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NOTE DE L'AUTEUR

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Introduction

- 1 Until recently, the Spanish government and social services have been aware of the inefficiency of contingency quotas as a control of the flow of immigration, and both concede that this in reality has been *hidden regularization*. The *controversial* LO 4/2000, or Law on the Rights and Freedoms of Foreigners attempted to resolve this problem, specifically in the case of seasonal agricultural jobs, with the creation of the *origin contract*. Until now, subsequent modifications of this law as well as approved regulations for its implementation have controlled the flow.
- 2 The procedure is the following: the jobseeker arrives in Spain with a work contract, specifying pre-established employment and social conditions, including housing, and once the period has concluded, he/she must return to his/her country of origin; this is a condition to be met for the employee to be able to return for the following season. The aforementioned *hidden regularization* has also forced the employer interested in taking advantage of this type of contract to make a generic offer, without making a

predetermined choice of the person to be hired. As of the second year, and only if the worker has complied with the terms of return to origin, the employer can present a nominal offer: this worker is usually referred to as *repeater*.

- 3 From its inception in Huelva, this program has become a national model, both due to the commitment of social agencies, as well as the volume of labor contracted. This study will examine the application of origin contracts in Spain, most specifically in the province of Huelva. Judicial texts as well as current statistics will be analyzed, accompanied by information from the Huelva Government sub-delegation archives, where these contracts are centralized. In this manner, we will be able to determine the causes leading to the hiring of foreign labor, procedures applied, regional implementation of this type of contract, what sets it apart, as well as possible failures and alternative measures to be taken.

1. Spanish immigration policy and the “national employment situation”

- 4 Unlike the situation in countries such as Germany, France, Belgium, the Netherlands, Switzerland, or the UK, during the greater portion of the twentieth century, Spain was characterized by emigration. The consolidation of democracy as well as joining the EEC (European Economic Community) had important repercussions on its economy, so that today Spain ranks among the ten leading world powers, and is among the EU (European Union) countries with the highest economic growth. This boom has positively affected job creation, increased the quality of life of its population, and improved the country’s general well-being. As a consequence of these changes, Spain is no longer simply a way-station for immigrants, who previously came through in order to gain access to other European countries. Economic development and advances in wellbeing have converted twentieth-century Spain in a country which attracts immigrants, with a quickly-growing population of resident aliens.
- 5 Economy-wise, the incorporation in the EEU has also influenced Spanish immigration politics, as well as adoption of some policies. Therefore, the first Law on the Rights and Freedoms of Foreigners was approved in July of 1985: LO 7/1985, dated July 1, regarding the rights and freedoms of foreigners in Spain. Its text alludes to the justification of the constitutional mandate stating that foreigners should enjoy the public freedoms guaranteed in Section I, based on the terms as established in the treaties and law. However, the extended delay in fulfilling the mandate established in the Constitution is surprising, as it is one of the country’s basic rights.
- 6 This delay can be explained by the reduced number of immigrants in existence at the time. The Andalusia Ombudsman’s office has stated that LO 7/1985 “corresponds to a period of time when there were fewer immigrants in Spain, and far less of an economic effect” (2005:77).
- 7 The following question arises: despite the fact that the immigration phenomenon was practically nonexistent, why were regulations put into effect to control immigration? The answer lies in the fact that a few months later, Spain joined the EEU.

- 8 The members feared that Spain would turn into the access road for foreigners to reach their territories, and therefore they imposed the requisite that Spain adhere to the control and limitation of the entry of non-community foreigners.
- 9 The underlying philosophy of LO 7/1985 was not based on immigration, but on policies related to foreigners and public order. No social, labor, or integration aspects were taken into account, nor were basic rights recognized. Increasingly, claims in this regard soon began to be filed as the number of arriving immigrants began to grow. As a result of this situation, the Ombudsman’s office, the courts, human rights organizations, and the United Left Catalanian Initiative¹ filed an urgent claim with the Government on June 13, 1990 in this regard: “What is the Government’s immigration policy, and what is the situation immigrants face, which spurs demonstrations and protests by social groups in their defense?” Based on this, the government agreed to prepare a report, which was presented before the Parliament on December 2, 1990, entitled *The situation of foreigners in Spain: general norms of Spanish immigration policies*.
- 10 The study established that Spain lacked general immigration policies, with the government’s main objective being to control and channel the flow of migration jointly with the rest of the EEC countries. The report also stressed that efficient intervention is fundamental in an active immigration policy as well as their social integration, strengthening border controls as well as an increasing attempt to send help to third-world countries. As a result of this report, on April 9, 1991, the Congress approved a proposition regarding the situation of immigrants in Spain. It suggested that the government carry out an 11-step program, which summarizes Spain's immigration policy. The suggestions focus on flow control, social integration of legal resident immigrants, and cooperation with the development of the countries from which they originate.
- 11 Despite the important and numerous changes which have since taken place, generally since the year 2000, in legislation of immigration in Spain, most have been based on these pillars, which do not differ from those which had been adopted by the rest of the EU countries. Each of these pillars has been given a degree of importance, making them stand out considerably as regards the limitation of migratory flow. With the passage of time a clear tendency towards strengthening exterior borders and an increased control of the entry of immigrants has been evident. The majority of the immigration budget is spent on the following: border sentries, surveillance systems, border walls, measures to force the return of people entering Spain without authorized jobs, internment centers, etc.
- 12 At this point it would be worth wondering which criteria are used to determine the number of non-EEC immigrants that should be allowed to legally enter Spain². Based on the previously mentioned report from 1990, no more immigrants should be allowed to enter than can be integrated. How many can be integrated? During his exposition on October 2, 2001 in the Spanish House of Representatives, the Government Immigration Delegate at the time, Mr. Enrique Fernández-Miranda y Lozana, stated that: “Our capacity is limited by the reality of our job market” (Diary of the Spanish House of Representatives number 314: 9.843). These words sum up the philosophy which traditionally has characterized Spanish legislation in this regard. Therefore, the Preliminary Recitals of RD 2393/2004, which approve the development norms expressed in current Immigration Law, state: “within the architecture of the current migratory system, the admission of new immigrants into Spain is mainly based on the need to fill jobs”³.

