Work Integration for Beneficiaries of International Protection: What Laws Work Best in the United States of America and in the Grand Duchy of Luxembourg?

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Work Integration for Beneficiaries of International Protection: What Laws Work Best in the United States of America and in the Grand Duchy of Luxembourg?

Christine Gouverneur

A Thesis in the Field of Legal Studies
for the Degree of Master of Liberal Arts in Extension Studies

Harvard University
May 2017
Abstract

The Convention Relating to the Status of Refugees (Geneva, 28 July 1951), as amended by its Protocol Relating to the Status of Refugees (New York, 31 January 1967), confers on refugees the right to gainful employment (Articles 17-19). This thesis examines to what extent the Grand Duchy of Luxembourg, in Europe, has created a legal framework that is compliant with the provisions of Article 17 of the Convention. Results are then compared to the situation in the United States of America.

The thesis finds that both countries comply with their commitment to the 1951 Convention: Under the law, refugees have the same access to the labor market as other citizens have in both countries. An important divergence is found when comparing the way anti-discrimination laws in both countries have evolved, to the way refugee-specific laws have evolved. Modern-day laws in the U.S. and in Luxembourg have evolved from a concept of theoretic equality of rights (de jure) to equal rights in practice (de facto), towards equality of opportunity, the most current development. Regarding refugees’ labor market access, the concept of equality of rights has not been implemented in practice: Refugees are not considered a group specially deserving of protection in their access to national labor markets, and equality of opportunities for refugees in the labor market is not even a topic of discussion.

Combining the results of international studies regarding refugees’ integration into the labor market with knowledge obtained from practitioners through expert interviews, the thesis makes three main recommendations on how to create a legal framework that will enhance equality of chances for refugees:
1. Lawmakers should continue to reduce administrative barriers, especially the wait period for asylees in the United States and for applicants of international protection in Luxembourg. The goal should be to ensure that refugees obtain permission to work and access to employment-related support as fast as possible. Once refugees obtain permission to work, this permission needs to be clearly documented and easy for employers to understand, to verify, and to trust.

2. Expand the methods for foreign credential recognition and adapt it to the reality of refugees’ life situations. To rely solely on original and certified documentation, often in paper version, is to ignore refugees’ perilous and strenuous journey. New methods of certification are needed, in order to expand the scope of valid educational credentials, and to account for knowledge and skills that have been acquired outside the new country of residence.

3. Ensure labor market access for refugees at all levels: In practice, refugees should be able to find employment matching their skills and professional experience, across all different sectors (horizontally) and hierarchical positions (vertically). This will require long-term funding cycles that allow service providers to offer employment integration programs built around the refugees’ needs instead of the providers’ needs.
Table of Contents

List of Tables ................................................................................................................... vii

List of Figures ................................................................................................................ viii

I. Introduction and Research Problem ............................................................................... 1

Research Methods ........................................................................................................ 4

Country Comparison ..................................................................................................... 6

II. Immigration History Formed Today’s Legislation: An Overview of Research on

Migration and Immigration History ............................................................................. 14

USA .............................................................................................................................. 14

Luxembourg ............................................................................................................... 23

Europe: Essential Common Legislation on Immigration .............................................. 30


USA .............................................................................................................................. 39

Luxembourg ............................................................................................................... 53

IV. Making Integration Work in Practice: Data, Practices, and Challenges................... 76

Data and Cross-Country Comparisons ........................................................................ 79

USA: Interviews ........................................................................................................ 87

Luxembourg: Interviews ......................................................................................... 94
List of Tables

Table 1: Relevant country characteristics and indicators, as of 2015.........................6
Table 2: European anti-discrimination laws applicable to all member states..............57
Table 3: Labor market situation for refugees arriving to the U.S. or Luxembourg,
        key indicators......................................................................................................79
Table 4: Promising practices for the labor market integration of refugees...............106
Table 5: Overview: Interview partners.................................................................119
List of Figures

Figure 1: Elements of Luxembourg labor and employment law, hierarchically………………62
Chapter I.
Introduction and Research Problem

The *Convention Relating to the Status of Refugees* (Geneva, 28 July 1951), as amended by its *Protocol Relating to the Status of Refugees* (New York, 31 January 1967), confers on refugees the right to gainful employment (Articles 17–19). Signatory states agreed to “accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.” For refugees who want to engage in the liberal professions or to be self-employed, the undersigning states guarantee a treatment “as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.” 65 years later, this provision seems more important than ever, as Europe is receiving the largest inflow of humanitarian protection seekers since the *Convention* was ratified. This thesis will examine to what extent the Grand Duchy of Luxembourg, in Europe, has created a legal framework that is compliant with the provisions of Article 17 of the *Convention* and compare the results to the situation in the United States.

As a member of the European Union, Luxembourg adheres to the *Common European Asylum System*, CEAS II. Hence, the specific situation in Luxembourg can

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1 To simplify, I will refer to the 1951 Convention as well as to the 1967 Protocol as one, unless otherwise mentioned.


better be understood when placed in context, and I will provide an overview of the
CEAS, as well as brief glances at the situation in Germany and in France. 4

Although not a signatory of the 1951 Convention,5 the United States recognized
very early the importance of wage-earning work for refugees: during the travaux préparatoires to the 1951 Convention, the U.S. representative stressed that “without the right to work all other rights were meaningless.”6 Accordingly, the United States has long provided labor market integration for refugees, and corresponding laws and policies have served as a model for many other nations.

International Human Rights are very explicit regarding refugee status and the special protections refugees deserve, as codified in the 1951 Convention. The right to work already formed part of the “second generation” economic and social rights enshrined in the 1948 Universal Declaration of Human Rights (Paris, 10 December 1948). Governments have thus long agreed that they have a responsibility to tailor their domestic labor laws accordingly to facilitate refugees’ access to the labor market. My hypothesis is that (a) the comparison of laws and policies between the United States and Luxembourg will reveal that there is potential to do more and better in each country, in order to comply with article 17 of the Convention; and that (b) in the past decade,

4 The idea is to provide a “side glance,” based on summarized country reports by the European Migration Network (EMN) and on published data. A detailed, point-by-point comparison between these three countries exceeds the scope of this thesis.


Luxembourg has made much faster progress towards a compliance with article 17 of the *Convention* than the United States.

To test this hypothesis, I will rely mainly on four different types of sources:

1. international treaties and national legislation concerning refugees’ right to work;
2. scholarly literature on work and migration;
3. publications by international organizations, especially the United Nations (UN), the International Labor Organization (ILO), the International Organization for Migration (IOM), the European Commission, the Organization for Economic Co-operation and Development (OECD), and associated non-governmental organizations;
4. quantitative data (national and international) on migration and the labor market; as well as qualitative data obtained through semi-structured interviews with one to two representatives of organizations responsible for the labor market integration of refugees in each country.

Countries facing a high inflow of humanitarian refugees have a vital interest in their successful labor market integration – from a humanitarian and an economic viewpoint alike. In a first step, my thesis will show where both countries stand with this labor market integration. In a second step, this will allow me to draw a framework of successful legislation that is effective in integrating humanitarian migrants into the labor market. Eventually, their different degree of compliance with Article 17 of the *Convention* will reveal whether one strategy seems more promising over the other in the long run: U.S. American compliance without ratification, or the EU member states’ full ratification of the *Refugee Convention* of 1951.
It should be clear that my thesis will not present an exhaustive reform proposal to fix all possible issues regarding refugee law, labor law, and the labor market. My focus is on the right to work as a promising and successful way of integration for refugees. Until today, refugees’ right to work is often handled as an ad-hoc response to labor market demands, not as a strategic goal. More often than not, attempts of integrating refugees into the labor market do not pay enough attention to the refugee populations’ specific needs. In this thesis, I advocate for refugees’ right to work as a strategic goal that should rank top among lawmakers’ priorities.

Research Methods

My thesis combines a classic law review with a law reform proposal. It is based mostly on desktop research: I will analyze and compare the current legislation and policies that provide for the access of humanitarian migrants to the first labor market in the United States of America and in the Grand Duchy of Luxembourg. Primary sources will consist of national and international legislation, secondary sources will be more varied and include publications by legal and migration policy scholars, reports and

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7 It is my goal to draw a framework of laws and policies that help a fast and successful integration of humanitarian migrants into the first labor market. However, it is important to realize that this framework will neither introduce new, previously non-existing laws, nor will it create an exhaustive framework of all options that could possibly help humanitarian migrants’ labor market integration. The framework presented will apply only to a very specific subset of instruments: laws existing since 2006, which have proven in practice to be beneficial to the labor market integration of humanitarian migrants, either in the United States, or in the Grand Duchy of Luxembourg. This involves mainly two problems: Problem 1 concerns domestic laws and their shortcomings in addressing the special needs and protections required for the refugee population. This requires modifications and additions to the text of existing laws, lying at the core of my law reform proposal. Problem 2 concerns the implementation of existing laws and the shortcomings of this implementation in practice. This requires practical recommendations to the employment agencies involved, on how to enforce laws while at the same time paying special attention to refugees’ needs. This practice-oriented, second problem-set only serves to illustrate specific issues. Examples of practice are not at the center of my research, yet they are helpful to illustrate existing issues and to learn from there what could be new or modified laws.
publications by governmental institutions, non-governmental organizations, and international organizations. To get a more holistic view of how these laws and policies play out in practice, I will also conduct semi-structured interviews with two government agencies and two non-governmental organizations (per country) responsible for integrating immigrants into labor. My interview partners are representatives of the Luxembourg Ministry of Foreign and European Affairs, MAE, and Lisko services, Luxembourg’s Center for Integration and Social Cohesion. Lisko services is a cooperation between Luxembourg’s Reception and Integration Agency, OLAI, and the Red Cross. At NGO level, I spoke with the Support Association for Immigrated Workers in Luxembourg, ASTI, and with the Liaison Committee of Immigrants’ Associations in Luxembourg, CLAE. In the United States, my interview partners at government level are two ORR representatives: the State Refugee Coordinator for the State of California and the Director of Workforce Development at the Massachusetts Office for Refugees and Immigrants. At NGO level, I spoke to the Employment Department Coordinator at Ascentria Care Alliance, MA, and the Manager of Refugee Services at Jewish Vocational Service, JVS. These expert interviews do not provide any empirical evidence, but provide a practical viewpoint to my theoretical research. The goal is to gain a more complete picture that can also speak to the practices and challenges encountered by those who work in the legal realm of refugees’ labor market integration.8

8 My analysis will not differentiate between different groups of refugees, e.g., by gender, age or family status, educational background, professional experience, arrival at border or through organized resettlement programs, etc.
Country Comparison

Table 1 provides the most relevant indicators to explain the situation each country faces when it comes to integrating their refugee population into the labor market:

Table 1: Relevant country characteristics and indicators, as of 2015.

<table>
<thead>
<tr>
<th>Indicator</th>
<th>United States</th>
<th>Luxembourg</th>
<th>Germany</th>
<th>France</th>
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<tr>
<td>Total Area (in km²) ⁹</td>
<td>9,833,517</td>
<td>2,586</td>
<td>357,022</td>
<td>643,801</td>
</tr>
<tr>
<td>Population ¹⁰</td>
<td>323,995,528</td>
<td>582,291</td>
<td>80,722,792</td>
<td>66,836,154</td>
</tr>
<tr>
<td>Labor Force ¹¹</td>
<td>156,400,000</td>
<td>265,800</td>
<td>45,040,000</td>
<td>29,840,000</td>
</tr>
<tr>
<td>GDP per capita, in 2015 U.S. ¹²</td>
<td>55,800</td>
<td>99,000</td>
<td>46,900</td>
<td>41,200</td>
</tr>
<tr>
<td>Unemployment Rate ¹³</td>
<td>5.2 %</td>
<td>6.9 %</td>
<td>4.8 %</td>
<td>9.9%</td>
</tr>
<tr>
<td>Net Migration Rate ¹⁴</td>
<td>3.9</td>
<td>16.3</td>
<td>1.5</td>
<td>1.1</td>
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¹¹ “The World Fact Book,” https://www.cia.gov/library/publications/resources/the-world-factbook/fields/2095.html. Labor force lists the total labor force figure per country, as of 2015. For Luxembourg, only the domestic labor force is listed – excluding about 150,000 daily commuters.


¹⁴ “The World Fact Book,” https://www.cia.gov/library/publications/resources/the-world-factbook/fields/2112.html. Definition of net migration rate: “… the figure for the difference between the number of persons entering and leaving a country during the year per 1,000 persons (based on midyear
Some important commonalities must be highlighted: All countries examined here can be characterized as constitutional democracies. They are member states of the United Nations (UN) as well as of the Organization for Economic Development (OECD) and they are parties to numerous international treaties. They consistently rank among those classified as high-income countries by the World Bank. They can be characterized as predominantly white, Christian countries, with efficient, post-industrial economies. … The net migration rate does not distinguish between economic migrants, refugees, and other types of migrants nor does it distinguish between lawful migrants and undocumented migrants.”


labor markets and a long history of immigration (and emigration, especially from Luxembourg and Germany). All of them played an important role in the preparation of the 1951 Convention Relating to the Status of Refugees, and its 1967 Protocol relating to the Status of Refugees, also called the Geneva Convention.

At the beginning of 2016, Luxembourg and the United States show strong economic indicators and low unemployment rates. Immigration numbers have been on the rise throughout the last year and present each country with important challenges. These economic, legal, political, and cultural challenges currently receive enormous media attention: topics related to international migration have been at the forefront of media coverage and political debate in the United States, as the country was focused on the presidential elections of 2016, as well as in Europe, where the constant influx of people through Europe’s Eastern and Southern frontiers challenges the political union of the 28 member states.

Media coverage often makes it seem as if the current migratory flows of people were absolutely unprecedented and unexpected; yet, they came as no surprise: first, the topic is almost as old as mankind itself – humans have moved across natural and political frontiers for thousands of years, motivated by love, war, work, and hunger.21 Second, scholars in the field of migration have long predicted the significant increase in international migration we are now beginning to witness. In 2002 for example, Timothy J. Hatton and Jeffrey G. Williamson published a paper on “What Fundamentals Drive

World Migration?” Their findings clearly predicted a continuous increase in international migratory movements, mainly due to demographic factors. Their conclusion, 14 years ago, was: “In short, if OECD countries think they have a [sic!] immigration problem now, they are going to find the future even more challenging.”

Scholarly literature on how best to deal with large-scale immigration into the rich countries of Western Europe and the United States covers a broad spectrum: there are those who advocate for stronger restrictions on migration and who calculate the costs of migration to receiving countries, thereby demonstrating that restricting immigration protects domestic budgets, as well as institutional and societal functioning. At the other end of the spectrum are those who advocate for free migration as a means to stimulate the economy worldwide and to reduce costs for the receiving country. In his book *Let Their People Come*, Lant Pritchett considers large inflows of low-skilled laborers to be a reality created by “irresistible forces” (e.g., the wage gap for unskilled labor as well as differences in demographic outlook) that attract work migration from poorer, low-wage countries to richer, high-wage countries. So far, populations of the richer high-wage countries try to shut out work migration at the national borders, and the increase of restrictive immigration policies since the beginning of the 20th century reflects the “immovable ideas” that rich country residents hold against the massive inflow of international labor migrants. Pritchett advocates for more open borders saying that

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increased migration would benefit the receiving country and do more to eradicate poverty than aid programs directed at the sending country. Influent international institutions take a similar stance: the OECD and the UN repeatedly point out the benefits of large-scale international migration and labor mobility, for example, to close the demographic gap in Western countries and to keep productivity up and higher social costs working.

For economists like Michael A. Clemens, removing barriers to international labor migration would bring tremendous economic benefits: “[T]he gains to lowering barriers to emigration appear much larger than gains from further reductions in barriers to goods trade or capital flows—and may be much larger than those available through any other shift in a single class of global economic policy.” Clemens classifies national restrictions on migration, especially from poor countries to rich countries, as one of the “greatest single class of distortions in the global economy.” He calculates enormous gains for the world GDP through the lifting of barriers for work migration, “one or two orders of magnitude larger than the gains from dropping all remaining restrictions on international flows of goods and capital.” According to Clemens, the benefits of worldwide mass migration are obvious: “When it comes to policies that restrict emigration, there appear to be trillion-dollar bills on the sidewalk.”

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28 Clemens, “Trillion-Dollar Bills,” 83.

29 Clemens, “Trillion-Dollar Bills,” 84.

30 Clemens, “Trillion-Dollar Bills,” 83-84.
questioned by the renowned migration scholar George J. Borjas, who vehemently opposes the idea that opening national borders to allow unlimited exchange of workers would automatically benefit all (migrating individuals, sending and receiving countries). In his 2015 article “Immigration and Globalization: A Review Essay,” Borjas argues that mass migratory movements come with specific challenges, which are too often ignored in the analytical models that Clemens and others propose. For Borjas, the main challenges are: wage decreases for workers in the (rich) destination country, the real costs of migrating, and the fact that “gains from unrestricted immigration depend largely on how the infrastructure in the receiving economies adjusts to the influx of perhaps billions of persons.” For Borjas, models proclaiming that there are “Trillion-Dollar bills on the sidewalk” are simply too good to be true, which is why state borders de facto continue to exist. Hence he concludes that the persistence of national borders and immigration controls points to the fact that “perhaps … policymakers and native populations know something that the social engineers ignore: there are few gains to be had after accounting for the adverse spillovers.” For Borjas, national policies related to labor immigration are endogenous, not exogenous: “In fact, it seems likely that a particular policy is chosen because that choice leads to the greatest benefits and/or smallest costs in that place and at that time. The application of that specific policy in any other context would likely lead to a diminution of the benefits and/or an increase in the costs.”

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Immigration laws and policies are influenced by the economic models presented above – across the entire spectrum. These models help policy makers decide who should be admitted into the country and under which conditions, and who is eligible to work. A decision that is highly important and sensitive: The integration of immigrants into work is crucial not only for the calculus of economic gains and losses achieved through migration, but because the integration into work benefits the migrating individual as well as society as a whole – in the country of origin and in the receiving country. Examining the difference between two nations in how they chose to integrate “their” humanitarian migrants into the first labor market can point to unused potential and benefits for both countries. In Borjas’ words: “The striking variation in the types of restrictions that different receiving countries impose on specific types of international migrants suggests a promising avenue for research.”

To this day, completely free and borderless international flows of laborers are still a fiction. As International Law scholar David Bederman reminds his readers, national borders remain alive and well, because they serve to protect a nation’s citizens and their rights through the vehicle of nationality:

It is crucial to realize that States still remain the vehicle by which most individuals on the planet aspire to a legal ordering of their rights …. Nations remain the potent instruments of popular will. Unless we have some kind of World Government, there will be no such thing as “citizens of the world.” It is critical then for international law to recognize and regulate the question of nationality – the essential relationship of loyalty and protection between a person and a State.

