, or delegated person, regarding the teaching functions the contracted person is to carry out.

⁹ On the provision that they can submit a favourable report from the State, or autonomous body, regarding its status of a recognised R&D centre or research and development unit, along with a descriptive report about the project for which the personnel are being hired.

¹⁰ These mentioned companies shall provide an explanatory report and documentation regarding the performance to take place, the people that make up the team and the countries in which they have previously (or already) performed and written evidence of international reach or the artist's participation in an international project, according to the case proposed, and its cultural relevance.

- e) Any other case assimilated to the ones above (a) to d)), which presents exceptional and duly accredited reasons of economic, social or professional interest, subject to authorization from the Ministry of State for Immigration and Emigration.

In the cases described in a), b), and c) it must be demonstrated that foreign highly skilled workers employed have previously developed these functions for at least one year, or, alternatively, to have proven experience for the same period on jobs or research projects on scientific or technological development similar to that intended to occupy.

Conversely, the **Special Unit for Large Companies and Strategic Economic Sectors** (*Unidad de Grandes Empresas y Colectivos Estratégicos* (UGE-EC)) was established in 2007 as a result of an agreement of the Council of Ministers and by Resolution by the Ministry of Labour and Social Affairs of 28 February 2007.¹¹ It is currently developed by Royal Decree 577/2011, of April 20, approving the Regulation implementing Organic Law 4/2000, of January 11¹², which refers specifically to it in the preamble, being regulated the content of his performance in the title IX of that Law.

The purpose of the UGE-EC is to give quick response to the needs expressed by companies and organizations established in Spain that need to incorporate non-EU highly skilled workers, while offering expert advice on the existing legislative options and procedures.

Eligibility for temporary residence

What type of permits can be applied for?

According to Title IX of the Immigration Regulations, which expands Spanish Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, and approved by Royal Decree 557/2011, of 20 April, the following permits may be applied for, provided that the requirements for each are met:

- Temporary residence and work permit as an employee;
- Temporary residence and work permit as an employee within the framework of a transnational provision of services;
- **Temporary residence and work permit for highly qualified professionals who hold an EU blue card;**
- Temporary residence and work permit for researchers;
- Temporary residence and work permit as an employee for a fixed period, in the case of artists.¹³

The holder of the **EU blue card** that has resided for at least eighteen months in another Member State of the European Union can get a residence permit in Spain as a Highly Skilled professional. The application may be done in Spain, within one month of their entry, or in the Member State where the worker is authorized. In case the original authorization had been extinguished without being resolved the application for authorization in Spain, it may be granted a temporary residence permit for the worker and the members of his family.¹⁴

¹¹ <https://www.boe.es/boe/dias/2007/03/16/pdfs/A11258-11261.pdf>.

¹² Article 38 *ter.* (on “Residence and work of highly qualified professionals”) has been added to OL 4/2000 by December 11, Organic Law 2/2009, of which amended the law updating it according to the new European Directives. <http://www.boe.es/boe/dias/2009/12/12/pdfs/BOE-A-2009-19949.pdf>.

¹³ The latest available data, from June 2012, indicate that the number of Indian nationals with residence permits was 32,668, of which 2,103 (just over 6%) are included in the community regime. Among those included in the general regime, 59.5% have long-term residence permits and 33.8% have temporary permits. Just over 14% obtained their residence cards in 2012 via family reunification. Data obtained from Ana López-Sala, *From Traders to Workers* (2013), pp. 16.

¹⁴ http://www.castillalamancha.ccoo.es/comunes/recursos/7/doc17444_Reforma_de_la_LOEX_2-2009_de_12_de_diciembre.pdf, pp.47.

Indian migrants who plan to carry out an activity that requires a higher education qualification may obtain a temporary residence and work permit for highly qualified professionals. Exceptionally, those workers who can prove a minimum of five years of professional experience related to the activity for which the permit is requested, at a level comparable to the above qualification, are also entitled to this permit.

