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DEMOGRAPHIC CRISIS IN JAPAN: WHY JAPAN MIGHT OPEN ITS DOORS TO FOREIGN HOME HEALTH-CARE AIDES

Carmel A. Morgan

Abstract: Japan is currently facing a two-fold demographic crisis: its birthrate is rapidly falling and its population is rapidly aging. Despite the present recession, Japan is confronting a significant shortage of workers in the health-care field. There may not be enough home health-care aides to meet the needs of all of the elderly who are eligible for visits under Japan's new long-term care insurance program. The Ministry of Justice has recently proposed allowing more foreigners to work in Japan. The proposal encourages the admission of immigrants to work as "home helpers," an occupation that is considered unskilled. This proposal marks a major departure from Japan's long-established official ban on unskilled foreign workers, and it has sparked controversy about whether Japan should open itself to increasing numbers of foreign residents. This Comment describes Japanese elder care, explores potential foreign and domestic solutions to the shortage of home health-care workers, and concludes that Japan is likely to admit unskilled immigrants to fill labor shortages related to elder care.

I. INTRODUCTION

Japan is experiencing plunging fertility rates¹ and soaring life expectancies.² This demographic dilemma, combined with the increasing number of elderly Japanese living by themselves rather than living with their children and grandchildren in a traditional extended family household³ is contributing to a growing shortage of home health-care helpers⁴ and family

¹ At 1.34 children per woman in 1999, Japan's fertility rate is among the world's lowest. See *Births (1983-1999)*, at <http://jinjapan.org/stat/stats/02VIT11.html> (last visited Jan. 24, 2001). This total fertility rate reflects the number of children a Japanese woman bears during her lifetime and is calculated per 1,000 Japanese females between the ages of fifteen and forty-nine. *Id.* Japan's fertility rates "have been among the lowest in the world for several decades." DEMETRIOS G. PAPADEMETRIOU & KIMBERLY A. HAMILTON, *REINVENTING JAPAN: IMMIGRATION'S ROLE IN SHAPING JAPAN'S FUTURE* vii (2000).

² The life expectancy for Japanese women is eighty-four years of age, and the life expectancy for Japanese men is seventy-seven years of age. *International Comparison of Life Expectancy at Birth*, at <http://jinjapan.org/stat/stats/02VIT11.html> (last visited Jan. 24, 2001). This is the longest life expectancy in the world. Wataru Koyano, *Population Aging, Changes in Living Arrangement, and the New Long-Term Care System in Japan*, 26 J. SOC'Y. & SOC. WELFARE 155, 157 (1999).

³ James S. O'Leary, *A New Look at Japan's Honorable Elders*, 7 J. AGING STUD., 1, 9 (1993). See also Masako Ishii-Kuntz, *Japan and Its Planning Toward Family Caregiving*, in *WORK AND CARING FOR THE ELDERLY: INTERNATIONAL PERSPECTIVES* 84, 85 (Viola M. Lechner & Margaret B. Neal eds., 1999) (discussing women's increased participation in the workforce and their changing familial roles).

⁴ Kathryn Tolbert, *As Japan Ages, It Plucks Workers from Family Tree Abroad*, INT'L HERALD TRIB. (Neuilly-sur-Seine, France), Mar. 8, 2000, at 5, available at LEXIS, Japan Country Files.

caregivers⁵ who can tend to the escalating number of disabled, elderly Japanese.⁶ The hard work and low wages associated with caring for the elderly in Japan discourage many Japanese nationals from accepting such jobs.⁷ Foreigners have recently been more willing than Japanese citizens to do low paying, low status work in Japan.⁸ Especially among Asians from lesser-developed countries, “even the most poorly compensated work in Japan” is viewed as “more desirable than skilled and professional work at home” because the wage differential between Japan and many of its neighbors is so huge.⁹ One promising solution to the looming health-care worker crisis, therefore, is the admission of foreign labor to care for Japan’s aging population.¹⁰

However, because home help for the elderly is classified as unskilled (manual) labor, foreign home health-care aides cannot be legally employed in Japan.¹¹ Japan is and always has been reluctant to admit substantial numbers of foreigners,¹² a fact reflected by its strict immigration laws.

⁵ Because the population is aging rapidly, the need for caregivers is on the rise. Meanwhile, the number of family members who can offer care is diminishing. Phyllis Braudy Harris et al., *Men and Elder Care in Japan: A Ripple of Change?*, 13 J. CROSS-CULTURAL GERONTOLOGY 177, 177-78 (1998).

⁶ An estimated increase in persons aged seventy-five and older in Japan suggests an increase in the number of disabled elderly. Koyano, *supra* note 2, at 157. By the year 2025, it is estimated that there will be 2.3 million bedridden elderly in Japan. Harris et al., *supra* note 5, at 177.

⁷ *The Door Opens, A Crack*, ECONOMIST, Sept. 2, 2000, available at LEXIS, Japan Country Files. Two-thirds of the half million Japanese who have been specially trained to assist the elderly have not taken jobs in the field. *Id.*

⁸ In Japan today, “increasingly affluent youth have lost interest in jobs that are boring, dirty or dangerous.” Jon Choy, *Japan’s Legal System on the Stand*, JEI REPORT, Sept. 15, 2000, available at LEXIS, Japan Country Files. Foreign workers are known for doing “the tasks the Japanese are increasingly unwilling to perform themselves.” See TAKASHI OKA, PRYING OPEN THE DOOR: FOREIGN WORKERS IN JAPAN 62 (1994). See also Michael Weiner, *Japan in the Age of Migration*, in JAPAN AND GLOBAL MIGRATION: FOREIGN WORKERS AND THE ADVENT OF A MULTICULTURAL SOCIETY 52, 66 (Mike Douglass & Glenda S. Roberts eds., 2000).

⁹ PAPADEMETRIOU & HAMILTON, *supra* note 1, at 22. For example, in 1994, Japan’s average wages were “thirty to forty times higher than in most of the labor-exporting Asian countries.” Wayne A. Cornelius, *Japan: The Illusion of Immigration Control*, in CONTROLLING IMMIGRATION: A GLOBAL PERSPECTIVE 375, 380 n.8 (Wayne A. Cornelius et al. eds., 1994).

¹⁰ PAPADEMETRIOU & HAMILTON, *supra* note 1, at 20. The authors conclude that Japan must “rely more heavily on foreigners” in order to support its aging population. *Id.*

¹¹ Home help for the elderly is considered manual (unskilled) labor. Tetsuya Jitsu, Editorial, *IT-Driven Economies Vie For High-Tech Workers, Few in Japan Realize Supply of Skilled Labor Cannot Satisfy Demand*, NIKKEI WKLY., Apr. 17, 2000, available at LEXIS, Japan Country Files. “Unskilled” labor indicates relatively low-skilled work that is very low paid. Yoko Selleck & Michael Weiner, *Migrant Workers: The Japanese Case in International Perspective*, in THE INTERNATIONALIZATION OF JAPAN 205, 208 (Glenn D. Hook & Michael A. Weiner eds., 1992). Yet unskilled work in Japan may be considered skilled in many of the countries from which immigrant workers come. OKA, *supra* note 8, at 71. According to Japanese immigration policy, unskilled workers are virtually unable to enter Japan for work. *Id.* at 1. Under Japanese immigration laws, however, even skilled workers are restricted “to a trickle.” *The Door Opens, A Crack*, *supra* note 7.

¹² Choy, *supra* note 8.

Japan is the only major industrialized country that, since the 1950s, did not admit significant numbers of foreign workers to take manual labor jobs.¹³ Presently Japan is reconsidering its restrictive and "outdated" immigration policies.¹⁴ As the demand for elder care continues to rise in Japan, increased immigration, including the immigration of unskilled workers, may be essential to alleviate severe labor shortages in the health-care field.¹⁵

This Comment explores Japan's growing need for health-care aides for the elderly and how this need might be met. Part II discusses Japan's declining birthrate, its aging population, and resulting labor shortages, especially in the health-care field. Part III documents changes in Japanese lifestyles, attitudes, and policies related to elder care. Part IV examines admitting foreign labor as a solution to Japan's shortage of elder care. Part V considers possible domestic solutions to this shortage. Part VI concludes that admitting foreign home health-care aides is likely to become part of Japan's immigration policy.

II. JAPAN'S DEMOGRAPHIC CRISIS

A. *Declining Birthrate and Aging Population*

Despite the fact that Japan is one of the world's most populous countries,¹⁶ with a population totaling 127.13 million in the year 2000,¹⁷ its population growth is extremely small.¹⁸ As of October 1, 1999, Japan had grown by only 0.16%, the smallest annual growth figure since World War II's end.¹⁹ Negative population growth rates are projected for the near future.²⁰ Negative population growth is likely to lead to negative economic growth, which is undesirable because the cost of supporting Japan's rapidly

¹³ Cornelius, *supra* note 9, at 377.

¹⁴ Jitsu, *supra* note 11.

¹⁵ Mike Douglass & Glenda S. Roberts, *Japan in a Global Age of Migration*, in JAPAN AND GLOBAL MIGRATION: FOREIGN WORKERS AND THE ADVENT OF A MULTICULTURAL SOCIETY 3, 20 (Mike Douglass & Glenda S. Roberts eds., 2000).

¹⁶ Oka, *supra* note 8, at 1. Oka reports that Japan is the seventh most populous country in the world. *Id.*

¹⁷ THE STATESMAN'S YEARBOOK: THE POLITICS, CULTURES AND ECONOMIES OF THE WORLD 920 (Barry Turner ed., 2001) [hereinafter STATESMAN'S YEARBOOK].

¹⁸ *The Real Need for Foreign Workers*, JAPAN TIMES, Mar. 30, 2000, available at LEXIS, Japan Country Files.

¹⁹ *Id.*

²⁰ Douglass & Roberts, *supra* note 15, at 12. If the current trend lasts, by the year 2010, Japan's population will start to decline. Oka, *supra* note 8, at 1-2.

aging population is sure to increase.²¹ Japan's decreasing fertility rates have been attributed to "improved birth control techniques, increased affluence, and higher female participation in the labor force."²² In addition, Japanese women, on average, are delaying marriage and some are choosing not to marry at all, which is also causing the fertility rate to fall.²³ Some Japanese companies, attempting to combat this trend, offer monetary incentives to encourage their employees to have more children.²⁴

Japan's rapidly aging population has forced the immigration issue to the forefront of public debate.²⁵ Japan is now the "world's most rapidly aging society."²⁶ By the year 2020, it is predicted that more than a quarter of Japan's population will be over age sixty-five.²⁷ This figure will give Japan "the oldest population on the planet."²⁸ Further, by the year 2020 the old-age dependency ratio, the ratio of people sixty-five and over to those between the ages of fifteen and sixty-four,²⁹ will reach 42%.³⁰ This means that "on average, the income (and taxes) of fewer than two and a half Japanese workers will be expected to support each Japanese who is not in

²¹ Kazutoshi Koshiro, *Does Japan Need Immigrants?*, in TEMPORARY WORKERS OR FUTURE CITIZENS?, 151, 158-59 (Myron Weiner & Tadashi Hanami eds., 1998). People over the age of sixty-five use "between two and four times as much in medical benefits as the rest of the population"; "rates for those over seventy-five are much higher." PAPADEMETRIOU & HAMILTON, *supra* note 1, at 20.

