

A new immigration regime for low- and medium-skilled labor in Japan? Assessing the 2019 amendment to the Immigration Control Act at the two-year mark

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Introduction

April of 2021 marks two years since what some journalists and academics have argued to be the most divergent and significant overhaul in Japan's immigration regime, which was implemented in form of the 2019 amendment to the Immigration Control and Refugee Recognition Act (hereafter 2019 amendment, or amendment). This is ostensibly a policy reversion from years of relying on side door policies to admit lower skilled foreign workers, which has led to the institutionalization of a regime that has prioritized rotational and sometimes exploitative labor programs. This begs the question: at the two-year mark, does the 2019 amendment signify a policy diversion and a first step towards establishing a new immigration regime for low- and medium-skilled labor that includes policy outcomes that recognize long-term settlement and makes efforts towards workers' integration? In its current form, the author argues that the 2019 amendment does not, as it fails to address fundamental issues such as the continued existence and reliance on side door policies that have been institutionalized over decades - especially the Technical Intern Training Program (TITP). This points towards the continuation of the status quo and not a transformation of Japan's immigration regime in the short term.

The 2019 amendment was initially passed by the 197th National Diet in December of 2018 before going into effect on April 1st of 2019. Most significantly, the amendment created two new visa categories (Specified Skilled Worker, or SSW, i and ii) for a total of 14 economic sectors identified as having a labor shortage. Other major aspects of the amendment include the implementation of

the “Comprehensive Measures for Acceptance and Coexistence of Foreign Nationals” (hereafter Comprehensive Measures) at a cost of ¥21.1 billion. These are various integration measures for foreigners, including improving access to public services as well as enhancing Japanese language education and job-matching services. Finally, on the institutional level, the Immigration Services Agency (ISA) was established to run the immigration regime. While still part of the bureaucratic apparatus of the Ministry of Justice (MOJ), it is now an external bureau with more autonomy and a larger budget. Considering that the Japanese government has long maintained that the only legally admitted economic migrants must be (highly) skilled, the 2019 amendment can be said to be significant for two reasons:

- (1) The establishment of the SSW visa category created a regulated pathway (front door) for the admission of a large number of low- and medium-skilled workers for the first time, with its cap being set at 345,150 over five years (Immigration Services Agency of Japan, Ministry of Justice 2020a).
- (2) The SSW (ii) visa, which provides a pathway towards permanent residency and a route for family migration, and the Comprehensive Measures protruding policies that recognize long-term settlement and the need for social integration.

Former Prime Minister Abe, whose government passed the amendment, has maintained that “this is not an immigration policy” (Sugiyama 2018). Despite this proclamation, the above does read as if Japan has taken the first step towards officially recognizing low- and medium-skilled workers as part of their “*gaikokujin rōdōsha ukeire*”¹, or “foreign worker acceptance” policies, while also promoting long-term immigration and taking steps towards integrating these workers into its society. Any discussion with regards to Japanese immigration policy must include the fact that the country is confronted with *shōshi kōreika* - the coupling of a low birth rate with an ageing society. This has led to a chronic labor shortage, specifically in the 14 sectors outlined in the amendment.

Therefore, these demographic issues and resulting demand for foreign labor have led to structuralist arguments birthing what the author calls “immigration optimism” with regards to Japan. Such a line of debate, advanced both by journalists and academics, suggests that Japan is on a trajectory towards a

1 In this paper, Japanese words are romanized using the modified Hepburn style. Japanese names are written using the first name, last name convention.

national immigration policy featuring front door policies for low- and medium-skilled labor. Indeed, these arguments have been made even before the 2019 amendment was passed into law. For instance, Green (2017) wrote that “demographic realities are forcing policymakers to court immigrants as potential solutions”, while Menju (2017) argued that “the time has come for Japan to make decisions on immigration”. Hollifield and Sharpe (2017) proposed that Japan is an “emerging migration state” and predicted the country to have a “Meiji moment” with regards to immigration policy. Is the 2019 amendment this “Meiji moment”?

The high volume and tone of writing in the immediate aftermath of the amendment’s passing suggests that many observers of Japanese immigration policy believe this to be the case. Akashi (2020) found a total of 16 separate monthly or weekly Japanese-language magazines with an optimistic strand. These oftentimes featured cover stories with bombastic titles, such as “A New Era for Immigrants” from *Gendai Shisō* or “Lifting the Ban on Immigrants” by the *Shūkan Tōyō Keizai*. In English-language publications, Gelin (2020) called the amendment “historic immigration reform”, with Oishi (2020) declaring a “new era for immigration and integration”.

