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Fundamental rights in human mobility. Relaxation of the requirements for the temporary work residence visa requested by the Republic of Ecuador for migrants from the Bolivarian Republic of Venezuela

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Abstract

The present research work is based on an investigation that is part of the agreement between the FIDAL Foundation and SEK International University, in the years 2020 and 2021, social assistance work was carried out, which yielded a series of inputs, including the detailing to analyze the rights of Venezuelan migrants when they are in Ecuadorian territory, and to observe if there is, in fact, a violation of these rights when they seek to acquire a temporary work residence visa. Therefore, this research will be divided into 3 sections. The first section is oriented toward defining human mobility. Likewise, this section lists the principles applicable in this branch of law. Finally, the requirements that the Ecuadorian State requests to grant the Temporary Work Residence Visa are developed. In the second section, the rights of migrants are analyzed, whose main premise are the articles of the Constitution of Ecuador and the decisions of the Constitutional Court. Likewise, we will analyze the Labor Code to observe which labor rights migrants have and, in turn, we will observe pronouncements of large international entities. In short, the research problem to be addressed in this article is the existence of violations of the rights of Venezuelan migrants caused by the difficulty in obtaining and accepting the immigration requirements for the acquisition of the temporary work residence visa.

Keywords: Human mobility. Temporary work residence visa. Criminal record. Passport.

Direitos fundamentais na mobilidade humana. Afrouxamento dos requisitos do visto de residência de trabalho temporário solicitado pela República do Equador para migrantes da República Bolivariana da Venezuela

Resumo

O presente trabalho de pesquisa é baseado em uma investigação que faz parte do convênio entre a Fundação FIDAL e a SEK International University, realizada no ano de 2020 e 2021. É um trabalho de assistência social, que rendeu uma série de insumos, incluindo o detalhamento em analisar os direitos dos migrantes venezuelanos quando se encontram em território equatoriano e observar se há de fato uma violação desses direitos quando estes buscam adquirir um visto temporário de residência de trabalho. Portanto, esta pesquisa será dividida em 3 seções. A primeira seção é orientada para definir a mobilidade humana. Da mesma forma, esta seção lista os princípios aplicáveis neste ramo do direito. Finalmente, são desenvolvidos os requisitos que o Estado equatoriano solicita para conceder o Visto de Residência Temporária de Trabalho. Na segunda seção, analisam-se os direitos dos migrantes, cuja premissa principal são os artigos da Constituição do Equador e as decisões do Tribunal Constitucional. Da mesma forma, analisaremos o Código do Trabalho para observar quais são os direitos trabalhistas que os migrantes possuem e, por sua vez, observaremos pronunciamentos de grandes entidades internacionais sobre o tema. Em suma, o problema de pesquisa a ser abordado neste artigo é a existência de violações dos direitos dos migrantes venezuelanos causadas pela dificuldade em obter e aceitar os requisitos imigratórios para a aquisição do visto temporário de residência de trabalho.

Palavras-chave: Mobilidade humana. Visto de residência temporária de trabalho. Antecedentes criminais. Passaporte.

Derechos fundamentales en movilidad humana. Flexibilización de los requisitos para la visa de residencia temporal de trabajo solicitada por la República del Ecuador para los migrantes de la República Bolivariana de Venezuela

Resumen

El presente trabajo de investigación parte de una investigación que nace del convenio entre la Fundación FIDAL y la Universidad Internacional SEK, dentro del año 2020 y 2021 se llevó a cabo un trabajo de ayuda social, el cual arrojó una serie de insumos entre ellos el análisis detallado de los derechos de los migrantes venezolanos al momento de encontrarse dentro del territorio ecuatoriano, y observar si es que en efecto existe una vulneración a estos derechos cuando buscan adquirir la visa de residencia temporal de trabajo. Por lo que la presente investigación se dividirá en 3 apartados. El primer acápite se encuentra orientado en definir a la movilidad humana. De igual forma, este apartado enlista los principios aplicables en esta rama del derecho. Por último, se desarrolla cuales son los requisitos que se solicita el Estado ecuatoriano para otorgar la Visa de residencia temporal de Trabajo. Dentro del segundo apartado son analizados los derechos de los migrantes, para lo cual se tiene como premisa principal tanto artículos de la Constitución del Ecuador como sentencias de la Corte Constitucional. De igual forma, analizaremos el Código de Trabajo para observar cuales son esos derechos laborales que poseen los migrantes, y a su vez, observaremos pronunciamentos de grandes entidades internacionales.

Palabras clave: Movilidad Humana. Visa de residencia temporal de trabajo. Antecedentes penales. Pasaporte.

