

# 11 ALL IN THE NAME OF QUALITY: MAKING LIFE HARDER FOR THE THIRD COUNTRY MIGRANT WORKER

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*This chapter presents a scenario where the economy of a particular EU Member State not only depends on migration but risks over-dependence on making migration as difficult as possible for third country nationals.*

## 11.1 A PRO-MIGRANT OUTLOOK

The author of this chapter makes no secret of his pro-migrant perspective, arguing that migration is a natural phenomenon, whereas statehood is not. So many species in the natural world traverse long distances seasonally for food and water without being required to apply for passports or permits. Similarly, human beings do not always manage to find a job or build a career in the vicinity of where they were born and educated, or are displaced, whether by natural phenomena or by tragic events such as war. Therefore, they need to move, sometimes considerable distances, in order to be able to sustain themselves and their families. Moving for humans involves crossing borders and requires passports, visas and other permits to be done legitimately.

In recent years, Malta has attracted so many foreign workers that its demography has changed. One in five persons in Malta is non-Maltese, and 63% of foreign workers are third country nationals.<sup>1</sup> These people earn their living and feed their dependants, whether they bring them to Malta or send money back home. However, it is by far not a one-way relationship: the Maltese benefit in many ways from the services these people provide, be it in the form of carers for the elderly and the sick, labourers in the construction industry or cab drivers, to name but a few. The relationship between third country migrant workers<sup>2</sup> and Maltese individuals is undoubtedly mutually beneficial. However, third country migrant workers face countless hurdles in obtaining and retaining valid work permits and getting on with their lives just like any other

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1 <https://jobsplus.gov.mt/resources/publication-statistics-mt-mt-en-gb/labour-market-information/foreigners-data> (accessed 29 February 2024).

2 For the purposes of this chapter, the author will concentrate on legitimate migrant workers, that is, those persons who are in Malta legally and have their documentation in order.

human being aspires to. This phenomenon does not seem to be anywhere near improving, simply because the Maltese state has little interest in facilitating matters for third country migrant workers.

### 11.2 A LEGAL SYSTEM WHICH FAVOURS THE MALTESE CITIZEN

Although sixty years old, the Maltese Constitution truly reflects the current situation where migrant workers are concerned. We are a democratic republic founded on work and the individual's fundamental rights;<sup>3</sup> the state recognises the right of all citizens to work,<sup>4</sup> protects work<sup>5</sup> and provides subsistence to citizens incapable of working.<sup>6</sup> One immediately notes the word "citizen". One may argue that it is to be expected that the Constitution of a country will lean towards its citizens; the only issue with this is that the world we live in is not naturally divided into states with their citizens. Nobody other than humankind created this division, and they did so to suit their own needs.<sup>7</sup>

The same Maltese Constitution also provides "workers" with reasonable insurance on a contributory basis,<sup>8</sup> favouring the Maltese citizens because the pension system works in such a way that current workers' contributions sustain the old-age pensions of the retired. Former Prime Minister Muscat was always very open about this; for example, when he said that if we do not want foreigners, we must say goodbye to pensions,<sup>9</sup> a statement which one would be very unwise to doubt. The same Muscat is also on record for having observed that foreign workers create wealth for Malta because most of them leave within six to seven years and, therefore, never claim a pension.<sup>10</sup> Muscat is indeed correct: while the author of this chapter does not have the statistics to prove this, he has heard first-hand from Serbs, in particular, that their ultimate aim is to move to Australia or New Zealand. They come to Malta and stick it out for around six years despite the high cost of rent and the poor salaries because Malta is a very good stepping stone to other countries even beyond mainland Europe, such as Australia and New Zealand; hence, their participation in, and effectively the creation of, the 'revolving door' system which Malta profits from.

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3 Constitution of Malta Art. 1.

4 Ibid., Art. 7.

5 Ibid., Art. 12.

6 Ibid., Art. 17(1).

7 Ivan Mifsud, *The State's Duty to Care when Acting in an Administrative Capacity* (Ph.D thesis 2008).

8 Constitution of Malta, Art. 17(2).

9 <https://timesofmalta.com/article/if-you-dont-want-more-foreigners-say-goodbye-to-pensions-warns-muscat.701023> (accessed 29 February 2024).