On the other hand, specifically with regards to the acceptance of workers, the new regime has seen a slow rollout. As of March 2021, the total number of foreigners holding a SSW visa status numbered just 22,567 (Immigration Services Agency of Japan, Ministry of Justice 2021a), significantly below the government’s own projections. There have also been investigations into how the new laws have been implemented by government agencies in Japan and auxiliary organizations in sending countries in the construction (Era 2020) and nursing (Ogawa and Sadamatsu 2020) sectors. These studies have shown that, at least for those professions, both employers and migrant facilitators (brokers) have not preferred the new SSW visa over the more established TITP. Overall, there has been little follow-up in the scholarship that looks at how the amendment has been implemented on the *macro level*. Therefore, and especially given the initial optimism towards the new laws described above, the author believes it necessary to investigate how the SSW visa category specifically has been implemented by governmental and bureaucratic actors in Japan. After placing the 2019 amendment within the context of Japan’s migrant control policies from the late 1980s onwards, this study will use primary government

documents from relevant institutions², including the MOJ and by extension ISA, the Ministry of Health, Labour and Welfare (MHLW) and other agencies, to outline *tangible outcomes* (=results), i.e., the change in how lower skilled foreign labor is accepted into Japan. The time period to be covered is April 2019 to March 2021. Finally, the conclusion will attempt to reconsider the importance of the amendment based on this outline and offer clues on the trajectory of Japanese immigration policy going forward. Therefore, this article aims to contribute to the English-language scholarship on Japanese immigration in two primary ways: (1) by mapping out the current Japanese low- and medium-skilled labor migration regime and (2) understanding the function of the 2019 amendment within this regime.

The 2019 amendment in context

Nikkeijin, technical interns and foreign students: Japan's major modern low- and medium-skilled migrant worker policies

For most of the 20th century, Japan has been identified as a negative case of labor migration (Bartram 2000), featuring an exclusive society and policies protecting the country's myth of ethno-homogeneity. While there was a significant population of oldcomer colonial era migrants primarily from the Korean Peninsula (known as *zainichi korean*), the country did not accept a notable number of foreign workers in the post-war period. However, the demographic factors mentioned above, as well as the multi-layer subcontracting structure present in many major industries of the Japanese economy, did result in demand for lower skilled labor, leading to the acceptance of foreign workers. The most significant developments in Japanese policy toward these workers are outlined below. The author will use the terms front door, signifying official policy and recognized status; side door, referring to legal status but outside of a formal immigration policy; and back door, meaning non-legal status, to classify the country's immigration schemes for lower skilled workers.

The first increase in foreign workers can be seen from the mid- to late 1980s, when the Japanese economy showed strong economic growth (known as the "bubble" period). In the absence of corresponding laws, the first newcomers,

2 The official English-language translation will be used whenever one is available. All translations from Japanese-language texts are done by the author.

foreign workers from Southeast and East Asia, Pakistan, Bangladesh and Iran, entered the country as visitors and proceeded to overstay and work in traditionally blue-collar jobs (Yamanaka 1993). By the late 1980s, the stark increase in migrants, many of which without legal status, had become a major societal issue in Japan. Fearing the long-term settlement of foreign workers that had been observed in post-war Western Europe, the demand for policy change was high among elites in the bureaucracy and ruling Liberal Democratic Party (LDP) (Yamanaka 1993; Komine 2014). At the same time, the influential business lobby was still in need of cheap labor and demanded a more institutionalized immigration control policy (Sekine 1990). The result of the compromise between the LDP-bureaucracy-big business triad have been numerous reforms since 1990 leading to a marked increase in migrant workers primarily through side door policies, with the simultaneous outcome of putting these workers into precarious status.

These began with the 1990 amendment to the Immigration Control and Refugee Recognition Act (passed in 1989), which enabled the migration of Japanese descendants (*nikkeijin*), primarily from Brazil and Peru and some from the Philippines and other South American countries. Due to their ethnicity, *nikkeijin* were allowed long-term (“*teijūsha*”) visa status and to bring their families, making them Japan’s first major modern immigration initiative. However, it must be noted that the acceptance of *nikkeijin* came in response to labor shortages and the public/political discussion regarding illegal immigration in the late 1980s, and enabled the Japanese government to procure low- and medium-skilled laborers through an official pathway while maintaining a façade of ethnic homogeneity (Kondo 2009). Writing in the LDP’s weekly magazine, a member of the “LDP Special Committee on the Foreign Worker Problem” put forth the argument of the time: *nikkeijin* were an effective way to alleviate labor shortages while reducing social friction, as “even though they might have a different nationality, their ethnicity allows us to accept them as compatriots” (Nojima 1989). Therefore, their acceptance, while technically a front door immigration policy based on ethnic considerations, can arguably be classified as labor migration policy. *Nikkeijin* admittance has thus been described as a side door policy as well, although I maintain the front door moniker due to the legal privileges the *teijūsha* status grants. *Nikkeijin* workers have almost exclusively worked as lower skilled laborers, including subcontract factories and

construction.

