



The Law Library of Congress

REPORT FOR CONGRESS

January 2009

Directorate of Legal Research
LL File No. 2009-02113

SPAIN: VOLUNTARY RETURN PROGRAM FOR UNEMPLOYED IMMIGRANTS

The Law Library of Congress is the foreign legal research arm of the United States Congress. You may contact us at 1 (866) 550-0442 (fax), or law@loc.gov (email). We also invite you to visit our website, <http://www.loc.gov/law>.

LAW LIBRARY OF CONGRESS

SPAIN

VOLUNTARY RETURN PROGRAM FOR UNEMPLOYED IMMIGRANTS

Executive Summary

Spain has set up a voluntary return program for immigrants to return to their countries of origin when they become unemployed. The program provides incentives for immigrants who commit not to return to Spain within three years from the date of departure. The incentive payment is made in two installments, the first in Spain and the second at the office of the Spanish diplomatic representation in the country of origin.

I. Program Overview

Royal Decree-Law 4/2008¹ creates a voluntary return program (V.R.P.) managed by the *Servicio Público de Empleo Estatal* (Public Service of State Employment),² within the Ministry of Labor and Immigration, that facilitates the voluntary return of unemployed foreign workers to their country of origin by paying the amount of unemployment compensation earned in two installments, the first in advance of the immigrant's departure from Spain.³ Unemployment compensation is based on the number of days the employee has contributed to the social security system in the six years prior to the unemployment situation. Unemployment benefits are paid for a period of 120 to 720 days.⁴

In order to qualify for the benefit, the worker must have legal immigration status and be a national of a country with which Spain has a bilateral social security agreement.⁵ This requirement may be waived by the Ministry of Labor when the country of origin has acceptable mechanisms of social protection for its workers.⁶ Nationals of European Union countries, member countries of the Agreement of the European Economic Area, or Switzerland are excluded from this benefit.⁷

¹ Real Decreto Ley 4/2008 of Sept. 19, 2008, Boletín Oficial del Estado (B.O.E.) Sept. 20, 2008.

² SERVICIO PÚBLICO DE EMPLEO ESTATAL, MINISTERIO DE TRABAJO E INMIGRACIÓN (official site), available at http://www.inem.es/inem/ciudadano/prestaciones/retorno_extranjero.html (last visited Jan. 28, 2009).

³ Real Decreto Ley 4/2008 art. 1.

⁴ Real Decreto 1/1994 of June 20, 1994, arts. 210-211, B.O.E. June 29, 1994.

⁵ The countries with bilateral social security agreements with Spain are: Andorra, Argentina, Australia, Brazil, Canada, Chile, Colombia, Ecuador, United States, Russian Federation, Morocco, Mexico, Paraguay, Peru, Dominican Republic, Tunisia, Ukraine, Uruguay, and Venezuela. See http://www.inem.es/inem/ciudadano/prestaciones/retorno_ext1.html (last visited Jan. 28, 2009).

⁶ Real Decreto Ley 4/2008 art. 2.

⁷ *Id.* art. 3.

Once the foreign worker decides to apply for the benefit, he or she must leave Spain within thirty days and commit not to return for three years.⁸ The government may grant credits to finance return expenses.⁹

The thirty-day period starts running after the first payment in Spain of forty percent of the corresponding unemployment benefit.¹⁰ The remaining sixty percent must be paid in the country of origin at the office of the Spanish diplomatic representation in the country of origin at least thirty days, but no more than ninety days, after the first installment.¹¹ The payments are made by check or electronic transfer in euros or in the currency regularly used for payments by the social security administration in that country.¹²

The Law also requires a commitment not to return to Spain for three years. Once this period has passed, those immigrants who had temporary residence in Spain would qualify again to apply for working permits and residence, with precedence over non-European Union citizen workers.¹³ The time spent in Spain before the return to their countries of origin will count towards the permanent residence period that temporary residents need to prove in order to obtain permanent status.¹⁴ Permanent resident beneficiaries of this program may return to Spain under the same immigration status that they previously held, which is formalized through an expedited process.¹⁵

In summary, to qualify for the accumulated payment for the return of the non-EU foreigners, immigrants are required to:

- 1) Be a national of a country with a bilateral social security agreement with Spain¹⁶ and be a legal resident. Nationals of the European Union, member countries of the European Economic Area, and Switzerland are excluded.
- 2) Be unemployed and an applicant for unemployment benefits before the competent agencies.

