



Thailand's role in updating ASEAN immigration policy



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ABSTRACT

This research examined how the Association of Southeast Asian Nations (ASEAN) can improve upon the common economic community through the revision of policies related to labor and migration. The literature review suggested that economic prosperity and growth are significantly related to national openness to naturalization and foreign investment. Citizenship laws from all 10 ASEAN states and several other nations were analyzed alongside economic indicators. Within ASEAN, Thailand is considered central to widespread immigration law changes due to its leadership role in the region. Human rights aspects of citizenship and migration were assessed and potential solutions posed for the high incidence of statelessness in Myanmar and Thailand. In order to support consistent, long-term economic growth and protection of human rights, the research recommends various statutory revisions and the implementation of an executive strategic plan to protect alien laborers. For the purposes of developing globally-competitive economies in ASEAN, the research supports expansive access to citizenship by descent, birth-right, and by naturalization, with full recognition of multiple citizenship.

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Introduction

The Association of Southeast Asian Nations (ASEAN) launched its ASEAN Economic Community (AEC) at the end of 2015 (ASEAN Secretariat, 2016). Leaders hope the AEC will “transform ASEAN into a region with free movement of goods, services, investment, skilled labor, and freer flow of capital” (ASEAN Secretariat, 2008). Despite popular comparisons to the European Union, the AEC is not intended to introduce any of a single currency, central banking, or a regional governing body similar to the European Commission into the Southeast Asian region (Trairatvorakul, 2011). Lack of such supranational governing bodies has attracted suspicion that AEC will not have a great effect, but proponents consider it a “game changer” (Lim, 2014).

Visa exemptions for intra-ASEAN travel help streamline the process for short-term passage between member States (ASEAN Framework Agreement on Visa Exemption, 2006), although the effects are mainly limited to the tourism sector. Eight ASEAN Mutual Recognition Arrangements (MRAs) have been drafted to promote freer movement of select qualified professionals, namely engineers, nurses, accountants, architects, surveyors, medical practitioners, dentists, and tourism personnel (Leungbootnak & Deewong, 2012). While a freer flow of highly skilled labor should be an AEC goal as it creates significant economic benefits, most intra-ASEAN migration is among low-skilled groups, from the poorer six nations to the wealthiest four—Singapore, Brunei, Malaysia, and Thailand. Martin and Abella (2013) propose those lower-skilled migrant laborers need to be the subject of international partnerships and protection.

Economic and social diversity in combination with rampant poverty and high agriculture sector involvement

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within ASEAN necessitate the broader inclusion of peoples in the language and spirit of AEC agreements in order to protect migrant workers against exploitation and to ensure the AEC benefits reach beyond the highest echelons of societies. Thailand's role as an ASEAN founder, its geographical location within the deeply impoverished Greater Mekong Subregion (GMS) and its common heritage with people from neighboring least developed countries—Laos, Cambodia, and Myanmar—give it a natural advantage in spurring action designed to help target ethnic and socio-economic demographic segments in the AEC. However, before Thailand can take on such a leadership role in ASEAN, it needs to update its own immigration laws and system.

This article examines how ASEAN members can improve the AEC, and how Thailand can claim a leadership role, by amending laws relating to migration. International law, custom, and practice are reviewed and analyzed to gain a clear picture of how domestic policy can be shaped in a manner consistent with global ideals. Statutes, data, and research from the OECD and other competitive nations are compared and contrasted with those in ASEAN in search of best practices models. Issues relating to economic growth, human rights, and reciprocity bolster recommendations and suggestions intended to improve transparency, efficiency, and the rule of law within the Kingdom of Thailand and the AEC as a whole.

The research supports proposals that Thailand should adopt liberal immigration policies with unambiguous language: (1) recognizing both *jus soli* and *jus sanguinis* rights to nationality; (2) committed to expansive naturalization of foreign nationals; (3) fully recognizing dual citizenship; (4) removing governmental power to revoke citizenship; and (5) establishing that Thai nationality may be relinquished only on a voluntary basis and only in cases where subjects hold multiple citizenships. Labor laws should be revised to support broad employment-based immigration. The government should also implement an executive strategy for the protection of alien laborers, in order to ensure the protection of human rights. The research suggests that upon successfully promulgating new laws or seriously amending old laws, Thailand's new approach should then be taken into consideration by other ASEAN member States, which should follow in attempts to create greater social, economic and cultural stability.