²² PAPADEMETRIOU & HAMILTON, *supra* note 1, at 16-17.

²³ Hiroshi Kojima, *Japan: Hyper-Aging and Its Policy Implications*, in AGING IN EAST AND WEST: FAMILIES, STATES, AND THE ELDERLY 95, 99 (Vern L. Bengtson et al. eds., 2000). The mean of first age at marriage for Japanese women in 1975 was 24.7, while in 1997 it was 26.6 years old. In 1995, the proportion of never-married women between the ages of twenty-five and twenty-nine (48%) and between the ages of thirty and thirty-four (19.7%) were more than double the corresponding 1975 figures (20.9% and 7.7%, respectively). *Id.*

²⁴ PAPADEMETRIOU & HAMILTON, *supra* note 1, at 16 n.21.

²⁵ *Id.* at 15.

²⁶ Editorial, *Nursing Care System Must Be Fine-Tuned*, DAILY YOMIURI, Jan. 26, 2000, available at LEXIS, Japan Country Files. Although Japan is presently the world's most rapidly aging country, "[i]n 1950, Japan was the least aged among today's developed nations." Koyano, *supra* note 2, at 156. Japan is not alone in facing aging population, though. Although Japan now has the world's oldest population, Italy, Switzerland, Germany, and Sweden are close behind. Japan's median age is forty-one, and the median age in Italy, Switzerland, Germany, and Sweden is forty. See *World Population Prospects, The 2000 Revision (Highlights)* 15, available at <http://www.un.org/esa/population/wpp2000h.pdf> (last visited Mar. 24, 2001).

²⁷ Joe Lamar, *Japan to Allow in Foreign Nurses to Care for Old People*, BRIT. MED. J., Mar. 25, 2000, at 825, available at LEXIS, Japan Country Files. By 2020, the U.S. ratio of those sixty-five and over to the total population is predicted to be roughly 16%, and in Germany the ratio is predicted to be about 20%. *International Comparison: Ratio of 65 Years Old and Over among Total Population*, at <http://jinjapan.org/stat/stats/01CEN2C.html> (last visited Jan. 24, 2001).

²⁸ Jonathan Watts, *Are Japan's Medical Sensei Losing the Public's Respect?*, LANCET, Mar. 18, 2000, at 995, available at LEXIS, Japan Country Files. The percentage of "old-old" (those seventy-five years of age or older) is increasing rapidly as well, and by 2023 the "old-old" are projected to constitute 50% of the elderly population. O'Leary, *supra* note 3, at 3.

²⁹ PAPADEMETRIOU & HAMILTON, *supra* note 1, at 18 n.23.

³⁰ *Id.* at 18.

the labor market."³¹ Among other industrialized states in the year 2020, only the United States, Canada, Australia, and Luxembourg (all countries with high levels of immigration) are likely to have dependency ratios under 30%.³² A 1995 United Nations (U.N.) Population Division report concluded that without either admitting ten million immigrants per year or increasing the retirement age to seventy-seven, Japan could not maintain its present ratio of employed persons to retirees.³³

B. Labor Shortages

Due to its aging population and low fertility rate, significant labor shortages are forecast for Japan,³⁴ and allowing more foreigners to work in the country could alleviate these shortages.³⁵ Estimated labor shortages are "so large that they will arrest economic growth unless they can be satisfactorily met."³⁶ A U.N. report recently announced that Japan is aging so quickly that it must accept over 600,000 workers yearly until 2050 to keep its working population stable.³⁷ If Japan were to heed the U.N.'s advice, almost one-third of its population would then be from outside the country.³⁸ On the other hand, if no large-scale immigration occurs in Japan, the U.N. calculated that by 2050 the nation's population would drop to 105 million.³⁹ Because of current record unemployment levels in Japan,⁴⁰ its labor needs are now "masked by the recession."⁴¹ Nonetheless, labor shortages *are* being felt in some areas,⁴² such as in elder care.

³¹ *Id.*

³² *Id.*

³³ *The Real Need for Foreign Workers*, *supra* note 18.

³⁴ There is "almost universal agreement that the country faces a shortage of workers." Choy, *supra* note 8.

³⁵ Douglass & Roberts, *supra* note 15, at 20.

³⁶ HIROMI MORI, IMMIGRATION POLICY AND FOREIGN WORKERS IN JAPAN 94 (1997).

³⁷ *The Door Opens, A Crack*, *supra* note 7.

³⁸ *Id.*

³⁹ *The Real Need for Foreign Workers*, *supra* note 18.

⁴⁰ *Id.* The unemployment rate is hovering at about 5% now. PAPADEMETRIOU & HAMILTON, *supra* note 1, at 13. As of 1999, Japan's unemployment rate was 4.7%, the U.S. unemployment rate was 4.2%, and the unemployment rate for both France and Italy was 11%. *International Comparison of Unemployment Rates, as of 1999*, at <http://jinjapan.org/stat/stats/09LAB34.html> (last visited Jan. 24, 2001). The unemployment rate for January 2001 was 4.9%, a post-war high. *Japan's Unemployment Highest Since WW II*, at <http://www.asiagateway.com/TOD/Story?detail=405>.

⁴¹ OKA, *supra* note 8, at 62-63.

⁴² For example, there is "high demand for young male workers in construction and manufacturing industries and for young female labor in entertainment-related businesses." Susumu Watanabe, *The Economic Crisis and Migrant Workers in Japan*, 7 *ASIAN & PAC. MIGRATION J.* 235 (1998).

Japan already has an acute need for people who can provide nursing care to the elderly.⁴³ *Nikkeiren*, Japan's employers' federation, strongly supports the Ministry of Justice's proposal calling for Japan to accept foreign workers to fill the shortage of low-paid, low-skilled home health-care helpers.⁴⁴ Although the Japanese government expects the number of home health-care helpers to double in the next five years, some predict that there will still not be enough home helpers.⁴⁵ If the Japanese economy improves, it is likely that many of those who hold jobs as home health-care aides may quit in order to find better paying, higher status work.⁴⁶

In summary, Japan's rapid aging and falling birth rate constitute a demographic crisis. Coupled with the recession, the demographic crisis in Japan is casting doubt upon the future of the country's economy and the well-being of its citizens.⁴⁷ Despite the recession, there are labor shortages in Japan, including a shortage of workers able to care for the elderly. Thus, elder care is an especially important matter in Japan today.

III. ELDER CARE IN JAPAN

A. *Traditional Japanese Elder Care*

The traditional family unit in Japan is composed of two parents, their eldest son, his wife, and their children, all of whom live together.⁴⁸ This traditional multigenerational family arrangement is influenced by the Confucian ethic of "filial piety and respect for the elderly," which "emphasizes that personal preference and ambition should be subordinated to the common good of the family and that all members of the family should respect and obey the elderly family members."⁴⁹ Women have traditionally been expected to be the caregivers for the elderly in Japan.⁵⁰ In particular, daughters-in-law (wives of eldest sons) are customarily expected to assume

⁴³ *Japan Says It Is Willing to Open Up to Asian Nations*, ASIA PULSE Nov. 29, 1999, available at LEXIS, Japan Country Files. The number of Japanese elderly needing nursing care or assistance with day-to-day activities has already surpassed two million, and this number is expected to grow by 100,000 per year. *Caring for a Graying Japan: Elderly Nursing-Care System is in the Works*, June 20, 1997, at <http://jin.jcic.or.jp/trends96/honbun/tj9706188.html> (last visited Jan. 24, 2001).

⁴⁴ *The Door Opens, A Crack*, *supra* note 7.

⁴⁵ Tolbert, *supra* note 4.

⁴⁶ *Id.*

⁴⁷ PAPADEMETRIOU & HAMILTON, *supra* note 1, at 1.

⁴⁸ Janet Primomo, *Nursing Care Around the World: Japan—Preparing for the Century of the Elderly*, 5(2) ONLINE J. ISSUES IN NURSING, Manuscript 1, 12 (May 31, 2000), at http://www.nursingworld.org/ojin/topic12/tpc12_1.htm.

⁴⁹ O'Leary, *supra* note 3, at 6-7.

⁵⁰ Ishii-Kuntz, *supra* note 3, at 86.

the caregiver role.⁵¹ The extended Japanese family depends mainly on women between the ages of thirty and fifty years old to provide care for the household's elderly family members.⁵² Traditionally, the eldest son, to whom headship of the family was once formally transferred, had a legal, as well as a moral obligation to co-reside with his elderly parents.⁵³ After the end of World War II in Japan, however, this legal obligation was abolished.⁵⁴

B. Contemporary Lifestyles and Attitude Changes Affecting Elder Care

Many changes have accompanied Japan's dramatic demographic changes, including increased geographic mobility, increased labor force participation of women, and non-traditional attitudes towards family care.⁵⁵ First, Japan's population is now highly urbanized,⁵⁶ and the nuclear family is replacing the extended family.⁵⁷ As job opportunities in urban areas increased over time, many Japanese moved away from their family homes, and, as a result, the traditional care-giving structure has weakened.⁵⁸ Second, Japanese women have been increasingly joining the workforce, and many of them desire to stay there.⁵⁹ In 1998, nearly 51% of working-age women in Japan were employed.⁶⁰ Finally, there have been subsequent alterations in Japanese attitudes toward familial roles.⁶¹ In Japan today, family members (almost always females) continue to care for most elderly Japanese at home.⁶² However, women are finding it increasingly difficult to both participate in the labor market and provide in-home care for their elders.⁶³ In 1957, 82% of Japanese aged sixty-five and older lived with their

⁵¹ *Id.*

⁵² O'Leary, *supra* note 3, at 11.

⁵³ Koyano, *supra* note 2, at 158.

⁵⁴ *Id.*

⁵⁵ Koyano, *supra* note 2, at 156.

⁵⁶ Douglass & Roberts, *supra* note 15, at 9.

⁵⁷ Ishii-Kuntz, *supra* note 3, at 95. Co-residence is less common in urban areas, among employees and/or younger generations. Koyano, *supra* note 2, at 158.

⁵⁸ Primomo, *supra* note 48, at 12-13.