10 <https://deeply.thenewhumanitarian.org/refugees/articles/2018/08/06/migrants-malta-does-not-want-are-powering-its-economy> (accessed 1 March 2024).

As a full member of the EU, Malta's legislation on migrant workers, such as the Immigration Act<sup>11</sup> and subsidiary legislation drafted thereunder, is broadly in line with its EU membership obligations; however, it tends to be implemented in such a way that favours Malta and not the third country national. For example, when it comes to family reunification, the sponsor must prove that they earn the "equivalent to the median wage, as established by the National Statistics Office – the latest published amount is €18,155 in addition to a 20% of the said median wage for each family member".<sup>12</sup> A policy allows for the review of applications for people who do not meet the family reunification requirements. The author can confirm that this policy works because he has himself presented applications for such persons and is pleased, indeed relieved, that the authorities did allow the reunification, for example, of a third country national fourteen-year-old girl born out of wedlock from an officially unknown father and whose mother had been working in Malta for more than ten years, had a stable income which unfortunately did not reach the median, but who had no choice but to bring her daughter over after the grandmother with whom the daughter lived for so many years had grown too old and was in too poor health to look after her granddaughter any more. The author publicly acknowledges the reasonable, humane stance taken by the public officials who decided on this application, but cannot help but ask, why is there a requirement for a median wage in the first place? Do people who earn a minimum wage<sup>13</sup> not have a natural right to family life? Does anybody control a Maltese citizen's ability to procreate or base it on their income? Never mind unemployed persons, but why are these obstacles limited to foreign workers? The author cannot help but question why the benchmark for family reunification is not the minimum wage, with no additional 20% per family member. An unemployed migrant worker is not a worker and, therefore, cannot be expected to bring their family over and sustain it. Advocating below the minimum wage would be illegal because nobody is allowed to earn below the minimum wage, but in the author's opinion, to be truly migrant friendly the benchmark should be a stable, full-time employment with no reference to income.

Another interesting question the author has encountered occasionally is, what if two third country nationals, migrant workers legitimately in Malta but not earning the median wage (as is indeed the case for many third country nationals on single permits), have a baby or possibly more than one? Will these babies be deported? The answer presumably will be negative because the authorities will exercise their discretion and the earlier mentioned policy. However, there is always the risk of a refusal to issue a

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11 Chapter 217 of the Laws of Malta.

12 <https://identita.gov.mt/expatriates-unit-non-employment-permits-family-members-policy/> (accessed 2 March 2024).

13 Currently, €213.54 per week for workers aged over eighteen, <https://legislation.mt/eli/ln/2023/287/eng> (accessed 2 March 2024).

residence card for the child, which will affect that child's ability to go to school and use state-provided medical services. These situations should be eliminated in the first place for migrant workers by eliminating the 'median wage + 20% per family member' rule. However, the current scenario favours Malta at the expense of the migrant worker because raising the bar in such a way results in less likelihood that migrant workers will bring their families over, and this, in turn, results in less likelihood that the migrant will settle in Malta, and will also result in the Maltese state needing to cater to fewer people when it comes to, for example, the provision of healthcare and education. We are, thus, back to the economics of migrant workers moving on after spending a number of years in Malta, which very much favours the Maltese economy, more than third country nationals remaining in Malta.

The same applies to long-term residency rules. As the author has already explained elsewhere,<sup>14</sup> in a country in which English is an official language apart from Maltese, the legislator amended the relevant legislation<sup>15</sup> in such a way as to make it necessary for the person seeking long-term residence to not only be able to communicate in English but also to be able to speak, read and write in Maltese. Indeed, if they do not obtain a minimum of 65% in a written exam<sup>16</sup> in the Maltese language, they will not be granted long-term residence status. This leads to two observations: Why is there a requirement to be able to read and write in Maltese in a country where everybody speaks English? Why the 65% pass mark when the pass mark at the national university is 45%? It is no secret that learning to speak the Maltese language is not easy, let alone reading and writing in Maltese and passing an exam with such a high benchmark. These same applicants must also follow a course on the social, economic, cultural and democratic history and environment of Malta and obtain a minimum of 75% marks in the exam. This may be done to integrate foreign workers, but as was observed, it "creates as many obstacles as opportunities" for integration.<sup>17</sup> Another challenge to overcome is the financial requirement. The author notes that the long-term resident<sup>18</sup> applicant requires to earn the national minimum wage and not the national median wage required for family reunification, which is a positive requirement in itself, except that the same legislation on LTR requires proof of the individual earning an additional 20% for each additional family member. This last requirement does not favour the migrant worker, who might not earn an additional 20% over the minimum wage for each family

