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THE LEGAL AND ADMINISTRATIVE FRAMEWORK FOR MIGRATION OF MIDDLE- SKILLED THIRD COUNTRY NATIONALS TO GERMANY – AN EXAMPLE FOR MATURE PUBLIC POLICY? “

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Contents

List of abbreviations

1. Introduction.....	3
2. Theoretical Considerations	4
2.1. Conceptual Definitions.....	5
2.2. Neoclassical approach	6
2.3. The State as a migration manager	7
2.4. The Liberal Paradox	7
3. Methodology	9
3.1. Case selection.....	9
3.2. Hypothesis.....	10
3.3. Research Design.....	12
3.4. Operationalization	12
4. Analysis: -Public Policy on Migration of middle skilled TCN to Germany.....	13
4.1. Predictive and well-planned:.....	13
4.2. Well-organized and coherent:	16
4.2.1. Administrative legislation.....	16
4.2.2. Legislation on employability	18
4.2.3. Legislation on recognition of qualification.....	19
4.2.4. Strategies to attract middle-skilled TCN to Germany.....	20
4.3. Rational:	22
4.3.1. Germany.....	22
4.3.2. India.....	23
4.3.3. Germany and India in analogy	25
5. Conclusion and Policy Recommendations.....	26
5.1. Conclusion.....	26
5.2. Policy Recommendations	28
6. Discussion.....	29
7. Bibliography	30

Declaration of academic honesty

List of abbreviations

AufenthG	Residence Act (Aufenthaltsgesetz)
BA	Federal Employment Agency (Bundesagentur für Arbeit)
BAMF	Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge)
BMBF	Federal Ministry of Education and Research (Bundesministerium für Bildung und Forschung)
BeschV	Employment Regulation (Beschäftigungsverordnung)
BQFG	Federal Government's Recognition Act (Berufsqualifikationsfeststellungsgesetz)
EU	European Union
IAB	Institute for Employment Research (Institut für Arbeitsmarkt- und Berufsforschung)
IHK	Chamber for Commerce and Industry
IHK FOSA	Chamber for Commerce and Industry (Foreign Skills Approval)
MiiG	Make it in Germany Initiative
OECD	Organisation for Economic Co-operation and Development
TCN	Third Country National
UN	United Nations
ZAV	International Placement Service (Zentrale Arbeitsvermittlung)

1. Introduction

Economic and sociological forces in the globalized system have led to a considerable increase of immigration to industrial countries since the end of World War II. Such forces are necessary conditions for the occurrence of migration, whereas legal and political conditions are the sufficient ones. On the background of demographic change and skills shortages in particular sectors, Germany tries to attract skilled people from countries outside the European Union (Third Country Nationals, TCN). Through administrative, legal and strategic changes, the Public Policy Framework for labor migration is meant to give a portrait of the German “Culture of Welcome”. As stated by the OECD in 2013, Germany ranges among the industrialized countries with the lowest hurdles for highly-qualified in contrast to middle-qualified TCN (OECD 2013). Until today, Public Policy on labor migration has mainly focused on the highly-qualified. But beside academic skills, current development on the labor market indicate that Germany especially needs middle-qualified skills. The main interest of this research thus lays in the current Public Policy Framework for migration of middle-qualified TCN.

This research henceforth questions:

THE LEGAL AND ADMINISTRATIVE FRAMEWORK FOR MIGRATION OF MIDDLE-SKILLED THIRD COUNTRY NATIONALS TO GERMANY – AN EXAMPLE FOR MATURE PUBLIC POLICY? “

In the following, three important theoretical foundations will be outlined. These theories will allow to understand the ambiguities states such as Germany have to face when designing Public Policy on migration. Following the attributes of mature Public Policy these characteristics will be operationalized to our case. An analysis of the historic development of migration policy is followed by an investigation on the legal and administrative means recently put into force in the context of middle-skilled TCN. In the last subchapter of this part an evaluation of expectations and needs of the German government in correspondence to the economic as well as demographical developments in India as an exemplary country of origin will follow. In conclusion, this approach will lead us to pragmatic policy recommendations where necessary. A discussion of the underlying research will represent the final piece of this thesis.

2. Theoretical Considerations

In this part the theoretical framework of this research will follow. In the first place the terminology applied in this thesis will be clarified. It will become apparent that the language used in the context of labor migration is mainly characterized by economic features. In this sense, the migrants focused on carry the label “(highly-/middle-) skilled labor”. This shows how emphasis is put on their economic role which is further refined by categorizing them according to their level of qualifications. Dealing with labor migration thus means approaching a topic intensively discussed on the political level with the help of economic theories. Reasons for migrations are often given in form of pull- and push factors. Whereas push factors drive migrants out of their countries of origin, pull factors are responsible for dictating where these travelers end up. Nonetheless, political and legal factors turn out to be decisive factors with view to the decision to migrate. The explanation on terminology (1) will thus be followed by the neoclassical approach in labor migration (2). The theory on the state as a migration manager (3) which emphasizes that the regulation of migration is up to the sovereign state will represent the third theoretical piece. This will be followed by an outline of Hollifield’s *Liberal Paradox* explaining why today’s states find themselves in a paradoxical situation between openness and closure when they regulate migration into their territory (4).

2.1. Conceptual Definitions

In order to apprehend the contents of this thesis on middle-skilled migration, explain the background of the terminology used throughout this thesis will be explained.

The focus of my research lies on the migration of middle-skilled TCN. The term ‘third country’ is used in the treaties of the EU, where it refers to a country that is not a Member State (MS). This meaning is derived from ‘third country’ in the sense that one of the parties does not take part in an agreement between two other countries. Moreover, the ambiguity of the term is compounded by the fact that often it is incorrectly interpreted to mean ‘third-world country’. The migration process of TCN for work purposes is further referred to as international labor migration which according to Skeldon (2010: 151) means “that a person moves from her/his country of residence to another country in order to take up a paid job.”

