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From issue: **Consulta Previa and Investment** (Spring 2014)

Policy Updates

A snapshot of policy trends and successes in the region.

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Protesters rally for comprehensive immigration reform in New York City on May 1, 2013. Photo: Carolina Ramirez.

Travel Regulations: OFAC and Cuba

BY

Robert Muse

The re-opening of "people-to-people" travel to Cuba by President Barack Obama in early 2011 was the boldest and, arguably, the single most consequential step taken by his administration in relation to the island. It was in fact a revival of a Clinton-era exemption to the decades-old ban on U.S. citizens visiting that country. The exemption had been closed in 2003 by President George W. Bush.

Visits to Cuba must meet two requirements to be approved as people-to-people travel: the travel must be for an educational purpose, not tourism; and there must be frequent "meaningful" interactions between the U.S. travelers and Cubans who are not officials of the government of Cuba. The educational requirement of people-to-people trips is most often met through cultural programs that explore such subjects as Cuban music, dance, fine art, and architectural history. However, among many other current offerings there are also environmentally themed trips, as well as programs focused on the Cuban health care and education systems.

Since the program was re-introduced, an estimated 100,000 Americans have been visiting Cuba each year on people-to-people trips. The visits have been organized by a wide variety of groups, including

the National Geographic Society, the Metropolitan Museum of Art and dozens of similar institutions. The travelers meet and talk with Cubans from different backgrounds and leave millions of dollars in the hands of non-state restaurateurs, artists, musicians, taxi drivers, and small farmers who supply the new private eateries of a changing Cuba.

The State Department is a firm supporter of people-to-people travel. In 2013 Secretary of State John Kerry called the program a "vital part of U.S. foreign policy," adding, "We believe that our people are actually our best ambassadors [...] they are ambassadors of our ideals, of our values, of our beliefs." According to comments made by Assistant Secretary of State Roberta S. Jacobson less than a year ago, the policy has benefited Cubans "by providing alternative sources of information, taking advantage of emerging opportunities for self-employment and private property, and strengthening independent civil society."

Applications for licenses to conduct people-to-people programs are labor intensive, but thousands of American visitors to Cuba will attest it is a process worth undertaking. To obtain a license, a U.S.-based organization must apply to the U.S. Treasury Department's Office of Foreign Assets Control (OFAC). It must demonstrate its capacity and intention both to offer full-time educational programs in Cuba and to enforce the requirement that the travelers under its auspices engage "meaningfully" with Cubans not affiliated with the government. Sample itineraries of activities to be undertaken in Cuba are required and carefully vetted by OFAC licensing officers to ensure both conditions are met.

According to the chief of the licensing division who manages Cuba travel for OFAC, Jeffrey Braunger, since 2011 a total of 350 people-to-people licenses have been approved. This figure does not, however, distinguish between original and renewed licenses, so the total number of licensees is probably less than 300.

In 2013, 275 people-to-people applications were filed. Those applications are a mix of first-time applications, renewals and reapplications arising from denied applications. Because statistics are not kept on first-time applications, it is difficult to know whether interest in applying for people-to-people licenses is waxing or waning. But it appears interest has remained steady.

On average, it takes OFAC four months to process an initial or renewal application. OFAC therefore recommends that licensees apply for renewal at least four months before the date of a license's expiration. However, it will accept applications up to six months before the date of expiration.

No one who has been through the people-to-people application process will say it is easy. But in fairness to OFAC, it was never meant to be easy. In 2000, Congress passed a special law making tourism to Cuba illegal. As a result, applicants for people-to-people licenses must prove that their proposed programs in Cuba are not tourism but, instead, constitute direct and meaningful interactions between travelers and Cubans not affiliated with the government. Looking constantly over OFAC's shoulder are several influential members of Congress who have never disguised their hostility to people-to-people travel. A demanding application process at OFAC may well be the best guarantee of the program's survival.

However, people-to-people programs may be at risk from an unforeseen quarter. In February, the Cuban Interests Section (CIS) in Washington DC, announced that it is suspending consular services in

the United States—including the issuance of visas to U.S. citizens for travel to Cuba. The announcement was ordered after the M&T Bank stopped handling Cuban bank accounts in the U.S., including the accounts where visa fees are deposited. No substitute bank has been identified. The CIS said in a prepared statement that it "regrets any inconvenience this situation may cause to U.S. citizens who may require the services of our offices, with the negative impact on academic, cultural, educational and other types of exchanges between Cuba and the United States." This, of course, puts people-to-people programs at risk. Proponents of those programs can only hope a solution will be found quickly.