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14 "Long-Term Residency Rules in Malta: Undefeatable Obstacle Course for Third-Country Nationals?", *The Implementation and Enforcement of European Union Law in Small Member States: A Case of Malta* (Springer, 2021, pp. 205-221).

15 S.L.217.05.

16 Ibid., reg. 5(2)(a).

17 [https://migrant-integration.ec.europa.eu/country-governance/governance-migrant-integration-malta\\_en](https://migrant-integration.ec.europa.eu/country-governance/governance-migrant-integration-malta_en) (accessed 2 March 2024).

18 LTR.

member, just like a Maltese citizen might be on the minimum wage<sup>19</sup> irrespective of the number of family members that person might happen to have.

The stark reality is that Malta benefits more from third country nationals extending their stay in Malta via single permits than these same workers obtaining long-term residence status: single permits must be renewed annually and come at a fee of €300 each,<sup>20</sup> while workers enjoying LTR status also enjoy a number of rights as a consequence, including the right to self-employed economic activity and the real prospect of remaining in Malta for much longer, if not indefinitely, and claiming a pension instead of the country profiting from the ‘revolving door’ system and from the fact that they will not stay in Malta long enough to be entitled to a pension despite paying their national insurance contributions.

The unfortunate truth is that the main considerations regarding migrant workers are economic. Migrant workers are allowed into Malta because it favours us, for the reasons already stated. They are allowed to serve us and for our convenience. They pay €300 per single permit application, which is not refunded if the application is refused; yet, where the state considers this to be convenient, this fee is reduced to a mere €27.50.<sup>21</sup> This reduced fee applies to live-in carers for the elderly. The reason for this reduced fee is that it is much cheaper for the state to encourage and assist the elderly to remain living at home than to provide beds and facilities in old peoples’ homes, which, apart from being very expensive to build and run, will involve the employment of third country national nurses and carers anyhow. Indeed, economic considerations run so deep that the Maltese state encourages rich foreigners to come to Malta and settle there; hence, the Malta Residence and Visa Programme,<sup>22</sup> because it also benefits the Maltese economy.

### 11.3 THE CREATION OF NEW CHALLENGES

Although Malta needs migrant workers, the Maltese state is about to make life for the migrant worker even harder. The latest challenge has come in the form of the “skills

19 A total of 29,036 Maltese workers earned between €0 and €10,000 in 2021 (<https://gwu.org/mt/en/majority-of-employees-earn-more-than-20000-euros/> [accessed 2 March 2024]).

20 Increased in early 2024 from €280.50. Considering that, according to the papers placed before the Parliament on 8 January 2024 (PQ 14242 available at <https://pq.gov.mt/PQWeb.nsf/7561f7daddf0609ac1257d1800311f18/c1257d2e0046dfa1c1258a9e00309730!OpenDocument> [accessed 2 March 2024]), in July 2023 there were 68,755 registered third country national workers in Malta, one appreciates that the Maltese state earns tens of millions of Euro per annum from these applications and, likewise, potentially stands to lose millions of Euro per annum if they obtain long-term residence.

21 This remained unchanged when the fee for single permit applications was increased from €280.50 to €300.

22 Regulated by S.L.217.18.

card” requirement, the rules for which still have to be publicised, which was announced in October 2023. According to articles in the Press,<sup>23</sup> third country nationals seeking tourism and catering jobs will require skill cards. New third country nationals applying to relocate to Malta for employment within the tourism and hospitality industry will be required to take several courses aimed at tackling English proficiency, customer care and knowledge of Maltese tourism products. The Institute for Tourism Studies will undertake these courses online. According to the same news reports, only once they pass these courses will these individuals be able to apply for their single permit. If the single permit is granted, that individual will have to make an appointment with the Institute for Tourism Studies three weeks before they arrive in Malta and will be assessed by the Institute within three business days from actual arrival in Malta; if they fail their assessment, they will be repatriated. This procedure comes at a not insignificant fee of €575,<sup>24</sup> over and above the €300 single permit application fee.