Further, skilled personnel is classified into 2 level according to the ISCED education standards¹ which were elaborated by the UNESCO. Accordingly, a distinction has to be made between highly-skilled (ISCED Level 5-8) and middle-skilled migrants (ISCED Level 3-4). The former classification incorporates third-country graduates from a university or a comparable institution who gained a diploma qualifying them to pursue a profession. Middle-skilled TCN do not have an academic degree as such: They have studied at a University of Applied Sciences (*Fachhochschule*) or achieved their qualifications in the course of a vocational training. In addition, I anticipate that labor shortage is the core element of what drives Germany’s active labor recruitment in Non-EU countries. Only a differentiated approach allows to distinguish between economically relevant labor shortages and those deriving from cyclically or locally-based economic processes. In their annual report 2008, the German Council of Economic Experts (*Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung*) defines the term labor shortage as a “relative supply shortage on a submarket for special qualifications“ (Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung 2008: 354). In this sense, only the latter form of labor shortage calls for state intervention, as it can have negative effects on the economy (such as decreased productivity, emigration of companies etc.). In turn, these have negative effects for the prosperity and financing of the welfare state as a growing amount of elderly faces a decreasing potential workforce (Kettner 2013: 15).

In view of this, the economic lenses through which labor migration is approached become clear. In the following an outline of the neoclassical rationale representing the predominant economic logic of the nation states in this context will follow.

2.2. Neoclassical approach

Since the late 19th century various approaches have been proposed to explain how international migration is initiated. These approaches share the logic that migration processes are mainly seen as a uni- or bidirectional movement brought about by emigration, immigration or return migration which have their origins in isolated factors, such as economy and politics. Neoclassic theory is the oldest and most traditional economic theoretical approach in migration research. Seen from this perspective, economy is not conceived as a closed and self-contained system. It rather represents a sort of method of optimization, applicable to the whole society. Also Ravenstein's famous "laws of migration" (1885) can be traced back to this approach. In the context of migration, neoclassic theorists claim that migration depends on market failure and imperfect factor allocation. Wage differentials between the labor markets of two different countries or regions can thus induce incentives to migrate. Migration is seen as factor allocation and will finally lead to the re-establishment of the equilibrium on the labor market, because "international immigration of income-maximizing persons is simply another way of ensuring that factor prices are equalized across countries." (Borjas 1989: 459). As Borjas put it, "Individuals migrate because it is in their benefit [...] to do so." (ibid.: 457). In other words, the individual generally seeks to maximize benefits and consequently migrates to those places where the biggest returns are expected. The immigration market plays an essential role in the decision to migrate as it coordinates the allocation of migrants (production factor labor) to different countries. The coordination process is dependent on variables such as economic conditions in the country of origin and destination country, immigration policy and individual characteristics of the potential migrants (i.e. age, skills and family relations).

¹ The International Standard Classification of Education (ISCED) was developed by the UNESCO in order to facilitate comparisons of education statistics and indicators across countries on the basis of uniform and internationally agreed definitions.

It becomes clear that the obvious pull-and push factor for migration are the markets in the country of origin and in the destination country. Economic conditions can easily be grasped by the individual migrant and can finally serve as motivation for the decision to migrate. Despite this concrete basis, the individual in question will have to take the immigration policy of the destination country into account. In the very end this is the factor determining if the desire to migrate can become reality. Further asking who is responsible for these regimes, the most dominant actors remain the states, characterized by the principles of sovereignty and non-interference (Hollifield, 2008: 198).

2.3. The State as a migration manager

Without entering a detailed debate on state sovereignty, the understanding of what states essentially represents will assist us in following the regulatory role states resume in the context of migration management. As Lassa Oppenheim (1927) put it

“[...] [t]here exists perhaps no conception the meaning of which is more controversial than that of sovereignty. It is an indisputable fact that this conception [...] has never had a meaning which was universally agreed upon.” (Oppenheim 1927: 129)

States are self-defined as the successful demand of power and sovereignty over an area and its people. Migration evidently means that people from outside enter the respective territory. The management of migration can thus be considered a challenge to the self-definition of the state. Accordingly, it is assumed that beside the main factors having an impact on the migration processes (i.e. the labor market, demographic factors), the migration policy of a state represents the most influential and decisive factor. Political and legal measures are expected to regulate migration flows (Hollifield 2000). In this context it is assumed that welfare states such as Germany “are expected to operate with the assumption of closure” (Soysal 1998: 191) in order to keep up high standards for their own citizen. Considering current demographic developments, labor migration represents one of the efficient means to tackle the negative effects of the former. It becomes clear that the liberal state is stuck in a paradox between inherent closure and economic pressure towards greater opening.

2.4. The Liberal Paradox

In the context of migration, states find themselves in a dilemma situation (referred to as the *Liberal Paradox*; Hollifield 2013) as economic forces seem to push

them towards greater openness while concerns on security and political forces put them towards closure. Though the globalized system is characterized by free movement of goods, capital and services, states are reluctant when it comes to the free movement of people. Reasons for the latter statement are mainly due to higher political risks the mobility of people can possibly involve:

“[...] [R]ights in liberal democracies have a long half-life. Once extended, it is difficult to roll them back, which may explain why many liberal states, especially in Western Europe are so reluctant to make even small or incremental changes in immigration [...] law.” (Hollifield, 2008: 197)

Henceforth, states try to control their border with the help of political and legal means, because they have to fulfil the social contract with their own citizens. In the case of labor migration one could argue that it is on the contrary in the citizen's interest to attract skilled labor from outside in order to maintain economic stability and competitiveness for the purpose of greater prosperity for all citizens. But at first sight, this argument lacks simple evidence and can only be proved through extensive analysis.

The wording *skilled labor* can easily be confounded with a service offered. But one has to keep in mind that while talking about skilled labor, ones talks about people. Though these people might primarily migrate for work purposes, they do at the same time become residents of the respective country. Consequently, they acquire a legal status which involves fundamental rights (i.e. social security). Assuming that immigration is followed by integration, the former migrants might even participate in all aspects of society and exert influence. This is the reason why the sovereign state regards migrants as a risk factor for its own sovereignty. The presented duality between openness and closure can serve as an explanation on contradictions and efforts Public Policy on migration involves for the nation state.

This theoretical framework indicates the potential conflict states can encounter when designing migration policy. In the course of objectification and a systematical categorization, the main subject of labor migration is often referred to as skilled labor which appears to be comparable to an economic good. Notwithstanding all ethical and moral arguments, the nation state's neoliberal rationale faces crucial limitations when it comes to active labor migration policy.

It is important to bear in mind, that in the context of labor migration the economy pushes for more openness in order to maintain a high level of productivity, on the other the nature of the state reacts with closure when borders and thus their sovereignty seems to be concerned. Thus it is up to the state as a migration manager to find the right balance between the conflicting interests when designing Public Policy on labor migration.