1 INTRODUCTION

This article describes the migration crisis in Venezuela from the perspective that Venezuelan migrants have or do not have in Ecuador. This topic was chosen after

observing Article 9 of the Ecuadorian Constitution, which states that all foreigners shall enjoy the same rights and duties as Ecuadorians. Is this article applied in real life? Migrants' rights are respected?

For a migrant in the Latin American environment, it means a definitive change when he/she obtains a visa that allows him/her to exercise lawful activities, so the main objective is to verify whether there is indeed a violation of the rights of Venezuelan migrants using the most complex situation for the migrant, which is the obtaining and acceptance of immigration requirements to acquire a visa, and in this case the temporary work residence visa.

In order to prove whether there is a violation of the rights of migrants, this article has been divided into 3 sections, which are intended not only to be used to meet the objective but to introduce the reader to the current problems that may have the branch of Human Mobility Law within the Ecuadorian State and Latin America.

The first section will serve as an introduction to the main topic, i.e. concepts and migratory requirements requested by Ecuador for Venezuelan migrants. The second section relates the rights of migrants within Human Mobility and international law. Finally, the third section shows an analysis of real cases of people who could not access the requested requirements due to difficulty, thus causing a violation of their fundamental rights.

Finally, by combining rules, opinions of authors, and analysis of real cases, conclusions will be presented that demonstrate the existence of violations of the rights of Venezuelan migrants and that in effect the State should make a little more flexible in obtaining and accepting certain requirements that by their nature cause violations to the rights of migrants in Ecuador.

In brief, the research problem to be addressed in this article is the existence of violations of the rights of Venezuelan migrants caused by the difficulty in obtaining and accepting the migratory requirements for the acquisition of a temporary work residence visa.

2 Terms used in human mobility and requirements requested by Ecuador to Venezuelan migrants for the acquisition of the temporary residence visa for work

Human mobility should be understood as any movement of people from their place of origin to other societies of destination, whether for long or short periods of time. (ZAMBRANO, 2019, pág. 6). Similarly Ausín and Peña (2015) in the book "Pasando Fronteras: el valor de la movilidad humana" state that Human Mobility encompasses any movement of human beings to any other place different from the one they were born. (AUSIN Y PEÑA, 2015, pág. 9). Under this order of ideas, it can be concluded that Human Mobility is the right of every human being to be able to go anywhere he/she wishes, without losing the care and surveillance of his/her rights by the different States and Nations.

It is important to emphasize that its creation is based on an article of the Universal Declaration of Human Rights, which states that everyone has the right to freedom of movement and residence within the territory of a State (Universal Declaration of Human Rights, 1948). This numeral has relevance within the present article since it speaks of the fact that we are all free to move and live in the territory we wish in any State.

Likewise, paragraph two highlights the following: "Everyone has the right to leave any country, including his own, and to return to his country" (UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948. Art. 13).

However, the Organic Law of Human Mobility contemplates the following definition of Human Mobility, which establishes: "Migratory movements made by a person, family or human group to transit or settle temporarily or permanently in a State other than that of their origin or in which they have previously resided, which generates rights and obligations." (ORGANIC LAW ON HUMAN MOBILITY, 2017).

It is important to understand that there are different types of migration for which we must name some of the most important ones. For this purpose, we can use the Colombian legislation, since without any doubt and as we will see later, this country has better-developed laws and concepts in this aspect, compared to the Ecuadorian legislation: Regular migration, irregular migration, pendular migration, transit migration, migration with permanence vocation (LAW N. 2136 COLOMBIA, 2021).

What is remarkable in these concepts is to be able to understand a little better the spectrum that Human Mobility presents to us. Now we can clearly define that Human Mobility is the set of rights that accompany people when they decide to move from their usual place of residence, either by their own choice or external factors.

Likewise, it is necessary to name those principles that are relevant for a better understanding of the topic to be discussed. The first principle that we will cover is the principle of Equality before the law and non-discrimination; since, according to the Organic Law of Human Mobility, this principle states that all migrants, regardless of nationality, sex, etc. will be protected by the rights of international treaties and the Constitution. In parallel, the following is textually stated: "The State shall promote the elimination of unnecessary distinctions due to the nationality or migratory status of persons, particularly those established in national and local norms or public policies" (ORGANIC LAW OF HUMAN MOBILITY, 2017).

This principle speaks about the prohibition of penalizing a person in the criminal sphere because of his or her migratory status. In other words, irregular migration will never be considered a crime and will always have an administrative sanction in the case of misdemeanors.