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In countries with a long immigration history, like the United States and Luxembourg, highly specialized laws and institutions have developed to limit and to steer the inflow of migrants into their domestic labor market. Before examining these laws and institutions responsible for the integration of refugees into each country’s labor market (in chapter 3), chapter 2 provides an historical overview: How did we get to where we stand today?
Chapter II.

Immigration History Formed Today’s Legislation: An Overview of Research on Migration and Immigration History

The United States is often considered a classical immigration country, with a long history of welcoming humanitarian refugees, with advanced knowledge of the needs of refugee populations, as well as advanced processes for their successful integration into the country and into the labor market. The Grand Duchy of Luxembourg, a small country embedded in the heart of Europe and a founding member of the Schengen area, is a “hidden champion” of integration and relies heavily on foreign workers to keep its successful labor market running. Historically, each country looks back at a very distinct immigration history, as is sketched out on the following pages.

USA

Beginning with the pioneers and explorers who arrived on America’s Eastern shores in 1492, the history of international immigration to the United States went through more than three centuries of predominantly forced immigration: “between 1492 and 1820 slaves accounted for more than three quarters of the 11.3 million migrants to the Americas, while Europeans accounted for less than a quarter.”37 Approximately one quarter of these Europeans arrived under contracts of indenture, or as convicts.38 Thus,

37 Ferrie and Hatton, “Two Centuries of International Migration,” 2.
38 Ferrie and Hatton, “Two Centuries of International Migration,” 3.
the history of labor and migration has been intertwined from its very beginning. Rising inflows of migrants were met by the development of new immigration and naturalization laws, and later also by laws to regulate immigrant labor. The provisions of the Naturalization Law (1 Stat. 103) of March 1790 granted citizenship to “‘free white persons’ who have resided in the United States for at least two years … so long as they demonstrate good moral character and swear allegiance to the Constitution.”39 It is interesting to note that the first Naturalization Law contains four categories which are essential to U.S. immigration and naturalization laws until today: (1) racial/national background, (2) length of residency in the U.S. prior to naturalization, (3) demonstration of good character, and (4) acceptance of the U.S. Constitution and the laws thereby established.

In 1798, the provisions became much harder as Congress enacted the Alien and Sedition Acts: non-citizens were now required to reside in the United States for a minimum of fourteen years, before they could be naturalized. In 1802, this provision was shortened again to require five years of residency,40 but the law still provided the possibility for removal and deportation of non-citizens considered “dangerous to the peace and safety of the United States.”41 Laws seeking to regulate labor and migration


41 “Major U.S. Immigration Laws, 1790-present.”
began to emerge in the later nineteenth century, when “the Immigration Act of 1864 (13 Stat. 385) established the position of a Commissioner of Immigration, …, and provided that labor contracts made by immigrants outside the United States shall be enforceable in the U.S. courts.”42 With the Immigration Act of 1882 (22 Stat. 214), immigration legislation moved into federal oversight. Taxes from immigrants were collected for a U.S. Treasury Fund, and the law now prohibited people from entering the U.S. if it seemed likely they would become a financial burden to the nation.43

The turn of the nineteenth to the twentieth century marked the beginning of mass migration from Europe to the United States, with a peak lasting from 1901 to 1905, when about 1.4 million Europeans immigrated to the States each year.44 Between 1901 and 1910, a total of 8,795,386 immigrants arrived, outnumbering all past experiences in U.S. immigration history.45 With the increase in numbers also came a change in the demographics of immigration: until the middle of the nineteenth century, most immigrants had come from Britain, Ireland, Germany and Scandinavian countries. In the second half of the nineteenth century, the main source countries were Southern and Eastern European countries, especially Italy, Spain, Austria-Hungary and Russia.46 Ferrie and Hatton explain this change in source country composition: During a sending country's transition to modern economic growth, emigration numbers tend to follow an

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42 “Major U.S. Immigration Laws.”
43 “Major U.S. Immigration Laws.”
44 Ferrie and Hatton, “Two Centuries of International Migration,” 4, 49.
45 “Timeline: Key Dates and Landmarks in United States Immigration History.”
inverted U-shape (also called the “mobility transition”).47 They identify four effects that help explain this “mobility transition”48:

1. Strong economic incentives: the real wage gap between the source country and the country of destination is large and attractive. Workers who perform the same or similar work in their country of origin as in their new destination country will earn significantly more per hour in the destination country – this “skills-premium” attracts immigrant workers.

2. Demographic transition: in the source country, a large cohort of young, working-age population makes it unlikely for them to gain access to paid work, qualified apprenticeships or inherited businesses.

3. Existing networks, or the “friends and relatives effect”: with a growing number of established immigrants who came from one and the same country of origin, future emigrants of this same country will find it easier to access the United States and settle down, as a lot of their needs upon arrival can be taken care of by friends and relatives (paperwork, housing, employment, social networks, etc.)

4. Falling transport costs and travel time: costs fall relative to the wage gains in the sending and receiving country.

With rising numbers of immigrants, those who were solidly established in the U.S. labor market began to fear competition through newcomers. As Ferrie and Hatton confirm, immigrants arriving to the United States after 1880 were less skilled and more


48 Ferrie and Hatton, “Two Centuries of International Migration,” 4-6.
ethnically diverse than their predecessors. Public opinion began to shift against immigration, and Chinese immigrants seem to have suffered the strongest backlash: the Chinese Exclusion Act of 1882 (22 Stat. 58) barred Chinese laborers from entering the U.S. and opened the way to more restrictive immigration laws. Probably the most restrictive was the Scott Act (1888), which prohibited Chinese immigrants who had previously been lawful U.S. residents to re-enter the United States once they left the country. As a consequence of a report on the effects of immigration, issued by the U.S. Immigration Commission (the “Dillingham Commission”) in 1911, several European and Asian nations became the target of anti-immigration sentiment that expressed itself in the 1917 Immigration Act (39 Stat. 875): its provisions required a literacy test to enter the U.S. and excluded nationals from most Asian countries. Exceptions only applied to students and specific professionals: teachers, lawyers, physicians, chemists, and government officials.

With the 1921 Emergency Quota Act, immigration became regulated by nationality-based admission quotas. By restricting the annual number of immigrants “from any given country to 3 percent of the total number of people from that country

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50 See, for example: Ferrie and Hatton, “Two Centuries of International Migration,” 8, 13; and: Jonathan H.X. Lee, Chinese Americans: The History and Culture of a People (Santa Barbara, CA: ABC-CLIO, 2016), 12-13.

51 “Major U.S. Immigration Laws, 1790-present.”


53 “Major U.S. Immigration Laws, 1790-Present.”
living in the United States in 1910”\textsuperscript{54} the \textit{Emergency Quota Act} effectively favored immigration from northern and western Europe. In 1929, the \textit{National Origins Formula} “capped national immigration at 150,000 annually and barred Asian immigration altogether.”\textsuperscript{55} Immigration was even more restricted during the Great Depression: only 532,431 immigrants arrived between 1931 and 1940.\textsuperscript{56}

At the end of World War II, modern immigration law began replacing the race-based quota with nationality-based quotas per the \textit{Immigration and Nationality Act} (INA) of 1952, thereby also opening legal immigration paths to nationals from Asian countries.\textsuperscript{57} Together with its federal enforcement agency, the Immigration and Naturalization Service (INS), INA now defined \textit{alien} as comprising different statuses, including illegal status: “any person lacking citizenship or status as a national of the United States. Different categories of aliens include resident and nonresident, immigrant and nonimmigrant, and documented and undocumented (‘illegal’).”\textsuperscript{58}

Only one year later, the \textit{Refugee Relief Act} (1953) granted admission to those who were fleeing persecution or had been expelled from their home country – up to 205,000

\textsuperscript{54} “Dillingham Commission (1907–1910).”

\textsuperscript{55} “Dillingham Commission (1907–910).”

\textsuperscript{56} “Timeline: Key Dates and Landmarks in United States Immigration History.”


\textsuperscript{58} “Immigration: Modern Immigration Law.” Note: Talking about “illegal” immigrants implies a notion of criminal offense, when in fact, criminal law does not apply. (immigration law matters are subject to civil law, not criminal law.) Consequently, immigrants who violate immigration law are not punished, they are deported – and their deportation constitutes an administrative procedure, not a criminal case. Since immigration proceedings are administrative (and not criminal) proceedings, the due process protections do not apply. Unlike civil litigation processes, immigration processes do not require a lawyer, and lawyers are not provided by the state.
refugees were now allowed to enter the United States beyond the quota system. Assistance to refugees was further expanded to include those persecuted for their race, religion, or political opinion, by the Migration and Refugee Assistance Act of 1962.

1965 marks the abolition of the quota system in U.S. immigration laws: the Immigration and Nationality Act based admission decisions on the immigrant’s relationship to a U.S. citizen or lawful permanent resident family members, or to a U.S. employer. While the number of immigrants under these categories is capped annually, there is no cap on the immigration of immediate family members (i.e., spouses, parents, and minor children). Regarding the admission of refugees, U.S. laws are defined by the Refugee Act of 1980, and it is up to the President to decide how many refugees to accept into the United States in any given year. Refugees are defined as follows:

[T]he term “refugee” refers to aliens with a fear of persecution upon returning to their homelands, stemming from their religion, race, nationality, membership in certain social groups, or political opinions. Anyone who delivers a missing American POW or MIA soldier receives refugee status. …. The United States, however, denies refugee status to any alien who actively persecuted individuals of a certain race, political opinion, religion, nationality, or members of a certain social group. … the government also typically refuses refugee applicants previously convicted of murderer. … Under international law, the Geneva Convention, or the laws of the United States, foreign citizens who have become disillusioned with their homeland cannot take temporary refuge within the United States.

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59 “Major U.S. Immigration Laws, 1790-present.”

60 “Major U.S. Immigration Laws, 1790-present.”

61 “Major U.S. Immigration Laws, 1790-present.”


63 “Immigration: Refugees and asylum seekers.”
In 1986, the Immigration Reform and Control Act (IRCA) increased border patrolling and imposed sanctions on employers who knowingly hired undocumented immigrant workers. At the same time, the IRCA provided amnesty for about 2.7 million immigrants living in the United States without legal status. The 1990 Immigration Act raised the cap for admissions of immigrants, especially for employer-based admissions, and eased the controls on temporary workers.

After September 11, 2001, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) marks a new era of immigration policies. The USA PATRIOT Act expanded the possibilities of rejecting and prosecuting aliens, based on a broader definition of possible threats to the U.S. by terrorism. In 2002, the Enhanced Border Security and Visa Entry Reform Act launched an electronic system to allow for an entry-exit-data system. Also in 2002, the Homeland Security Act establishes what has become “the face” of immigration law: the Department of Homeland Security (DHS) was created through the merger of 22 different Federal departments and agencies, as a stand-alone, Cabinet-level department.

As the Migration Policy Institute summarizes:

In 2003, nearly all of the functions of the U.S. Immigration and Naturalization Service (INS) – the Department of Justice Agency responsible for provision of immigration services, border enforcement, and border inspection – are transferred to DHS and restructured to become three new agencies: U.S. Customs and Border Protection (CBP), U.S.

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64 “Major U.S. Immigration Laws, 1790-Present.”

65 “Major U.S. Immigration Laws, 1790-Present.”


67 “Major U.S. Immigration Laws, 1790-Present.”
Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS).  

The expansion of reasons for inadmissibility to or deportation from the United States, based on the definition of terrorist activities, as well as improved border infrastructure have since remained at the top of the agenda in U.S. immigration policies.

Throughout the last decade, many have pointed out that the U.S. immigration system is in need of reform. Repeated attempts at a comprehensive immigration reform have failed. With little chances for a comprehensive reform to succeed in the near future, current policies seem to accept a piecemeal approach as the best way to move forward with immigration legislation. For example, the Deferred Action for Childhood Arrivals (DACA) of 2012 allows certain unauthorized immigrants who entered the United States before their 16th birthday to apply for work permits. Significant provisions of the DREAM Act were passed in 2013, embedded into the Border Security, Economic Opportunity, and Immigration Modernization Act. President Obama also used executive orders to suspend the deportation of certain youths with no status, and the selection criteria mostly matched the selection criteria required by the DREAM Act. Further attempts at a comprehensive immigration reform will most likely remain stalled during the 2016 electoral year.

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68 “Major U.S. Immigration Laws, 1790-Present.”


Luxembourg

Nestled among Europe’s big powers lies the hidden champion of immigration: the Grand Duchy of Luxembourg. The country’s population today consists of 53% Luxembourgers and 47% foreigners. Luxembourg’s history of large scale migration shows some parallels to its German neighbor: not a “big player” of the colonialization era, mass migratory movements only began in the 19th century when their own nationals emigrated to neighboring countries or, more often, to the United States, to find work and to flee poverty. A growing steel and iron industry began to attract workers to the South of Luxembourg during the second half of the 19th century. Here, a pattern emerged that will remain typical for work migration in Luxembourg until today: double immigration. Double immigration means that the highest and lowest echelons of the labor market hierarchy are filled simultaneously, while leaving a gap of open positions in the middle. In the mining industry, experienced German workers were usually employed to do skilled labor, while Italian work migrants were hired to do unskilled, lowly paid jobs. Most of them were young men traveling alone, often leaving Luxembourg after a short stay and rotating jobs in the mining industry between Luxembourg, France, and Germany. With the rise of the steel- and iron industry came an important increase in the share of

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foreigners in Luxembourg’s population, from less than 3% in 1871 to over 15% in 1910. Similar to German immigration politics at the time, foreign workers were considered for their contribution to the economy, but hardly any thought was given to their individual, social, and cultural integration. For a long time, migratory movements in Luxembourg were immediately tied to the cycles of the domestic economy, with little influence of political, cultural or humanitarian motives. Immigrant workers were the first to be dismissed in times of crisis, and since they usually returned to their home countries immediately, they functioned like a protective layer to Luxembourg’s labor market and social security system that remained intact almost until the end of the 20th century.

Two world wars caused a temporary breakdown in immigration numbers, but immediately after both wars, foreign labor was actively sought to help rebuild the country. As early as 1948, Luxembourg signed its first bilateral agreements for the recruitment of workers with Italy. However, after an initial wave of immigration to the Grand Duchy, Italian workers soon preferred to work in Germany, Switzerland, and northern Italy, where pay was higher. As a consequence, in 1970, Luxembourg signed two further agreements for the recruitment of workers with Portugal and Yugoslavia – with much more favorable terms for the Portuguese agreement, allowing Portuguese workers to settle in Luxembourg with their families and overall aiming to make immigration easy and attractive to them. This time, there were more than just economic motives at play. As Luxembourg historian Michel Pauly has shown, postwar immigration

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policies in Luxembourg consciously sought to attract foreign workers they considered to be culturally similar, that is: white and catholic.\textsuperscript{76} Despite a more restrictive immigration law issued in 1972,\textsuperscript{77} Portuguese immigration thrived, and the \textit{friends and relatives effect} was strong among the Portuguese immigrant community. Today, they represent more than 16.3\% of the total population of the Grand Duchy, and 35.6\% of the foreign population.\textsuperscript{78}

Up to the 1980ies, most work migration was to fill unskilled and low paid jobs,\textsuperscript{79} while the smaller amount of prestigious employments, especially in public administration, were held by Luxembourgish nationals or by people commuting from Germany, France, and Belgium. Yet, \textit{double immigration} began to grow more important in the 1980ies:\textsuperscript{80} with the development of an international financial sector, and with the growth of the European Institutions (many of which are headquartered in Luxembourg), immigration to the lowest segments of the labor market was now quickly complemented

\textsuperscript{76} Pauly, “Le phénomène migratoire,” 67-68.

\textsuperscript{77} \textit{Loi du 28 mars 1972}, at 818, accessed 3/8/2016, http://www.legilux.public.lu/rgl/1972/A/0818/1.pdf. The law restricts immigration, as it allows only workers who hold a work permit that will be issued by Luxembourg authorities if no Luxembourgish national can be found to fill the position. Similar provisions form part of the European legislation today: several European member states only grant a work permit to non-EU nationals after it has been demonstrated that there is no qualified EU national available for the position in question.

\textsuperscript{78} “Population by Nationality, 2011-2015.”

\textsuperscript{79} In a speech held in 2010, Luxembourg’s former prime minister Jean-Claude Juncker said that 40-50\% of all work immigrants enter Luxembourg’s labor market without any formal qualification. Hence, their re-integration into the labor market is extremely difficult once they lose their initial employment. See: Jean-Claude Juncker, “Discours du Premier ministre Jean-Claude Juncker pour le 30\textdegree{} anniversaire de l’ASTI,” in \textit{ASTI 30+: 30ans de migrations, 30ans de recherche, 30ans d’engagements}, ed. Association de Soutien aux Travailleurs Immigrés (Luxembourg: Editions Binsfeld, 2010), 21.

by immigration to the top segments. Still, these positions were mainly filled by commuters from the bordering countries, (Germany, France, and Belgium) until the implementation of European legislation on immigration at the beginning of the 21st century led to a more diverse composition of the immigrant population in Luxembourg. Employees from Rumania, Poland, Spain, China, as well as from the Americas, now complemented the higher echelons of the labor market.81

Despite Luxembourg’s active and driving role in matters of EU legislation, national legislation adapted very slowly to the changes brought by Schengen and Dublin.82 Every time the EU member states agreed to expand open borders within the EU, Luxembourg obtained special derogation rules to keep its own labor market immigration under domestic control.83 Only in 2008 did the government of the Grand Duchy replace its restrictive immigration law of 1972 with a modern and comprehensive immigration law. Up to 2008, the country’s immigration policies are a piecemeal approach, responding only to the most pressing issues: After the experience of promoting labor immigration from Southern Europe, the government was challenged when several waves of refugees from former Yugoslavia sought asylum in Luxembourg during the 1990ies. At first, the response was purely administrative, not legislative. A special status was issued ad-hoc: in March 1992, the government granted refugees from former Yugoslavia a status of temporary protection and labor market access, both for three


82 European policies regarding migration will be explained in chapter 3.

83 Pauly, “Le phénomène migratoire,” 73.
months initially. Soon afterwards, the government proceeded to a more restrictive policy and issued a visa requirement for nationals of ex-Yugoslavia, all the while keeping a refugee status for former Yugoslavs under specific conditions. From this administrative ad-hoc response, Luxembourg’s legislators soon moved to a more systematic approach, in line with European legislation. The law of December 18, 2015, regulating international protection and temporary protection, defines three different statuses:

1. Refugee status (the definition of “refugee” follows the text of the 1951 Convention and Protocol);

2. Subsidiary protection status (for people who have not been recognized as refugees, but who are allowed to stay, as a return to their home country would violate the European Convention on Human Rights of 1950);

3. Temporary protection status (may be granted exceptionally in the event of a major influx of people who have had to leave their country in an emergency and who cannot return to their country at present. This status requires an executive decision by Luxembourg’s government or the European Union.)