3. Methodology

In the following pages, the methodology which has been applied throughout this research will be explained. Putting emphasis on the political relevance of middle-skilled migration in the present and future tense will lead us to the hypothesis that the Public Policy Framework for middle-skilled migration is not yet adequate in order to attract a higher amount of TCN belonging to the latter group of people. The *Liberal Paradox* according to Hollifield will become clear as the economy claims more openness in order to satisfy the labor demand while the nature of the sovereign state initially remains reluctant. An outline of my research design will follow. Accordingly, the framework for middle-skilled TCN will be tested on the basis of how mature Public Policy is assumed to be designed. Maturity in this context would henceforth mean that the state as a migration manager has mastered the challenge posed by the Liberal Paradox. With reference to three core attributes for maturity of Public Policy the operationalization part will serve as applied adjustment of these general attributes to the framework for middle-skilled migration in Germany.

3.1. Case selection

The underlying research of this thesis will focus on the migration management of middle- skilled TCN to Germany. Regarding my theoretical framework Germany represents an industrialized welfare state, characterized by labor shortages in certain sectors on the labor market. As stated in the monthly report on economic developments in Germany by the current Minister of Economic Affairs, Sigmar Gabriel, this situation calls for urgent political action (cf. BMWI 2014). According to a recent study by the Institute for Employment Research (IBA) around 1.075 million job vacancies on the German labor market could not have been filled in the first quarter 2014. In line with governmental endeavors, great potential in order to counteract this development is seen in active labor recruitment in foreign countries. Consequently, the German government has launched its Qualified Professionals Initiative (*Fachkräfteoffensive*) in 2012. Generally aiming at attracting highly-qualified as well as middle-qualified

labor, the initiative is clustered in different elements. One core element is represented by the *Make it in Germany Initiative* (MiiG Initiative). Within this initiative the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, representing a federal enterprise which supports the German government in achieving its objectives in the field of international cooperation for sustainable development, is responsible for the implementation of three pilot projects in India, Indonesia and Vietnam. As I became aware of the political need, the complexity and the existing challenges in the field, I wanted my Bachelor Thesis to become a useful piece of work which would in the best case not only give scientific but also practical insights into this important topic. This claim led to a cooperation with the GIZ. Extensive discussions with GIZ experts in Bonn coordinating the pilot projects in overseas finally gave reason to having a closer look on the legal and political framing German Public Policy on attracting middle-skilled TCN to Germany. With view to the relevance of the issue at hand and especially in contrast to migration of highly-qualified TCN, the migration framework for middle-skilled TCN appears to have remained unconsidered in the scientific discourse.

3.2.Hypothesis

As laid down in the theoretical part, policy makers in Germany are confronted with a dilemma situation: On the one hand, historical statements such as “We are not an immigration country.” (Schäuble 2006, Former Minister of the Interior) or Jürgen Rüttger’s (high-ranking politician) slogan for the elections in NRW 2000 “Children instead of Indian” are exemplary for the political and social forces heating up the debate on immigration. On the other, economic needs, more precisely labor market needs on the background of expectable negative effects brought about by demographic change push the state towards greater openness.

According to an objective analysis of data it is assumed that the German economy is not able to satisfy its current demand on middle-skilled labor through recruitment on the national labor market. For the future the lack on skills is expected to increase. As a consequence, Germany tries to attract highly- as well as middle-qualified labor from outside the EU. Essential motives to immigrate into a country are employment opportunities and an *Open Culture of Welcome*. In general, welcoming in culture is not only expressed in people’s attitudes towards migrants, but more comprehensively by a transparent and comprehensive legal framework making it possible for people to come, to work and to integrate. In implementing the EU Blue Card Directive (Council

Directive 2009/50/EC of 25/05/2009) Germany primarily focused on the conditions of entry and residence of highly-qualified TCN. Though the success of this measure is still questioned, about 10.000 Blue Cards have been issued from its introduction in 2012 until the middle of 2013. While most of these Cards have been issued to entitled people already residing in Germany, only 2.536 Blue Cards have been issued for new immigrants. 1.971 of these Blue Card holders were of Indian origin, 775 Chinese and 597 came from Russia (Netzwerk Migration in Europa e.V 2013). This data shows, that beside the focus on highly-skilled labor, the Blue Card mostly *attracted* people who were already in Europe. Additionally, it can be concluded, that people from Asia and especially from India have interest in migrating to Germany for work purposes.

Despite changes in the legal framework for migration aimed at higher transparency and facilitation of the administrative process, Germany has not yet been able to attract a significant amount of middle-skilled labor migrants. As outlined before, in legal and political terms, the state represents the most influential and decisive factor. Public Policy making on labor migration thus seems to have failed the preceding aspirations which brings us to the core hypothesis of this research:

Hypothesis:

The administrative and legal means aimed at attracting an increased amount of middle-skilled TCN to Germany do not give example for mature migration policy.

3.3. Research Design

In the following it is tested if the administrative and legal means, representing the policy framework for migration of middle-skilled TCN to Germany, are exemplary for mature migration policy, or if on the contrary my hypothesis turns out to be true. The unit of analysis is the administrative and legal framework for middle-skilled labor migration to Germany.

This research is mainly based on the national laws applicable to middle-skilled TCN willing to migrate to Germany as well as additional, explanatory documents. Further, official facts and figures by national and international organizations serve as a solid basis during my research. Finally, also publications of different think tanks and individual experts in the field of migration will help to channel insights.

3.4. Operationalization

Analyzing the current administrative and legal framework migration policy on skilled migration is embedded in, a characterization of what mature policy making should look like in an optimal situation is necessary.

In accordance with traditional approaches on Public Policy, mature policy-making is characterized by four main attributes: Predictive and well-planned (1), well-organized and coherent (2), rational (3) and efficient (4).

Efficiency will be considered as the concluding criterion which can be seen as the result of the three prior indicators, this research is based on the assumption of non-efficiency of Germany's Public Policy management of middle-skilled TCN. The following analysis is thus structured into three parts, following the first three attributes.

In order to operationalize these attributes, the following indicators have been identified for each characteristic correspondingly.

1. Predictive and well-planned

Predictive and well-planned Public Policy on migration is based on a widely accepted long-term strategy which defines the state's interest and aims to achieve them via migration policy. In order to examine this indicator the relevant developments of Germany's migration policy over recent time will be outlined.