Likewise, there is a principle of vital importance that deserves to be recognized, although it is found in the Ecuadorian Constitution and not in the Organic Law of Human Mobility. Said principle is contemplated in Article 11, numeral 2 of the Magna Carta, which states that all persons are equal and shall enjoy the same rights, without being discriminated against for reasons of ethnicity, place of birth, age, sex, gender identity, cultural identity, marital status, language, religion, ideology, political affiliation, judicial past, socioeconomic status, migratory status, sexual orientation, and others (CONSTITUTION OF ECUADOR, 2018).

Like the first principle, this one talks about the fact that no one can be discriminated against no matter where they come from or what their sex is, however, there is a substantial part that should be highlighted in this article, at the time it is written (judicial past) it is protecting the fact that no matter what are the acts committed by a particular person, judged and punished by law. So later, and based on this principle, we will talk about the fact of a possible violation of rights to request a judicial record to grant a temporary work visa.

It is no secret that the political crisis in Venezuela has generated a great impact on Ecuador and all of Latin America, so this problem is presented as one of the main concerns of national governments, which is precisely why Ecuador has sought to limit the migratory flow (CISNEROS, 2020, p. 69). Even though the crisis is a constant concern for the Ecuadorian national government, it has not generated a timely response, thus causing the rights of migrants to be violated without having protected their interests.

The principles of Human Mobility observed in this section are clear and exist to be used in favor of the protection and guidance of migrants' rights. Notwithstanding the above, we can begin to doubt whether all these principles are being complied with, especially that of equality and non-discrimination.

Once certain principles and definitions have been observed, it is important to quote the author Tanya Basok, according to the author, the proper immigration document is the cornerstone for the beginning of a new life when we are not in our country of origin, since that document is the one that will allow us to work, access to social security and above all, to remain calm without fear of being expelled from the new home we have achieved. Many times, to enter a country or, at the same time, to exercise some type of legal activity, it is necessary to acquire a document, which constitutes the express authorization by the country to carry out such activity abroad, such document is called Visa.

With the growing migratory crisis, it has become more complicated to maintain control of foreigners entering the country, so the irregularity in transit generates greater difficulties to establish those people who are in transit and migrants who wish to remain in Ecuador. (BASTIDAS, 2020, p. 24).

However, it is important to clarify that the Visa not only functions as an informative mechanism but also as a control one. The decision of a country to allow or not to allow a foreigner to enter is absolutely optional since it is part of the sovereignty of nations to decide who enters their national territory.

Notwithstanding the above, it is fine to ensure the security of a country as a government, but all States must protect the rights of individuals, so these requirements may not be in violation of rights.

According to the Organic Law of Human Mobility, Visa "Is the authorization granted by the Ecuadorian State to foreign persons so that they can stay in the country for a temporary or permanent period" (ORGANIC LAW OF HUMAN MOBILITY, 2017).

Due to the length of the essay, we will focus on the analysis of the Temporary Work Residency Visa, which is the document that allows one to acquire a job or work in Ecuador, and enjoy all the rights and duties that it grants, such as the opportunity to be affiliated to the Instituto Ecuatoriano de Seguridad Social and access to the benefits and considerations. The countries tend to structure the migratory requirements according to the external and internal conditions that affect each country concerning events, as Ana Allen and Dimitri Fazito say, the policies of each country are restructured according to their economic and social structures, especially when these are affected by external factors.

Before proceeding with the requirements, it is important to define the meaning of the Temporary Work Residency Visa. On the official website of the Ecuadorian government, it defines the Temporary Work Residency Visa as follows:

"Temporary residence authorization granted by the Ecuadorian State to foreign persons who intend to settle in the country to carry out lawful activities and work" (Presidency of the Republic of Ecuador, 2021).

The official Ecuadorian government website (2021), lists the following requirements as mandatory to access the visa and in turn, access the right to work. Within these requirements, we find the following: 1.- Updated photograph, 2.- Valid and current passport original and copy, 3.- Valid regular stay in the country from which the visa is applied, 4.- Original certificate of criminal record, 5.- Proof of lawful means of subsistence for the applicant and his/her dependent family group, 6.- Payment of the fee (Consular and Diplomatic Fee).

Of all these requirements, there are two that are particularly difficult to access. The first one is the passport since this requirement is becoming the first problem we encounter with Venezuelan citizens within the national territory, since obtaining it has become complicated for them. Obtaining or renewing a Venezuelan passport in Ecuador takes about ten months, thus making the regularization process extremely complex.

In theory, a Venezuelan citizen arriving in the national territory has a valid passport. However, the real problem lies in the fact that visas eventually expire, so migrants must undergo a visa renewal process, for which they must have a valid passport. It can be considered up to this point that it is not a very complicated requirement to obtain, but due to the pandemic caused by COVID-19 and the closing of both public and private institutions, the system of the Venezuelan Consulate, as well as the time of permanence and renewal of Visas collapsed.