Refugee status and subsidiary protection status are now the only two categories of international protection recognized in Luxembourg, since the temporary protection status

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has never been granted in practice. Once an applicant is granted international protection status, they receive a residence permit valid for five years.  

All three statuses were already included in the law of May 5, 2006, bringing Luxembourg’s legislation in line with the framework legislation of the European Union. With the law of December 18, 2015, refugee status and subsidiary protection status were further approximated, with the aim to form one uniform status of international protection.  

In 2008, the Luxembourg government issued a law on “the free movement of people and on immigration,” the law of August 29, 2008, which was complemented by the law of December 16, 2008, on “welcoming and integrating foreigners to the Grand Duchy of Luxembourg.” Taken together, these two laws finally apply the European legislation regarding immigration to Luxembourg domestic law. Immigrants who are nationals of one of the member states of the European Union, or who have been lawful long-term residents of a EU member state, are allowed to reside in the Grand Duchy if they can provide for their own cost of living, (and that of any close family members


immigrating with them) either through proven funds or through paid employment, or if they are full-time students in Luxembourg. After their application for a work permit has been granted, they may enter the labor market on the same terms as Luxembourgish nationals. Immigrants from EU member states become permanent residents after five years of living in Luxembourg, and can be barred from entering the country or removed from the territory (at all times) only for purposes immediately related to the public order, public security and public health.

For immigrants coming from non-EU member states (“third-country nationals”), their stay in Luxembourg may exceed three months if they are paid employees (or self-employed), family members of a wage-earning employee, students, researchers, or athletes. However, employment is bound to specific conditions: the position needs to be registered as a vacancy with the national employment agency (ADEM), the third-country national has to prove he/she is qualified for this position, and may only be employed if there is no EU-national qualified for the same position, and as long as their employment is of economic interest to the state. Their permit of residency is issued for one year, and bound to their employment in one specific sector and position. Only a second renewal allows for a residency of three years that is no longer bound to being employed in the

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92 In practice, the fact that the country is tri-lingual presents great opportunities for those who completed the Luxembourgish school system, and great challenges for immigrants who are not familiar with the country’s three official languages. See, for example: “Länderprofil Luxemburg: Einleitung,” BPB, accessed 3/8/2016, http://www.bpb.de/gesellschaft/migration/laenderprofile/209261/einleitung.

93 Loi du 29 août 2008, article 85, accessed 3/8/2016, http://www.legilux.public.lu/leg/a/archives/2008/0138/a138.pdf. Interestingly enough, Article 32 allows holders of a Luxembourgish passport to re-enter the country at any time should they have been deported from any other country on the grounds stated above.

same sector and position.\textsuperscript{95} The \textit{law of December 16, 2008}, established a government office in charge of integration, OLAI, and for the first time included integration as an explicit goal of national policies. Until today, it is an open secret that Luxembourg’s laws on asylum, immigration, and integration seek to pursue two goals at once: to duly protect refugees and asylum seekers, and to protect the country from becoming too attractive and generating a massive immigrant movement.\textsuperscript{96}

Europe: Essential Common Legislation on Immigration

Shared European legislation interacts with national and international law. Before looking at common European laws specifically concerning asylum, the following excerpt from a “fact sheet on the European Union” is helpful to situate the \textit{Sources and Scopes of European Union Law}:

The European Union has legal personality and as such has its own legal order, which is separate from international law. Furthermore, European Union law has a direct or indirect effect on the laws of its Member States and, once in force, becomes part of the legal system of each Member State. The European Union is in itself a source of law. The legal order is usually divided into primary legislation (the Treaties and general legal principles), secondary legislation (based on the Treaties) and supplementary law.

Sources and Hierarchy of Union Law:

1. Treaty on European Union (TEU); Treaty on the Functioning of the European Union (TFEU); and their protocols (there are 37 protocols, 2 annexes and 65 declarations, which are attached to the treaties to fill in details, without being incorporated into the full legal text); Charter of Fundamental Rights of the European Union; as well as the two main treaties, the Treaty Establishing the European Atomic Energy Community (Euratom) is still in force as a separate treaty;

2. international agreements;


\textsuperscript{96} Besch, “Les réfugiés entre droit et politique (1990-2009),” 121.
3. general principles of Union law;
4. secondary legislation.

The Treaties and the general principles are at the top of the hierarchy, and are known as primary legislation. Following the entry into force of the Lisbon Treaty on 1 December 2009, the same value was also given to the Charter of Fundamental Rights [European Charter of Fundamental Rights, EUCFR]. International agreements concluded by the European Union are subordinate to primary legislation. Secondary legislation is the next level down in the hierarchy and is valid only if it is consistent with the acts and agreements which have precedence over it.97

Regarding asylum, European Member States formulate and set their own laws at national level, while adhering to a Common European Asylum System, CEAS. In the realm of admissions to national territory – one of the cornerstones of state sovereignty – member states of the European Union have accepted to trade some of their sovereign decision making powers at national level to the supra-national level of the EU, by adhering to the CEAS. This chapter provides an overview of how the CEAS developed as well as of its most important consequences.

In 1985, the Be-Ne-Lux countries, together with France and Germany, were looking to diminish trade barriers between their countries. They were determined to put the 1957 Treaty of Rome into action, “RESOLVED to ensure the economic and social progress of their countries by common action to eliminate the barriers which divide Europe”.98 In this spirit, the five secretaries of State got together on June 14, 1985, and signed an inter-governmental agreement to gradually remove physical border controls:

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the *Schengen Accord*, complemented by the *Schengen Convention* (signed on June 19, 1990), came into effect in 1995. Today, the Schengen zone comprises most States of the European Union, as well as the non-EU States Iceland, Norway, Switzerland and Liechtenstein. Bulgaria, Croatia, Cyprus, Ireland, Romania and the United Kingdom have not joined or are still in the process of joining the Schengen Area.\(^9^9\) The European Commission (Directorate General of Home Affairs) defines the Schengen agreement as follows:

The free movement of persons is a fundamental right guaranteed by the EU to its citizens. It entitles every EU citizen to travel, work and live in any EU country without special formalities. Schengen cooperation enhances this freedom by enabling citizens to cross internal borders without being subjected to border checks. The border-free Schengen Area guarantees free movement to more than 400 million EU citizens, as well as to many non-EU nationals, businessmen, tourists or other persons legally present on the EU territory.\(^1^0^0\)

What is implicit in this statement is the need for a common exterior border: Since movement is now free between EU countries, access for citizens from third (non-EU) States has to be restricted on a shared legal basis. To this effect, the accords on the free movement of goods and people were complemented by accords on the cooperation regarding police and border protection activities, judicial cooperation, and the Schengen information exchange system (SIS). Probably the most widely known “compensatory measures”\(^1^0^1\) are those included in the *Dublin Conventions*. These established the rules of

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\(^1^0^1\) Harmonized asylum policies and common border controls are often referred to as “compensatory measures” for the opening of inner EU borders. Some scholars call this a self-constructed myth. Cathryn Costello for example argues that: “As long as internal free movement rights are only for EU Citizens, there
responsibility for asylum applications in the newly formed Schengen area – rules crucial to the EU member states, since they were about to ‘trade in’ their sovereign competence to control their own borders. The original *Dublin Convention* was signed on June 15, 1990, and entered into force on September 1, 1997.\(^{102}\) It ensures that only one member state is responsible for treating an asylum request: the state in which an asylum seeker first enters the territory of the European Union. From now on, asylum seekers could no longer choose their country of destination within Europe. The *Dublin Convention* diffused national concerns about the uncontrolled inflow of migrants and about so-called “asylum-shoppers,” who could apply for asylum in different EU member states at the same time. *Dublin* established common directives on the definition of qualification for international protection, on asylum procedures, and on reception conditions. Simultaneously, the Dublin regulations knitted a tight net of control mechanisms around the exterior borders of EU territory and de facto shifted most of the responsibility in asylum questions to the outside borders of the EU – making the border-free-zone very attractive to those countries that are comfortably nestled inside the European mainland. Since 1997, the original Dublin regulations have been replaced by *Dublin II* in 2003, and by *Dublin III*, currently in force.\(^{103}\)

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is no logical requirement for common immigration or asylum policies. As Bigo argues, ‘[t]he debate on compensatory measures and the security deficit created by the opening of the internal borders [is] one of the strongest myths of EU self-presentation’.” Cathryn Costello, *The Human Rights of Migrants and Refugees in European Law* (Oxford: Oxford Scholarship Online, 2016), 17, accessed 5/17/2016, DOI: 10.1093/acprof:oso/9780199644742.001.0001.


\(^{103}\) “Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.” The Dublin III Regulation applies to all 28 EU Member States as well as to Norway, Iceland, Switzerland and Liechtenstein. See: Regulation (EU) No 604/2013 of the European Parliament and
Both accords, Schengen and Dublin, were conceived outside the EU Treaty framework and only added later, in 1999, by signing of the Treaty of Amsterdam in 1999. The Amsterdam Treaty provided the binding framework for policies on asylum, refugees, immigration and visa regulations for all European Member States, and expanded the powers of the European Commission. Also in 1999, and as a result of an EU Council summit in Tampere (Finland), the idea emerged to create an Area of Freedom Security and Justice inside Europe. Cathryn Costello summarizes the effects in her 2015 book The Human Rights of Migrants and Refugees in European Law: “the EU evolved with a strong rights-based approach to internal free movement, but immigration and asylum from outside the EU were addressed in different policy contexts, with no EU judicial scrutiny. The Treaty of Amsterdam marks a huge institutional shift, with formal EU lawmaking competence over immigration and asylum, under the new overarching aim of creating an Area of Freedom, Security, and Justice (AFSJ).”


106 “From Schengen to Stockholm, A History of the CEAS.”

107 Costello, The Human Rights of Migrants and Refugees in European Law, 17. Costello defines the AFSJ on page 17: “Article 67 of the Treaty on the Functioning of the European Union (TFEU) sets out greater detail, namely that ‘The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.’ And, again reiterating the linkage between internal free movement and external asylum and immigration policies, it states: It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals.”
Given that EU law now superseded national law regarding territorial access, CEAS’ first stage was carefully designed to strike a balance between the advantages it provided through harmonized EU asylum law on one hand, and the loss of sovereignty it entailed at national level, on the other hand. From the very beginning, CEAS was based on the lowest common denominator between Member States. In 2013, CEAS II was launched with the aim “to ensure that all applicants for international protection are treated equally in an open and fair system, wherever they apply.” CEAS II is composed of five legal instruments:

2. The *Reception Conditions Directive* establishes common standards of reception conditions (housing, food, health care, employment, etc.) for asylum applicants.  
3. The *Qualification Directive* establishes common grounds to grant international protection.  
4. The *Dublin Regulation* establishes the Member State responsible for the examination of the asylum application.  
5. The *EURODAC Regulation* establishes an EU asylum fingerprint database.

Costello’s book examines the interplay between EU law, international refugee law –especially the 1951 Convention and its 1967 Protocol– and the European Convention on

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Human Rights (ECHR) as it maps onto established case law by the European Court of Human Rights (ECtHR).\(^{111}\) Her in-depth analysis of the interaction between these three “dynamic bodies of law”\(^{112}\) points to inherent contradictions. Two of these contradictions are worth noting here: the first one Costello presents concerns the role of the State in migration control.

In spite of its universal premises and aspirations, international human rights law, of which the ECHR is an exemplar, acknowledges and accommodates States’ migration control imperatives. In contrast, when we turn to the EU domain, the State is no longer the same plenipotentiary actor. Its competences in the migration field are transformed by being shared both horizontally with other States and vertically with the EU authorities. … To put it strongly, when the human rights of the unenfranchised migrant are at issue, the democratic credentials of elected bodies are lacking.\(^{113}\)

The second contradiction is that between the aspiration for Human Rights to be universal and the practice of “statist” border controls, which rely on the old concept of state sovereignty:

Human rights are understood as universal, in that they inhere in all persons simply by virtue of their being human. That promise sits uneasily with statist border control, which presupposes rights enjoyed within bounded States, with States having a sovereign right to control admissions. The figure of the refugee stands out as the exception that constitutes this rule … Here, we encounter a version of old-style sovereignty, which elides sovereignty and unfettered State discretion. I refer throughout to the ‘statist entry control assumption’ or simply the “statist assumption” to connote this notion that States have a sovereign right to exclude aliens without justification. … The statist assumption seems out of place in an age of human rights, and increasing transnational economic and social interpenetration. Yet, in the migration context, it remains stubbornly ingrained.\(^{114}\)

\(^{111}\) Costello, The Human Rights of Migrants and Refugees in European Law, 7.

\(^{112}\) Costello, The Human Rights of Migrants and Refugees in European Law, 7.

\(^{113}\) Costello, The Human Rights of Migrants and Refugees in European Law, 10.

\(^{114}\) Costello, The Human Rights of Migrants and Refugees in European Law, 11.
As Costello points out, the “statist assumption” is reflected even in the most important instruments of international law, as well as in the *Universal Declaration of Human Rights* (UDHR). These inherent contradictions add another layer of complexity to the already highly complex interactions between national law, EU law and international law.\(^\text{115}\)

Looking at how the European judicial system is organized helps to decipher this complexity: The European Union court system consists of three strands: the Court of Justice (which constitutes the highest judicial authority of the EU), the General Court, and specialized courts in specific areas. Their primordial task is to ensure that the interpretation and application of EU law is observed.

The European Court of Justice, in cooperation with the courts and tribunals of the Member States, ensures the application and uniform interpretation of European Union law. It is composed of one judge from each Member State,\(^\text{116}\) and the European Commission website explains:

The General Court hears cases in first instance, which are not referred to the specialised courts or directly to the Court of Justice. It also deals with appeals … by the specialised courts. The General Court is composed of at least one judge per Member State. Specialised courts can be set up for specific areas. They can hear and determine cases at first instance, with the possibility of an appeal to the General Court. … For disputes between the EU and its civil servants (for instance on their recruitment, career or social

\(^{115}\) Costello illustrates this by using the EU’s Lisbon Treaty as an example: with its entry into force on December 1, 2009, the EU strengthened its “constitutional commitment to fundamental rights. The EU Charter of Fundamental Rights (the ‘Charter’ or ‘EUCFR’) became binding, the EU committed to accede to the ECHR, and reaffirmed that fundamental rights were general principles of EU law.” However, this plan was crossed: “[i]n 2014, the Court of Justice of the European Union (CJEU) ruled that the Draft EU Accession Agreement to the ECHR was incompatible with EU law.” Although all EU institutions and 28 Member States intervened to say that the agreement was indeed compatible, the matter is not settled yet. Costello, *The Human Rights of Migrants and Refugees in European Law*, 8.

security), a Civil Service Tribunal composed of seven judges has been created.”

These EU courts are situated in Luxembourg, and are not to be confused with the European Court of Human Rights (ECHR), which is not a court of the EU. The ECHR was created through the Council of Europe, with the mission to ensure “respect for the rights and freedoms guaranteed in [the European Convention on Human Rights].” However, ECHR’s case law influences EU law, “since the fundamental rights guaranteed in the European Convention also constitute general principles of EU law.”

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Chapter III.

Labor Legislation for Refugees: The Most Important Facts, by Country

This chapter presents the labor and employment laws that are in force today in the United States and in Luxembourg, and analyses them insofar as they apply to the applicants and beneficiaries of international protection. Important legislative changes are traced back for a maximum time period of ten years, i.e., no longer than 2006.

USA

With its long history of accepting and integrating immigrants into the county, the United States has created one of the most differentiated and specialized immigration systems in the world. Immigration law is essentially a federal topic, and the power to create and modify immigration laws is vested in Congress. This is the legacy of international and constitutional legal principles which founded the nation state itself: based on the Westphalian concept of the sovereign nation state, the idea that a state needs to defend its borders and to regulate the flows of immigration in order to retain its territorial sovereignty is generally accepted until today. Hence, the U.S. Constitution grants Congress the power to regulate international affairs, especially concerning commerce, war, and naturalization. By concentrating the power over international affairs in Congress, the Constitution prevents the states from acting on their own and

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120 Peace of Westphalia (1648). For more details, see: Bederman, International Law Frameworks, 3.

121 U.S. Constitution, Article 1, Section 8.
from the chaos that would ensue if each state were to issue, for example, its own naturalization laws.\textsuperscript{122} Traditionally, the U.S. Supreme Court has kept states from passing legislation that interferes with this area of federal power and acts to defend federal statutes which regulate immigration.\textsuperscript{123} State statutes must be compatible with federal immigration policies and with the Equal Protection Clause of the 14th Amendment.\textsuperscript{124} Consequently, states cannot emit laws that severely restrict the employment of non-citizens at state level. In \textit{Truax v. Raich}, 239 U.S. 33 (1915), the Court reasoned that Congress’ power to grant foreigners the right to live in the United States would be contradicted – maybe even obliterated – if states were free to restrict employment based on citizenship.\textsuperscript{125} This decision at federal level far precedes Louis Henkins’ famous reasoning, at international level, that “without the right to work all other rights were meaningless.”\textsuperscript{126} Since decisions regarding immigration, naturalization, and foreign policy have international consequences, power is entirely vested in Congress as the federal legislative power.

The judiciary only intervenes ‘indirectly’ by ruling on the interpretation of statutes – the Supreme Court restricts itself to limited admissible reviews concerning decisions of inadmissibility of non-citizens to the United States, decisions regarding

\begin{itemize}
  \item \textsuperscript{123} Danielson and Weissbrodt, \textit{Immigration Law}, 62.
  \item \textsuperscript{124} Danielson and Weissbrodt, \textit{Immigration Law}, 76.
  \item \textsuperscript{125} Danielson and Weissbrodt, \textit{Immigration Law}, 542-543.
\end{itemize}
removal proceedings, asylum cases, and, although hardly ever applied, the possibility to review naturalization cases. In asylum cases, the Court sought to ensure compatibility between national rights (as expressed in the *Refugee Act of 1980*) and international rights (as expressed in the 1967 *Protocol*). In *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), the Court successfully determined the standard to be applied: “refugees seeking asylum … must show only a ‘well-founded fear of persecution’ in their country of origin, and not a ‘clear probability’ of persecution,” as had previously been required.