2. Well-organized and coherent

Well-organized and coherent Public Policy is reflected in a legal framework that serves as a normative basis and an appropriate bureaucratic structure to ensure successful implementation. In this context the legal and administrative framework Germany's migration policy is embedded in will be analyzed. A closer look will be taken on the administrative legislation (1), legislation on employability (2), legislation on the recognition of qualifications (3) as well as on strategic means to attract middle-skilled TCN to Germany (4).

3. Rational

Rational Public Policy builds up on a thorough analysis of all available data and information sources. I decided not only to focus on statistical data, current demographic and labor market developments in Germany, but also in a country where the potential pool of middle-skilled labor is assumed to be located. As India is one of the pilot countries chosen within the MiiG Initiative, a considerable pool of middle-skilled labor is expected to be of Indian origin. Facts and figures about each country should in analogy lead to the conclusion that skilled migration from India to Germany represents a fruitful and worth pursuing aim for all parties involved (triple win situation between country of origin, destination country and the migrant).

These three aspects will be used as indicators in the following in-depth analysis to answer the question if German migration policy carries the attribute of maturity. Additionally particular attention will be paid to emphasizing the core challenges in order to finally be able to give policy recommendations where needed.

4. Analysis:

-Public Policy on Migration of middle skilled TCN to Germany

4.1.Predictive and well-planned:

-A historical outline of German Labor Migration Policies

German labor migration policies have faced important changes since the introduction of the Immigration Act (*Zuwanderungsgesetz*) on 1 January 2005: According to the OECD report "Immigration of foreign skilled workers" (*Zuwanderung ausländischer Arbeitskräfte*) Germany has changed from a so-called *Anwerbestopp* (recruitment stop) country to a country with a high employability

level of TCN (OECD 2013: 15).² Germany's recent labor migration policies can be traced back to the economic expansion after post-world war leading to a rising demand of industrial workers. Henceforth the "guest worker programs" (*Gastarbeiterprogramme*) were established, aimed at the recruitment of temporary manual laborers, in majority coming from poorer countries of Southern Europe, such as Greece, Italy, Portugal, Spain, Turkey and Yugoslavia. Until 1973, this program represented the most significant immigration channel to Germany. Economic interests were superior to the controlling of immigration:

"External controls were not very restrictive and legal stay was not directly dependent on legal entry. Immigrants could apply de facto for a residence permit even after having crossed the border irregularly and having found an employer."
(Vogel 2003: 168)

As a result of the 'oil crisis' of 1973, several EU Member States adopted stop-policies for foreign workers which made legal stay dependent on legal entry and thereby putting an end to the aforementioned ex-post regularization channels. Through the Anwerbestopp of 1973 this policy change was institutionalized and can retrospectively be regarded as "the official end of the recruitment of labor migrants" (Glorius 2008: 83). Unpredictably, this policy entailed an increase of migrants from the guest worker countries using the legal channel of family reunification. Thus, migration was more due to external factors than to internal ones (e.g. economic situation).

In 1992 Germany noted a net-migration inflow of 778.000 migrants (Angenendt 1999: 166). Consciousness on regaining greater control on migration flows paired with a re-emergence of migration regulation culminated to the self-proclamation of Germany as a "non-immigration country" (Glorius 2008: 81). The year 2000 can be seen as a paradigm shift in Germany's policy on foreigners. On the background of skills shortages especially in the IT sector the Greencard Program was launched in May of the same year, aimed at recruiting up to 20.000 highly-skilled workers from third countries. This scenario is an example for migration management in times where states are confronted with what Hollifield calls the *Liberal Paradox*, as the economic situation in Germany pushed for an opening of the political and legal logic originally marked by closure (cf. Hollifield 1998). Literally, scholars in the field of migration

² The Anwerbestopp (1973) formally continues to be in force.

also talk about the shift from *controlling* to *shaping* migration.³ From a very personal point of view, controlling migration entails restriction by drawing a negative, clearly dangerous picture of what migration represents. On the other hand, the shaping of migration implies a smoother, less restrictive approach, regarding migration as phenomenon that can be influenced in a positive and active manner.

On the background of demographic change including the two major aspects, a decreasing fertility rate and ageing population, new migration policy regulations mainly focused on opening the gateway for highly skilled. The implementation of the Blue Card Directive (Council Directive 2009/50/EC) gives additional proof for migration management aimed at this special category of migrants. Nonetheless, current headlines such as “Shortages, especially of skilled workers” provide evidence that German migration policy should not only be aimed at attracting highly-skilled, but also middle-skilled TCN (IW Köln: 2013). Against this background especially the potential of Asia for the recruitment of skilled employees leaps to the forefront of public consciousness in Germany (Bundesamt für Migration und Flüchtlinge 2014: 9). Incentives for doing so can be found in the positive demographic developments as well as in Asia’s pioneer position with view to STEM disciplines. Nonetheless, having a closer look on demographic as well as economic changes in Asia, one should bear in mind that emigrating is not the most attractive option for Asian nationals, as this continent is more and more taking the position of a destination for skilled professionals (OECD 2012: 159). The rationale that migration to Germany represents a rewarding chance for individuals from third countries remains but a general prejudice in the mind of many. Social welfare dependency can nearly be excluded as selective immigration policy based on a few indicators can significantly contribute to reduce the risk of future immigrants to depend on the former. Germany is now working on establishing optimistic awareness when it comes to migration. In recent publications Germany is presented as a world-open country getting more and more attractive as a destination country for migrants. Immigration is further considered of growing importance for the country, especially with view to the discussion on demographic change and gain of foreign professionals. Additionally the authors forecast that this situation will remain in the future (cf. BAMF 2012: 5).

³ As stated in the title of the report of the independent commission on migration suggests: ‘Shaping Immigration – Encourage Integration’ [‘Zuwanderung Gestalten – Integration Fördern’] (Unabhängige Kommission ‘Zuwanderung’ 2001).

The abovementioned statements are proof for the strategic will to establish a new *Open Culture of Welcome* in Germany with the aim to attract skilled professionals from outside Germany in order to deal with the phenomenon of demographic change. Further, the outlined development question the assumption of Soysal that welfare states do act under the assumption of closure (cf. p.7) can be questioned. Germany has already been a welfare state when the guest workers program was introduced. Though restrictions on access to the welfare system have been made for the guest workers, it can consequently be assumed that in case economic needs become more urgent, the controlling of immigration turns to be less restrictive.