Eligibility for permanent residence

According to Spanish law, Indian citizens (without distinctions between low, mid or high level of education) are required to reside continuously in the country for ten years in order to apply for the Spanish nationality.¹⁵ Legislation regarding Spanish nationality is based on the principle of *ius sanguinis*. It differs from other European countries in that it allows privileged access to Spanish nationality to certain countries (Latin American countries and nationals from other former Spanish colonies) after a two-year residence period. It also allows for the possibility of double nationality for these nationals.¹⁶ Data from 2011 indicate that 47% of Indians who acquired Spanish nationality did do through prolonged residence, 12.5% via matrimony and 40.25% because they were born in Spain.¹⁷

Family reunification under the policy

Highly Skilled Indian migrants who are holders of residence and work permits granted in accordance with Title IX of Royal Decree 557/2011, of April 20, with the exception of artists, can bring their family members to Spain.¹⁸

The types of residence permits that families of the workers specified (except artists) can apply for are these:

- Temporary residence permits without undertaking a work or professional activity;
- Temporary residence and work permit as an employee;
- Temporary residence permits for family reunification.

How is 'highly skilled' defined under the policy?

Under the EU blue card programme, higher education qualification is defined as the resulting from higher education training that lasted at least 3 years and provides the degree of qualification necessary to practice a profession that demands a high level of training or to join an advanced research programme.

According to Spanish legislation (Article 38 third of Organic Law 2/2009),¹⁹ it will be considered as a highly qualified professional for the purpose of the article those accrediting higher education qualifications or, exceptionally, have a minimum of five years of professional experience that may be considered comparable, in the terms specified in the regulations.

¹⁵ Spanish Ministry of Justice on legislation regarding nationality:
<http://www.mjusticia.gob.es/cs/Satellite/es/1215198282620/EstructuraOrganica.html>;
<http://www.mjusticia.gob.es/cs/Satellite/en/1215198283008/EstructuraOrganica.html>.

¹⁶ See Ana López-Sala, *From Traders to Workers* (2013), pp. 16.

¹⁷ Although Spanish nationality is granted on the legal principle of *ius sanguinis*, a person born in Spanish territory can be naturalized after a short period of residence. See Ana López-Sala, *From Traders to Workers* (2013), pp. 17.

¹⁸ <http://www.boe.es/buscar/act.php?id=BOE-A-2011-7703>, Articles 178-181.

¹⁹ <http://www.boe.es/boe/dias/2009/12/12/pdfs/BOE-A-2009-19949.pdf>, pp. 1005007 (Art 38 *ter.*).

Highly qualified/skilled migrant workers according to this article will get an authorization residence and work permit through an EU blue card. Article 38 also states that for the granting of authorizations aimed at highly skilled professionals it can be taken into account the national employment situation and the need to protect the adequacy of human resources in the foreign country.

When defining 'highly skilled' workers according to Spanish laws, there are no salary requirements or salary thresholds, no labour market tests are required and there are no age restrictions or linguistic trainings conditions when applying the different framework policies.

Special regime for academic researchers

Article 38 *bis.* (introduced by Organic Law 2/2009) contains the special regime for academic researchers.²⁰

Foreign researchers whose main or sole reason for being in Spain is to carry out research projects through a hosting agreement with a research organisation can obtain a temporary residence and work permit, to be renewed on a yearly basis.

The duration of the permit will be equal to that of the research project, with a minimum of 5 years, which in exceptional cases can be of a shorter duration. It is important to note those Indian migrants who are going to carry out unremunerated research or training activities do not have to apply for this permit, as they will only need a visa for studies.

Foreign researchers admitted for these purposes may teach or perform other activities consistent with its main research, in accordance with the regulations in force.

Any foreigner previously admitted as a researcher in another Member State of the European Union asking to perform part of their research in Spain for a period exceeding three months may apply for a residence authorization and work permit and being eligible for it once the requirements are met, requiring a new hosting agreement.

By a research organisation it is meant any individual or public or private legal entity established in Spain that carries out research and technological development activities and is authorised to sign hosting agreements. The Spanish Ministry of Science and Innovation maintains an updated list of organisations authorised to host foreign researchers.²¹

The conditions needed to be met in order to secure a hosting agreement are: i) that the research project has been accepted by the organisation and adequately defines its aim and duration; ii) that the necessary material and financial resources are available to carry out the project; and iii) that the researcher can prove they have a higher degree that allows access to doctorate programmes related to the research project for which the temporary residence and work permit for research is sought.