Literature Review

International legal instruments and customs have long recognized clear and equal rights to nationality among peoples. Equality among peoples and states is a fundamental tenet of human rights law, which arose out of custom through the [Universal Declaration of Human Rights \(1948\)](#), of Human Rights. The concept has been written into treaties at numerous points since the advancement of international law became a viable option through the United Nations. Human rights and basic freedoms are granted equally to all people under agreements such as the [Convention relating to the Status of Stateless Persons \(1954\)](#), the [Convention on the Reduction of Statelessness \(1961\)](#), the [Convention on the Elimination of All Forms of](#)

[Racial Discrimination \(1963\)](#), the [International Covenant on Civil and Political Rights \(1966\)](#), the [International Covenant on Economic, Social and Cultural Rights \(1966\)](#), and the [Convention on the Elimination of All Forms of Discrimination against Women \(1979\)](#). Bilateral and multilateral treaties such as the 2012 ASEAN Human Rights Declaration strengthen the basic principles.

However, the voluntary nature of international law leaves room for States to overlook some people. For example, all ASEAN members have ratified the [1989 Convention on the Rights of the Child \(CRC\)](#), which provides children rights to be registered at birth, thereby reducing the likelihood of statelessness, yet recent UNICEF statistics have shown about 45 percent of births in Indonesia, 35 percent in Myanmar, and 28 percent in Laos go unregistered ([UNHCR, 2010](#)). A study of only 65,000 hill tribe persons in Thailand found 25,000 participants were stateless or at risk of being stateless ([UNHCR, 2010](#)).

The most egregious abuses of basic human rights to citizenship within ASEAN are presently found in Myanmar. An estimated 1.2 million stateless people in Myanmar were expected by the end of 2015 ([UNHCR, 2014c](#)). The [1982 Myanmar Citizenship Act](#) granted discretionary power over whether or not certain minority ethnicities would be recognized as citizens. Among those not recognized were 800,000 Rohingya Muslims from the Rakhine territory, bordering Bangladesh. Rohingya people experienced various human rights abuses, prompting the [United Nations to pass Resolution 67/233 \(2012\)](#) calling on Myanmar to protect the rights of Rohingya people and to allow them equal access to citizenship. Myanmar rejected the resolution ([Ferrie, 2013](#)) and *ipso facto* rejected its commitments under the [2012 ASEAN Human Rights Declaration](#), showing the ineffectual side of international law.

The problem of statelessness in ASEAN is mostly localized to Myanmar and Thailand, which together contain more than 1.3 million stateless people, or more than 10 percent of the world's total of stateless persons ([UNHCR, 2014a, 2014c, 2017](#)). Add to this more than 406,000 refugees in and nearly 800,000 refugees from ASEAN member States ([UNHCR, 2014b](#)) and we find reason to make serious policy changes. The Philippines is the lone ASEAN member State to have ratified or signed the 1954 Convention on Stateless Persons while no ASEAN State signed or ratified the 1961 Convention on the Reduction of Statelessness. Those treaties are a good start. If Thailand, Malaysia, Brunei, Vietnam, and Singapore also ratified the [2000 Protocol against Smuggling of Migrants](#), ASEAN as a whole could stand more united against practices which threaten rights to citizenship. A competitive AEC requires people with passports, or at least identification, and thus citizenship. Statelessness is an economic death sentence in a world on the move.

"In 2013, 232 million people, or 3.2 percent of the world's population, were international migrants, compared with 175 million in 2000 and 154 million in 1990" (UN, 2013). Half of all international migrants in the same year lived in 10 countries: the USA, Russia, Germany, Saudi Arabia, the UAE, the UK France, Canada, Australia, and Spain. Singapore is a rarity in the Eastern world as

international migrants make up around 40 percent of its population (SGNPTD, 2014; World Bank, 2014b). At nearly 2 million, international migrants in Singapore outnumber those in seven of the remaining nine ASEAN members combined.