Keeping the shifts from non-immigration to immigration country at the back of our minds, the following chapters will now focus on the administrative and legal framework skilled migration of TCN to Germany is currently embedded in.

4.2. Well-organized and coherent:

- Administrative and legal instruments

On the background of demography, in 2011 the German Federal government has adopted a concept for securing skilled personnel. A central pillar in this concept is immigration of (highly-) skilled TCN to DE (BMI 2011: 55-57). In order to attract skilled TCN to Germany, the establishment and promotion of a German Culture of Welcome is seen as a necessary means to increase attractiveness as an immigration country. An attractive, transparent and open legal framework is of elementary importance, not only for immigration but also for successful integration, as stated by experts from the BAMF (BAMF: 2012).

The main legal acts, relevant for migration of skilled TCN to Germany are the Residence Act (*Aufenthaltsgesetz*, AufenthG), the Employment Regulation (*Beschäftigungsverordnung*, BeschV) and the Recognition Act (*Berufsqualifikationsfeststellungsgesetz*, BQFG). In this chapter an outline on the legal acts and their implications for TCN willing to immigrate in Germany will be given. As high importance given to the picture, Germany is painting in the world, advisory services such as the MiiG Initiative will represent the central focus of the final subchapter.

4.2.1. Administrative legislation

The AufenthG (from 30/07/2004, BGBl. I S. 1950) is the center piece of the immigration act. It regulates entry, residence, permanent establishment, employment

and termination of residence applicable to TCN migrants. For TCN, the permit for employment along with the residence permit is issued by the foreigner's authority (*Ausländerbehörde*). A challenging feature derives from the federal structure of Germany. Law enforcement in the context of the *AufenthG* is thus delegated to the 16 federal states. The federal government has the legislative power, but the issuing of the residence permit is made by the foreigner's authority in the respectively competent federal state. Thus, there exist differing instruction regulations for each of the 16 federal states and their foreigner's authorities. This basic feature entails a great level of complexity and impenetrableness for the applicant.

Consent can only be given if a concrete employment opportunity exists. TCN are generally given the right for employment for the period of their employment, in case the latter exceeds 3 months.⁴ In accordance with § 18 (1) *AufenthG* authorization of TCN seeking employment is determined by the demands of the business location Germany taking into account the circumstances of the labor market.⁵ § 18 (2) *AufenthG* outlines the principle that a residence permit for the purpose of employment can be given if the Federal Employment Agency (*Bundesagentur für Arbeit*, BA) has expressed its consent or in case there is ordinance or interstate agreement which regulates that the BA's approval is not necessary (cf. BAMF 2012).

Further, the BA can give its consent to a residence permit according to §18 *AufenthG*, in case the employment of foreigners does not entail any negative effects on the labor market.(1) The BA can also give its authorization when German, such as *privileged* foreign employees are not available (§ 39 (2) (i) *AufenthG*).⁶ This *modus operandi* is called priority review (*Vorrangprüfung*) according to § 39 Abs. 2 S. 1 Nr.1 *AufenthG* has gradually been suspended in the last years for a growing pool of TCN (BAMF 2012: 52). Nonetheless, consistency and transparency in the procedure is lacking and difficult to comprehend.

In conclusion it is to bear in mind that especially the federal structure of Germany and the restrictive conditions on employment, such as priority review pose challenges for middle-skilled TCN willing to migrate.

⁴ Short-term employment is also possible when holding a visa issued for this purpose.

⁵ Here the neoclassical approach in the context of designing Public Policy for migration becomes clear as the individual characteristics of the migrant are compared to the economic needs of the destination country.

⁶ These are either EU citizens (though exceptions are made for the new MS) or foreigners who already live in Germany with a regular residence permit and are equal in terms of legislation or according to EU law having priority to enter the labor market.

Legislation on employability of TCN in Germany as such is further laid down in the BeschV.

4.2.2. Legislation on employability

On 01/07/2013, the renouvellement of the BeschV entered into force. The BeschV generally regulates labor migration of TCN to Germany. The renewed regulation represents a combination of the former Employment Procedure Regulation (*Beschäftigungsverfahrensverordnung*, BeschVerfV) and the previous version of the BeschV. In the field of residence for the purpose of gainful employment, temporary residence permits can be granted and renewed in accordance with § 18 BeschV. Therewith permits can not only be granted to highly skilled TCN, but also to skilled TCN pursuing particular occupations. These particular occupations are listed in the so-called Whitelist (*Positivliste*). The procedure can then be put into effect without priority review. The Whitelist can be seen as the product of an assessment of the labor market by the BA. The latter has thus come to the assumption that from a labor market and integration perspective it can be responsible to fill vacant jobs with foreign applicants. Inter alia, the following occupations are listed: Mechatronics and electricians.

Important implications of the renewal can be found when having a closer look on § 6 BeschV applying to TCN having obtained their vocational qualification in third countries. Accordingly, consent for pursuing the occupation corresponding to the qualifications can be given if the competent authority of the Federation or of the federal states assessed equivalence to qualifications obtained in Germany. Further, one of the following conditions has to apply:

1. The person in question has been assigned by the BA due to prior consultation about the procedure and the selection with the public employment services in the country of origin
2. The BA has assessed that vacant positions in the particular occupation can be filled with TCN. (The choice has to be made on the ground of responsibility in the sense of labor market and integration aspects.)

If consent is given, this is done without priority review.

It should be stressed here that there is no obligation to report vacant positions to the BA. Further, the registration procedure for these vacant positions appears to be very complex. This is the reason why not even 50% of all vacant positions on the German labor market is registered at the BA. By looking at official data, only around 42% of all vacant positions in May 2014 have been officially registered (1.075.400 overall job offers in comparison to 451.743 registered positions; BA 2014: 3).

As it has become evident in the analysis of the AufenthG, also the application of the BeschV to TCN poses problems for middle-skilled TCN. Again special emphasis is to be put on the federal structure as well as on the self-understanding of the BA in managing employment opportunities for TCN.

4.2.3. Legislation on recognition of qualification

The recognition of qualification is more than a channel to the labor market. Having qualifications recognized can be seen in symbolic terms, as someone or an institution regards skills or qualifications being equivalent to the respective status quo. On 01/04/2012 the Recognition Act came into effect with the aim of simplification and standardization. It stipulates the procedures and criteria for assessing the equivalence of foreign professional qualifications with those of the German reference profession. The introduction of the Recognition Act is referred to as a paradigm shift as the positive potential of migrants is put in the center in order to overcome the usually deficit-oriented approach. Henceforth emphasis is not only put on recognition in an administrative point of view, but more on recognition in the sense of respect and estimation of the individual achievement (BMBF 2014: 7).