The hosting agreement must contain a descriptive report about the project and the employment contract, with the start date conditional upon a permit being granted.

There exist some agreements between Spanish and Indian academic institutions, such as the one signed by the Spanish ICMAT (Institute for Mathematics Sciences) and the Indian Institute of Sciences, the National Board for Higher Mathematics, the Tata Institute of Mumbai and the Chennai Mathematical

²⁰ <http://www.boe.es/boe/dias/2009/12/12/pdfs/BOE-A-2009-19949.pdf>, (Art 38 *bis.*).

²¹

<http://www.idi.mineco.gob.es/portal/site/MICINN/menuitem.7eeac5cd345b4f34f09dfd1001432ea0/?vgnextoid=2e4a44cb71b72210VgnVCM1000001d04140aRCRD>.

Institute, in order to promote and enhance collaboration between the two countries in the field of Mathematics.²² There are similar collaboration agreements in the field of Astronomy.

Memorandums of Understanding and Bilateral Agreements between India and Spain

In the last few years, the governments of India and Spain have signed several Memorandums of Understanding (MoU) under which they encourage collaboration and exchange of highly qualified personnel and knowledge. These are the different MoU signed recently between both countries:

- MoU on Institutionalization of Political Dialogue (2006)
- Mutual Legal Assistance treaty on Criminal Matters (2006)
- MoU between Technology Development Board (TDB) and the Centre for Development of Industrial Technology (2006)
- MoU of cooperation in the field of Science and Technology (2007)²³
- MoU on Agriculture and Allied Fields (April 2009)
- MoU on cooperation in Tourism (April 2009)
- MoU on Renewable Energy (April 2009)²⁴
- MoU on Defence Cooperation (October 2012)²⁵
- MoU on Roads and Road Transport Sector (October 2012)
- MoU in the field of Audio-visual Co-production (October 2012)
- MoU between the Indian Railways and RENFE (Spanish Railways Infrastructure Manager) of Spain on technical cooperation in the field of Railway sector.²⁶

Brief evaluation of the success or failure of recent policies in terms of attracting highly skilled workers

With respect to the 2007 Resolution by the Ministry of Labour and Social Affairs creating the Special Unit for Large Companies and Strategic Economic Sectors, being the purpose of the rule to ease the entry of highly skilled professionals, the requirements on the amount of investment, the number of workers of the contracting company or the accreditation of qualifications required to the researchers, these might look as an excessive burden. It makes little sense to force compliance with strict requirements when it would be simpler to revoke the work permit if the person does not meet the desired expectations. However, the same resolution empowers the Director General to reduce the thresholds mentioned and thus facilitate access to a greater number of companies or employers. Following this procedure were processed 2,650 applications in the first year of operation, corresponding to executives, technicians, researchers and teachers, and the average processing time did not exceed 16 days, which is an incentive to use this procedure.

²² <http://www.icmat.es/press%20outreach/press/Releases/NP-17-09-12>.

²³ This MoU has been strengthened with a Cooperation Program signed in January 2013 to promote research and development between both countries:

http://www.idi.mineco.gob.es/portal/site/MICINN/menuitem.edc7f2029a2be27d7010721001432ea0/?vgnextoid=1cc9256d9bb8c310VgnVCM1000001d04140aRCRD&lang_chosen=en.

²⁴ The joint Indo-Spanish programme for Technological cooperation in Renewable Energy signed on January 2013 enhanced research, cooperation and technologies in the field of renewable energy:

http://www.ibef.org/artdisplay.aspx?tdy=1&cat_id=60&art_id=33379.

²⁵ <http://www.thehindu.com/news/national/india-spain-ink-agreement-on-defence-cooperation/article4034433.ece>.

²⁶ <http://pib.nic.in/newsite/erelease.aspx?relid=88651>.

In principle, it might seem that the rule seeks to promote foreign investment in Spain, requiring large volumes of foreign investment, rather than facilitate the entry of highly skilled workers.