- 13 The source of information used to determine the desired influx of new extra-EEC immigrants originates in the "national job situation." This expression means that entry is only granted when there is a demand in the job market, specifically meaning when there are jobs available regardless of unemployment, which cannot be filled by Spanish, EEC, or other legal residents⁴. It is evident that this limitation is linked with protecting Spanish workers as well as the internal job market. It is important to note that employment, or precisely the lack of it, is one of Spaniards' main worries as reflected in opinion polls⁵. The following arguments are used to justify immigration control, and even to oppose the admission of new immigrants: competition for jobs, decreasing salaries, and unsteady working and social conditions.
- 14 Despite the high rate of unemployment and temporary contracts, the reality is that many job offers are not filled. This was already evident back in 1994 in the *Plan for Social Integration of Immigrants*.⁶ It stated the following: "The idea that vacant posts can be filled by any job seeker is a false hypothesis, and cannot be proven". It also pointed out that within the job market there are "job niches" which, due to their precarious nature, lack of formality, or type of work, would be rejected by Spaniards yet be attractive to new immigrants.
- 15 Further arguments counter the claim that a higher number of immigrants negatively affects salaries and the rest of working and social conditions. It is indeed true that in many cases, due to the precarious situation in which the great majority of these people find themselves, the poorer working conditions in their countries of origin, and the desperate need to earn a salary have led them to accept very unattractive conditions (Agrela, B., 2002), sometimes even below what is legally acceptable. The fear of being fired, difficulty in finding another job, and the connection between authorizations of legal residence in Spain and having a job limit possibilities of filing claims against companies. In this manner, employers obtain cheap and submissive labor, which can negatively affect Spanish workers. However, the immigrant cannot be held responsible for this, as the Spanish government, like many others, relies on the Labor Inspectorate to oversee compliance with labor laws. In this manner those who do not comply with labor laws could be detected and fined. However, there are currently not enough inspectors and sub inspectors to achieve this.
- 16 A final reflection counters the idea that immigrants take jobs away from Spaniards. This is in fact erroneous, as the jobs available have been previously rejected by Spaniards and other legal aliens. What is not often mentioned is that immigrants contribute to sectors which would not exist without them. Aspects such as the arduous working conditions as well as lack of prestige make these jobs unattractive to other workers. Their contribution to the national economy is even more far-reaching, in that it generates a high volume of employment. An example is the area of agriculture, which will be delved into further on. The fact that immigrants harvest crops permits the creation of jobs in the agriculture cooperatives, which boosts agro industrial labor. This also has a beneficial effect on transportation companies, which see that the products reach their clients. It also benefits stores which provide agricultural supplies and the necessary merchandise for cultivating crops, construction companies which build warehouses or residences for temporal workers, food and clothing stores, bars, pubs, and discotheques, all of which obtain numerous new clients during the harvest (Gordo, M., 2005). These are only a few examples.

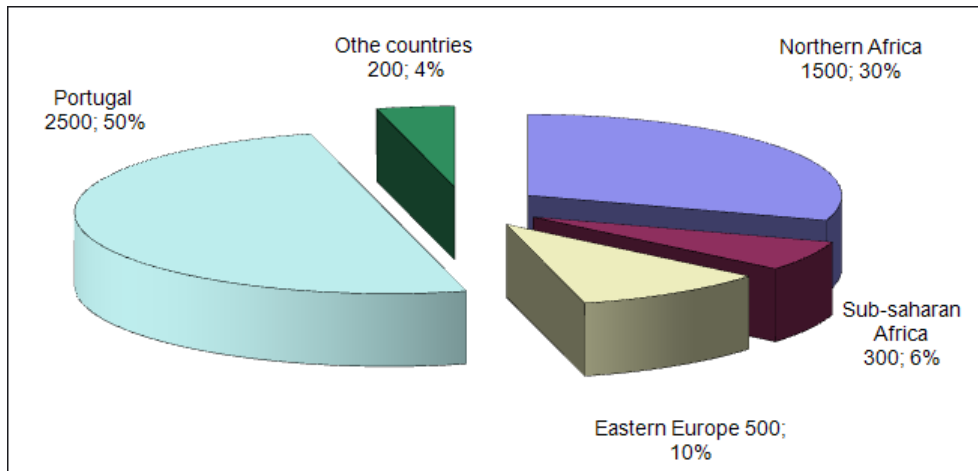
- 17 Without considering the aforementioned, we agree with Santamaría in that it is not necessary to call attention to the socio-economic need for immigration, “since stressing usefulness is a cruel paradox, which by attempting to focus on the advantages provided by immigrant workers, perpetuates and spreads utilitarianism, that is, the idea that the value of things and beings correlates to benefits to be obtained, which is a conditional and opportunistic reward.”(Santamaría, E., 2002: 375-376). It is our opinion that immigration should not be simply legitimized because it might be advantageous, but also because people have the right to better themselves both professionally as well as economically.
- 18 The abovementioned can be summarized thusly: the basic pillar of Spain’s current immigration policy is flow control. This is evident in the current national job market, which conditions the entry of immigrants through the availability of jobs. Are there jobs available? Which ones? Why are they vacant? The following section will answer these questions regarding the agriculture sector.