⁵⁹ O'Leary, *supra* note 3, at 19. Due to the large number of Japanese women working who intend to remain in the work force, "it is likely that there will be a continued shift in the burden of caring from the private family sector to the public." *Id.*

⁶⁰ PAPADEMETRIOU & HAMILTON, *supra* note 1, at 11 n.11.

⁶¹ Ishii-Kuntz, *supra* note 3, at 85.

⁶² *Id.* Seventy percent of elderly bedridden Japanese depend exclusively on family members to care for them. Harris et al., *supra* note 5, at 177.

⁶³ Ishii-Kuntz, *supra* note 3, at 85. The Japanese expression, "*Te tsuki, ka tsuki, baba nuki*," is used to describe women who wish to marry a man "with a house, a car, but without a mother" in order to avoid the duty of caring for an elder mother-in-law. Sepp Linhart, *Does Oyakōkō Still Exist in Present-Day*

children; by 1997, this ratio decreased to 52%.⁶⁴ Although the number of elderly living in multi-generation households has decreased, increasing numbers of Japanese elderly are now living nearby their children.⁶⁵ Furthermore, at the present time about 53% of family caregivers for the elderly are themselves aged sixty or over,⁶⁶ and nearly 90% of these caregivers are female.⁶⁷ Although nearly all caregivers are female, there is some evidence of increasing involvement of men in care-giving activities.⁶⁸

In-home elder care has created an especially heavy burden on women, and the situation has been dubbed “nursing care hell” in Japan.⁶⁹ It is remarkable that the age group that is traditionally expected to provide most of the elder care is least interested in continuing to reside in an extended family household.⁷⁰ A 1994 survey conducted by *Asahi Shinbun*, one of

Japan?, in AGING: ASIAN CONCEPTS AND EXPERIENCES, PAST AND PRESENT 297, 313 (Susanne Formanek & Sepp Linhart eds., 1997).

⁶⁴ Yasuhiko Yamasaki, Commentary, *Toward the Adoption of Nursing Care Insurance*, NIRA REV., Autumn 1999, 1, at <http://nira.go.jp/publ/review/99autumn/yamasaki.html> (last visited Jan. 24, 2001). One study has found that the strength of the co-residence cultural norm in Japan today depends most upon occupation (it is strongest among farmers), age (younger generations support the norm less), education (weaker among the highly educated who are “critical of traditional customs”), and the size of the parents’ dwelling (more likely to reside in a three generation household if the parent’s house is large). O’Leary, *supra* note 3, at 13-14. Commitment to extended family living arrangements is also influenced by income. *Id.* at 17.

⁶⁵ Ishii-Kuntz, *supra* note 3, at 95. The popular Japanese phrase, “*supu no samenai kyori*,” (a distance that does not allow the soup to get cold) reflects “the ‘ideal’ distance between elderly parents and their children’s family, especially between the two female in-laws concerned.” Sug-in Kweon, “*Supu no Samenai Kyori (A Distance Which Does Not Allow the Soup to Get Cold): The Search for an Ideal in the Care of the Elderly in Contemporary Japan*,” AGING: ASIAN CONCEPTS AND EXPERIENCES, PAST AND PRESENT 369, 371 (Susanne Formanek & Sepp Linhart eds., 1997). The expression means that the ideal distance is one “which does not make the hot soup from the offspring’s place get cold before it arrives at the parent’s place.” *Id.*

⁶⁶ Yamasaki, *supra* note 64, at 2.

⁶⁷ Ishii-Kuntz, *supra* note 3, at 85.

⁶⁸ See Harris et al., *supra* note 5 (examining the experiences of sixteen Japanese male caregivers, including both husbands and sons). Like female caregivers, the men in the study found their work “physically exhausting and emotionally draining.” *Id.* at 195. Harris mentions that an American baseball player in Japan elected to leave his job and return home to care for an ill family member, and his decision received a lot of attention in the Japanese media. *Id.* at 178. Furthermore, it is interesting to note that a 1998 book called *Oya ga 65-sai o sugitara otoko ga yomu hon* [A Book to be Read by Men Whose Parents Are Older than 65] became a best-seller. Ishii-Kuntz, *supra* note 3, at 87. The book “emphasizes the importance of men’s participation and responsibility in caring for frail elderly parents.” *Id.*

⁶⁹ Yamasaki, *supra* note 64, at 2. One Japanese TV talk show introduced the story of a middle-aged female caregiver who was so overwhelmed by caring for her bedridden mother-in-law for three years that she was worked to death. *Id.* at 84. The Japanese term “*karoshi*,” a word usually reserved for the death of overworked Japanese businessmen, was used to describe her death. *Id.* One commentator has concluded that “Japanese middle-aged woman are being exploited as caregivers to the elderly by a patriarchal system under the premises of impending economic crisis and the perceived cultural aversion to institutionalization.” Brenda Robb Jenike, *Home-Based Health Care for the Elderly in Japan: A Silent System of Gender and Duty*, in AGING: ASIAN CONCEPTS AND EXPERIENCES, PAST AND PRESENT 329, 333 (Susanne Formanek & Sepp Linhart eds., 1997).

⁷⁰ O’Leary, *supra* note 3, at 11.

Japan's countrywide newspapers, found that "less than 30% of Japanese women in their forties and fifties felt responsible for taking care of their elderly parents."⁷¹ Nowadays, "[n]ot only do the majority of young and middle aged adults express a desire not to want to live with their parents, but elder Japanese themselves also indicate an ambivalent attitude."⁷² In addition, Japan's family-based welfare system is particularly stressful for those in lower-income groups who face high rent and a lack of living space.⁷³ Family stress related to caring for the elderly can result in elder abuse, labeled "silver harassment" ("*shiruhara*").⁷⁴

C. *Home Helpers as Caretakers for the Elderly*

Home helpers, who offer nursing services to the elderly or disabled,⁷⁵ are a relatively new and expanding category of worker in Japan.⁷⁶ Today, under the guidance of the Ministry of Health, Labor and Welfare, home helpers are trained and are "appointed according to their expertise and experience."⁷⁷ In 1999 there were 178,500 home helpers in Japan.⁷⁸ The growth in the number of home helpers "occurred in part because of the increasing need for personnel to care for the growing elderly population and the lack of response on the part of nursing to address the shortage of nurses prepared to care for them."⁷⁹ The "vast majority" of home helpers trained by local governments are middle-aged women.⁸⁰ Middle-aged women are recruited for home helper certification programs because they are thought to

⁷¹ Ishii-Kuntz, *supra* note 3, at 87.

⁷² *Id.* at 15. In a 1998 survey showing the shift in traditional attitudes about caring for the elderly, only 25.4% of Japanese youths from ages eighteen to twenty-four said that they would take care of their parents regardless of what it takes, while 66% of their American counterparts selected this answer. *International Comparison of Public Opinion on Supporting Elderly Parents*, at <http://jinjapan.org/stat/stats/22OPN32.html> (last visited Jan. 24, 2001). "I will care for my parents as I am financially able to," was the more popular response among the Japanese (65.5%), while just 28.6% of American youths chose this response. *Id.*

⁷³ Jonathan Ferries, *Obasuteyama in Modern Japan: Aging, Ageism and Government Policy*, in *CASE STUDIES ON HUMAN RIGHTS IN JAPAN* 222, 238 (Roger Goodman & Ian Neary eds., 1996).

⁷⁴ *Id.* at 239. Japanese cities, like Kobe, have organized advice centers and hotlines for those seeking help regarding elder abuse. *Id.*

⁷⁵ *Home Helpers (F.Y. 1986-1999)*, at <http://www.jinjapan.org/stat/stats/12MED33.html> (last visited Jan. 24, 2001) [hereinafter *Home Helpers*].

⁷⁶ Primomo, *supra* note 48, at 14. *But see* Eiko Shinotsuka, *Japanese Care Assistants in Hospitals, 1918-88*, in *JAPANESE WOMEN WORKING* 149, 158-59 (Janet Hunter ed., 1993) (describing the emergence of home help associations (*hashutsufukai*) in Japan as early as 1918).

⁷⁷ *Home Helpers*, *supra* note 75.

⁷⁸ *Id.*

⁷⁹ Primomo, *supra* note 48, at 11.

⁸⁰ Jenike, *supra* note 69, at 332.

have spare time (they are assumed to no longer be working, going to school, or caring for children) and are still physically healthy.⁸¹

D. Government Efforts to Promote Elder Care

1. Long-Term Care Insurance

At the center of Japan's preparations for its aging population are provisions for expanding the availability of long-term care services.⁸² Japan began offering subsidized public services at the local level as part of its "Gold Plan," a ten-year plan enacted in 1989 to support home health care in place of institutionalization.⁸³ By initiating the Gold Plan, the Japanese government pledged to provide long-term care for all of Japan's frail elderly, regardless of their income or level of family support.⁸⁴ The fact that the declining birthrate threatens to end family-based elder care was one motivation for the Japanese government to later initiate a public long-term care insurance plan.⁸⁵ Because the number of Japanese seniors dependent on public assistance has increased, the government wishes to promote in-home health-care for the elderly as a lower cost alternative to institutionalized care.⁸⁶ A second motivation for the creation of the long-term nursing care insurance was "to relieve family members from the pressure of nursing the elderly."⁸⁷ A third reason for designing the long-term care insurance program was to integrate welfare and medical services.⁸⁸

In 1997, the Japanese Diet passed the Public Insurance Scheme for Long-Term Care (*Kaigo Hoken*), which was launched in April 2000.⁸⁹ The insurance covers 90% of the expense of long-term care services, which can be provided in either the community (home-help, day care, visiting nurses)

⁸¹ *Id.* at n.8.

⁸² Koyano, *supra* note 2, at 157.

⁸³ Jenike, *supra* note 69, at 331. The goals of the Gold Plan, also known as the "Ten-Year Strategy to Promote Health and Welfare for the Aged," were to "more than double the number of nursing home beds, triple the number of home helpers, and (from a small base) ten times the number of adult day-care centers." John Creighton Campbell & Naoki Ikegami, *Long-Term Care Insurance Comes to Japan*, 19 HEALTH AFF. 26, 28 (2000). By the early 1990s the demand for elder care services exceeded the growing supply, and in 1994, the government significantly increased its goals for expanded elder care services in the "New Gold Plan." *Id.* at 29.

⁸⁴ Campbell & Ikegami, *supra* note 83, at 28.

⁸⁵ Ishii-Kuntz, *supra* note 3, at 95.

⁸⁶ *Id.* at 98. One Japanese scholar has expressed the view that the "Japanese government, in order to pursue its own policy of reducing welfare expenditures, has publicly abused elderly people and made them a scapegoat for the projected problems associated with Japan's aging society." O'Leary, *supra* note 3, at 8.

⁸⁷ Yamasaki, *supra* note 64, at 2.