In 2013, one-fifth of migrants in OECD nations were highly educated and from India, China or the Philippines. Since 2008, more than 2 million highly educated Asian migrants arrived in OECD countries. In Vietnam and the Philippines, rates of “brain drain”, or emigration of highly-educated workers hit 10.3 and 7.4 percent, respectively (OECD/UN-DESA, 2013). In 2013, more than 5.15 million highly educated migrants were reported from India, China, and the Philippines, which clearly relates to those three nations being the top recipients of international remittances (World Bank, 2012). But while remittances from OECD nations help individual ASEAN citizens' families, the result of intelligence-flight out of the region is harmful to overall performance in ASEAN. If highly-skilled professionals were motivated to stay within the AEC, perhaps migrating to another regional State rather than to North America, Europe, or Australia, then the AEC would have a better chance at creating and sustaining economic gains.

“Immigrants increase economic efficiency by reducing labor shortages” (Roth, 2013). Arguments against immigration usually focus on how increases in low-wage immigrant populations lead to decreases in available jobs for local citizens (Borjas, 1994). There are always individual cases showing hardship borne by natives; however, studies show mixed results on whether or not low-skilled immigration hurts low-skilled native workers in the long term (Matthews, 2013). Immigration has its opponents, but economic experts consistently agree that immigrants improve the national economy by adding to population, participation, and productivity (Crovitz, 2013; Migration Council Australia, 2015; Tammy, 2014).

The more dynamic and innovative firms can be, the greater their potential to build sustainable competitive advantages in the marketplace. As tariffs and quotas decrease an organization's ability to capitalize on broader opportunities, so visa and immigration restrictions threaten a company's ability to attract and retain high-quality employees. If firms can recruit and hire from outside their national jurisdiction without facing significant legal barriers, they have a better chance of increasing their brand equity via offering better products and services.

Competitive advantages can also be created by employing foreigners in low-skilled positions. Foreign laborers help keep expenses down, generating profit and freeing up cash flow in local businesses. Labor migration between Myanmar and Thailand is a prime example of this phenomenon, where Burmese laborers accept work in low-skilled sectors in Thailand which Thai citizens prefer not to enter (Chantavanich, 2012). However, employers too often face legal restrictions which make it difficult, if not impossible, to establish a sustainable competitive advantage in a changing region increasingly dominated by multinational firms.

Outmoded legal infrastructure undoubtedly contributes to the high prevalence of shadow economic activity in Thailand, where more than half of all transactions are off-

record (Schneider, Buehn, & Montenegro, 2010). A 1979 Royal Decree prohibiting foreign occupation in 39 categories of work presents serious obstacles to legal employment of foreigners. Thai regulations requiring a certain ratio of Thai to foreign workers at a firm before visas are granted to foreigners (U.S. Bureau of Economic and Business Affairs, 2012) significantly impair the labor market function in our increasingly internationalized economy. Likewise, the 21 categories of businesses listed in the 1999 Foreign Business Act, in which foreign participation is prohibited, stifles competition in the market. Recently, the military-led government has opened up discussion on amending the law, but none of the bans have been lifted.

The free flow of products and labor allows countries to benefit from comparative advantages in the international marketplace. For example, Burmese migrant workers in Thailand share a comparative advantage in low-skilled labor. Thailand benefits by reducing labor costs and Myanmar benefits from international remittances. Abundant, fertile soils in Thailand lead naturally to a high labor force involvement in agriculture, helping give the Kingdom a comparative advantage in rice production (van der Eng, 2004). Similarly, Singapore's limited land base prevents a strong agriculture sector, which in combination with government policy led the economy toward high-tech sectors, in which Singapore holds comparative advantages (Lim, 2008).

