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### Recruiting for the Future: A Realistic Road to a Points-Tested Visa Program in the United States

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Recruiting for the Future:

# A Realistic Road to a Points-Tested Visa Program in the United States

Stephen Yale Loehr and Mackenzie Eason

July 2020



Cornell Law School  
Immigration Law and Policy Program

Recruiting for the Future:

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**Stephen Yale-Loehr and Mackenzie Eason**

July 2020

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**Cornell Law School**

Immigration Law and Policy Program

## Abstract

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For over 40 years, lawmakers and academics have been debating whether the United States should adopt a merit- or skills-based approach to labor immigration and a points-based program for selecting foreign workers. Despite having bipartisan support, efforts to adopt such a program thus far have been unsuccessful.

This idea is now back at the center of public debate, having been given new life by President Trump. He has called for “merit-based” immigration reforms that would make the United States more effective at attracting the world’s “best and brightest” and make it more competitive in the global marketplace for highly skilled foreign workers. The President’s public embrace of this goal has not been accompanied, however, by any detailed policy proposal or administration-backed bill introduced in Congress.

This report capitalizes on this atmosphere of renewed interest by harnessing the current administration’s enthusiasm, providing evidence-based policy guidance, and mapping out a path forward that avoids the policy gridlock and political pitfalls that have beset past efforts to implement a points-based immigration program in the United States.

This path forward is presented in the form of a legislative program. The authors recommend that the U.S. create a small pilot program that would allocate 50,000 green cards each year to candidates selected through a novel points-based selection program. Alongside this small pilot, the authors recommend creating a number of administrative supports meant to ensure that this program is effective, flexible, and transparent. Included are guidelines and financial support for U.S. Citizenship and Immigration Services (USCIS) or another executive agency to gather linked long-term data on the employment outcomes of admitted foreign workers; provisions requiring periodic review of the program by relevant congressional committees; and the establishment of a standing advisory board consisting of immigration experts and stakeholders.

In designing these proposals, the authors sought to incorporate lessons from both the successes enjoyed by those countries that have already implemented points programs and the failures endured by those involved in past efforts toward comprehensive immigration reform

here in the United States. Lessons from the former led the authors to embrace a two-stage selection process and criteria designed to balance both the short- and long-term needs of the U.S. economy. Lessons from the latter led the authors to adopt a more targeted and incremental approach to immigration reform, resulting in a policy proposal that is modest in its size, scope, strategy, and structure.

The points-tested visa program laid out in this proposal would be temporary by design, initially authorized for just ten years, and would increase the number of green cards issued each year by only 4%. This program is designed to supplement, not displace, existing employment-related and family-based immigration categories. As such, this proposal does not call for any changes to existing immigration categories. Finally, the proposal embraces a piecemeal and incremental approach to legislative strategy, recommending that the pilot program be introduced in Congress as a standalone bill rather than as part of a comprehensive immigration reform package.

For all these reasons, the authors believe that the policy recommendations presented in this report are legislatively achievable and would be programmatically successful.

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## Chapter 1: Introduction/Executive Summary

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“[I]nstead of admitting people through random chance, we will establish simple, universal criteria for admission to the United States. No matter where in the world you’re born, no matter who your relatives are, if you want to become an American citizen, it will be clear exactly what standard we ask you to achieve. ... Like Canada and so many other modern countries, we create an easy-to-navigate points-based selection system.” **President Donald Trump, May 16, 2019.**<sup>1</sup>

U.S. academics, policy experts, and lawmakers have been proposing “merit-based,” “skills-based,” or “points-based” employment-based immigration systems since the late 1970s.<sup>2</sup> Since then, several bills have been introduced in Congress proposing such a system,<sup>3</sup> three of which have come within striking distance of passing.<sup>4</sup> So far, however, advocates and supporters have failed to enact such an immigration selection system in the United States.

The idea of a points-based immigration selection system is once again at the center of public debate, largely because of statements by President Trump and members of his administration. Since before he took office, President Trump has made his support for a “merit-based” immigration system a core element of his immigration platform.<sup>5</sup> Indeed, this policy goal has been featured in many of the President’s most high-profile formal remarks on immigration, from his first address to Congress in 2017<sup>6</sup> to a 2019 Rose Garden speech on the administration’s immigration priorities.<sup>7</sup> In the latter set of remarks, President Trump called for the adoption of an employment-based immigration system in which “immigrants are selected based on skill or based on merit” and in which applicants would receive “points for being a younger worker, ... for having a valuable skill, an offer of employment, an advanced education, or a plan to create jobs.”<sup>8</sup>

Even as the President and his administration have consistently expressed support for merit-based (or points- or skills-based) immigration, however, this advocacy has yet to advance beyond high-level talking points. The White House has not stated how such a system would be

implemented,<sup>9</sup> and no administration-backed bill has been introduced in Congress.

The atmosphere of renewed interest combined with a lack of details has opened a space for a new round of debate over whether and how the United States might adopt an immigration points program. The contemporary atmosphere of political gridlock and the lack of success so far might encourage participants to find new approaches to this idea.

This report aims to do just that, drawing on past lessons and existing innovations while adding something new.

Specifically, our proposal calls for:

- The enactment, as a 10-year pilot program, of a new green card stream in which applicants are evaluated according to a points rubric.
- Allocating to this pilot program 50,000 permanent visas per year, without changing other current immigration categories.
- A single application stream, managed through an “expression of interest” application system like Canada and Australia.
- A points rubric weighted toward longer-term human capital factors such as educational attainment, age, experience, teamwork, and linguistic abilities. We already have the existing labor certification system for short-term labor needs. We would not change that. Rather, our proposed program would focus instead on long-term human capital needs in the United States.
- An oversight apparatus capable of gathering detailed immigration data, keeping track of immigration outcomes through large-scale longitudinal studies.
- A regular policy review process under which current admission policies and post-entry integration and support policies would be examined using (a) current labor market data and future labor market projections and (b) economic and societal integration outcome data regarding past years’ immigration cohorts.

- A standing advisory board consisting of experts, policymakers, and stakeholders, including policy experts in economics, public policy, and immigration; civil servants with experience in administering the United States’ and/or other countries’ immigration systems; and representatives from professional associations, labor unions, and industry trade associations.

In many ways, our proposal isn’t all that novel. Our points rubric (the list of characteristics on which applicants are evaluated and the relative point weights allocated to each) resembles the points systems contained in past immigration bills introduced in Congress. And the application process and administration of our proposed system is modeled on the efficient, flexible, and all-digital systems now employed in Australia, Canada, and other countries.

The novelty of our proposal lies in its intentional modesty—in size, scope, strategy, and structure:

- **Size:** Our proposed points-tested pilot program would apply to only 50,000 green cards each year, about 4% of overall yearly immigration to the United States.
- **Scope:** Our proposal does not call for making any changes to existing immigration categories. Our proposed pilot program is designed to supplement, not displace, existing immigrant visa categories.
- **Strategy:** Our proposal recommends that Congress enact this pilot program as a standalone bill, rather than as part of a comprehensive immigration reform package.
- **Structure:** Our proposal recommends creating this new green card stream as a 10-year pilot program. Building in this extendable expiration date reduces political commitment costs for legislators, while also giving enough time to generate reliable data to measure the program’s impact.

This four-squared modesty sets our proposal apart from past efforts to establish a points system. Moreover, we believe this modesty gives our proposal a chance to succeed where others have failed.

Our research suggests that the failure of past efforts to implement an immigration points program in the United States was due more to partisan overreach and legislative ambition than to the specific provisions of the points

system itself. Presented as part of a sweeping restructuring of U.S. employment-based immigration and contained within omnibus immigration bills that would have imposed cuts on other immigration streams, past efforts were either too costly to attract the support of undecided lawmakers or too contentious to obtain the support of vital groups.

Our proposal seeks to avoid these problems of scale. Its incremental approach, narrow subject matter, and small policy footprint combine to make our proposal a low-cost, low-risk proposition for legislators. By lowering these barriers to entry for undecided lawmakers and providing a realistic path to adoption for lawmakers on both sides of the aisle who have already expressed support for employment-based immigration reform, our proposal represents a viable way to achieve the goal of implementing an immigration points program in the United States.

This goal—finding ways to pass legislation that aims to reform and improve the United States’ employment-based immigration system despite the current atmosphere of gridlock and partisan polarization—is vitally important. The United States’ current approach to skilled immigration is broken. Rigid yearly caps and quotas on permanent residents and certain classes of temporary foreign workers severely limit the supply of visas and talent, while demand continues to expand and the list of qualified applicants grows. This dynamic, along with increasingly stringent administrative requirements and long processing times, has led to the formation of backlogs lasting years (and even decades) for even the most qualified applicants. Certain high-skilled Indian nationals seeking an employment-related green card, for example, currently must wait over a decade, as the State Department is only now setting interview dates for such individuals whose applications were filed in May 2009.<sup>10</sup>

These backlogs and delays impose unnecessary financial, logistical, and psychological costs on prospective foreign workers seeking to come to or remain in the United States. These added costs have started to lead potential would-be immigrants to go elsewhere,<sup>11</sup> creating a “brain drain” effect.

These backlogs and delays also impose costs on U.S. companies and workers. Access to skilled labor is a critical determinant of success for start-up firms and small and large businesses,<sup>12</sup> many of which struggle to find U.S. workers with needed skills. And while restrictions on



high-skilled immigration to the United States are often cast as protections for U.S. workers, those restrictions have not resulted in U.S. firms hiring more native workers, but instead have led U.S. companies to move certain jobs to more immigration-friendly countries like Canada and Australia.<sup>13</sup>

Taken together, these adverse effects pose a serious problem to our nation's fiscal, economic, and geopolitical health and future. In encouraging talented individuals to take their skills, creativity, productivity, and tax dollars to other countries, the United States forgoes significant economic, intellectual, and fiscal gains. In imposing artificial challenges for U.S. businesses, the United States is falling behind in the global race for talent. And, insofar as the United States' global standing depends in large part on its role as a home for the most talented researchers, inventors, innovators, and entrepreneurs, this is not only a matter of geopolitical pride but also of national security.<sup>14</sup>

Stated simply, it is in the United States' best interests to adopt policies that foster high-skilled immigration.

As a general matter, immigrants generate far more economic and fiscal benefits than costs. Indeed, according to a 2017 study conducted by the National Academies of Sciences, Engineering, and Medicine, the average recent immigrant will, over a lifetime, end up generating a positive net fiscal impact of more than \$279,000 (in 2012 dollars, an amount worth more than \$312,000 today). Stated another way, even if we subtract the total cost of all government benefits this individual will likely receive over a lifetime from the total amount of taxes this individual will pay (including all taxes paid to local, state, and federal governments) during their lifetime, an average recent immigrant will end up generating around \$300,000 in additional tax dollars paid.<sup>15</sup>

In the same study, the National Academies found that highly skilled immigrants—defined as those with education beyond a bachelor's degree—will likely each generate between \$523,000 and \$915,000 in positive fiscal value over their lifetimes.<sup>16</sup> (These values were also calculated in 2012 dollars. If adjusted to 2020 dollars, the

net lifetime fiscal benefits of these skilled immigrants would be between \$589,000 and \$1.03 million each.)

Additionally, highly skilled immigration has been found to have profound and positive “scaling effects” on jobs and wages for U.S. workers. According to a study by the National Foundation for American Policy, every H-1B worker hired by a U.S. firm creates 5 to 7.5 new domestic jobs in that firm's industry.<sup>17</sup> And according to a 2014 study, every 1% increase in foreign STEM (science, technology, engineering, and math) workers leads to a 7 to 8% increase in U.S. workers' wages.<sup>18</sup>

The benefits of skilled immigration are not limited to tech firms and the large urban areas in which they tend to be concentrated. Fostering skilled immigration can also benefit communities in rural America.<sup>19</sup> Such communities face a number of challenges, including a dire and growing shortage of physicians and other healthcare workers. According to one recent report, rural counties have on average fewer than half as many active physicians per capita as urban counties, and 135 of these counties don't have a single active physician.<sup>20</sup> This shortage is already preventing many U.S. residents from having reliable access to vital medical care, and it is likely to get worse as rural doctors continue to retire faster than they are replaced.<sup>21</sup> Relaxing current restrictions on skilled immigration could help to reverse these troubling trends, because foreign-born doctors are more likely than their U.S.-born counterparts to practice as primary care providers<sup>22</sup> and to be willing to live and work in poor or rural communities.<sup>23</sup>

This report presents a set of policy and program recommendations that we believe would be broadly popular, legislatively achievable, and programmatically successful. In the following pages, we provide an introduction to points-based economic immigration systems, the ways they are currently being employed in Canada and Australia, best practices regarding their use and implementation, and our proposal for a pilot program in the United States.

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<sup>1</sup> Donald Trump, “Remarks by President Trump on Modernizing Our Immigration System for a Stronger America” (Speech, White House, Washington, D.C., May 16, 2019), <https://www.whitehouse.gov/briefings-statements/remarks->

[president-trump-modernizing-immigration-system-stronger-america/](https://www.whitehouse.gov/briefings-statements/remarks-president-trump-modernizing-immigration-system-stronger-america/).

<sup>2</sup> For example, the members of the Hesburgh Select Commission on Immigration and Refugee Policy, a joint executive-legislative advisory body formed in 1978, considered adopting a points test

system similar to those used in Australia and Canada. See Rachel Stevens, *Immigration Policy from 1970 to the Present*, Routledge Studies in Modern History 19 (New York: Routledge, 2016), 79–82. (Discussing deliberations of Hesburgh Commission regarding points system, and how these ideas went on to be discussed in the immigration reform efforts of the late 1980s and early 1990s, often championed by legislators who were members of this Commission.)

<sup>3</sup> For example, a bill introduced by Senator Ted Kennedy in 1987 would have established a category of “Independent Immigrants,” and a subcategory of “Nonpreference Aliens” that would have been selected on the basis of a points system. See U.S. Congress, Senate, *Immigration Act of 1987*, S. 1611, 100th Cong., introduced in Senate August 6, 1987. Two years later, Senator Kennedy joined Senator Alan Simpson to co-sponsor a bill that included provisions for 55,000 “Selected Immigrants” who would have been chosen through a points system. See U.S. Congress, Senate, *Immigration Act of 1989*, S. 358, 101st Cong., introduced in Senate February 7, 1989.

<sup>4</sup> See U.S. Congress, Senate, Secure Borders, Economic Opportunity and Immigration Reform Act of 2007, S. 1348, 110th Cong., 1st sess., introduced in Senate May 9, 2007; U.S. Congress, Senate, Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, S. 744, 113th Cong., 1st sess., introduced in Senate April 16, 2013; and U.S. Congress, Senate, Reforming American Immigration for Strong Employment (RAISE) Act of 2017, S. 354, 115th Cong., 1st sess., introduced in Senate February 13, 2017.

<sup>5</sup> Reem Nasr, “Trump: Only in Favor of Legal Immigration,” CNBC, October 29, 2015, <https://www.cnbc.com/2015/10/28/trump-in-favor-of-legal-immigration-only.html>.

<sup>6</sup> See, e.g., Julie Hirschfeld Davis, “How Trump’s ‘Merit-Based’ Immigration System Might Work,” *New York Times*, March 1, 2017, sec. U.S., <https://www.nytimes.com/2017/03/01/us/politics/immigration-trump.html>.

<sup>7</sup> Annie Karni, “Trump’s Immigration Plan Gets a Rose Garden Rollout and a Cool Reception,” *New York Times*, May 16, 2019, <https://www.nytimes.com/2019/05/16/us/politics/trump-immigration-plan.html>.

<sup>8</sup> Trump, “Remarks by President Trump on Modernizing Our Immigration System for a Stronger America.”

<sup>9</sup> Even significant stakeholders in immigration policy have been kept in the dark. See, e.g., Muzaffar Chishti and Jessica Bolter, “‘Merit-Based’ Immigration: Trump Proposal Would Dramatically Revamp Immigrant Selection Criteria, But with Modest Effects on Numbers,” *Migration Information Source* (*Migration Policy Institute*) (blog), May 30, 2019, <https://www.migrationpolicy.org/article/merit-based-immigration-trump-proposal-immigrant-selection>. (Writing that the details of the Administration’s proposed overhaul “remain sketchy and come mostly from media reports.”)

<sup>10</sup> See Jeanne Batalova, Brittany Blizzard, and Jessica Bolter, “Frequently Requested Statistics on Immigrants and Immigration in the United States,” *Migration Information Source* (*Migration Policy Institute*) (blog), February 12, 2020, <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states>. (Reporting that, as of February 2020, the State Department was still processing applications submitted in May 2008.) See also David J. Bier, “Immigration Wait Times from Quotas Have Doubled: Green Card Backlogs Are Long, Growing, and Inequitable,” Policy Analysis (Cato Institute, June 18, 2019), <https://www.cato.org/sites/cato.org/files/pubs/pdf/pa-873-updated.pdf>. (Reporting that skilled foreign workers from India who applied for EB-2 or EB-3 visas in June 2019 faced processing and quota wait times of around a decade, and those from Mexico, China, and the Philippines would have to wait for an average of 5 to 8 years.)

<sup>11</sup> See Theophilos Argitis, “Canada Is Luring Tech Talent Away From U.S. With Fast-Track Visa,” *Bloomberg News*, June 12, 2019, <https://www.bloomberg.com/news/articles/2019-06-12/canada-is-luring-tech-talent-away-from-u-s-with-fast-track-visa>.

<sup>12</sup> See Stephen Dimmock, Jiekun Huang, and Scott Weisbenner, “Give Me Your Tired, Your Poor, Your High-Skilled Labor: H-1B Lottery Outcomes and Entrepreneurial Success” (Cambridge, MA: National Bureau of Economic Research, October 2019), <https://doi.org/10.3386/w26392>. Washington, D.C.: National Bureau of Economic Research, 2019. <https://www.nber.org/papers/w26392>.

<sup>13</sup> See Stuart Anderson, “Restrictions On H-1B Visas Found To Push Jobs Out Of The U.S.,” *Forbes*, February 10, 2019, <https://www.forbes.com/sites/stuartanderson/2019/10/02/restrictions-on-h-1b-visas-found-to-push-jobs-out-of-the-us/>. See also Rani Molla, “Canada Is Becoming a Tech Hub. Thanks, Donald Trump!—U.S. Companies Are Moving Tech Jobs to Canada Rather than Deal with Trump’s Immigration Policies,” *Recode* (blog), March 19, 2019, <https://www.vox.com/2019/3/19/18264391/us-tech-jobs-canada-immigration-policies-trump>.

<sup>14</sup> See National Academy of Engineering and National Research Council, *Assuring the U.S. Department of Defense a Strong Science, Technology, Engineering, and Mathematics (STEM) Workforce* (Washington, D.C.: National Academies Press, 2012), <https://doi.org/10.17226/13467>.

<sup>15</sup> National Academies of Sciences, Engineering, and Medicine, *The Economic and Fiscal Consequences of Immigration* (Washington, D.C.: National Academies Press, 2017), 430–33, <https://doi.org/10.17226/23550>.

<sup>16</sup> National Academies of Sciences, Engineering, and Medicine, 430–33.

<sup>17</sup> National Foundation for American Policy, “H-1B Visas and Job Creation,” NFAP Policy Brief (Washington, D.C.: National Foundation for American Policy, March 2008), 11, <http://www.nfap.com/pdf/080311h1b.pdf>.

<sup>18</sup> Giovanni Peri, Kevin Shih, and Chad Sparber, “Foreign STEM Workers and Native Wages and Employment in U.S. Cities” (Cambridge, MA: National Bureau of Economic Research, May 2014), 3, <https://doi.org/10.3386/w20093>.

<sup>19</sup> This proposition has been championed by a number of policy outlets, including, for example, the Economic Innovation Group. See Adam Ozimek, Kenan Fikri, and John Lettieri, “From Managing Decline to Building the Future: Could a Heartland Visa Help Struggling Regions?” (Washington, D.C.: Economic Innovation Group, April 2019), 4, <https://eig.org/wp-content/uploads/2019/04/Heartland-Visas-Report.pdf>. (Proposing that the U.S. implement a new program of place-based visas—referred to here as “Heartland Visas” that “could become a powerful economic development tool for communities facing the consequences of demographic stagnation, but not content to simply manage decline.”)

<sup>20</sup> Partnership for a New American Economy, “Life Support: The Shortage of Physicians in America’s Rural Communities and How Foreign-Born Doctors Can Help” (New York: New American Economy, September 2015), 11, <http://research.newamericaneconomy.org/wp-content/uploads/2015/09/lifesupport929-1.pdf>.

<sup>21</sup> Partnership for a New American Economy, 3.

<sup>22</sup> American Immigration Council, “Foreign-Trained Doctors Are Critical to Serving Many U.S. Communities,” Special Report, January 2018, 5, [https://www.americanimmigrationcouncil.org/sites/default/files/research/foreign-trained\\_doctors\\_are\\_critical\\_to\\_serving\\_many\\_us\\_communities.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/foreign-trained_doctors_are_critical_to_serving_many_us_communities.pdf). (Reporting that, on average, areas that experience higher poverty levels tend to have a higher share of foreign-trained doctors.)

<sup>23</sup> See Claudia Castillo Tussey, “Winston-Salem Journal: Immigrants Can Solve N.C.’s Doctor Shortage,” *New American Economy*, July 7, 2019, <https://www.newamericaneconomy.org/feature/winston-salem-journal-immigrants-can-solve-n-c-s-doctor-shortage/>. (Asserting that foreign-born doctors are significantly more likely than U.S.-born doctors to live in “poor and rural communities,” pointing to New American Economy data showing that, nationwide, only 27.7% of physicians and 23.7% of nursing aides are foreign-born but more than 42% of the medical professionals serving America’s poorest neighborhoods are foreign-born.)

## Chapter 2: Context, Concepts, and Definitions

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Debates about immigration policy often are confusing and politically charged. This is particularly true of discussions about “merit-” or “skills-based” labor migration policies and “points-based” selection systems. Obstacles like specialized but often inconsistent terminology, fine technical distinctions, and politicized connotations and agendas all combine to make it difficult for well-meaning people across the political spectrum to discuss these public policy tools in an effective way.

This chapter is designed to assist readers not already familiar with these aspects of immigration policy. It provides a brief introduction to the foundations of immigration policy, defines and distinguishes relevant terminology, and gives a brief overview of the history and spread of merit-based immigration regimes and points-based selection systems.

### § 1 POLICY CONTEXT

#### The “Three Streams” of Immigration

Every country that accepts immigrants must decide what kinds of immigrants it wants. Countries have tended to focus on specific factors, such as: Is this potential immigrant related or married to a citizen or resident of our country? Would admitting a foreign worker adversely affect native workers? Do we have a duty to admit people fleeing persecution? These three questions correspond to the three general types—or “streams”—of immigration recognized by most countries today: family, economic, and humanitarian.

These streams are distinguished according to the differences in the criteria on which potential immigrants are selected.<sup>1</sup> Generally speaking, in the family stream, potential immigrants are selected on the basis of having a family member already residing in or originating from the destination country. In the economic stream, potential immigrants are selected on the basis of their potential to contribute to the economic well-being of the destination country or because no native workers are available for a particular job. In the humanitarian stream, potential immigrants are selected on the basis of a credible threat to

their life, liberty, or health that has led them to leave their prior country of residence. Each of these streams satisfies a different government interest or policy goal. Family-stream immigration promotes the state’s interest in providing its nationals and permanent residents with the chance to reunite with their family members and loved ones, thus promoting societal stability.

Humanitarian-stream immigration serves the state’s interest in acting as a humane member of the international community and honoring international obligations and agreements by offering refuge to those fleeing persecution and violence. Economic-stream immigration serves the state’s interests in promoting the health of its domestic economy and job market by admitting migrants that have the capacity to generate economic growth or fill gaps in the labor market not addressed by native workers.

Each of these state interests is important but distinct. So, in addition to deciding what kinds of immigrants to accept, countries must determine how many of each kind of immigrant they want to accept. Or, put another way, policymakers must decide what balance to strike among these three immigration-related government interests, as well as between these interests and the panoply of other interests a state has.

#### Key Questions in Economic-Stream Immigration Policy

In designing and governing economic-stream immigration, policymakers face questions like: How should foreign workers be selected, and who should select them? What goals should economic-stream migration policy pursue? And how should the state balance competing goals, such as addressing near-term labor market shortages versus ensuring the longer-term health of the economy? What kinds of protections should be built into our immigration system to make sure that citizen or permanent resident workers are not being unfairly disadvantaged, immigrant workers are not being exploited, and economic migration programs are in fact serving the economic (and political) interests of our country?

## Two Approaches to Selecting Economic-Stream Immigrants: Demand- vs. Supply-Driven Models

In the academic and policy literature, countries' economic immigration systems are often categorized according to how they address the first of these underlying questions: How should foreign workers be selected, and who should select them? Broadly speaking, states use one of two approaches in selecting foreign workers: a "demand-driven" approach or a "supply-driven" approach.<sup>2</sup>

Under a demand-driven approach, employers in a country play the leading role in recruiting and selecting foreign workers. (This is why these systems are also commonly referred to as "employer-led" or "job-offer" systems.) Countries employing this approach generally make economic immigration contingent on having a job offer from an employer within the destination country, a requirement that effectively gives employers the ability to set criteria for admission and to apply those criteria by selecting which foreign workers' applications can move forward. Employers set the selection criteria by seeking candidates who have the skills or qualifications to satisfy their firm's actual labor needs, enact their selections by making job offers to the candidates of their choice, and may initiate the immigration process by asking immigration authorities to grant the foreign worker an employment visa. Because selection decisions in a demand-driven system are made by employers according to their actual labor needs in real time, these systems tend to result in selection outcomes that favor short-term economic needs over longer-term goals. For the same reason, they also tend to result in selection outcomes that reflect the interests of the companies seeking to employ foreign labor and not necessarily the broader interests of the receiving state. States whose immigration policies and programs have generally adopted a demand-driven approach to labor immigration include Germany, Sweden, Spain, Norway, the United Kingdom, and the United States.<sup>3</sup>

Under a supply-driven approach, government officials and immigration agencies take the lead in recruiting and selecting foreign workers. (This is why these systems are also commonly referred to as "government-led" systems.) In these systems, government immigration agencies accept applications directly from prospective foreign workers. These individuals' applications for entry are then assessed by immigration officers, not according to

prevailing labor market conditions but according to criteria established by policymakers in advance. These criteria, set by either statute or administrative regulation, may include educational qualifications, work experience, age, language skills, the existence of a job offer or arranged employment,<sup>4</sup> and previous wages. Because selection decisions in supply-driven systems are made according to criteria set by government officials according to the needs of the economy or polity as a whole, these systems tend to result in selection outcomes that favor medium- and longer-term goals, such as addressing foreseeable labor market imbalances or accumulating human capital. Countries commonly associated with this approach to selecting foreign workers include Canada, Australia, and New Zealand.<sup>5</sup>

This clean distinction between demand-driven and supply-driven approaches is an artificially simplified comparison of ideal types. It provides a useful lens through which to compare the structure and effects of labor immigration programs across states, but in reality all states fall somewhere along a continuum between these two extremes. Most countries that employ a supply-driven (government-led) approach to labor immigration have incorporated, to one degree or another, policy features that make their immigration programs more responsive to employer interests or labor market demand, whether by granting expedited processing or bonus points to visa applicants with a verified job offer or by limiting admission to candidates whose profession is included on a "shortage occupation list."<sup>6</sup> Similarly, no country has an immigration system that is *entirely* employer-led. In these countries, employers seeking to hire foreign workers must do so according to regulatory parameters set by government officials or national legislation. And in even the most "demand-driven" systems, proof of an employment offer is a necessary but not sufficient condition for admission, as visa applications are often subjected to various secondary requirements. Common examples of these include minimum salary requirements (meant to protect foreign workers and native workers alike against wage suppression); labor market tests assessing whether there are similarly qualified native workers that could fill the position (meant to incentivize the hiring of native workers); and minimum qualification requirements (meant to ensure that foreign workers are held to the same qualification standards as native workers).

## § 2 CORE CONCEPTS

Although the terms “merit-based immigration” and “points-based selection” have been used frequently in debates over immigration policy for decades, these terms and the relationships between them are commonly misunderstood by political figures and the general public alike.

Some of this confusion is the result of disagreements about terminology among academics and policy experts. In some cases, different authors continue to use a variety of terms to refer to more or less the same concept—as in the case of “merit-based,” “skills-based,” “talent-based,” and “knowledge-based” immigration. In others, different authors use the same term to refer to different concepts, such as the phrase, “two-step immigration systems,” a description used by some scholars to refer to “Expression of Interest” application management systems<sup>7</sup> (discussed below) and by others to refer to provisional-to-permanent visa pathways.<sup>8</sup> That said, these disagreements about technical terminology are not unusual in a subject of much debate that crosses so many national, political, ideological, and disciplinary lines. And while such apparent discrepancies may frustrate a casual reader, they are not enough to prevent experts from understanding each other.

A greater share of the confusion is the result of these terms having become political buzzwords, taking on a second layer of meaning. Previously only used in their technical sense by immigration policy experts, terms like “merit-based immigration” and “points system” have started to be used by political figures and commentators as rhetorical shorthand and political shibboleths used to signal loyalty to a larger set of ideological commitments and policy preferences.<sup>9</sup> This rhetorical and political adoption of these terms results, for example, in phrases like “merit-based immigration reform” containing two layers of meaning: one referring to a change in how economic immigration policy and programs are run, and the other referring to a shift in the balance between the family and economic immigration streams.

The following section aims to undo some of the effects of this politicized rhetoric by providing clear technical definitions of these and other key terms.

### “Merit-Based” or “Skills-Based” Immigration

As technical policy terms, “merit-based immigration” and “skills-based immigration” are both used to describe economic-stream immigration programs in which: (a) candidates’ applications for entry are evaluated according to their skills, talents, training, and/or other measures of “human capital” and “economic potential”;<sup>10</sup> and (b) the decision to select successful applicants is made by someone other than a potential employer. These kinds of programs are, therefore, one way of implementing a supply-driven (government-led) approach to selecting economic immigrants.

Although the terms “merit-based” and “skills-based” have slightly different connotations, these two terms—and the less common “talent-based”<sup>11</sup> and “knowledge-based”<sup>12</sup>—are used more or less interchangeably in both popular and academic discussions of immigration policy. That said, although it is common for policy experts to treat “points-based immigration” as synonymous with “merit-based immigration,”<sup>13</sup> strictly speaking this is incorrect. While many “merit-based” immigration programs employ “points-based” selection systems, this association is not universal. Some countries, such as the United Kingdom, Japan, and South Korea, have employed points tests as secondary requirements in otherwise employer-driven immigration programs. And others, such as Canada between 1962 and 1967, have implemented merit-based economic visa programs that did not use a points test to select candidates.