The next requirement of difficult access is the original certificate of criminal record of the country of origin or in which he/she has resided during the last five years. One hundred and eighty (180) days of validity will be taken into account, counted from the date of issuance of the certificate until the last entry of the interested party into the country. The certificates issued by Federal Governments will be valid as long as they include the criminal record at a national level, it is important to emphasize that the required documents will be requested only for persons over 18 years of age. Taking the premise that 'no one can be judged by his or her judicial past', we should then ask ourselves the following question: Why are criminal record certificates for the last 5 years required as a mandatory requirement for persons over 18 years of age?

By way of justification, on January 21, 2019, in Ecuador, a judicial record of Venezuelan citizens was made a mandatory requirement for the mere AUTHORIZATION of entry into the Ecuadorian country, due to the migratory stampede (LINARES & USECHE, 2019, p. 2-3).

Although it is a right of the countries to request as many requirements as deemed necessary for the authorization of visas and legal stay of foreigners, it is necessary to ask ourselves the following questions: Is it discriminatory to request a criminal record as a mandatory requirement for acquiring the right to work? If a migrant comes from Venezuela and on his way to Ecuador he transiently passed through several countries of the region, does not require a criminal record from all the countries where he has been made a difficult requirement to obtain? And, finally, could this requirement be replaced by one that is easier to obtain, such as an affidavit?

The terrible economic conditions of Venezuelan migrants are increasing day by day due not only to the existing political crisis in Venezuela but also to the growing xenophobia and the difficulties and delays in the regularization processes (HERRERA & CABEZAS, 2019, p. 151).

These are all the requirements whose obtaining is mandatory for the granting of a Temporary Work Residency Visa, so the lack of one of these meant the absolute refusal for the granting of such visa, thus causing any migrant who does not meet these requirements, is not authorized to exercise his right to work which, in theory, is guaranteed by the Constitution of the Republic of Ecuador and international treaties.

As a conclusion to this section, we can observe that there are principles that govern Human Mobility, and therefore should govern the requirements that are requested to obtain the migratory document that will allow them access to a better life. However, we find that a criminal record is required, and it is worth clarifying that few people can enjoy the right to work if they have a criminal record, which is, unfortunately, a discriminatory event.

3 The rights of Venezuelan migrants in the Ecuadorian and international context

Venezuelan migrants seek new destinations that allow them to live with dignity, where the rights inherent to any human being are respected, such as the right to life. (CASTILLO, 2017, p. 160) on the other hand, the Ecuadorian State must guarantee (without any discrimination) the enjoyment of rights, so without any doubt, migrant citizens fall into this category, without types of distinction, privilege, or discrimination. (ECUADORIAN CONSTITUTION, 2008, Arts, 3, 9, and 11 clauses 2).

The highest body of constitutional interpretation in Ecuador (Constitutional Court) has pronounced in its resolute part in numeral 2 speaks of the following: "Consider that this sentence, which recognizes the rights of the plaintiffs, constitutes a symbolic form of reparation concerning people who have been collectively expelled without due process" (CONSTITUTIONAL COURT RULING, No. 639, 2019).

Ecuador opened new international barriers toward the guarantee of rights, but not even more than 10 years later the right balance has been found between guaranteeing rights and creating the adequate procedure to fulfill them as they say (SUÁREZ, CASTILLO Y MERA, 2020. P. 30). There is indeed an attempt to guarantee rights in terms of Human Mobility that were not found at that time, but the State would not understand the difficulty of ensuring all these rights until the arrival of the Venezuelan migratory crisis.

Similarly, regarding the prohibition of discrimination under the judicial past or the existence of a criminal record, the Constitutional Court, in Ruling No. 10-14-IN/20, dated June 9, 2020, the Constitutional Court states that requesting a criminal record can be misused precisely because it could give a negative image of the past of that subject. 10-14-IN/20, dated June 9, 2020, the Constitutional Court says that requesting a criminal record can have an unfortunate use precisely because it could give a negative image of the past of that subject, and that can be translated into a situation of discrimination when allowing or not the exercise of a right, in this case, the right to work. (CONSTITUTIONAL COURT RULING 10-14, 2020, p. 7). In this sense, a

progressive deinstitutionalization and loss of freedoms inherent to life in a democracy are sought". (FREITEZ, DELGADO Y LAURIÑO, 2020, p. 2)

They are those people who are not in a dignified environment and are forced to migrate to another country, pursuing the dream of a dignified life through work. (MAZUERA-ARIAS, 2020, p. 35).