In contrast to the previous legislative framework, not only people with skills in regimented occupations do benefit, but also those with a background in non-regiment ones. The latter do not necessarily need to have their qualification recognized to be able to work, but the recognition significantly improves their chances and opportunities on the labor market. The Recognition Act can thus be regarded as a new instrument for securing the demand on skilled labor on the German labor market. In general the act creates a legal entitlement to the assessment of equivalence with view to qualifications obtained in third countries with German professions of reference. Focusing on the technical part of the Recognition Act, it is an Amending Act (*Artikelgesetz*), because it consists on several acts or changes of previous legislation.

The BQFG represents the first article, the second one is the Vocational Training Act (*Berufsbildungsgesetz*, BBiG), the third one is the Trade and Crafts Code (*Handwerksordnung*, HwO), while articles 4-61 consists on amendments to sectorial laws on regimented professions.

With view to the entitlement to assessment of equivalence an individual procedure is guaranteed. (§6 BQFG). According to §6 BQFG, the assessment shall not take longer than 3 months upon receipt of the relevant documents (in accordance with §5 BQFG) by the competent authority. Determination of equivalence is made if the evidence of formal or professional qualifications gives proof for the ability to pursue a comparable occupation as corresponding national evidence would do (§4 BQFG). In case significant differences are assessed the request for equivalence the request will be refused. In accordance with the legislative framework, significant difference can be assessed with view to required knowledge, skills and competencies (§4 (1-3) BQFG). Nonetheless the new legislation offers scope for partial recognition which can be expanded through compensatory measures or adjustment qualifications through so that the applicant would achieve the required level of qualifications. In practice there is little offer for such measures. Furthermore, the competent authority for assessment is determined according to §8 BQFG. Correspondingly, the chamber respective to the profession of the applicant is the competent one. In the case of an electrical engineer for instance, the IHK would be the responsible authority. In order to improve the recruitment of foreign skills, the request can theoretically also be done from abroad. Further, the applicant has to bear the costs for the assessment. These can vary from € 100 to € 600. Also the before-mentioned compensatory measures or adjustment qualifications have to be taken over by the applicant. It should further be noted, that the latter are not yet offered on a regular and wide-range basis.

The Recognition Act can thus be understood as a solid step towards an opening of the German labor market. Nonetheless, the distribution of competencies, non-transparent procedures and high costs indicate still persisting challenges.

4.2.4. Strategies to attract middle-skilled TCN to Germany - Example of *Make it in Germany*

In 2012 the Qualified Professionals Initiative was launched by the Federal Ministry for Economic Affairs and Energy, the Federal Ministry of Labor and Social

Affairs and the Federal Employment Agency. Through the initiative the Federal Government's skilled workers concept is promoted to the public. As briefly set out above, one pillar element of the prior is the MiiG Initiative which shall raise awareness among the public about the need for skills and shall further express the “Culture of Welcome” in Germany.

“We cordially invite you to shape your future in Germany, at the heart of Europe. Come and be part of the “Make it in Germany” story – we look forward to seeing you!” (Make it in Germany Portal- The Initiative)

The MiiG Initiative is supported by an information portal for the target group which consists not only on the skilled TCN, but also the general public and businesses. The portal is aimed at expressing the Culture of Welcome in Germany. It aims at giving an image of Germany as a modern, diverse society and seeks to convey its friendly, cosmopolitan nature. Further, the portal advertises current vacancies in occupations where labor shortage has been assessed and provides detailed information about the respective sectors. Through vivid presentations by internationally qualified professionals who have started their career in Germany the interest of the potential pool of skilled TCN should be awakened, while employers in Germany do get advice on recruitment procedures abroad.

With the beginning of 2013, MiiG has started with a special assistance service for skilled people from India, Indonesia and Vietnam. In the course of this pilot projects, local support is provided on the spot by specially trained advisors. The implementation of these projects is under the responsibility of the GIZ. The main project partner is the International Placement Service (ZAV) of the BA. From information events to individual assistance people have the chance to get well-prepared for the German labor market. Particular focus has been placed to the STEM sectors⁷. In the course of implementation, special emphasis is paid to a balance between the interests of the German labor market and the particular situation of the respective country of origin. As a consequence no active recruitment is done in case these professionals are urgently needed in the respective country. In a long-term view, the experiences which are

⁷ STEM is an acronym which refers to the academic disciplines of science, technology, engineering, and mathematics.

gained in the projects are meant to provide information on best practice for the recruitment of (highly-)skilled professionals from abroad

In retrospect the approach of MiiG can be regarded as a huge step towards successful promotion of Germany's labor market in third countries. Leaving Germany and moving to third countries is not only a symbolic move, but also underlines the associated importance and seriousness. However, promotion can only be judged successful, if the product is sold. Regarding possible labor migration to Germany as the product to be sold, one has to bear in mind the challenges posed by the above-mentioned framework.

4.3. Rational:

-Economic and demographic developments in Germany and India

According to Schubert and Klein (2011) demographic change means a change in the composition of societies, especially due to age structures. Further, especially countries in Western Europe and North America are characterized by birth deficits as a result of low fertility and a comparably higher life expectancy over the last decades.

Regarding skilled labor shortages in Germany, India is especially interesting when discussing shortages in the IT and engineering sector as demographic development and also specificities on the labor market seem to be nearly contrasting.

4.3.1. Germany

Since 2003 Germany's population has been shrinking.⁸ Among OECD countries Germany is one of the fastest ageing and shrinking countries. Demographic change is thus displaced in an unprecedented kind. These tendencies are expected to continue in the future: Germany's population which is currently counting up to 82 million people (end of 2008) will shrink to a population size between 65 and 70 million in 2060. In this context, especially the impact of demographic change on the economic competitiveness and the future of security systems is discussed (cf. Statistisches Bundesamt 2009). Accordingly, the working age population will be confronted with more pensioners: In 2008, 100 people at working age (20-65 years old) faced 34 old people (65 years old or higher). Until 2040 the so called age-dependency rate will

⁸ Although there was a small migration up-tick in 2011.

rapidly increase by 80%.⁹ In 2060 63 or 67 potential pensioners will face 100 people in their working age (ibid.: 7).