Both Singapore's technological advancements and Thailand's agricultural yields were made possible in part by migrant laborers, but Singapore's strategic integration of global-class foreigners led to innovation and development, while Thailand's reluctant integration of GMS foreigners and non-integration of global foreigners left the Kingdom in the “middle income trap” along with most ASEAN member States (Tho, 2013). In the case of Singapore, we find a key to continuing national growth beyond the middle-income class was legal immigration of foreigners whose origins are outside of the region—Europeans, North Americans, Indians, and Chinese. Naturalization of persons skilled in sciences, technology, and finance were crucial to making Singapore the second most competitive country in the world (Schwab, 2014).

Broad prohibition of foreign ownership under the Thai Foreign Business Act make the Kingdom less appealing to do business in when compared to Singapore (1967 Companies Act) and Malaysia (1965 Business Act), which fully allow foreign ownership of businesses. Government policy facilitates high-skilled labor migration in Malaysia and Singapore while impeding business start-ups in Thailand, resulting in comparative advantages for Malaysia and Singapore. Whereas Malaysia and Singapore created trade surpluses by focusing on high-value industries, Thailand's low-value agricultural economy leads to trade deficits (ASEAN, 2014) as increasingly modernized consumers demand products from high-tech industries in which the nation faces a comparative disadvantage.

Methods

This research was primarily structured in the style of a qualitative review and analysis of legal, political, and

economic literature. Electronic databases were searched for files related to past, present, and forecasted ASEAN economic and political conditions. Legal instruments pertaining to migration, labor, land, and business ownership were retrieved from governmental and intergovernmental sources. Data and policies from all 10 ASEAN countries were compared and contrasted within the ASEAN group and externally with the United States, Korea, Japan, China, Germany, Great Britain, Austria, and the Netherlands.

Documents from ASEAN, UN agencies, sovereign governments, and academic authors frequently contained statistics, and thus some element of quantitative methodology was involved. As economic order presupposes legal order (Long & Machan, 2008), we approached economic matters as inseparable from and largely dependent on legal and State policy issues. Quantitative data were analyzed in efforts to estimate the influences of trade and immigration policies on macroeconomic performance. Quantitative data also showed the prevalence of human rights-related cases, which were simultaneously associated with labor and migration, and therefore economic, issues.

Legal interpretivist (Stavropoulos, 2014) methods applied in making national-level *lex ferenda* propositions were reinforced by a legal positivist approach to international-level *lex lata*, especially relating to human rights. Article 38 of the *Statute of the International Court of Justice* was used as a basic model for prioritizing laws. Recommendations were made *ex aequo et bono* when references and expert opinions overwhelmingly supported or did not contradict such advocacy. The overarching goals of this research were to offer counsel on how to improve human rights practices in ASEAN in a way likely to also increase economic prosperity.

Legal Analysis

Most often, nations provide rights to become a naturalized citizen under statute only, while in some countries like the USA (Constitution Article 1, §8), Malaysia, and Singapore, citizenship by naturalization is a constitutional and statutory right. Western nations tend to naturalize more immigrants, and report statistics more frequently than nations in other regions. *Statistics Canada* (2014) boasted its naturalization rate “[is] higher than in other major immigrant-receiving countries”. In 2011, more than 85 percent of Canada’s 6 million eligible immigrants were naturalized, compared to 74 percent in Australia and less than 44 percent in the United States. Despite its lower rates, the United States has naturalized more citizens between 2003 and 2013 (7 million) than Australia has since 1949 (AUSDIBP, 2014; USDHS, 2013).

The 2010 Census showed around 23 percent of Singapore’s citizenship was foreign born (Singapore Department of Statistics, 2011). Japan, with an area of more than 500 times and a population more than 24 times that of Singapore, has carried out roughly the same number of naturalizations in the past 10 years as Singapore (JPMOJ, 2013; Lian, 2013). One could surmise that high population density in Japan (350/km²) creates adversity to naturalizing new citizens, but that theory is compromised when we look at Belgium (368/km²) and the Netherlands (497/km²)

which naturalized more than 300,000 each (EUDO, 2013; World Bank, 2014a). Our research found ASEAN members other than Singapore do not naturalize foreigners in numbers consistent with competitive economies abroad.