Evidently, for a migrant to be legally recognized as a worker from the point of view of the Ecuadorian State, he/she must comply with an extra requirement that any Ecuadorian needs, which is to obtain a Temporary Work Residence Visa (Labor Code, 2005, art. 9). The International Labor Organization states that "tacit and explicit barriers to the employment of people in a situation of human mobility in Ecuador", document "elaborated in the framework of the Project Economic Integration of Venezuelan migrants and refugees with decent work in Ecuador and Peru, which the International Labor Office for the Andean Countries is carrying out in Ecuador and Peru." (ILO, 2021)

Additionally, of the Venezuelan workers with employment contracts, it is estimated that 71% of these are temporary contracts; also, the study finds that Venezuelan migrants work 5 hours more per week than the average number of hours worked by Ecuadorian workers; however, their salary is 42% lower. In summary, the Venezuelan migrant population shows conditions of vulnerability in the labor market, a situation that is accentuated by their irregular migratory status". (ILO, 2021, pp. 9, 10).

Concerning the regulatory framework: "The Ecuadorian State, per the guidelines of the public administration acting through the highest authorities of the Executive Function, has issued regulatory acts (mainly ministerial agreements and executive decrees) that regulate the migratory situation of foreigners in Ecuador. These are aimed at making viable the conditions to guarantee the rights of immigrants in Ecuadorian territory". (ILO, 2021, p. 21).

It is necessary to consider that all categories of temporary and permanent visas, with few exceptions, require the payment of a consular fee, which may be unaffordable for foreign citizens who are forced to move outside their country due to the fragility of the economy and lack of opportunities, as is the case of Venezuelan citizens in Ecuador" (ILO, 2021, p. 26).

In conclusion, Ecuador has the tools to generate decent employment for foreign citizens. The various regulatory acts and laws on the subject show the diversification of existing hiring alternatives so that people -regardless of their nationality- can have access to formal employment. In support of migrants in Ecuador, efforts have been made to facilitate migratory regularization, to guarantee that foreigners can enter formal employment without obstacles. Finally, the control actions carried out by the Ministry of Labor seek to ensure compliance with the Law. The debacle of decent employment and mass exoduses in the Latin American region constitute a problem whose solution must be adapted to the situation". (ILO, 2021, p. 29).

Although the Ecuadorian Constitution constantly talks about the equal rights of migrants to have access to work, it is mandatory to obtain a Temporary Resident Work Visa to exercise this right, so the fact that they are asked for a visa already puts them in a condition of inequality. (ILO, 2021, p. 43) Even so, although the Temporary

Resident Work Visa may be considered easy to access, the national reality is the opposite.

However, if foreigners cannot access a visa due to problems beyond their control, such as obtaining their passport, they cannot have access to the right to work and, without the right to work, there is no access to the right to social security contemplated in the Universal Declaration of Human Rights. (UNIVERSAL DECLARATION OF HUMAN RIGHTS, Art, 13, 1948).

According to the report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Republic of Venezuela, dated July 04, 2019. In paragraph 69 it indicates that "the number of people who have been forced to leave Venezuela has increased dramatically since 2018, reaching more than 4 million by June 6, 2019. Colombia hosts the largest number of people, followed by Peru, Chile, Argentina, Ecuador, and Brazil." (UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, 2019)

States should encourage the regularization of migration by avoiding, in particular, precarious working conditions and other consequences of irregular migration status." (IACHR, 2019). Which increases their risk of suffering greater discrimination and exclusion in transit and destination countries.

Similarly, the Inter-American Court of Human Rights, in the Judgment issued on November 23, 2010, in the Case: Vélez Loor vs. Panama, this organism pronounced itself regarding: "(...) the situation of vulnerability in which undocumented or irregular migrants find themselves (for being the most exposed to potential or actual violations of their rights) and suffer, as a consequence of their situation, a high level of lack of protection of their rights and differences in the access to public resources administered by the State concerning nationals or residents". (HRC, 2010, p. 33)

In this sense, in the Judgment issued on June 17, 2005, in the Case: of Yakye Axa Indigenous Community vs. Paraguay, in the considerations the Court has stated that: "One of the obligations that the State must assume in its position of a guarantor, intending to protect and guarantee the right to life, is to generate the minimum living conditions compatible with the dignity of the human person" (HRC, 2005, p. 88). (CHR, 2005, p. 88).