From an economic point of view, labor force growth, which was positive over the last ten years, is going to turn negative over the present decade 2010-2020. According to the UN's population predictions, in 2020 there will be 60% more people leaving the working age population than entering it. This demographic development is accompanied by lacks of skilled workers. Respectively, the Business Barometer from 01/2014 (*Mittelstandsbarometer Januar 2014*) indicates that seven out of ten owners of small medium enterprise notice a lack of skilled workers. A majority of 71% further indicates that they have serious difficulties in finding appropriate employees (Ernst & Young 2014: 17). Overall, there are 326.000 job vacancies in the German small medium enterprise sector, especially due to skills shortages (ibid.: 20). When asked in which area the majority of positions is left vacant, 31% of SME owners refer to the technical part, the manufacturing (ibid.: 21). As reported by Ernst & Young this lack of workforce has severe negative effects on the volume of sales: 53% of SME owners complain about losses of sales in consequence of skills shortages. In total, 31 billion Euro (= Euro 31.000.000.000) are calculated for sales not being realized. Calls on the need for action can especially be observed after the economic upturn in Germany in 2006 (Kettner 2012: 13).

4.3.2. India

With nearly 1.3 billion people in 2013 India has been the second populous country after China in the world. The Indian population is expected to surpass the one of China around 2028, "when both countries will have populations of around 1.45 billion." (UN 2013: 27). For the following decades a continued population growth is expected up to around 1.6 billion. After a slow decline it will reach a population of 1.5 billion in 2100. Between 2013 and 2050 India is thus expected to contribute most to the overall population increase in the world. India belongs to the so called "intermediate-fertility" countries in the world (43% of all countries in the world belong to this category), where women have on average between 2.1 and 5 children. Due to persisting economic asymmetries including demographic dynamics across countries such as demographic asymmetries across countries, the degree of international

⁹ Age dependency ratio, old, is the ratio of older dependents--people older than 64--to the working-age population--those ages 15/20-64. Data are shown as the proportion of dependents per 100 working-age population. (World Bank)

migration will increase and India is with -284.000 emigrants within the medium-term future one of the most significant countries of departure (cf. UN 2013).

According to the Census from 2011, 65% of the Indian population were young people at working-age (15-64 years). Approximately 30% were below this age, meaning that in the near future many young people will enter the labor market (Government of India 2011). This leads us to the demographical dividend, typically used when discussing demography in India. Demographical dividend means that there is a surplus of young people. This is meant to entail economic advantages in terms of labor skills available in the future decades. In the discourse on demography, the Indian dividend was often referred to as the biggest strength of India and as a guarantor for growth and prosperity. Bangalore also carries the title “India’s Silicon Valley“. The title indicates that India has a very innovative and fast growing IT and engineering industry. Top universities, such as the National Institutes of Technology or the Indian Institutes of Technology ensure that students are trained on a very high level.

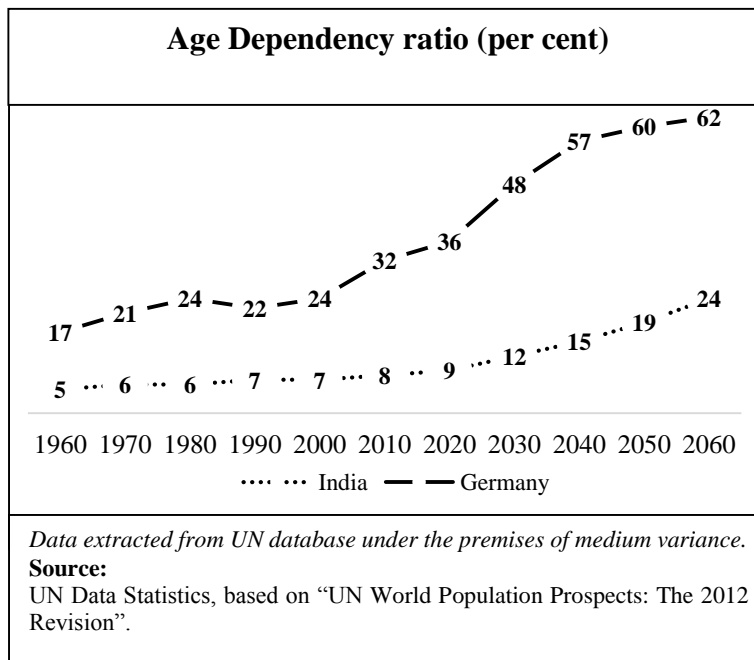
Despite these positive developments, recent research and estimates indicate that India will have difficulties, as its labor pool lacks employability.

“Insufficient supply of quality skills is one of the main impediments to further economic growth in India. The Indian economy grew more than 8% on average over the past 5 years, including the year of the unprecedented financial crisis in 2009. However, the skill shortage is still one of the major constraints in most industries in India.“(Blom, A. & Saeki, Hiroshi, 2011: 2)

Accordingly, the IT sector generally demands creativity and strong system design skills while the expertise in mathematics, science, and engineering are of less importance.

4.3.3. Germany and India in analogy

In addition to the country portfolios above, a comparison of the age-dependency ratio visualizes the current demographic developments in both countries.



In general, age dependency ratio, is the ratio of older dependents (people older than 64) to the working-age population (aged between 15 and 64). In the diagram above, data is shown as the proportion of dependents per 100 working-age population. In 2020 for instance, it is expected that around 36 people over 64 will be economically dependent on the workforce of 100 people. In contrast, only 8 elderly Indian will depend on the same amount of workers. Though detailed application of this ratio to our case selection would imply further analysis of living standards and related data, age-dependency ratio can be comprehended as a valid point of reference for the demographic developments throughout this analysis.

From the perspective of Germany, we can conclude that India represents a country with generally high potential regarding labor migration. The positive demographic development of India is evident and also the development of (middle-) skilled labor continues its uptrend, especially in fields where Germany lacks skills. Nonetheless, taking a closer look on the situation reveals that the question of employability has not been regarded from the German perspective.

5. Conclusion and Policy Recommendations

In this chapter the conclusion (1) and the deduced policy recommendations (2) of this research will be presented. The first section consists of the conclusion.

5.1. Conclusion

In the course of the underlying research the preceding hypothesis has been tested.

Hypothesis:

The administrative and legal means aimed at attracting an increased amount of middle-skilled TCN to Germany do not give example for mature migration policy.