### “Points-Based” or “Points-Tested” Immigration and Selection Systems

Points-based selection systems (also commonly referred to as points-based immigration systems, points-tested systems, or simply points systems) are a policy tool through which lawmakers can implement an immigration policy or program. Traditionally, points-based systems have been used to assess prospective foreign workers’ applications to enter a host country on a work visa. In this context, eligibility decisions are made in whole or in part according to whether a given candidate is able to score above a threshold number of points in a scoring system that measures factors such as education level, connection with the country, language fluency, and arranged employment.

Points-based selection systems are largely policy neutral. They are simply a policy tool by which policymakers can ensure that applications for a given visa program are assessed consistently, and that each application is assessed according to multiple variously weighted criteria.<sup>14</sup>

Although points-based selection programs have mostly been used in economic immigration systems, they could just as easily be used as a means to quantify the application of other kinds of selection criteria. For example, a points-based selection mechanism could be employed in a family-stream migration system.<sup>15</sup> A policymaker might include “degree of relation to sponsoring relative” as a selection criteria, and this could be quantified by assigning potential point values to the various familial relationships that might exist between the applicant and a given family member residing in the target state (e.g., parent, child, sibling, cousin).

While their specifics may vary, every points system shares one characteristic: their selection criteria and the relative weight of each factor are quantified, with each criterion being assigned a maximum possible point value. These criteria and point values are set in advance and made available to immigration officers, the public, and aspiring immigrants. Along with the criteria and maximum point values, states generally also include guidelines on how the points within each criterion will be assigned to any given applicant. For binary criteria—e.g., the existence of a job offer—these guidelines are simple, directing immigration officers to grant the full number of points allocated to that criterion to any applicant satisfying its conditions and no points to applicants who do not. Most criteria, however, are non-binary, and thus the guidelines for scoring these criteria lay out the varying levels of “partial credit” that can be allocated under these categories. In a scoring system in which the criterion of education has 10 possible points, the scoring guidelines might direct immigration officials to grant 10 points to candidates who hold a doctoral degree, 8 points to those holding a master’s degree, and 5 points to those with any undergraduate postsecondary degree. These scoring system details—the criteria, point values, and scoring guidelines—may be communicated in plain prose or formatted as a points table (also referred to as a “points grid”<sup>16</sup> or “rubric”<sup>17</sup>), a two-dimensional table with

columns corresponding to the names of criteria, possible point values, and scoring guidance.

### **“Skilled” or “High-Skilled” Immigration**

There is no single, agreed-upon definition of skilled or highly-skilled persons or occupations employed across countries and among scholars. There are a variety of approaches to defining this term, all of which employ one or more of the following three characteristics: education/training, occupation, and salary.

Academics tend to define high-skilled migration sparingly, using only one or two of these factors. This trend toward parsimony is perhaps the result of an effort to make these definitions more suitable to broad-scale quantitative analyses. Some researchers define skill solely according to the level of education a given migrant has acquired,<sup>18</sup> while others define “skill” according to the occupation a given migrant has or will work in.<sup>19</sup> Other studies have employed slightly more complicated approaches, defining skill according to the occupation and the salary a given migrant has earned. However, this approach has not been as widely adopted.<sup>20</sup>

Most receiving states tend to adopt approaches that examine more than one of these approaches. For example, Australia and Canada classify certain immigrants (and immigration streams) as “skilled” on the basis of at least three of the following four characteristics: the skill level required by the immigrant’s occupation, the amount and type of work experience they have already accrued, their level of education, and their language skills.

The current U.S. immigration system does not employ this kind of skilled/unskilled distinction. The closest analog employed in the United States is the idea of a “specialty occupation” employed in the current H-1B temporary visa program, defined as an occupation requiring at least a four-year degree. In the interest of continuity and ease of implementation, our proposed program would adopt this definition.

### **“Human Capital”**

The term “human capital” is something of a shibboleth among immigration policymakers and scholars, a term of art that acts as a shorthand for many of the gains that skilled immigration promises.<sup>21</sup> Despite its centrality to arguments both for and against skilled immigration,

however, lawmakers and experts making these arguments have yet to agree on a definition of the term.<sup>22</sup>

The concept of human capital emerged from the field of economics in the mid-twentieth century in the work of scholars like Gary S. Becker and Theodor W. Schultz. These early works examined the impact on future incomes that can be expected from schooling and other forms of training.<sup>23</sup> Given this goal, these economists defined the concept of “human capital” simply as the set of skills that individuals may acquire as a result of investments of time and resources in education or training.<sup>24</sup>

In the intervening decades, this concept spread beyond economics. As it spread, arguments arose over the precise boundaries of this term. What kinds of skills should be understood as human capital, and which should not? To what degree are an individual’s future earnings dictated by learned skills as opposed to innate abilities? What kinds of education or training should count? And how can we measure this form of capital, which is neither transferrable nor tangible?

In the last two decades, as economists and policymakers have sought better explanations of differences in productivity and development across countries, there has been a renewed interest in developing useful and quantifiable measures of human capital.<sup>25</sup>

The academic literature on skilled immigration uses the term “human capital” to refer to the skills and knowledge possessed by individual migrants or to immigration policies or programs that select for these qualities. In this latter context, it is used to describe a possible approach to valuing or admitting skilled migrants, with the “human capital model of immigration” generally set at one end of a continuum and the “labor shortages model of immigration” set at the other.

Under the labor shortages model, the value of skilled immigration is determined by the needs of the labor market. Skilled immigration is thus cast as a tool to be used only to address specific and immediate labor shortages in vital economic sectors.

By contrast, under a human capital model, the value of high-skilled migration is determined not in reference to the labor market but rather in reference to the needs of the larger economy, often specifically focusing on economic growth. Analyses emphasizing the human capital model

generally hold that persistent economic growth is not possible without the accumulation of human capital.<sup>26</sup> This is because it is only through the efforts, abilities, and ideas of the individuals that make up a country’s “stock” of human capital that new ideas and technological advancements can be generated.<sup>27</sup> As such, immigration policies that select for human capital are thought to be advantageous because those immigrants with higher levels of education and experience can contribute needed skills and expertise and are better able to adjust to both cyclical and structural changes in the labor market than those with lower levels of education.<sup>28</sup>

### § 3 HISTORICAL CONTEXT

With this theoretical context laid out and relevant terms defined, we now turn to how policymakers have actually implemented points systems over the past half century.

#### Origin and Proliferation

In 1967, Canada implemented the world’s first points-based selection system as part of an effort to attract larger numbers of skilled foreign workers to meet the growing needs of its domestic labor market. This policy tool has since spread to more than a dozen other countries.

The first states to follow Canada’s lead were Australia and New Zealand, with the former adopting a points system in 1972 and the latter in 1991. This proliferation accelerated in the early 2000s as countries across Asia and Europe reformed and updated their labor immigration systems. In Europe, the United Kingdom and the Czech Republic were the first to implement points systems in 2002 and 2003, respectively,<sup>29</sup> followed by Denmark in 2007,<sup>30</sup> the Netherlands in 2008,<sup>31</sup> and Austria in 2011.<sup>32</sup> In Asia, Singapore was the first to adopt a points system in 2004,<sup>33</sup> followed by China<sup>34</sup> and Hong Kong<sup>35</sup> in 2006, Malaysia in 2010,<sup>36</sup> Japan in 2012,<sup>37</sup> and South Korea in 2017.<sup>38</sup>

In addition to these fully implemented points systems, a number of countries have moved toward adopting a points system. Mexico and Turkey, in 2012<sup>39</sup> and 2016,<sup>40</sup> respectively, both passed legislation laying the groundwork for immigration points systems that have not yet been fully implemented, and Germany ran a points-based pilot program from 2016 to 2019 that admitted foreign workers to the state of Baden-Württemberg.<sup>41</sup>



## Evolution and Adaptation

As this historical progression shows, the number of countries employing points-based selection systems is growing at an increasing rate. That said, the points systems in these states are by no means identical. Indeed, as the number of such systems has grown and existing points systems have become more established, these systems have become increasingly diverse in their structure, details, and application.

The following section addresses the commonalities and variations among the points systems employed in various countries. First, it describes what legal and policy scholars have generally regarded as the “traditional” or “classic” form of the points system. Next it discusses how existing points systems have diverged from this “traditional” model across a number of policy dimensions. Finally, it summarizes some of the explanations given for why the spread of points-based immigration selection systems and other similar policy innovations have resulted not in convergence but in a set of variations on a common theme.

### The “Traditional” or “Classic” Points System

The points systems introduced in Canada in 1967 and Australia in 1972 are often used as a baseline, providing the template for what is commonly referred as the “classic”<sup>42</sup> or “traditional”<sup>43</sup> model. This type of points system is generally characterized as a policy tool that is used to manage a single visa stream for high-skilled foreign workers<sup>44</sup> through which qualified applicants apply directly for a permanent residence visa.<sup>45</sup> This points system is employed early in the application review process, serving as a pre-entry screening mechanism that helps to determine whether a given applicant is eligible for entry. Under such a system, applicants are not required to have arranged employment or a sponsoring employer,<sup>46</sup> and admissions decisions are administered through a first-come, first-served single-step selection process.<sup>47</sup>

### Variations on the “Traditional” or “Classic” Model

Many of the points systems implemented in countries other than Canada and Australia, and the later iterations of Canada’s and Australia’s points systems, share many of these policy features. Many, however, have also diverged

from this original model, opting for different policy choices in one or more ways.

### *Single, High-Skilled Visa Stream*

The historical association between points systems and skilled immigration still exists. Most points-based immigration selection systems are used in high-skilled immigration programs. These include Canada’s Federal Skilled Worker program, Australia’s three points-tested skilled visas, New Zealand’s Skilled Migrant Category program, Austria’s Red-White-Red Card program, Japan’s Preferential Treatment for Highly Skilled Foreign Professionals program, Turkey’s Turquoise Card program, and the “Category A” stream of China’s Foreigner’s Work Permit program.<sup>48</sup>

That said, various states have created points-tested programs tailored to workers at lower skill levels. For example, Canada has one skilled visa program dedicated entirely to medium-skilled foreign workers (the Federal Skilled Trades program), one that admits both medium- and high-skilled workers (the Canadian Experience Class program), and a number of provincial-level programs that admit either medium- or low-skilled workers.<sup>49</sup> Similarly, medium-skilled workers whose occupation is included on Australia’s Shortage Occupation List are eligible to apply to any of that country’s three points-tested skilled visa programs (subclasses 189, 190, and 489). Those applicants are granted points for post-secondary professional qualifications that are not university degrees.<sup>50</sup> Germany’s pilot points-tested program, the Punktebasiertes Modellprojekts für ausländische Fachkräfte (PuMa) (Points-Based Model Project for Foreign Professionals), was aimed at medium-skilled workers.<sup>51</sup> And South Korea has a points-tested visa stream, the Employment Permit System (EPS), that is exclusively aimed at low-skilled foreign workers.<sup>52</sup>

Other states have employed points systems in economic visa programs that do not include an explicit reference to applicants’ skill levels or the skill levels of their professions. These points-tested but not skills-based visa programs have tended to be aimed at investors, self-employed business owners, entrepreneurs, and start-ups. Examples include Australia’s Business Innovation and Investment (Provisional) Visa (Subclass 188),<sup>53</sup> Canada’s Immigrant Investor Program (IIP),<sup>54</sup> New Zealand’s Investor 2 Category Resident Visa<sup>55</sup> and Entrepreneur

Work Visa programs,<sup>56</sup> the Netherlands' Investment Visa Program,<sup>57</sup> and South Korea's D-8-4 (Start-Up Visa) program.<sup>58</sup>

There has been a similar proliferation of policy options concerning the number of visa streams that any given points system is used to manage. Some countries set up a single overarching points system that applies to multiple visa streams. Other states set up multiple points systems, each linked to (and thus tailored to) a single visa program. Some states adopt a mix of these approaches.

Policymakers in Canada and Australia have opted for the former approach. Both countries have set out points systems that apply to all their skilled-stream visa programs. (Australia has now established a second points system, and a second applicant pool, that is applied solely in its "Investment 2" visa program.) Austria's Red-White-Red (RWR) Card program adopts a similar approach, using a single points system in the application process for multiple kinds of residence permits, but diverges from the Canadian and Australian approaches by varying the number of points allocated to each factor depending on the type of residence permit for which an applicant is applying.<sup>59</sup> Korea has four points-tested visa programs, also called "status of residence" programs, each of which employs a different points table.<sup>60</sup>

### *Allocating Permanent Visas*

In the "classic" or "traditional" model, points systems were used only in programs that allowed foreign workers to directly apply for permanent resident status, without requiring them to have held any provisional or temporary visa beforehand. Canada continues to follow this practice, directly allocating permanent residence visas in all its points-tested programs.

Most of the other countries that have implemented points systems have moved away from this precedent. Some of these states have continued to employ points systems in programs that grant permanent visas but have also implemented one or more points-tested temporary or provisional visa programs. Australia, for example, has continued to allocate permanent residence permits to those admitted via its skilled independent visa program, but the country also has a number of points-tested temporary and provisional visa programs. Many of these latter programs have been set up as part of a wider shift in

Australian policy toward a "two-step"<sup>61</sup> approach to immigration in which foreign workers seeking permanent residence must first hold a temporary or provisional visa. New Zealand has also begun experimenting with points-tested temporary visa programs. While it allocates permanent visas in both its Skilled Migrant and Investor visa programs,<sup>62</sup> its more recently established Entrepreneur Work visa program grants only a temporary three-year visa.<sup>63</sup> Austria's RWR Card program has multiple tiers, one that grants a six-month job-search visa,<sup>64</sup> another that grants a one-year temporary visa (colloquially called an RWR Card),<sup>65</sup> and one that grants a permanent residence and work permit (called an RWR-Plus Card).<sup>66</sup>

Other states like the Netherlands, Denmark, and Singapore have limited their points systems to temporary or provisional visas. The Netherlands' only points-tested visa program grants successful applicants a two-year (renewable) visa.<sup>67</sup> Denmark's now-shuttered Green Card program included two points-tested visa categories, both of which were temporary: a six-month job-search visa<sup>68</sup> and a three-year employment visa.<sup>69</sup> Singapore's only points-tested visa program is the "S-Pass," a temporary visa that allows "semi-" or "mid-level" skilled workers to live and work in Singapore for two years.<sup>70</sup>

Three recent examples use points systems exclusively in permanent visa programs. Hong Kong's Quality Migrant Admission Scheme, enacted as part of an effort to foster skilled immigration, aims to attract talented foreign workers by offering them permanent residence visas.<sup>71</sup> Malaysia's Residence Pass for Talent (RP-T) program and Turkey's Turquoise Card program also offer qualified foreign workers a direct path to permanent residence.<sup>72</sup>

### *Use as Eligibility Screening Mechanism*

In the traditional model, an immigration points system is used early in the visa application process to assess whether applicants meet the eligibility requirements for a given visa program, to sort a pool of applicants so that immigration officers can select the most qualified candidates, or both. This is still the most common way in which points systems are used in the immigration regimes of countries that have implemented one or more points-tested visa programs.

Some countries, however, have found other uses for points systems. For example, Japan and China have incorporated points systems as a secondary sorting mechanism in an otherwise largely employer-led labor immigration regime. Foreign workers seeking to immigrate to either of these countries must first obtain a job offer before applying for a visa. It is at this stage that these countries' points systems are applied. Most foreign workers seeking to enter Japan or China are routed through these countries' general, catch-all work visa programs: the Z Visa in China and the Working Visa in Japan. Highly qualified foreign applicants—those who score over 70 points on Japan's Points-Based System for Highly Skilled Foreign Professionals or more than 85 points on China's Working Foreigners Classification Scheme—may, however, be allowed to apply for alternate visa programs that admit only highly skilled foreign professionals. The visas issued through these alternate visa routes—China's R Visa and Japan's Highly Skilled Foreign Professional visa—grant foreign professionals all the privileges associated with general work visas as well as a range of additional privileges, including fewer restrictions on the types of work permitted, visas for spouses and children, visas for applicants' parents or household workers, preferential processing of subsequent immigration applications, and faster access to permanent residence.<sup>73</sup> Thus, these two points systems differ from those employed in more traditional models. Given that all applicants who would be eligible for these high-skilled visa programs would also be eligible for Japan's or China's basic work visa, some authors have described these two points systems as less akin to entry exams and more to velvet ropes set at the entrance to the red carpet (or “green path”) leading to a VIP room.<sup>74</sup>

Other states have even applied points systems to other actors in the labor immigration process. Hong Kong, Singapore, and South Korea have all set up points systems by which they evaluate employers seeking to employ foreign workers. Under Korea's Employment Permit System (EPS) program, a temporary visa program (E-9) for low-skilled workers, employers' applications to hire foreign workers are scored according to a points test that includes factors such as “basic items” (a category that includes such measures as how many foreign workers an employer has hired in the past and how many Korean workers it hired in a given period), “bonus items” (a category that rewards employers for doing things like

fully paying for accident insurance, offering training for their workers, and maintaining a safe work environment), and “penalties” (a category that deducts points from employers that have violated labor regulations in the past, have had foreign workers quit due to sexual harassment or physical/verbal abuse, or that are found to operate an unsafe working environment).<sup>75</sup> Under this system, all employers' applications are scored and then permits are issued according to rank order until the program's quota is exhausted.<sup>76</sup>

### *Job Offer/Employer Sponsor Requirement*

Under a traditional points system, applicants face few mandatory requirements.<sup>77</sup> Aside from meeting certain minimum standards of health and character, such as vaccination, lack of criminal record, or adequate means of financial support, aspiring foreign workers may apply regardless of whether they had arranged employment in the destination state and without having to show evidence of labor market demand for their particular professional skills. That said, classic points systems did not ignore these indicators of employability. They just included them as criteria within the points table, rewarding applicants whose professions were in particular demand and those with arranged employment, but did not exclude applicants who failed to meet those criteria.

A number of existing systems, however, have diverged from this traditional model. Many points systems have additional prerequisites that, if not satisfied, render a prospective foreign worker ineligible to apply. Some of these eligibility requirements may even address qualities that are also addressed in the points system. These include, for example, minimal levels of language proficiency, being below a maximum age, earning above a set minimum either in past salary or expected salary upon entry, being qualified to work in a profession that has been included on a government-compiled “shortage occupation list,”<sup>78</sup> passing a skills assessment,<sup>79</sup> or having a job offer in hand.<sup>80</sup>

### *Single-Step Versus Expression of Interest Selection Processes*

In a classic points system, the process of evaluating individual applications is relatively simple. Candidates are assigned a given number of points for each criterion in that program's points table, these points are added up, and

any applicant whose points total equals or exceeds a specified “pass mark” is deemed eligible for a visa.<sup>81</sup> In this traditional “grading” procedure, individuals’ applications are evaluated according to an absolute<sup>82</sup> assessment model under which their score totals are assessed according to a fixed pass mark. This single-step, threshold, or pass/fail<sup>83</sup> assessment structure is used in most points systems around the world, including those in China, Denmark, Hong Kong, Japan, the Netherlands, South Korea, Singapore, and Turkey.

In the last two decades, however, an alternative approach to applicant assessment has emerged. Under this new model—referred to as an “expression of interest” model—there is still a pass mark and applicants are still assigned a total score based on a fixed points rubric. Applicants whose total points meet or exceed the pass mark are not, however, immediately deemed eligible to receive a visa. These candidates’ applications are instead placed in a “pool” of qualified candidates. All applications in the pool are ranked according to the number of points they have accrued. Immigration officials (and potentially employers or regional governments) then invite the highest scoring applicants to submit a full application. This expression of interest assessment model is thus a two-stage application process.<sup>84</sup> Applicants are first graded on an absolute basis according to a fixed “pool pass mark.” They then are graded on a relative basis, with their score totals being compared to those earned by other applicants in the current applicant pool.

### Explanations for Spread and Variation

As addressed above in our definition of points systems, all existing points systems share certain core characteristics: they employ explicit selection criteria and quantify the relative weight of each selection factor. In other words, a points-based selection system is a policy tool that offers policymakers a way to ensure that multiple, variously weighted selection criteria will be consistently applied to visa applications. In addition to this single universal characteristic, however, a number of other characteristics are shared by many existing points systems and their past

iterations. In this, one could describe all these points systems as exhibiting a kind of “family resemblance”—a similarity marked less by universally shared characteristics than by multiple overlapping similarities.<sup>85</sup>

This family resemblance is not the result of independent invention but rather of imitation. Policymakers have looked to existing points systems in other states for inspiration. This phenomenon—in which policymakers or jurists in one state look to policies, administrative structures, institutions, or legal concepts in another state as sources of guidance or templates to be imitated—is referred to in public policy and political science as “policy transfer”<sup>86</sup> or “policy diffusion,”<sup>87</sup> and in comparative law as “legal borrowing” or “legal transplantation.”<sup>88</sup> Sources drawn from these subjects offer numerous examples, drawn from various areas of policy and law, suggesting that this process of cross-border circulation of policy innovations commonly results in the kind of policy resonance among state policies that can be observed here.

These same conceptual tools also account for the differences among points systems, and for the apparent increase in the variety of differences as the family of points-system states has grown. In surveying the literature on legal or policy borrowing, numerous reasons exist why policymakers seeking to import a legal framework or policy tool from abroad may not want, or be able, to do so through simple duplication. First, different governments have different policy goals, and different political moments may require different strategies and concessions. Each of these points systems was crafted by political actors with their own political priorities, tailored to address the concerns of a particular supporting coalition, and framed in terms designed to resonate with a specific public audience. Second, these foreign imports may need to be “translated” to make them fit within the policy context and legal culture of the borrowing state. Third, there is an imperative to iterate and improve, learning from and building upon the mistakes and successes of other states employing the policy or legal tool being imported.

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<sup>1</sup> This commonly used metaphor of three “immigration streams,” distinguished from each other on the basis of the different kinds of criteria used in each stream to separate admissible from

inadmissible migrants, helps to untangle the varied and quite different reasons that governments might have for admitting a given migrant. But regardless of what selection criteria are used,

every immigration policy is inescapably and intrinsically discriminatory, a tool used to distinguish who will be admitted and who will be excluded. Natasha Duncan, *Immigration Policymaking in the Global Era: In Pursuit of Global Talent*. (New York: Palgrave Macmillan, 2012), 50, <http://doi.org/10.1186/s40878-0180092-410.1057/9781137048967>. As such, every immigration policy framework must answer two basic questions: who gets in, and how many are permitted. Given this, one can think of any given set of admissions requirements as part of a decision-making formula set out by immigration policymakers. The variables in this formula (the selection criteria) determine “which types of persons will be admitted,” and numerical caps or flexibility within the formula (the possibility of candidates being found admissible without fully satisfying all selection criteria) determine “how many persons will be let in.” Borjas, George. 2001. *Heaven’s Door: Immigration Policy and the American Economy*. Princeton, NJ: Princeton University Press, 17. Extending this “formula” metaphor to the question of application management or “set theory,” the variables in the formula reflect “various policy calculations to segment the pool of potential migrants.” Duncan, 50.

<sup>2</sup> This two-category typology was first articulated in a 2002 study of comparative immigration policy commissioned by the Irish government and produced by the International Organization for Migration (IOM). IOM, “International Comparative Study of Migration Legislation and Practice,” April 2002, [https://publications.iom.int/system/files/pdf/international\\_study\\_legislation.pdf](https://publications.iom.int/system/files/pdf/international_study_legislation.pdf). While many sources continue to use this two-category typology, there have been efforts to improve upon it. A notable example here is Rey Koslowski’s addition of a third category, the “neo-corporatist” model, to the continuum between fully demand-driven and fully supply-driven models. This neo-corporatist model relies on government selection using a points system, but also involves “extensive business and labour participation” in both the design of the points system and the process of selection. See Rey Koslowski, “Selective Migration Policy Models and Changing Realities of Implementation,” *International Migration* 52, no. 3 (June 2014): 27, <https://doi.org/10.1111/imig.12136>.

<sup>3</sup> See Mathias Czaika and Christopher R. Parsons, “The Gravity of High-Skilled Migration Policies,” *Demography* 54, no. 2 (April 2017): 8, <https://doi.org/10.1007/s13524-017-0559-1>.

<sup>4</sup> In theory, systems that employ a supply-driven approach do not require applicants to have a job offer, but may favor those candidates who do have a job offer. As a matter of actual policy, there have been instances in which states commonly described as having supply-driven economic immigration systems have imposed this requirement. See, for example, the Canadian points system in 1982 and 1986, when ministry officials restricted access to the skilled independent application system to those applicants that had an approved job offer. Edwina O’Shea, “Missing the Point(s): The Declining Fortunes of Canada’s

Economic Immigration Program,” *Transatlantic Academy Paper Series* (Transatlantic Academy, April 2009), 8. That said, one could argue that in cases like this, the immigration system in question is not actually a fully supply-driven system and instead has moved, however temporarily or marginally, toward the middle of the continuum between supply- and demand-driven.

<sup>5</sup> See Mathias Czaika and Christopher R. Parsons, “The Gravity of High-Skilled Migration Policies,” 8.

<sup>6</sup> Some researchers have argued that shortage lists are a tool by which states can “define what it means to be highly skilled beyond tautological definitions based on market demand,” and that the composition of these lists tends to reflect “priorities or values that are not necessarily expressed by prevailing market forces.” Christopher R. Parsons et al., “High Skilled Migration through the Lens of Policy,” *Migration Studies*, December 5, 2018, 6–7, <https://doi.org/10.1093/migration/mny037>. That said, in most cases many of the occupations on the list are in fact in high demand (reflecting a current or near-term shortage of qualified candidates), making shortage lists at least in part a demand-driven policy tool.

<sup>7</sup> See, e.g., Law Library of Congress, Global Legal Research Directorate, “Points-Based and Family Immigration” (Law Library of Congress, January 2020), 32, <https://www.loc.gov/law/help/points-based-immigration/points-based-immigration.pdf>. (“The Express Entry system manages applications for permanent residence through a two-step process.”)

<sup>8</sup> See, e.g., Robert G. Gregory, “The Two-Step Australian Immigration Policy and Its Impact on Immigrant Employment Outcomes” (Institute for the Study of Labor (IZA), 2014). (“Two-step migration means the transition of status from temporary to permanent.”) See also Ray Marshall, *Value-Added Immigration: Lessons for the United States from Canada, Australia, and the United Kingdom* (Economic Policy Institute, 2011), 75.

<sup>9</sup> See Dara Lind, “Trump’s Call for ‘Merit-Based Immigration,’ Explained,” *Vox*, March 1, 2017, <https://www.vox.com/policy-and-politics/2017/3/1/14773298/merit-based-immigration>. (Describing how the term “merit-based” has come to be “generally understood in Washington” not as simply a specific policy tool but “political code for changing the composition of people settling in America to favor educated, highly skilled immigrants and reduce family-based immigration.”) See also Stephen Gibson and Rachael Booth, “‘An Australian-Style Points System’: Individualizing Immigration in Radical Right Discourse in the 2015 U.K. General Election Campaign,” *Peace and Conflict: Journal of Peace Psychology* 24, no. 4 (November 2018): 389–97, <https://doi.org/10.1037/pac0000267>. (Describing how the phrase “Australian-style points system” was used by leaders of the United Kingdom Independence Party (UKIP) as a way to signal support for cutting overall immigration levels.) One could disentangle this rhetorical usage of the term “merit-based immigration” from the more technical usage by drawing a

distinction between a “merit-based economic immigration program”—referring to one or more specific visa lines that employ a supply-driven approach to selection, and a “merit-based immigration regime”—referring to an overall approach to immigration that increases the share of overall in-migration dedicated to economic stream visas and reduces the share devoted to family stream visas.

<sup>10</sup> These factors can be roughly sorted into two categories: (a) factors observed or believed to be “associated with a positive economic contribution (such as high levels of human capital or specific occupational skills),” and (b) factors associated with the capacity to “integrate successfully into the receiving country’s labor market.” Madeleine Sumption, “Points-Based Immigration,” in *Encyclopedia of Migration*, ed. Frank D. Bean and Susan K. Brown (Dordrecht: Springer Netherlands, 2015), 2, [https://doi.org/10.1007/978-94-007-6179-7\\_65-2](https://doi.org/10.1007/978-94-007-6179-7_65-2).

<sup>11</sup> See, e.g., Robin R. Marsh and Ruth Uwaifo Oyelere, “Global Migration of Talent: Drain, Gain, and Transnational Impacts,” in *International Scholarships in Higher Education: Pathways to Social Change*, ed. Joan R. Dassin (New York, NY: Springer International Pub., 2017), 224. (“Based on current evidence in the literature, it is reasonable to assume *talent-based immigration* is on average an economic winner for developed countries like the USA and Canada.”)

<sup>12</sup> Darrell Issa, “Supplying Knowledge-Based Immigrants and Lifting Levels of STEM Visas Act (SKILLS Visa Act),” H.R. 2131 (2013), <https://www.congress.gov/bill/113th-congress/house-bill/2131>.

<sup>13</sup> See, e.g., Demetrios G. Papademetriou and Kate Hooper, “Competing Approaches to Selecting Economic Immigrants: Points-Based vs. Demand-Driven Systems” (Migration Policy Institute, 2019), 7. This conflation of the terms “points-based” and “merit-based” also crops up frequently in the popular press. See, e.g., David Iconangelo, “How Would ‘Merit-Based’ Systems Change U.S. Immigration? Points-Based Immigration Systems Are in Place in Most Wealthy Countries. But If They Function Smoothly, It’s Because of Bureaucrats,” *Christian Science Monitor*, March 2, 2017, <https://www.csmonitor.com/USA/Politics/2017/0302/How-would-merit-based-systems-change-US-immigration>.

<sup>14</sup> OECD, *International Migration Outlook 2014*, International Migration Outlook (OECD Publishing; Éditions OCDE, 2014), 137, [https://doi.org/10.1787/migr\\_outlook-2014-en.OECD](https://doi.org/10.1787/migr_outlook-2014-en.OECD).