In a world increasingly dominated by international business concerns, the two main hurdles to achieving more competitive naturalization tallies are language exams and the recognition of dual citizenship. We found no evidence that dual citizenship is fully recognized and available in any ASEAN member State. We also found each ASEAN member requires knowledge of the national language as a prerequisite for naturalization, while only two States—Singapore and the Philippines—recognized English as a national language. Trends across Europe show tolerance for multiple citizenship (Bauböck & Honohan, 2010) and economic conditions in ASEAN favor revising language barriers to naturalization, which could be a main factor in growth and development for decades to come.

“Foreignness is a liability” to multinational firms (Siegel, Pyun, & Cheon, 2014). This means not only that companies want to establish subsidiaries in foreign nations, but also that to the extent allowable by law, there is a business interest in having employees integrated into local societies. Companies save time and cost, and reduce turnover risks stemming from visa and work permit requirements when their employees are citizens of the country in which they work. A *Deloitte* (2010) survey found 93 percent of Fortune 500 companies consider diversity a key business driver, whereas ethnic diversity is a weakness in discrete ASEAN member talent pools. Much in the same way that Chinese firms need to invest in human resources in order to compete in the international marketplace (Shambaugh, 2012), ASEAN businesses need to attract more global employees. Broader options to naturalize in the host country can improve the appeal of relocation.

While in some cases the language requirement may ensure naturalized citizens do not become public charges, in other cases the national language is not essential to the foreign applicant’s work, such as for Filipino and other English-language educators. One could easily argue that applicants should have an option of taking an English exam in place of the national language exam considering usage of English in the international workplace. The Singaporean (§153A) and Filipino (§7) constitutions recognize English as a national language, consistent with English being the official working language of ASEAN and thereby allowing certain applicants to bypass examination in more esoteric vernacular.

In Thailand, even if the Nationality Act were amended to offer an English-language exam, potential candidates would have little opportunity to find white-collar work given the prohibition of foreign employment in 39 categories under the Royal Decree Prescribing Works Relating to Occupation and Professions in Which An Alien in Prohibited to Engage attached to the 2008 *Alien Working Act*. The Decree broadly prohibits foreign employment in brokerage or international business agencies, civil engineering, architecture, legal services, tour guide services, office or secretarial work, and accounting. Although it seems provisions in the Decree and corresponding sections of the 1999 *Engineer Act*, 1985 *Lawyers Act*, and 2004

Accounting Professions Act would need to be repealed in order to implement MRAs in certain fields, we found no progress on this issue. Implementation of MRAs alone does not necessarily create the most advantageous impact either, considering that Thailand and other AEC members should tap into the global work force in order to improve growth and competitiveness.

Huguet, Chamrathirong, and Natali (2012) reported that more than 3.5 million foreigners resided in Thailand in 2012, with 3 million of them working, but just over 83,000 had work permits despite a general prohibition on work without a permit under the Alien Working Act. More than 1 million migrants from Cambodia, Laos, and Myanmar had completed or commenced nationality verification, which leads to legal working status, but nearly 1.5 million people remained undocumented. Rapid, massive changes to policy are called for when 5 percent of a country's population is made of migrants from neighboring countries with 2.5 percent being undocumented workers. If naturalization is not feasible, then a comprehensive immigration reform bill such as *America S.744* (2013) should be introduced, one that provides legalization options to undocumented migrants without nationality verification considering that it may be impossible for persons in Thailand to obtain nationality verification from the Myanmar government (Archavanitkul, 2010). Should the Thai government desire to continue requiring nationality verification under the *MOU on Employment of Workers* (2003) with Myanmar, then Thailand should seriously consider approaching undocumented persons as stateless.