The executive power’s role is to enforce the immigration legislation previously passed by Congress, and it does so through five federal executive agencies that administer and enforce immigration law: the Department of Homeland Security (DHS), the Department of State (DOS), the Department of Justice (DOJ), the Department of Labor (DOL), the Department of Health and Human Services (HHS), and the Social Security Administration (SSA).

These federal institutions know three types of lawfully admitted non-citizens: “(1) persons who seek admission for a limited period of time and usually for a limited purpose (known as ‘nonimmigrants’), (2) persons who want to become permanent residents of the U.S. (known as ‘immigrants’), and (3) refugees.” Numerically speaking, the most important categories of people seeking to become lawful permanent residents (LPRs) are

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“family-sponsored, employment-based, diversity immigrants, and refugees.”\textsuperscript{132} These can again be differentiated: First, there are immigrants who are not subject to numerical limitations. Only immediate relatives of U.S. citizens (children, parents, and spouses) are not subject to numerical caps, and they encounter comparatively few obstacles when they apply for entry to and residence in the United States. However, the number of immediate relatives who immigrate to the U.S. in a given year is set off from the quota available for other family-sponsored immigration categories.\textsuperscript{133} Second, there are immigrants who are subject to numerical limitations: family-sponsored and employment-related preferences fall into this group, as well as diversity immigrants and special groups of immigrants from Hong-Kong and Northern Ireland. Third is a group of “special immigrants” that comprises former U.S. citizens, religious workers, U.S. government employees, and others.\textsuperscript{134} With the exception of immediate relatives, each category of immigrants is subject to an annual cap, as defined through a preference system that was established by the \textit{Immigration Act} of 1990.\textsuperscript{135} These preference categories and numerical limits reflect the government’s interest in matters of immigration policy: a clear focus is on family reunification and on creating a workforce that is globally competitive, without threatening the domestic labor market in the U.S. “Of the more than 1 million new LPRs in 2014, 41 percent were immediate relatives of U.S. citizens, 23 percent entered through a family-sponsored preference, and 15 percent via an employment-based preference.

\textsuperscript{132} Danielson and Weissbrodt, \textit{Immigration Law}, 142.

\textsuperscript{133} Danielson and Weissbrodt, \textit{Immigration Law}, 143.

\textsuperscript{134} Danielson and Weissbrodt, \textit{Immigration Law}, 162.

Another 13 percent adjusted from refugee or asylee status, and 5 percent were diversity-lottery winners.  

The above-mentioned categories account for the biggest share of immigration to the U.S.; as can sometimes be deduced from the name of their “preference category,” these immigrants are deemed valuable to the government’s policy goals, and they are often ‘sponsored’ by a person or entity that actively seeks their entry to the United States, as family-sponsored and employer-sponsored immigrants. Hence, they benefit from certain rights and privileges upon entry to the U.S., which are examined in detail in David Weissbrodt’s and Laura Danielson’s “In A Nutshell” volume on *Immigration Law and Procedure*. My focus is on a category of immigrants who usually have neither family members nor employers cheering for their arrival: refugees and asylees. “Refugee and asylum status, along with occasional lotteries …, constitute the only significant avenues for immigrating to the United States for individuals without family ties or without employment or investment opportunities in the U.S.” To be considered as an applicant for refugee or asylum status, one must meet the definition under INA § 101(a)(42):

[A]ny person who is outside any country of such person’s nationality or … any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

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With the *Illegal Immigration Reform and Immigrant Responsibility Act* of 1996, IIRIRA, the definition of “persecution on account of political opinion” was expanded to include those who face “forced abortion or involuntary sterilization, or persecution for failure or refusal to undergo such procedure or for other resistance to a coercive population control program.”\(^{140}\) In compliance with the U.S. obligations under the 1967 *Protocol* to the *Refugee Convention*, the INA definition is worded closely to the definition of refugee provided in Article 1A (2) of the 1951 *Convention Relating to the Status of Refugees* and its 1967 *Protocol*, which apply to any person who:

> owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.\(^{141}\)

Specific to the United States, refugees and asylees must meet the same criteria of definition, but undergo different application procedures. A refugee is considered someone who applies from abroad. Applications are considered in light of whether or not the person meets the definition under INA § 101(a)(42)(A) and whether admission is still permissible under the annual numerical ceiling for refugee admissions to the U.S.: under INA § 207, the President (after consultation with Congress) sets a maximum number of


admissions for refugees for each fiscal year. This number is allocated between different regions of the world, and includes regions that are “of special humanitarian concern to the United States.” However, these regional allocations do not mirror the ratio of refugees in the world in a given year – rather, they reflect the United States’ interests in foreign policy, and the President has considerable discretion in setting and adjusting the refugee admission ceiling. Refugees file their application at an office of the U.S. Citizenship and Immigration Services (CIS) outside the United States. If they meet the statutory definition of refugee, are within the annual number of refugees allotted to their region of provenience, have not firmly resettled in another country, and are admissible under INA § 212(a), the officer in charge may approve their application and they may enter the U.S. within four months following approval. In addition, each refugee must be sponsored either by an individual sponsor or an organization. Upon arrival to the United States, the Office of Refugee Resettlement (ORR), located within HHS, “coordinates with other government and non-profit agencies to provide employment, educational, housing, and cultural resources for refugees … .” For employment purposes, refugees are considered a “protected class” and are thus not required to apply for an Employment Authorization issued by the DOL: they may accept work immediately. After one year in the United States, refugees can apply to have their status

142 Danielson and Weissbrodt, Immigration Law, 366-367.
143 Danielson and Weissbrodt, Immigration Law, 367.
144 Danielson and Weissbrodt, Immigration Law, 368.
145 Danielson and Weissbrodt, Immigration Law, 368.
146 Danielson and Weissbrodt, Immigration Law, 371.
changed to lawful permanent residence; there is no annual limit to the number of status changes from refugee status to LPR, and the change of status is not contingent upon a new assessment of the situation in his or her country of provenience.\footnote{Danielson and Weissbrodt, \textit{Immigration Law}, 370.}

Applicants for asylum, in contrast, are non-citizens who have already reached the U.S. border or are within the United States. Typically, there are three different situations in which applications for asylum can be filed, independent of the applicant’s current immigration status: upon arrival at a U.S. border point of entry, within one year after arrival to the United States, or, as a defense during a removal process (usually within one year after arrival).\footnote{Danielson and Weissbrodt, \textit{Immigration Law}, 372.} Applicants seek to be granted asylum status based on the same statutory grounds as refugees (INA §101(a)(42)(A)), and it is up to an asylum officer or immigration judge to decide whether the applicant’s claim is credible. Since there is no exact definition for the claim of a “well-founded fear of persecution,” asylum officers and immigration judges have to rely on the credibility of the applicant’s statements, on the facts they know about the applicant’s country, on case precedents, and, to some extent, their own judgment and discretion.\footnote{See: Danielson and Weissbrodt, \textit{Immigration Law}, 373, 382.} “Asylum is not considered a right. Rather it is granted at the discretion of the asylum officer or immigration judge in the district where the non-citizen resides or enters the United States.”\footnote{Danielson and Weissbrodt, \textit{Immigration Law}, 390.} The legal basis for asylum applications in the U.S. was established with the \textit{Refugee Act} of 1980, codified in INA

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\begin{itemize}
\item \footnotemark[147] Danielson and Weissbrodt, \textit{Immigration Law}, 370.
\item \footnotemark[149] See: Danielson and Weissbrodt, \textit{Immigration Law}, 373, 382.
\item \footnotemark[150] Danielson and Weissbrodt, \textit{Immigration Law}, 390.
\end{itemize}
§ 208, and expanded through IIRIRA in 1996.\textsuperscript{151} The burden of proof is on the applicants, who must show “that they have a well-founded fear of persecution in their home country on account of race, religion, nationality, membership in a particular social group, or political opinion.”\textsuperscript{152} Once the application is granted, asylees may begin to work right away – they do not need to request Employment Authorization Documents (EAD). However, as long as the decision on an asylum request is pending, the applicant needs to wait 150 days before applying for EAD. If granted, it will typically take at least 30 days for the applicant to receive their authorization to work, which means that while an application for asylum is pending, applicants need to wait at least half a year before they are authorized to take up employment.\textsuperscript{153} Should their application be denied, removal proceedings will be opened by an immigration judge, eventually leading to removal from the U.S. Hence one can imagine how much insecurity an applicant for asylum must overcome if they want to take up employment and get firmly settled in the U.S. all while awaiting the final decision on their asylum application.

Once an application is approved, asylees (like refugees) have the right to start working, to petition for their spouse and children to follow to the United States, to receive travel documents, and to apply for adjustment of status to LPR after one year.\textsuperscript{154} However, although asylum status is granted indefinitely when an application is approved,


\textsuperscript{152} Danielson and Weissbrodt, \textit{Immigration Law}, 379.


\textsuperscript{154} Danielson and Weissbrodt, \textit{Immigration Law}, 408-409.
it may also be revoked: proceedings to terminate asylum may be reopened not only in case of fraudulent applications or criminal behavior, but also when the conditions in the asylee’s country of provenience have changed so that the ground for granting asylum no longer exists.\textsuperscript{155} Asylee status is therefore inherently unstable – unless an asylee adjusts her status to LPR, she might encounter great difficulties in getting settled, since finding employment and housing may be negatively affected through the inherent instability of status in the U.S.

Similar in regards to the right to work is the Temporary Protected Status, TPS.\textsuperscript{156} Yet, as the name makes clear, TPS is only temporary, and it is granted by the Secretary of Homeland Security “to nationals of countries experiencing civil upheaval or natural disasters.”\textsuperscript{157} TPS is usually valid for 18 months, unless the conditions leading to TPS still prevail and the Secretary decides to extend TPS for another period of up to 18 months.\textsuperscript{158} Under TPS, a person may apply for Employment Authorization Documents, but TPS does not lead to LPR.

Apart from LPRs and non-citizens holding a visa category that explicitly allows them to work, the only non-citizens allowed to work in the U.S. are asylees and refugees.\textsuperscript{159} In 1986, with the passage of the \textit{Immigration Reform and Control Act}

\begin{footnotesize}
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\item \textsuperscript{155} Danielson and Weissbrodt, \textit{Immigration Law}, 408.
\item \textsuperscript{156} Specifics on eligibility and application for TPS can be found on USCIS website: “Temporary Protected Status,” USCIS, accessed 09/07/2016, https://www.uscis.gov/humanitarian/temporary-protected-status.
\item \textsuperscript{157} Danielson and Weissbrodt, \textit{Immigration Law}, 410.
\item \textsuperscript{158} Danielson and Weissbrodt, \textit{Immigration Law}, 412.
\item \textsuperscript{159} See: Danielson and Weissbrodt, \textit{Immigration Law}, 596-597.
\end{itemize}
\end{footnotesize}
(IRCA), it became illegal for employers to hire undocumented workers,\textsuperscript{160} and employers now have to verify potential future employees’ EAD.\textsuperscript{161} Despite the existing laws and sanctions, the Migration Policy Institute estimates that 64\% of the total unauthorized immigrant population (age 16 or older) is employed\textsuperscript{162} – meaning that about 6.5 million people have found employment in the U.S. without the requested EAD. This number inevitably raises the question of workforce protection: What laws exist to protect non-citizen workers in the U.S.? Even though I am looking at workers with a legal status as asylee, refugee, or TPS – not at undocumented workers – the question remains.

Labor and employment laws aimed at protecting the workforce principally apply to every legally employed worker in the U.S. Employment law is in fact a whole body of legal rules that regulate the relationship between employer and employee directly, without unions as intermediary. Four principal types of rules can be distinguished: (1) statutes, often authorizing specific action by administrative agencies; (2) rules, regulations, and decisions enacted by these agencies; (3) common law tort and contract doctrines; (4) constitutional provisions at state and federal level.\textsuperscript{163} Also regulating the employment relationship are individual employment contracts and collective bargaining agreements.\textsuperscript{164} Benefits obtained through unions in collective bargaining agreements

\textsuperscript{160} Danielson and Weissbrodt, \textit{Immigration Law}, 597.

\textsuperscript{161} INA § 274A(b) established an employment verification system for this purpose, available online for employers. See: Danielson and Weissbrodt, \textit{Immigration Law}, 638. For the online tool, see: “What is E-Verify?,” USCIS, accessed 09/07/2016, https://www.uscis.gov/e-verify/what-e-verify.


\textsuperscript{164} Covington, \textit{Employment Law}, 6.
apply to all employees, without exceptions, and the body of collective rights which came to form labor laws in the U.S. allows employees (or their designated representative) to bring unfair labor practice cases before the National Labor Relations Board, NLRB – regardless of immigration status.165

As the influence of unions on the labor force is declining, the emphasis of legal protection has been shifting from collective rights to the protection of individual employee rights.166 Pivotal to both, employment and labor law, are the provisions of Title VII of the Civil Rights Act of 1964: “Title VII of the Civil Rights Act of 1964 protects employees from discrimination in the workplace on account of race, national origin, gender, and religion.”167 It applies to U.S. citizens and non-citizens alike, and although it applies regardless of immigration status, it might well be the most important U.S. law to protect non-citizen workers. What is interesting to note is that the categories of race, nationality, and religion, under Title VII are the same categories that are relevant for the definition of refugee and asylee status under INA § 101(a)(42)(A), while political opinion and membership in a social group are missing. One is inclined to ask then, whether being a non-citizen – or, even more specifically, being a refugee or asylee – constitutes membership in a social group? The question has left a long trail of jurisprudence, without being settled. Throughout the 1970ies, the Supreme Court struck down several state statutes prohibiting non-citizens from specific employment categories, e.g., in civil service, law, and education. On top of opening additional employment possibilities for

166 Covington, Employment Law, 2.
167 Danielson and Weissbrodt, Immigration Law, 600.
immigrants, these decisions pointed towards a desire to apply the Equal Protection Clause of the 14th Amendment more equally: to all those who reside legally in the United States. The Court’s reasoning revolved around the idea that non-citizens can be considered a group, and this idea was most clearly expressed in *Graham v. Richardson*, 403 U.S. 365 (1971), where the Court held that non-citizens constitute a “‘discrete and insular minority’ deserving of heightened judicial protection, and that alienage is a ‘suspect classification’ prompting strict scrutiny of state discrimination under the Equal Protection Clause.”

In *Graham v. Richardson*, the Court also barred Congress from explicitly authorizing the states to violate the Equal Protection Clause by enacting laws that discriminate on the basis of alienage. The idea was further developed throughout the 70ies: although ‘being non-U.S.-citizen’ is not an immutable characteristic, as is race for example, and although asylees, refugees, and visa holders immigrate to the U.S. from different backgrounds and under different circumstances, they can still be regarded as one group. As long as they do not acquire U.S. citizenship, their status is indeed comparable: it is heteronomous – hence fragile – and inescapable, and it is inherently non-democratic since non-citizens lack political rights and the representative voice that could speak on their behalf. “While other protected minorities may have seriously weakened political voices, a non-citizen has no voice or vote. The suspect classification doctrine is at least partially based on the understanding that judicial vigilance is necessary because

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the political process does not adequately represent the interests of oppressed groups.”\textsuperscript{172} As such, non-citizens constitute a group that is underrepresented in the political process and therefore need the special protection of the law, in accordance with the 14\textsuperscript{th} Amendment’s Equal Protection Clause. However, reality shows that there is no such special protection: while the Court moved towards a definition of non-citizens as a group deserving of special protection in its jurisprudence on discriminatory state laws in the 1970ies, this path has not been pursued further. At federal level, the Court treats discrimination based on alienage differently than discrimination based on race, religion, or national origin, reasoning that “the equal protection component of the Fifth Amendment [at federal level] is not co-extensive with that of the Fourteenth …”\textsuperscript{173} This leads to the paradox that non-citizens receive more protection of the laws in cases of state discrimination than in cases of federal discrimination.\textsuperscript{174} Let’s recall that labor law and immigration law are essentially federal. In the labor market, non-citizens thus do not hold any individual rights specific to their group, but are protected by the labor and employment laws that regulate all legal employment relationships in the United States.

The area of employment law that protects individual rights and has received most attention in the past decades is the one that forbids discrimination on the basis of protected characteristics, as expressed in Title VII.\textsuperscript{175} Since immigration status is not considered a protected characteristic, asylees, refugees, and workers under TPS may

\textsuperscript{172} Danielson and Weissbrodt, \textit{Immigration Law}, 569.

\textsuperscript{173} Danielson and Weissbrodt, \textit{Immigration Law}, 561.

\textsuperscript{174} Danielson and Weissbrodt, \textit{Immigration Law}, 567-568.

\textsuperscript{175} Covington, \textit{Employment Law}, 219.
bring discrimination cases in employment (or cases of unfair labor practice) only on the grounds protected under Title VII.

Luxembourg

Similar to the development in the United States, employment and labor law emerged primarily as contract law, governed by civil law. With the rise of laboring classes during the industrialization period, employment law came to regulate ever more specific aspects of the individual relationship between employer and employee. At the same time, labor organization movements were gaining strength at the end of the 19th and beginning of the 20th century, and the need to regulate these movements resulted in collective labor laws.

In modern-day Luxembourg though, the development of labor and employment laws evolved on a very different path: generally speaking, there is a constant awareness of and orientation towards international jurisprudence to which lawmakers in Luxembourg turn when setting their labor and employment legislation. With its large inflow of workers from the neighboring countries Belgium, France, and Germany, Luxembourg has traditionally been aware of the labor and employment law developments in these countries.176 In 1975, Luxembourg introduced the tripartite structure177 for all consultations regarding labor and employment law: government representatives, employers and unions convene to develop and discuss labor policies and legislation.