With regard to the effectiveness of other laws or policies, it might be needed a regulation simplifying administrative procedures related, both with the approval of foreign qualifications, as with the granting of licenses or work permits and specific visas for researchers, managers or highly qualified technicians. So far, recognition of original qualifications has been established only for medical and nursing professionals, with specific adaptation courses to enter the MIR system.²⁷

Similarly, it might be desirable to facilitate the hiring of non-EU students who complete their undergraduate studies, technical studies and Ph.D. in Spain, since they have the advantage of being already integrated in the country. These measures could be accompanied by legislative support for the creation of private recruitment agencies hiring qualified professionals from abroad and other rules involving greater labour market flexibility, allowing Spanish wages compete with the rest of Europe.

2. Policy Impact on the Recruitment of both Highly Skilled Labour in general and Indian highly skilled workers in particular

Spain provides two kinds of registries that can be used to analyze the immigrant population. First, the Foreign Residents Register sustained by the Ministry of Labour, collecting data on all immigrants authorized to reside in Spain, including both EU and non-EU countries.²⁸ Second, the Municipal Register of Inhabitants, which is a registry of the entire population residing within the different municipalities, providing numbers of the real size of the foreign population and being continually updated.

Since the middle of the past decade highly skilled Indian workers have started settling more consistently in Spain. This process has been registered in some official statistics, mainly provided by the Spanish Ministry of Labour. Although the number of highly skilled migrants is smaller than that of low or unskilled workers, India appears as one of the most important nationalities among the applications managed through the Transnational Service Workers system and authorizations from the Special Unit for Large Companies and Strategic Economic Sectors (UGE), the instrument designed by the Spanish immigration policy. The establishment of the highly skilled Indian worker is the result of mobility derived from the internationalization of the labour market and the domestic demand together with the dynamics of migration policies in Spain.

Data from the Spanish Ministry of Labour allows providing only brief information on the highly skilled migration current. In 2011, 8% of the blue card permits issued in Spain was given to Indian nationals, being this percentage only surpassed by nationals from the U.S., Canada, China and Colombia.²⁹ Since 2007 a part of the qualified immigration from third countries to Spain is managed by the Special Unit for Large Companies and Strategic Economic Sectors. Between 2007 and 2011 close to 12,000 permits were issued to foreign citizens via this unit, just over 1,000 Indian nationals (10.3%). In addition, between 2008 and 2011 India has remained one of the top four nationalities in number of permits received, second in 2009 and 2010, surpassing 13% in both of those years.³⁰

The recent growth of the Indian community has been coupled with an increasing masculinisation of it. The percentage of male within the whole group has grown from 48.7% in 1998 to 69.84% in 2012 (we refer

²⁷ <http://www.grupocto.es/web/medicina/extranjeros.pdf>. MIR in Spanish stands for *Médico Interno Residente*, the system of training for medical specialists that exists in Spain since 1978.

²⁸ The Ministry of Labour also compiles data from other ministries with competences over foreign citizens.

²⁹ Note that only a few hundred of these kind of permits are issued a year. See Ana López-Sala, *From Traders to Workers* (2013), pp. 15.

³⁰ See Ana López-Sala, *From Traders to Workers* (2013), pp. 15.

here to the overall Indian community, not just the highly skilled workers proportion).³¹ The proportion between sexes has gradually transformed during the last 15 years into a clear predominance of males. The change is very significant from the balanced proportion between male and female percentages throughout the last decade to one of the foreign communities with the highest number of males in percentage according to the data provided by the Municipal Register and the National Statistics Institute (INE).

However, the growing masculinisation of the Indian community in Spain is not observed among economically active members. The proportion of women registered with Social Security has always been much lower and this has not changed significantly over the past few years. In 2001 only 14.3% of the Indians registered were women, while in 2011 the percentage increased only slightly to 16%.³²

³¹ Data obtained from Ana López-Sala, *From Traders to Workers* (2013), pp. 4-7.

³² Data obtained from Ana López-Sala, *From Traders to Workers* (2013), pp. 12-13.