<sup>15</sup> In fact, at least one country *has* applied a points system in assessing family stream visa applicants. In 2012, New Zealand immigration officials extended the use of their points system, applying it to a number of family stream visa programs—most notably the Parent Visa. See “Meeting the Criteria: Parent Resident Visa,” Immigration New Zealand, accessed June 6, 2020, <https://www.immigration.govt.nz/new-zealand-visas/apply-for-a-visa/criteria/parent-resident-visa>. See also “Expert Immigration Advice, Residence Class Visa, Family

Stream—ExperieNZ Immigration Services Ltd.,” ExperieNZ Immigration Services Ltd., accessed June 6, 2020, <https://experienzimmigration.co.nz/family-stream/>. (“The Parent Category, similar to that of the Skilled Migrant Category, requires the applicant to submit an Expression of Interest (EOI). If the EOI is accepted, the applicant will be invited to apply.”)

<sup>16</sup> OECD, *Recruiting Immigrant Workers: Canada 2019* (S.I.: OECD Publishing; Éditions OCDE, 2019), 49.

<sup>17</sup> This term comes from the context of academic assessment, in which it is generally used to refer to a “scoring guide used to evaluate the quality of students’ constructed responses.” W. James Popham, “What’s Wrong—and What’s Right—with Rubrics,” *Educational Leadership* 55, no. 2 (1997): 72, <https://eric.ed.gov/?id=EJ552014>.

<sup>18</sup> See, e.g., Frédéric Docquier, B. Lindsay Lowell, and Abdeslam Marfouk, “A Gendered Assessment of Highly Skilled Emigration,” *Population and Development Review* 35, no. 2 (June 2009): 304, <https://doi.org/10.1111/j.1728-4457.2009.00277.x>. (“We distinguish three levels of education. Medium-skilled migrants are those with completed upper-secondary education, low-skilled immigrants have less than completed upper secondary education, including those with only lower-secondary and primary education and those who did not go to school. Highly skilled migrants have post-secondary education.”)

<sup>19</sup> See, e.g., Mathias Czaika and Christopher R. Parsons, “The Gravity of High-Skilled Migration Policies,” 7. (Classifying migrants as “high skilled” if they are qualified to work in an occupation that is included in the first three major groups of the International Standard Classification of Occupations (ISCO) 2008.)

<sup>20</sup> One set of researchers avoids education altogether, defining skill through a combination of occupation and salary. See Steven Ruggles et al., *Integrated Public Use Microdata Series: Version 5.0. (Data Set)* (Minneapolis: University of Minnesota, 2010). This approach has, however, not been widely adopted.

<sup>21</sup> This definitional controversy also exists in other fields. See, e.g., Benjamin F. Jones, “The Human Capital Stock: A Generalized Approach. Reply,” *American Economic Review* 109, no. 3 (March 2019): 1175, <https://doi.org/10.1257/aer.20181678>. (“The measurement of human capital has long been a source of debate in the development accounting literature. The disagreements have sprung not from differences in data but from conceptual differences in the measurement methods.”)

<sup>22</sup> For example, there are two different definitions of human capital used among researchers working for the same Canadian ministry in papers released in the same year. In one 2010 paper, Canadian researchers defined human capital in terms of expected future income, describing “human capital stock” as “the expected future lifetime income of all individuals” in the country, and “human capital investment” as “changes in human

capital stock due to the addition of new members of the working age population arising from the rearing and education of children and the effect of immigration on human capital.”

Wulong Gu and Ambrose Wong, “Estimates of Human Capital in Canada: The Lifetime Income Approach,” *Economic Analysis (EA) Research Paper Series* (Statistics Canada, Analytical Studies Branch, 2010), 5,

<https://www150.statcan.gc.ca/n1/en/pub/11f0027m/11f0027m2010062-eng.pdf>. In another 2010 research paper, economists from within the same government Ministry—Statistics Canada, a division within the Ministry of Industry—take a very different approach to human capital, defining it instead as “the average skill level of workers.” Desmond Beckstead et al., “Cities and Growth: Earnings Levels Across Urban and Rural Areas: The Role of Human Capital,” *The Canadian Economy in Transition Series* (Statistics Canada, Analytical Studies Branch, 2010), 7, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.615.7698&rep=rep1&type=pdf>.

<sup>23</sup> These early forays into human capital sought, at a micro level, “to make sense of how individuals decide whether to look for employment or to seek more training,” and at a macro-level to “help governments devise their education policy.” M. Feher, “Self-Appreciation; or, The Aspirations of Human Capital,” *Public Culture* 21, no. 1 (January 1, 2009): 25, <https://doi.org/10.1215/08992363-2008-019>.

<sup>24</sup> See, e.g., Gary Stanley Becker, *Human Capital: A Theoretical and Empirical Analysis, with Special Reference to Education*, reprint, revised (University of Chicago Press, 2009), 25. (Describing human capital as “the outcome of deliberate investment [in education and work experience] on the part of individuals deciding to incur present costs for the sake of future benefits.”)

<sup>25</sup> See John R. Baldwin, Wulong Gu, and Ryan Macdonald, “Integrated Productivity Accounts: Contributions to the Measurement of Capital,” *The Canadian Productivity Review* (Statistics Canada, Analytical Studies Branch, 2010), 26, <https://www150.statcan.gc.ca/n1/pub/15-206-x/2010027/part1-eng.htm>. (Describing the renewed interest in measuring the total stock of human capital in the OECD.) These cross-country studies have tended to focus on questions of the link between human capital and economic growth. In this literature, a variety of approaches to defining or measuring human capital have been proposed. Some studies take an approach focused on measuring human capital “flows,” initially measured as the number of individuals in the country enrolled in formal schooling. A “flow” variable is measured over an interval of time, and thus describes the change in the quantity of something over that interval (e.g., the change in the total number of dollars held in U.S. banks between January 1 and January 31, 2020). Other studies approach human capital as a “stock” variable. A “stock” variable is measured at one specific time, and thus describes the quantity of something existing at that point in time (e.g., The total number of dollars held in U.S. banks on January

1, 2020). See Robert J Barro and Jong Wha Lee, “International Measures of Schooling Years and Schooling Quality,” 2020, 7.

<sup>26</sup> Sucharita Ghosh and Camilla Mastromarco, “Exports, Immigration and Human Capital in U.S. States,” *Regional Studies* 52, no. 6 (June 3, 2018): 842, <https://doi.org/10.1080/00343404.2017.1361020>.

<sup>27</sup> Skilled immigrants may contribute to a host country’s human capital stores either directly (via the training and skills accumulated before their arrival) or indirectly (by transmitting knowledge and skills to native workers or generating new economic demand for skilled workers). In this sense, technological advancements shift a state’s production frontier, increasing that state’s productive capacity. Ghosh and Mastromarco, 843.

<sup>28</sup> Garnett Picot et al., *The Human Capital Model of Selection and the Long-Run Economic Outcomes of Immigrants* (Ottawa, Ont.: Statistics Canada, Analytical Studies Branch, 2014), 6.

<sup>29</sup> See Hein de Haas, Katharina Natter, and Simona Vezzoli, “Growing Restrictiveness or Changing Selection? The Nature and Evolution of Migration Policies,” *International Migration Review* 52, no. 2 (2016): 24, <https://doi.org/10.1111/imre.12288>.

<sup>30</sup> For a discussion of Denmark’s points system, see Martin Kahanec and Klaus F. Zimmermann, “High-Skilled Immigration Policy in Europe,” *IZA Discussion Papers*, December 2010, 8, <http://repec.iza.org/dp5399.pdf>. In addition to being the first three European states to implement points systems, the UK, the Czech Republic, and Denmark are also the only three states—so far as the authors of this report are aware—to repeal a points-based selection system after it had been fully implemented. The UK and the Czech Republic did so in 2010, with the Czech Republic formally terminating its “Programme of Active Selection of a Qualified Foreign Labour Force” and the UK effectively terminating its points-tested “Tier 1” independent skilled visa program by nearly zeroing out the number of visas allocated to it. All three of these points-system closures have been linked to the economic downturn in the wake of the worldwide 2008 economic crisis. See Madeleine Sumption, “The Points System Is Dead, Long Live the Points System,” *Migration Information Source (Migration Policy Institute)* (blog), December 10, 2014, <https://www.migrationpolicy.org/article/points-system-dead-long-live-points-system>. The Danish government repealed its points-based Green Card scheme in 2016. See Claus Baggersgaard, “Social Liberal Party Wants to Restore Green Card Scheme,” *University Post*, University of Copenhagen, August 31, 2018, sec. Politics, <https://uniavisen.dk/en/social-liberal-party-wants-to-restore-green-card-scheme/>.

<sup>31</sup> Tesseltje de Lange, “Welcoming Talent? A Comparative Study of Immigrant Entrepreneurs’ Entry Policies in France, Germany and the Netherlands,” *Comparative Migration Studies* 6, no. 1 (December 2018): 9, <https://doi.org/10.1186/s40878-018-0092-4>.

<sup>32</sup> For a discussion of Austria's "Red-White-Red Card" visa program, and the points scheme it uses to assess applicants, see Nina Rilla et al., *Immigrants in the Innovation Economy—Lessons from Austria, Canada, Denmark and the Netherlands*, Valtioneuvoston Selvitys-Ja Tutkimustoiminnan Julkaisusarja 1/2018 (Prime Minister's Office, Finland, 2018), 12, <https://tietokaytoon.fi/julkaisu?pubid=23803>.

<sup>33</sup> See Elizabeth Chacko, "Policies and Practices of Integration: High-Skilled Migrants from India in Singapore," *Papers in Applied Geography* 3, no. 3–4 (October 2, 2017): 267, <https://doi.org/10.1080/23754931.2017.1349686>.

<sup>34</sup> China first implemented a points system as part of its new "Quality Migrant Admission Scheme" in 2006. Hein de Haas, Katharina Natter, and Simona Vezzoli, "Growing Restrictiveness or Changing Selection?," 24. It then introduced a second points-tested visa program in 2017. See Demetrios Papademetriou, Meghan Benton, and Kate Hooper, "Equipping Immigrant Selection Systems for a Changing World of Work" (Migration Policy Institute, 2019), 14.

<sup>35</sup> See Maggi Leung, "'One Country, Two Systems', 'One City, Two Systems': Citizenship as a Stage for Politics of Mobility and Bordering Practices in Hong Kong," *Migration Letters* 13, no. 1 (January 2016): 56. See also Eral Frasheri et al., "A Comparative View of Immigration Frameworks in Asia: Enhancing the Flow of Knowledge through Migration" (Working Paper, Center for International Development, Harvard University, October 2017), 23, [https://growthlab.cid.harvard.edu/files/growthlab/files/immigration\\_frameworks\\_2017.pdf](https://growthlab.cid.harvard.edu/files/growthlab/files/immigration_frameworks_2017.pdf).

<sup>36</sup> See Frasheri et al., "A Comparative View of Immigration Frameworks in Asia: Enhancing the Flow of Knowledge through Migration," 37. See also Ministry of Human Resources of Malaysia and World Bank Social Protection and Labor Unit East, Asia and Pacific Region, "Immigration in Malaysia: Assessment of Its Economic Effects, and a Review of the Policy and System," 2013, <https://psu.um.edu.my/img/Recommended%20Reading/Recommended/Immigration%20in%20Malaysia.pdf>.

<sup>37</sup> David Green, "Japan's Highly Skilled Foreign Professional Visa: An Early Assessment" 3 (2014): 11.

<sup>38</sup> For a discussion of South Korea's points-based selection system and its creation of a visa track for high-skilled foreign workers, see OECD, *Recruiting Immigrant Workers: Korea 2019*, Recruiting Immigrant Workers (OECD, 2019), 139, <https://doi.org/10.1787/9789264307872-en>. (Discussing Korea's "points-based system for skilled foreigners"). South Korea added a second points system in 2018. See OECD, *International Migration Outlook 2019* (OECD Publishing; Éditions OCDE, 2019), 246. ("A new system for issuing the D-10 job-search visa to professionals and persons seeking professional employment was implemented in 2018, creating a points system for attributing the visa.")

<sup>39</sup> See "Mexico Immigration Guide 2020" (Mexperience Ltd., 2020), 18–19, <https://www.mexperience.com/wp-content/uploads/Mexico-Immigration-Guide-2020-Mexperience.pdf>.

<sup>40</sup> See OECD, *International Migration Outlook 2017*, International Migration Outlook (OECD Publishing; Éditions OCDE, 2017), 44, [https://doi.org/10.1787/migr\\_outlook-2017-en](https://doi.org/10.1787/migr_outlook-2017-en).

<sup>41</sup> See "Points-Based Immigration System Trial Program Forthcoming," Fragomen, February 29, 2016, <https://www.fragomen.com/insights/alerts/points-based-immigration-system-trial-program-forthcoming>.

<sup>42</sup> See Duncan, *Immigration Policymaking in the Global Era*, 151. ("Classic" relates to the points systems of Canada and Australia—the model countries and vanguards of the points system.) See also Jennifer Hunt, "Is a Points System the Best Immigration Policy?," in *Refugees and Economic Migrants: Facts, Policies and Challenges*, ed. Francesco Fasani (London: Centre for Economic Policy Research (CEPR) Press, 2016), 168, [http://giovanniperi.ucdavis.edu/uploads/5/6/8/2/56826033/refugees\\_and\\_economic\\_migrants.pdf#page=175](http://giovanniperi.ucdavis.edu/uploads/5/6/8/2/56826033/refugees_and_economic_migrants.pdf#page=175). (A chapter structured around comparisons to the "classic Canadian points system.")

<sup>43</sup> See Christina Gabriel, "A Different Road? Canadian Immigration Policy in the 1960s," *Labor Studies in Working-Class History of the Americas* 12, no. 3 (September 2015): 30, <https://doi.org/10.1215/15476715-2920352>. ("the traditional points-based approach, pioneered in Canada.")

<sup>44</sup> See Duncan, *Immigration Policymaking in the Global Era*, 9. ("In its classical form, the points system targets high-skilled migrants.")

<sup>45</sup> See Duncan, 55. ("Classic" points systems offer immigrants permanent residency at the outset and do not require a job offer.")

<sup>46</sup> Demetrios Papademetriou and Madeleine Sumption, "Rethinking Points Systems and Employer-Selected Immigration" (Migration Policy Institute, 2011), 3. ("Perhaps the greatest single flaw of the traditional points-based model is that immigrants arrive without a job offer.") See also Duncan, *Immigration Policymaking in the Global Era*, 120. ("The point system ... in its classic form ... permits qualified individuals without a job offer.")

<sup>47</sup> See OECD, "Expression of Interest (EOI) Systems in Comparison: Building Blocks of a Migration Management Tool" (OECD, March 26, 2019), 7, <https://doi.org/10.1787/707a740f-en>. ("...the traditional processing mechanism (i.e., processing all applications as they were submitted and granting a positive outcome to all those reaching the pass-mark on the point-based system)...")

<sup>48</sup> This is also true for points-based programs that no longer exist. For example, the points systems implemented by the UK ("Tier 2"), Denmark ("Green Card"), and Czech Republic



(“Selection of Qualified Foreign Workers” program) were used in visa streams tailored to highly skilled workers.

<sup>49</sup> See “Foreign Worker Initiatives—Changes to Federal Immigration and Temporary Foreign Worker Programs to Address Skilled Worker Shortages,” Petroleum Services Association of Canada (PSAC), accessed June 6, 2020, <https://www.psac.ca/leadership/labour/foreign-worker-initiatives/>.

<sup>50</sup> J. Chaloff and G. Lemaître, “Managing Highly-Skilled Labour Migration: A Comparative Analysis of Migration Policies and Challenges in OECD Countries,” OECD Social, Employment and Migration Working Papers, vol. 79, OECD Social, Employment and Migration Working Papers (Organisation for Economic Co-operation and Development, March 18, 2009), 11, <https://doi.org/10.1787/225505346577>. (Reporting that both the Australian and Canadian points systems currently award points for qualifications that are (a) not university degrees or (b) for occupations that require qualifications that are less than a 4-year university degree.)

<sup>51</sup> Fragomen, “Points-Based Immigration System Trial Program Forthcoming.”

<sup>52</sup> OECD, *Korea 2019*, 80.

<sup>53</sup> For a description of the purposes and details of this program, see Law Library of Congress, Global Legal Research Directorate, “Points-Based and Family Immigration,” 7–8, 14. (Describing how, in the Business Innovation Visa points test, points are awarded for age, English proficiency, business experience, financial assets, business turnover, business innovation, and a determination by a state or territory government agency that the business proposed by the applicant is “of unique and important benefit” to the relevant jurisdiction.”) See also Law Library of Congress, Global Legal Research Directorate, “Investor Visas” (Law Library of Congress, August 2013), 4–5, <https://www.loc.gov/law/help/investor-visas/index.php>.

<sup>54</sup> Law Library of Congress, Global Legal Research Directorate, “Investor Visas,” 15–16.

<sup>55</sup> For a description of the purposes and details of this program, see Law Library of Congress, Global Legal Research Directorate, “Points-Based and Family Immigration,” 53–54.

<sup>56</sup> For a description of the purposes and details of this program, see Law Library of Congress, Global Legal Research Directorate, “Points-Based and Family Immigration,” 55. (“The points scale for the Entrepreneur Work Visa awards points based on the amount that the person will invest in New Zealand; the length of his or her business, self-employment, or senior management experience; benefits to New Zealand from the business, in terms of the number of full-time jobs, forecast turnover in annual exports, and provision of “a product or service that is unique or new to its New Zealand location”; the person’s age (points only awarded if aged 59 years or younger); and business location (points awarded if it will be outside of

Auckland).”) The full points table for this visa program can be found on p. 64 in the same report.

<sup>57</sup> The points test applied to applicants for this visa measures the following criteria: personal business experience, applicant’s business plan, and what specific contributions that business would make to the Dutch economy. See Law Library of Congress, Global Legal Research Directorate, “Investor Visas,” 29, 32–33.

<sup>58</sup> OECD, *Korea 2019*, 176–77. (In this visa stream, started in 2008, candidates are “assessed through a point-based system (PBS), and are considered eligible if they accrue 22% of available points (80/360).”)

<sup>59</sup> Law Library of Congress, Global Legal Research Directorate, “Points-Based and Family Immigration,” 24.

<sup>60</sup> Law Library of Congress, Global Legal Research Directorate, “Points-Based and Family Immigration,” 45.

<sup>61</sup> Beibei Chiou, “Two-Step Migration: A Comparison of Australia’s and New Zealand’s Policy Development between 1998 and 2010,” *Asian and Pacific Migration Journal* 26, no. 1 (March 2017): 87, <https://doi.org/10.1177/0117196817695272>. (Defining the term “two-step migration” as referring to visa programs in which migrants can only attain permanent status indirectly, by undergoing a “transition of status from temporary to permanent.”)

<sup>62</sup> See Law Library of Congress, Global Legal Research Directorate, “Points-Based and Family Immigration” (Law Library of Congress, January 2020), at 51. (“Persons who obtain a resident visa under the Skilled Migrant Category are able to live, work, and study in New Zealand indefinitely.”) Also see id. at 53. (New Zealand’s Investor 2 Category Resident Visa “enables indefinite stay in New Zealand.”)

<sup>63</sup> Law Library of Congress, Global Legal Research Directorate, 54. (“The visa allows holders to come to New Zealand for 12 months to buy or set up their business, then to stay for a further 24 months once the business has been established.”)

<sup>64</sup> OECD, *International Migration Outlook 2012*, International Migration Outlook (OECD Publishing; Éditions OCDE, 2012), 212, [https://doi.org/10.1787/migr\\_outlook-2012-en](https://doi.org/10.1787/migr_outlook-2012-en).

<sup>65</sup> OECD, 212. (“The RWR card grants one year of residence and work with a specific employer. After this initial period, if the applicant has been continuously employed for ten months, free labour market access can be obtained through acquisition of a RWR card-plus.”)

<sup>66</sup> Law Library of Congress, Global Legal Research Directorate, “Points-Based and Family Immigration,” 24. (“A points-based system is in place for the majority of the permanent residence titles for (highly) skilled workers (Red-White-Red Card).”)

<sup>67</sup> See Tesseltje de Lange, “Welcoming Talent?,” 11. (“The residence permit for an entrepreneur is valid for two years and can be extended if the business is doing well enough.”)

<sup>68</sup> See Hein de Haas, Katharina Natter, and Simona Vezzoli, “Growing Restrictiveness or Changing Selection?,” 24. (“In 2007, Denmark created its Green Card Scheme by granting a six-month job search residence permit to those passing a points system.”)

<sup>69</sup> See Martin Kahanec and Klaus F. Zimmermann, “High-Skilled Immigration Policy in Europe,” 8. (“Denmark uses a green-card scheme based on a points system. A green card allows a foreigner to stay in Denmark for three years and to seek and subsequently secure employment.”)

<sup>70</sup> After two years, S Pass holders may apply to extend this pass for an additional three years. See Pang Eng Fong, “Foreign Talent and Development in Singapore,” in *Competing for Global Talent*, ed. Christiane Kuptsch, Eng Fong Pang, and Internationales Institut für Arbeitsfragen (Geneva: Internat. Inst. for Labour Studies [u.a.], 2006), 168.

<sup>71</sup> See Maggi Leung, “‘One Country, Two Systems’, ‘One City, Two Systems’: Citizenship as a Stage for Politics of Mobility and Bordering Practices in Hong Kong,” 56. (Describing the Quality Migrant Admission Scheme as “a quota-based migration scheme and operated on a points-based system, under which applicants would be awarded points based on their education, age, working experience, language abilities, and family background.”) Interestingly, Hong Kong is an example of a country that initially tried the “temporary-permanent” route and then later opted to shift to the more direct permanent visa route because offering permanent visas up front would be more enticing to talented foreign workers. See Leung, 54–56. (Describing the decision to move to offering permanent visas after decades of limiting skilled migrants to temporary visas as a “paradigm shift in Hong Kong’s immigration policy.”)

<sup>72</sup> See Wendy Zeldin, “Turkey: Regulation on Turquoise Card System for Skilled Foreign Workforce,” web page, Global Legal Monitor (Law Library of Congress), April 3, 2017, <http://www.loc.gov/law/foreign-news/article/turkey-regulation-on-turquoise-card-system-for-skilled-foreign-workforce/>. (Citing Turquoise Card Regulation, art. 4(1)(e)). It should be noted that while the Turquoise Card is classified as a permanent visa, in some ways it is similar to a “Two-Step” visa program. This is because the first three years in which an individual holds this visa have been explicitly described by Turkish officials as a “probationary” or “transition” period in which card holders may have their card revoked. See Elena Sánchez-Montijano, Ayhan Kaya, and Melike Janine Sökmen, “Highly Skilled Migration between the EU and Turkey: Drivers and Scenarios,” FEUTURE Online Paper, April 2018, 12.

<sup>73</sup> On the benefits offered under Japan’s HSFP system, see “Points-Based Preferential Immigration Control And Residency Management Treatment For Highly Skilled Foreign Professionals,” Immigration Bureau of Japan, accessed June 9, 2020, [http://www.immi-moj.go.jp/newimmiaact\\_3/en/index.html](http://www.immi-moj.go.jp/newimmiaact_3/en/index.html). See also Green, “Japan’s Highly Skilled Foreign Professional Visa: An Early Assessment,” 14. See also Nana Oishi,

“Redefining the ‘Highly Skilled’: The Points-Based System for Highly Skilled Foreign Professionals in Japan,” *Asian and Pacific Migration Journal* 23, no. 4 (December 2014): 430, <https://doi.org/10.1177/011719681402300406>. On the benefits offered under China’s R Visa system, see Wang Jing & Co. Law Firm, “Overview of China’s New Rules on Foreigners’ Employment Management,” *China Legal Bulletin, Labor & Immigration*, January 10, 2017, <http://www.wjnco.com/downloadFile/en201701.pdf>. Along these same lines, South Korea has also implemented a points system that is meant to speed up access to permanent residency for high-skilled workers already residing in Korea. See OECD, *Korea 2019*, 178.

<sup>74</sup> Guofu Liu and Björn Ahl, “Recent Reform of the Chinese Employment-Stream Migration Law Regime,” *China and WTO Review* 4, no. 2 (September 30, 2018): 11, <https://doi.org/10.14330/cwr.2018.4.2.01>.

<sup>75</sup> OECD, *Korea 2019*, 85.

<sup>76</sup> OECD, 85.

<sup>77</sup> Duncan, *Immigration Policymaking in the Global Era*, 55. (“Classic points systems ... do not require a job offer.”)

<sup>78</sup> Christopher R. Parsons, Sebastien Rojon, Lena Rose, and Farhan Samanani, “High Skilled Migration through the Lens of Policy,” *Migration Studies*, December 5, 2018, <https://doi.org/10.1093/migration/mny037> at 4. (Reporting that being qualified to practice a career on a shortage-listed job is a prerequisite for Australia’s points-tested visa programs, and that the points systems in Canada, New Zealand, and Denmark all award points to those candidates able to work in shortage-listed professions.)

<sup>79</sup> See OECD, *International Migration Outlook 2014*, 164. (Describing Australia’s then-recent requirement that primary visa applicants undergo a “skills assessment” before applying under any of its points-tested visa programs.)

<sup>80</sup> The UK, Austria, China, Korea, Japan, and Singapore each have at least one points system that requires applicants to have a job offer. Many countries have experimented with applying one or more of these requirements on one points-tested visa program while imposing different or fewer restrictions on others. In Hong Kong, for example, only skilled foreign workers with a job offer may apply through the “General Employment Policy,” a visa stream with no career- or sector-specific restrictions. Skilled foreigners who do not have a job offer from a Hong-Kong-based employer apply through the “Quality Migrant Admission Scheme.” Candidates applying to these streams take one of two tests: the “General Points Test” or the “Achievement-based Points Test.” See Maggi Leung, “‘One Country, Two Systems’, ‘One City, Two Systems’: Citizenship as a Stage for Politics of Mobility and Bordering Practices in Hong Kong,” 55–58.

<sup>81</sup> Madeleine Sumption, “Points-Based Immigration.” In *Encyclopedia of Migration*, edited by Frank D. Bean and Susan

K. Brown, 1–6. Dordrecht: Springer Netherlands, 2015.  
[https://doi.org/10.1007/978-94-007-6179-7\\_65-2](https://doi.org/10.1007/978-94-007-6179-7_65-2).

<sup>82</sup> The distinction between “absolute” and “relative” assessment employed here is drawn from the literature on academic assessment. When using an absolute grading (also called “criterion-referenced” grading) scheme, a student’s grade depends only on how their own test outcomes compare to a pre-set grade scale. When using a relative grading (also called “norm-referenced” grading) scheme, students’ grades depend on where their raw score falls in the score distribution of the class as a whole. See Eszter Czibor, Sander Onderstal, and Randolph Sloof, “Does Relative Grading Help Male Students? Evidence from a Field Experiment in the Classroom,” IZA Discussion Papers (Institute for the Study of Labor, August 2014), 1, <http://hdl.handle.net/10419/102349>.

<sup>83</sup> See OECD, *Korea 2019*, 154.

<sup>84</sup> See Law Library of Congress, Global Legal Research Directorate, “Points-Based and Family Immigration,” 32. (Describing Canada’s expression-of-interest system, called Express Entry, as managing applications “through a two-step process.”)

<sup>85</sup> “Family resemblance” is a term coined by the philosopher Ludwig Wittgenstein that describes a way in which a set of objects may be similar due to a series of overlapping similarities, even when there is no one feature that all those objects have in common. See Ludwig Wittgenstein,

*Philosophical investigations*, ed. G. E. M. Anscombe and Peter M. S. Hacker, 4th, revised ed. (Chichester [u.a.: John Wiley & Sons, 2010), 67–77.

<sup>86</sup> See David P. Dolowitz and David Marsh, “Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making,” *Governance* 13, no. 1 (January 2000): 5, <https://doi.org/10.1111/0952-1895.00121>. (Defining “policy transfer” as the way in which “knowledge of policies, administrative arrangements, institutions and ideas in one political system (past or present) is used in the development of policies, administrative arrangements, institutions and ideas in another political system’.”)

<sup>87</sup> See Duncan, *Immigration Policymaking in the Global Era*, 66. (Defining “policy diffusion” as the process by which policy innovations spread from one country to another, not through simple duplication but through iteration and adaptation, with later adopter states altering their policies according to the mistakes and successes of early adopter states.)

<sup>88</sup> For a discussion of the use, definitions, and origins of the concept of “legal borrowing” and its close cousin, “legal transplantation,” see John W Cairns, “Watson, Walton, and the History of Legal Transplants,” *Georgia Journal of International and Comparative Law* 41 (2012): 637–96, <https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1049&context=gjicl>.

## Chapter 3:

# Case Study—Canada’s Points-Based Immigration System

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### § 1 THE EVOLUTION OF CANADA’S SKILLED IMMIGRATION SYSTEM

Until the late 1950s, the underlying policy goal that shaped Canada’s immigration policy was to entice large numbers of new permanent residents that would help to settle and to “civilize” its vast territorial holdings, while also admitting only those potential immigrants that would allow Canada’s national character to remain essentially white-European.<sup>1</sup> To this end, Canadian immigration policy welcomed migration from Britain and northern Europe while limiting or barring the entry of various “classes” of nonwhite immigrants through the use of explicit geographical and racial preferences.<sup>2</sup>

In the early 1960s, though, Canada faced intense domestic and international pressure to drop these restrictions. At home, Canada’s economy was booming and the domestic labor market couldn’t supply sufficient skilled labor. Abroad, Canadian officials supporting the wave of decolonization sweeping through the United Nations and the Anglophone Commonwealth faced criticism over the tension between their antiracist rhetoric abroad and their racially selective immigration laws at home. Spurred by these dual political demands, Canadian officials began to overhaul the nation’s immigration system, issuing regulations in 1962<sup>3</sup> that directed immigration officials to select candidates on the basis of “their education, training, skills and adaptability,”<sup>4</sup> irrespective of their race or country of origin.

This shift toward a more universal, economic approach to immigration proved popular among policymakers and the public.<sup>5</sup> But it soon became apparent that further reform and guidance were needed. While the 1962 regulatory changes<sup>6</sup> had included instructions for frontline immigration officers, directing them assess visa applicants based only on characteristics believed to predict a candidate’s capacity to integrate in and contribute to the Canadian economy (education, training, skills, and “adaptability”), immigration officers were given no clear guidelines on how to measure or weigh these characteristics.<sup>7</sup> Because officers retained such broad discretion over the application of the prescribed

guidelines, rationales and selection outcomes varied among immigration officers.