⁸ *Id.* art. 4.

⁹ *Id.*, Disposición Final.

¹⁰ Real Decreto 1800/2008 of Nov. 3, 2008, Desarrolla el Real Decreto–Ley 4/2008, arts. 3.1.a & 4.2, B.O.E. Nov. 11, 2008.

¹¹ *Id.* art. 4.2.b.

¹² *Id.* art. 5.6.

¹³ *Id.* art. 3.2.

¹⁴ *Id.* art. 3.3.

¹⁵ *Id.* art. 3.4.

¹⁶ See list of countries with bilateral social security agreements with Spain, *supra* note 4.

- 3) Have a legal unemployment status based on the termination of a labor contract due to reasons beyond the employee's fault, such as bankruptcy of the employer, the end of a temporary labor contract, or the retirement of the employer.
- 4) Commit to return to the country of origin within thirty days of the first installment payment and not to return to work in Spain for three years.
- 5) Not be prohibited from leaving Spain on grounds of violations of the immigration law. To this end, the *Servicio Público de Empleo Estatal* must obtain the clearance of the police and the *Guardia Civil*.

II. The Program in Practice

The economic crisis has changed dramatically the immigration trend in Spain. In 2008 less people immigrated into Spain, and at the same time living and working conditions for immigrants have deteriorated.¹⁷

The total number of unemployed immigrants in Spain in October 2008 was 240,000. There are 2.2 million non-European Union immigrants living legally in Spain, but only half of them qualify for the V.R.P. because the other half are nationals of countries that do not have social security bilateral treaties with Spain.¹⁸

Around 1,400 immigrants have enrolled in the V.R.P. in the first two months since the plan started in November 2008, according to estimates by the Ministry of Labor.¹⁹ The government's objective was to enroll 100,000 immigrants. The actual numbers are disappointingly lower mainly because many qualified immigrants have lived in Spain for a number of years, are paying a mortgage, and have children born in the country. Others have not been in the country long enough to have earned a large sum of unemployment benefits that would merit their return.²⁰ The low level of enrollment in the V.R.P. is clear evidence that the program is a minority option, in the sense that people prefer to remain in Spain in spite of all the adversities, rather than return to their countries.²¹

¹⁷ Editorial, *Nuestros Inmigrantes: La Crisis reduce la Inmigración que llega, pero agrava la situación de la que ya está aquí*, EL PAIS.COM, Jan. 18, 2009, available at http://www.elpais.com/articulo/opinion/inmigrantes/elpepiopi/20090118elpepiopi_3/Tes?print=1 (last visited Jan. 28, 2009).

¹⁸ *El Plan de Retorno atrae a 1,400 Inmigrantes*, EL PAIS.COM, Jan. 15, 2009, available at http://www.elpais.com/articulo/espana/plan/retorno/atrae/1400/inmigrantes/elpepunac/20090115elpepinac_11/Tes (last visited Jan 28, 2009).

¹⁹ *Id.*

²⁰ *Asociaciones de Inmigrantes consideran las condiciones del Plan de Retorno "muy restrictivas," Europa Press*, Jan. 8, 2009, available at <http://www.europapress.es/noticiaprint.aspx?ch=00313&cod=20090108190214> (last visited Jan. 29, 2009).

²¹ *Id.*

As reported, the reality is that many immigrants have already adjusted to a new life that they do not want to lose even if they have to endure more sacrifices. The perception among the immigrants is that conditions to return and reapply for a new working permit and visa might become tighter. Therefore, they prefer to remain in Spain or return to their countries during the economic crisis but without enrolling in the V.R.P.²²

Prepared by Graciela Rodriguez-Ferrand
Senior Foreign Law Specialist
January 2009

²² *El Plan de Retorno*, *supra* note 18.