⁸⁸ *Id.*

⁸⁹ Ishii-Kuntz, *supra* note 3, at 90-91.

or in an institutional setting (nursing home, long-term care facility).⁹⁰ Everyone forty years of age or older pays premiums for this nursing care insurance.⁹¹ Additionally, government funds support this insurance⁹² whereby the municipality acts as the insurer.⁹³ For those sixty-five years or older, the insurance covers long-term care services "irrespective of the cause of the disability," while those between the ages of forty and sixty-four are covered "only if his or her disability is caused by 'geriatric disorders' (such as cerebrovascular stroke or Alzheimer's disease)."⁹⁴ Those requiring long-term care services must apply to the municipality to be assessed for eligibility.⁹⁵ If eligible, one of six assigned ranks, based on the severity of the disability, will determine the upper limits for reimbursement.⁹⁶ The insured is able to pick the kind, amount, and provider(s) of services.⁹⁷ In addition to government funding, seniors must contribute to the insurance plan; 10% up to the upper limit of reimbursement and 100% for services exceeding this limit.⁹⁸ The fact that seniors are required to contribute to the insurance plan marks a "significant departure from past policy of social welfare for the elderly."⁹⁹

The new long-term care insurance system provides various benefits. It "provide[s] services for the elderly who are bedridden or who suffer from senile dementia or other age-related difficulties. It will also pay for professional caregivers (at least on a part-time basis) and pay for daycare centers."¹⁰⁰ The nursing care insurance system entitles certain individuals needing a reasonable amount of assistance in bathing and using the toilet "five visits per week by a home helper, a weekly visit by a nurse and two

⁹⁰ Koyano, *supra* note 2, at 159.

⁹¹ Ishii-Kuntz, *supra* note 3, at 91.

⁹² *Id.*

⁹³ Koyano, *supra* note 2, at 159. Municipalities were chosen as Japan's long-term care insurance carriers because they "were already responsible for social services and for health insurance covering retired persons and other nonemployees (about one-third of the population)." Campbell & Ikegami, *supra* note 83, at 32.

⁹⁴ Koyano, *supra* note 2, at 159-60. Those between the ages of forty and sixty-four pay a supplement to their health insurance premium, shared with the employer. Premiums for those sixty-five and older are deducted from their public pensions. Campbell & Ikegami, *supra* note 83, at 31-32.

⁹⁵ Koyano, *supra* note 2, at 160.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Ishii-Kuntz, *supra* note 3, at 98. Under welfare services as they existed before the new long-term insurance system, long-term care service users were not expected to pay. Koyano, *supra* note 2, at 161. In response to criticism, there is now a short-term freeze on the premiums the elderly must pay and a provision for some small means-tested family allowances outside of the long-term care insurance framework. Campbell & Ikegami, *supra* note 83, at 31.

¹⁰⁰ Ishii-Kuntz, *supra* note 3, at 91.

sessions per week of rehabilitative therapy at a hospital.”¹⁰¹ Every six months, the insurance plan also allows such individuals around-the-clock care at system facilities for a two-week period.¹⁰² In locations where there are not enough nurses available, no services are guaranteed.¹⁰³ Individuals in areas with a shortage of health-care workers instead pay lower premiums.¹⁰⁴

Unfortunately, some commentators believe that the long-term care insurance plan fails to meet the needs of many elder Japanese and their caregivers, especially because of the lack of reliable professional assistance.¹⁰⁵ Others, however, contend that the current available supply of home health-care services should be enough to meet the government’s estimates of initial demand for these services.¹⁰⁶ How municipalities will deal with balancing supply and demand for long-term care insurance services remains to be seen. There may be great variation in demand for services across localities and across types of services.¹⁰⁷ Furthermore, as the program becomes more familiar, the demand for services may rapidly increase.¹⁰⁸ If the demand for services does increase rapidly, contrary to the Japanese government’s predictions, and the government chooses to tighten eligibility criteria or cut benefits, the public reaction could be severe.¹⁰⁹ Therefore, it is unlikely that the government will back away from its commitment to care for the frail elderly.¹¹⁰ Jobs in the health-care field are sure to increase in step with the demand for services under the long-term care insurance plan, and filling these positions will be a growing challenge as the Japanese population continues to quickly age.

¹⁰¹ *Nursing Care System Must Be Fine-Tuned*, *supra* note 26. During the first year the long-term care insurance plan is in place, it is estimated that there will be eighty million home-help visits. Campbell & Ikegami, *supra* note 83, at 35.

¹⁰² *Nursing Care System Must Be Fine-Tuned*, *supra* note 26.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Ishii-Kuntz, *supra* note 3, at 94. The long-term insurance system is relying on private companies to play a major role in the provision of services, but such companies are “insufficiently developed” at this time. Koyano, *supra* note 2, at 161.

¹⁰⁶ Campbell & Ikegami, *supra* note 83, at 36.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 37. There was an “uproar” when politicians proposed postponing the implementation of the long-term care insurance program in 1999. *Id.*

¹¹⁰ *Id.*

2. Long-Term Leave Law

The Long-Term Leave Law (*Kaigo Kyugyohou*)¹¹¹ directs Japanese businesses to allow employees temporary work leave so that they can care for elderly family members who are in poor health.¹¹² The law was designed to “prevent workers from being compelled to quit their jobs in order to look after their families.”¹¹³ However, because the Long-Term Leave Law provides a guarantee of just three months leave, those caring for elderly family members in need of constant attention are only able to get a brief respite from their work outside the home.¹¹⁴ Furthermore, only one family member can take a leave of absence, this leave may be taken only once, and one must apply for the leave two weeks in advance.¹¹⁵ Additionally, there are no provisions for punishing employers who refuse to allow employees paid leave in accordance with the law.¹¹⁶

In summary, elder care in Japan is a national concern. Contemporary lifestyles and attitude changes have placed considerable strain upon the country’s traditional model of family-based elder care. Although Japan’s Public Insurance Scheme for Long-Term Care and the Long-Term Care Leave Law take important steps towards making in-home care for the elderly easier, these governmental efforts do not provide everyone with an adequate solution to the problem of elder care.

IV. JAPAN SHOULD ADMIT FOREIGN WORKERS TO SOLVE HOME HELPER SHORTAGES

Admitting more foreigners poses a promising solution to the health-care worker shortage in Japan. Recognizing both the severe stress caregivers experience and the dwindling number of family members and health-care workers available to care for the elderly, Japan’s Ministry of Justice has proposed easing immigration restrictions in order to admit

¹¹¹ Ishii-Kuntz, *supra* note 3, at 88. Japan’s Diet passed a Long-Term Leave Law (Family Leave Law) in June of 1995, and the law went into effect in April 1999. *Family Leave Law to be Implemented in 1999*, Information Bull. No. 8, June 23, 1995, at <http://jin.jcic.or.jp/bull/8.html> (last visited Feb. 4, 2001).

¹¹² Ishii-Kuntz, *supra* note 3, at 88.

¹¹³ *Family Leave Law to be Implemented in 1999*, *supra* note 111. In 1993, Japan’s Management and Coordination Agency reported that more than two million elderly Japanese required some type of nursing care, and some 81,000 workers were forced to give up their jobs to care of family members. *Id.*

¹¹⁴ Ishii-Kuntz, *supra* note 3, at 90.

¹¹⁵ Sumitaka Harada, *The Ageing Society, the Family, and Social Policy*, (Fumiaki Moriya trans.), in *THE POLITICAL ECONOMY OF JAPANESE SOCIETY*, VOL. 2 175, 221 (Junji Banno ed., 1998).

¹¹⁶ *Family Leave Law to be Implemented in 1999*, *supra* note 111.

foreign home helpers.¹¹⁷ Lesser-developed countries neighboring Japan have a surplus of labor,¹¹⁸ so they are ideal exporters of home health-care helpers. Countries neighboring Japan are interested in exporting labor, and they have much to gain economically from doing so.¹¹⁹ For example, a three-month training program for home helpers that includes basic Japanese language lessons at a Bangkok hospital has already begun.¹²⁰ In addition to the obvious benefit of addressing the growing need for home helpers, the liberalization of Japanese immigration laws, in general, might have a positive economic and political impact within Asia. An official position paper titled "Report of the Mission for Revitalization on Asian Economy" released by Japan's Ministry of Foreign Affairs in 1999 at a preparatory gathering before an Association of South East Asian Nations ("ASEAN") meeting states:

We will not be able to build a true partnership with Asian countries unless we open Japan, and we must understand that opening Japan will be beneficial for Japan itself . . . The time has come to seriously consider actively bringing in human resources from abroad to supply the people who will provide medical and nursing care and fill other needs as our society ages.¹²¹

Supporters of a more open-door immigration policy point out that since the trade of money and goods has become more liberalized among the world's countries, it is consequently necessary to liberalize "the trade in people."¹²² As the world becomes increasingly borderless, Japan's immigration policies

¹¹⁷ *The Door Opens, A Crack*, *supra* note 7.

¹¹⁸ PAPADEMETRIOU & HAMILTON, *supra* note 1, at 22. Such countries include China, the Philippines, Thailand, Bangladesh, and Pakistan. *Id.* After Mexico, the Philippines is the world's second leading exporter of labor. Philip Martin, *Labor Migration: What Role Did It Play in the Asian Economic Miracle?*, Center for Migration and Development Working Paper Series, Princeton University (May 2000), available at <http://www.opr.princeton.edu/papers/cmd0002f.pdf>, at 14. One study estimates that up to 250 million Chinese workers would enter Japan if the government eased immigration restrictions. Koshiro, *supra* note 21, at 163.

¹¹⁹ See also Editorial *Their Loss Could Be Thailand's Gain*, BANGKOK POST, Mar. 27, 2000, available at LEXIS, Japan Country Files.

¹²⁰ This home help training program involves Thai individuals of Japanese descent, thus they will be able to enter Japan legally to do unskilled work. Tolbert, *supra* note 4.

¹²¹ The Ministry of Foreign Affairs of Japan, Report of the Mission for Revitalization of Asian Economy: Living in Harmony with Asia in the Twenty-first Century, pt. 1, sec. 8, <http://www.mofa.go.jp/policy/economy/asia/mission99/report/index.html>.

¹²² HIROSHI KOMAI, *MIGRANT WORKERS IN JAPAN* 247 (Jens Wilkinson trans., 1995).

appear more and more anachronistic.¹²³ If Japan were to continue to allow unskilled immigrants to be admitted only “through the back door,” this would probably not garner much international support. However, if more foreigners are to be legally admitted, the government will have to change its strict immigration laws.