177 Putz, Das luxemburgische Arbeitsrecht, 13.
together. This tripartite structure is known from the ILO, “the UN agency for the world of
work,” 178 which operates under the same model; it has also become a hallmark of
Luxembourg’s labor policies. However, international comparison is not always in
Luxembourg’s favor – the country has often been criticized for its slow implementation
of European directives in the field of labor legislation. For example, the European
regulation guaranteeing gender equality was introduced in 1957, but implementation in
Luxembourg was not complete until 1981. In an effort to avoid such delays,
Luxembourg’s lawmakers now tend to implement the text of European regulations as is
into their national legislation – thereby often creating incoherencies of terminology and
systematic among the national legislation.179

In 2006, all relevant legislation regarding labor and employment in Luxembourg
has been compiled, codified, and structured in order to publish one coherent and
comprehensive Labor Code.180 Luxembourg’s Labor Code is considered complete since
2009, when the distinction between ‘workers’ (ouvriers) and ‘private employees’
(employés privés)181 was replaced by one uniform term, ‘employees’ (salariés).182

Luxembourg’s legislation related to labor and employment is drawn from the
following sources:

178 “The World of Work,” International Labour Organization ILO, accessed 09/12/2016,
179 Putz, Das luxemburgische Arbeitsrecht, 20.
180 Putz, Das luxemburgische Arbeitsrecht, 22. To avoid duplicates, all laws specific to labor and
employment which had been “drawn into” the new Labor Code, were subsequently erased from other areas
of civil law.
181 The former term, “workers”, usually refers to people whose tasks are mainly manual, the latter
term, “private employees”, referred to administrative and intellectual workers.
182 Putz, Das luxemburgische Arbeitsrecht, 14.
1. Constitutional Law:

Luxembourg’s Constitution\textsuperscript{183} contains several provisions relating to labor and employment law. Among the indirect provisions are all those that regulate a citizen’s rights independently of the work-context, e.g., the right to free speech (article 24), religious freedom (article 19), and gender equality (article 11(2)). An employer may not curtail these rights more than permissible under the Constitution.\textsuperscript{184} Luxembourg’s Constitution also makes several provisions immediately related to work: most prominently, the Constitution recognizes the freedom of trade and the right to work (Article 11(4)).\textsuperscript{185} The right to work has come to be understood as a policy goal – the state strives to reach full employment and makes sure its policies facilitate the means to obtain full employment. The right to work is thus not a subjective right that can be claimed by an individual plaintiff against the state; by this law, the state is bound to act, but cannot be held liable for the results.\textsuperscript{186} Two obligations derive from this right to work: first, the government needs to facilitate employment relations, especially through an adequate structure that supports finding employment for those who are actively in search of employment. In Luxembourg, the Agency for Employment Development (Agence pour le développement de l’emploi, ADEM) is tasked with the promotion of job

\textsuperscript{183} Luxembourg’s Constitution was originally proclaimed in 1868 and has since been revised numerous times; the latest revision took place in 2009. All references in this text are based on the following edition: Ministère d’État: Service central de législation du Gouvernement du Grand-Duché de Luxembourg, ed., “Constitution du Grand-Duché de Luxembourg, 2015: Texte coordonné à jour au 1er août 2013,” Legilux: Journal Officiel du Grand-Duché de Luxembourg, accessed 9/12/2016, http://www.legilux.public.lu/leg/textescoordonnes/recueils/Constitution/.

\textsuperscript{184} Putz, Das luxemburgische Arbeitsrecht, 15.

\textsuperscript{185} Ministère d’État, Constitution 2015, Article 11(4).

\textsuperscript{186} Putz, Das luxemburgische Arbeitsrecht, 16.
opportunities, to help match prospective employees to employers and to support employment seekers.\textsuperscript{187} Second, the right to work implies a protection of employees against unfair layoffs. Unlike the U.S. model of employment at will, the Luxembourgish labor contract law precisely regulates the permissible terms and conditions for layoffs.\textsuperscript{188} The Constitution also regulates collective labor relations, specifically through article 11(4) which allows unions and obligates the state to set the rules for strikes.

2. International Law:

Luxembourg has ratified numerous international covenants relating to labor and employment laws, most notably the 1951 \textit{Convention relating to the Status of Refugees} and the 1967 \textit{Protocol},\textsuperscript{189} the \textit{European Convention on Human Rights} (ECHR), \textit{European Charter of Fundamental Rights} (EUCFR), and numerous ILO conventions and recommendations that set international minimum standards for labor rights.\textsuperscript{190}

3. European Law:

Although labor and employment legislation are created at national level, some aspects have come under European regulation, most notably the Directive 2013/33/EU of the European Parliament and of the Council, of 26 June, 2013, laying down standards for


\textsuperscript{188} Putz, \textit{Das luxemburgische Arbeitsrecht}, 16.


\textsuperscript{190} Putz, \textit{Das luxemburgische Arbeitsrecht}, 19.
the reception of applicants for international protection, as well as the Equality
Directives. With these instruments, as listed in table 2, EU law sets minimum standards
of protection against discrimination in all member states: of course, member states may
choose to enlarge the scope of protection in their national legislation, but they may not
provide less protection than what has been established through EU legislation.

Table 2: European anti-discrimination laws applicable to all member states.

<table>
<thead>
<tr>
<th>EU Directive</th>
<th>Grounds of discrimination</th>
<th>Grants protection in the fields of:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Racial Equality Directive 2000/43/EC</td>
<td>Racial or ethnic origin</td>
<td>Access to employment (recruitment); Working conditions including pay and dismissal; Occupational pensions; Vocational training; Access to self-employment/ other forms of occupation; Social protection (including social security and health-care); Education; Access to and supply of goods and services, including housing.</td>
</tr>
<tr>
<td>Employment Equality Directive 2000/78/EC</td>
<td>Religion or belief, disability, age or sexual orientation</td>
<td>Working conditions, including pay and dismissal; Occupational pensions; Access to employment (recruitment); Vocational training; Access to self-employment/ other forms of occupation.</td>
</tr>
<tr>
<td>Gender Equality Directive 2006/54/EC (in relation to employment); Gender Equality Directive 2004/113/EC (in relation to goods and services); Gender Equality Directive 79/7/EEC (in relation to social security)</td>
<td>Gender (including pregnancy and maternity; discrimination arising from gender reassignment)</td>
<td>Access to employment (recruitment); Working conditions including pay and dismissal; Occupational pensions; Vocational training; Access to self-employment/ other forms of occupation; Social security; Access to and supply of goods and services.</td>
</tr>
</tbody>
</table>


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Directive 2013/33/EU of the European Parliament and of the Council, of 26 June, 2013, laying down standards for the reception of applicants for international protection, defines standards for refugees’ access to employment and vocational training in articles 15 and 16, respectively. According to article 15, all EU member states shall grant refugees’ access to the labor market:

1. After a maximum wait period of nine months since filing their application for international protection;

2. In an effective manner, in accordance with their national laws. Article 15(2) explicitly allows to prioritize other groups of job-seekers over refugees: “For reasons of labour market policies, Member States may give priority to Union citizens and nationals of States parties to the Agreement on the European Economic Area, and to legally resident third-country nationals.”

3. Throughout the duration of appeals procedures, until a negative decision on such an appeal is issued.

Directive 2013/33/EU was transposed into Luxembourg national law through the law of December 18, 2015. In July 2016, the European Commission submitted a proposal to recast the EU directive. This most recent proposal advises to reform the following points regarding labor market access for refugees:

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1. To reduce the wait period from nine to no longer than six months, encouraging member countries to reduce the wait period to three months when the application is well-founded;

2. To make sure refugees receive effective labor market access, in spite of the existing rules that prioritize other groups of job-seekers (the so-called “labor market tests”).

The Commission’s proposal (in paragraph 35) thus recognizes that labor market tests pose a real obstacle to refugees’ integration into the labor market, yet makes no specific proposal to abrogate or modify this rule. Paragraph 36 proposes important steps to guarantee equal treatment of refugees in national EU labor markets:

(36) Once applicants are granted access to the labour market, they should be entitled to a common set of rights based on equal treatment with nationals. Working conditions should cover at least pay and dismissal, health and safety requirements at the workplace, working time and leave, taking into account collective agreements in force. Applicants should also enjoy equal treatment as regards freedom of association and affiliation, education and vocational training, the recognition of professional qualifications and social security.195

Paragraph 37 addresses refugees’ special difficulties regarding the recognition of their credentials and suggests that professional qualifications acquired in another EU country should be recognized across the EU, equally to that of citizens. Qualifications from a third country should be treated in accordance with EU Directive 2005/36/EC196 – a directive that was initially aimed at harmonizing recognition procedures inside the EU,

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only extending to the other European Economic Area (EEA) countries and to Switzerland under certain conditions. In brief, the directive sets up a system for the recognition of professional qualifications that revolves around three types of recognition:

1. automatic recognition for professions where harmonized minimum training conditions exist, e.g., for doctors, nurses, midwives, dentists, pharmacists, architects.

2. general system for (nationally) regulated professions, e.g., teachers, translators.

3. recognition on the basis of professional experience for activities such as carpenters, plumbers, estheticians.\(^{197}\)

The Commission’s 2016 proposal to apply EU Directive 2005/36/EC to professional qualifications from other third countries – which could, in practice, include all countries outside the EU – is a significant step towards opening up the EU labor market to employees world-wide.

1. Labor Code:

As mentioned above, all national laws that immediately regulate labor and employment are compiled in the Luxembourgish Labor Code of 2006.

2. Decrees:

To regulate the specifics of labor law implementation and execution, the Grand Duke emits decrees. Unlike the 2006 Labor Code, the entire collection of grand-ducal

decrees has not yet been codified, which means that there are incoherences between the 2006 Labor Code and previously existing grand-ducal decrees.\footnote{Putz, \textit{Das luxemburgische Arbeitsrecht}, 22.}

3. Contract Law:

Most important in labor-related contract law are: (i) the individual employment contract, upon which an employment relationship is established and which regulates all aspects of the relationship between the employer and the employee directly. Individual employment contracts may contain unilateral (nonreciprocal) regulations, giving the employer the authority to issue directives;\footnote{Putz, \textit{Das luxemburgische Arbeitsrecht}, 24, 29. Of course, these employer-directives must comply with the relevant laws.} (ii) the collective labor contracts, established between unions as employee representatives and one or several employers or employer’s organizations. These are usually established at national level, taking into consideration EU framework legislation, e.g., regarding parental and family leave.\footnote{Putz, \textit{Das luxemburgische Arbeitsrecht}, 24.}

To summarize, Figure 1 gives an overview of all legal components that regulate individual employment and collective labor relationships in Luxembourg, in hierarchical order. Regardless of hierarchy, the more favorable law applies – as is the case, for example, regarding European anti-discrimination laws: if a national law provides more protection against discrimination than is mandatory under EU law, national law prevails (although it is second to EU law in terms of hierarchy).\footnote{Putz, \textit{Das luxemburgische Arbeitsrecht}, 30-31.}
Laws applying specifically to refugees and asylees are rather new to Luxembourgish legislation. As shown in chapter 2.2, there was no historical development of refugee and asylum laws comparable to the United States. The phenomenon of double immigration almost freed the state from caring for those who came to fill the upper echelons in the labor market – these labor migrants were economically successful and thus usually highly independent. Immigrants who came to perform low-wage labor were subject to the state’s policies that overtly favored specific groups of immigrants, e.g., from Portugal, for their cultural and religious affinity to Luxembourg’s society. The few instances when important numbers of asylum seekers reached the country were handled
through ad-hoc directives. Only with the expansion of the European Union and its jurisdiction have asylum and refugee laws begun to emerge at national level.

Two different statuses of international protection are known today:

1. Refugee status (according to the definition provided in the 1951 *Convention* and *Protocol*);

2. Subsidiary protection status (for people who have not been recognized as refugees, but who are allowed to stay, as a return to their home country would violate the *European Convention on Human Rights* of 1950); 202

Additionally, there is the possibility to grant temporary protection status, in the event of a major influx of people who have had to leave their country in an emergency and who cannot return to their country at present. However, this status represents an exception and has not been applied until today. 203

Applications for protection can only be presented in person: at the Ministry of Foreign and European Affairs (MAE), at the airport, or at any police station and detention facility in Luxembourg. An application is valid if the applicant meets the above definition of refugee or subsidiary protection status, and if Luxembourg is the first “safe country” where the applicant places her first request for protection (in line with the EU’s Dublin regulations). Given Luxembourg’s geographical location at the center of Europe, it is difficult – almost impossible – for a refugee from a non-European country to reach Luxembourg without first touching ground in another European country. Hence a large

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part of successful applicants are in fact those whom Luxembourg accepts to resettle under European relocation plans.  

While their application is pending, applicants receive a certificate (the “pink card”) allowing them to stay and circulate freely in Luxembourg for the time of the application process. This card has to be renewed monthly and is neither a valid identification nor a permit of residency (as such, the card is not valid for traveling outside the country). Applicants also receive explanations about the process in their language, and have the right to an interpreter and to legal assistance. They are immediately assigned a social worker from the Luxembourg Reception and Integration Agency, OLAI, who is to assist with all questions regarding the application process and settlement in Luxembourg.

While their application is pending, refugees may be granted a temporary work authorization (autorisation d’occupation temporaire, AOT). Application for AOT may be submitted by the applicant or by a prospective employer to the ADEM, no earlier than six months after the application for asylum was submitted. It is valid for six months and

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206 “Applying for international protection.”

can be renewed. However, the AOT is subject to numerous restrictions: besides the long wait period before, and short validity after application, the applicant must meet eligibility criteria derived from his asylum application. Then, the AOT application is subject to the same restrictions that apply to other third-country nationals: first, the employer has to register the position as a vacancy with ADEM before an application for AOT can be filed, then, ADEM will determine whether there is an EU-national registered in their database who qualifies for the same position. Only if there is no potential candidate previously registered with ADEM can the applicant for international protection receive AOT and, eventually, employment. This AOT will still be restricted to one specific profession and one single employer.208

Once an applicant is granted international protection status, she receives a residence permit marked “international protection,” valid for five years and renewable, if the conditions leading to international protection are still met.209 This permit of residency is granted by the Ministry of Foreign and European Affairs, MAE, and no separate work permit is required (single permit policy).210 Under a status of international protection, beneficiaries may travel freely within the Grand Duchy. People with refugee status are entitled to travel documents that allow them to travel outside of Luxembourg, while those under subsidiary protection status are usually required to present a passport of their own


210 Nienaber, Petry, and Sommarribas, Integration of beneficiaries in Luxembourg, 16.
in order to receive travel documents from the Grand Duchy. In both cases, if the beneficiaries of international protection return to their country of origin, they may lose their status.211

For beneficiaries of international protection,212 the labor market is now theoretically accessible under the same conditions as it is for Luxembourgish citizens: with the exception of employment in civil service (which is restricted to Luxembourg and EU nationals), there are no legal barriers for refugees and recipients of subsidiary protection to access the labor market and all corresponding support measures aimed at facilitating a successful entry to the labor market, including language classes, vocational training, job counselling, diploma recognition, etc.213 Access to social security benefits, housing, health care and education in general is also open to the asylee under the same conditions as to Luxembourg citizens.214 It is important to note, though, that “equality of access” to the labor market and its related support measures also means that none of these measures are specifically targeted at, nor tailored to, the recipients of international protection – they potentially serve every person legally residing in Luxembourg.


212 In terms of accessing the labor market, refugee status and subsidiary protection status can be treated as one category, which I will synonymously refer to as “international protection” and/or “asylee” status. Differences between refugees and recipients of subsidiary protection remain only as to the modalities of issuing travel documents, as well as to laws which have not yet been adapted to the new, harmonized status of refugee and subsidiary protection. Thus, some previously existing laws (mainly regarding social security benefits) still refer to only one of the two statuses, when they should in fact encompass both statuses uniformly. For a detailed list, see: Nienaber, Petry and Sommarribas, Integration of beneficiaries in Luxembourg, 8-9. For the recipients of temporary protected status, rights are much more restrictive. However, since this status has not been granted to date, it will not appear in this analysis. For more information, see: Nienaber, Petry and Sommarribas, Integration of beneficiaries in Luxembourg, 10-12.

213 Nienaber, Petry and Sommarribas, Integration of beneficiaries in Luxembourg, 4-5.

214 “Rights conferred by international protection.”
Furthermore, there is no inter-institutional coordination between the institutions involved. For each support measure, the applicant must submit a separate application to the institution in charge. Applicants may receive help through their assigned social worker from OLAI while their application is pending, but this support ends as soon as international protection status is granted. This transition period from applicant to beneficiary of international protection leaves asylees in a fragile situation: benefits they received throughout the application process end abruptly, yet the time until they find employment and receive their first salary to support themselves might be long and causes financial hardship. Since OLAI is no longer responsible, and since there is no integrated counselling service, beneficiaries of international protection largely rely on the help of NGOs during the transition period between their status approval and their effective economic independency.215

In the absence of labor market integration policies or laws specifically tailored to the holders of international protection, two existing instruments stand out as being relevant for their labor market integration. One is the Welcome and Integration Contract (CAI) established by the law of 16 December 2008, on the reception and integration of foreigners.216 The second is the Labor Code of 2006, which protects all employees, especially through its anti-discrimination provisions under Title V.

215 Nienaber, Petry and Sommarribas, Integration of beneficiaries in Luxembourg, 13, 17. Several NGOs assist the recipients of international protection in Luxembourg, though none of them exclusively. A list can be found at Nienaber, Petry and Sommarribas, Integration of beneficiaries in Luxembourg, 33-35. In case of hardship, OLAI may still cover urgent expenses, although these are usually recovered from the recipient as soon as she is able to repay the financial advances. See: Nienaber, Petry and Sommarribas, Integration of beneficiaries in Luxembourg, 45.

The CAI is a voluntary contract that can be signed between OLAI as representative of the state and any foreigner of 16 years or older who legally resides in Luxembourg, including those granted international protection status. It offers a language training course (to acquire a basic level in one of Luxembourg’s three official languages), a citizenship training, and an orientation course on the most important state institutions in Luxembourg. Besides offering these three courses at reduced or no cost, and bringing together newly arrived residents in Luxembourg, the CAI also counts at a later stage, when applying for citizenship or permanent resident status. 217 “For OLAI, the CAI constitutes a flagship tool for the implementation of the integration policy of foreigners.” 218

Under Luxembourgish legislation, a person who is granted the status of international protection may access the labor market under the same conditions as Luxembourg nationals, hence the Labor Code of 2006 applies to a beneficiary of international protection who has secured employment, and grants him the same rights and obligations as Luxembourgish employees. As I mentioned before, equal access also means that there are no special mechanisms of help or support – the beneficiary of international protection, who is new to the country and has so far received support to navigate the administrative channels leading to his five-year residence permit in Luxembourg, is now placed into the same pool of competitors for employment as every


218 Nienaber, Petry and Sommarribas, Integration of beneficiaries in Luxembourg, 19.
citizen in search of employment, some of whom may well have spent their entire life in the Grand Duchy.