In 1993, the Technical Intern Training Program (TITP) was established. Finding its origins in the 1960s as a scheme for Japanese multinational corporations to train their foreign subsidiaries' employees back home (Iguchi 2002), 1993 marked the onset of the TITP gradually expanding to become a highly institutionalized program that accounts for more than 400,000 foreign residents as of October 2020 (Ministry of Health, Labour and Welfare 2021a). Ostensibly, the TITP is a human resource development program aimed at the transfer of skills from Japan to developing countries primarily in Asia, thus contributing to their economic advancement. However, in the immediate years since its establishment up to the present, many scholars have identified the system as a *de facto* temporary labor program (Iguchi 2002; Komine 2018; Yamanaka 1993), with the status of *ginō jissūsei* (technical intern) allowing for employment below the minimum wage, limited access to entitlements, no labor mobility and the curtailing of workers' rights (Roberts 2018). Especially with its expansion in recent years, this has led to an increase in the number of runaways from the program, as well as several deaths attributed to suicide or overwork. One case that gained attention in the news concerned a 27-year-old Filipino who worked at a casting company, logging up to 122.5 hours of overtime per month before dying of heart failure in his employer's dormitory (Otake 2016). Today, the TITP system is a massive entity, featuring the ISA as an administrative and control agency, the Organization for Technical Intern Training (OTIT) as a monitoring body, and thousands of auxiliary non-governmental organizations. These include foreign brokers recruiting workers, supporting organizations within Japan ostensibly responsible for their basic integration and protection, as well as the employers themselves. The MHLW tacitly acknowledges the interns as workers, listing them as part of their statistics on foreign workers (Ministry of Health, Labour and Welfare 2021a). Overall, the TITP is a classic example of a side door labor immigration policy.

Finally, possibly one of the least explored aspects of labor migration to Japan in English-language scholarship is the rapid increase in the number of foreign workers under the "*shikakugai*" category. This status refers to a permission to engage in activities other than those permitted under the official status of residence. 82.7% of *shikakugai* status holders have the official status of student, accounting for more than 306,000 workers (Ministry of Health, Labour and

Welfare 2021b).³ The number of foreign students has risen since the adoption of the governments “300,000 International Students Plan” in 2008, though the increase of *de facto* foreign laborers utilizing the status of student is particularly noteworthy. While foreign students whose primary purpose is education definitely contribute to the labor force through part-time work, the latter represents another side door policy to fill the demand for lower skilled workers in lieu of front door channels (Menju 2017). This has led to a third-party support infrastructure of brokers in origin countries and Japanese language institutions and other sham vocational schools in Japan for these workers, who find themselves in a legal grey area (as they oftentimes work more hours than their legal allowance) and thus face similar exploitation to technical interns (Liu - Farrer and Tran 2019). Overall, this suggests an infrastructure resembling the TITP. However, due to its positioning in grey legality, it is less institutionalized and thus close to no information is available from government sources. Inoue (2019) and Liu - Farrer and Tran (2019) provide an in-depth overview of the specifics of this system. Similar to the TITP, the MHLW tacitly admits to the students’ status as workers in counting *shikakugai* as part of the foreign workforce (Ministry of Health, Labour and Welfare 2021a).

As an endnote, it must be highlighted that the latter two side door policies inherently do not allow for the long-term resettlement of foreign workers unless a visa status change is achieved. They are thus similar to traditional guest worker regimes which operate based on a temporary rotation of workers, allowing for “labor inclusion but human exclusion”, as Endoh (2019) puts it.

Mapping lower skilled foreign labor in Japan today

The previous section gave an outline of the three major ways Japan’s policymakers have created pathways for lower skilled foreign workers into Japan, namely the admittance of *nikkeijin*, the TITP and the rise in the number of students holding *shikakugai* status. In 2020, there were a total of 2,885,904 foreign residents living in Japan (Immigration Services Agency of Japan, Ministry of Justice 2020d), with the MHLW showing 1,724,328 foreign workers as of October 2020 (Ministry of Health, Labour and Welfare 2021a). Table 1 shows a breakdown of the three major categories described thus far and how

3 Students are legally allowed to work for up to 28 hours a week in the school period and are allowed to engage in full-time employment outside the school period.

worker intake has changed in the 2010s. Together, the three categories account for 50% of the total foreign workforce in 2020. This shows that government rhetoric painting Japan as a country that exclusively accepts highly skilled workers is in direct contradiction to its own data, a dynamic frequently outlined by local activists such as Ippei Torii from the Solidarity Network with Migrants Japan (Torii 2020) or international labor rights organizations such as Verité (Verité 2018).

The increase of technical interns and foreign students has driven the steady increase in the number of low- and medium-skilled foreign migrants in the last decade. From 2010 to 2020, the number of interns in the TITP has increased by 252% and the number of *shikakugai* student visa holders has increased by 338%. This contrasts with the *nikkeijin*: while the number of workers from the main *nikkeijin* origin countries has seen a slight increase, their proportion in the foreign workforce has decreased significantly, from 21% in 2010 to 9% in 2020. TITP and *shikakugai* students now account for 23% and 18% of the total foreign workforce, respectively. Interestingly, in the last two years (and thus a period of large overlap with the 2019 amendment coming into law), the amount of *shikakugai* student visa holders only increased by 8,096 (a 2.7% increase), while technical interns increased by 93,867 (a 30.4% increase), suggesting that the latter has become the primary method for Japanese employers to procure lower skilled labor (Ministry of Health, Labour and Welfare 2019a; 2021b).