To solve this and other implementation problems,<sup>8</sup> the Canadian government issued a second set of regulations in 1967,<sup>9</sup> laying out a clear application review process and an objective scale against which applicants would be assessed.<sup>10</sup> With this, Canada established the world’s first points-based immigration selection system.

Under the first iteration of Canada’s points system, immigration officials graded applicants according to a rubric that established possible point values corresponding to nine characteristics: (1) education and training; (2) personal character; (3) occupational demand; (4) occupational skill; (5) age; (6) pre-arranged employment; (7) knowledge of French and English; (8) the presence of a relative in Canada; and (9) employment opportunities in their area of destination.<sup>11</sup> Applicants’ scores in each of these categories were then added up, resulting in an overall points total. Using these points totals, admissions decisions were then made on a simple pass/fail basis. Candidates who had earned a points total that met or exceeded a set points threshold (or “pass mark”) of 50 out of 100 points were deemed eligible to receive a permanent residence visa.<sup>12</sup>

Each application was processed on a first-come, first-served basis. This meant that each year, after targets for how many permanent economic immigrants would be admitted were set, immigration officials issued visas to approved applicants one by one until that target was met. Applicants whose points totals were sufficient for admission but who were not immediately granted admission because the yearly numerical targets had already been met kept their place in line and had a legal right to have their applications considered in future years once their numbers came up.

Over the intervening five decades, Canadian officials have adjusted one or more of the parameters of this original points system more than a dozen times.<sup>13</sup> Some of these adjustments were made in response to changes in external circumstances, such as the 1982 addition of a job offer requirement meant to restrict skilled immigration in

response to an economic downturn.<sup>14</sup> Regulations issued in 1986 removed that requirement to provide more skilled immigrants to fill the needs of a now-revived economy.<sup>15</sup> Some adjustments were made in response to perceived malfunctions or unforeseen consequences of the policy structure of the points system itself, such as in 1978 when policymakers facing claims that the points system was admitting too many “unemployable” but highly educated candidates reweighted the points table, making it more “labor-market relevant” by reducing the points granted for education and increasing the points allocated to “labour market factors” like work experience.<sup>16</sup>

Finally, the Canadian government made some adjustments over the years in response to shifting policy preferences and public opinion about whether points-tested skilled migration should be weighted toward solving short-run labor shortages or building long-term human capital reserves. In its original 1967 form, the points system skewed strongly to the longer-term human capital side of this continuum. In 1978, the pendulum swung toward the other side of the continuum as lawmakers reweighted the points table in favor of “employability” factors, signaling a “clear shift toward greater alignment with labor market needs.”<sup>17</sup> A few years later, the pendulum began to swing back, as lawmakers once again adjusted the points table, increasing the points allocated to education in 1986, in 1992, and again in 1995.<sup>18</sup> This swing toward long-term “human capital” culminated in 2001’s Immigration and Refugee Protection Act (IRPA), an omnibus overhaul of Canada’s immigration law. The provisions of IRPA shifted Canada’s skilled immigration programs almost entirely away from the goal of meeting short-term labor market<sup>19</sup> needs, casting them instead primarily as tools meant to help Canada prepare for its longer-term future.<sup>20</sup>

Across the first three decades of its existence, the points system was remarkably responsive. Partly as a result of the clearly defined policy levers offered by Canada’s transparent and quantified points system,<sup>21</sup> most of the adjustments listed in the previous paragraphs did in fact bring about changes in the rate and composition of Canada’s skilled immigration flows that were in line with the intentions of Canadian officials.<sup>22</sup>

In the mid 2000s, however, the responsiveness and flexibility of the points system started to break down. With its economy in the midst of a years-long expansion,

and its “human capital” immigration model consistently attracting the interest of high-skilled workers from around the world, Canada began to receive record numbers of applications for its skills-tested immigration programs. Although it was not unusual for these visa programs to have a backlog, this explosion of applications rapidly “out-paced both the government’s desired level of intake and the system’s operational capacity.”<sup>23</sup> Faced with this deluge of new applications, its fifty-year-old application processing procedures couldn’t keep up, leading to the development of a backlog of more than 600,000 applications with an average processing time of three to five years.<sup>24</sup>

After various attempts at minor fixes, in 2015 the Canadian government fundamentally reformed its skills-tested immigration systems. As part of this reform, Canada replaced its single-test, first-come first-served admission system with a new two-stage selection system called “Express Entry”—an application management program designed to be at once more effective and efficient than its old system.

## § 2 CANADA’S CURRENT SKILLED IMMIGRATION SYSTEM

Canada’s current skilled immigration system is made up of three federal-level visa programs and various provincial-level programs through which skilled workers<sup>25</sup> can receive permanent residence visas. The application and selection process for all three of the federal-level visa programs and most of the provincial-level programs is administered through the Express Entry application management system.

### Canada’s Skilled Visa Programs

Canada has three points-tested skilled visa programs at the federal level. First, the Federal Skilled Worker program is aimed at candidates that have the experience and training needed to work in positions in the top three skill levels of Canada’s National Occupation Classification system: managerial jobs, professional jobs, and technical jobs and skilled trades. The Federal Skilled Worker program is the most common route for skilled immigration into Canada. To be eligible for this program, a candidate must: (1) have at least one year of experience working in a relevant job; (2) demonstrate intermediate to

advanced fluency in English or French; and (3) have at least a high school diploma or equivalent.

Second, the Federal Skilled Trades program selects candidates whose work experience and training qualify them for certain technical jobs and skilled trades. To be eligible for the Federal Skilled Trades program, a candidate must: (1) have at least two years of full-time work experience (or an equal amount of part-time work experience) in one of the qualifying trades; (2) meet the job requirements to work in their chosen trade; (3) demonstrate a sufficient grasp of English or French to work in their chosen trade; and (4) have either a valid offer of full-time employment or have received a “certificate of qualification” in their chosen trade from a Canadian authority at the provincial, territorial, or federal level.

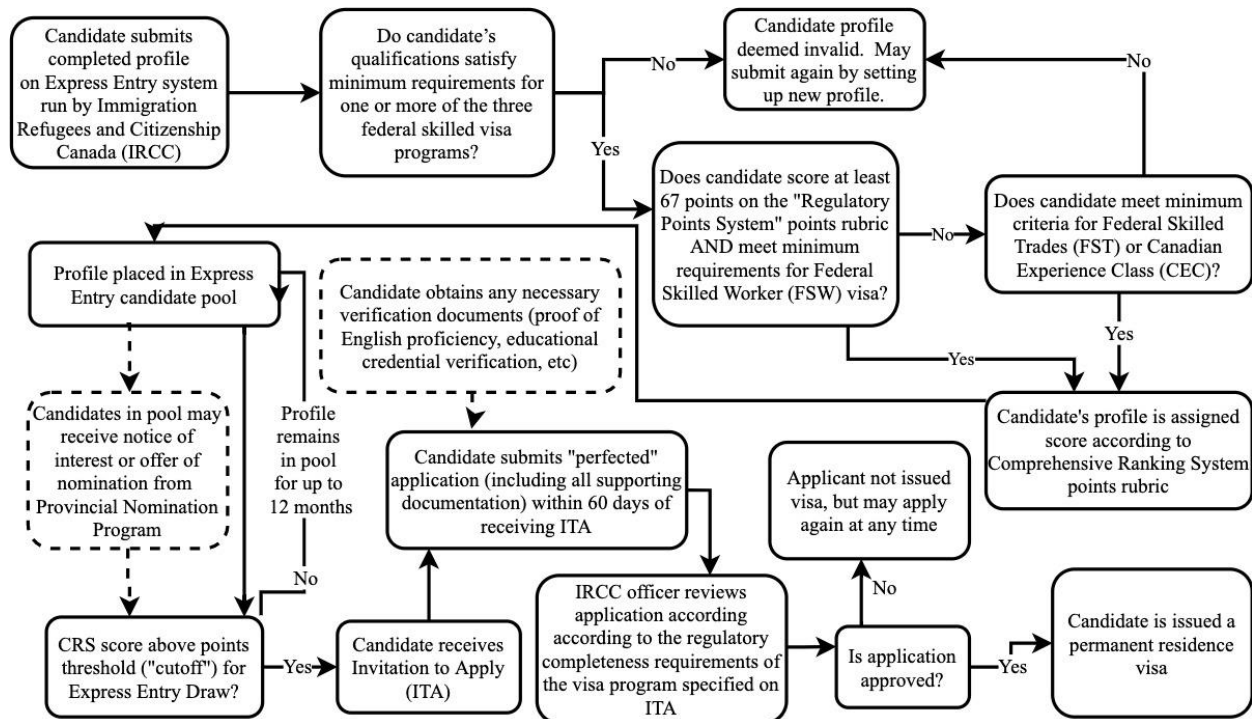
Third, the Canadian Experience Class program is for applicants who have at least one year of full-time Canadian work experience within the last three years. Applicants must also meet the minimum language levels needed for their jobs.

Canada also has a variety of visa programs that are jointly administered by Canada’s federal government and the governments of its various provinces and territories. These Provincial Nominee Programs (PNPs) allow participating provinces and territories to address local labor market needs by selecting potential foreign workers and/or foreign students and nominating them for permanent residence visas.

### The Application and Selection Process

Since 2015, foreign workers seeking a skilled visa to enter and work in Canada have been required to apply through the Express Entry system. The term “Express Entry” refers both to Canada’s digital application management system—an online database portal through which candidates’ information is gathered, stored, processed, and potentially matched with interested employers<sup>26</sup>—and to the two-step selection process that Canadian officials adopted in 2015. This new two-step selection process consists of an “Expression of Interest” phase and an “Invitation to Apply” phase, as illustrated in Figure 1.

**Figure 1:** Express Entry Canada Application Process



In the first step, foreign workers seeking a skilled visa begin by completing a candidate profile on the Express Entry web portal. Once completed and submitted, this profile is treated as an applicant's "expression of interest" (EOI). If the qualifications listed on a candidate's profile satisfy the minimum requirements of any of the three federal skilled visa programs,<sup>27</sup> the candidate's profile is then scored according to a points rubric called the Comprehensive Ranking System (CRS).

Just as in Canada's pre-2015 points system, the CRS rubric assigns points to each candidate based on a range of factors, including education or training, occupational skills, occupational demand, age, fluency in English or French, experience working or attending school in Canada, and employer or provincial sponsorship. After this initial review and scoring, profiles are placed into a pool of eligible screened candidates.

The second phase of the application process occurs when Canadian officials conduct a "drawing" or "selection round." In these drawings, conducted one or two times per month, all candidates currently in the Express Entry pool are ranked according to their CRS scores and the highest ranking applicants are sent an "Invitation to Apply," allowing them to move on to the next step of the application process. The number of invitations issued in each drawing is determined according to monthly targets set by the Ministry of Immigration, Refugees and Citizenship. Candidates who have received these invitations may<sup>28</sup> then complete a full application, which is reviewed by immigration officials according to the visa program under which they are applying.<sup>29</sup> Candidates whose full applications are approved are then issued a permanent residence visa.

### § 3 LESSONS FROM CANADA

#### **Lesson 1: Canada has been remarkably successful in attracting foreign workers in general, and in attracting high-skilled foreign workers in particular.**

Canada has been and continues to be a leading destination for foreign workers at all skill levels. It has the largest permanent labor migration program among countries in the Organisation for Economic Co-operation and Development (OECD),<sup>30</sup> the most highly educated

foreign-born population in the world (with 60% of foreign-born residents having a tertiary degree),<sup>31</sup> and the longest-standing and most elaborate points system in the world. Indeed, Canada is consistently ranked as one of the most desirable destination countries in the world. In a recent Gallup World Poll on migration, over 47 million potential migrants chose Canada as their top choice of destination, making Canada the second-most-desired destination country after the United States.<sup>32</sup> This attractiveness appears to be particularly strong among skilled migrants, as suggested by a recent OECD study examining the attractiveness of destination countries in the eyes of highly qualified potential migrants. Respondents ranked Canada as one of the top five destination countries (alongside Australia, Sweden, Switzerland, and New Zealand).<sup>33</sup>

Canada's popularity as a destination state is a function of several pull-factors. It has a highly developed and open domestic economy, high safety and life expectancy rates, and a stable and comparatively responsive political system. It also has unusually high levels of domestic support for immigration among both Canadian officials and the Canadian population. This support may be driven in part by demographic necessity, as Canada is expected to face such large shortages of native-born workers in the coming decades that immigrant workers will account for all of Canada's net labor force growth (3.7 million workers) between 2018 and 2040.<sup>34</sup> It is likely also the result of a decades-long effort to incorporate multiculturalism into the national ethos.<sup>35</sup>

In addition to these more general pull-factors, a recent study suggests that Canada's extraordinary success in attracting skilled workers may be due in part to two key aspects of its skilled immigration programs: the use of a points-based selection system and the provision of a direct route to permanent residence for skilled migrants.

In a 2017 study examining the effectiveness of various skill-selective migration policy designs, Czaika and Parsons found that even when controlling for an exhaustive list of economic, social, political, and other factors, these two policy features were associated with significant improvements in countries' ability to attract high-skilled foreign workers. On average, this study found that countries that have established points-based skilled visa programs attract approximately 1.5 times the number of high-skilled migrants as countries that have

not,<sup>36</sup> and that skilled immigrants make up a larger share of these countries' overall labor migration flows.<sup>37</sup> And the decision to offer skilled visa programs that provide immediate access to "permanency rights" is associated with even larger effects. Countries offering skilled visas that grant permanency rights on arrival attract, on average, two times the number of high-skilled migrants as those that do not.<sup>38</sup>

While there may be a number of possible explanations for the remarkable effectiveness of these two policy design elements, it is likely at least in part because points-based selection systems and immediate permanency visas reduce uncertainty costs for potential skilled migrants. Points systems reduce uncertainty before applying, allowing potential skilled migrants to estimate their likelihood of being offered entry, by clearly listing all selection criteria and their relative weights. (This reduced uncertainty logic may be even stronger for countries that employ two-step expression-of-interest systems, because such systems' ranking functions effectively move the highest-scoring candidates to the front of the line, minimizing the risk that the most qualified applicants will not be offered visas due to quota limitations.<sup>39</sup>) Direct permanent skilled visas reduce uncertainty after admission by sparing admitted foreign workers many of the costs they would have faced if granted only temporary status, including the professional and personal costs of being constrained in their ability to change employers, the administrative and financial costs associated with renewing or converting a temporary visa, and the cognitive and emotional costs associated with being uncertain about their ability to stay in their destination country.<sup>40</sup>

**Lesson 2: Foreign workers admitted through Canada's skilled visa programs enjoy largely positive economic outcomes and are generally well-incorporated into the labor market.**

According to Immigration, Refugees and Citizenship Canada (IRCC) and Statistics Canada—the country's two primary official sources of data on immigration flows and immigrant outcomes—positive economic outcomes for skilled immigrants living in Canada are generally quite strong.

While short-term economic outcomes among newly arrived skilled foreign workers were once the Achilles'

heel of Canadian immigration, the share of highly skilled foreign workers (that is, primary visa applicants admitted through any one of Canada's skilled visa programs) who report finding employment within the first year of their arrival in Canada has been steadily increasing since 2005.<sup>41</sup> In 2016, the year that the Express Entry system fully took effect, 86% of skilled workers admitted in the prior year reported having found employment.<sup>42</sup> Data gathered on subsequent cohorts of skilled foreign workers selected through Express Entry show that this rate has held largely steady at around 87%.<sup>43</sup> In the medium- and longer-term, outcomes for skilled immigrants in Canada improve even further, with both employment rates and average earnings increasing with duration of residence in Canada. As of 2017, economic immigrants residing in Canada for five or more years were 15 to 24% more likely to be employed than Canadian natives, and their average salary was 106% of the Canadian average.<sup>44</sup>

These positive labor market outcomes for skilled foreign workers have not been associated with any noticeable negative effects on labor market outcomes for native-born Canadians. Indeed, a number of studies have found that skilled immigration has—and likely will continue to have—a positive effect on Canada's labor market and the wider economy.<sup>45</sup>

**Lesson 3: The longstanding success of Canada's points-based selection system would have been impossible without its robust and comprehensive data-gathering infrastructure.**

Canada's points system has been in place for more than five decades. During this time, Canadian immigration officials have made dozens of changes to the system's provisions and the processes, adjusting the system in response to changing circumstances and emerging challenges. For this ongoing process of policy adaptation to be successful, policymakers needed to have access to accurate, detailed, and reliable data on the characteristics and outcomes of those admitted through the system. To this end, Canada has built one of the most comprehensive immigration data-gathering infrastructures in the world.

One core element of this immigration data infrastructure is the Longitudinal Immigration Database (IMDB), an administrative database containing data on every person who has migrated to Canada since 1982. The IMDB gathers and links information drawn from immigrants'



admissions files with information drawn from the tax returns they file in subsequent years. By incorporating these two sources of data, the IMDB allows researchers to examine not only patterns in the demographic and professional characteristics of migrants admitted to Canada through a given visa program but also trends in those individuals' socioeconomic outcomes in the years after their arrival. This dataset is an invaluable resource for immigration policymakers tasked with managing and adjusting Canada's points-tested skilled visa programs, offering them a readily available source of information about the relationships between candidates' educational and skill profiles and their short- and long-term economic and social outcomes.<sup>46</sup>

Another element that contributes to the success of Canada's immigration data infrastructure is the existence of the Evaluation Division, an agency within Canada's Ministry of Immigration, Refugees and Citizenship (IRCC). This Division is devoted entirely to monitoring the functioning of Canada's immigration programs, including the integration of immigrants into the country's labor market and society. It also gives advice on needed policy adjustments.<sup>47</sup> Canada is one of only a few countries to have a dedicated evaluation department within its immigration ministry.<sup>48</sup>

The IMDB database, research and evaluations published by the IRCC's Evaluation Department, and information from various other sources (including the Express Entry system itself)<sup>49</sup> are gathered and stored through close cooperation between IRCC and Statistics Canada, and are made available to the public through Canada's Open Government Portal.<sup>50</sup>

**Lesson 4: Canada's two-step Express Entry application system is more efficient and responsive than the prior one-step system, and may be more effective at admitting candidates most likely to succeed.**

According to Canada's IRCC, the Express Entry application management system was designed with a number of objectives in mind, including (1) increasing the speed of application processing, (2) allowing the IRCC a greater degree of flexibility in selection criteria and application management,<sup>51</sup> and (3) improving economic and social outcome rates by accurately selecting those

“candidates who are most likely to succeed economically.”<sup>52</sup>

As to the first objective, Express Entry has undoubtedly increased the speed with which individuals' applications are processed. In 2014, the year before the launch of Express Entry, the IRCC had a backlog of over half a million unprocessed applications, and applicants faced processing times of three to five years.<sup>53</sup> Since 2015, the IRCC has consistently processed 80% of skilled visa applications in less than six months.<sup>54</sup>

This reduction in processing times is likely the result of a number of changes implemented through the adoption of the Express Entry system. One such change was the shift from a “paper logic” to a “digital logic.” This involved a comprehensive effort to redesign the way the IRCC administered the points system, all but eliminating the reliance on paper records and ushering in fully digital application management, mass communication, and data collection.<sup>55</sup> Another change was the move from a one-step to a two-step application process. By automating the initial round of reviewing candidates' credentials and allowing unselected EOI profiles to automatically exit the pool at expiration, the two-step expression-of-interest system alleviated much of the administrative burden associated with reviewing applications.

As to the second objective, the Express Entry system does in fact grant immigration policymakers more flexibility in adjusting the points system's criteria. Unlike the pre-2015 points table, the point values and criteria included in the Comprehensive Ranking System points table are not set by statute. Instead, the criteria and point values—along with most other aspects of the Express Entry system—can be changed through Ministerial Instructions, a tool of administrative rulemaking that does not require parliamentary review.<sup>56</sup> While some have questioned granting the Immigration Ministry this degree of discretion, this change undoubtedly makes the Comprehensive Ranking System points table a more flexible and dynamic policy tool, capable of being adjusted quickly to ensure that immigration targets are being met and that those invited to apply for residency have skills suited to the economy's demands.

As to the third objective, it is not yet possible to assess whether candidates selected through the Express Entry system have noticeably better integration outcomes using

administrative data. Although the IMDB has been updated to include candidates admitted in 2015, the current version of the database does not include income information beyond the 2015 tax cycle. Furthermore, many of the applications processed between 2015 and 2017 were not submitted through the Express Entry system but rather were part of the backlog of applications submitted before 2015.<sup>57</sup> Given this small sample size and short time span, it is not yet possible to reliably assess the comparative effectiveness of the Express Entry's selection mechanisms using the IMDB administrative data alone.

That said, preliminary data from a survey conducted by the IRCC in 2018 suggests that candidates selected and

admitted through Express Entry may in fact perform better on at least two metrics of economic outcomes. The survey, distributed to foreign workers admitted between 2015 and 2018, compared the rates of employment and median wages of those who applied through Express Entry and those who had applied under the pre-2015 system. Twelve months after admission, 87% of those who had applied through Express Entry had secured a job, compared with 82% of pre-2015 system applicants. Similarly, the candidates selected through Express Entry had a higher mean and median income than the pre-2015 system applicants.<sup>58</sup>

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<sup>1</sup> These goals were central to the “white Canada” policy, a racialized vision of nation-building prevalent in Canadian politics from the late 19th century. See generally W. Peter Ward, *White Canada Forever: Popular Attitudes and Public Policy toward Orientals in British Columbia* (Montreal: McGill-Queen's University Press, 2008).

<sup>2</sup> See Triadafilos Triadafilopoulos, ed., “Dismantling White Canada: Race, Rights, and the Origins of the Points System,” in *Wanted and Welcome? Policies for Highly Skilled Immigrants in Comparative Perspective, Immigrants and Minorities, Politics and Policy* (New York ; London: Springer, 2013), 15–16. (Canada had a “longstanding policy of regulating immigration for purposes of nation building, ... distinguishing among 'preferred,' 'non-preferred,' and 'excluded' classes of immigrants.” Immigrants from the British Isles and northern Europe were classified as “preferred,” those from southern and eastern Europe were classified as “nonpreferred” (and thus “granted entry during periods of economic growth but regulated more closely during bad times”), and all non-white immigrants from outside Europe were excluded under the auspices of “the Chinese Immigration Act, the ‘continuous journey’ clause, and a host of other racially discriminatory regulations and administrative practices.”)

<sup>3</sup> Canada. 1962. Immigration Regulations, Order-in-Council P.C. 1962–0082, January 18, 1962.

<sup>4</sup> Robert Vineberg, “Improving Canada’s Selection of Economic Immigrants,” SPB Briefing Paper (University of Calgary, January 2019), 2, <https://doi.org/10.11575/sppp.v11i0.53036>.

<sup>5</sup> Triadafilos Triadafilopoulos, “Dismantling White Canada: Race, Rights, and the Origins of the Points System,” 26. (“The media, advocacy groups, and foreign governments welcomed the government’s decision to formally repeal racial and ethnic criteria in its admissions policies.”)

<sup>6</sup> Robert Vineberg, “Improving Canada’s Selection of Economic Immigrants,” 2.

<sup>7</sup> See Alan G. Green and David Green, “The Goals of Canada’s Immigration Policy: A Historical Perspective,” *Canadian Journal of Urban Research* 13, no. 1 (2004): 117. (Describing how, despite being instructed to assess candidates according to their “training and skills,” immigration officials failed to give frontline officers any clear guidance on which types of skills were needed or how the officer was to judge whether the applicant met the skill requirements.)

<sup>8</sup> The other significant issue that spurred the generation of further regulations in 1967 was a concern among critics that existing limits on family stream sponsorship visas were too accommodating. See Triadafilos Triadafilopoulos, “Dismantling White Canada: Race, Rights, and the Origins of the Points System,” 27. To address this, the 1967 regulations established that Canadian nationals and permanent residents could no longer sponsor any family members beyond their spouse or children. Instead they could only “nominate” siblings, parents, nieces, nephews, uncles, or aunts, and these nominated relatives would be subject to an evaluation similar to the points test. See Canadian Museum of Immigration at Pier 21, “Immigration Regulations, Order-in Council PC 1967–1616, 1967,” accessed May 29, 2020, <https://pier21.ca/research/immigration-history/immigration-regulations-order-in-council-pc-1967-1616-1967>. See also Robert Vineberg, “Improving Canada’s Selection of Economic Immigrants,” 3.

<sup>9</sup> Canada. 1967. Immigration Regulations, Order-in-Council P.C. 1967–1616, August 16, 1967.

<sup>10</sup> Alan G. Green and David Green, “The Goals of Canada’s Immigration Policy: A Historical Perspective,” 117.

<sup>11</sup> Canadian Museum of Immigration at Pier 21, “Immigration Regulations, Order-in Council PC 1967–1616, 1967.”

<sup>12</sup> Alan G. Green and David Green, “The Goals of Canada’s Immigration Policy: A Historical Perspective,” 119.

<sup>13</sup> These reforms and adjustments took place in the following years: 1978, 1982, 1986, 1991, 1993, 1995, 1998, 2001, 2008,

2011, 2012, 2013, and 2014. See Alan G. Green and David Green, 118; Ana M. Ferrer, Garnett Picot, and William Craig Riddell, "New Directions in Immigration Policy: Canada's Evolving Approach to the Selection of Economic Immigrants," *International Migration Review* 48, no. 3 (September 2014): 846–67, <https://doi.org/10.1111/imre.12121>; Robert Vineberg, "Improving Canada's Selection of Economic Immigrants," 2–4.

<sup>14</sup> Alan G. Green and David Green, "The Goals of Canada's Immigration Policy: A Historical Perspective," 39. (Describing how officials accomplished this reduction simply by adding another program prerequisite, declaring that "the only independent applicants who could enter were those with arranged employment.")

<sup>15</sup> These 1986 regulation changes were also spurred in part by new demographic data projecting a drop in the Canadian birth rate below replacement levels. See Asha Kaushal, "Do the Means Change the Ends? Express Entry and Economic Immigration in Canada," *Dalhousie Law Journal*, 2019, 33. See also Alan G. Green and David A. Green, "The Economic Goals of Canada's Immigration Policy: Past and Present," *Canadian Public Policy/Analyse de Politiques* 25, no. 4 (December 1999): 425, <https://doi.org/10.2307/3552422>. (Describing how, in the 1986 immigration regulation changes, Canadian officials sought to use immigration as a tool to bolster population growth and to readjust the age structure of the population so that there would be enough workers "to pay for the baby boomers' pensions and health care.")

<sup>16</sup> This reweighting reversed the balance between human capital and labor market factors. Under the original 1967 points rubric, "labour market factors accounted for 35 points and human capital factors were worth a possible total of 40 points." By contrast, the 1978 updated points rubric "reversed the balance in the selection factors, offering up to 48 points for labour market factors and 32 points for human capital factors." A similar balance shift occurred in 1992 and 1993, when Canadian officials responded to calls from both the private and public sectors to admit more educated foreign workers by issuing regulations that raised the number of points that could be awarded on the basis of education, increasing the number of points issued to those with university or post-secondary credentials, and offering points for "specific vocational preparation." See Asha Kaushal, "Do the Means Change the Ends? Express Entry and Economic Immigration in Canada," 33.

<sup>17</sup> Edwina O'Shea, "Missing the Point(s): The Declining Fortunes of Canada's Economic Immigration Program," *Transatlantic Academy Paper Series* (Transatlantic Academy, April 2009), 6.

<sup>18</sup> Asha Kaushal, "Do the Means Change the Ends? Express Entry and Economic Immigration in Canada," 33.

<sup>19</sup> Ana M. Ferrer, Garnett Picot, and William Craig Riddell, "New Directions in Immigration Policy," 849.

<sup>20</sup> This model selected immigration candidates with little regard to short-run labor market needs, justifying this omission on the basis that characteristics like education and language proficiency "would allow immigrants to better adjust to both cyclical and structural labor market change, thereby improving longer term immigrant economic outcomes." See Ana M. Ferrer, Garnett Picot, and William Craig Riddell, 849–850.

<sup>21</sup> Canadian officials' efforts to adjust the flow and makeup of skilled immigration were also aided by the fact that Canadian law grants broad discretion over immigration matters to the government and its ministers. While some of the changes described in the previous section were accomplished through legislation—bills passed by Parliament—most changes were implemented through an executive action called "Orders in Council." Changes made through this means of executive authority have no effect on the existing statutory framework governing immigration law, but they allow the Prime Minister and the Ministers in Cabinet to effect significant changes in the way that Canada's immigration system operates "without approval or even debate in Parliament." Ian G. Green and David Green, "The Goals of Canada's Immigration Policy: A Historical Perspective," 119.

<sup>22</sup> See Abdurrahman Aydemir, "Effects of Selection Criteria and Economic Opportunities on the Characteristics of Immigrants," *Analytical Studies Branch—Research Paper Series*, 2002. (Finding that, according to patterns in data from Canada's Longitudinal Immigration Database, the various changes in the selection process and criteria in Canada's points system had a "significant impact on characteristics of the immigrants" admitted.) See also Ian G. Green and David Green, "The Economic Goals of Canada's Immigration Policy," 425. (Finding that "the removal of the prerequisite of arranged employment for independent applicants" and other small changes to the points allocations implemented in January 1986 resulted in a steady increase in the inflow of immigrants over subsequent years, "jump[ing] from 83,402 in 1985 to 99,219 in 1986, and then to 152,098 in 1987.")

<sup>23</sup> Edwina O'Shea, "Missing the Point(s): The Declining Fortunes of Canada's Economic Immigration Program," 15.

<sup>24</sup> Asha Kaushal, "Do the Means Change the Ends? Express Entry and Economic Immigration in Canada," 97. (Suggesting that this backlog was a function of a variety of factors, including the "relatively low" pass mark and administrative inefficiencies within IRCC.)

<sup>25</sup> In the context of Canadian immigration policy, the term "skilled workers" refers to "independent immigrants selected to contribute to the economy through their education, skills and training." See Library of Parliament, Law and Government Division, "Canada's Immigration Policy" (Ottawa, 2002), <http://publications.gc.ca/Collection-R/LoPBdP/BP/bp190-e.htm#cimmigrationtxt>. This term thus encompasses any foreign worker selected for immigration who was selected on the basis

of their capacity to contribute to the Canadian economy. It does not map onto the high-/mid-/low-skilled terminology used in other contexts.

<sup>26</sup> While the matchmaking function of the Express Entry pool has since been de-emphasized, when the system was being designed it was widely described as an “online matchmaker” meant to connect immigrants to employers and provinces. In 2013, for example, the then-Minister for Citizenship, Immigration and Multiculturalism Jason Kenney described Express Entry as a “dating site.” Asha Kaushal, “Do the Means Change the Ends? Express Entry and Economic Immigration in Canada,” 33.