2. Labor demand in the new agriculture in Huelva (España)⁷

- 19 As mentioned, the limited access to the job market for foreigners is not absolute. Certain sectors open to them are generally rejected by Spaniards. They are examples which coincide with the increasing informal economy (Charro, P., 2003): precarious work conditions, low wages, scarce possibilities of promotion, short terms, danger, and low prestige. Outstanding among these are jobs related to seasonal harvesting campaigns.
- 20 The transformation of land use, localized irrigation, the intensive use of plastics to protect crops, chemical fertilizers, herbicides and the application of genetic engineering in farming have brought about two distinct types of agriculture: traditional and “new agriculture.” The latter, also known as “technoagriculture”, “intensive agriculture,” or “plastic agriculture,” takes advantage of technical advances to accelerate the biological production cycle. Its objective is to speed up the time it takes to get produce into the market, while its scarcity forces prices to rise, so that a small farm can be profitable. A growing concern among farmers is to avoid market saturation, to avoid lowering prices and therefore their earnings.⁸
- 21 This new agriculture has made the land it occupies more dynamic, creating farming sites from areas which previously were considered not very appropriate. This is the case along the shoreline of the Huelva province; since the 60s the pine trees on the sand began to be substituted by farms of “red gold” strawberries. Such was the case that within a few years this area became the leading producer of strawberries for fresh consumption not only in Spain, but across Europe, gaining the reputation as cutting-edge farming. Of 8,748 hectares of strawberries cultivated in Spain during 2005, 76% were grown in Huelva, or a total of 6,692 (MAPA, 2007), mainly in towns along the coast: Moguer, Palos de la Frontera, Lepe, Cartaya, Lucena del Puerto, Almonte, Isla Cristina and Bonares, all of which have become the leading strawberry growers. Regarding production, the numbers are even more striking. Huelva accounts for 90% of Spanish strawberries during the same period: 289,998 tons of the 320,853 produced (MAPA, 2007). The explanation for this is the higher production by its farms: 43,445 kilos per hectare, as compared to 40,000 obtained in Santa Cruz de Tenerife, the second highest producer in Spain (MAPA, 2007).

- 22 While strawberries continue to lead the new agricultural market in Huelva, for some years the tendency has been to diversity as a strategy to reduce risk. Citrus fruits have been introduced, especially oranges. Diversification has also set the stage for blueberries, raspberries, persimmons, peaches, etc. A breakdown of leading destinations for these is: Germany, France, UK, Belgium, Italy, Portugal, and the Netherlands.
- 23 This new agriculture has also caused important consequences regarding labor. Traditional farming is characterized by emigration and rural exodus, due to the increasing mechanization of farms and low profitability it offers.⁹
- 24 Contrarily, areas in which state-of-the art farming is practiced attract salaried workers due to the high demand required by these crops. Although certain activities have been mechanized (for example, soil preparation, distribution of fertilizer, irrigation), others cannot be done by machines (such as planting and gathering of crops, and tasks which require human labor). In the province of Huelva, the manner in which this need has been met has changed in recent years.
- 25 Initially, different field tasks were carried out by the family unit. As the strawberry plantations increased profits, some family members have stopped working the fields or simply remain in positions of authority. Many women remain connected to this activity. They work as supervisors, those who weigh the product, or work in the cooperatives. The same occurs with their children, who now carry out management and sales functions. At the same time, it is important to consider that the amount of wealth generated in the area acts as a motor which pulls behind it the following sectors: services (shops selling supplies, transportation companies), industrial (agro-industry), and construction (warehouses, residences for transient workers, etc.). These sectors offer more jobs which are more technical, qualified, stable, and with a higher social status, occupied by local residents, vacating the positions requiring manual labor (Ruiz, P., 1995).
- 26 Consequently, the local population became insufficient to fill the jobs, especially when considering that the surface cultivated was ever-increasing, due to the new techniques employed. In order to remedy this situation, initially laborers from other areas of Huelva were hired, mainly from la Sierra and el Andévalo. Another large group arrived from the outlying provinces, such as Seville and Cadiz, as well as Extremadura. This was a good solution during a few years; however, the low salaries, housing problems, the dependence upon the climate and the markets¹⁰ as well as the appearance of other alternative employment nearer their homes led the majority of these workers to stay put and stop providing this source of labor. These problems began to arise during the 90s, and were compensated by contracting workers from Portugal and Northern Africa, mainly Moroccans and Algerians. Despite this, the continuous cultivation of the land, along with the diversification of crops and the simultaneous cultivation of various crops during the same time period, resulted in a lack of laborers. Contrarily, employers insisted on claiming the lack of workers as the leading threat to being able to make their farms successful.

The origin of foreign seasonal field labor during the Huelva strawberry campaign



Source: Fieldworkers' Union, 2000. Preparation: Gordo, M., 2007.