Table 1. Change in Number of Foreign Workers, by 3 major low-/medium-skilled labor statuses

	No. of Foreign Workers, 2010	% Foreign Workforce, 2010	No. of Foreign Workers, 2020	% Foreign Workforce, 2020	% Change, No. of Foreign Workers
TITP*	159,431	25%	402,356	23%	252%
Students w. <i>shikakugai</i>	90,675	14%	306,557	18%	338%
Brazilian + Peruvians**	139,723	21%	158,359	9%	113%

Table created by author based on data from the MHLW (Ministry of Health, Labour and Welfare 2011; 2021b). The total number of foreign workers stood at 649,982 in 2010 and 1,724,328 in 2020.

* refers to the total number of foreigners holding the *ginō jisshū* (technical training) status.

** For *nikkeijin*, as many have switched from their original *teijūsha* status to other status-based categories, the total number was calculated by ethnicity, not status.

Another aspect of note is the use of EPAs (Economic Partnership Agreements) to accept nurses and care workers from the Philippines, Indonesia

and Vietnam. The use of trade deals rather than immigration control policy was another way for the Japanese government to side-step a debate on foreign labor import (Ford and Kawashima 2013). Workers receive training in their field and Japanese language lessons both prior and following arrival in Japan. Then, they obtain a labor contract and provided they pass corresponding national exams within a designated time frame (3 or 4 years), are permitted to work in their field indefinitely. However, the *total* number of workers entering through this system since its inception in the late 2000s totaled just over 6,400 in 2019 (Ministry of Health, Labour and Welfare 2019b). Therefore, the author did not consider it a *major* policy for foreign labor admittance.

Finally, when attempting to quantify the number of lower skilled foreign workers, it is also important to mention the number of *fuhō zanryūsha*, commonly translated as (illegal) overstayers. While the majority of overstayers still enter the country through short-term tourist visas, the number for (former) technical interns and foreign students stood at 12,457 and 5,170, respectively (Immigration Services Agency of Japan, Ministry of Justice 2020c). The exploitative nature of side door policies, including the ban on technical interns changing their employer, contributes to the *shissō* (or disappearance) of these workers, who most likely attempt to find more favorable working conditions despite the loss of status. This creates a regression of status, as workers move from the side door (limited legal protection) to the back door (highly limited to no legal protection). The total number of *fuhō zanryūsha* was 82,616 in 2020 and the high probability that a majority of them have remained in the workforce suggests an even higher number of lower skilled workers than reported in the official data (Immigration Services Agency of Japan, Ministry of Justice 2020e).

A labor migration regime based on side door policies

As outlined above, before the 2019 amendment, Japan had shown a trend away from their only major front door immigration policy (though it was based on ethno-nationalist conceptions of Japanese society) towards their two primary side door policies to accept lower skilled foreign workers - with workers accepted under the TITP specifically being of note due to their marked recent increase. Indeed, with regards to *nikkeijin*, the 2008 recession leading to high unemployment and the difficulty of integrating them into Japanese society prompted the government to provide a monetary incentive for repatriation (Tian

2019). On the other hand, the flexibility and inexpensiveness of the TITP and *shikakugai* students has led to those systems becoming the primary source for lower skilled foreign labor in industries where *nikkeijin* traditionally worked. Today, the TITP has a broader occupational and geographic distribution of workers than was seen even at the peak of *nikkeijin* employment (Tian 2019). Interestingly, the 2019 amendment did include a stipulation for 4th generation *nikkeijin* to be able to immigrate to Japan. However, this allowance now comes attached with a language requirement (minimum JLPT level N4) for the first time, converging it towards the other two major policies and further underscoring Japan's hesitancy to commit to long-term settlement and the accompanying integration costs.

Overall, the immigration policy of the 2010s, and especially of the 2nd Abe Administration from 2012 to 2020, reflect a desire to keep the status quo: the appearance that Japan does not permit lower skilled labor, while accepting an increasing amount of such labor through side door policies. This is a balancing act on the part of the governing LDP-*Kōmeitō* coalition due to political considerations. Indeed, the coalition is susceptible to pressures from business interests that are struggling with a shortage of labor while also requiring the political support of hardliners on the right (Endoh 2019; Roberts 2018). Therefore, Abe framed the 2019 amendment as an economic measure to help calm potential political backlash from both core constituents (such as the influential right-wing lobby *nippon kaigi*) as well as the general public, which has generally been hesitant to increasing immigration (Song 2020).