<sup>27</sup> To be eligible for the Express Entry candidate pool, an applicant need only fulfill the minimum requirements of one of the three federal visa programs that employ the Express Entry system. This minimal screening according to Federal program requirements also applies to candidates seeking to apply for the Provincial Nominee Programs. See Immigration, Refugees and Citizenship Canada, “Express Entry Year-End Report 2018,” 2018, 4, <https://www.canada.ca/content/dam/ircc/documents/pdf/english/pub/express-entry-year-end-report-2018.pdf>.

<sup>28</sup> Candidates issued an “Invitation to Apply” do not have to accept this invitation. If a candidate declines an invitation to apply, their profile is placed back in the pool. See Immigration, Refugees and Citizenship Canada, “Can I Be Eligible for More than One Program under Express Entry?,” November 7, 2012, <https://www.cic.gc.ca/english/helpcentre/answer.asp?qnum=1294&top=29>.

<sup>29</sup> Candidates are not permitted to specify which of the Express Entry-aligned visa programs they want to be considered for. Instead, if a candidate meets the basic requirements for more than one of the visa programs, and is later selected to receive an invitation to apply, the Express Entry system automatically sorts the candidate into one program based on availability of spots. This automatic sorting process proceeds according to the following order: Canadian Experience Class (CEC), Federal Skilled Worker Program (FSWP), and Federal Skilled Trades Program (FSTP). This sorting order ensures that candidates capable of fulfilling the higher skill and experience requirements of the CEC or FST programs enter through those programs, effectively reserving the spots allocated to the FST program for the medium-skilled workers to which that program was targeted. See Immigration, Refugees and Citizenship Canada. “Can I Be Eligible for More than One Program under Express Entry?”

<sup>30</sup> OECD, *Recruiting Immigrant Workers: Canada 2019* (S.I.: OECD Publishing; Éditions OCDE, 2019), 31. This is when measured in the total number of foreign workers admitted. When measured relative to population, Canada’s permanent labor program is smaller than only two other OECD members: Australia and New Zealand.

<sup>31</sup> OECD, 31. Even though the majority of Canada’s incoming permanent migrants are admitted either through the family

stream or as family members accompanying a primary applicant entering through the skilled stream, the majority of incoming permanent migrants are highly educated. “Although less than one in three new permanent migrants to Canada are directly selected as labour migrants, accompanying family members and subsequent family migration also tend to be relatively skilled. As a result, a full 60% of Canada’s foreign-born population are highly educated. This is the highest share in the OECD.” OECD, 17.

<sup>32</sup> Neli Esipova, Julie Ray, and Rajesh Srinivasan, “The World’s Potential Migrants: Who They Are, Where They Want to Go, and Why It Matters” (Gallup, 2011), [https://www.migrationinstitute.org/files/events/gallup\\_whitepaper\\_migration.pdf](https://www.migrationinstitute.org/files/events/gallup_whitepaper_migration.pdf).

<sup>33</sup> OECD/Bertelsmann Stiftung, “How Do OECD Countries Compare in Their Attractiveness for Talented Migrants?,” Migration Policy Debates, May 2019, 1, <https://www.oecd.org/els/mig/migration-policy-debates-19.pdf>. See also Çağlar Özden et al., “Global Talent Flows,” Working Paper (Harvard Business School, 2016), 2, [https://www.hbs.edu/faculty/Publication%20Files/17-026\\_a60ac33d-3fd5-4814-a845-137a38066810.pdf](https://www.hbs.edu/faculty/Publication%20Files/17-026_a60ac33d-3fd5-4814-a845-137a38066810.pdf). (“A pattern is emerging in which these high-skilled migrants are departing from a broader range of countries and heading to a narrower range of countries—in particular, the United States, the United Kingdom, Canada, and Australia.”)

<sup>34</sup> The Conference Board of Canada, “Can’t Go It Alone: Immigration Is Key to Canada’s Growth Strategy,” Insight Briefing, May 2019, 5, [https://www.conferenceboard.ca/temp/26f2fb41-cec7-4fbb-9a0e-5c8981f06d01/10150\\_Can'tGoItAlone\\_BR.pdf](https://www.conferenceboard.ca/temp/26f2fb41-cec7-4fbb-9a0e-5c8981f06d01/10150_Can'tGoItAlone_BR.pdf).

<sup>35</sup> Currently, Canada scores an 8.14 (out of a possible 9.0) on Gallup’s Migrant Acceptance Index (MAI), coming in fourth among the 140 countries measured. By contrast, the United States is in ninth place. Neli Esipova, Julie Ray, and Anita Pugliese, “Migrant Acceptance in Canada, U.S. Follows Political Lines,” Gallup.com, April 26, 2018, <https://news.gallup.com/poll/233147/migrant-acceptance-canada-follows-political-lines.aspx>.

<sup>36</sup> Mathias Czaika and Christopher R. Parsons, “The Gravity of High-Skilled Migration Policies,” *Demography* 54, no. 2 (April 2017): 13, <https://doi.org/10.1007/s13524-017-0559-1>.

<sup>37</sup> Mathias Czaika and Christopher R. Parsons, 21.

<sup>38</sup> Mathias Czaika and Christopher R. Parsons, 9.

<sup>39</sup> Committee for Economic Development, “Boosting Immigration: Harnessing Global Talent to Increase U.S. Competitiveness, Innovation, and Prosperity,” Policy Brief (Committee for Economic Development, January 29, 2020), 25, <https://www.ced.org/reports/boosting-immigration>.

<sup>40</sup> Czaika and Parsons phrase this in rather more sparse, economic terms, writing that permanent visas “increase the *option value* of staying longer in the host country and expand

future opportunities.” See “The Gravity of High-Skilled Migration Policies,” 13.

<sup>41</sup> The only year in which this rate did not increase year on year was 2008, the year of the global economic crisis.

<sup>42</sup> OECD, *Canada 2019*, 88–89.

<sup>43</sup> According to data gathered by Canada’s IRCC as part of a forthcoming report, 87% of economic immigrants selected through Express Entry who were admitted between 2015 and 2018 were employed within one year of arrival. OECD, 89. (Citing IRCC (forthcoming), “Survey of Economic Principal Applicants 2019.”)

<sup>44</sup> Immigration, Refugees and Citizenship Canada, “2018 Annual Report to Parliament on Immigration,” 2018, 3.

<sup>45</sup> Peter Dungan, Tony Fang, and Morley Gunderson, “Macroeconomic Impacts of Canadian Immigration: Results from a Macro Model,” *British Journal of Industrial Relations* 51, no. 1 (March 2013): 189, <https://doi.org/10.1111/j.1467-8543.2012.00905.x>. (Writing that, projecting forward, “additional immigration is likely to have a positive impact on the Canadian labour market and economy in general.”) See also Jiong Tu, “The Impact of Immigration on the Labour Market Outcomes of Native-Born Canadians,” IZA DP No. 5129, IZA Discussion Papers, n.d., <http://ftp.iza.org/dp5129.pdf>; Alessio Cangiano, “Migration Policies and Migrant Employment Outcomes: Conceptual Analysis and Comparative Evidence for Europe,” *Comparative Migration Studies* 2, no. 4 (December 2014): 417–43, <https://doi.org/10.5117/CMS2014.4.CANG>.

<sup>46</sup> Demetrios Papademetriou, Meghan Benton, and Kate Hooper, “Equipping Immigrant Selection Systems for a Changing World of Work” (Migration Policy Institute, 2019), 15.

<sup>47</sup> Maria Vincenza Desiderio and Kate Hooper, “The Canadian Expression of Interest System: A Model to Manage Skilled Migration to the European Union?” (Migration Policy Institute, March 2016), 6.

<sup>48</sup> Maria Vincenza Desiderio and Kate Hooper, 6.

<sup>49</sup> OECD, *Canada 2019*, 53. (Describing how the Express Entry system is rapidly becoming another vital “source of data for

researchers [and] the federal government,” given that it contains “information on the characteristics of interested potential labour immigrants who passed the minimum requirements for one of the core permanent migration programmes but have not yet submitted their application.”)

<sup>50</sup> OECD, 53.

<sup>51</sup> Immigration, Refugees and Citizenship Canada, “Express Entry Year-End Report 2015,” March 11, 2016, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/express-entry-year-end-report-2015.html>.

<sup>52</sup> Immigration, Refugees and Citizenship Canada, “Express Entry: What Prospective Candidates Need to Know,” November 13, 2014, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/express-entry-what-prospective-candidates-need-know.html>.

<sup>53</sup> Asha Kaushal, “Do the Means Change the Ends? Express Entry and Economic Immigration in Canada,” 97. (Suggesting that this backlog was a function of a variety of factors, the most important of which was the “relatively low” pass mark and administrative inefficiencies within IRCC.)

<sup>54</sup> Immigration, Refugees and Citizenship Canada, “Express Entry Year-End Report 2018,” 17.

<sup>55</sup> Demetrios Papademetriou, Meghan Benton, and Kate Hooper, “Equipping Immigrant Selection Systems for a Changing World of Work,” 22.

<sup>56</sup> Since 2015, seven sets of Ministerial Instructions have been issued. See Immigration, Refugees and Citizenship Canada, “Ministerial Instructions Respecting the Express Entry System,” December 1, 2014, <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/ministerial-instructions/express-entry-application-management-system.html>.

<sup>57</sup> Daniel Hiebert, “The Canadian Express Entry System for Selecting Economic Immigrants: Progress and Persistent Challenges,” 2019, 9.

<sup>58</sup> OECD, *Canada 2019*, 89.

## Chapter 4:

# Case Study—Australia’s Points-Based Immigration System

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### § 1 THE EVOLUTION OF AUSTRALIA’S SKILLED IMMIGRATION SYSTEM

In the early 1970s, the Australian government reoriented the country’s immigration system away from simply adding people toward economic nation-building. This policy shift occurred partly because of economic pressures. After the Second World War and through the 1960s and 1970s, the Australian economy grew rapidly, putting increasing pressure on its domestic labor market. Partly in response to growing labor market shortfalls, Australian officials implemented a series of immigration reforms aimed at increasing the inflow of qualified foreign workers.<sup>1</sup> This increase was accomplished partly by raising caps on economic migration and partly by removing immigration restrictions adopted under the decades-old “White Australia”<sup>2</sup> policy that had favored migrants from the United Kingdom, the British Commonwealth, and Europe. The decision to admit more foreign workers, and to admit workers who hailed from countries outside Europe and the British Commonwealth, was controversial. But the policymakers behind these changes ultimately swayed political and public support, arguing that Australia’s economic future depended in large part on its ability to “attract more highly skilled workers, inventors, and entrepreneurs from Asia and elsewhere.”<sup>3</sup>

In 1973, Australian lawmakers changed the regulations governing how immigration officers were to assess visa applications, reducing their discretion and requiring them to employ a merit-based qualitative assessment rubric. This assessment rubric encompassed many of the same factors as the then-newly implemented Canadian points system. However, it stopped short of quantifying or giving specific weighting guidelines for the various factors to be considered. In 1979, Australia further formalized its immigration selection guidelines, adopting a points system that was similar to the Canadian points system at the time.<sup>4</sup> Australian officials allocated a numerical weight to criteria such as age, education, occupational skill, assessed capacity to adapt to Australian values, and presence of family in Australia.<sup>5</sup>

Over the years, Australia revised its points system several times. For example, in 1992 Australia introduced two new visa classes, under which states and territories could sponsor certain economic migrants. In 2007, Australia revised the criteria for the subclass through which students and holders of provisional temporary visas could apply for permanent residence, placing greater emphasis on language proficiency and relevant work experience.

In 2010, Australia shifted the focus of its skilled migration stream away from “supply-driven” independent skilled migration toward “demand-driven” migration, in the form of employer and government-sponsored skilled migration.<sup>6</sup> The changes included establishing priority processing arrangements under which applicants who had received either government or employer sponsorship would be processed before independent (non-sponsored) candidates (an express change from the prior first-come-first-served processing order), and phasing out existing skills lists and replacing them with a skilled occupation list to fill structural needs.<sup>7</sup>

In 2011, Australia revised its points test again to try to end a years-long backlog (caused by slow application processing and a first-come-first-served system under which applicants who had submitted a complete application were guaranteed consideration) and a perceived inflexibility of program criteria.<sup>8</sup> Among other things, Australia created a two-step process for points applications: First, applicants file an expression of interest in immigrating to Australia. Then, if they pass a certain score on the points test, they can file a formal immigration application.

### § 2 AUSTRALIA’S CURRENT SKILLED IMMIGRATION SYSTEM

Australia’s current skilled immigration system is made up of two federal-level points-tested visa programs.<sup>9</sup> The application and selection process for all three of these programs is administered through the SkillSelect application management system.

## Australia's Skilled Visa Programs

The first of Australia's points-tested skilled visa programs is the Skilled Independent visa (subclass 189). This visa program is aimed at candidates who have the experience and training needed to work in an occupation on Australia's Medium and Long-term Strategic Skills List. The Skilled Independent visa program has generally been the route through which most skilled immigrants entered Australia, but in recent years it has been closely followed—and in some years surpassed—by the Employer Sponsored visa program.<sup>10</sup> To be eligible for the Skilled Independent visa program, a candidate must be under 45 years old; meet certain health, character, and English language requirements; meet a minimum score (currently 65 out of 120) on a points test; and obtain a successful migration skills assessment outcome in their occupation.<sup>11</sup>

Australia's second points-tested skilled visa program is the State/Territory and Regional Nominated visa subcategory. This program contains two visa subcategories: the State/Territory and Regional Nominated stream of the Skilled Nominated visa (subclass 190) and the Skilled Regional visa (subclass 887). These visa programs are aimed at the same kinds of skilled workers as the Skilled Independent (189) visa.

The 190 visa can be obtained without having held any prior Australian visa, whereas the 887 is a dedicated permanent visa avenue for individuals who have held certain temporary or provisional visas for at least two years. These visa programs are largely similar in structure and eligibility requirements to the Independent Skilled (189) visa described above.

To be eligible for a 190 visa, a candidate must satisfy all the same basic requirements as a 189 visa, including being under 45 years old; meeting certain health, character, and English language requirements; earning a minimum score (currently 65 out of 120) on a points test; and obtaining a successful migration skills assessment outcome in their occupation.<sup>12</sup> In addition to these common requirements, candidates for a 190 visa must also obtain a nomination from one of Australia's states or territories.

The criteria that applicants need to fulfill to receive a nomination vary from state to state and territory to

territory. Common criteria include having an occupation listed on a state's or territory's own shortage occupation list, having a job offer from an employer in that state or territory, and agreeing to live and work within the nominating state or territory for a period of time (usually two or three years).<sup>13</sup> Another notable difference between these regional visas and the 189 visa is that candidates can be eligible for these visas even if their occupation does not appear on the Medium and Long-term Strategic Skills List, so long as their occupation appears on the Short-term Skilled Occupation List.

In addition to these two skills-based and points-tested visa programs, Australia has a variety of other visa programs that are either (a) aimed at selecting skilled workers but are not points tested or (b) employ a points test but are not aimed at selecting skilled workers. The former category includes Australia's Employer Sponsored permanent visa programs: the Employer Nomination Scheme visa (subclass 186) and the Regional Sponsored Migration Scheme visa (subclass 187).<sup>14</sup> Candidates for these visa programs are not subjected to a points test, but they must have a profession that appears on the Medium and Long-term Strategic Skills List.<sup>15</sup> The latter category includes certain parts (notably the Business Innovation stream and the Investor stream) of the Business Innovation and Investment (Provisional) visa (subclass 188) program.<sup>16</sup>

## The Application and Selection Process

Since 2012, foreign workers seeking an employment-based visa to Australia must apply through the SkillSelect system. This system employs an Expression of Interest (EOI) model, in which the process of selecting foreign workers includes two steps.

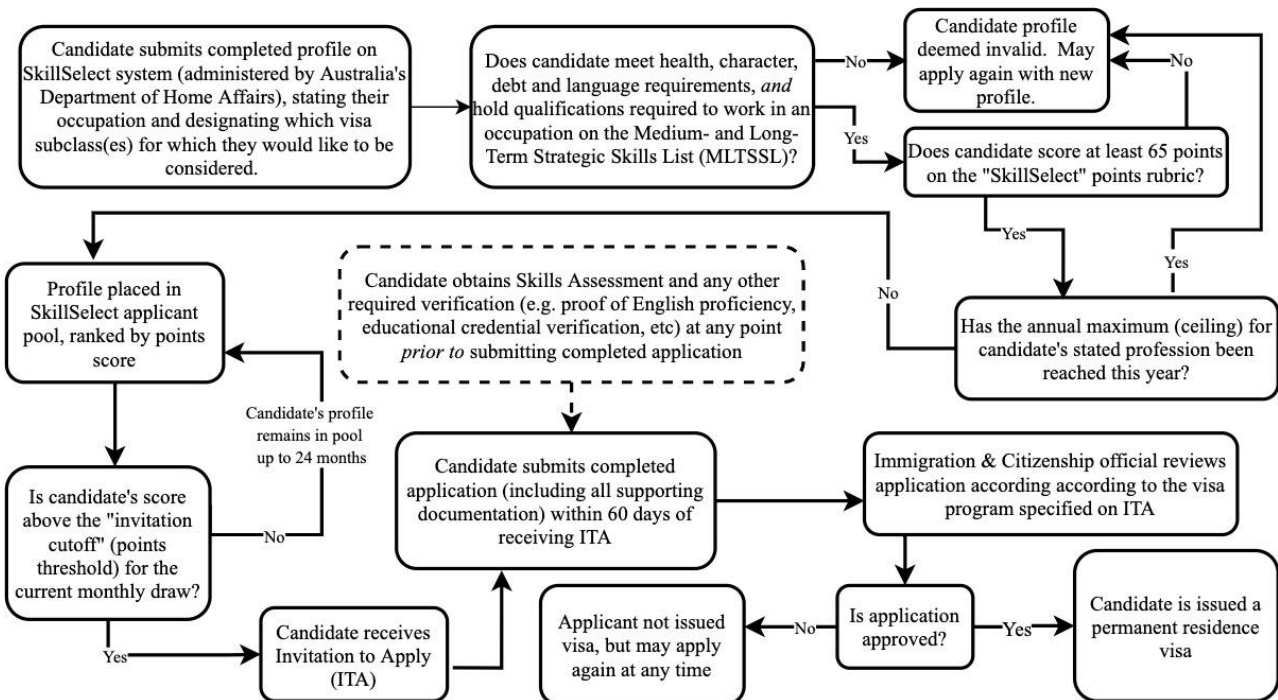
In the first step, foreign workers seeking a skilled visa begin by completing a candidate profile on the SkillSelect web portal.<sup>17</sup> As part of their profile, candidates must "nominate" a career for which they qualify. In this regard Australia differs from Canada's Express Entry system, which does not allow candidates to select their chosen visa programs and instead automatically sorts candidates into visa programs according to qualification and availability. By contrast, Australia's SkillSelect system requires candidates to select the visa programs for which they would like to be considered. SkillSelect candidates may select more than one visa program.

Once completed and submitted, this profile is treated as an applicant’s expression of interest. Each candidate’s profile is scored according to a points table that assigns points based on a range of factors, including age, fluency in English, educational qualifications, past study or work in Australia, fluency in one of Australia’s community languages, and the skills and qualifications of the candidate’s partner or spouse (if applicable). If the qualifications listed on a candidate’s profile satisfy the minimum requirements of any of the visa programs they listed on their EOI profile, that candidate’s profile is placed into a “pool” of eligible screened candidates.

The number of invitations issued in each drawing is determined according to monthly targets set by the Department of Home Affairs. Candidates who have received invitations may<sup>19</sup> complete a full application, which is then reviewed by immigration officials according to the visa program under which they are applying. Candidates whose full applications are approved are then issued a permanent residence visa. The process is illustrated in Figure 2.

The second phase of the application process occurs when Australian officials conduct a “drawing” or “invitation round.” In these drawings, all candidates currently in the SkillSelect pool are ranked according to their point scores. The highest-ranking applicants are sent an “Invitation to Apply” (ITA). These invitation rounds are conducted monthly. Only candidates who have received an ITA can move on to the next step of the application process.<sup>18</sup>

**Figure 2: SkillSelect Australia Application Process**





### § 3 LESSONS FROM AUSTRALIA

#### **Lesson 1: Australia has been remarkably successful in attracting foreign talent.**

Australia has welcomed and depended upon international migration for many years. Over the last two decades, it has become a leading destination for skilled foreign workers. Between 2000 and 2010, the number of highly skilled immigrants in Australia doubled, and that number has only continued to grow since then.<sup>20</sup> In a recent study of the relative attractiveness of OECD countries among highly qualified workers, Australia came in first, followed closely by Sweden, Switzerland, New Zealand, and Canada.<sup>21</sup>

Australia's popularity as a destination state is likely a function of several pull-factors. As with Canada, Australia has a highly developed and open domestic economy, high safety and life expectancy rates, and a stable and comparatively responsive political system. In addition to these, it has a warm climate and a desirable "national lifestyle."<sup>22</sup> And as with Canada, Australian officials and the Australian public generally exhibit high levels of support for immigration and immigrants, an outgrowth perhaps of a similar decades-long effort to embrace multiculturalism in Australian politics and Australian education.<sup>23</sup>

In addition to these more general pull-factors, Australia's success in attracting skilled workers may also be due in part to two key aspects of its skilled immigration programs: the use of a points-based selection system and the provision of a direct route to permanent residence for skilled migrants. In their 2017 study, discussed in more detail in the Canada chapter, Czaika and Parsons found that countries that operate points-based skilled visa programs attract an average of 1.5 times the number of high-skilled migrants as countries that lack such programs.<sup>24</sup> Moreover, countries that offer skilled visa programs that provide immediate access to "permanency rights" attract, on average, 2 times the number of high-skilled migrants as countries that do not.<sup>25</sup>

#### **Lesson 2: Foreign workers admitted through Australia's skilled visa programs enjoy largely positive outcomes and are generally well-incorporated into the labor market.**

Skilled migrants (that is, *primary* applicant migrants in Skill Stream visas) in Australia demonstrate employment outcomes that are similar to, and in some ways significantly better than, those of the Australian general population. According to survey data from Australia's Department of Home Affairs, the labor force participation rate among permanent migrants admitted to Australia in 2017 at six months after their arrival was 88.4%, and their unemployment rate was 7.0%.<sup>26</sup> By contrast, the general Australian labor force participation rate at the time was 64.7% and the unemployment rate was 5.7%.<sup>27</sup>

These participation and employment outcomes were both markedly improved when these same skilled migrants were surveyed 18 months after arrival. At that point the labor force participation rate of skilled migrants increased to 94% and the unemployment rate fell to 2.8%.<sup>28</sup> At the time of this second round of surveys, the labor force participation and unemployment rates among the general Australian population both held largely steady, with the former increasing slightly to 65.5% and the latter decreasing slightly to 5.5%.<sup>29</sup>

Notably, these positive labor market outcomes for skilled foreign workers have not been associated with any noticeable negative effects on the domestic labor market or on labor market outcomes for native-born Australians. A recent academic study concluded that there is "almost no evidence" for the proposition that skilled immigration negatively affects outcomes for native-born Australians,<sup>30</sup> and an analysis by the Migration Council of Australia concludes that skilled foreign workers have in fact had significant positive effects on Australia's labor market and the wider economy, with few appreciable negative effects on employment outcomes for native Australians.<sup>31</sup>

#### **Lesson 3: Australia is a model of how points-based skilled visa programs can complement employer-sponsored visa programs.**

As discussed in more detail in the U.S. chapter, we propose that the United States establish a points-based visa program, not as a replacement for its existing employer-driven green card programs but in addition to

them. We chose this policy proposal partly for practical reasons. Adopting a points system by adding a new visa track would be comparatively less costly, both politically and economically, than overhauling the United States' existing economic visa infrastructure. But we also chose this policy design because, by operating both a points-tested independent skilled visa program as well as continuing existing economic visa streams, the United States could reap the benefits of both. The existing employer-driven visa programs will ensure that the short-run needs of the U.S. labor market are met, while the points-tested independent visa program will help to address the longer-term needs of the U.S. human capital infrastructure.

Australia provides a useful real-world test of this proposition because, unlike Canada, Australia currently operates its employer sponsorship as a separate stream alongside the rest of its skill stream visas. Prospective foreign workers wishing to apply for one of Australia's two employer sponsored visa programs—the Employer Nomination Scheme (ENS, subclass 186) and the Regional Sponsored Migration Scheme (RSMS, subclass 187)—are not subject to a points test, and they apply through a different online system that is separate from SkillSelect.<sup>32</sup>

The move toward dividing Australia's supply-and-demand-driven economic visa streams began with reforms announced in February 2010, explicitly reworking the skilled independent visa programs to meet medium- to long-term skill needs while allowing the employer-sponsored visa programs to address more immediate needs.<sup>33</sup>

Data on the economic outcomes of foreign workers admitted to Australia through these two streams suggests that operating both demand- and supply-driven visa streams has resulted in a pool of foreign workers with largely complementary traits. Migrants entering Australia through an employer-sponsored visa program tend, on the one hand, to have higher rates of short-term employment, lower levels of mobility, and lower levels of skills mismatch than those who entered via a skilled independent visa. On the other hand, they also tend to be older, less educated, and less diverse in their gender and countries of origin.<sup>34</sup> Independent skilled migrants tend to have poorer employment rates in the short term. However, they tend to be higher skilled and have higher mobility;

their rates of employment and over-qualification converge with their employer-sponsored peers as their duration of stay extends past three to four years; and they command higher salaries than employer-sponsored visa holders in the long run.<sup>35</sup>

#### **Lesson 4: Australia's robust and consistent data-collection programs have been vital to the successful management of its points-based visa programs.**

Australia has offered points-based skilled visas for more than four decades. Over this time, as discussed earlier in this chapter, Australian officials have made various adjustments to the weighting and categories addressed in the points table itself, the form and content of the occupation lists used in the application process, and the number and provisions of the specific visa programs to which the points test has been applied. Each of these adjustments was made according to changes in the economic or political climate within and outside Australia, or perceived malfunctions of the points system itself.<sup>36</sup> The success of policymakers' efforts to continue to adapt Australia's points system to new and emerging challenges depends on their having access to accurate, detailed, and reliable data on the characteristics and outcomes of those admitted through the visa programs that use this points system. To this end, Australian immigration officials have built up an impressive array of performance monitoring and data-gathering tools.

One of these tools is the Continuous Survey of Australia's Migrants (CSAM).<sup>37</sup> Created in 2009 and administered by the Department of Home Affairs, this survey program examines the labor market outcomes (and other settlement and integration outcomes) of recently arrived permanent migrants in Australia. The CSAM surveys migrants arriving through both Skill stream and Family stream visa programs, gathering data on economic outcomes—as well as a variety of individual characteristics that may be relevant to labor market outcomes (such as gender, education level, age, and English language ability)—for both primary and secondary applicant migrants (e.g., accompanying family members).<sup>38</sup> To gather both static outcome data and data showing the changes in outcomes over time, the CSAM consists of two survey rounds: an introductory survey issued to migrants six months after their arrival in Australia (also referred to as “the six-

month stage of settlement”) and a second follow-up survey issued 18 months after arrival (the “18-month stage of settlement”).<sup>39</sup>

In addition to the survey-based outcome data gathered by the CSAM, there are at least three major sources of information on immigration outcomes that are based on administrative data. The first of these is the SkillSelect system itself. Given its design as a fully digital application management system, SkillSelect data records information on the characteristics of candidates submitting EOI profiles, those selected to receive invitations to apply, and those whose applications were ultimately processed.<sup>40</sup> The other two are the Personal Income Tax and Migrants Integrated Dataset (PITMID) and the Australian Census and Migrants Integrated Dataset (ACMID). These two datasets were created by the Australian Bureau of Statistics in 2013 and 2016, respectively. PITMID contains information on recent permanent and provisional migrant taxpayers’ personal income generated by linking the Australian Taxation Office Personal Income Tax records with migrant records from the Australian Government’s Settlement Database.<sup>41</sup> ACMID provides information about the location, household characteristics, and other residence characteristics of permanent migrants in Australia generated by linking Australian Census data with Permanent Migrant Settlement Data gathered by the Department of Home Affairs.<sup>42</sup>

**Lesson 5: Australia’s two-step SkillSelect application system and reforms implemented at the same time have improved efficiency, reduced costs, and lowered burdens on applicants.**

When the Australian government rolled out the SkillSelect application system in 2012, their stated objectives were largely similar to those set by Canadian officials when launching their Express Entry program three years later. The SkillSelect system would, in the words of Australia’s then-Department of Immigration and Citizenship (succeeded by the Department of Immigration and Border Protection), offer Australian officials a greater degree of control over the rates and composition of

economic migration,<sup>43</sup> reduce backlogs by improving administrative efficiency,<sup>44</sup> and attract the “best and brightest intending migrants” from around the world.<sup>45</sup>

SkillSelect has accomplished all three objectives. First, the two-stage EOI application process has given immigration officials a greater degree of control over the rate and composition of economic immigration controls. This was accomplished partly because, under the two-stage EOI application system, immigration officials set the number of invitations to apply issued in each draw, allowing them to adjust the pipeline of visa applications awaiting processing at any one time according to the needs of the Australian job market and the processing capacity of the immigration officers tasked with reviewing visa applications.<sup>46</sup> It was also partly accomplished through reforms passed alongside SkillSelect that give the Department greater capacity to adjust the parameters of Skill Stream visa programs without seeking parliamentary approval.<sup>47</sup>

Second, the SkillSelect system has reduced application backlogs and processing times. Indeed, there was not only a sharp decrease in processing time that occurred between the old system and the adoption of SkillSelect, but processing times have continued to fall since then, with average processing times falling sharply over the period in which SkillSelect has been operating.<sup>48</sup>

These improvements in application processing times, along with the ranking function of the two-step EOI system, have both contributed to the third objective. The highest-scoring candidates are more likely to receive invitations to apply and are likely to receive these invitations sooner than those with lower points, making it more likely that these candidates will be admitted.<sup>49</sup> And, once they apply, because they will find out more quickly about the outcome of their applications, these highly desirable candidates are less likely to have received jobs or migration offers elsewhere.<sup>50</sup>

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<sup>1</sup> OECD, ed., *Recruiting Immigrant Workers: Australia 2018*, Recruiting Immigrant Workers (Paris: OECD Publishing; Éditions OCDE, 2018), 98. (“The focus of policy changes from

the 1970s–1980s was on skills and meeting labour market needs and opening migration to non-European countries.”)