Also, in the Judgment issued on October 24, 2012, in the Case: of Nadege Dorzema et al. v. the Dominican Republic, the IACHR has stated that: "(...) it is permissible for the State to grant different treatment to documented migrants concerning undocumented migrants, or between migrants and nationals, provided that such treatment is reasonable, objective and proportional and does not violate human rights". (HRC, 2012, p. 64)

As if this were not enough, in Advisory Opinion 18 of the Inter-American Court of Human Rights, on the Juridical Condition and Rights of Undocumented Migrants, derived from the presentation of the consultation carried out by Mexico, dated May 10, 2003, regarding the deprivation of the enjoyment and exercise of certain labor rights of migrant workers and its compatibility with the obligations of the States parties, this organism has warned that: 'Thus, the general obligation to respect and guarantee human rights binds States, regardless of any circumstance or consideration, including the migratory status of persons.'" (CHR, 2003, p. 118).

In the same line, the Andean Community, concerning migration and human mobility matters, through Decision No. 878 has approved the Andean Migratory

Statute, from which it has developed the Andean Cooperation Mechanism on Consular Assistance and Protection and Migratory Matters, through Decision No. 548; as well as the Regulations to this Decision, through Resolution No. 1546. Within this Mechanism, it has stated as part of its objectives: "Article 2.- To establish a mechanism for cooperation in consular assistance and protection, and migratory matters, for the benefit of natural persons who are nationals of any of the Member Countries of the Andean Community and who for various reasons are outside their country of origin". (CAN, 2003)

The CAN receives 60% of the 5 million Venezuelan citizens who have left their country, and the area through which the Venezuelan population moves to Bolivia, Colombia, Ecuador, and Peru has even been called the "Andean corridor" (CAN, 2020).

In conclusion this section, we note that the laws of both the Ecuadorian State and the international community watch over and protect migrants (in this case Venezuelan migrants), however, due to the migratory crisis we can see that Latin American legislations are not prepared to optimally take care of the rights enshrined in the Universal Declaration of Human Rights.

4 Analysis of the need to relax the immigration requirements for obtaining a temporary work residence visa.

In this section, we will observe through dynamic tables complicates of the work done between the Fidal Foundation and SEK International University, twenty cases of migrants who could not obtain their temporary residence visa for work due to lack of obtaining requirements, and analyze the first two and finally talk about proposals that could help the migration crisis that is currently experienced in Ecuador and Latin America, for reasons of confidentiality have been omitted sensitive data such as ID number and names.

The political crisis in Venezuela caused many migrants to leave their country without extremely important documents, such as passports or criminal records. This can be corroborated by the words of Alvarez, Niño, and Locatelli, who comment on these facts in their book entitled Venezuelan Migration, Aporophobia in Ecuador and Resilience of Venezuelan Immigrants in Manta, Period 2020, as follows:

It is possible to observe a significant increase of immigrants who entered irregularly due to the lack of humanitarian visas, passports, and apostilled criminal records, among other documents impossible to obtain in Venezuela, and which have been required since last year in Ecuador due to the massive exodus of Venezuelans living in poverty in recent years, accentuating in different contexts the regrettable aporophobia (Alvarez, Niño, and Locatelli, 2020, p. 106). (Alvarez, Niño and Locatelli, 2020, p. 106).

Well, in this section, we will analyze two real-life cases of Venezuelan migrants who arrived in the country to legalize their stay and obtain a temporary work residency visa. To obtain these two cases, we spoke with 100 migrants who were in the same situation, so we have considered it pertinent to present 20 of these 100 cases in a table, and in turn, to analyze and describe two of these cases.

Table 1: Migrants who could not obtain a visa because they did not have a valid passport

Case number	Age	Missing requirement	Legal status in the country
Case 1-A	26	valid passport	Irregular
Case 2-A	33	valid passport	Irregular
Case 3-A	44	valid passport	Irregular
Case 4-A	29	valid passport	Irregular
Case 5-A	27	valid passport	Irregular
Case 6-A	38	valid passport	Irregular
Case 7-A	23	valid passport	Irregular
Case 8-A	28	valid passport	Irregular
Case 9-A	44	valid passport	Irregular
Case 10-A	30	valid passport	Irregular
Case 11-A	27	valid passport	Irregular
Case 12-A	35	valid passport	Irregular
Case 13-A	26	valid passport	Irregular

For this, it is important to clarify that there are two types of inconveniences that are most repeated to acquire the temporary residence visa for work, the first is in the correct acquisition and presentation of the valid passport due to the overload of work caused by the pandemic and the migratory crisis that the consulate of Venezuela has, and the second is the obtaining of the criminal record of the last 5 years due to failures in the system of the judicial police.

In case 1-A we have Paola, Paola is a Venezuelan migrant and arrived in the country on September 20, 2020, thus beginning the countdown of the respective 90 days granted by law for a migrant to obtain her visa. Mrs. Paola got a job in a private company so she already had a work contract, the main requirement to access the Temporary Work Residence Visa, however, her passport expired 14 days after her arrival in Ecuador, so she started the respective procedures at the Venezuelan consulate, however, due to the high demand of passports caused by the pandemic and the migratory crisis, the Venezuelan consulate was taking 6 to 8 months to deliver the renewed and valid passport.