A. Japanese Immigration Law and Proposed Changes

1. Japan's Legally Admitted Foreign Population

Japan has the smallest foreign population among the world's major industrialized countries.¹²⁴ At the close of 1999, the total number of foreigners registered in Japan was 1,556,113.¹²⁵ The “overwhelming majority” of foreigners living in Japan are from Asia.¹²⁶ In almost every industrial society the percentage of foreigners “is between 3 and 8 percent, in some cases substantially more.”¹²⁷ Right now, Japan's foreign residents total less than 1.5% of the population.¹²⁸ However, over the past twenty years, the number of foreign-born people living in Japan has undergone a twofold increase.¹²⁹ More foreign workers have entered Japan during the past two decades because of labor shortages in Japan and the relatively high wages offered.¹³⁰ Many of the foreigners who came to work temporarily in

¹²³ HARUO SHIMADA, JAPAN'S “GUEST WORKERS”: ISSUES AND PUBLIC POLICIES 46 (Roger Northridge trans., 1994).

¹²⁴ Myron Weiner, *Opposing Visions: Migration and Citizenship Policies in Japan and the United States*, in TEMPORARY WORKERS OR FUTURE CITIZENS? 3, 3 (Myron Weiner & Tadashi Hanami eds., 1998).

¹²⁵ *Number of Non-Japanese Residents in Japan by Country, as of 1999*, at <http://jinjapan.org/stat/stats/21MIG22.html> (last visited Jan. 24, 2001). Of these foreign residents, 635,715 were permanent residents as of 1999, mainly people of Korean and Chinese origin who settled in Japan during World War II, their families, and their offspring. *Number of Non-Japanese Residents in Japan by Qualification (1992-1999)*, at <http://jinjapan.org/stat/stats/21MIG22.html> (last visited Jan. 24, 2001).

¹²⁶ OKA, *supra* note 8, at 2 (citing figures from 1992). For example, people from Asian countries made up 74.3% of permanent residents in Japan in 1998. PAPADEMETRIOU & HAMILTON, *supra* note 1, at 39 tbl. 4.

¹²⁷ Weiner, *supra* note 124, at 3-4. For example, foreigners make up 8.6% of the total population in the United States, 8.6% in Germany, 6.4% in France, 9.5% in Sweden, 3.3% in the U.K., 4.6% in the Netherlands, 6.6% in Austria, 9.1% in Belgium, 18% in Switzerland, 23.4% in Australia, and 15.1% in Canada. *Id.* at 4.

¹²⁸ Lamar, *supra* note 27.

¹²⁹ *The Door Opens, A Crack*, *supra* note 7. The percentage of foreigners in Japan's total population between 1950 and 1988 remained around 0.6%. Cornelius, *supra* note 9, at 375.

¹³⁰ See *supra* note 9 and accompanying text. By the 1980s, the number of agricultural workers had significantly decreased, and those remaining in agriculture were less willing to move to the cities to work. PAPADEMETRIOU & HAMILTON, *supra* note 1, at 11.

Japan now reside there permanently.¹³¹ Foreign workers may enter Japan under current laws only for a specified period and only if they have certain recognized skills or training.¹³² Technically speaking, almost no unskilled laborers can be legally employed in Japan.¹³³

2. *Immigration Laws*

For decades, Japan has tightly controlled immigration.¹³⁴ In fact, throughout its history, Japan has habitually presented itself as a country with “little room physically or socially—for foreigners.”¹³⁵ The Japanese Immigration Control Law¹³⁶ was instituted in 1952.¹³⁷ At the time of its inception, during the U.S. occupation following World War II, U.S. immigration laws were used as a model.¹³⁸ Unlike U.S. models, however, the Japanese counterpart had no provision for accepting immigrants intending to reside permanently in Japan.¹³⁹ In 1981, the Japanese government revised the Immigration Control Law by creating the Immigration Control and Refugee Recognition Act (“ICRRA”).¹⁴⁰

¹³¹ Takamichi Kajita, *The Challenge of Incorporating Foreigners in Japan: “Ethnic Japanese” and “Sociological Japanese”, in TEMPORARY WORKERS OF FUTURE CITIZENS?* 120, 120 (Myron Weiner & Tadashi Hanami eds., 1998).

¹³² Michiyo Nakamoto, *Tokyo Governor Rebuked for Attack on Immigrants*, FIN. TIMES (London), Apr. 12, 2000, at 14, available at LEXIS, Japan Country Files.

¹³³ See Cornelius, *supra* note 9, at 395. There are exceptions allowing unskilled labor by trainees, students, and migrants of Japanese descent. See discussion *infra* Part IV.A.3.

¹³⁴ Choy, *supra* note 8.

¹³⁵ *Id.* Japan is not alone in having strict immigration regulations. Singapore and Switzerland, for example, are often cited as countries with tightly controlled immigration policies. MORI, *supra* note 36, at 1.

¹³⁶ The Immigration Control and Refugee Recognition Act, Cabinet Order No. 319 of 1951, amended by Law No. 135 of 1999, provisional translation, at <http://www.moj.go.jp/ENGLISH/IB/ib-19.htm> (last visited Nov. 10, 2000).

¹³⁷ Seigo Hirowatari, *Foreigners and the “Foreigners Question” Under Japanese Law*, University of Tokyo Institute of Social Science, Occasional Papers in Law and Society, No. 7, 21 (Fumiaki Moriwa trans., Mar. 1994).

¹³⁸ *Id.* at 22.

¹³⁹ *Id.* Hirowatari explains, “Admitting foreigners as immigrants implies admission of foreigners from the start as ‘future citizens.’” Seigo Hirowatari, *Foreign Workers and Immigration Policy*, (Colin Noble, trans.) in THE POLITICAL ECONOMY OF JAPANESE SOCIETY, *supra* note 115, 81, 88. Japanese immigration law follows the United States’ practice of issuing non-immigrant visas. While Japanese immigration law does provide for permanent residence, this is not equivalent to an American immigrant visa. *Id.* at 90.

¹⁴⁰ Hirowatari, *supra* note 137, at 22-23. The revision was “necessitated by the fact that Japan, having just become a signatory to both the Convention to the Status of Refugees and its accompanying Protocol, was obliged to establish legal procedures for the acceptance of refugees.” *Id.* According to the United Nations High Commissioner for Refugees (“UNHCR”), “[a]lthough a signatory to the UN Refugee Convention and a major donor to UNHCR, Japan continued to admit the fewest refugees of all industrialized countries except South Korea in 1999.” *Country Report: Japan*, available at http://www.refugees.org/world/countryrpt/easia_pacific/japan.htm (last visited Apr. 24, 2001).

Responding both to the increased numbers of illegal immigrants in the mid-1980s and the increased need for foreign labor, Japan revised the ICCRA in 1989, and a new version of it went into effect on June 1, 1990.¹⁴¹ The 1989 amendments expanded the number of job categories under which foreign workers can be admitted.¹⁴² The new law created more categories for legal residence and work, allowing a variety of professionals and descendants of Japanese immigrants to work and reside in Japan legally, with specific lengths of stay.¹⁴³ This version of the immigration law also allowed immigrants of Japanese ancestry to work in unskilled jobs.¹⁴⁴ Further, the revised ICCRA, for the first time, imposed sanctions on employers for employing illegal workers.¹⁴⁵ The amended ICCRA also extended punishment for those foreigners illegally overstaying or violating the terms of their authorized stay.¹⁴⁶

3. *Unskilled Foreign Labor*

Japan presently maintains strict immigration controls both at the border and during an immigrant's stay.¹⁴⁷ Under current laws, foreign workers may enter Japan only for a specified period and only if they have certain recognized skills or training.¹⁴⁸ Almost no unskilled workers can be legally employed in Japan.¹⁴⁹ However, Japanese immigration law provides for some special exceptions to the general ban on the employment of unskilled foreign labor. Trainees, students, and migrants of Japanese descent are permitted to perform unskilled labor.¹⁵⁰ In addition, unskilled foreign laborers are being illegally employed in Japan.¹⁵¹

¹⁴¹ Yoko Selleck, *Illegal Foreign Migrant Workers in Japan: Change and Challenge in Japanese Society*, in *MIGRATION: THE ASIAN EXPERIENCE* 185 (Judith M. Brown & Rosemary Foot eds., 1994).

¹⁴² Kiriyo Morita & Saskia Sassen, Research Note, *The New Illegal Immigration in Japan, 1980-1992*, 28 *INT'L MIGRATION REV.*, 153, 160 (1994).

¹⁴³ *Id.* For a list of the status of residence categories and the related periods of stay, see <http://www.moj.go.jp/ENGLISH/IB/ib-07.htm> (last visited Feb. 4, 2001).

¹⁴⁴ *Id.*

¹⁴⁴ Morita & Sassen, *supra* note 142, at 160.

¹⁴⁵ *Id.*

¹⁴⁶ MORI, *supra* note 36, at 99.

¹⁴⁷ MORI, *supra* note 36, at 1. Singapore and Switzerland are given as examples of other countries with strict immigration policies. *Id.*

¹⁴⁸ Nakamoto, *supra* note 132.

¹⁴⁹ Tolbert, *supra* note 4.

¹⁵⁰ SHIMADA, *supra* note 123, at 18-21.

¹⁵¹ See discussion *infra* Part IV.A.3.d.

a. *Trainees*

Trainees are one important exception to the general ban on the immigration of unskilled labor under Japanese law.¹⁵² Japanese law allows foreign trainees to enter Japan to be trained in a particular job skill.¹⁵³ Thus, small- and medium-sized Japanese firms having no foreign presence are able to legally recruit unskilled foreign workers.¹⁵⁴ Japanese trainee programs are “[o]fficially portrayed as an enlightened attempt to transfer skills and expertise to Japan’s less-developed neighbors.”¹⁵⁵ However, in many cases, trainees have been used illegitimately as a cheap source of labor.¹⁵⁶ During labor shortages in the 1960s and early 1970s, employers misused the trainee category and the trainee system continues to be used to import unskilled laborers to Japan.¹⁵⁷

To combat this illegal practice, in 1991 Japan launched the Japan International Training Cooperation Organization (*Kokusai Kenshu Kyoryoku Kiko*), also known as JITCO.¹⁵⁸ This organization now conducts unified supervision of trainees.¹⁵⁹ Japan’s Technical Internship Training Program, which began in 1993, allows trainees to work after completion of their training if they can pass a special technical skills test.¹⁶⁰ Under this program, technical interns acquire the same labor rights as Japanese workers, and they may work in Japan for up to three years.¹⁶¹ However, like twenty years ago, “the euphemism ‘training’ [is being] used as camouflage for the introduction of foreign workers.”¹⁶²

b. *Students*

Students are also “a convenient vehicle for the introduction of foreign workers.”¹⁶³ For example, during the mid-1980s, many individuals from Bangladesh and Pakistan came to Japan with student visas, supposedly to

¹⁵² PAPADEMETRIOU & HAMILTON, *supra* note 1, at 40.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ KOMAI, *supra* note 122, at 37. The academic courses and lectures that are supposed to be provided to trainees are sometimes never carried out. *Id.*

¹⁵⁷ *Id.* at 53. The use of trainee nurses became a “topic of controversy” in the 1960s and 1970s. *Id.*

¹⁵⁸ *Id.* at 52.