According to the same news reports, by October 2024 all third country nationals currently working in the tourism and hospitality industry must apply for and obtain this skills card or will not have their single permit renewed. A few months later, all European and Maltese people working in the tourism and hospitality industry must obtain the same skills card. At a later stage, this system of skills cards will be extended to other industries.

It is claimed that this is being done to raise standards in the tourism and hospitality industry,<sup>25</sup> and it is hard to argue with the prospect of improving skills and raising standards, the more so when the system is not going to be restricted to third country nationals. The system will be hard on employers as well because it will be even harder for them to recruit people and hold on to existing staff. The author of this chapter has assisted and advised people in obtaining work permits and the necessary visas which go with them. There was a time when the single permit was not a problem, and a letter of “Approval in Principle” could be obtained with relative ease; the true difficulty lay in obtaining the visa and finding oneself in a situation where one had an “Approval in Principle” and was then denied a visa. On one particular occasion, the Consul General of Malta in Istanbul refused a visa because “there are reasonable doubts as to your intention to leave the territory of the Member States before the expiry of the visa”. Following this communication, an appeal to the Immigration Appeals Tribunal was

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23 [https://www.maltatoday.com.mt/news/national/125687/thirdcountry\\_nationals\\_seeking\\_tourism\\_and\\_catering\\_jobs\\_will\\_require\\_skills\\_card\\_from\\_2024#.ZeNc8nbMLGI](https://www.maltatoday.com.mt/news/national/125687/thirdcountry_nationals_seeking_tourism_and_catering_jobs_will_require_skills_card_from_2024#.ZeNc8nbMLGI) (accessed 2 March 2024).

24 <https://timesofmalta.com/article/skills-card-rules-rolled-hospitality-workers-january.1063551> (accessed 2 March 2024).

25 N.319.

lodged, and to date, this appeal, sent on 13 April 2022, is still pending. In the meantime, the individual gave up and found a job in another country.

This is but one example of a real scenario in which the author of this chapter was involved. The main point is that this difficult process will be made even more difficult by having to take and pass online courses. Apart from practical difficulties, for example, lack of easy access to the internet and difficulty in meeting the costs involved,<sup>26</sup> there is the impracticality of certain topics that have been announced, namely, knowledge about Maltese tourist products. With all due respect to the authorities, this is unrealistic. These third country nationals who are ‘still abroad’ are hired for their special skills. For example, a restaurant serving Thai food will hire and bring over a person who knows how to prepare authentic Thai cuisine. From the author’s experience, this person will not know a word of English and, in all probability, will barely know where Malta is at the time they decide to take up a job here. However, they can cook very well and, therefore, will fulfil the employer’s requirements. Getting these people through these courses and the ensuing assessments within three working days of arrival in Malta is not going to be easy. Even more difficult will be getting third country nationals already in Malta, such as Asians who can prepare their native dishes but hardly know a word of English, to pass the exams and obtain their skills card and with it the renewal of their work permit.

The author of this chapter knows an individual who owns a handful of Asian restaurants in Malta and is bracing himself for the worst – having to shut down his business because his chefs are very good at what they do but cannot speak English. He may try to send them for courses in English but very much doubts their success by the time they need to renew their work permits. The bleak reality is that, in the name of raising standards, several migrant workers are anticipated to lose their jobs by not passing the tests and getting their skills cards. Ironically, this will work in favour of the Maltese economy, which, as stated earlier, relies on the ‘revolving door’ concept, that is, on migrant workers not staying more than a few years in Malta, most certainly not enough to claim a pension. Amid all this, the government will line its pockets with the €575 multiplied by countless applicants and generate work for the trainers. At the same time, third country nationals will pay, study and suffer in silence, and restaurateurs will have to cope with an even more challenging business environment than at present. Despite the