However, even before the 2019 amendment, Abe's government had pursued incremental attempts at reform aimed primarily at the TITP. Here too, the government opted for language suggesting that the acceptance of foreign workers is a "key to (economic) revitalization", although the growing pressure by labor activists, scholars as well as foreign governments and international organizations may have forced the ruling bloc's hand (Tian 2019). The TITP was overhauled twice, first in 2014 and again in 2016. The latter reforms lengthened maximum length of stay from 3 to 5 years, added nursing as an acceptable category for employment and, crucially, included new oversight measures for employers. The OTIT was implemented to monitor and carry out inspections for the "implementing organizations" (employers) and "supervising organizations" (responsible for accepting, placing, and supporting interns), which

now must register with the MHLW. Despite this, the reliance on extra-governmental actors for the implementation of humane working conditions and labor rights remains a bottleneck (Tian 2019). Indeed, the OTIT found a total of 4,922 (32.9% violation rate) violations for implementing and 1,331 (43.1%) for supervising organizations in its latest monitoring report (Organization for Technical Intern Training 2020). A significant number of these violations are of a serious nature, including insufficient support (e.g., lack of adequate housing) and inappropriate payment of wages. The presence of an impressive number of auxiliary organizations that are responsible for key aspects of the implementation of the TITP, including the protection of workers, is emblematic of what the author calls delegationism in the Japanese immigration regime. This phenomenon will also be analyzed in context of the 2019 amendment below.

The 2019 amendment to the Immigration Control Act: policies regarding low- and medium-skilled labor

It is with this background that the 2019 amendment was passed into law. Considering Japan's recent trajectory towards a strong reliance on their two major side door lower skilled labor policies, and specifically the TITP, the amendment reads as a major policy divergence. As mentioned in the outset, the establishment of the SSW (i) and (ii) visa categories provide front door access for lower skilled workers based on the completion of language and technical exams, while the Comprehensive Measures are an attempt to integrate these workers (and are not limited to only SSW visa holders). Table 2 gives a summary of the two new visa categories. In contrast to the TITP and *shikakugai* student workers, the amendment provides a legal framework for the following:

Status: a legal pathway for lower skilled workers, featuring protection under labor laws and access to social and labor insurance, in industries previously accessible through side door policies (with *nikkeijin* workers and EPA healthcare workers as exceptions). 12 of the 14 industries selected for the SSW (i) visa overlap with the TITP, accounting for most foreign workers currently employed by that system (see figure 1).

Settlement: Through the SSW (ii) visa, a pathway towards permanent residence and family migration. Furthermore, a pathway for status progression (from side door to front door) both for students and technical interns to the

SSW (i) status, the latter being exempt from both the sector-specific and language examination provided they have completed three years in the TITP. In addition, upon passing the SSW (ii) sector-specific exam, status change from SSW (i) to (ii) is also possible, technically allowing for a path to long-term settlement as well.⁴

Access: Though determined by sector-specific exams and language ability, relatively low barriers to entry to the system for workers (though arguably not for employers, as will be outlined below). However, it must be noted that there is an overall cap to the number of workers to be admitted under the new statuses, which ranges by industry (see figure 1). The total cap is 345,150 over the first five years from implementation. If achieved, this would mean a significant amount of lower skilled foreign labor would be admitted under a front door policy, especially if one considers the potential of status progression leading to a lower proportion of workers stuck within side door systems.

Figure 1. 14 industries selected for the SSW visa category, by responsible ministry

MHLW:	<i>Care worker (60,000), building cleaning management (37,000)</i>
METI:	<i>Machine parts & tooling industries (21,500), industrial machinery industries (5250), electric, electronics and information industries (4,700)</i>
MLIT:	<i>Construction industry (40,000), shipbuilding & machinery industry (40,000), automobile repair & maintenance (7,000), aviation industry (2,200), accommodation industry (22,000)</i>
MAFF:	<i>Agriculture (36,500), fishery & aquaculture (9,000), manufacture of food and beverage (34,000), food service industry (53,000)</i>
<p>The number in brackets indicates the government identified shortage of workers and signifies the maximum number of foreign nationals to be accepted over 5 years. Italics indicate sectors currently accepting workers under TITP. Bold indicates acceptance under both SSW (i) and (ii) category.</p>	

Table created by the author based on MOJ documents (Immigration Services Agency of Japan, Ministry of Justice 2020a).

4 Additionally, in the case of a foreign worker that completes the TITP program (5 years), changes status to the SSW (i) category and works for the maximum allowed period of stay (an additional 5 years), they will have stayed in Japan for a total of 10 years. A successive stay of 10 years allows for the application to permanent residency, though Japan's non-formalized, case-by-case PR system would not guarantee it.

Table 2. Outline of the SSW (i) & (ii) visa category specifics

	Specified Skilled Worker (i)	Specified Skilled Worker (ii)
Period of Stay	Up to 5 years total	Unlimited
Occupational Sector	14*	2*
Skill Level	Determined by sector-specific exams, exempt if Applicant has completed Technical Intern Training (TITP) (ii) (equal to 3 years)	Determined by sector-specific exam
Level of Japanese Language Proficiency	Japanese language skills necessary for day-to-day activities and work, as determined by an exam or the completion of TITP (ii)	Exempt from examination on Japanese proficiency
Accompaniment of Family Members	No	Yes (Spouse and Children)
Path to Permanent Residency	No, though status change to SSW (ii) is possible	Yes

Table created by the author based on MOJ documents (Immigration Services Agency of Japan, Ministry of Justice 2020a)

*see figure 1 for details on occupational sectors

Finally, it must be mentioned that the government language with regards to the SSW visa category continues the trend of Japan creating visa status based on its definitions of “skills”. Indeed, the “Specified Skills” moniker attached to the new visa categories suggests that the government is simply redefining who it considers a skilled worker to fit industry demand for labor. While some have called the amendment a “medium-skilled” worker program (Milly 2020), the overlap with many TITP industries, low language requirement (JFT Basic or JLPT N4, the second lowest level offered) and lack of cultural training suggests that it is simply reorganizing and institutionalizing many of the lower skilled labor categories previously served by the side door policies (Oishi 2020).