The *Labor Code* does not grant any privileges for asylees, it does in fact not even guarantee them “equal treatment” at work – similar to the U.S. model, the only special protection is that of non-discrimination. The principle of equality would require that all employees who are in a comparable situation, i.e., who can be said to constitute a specific group or category, be treated equally.\(^{219}\) In contrast, the principle of non-discrimination prohibits differential treatment when it is based on specific criteria, as defined in Title V of the Labor Code: Article L. 251-1 (1) prohibits direct and indirect discrimination based on religion or belief, disability, age, sexual orientation, as well as racial or ethnic origin.\(^{220}\) Discrimination represents one form of unequal treatment, yet not every unequal treatment is discriminatory. Both concepts evolved at different times in the Luxembourg legislation, and while the *Labor Code* explicitly forbids discrimination, unequal treatment of employees can be justifiable and is de facto not forbidden.\(^{221}\) In the absence of a definition of “discrimination” and “equal treatment” specific to the Labor Code, however, confusions occur and terminology is not applied coherently throughout the text. Interestingly, the concept of equality is clearly applied to one field of labor law: men and

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\(^{221}\) Putz, *Discrimination*, 23. Note: French labor legislation requires the employer to implement equality in all decisions – thus going much further than the requirement of non-discrimination; see: Putz, *Das luxemburgische Arbeitsrecht*, 166.
women are to receive equal payment for equal types of work. All other forms of unequal treatment at work may be considered legal, as long as they are not based on one of the grounds protected by Art. 251-1(1). Gender equality provisions and those against discrimination made their entry into Luxembourg’s employment law at different points in time: gender inequality came onto the political agenda during the 1970ies, while anti-discrimination laws only appeared with European directives 2000/43/CE (Racial Equality) and 2000/78/CE (Employment Equality) in the year 2000. The Racial Equality Directive was to be implemented by July 19, 2003; the Employment Equality Directive was supposed to be applied in all member states by December 2, 2003; both found their entry into Luxembourgish legislation only at the end of 2006, with the publication of the new Labor Code. In the meantime, it seemed as if there was no need to change anything: neither public nor political debates addressed discrimination as a pressing topic. Broadly speaking, the idea was that since the text of Luxembourgish labor laws did not discriminate towards anyone per se, this meant that equality reigned and that nobody ever had to experience discrimination at work. The idea of a possible gap between textual / legal equality (de jure) and factual / real equality (de facto) had not yet reached public debate. Borrowing the words of psychology professor Daniel Kahnemann, the attitude

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222 Putz, Discrimination, 23.


was “WYSIATI, which stands for what you see is all there is”227 – Luxembourg’s legislators perceived no discrimination at work, and hence saw no need to enact new laws for special protections. When it came to the implementation of EU regulations against discrimination, Luxembourg’s legislative action seemed more reactive than proactive. Critics point out that this attitude persisted well into the 2010’s, saying that the *Labor Code* only transposed the minimum anti-discrimination directives into Luxembourgish laws in order to comply with the EU framework, but that there was no innovation, no national political will or agenda to drive change.228

Today, laws against discrimination are codified in two different parts of the *Labor Code*: gender equality is prescribed under Title IV, and discrimination on the grounds of religion or belief, disability, age, sexual orientation, as well as racial or ethnic origin is forbidden under Title V. Title V applies to the entire ‘employment lifecycle’: it protects (potential) employees against discrimination from the publication of a job offer and access to employment, to promotions and job-related training to working conditions, salary and benefits, up to the reasons for and conditions of termination.

Before hiring a potential candidate who is not a citizen of one of the EU member states, the employer is required to verify their permit of residence and to confirm that the employee is a legal resident of the Grand Duchy. EU Directive 2009/52/CE holds the employer responsible and defines sanctions at administrative level, but also criminal and civil charges, for employers who are found to hire employees without valid status of


residence.229 Direct discrimination is obviously prohibited by law at any point in the employment relationship, unless it is immediately related to the nature of a specific job,230 or if it serves the purpose of positive discrimination. Positive discrimination is meant to foster diversity among employees. In this spirit, the state actively promotes the hiring of disabled employees through quota regulations that are binding on employers; for all other groups, employers are free to decide whether or not they chose to introduce a quota system.231 Indirect discrimination is also forbidden by law, but much harder to prove in practice: to build a case of indirect discrimination, an employee needs to show that a seemingly neutral practice related to their working environment places her in a worse position than other, comparable employees in the same situation and that this disadvantage is causally due to her belonging to one of the protected groups. Since the proof may not be obvious, statistical data can be introduced as proof – in practice, however, plaintiffs seldom bring cases of indirect discrimination to court.232

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230 A famous example is the hiring of an actor to play a specific role – here, the employer may discriminate on the basis of age and other protected categories. See: Putz, Das luxemburgische Arbeitsrecht, 172.

231 Putz, Das luxemburgische Arbeitsrecht, 62.

232 Putz, Das luxemburgische Arbeitsrecht, 174-175.
An additional layer of protection for employees is added by the European framework agreement on harassment and violence at work, which has not yet become EU law. The EU framework agreement defines harassment and violence as follows:

Harassment occurs when one or more worker or manager are repeatedly and deliberately abused, threatened and/or humiliated in circumstances relating to work. Violence occurs when one or more worker or manager are assaulted in circumstances relating to work. Harassment and violence may be carried out by one or more managers or workers, with the purpose or effect of violating a manager’s or worker’s dignity, affecting his/her health and/or creating a hostile work environment.

While the text certainly helps to raise awareness and sensibility levels for the various forms of discrimination that may be faced at work, it is highly theoretical: first, it is based on very subjective terms, e.g., the notion of dignity and hostility. Furthermore, the burden of proof is on the plaintiff, thus requiring the victim to provide very detailed accounts that cover a large period of time and usually need witnesses to confirm the account of an individual victim – all of which may be difficult to provide in cases of serious harassment.

In summary, US legislation and Luxembourg’s legislation show vast similarities when it comes to the integration of refugees into the domestic labor market: in both countries, access to the labor market is restricted only for a limited period of time during the application process. Applicants for asylum in the United States have a wait period of

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150 days, and applicants for international protection in Luxembourg have to wait six months before they may access the labor market.\footnote{The wait period does not apply for refugees arriving to the U.S. under a resettlement program, they may start to work immediately. See: “Refugees & Asylum,” USCIS, accessed 10/28/2016, https://www.uscis.gov/humanitarian/refugees-asylum. For the current legislation in Luxembourg, see: Law of 18 December 2015, Article 6.} Once an applicant receives international protection status, access to the domestic labor market is granted under the same conditions as apply to the country’s citizens. Refugees are now free to search for and engage in employment under the same conditions as nationals – which also means that there are no special provisions accounting for the fact that refugees’ conditions for job searching in a new country are, in fact, not the same conditions as those faced by nationals who are searching for employment. In both countries, refugees who enter the labor market are protected by the same laws that apply to all citizens: international law, constitutional law, common and civil law provisions regarding contract and tort, as well as labor law for collective agreements and employment law regulating the individual employment relationship. The area that receives most attention when it comes to protecting refugees’ employment rights are anti-discrimination laws (under Title VII in the U.S., Title V in Luxembourg). Refugees can rely on their protection in case they have been discriminated against on the basis of a category protected under Title VII (U.S.) / Title V (Luxembourg). However, these laws have neither been tailored specifically to refugees (they apply to all employees in the country), nor do they recognize refugees as a protected group. While it is laudable that refugees do not face legal barriers to access the labor market and that their employment relationship benefits from the same legal protections that is granted to every legal worker on the territory, the inherent
contradiction is striking: In the United States as well as in Luxembourg, those who entered the country on the legal ground of deserving international protection do not form a “protected group” before the law any more once they have been admitted to the country. Inevitably, this opens a gap between their legal situation “in theory,” and the situation that refugees face in practice when they access (or try to access) the labor market. The following chapter provides national data to illustrate the situation in practice.
In countries with a long immigration history, like the United States and Luxembourg, highly specialized laws and institutions have developed to limit and to steer the inflow of migrants into their domestic labor market. The U.S. Department of State’s Bureau of Population, Refugees and Migration (PRM) operates the Reception and Placement Program, where nine domestic resettlement agencies work on a case basis to identify and eventually integrate refugees selected by the overseas Resettlement Support Centers (RSC). The resettlement agencies work to match the particular needs of each refugee with resources available in one of 190 local communities across all States. As described on the Department of State’s website, the goal is to allow each resettled refugee to become autonomous and to integrate into U.S. society as quickly as possible: “Based on years of experience, the U.S. refugee resettlement program has found that people learn English and begin to function comfortably much faster if they start work soon after arrival. Most refugees begin in entry-level jobs, even if they have high-level skills or education. With time, many if not most refugees move ahead professionally and find both success and satisfaction in the United States.”

In cooperation with the PRM, the Office of Refugee Resettlement (ORR) – an office of the Administration for Children and

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Families – provides assistance for eligible persons from their date of arrival onwards.\textsuperscript{237} To fulfill its mandate, ORR cooperates with local service providers, for example nonprofit organizations specializing in employment services.

In Luxembourg, the Reception and Integration Agency (L'Office luxembourgeois de l'accueil et de l'intégration), OLAI, was created by the law of 16 December 2008, under the administration of the Ministry of families, integration, and the greater region. Its mission is to implement and to coordinate the policies of reception and integration to the Grand Duchy, to facilitate the integration process for foreigners, and to study migration flows. OLAI represents the Grand Duchy of Luxembourg at the European and at the international level, for example at the European Union, the Council of Europe, the OECD, and the UN.\textsuperscript{238} At national level, they cooperate with most Ministries and Government Agencies, most importantly with the Ministry of Foreign and European Affairs, MAE, and the Employment Agency, ADEM. Since OLAI is mandated to support applicants for international protection only up to the time they obtain official status as BIP, OLAI recently launched a cooperation with the Luxembourgish Red Cross, creating the “LISKO” agency (in June 2016). LISKO, Luxembourg’s Center for Integration and


Social Cohesion, is mandated to support BIPs (after obtaining status) on their path to integration in Luxembourg, including integration into employment.\(^{239}\)

This chapter draws on the experience collected through a series of expert interviews that I conducted in the Fall of 2016. As experts in the field of labor market access for refugees, my interview partners work for government agencies or for nonprofit organizations either in the United States or in Luxembourg. At government level, I conducted interviews with the first- or second-level representatives of four state agencies: the California Department of Social Services and the Massachusetts Office for Refugees and Immigrants (ORI), both mandated directly through ORR; the Immigration and Asylum Directorate at the Luxembourgish Ministry of Foreign and European Affairs (MAE), as well as the LISKO agency, under the administration of OLAI and Luxembourg’s Ministry of Families, Integration, and the Greater Region.\(^{240}\) Additionally, I interviewed people in charge of refugees’ labor market integration at two representative NGOs in each country. I consider them representative due to the following (shared) attributes: their work focuses on refugees’ labor market integration, they have long-term experience with the topic (≥ 30 years), and are involved at state and/or national policy level through direct cooperation with at least one of the four state agencies mentioned above. Taken together, these interviews illuminate the situation in practice: How successful are refugees’ attempts to enter the domestic labor market? What are the big


\(^{240}\) LISKO agency is an “hybrid”: operations are run by the Red Cross Luxembourg, in cooperation with OLAI, and under the direct mandate and funding of the Ministry of Families, Integration, and the Greater Region. I therefore decided to categorize their interview responses as representing a government perspective, although I recognize this choice might be challenged.
challenges they encounter today? And how does the national legal context support or hinder refugees’ employment?

Data and Cross-Country Comparisons

Before analyzing the responses of my interview partners, table 3 provides some key indicators on the labor market situation that refugees face in their destination country. While the focus is on Luxembourg and the United States, data for France and Germany is included because it helps to locate data from Luxembourg in a larger European context.

Table 3: Labor market situation for refugees arriving to the U.S. or Luxembourg, key indicators.

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<th>United States</th>
<th>Luxembourg</th>
<th>Germany</th>
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<tbody>
<tr>
<td><strong>Operates Resettlement Program</strong></td>
<td>Yes (USA is world’s top resettlement country)</td>
<td>No</td>
<td>Yes (established in 2007)</td>
<td>Yes (established in 2007)</td>
</tr>
<tr>
<td><strong>Population</strong></td>
<td>323,995,528</td>
<td>582,291</td>
<td>80,722,792</td>
<td>66,836,154</td>
</tr>
<tr>
<td><strong>Labor Force</strong></td>
<td>156,400,000</td>
<td>265,800</td>
<td>45,040,000</td>
<td>29,840,000</td>
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<tbody>
<tr>
<td>Native-born participation rate (in %) 245</td>
<td>71.1</td>
<td>64.3</td>
<td>78.5</td>
<td>71.7</td>
</tr>
<tr>
<td>Foreign-born participation rate (in %) 246</td>
<td>73.4</td>
<td>77.6</td>
<td>74.1</td>
<td>67.3</td>
</tr>
<tr>
<td>Native-born employment rate (in %) 247</td>
<td>66.5</td>
<td>61.5</td>
<td>74.9</td>
<td>64.9</td>
</tr>
<tr>
<td>Foreign-born employment rate (in %) 248</td>
<td>69.1</td>
<td>72</td>
<td>68.3</td>
<td>56.2</td>
</tr>
<tr>
<td>Total unemployment rate (in %) 249</td>
<td>5.2</td>
<td>6.9</td>
<td>4.8</td>
<td>9.9</td>
</tr>
<tr>
<td>Native-born unemployment rate (in %) 250</td>
<td>6.5</td>
<td>4.4</td>
<td>4.5</td>
<td>9.5</td>
</tr>
</tbody>
</table>

245 “Native-born participation rate (in 2014),” OECD data, accessed 10/06/2016, https://data.oecd.org/chart/4Dod. The native-born participation rate is calculated as the share of employed and unemployed native-born persons aged 15-64 in the total native-born population (active and inactive persons) of that same age.

246 “Foreign-born participation rate (in 2014),” OECD data, accessed 10/06/2016, https://data.oecd.org/chart/4Doe. The foreign-born participation rate is calculated as the share of employed and unemployed foreign-born persons aged 15-64 in the total foreign-born population (active and inactive persons) of that same age.

247 “Native-born employment (in 2014),” OECD data, accessed 10/06/2016, https://data.oecd.org/chart/4Doa. Calculated as the share of employed native-born persons aged 15-64 in the total native-born population (active and inactive persons) of that same age. Employed people are those who worked at least one hour or who had a job but were absent from work during the reference week.

248 “Foreign-born employment (in 2014),” OECD data, accessed 10/06/2016, https://data.oecd.org/chart/4Do7. The foreign-born employment rate is calculated as the percentage share of employed foreign-born persons aged 15-64 in the total foreign-born population (active and inactive persons) of that same age.


250 “Native-born unemployment (in 2014),” OECD data, accessed 10/06/2016, https://data.oecd.org/chart/4Doc. The native-born unemployment rate is calculated as the share of unemployed native-born persons aged 15-64 in the native-born labor force (the sum of employed and unemployed native-born) of that same age. Unemployed persons consist of those who report that they are without work during the reference week, are available for work and have taken active steps to find work during the four weeks preceding the interview.
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<tbody>
<tr>
<td>Foreign-born unemployment rate (in %) 251</td>
<td>5.8</td>
<td>7.2</td>
<td>7.9</td>
<td>16.6</td>
</tr>
<tr>
<td>Net Migration Rate 252 (per 1,000 inhabitants)</td>
<td>3.9</td>
<td>16.3</td>
<td>1.5</td>
<td>1.1</td>
</tr>
<tr>
<td>Positive decisions on asylum applications in 2015 253</td>
<td>69,933 254</td>
<td>255</td>
<td>148,725</td>
<td>26,635</td>
</tr>
<tr>
<td>Positive decisions on asylum applications from 2008 – 2015 (cumulated) 255</td>
<td>532,664 256</td>
<td>1,205</td>
<td>296,785</td>
<td>122,595</td>
</tr>
</tbody>
</table>

251 “Foreign-born unemployment (in 2014),” OECD data, accessed 10/06/2016, https://data.oecd.org/chart/4Do6. Calculated as the share of unemployed foreign-born persons aged 15-64 in the foreign-born labor force. Unemployed people consist of those persons who report that they are without work during the reference week, are available for work and have taken active steps to find work during the four weeks preceding the interview.

252 “The World Fact Book,” CIA 2016, accessed 9/26/2016, https://www.cia.gov/library/publications/resources/the-world-factbook/fields/2112.html. Definition of net migration rate: “… the figure for the difference between the number of persons entering and leaving a country during the year per 1,000 persons (based on midyear population). … The net migration rate indicates the contribution of migration to the overall level of population change. The net migration rate does not distinguish between economic migrants, refugees, and other types of migrants nor does it distinguish between lawful migrants and undocumented migrants.”


Despite the continued public and political focus on refugees and a general understanding that labor market participation is crucial to refugees’ integration success, systematic research into the labor market outcomes of refugees is scarce. Existing studies usually focus on small samples of relocated refugees, especially in the United States, with

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<tbody>
<tr>
<td><strong>Refugee share of the total population (in 2015)</strong>$^{257}$</td>
<td>0.1%</td>
<td>-</td>
<td>0.3%</td>
<td>0.4%</td>
</tr>
<tr>
<td><strong>Refugees accessing the labor market (cumulative inflow 2014 – 2016, as % share of total national labor force)</strong>$^{258}$</td>
<td>-</td>
<td>0.4%</td>
<td>1%</td>
<td>0.4%</td>
</tr>
<tr>
<td><strong>Budgetary expenses for asylum seekers in 2016 (% of GDP)</strong>$^{259}$</td>
<td>-</td>
<td>0.09</td>
<td>0.35</td>
<td>0.06</td>
</tr>
</tbody>
</table>

Sources: See specific source for each entry (footnotes).


its long commitment to – and experience with – refugee resettlement. They often measure short-term goals, as defined by government administrators, rather than by refugees’ experience of labor market integration. These focused studies hardly allow one to deduce general rules about refugees’ success in entering the labor market, and large, quantitative studies with randomized experimental settings are missing. Nevertheless, existing studies reveal an important commonality: there is consensus on the biggest challenges, as well as on promising pathways to success. In her “global meta-study focused on labour market integration of resettled refugees” for the UNHCR, Eleanor Ott identifies ten promising practices to foster the labor market integration of refugees:

1. Research and monitoring on the needs of refugees and employers
2. Managing pre-resettlement expectations
3. Individualized / tailored employment plans-of-action
4. Outreach and partnering with employers / the private sector
5. Placements with employers

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263 Ott, *The Labour Market Integration of Resettled Refugees*, 19-20. The author carefully reminds the reader that the listed variables show correlations with refugees’ success in entering their host country’s labor market – not causations!