- 27 The government tried to respond to this question, since employers began to attract more and more foreign workers in an increasingly disorganized fashion. They arrived without private contracts, and some were in Spain without residence permits, working permits or housing. Many of them survived in huts and did not find work. Conflicts arose, as did barriers to social integration. Unions, NGOs, and the Andalusian Public Defender (2001) began to condemn the precarious situation of these people in a reiterated manner. How did the government decide to meet the needs of businesses while controlling the flow of immigration? It chose a familiar tool: “contracts in origin”, which would create notable qualitative and quantitative repercussions within the seasonal workforce in the province of Huelva.

3. Implementation of “contracts in origin” as a tool to control immigration flow throughout Spain

- 28 The previous section explained the implantation of the new agriculture across the coastline of Huelva, and how it transformed the area into a leader in demand for manual labor. The accompanying unattractive salary and working conditions as well as economic propulsion of other sectors led the local residents to reject jobs in this agricultural sector. Businessmen began to raise the voice of alarm, stating that their crops were not being harvested and bemoaning losses due to the lack of manual laborers. This situation was repeated across Spain, with foreign laborers attracting attention as a possible solution to the problem.
- 29 On April 9, 1991 the government¹¹ presented a Proposition before the Spanish House of Representatives regarding the situation of aliens in Spain. It was approved the very same day, expressly acknowledging Spain as a country dealing with immigration (IU, 1997). Of the 11 measures it detailed, the first was: “To develop active immigration policies in which the government, strongly supported by political and social organisms, will take the initiative in channeling and organizing the flow of legal immigration based on labor needs of the Spanish economy, as well as the capacity to absorb the legal aliens into society.” In order to comply, the Ministers Council adopted a “contingent” policy as of

1993. This consists of an annual quota for non EEC workers, who are allowed entry to Spain to work because the national situation of employment cannot fill the vacancies.
- 30 This initiative spurred initial seasonal contracting, including jobs in agriculture. Farming activities and domestic service represent the majority of offers received. However, from the beginning the problems inherent in this practice were evident. The instructions of the 1995 contingency policy expressly stated the need to adopt specific procedures regarding these activities, which would provide quick and efficient processing of job offers which the national workforce could not or would not accept. Another novelty of the 1995 contingency policy was the specification of nationalities to which the offers would be made, as well as the type of job they would be offered. Hence, for seasonal farming jobs, 4,500 jobs were reserved for Moroccans, and 1,000 for “other countries.”
- 31 In 1996 a new Development Regulation was added to LO 7/1985: the Royal Decree 155/1996. A new aspect was the regulation of work permits. As was the case for the Regulation which it substituted, this foresaw the work situation of temporary workers as a special situation, in which the work permit was specifically created for them, known as Type A. Its duration, including extensions, was not to exceed nine months, and was not renewable. It also established a specific deadline to resolve these procedures, allowed for preferential treatment when issued. In this manner the special characteristics of temporal activity were reinforced, including farming, creating a regimen requiring specialized treatment. The Royal Decree (RD) institutionalized the contingency quotas as a measure to channel migrant workers, as for the first time it became part of Immigration Law, treated as a regulation. Experts considered that this “meant the acceptance of the reality that a series of jobs exist which, due to their precarious nature, are difficult or impossible to fill” (Salcedo, M.C., 2001:210), despite the existence of unemployment in the Spanish job market.
- 32 The specific regulation was included in Article 70, establishing that the government would be allowed to establish contingency quotas, as proposed jointly by the Ministries of Employment and Social Security and Social Services¹², as result of consultations with leading social and business organisms, and based on a report from the Inter-Ministerial Immigrant Commission.
- 33 Despite the change in policy, some rural areas of Spain continued to have problems, as they did not have enough workers during peak production seasons. This led to an uncontrollable movement of workers who could not be absorbed by job offers during periods of harvesting, either because they were travelling during the wrong periods, or because there were too many of them. As a result, destinations had to support the influx in a precarious manner, as social and health services were overburdened. Cooperation framework Agreement to the Arrangement of the Interior Migrations in the diverse Agricultural Campaigns of temporary Employment. As stated in the first clause, its intention was to “plan and organize temporary agriculture employment campaigns as well as to improve social and working conditions of migrant workers.” Apart from the organization of transportation of the workers, activities included creation of housing, advisory and information services regarding social and working matters, maintenance of child care centers and schools in the workers' places of origin, as well as occupational services.
- 34 Although initially the 1997 Cooperation Framework Agreement was made to solely include national workers and foreigners residing legally in Spain, in 1999 it was extended to the contracting of immigrants, and on September 21 of that year an Additional

Protocol was added to this effect. This stated that the situation of temporary campaigns as expressed in 1997 was still in existence, and that it was necessary to “find subsidiary formulas which would make it possible to fill job offers in a swift manner.” The object of the Additional Protocol was “to collaborate in the establishment and development of a subsidiary procedure for the hiring of foreign workers in their countries of origin, in seasonal agriculture campaigns, when all possibilities of hiring Spaniards, EEC members, or legal residents had been exhausted”(First Clause). It specified that this procedure would be gradually put into effect, beginning with pilot programs in specific areas (Fourth Clause). One of the areas selected as a testing area for this contracting system was the province of Huelva during its 2000-2001 season. Since then, it has become a national focal point, both for the volume of this type of contract, as well as the excellent, although not perfect, management of it. The term “Huelva model” was even coined.