<sup>2</sup> For an explanation of this policy of racial exclusion and the political struggle to overturn it, see Gwenda Tavan, “The Dismantling of the White Australia Policy: Elite Conspiracy or Will of the Australian People?,” *Australian Journal of Political Science* 39, no. 1 (March 2004): 109–25, <https://doi.org/10.1080/1036114042000205678>.

<sup>3</sup> Ray Marshall, *Value-Added Immigration: Lessons for the United States from Canada, Australia, and the United Kingdom* (Economic Policy Institute, 2011), 63.

<sup>4</sup> Gwenda Tavan, “Creating Multicultural Australia: Local, Global and Trans-National Contexts for the Creation of a Universal Admissions Scheme, 1945–1983.” In Triadafilos Triadafilopoulos, ed., *Wanted and Welcome? Policies for Highly Skilled Immigrants in Comparative Perspective*, Immigrants and Minorities, Politics and Policy (New York ; London: Springer, 2013), 54.

<sup>5</sup> Gwenda Tavan, “The Dismantling of the White Australia Policy,” 54–55.

<sup>6</sup> OECD, *Australia 2018*, 100.

<sup>7</sup> OECD, 100.

<sup>8</sup> Anna Boucher and Amy Davidson, “The Evolution of the Australian System for Selecting Economic Immigrants” (Migration Policy Institute, May 2019), 8.

<sup>9</sup> A note on terminology: The Australian government uses the term “skilled immigration” for all forms of economic or employment-based migration to Australia. For purposes of this report, however, the term “skilled immigration system” refers only to those economic immigration programs designed to attract skilled foreign workers.

<sup>10</sup> OECD, *Australia 2018*, 63.

<sup>11</sup> Australia Department of Home Affairs, “Skilled Independent Visa (Subclass 189) Points-Tested Stream,” accessed May 15, 2020, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/skilled-independent-189/points-tested#Eligibility>.

<sup>12</sup> Australia Department of Home Affairs. “Skilled Independent Visa (Subclass 189).”

<sup>13</sup> For a full description of each state’s nominating requirements, and those of the Northern Territory and Australian Capital Territory, see State Government of South Australia, “Nomination Process,” accessed May 15, 2020, <https://www.migration.sa.gov.au/skilled-migrants/nomination-process>; State Government of Queensland, “Queensland Skilled Occupation Lists (QSOL),” *BSMQ* (blog), accessed May 15, 2020, <https://migration.qld.gov.au/skilled-occupation-lists/>; State Government of Tasmania, “Subclass 190—Skilled Nominated Visa—Migration Tasmania,” accessed May 15, 2020, [https://www.migration.tas.gov.au/skilled\\_migrants/skilled\\_nominated\\_visa](https://www.migration.tas.gov.au/skilled_migrants/skilled_nominated_visa); State Government of New South Wales, “Are You Eligible?—Live & Work in New South Wales,” accessed May

15, 2020, <https://www.business.nsw.gov.au/live-and-work-in-nsw/visas-and-immigration/Skilled-Nominated-visa-subclass-190/are-you-eligible>; State Government of Western Australia, “Migration WA—About State Nomination,” accessed May 15, 2020, <https://migration.wa.gov.au/services/skilled-migration-western-australia/about-state-nomination>; State Government of Victoria, “Skilled Nominated Visa (Subclass 190),” accessed May 15, 2020, <https://liveinmelbourne.vic.gov.au/migrate/skilled-migration-visas/skilled-nominated-visa-subclass-190>.

<sup>14</sup> These visa programs both offer permanent residence for skilled workers. To be eligible for a 186 or 187 visa, an Australian employer must nominate a skilled individual. For a 186 visa, this employer may be located anywhere in Australia; for a 187 visa, this employer must be located in a region of Australia that is outside Sydney, Melbourne, Brisbane, the Gold Coast, and Perth. See Australia Department of Home Affairs, “Designated Regional Areas,” accessed May 15, 2020, <https://immi.homeaffairs.gov.au/visas/working-in-australia/regional-migration/eligible-regional-areas>.

<sup>15</sup> Australia Department of Home Affairs, “Skilled Occupation List,” accessed May 15, 2020, <https://immi.homeaffairs.gov.au/visas/working-in-australia/skill-occupation-list>.

<sup>16</sup> See “Business Innovation and Investment (Provisional) Visa (Subclass 188) Business Innovation Stream,” accessed May 15, 2020, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/business-innovation-and-investment-188/business-innovation-stream>; “Business Innovation and Investment (Provisional) Visa (Subclass 188) Investor Stream,” accessed May 15, 2020, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/business-innovation-and-investment-188/investor-stream>.

<sup>17</sup> Australia Department of Home Affairs, “SkillSelect,” accessed June 3, 2020, <https://immi.homeaffairs.gov.au/visas/working-in-australia/skillselect>.

<sup>18</sup> Candidates’ EOI profiles remain active in the EOI pool until either they are issued a visa or their EOI expires. Profiles in the SkillSelect system expire after two years. This is a comparatively long time. Profiles submitted to Canada’s EOI expire after one year, and in New Zealand after six months. Candidates whose profiles expire may complete and submit a new EOI profile.

<sup>19</sup> Candidates issued an Invitation to Apply do not have to accept this invitation. If a candidate declines an invitation to apply, their application is placed back in the pool. If an applicant receives a second Invitation to Apply and fails to submit an application a second time, their EOI will be removed from the EOI pool. OECD, *Australia 2018*, 163.

<sup>20</sup> National Academies of Sciences, Engineering, and Medicine, *Immigration Policy and the Search for Skilled Workers*:

*Summary of a Workshop* (Washington, D.C.: National Academies Press, 2015), 16, <https://doi.org/10.17226/20145>.]

<sup>21</sup> OECD/Bertelsmann Stiftung, “How Do OECD Countries Compare in Their Attractiveness for Talented Migrants?,” *Migration Policy Debates*, May 2019, 1, <https://www.oecd.org/els/mig/migration-policy-debates-19.pdf>. See also Çağlar Özden et al., “Global Talent Flows,” Working Paper (Harvard Business School, 2016), 2, [https://www.hbs.edu/faculty/Publication%20Files/17-026\\_a60ac33d-3fd5-4814-a845-137a38066810.pdf](https://www.hbs.edu/faculty/Publication%20Files/17-026_a60ac33d-3fd5-4814-a845-137a38066810.pdf). (“A pattern is emerging in which these high-skilled migrants are departing from a broader range of countries and heading to a narrower range of countries—in particular, the United States, the United Kingdom, Canada, and Australia.”)

<sup>22</sup> Siew-Ean Khoo, Graeme Hugo, and Peter McDonald, “Skilled Migration from Europe to Australia,” *Population, Space and Place* 17, no. 5 (September 2011): 560–61, <https://doi.org/10.1002/psp.651>. (These factors were among the most commonly cited by migrants living in Australia when asked about their reasons for choosing to emigrate to Australia as part of surveys conducted by the Australian Department of Immigration.)

<sup>23</sup> See, e.g., Race Discrimination Commissioner Tim Soutphommasane and Australian Human Rights Commission, “The Success of Australia’s Multiculturalism,” March 9, 2016, <https://doi.org/10.1787/eag-2012-en>. (Speech describing efforts of the Australian government to support multiculturalism, and the general approval of multiculturalism and cultural diversity among the Australian public.)

<sup>24</sup> Mathias Czaika and Christopher R. Parsons, “The Gravity of High-Skilled Migration Policies,” *Demography* 54, no. 2 (April 2017): 13, <https://doi.org/10.1007/s13524-017-0559-1>.

<sup>25</sup> Mathias Czaika and Christopher R. Parsons, 9.

<sup>26</sup> Elsewhere in the 2018–19 report, the Department of Home Affairs reports that 21% of “skill stream migrants” reported being unemployed during their first year after arrival, and only 75% reported participating in the labor force. See “Australia’s Migration Trends 2018–19 Highlights” (Australian Government, Department of Home Affairs, 2019), 17, <https://www.homeaffairs.gov.au/research-and-stats/files/migration-trends-highlights-2018-19.PDF>. This apparent discrepancy is due to a difference in coding category and terminology between “skilled migrants” and “skill stream migrants.” The former category includes only *primary* applicant migrants, whereas the latter includes primary applicants and all members of their accompanying family unit. Of the 109,713 “skill stream” visas issued in 2018–19, only about 50,000 (46.2%) were issued to skill stream primary applicants. “Australia’s Migration Trends 2018–19 Highlights,” 4. Given this distribution, the discrepancy in participation and unemployment rates between “skilled migrants” and “skill stream migrants” is largely driven by the less positive

employment outcomes of primary visa holders’ accompanying family members.

<sup>27</sup> “Australia’s Migration Trends 2018–19 Highlights,” 20.

<sup>28</sup> “Australia’s Migration Trends 2018–19 Highlights,” 20.

<sup>29</sup> “Australia’s Migration Trends 2018–19 Highlights,” 20.

<sup>30</sup> Robert Breunig, Nathan Deutscher, and Hang Thi To, “The Relationship between Immigration to Australia and the Labour Market Outcomes of Australian-Born Workers,” *Economic Record* 93, no. 301 (June 2017): 255–76, <https://doi.org/10.1111/1475-4932.12328>. (“Once we control for the impact of experience and education on labour market outcomes, we find almost no evidence that immigration harms the labour market outcomes of those born in Australia.”) See also OECD, *Australia 2018*, 18. (“The existing empirical evidence does not find a negative effect of immigration on the Australian native-born and previous migrant cohorts as a whole. However, this does not rule out some possible effects on specific segments of the labour force.”)

<sup>31</sup> Migration Council of Australia, “Economic Impact of Migration,” 2015, [https://migrationcouncil.org.au/wp-content/uploads/2016/06/2015\\_EIOM.pdf](https://migrationcouncil.org.au/wp-content/uploads/2016/06/2015_EIOM.pdf).

<sup>32</sup> Many applicants for these visa programs begin their application process by submitting an Expression of Interest to the SkillSelect system. Once they have been nominated by an employer, however, applicants need not continue under the SkillSelect system to receive an invitation to apply for a visa. OECD, *Australia 2018*, 70.

<sup>33</sup> OECD, 69–70.

<sup>34</sup> OECD, 140.

<sup>35</sup> OECD, 141.

<sup>36</sup> See, e.g., Anna Boucher and Amy Davidson, “The Evolution of the Australian System for Selecting Economic Immigrants,” 18. (Describing how the Australian government has “found it necessary several times to adjust the occupational lists and points categories” employed in its points system in response to evidence that “the skills profiles of the immigrants previously admitted did not accurately reflect skills gaps within the Australian labor market.”)

<sup>37</sup> Before the CSAM, the Australian government experimented with a variety of data-gathering programs aimed at measuring immigration outcomes. Under a program called the Longitudinal Survey of Immigrants to Australia (LSIA), for example, the Australian Department of Immigration and Citizenship conducted three longitudinal surveys between the early 1990s and the mid-2000s. Each of these surveys followed a different sample of respondents (selected through the DIAC’s administrative Settlement Database), surveying them at 6 and 18 months after arrival. (The first of these surveys, LSIA1, went even longer, sending its final wave of surveys at 42 months after arrival.) See Statistics Australia, “Longitudinal Survey of Immigrants to Australia (LSIA),” March 29, 2011,

[https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/3414.0main+features22011%20\(Edition%202\)](https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/3414.0main+features22011%20(Edition%202)).

<sup>38</sup> “Australia’s Migration Trends 2018–19 Highlights,” 4.

<sup>39</sup> “Australia’s Migration Trends 2018–19 Highlights,” 20.

<sup>40</sup> See Australia Department of Home Affairs, “SkillSelect Expression of Interest (EOI) Data Dashboard,” accessed June 3, 2020,

[https://api.dynamic.reports.employment.gov.au/anonap/extensions/hSKLS02\\_SkillSelect\\_EOI\\_Data/hSKLS02\\_SkillSelect\\_EOI\\_Data.html](https://api.dynamic.reports.employment.gov.au/anonap/extensions/hSKLS02_SkillSelect_EOI_Data/hSKLS02_SkillSelect_EOI_Data.html).

<sup>41</sup> See Australian Bureau of Statistics, “Personal Income Tax and Migrants Integrated Dataset (PITMID),” October 19, 2016, <https://www.abs.gov.au/ausstats/abs@.nsf/cat/1351.0.55.060>.

<sup>42</sup> See Australian Bureau of Statistics, “Australian Census and Migrants Integrated Dataset, 2016,” July 18, 2018, <https://www.abs.gov.au/ausstats/abs@.nsf/mf/3417.0.55.001>.

<sup>43</sup> Australia Department of Immigration and Citizenship, “Trends in Migration: Australia 2010–11,” 2012, 10, <https://web.archive.org/web/20120227175258/http://www.immi.gov.au/media/publications/statistics/trends-in-migration/trends-in-migration-2010-11.pdf>.

<sup>44</sup> Australia Department of Immigration and Citizenship, “Australia’s Migration Trends 2011–12,” 2013, 10, <https://www.homeaffairs.gov.au/research-and-stats/files/australian-migration-trends-2011-12.pdf>.

<sup>45</sup> Australia Department of Immigration and Citizenship, 10.

<sup>46</sup> OECD, *Australia 2018*, 175.

<sup>47</sup> This largely unfettered discretion has also had some downsides. Some critics have suggested that it has led Australia’s skilled stream visas to undergo a “near-continuous evolution” over the last decade. Anna Boucher and Amy Davidson, “The Evolution of the Australian System for Selecting Economic Immigrants,” 18. Indeed, according to one Australian immigration law expert interviewed for this report, Australian migration law is among the most rapidly changing and unstable areas of Australian legal practice, making it extraordinarily difficult to keep up with even for legal experts. Phone interview with Arnold J. Conyer, Accredited Specialist in Immigration Law and Partner in Diamond Conway Lawyers, Sydney, NSW, Australia, on 2–11–2020.

<sup>48</sup> OECD, *Australia 2018*, 175.

<sup>49</sup> OECD, 179.

<sup>50</sup> OECD, 175.

# Chapter 5: Recommendations for the United States

## § 1 CURRENT U.S. EMPLOYMENT-BASED IMMIGRATION SYSTEM

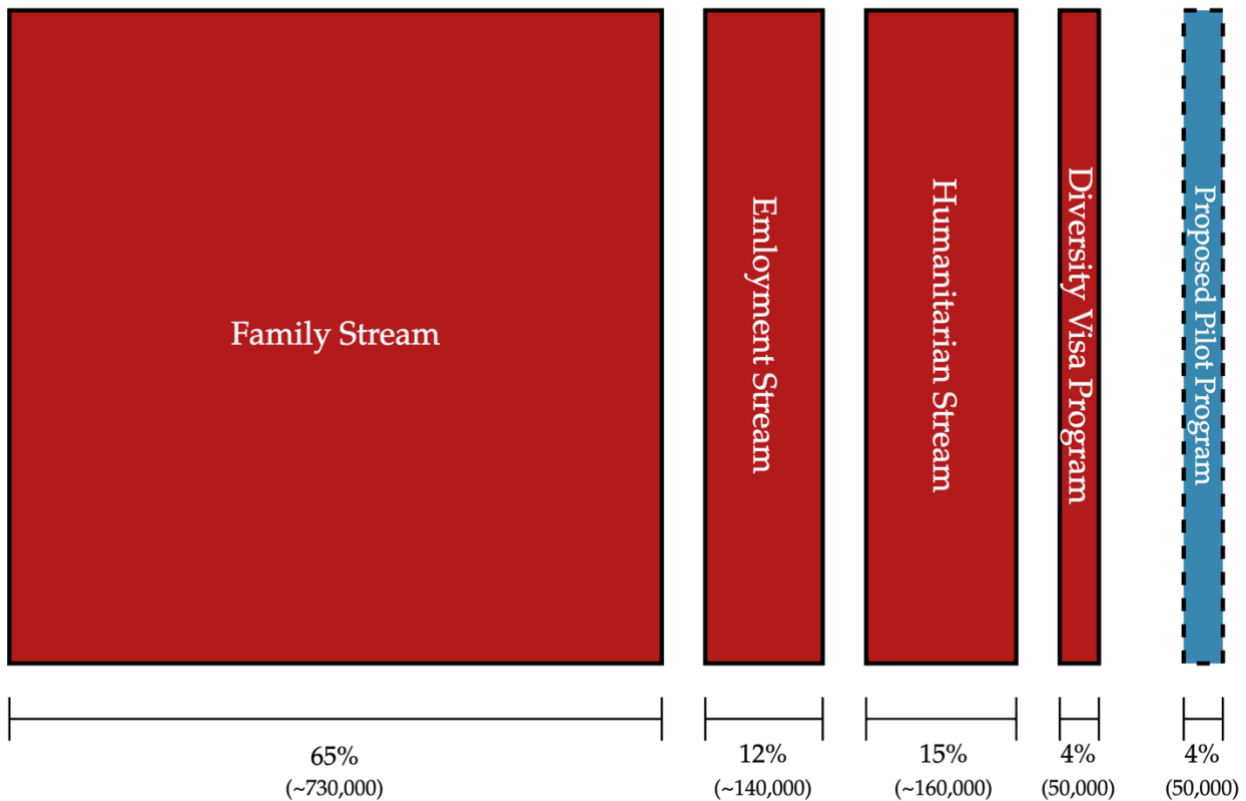
The United States has the largest immigration system in the world. Each year, more than 10 million people enter the United States on temporary visas, and about 1 million people receive permanent residence visas, also known as green cards. These overall immigration flows are divided roughly into four streams: family, economic or employment-based, humanitarian, and the diversity visa program.

Although the totals vary from year to year, about 65% of the permanent visas issued by the United States each year are issued to migrants entering through a family-sponsored visa, about 12% are issued to economic or employment-based migrants, about 15% are issued to those entering for humanitarian reasons (e.g., as refugees

or asylees), and about 4% are issued through the diversity visa program. See Figure 3 below.

In the United States' current economic immigration stream, about 140,000 permanent visas are available each year. These are allocated across five employment-based categories (formally known as "preferences"). The employment-based first preference category (EB-1) is for people with extraordinary ability, as well as outstanding professors and researchers, and certain executives and managers. EB-2 is for people who have advanced degrees. EB-3 is for other professionals, as well as skilled and unskilled workers. EB-4 is for certain miscellaneous workers, such as religious ministers. EB-5 is for certain immigrant investors. The 140,000 total includes both principal workers and their spouses and children. Most employment-based immigrants must have an employer to sponsor them. Most of the time, an employer who seeks to

**Figure 3:** Proportion of Green Cards Issued Each Year by Visa Stream (Values based on category averages from 2015-2018)



hire a foreign worker permanently must first obtain a certification from the Department of Labor stating that there is no U.S. worker who is qualified and available for the same position. The employer must also prove that hiring the foreign worker will not affect the wages and working conditions of similarly employed U.S. workers. This is known as the labor certification process.

The current employment-based immigration system in the United States, whether temporary or permanent, selects for the short-term, specific labor needs of certain employers, not the long-term human capital needs of the United States.

## § 2 GOALS OF PROPOSED POINTS-BASED PILOT PROGRAM

### **Pressure Relief: Providing Additional Capacity for High-Skilled Immigration Without Changing Existing Skilled Visa Programs**

As noted in the first chapter of this report, the United States' current immigration system is failing U.S. employers and the country in a variety of ways. These failures are likely to become more serious in the near future, as the U.S. economy undergoes significant changes in the face of challenges like the COVID-19 pandemic, automation, an aging workforce, and growing skills “mismatches” across sectors and geographic regions.<sup>1</sup>

Although there is ample evidence suggesting that even a moderate increase in skilled immigration would benefit the country,<sup>2</sup> for 30 years the U.S. Congress has failed to reform the employment-based green card categories. By providing an alternate avenue for 50,000 skilled workers to enter each year, our proposal presents a way to relieve pressure on existing visa programs without changing current categories.

### **Proof of Concept: Providing a Low-Cost, Low-Risk Path to Testing the Efficacy of an Immigration Points Program in the United States**

As detailed in prior chapters, the data have shown how immigration points programs benefit Canada and Australia. However, we cannot adopt their models wholesale. The reasons given for this uncertainty vary

from source to source, but they generally include questions of scale and government structure.

While Canada and Australia are similar to the United States in many ways, including shared cultural roots, legal traditions, and economic orientations, they also differ in important ways. For example, Canada and Australia are significantly smaller than the United States in terms of population, economic output, and yearly immigration flows. Given these significant differences, we don't have confidence that simply importing a Canadian or Australian points system to the United States would work.

The governmental structure in the United States also differs significantly from that in Australia and Canada. Australia and Canada have parliamentary systems that have delegated much immigration responsibility, including making changes to their points systems, to their immigration ministries. Congress cannot move quickly enough to provide the sustained and responsive tinkering necessary for a points program to function effectively.

For these reasons, we propose a low-cost, low-risk path. Because our immigration points program would be implemented as a small pilot program, questions regarding the feasibility of a points program here in the United States could be explored in a real-world setting, and could be addressed in a staged manner. And the question of whether a points program could be successfully scaled up to manage all employment-based immigration to the United States could be postponed for at least ten years. By then empirical evidence will help answer that question.

### **Filling a Policy Gap: Providing for Long-Term Economic and Social Needs of the United States**

The United States' existing employment-based visa programs—both temporary and permanent—are generally oriented toward meeting the short-term needs of U.S. employers. These programs are designed to select those candidates that fulfill an immediate need of a U.S. employer that it cannot fulfill otherwise due to a gap in the U.S. labor market.<sup>3</sup>

There are two problems with relying on the labor certification system as the primary means of selecting economic immigrants. First, the interests of U.S. employers are not identical to the interests of the United



States as a nation-state or of its residents as a collective polity. Second, the elected lawmakers charged with setting U.S. immigration policy have a fiduciary duty to provide not only for the short-term needs of particular companies, and the nation's economy and labor market, but also for the country's long-term economic success and health. The labor certification system is structurally ill-suited to address either problem. There is, therefore, a gap in U.S. immigration policy.

Establishing a modest points-based selection program would allow lawmakers to fill this gap. Because the selection criteria of points-based programs are set by government officials, these programs can be adjusted over time to accommodate the evolving needs and interests of the state and the public interest, not just to fill jobs. And because their criteria for selection include factors other than employer sponsorship or a job offer, policymakers can use points programs to select candidates for permanent immigration with the kinds of skills, experience, and capabilities that they believe will contribute to the country's long-term success.

Moreover, by establishing this points program alongside the existing labor certification system, U.S. policymakers will be able to fill this gap while allowing each of these programs to remain tailored to their respective goals. The existing labor certification programs need not be altered to consider longer-term economic goals or interests beyond those of domestic employers, and the points program need not include factors whose inclusion is driven by questions of short-term employability.

### § 3 DETAILS OF PROPOSED PROGRAM

#### Selection Criteria and Point Values/Weights

Because the capacity to and likelihood of making these future contributions cannot be measured directly, our program—like all other immigration points programs—instead selects candidates based on a series of characteristics that are indirectly correlated with the likelihood of economic success and social integration of foreign workers.

Moreover, because our pilot program is meant to augment and not to replace the current U.S. employment-based immigration program, and given that the structure of the current labor certification and employer sponsorship program leads to the selection of foreign workers on the basis of short-term need, we have designed our points rubric (Table 1)—both in the selection of criteria and in the weights allocated to each—to select for individuals most likely to contribute to the success of the United States in the longer term.

In reviewing this points rubric, the reader should also notice another design choice: that of the scale and range of the possible points values. With any numerically scaled assessment, the choice of numerical scale is somewhat arbitrary. But in making a selection of which scale to use, one should aim for a scale that is both intuitively understandable and a range that is wide enough to accommodate fine distinctions and adjustments. With these guidelines in mind, we chose to set our maximum possible points value at 1,000. This maximum is a factor of ten, making scores calculated in relation to that maximum more easily understood at an intuitive level. Although 100 may be an even more intuitive total, and one we could have used given that all our current points allocations are reducible by a factor of ten, we opted for the larger 1,000-point maximum to give future lawmakers the ability to make finer adjustments and distinctions among factors in future revisions.

**Table 1:** Points Table (or “Rubric”) for Proposed Pilot Program

<b>Factors</b>		<b>Max. Points</b>	<b>Weight (as % of Max. Possible Total)</b>	<b>Points Allocation Guidelines</b>
<b>Education</b>	<b>Highest Degree Earned</b>	200	20%	Doctorate: 200 points Master’s: 150 points Bachelor’s: 100 points
	<b>U.S.-Based Degree Bonus:</b>	50	5%	>1 postsecondary degree earned from U.S. institution: 50 points
<b>Age</b>		100	10%	18 - 29 years of age: 100 points 30 years of age: 95 points 31 years of age: 90 points 32 years of age: 85 points 33 years of age: 80 points 34 years of age: 75 points 35 years of age: 70 points 36 years of age: 65 points 37 years of age: 60 points 38 years of age: 55 points 39 years of age: 50 points 40 years of age: 45 points 41 years of age: 35 points 42 years of age: 25 points 43 years of age: 15 points 44 years of age: 5 points >45 years of age: 0 points
<b>Language Proficiency</b>	<b>English Language Proficiency</b>	100	10%	Superior English: 100 points Proficient English: 80 points Competent English: 60 points
	<b>Other Language Proficiency</b>	50	5%	Superior 2nd Language: 50 points Proficient 2nd Language: 40 points Competent 2nd Language: 30 points
<b>Employability</b>	<b>Employment Experience</b>	150	15%	> 8 years: 150 points 5-8 years: 100 points 3-5 years: 50 points < 3 years: 0 points
	<b>Employment Experience within U.S. Bonus:</b>	50	5%	Currently employed in a skilled occupation by U.S.-based employer OR > 2 years’ experience working in a skilled occupation for a U.S.-based employer: 50 points
<b>Family Support</b>	<b>U.S. Resident Spouse/Partner or First-Degree Relative</b>	100	10%	Has a spouse/partner or first-degree relative U.S. citizen or permanent resident: 100 points

	<b>Accompanying Spouse/Partner or First-Degree Relative</b>	100	10%	Will be accompanied by spouse/partner or first-degree relative when moving to U.S.: 100 points
<b>Demographic Characteristics</b>	<b>Country of Origin Bonus</b>	50	5%	Is a national of a state designated a “developing country” by USAID: 50 points.
	<b>Gender Bonus</b>	50	5%	Is non-male: 50 points
<b>TOTAL POSSIBLE</b>		1000		

### Education

The first human capital factor we include is education. This factor contains two potential sources of points. The first is based on an applicant’s formal educational attainment, with applicants being granted 100, 150, or 200 points according to the highest post-secondary degree they attained. These points allocations are not additive, but rather given based on the highest post-secondary degree awarded. An applicant who has received both a bachelor’s degree and a master’s degree, for example, would receive 150 points.<sup>1</sup>

This factor is the most heavily weighted in our points rubric because education is both a key predictor of employability and a strong indicator of the kinds of positive psychological characteristics and pro-social soft skills, like adaptability and resilience, that help to foster long-term success.<sup>2</sup>

The second potential source of points under this factor is a small bonus of 50 points for an applicant who holds at least one post-secondary degree from a U.S.-based institution. We include this for two reasons: First, foreign workers who have attended college in the United States will likely have an easier time acclimating to the U.S. labor market. Second, it is in the interest of the federal government, both fiscally and in terms of global soft power, to encourage foreign students to attend U.S. colleges.

### Age

The second human capital factor we include is age. Candidates can be allocated up to 100 points for this

factor. Candidates who are between 18 and 29 years old when they begin the application process will be allocated the full 100 points. For each additional year of age beyond 29, a candidate will receive 5 fewer points. For example, a 30-year-old candidate will receive 95 points, a 31-year-old candidate will receive 90, and so on. Per this declining pattern, candidates aged 45 years or older will receive 0 points for this factor. Children under 18 receive no points.

We have allocated age a significant number of points in our proposed points rubric for several reasons. Research suggests that immigrants’ age at time of admission is a significant predictive factor in the likelihood and degree to which they will successfully integrate into the social and economic fabric of their new home state.<sup>3</sup> The allocation of points in this factor is arranged as a simple linear decline by age cohort because arriving in a host country at a younger age brings various benefits. The younger an individual is at the time of their arrival, the more flexible they tend to be in adapting to new economic and cultural surroundings.<sup>4</sup> Younger immigrants will also, on average, have greater positive fiscal effects because they have more working years ahead of them in which to pay taxes and more years until they draw on any public retirement funds. And for foreign workers whose native language is not English, flexibility and having a longer time horizon have some impact on language acquisition. Research suggests that immigration at an older age is associated with lower fluency in English, while English proficiency tends to improve the longer a foreign worker lives in an Anglophone host country.<sup>5</sup>

While these positive correlations justify favoring younger applicants, we opted to allocate the maximum number of points to a wide age range—between 18 and 29—and thus to set the threshold for declining points at 30. We have a few reasons for extending this favored age window over a decade into adulthood. Given that our proposed points program is aimed at highly skilled foreign workers, our points distribution for this factor should account for the time that it takes to earn one or more post-secondary degrees and/or accumulate skilled work experience. Further, even in their late 20s, the average candidate’s cognitive and social flexibility will have yet to decline significantly, and they will still have three or more decades of professional life ahead of them.

### Language Proficiency

The third human capital factor we include is linguistic proficiency. This factor contains two potential sources of points. We allocate 100 points according to an applicant’s degree of fluency in English and an additional 50 points according to their demonstrated proficiency in a language other than English.

#### *Proficiency in English*

We include a measure of English language proficiency among our points categories not out of a belief in the inherent importance of English or a nationalist pride in the language, but rather because fluency in a host country’s majority language has been found to be an important predictor of both short-term economic success and long-term social integration. Also, the United States is heavily reliant on English for many functions and those who are not proficient in English may have a harder time adapting. In the short term, foreign workers’ fluency in the prevailing language of their host state strongly influences their likely economic outcomes, not least of which is their ability to find and maintain skilled employment.<sup>6</sup> In addition to influencing the likelihood of workforce participation, linguistic fluency has also been shown to be strongly related to the pay foreign workers can command in the job market. Recent studies have found that foreign workers who are highly fluent in their host country’s majority language may receive up to 20% or, in some cases, up to 35%, higher salaries than their less-fluent counterparts.<sup>7</sup> In the longer term, fluency in the prevailing host state language is vital to foreign workers’ economic and societal integration, improving and

increasing job opportunities and facilitating social and political participation.<sup>8</sup>

While awarding points on the basis of English fluency has been controversial in past points program proposals in the United States, we believe it is still a worthwhile selection criteria because of its robust positive value. Whether this correlation is due to linguistic or cultural biases of host-country employers or to less nefarious causes, it is real and measurable.