Unlike statutes in Thailand (*1965 Nationality Act*), Laos (*1990 Nationality Law*), and Korea (*1948 Nationality Act*), the Japanese law does not require persons seeking citizenship by naturalization to demonstrate skills in the national language. Spouses also enjoy special status in Japan whereby they can be exempt from basic criteria regarding age and the term of residence (*1950 Japan Nationality Act*). Japan's lack of a language exam makes it friendlier to international marriages than other developed countries like Austria (*1985 Nationality Act*), Britain (*1981 Nationality Act*), the Netherlands (*1985 Nationality Act*), Germany (*1913 Nationality Act*), and the United States (*1952 Immigration and Nationality Act*), which require applicants to demonstrate language ability. In some cases, language tests prevent or delay post-marriage cohabitation (Grieshaber, 2014).

Spousal naturalization prevents risks associated with having children. If the national parent dies or becomes legally incapacitated, a naturalized second parent may have more legally-exercisable rights than a foreign parent. In cases involving land ownership, when there is a death of the Thai national spouse, property may be easily transferred to the naturalized citizen, whereas foreigners are generally prohibited from owning land under the *1954 Land Code*. Custody disputes resulting from divorce are likewise undoubtedly more equitable when both parents are nationals.

Economic and social benefits accompany naturalization for spouses. Citizens have access to restricted job categories, such as top banking positions and in the police, high-level civil service, and military (Bevelander &

DeVoretz, 2008). As a result, married couples with a naturalized citizen spouse earn more income on average when compared to married couples with a foreign immigrant spouse (Pastor & Scoggins, 2012). Naturalized citizens in the United States suffer unemployment less frequently than noncitizens. They tend to speak English better than noncitizens and earn more than both noncitizens and American-born citizens (Sumption & Flamm, 2012). Naturalized citizens may participate in democratic and political processes, which is likely to increase satisfaction and loyalty as opposed to alienation as a foreigner. We found virtually no evidence of drawbacks to naturalization of spouses. However, legislative changes are needed to support broader acquisition of Thai and other ASEAN member nationalities.

Costa and Kahn (2003) found civic engagement and diversity were negatively correlated, but Letki (2008) found socioeconomic status rather than race was the "key element undermining all dimensions of social capital". In terms of immigration, while excessive diversity can be counterproductive, insufficient diversity can prevent economies from capitalizing on opportunities. Alesina, Harnoss, and Rapoport (2013) found that diverse, highly-skilled immigrants are more economically profitable and socially acceptable. The economic impacts of immigration are optimized at intermediate levels where "quantity, quality and diversity of immigration interact to generate more prosperity" (Alesina, Harnoss, and Rapoport (2013)).

Diversity is said to enrich the social environment and contribute to greater creativity (Lazear, 2000). The United States government recognizes the value of diversity and grants up to 50,000 immigrant visas annually to random individuals from countries with low rates of immigration to the USA (*1990 Immigration Act*). A stratified version of such a diversity lottery could help Thailand and neighboring States develop more diverse immigrant populations who work in various fields, whereby the government could authorize naturalization for a certain number of foreign doctors, lawyers, teachers, laborers, scientists, and farmers, among others from countries with low rates of immigration to Thailand. However, before developed-nation citizens are willing to consider acquiring citizenship in Thailand or other ASEAN States, it is likely that the State will first need to recognize and offer dual citizenship.

As rights to naturalize are constitutional in Singapore and Malaysia, so too is dual citizenship prohibited under their constitutions. Neither the *Chinese (1980)* nor *Japan Nationality Act (1950)* Nationality Law leaves any room for misunderstanding that if one of their citizens acquires another nationality, their first citizenship shall be revoked. For Thai citizens who naturalize in another country, the 2008 Thai Nationality Act explicitly states such persons will lose Thai nationality although in practice this is not always the case. The law is vague in parts, reading that Thai citizenship may be revoked if it appears a Thai-born citizen of one alien parent, or a naturalized citizen, "makes use" of foreign citizenship or resides abroad for more than five years. While the language of the Act falls short of requiring naturalization applicants to renounce foreign citizenship, what constitutes making use of foreign citizenship is unclear.