¹⁵⁹ *Id.*

¹⁶⁰ PAPADEMETRIOU & HAMILTON, *supra* note 1, at 40.

¹⁶¹ *Id.* In 1998, nearly 50,000 trainees entered Japan. *Id.* n.45.

¹⁶² KOMAI, *supra* note 122, at 54.

¹⁶³ *Id.*

study at Japanese language schools, but most worked illegally.¹⁶⁴ In an effort to clean up the language school industry, the Japanese government introduced new controls.¹⁶⁵ Students are now limited to working four hours per day during the week and eight hours per day on the weekend.¹⁶⁶ Despite this restriction, most students work much more than twenty hours per week.¹⁶⁷ In fact, “a substantial portion of the so-called foreign student populations is, de facto, a part of the regular, full-time labor force, whether or not they were bona fide students attending legitimate schools at the outset of their stay in Japan.”¹⁶⁸ Foreign students are now an “indispensable” part of the labor force.¹⁶⁹ They tend to fill jobs with late night or early morning hours (e.g., convenience stores, newspaper delivery and wholesale markets).¹⁷⁰

c. *Migrants of Japanese descent*

Responding to labor shortages in the late 1980s, the Japanese government amended its immigration laws so that second and third generation descendants of Japanese migrants (called “*Nikkeijin*”¹⁷¹) could enter the country as unskilled workers.¹⁷² This marked the first time that unskilled workers were allowed to enter Japan as part of a national immigration policy.¹⁷³ Under the 1990 amendment to Japan’s immigration law, the number immigrants of Japanese ancestry who can enter Japan is not subject to a numerical ceiling.¹⁷⁴ Furthermore, *Nikkeijin* are issued an initial visa lasting three years, which can be renewed an unlimited number of times.¹⁷⁵ Since 1990, there has been a “reverse immigration” of ethnic Japanese coming to Japan from Latin America, mostly from Brazil.¹⁷⁶

¹⁶⁴ *Id.* at 55.

¹⁶⁵ *Id.* at 63.

¹⁶⁶ Koshiro, *supra* note 21, at 159.

¹⁶⁷ Cornelius, *supra* note 9, at 400.

¹⁶⁸ *Id.*

¹⁶⁹ MORI, *supra* note 36, at 173.

¹⁷⁰ *Id.*

¹⁷¹ See KOMAI, *supra* note 122, at 2.

¹⁷² Tolbert, *supra* note 4. Even prior to the revision of the immigration law, Latin Americans of Japanese ancestry were considered eligible for special “resident permits” and the government granted them. The Ministry of Justice, aware that employers were taking advantage of a loophole in the law by using these foreign workers, ultimately encouraged further use of the loophole by creating a long-term residence status for these workers. Hirowatari, *supra* note 137, at 23-24.

¹⁷³ OKA, *supra* note 8, at 42.

¹⁷⁴ Cornelius, *supra* note 9, at 395-96.

¹⁷⁵ *Id.* at 396.

¹⁷⁶ OKA, *supra* note 8, at 41.

Japanese officials view the reverse immigration of Japanese-Latin Americans as “a politically low-cost way of helping to solve the labor shortage, since immigrants of Japanese ancestry are not supposed to upset the country’s mythical ethnic homogeneity.”¹⁷⁷ The fact that Japanese law favors *Nikkeijin* by allowing them to work without restriction in Japan is evidence of the blood-lineage orientation of the Japanese legal system.¹⁷⁸ The arrival of Latin American workers of Japanese descent was thought of as a kind of “homecoming.”¹⁷⁹ Masahiro Fukukawa, director of the Foreign Ministry’s consular and migration policy division has explained, “We thought they [foreigners of Japanese descent] could assimilate more easily than other foreigners, that they share common values and probably would not cause crimes.”¹⁸⁰ The fact that most *Nikkeijin* “initially have little or no competence in the Japanese language, and that they behave culturally as Latin Americans rather than Japanese, are facts conveniently overlooked.”¹⁸¹

Many Japanese employers jump at the chance to employ *Nikkeijin* because they can be hired to do any job (skilled or unskilled), and they “tend to be well educated and occupationally skilled.”¹⁸² Surveys show that most *Nikkeijin* who come to Japan to work were white-collar workers in their home countries.¹⁸³ They are willing to perform unskilled labor in Japan because of the enormous wage differential.¹⁸⁴ A typical *Nikkeijin* factory worker earns “more than even doctors, lawyers and professors in Brazil.”¹⁸⁵ The Japanese government estimated that in 1998 there were 220,844 *Nikkeijin* legally employed in Japan.¹⁸⁶ However, although *Nikkeijin* are a popular source of legally employable unskilled workers, alone they “cannot possibly supply Japan with the number of foreign workers that its economy seems to demand.”¹⁸⁷

¹⁷⁷ Cornelius, *supra* note 9, at 396.

¹⁷⁸ See Hirowatari, *supra* note 137, at 27.

¹⁷⁹ *Id.* at 23.

¹⁸⁰ Tolbert, *supra* note 4.

¹⁸¹ Cornelius, *supra* note 9, at 396. In the Japanese town of Oizumi, Latin American residents hold a yearly carnival complete with feathers, G-strings, and “a pounding samba beat.” The *Nikkeijin* also eat atypical food like braised beef and sausage in their traditional Japanese lunchboxes (*bento*). George Wehrfritz & Hideko Takayama, *The Japan That Can Say Yes*, NEWSWEEK, June 5, 2000, available at LEXIS, Japan Country Files.

¹⁸² Cornelius, *supra* note 9, at 396.

¹⁸³ *Id.* at 397.

¹⁸⁴ *Id.*

¹⁸⁵ Wehrfritz & Takayama, *supra* note 181.

¹⁸⁶ PAPADEMETRIOU & HAMILTON, *supra* note 1, at 38.

¹⁸⁷ Cornelius, *supra* note 9, at 397.

d. *Illegal immigrants*

Japan's foreign population includes numerous illegal immigrants in addition to legal immigrants.¹⁸⁸ There was a "near tripling of the illegal foreign worker population in Japan" between 1990 and 1994.¹⁸⁹ In 1991, at the peak of Japan's economic prosperity (popularly referred to as the "bubble economy"), illegal immigrants from seventy-five different nations lived in Japan.¹⁹⁰ Current estimates put the number of illegal laborers in Japan around 500,000.¹⁹¹ Like Japan's legal immigrants, the illegal immigrants residing in Japan are mainly from Asia.¹⁹² Many of these illegal workers come into the country on tourist visas and find work in so-called "3K" jobs, which Japanese workers shun.¹⁹³ "3K" jobs (or "3D" jobs in English) are jobs that are "*kitanai*" (dirty), "*kitsui*" (difficult), and "*kiken*" (dangerous).¹⁹⁴ For example, construction is a 3K job,¹⁹⁵ and caring for the elderly most likely qualifies as a 3K job as well. Enforcement of sanctions against employers employing illegal foreign workers has largely been "symbolic," and is considered "a recognition of the essential role now played by foreign workers—legal and illegal—in certain sectors of the Japanese economy."¹⁹⁶ The current recession has caused only a slight decrease in the estimated number of illegal immigrants.¹⁹⁷

¹⁸⁸ Koshiro, *supra* note 21, at 155.

¹⁸⁹ Demetrios G. Papademetriou, *Forward* to TAKASHI OKA, *PRYING OPEN THE DOOR: FOREIGN WORKERS IN JAPAN* vii, x (1994).

¹⁹⁰ OKA, *supra* note 8, at 31.

¹⁹¹ Wehrfritz & Takayama, *supra* note 181. While the number of foreigners officially confirmed as living in Japan illegally is around 270,000, the government recognizes that there are many illegal aliens not accounted for, namely those who have been smuggled into Japan. *Basic Plan for Immigration Control*, second edition, Ministry of Justice, Mar. 2000, provisional translation, at <http://www.moj.go.jp/ENGLISH/IB/IB2000/ib01.htm> (last visited Feb. 4, 2001).

¹⁹² PAPADEMETRIOU & HAMILTON, *supra* note 1, at 29. In 1997, an estimated 78% of illegal immigrants came from six Asian countries: Thailand, Korea, China, the Philippines, Malaysia, and Iran. *Id.*

¹⁹³ Nakamoto, *supra* note 132. See also OKA, *supra* note 8, at 1.

¹⁹⁴ OKA, *supra* note 8, at 1. Some Japanese use the expression "Roku-K" [6-K], adding the following three phrases to the three Ks already mentioned: "*Kyuryo ga [yasui]*," [low-wages], "*Kyujitsu ga sukunai*" [few holidays], and "*Kakko ga warui*" [not-smart-in-appearance]. Selleck, *supra* note 141, at 183.

¹⁹⁵ Nakamoto, *supra* note 132.

¹⁹⁶ Cornelius, *supra* note 9, at 391-92.

¹⁹⁷ Koshiro, *supra* note 21, at 152.

4. *Proposed Changes to Japanese Immigration Law and Policy*

a. *Commission on Japan's goals in the 21st century*

The January 18, 2000 report by the Commission on Japan's Goals in the 21st Century, a private advisory panel organized by former Japanese Prime Minister Keizo Obuchi, advocated allowing more immigrants to enter Japan.¹⁹⁸ The Commission called for establishing "an explicit immigration and permanent residency system."¹⁹⁹ Because Japan's labor force is expected to shrink, the government "has a strong incentive to increase the numbers of foreigners at all skill levels allowed to work in the country."²⁰⁰ The Commission's findings reflect recognition that allowing more foreigners to enter Japan as immigrants, including those who are considered unskilled, could help alleviate labor shortages. The report is supposed to represent the panel's view of "the desirable future direction of Japan."²⁰¹ It remains to be seen whether Japan's new leadership will embrace this point of view.

b. *Basic plan for immigration control*

For the first time, Japan is officially advocating coexistence between Japanese and foreigners "as the overriding goal of immigration administration in the face of the country's decreasing birthrate and aging population."²⁰² Article 61-9 of ICCRA mandates that the Ministry of Justice establish immigration guidelines in the form of a "Basic Plan for Immigration Control."²⁰³ The aim of Japan's new Basic Plan, announced in March 2000, is to "promote the acceptance of foreigners who meet the social needs" of Japan; rather than suddenly accepting a large number of foreign workers, the Plan contemplates "accepting foreigners in a way that would

¹⁹⁸ *Prime Minister's Commission on Japan's Goals in the 21st Century Delivers Report*, at <http://www.embassyjapancanada.org/AboutJapan/Politics/pmcommsum.html> (last visited Feb. 4, 2001). The report was called, *The Frontier Within: Individual Empowerment and Better Governance in the New Millennium*. *Id.*

¹⁹⁹ Wehrfritz & Takayama, *supra* note 181.