Looking at some of the sector-specific exams underscores this: the “building cleaning management” exam is only 32 minutes long and primarily consists of being able to reproduce the basic flow of cleaning floors, glass surfaces and toilets (Japan Building Maintenance Association 2020). On the other hand of the spectrum are fields such as “care worker” (corresponding to nursing), which have higher requirements that include a specific Japanese examination for the field (Immigration Services Agency of Japan, Ministry of Justice 2020b). However, with regards to nursing, its addition to the TITP also included stipulations stricter than is the norm for the system, including the same language requirement now present in the SSW system. In that sense, the 2019

amendment does not present a major policy divergence. Overall, the classification of the amendment in terms of low- and medium-skilled labor, as has been done in this paper, seems accurate.

A new immigration regime for low- and medium-skilled labor?

A slow rollout

At first glance, the above points to a significant policy reform, addressing critical issues facing foreign workers that have been forced to rely on side door policies, such as labor protection and access to social entitlements. Furthermore, there are now pathways for status progression and even potentially long-term settlement. This suggests a trajectory for Japan to become an “immigration country”, which is traditionally defined as a country where immigration is not part of the founding ideal but that does implement an immigration regime that relies *mostly* on front door policies, allowing for formal employment and settlement (J. Hollifield, Martin, and Orrenius 2014). Such a trajectory would validate the arguments of the “immigration optimists”. However, when analyzing immigration policy, it is important to differentiate between policy output and outcome. As Komine (2018) points out, “even if an admission policy was objectively open, this does not automatically produce a large number of migrants”. There is oftentimes a gap between how policy is formulated/put into law and how it is implemented, called an “implementation gap” (de Haas et al. 2019). April 2021 marks exactly two years since the amendment was implemented. Therefore, it is crucial to begin to analyze not only the policy and related laws, but also the tangible *outcomes* of this policy. With the legal framework of the amendment established, the results of its implementation for lower skilled foreign workers in Japan will be investigated below.

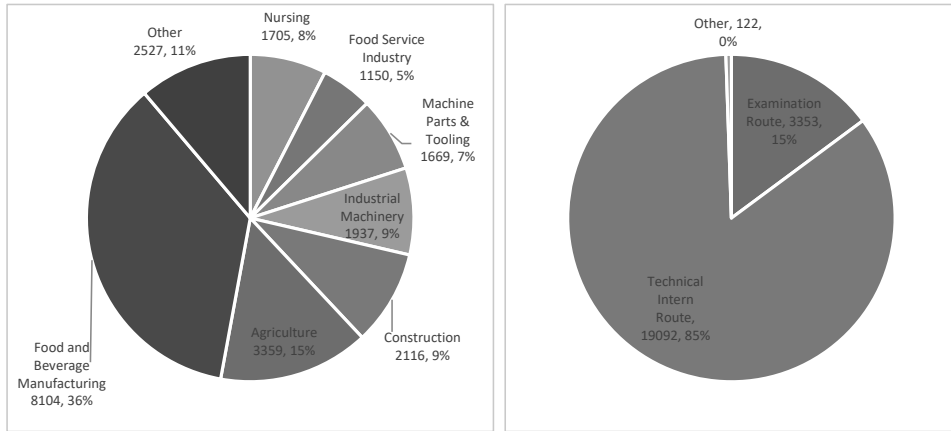
At almost exactly the two-year mark, as of March 2020, the MOJ reported a total of 22,567 SSW visa status holders (Immigration Services Agency of Japan, Ministry of Justice 2021b). At the time of writing, there are currently zero SSW (ii) status holders and no exams scheduled for the acceptance of workers under this category. This is significantly below the maximum allowance that the SSW stipulates, which is 345,150 over five years or roughly 69,000 per year. Furthermore, given that it was widely reported that the government expected a total of 47,550 workers to secure the new visa for fiscal year 2019 alone, the

current numbers appear to be missing the government's own projections by wide margins (The Japan Times 2020). Figures 2-a and 2-b show the current distribution of SSW visa holders by industry and acquisition route. What are some of the factors that have contributed to the low acceptance numbers under the new visa categories?