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Currency: Argentina's Devaluation

BY

Natalie Schachar

When Argentina devalued its peso by 19 percent against the U.S. dollar in January, Brazilian President Dilma Rousseff reaffirmed her country's independence from the volatile currency of its southern neighbor. "It will not have significant consequences," *Folha de São Paulo* reported her saying. Indeed, Brazil has large international reserves, a balanced budget and consistent growth due to large domestic demand. But while the so-called "tango effect" of the devaluation has been negligible, Argentine protectionism is still a challenge to Brazil's economy.

Before the devaluation, Argentina's foreign reserves had reached record lows as the administration of President Cristina Fernández de Kirchner attempted to sustain the overvalued peso. The government's decision to let the peso slide toward its truer value helped stabilize foreign reserves, which the country has relied on since being locked out of international credit markets in 2002.

To prevent the further depletion of the money supply, however, Argentina has continued to enforce harsh restrictions on imports.

This has been implemented through *declaraciones juradas anticipadas de importación* (sworn affidavits of intent to import—DJAI), which function as import permission slips. DJAIs monitor imports to protect Argentine international reserves. But these new bureaucratic regulations, further complicated by a lack of alternative financing options for Argentine buyers, have stalled trade. According to the *Cámara de Importadores de la República Argentina* (Chamber of Importers—CIRA), companies are making multiple declarations on the same products to improve their chances of importing goods, and the Central Bank is adding to the problem by unofficially delaying or denying requests for dollars above the amount of $300,000. Even with the easing of restrictions, Argentines must still have approval to purchase foreign currency.

The red tape has intensified fears in Brazil that exports to its third largest trading partner will fall precipitously, causing a trade deficit by the end of the year. Consumer behavior is also a factor in the import slowdown: Argentines are buying fewer products as a defensive move against rising inflation.

Such factors have driven import figures early this year to the lowest they have been since January 2010. For example, Brazilian exports of diesel-powered cars to Argentina declined by roughly 6 percent in comparison to last year. Overall, trade between Argentina and Brazil fell 16.9 percent in January and February. Bilateral exports declined by 23.3 percent and imports by 11.8 percent.

But even prior to the latest Argentine currency adjustment, divergent economic interests among Argentina and other countries in the *Mercado Común del Sur* (Southern Common Market—Mercosur) have been increasingly apparent—triggering familiar charges by economists that the trade bloc itself is having a crisis. While the charges may be overstating the case, the difficulties Mercosur countries have experienced in accessing Argentina's market have prevented further progress in improving the trade zone, and caused other countries to fortify themselves against the instability of Argentina's exchange rate.

Apart from the fact that Argentina's devaluation narrowly increased the competitiveness of its exports —soaring inflation quickly took away any edge—closing the gap between the official and black market exchange rates has had only small consequences on the varied agendas of Mercosur countries. These days, trade barriers and the prices of commodities traded among the bloc—such as soybeans and wheat—are of larger concern to Argentina's neighbors.

The lack of strong regional integration has also spurred an energetic push toward finding more open markets. Brazil, Uruguay and Paraguay are once again actively trying to revive a free trade deal with the European Union (EU). The decade-long discussion took on greater urgency due to the prospect of additional currency devaluations in Argentina. Notably, Venezuela, which joined the trade bloc in 2012, is also not part of the negotiations.

As it continues trying to boost production at home, Argentina has shown a steady lack of enthusiasm for any trade deal with Europe. Among other initiatives, the country's state-owned oil company, YPF, has rushed to increase gas and oil production, and a recently passed law would encourage the development of an auto parts industry.

A potential EU–Mercosur agreement, which would include easing tariffs on 90 percent of goods, has had Argentina insisting on redefining the terms. Since all five Mercosur countries will have to be in agreement before they can put anything in ink, a final EU deal has stayed frustratingly out of reach, although Brazil could sign a deal alone.

For now, a few ideas for improving trade ties within the bloc have been suggested. One would be to use local currencies for imports and exports to reduce Argentina's demand for dollars. Although even under this plan, Argentina's highly unpredictable currencies could still remain a problem.

The second proposal, which appears to be on its way to implementation, involves opening a private line of credit between Brazil and Argentina so that buyers are not forced to turn to the Central Bank. The operations would be limited to 15 or 20 percent of bilateral trade between both countries, and the Central Bank would not be able to block payments to Brazilian exporters.

CIRA spokesman Miguel Ponce, however, maintains that the best-case scenario would be if Argentina comes to an agreement with Mercosur on a free trade deal with the EU. "Better integration with the world would improve the way Argentina conducts trade with foreign countries in the region," he said.