²⁰⁰ Douglas Ostrom, *Tokyo Unveils New Economic Plan*, JEI REPORT, July 16, 1999, available at LEXIS, Japan Country Files.

²⁰¹ *Prime Minister's Commission on Japan's Goals in the 21st Century Delivers Report*, at <http://www.embassyjapancanada.org/AboutJapan/Politics/pmcommsum.html> (last visited Feb. 4, 2001).

²⁰² *Japan May Accept Nursing Care Workers from Abroad: Draft*, JAPAN WKLY. MONITOR, Mar. 24, 2000, available at LEXIS, Japan Country Files.

²⁰³ *Basic Plan for Immigration Control*, 2d ed., Ministry of Justice, Mar. 2000, provisional translation, at <http://www.moj.go.jp/ENGLISH/IB/IB2000/ib.html> (last visited Apr. 18, 2001), pt. I [hereinafter *Basic Plan*].

cause little friction with society.”²⁰⁴ As part of the Plan, the Immigration Bureau, an arm of Japan’s Ministry of Justice, has said it will consider creating a new type of residence status that would encourage foreigners to come to Japan to work in the health-care field.²⁰⁵ With this announcement, the Ministry of Justice indicated that it will begin to revise the ICCRA.²⁰⁶ The Justice Ministry’s proposal to change visa and residency regulations so that foreigners can be employed in a broader range of jobs was approved by the ruling Liberal Democratic party and its coalition partners in March 2000.²⁰⁷ While the Japanese government is expected to implement measures in line with the guidelines in the Basic Plan,²⁰⁸ no change has yet been made to the immigration laws.

5. *Current Debate on Immigration Law and Policy in Japan*

There is “plenty of opposition” to the plan to allow foreign home health-care helpers to enter Japan to work.²⁰⁹ One reason Japan’s restrictive approach towards accepting unskilled immigrant labor has been maintained is due to conflicting viewpoints among Japan’s many government ministries and agencies.²¹⁰ In the past, there has been little consensus within the Japanese government concerning the basic direction of immigration policy.²¹¹ The immigration policy-making process has been described as a “tug of war” involving different segments of government bureaucracy.²¹² For example, the Ministry of Health and Welfare recently objected to the plan to accept foreign home helpers because this proposal conflicts with their nursing-care insurance plan, which makes no provision for foreign workers.²¹³ In addition, the Ministry of Labor voiced concern that foreigners would take jobs away from Japanese workers.²¹⁴ The main ministry responsible for immigration policy, the Ministry of Justice, has typically taken the most conservative position, supporting strict immigration laws.²¹⁵ Now the Ministry of Justice, who introduced the ground-breaking plan to

²⁰⁴ *Id.*

²⁰⁵ *Japan May Accept Nursing Care Workers from Abroad, supra* note 202.

²⁰⁶ *Id.*

²⁰⁷ Lamar, *supra* note 27.

²⁰⁸ *Basic Plan, supra* note 203.

²⁰⁹ *The Door Opens, A Crack, supra* note 7.

²¹⁰ Koshiro, *supra* note 21, at 157.

²¹¹ Cornelius, *supra* note 9, at 385.

²¹² *Id.* at 385-86.

²¹³ *The Door Opens, A Crack, supra* note 7.

²¹⁴ *Id.*

²¹⁵ Koshiro, *supra* note 21, at 157.

bring in more foreign workers, “seems to be backpedaling, saying its proposals are not necessarily final.”²¹⁶ The Ministry of Health and Welfare merged with the Ministry of Labor on January 6, 2001 to become the Ministry of Health, Labor, and Welfare.²¹⁷ It is uncertain what affect this will have on disputes regarding immigration policy.

The general public also lacks consensus on the issue of allowing unskilled workers to enter Japan.²¹⁸ Public opinion does not strongly support allowing more foreigners into Japan; a 1999 nationwide poll conducted by the Economic Planning Agency which surveyed 3600 retail-price monitors, mostly women, showed that among the 95.5% that responded, nearly 80% were in opposition to expanding job areas open to foreigners.²¹⁹ Furthermore, close to one-third supported stricter immigration regulations.²²⁰

In summary, Japan’s immigration laws tightly restrict the employment of unskilled labor. Nevertheless, in recent years, trainees, students, and migrants of Japanese descent, as well as illegal immigrants, have been supplying Japan with unskilled labor. Now, prompted in part by the current shortage of health-care workers for the elderly, Japan is reconsidering its formal restrictions on unskilled labor. The Ministry of Justice has recently proposed that Japan open its doors to foreign home health-care aides. While opening Japan to more foreign workers has the potential to improve Japan’s demographic situation, the proposal to allow unskilled foreign workers to work legally in Japan remains controversial.

B. Social and Cultural Challenges Accompanying the Admission of Foreign Home Health-Care Aides

1. Acceptance of Foreigners as Home Helpers

Foreigners may not be easily accepted into Japanese households as home helpers. One problem is that Japanese women are “socialized to regard care of the family and the home as her main purpose in life, and

²¹⁶ *The Door Opens, A Crack*, *supra* note 7.

²¹⁷ *Kondo Named Vice Health, Labor, Welfare Minister*, JUI PRESS TICKER SERVICE, Dec. 26, 2000, available at LEXIS, Japan Country Files.

²¹⁸ Cornelius, *supra* note 9, at 407.

²¹⁹ Tolbert, *supra* note 4. In a 1994 survey, 64% of Tokyo residents indicated that they disliked having foreigners residing in their neighborhoods. Cornelius, *supra* note 9, at 402.

²²⁰ Tolbert, *supra* note 4. Media and university surveys in Japan show, however, that most Japanese support the foreign workers already present in their country, at “a support rate higher . . . than that measured in . . . the United States.” Wehrfritz & Takayama, *supra* note 181.

delegating this expected social role to a foreign household servant would invite social ostracism as well as intense personal guilt feelings.”²²¹ Another problem is that foreigners, because they are outsiders, could be considered “as a particularly egregious form of impurity,” and so some Japanese may be reluctant to accept them as workers in the home.²²² Disdainful feelings toward fellow Asians is yet another problem. Like most of Japan’s foreign population, those coming to work as home helpers would certainly come from Asia. In Japan, “[w]hile Caucasians often receive a warm welcome, Asians tend to be treated coldly, or sometimes even with contempt.”²²³ One Japanese professor is quoted as saying, “Since the end of the 19th century, the attitude has been whites are superior, other Asians are inferior.”²²⁴ It is hard to imagine successfully employing Asians as home helpers without altering the “deeply embedded negative stereotypes and intolerant attitudes” toward Japan’s Asian neighbors.²²⁵

2. Economic Stratification

In Japan there is a fear that if many foreigners enter the country as unskilled laborers, “they will gradually come to form a separate stratum at the lower end of the labor market.”²²⁶ Many Japanese fear that introducing a great number of unskilled foreign laborers would amount to a “recipe for social chaos.”²²⁷ Among other problems, this economic stratification could further exacerbate prejudice against immigrant Asians²²⁸ and potentially lead to an increase in the crime rate.²²⁹ Although the segmentation of the labor

²²¹ Cornelius, *supra* note 9, at 385.

²²² *Id.* *Nikkeijin* may be immune to this kind of stigma. In Tokyo, some *Nikkeijin* females have been employed as live-in care providers for the elderly. *Id.* at 385 n.16.

²²³ YUJI IWASAWA, INTERNATIONAL LAW, HUMAN RIGHTS, AND JAPANESE LAW 202 (1998)

²²⁴ Howard W. French, *Disdainful of Foreigners, the Japanese Blame Them for Crime*, N.Y. TIMES, Sept. 30, 1999, available at LEXIS, Newspaper Stories, Combined Papers. According to some experts, “Japan has used Westerners and Asians as flip sides of the same coin of racial complexes, struggling to ‘catch up’ to the one while despising the other.” *Id.* A survey conducted in 1999 shows that 33.8% of Japanese have positive feeling about the United States, compared to 8.0% with positive feelings about countries that are members of the Association of South East Asian Nations (“ASEAN”). Conversely, only 9.7% of Japanese say they do not have positive feelings towards the United States, compared to 21.8% of Japanese surveyed who do not have positive feelings about ASEAN countries. *Countries that Japanese Have Positive Feelings Towards*, at <http://jinjapan.org/stat/stats/22OPN45.html> (last visited Jan. 24, 2001). ASEAN member countries include Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. See *ASEAN homepage*, at <http://www.asean.or.id> (last visited Jan. 25, 2001).

²²⁵ Cornelius, *supra* note 9, at 403-04.

²²⁶ SHIMADA, *supra* note 123, at 41.

²²⁷ *Id.* at 46.

²²⁸ *Id.* at 41-42.

²²⁹ *Id.* at 47.

market and the social problems that accompany it are matters that merit serious concern, a two-tiered society is already emerging in Japan.²³⁰ The availability of unauthorized foreign workers, trainees, and the *Nikkeijin* have already contributed to “the creation of hierarchies within the employment continuum.”²³¹ In many ways the 1990 revisions of Japan’s immigration laws “provided the blueprint for further segmentation of unauthorized and legal employment.”²³² The introduction of unskilled immigrants to work as home health-care aides might add to the problem of labor market segmentation, but the problem of economic stratification would probably persist in Japan regardless of whether these new workers are permitted to enter the country or not.

3. *Fair Treatment of Foreigners*

Assuring immigrants that that they will be treated fairly is an important element in attracting foreign labor and in keeping ethnic relations smooth. The dramatically increasing numbers of immigrants in Japan during the 1980s “created a new focus on the legal rights of aliens.”²³³ Foreigners in Japan “face discrimination and racial slurs,” and they are also extremely vulnerable because not all labor laws and health insurance programs protect them.²³⁴ The most frequent complaint about discrimination against foreigners in Japan is in the housing arena.²³⁵ These days “[o]rganized groups of foreign residents and Japanese citizens” have been advocating for Japanese law enforcement to treat foreigners fairly, urging the prevention of job discrimination, encouraging the opening of public employment to resident aliens, and asking that resident aliens be given the right to vote in local elections.²³⁶ University of Tokyo law professor Seigo Hirowatari concludes that it is “imperative that public programs of support for foreign workers . . . be established and expanded so as to help them better cope with various problems they face in their daily lives.”²³⁷

²³⁰ PAPADEMETRIOU & HAMILTON, *supra* note 1, at 62.