- 35 The 1997 Cooperation Framework Agreement and its Additional Protocol were incorporated to Immigration Law and approved in LO 4/2000¹³, with the seasonal workers referred to in the Law Regulation under “special regimen.”¹⁴. Entry and departure of these workers from national territory should be made in accordance with the characteristics of the campaigns as well as the information provided by the Autonomous Communities to which they refer. This demonstrated what many experts had been saying all along: that seasonal jobs had specific characteristics which required specific contracts, differing from annual quotas approved for the entry of legal aliens.
- 36 The first Regulation of LO/4/2000 was approved via RD 864/2001, in which articles 78 and 89 outlined regulations for seasonal permits. These include Type A, which authorize activity during a specific time frame, and Type T, which are applied to agriculture campaigns. They can be limited to one activity and specific geographic area. Their duration should coincide with that of the work contract, and cannot exceed nine months, within a period of 12 consecutive months. This RD was later substituted by RD 2393/2004, which sets seasonal activity apart as a special regimen. The Council of Ministers which approved the contingent may regulate stable offers, as well as the particularities involved in contracting seasonal workers (Article 78). The Type T permit is an “authorization of a third-party temporary residence and work permit for a determinate period” (Article 55), with the same conditions mentioned previously. Keeping in mind the singular aspect of agricultural activity, the period under which these authorizations must be resolved is a month and a half, as compared to the 3 months generally established for the rest.
- 37 Despite all these efforts, the situation cannot be considered resolved. Farms continue to need workers to harvest and carry out other related tasks. A clear example of this is the signing of an Agreement to supervise the social and professional coordination and integration of migrant workers in seasonal agricultural campaigns. This was signed on July 18, 2006 by the same groups participating in the 1997 Cooperation Framework Agreement as well as its Additional Protocol (1999), with the addition of the Small Farm and Livestock Association (SFLA). Its philosophy and contents are similar to those which appear in these two agreements; it seems to be an attempt to revitalize them.
- 38 This judicial journey indicates that immigrant labor is a decisive work force which is essential to farmers. Although unorganized at first, attempts have been made to articulate it in a framework of immigration policy, the central aim of which is to control migratory flow and to tailoring it to the labor needs of the Spanish economy. A specific contracting procedure was developed, detailing the precise job to be done. The next

section will analyze the procedure involved. The Huelva province will be the focus of the analysis, which as stated earlier, stands out as the leader in this type of contracting.

4. Procedures followed in preparing “contracts in origin”

- 39 The starting point is when the business presents a demand for workers before the Public Employment Service (PES)¹⁵. This step complies with the mandate included in Article 50.a) of RD 2393/2004, which states that, in order to obtain a third-party temporary residence permit for a non-EEC immigrant, the national employment situation must be such that this can be permitted. The employer must present an offer of employment to the PES. This is then handled in the appropriate manner in order to promote contact between the business and those seeking work which fit the job profile. Within a maximum period of 15 days of its reception, a certificate must be sent regarding results obtained. If the job offer does not receive sufficient and adequate response from workers available to fill it, it is understood that the national employment situation is such that the offer can be extended to immigrants not residing in Spain.
- 40 Once this first step has taken place, the employer can make an offer to the Provincial Commission which supervises the social and professional coordination and integration of migrant workers in seasonal agricultural campaigns. The Commission is presided by the Head of the Employment Social Services Area of the Sub-delegation of the corresponding government. Representative unions and business associations are also present¹⁶, as well as the Employment Inspector, representatives of local administration (FEMP), and any other invitees. The offer may be presented in person or through a business organization, within a period of three months prior to the time the worker will be needed.
- 41 There are two types of offers: generic or nominal. The generic offer is not created for a specific individual, but is based on the need of the business for workers. All the seasonal workers who arrive with a contract in origin for the first time do so through a generic offer. On the contrary, if the worker fulfills his contract with the obligation to return to his country once the job had finished, he will have preference to return for the next season. In this case the employer will make a nominal offer, expressly stating the individual’s name. These workers are often referred to as “repeaters.”
- 42 Another point worth analyzing regards nationalities chosen. As a consequence of the most recent update of Immigration Law, Article 42.4 establishes that “seasonal job offers will first be made in countries where Spain has signed immigration flow agreements.” Until now, these agreements have existed with: Bulgaria, Columbia, Ecuador, Morocco, Poland, the Dominican Republic, Romania, and more recently, with Senegal. The reasons why these are chosen over other countries are explained in the GRECO Program¹⁷. This states that negotiations will be carried out with countries in which there has been significant migratory flow to Spain. It also states that these countries were determined by taking into account the reality of Spanish migration as well as the relationship with the country in question (historical, political, economic, geographic, etc.). The traditional relationship with Latin American countries and the effect of these on immigration in Spain justify the agreements signed. In the cases of Poland, Romania, or Bulgaria, their recent inclusion in the EEU as well as economic and political interests helps understand their choice. Increased flow from Senegal, traditional influx from Morocco into Spain, and

geographic proximity explain why these countries have had agreements with Spain until now.

Workers contracted by origin based in Huelva by nationality and campaign

COUNTRY	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07 (*)
Bulgaria	0	0	0	508	604	941	2 577
Columbia	0	149	177	105	82	8	2
Ecuador	0	0	15	8	64	26	12
Morocco	198	336	95	635	1 094	2 330	1 946
Poland	540	4 954	7 535	8 811	7 361	9 796	-
Romania	0	970	4.178	10 933	13 186	19 153	26 278
Ucrania	0	0	0	0	0	0	724
Total	738	6 409	12 000	21 000	22 391	32 254	31 539

(*): The number of workers corresponding to this campaign is not definitive. Incidences with the Romanian government regarding contracts as well as failed repeaters has caused the estimated number to decrease, with these compensated by Moroccan workers. Regarding Poland, due to the fact its citizens now can circulate and work freely as members of the EEU, it is no longer included in these statistics.