Mazzolari (2009) found that by allowing multiple-citizenship, nations increased naturalizations of high-wage earning applicants as a percentage of all applicants. Immigrants who favor dual citizenship are frequently less likely to be welfare recipients. If Thailand were to amend laws and recognize dual citizenship, the resulting effect would likely be positive, whereby more highly-educated, English-speaking professionals would move to Thailand, a country of preference for expatriates for the quality of life and improved financial status it offers (HSBC, 2013). With the Republic Act 9225, the Philippines offered its own naturally born citizens rights to acquire another nationality, but it failed to reciprocate to allow naturalized citizens rights to retain their former citizenship, thus making naturalization unappealing for people from more developed nations. This type of double-standard is the norm for the region; like most of the world, discrimination against foreigners' integration is commonplace.

Economic growth and productivity may hinge upon this issue, so it is a bit ironic that people would resist freer flow of highly-skilled labor. Reciprocity is a fundamental principle of international trade—it should be customary that workers are able to travel and assimilate alongside products. ASEAN can emerge as a preferred destination for high-quality global migrants, but first countries like Vietnam, Cambodia, Laos, Myanmar, the Philippines, Indonesia, and Thailand must offer rights to dual citizenship.

Discussion

Older reports found naturalization is “limited” in Myanmar and “not encouraged” in Malaysia (USOPM, 2001). No evidence was found suggesting those old-fashioned practices were supplanted by progressive ones in recent years. Diversity programs are not merely about a primarily Caucasian firm hiring, or a primarily Caucasian nation granting visas to persons “of color,” although these are perhaps the most well-known varieties. While there is moderate ethnic diversity within ASEAN member States by way of historical tribal sects and integration of Chinese, and there is significant religious diversity across the ASEAN group, the vast majority of the 600 million people in the region share relatively common ancestry. European whites, African blacks, Latinos, North Africans, and Middle Easterners are very uncommon in the region, and extremely rare in the resident population. A slang word like *farang* (ฝรั่ง) literally means “guava” but is commonly held to mean “foreigner”. However, only Caucasian foreigners are *farang*. Such words are frequently used to categorize foreigners by race, and serve as a reminder of longstanding hostility toward outsiders.

Lacking social reform, which is difficult to motivate and sustain, legal reform is the only way to facilitate the flow of a broader spectrum of immigrants, and in turn develop the national society and economy into something better. Research and international trends suggest minimal downsides to expanding immigration whereas with the strategic implementation of a balanced system, massive economic and social benefits have been shown to result from a properly guided immigration plan. The remaining hurdle to opening borders in ASEAN as it transitions into full

cooperation is a lack of political will, which quite possibly stems from deep-seated prejudice which permeates various tiers of socio-politico-economic hierarchies in the region.

Progress is stalled by animosity relating to historical wars, fervent hostility from more recent border disputes, lingering paranoia from the colonial period, and malevolence inspired by international human rights abuses. ASEAN is a region largely at peace, but with 800,000 refugees and 650,000 internally displaced persons (UNHCR, 2014b), Southeast Asia is not yet paradise. There are 1.2 million Vietnamese and 1.8 million Filipinos included in the 10.6 million people from Asia living in the United States, more than 6 million of whom have been naturalized (U.S. Census Bureau, 2010a, 2010b). Millions of ASEAN citizens have been integrated into OECD nations while Singapore remains the lone ASEAN State which has significantly reciprocated, leaving an imbalance in the relationship.

The U.S. Supreme Court held in *Yick Wo* (1886) that the constitutional equal protection clause in the 14th Amendment applied to both nationals and aliens. The Thai Constitution (previously at §30) provides for equal protection under the law in virtually the same language as the U.S. Constitution yet we can deduce from the lack of heterogeneity in the population that foreigners of remarkably different races are probably not treated as equals to Chinese and intra-ASEAN naturalization applicants. It is a true rarity in Thailand to find a person of European descent who has acquired Thai citizenship, while on the other hand, it is difficult to find a fishing or farming village in which there are no former Laotian, Burmese or Cambodian citizens, many of whom acquired Thai nationality without ever having a passport.