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Policy Advocacy: U.S. Immigration Reform

BY

Charles Kamasaki

Any meaningful comprehensive immigration reform in the United States must establish a pathway for the estimated 11 million undocumented immigrants to become eligible for legal residence and eventual citizenship. Getting unauthorized immigrants to some form of legal status, however, will require more than just legislative action; the nonprofit sector must mobilize and help them navigate the complex bureaucratic and legal hurdles that will inevitably accompany any reform. That, in turn, will require more funding for the critical network of NGOs and community groups already active in the field—support for which, until now, has not been seen as an essential element of reform.

The benefits of a broad-based legalization program, both to immigrants and to society at large, are not in dispute. A host of studies demonstrate that immigrants who achieved legal status under the Immigration Reform and Control Act of 1986 (IRCA) experienced substantial wage gains, and improvements in educational attainment, occupational status and homeownership, as well as reductions in poverty rates—all as a result of the change to their legal status.[1]

A recent study estimates that today, legalization could produce an increase of over $1 trillion in GDP, more than $144 billion in higher tax revenues, and significant wage and employment growth over 10 years.[2]

But these benefits will occur only if three-quarters or more of those eligible successfully complete the program. Experience from IRCA shows that Congress will have to do more than change the law—it must support NGOs taking on this work.

In the 1986 legalization and several smaller programs since then, nonprofit organizations served as a critical buffer between undocumented applicants and the government. That process led to the legalization of nearly 2.7 million undocumented immigrants out of more than 3 million applicants. Of the approximately 75 percent of those eligible who applied, close to 90 percent were approved.

Of those who were approved, about half received some assistance from a nonprofit organization, and more than a fifth received intensive application assistance, which typically involved one-on-one counseling to help applicants collect documents and complete the required forms. A key subset of these nonprofits, the so-called "voluntary agencies" (VOLAGs), were simultaneously engaged in resettling the enormous wave of Indochinese and other refugees who came to the U.S. over the period of 1975 to 1990. These resettlement organizations accounted for a large plurality of legalization applicants assisted by nonprofits under the 1986 law. The U.S. Catholic Conference, the largest of the VOLAGs, invested more than $25 million in its legalization program, a figure that likely was matched by contributions from other refugee resettlement groups, although around half was later recouped from government grants and applicant fees.[3]

Who will be there to assist this time around? The Congressional Budget Office estimated that under legislation passed by the Senate last year, about 8 million applicants might be expected to apply—50 percent more than the number of applicants under IRCA. Analysis suggests that this time, nonprofit costs for assisting a legalization program could be as much as $270 million. But unlike before, the funds of VOLAGs and other nonprofits to invest anything even approaching $25 million ($50 million in 2013 dollars) no longer exist.

Currently, the only anticipated revenue sources for this work would be $50 million from a government grant program included in the Senate bill and an estimated $165 million from fees paid by applicants, leaving a gap that could surpass $50 million.[4]

Some of this gap can be filled by technology-based efficiencies in case management that have developed since the 1980s. Assigning volunteers from AmeriCorps and other programs to immigrant service providers could also usefully augment nonprofit staff capacity. Foundations might be expected to shoulder a major part of this load. The largest potential source of support is public funding, but this area is also subject to the greatest uncertainty. Potential House legislation could provide higher levels of federal support than the $50 million in the Senate-passed bill, but this appears unlikely. State and local governments are another possible source of support, although prospects for new grant programs to support immigrant service providers are unclear at best, given that most jurisdictions are just now emerging from severe, recession-induced budget cutbacks.

As a result, even a highly optimistic projection of support from these and other conceivable sources would leave a substantial shortfall, meaning that hundreds of thousands of eligible immigrants could be left out of the program.

One might argue that implementation planning is premature, given highly uncertain legislative prospects for immigration reform in the near future. But even if legislation is not enacted, many believe the Barack Obama administration will use its executive authority to extend some administrative relief to a substantial portion of the unauthorized, as it did in 2012 through its Deferred Action for Childhood Arrivals (DACA) program. DACA provided a means for up to 1 million undocumented people who arrived in the U.S. as children to become eligible for deferral of deportation and work authorization for renewable two-year periods. Expansion of the program could extend relief to potentially millions more.

It would be tragic if after decades of an often wrenching and ugly debate, the nation finally finds the political will to enact immigration reform legislation or its administrative equivalent, but then fails to implement it fully. Given the clear economic and social benefits of legalization, all stakeholders in the campaign for meaningful comprehensive immigration reform should consider this period of delay and uncertainty as an unexpected "gift of time" to redouble efforts to mobilize the resources and infrastructure required to bring 8 million previously undocumented people out of the shadows.

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