Source: Bago, M. J., 2007.

- 43 Employers have preferences among the nationalities they are allowed to choose. In the case of Huelva, Polish and Romanians have been in great demand since this system has been active. This has had a notable economic influence. One of the obligations which the employer must assume is a portion of the transportation expenses for the worker to arrive from his country of origin. Although cultural and linguistic aspects make Columbian and Ecuadorian immigrants attractive, geography works against them. This explains how the few who make it to the "New Continent" do so under a different strategy: generally they are contracted for a 9-month period, which is the maximum legal term for seasonal labor, and once the period in Huelva ends, they are transferred to Catalonia to work harvesting other crops there, until the 9 months are up.¹⁸ In this manner, transportation costs to Spain are then divided among the different employers contracting the workers (Márquez, J. A. and Gordo, M., 2007).
- 44 As regards Bulgarians, the fact that they signed the agreement recently explains their reduced presence. Moroccans have faced diplomatic and socio-cultural challenges, which have influenced their lesser presence, despite geographical proximity. Poland has recently joined the EU as a member with full rights and freedom for its workers, while Bulgaria and Romania will soon do the same; as a result, Morocco and other northern African countries will begin to have a more active role. This hypothesis is becoming reality, for example with the signing of the agreement with Senegal. Another example is the initiation of the AENEAS Project, financed with EEU funds, the mission of which is to boost and speed up contracts with Morocco. The freedom of movement enjoyed by the

Polish has resulted in reduced involvement in Huelva's agriculture, as they prefer to work in other jobs or places which are nearer by, such as Germany.

- 45 Here we return to the topic of "contracts in origin" for seasonal agricultural jobs. Along with the job description, the employer must also fulfill certain requisites:
- Provide PES certification which proves that national employment makes it impossible to fill jobs with workers presently living in Spain.
 - Prove to be up to date with Treasury and Social Security obligations.
 - Comply with Spanish legislation in offering jobs which are in line with economic and working conditions falling within the Provincial Agricultural guidelines.
 - Provide housing which conforms to stated norms¹⁹.
 - Guarantee continuous activity during the period covered in the work permit, which is often not the case, due to the effect of climate on this industry.
 - Organize trips to and from Spain, paying at least for the first of these trips, as well as the costs of transportation from port of entry to housing. The usual practice in Huelva is for the employer to cover half of the ticket each way, which is an attempt to see to it that the worker does not desert the campaign halfway through.
- 46 The Commission studies the offer, then decides whether it is to be approved totally, partially, or if it is to be rejected. Should it be accepted, the workers contracted must reside outside Spain when the contract is finalized before entry into Spain. In this manner, individuals who have reached Spain illegally will not be hired.
- 47 Employers may participate in the selection process, either personally or through the business association to which they belong. To do this, they will have to travel to the worker's country of origin. Previously, the country's PES will have carried out a pre-selection process from among its job seekers, with a list of candidates sent to the Mixed Commission, which is made up of government representatives from both countries. During the final selection, the employer will consider the candidate's farming experience; therefore individuals from rural areas will be the most likely choices. There seems to be a high preference for women, which is justified by the argument that strawberries are very delicate produce, requiring delicate hands for harvesting. It seems more likely that employers seek malleable workers, who will more often comply with the requisite to return home, or who will better relate in shared living conditions.
- 48 Colombian workers are particular in this aspect. According to information provided from the Huelva Government Sub-delegation, the breakdown of gender by campaign is as follows: during 2001/2002 campaign, men represented 41.61%, in 2002/2003, 37.14%, and in 2003/2004, 53.42% of the employees were male. In the case of other nationalities, the number hardly surpassed 5%, with extreme figures for Poland and Morocco, from which practically 100% are women. The *modus operandi* applied to Colombian workers explains why the breakdown between sexes is more equitable. Later participation in agricultural campaigns require a greater physical effort, and therefore increases the demand towards men (Márquez, J. A. and Gordo, M., 2007).
- 49 Once the selection process is finished, the worker's contract, visa, and corresponding authorizations are processed. Therefore, if the contract is to last over six months, the worker must obtain a residence permit. In order to obtain these documents, especially the visa, the following should be presented: a passport, police clearance certificate, and a health certificate demonstrating that the jobseeker does not have any illnesses mentioned in the International Health Code. Also, foreign workers must agree to return

to his/her countries of origin once the job has finished. Non-compliance with this obligation is considered just cause for denial of future requests for work permits. Those complying will later be given priority to accept other potential offers in the same activity and, once several years have passed in this manner, a more stable work permit may be granted.

- 50 Once all of these requisites have been met, the worker must move to the province of Huelva with the assistance of his employer. Those who arrive from Bulgaria, Romania, or Poland arrive on buses hired by employers, and organized by their business associations. Immediately following they begin to work. It is important to note that the majority of seasonal workers who are in Huelva arrived to participate in harvesting. They normally arrive during the months of February and March, and remain until June. Nonetheless, strawberry-planting contracts increase yearly. Offers presented during 2007 totaled 5,215 workers, 36% more than the previous year, according to information provided by the Huelva Government Sub-delegation, published in *Huelva Información* on September 14, 2007.