For this, Mrs. Paola had already scheduled an appointment at the immigration department to obtain her visa, and since she did not have a valid passport, she brought the necessary documents that proved that her passport was in due process at the consulate. Even so, her request for access to the visa was denied due to her non-compliance with this requirement, and being a situation that was out of its limits of action, Mrs. Paola decided to stay in the country illegally.

The company, having strict policies on the legalization of foreign migrants, ended up terminating the employment contract, so Ms. Paola ended up working for another company under unequal conditions since she could not make use of either her right to social security or her right to work. She is currently working 8 hours a day but is not receiving the minimum wage nor is she affiliated with any social security.

In the first case we can observe that since she is in a situation that is not due to her negligence, since it is the Venezuelan consulate that is delaying the delivery of passports, we can clearly and precisely observe how her rights are being violated. Thus, in case 1 we observe a clear example of the difficulty in obtaining and accepting a migratory requirement to acquire a temporary work residence visa.

En el siguiente caso podremos evidenciar que el pasaporte no es el único requisito de difícil acceso, sino también acceder a los antecedentes penales puede volverse una tarea complicada tomando en cuenta la crisis migratoria que se encuentra viviendo Venezuela.

Table 2: Migrants who could not obtain a visa due to incomplete criminal record

Case number	Age	Missing requirement	Legal status in the Country
Case 1-B	37	Criminal record	Irregular
Case 2-B	29	Criminal record	Irregular
Case 3-B	35	Criminal record	Irregular
Case 4-B	25	Criminal record	Irregular
Case 5-B	29	Criminal record	Irregular
Case 6-B	45	Criminal record	Irregular
Case 7-B	45	Criminal record	Irregular

In the case of 1-B, we have Mr. Javier. Mr. Javier left Venezuela on August 12, 2018, from Venezuela due to the serious political crisis, so he would try to seek a new life in the country of Colombia. Mr. Javier tried repeatedly to apply for a visa that would allow him to work in Colombia, however, his requests were constantly rejected.

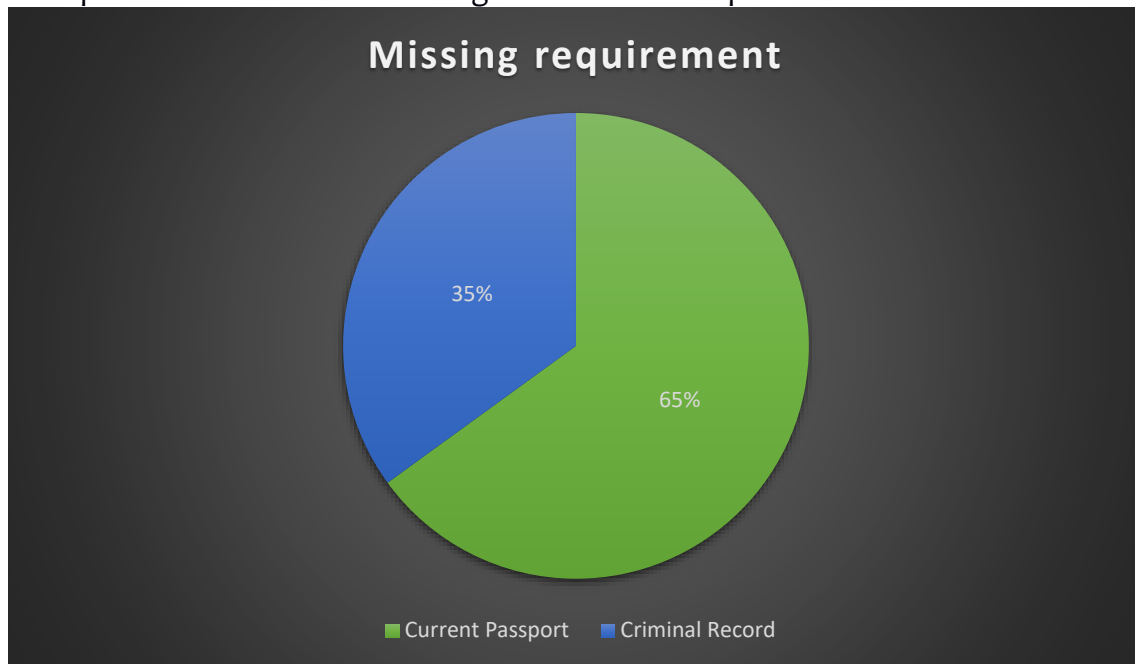
After two years in that country, Mr. Javier decided to try his luck in Ecuador, so he arrived in the country in June 2021. Having a Venezuelan friend who was in a stable job, Mr. Javier was going to be able to arrive and receive an employment contract, however as in case 1, this was not going to work out. In order to comply with the 90 days time limit, the first thing he did was to schedule an appointment for the granting of the temporary work residence visa, however, the first problem that Mr. Javier was going to encounter in order to comply with all the requirements was to obtain his criminal record.