The research was conducted on the basis of three theoretical rationales. The neoclassical approach allowed to see migration through economic lenses, where labor migration management of TCN can be seen as a means for simple factor allocation in order reach an equilibrium on the labor market. The theory on the state as a migration manager in combination with the *Liberal Paradox* revealed, that the issue of labor migration is more complex than factor allocation. The point here is that though Germany as a sovereign state is able to design Public Policy on labor market migration in a nearly autonomous manner, the nature of state generally aims at protection of its sovereignty. Within the methodological part, the political evidence for taking a closer look on Public Policy middle-skilled migration of TCN to Germany became clear. With the assumption that the existing framework is not characterized by maturity, the attributes of the latter have been operationalized. Equipped with these scientific tools the in-depth analysis was structured according to the three core characteristics of mature Public Policy: Predictive and well-planned (1), well-organized and coherent (2), rational (3).

In this part the findings for each characteristic will be presented.

1. Predictive and well-planned

Recent historic developments are exemplary for the contradictions skilled labor migration is approached with in the public discourse. In the context of labor migration Public Policy is mostly characterized by closure, though economic forces have already led to an opening of immigration policies. An overall leitmotif is not apparent. Henceforth, Germany's Public Policy on skilled-migration has not been predictive and well planned.

2. Well-organized and coherent

Germany's legal and administrative framework has undergone important and positive changes with view to middle-skilled labor migration. A generally more open approach can be deducted. In general it is now possible, that middle-skilled TCN enter the German labor market. Also the Recognition Act represents an important means to adjudging middle-skilled TCN an adequate position on the labor market. With view to procedural aspects, the federal structure of Germany poses problems, as competencies of the responsible institutions are not concentrated. Regional specificities with regards to the Foreigner's authority or the Chamber of Commerce and Industry in the context of recognition have to be taken into account. Further, the required demands and conditions set by the BA constitute considerable impediments for TCN on the way to enter the German labor market and make such entry less probable than it could be.

3. Rational

It can be rationally proved that Public Policy aimed at attracting middle-skilled labor from India builds upon statistical evidence. This evidence with view to demographic as well as sectorial labor market development can easily be proved. Nonetheless professional skills have to be approached in a more subtle manner. The question of employability of middle-skilled TCN on the German labor market should thus be revised in detail.

Evidence shows that Germany's management of Public Policy on labor migration is mainly economically motivated. On the backdrop of labor market demands with view to middle-skilled qualifications, the legal and administrative framework for TCN is far more complex than it is for the highly-qualified. Reasons for this can be found in the history of migration to Germany. The fear that migration to Germany involves later welfare dependency is more present than ever before. Consequently, if labor migration to Germany is economically desired, appropriate Public Policy needs to be elaborated according to the respective demands of the labor market.

Concluding, this research gives proof for the hypothesis: German Public Policy is not exemplary for mature Public Policy. On the basis of these concluding remarks possible policy recommendations will be outlined in the following part.

5.2. Policy Recommendations

On the basis of this conclusion and with detailed few on the analysis, this part aims at giving pragmatic policy recommendations:

- **Clear distribution of competences**

A clearer distribution of competences has to be envisaged. Especially for TCN who are not familiar with Germany's federal structure procedures are not traceable. A bundling of competences with view to the Foreigner's Office or the Chamber of Commerce and Trade in course of recognition could represent a solution to this problem.

Also a uniform cost range for recognition or compensatory measure should be envisaged.

- **Flexible procedures at the BA**

Until today a middle-skilled TCN has to prove that a concrete employment opportunity exists. Especially in the sector for middle-qualified professions, vacancies are often not registered at the BA but put out for tenders on different platforms. This is mainly due to the time-consuming process of registration at the BA. As this negative aspect is already rooted in the minds of the responsible people, only a more flexible approach of the BA could provide considerable improvements. New methods to prove quality and existence of unregistered vacancies have to be brought up. Only this way, legislation on employability for skilled-TCN can become more than symbolic policies.

- **Making preparatory measures a regular step to enter the German labor market**

A huge amount of middle-skilled TCN is not able to fully enter the labor market as their qualifications are not judged equivalent to the German qualifications of reference. Making preparatory measures more accessible in order to compensate a lack of skills represents a channel to effectively integrating a higher amount of middle-skilled TCN on the labor market. Also costs for these measures should be revised according to urgent necessities of the labor market.

6. Discussion

In general the aim of this thesis to give scientific but also practical insights into the topic of middle-skilled labor migration has been achieved. Nonetheless, some debatable issues have so far been left out.

Firstly, in order to fully develop a pragmatic and realistic framework for mature Public Policy on middle-skilled migration, further empirical research, such as interviews with German officials, entrepreneurs and migration experts, would be necessary. As became evident, migration is not only a geographical movement from one place to another. It is on the contrary a very sensitive topic, which has to be explored in an interdisciplinary approach. In this context, economic interests can only be followed if the legal and political channels are appropriate.

Secondly, I see two main possibilities to manage skilled labor migration of TCN:

Public Policy on skilled labor migration can on the one hand be based on maturity and herewith on the three attributes applied throughout this research. In my view, this manner of managing necessitates a red line, bundling certain values, such as integrity, responsibility, fairness and transparency on all levels and sectors involved. This research has revealed that the recruitment of skilled TCN is mainly economically motivated. Changes have been done with view to the administrative and legal framework. In the end these changes remain symbolic as their real impact does not correspond to the publicly promoted objectives. Putting forward the argument that Germany is a world-opened country and happy to welcome people from around the world gives a false impression.

On the other hand, Germany could put the cards on the table: The main reason for the recruitment of middle-skilled TCN is economic necessity. Laying the focus on economic aspects instead of entering the politically charged discussion on migration right away would be both, more pragmatic and authentic.

Concluding, political reasons to justify active labor recruitment of middle-skilled are put in front of the public debate. It is more than desirable if this was the case and the motor for action. Nonetheless, incremental political changes in the way of reasoning about migration would be necessary in order to give an authentic example of mature Public Policy on skilled-labor migration.

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Declaration of Academic Integrity

I hereby confirm that the present paper / thesis on

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is solely my own work and that if any text passages or diagrams from books, papers, the Web or other sources have been copied or in any other way used, all references – including those found in electronic media – have been acknowledged and fully cited.

Stephane Sperling , 12/06/2014
Name, Date,

Signature