²³¹ *Id.* at 42.

²³² *Id.*

²³³ Choy, *supra* note 8, at 8.

²³⁴ Nakamoto, *supra* note 132.

²³⁵ OKA, *supra* note 8, at 56.

²³⁶ Choy, *supra* note 8, at 8.

²³⁷ Hirowatari, *supra* note 137, at 28.

4. *Language Instruction*

Language training might help to lessen some of the practical difficulties arising between the Japanese and foreigners.²³⁸ Because the majority of Japanese are monolingual, except for limited English language competence, “the language barrier is . . . a key source of tensions and misunderstandings between foreigners and natives.”²³⁹ The Commission on Japan’s Goals in the 21st Century’s report recommends drafting public documents in Japanese and English and making English Japan’s second official language.²⁴⁰ Japan’s educational institutions have agreed to consider using more English “to make it easier for other Asian students.”²⁴¹ On the other hand, also with the aim of making potential foreign workers more comfortable, “Japan has committed to make it easier for other Asians to learn Japanese by establishing Japanese language education centers overseas.”²⁴² Of course, speaking Japanese well would be an important skill for foreign home-health care aides.

V. POTENTIAL DOMESTIC SOLUTIONS TO HOME HEALTH-CARE WORKER SHORTAGES IN JAPAN

A. *Employ More Women, Elderly, and Disabled Persons*

An alternative way to partially alleviate a shortage of home health-care helpers is for Japan to employ more women, elderly, and disabled persons,²⁴³ but the increased employment of these groups of workers will probably not be sufficient to fill labor shortages in home-health care. Some commentators argue that Japanese women are “an underutilized resource.”²⁴⁴ Although Japan passed the Equal Employment Opportunity Law in 1986, discrimination against women in the workplace is common and many women are pressured to retire when they marry or have children.²⁴⁵ The Japanese government is making an effort to encourage nurses who are not presently working to rejoin the work force and to encourage those working

²³⁸ See Cornelius, *supra* note 9, at 403.

²³⁹ *Id.*

²⁴⁰ *Nursing Care System Must Be Fine-Tuned, supra* note 26.

²⁴¹ *Japan Says It Is Willing to Open Up to Asian Nations, supra* note 43.

²⁴² *Id.*

²⁴³ Papademetriou, *supra* note 189, at viii.

²⁴⁴ See Koshiro, *supra* note 21, at 171.

²⁴⁵ *Id.*

part time to work full time.²⁴⁶ U.N. officials, however, caution that using more female labor “would do nothing to prevent population decline and might make fertility rates, already low, decline further as more women choose to work rather than raise large families.”²⁴⁷ Given this observation, recruiting Japanese women who are past their child-bearing years to work as home helpers is most reasonable.

While employing more elderly and disabled persons could probably alleviate some labor shortages, home-help positions may not be suitable for these workers. The Japanese Ministry of Health, Labor and Welfare has a Department of Employment Measures for the Elderly and Persons with Disabilities, which promotes the employment of the elderly and the disabled.²⁴⁸ Increasing the mandatory retirement age, supporting outplacement for older employees, and encouraging business owners to employ the disabled are some of the department’s goals.²⁴⁹ In Japan, among those sixty-five years of age and older in 2000, there were 3,010,000 employed males and 1,820,000 employed females.²⁵⁰ Those in the same age group defined as unemployed in the year 2000 (the annual average of “persons who did not work at all during the survey week, but were currently available for work and were actively seeking a job or were waiting for the results of past job-seeking activity”) amounted to 100,000 males and 20,000 females.²⁵¹ Even if more elderly and disabled persons were employed, it is unlikely that all of them would be appropriate home helpers because of the often difficult, physical nature of the job.²⁵²

B. *Change the Public Perception of Home Helpers and Increase Their Wages*

The public perception of a home health-care aide in Japan is not very favorable.²⁵³ For example, Japanese nurses are perceived as “subservient to

²⁴⁶ Primomo, *supra* note 48, at 14.

²⁴⁷ See Editorial, *Their Loss Could Be Thailand’s Gain*, *supra* note 119.

²⁴⁸ *Department of Employment Measures for the Elderly and Persons with Disabilities*, at <http://www.mhlw.go.jp/english/org/policy/p23.html> (last visited Jan. 24, 2001).

²⁴⁹ *Id.*

²⁵⁰ *Employed Workers (5-Year Age Groups), as of 2000*, at <http://www.jinjapan.org/stat/stats/09LAB22.html> (last visited Apr. 18., 2001).

²⁵¹ *Unemployed Workers (5-Year Age Groups), as of 2000*, at <http://www.jinjapan.org/stat/stats/09LAB33.html> (last visited Apr. 18, 2001).

²⁵² See Cornelius, *supra* note 9, at 389. While Cornelius does not specifically mention the job of home helper, he does point out that hard, manual labor jobs would not be regarded as appropriate for Japanese elders.

²⁵³ See *supra* note 7 and accompanying text. See also Primomo, *supra* note 48, at 2.

physicians,” and their work is described in negative language like “hard, dirty, dangerous, low salary, few holidays, minimal chance of marriage and family, and poor image.”²⁵⁴ Changing the perception of health-care workers among today’s highly educated and affluent Japanese youth is a difficult task, if not an impossible one.²⁵⁵ While changing the perception of home helpers among Japanese youth is important, it may be of less immediate importance than creating a positive image among middle-aged Japanese women. Most home helpers in Japan are in this age group.²⁵⁶

Currently the Japanese government is helping to promote nursing-care employment through a wage subsidy program.²⁵⁷ The government launched its wage-subsidy program for nursing-care workers when the nursing-care insurance system began in April 2000.²⁵⁸ Corporate and nonprofit service providers receive government subsidies once they hire new full-time or part-time nursing staff.²⁵⁹ The government pays one half of a full-time employees’ salary for a year and one-third of the salary for part-time staff. This support is helping to create new jobs.²⁶⁰

C. Continue to Utilize “Backdoor Methods” of Employing Unskilled Workers

Japan might be able to continue to utilize “backdoor methods” of employing unskilled workers (i.e., using trainees, students, and migrants of Japanese descent) in order to alleviate shortages of home helpers.²⁶¹ However, without opening Japan to unskilled immigrant workers, “there is no cause for optimism about maintaining moderate economic growth.”²⁶² If Japan encounters zero or negative growth, its social security system, for example, would be adversely impacted. Moderate economic growth of at least 1 to 2% is necessary in order to support Japan’s increasingly aged population.²⁶³ Therefore, it seems inevitable that if Japan is to maintain

²⁵⁴ Primomo, *supra* note 48, at 2.

²⁵⁵ Cornelius, *supra* note 9, at 380-81.

²⁵⁶ See *supra* text accompanying note 80.

²⁵⁷ *Gov’t Wage Subsidies Help Create 12,000 Nursing-Care Jobs*, JAPAN ECON. NEWSWIRE, Sept. 16, 2000, available at LEXIS, Asiapac Library, Japan File.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ Koshiro, *supra* note 21, at 159.

²⁶² *Id.*

²⁶³ *Id.*

economic growth, additional unskilled foreign laborers must be allowed to enter Japan.²⁶⁴

Although there are domestic efforts that can address Japan's elder care shortage, these efforts alone are not enough. Even if Japan were to fully employ women, retirees, and the disabled, Japan's reliance on immigrants is likely to increase within the next twenty years.²⁶⁵ Thus Japan will probably be forced to change its immigration laws. Japan is likely to gradually moderate its immigration policy so that unskilled workers can be legally employed,²⁶⁶ particularly because of the importance of maintaining economic growth in order to support Japan's aged population. In particular, it appears that Japan will need to rely, in part, on foreign labor to care for its aging population.²⁶⁷ It is sensible for Japan to begin the process of permitting unskilled workers to enter the country by allowing foreigners to work in Japan as home helpers, especially since the need for workers in this field is so great.

VI. CONCLUSION

Despite the challenges that would accompany allowing more foreigners to work in Japan, accepting an increasing number of immigrants, particularly immigrants who can work as home helpers, is practically essential because of Japan's ongoing demographic crisis. Allowing foreign workers to come to Japan to be employed as home helpers would alleviate labor shortages in the health-care field and assist the nation in maintaining its economic prosperity. Japan should not open its doors to foreign labor indiscriminately, but there is room for a significantly more flexible immigration policy. Japan could choose to follow the model of the Persian Gulf States and Singapore, which "have worked diligently to prevent temporary migration from turning into permanent settlement,"²⁶⁸ or Japan could follow the model of most advanced industrial societies, which have more liberal immigration policies and provide greater access to permanent residence and citizenship. Although the model of the Persian Gulf States and Singapore holds great appeal for Japan, human rights pressure and demographic realities will probably prevent Japan from taking this course.²⁶⁹

²⁶⁴ *Id.* at 172.

²⁶⁵ PAPADEMETRIOU & HAMILTON, *supra* note 1, at 21.

²⁶⁶ Koshiro, *supra* note 21, at 172.

²⁶⁷ PAPADEMETRIOU & HAMILTON, *supra* note 1, at 20.

²⁶⁸ *Id.* at 63.

²⁶⁹ *Id.* For example, in 1995 a maid from the Philippines was hung for murder in Singapore, while another maid from the Philippines was sentenced to death in the United Arab Emirates (her sentence was

Instead, Japan is more likely to favor “highly selective (especially in terms of skills and ethnicity) permanent immigration strategies.”²⁷⁰

Japan needs to change its immigration laws in order to adapt to its current demographic challenges. The issue now facing Japan is how it will balance the desire for continued economic prosperity with the aspiration of preserving its perceived ethnic homogeneity.²⁷¹ Right now, the shortage of home health-care workers is of national concern, and the recent policy proposal put forth by the Ministry of Justice, which proposes a change in the immigration laws so that foreign workers can legally enter Japan as home helpers, marks a new step towards Japan becoming a country with more liberal immigration laws. Given the importance Japanese society places on caring for the elderly and the increasing numbers of older Japanese, Japan has little choice but to admit more immigrants to fill labor shortages in the elder care field. If Japan wishes to continue its economic prosperity, it will have to gradually welcome foreign workers in other skilled and traditionally unskilled areas as well. Furthermore, in order to sustain Japan’s population and economic prosperity, these foreigners must be able to settle permanently in Japan.

later commuted), raising concerns about the human rights protections available to female migrant labor in these countries. Martin, *supra* note 118, at 15.

²⁷⁰ *Id.*

²⁷¹ Cornelius, *supra* note 9, at 404. Papademetriou concludes, “there should be little doubt that economic rationality *will* prevail over more extreme expressions of cultural intolerance.” Papademetriou, *supra* note 189, at xi.