That said, we acknowledge the structural biases that rewarding English proficiency brings with it, and the limitations of any measure of linguistic fluency.<sup>9</sup> And while it would be impossible to perfectly counterbalance those biases and limitations, we aim to reduce their effects in two ways: by (1) offering multiple ways of proving English fluency and (2) granting points for the degree of fluency in an applicant’s native language.

#### *Proficiency in a language other than English*

In addition to earning points for their degree of fluency in English, applicants may also earn points for their degree of fluency in one other language, including their own. While allocating points based on fluency in a language other than English may seem counterintuitive, it is not unprecedented among countries with points-tested immigration streams.<sup>10</sup> Rewarding applicants’ fluency in languages other than English will help to foster the creation of a culturally and linguistically diverse work force, an outcome that is vital to a variety of compelling U.S. interests.

In the economic sphere, the capacity of the United States to maintain its economic standing depends on the ability of U.S. firms to compete in a globalized market. The ability to fluently communicate with potential trade partners or colleagues abroad in their native tongues, while also being intimately familiar with cultural differences or pitfalls, is a vital form of human capital that could significantly influence the success or failure of a given worker’s firm. Within firms and working teams, cultural diversity may generate new ideas or new perspectives on existing problems, as people from different backgrounds may see solutions, problems, or connections that those from other backgrounds may not.<sup>11</sup> And having team members fluent in a variety of languages and cultures can help companies design brands

and messaging that will be clearly understood by foreign audiences and avoid embarrassing “brand blunders” caused by translation mistakes or unintended meanings.<sup>12</sup> Indeed, it has now become common practice among transnational companies to conduct “cultural-linguistic checks” on any new brands or marketing before they are released in a new market. These checks are expensive, requiring surveys of native speakers or consultations with specialized professional linguists—or hiring PR firms to perform these tasks. Having the ability to hire employees and team members with personal experience and language skill gained from living and working in a target market can allow companies to defray some of this cost by bringing this cross-cultural expertise in-house. This added value of linguistic and cultural fluency can be seen in studies of both U.S. and European job markets, with workers who have mastery of a foreign language earning up to three percent more than their monolingual counterparts.<sup>13</sup>

In the political and strategic arenas, fostering linguistic and cultural diversity among U.S. residents is similarly vital for U.S. national security and its capacity to project hard and soft power abroad. Recognizing this strategic need, the Defense Department has emphasized expertise in critical languages in its recruiting programs. Despite this, the U.S. military and intelligence services have struggled to find sufficient numbers of U.S. nationals with expertise in these languages.<sup>14</sup> To address this, the Defense Department has invested heavily in language training facilities for U.S. servicemembers.<sup>15</sup> Moreover, in 2008, Congress established the Military Accessions Vital to the National Interest (MAVNI)—a program designed to allow noncitizens with specialized language skills to enlist in the U.S. military.<sup>16</sup> While these investments and programmatic changes have improved the language skills shortfall, there is still unmet demand for additional native or fluent speakers of various mission-critical languages.

Finally, it makes sense to reward candidates’ fluency in their own native language because having high levels of fluency in one language may predict a broader capacity for language acquisition, thereby acting as an indicator of likely English proficiency in the future.<sup>17</sup>

### *Measuring fluency in English*

While various tests exist to test English fluency, the most appropriate one—given both the goals of our proposed

program and the likely demographics of the candidates that would pass through it—is the Test of English for International Communication (TOEIC). This assessment consists of two separate exams: the TOEIC Speaking and Writing Test and the TOEIC Listening and Reading Test. This assessment is both comprehensive enough and specific enough to provide a reliable indication of how well a candidate will be able to understand and communicate in English on the job. In examining all four dimensions of language fluency (reading, listening, writing, and speaking), it provides a multi-faceted assessment of English ability and fine-grained feedback for the candidate regarding specific skills they could improve. And the assessment materials themselves are tailored to the work environment, requiring subjects to perform common workplace tasks, including taking part in a conversation about sales and reading English-language manuals and technical materials.

The TOEIC is also established and reliable. Over 14,000 organizations across 160 countries currently use the TOEIC to assess current employees’ English fluency, to assess potential new employees, and to track the progress of employees in English-language usage.<sup>18</sup>

### *Measuring fluency in languages other than English*

Widely accepted exams of language proficiency already exist for many of the most commonly spoken languages in the world. For example, the American Council on the Teaching of Foreign Languages (ACTFL) has established versions of their Assessment of Performance toward Proficiency in Languages (AAPPL) exam—a fluency test that measures reading, writing, listening, and speaking skills—that can measure fluency in Arabic, Chinese, French, German, Korean, Portuguese, Russian, Spanish, Hindi, Italian, Japanese, and Thai.<sup>19</sup> Like the TOEIC, the AAPPL exam assesses all four dimensions of language fluency.<sup>20</sup>

The Defense Language Institute Foreign Language Center (DLIFLC) has developed tests for some less-commonly spoken languages.<sup>21</sup> The rating scales and scoring methods of any of these exams could be standardized using any of a number of existing scales designed to compare fluency evaluations across languages, including the Interagency Language Roundtable proficiency scale,<sup>22</sup> the Common European Framework of Reference for Languages,<sup>23</sup> and the ACTFL proficiency scale.<sup>24</sup> All of

these would be promising standards by which to standardize and compare knowledge of a second or third language for immigration purposes.

### *Alternative methods of establishing fluency*

Whatever metric or evidence of fluency ends up being adopted, the task of proving one’s fluency—in English or any other language—should not be made overly burdensome for either applicants or the immigration officials tasked with evaluating them. To this end, we propose that applicants seeking to prove their fluency in English or a second language should be allowed to do so either by taking a standardized language proficiency test *or* by presenting evidence that they have completed at least a three-year college degree in which the language being asserted was the principal language of instruction.

### Employability

The fourth human capital factor we include is employability. This factor contains two potential sources of points. The first is based on the number of years of experience in a skilled occupation. For purposes of this program, we define “skilled occupation” as used in the current H-1B visa program, meaning an occupation requiring at least a four-year degree or its equivalent. Applicants with more than eight years of experience in a skilled occupation will receive the maximum 150 points allocated to this factor. Applicants with between five and eight years’ experience will receive 100 points, those with between three and five years’ experience will receive 50 points, and candidates with fewer than three years’ experience in a skilled occupation will receive 0 points for this factor.

This factor is the second most heavily weighted factor in our points rubric, for two reasons: First, experienced workers generally make a more immediate contribution to their employer and to the broader economy than do less experienced workers. And experienced workers bring with them more intellectual capital, in the form of best practices and professional networks, than do less experienced workers. Second, building up years of sustained employment in a skilled profession requires at least some degree of the same psychological characteristics and social soft skills as those required to complete a post-secondary education.

The second potential source of points under this factor is a bonus of 50 points for applicants who are currently employed by a U.S.-based employer in a skilled occupation or who have had at least two years’ experience working for a U.S.-based employer in a skilled occupation. The term “skilled occupation” employed in the criteria for this small points category will also be defined as an occupation requiring a four-year degree or equivalent.

We include this bonus for two reasons. First, by deciding to employ a prospective foreign worker, a U.S.-based employer implicitly endorses that candidate’s credentials and the value of their human capital. Second, candidates with current employment in the United States or with an offer of employment upon their arrival have already surpassed one of the major hurdles in economic and social integration.

### Family Support

The fifth human capital factor we include is family support. This factor contains two potential sources of points. Candidates who have a spouse or an adult first-degree relative who is already residing in the United States as a citizen or lawful permanent resident will be granted 100 points. (The term “first-degree relative” denotes an individual’s parent, sibling, or adult child.) Candidates who, if selected for admission, will be accompanied by a spouse or one or more first-degree relatives will be granted 100 points. These two subcategories are additive, meaning that candidates who satisfy both of these stated criteria will receive 200 points.

We include these two measures of direct family support in our points rubric because having a personal support network is a key predictor of an individual’s long-term economic integration and personal well-being, and because family units are culturally important in the United States. While personal support networks are not limited to family members, candidates who will have a spouse or close family member with them in the United States will arrive with the foundations of a support network already in place. Having a partner or close relative nearby can act as a bulwark against social isolation and can provide a source of much-needed psychological, emotional, and practical support. The presence of a partner or close family member should be seen as a form of human capital because it can foster stability and bolster a foreign

worker's capacity to weather both the challenges and setbacks that accompany moving to the United States and adapting to a new social and work environment, and the longer-term aspects of human life that we all face.<sup>25</sup>

In addition to the ways in which including family supports as a factor in our points rubric might lead to better integration outcomes for the foreign workers selected under this program, including these kinds of family-friendly considerations in the program's selection criteria may make the United States a more attractive destination for skilled foreign workers choosing between potential destination states. In the words of researchers Harriet Duleep and Mark Regets, "highly educated immigrants have families too."<sup>26</sup> As such, in designing skilled immigration policies, we should remember that in deciding where to bring their talents and earning capacity, skilled foreign workers report weighing family concerns just as much as, if not more heavily than, factors like salary or professional advancement.<sup>27</sup>

Adopting policies that incentivize skilled foreign workers to bring their families with them when coming to the United States will also result in longer-term benefits. Broadly speaking, the children of parents with high levels of human capital tend to attain high levels of human capital themselves.<sup>28</sup> This tendency is well-documented and has been attributed to a number of different potential causal factors. Leaving aside the thorny issue of genetic or inherited capacity, much of the correlation between high levels of education in parents and higher rates of education in children can be attributed to socioeconomic and cultural factors. Highly educated parents may have more financial resources to devote to their children's education. And even in the absence of this financial advantage, these parents can pass on non-monetary intellectual capital—the cultural and practical understanding of academic culture—that will help their children navigate educational institutions.<sup>29</sup>

### Demographic Characteristics

The sixth and final factor we include is intended to offset some of the structural advantages falling to certain types of candidates that plague any purportedly meritocratic selection system. Under this factor, a small number of points will be allocated according to a candidate's country of origin and gender. In the former subcategory, nationals of a state currently on the U.S. Agency for International

Development (USAID)'s list of "developing countries"<sup>30</sup> will be granted 50 points. In the latter subcategory, female candidates will be granted 50 points. These two subcategories are additive, meaning that candidates who satisfy both criteria will receive 100 points.

We include these demographic factors because although contemporary points-based immigration systems that select candidates based on training and skills are more transparent and unbiased than prior systems, they are still prone to some degree of inequality and imbalance. Indeed, even when systems are facially neutral regarding the gender, race, or national origin of applicants, these systems can still lead to significantly disparate outcomes for women or those from lower-income nations. Women remain significantly underrepresented in both the applicant pools and admitted cohorts in highly skilled visa programs in countries throughout the OECD.<sup>31</sup> And these same systems are consistently more likely to admit individuals from richer countries than from poorer ones.<sup>32</sup>

Some degree of this disparity has been linked to specific design elements common to many skilled immigration programs, such as the use of a "shortage occupation list"<sup>33</sup> or defining "skilled employment experience" according to salary earned.<sup>34</sup> For these and other reasons, when designing our points program, we have opted not to include these policy elements.

That said, however, we acknowledge that our points program cannot fully avoid these problems of structural advantage and disparate outcomes. Any program that selects candidates based on human capital will contain structural biases, because not every potential applicant has equal access to the opportunities, resources, and institutions necessary to accumulate human capital. In many countries around the world, women do not have equal access to education or skilled employment, whether due to formal exclusion or cultural gender-based expectations.<sup>35</sup> Similarly, because of marked differences in educational institutions and size of skilled economic sectors across states, applicants from developing countries may face significant obstacles to gaining a degree from a globally recognized institution or finding skilled employment opportunities in their home countries.<sup>36</sup> In addition to these problems of unequal access, many scholars have argued that the inclusion of seemingly neutral factors like a candidate's age<sup>37</sup> or even the focus on "skilled" immigration itself may have the effect of

creating “winners and losers along these lines of identity.”<sup>38</sup>

It is important to address and counteract these kinds of structural issues to the extent possible, partly for reasons of fairness and partly to be consistent with the United States’ longstanding commitment to non-discrimination in both its domestic law and international agreements. Beyond these normative justifications, there are also strategic and utilitarian reasons to address disparities tied to gender and national origin. As discussed in the section above addressing the points allocated on the basis of language proficiency, there is significant economic and competitive value to fostering diversity in the workforce, at both the company and national levels. Thus, any skills-based visa selection program that disproportionately selects affluent males from developed countries would hurt U.S.-based firms, the U.S. economy, and the United States as a global leader in innovation and trade.

For all these reasons, we include in our proposal two points bonuses that are meant to at least partially counteract the structural disadvantages that women and nationals of developing countries often face when attempting to build their human capital. This policy design tool—bonuses based on demographics—is admittedly a blunt solution to a set of nuanced problems. But it is a step in the right direction.

## **Procedural Elements**

### **Administrative and Oversight Authority/Jurisdiction**

If the pilot program and related proposals presented in this report gain sufficient political support among U.S. lawmakers, that process would have to begin in Congress. We recommend that this implementing legislation be introduced and passed through Congress as a standalone bill, rather than as part of a comprehensive immigration reform package. We discuss this strategy in more detail later in this chapter.

Once enacted, the responsibility to implement and operate the pilot program would pass to the executive branch. Although authority over various aspects of U.S. immigration is currently divided among several executive agencies, we recommend granting operational authority over the pilot program to a single administrative agency. We make this recommendation on the grounds that this is

a relatively small pilot program, so there is no need to spread the administrative or logistical burden across agencies. Additionally, dividing administrative authority over this program among agencies would introduce unnecessary overlap, barriers, and transaction costs that would make the program less efficient and flexible. We believe that the agency most suited to manage the pilot program currently is U.S. Citizenship and Immigration Services (USCIS).

Regardless of which agency is granted responsibility over this program, that agency will need to work with other agencies that oversee related government issues. If Congress selects USCIS to operate the pilot program, for example, it would still need to liaise with other government agencies, such as the Department of Labor. Specifically, the Department of Labor should be granted the authority to compile lists of occupations to be classified as “highly skilled” for the purposes of the pilot program, to compile lists of occupations and job categories in which there are existing labor shortages, and to design the methodology employed in both of these tasks.

This cooperation and consultation would also have to extend to Congress. While implementation and operational responsibilities would be delegated to USCIS, that agency should not be granted unfettered authority to make changes to the pilot program. While the details of this division of authority would be worked out in the legislative drafting process, it could look something like the following. In addition to responsibilities related to regular operation of the pilot program, Congress might grant USCIS officials a degree of leeway in making small operational changes (e.g., adjusting points thresholds for each monthly draw according to trends in the candidate pool, setting and adjusting tiebreaker rules, adjusting points table category allocations by 10-15%). If USCIS wants to make any changes that would exceed this limited operational discretion, USCIS officials may propose those changes and they would need to be approved by an appropriate legislative gatekeeping body. We propose limiting this legislative review to the chairs and ranking members of immigration subcommittees, a majority of the members of the Senate and House immigration subcommittees, or some similar set immigration stakeholders and experts in the legislative branch.



Granting the administrative agency overseeing the pilot program a limited degree of authority to make changes may be seen as going against the prevailing wisdom in the policy literature. Others argue that for a points program to succeed, it must be “actively managed” by policymakers capable of adjusting the parameters of their points programs (the “attributes and points awarded”) when necessary to account for “changing economic and labor-market policy priorities” and to respond to problems or inconsistencies revealed by ongoing policy evaluations (such as “longitudinal data on selected immigrants’ economic outcomes”).<sup>39</sup> We agree that the pilot program should be actively managed, and that it must be flexible enough to allow for adjustment over time. However, unlike the Canadian and Australian points systems on which these experts base this recommendation, the pilot program laid out in this report is designed to focus on selecting individuals who will help to build the United States’ long-term human capital infrastructure, not on short-term labor market needs. Thus, given that there is no need for the officials tasked with operating the pilot program to adapt to a fast-changing labor market, we believe our pilot program can be successfully managed and adjusted over time, as needed, by administrative officials without requiring the wholesale discretion granted to immigration officials in the Australian and Canadian systems.

Under our recommended division of authority outlined above, this program would be sufficiently flexible to allow administrative officials to address minor issues of adjustment that might arise during implementation or the normal operation of this program without legislative consultation. This discretion would ensure that necessary adjustments can be made to keep this program operational. On the other hand, although limiting the authority of administrators to make significant changes may reduce the program’s flexibility, such limitations foster another quality commonly associated with points programs: transparency. By limiting the ease with which major changes can be made to the structure of our pilot program, our proposed division of authority encourages stability in program requirements over time. This stability would help to ensure that prospective immigrants, employers, and any other actors involved in the application process understand and can rely on the program’s rules, making the program more attractive to

high-quality applicants and more able to produce timely and predictable results.

### Data Collection and Evaluation

Our pilot program is designed to establish an immigration stream dedicated to selecting individuals who have the capacity to contribute to the long-term economic growth and overall societal health of the United States. Although we believe that our proposed program will succeed in this goal, all forecasts are fallible and the program’s parameters and procedures will need to be adjusted and fine-tuned. To make these kinds of changes, administrators and oversight bodies must have access to detailed and reliable information about the employment, economic, and societal outcomes of foreign workers admitted through this program.

To this end, we propose that the administrative agency overseeing the pilot program be required to gather data on the economic and social outcomes of candidates selected through the program. Data points that would need to be gathered include:

- High-level data about the operation of the pilot program, such as the number of candidates selected for entry through the pilot program each year, the parameters for each periodic draw from the candidate pool, the number of invitations to apply issued versus the number of applications actually submitted, and the rate of acceptance among applicants.
- Demographic data on candidates’ birthplace/nativity, age, educational qualifications, proposed occupations, and time spent in the United States before application or admission. These data points should be gathered and retained for all candidates who submit an expression of interest and are placed in the EOI pool. These data should allow for comparisons between the makeup of the overall EOI pool and the subsets of candidates invited to apply and those ultimately admitted.
- Outcome data on admitted foreign workers, including their workforce participation, what occupation they came to work in after admission to the United States, their geographic destinations, and the degree to which their actual employment matches their educational qualifications and past experience.

- Outcome data on various non-economic dimensions of integration, including social, civic and cultural aspects.<sup>40</sup>

The administrative agency tasked with implementing our pilot program could gather most of these operational and demographic data points by retaining and organizing internal administrative data generated by the EOI application management system. To generate reliable data on outcomes, however, the agency would need to conduct staged surveys of foreign workers admitted through this program.

These surveys could be modeled on the Continuous Survey of Australia's Migrants (CSAM) or Canada's Longitudinal Survey of Immigrants to Canada (LSIC). These large-scale, longitudinal surveys, described in the case study chapters above, ask questions about employment and integration of a sample of each incoming foreign worker cohort. Both surveys employ a staged survey strategy that involves issuing surveys to a selected sample in waves, with respondents being issued surveys at—for example—6 months, 18 months, and 42 months after arrival.

To ensure that the data gathered by the agency running our pilot program are useful in assessing and reassessing the elements of the program, we recommend that the survey and administrative data be linked and stored to allow researchers to disaggregate individuals according to demographic characteristics and conduct fine-grained comparisons of outcomes across different subgroups. Additionally, if possible, these data should link to data drawn from Census Bureau-administered surveys, including the decennial census and the American Community Survey.<sup>41</sup>

This dataset would be available, of course, to internal researchers working for the overseeing administrative agency. But the data should, as much as possible, also be made available to outside evaluators (e.g., external agencies, firms, or academics) and the public.

Because this dataset would involve record linkage, participants in the EOI pool and respondents to any subsequent surveys would need to give their consent to be included in the dataset. To protect the privacy of those candidates and admitted foreign workers whose information is included, the individual-level data should

be de-identified and anonymized as much as possible. To reduce the risk that individual records could be “re-identified,” the data storage protocols could employ privacy protection techniques such as deleting personally identifiable information, masked data-sharing (employing techniques such as list inflation, third-party linkage, or grouped linkage), or making fully linked data available only through secure data centers where researchers are permitted to analyze the data under controlled conditions.<sup>42</sup>

### Standing Advisory Board

In addition to having access to comprehensive and reliable data, administrators and lawmakers charged with overseeing our pilot program should also have ready access to expert advice on how to interpret the data, what policy changes could be made, and the effects that any such changes might have. We therefore recommend that Congress create a standing advisory board consisting of a variety of stakeholders in immigration policy, including policy experts in the economics, sociology, and public policy effects of immigration; civil servants with experience in administering the United States' and/or other countries' immigration systems; and representatives from professional associations, labor unions, and industry trade associations.<sup>43</sup>

This advisory commission should be established as an independent, non-partisan body to provide objective, evidence-based, professional advice and analysis to lawmakers and administrators. While the mandate of this commission could be limited to matters relating specifically to our pilot program, we recommend that the commission have a wider purview, allowing them to issue recommendations about any policy issues relating to U.S. immigration as a whole. This advisory board should be empowered to address issues or questions raised by lawmakers or administrators, and to issue advisory reports *sua sponte*.

Establishing this independent source of advice and analysis would provide at least two significant benefits: First, it would establish a uniform channel through which lawmakers and administrators, regardless of their political alignment, could seek advice that might help them avoid making policy changes that would have unintended and undesirable downstream effects. Second, being able to seek out evidence-based recommendations from an

independent panel may provide some degree of political separation for lawmakers and administrators, allowing policy reviews or adjustments to be cast more as technocratic exercises than as sites of partisan conflict.

While the United States currently lacks a standing commission on immigration, various analogous advisory bodies exist elsewhere in the federal government. For example, when debating monetary or trade policy, Congress and the executive branch rely—both for technical and political reasons—on research and recommendations made by the Federal Reserve Board and the International Trade Commission. And there exists significant support, among both current members of Congress<sup>44</sup> and advocates and experts in the broader immigration policy landscape,<sup>45</sup> for the creation of a similarly nonpartisan advisory commission to support policymaking in the area of immigration.

#### Periodic Review Process

To ensure that lawmakers and administrators charged with overseeing the pilot program have access to data and advice and put these resources to use, the legislation implementing this program should include requirements and procedural guidelines for periodic reviews of this program's effectiveness and efficiency. These periodic reviews would require the administrative agency running the pilot program to prepare and submit a report for Congressional oversight every two years. These reports would provide an overall assessment of the functioning of the program based on compilations and analyses of available administrative and survey data, as well as proposals for any revisions or adjustments that administration officials believe are required to improve the operation or outcomes of the program.

Building in a requirement for regular reviews, as well as specific standards and guidelines that should be employed, has a number of advantages. Among other things, it would act as a structural reminder of the provisional and experimental nature of the pilot program. By requiring lawmakers and administrators to regularly ask questions about the effectiveness of this program and to think about ways in which the program's elements could be adjusted or corrected, this built-in review process makes it more likely that this program will in fact be improved over time through a process of iterative reform.

## § 4 EXPLANATIONS OF DESIGN CHOICES

### Why Implement Our Program as a Pilot and Not a Permanent New Visa Track?

Reworking the entire economic stream of the U.S. immigration system from one that is entirely employer-driven to one that is government- and supply-driven would be a massive undertaking and would require a great deal of political capital and agreement. By contrast, creating a relatively small pilot program would require much less effort and political capital.

Furthermore, although this kind of selection system has been well-tested elsewhere in countries that share many characteristics with the United States, this does not mean that this system can be "imported" wholesale or that it will have the same outcomes and effects that it has in our case study nations. Thus, testing out this kind of selection system through a small pilot program would generate valuable data regarding outcomes and effects in the U.S. context and allow U.S. policy makers who support scaling up this kind of program to fine-tune and address "teething" issues before a larger-scale roll-out.

### Why a Single Application Stream?

The points-based selection systems established in Canada and Australia are used to manage multiple visa programs or visa subcategories. We believe that the points-based program we propose in this report could be adapted relatively easily to accommodate multiple visa streams should lawmakers decide to do so.

For the purposes of this proposal, though, we opted to keep our focus narrow, laying out a program aimed only at high-skilled foreign workers. In the interest of simplicity and clarity, we refrained from being too expansive in the goals addressed or fine-grained in the distinctions made.

If this program proves successful enough that lawmakers would like to expand it, the next step we recommend would be the addition of a stream aimed at medium-skilled workers in foreign trades.

## **Why Allocate Permanent Visas Rather Than Temporary/Provisional Visas?**

Among countries that employ points-based immigrant selection systems and have updated their skilled immigration policies in recent years, there has been a trend toward an increased use of temporary or provisional visas. This trend represents a departure from the norm. Traditionally, points programs have been employed to allocate permanent employment visas. The evidence from these earlier points programs suggest that, in the long term, individuals with the kinds of human capital characteristics we will be selecting for tend to exhibit high levels of employment, attain high salaries over their career, and thus tend to contribute to their host countries' labor markets and tax revenues. Given the depth of this evidence, and our resultant confidence that the kinds of highly educated, well-qualified individuals our program will select for will contribute to the economic and societal good of the United States, there is no particular need to place administrative hurdles in front of them.

We opted to follow this older pattern and design our pilot program around a set of 50,000 permanent visas for a number of reasons. First, because our program focuses on selecting individuals who can contribute to the long-term success of the United States, employing temporary or provisional visas would make little sense. Second, we believe there is no compelling reason to impose the additional cost and uncertainty that come with provisional or two-step visa programs on the high-skilled foreign workers selected under our program. By contrast, by sparing these foreign workers this unnecessary administrative burden and offering them long-term stability, we free their time and attention and allow them to get on with making their contributions to the United States and embedding themselves in our society. Third, from the perspective of the global race for talent, the offer of permanent residence in the United States without needing to attain any provisional or temporary visa beforehand would be a significant "pull factor" that would make the United States that much more attractive compared to our global competition.<sup>46</sup>

## **Why 50,000 Green Cards?**

In deciding on the scale of our proposed points program, we recommend 50,000 green cards annually largely because this would make our pilot program roughly the

same size as the current diversity visa lottery. By adopting this scale, patterning the size of our program on an already existing small visa program, we aim to make our proposed program large enough to be a reliable proof of concept but also small enough to be politically feasible.

## **Why Employ a Points-Based Selection Mechanism?**

Points-based selection mechanisms have long been lauded by immigration policy experts for their effectiveness and efficiency. Additionally, these systems have a series of procedural advantages, "streamlining the immigration process and yielding transparent, objective, and flexible criteria for selecting skilled immigrants."<sup>47</sup>

## **Why Adopt an "Expression of Interest" Application System?**

As explained above, we recommend that our pilot program be managed using a two-step expression of interest (EOI) system like those used in Canada and Australia. We have a number of reasons for making this recommendation. Two-step EOI systems process applications more efficiently and quickly, reduce administrative burdens on immigration officials and applicants, and reduce the likelihood of application processing backlogs.

After adopting their EOI systems, the average processing times for immigration applicants in both Canada and Australia dropped markedly. Currently, successful immigration candidates can expect to have their applications processed in less than six months. That marks a significant improvement over the years-long processing times such applicants had to endure under both countries' previous systems.<sup>48</sup> Administrators for these programs have been able to achieve these processing times partly by adjusting the size and frequency of draws, calibrating the volume of applications to be examined to match the current processing capacity of immigration officers.

Administrative burdens are further lowered under EOI systems as compared to older one-step application systems because any EOI profiles that have not been selected before the set profile expiration date are automatically deleted. This automatic clearing function serves to relieve immigration officers of the administrative burdens that would have been associated

with processing applications from candidates that would ultimately be rejected as underqualified.

In considering whether to adopt an EOI system or the older one-step selection system, U.S. policymakers should treat Canada’s and Australia’s decision to adopt EOI systems, and to maintain them in the years since, as significant evidence in favor of selecting such a system. In both countries, transitioning to an EOI system from the older one-step selection systems involved revamping or retrofitting existing systems, and so entailed massive economic, political, and logistical costs associated with designing and implementing a new application system; retraining immigration personnel; and widespread litigation from current applicants. The fact that both states opted to bear these costs and go ahead with the transition to an EOI system suggests that they believed that the efficiency, flexibility, and cost benefits of this newer approach were worth it. Given that the United States does not have an existing points system that would need to be revamped or adapted, it could reap the “benefits of backwardness”<sup>49</sup>—benefitting from the costly experiences of its peer countries without incurring any of the innovation or retrofitting costs that those countries had to pay.

## § 5 EXPLANATION OF POLITICAL/STRATEGIC CHOICES

### Why Advocate for a Standalone Bill?

We recommend that Congress implement our pilot program in a standalone piece of legislation for several reasons:

First, we believe that in the current atmosphere of political polarization and legislative gridlock, comprehensive immigration reform seems less likely than ever.<sup>50</sup> The rocky reception to the 2019 RAISE Act bill indicates that the parties are even further from a negotiated compromise than they were in 2013, when the Senate passed a comprehensive immigration reform bill<sup>51</sup> that died in the House.<sup>52</sup>

Second, although this fractious political atmosphere may make it effectively impossible to build a broad enough coalition of support to pass a comprehensive immigration package, we believe that it may be possible to cobble together sufficient support to pass certain narrow reforms that address issues in a way that can be supported by groups and ideological positions across the political spectrum. This is also an issue on which the American public broadly agrees. Roughly eight in ten U.S. adults surveyed in a January 2019 Pew Research Center poll supported policies that “encourag[e] highly skilled people to immigrate and work in the U.S.”<sup>53</sup> This support is consistent with results from other polls conducted over the last decade showing substantial public approval for increasing high-skilled immigration to the United States.<sup>54</sup>

Third, we believe that getting something done is better than getting nothing done. Furthermore, we believe that the act of passing any immigration reforms, however narrow or incremental, might help to break the legislative logjam and lay the political and strategic foundations for further improvement.

Fourth, we believe that enacting reforms that specifically address skilled immigration could be a particularly useful first step in the process of overall immigration reform. Based on survey evidence collected in Canada and the United States, we believe that an increase in high-skilled immigration could help to change the perception among U.S. citizens toward immigration generally. Repeated surveys of the Canadian and Australian electorate’s views on immigration show higher levels of support for immigration, and that this positive evaluation of immigration is due in large part to the large proportion of immigration to those countries that is dedicated to high-skilled employment-based immigration. Based on this evidence, we believe that enacting a standalone piece of legislation that not only admits 50,000 additional skilled, trained and educated foreign workers into the United States but does so using a transparent and open selection process would be a useful step toward changing domestic attitudes about immigration.