Firstly, the extreme haste with which the amendment went from being passed into law in the diet (December 2018) to implementation (April 2019) allowed for little time to prepare the necessary infrastructure such a grand program requires (Endoh 2019). This is underscored by the timeline for the bilateral agreements between Japan and the sending countries (known as Memorandum of Cooperation, or MOC). As of April 2019, only four MOCs were signed. Since then, an additional nine have been signed after the program was already officially implemented, bringing the total number of sending countries to 13 (Immigration Services Agency of Japan, Ministry of Justice n.d.). The sending countries are exclusively from South and Southeast Asia and generally overlap with those of the TITP, with one notable exception. China accounts for more than 65,000 technical interns, but an MOC with the country has not been signed as of June 2021. However, an MOC is not a requirement for acceptance of foreign workers from a country if those workers are already in Japan. Hence, there are currently 2,050 Chinese SSW status holders (Immigration Services Agency of Japan, Ministry of Justice 2021b).

Furthermore, a contributing factor that cannot be ignored is the effects of the COVID-19 induced global pandemic, which has resulted in unprecedented limits to human movement, slowing migration in the short-term. Indeed, Japan made headlines as it restricted foreign entry even for foreign residents, i.e., those with a valid residence status or a Certificate of Eligibility (essentially an entry permit for a work visa), in the period between April to September of 2020 (Dooley 2020). This effectively brought new arrivals in all visa categories, including the SSW1&2, to a standstill.

Figure 2-a/2-b Number of SSW status holders by industry and by acquisition route, as of March 2021



Figures created by the author based on (Immigration Services Agency of Japan, Ministry of Justice 2021b).

To examine the specifics of admittance under the SSW status, it is important to keep in mind the two routes of acceptance into the program: the examination route, referring to entry via passing language and sector-specific examinations; and the technical intern route, meaning entry through visa progression from the TITP system. With regards to the former, one of the most important aspects in implementation is the holding of examinations. The responsibility of organizing these falls to the ministry responsible for the specific sector (see figure 1), though their creation/administration is done by industry trade organizations. The data shows only 3,353 foreigners currently holding SSW (i) status have come through the examination route. This suggests an extremely slow rollout of the examination infrastructure, although the ISA reports a total of 40,268 (out of 63,284) successful examinees for sector-specific tests over all industries, and 10,412 (out of 25,553) successful examinees for the JFT Basic Japanese language examination as of March 2021 (Immigration Services Agency of Japan, Ministry of Justice 2021a). These numbers show two noteworthy trends: there is a significantly larger number of successful examinees than current examination route status holders, meaning that either COVID-19 related entry restrictions or lack of employment opportunities (or both) has contributed to the low levels of acceptance. Also, since passing of the language test is required in addition to the sector-specific exam, the low passing

rate for the JFT Basic suggests that the language requirement is a bottleneck for many would-be applicants (as sector-specific exams are held also in English or the applicant's native language).⁵

Furthermore, the frequency of tests is also critical to guarantee access to the system. Especially with regards to tests held in foreign countries, it has been reported that an effort to eliminate malicious brokers, in addition to certain COVID-19-related restrictions in sending countries, has slowed down the rollout of examinations (The Japan Times 2020). Most industries have only held exams in one or two foreign countries in addition to Japan, the notable exceptions being nursing (7 countries), agriculture (6 countries) and food services (6 countries) (Immigration Services Agency of Japan, Ministry of Justice 2021a). The JFT Basic has been held in 7 countries. Even before the spread of COVID-19, the Japanese government made a significant change in who was eligible to take SSW examinations, allowing anybody with a valid visa status (including temporary visitors) the chance to take the tests (Immigration Services Agency of Japan, Ministry of Justice 2020b).

One crucial aspect to note is that the two industries not covered by the TITP, i.e., accommodation and food services, as well as nursing, have been most proactive in the administration of examinations. As described above, nursing represents a late comer to the TITP, suggesting that its usage by employers is not as entrenched as with other industries. The percentage of total examinees in those three industries was 70% (44,495 out of 63,284) and the percentage of successful examinees was 65% (26,331 out of 40,268) (Immigration Services Agency of Japan, Ministry of Justice 2021a, 20201).

Overlap and continued reliance on the TITP

While the slow procedural and administrative rollout and COVID-19 induced global pandemic are contributing factors, this leads to what the author considers to be the fundamental reason for the slow acceptance of foreign workers under SSW visas: the continued existence of the TITP program and the large overlap between it and the SSW system. As written above, Japan has accepted close to 100,000 technical interns in the period from late 2018 to late 2020, while only

5 It must be noted that as the JLPT N4 is also acceptable and the nursing field conducts its own sector-specific Japanese language examination, these numbers do not paint the full picture.

19,092 interns have made the switch from the TITP to the SSW visa status as of March 2021 (see figure 2-b). As TITP workers are already in Japan, there are no COVID-19 related entry problems for these workers. There are two primary reasons for the low turnover from TITP to SSW, both suggesting a continued reliance on the TITP: (1) On the regulatory side, the requirement for completion of TITP (ii), equivalent to three years. This excludes 369,400 of the 402,355 technical interns in Japan in 2020, significantly hindering access to visa progression. (2) With regards to the industries covered both by the TITP and SSW, a financial disincentive for employers both to hire new workers under the SSW over the TITP and to allow existing workers to switch their visa status. The financial disincentive arises from the following reasons:

- 1 The requirement of the establishment of a support plan for every SSW worker (possible to outsource to registered support organizations), including guidance on administrative procedures, guarantorship for finding accommodation, daily life support, providing opportunities for Japanese language education and cultural exchange, among others (Immigration Services Agency of Japan, Ministry of Justice 2020a).
- 2 The criteria stipulating that remuneration must be equal or greater to Japanese nationals.
- 3 The status of SSW providing worker protection under labor laws as well as access to entitlements, meaning that exploitative labor practices are less likely to go unpunished.