6. Vocationally-focused language courses with integrated work experience
7. Assistance with recertification
8. Partnering with the broader community (e.g., through mentoring programs)
9. Expand refugees’ employment opportunities through microenterprise and alternative employment programs
10. Establish mechanisms for sharing good practices

Ott’s meta-study analyzed studies from the English-speaking world, and included only countries with a well-established refugee-resettlement program.265 However, her findings are echoed through another international study from 2016, which focused on European countries. This study by the European Parliament’s Directorate General for Internal Policies includes countries with little or no experience in operating resettlement programs. Similar to Ott, the authors find “a high degree of international consensus on key elements for a successful integration strategy,”266 namely:

1. Access to healthcare, with specific offers tailored to refugees’ needs upon arrival – studies show that good health augments chances for employment and for social integration more broadly;267
2. Housing coupled to employment opportunities: in case of large refugee inflow, the free choice of residency should be balanced with a realistic assessment of available infrastructure for refugee reception, including language classes, education and work opportunities.268

265 Ott, *The Labour Market Integration of Resettled Refugees*, 41-42.
266 Konle-Seidl and Bolits, *Labour Market Integration of Refugees*.
3. Strong engagement of the civil society: actors from every part of civil society should get involved to support refugee integration. Since integration is considered a two-way process, frequent interaction can help refugees find their way faster in their new environment. The emphasis is on “creating strong legal and operative anti-discrimination frameworks but also by raising the awareness of the importance of anti-discrimination. Access for immigrants to institutions and services, on a basis equal to national citizens and in a non-discriminatory way, is a critical foundation for better integration.”269

4. Early access to the labor market: Since prolonged periods of inactivity make it more difficult for refugees to access the labor market, they should receive permission promptly, possibly already during the asylum application process. Although EU Directive 2013/33/EU, Article 15 (1), promulgates a maximum wait period of nine months after placing an asylum application,270 refugees often face a different situation when they try to access the labor market. Applications may get delayed through backlogs or additional requirements. For example, many European countries require prospective employers to prove that no EU-citizen could have filled the position in question before a refugee can be hired.271

5. Offer language tuition and skills assessments as early as possible, ideally in combination with civic instruction and practical work experience;272

269 Konle-Seidl and Bolits, Labour Market Integration of Refugees, 31.

270 Luxembourg fulfills this requirement through the Law of 18 December 2015, Article 6, which establishes a wait period of six months.

271 Konle-Seidl and Bolits, Labour Market Integration of Refugees, 33.

272 Konle-Seidl and Bolits, Labour Market Integration of Refugees, 37.
6. Facilitate the recognition of foreign credentials, including alternative methods of assessing informal learning and work experiences;\textsuperscript{273}

7. Provide quality counselling to develop an individualized integration plan;\textsuperscript{274}

8. Offer job search assistance, including the use of quality mentoring by business/employers and targeted entry subsidies for employers;\textsuperscript{275}

9. Open the general employment support for refugees: as soon as language is no longer a major obstacle, refugees can benefit from training measures and other “mainstream” support available to all unemployed.\textsuperscript{276}

10. Ensure the implementation of comprehensive and coordinated policies, including horizontal co-ordination with stakeholders and civil society organizations, i.e., NGOs, at the local level to provide quality services. At the same time, all government actors involved need to ensure vertical and horizontal coordination among themselves at regional and national level. The study authors recommend a multi-stake holder’s approach, characterized by solid and consistent coordination mechanisms, and involving a broad range of partners from Ministries and government agencies at national, regional and local level, as well as NGOs, the social partners and service providers.\textsuperscript{277}

\textsuperscript{273} Konle-Seidl and Bolits, \textit{Labour Market Integration of Refugees}, 37.

\textsuperscript{274} Konle-Seidl and Bolits, \textit{Labour Market Integration of Refugees}, 36-37.

\textsuperscript{275} Konle-Seidl and Bolits, \textit{Labour Market Integration of Refugees}, 40-41.

\textsuperscript{276} Konle-Seidl and Bolits, \textit{Labour Market Integration of Refugees}, 9, 35-36.

\textsuperscript{277} Konle-Seidl and Bolits, \textit{Labour Market Integration of Refugees}, 42.
Which of the above recommendations work in practice? Governments in the United States as well as in Luxembourg continuously develop their policies to address the challenges that refugees face upon entering the labor market. Yet, generalizable knowledge or rules remain scarce. Good practices are often difficult to transfer to a different context; and information transfer, as well as the coordination of activities between involved partners, remain a challenge in day-to-day practice. The expert interviews I conducted with government officials and NGO representatives reveal strengths and potentials that can create a real positive impact on refugees’ access to the labor market in Luxembourg and in the U.S. The following section presents these results under four thematic clusters: Refugees’ access to the labor market, the job-search process, institutional involvement and coordination, and evolution of the laws regarding refugees’ access to employment. Since I asked my interview partners to speak for their state or country in general, responses will be differentiated mainly along two lines: geographical location, and whether they represent a government or NGO specific perspective. Other attributes, like hierarchical position and years of experience are mentioned when necessary, but the focus is on common viewpoints and agreements.

USA: Interviews

I. Interview partners: In the United States, I conducted interviews with two ORR representatives, the State Refugee Coordinator for the State of California and the Director of Workforce Development at the Massachusetts Office for Refugees and Immigrants. I

278 All interviews were conducted in the Fall of 2016, either by phone or in person. For a detailed interview schedule and a full transcript of each interview, see Appendix 1.
also spoke to the Employment Department Coordinator and the Manager of Refugee Services, respectively, at two NGOs whose main task is the integration of refugees into employment.279

II. Refugees’ access to the labor market: Although my Massachusetts-based interview partners usually began by stating that refugees’ access to the labor market is comparable to that of U.S. citizens, they later modified this statement to put it in perspective. In the end, all interviewees concluded that labor-market access is more difficult for refugees – notwithstanding the fact that the labor market in Massachusetts is growing and currently offering more job opportunities than the Californian labor market. The main challenges were identified at four different levels:

1. Availability of matching jobs: In Massachusetts, the focus clearly is on entry level jobs, concentrated in the hospitality and service industries, as well as in low-end packaging and assembly-line types of work, that seem to be available throughout the state. My interview partner in California pointed out the difficulty in finding any matching jobs above entry-level. All interviewees agreed that the prevailing labor market conditions decisively influence refugees’ chances of success on the labor market: employer demand is decisive.

2. Employer awareness: Employers are often insecure about a refugees’ legal status and his/her authorization to work. Making clear and easy-to-access legal information available to (all) potential employers would facilitate refugees’ integration into the labor market. Interview partners in Massachusetts also noted a positive trend among well-informed employers. They detected an increasing

279 Both NGOs are based in Massachusetts. Although I wished to include an NGO from the state of California, my repeated attempts to find and interview partner there had no success, unfortunately.
interest from employers in the security industry, e.g., at airports, to hire refugees, because these employers know and trust the complex security screenings that refugees had to go through before being admitted to the United States.

3. Labor-market skills: English language skills and job skills obviously facilitate refugees’ labor market integration. That’s why all interviewees support the active promotion of language skills, ideally in a job-related context to foster a broader set of relevant skills at the same time. (e.g., job application skills and basic computer skills coupled with English language learning.)

4. Personal and Cultural context: Adapting to a new culture and organizing a new life in a previously unknown community needs time. Networks have to be built, and refugees need to deal with most essential aspects of their lives before they can be fully available for work-life, especially health and childcare, but also social life and mobility/transportation.

As main strengths of the labor market, my interview partners named the prosperous economy which creates jobs that are available and immediately accessible for refugees, thus avoiding long, inactive wait periods. Another strength specific to the U.S. is the availability of targeted programs that are designed to help refugees find a first job, and the characteristics of the refugees themselves who sometimes arrive with very valuable skills and are typically seen as bringing a strong motivation and strong work ethics to their future employment.

III. The job-search process: All interview partners identified barriers that affect refugees’ effectiveness during the job-search.
1. Diploma recognition represents the biggest challenge. Procedures to have qualifications from a foreign country recognized or re-certified are complicated, lengthy, and costly – making it especially tough for higher-qualified newcomers to find a job that matches their professional qualification.\footnote{The State Refugee Coordinator for California pointed to a general underlying issue with the way foreign qualifications are viewed in the United States.}

2. While all interviewees consider refugees’ qualifications upon arrival as helpful, they also acknowledge that these qualifications are not decisive to the outcome of their job-search. Time is scarce, as (economic) necessity forces refugees to take on available jobs, which are usually low entry-level jobs that require little previous qualification.

3. All interviewees confirm that refugees’ preferences are duly taken into account during the job-search process, and that they find work across all sectors of the U.S. economy. However, they find themselves under considerable time pressure: support services are only funded for the first few months after their arrival to the U.S., and refugees need to make sure they will soon be able to finance themselves (and their families). In practice, this leads to refugees being concentrated in entry level jobs of a few very specific sectors: hospitality and service industry, as well as low-level packaging and assembly-line work in manufacturing, retail, and in the healthcare sector.

4. Another barrier is access to information: refugees need to know whom to turn to in support of their job-search, and employers need to know whom to ask in case they want to verify or ask questions about refugees’ documentation and authorization to work in the United States.
5. Once refugees have found their way into jobs, there are no identifiable administrative barriers: work contracts and working conditions are considered the same as for all other U.S. residents in comparable jobs.

IV. Institutional involvement and coordination: Regarding the need for a tighter, centrally organized coordination between all actors involved in refugees’ labor market access, opinions varied considerably. ORR ensures the information exchange upon a refugee’s arrival to the U.S. However, once refugees arrive at their local community, interview partners at government level advocated for a de-central coordination, as each community is different and has its own needs as well as its own networks at local level. Practitioners in employment services agree to the benefits of independently managing refugees’ labor market integration at the community level, given that they know their communities’ needs and opportunities. However, they would welcome more initiatives of coordination and more opportunities to connect with all the different players who are engaged in refugees’ labor market integration.

While there is no institution in the U.S. that is specifically mandated to monitor the right to employment for refugees, my interview partners did not see this as a lack or a deficit: Once refugees are officially recognized as recipients of international protection, the same employment and labor laws that apply to every other U.S. worker apply to refugees. Hence, the institutions that are in place today are considered sufficient, and nobody mentioned the need for a specialized institution to monitor refugees’ right to work.281

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281 Referring to institutions that are already monitoring labor rights in general, and refugees’ rights to access the labor market in particular, my interview partners mentioned UNHCR, USCIS, the Department of Justice, and the Department of Labor.
As requested to identify possible improvements at institutional level that could promote refugees’ integration into the labor market, the item most often referred to was funding. Due to the limited time-period in which public funds are available, refugees’ integration into employment is dictated by economic needs. Due to their lack of U.S.-specific training and experience, refugees often have no other choice but to take on any low-level entry job available. If they had more time to receive job-targeted training and support, they could enter the labor market better prepared and obtain higher paying positions. This would require a shift in perspective: support programs would need to be designed with the refugee and her needs and requirements in mind as a starting point. Today, the reality is that financial and institutional requirements form the starting point in designing and implementing support programs. A successful program design would be centered around the recipient’s needs and also include institutional cooperation across all levels to ensure a teamwork approach among federal, state, and local partners, including partners who are more indirectly involved in labor market support, e.g., actors in housing and healthcare.

V. Evolution of the laws regarding refugees’ access to employment: While there were some cases of alleged discrimination that did not make their way to court, none of my interview partners could report an employment-related lawsuit initiated by a recipient of international protection – neither regarding labor or employment laws in general, nor any cases brought specifically because of discrimination.

None of the interviewees see the need to modify existing anti-discrimination laws: everyone agrees that refugees’ interests and needs of protection are sufficiently covered under existent anti-discrimination laws (Title VII). To add a category of protection that specifically and exclusively targets refugees, based on their immigration status as
beneficiaries of international protection, would only single refugees out and possibly make their successful integration into the labor market more complicated. Refugee status should be irrelevant when it comes to employment: the focus should be on the future employee’s potential and skills, not on their immigration status. To include a special legal protection for refugees as a category that is explicitly protected against discrimination under Title VII would risk to backfire and hinder a successful integration into employment for refugees as a group.

In practice, however, three out of four interviewees agreed that refugees do face several forms of discrimination upon entering the labor market. They face barriers at a systemic level – not at the individual level – that seem to lie in the very nature of the labor market itself. Many prerequisites to a job application are harder to fulfill for newcomers than for the native population: first, the language requirements. Although some type of work and tasks require very little language proficiency, a lack of English language skills may lead employers to bypass refugees and other newcomers to the U.S. and to ignore other essential qualifications they may hold, in favor of native speakers. Another form of discrimination that refugees encounter is that some employers are not sure how to verify a refugees’ paperwork. Employers want to be sure that they are only employing people who legally reside in the United States and are allowed to work. Rather than taking risks, employers may opt for the safer option of employing a local citizen with valid U.S. documents, instead of searching for confirmations and proof related to a potential employee’s immigration status. Other barriers that refugees have to overcome when applying for employment include the need for local networks in order to provide
referrals and introductions to potential employers, as well as the requirement to apply online, which requires experience with and access to computer and internet use.

These barriers do not intentionally discriminate against refugees as a group, but are systemic barriers inherent in the labor market. Therefore, my interview partners see no need for a law reform that targets refugees’ employment. However, they think that it could be helpful to have more discussions about the difficult situation that refugees face upon entering the labor market. Interviewees from Massachusetts agreed that targeted discussions would be helpful if they systematically involved all stakeholders, so as to ensure tangible results and takeaways from these discussions. Discussions should focus on informing all stakeholders, especially employers, about the added value that refugees bring to the labor market. Both government representatives pointed to the difficulty of launching public discussions during an ongoing presidential debate. When the topic risks being highly politicized, it should rather be kept away from the forefront of a general public debate.

Luxembourg: Interviews

1. Interview partners: In the Grand Duchy of Luxembourg, I conducted interviews at the Ministry of Foreign and European Affairs, MAE, Immigration Directorate, with the Coordinator of Refugee Services and the Commissioner for Employee Services. At a ‘hybrid level,’ between state and NGO, I spoke to the Head of LISKO Services, and a LISKO Services Social Worker. LISKO Services, the Luxembourg Center for Integration and Social Cohesion, is a cooperation between the Luxembourg Red Cross and the Ministry of Families and Integration. At NGO level, I interviewed the spokesperson of
ASTI Luxembourg, the Support Association for Immigrant Workers, as well as a Social Worker and a Psychologist at CLAE Services, the Liaison Committee of Immigrants’ Associations in Luxembourg. Except for the ASTI spokesperson, all interview partners chose to include a second interviewee to the meeting, so that I held these interviews with two interviewees at the same time.\(^{282}\)

II. Refugees’ access to the labor market: While labor market access is the same for refugees who have obtained status as beneficiaries of international protection (BIP) as for Luxembourg citizens – and any other EU citizen for that matter – all interviewees agreed that in practice, refugees face a more difficult situation. They identified four main challenges, but also pointed out important advantages of Luxembourg’s labor market situation for refugees:

1. Language skills: The country’s three-lingual structure requires newcomers to learn at least two new languages. A combination of French, German, and/or Luxembourgish is usually a prerequisite to enter any position, and most employers request additional language skills, although in varying combinations.

2. Diploma recognition: Equivalencies for foreign diplomas are handled by the Ministry in charge, usually the Ministry of Education. Procedures are long, and often non-transparent to the applicant. For diplomas that were not obtained in an EU member state, recognition works on the basis of bilateral agreements, and Luxembourg has only few of these agreements with countries in Asia and the Middle East, for example. All recognition and validation procedures require substantial language skills, usually either in French or in German, and for some

\(^{282}\) Responses were given in consent and treated as one response, unless stated otherwise.
sectors even both languages are a prerequisite to obtain Luxembourg’s recognition of a foreign diploma.

3. Employer awareness: Although there has been a lot of interest in refugees’ situation and many employers have taken the initiative to reach out and offer jobs, two caveats remain: One is that employers are often insecure about a refugees’ legal status and his/her authorization to work. More and easy-to-access legal information should be available to (all) potential employers in order to facilitate refugees’ integration into the labor market. Both government agencies also raised concerns requiring “employee awareness”\textsuperscript{283}: to ensure fair employment conditions for all, refugees need to be aware of their rights so they can avoid employers who specifically target refugees and try to offer them employment contracts which would usually not be accepted by locals.

4. Labor-market skills: Besides language skills, the BIP also needs to meet employer demands which can be very different from what was required in their country of origin. This forms part of acquiring a new cultural context and, as such, needs time.

All interview partners agreed that the Luxembourgish labor market also offers its unique strengths to refugees.

1. Language skills: A multilingual work environment may present a challenge, but it also provides real opportunities for those who have previously had international work experience. Experienced and higher-skilled refugees can find employment

\textsuperscript{283} Both interview partners at MAE and LISKO referred to the risks of exposing newcomers to unfair employment practices, e.g., when employers require long “trial periods” of unremunerated work as a condition for a subsequent employment contract with remuneration.
in the English-speaking environment of international companies; and some employers specifically target foreigners with different language skills, for example English, Chinese, Russian, Portuguese, and many more. It is thus comparatively easy to access higher positions within the Luxembourg labor market for refugees who arrive with previous work experience and skills.

2. Diploma recognition: Although still requiring language skills in one of the country’s three official languages, there is a way to have practical experience validated to obtain a diploma that is equivalent to Luxembourgish diplomas. This validation of practical experience, called “VAE” presents an opportunity for refugees to access a valid Luxembourgish diploma if they can show they have a minimum of three years of professional experience in their field. VAE thus considerably facilitates the entry of mid-level professionals into Luxembourg’s labor market.

3. Employer awareness and labor market skills: While some interviewees mentioned employers’ high expectations and high competitiveness on the local labor market, they all agreed that Luxembourg offers a very diverse and international labor market, with opportunities across many different sectors and levels of employment. So far, employers have shown interest in hiring refugees and professional organizations are there to help connect both parties with the goal of creating successful employment matches.

III. The job-search process: All interview partners identified the following barriers that affect refugees’ effectiveness during the job-search:
1. Diploma recognition represents the biggest challenge. Requests have to be presented to the Ministry of Education (sometimes paired with another Ministry in charge, e.g., for healthcare professions) and are decided on an individual case-by-case basis. Decision guidelines are not made public, and the level of complexity and required proof varies significantly depending on whether or not there are bilateral agreements between Luxembourg and the country issuing the original diploma. It is important to specify that this barrier is not specific to immigration status: the same requirements apply for Luxembourg citizens who obtained their education credentials abroad\textsuperscript{284} and wish to have their professional certificates and diplomas recognized in Luxembourg.\textsuperscript{285}

2. Another barrier are mandatory wait periods before accessing the labor market: applicants for international protection have a minimum wait period of six months before they may submit a request for a temporary work permit, AOT.\textsuperscript{286} In practice, the AOT is difficult to obtain because of its requirements, especially the joint employer-employee filing requirement. Also, while awaiting BIP status, applicants are subject to the labor market test, which requires any potential employer to prove that no EU-national was available to fill the position for which she is planning to hire a refugee. Administrative barriers disappear once BIP

\textsuperscript{284} A significant share of the Luxembourg population, given that the country’s single university opened its doors only in 2003 and today has three faculties (Faculty of Science, Technology and Communication; Faculty of Law, Economics and Finance; and Faculty of Language and Literature, Humanities, Art and Education. For more information, see the University of Luxembourg’s website: http://wwwen.uni.lu/universite/presentation.