Huelva agricultural campaigns 2004-2005 - authorizations by country

COUNTRY	NOMINAL					GENERIC			TOTAL
	Plant.	Harv.	Total	Failed	Succ.	Initial	Failed	Total	
Bulgaria	15	404	419	22	397	185	22	207	604
Columbia	0	82	82	0	82	0	0	0	82
Ecuador	24	6	30	0	30	4	0	4	34
Morocco	47	192	209	0	209	885	0	885	1 094
Poland	1 117	4 551	5 591	1 345	4 246	1 770	1 345	3 115	7 361
Romania	1 773	7 412	9 085	1 603	7 482	4 101	1 603	5 704	13 186
Total	2 976	12 647	15 416	2 970	12 446	6 945	2 970	9 915	22 361

SOURCE:Archives of the Huelva Provincial Employment and Social Affairs Division.Preparation: Gordo, M., 2007.

- 51 Traditionally, Moroccans have stood out regarding non-compliance with the obligation to return, which the previously-mentioned AENEAS project attempts to correct. On the contrary, Ecuadorians and Columbians have the best return rates. Factors which contribute notably to their return are: their long-term contracts, often lasting nine months, the possibility to return to work again within a short period of time, and the fact that their return tickets are paid for (Márquez, J. A. and Gordo, M., 2007). Short months later, the cycle repeats itself.

Conclusion: Successes and failures of “contracts in origin” in Spain

- 52 As has been the case in other countries with a longer tradition of accepting immigrants (Germany, Switzerland, Belgium, etc.), Spain began to use “contracts in origin”. These are an intermediate solution between zero immigration and an open-door policy attempting to maintain the difficult balance created by the Spanish economy’s need for workers. There are several objectives:
- To control the flow of immigration, so that the arrival of immigrants takes place in an orderly fashion. At the same time, they attempt to ensure that seasonal workers return to their countries of origin once the contract has finalized.
 - They also recruit the workers needed by employers, protecting and boosting access to jobs by residents. Only when the local market cannot supply workers for these job offers can they be posted to immigrants.
 - To guarantee social and working conditions which conform to the law.
- 53 However, none of these objectives are entirely fulfilled. It should be kept in mind that this represents progress in the situation facing immigrants. The following demonstrate this:
- Workers arrive after having passed previous controls, rather than arriving specifically to seek work; working conditions are organized from their places of origin, although as we will later see, not in their entirety.
 - They do not have to risk their lives in dangerous journeys, or depend on mafias to lend them money²⁰, since their employers provide them with a means of transportation.
 - They arrive with proper working papers and legal authorizations, which aids security and emotional stability.
 - Housing is provided, which must be acceptable, solving one of the biggest hurdles facing immigrants: getting a place to live.
 - Return trips are also organized, and if they comply with the terms regarding returning home, they later are guaranteed work the following year. In this manner a stable job is promised for a few months down the road, therefore seeing to it that the workers do not remain in Spain without means or work permits.
 - Destinations can prepare support services (for example, medical) in advance. In the case of Huelva, frequently the Government Sub-delegation informs the Town Hall regarding the number of workers to arrive.
- 54 These are the advantages of the contracting procedure, but there are also drawbacks:
- It is a slow bureaucratic process, despite efforts to make improvements.
 - There is a lack of personnel in the areas in charge of handling contracts, causing delays which force some employers to retract their offers. An example: The Huelva government Sub-delegation processed over 30,000 contracts during 2006/2007, with the same number of personnel handling 2000/2001, in which only 1,000 employees were hired.
 - Problems were observed in the coordination of the different agencies involved. On occasion, collaboration with the Romanian and Moroccan governments left quite a bit to be desired.
 - Employers must estimate the number of workers needed at least three months in advance. Farming activities are dependent on the climate, so that during those three months the forecasted number of workers required might vary greatly.

- The practice of preparing the contract in the native language of the worker is not habitual; despite efforts made by unions and the government, there are still seasonal workers without known working conditions.
 - Although continuous activity is recognized in practice, climate and market conditions hinder continuity. For example, no work is done on rainy days, and no payment is received, either.
 - Not all housing conditions are in compliance with law. Employment inspectors and unions make an attempt to see that they do, but it is impossible to visit all of the housing developments.
 - The stipulated return to country of origin is not always observed. Some workers abandon the job halfway in. On some occasions, the employees have friends and family in Spain, and use the contract in origin as a method to gain entry.
 - There are still cases of corruption. Both in countries of origin as well as Spain there are government employees willing to accept payment in exchange for assuring that individuals receive these contracts.
- 55 Finally, it must be stressed that this type of contract is designed to solve the employers' needs. Very few are designed considering the interest of foreign workers. Thus, its efficiency as an instrument to control immigration is limited, as the great majority of immigrants do not see it as a solution to their problems. They have their own project, among which is the intent to improve their situation in the select club into which the EEU has converted.

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NOTES

1. This is a political party which operates in this Autonomous Community.
2. It is worth mentioning that EEC citizens do not fall under Immigration Law, but under a much more specific and beneficial one, which grants them practically the same rights as Spaniards. Currently the EEC regimen in Spain is regulated by RD 240/2007, of February 16, and covers entry, free circulation, and residence in Spain of citizens who are members of the EEC and other countries participating in the agreement on the European Economic Area (BOE number 51, dated February 28, 2007).
3. Other ways of gaining access to Spanish territory are through a student visa, family regrouping, seeking political asylum, or obtaining a work visa. However, the requisites for these are increasingly demanding. Tourist visas are also under stricter control, although they are usually an alternative to enter Spain legally and then stay afterwards.
4. The law also allows for a series of exceptional situations in which the aforementioned national employment situation is not observed: for example, foreigners who have been authorized to work in seasonal activities during four years and have returned to their countries of origin.
5. Information compiled by the CIS demonstrates this (CIS, www.cis.es).
6. This was approved by the Consensus of Ministers on December 2, 1994.