While there have been reports of employers preferring non-temporary foreign workers to limit the cost of having to successively train new cohorts of workers (Torii 2020), these financial disincentives in turn incentivize continued reliance on the TITP system, resulting in little progress for workers. The fact that many employers relying on the TITP run very small operations (Tian 2019) makes the high cost of entry into the SSW system difficult. This point of criticism was specifically pointed out in the immediate aftermath of the 2019 amendment's passage into law (Endoh 2019; Milly 2020), and its implementation thus far underlines such argumentation. Another reason is even more simple: the facilitation of the migratory process under the TITP has been institutionalized, both in the origin countries and Japan, over almost three decades now, making it impractical and unrealistic to expect an immediate switch-over to the SSW system. Early findings from the system's implementation in the construction

(Era 2020) and nursing (Ogawa and Sadamatsu 2020) sectors point to this as well.

Finally, another issue relates to the oversight of workers under the SSW system. Based on a comparison of supervising organizations for the TITP and registered support organizations for the SSW, the author found 1,640 out of 3,276 TITP organizations to be also registered for the SSW as of April 2021 (Organization for Technical Intern Training 2021; Immigration Services Agency of Japan, Ministry of Justice 2021c). Given the number of significant problems with TITP supervising organizations outlined above, there is reasonable doubt as to whether they are fit to implement the stricter SSW criteria. The continued reliance on these external support organizations also suggests that the Japanese government has not learned its lesson when it comes to delegationism, i.e., the overreliance on non-governmental actors for key aspects in the smooth admittance, caretaking, and support of workers. This suggests that the implementation of the SSW system might follow a similar institutional model to the TITP, which would clearly be problematic given the well documented issues with the latter program for workers.

Conclusion

After looking at the specifics regarding its implementation in the previous section, does the 2019 amendment represent a significant policy change leading to more favorable policy outcomes for foreign workers?

In its short history of accepting low- and medium-skilled workers and especially in the past decade, Japan's immigration regime has been defined by two primary characteristics: (1) the creation of systems that are inherently based on maximizing labor inclusion but minimizing related human costs, and (2), any reforms to this regime being incremental in nature. At the two-year mark, the 2019 amendment has underlined the latter trend. The early results for the acceptance of SSW workers show a slow implementation of the examinations infrastructure, which can be partly attributed to administrative issues and the effects of the COVID-19 pandemic. However, the high percentage of examinations that have been held by those industries *not* (or, in the case of nursing, only recently) being served by the TITP suggests another root cause. That is, that due to the expensive barriers of entry and institutional

entrenchment of the TITP, there is little incentive for those employers currently served by the TITP to accept many SSW workers. Also, the continued delegation to non-governmental organizations for critical worker support could present SSW workers with similar issues to the TITP going forward. Furthermore, the SSW (ii) visa category, which has been lauded as it allows a path to long-term settlement and family migration, has been completely non-functional, with zero status holders at time of writing - although recent reports suggesting that this category will be expanded to all 14 industries covered under the amendment suggests bureaucratic awareness of this issue (The Japan Times 2021).

Given these findings, the question arises what purpose the SSW system serves. The implementation results indicate it to be an auxiliary immigration policy serving those industries not currently served by the TITP, as well as providing a pathway for employers to retain their technical interns once they have completed that program. Currently, it is not a fundamental change in Japan's immigration regime for lower skilled workers. It does not result in a majority of foreign workers that entered the country through side door policies a pathway to visa progression and the resulting policy outcomes, such as worker protection, access to entitlements, and long-term settlement. Therefore, the implementation of the 2019 amendment in its current form has validated a skeptical outlook for Japan's immigration policy for low- and medium-skilled workers: while it is a country of such migrants, the latest reforms have not resulted in Japan becoming a "country of immigration".

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Abstract

A new immigration regime for low- and medium-skilled labor in Japan? Assessing the 2019 amendment to the Immigration Control Act at the two-year mark

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Demographic issues and resulting demand for foreign labor have led certain journalists and academics to advance structuralist arguments birthing immigration optimism with regards to Japan. The enactment of a major amendment to its immigration regime for low- and medium-skilled labor in April 2019 seemingly underscored such optimism. Through a data-driven analysis based on collecting tangible implementation results and uncovering the processes that have led to them, the author maps Japan's lower skilled labor acceptance systems in 2021 and how the recent amendment fits within them, revealing that the reform has produced only an incremental and not fundamental change to Japanese immigration control policy.