The first thing he did was to try to get the criminal records of his native country, however, due to failures in the Venezuelan web portal Saime, he could not get them online, so he made a written request to the Venezuelan consulate to access his criminal records.

The real problem was to acquire those of Venezuela and Colombia since they must be presented from the places of stay for the last 5 years, so even though Mr. Javier had documentation showing that his criminal records were in process, the migration official ended up rejecting the request to acquire the temporary residence visa for work. Thus, Mr. Javier remained working for the same company, but without an employment contract and without being affiliated with the social security system.

It is worth mentioning that although Mrs. Paola and Mr. Javier remained in the country as undocumented immigrants, both also have an order to leave the country.

Graph. 1. Foundation for the Integration and Development of Latin America. 2021



As shown in the illustration, the two most complex requirements to obtain are a valid passport and a criminal record, the latter being the one that creates the greatest difficulty in a range of two-thirds, making it evident that this requirement is at the top of the iceberg that hinders these vital procedures for a human being in a mobility condition.

Because of the current trend of approximately 300 entries per day and the growing trend of entering the country only with the national identity document, which does not present security devices that allow verifying the authenticity of the same or without any document recognized by the country, could negatively impact the country in the national capacity for prevention, control and protection of these phenomena, affecting the rights of people in mobility, and generating environments conducive to the phenomenon of crimes associated with mobility, so it is necessary to establish policies that allow preventing irregular and risky migration. (Ministerio del Interior. Informe técnico de situación flujos migratorios insuales de ciudadanos venezolanos, 2018).

The first thing we must understand is that a large part of the non-compliance with the passport requirement is in the hands of the Venezuelan consulate, precisely because this is the only entity within the country that is capable of renewing the passports of Venezuelan citizens, so as a first proposal, Ecuador should request the cooperation of Venezuela through some international agreement or treaty to give priority in the processing and delivery of passports, either by streamlining the internal processes of the consulate or by lowering the price of passport renewal.

Likewise, in case this international cooperation cannot be given, Ecuador could enforce the Constitution if it relaxes the acceptance of this requirement. Although having a passport is extremely necessary when you are in a foreign country, Ecuador could accept documents endorsed by the Venezuelan consulate showing that the person is processing such document, since that is more than enough proof to demonstrate that the situation of legalizing that document is not in the hands of the migrant, but rather in the hands of the governing body that grants this requirement.

As a next point, we have had difficult access to the criminal record for the last 5 years. This requirement is controversial since Ecuador prohibits discrimination against people based on their judicial past. This being the case, is it necessary to require a criminal record for migrants to have access to the right to work and social security?

Once again, Article 9 of our Constitution states that all migrants in Ecuadorian territory shall enjoy the same rights and duties as any Ecuadorian man or woman, however, Ecuadorians are not required to have a criminal record to be able to work or be affiliated with the social security system since this would end up being discriminatory. An affidavit could be used instead of obtaining a criminal record as a requirement for obtaining a visa, thus avoiding discriminatory episodes and violations of the rights of migrants.

The migratory crisis is becoming more and more unstoppable, and it is happening within a context where we find a Latin America that is not prepared for the proper reception of Venezuelans seeking a better future for themselves and their families because, due to political crises, they have been left without a home that defends their rights.

CONCLUSIONS

There is an international and local regulatory framework that protects the rights of migrants, so this body of principles and guarantees should be taken into account when establishing state policies to specify the requirements for work visas and thus mitigate the discrimination suffered by Venezuelan migrants, not only in Ecuador but in South America.

In the course of this article, we were able to observe that there are indeed violations of the rights of Venezuelan migrants, since international regulations and the Ecuadorian constitution provide the same rights to both nationals and foreigners, thus being able to grant an affirmative answer to the research problem posed.

It is absolutely discriminatory to request a criminal record from foreigners in order for them to have access and make use of their rights, such as the right to work, the right to social security, or the right to a dignified life, which cannot be achieved without the other two rights mentioned above. An affidavit could be used as a substitute for obtaining a criminal record as a requirement for obtaining a visa, thus avoiding discriminatory episodes and violations of migrants' rights.

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