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<sup>1</sup> For a discussion of some of these challenges and the likely effects they will have on the U.S. economy, see Harry J. Holzer, “Immigration and the U.S. Labor Market: A Look Ahead,” IZA

Discussion Papers (Bonn, Germany: IZA—Institute of Labor Economics, January 2020).

<sup>2</sup> Harry J. Holzer, 11.

<sup>3</sup> The United States has two current visa programs, EB-1A and O-1, in which candidates are selected on the basis of their extraordinary skills or abilities and which are not aimed at (and do not require proof of) filling a gap in the U.S. labor market. But these visa programs are numerically quite small and are not explicitly aimed at building human capital.

<sup>1</sup> Candidates who have received a degree from an institution from outside the United States would need to have this degree verified by a third-party credential evaluation service, such as those that make up the membership of the National Association of Credential Evaluation Services. Candidates should be given some degree of guidance and, if necessary, financial support in this credential verification process because research into immigration outcomes suggests that effective recognition of foreign credentials is vital for preventing the problem of skills mismatching and brain waste. This research suggests that policies that facilitate candidates' efforts to have their foreign credentials properly recognized may improve wages, job satisfaction, and labor market integration. See Marco Pecoraro and Philippe Wanner, "Does the Recognition of Foreign Credentials Decrease the Risk for Immigrants of Being Mismatched in Education or Skills?," in *Migrants and Expats: The Swiss Migration and Mobility Nexus*, ed. Ilka Steiner and Philippe Wanner (Cham: Springer International Publishing, 2019), 161–86, [https://doi.org/10.1007/978-3-030-05671-1\\_7](https://doi.org/10.1007/978-3-030-05671-1_7).

<sup>2</sup> For example, a 2013 study found that students' adaptability, resilience, and other dimensions of their capacity to respond to uncertainty and novel circumstances were strong predictors of their academic and non-academic success. See Andrew J. Martin et al., "Adaptability: How Students' Responses to Uncertainty and Novelty Predict Their Academic and Non-Academic Outcomes.," *Journal of Educational Psychology* 105, no. 3 (August 2013): 728–46, <https://doi.org/10.1037/a0032794>. Given these findings that students with higher levels of adaptability, resilience, and other psychological characteristics tend to have higher levels of academic success, it is reasonable to suppose that many if not most individuals with higher levels of academic success—e.g., by completing a tertiary or graduate degree—would likely score highly on psychological measures of adaptability and resilience. Of course we cannot reverse this causal arrow with complete certainty, but we believe this inductive supposition is at least a reasonable hypothesis. Similarly, a number of studies have found that certain forms of emotional intelligence are significantly and positively associated with respondents' academic achievement, allowing us to make at least a tentative assumption that individuals with high levels of academic achievement may have a higher probability of exhibiting higher than average levels of emotional intelligence. See, e.g., Harsha N. Perera and Michelle DiGiacomo, "The Relationship of Trait Emotional Intelligence with Academic Performance: A Meta-Analytic Review," *Learning and Individual Differences* 28 (December 2013): 20–33, <https://doi.org/10.1016/j.lindif.2013.08.002>. (A meta-analysis of 40 prior published studies on the link between emotional

intelligence and academic performance, finding robust evidence that emotional intelligence is a valid predictor of academic performance). Further research may find a similar relationship between the positive psychological and attitudinal traits laid out above and the attainment of foreign language fluency or years of skilled work experience.

<sup>3</sup> See Bjorn Anders Gustafsson, Hanna Mac Innes, and Torun Österberg, "Age at Immigration Matters for Labor Market Integration—the Swedish Example," *IZA Journal of Development and Migration* 7, no. 1 (December 2017): 1, <https://doi.org/10.1186/s40176-017-0087-1>. See also Joseph Schaafsma and Arthur Sweetman, "Immigrant Earnings: Age at Immigration Matters," *Canadian Journal of Economics/Revue Canadienne D'Économique* 34, no. 4 (November 2001): 1066–99, <https://doi.org/10.1111/0008-4085.00113>.

<sup>4</sup> Studies on this tendency have attributed this flexibility to a variety of factors, including higher levels of cognitive flexibility, less entrenched work or social habits, a greater willingness or ability to accept less-desirable jobs, or age-related bias against older workers. See, e.g., Gustafsson, Mac Innes, and Österberg, "Age at Immigration Matters for Labor Market Integration—the Swedish Example."

<sup>5</sup> See Barry R. Chiswick and Paul W. Miller, "Immigration, Language and Multiculturalism in Australia," *The Australian Economic Review* 32, no. 4 (December 1999): 369–85, <https://doi.org/10.1111/1467-8462.00124>. See also Barry R. Chiswick and Paul W. Miller, "English Language Fluency among Immigrants in the United States," *Research in Labor Economics* 17 (1998): 151–200.

<sup>6</sup> Ana M. Ferrer, Garnett Picot, and William Craig Riddell, "New Directions in Immigration Policy: Canada's Evolving Approach to the Selection of Economic Immigrants," *International Migration Review* 48, no. 3 (September 2014): 850, <https://doi.org/10.1111/imre.12121>. (Writing that, among skilled immigrants to Canada, those with "good language skills in English or French can much more easily convert their education to earnings than those with poor skills.")

<sup>7</sup> See Barry R. Chiswick and Paul W. Miller, "International Migration and the Economics of Language," in *Handbook of the Economics of International Migration*, ed. Barry R. Chiswick and Paul W. Miller, 2014, 257–63. (Finding that higher levels of English fluency among foreign workers in Anglophone countries is associated with a wage premium of up to 20%.) See also Alicia Adserà and Mariola Pytliková, "Language and Migration," in *The Palgrave Handbook of Economics and Language*, ed. Victor Ginsburgh and Shlomo Weber, 2016, 353–61. (Discussing the results of various analyses of the effects of fluency in the host-country language upon foreign workers' earnings, showing increases of between 5 and 35%.) Similar wage effects of fluency have been shown in a range of other studies. See, e.g., Barry R. Chiswick, "Speaking, Reading, and Earnings among Low-Skilled Immigrants," *Journal of Labor Economics* 9, no. 2 (April 1991): 149–70,

<https://doi.org/10.1086/298263>; Anthony P. Carnevale, Richard A. Fry, and B. Lindsay Lowell, "Understanding, Speaking, Reading, Writing, and Earnings in the Immigrant Labor Market," *American Economic Review* 91, no. 2 (May 1, 2001): 159–63, <https://doi.org/10.1257/aer.91.2.159>; Victor Ginsburgh and Shlomo Weber, *How Many Languages Do We Need?: The Economics of Linguistic Diversity* (Princeton; Oxford: Princeton University Press, 2011); Bernt Bratsberg, Torbjørn Hægeland, and Oddbjørn Raaum, "Immigrant Skills and Employment: Cross-Country Evidence from the Adult Literacy and Life Skills Survey," Statistics Norway Research Department Discussion Papers, January 2013, <https://ssb.brage.unit.no/ssb-xmlui/handle/11250/2628013>.

<sup>8</sup> See, e.g., Ingo Isphording, "What Drives the Language Proficiency of Immigrants?," *IZA World of Labor*, 2015, <https://doi.org/10.15185/izawol.177>.

<sup>9</sup> Anna Katherine Boucher, "How 'skill' definition affects the diversity of skilled immigration policies." *Journal of Ethnic and Migration Studies* (2019): 1-18, 7.

<https://doi.org/10.1080/1369183X.2018.1561063>. ("Language testing can raise the spectre of ethno-linguistic discrimination within skilled immigration selection because it is clearly easier for native speakers to gain access than foreign language speakers.")

<sup>10</sup> Australia's points test for the 189, 190, and 489 visas also allocates points on the basis of a candidate's fluency in any "credentialled community language." See Australia Department of Home Affairs, "Points Table for Skilled Nominated Visa (Subclass 190)," accessed June 11, 2020, <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/skilled-nominated-190/points-table>. These languages include Mandarin, Cantonese, Hindi, Nepali, Bangla, and Tamil, along with more than 50 others. "NAATI Points for Migration | Registered Migration Australia | Immigration Australia," Registered Migration Australia, accessed June 11, 2020, <http://rmaustralia.com/naati-migration-points.html>. To earn these points, candidates must take and pass an accreditation test set by the National Accreditation Authority for Translators and Interpreters (NAATI). While NAATI's accreditation tests are designed to certify professional interpreters and translators, potential migrants who pass a NAATI test do not need to work in translation or interpreting to receive these points. As such, this provision serves not merely to facilitate the entry of skilled professional translators, but also to foster a broad range of linguistic capabilities among foreign workers in Australia. Canada also awards points on the basis of fluency in languages other than English. See Organisation for Economic Cooperation and Development (OECD). *Recruiting Immigrant Workers: Canada 2019*, 80. Paris: OECD Publishing, 2019. <https://doi.org/10.1787/4abab00d-en>. (Describing how Canada's CRS points rubric allots 136 points for proficiency in one of the two official languages (English or French) and an additional 24 points for those candidates proficient in the second official language.) Admittedly, Canada's policy of awarding points

based on fluency in a second language is slightly different from what we are proposing, as Canada only awards points for English and French and thus is likely motivated less by an interest in fostering linguistic diversity broadly construed and more by an interest in boosting candidates fluent in both of Canada's two official languages.

<sup>11</sup> On the effects of diversity on innovation, see Alesina Alberto, Enrico Spolaore, and Romain Wacziarg. "Economic Integration and Political Disintegration." *American Economic Review* (2000): 1276–1296. <https://doi.org/10.1257/aer.90.5.1276>. See also William R. Kerr and William F. Lincoln, "The Supply Side of Innovation: H-1B Visa Reforms and U.S. Ethnic Invention." *Journal of Labor Economics* 28, no. 3 (2010): 473-508. <https://doi.org/10.1086/651934>. See also Giovanni Peri, Kevin Shih, and Chad Sparber, "STEM Workers, H-1B Visas, and Productivity in U.S. Cities." *Journal of Labor Economics* 33, no. S1 (2015): S225-S255. <https://doi.org/10.1086/679061>.

<sup>12</sup> The term "brand blunder" refers to a marketing or branding mistake in which a product's name or a marketing slogan that is innocuous in a company's home language has unintended negative or even obscene denotations or connotations in one or more foreign languages or cultures. See Rob Gray, *Great Brand Blunders: The Worst Marketing and Social Media Meltdowns of All Time ... and How to Avoid Your Own*, 2014. Famous examples of such cross-linguistic or cross-cultural brand blunders include: Toyota's having to re-badge its "MR-2" sports car as just "MR" in French speaking countries because of the similarity between the spoken "MR deux" and "merde", a slang term for excrement; Mitsubishi Motors' renaming of its "Pajero" SUV in Spanish-speaking countries because the original name was found to be a slang term for a sexual act; the Kellogg cereal company's decision to change the name of its "Bran Buds" cereal in Sweden because the original name meant "grilled farmer" in Swedish; and Wang Computing's decision to drop its motto "Wang Cares" in British markets because, to British ears, it sounded too close to "wankers." For discussions of these examples, see Jian Sang and Grace Zhang, "Communication across Languages and Cultures: A Perspective of Brand Name Translation from English to Chinese," *Journal of Asian Pacific Communication* 18, no. 2 (2008): 225–46, <https://doi.org/10.1075/japc.18.2.07san>; Sang and Zhang; Jean-Claude Usunier and Janet Shaner, "Using Linguistics for Creating Better International Brand Names," *Journal of Marketing Communications* 8, no. 4 (December 2002): 211–28, <https://doi.org/10.1080/13527260210146000>; Pinfan Zhu, "Cross-Cultural Blunders in Professional Communication from a Semantic Perspective," *Journal of Technical Writing and Communication* 40, no. 2 (April 2010): 179–96, <https://doi.org/10.2190/TW.40.2.e>. The issue of offensive or negative cross-linguistic meanings is common enough that one marketing firm, Lexicon, has gone so far as to build a "Profanity Check App," an iOS and Android app that product managers can use as a "first step" check for potential new brand names—but they recommend this be followed up by "comprehensive

linguistic checks” involving consultation with native speakers. See Lexicon Branding, “Brand Name Profanity Checker Application,” May 15, 2015, <https://www.lexiconbranding.com/media-1/profanity-checker-app>.

<sup>13</sup> See Albert Saiz and Elena Zoido, “Listening to What the World Says: Bilingualism and Earnings in the United States,” *Review of Economics and Statistics* 87, no. 3 (August 2005): 523–38, <https://doi.org/10.1162/0034653054638256>; Donald R. Williams, “Multiple Language Usage and Earnings in Western Europe,” *International Journal of Manpower* 32, no. 4 (July 12, 2011): 372–93, <https://doi.org/10.1108/01437721111148513>.

<sup>14</sup> See United States Defense Science Board, “Enhancing Adaptability of U.S. Military Forces” (U.S. Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, 2011), 57, <https://www.hsdl.org/?view&did=10600>. (Describing the Defense Department’s attempts to “recruit and enlist members who already had language skills,” and the difficulty it has encountered in doing so.)

<sup>15</sup> United States Defense Science Board, 57.

<sup>16</sup> See Muzaffar Chishti, Austin Rose, and Stephen Yale-Loehr, “Noncitizens in the U.S. Military” (Washington, DC: Migration Policy Institute, May 2019), <https://www.migrationpolicy.org/research/noncitizens-us-military-national-security-concerns-recruitment-needs>.

<sup>17</sup> Students’ level of fluency and literacy in their native language has been shown to be a strong predictor of their later aptitude for foreign-language acquisition. See Richard L. Sparks et al., “Native Language Predictors of Foreign Language Proficiency and Foreign Language Aptitude,” *Annals of Dyslexia* 56, no. 1 (March 2006): 129–60, <https://doi.org/10.1007/s11881-006-0006-2>. Additionally, achieving fluency in more than one language has been shown to improve the ability to learn additional new languages in the future. See Richard L. Sparks, Leonore Ganschow, and Jon Patton, “Prediction of Performance in First-Year Foreign Language Courses: Connections between Native and Foreign Language Learning,” *Journal of Educational Psychology* 87, no. 4 (1995): 638–55, <https://doi.org/10.1037/0022-0663.87.4.638>; Gayane Meschyan and Arturo Hernandez, “Is Native-Language Decoding Skill Related to Second-Language Learning?,” *Journal of Educational Psychology* 94, no. 1 (March 2002): 14–22, <https://doi.org/10.1037/0022-0663.94.1.14>.

<sup>18</sup> See Educational Testing Service, “The TOEIC Program (For Organizations),” accessed June 10, 2020, <https://www.ets.org/toEIC/organizations>.

<sup>19</sup> See American Council on the Teaching of Foreign Languages, “ACTFL Assessment Of Performance Toward Proficiency In Languages,” accessed June 10, 2020, <https://www.actfl.org/assessment-professional-development/assessments-the-actfl-testing-office/aappl>.

<sup>20</sup> American Council on the Teaching of Foreign Languages.

<sup>21</sup> The Defense Language Institute Foreign Language Center (DLIFLC) recently upgraded its language testing programs, developing tests for less common languages that have been deemed “mission-critical” because of their relevance to U.S. defense interests around the globe. United States Defense Science Board, “Enhancing Adaptability of U.S. Military Forces,” 2011, 57.

<sup>22</sup> See Interagency Language Roundtable, “Interagency Language Roundtable Language Skill Level Descriptions,” accessed June 10, 2020, <https://www.govtilr.org/Skills/ILRscale2.htm>.

<sup>23</sup> See Council of Europe Language Policy Programme, “Common European Framework of Reference for Languages: Learning, Teaching, Assessment,” accessed June 10, 2020, [https://www.coe.int/en/web/language-policy/home?e1\\_en.asp](https://www.coe.int/en/web/language-policy/home?e1_en.asp).

<sup>24</sup> See American Council on the Teaching of Foreign Languages, “ACTFL Assessment Of Performance Toward Proficiency In Languages.”

<sup>25</sup> While not universal, there are a number of precedents among existing and past points programs for the inclusion of points awarded on the basis of a candidate’s family supports. At various times, Canada’s points system has granted a significant share of points on the basis of the presence of an adult family member already living in Canada. In fact, under its original 1967 points system, Canada granted 35 to 50 points for the presence of a family member—a share that could and did tip the balance for many applicants. See Asha Kaushal, “Do the Means Change the Ends? Express Entry and Economic Immigration in Canada,” *Dalhousie Law Journal*, 2019, 192. While the point share was later reduced, the Canadian points system continued to allocate points in one way or another to candidates with Canadian resident family members or those applying with a spouse. For a discussion of the various ways in which Canada’s points system rewarded applicants/candidates for having “family support” across its five decades of existence, see Alan G. Green and David A. Green, “Canadian Immigration Policy: The Effectiveness of the Point System and Other Instruments,” *The Canadian Journal of Economics* 28, no. 4b (November 1995): 1006, <https://doi.org/10.2307/136133>. Additionally, a family support factor was included in the 2013 Border Security, Economic Opportunity, and Immigration Modernization Act passed by the U.S. Senate. See U.S. Congress, Senate, *Border Security, Economic Opportunity, and Immigration Modernization Act of 2013*, S.744, 113th Cong., 1st sess., introduced in Senate April 16, 2013.

<sup>26</sup> Harriet Duleep et al., “Family-Friendly and Human-Capital-Based Immigration Policy,” *IZA World of Labor*, 2017, 6, <https://doi.org/10.15185/izawol.389>.

<sup>27</sup> See Nirmala Kannankutty and Joan Burrelli, “Why Did They Come to the United States? A Profile of Immigrant Scientists and Engineers” (National Science Foundation, 2007),



[https://www.fosterglobal.com/policy\\_papers/WhyDidTheyComeToTheUS.pdf](https://www.fosterglobal.com/policy_papers/WhyDidTheyComeToTheUS.pdf).

<sup>28</sup> See National Research Council, *Beyond the Market: Designing Nonmarket Accounts for the United States* (Washington, D.C.: National Academies Press, 2005), 92, <https://doi.org/10.17226/11181>. (Reporting that parents with more human capital are “more productive not only in the market, but also in fostering the development of their children’s human capital.”)

<sup>29</sup> See Teresa Abada and Eric Y. Tenkorang, “Pursuit of University Education among the Children of Immigrants in Canada: The Roles of Parental Human Capital and Social Capital,” *Journal of Youth Studies* 12, no. 2 (April 2009): 201, <https://doi.org/10.1080/13676260802558870>. (Finding that “parental university education is indeed important in obtaining a university education among the children of immigrants,” theorizing that this is partly because “educated parents have the financial and non-monetary resources to invest in their children’s abilities early on, inevitably placing them on track not only for better school performance but also to pursue university education.”) See also Miles Raymond Corak, “Are the Kids All Right?: Intergenerational Mobility and Child Well-Being in Canada” (Statistics Canada, Analytical Studies Branch, 2001), <https://www150.statcan.gc.ca/n1/pub/11f0019m/11f0019m2001171-eng.pdf>.

<sup>30</sup> United States Agency for International Development (USAID), “List of Developing Countries: A Mandatory Reference for ADS Chapter 310,” February 6, 2012, <https://www.usaid.gov/sites/default/files/documents/1876/310maa.pdf>.

<sup>31</sup> Anna Boucher, “Female High-Skilled Migration,” in *High-Skilled Migration: Drivers and Policies*, ed. Mathias Czaika, First edition (United Kingdom: Oxford University Press, 2018), 78. (Giving the example of the pool of applicants granted a visa through Australia’s Permanent Skilled Independent Visa stream in 2011, of which only 32% were female.)

<sup>32</sup> See Anna Katherine Boucher, “How ‘Skill’ Definition Affects the Diversity of Skilled Immigration Policies,” *Journal of Ethnic and Migration Studies*, February 13, 2019, 11, <https://doi.org/10.1080/1369183X.2018.1561063>.

<sup>33</sup> See Lucie Cerna and Mathias Czaika, “European Policies to Attract Talent: The Crisis and Highly Skilled Migration Policy Changes,” in *High-Skill Migration and Recession Gendered Perspectives*, ed. Anna Triandafyllidou and Irina Isaakyan (London: Palgrave Macmillan UK :Imprint: Palgrave Macmillan, 2016), 38. (“Highly qualified female migrants employed in highly skilled occupations represent only a small share of shortage occupations... [some of this] occupational segregation, that is, the preponderance of male migrants in highly skilled occupations, is in part a reflection of the fact that European immigration policies tend to favour medical, high-level management, engineering, information technology and

scientific research skills, which are in occupations that are still predominantly chosen by (migrant) men”).

<sup>34</sup> Lucie Cerna and Mathias Czaika, 34. (Describing how “female high-skilled migrants are disadvantaged” by policies determining skill according to salary levels because “women tend to earn less than men and also work in less well-paid occupations (such as the health-care and education sectors).”)

<sup>35</sup> Stuart Tannock, “Points of Prejudice: Education-Based Discrimination in Canada’s Immigration System,” *Antipode* 43, no. 4 (September 2011): 1330–56, <https://doi.org/10.1111/j.1467-8330.2010.00864.x>.

<sup>36</sup> See Lesleyanne Hawthorne, “The Growing Global Demand for Students as Skilled Migrants” (Washington, D.C.: Migration Policy Institute, November 2008), <https://www.migrationpolicy.org/research/growing-global-demand-students-skilled-migrants-0>.

<sup>37</sup> Anna Boucher, “How ‘Skill’ Definition Affects the Diversity of Skilled Immigration Policies,” 65. (Detailing how skilled visa programs that reward younger applicants tend to disadvantage women because, on the whole, women are more likely to have to accept part-time positions or delay their career progression due to expectations that they shoulder a greater share of the informal labor associated with child-rearing and caring for family members.)

<sup>38</sup> Anna Boucher and Lucie Cerna, “Current Policy Trends in Skilled Immigration Policy,” *International Migration* 52, no. 3 (June 2014): 21–25, <https://doi.org/10.1111/imig.12152>.

<sup>39</sup> Demetrios G Papademetriou and Kate Hooper, “Competing Approaches to Selecting Economic Immigrants: Points-Based vs. Demand-Driven Systems” (Migration Policy Institute, 2019), 4.

<sup>40</sup> National Academies of Sciences, Engineering, and Medicine, *Data on Integration of Immigrants into American Society* (Washington, D.C.: National Academies Press, 2015), 413, <https://doi.org/10.17226/21746>. (“The many dimensions of integration (social, economic, political, civic, cultural) require different contextual, family/household, and individual-level data.”)

<sup>41</sup> This data alignment could be conducted according to existing protocols that allow Internal Revenue Service data to be compared with Census Bureau data. See National Academies of Sciences, Engineering, and Medicine, 431. (“Matched individual-level records from Decennial Censuses (and the ACS) with income data from Internal Revenue Service and the Social Security Administration would allow for longitudinal studies of the socioeconomic progress of immigrants in American society and allow for the measurement of both intracohort change and intercohort (for cohorts based on time of arrival in the United States) change for successive waves of immigrants.”)

<sup>42</sup> For more information on these and other data linkage privacy protection practices, see Government Accountability Office,

“Record Linkage and Privacy” (Washington, D.C.: United States General Accounting Office, April 2001), <http://www.gao.gov/new.items/d01126sp.pdf>. See also United States Defense Science Board, “Enhancing Adaptability of U.S. Military Forces” (U.S. Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, 2011), 57, <https://www.hsdl.org/?view&did=10600>.

<sup>43</sup> We are hardly the first to recommend the creation of a “standing advisory board” for immigration policy, or a “permanent immigration commission.” For a detailed and insightful discussion of the value of establishing a permanent and independent advisory body for immigration policy, see Demetrios G Papademetriou et al., “Harnessing the Advantages of Immigration for a 21st-Century Economy:” (Washington, D.C.: Migration Policy Institute, May 2009); Ray Marshall, *Value-Added Immigration: Lessons for the United States from Canada, Australia, and the United Kingdom* (Economic Policy Institute, 2011), 196–203. (Recommending that the U.S. “create a permanent, independent Commission on Foreign Workers.”)

<sup>44</sup> See U.S. Congress, House, *Bill to Establish a Nonpartisan Commission on Immigration Reform and Border Security*, H.R.1283, 116th Cong., introduced in the House February 4, 2019. Proposals for such a standing commission have been supported by various lawmakers for some time, having been introduced in various rounds of legislative negotiations over comprehensive immigration reform in recent decades. See Ray Marshall, *Value-Added Immigration: Lessons for the United States from Canada, Australia, and the United Kingdom*, 196. (“The Senate Democrats’ outline for comprehensive immigration reform released in April 2010 provided for such a commission; the draft bill developed in 2010 by Senator Robert Menendez detailed a robust immigration commission; and Congressman Solomon Ortiz proposed an independent commission with broad powers in his 2009 immigration reform bill.”)

<sup>45</sup> For evidence of support from immigration policy and stakeholder groups across the political spectrum, see Ray Marshall, *Value-Added Immigration*, 196. (Describing various non-governmental policy groups that have expressed support for the creation of an independent commission on immigration policy, including “the Independent Task Force on Immigration and America’s Future, co-chaired by Lee Hamilton and Spencer Abraham; the Council on Foreign Relations’ Task Force on U.S. Immigration Policy, co-chaired by Jeb Bush and Thomas McLarty III; the Brookings-Duke Immigration Policy Roundtable; and the Migration Policy Institute.”)

<sup>46</sup> See Ayelet Shachar, “Talent Matters: Immigration Policy-Setting as a Competitive Scramble among Jurisdictions,” in *Wanted and Welcome? Policies for Highly Skilled Immigrants in Comparative Perspective*, ed. Triadafilos Triadafilopoulos, *Immigrants and Minorities, Politics and Policy* (New York ; London: Springer, 2013), 86–87. (Describing how highly skilled migrants “view the acquisition of political membership in a stable, affluent country as a valued good in itself,” and how—

because it relies heavily on temporary visas—the U.S. is at a disadvantage when competing with “other destination countries such as Canada, Australia, New Zealand, the Netherlands, Norway, and Switzerland—to mention but a few” that “extend skilled migrants the option of gaining a permanent residence status upfront.”)

<sup>47</sup> Stephen Yale-Loehr and Christoph Hoashi-Erhardt, “A Comparative Look at Immigration and Human Capital Assessment,” *Georgetown Immigration Law Journal* 16 (2001): 107.

<sup>48</sup> See OECD, “The Expression of Interest Model: What Lessons for Migration Management in the EU and Elsewhere?,” OECD Migration Policy Debates (OECD, 2019), <http://www.oecd.org/els/mig/migration-policy-debates-18.pdf>.

<sup>49</sup> On the concept of “advantages of backwardness” or “late entry advantage,” see, e.g., Erich Weede, “Economic Freedom and the Advantages of Backwardness,” Cato Institute, January 31, 2007, <https://www.cato.org/publications/economic-development-bulletin/economic-freedom-advantages-backwardness>. See also David Dollar, “Technological Differences as a Source of Comparative Advantage,” *The American Economic Review* 83, no. 2 (1993): 431–35.

<sup>50</sup> Some immigration experts have argued that the prospects for comprehensive legislation are dim regardless of the current political climate because “any single bill will likely create cross-pressures that endanger passage.” Gary P. Freeman, David L. Leal, and Jake Onyett, “Pointless: On the Failure to Adopt an Immigration Points System in the United States,” in *Wanted and Welcome? Policies for Highly Skilled Immigrants in Comparative Perspective*, ed. Triadafilos Triadafilopoulos, *Immigrants and Minorities, Politics and Policy* (New York ; London: Springer, 2013), 140.

<sup>51</sup> U.S. Congress, Senate, *Border Security, Economic Opportunity, and Immigration Modernization Act of 2013*, S. 744, 113th Cong., 1st sess., introduced in Senate April 16, 2013.

<sup>52</sup> See David Nakamura, “Timeline: The Rise and Fall of Immigration Reform,” *Washington Post*, June 26, 2014, <https://www.washingtonpost.com/news/post-politics/wp/2014/06/26/timeline-the-rise-and-fall-of-immigration-reform/>.

<sup>53</sup> Phillip Connor and Neil G. Ruiz, “Majority of U.S. Public Supports High-Skilled Immigration,” Pew Research Center’s Global Attitudes Project (Washington, D.C.: Pew Research Center, January 22, 2019), 3–4, [https://www.pewresearch.org/global/wp-content/uploads/sites/2/2019/01/Pew-Research-Center\\_Majority-of-U.S.-Public-Supports-High-Skilled-Immigration\\_2019-01-22\\_Report.pdf](https://www.pewresearch.org/global/wp-content/uploads/sites/2/2019/01/Pew-Research-Center_Majority-of-U.S.-Public-Supports-High-Skilled-Immigration_2019-01-22_Report.pdf). This poll found that 78% of U.S. adults surveyed said they “support encouraging highly skilled people to immigrate and work” in the U.S. The same poll found support for encouraging high-skilled immigration even among respondents who were otherwise against immigration. Almost two-thirds of the respondents who had said, in

answering a prior question, that the United States “should allow fewer or no immigrants,” said that despite this general sentiment against immigration, the United States should encourage “highly skilled people to immigrate and work” in the United States.

<sup>54</sup> See Pew Research Center, “Modern Immigration Wave Brings 59 Million to U.S., Driving Population Growth and Change Through 2065: Views of Immigration’s Impact on U.S. Society Mixed” (Washington, D.C.: Pew Research Center, September 2015), 62, 125, [https://www.pewresearch.org/wp-content/uploads/sites/5/2015/09/2015-09-28\\_modern-](https://www.pewresearch.org/wp-content/uploads/sites/5/2015/09/2015-09-28_modern-immigration-wave_REPORT.pdf)

[immigration-wave\\_REPORT.pdf](https://www.pewresearch.org/wp-content/uploads/sites/5/2015/09/2015-09-28_modern-immigration-wave_REPORT.pdf). (Finding that 56% of Americans polled expressed support for giving priority to “highly educated and highly skilled workers.”) See also “Washington Post-ABC News Poll April 11–14, 2013,” Washington Post, accessed June 10, 2020,

<https://www.washingtonpost.com/apps/g/page/politics/washington-post-abc-news-poll-april-11-14-2013/105/>. (Finding that 58% of those polled in a survey of registered voters supported “more visas for highly skilled workers.”)

## About the Authors

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