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26 €575 is a lot of money to these people and that is not considering the other fees they pay, for example to people and entities that assist them in the processes of finding jobs, obtaining visas, etc. See for example <https://www.aljazeera.com/features/2023/12/4/malta-welcomes-foreign-workers-to-fill-labour-shortage-but-repels-refugees> (accessed 3 March 2024) for accounts on paying agencies, and on only coming to Malta as a stepping stone to the European Union. Unfortunately, the more bureaucracy created, the more fertile the ambient for agencies and middlemen.

difficulties, this initiative looks very good politically to Maltese citizens, who tend to be wary of foreign workers and immigrants in general, especially dark-skinned ones,<sup>27</sup> and are likely to welcome government initiatives to raise standards.

While it is not being implied that this system of training and skills cards is specifically intended to act as a ‘revolving door’ for migrant workers or to raise money and create jobs for trainers and other assessors, if the government persists with these plans that it has indeed already announced, this could be an unanticipated benefit for the country and the factor of ‘not staying too long in Malta’, on which the economy seems to rely in order to maximise benefit from migrant workers. One hopes that the government will have a rethink, at least when it comes to the renewal of single permits. It may indeed be argued that a person who does not have contact with the patrons of the restaurant or other catering outlets does not even need to know English or be trained in customer care or know about the Maltese catering industry in general; all they need to know is how to do their job, that is, how to prepare Asian or other food to the likings and expectations of the diner. Another solution is to extend the time frames, giving such people a longer time window within which to acquire these skills,<sup>28</sup> or if they are unwilling, giving their employer sufficient time to find, train and recruit replacements, thus keeping their business going.<sup>29</sup> The government could also lower the anticipated fee of €575 to something more affordable; indeed, the lower this fee, the better.

#### 11.4 CONCLUDING OBSERVATIONS

The fact that the author considers migration a natural phenomenon does not imply that it should not be regulated. Only animals, birds and fish can cross territories free of passports, visas and other permits, humans cannot. The human world is what it is: governments exist, as do controls. Every government is concerned with its territory, economy, people and their welfare; whether we like it or not, it is ultimately about the survival and quality of life<sup>30</sup> of one’s people. It is also about addressing the concerns and sentiments of one’s people, for example, their perception of immigrants and crime. Truth be told, it is also about votes. Apart from the odd act of solidarity, such as opening up to victims of war, the government will not shower foreign workers with empathy, either where the planned skills card system is concerned or in other aspects.

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27 [https://www.maltatoday.com.mt/news/national/104097/numbers\\_tell\\_a\\_different\\_story\\_its\\_the\\_state\\_that\\_must\\_not\\_neglect\\_migrants\\_and\\_our\\_communities#.ZeSP3HbMLGI](https://www.maltatoday.com.mt/news/national/104097/numbers_tell_a_different_story_its_the_state_that_must_not_neglect_migrants_and_our_communities#.ZeSP3HbMLGI) (accessed 3 March 2024).

28 It is submitted that a three-year time frame within which to go for tuition and acquire these skills should suffice.

29 Interestingly, this will also satisfy the ‘revolving door’ factor.

30 N.323.



Specifically concerning the planned skills card system, the government intends to extend this system in due course beyond the catering and hospitality industry. This means that, from a third country migrant worker's perspective, the challenges are set to increase yet further. That Maltese and Europeans will be subjected to the same system is of little consolation: one cannot anticipate them losing their jobs, and for certain, they will not have paid so much money and put in so much effort to come to Malta, and will not be deported either because one cannot deport a Maltese and deporting a European citizen seems rather unlikely, which means that the brunt will be on the third country immigrant workers, who leave their country in search of a better life, only to find yet more difficulties in the host country even though the relationship is a mutually advantageous one. The author is also particularly concerned that Malta may be approaching a stage of over-reliance on the current status quo to keep its generous system of pensions and welfare going,<sup>31</sup> and there is little to no room for being more accommodating towards third country migrant workers. Indeed, the government must continue to be harsh in the requirements it imposes on third country migrant workers, and doing so in the name of improving the quality of service offered by the particular industry may be but one facet of the stand which the government has to take, in order to sustain the current economic model.

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31 N.323.