In the *Bunsiri* case (No. 15/2551, 2008), Thailand's Constitutional Court ruled that sections of the Nationality Act setting out different standards for acquisition of Thai nationality for different ethnic groups were not inconsistent with the equal protection section of the Constitution. *Bunsiri* dealt with *jus soli* acquisition, which is not available in cases of birth to two alien parents. Indeed, “anchor babies” are a thorny issue, and automatic *jus soli* citizenship at birth is practiced in less than three dozen of the world's nearly 200 countries (Feere, 2010). Considering the enormity of the undocumented migrant population in Thailand—most of whom have no opportunity to have their Burmese nationality verified—we find automatic grants of citizenship at birth under the *jus soli* principle an unavoidable necessity.

Furthermore, the utter lack of naturalizations of persons not of East or Southeast Asian descent make it arguable that the Minister in practice may have abused discretion under the Nationality Act, permitting and refusing applications in a manner inconsistent with the equal protection section of the Constitution. Individuals presently have no possible remedy for grievances regarding the system of immigration in Thailand.

A study from the Thailand National Institute of Development Administration (Kampan, 2015) found demand for unskilled alien labor in Thailand has been on the rise across multiple economic sectors. In response to labor-related human trafficking concerns, especially in the fishing

sector (Urbina, 2015), an executive strategy regarding alien labor should be developed and implemented with the aim of ensuring the protection of human rights, sustainable economic growth, and acceptance of the international community. Success will require a multidisciplinary effort to raise awareness of immigration issues, facilitate and monitor migrant workers, revise policy, and provide penalties for commercial violations. Stakeholders from the private and public will need to engage in conversation on the issue and create a common vision.

While equality is at the core of all human rights and serves as the basis of State interaction under the [United Nations Charter \(1945\)](#) equality in practice has been all but explicitly dismissed in Thailand and throughout the majority of ASEAN in matters relating to immigration of distant ethnicities and persons of lower socioeconomic status. As such, the time is right for clear, substantial change to law and practice in the region. Thailand's position of relative leadership makes it a prime candidate to initiate immigration overhauls.

Conclusions

In summary, we found no clear evidence showing that immigration, whether regional or global, is likely to have harmful effects on the economics of Southeast Asia. We found opinions supporting the expansion of immigration programs and evidence from OECD countries which showed broadening immigration directly relates to economic improvement, especially to the immigration of highly-skilled workers. Our research discovered a litany of complaints about excessively complicated, obtuse, and vague immigration rules in Thailand and ASEAN members outside of Singapore, which remains the sole AEC nation clearly committed to integrating foreigners. We found outdated laws and practices have resulted in unacceptable numbers of stateless persons in Myanmar and Thailand. For humanitarian and economic reasons, we make several recommendations.

We recommend that Thailand grant citizenship under both *jus soli* and *jus sanguinis* practices, whereby all persons born within Thailand have equal and identical rights to persons born to one or two Thai national parents anywhere on earth. Consequently, Thailand should fully recognize multiple-citizenship. All Thai nationality laws should be bound into a single code and existing laws should be amended such that nationality may only be relinquished voluntarily in cases where the person losing Thai nationality holds multiple citizenship. Ideally, treaties on statelessness and the protection of migrants should be joined and the constitution should be amended to incorporate clear, precise guidelines for the acquisition and loss of citizenship, but the same goals may be accomplished via statute.

While our recommendations are focused on Thailand, we urge all ASEAN members to take immediate and comprehensive action to provide citizenship to all persons presently stateless, and to ensure statelessness will not persist in the AEC. In light of the overwhelming academic and intergovernmental opinions in favor of the integration of foreigners, while recognizing the validity of existing

regimes, we strongly recommend ASEAN members revise, repeal, or otherwise amend statutes restricting free movement and choice of occupation within the region. Bearing in mind the experiences of other nations and trade unions, we conclude that if the AEC is to be a fruitful partnership, expansive integration of global persons is required. In closing, we find reason to believe that if the AEC aims to support, protect, and practice human rights such as freedoms of movement, then the partnership will have a long, prosperous future, but presently many changes need to take place before the commencement date.

Conflict of Interest

There is no conflict of interest.

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