7. Portions of this also coincide with point 3 of the other reference article mentioned in the bibliography (Márquez, J. A. and Gordo, M., 2007).
8. This explains the differences in areas cultivated each year. Depending on market performance, farmers either reduce or increase the area dedicated to crops.
9. However, cereal sales are going well, with a tendency towards increased prices. This is due to the fact that bio-combustibles used in growing certain cereals are on an upswing.
10. During strawberry campaigns, no work is done on rainy days, since the product tends to rot and must be disposed of. As far as markets are concerned, when prices are low and an extra day can be spent in the fields, crops are not harvested, in the attempt to boost prices due to a light demand. Evidently days not worked are not paid.
11. This was presided over by the Spanish Socialists Workers Party (PSOE).
12. A short time afterwards, these Ministries fused to become the Employment and Social Affairs Ministry (ESAM).
13. See Note 3.
14. Particularities were also foreseen for domestic help.
15. In Spain, the state-run organ is the National Employment Institute (INEM). Autonomous Communities which have taken over work-related issues also have their own services. For example, in Andalusia the Andalusian Employment Service was created (SAE), while in Catalonia there is the Catalan Employment Service.
16. In Huelva, the unions are CCOO and UGT. Those which participate in seasonal origin contracts, in order of importance, are: ASAJA, Huelva Association of strawberry producers and exporters (FRESHUELVA), COAG, The Huelva Province Association of Citrus Producers, and UPA.
17. This is the Comprehensive Program for the Regulation and Coordination of Immigration in Spain 2000 - 2004. It was approved by the Resolution on April 17, 2001 by the Government Immigration Delegation, which published the Ministers' Council Agreement dated March 30, 2001, approving the Global Immigration Regulation and Coordination program in Spain (BOE April 27, 2001).
18. When the moment arrives, although they still might have jobs, they must return to their countries of origin in order to comply with the return commitment. If they do so, they may return a few months later to participate in the next campaign.
19. A deeper analysis of housing for seasonal workers in Huelva may be found in GORDO, M. (2005): "Peones con casilla: el alojamiento de los trabajadores extranjeros con contratos en origen de temporada en la provincia de Huelva", en AGE (Ed.) *Actas del XIX Congreso de geógrafos españoles "Espacios públicos, espacios privados. Un debate sobre el territorio"*, AGE y Universidad de Cantabria, Santander (Spain), electronic version, 13 p, ISBN 84-8102-981-5M.
20. In many cases this would be tantamount to suicide.

RÉSUMÉS

Jusqu'à la fin des années quatre-vingt-dix, l'Etat tout comme les associations de terrain reconnaissaient l'inefficacité du système de quota qui faisait figure de politique migratoire en Espagne. Tous s'accordaient sur le fait que la gestion de l'immigration dans ce pays tenait d'avantage à des régularisations à posteriori en fonction de chiffres fixés à l'avance qu'à un réel contrôle des entrées. La loi 4/2000 a tenté de remédier à cette situation. Une procédure

spécifique a alors été mise en place concernant l’agriculture : le *contrato en origen* qui permet de recruter des saisonniers pour une période limitée directement depuis leur pays d’origine.

Depuis lors, si des modifications de cette loi ont été votées, ce procédé fut maintenu et est devenu un instrument clé de la politique de gestion des flux migratoires.

L’expérience de la province de Huelva, principale utilisatrice de cette procédure pour l’introduction de ses saisonniers agricoles, est alors devenue une référence au niveau national. On parle désormais du modèle de Huelva.

Le présent article analyse la mise en œuvre des contrats en origine en Espagne, principalement dans la province de Huelva. Nous y présentons les textes juridiques et les principales statistiques existantes en la matière ainsi que la gestion de cette procédure par la préfecture de la province. L’objet du texte est d’expliquer le succès de cette mesure auprès des agriculteurs ainsi que de pointer ses effets négatifs sur le traitement de la main-d’œuvre étrangère.

Until recently, both the Administration and the social agents recognized the inefficiency of the quota system as policy to control migratory flows, both of them agreeing that it was in fact concealed regularization. This situation tried to be settled by the contested Immigration law 4/2000, in which, for the specific case of the seasonal agricultural tasks, the modality of “contracting in origin” was established. The later modifications of the Law and its two “Regulations of development” approved up to the date, have kept this modality as the means for controlling migratory flows.

With the introduction of this new system, the province of Huelva has turned into a “model” at a national level, not only for its adoption of this formula, but also for the volume of manpower contracted this way. The present study centres on analyzing the application of the “contracts in origin” in all of Spain, and particularly in the province of Huelva. We study the juridical texts and the main existing statistics in the matter, and complement this information with archive work carried out in the Subdelegation of the National Government in Huelva, which centralizes this kind of contracts.

With this material, we propose to explain the reasons that lead to the appeal of foreign manpower, the procedure that is applied, the different regional significance of this contractual modality, as well as the negative effects and possible alternatives to correct them.

INDEX

Mots-clés : agriculture, contrat en origine, main-d’œuvre saisonnière, politique migratoire espagnole

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