\textsuperscript{285} The \textit{Law of December 18, 2015}, Article 60(3), guarantees equal treatment between beneficiaries of international protection and Luxembourg citizen in matters of diploma recognition procedures.

\textsuperscript{286} See: \textit{Law of 18 December 2015}, Article 6.
status is officially granted. Now, the BIP has access to the same jobs and employment related services as all Luxembourg citizens (and other EU citizens). However, due to current backlogs, the decision procedure regarding international protection status can last up to 21 months – much longer than the six months that are regularly foreseen for processing applications for international protection.\(^{287}\) During this wait period of almost two years, refugees’ access to the labor market is significantly restricted.

3. All interviewees agree that refugees’ qualifications are very important, as they determine job-search strategies and outcome. Refugees qualifications and preferences are duly taken into account during the job-search process. Upon arrival, they are asked to establish a professional profile that includes their work experience, skills, and education. This profile is shared between the institutions that make first contact with an applicant for international protection: OLAI, MAE, and later ADEM. Yet, there is some pressure to enter employment as quickly as possible. For some, it is because the guaranteed minimum income they receive from the state (called RMG)\(^{288}\) is simply not sufficient to cover the cost of living – this is especially true when housing is sought on the private market, where rents are expensive and landlords usually require to see a work contract with a tenant’s


\(^{288}\) Guaranteed minimum income, called RMG (revenu minimum garanti): the amount depends on household composition, e.g., number of children, adults, and elderly persons living in one household; as of August 1, 2016, the basis amount is 1,348.18 Euro per month for one adult. See: “Paramètres sociaux: Le revenu minimum garanti,” Chambre des Salariés Luxembourg, accessed 11/21/2016, http://www.csl.lu/parametres-sociaux.
application. The RMG thus moderates economic pressure, but does not eradicate it. My interview partners also reported that many refugees have great trouble accepting such “gratuitous” payment from the state – they would much rather accept any job available in order to work for pay and to end their time of professional inactivity.

Just as interviewees in the United States confirmed, there are no identifiable administrative barriers in Luxembourg either once refugees have found their way into jobs: work contracts and working conditions are considered the same as for all other citizens, and the Luxembourgish Labor Code applies to every person who is legally working on the territory. It is important to note though, that refugees’ integration to the Luxembourg labor market is not restricted to low-level entry jobs: After obtaining BIP status, those who can validate their work experience and/or diplomas usually integrate the labor market quickly, in the sector and type of position that they are trained for and prepared to hold. Job-search strategies seem to differ between those looking for lower-wage labor and those looking for high-wage positions: newcomers with (practical) work experience in lower-wage, manual labor, usually find employment very quickly and start working soon after obtaining BPI status. Newcomers with higher educational degrees usually take more time, as they prepare their language and labor market skills to meet the demands of the Luxembourgish labor market and then enter a position that corresponds to their qualifications. Refugees are thus distributed horizontally and vertically across the Luxembourgish labor market: they enter all types of positions (hierarchies) in all types of sectors.
IV. Institutional involvement and coordination: At national level, OLAI is in charge of welcoming refugees upon their arrival to Luxembourg, until they obtain BIP status. For employment related measures, ADEM is in charge – however, ADEM does not assume an active role of coordinating existing measures related to the labor market. These can involve numerous Ministries and non-governmental organizations, who self-organize around regular round table meetings and working groups which have emerged in 2015 and 2016, as a response to the increased arrival of refugees in Luxembourg. My interview partners valued the round tables and working groups as a successful means of coordination between the actors involved. On the one hand, because this format is a good fit for Luxembourg’s size, allowing for direct ways of coordination through personal communication. On the other hand, this direct way of coordination is also valued as a means to not anchor every aspect of coordination at state level, but to allow for some decentralized coordination. Nevertheless, interviewees working for Luxembourgish NGOs agreed that more coordination and cooperation would be beneficial, especially at top government level. Their suggestions included: ADEM should take on a leadership role in coordinating all employment related measures for refugees, there should be more inter-ministerial coordination, and more coordination between the three biggest funders of employment related measures for refugees.289

While there is no Luxembourgish institution specifically mandated to monitor the right to employment for refugees, my interview partners consider this function as being

289 As the three biggest funders of employment related measures for refugees, my interview partners named: the national employment agency, ADEM, the European Union’s Asylum and Migration Fund, AMIF, and the “Œuvre Nationale de Secours Grande-Duchesse Charlotte,” a public philanthropic organization under the auspices of Luxembourg’s Prime Minister.
fulfilled: first, there is the LFR (Collectif Réfugiés Luxembourg), an umbrella organization that is in charge of addressing issues related to asylees’ and refugees’ rights (in general, not only labor and employment rights). The LFR unites all groups and associations that actively work with refugees in Luxembourg, plus two external observers mandated by UNHCR. Once refugees are officially recognized as recipients of international protection, they are protected by the same employment and labor laws that apply to Luxembourg citizens and citizens of other EU member states. They can thus benefit from protection and services provided by existing government institutions, like ADEM.

Asked to identify possible improvements at institutional level that could promote refugees’ integration into the labor market, interviewees most often referred to the need to facilitate administrative procedures: diploma recognition should be much easier and better adapted to refugees’ real-life circumstances of fleeing their previous home country. Procedures to obtain temporary work permits, AOT, should be easier in order to facilitate faster access to the labor market, and access to vocational education and training should become easier for young adults who wish to pursue their education upon arrival in Luxembourg. None of my interview partners mentioned improved funding (of their own organization or programs) as a prerequisite to achieve a better integration of refugees into the labor market.

V. Evolution of the laws regarding refugees’ access to employment: None of my interview partners knew of an employment-related lawsuit initiated by a recipient of

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290 The LFR is currently chaired by Amnesty International, Luxembourg, and each member organization chairs the LFR on a rotating basis. For more information, see: “Migrants et Réfugiés,” Amnesty International Luxembourg, accessed 11/21/2016, http://www.amnesty.lu/campagnes/migrants-et-refugies/?gclid=CM7EorTy6c8CFUwW0wod9LgG8A#.WAj9A-B97ic.
international protection in Luxembourg, and no interviewee saw the need to modify existing anti-discrimination laws. Rather, they agreed that refugees’ interests and needs of protection in the workplace are covered under existent anti-discrimination laws (Title V). Refugees who feel they are being discriminated against, in or outside the context of work, can resort to the existing law for protection against discrimination, as it applies to everyone in Luxembourg. To add a category of protection that specifically and exclusively targets refugees would only single refugees out as a group, and possibly make their integration into the labor market more difficult. Past experience has shown that employers respond positively to the fact that recognized refugees have the same employment related rights as Luxembourg citizens. From an employer’s perspective, this means that refugees do not constitute a special group of workers that comes with conditions attached. In this respect, refugees have a better legal status when it comes to employment than other third-country nationals, whose employment is bound to more administrative conditions and thus carries an extra burden for the employer before she can hire a third-country national. It is thus considered helpful that refugees are not singled out by special legal protections based solely on their immigration status. However, one of my interview partners mentioned that the Center for Equal Treatment, CET, a government agency created in 2006, should get more involved in addressing cases of discrimination based on race or ethnic origin.

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291 The Centre for Equal Treatment (CET) was created by the law of 28 November 2006. Its mission is “to promote, analyse and monitor equal treatment between all persons without discrimination on the basis of race or ethnic origin, sex, sexual orientation, religion or beliefs, handicap or age.” See: CET’s website at http://cet.lu/en/.
Only in one case did an interviewee point to discrimination in the labor market that exists in practice and specifically targets refugees: the Social Worker I spoke to at LISKO agency sees discrimination take place in practice at several informal levels, and thinks that these are not brought before the courts because refugees fear losing their employment and maybe even their BIP status. However, she was not aware of any specific examples to illustrate this perceived discrimination. All other interview partners did not know of refugees suffering from discrimination in the workplace, and see no indicators that make them suspect such discrimination exists in practice. No legal cases have been filed, workplace discrimination targeting refugees has not come up as a topic at the LFR’s sessions, and the interviewees never received any feedback from their clients regarding discrimination. Interviewees mentioned the role that Luxembourg’s small size may play: attention to all topics surrounding refugees is high, and so is employers’ awareness. Luxembourg’s employers have shown a lot of interest in and understanding for refugees’ situation, and many have reached out with employment offers. This spontaneous help is welcome from all sides – including the employers themselves, since it benefits their image, too, in a small country where word of mouth travels fast. Despite all the positive response, my interview partners also mentioned that working conditions are hard for those with the lowest level of language- and work-related skills. Although this is not a refugee-specific discrimination, it can affect every newcomer who begins to work in Luxembourg with minimal language- and work-related skills.

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292 LISKO agency picked up operations in June 2016. Please note that no data or examples were given to illustrate the alleged discrimination of refugees. The full interview can be read under Appendix 1, Interview 4.
Asked about the need for more public discussion and debate about refugees’ situation on the labor market in Luxembourg, everyone agreed that the topic already receives immense mediatic attention, and that the necessary public debate has long ensued. It seems helpful to inform the public at large about refugees’ real life stories, emphasizing the fact that they do not come “with nothing”: most refugees were forced to leave very stable economic conditions and employment behind due to their flight. A more solution-oriented debate at the highest political level would also be welcome, especially between the Ministries working on refugee integration. Yet, communication should not be over-done, as people might lose interest or even feel alienated if they feel the government’s attention has shifted away from other important issues. Debates should not be held for the sake of debating; rather, the focus should be on the absence of debate as a good sign, a sign of success. All interviewees agreed that communication should be used wisely in order to avoid any unintended backlash.

Promising Practices: Roadmap for a Fair and Efficient Refugee Integration

Interviews I conducted with experts in Luxembourg and the United States show that both countries would benefit from implementing the promising practices identified in the two comparative international studies presented at the beginning of chapter 4. Table 4 provides an overview of these promising practices, and I will review them in the context of the expert interviews I conducted. The goal is to chart a roadmap with specific measures to improve refugees’ labor market access in both countries.
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<tr>
<th></th>
<th>UNHCR study</th>
<th>EU Parliament study</th>
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<tbody>
<tr>
<td>0</td>
<td>Managing pre-resettlement expectations</td>
<td>Not mentioned</td>
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<tr>
<td>1</td>
<td>Strengthening research on and monitoring of the needs of refugees and employers</td>
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<td>2</td>
<td>Provide quality counseling to develop an individualized integration plan</td>
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<td>3</td>
<td>Outreach and partnering with employers / the private sector; placements with employers</td>
<td>Offer job search assistance, including the use of quality mentoring by employers; Early access to the labor market</td>
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<td>4</td>
<td>Vocationally-focused language courses with integrated work experience</td>
<td>Offer language tuition and skills assessments as early as possible, ideally in combination with civic instruction and practical work experience</td>
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<td>5</td>
<td>Assistance with recertification</td>
<td>Facilitate the recognition of foreign credentials, including alternative methods of assessing informal learning and work experiences</td>
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<td>6</td>
<td>Partnering with the broader community, e.g., through mentoring programs</td>
<td>Strong engagement of the civil society</td>
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<td>7</td>
<td>Expand refugees’ employment opportunities through microenterprise and alternative employment programs</td>
<td>Offer job search assistance, including the use of quality mentoring by employers and targeted entry subsidies for employers</td>
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<td>8</td>
<td>Establish mechanisms for sharing good practices</td>
<td>Not mentioned</td>
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<td>9</td>
<td>Not mentioned</td>
<td>Ensure the implementation of comprehensive and coordinated policies</td>
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<td>10</td>
<td>Not mentioned</td>
<td>Access to healthcare and housing</td>
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<td>11</td>
<td>Not mentioned</td>
<td>Open the general employment support systems available for national citizens to refugees</td>
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Sources: Ott, *The Labour Market Integration of Resettled Refugees*, and: Konle-Seidl and Bolits, *Labour Market Integration of Refugees*.

Seven of these promising practices appeared in both studies, and I included them in my expert interviews. They reveal a set of strengths and challenges for each country, as well as specific measures to improve refugees’ labor market access in both countries:
1. Strengthening research on and monitoring of the needs of refugees and employers: While some EU member countries are picking up the topic as a focus of research, little to no systematic research on the needs of refugees and employers is available for Luxembourg so far. In the U.S., much more research exists thanks to federally mandated research by institutions like the National Academy of Sciences, USCIS and ORR at national level, and from the non-government sector, including leading think-tanks such as the Center for Migration Studies of New York (CMS) and the Migration Policy Institute (MPI).

2. Provide quality counseling to develop an individualized integration plan: Professional counseling is available in both countries to help refugees’ find their way into employment. As the expert interviews have shown, counselors strive to provide individualized integration plans, but the premises seem to be very different in the two countries. In the U.S., funding is the primary concern that determines – and limits – the counselor’s ability to create individualized integration plans for their clients, often forcing newcomers to accept low entry-level jobs despite their professional qualification, experience, and career plans. In Luxembourg, none of my interview partners made funding of their own program a primary concern – here, Luxembourg leads the way by offering programs that take refugees needs into account first, not their own program funding needs. This approach is more refugee centered; programs are built around refugees’ needs and allow them to develop an individualized plan for their professional integration. Refugees benefit from the long-term funding of employment support programs that allow them the time to prepare and adapt to the new demands of the labor
market they face. Again, *double immigration*, the pattern that has been typical for work migration to Luxembourg throughout the last two centuries, offers newcomers a chance to access the labor market at various levels – not only from the very bottom.

3. Offer early access to the labor market; Offer placements with employers, outreach and partnering with employers and the private sector, job search assistance, including the use of quality mentoring by employers: The value of these measures are acknowledged in both countries. Fostering employer relationships, e.g., through active outreach, networking, job search assistance and mentoring is considered pivotal. The same applies for offering early labor market access. As of today, applicants for asylum in the United States have a wait period of 150 days, and applicants for international protection in Luxembourg have to wait six months before they may access the labor market. The wait period does not apply for refugees arriving to the U.S. under a resettlement program, they may start to work immediately. See: “Refugees & Asylum,” USCIS, accessed 10/28/2016, https://www.uscis.gov/humanitarian/refugees-asylum. For the current legislation in Luxembourg, see: *Law of 18 December 2015*, Article 6.

4. Offer skills assessments and vocationally focused language courses with integrated work experience: Both countries acknowledge the value of these measures and service providers work hard to ensure offerings that meet the demand.

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293 For the concept of double immigration, see: Pauly, “Le phénomène migratoire,” 69.

5. Assistance with recertification; Facilitate the recognition of foreign credentials, including alternative methods of assessing informal learning and work experiences: In both countries, the value of education credentials for labor market access cannot be overstated. However, recertification available to refugees differs significantly: The U.S. offers a structured and highly standardized process, where the applicant can choose a credential evaluation agency, either based upon state or institutional guidelines, or based upon the agency’s membership in a renowned national or international association, and can have his foreign credential evaluated. The result will determine if and to which extent he needs to obtain new credentials in the U.S. education system. The process is highly standardized, transparent, and accessible online. However, it does not adapt to refugees’ and asylees’ special circumstances: the need to provide original documents and certified copies, and the high cost of the evaluation, but even more so of the additional training that is required to achieve a fully valid credential for accessing the U.S. labor market present considerable constraints to recertification in practice. Luxembourg cannot boast such a streamlined and service-oriented process. The administrative procedure requires similar documentation and paperwork as in the U.S., but is usually not available online (hard copies have to be mailed to the Ministry) and the procedure is not transparent to the applicant. Evaluations of foreign credentials are made on a case-by-case basis, usually by the Ministry of Education or another Ministry in charge. Length and outcome of the evaluation procedure vary, mainly depending on the country in which the credentials were originally obtained and whether Luxembourg has bilateral
agreements in place with this country to regulate the recognition of education credentials. Overall, costs are more affordable than in the U.S., especially costs associated with re-certifications, because Luxembourg offers free public education up to university level. There is also a growing awareness for the fact that recognition of foreign credentials should become easier and more accessible. At national level, first steps have been taken to facilitate recognition of practical skills when no formal diploma is available, e.g., through the VAE diploma. At European level, policies are aiming to reduce the administrative burden associated with the recognition of foreign credentials and to create new methods of skills-assessment in order to open European labor market to a wider range of qualifications and credentials from non-EU member states.295

6. Partnering with the broader community, e.g., through mentoring programs, and strong engagement of the civil society: As with the partnering with employers, the value of active outreach, networking, and community engagement is clear to actors in both countries.

7. Expand refugees’ employment opportunities through microenterprise and alternative employment programs; Offer targeted entry subsidies for employers: Both countries value entrepreneurship as a means for integrating newcomers to the domestic labor market and offer tailored support for refugees who decide to run their own (micro-) enterprise. When it comes to offering alternative employment programs and subsidies for employers, the possible risks and benefits should be assessed in light of each country’s past experience. A common

295 See: Konle-Seidl and Bolits, Labour Market Integration of Refugees, 37.
viewpoint seems to be that refugees who enter their host country’s labor market as newcomers can be compared to young people entering the labor market for the first time – yet, their background and former work experience might be very different, and their experiences of flight and hardship might require special adjustment measures.\textsuperscript{296} If refugees are offered alternative employment programs similar to those offered to facilitate a first entry into the labor market, e.g., designed for youth with special needs, then it seems particularly important to acknowledge and act upon the lessons learned from these programs in the past. Both countries have their own, long experience with domestic programs for labor market integration, and now that these programs are being adapted to serve the refugee population, the lessons learned need to be acknowledged and implemented in a coherent and consequent manner. Incentive structures are key: employers and service providers need to operate under an incentive structure that rewards long-term success, i.e., long-term integration into the labor market, in order to create programs that are designed from the recipients’ perspective and have his success as primary goal. Neither during my interviews, nor in the literature did I find a mention of how the lessons learned from domestic labor market integration programs in the past will be integrated into the current design of programs for refugees.

\textsuperscript{296} The idea is summarized in: Ott, \textit{The Labour Market Integration of Resettled Refugees}, 13.
Chapter V.

Results and Discussion

This chapter concludes with three recommendations to create a legal framework that facilitates refugees’ success in the labor market. Results are drawn from the findings of my law review in chapters two and three, from the international meta studies presented in chapter four, and from the expert interview responses.

1. Reduce administrative barriers:

   a) Remove existing laws that hinder refugees’ labor market access: Lawmakers should remove the wait period for asylees in the United States and for applicants of international protection in Luxembourg. The aim should be to completely erase the wait period. While it has already been reduced to six months in Luxembourg and currently is at 150 days in the United States, these wait times are often not implemented, and become significantly longer due to administrative backlogs. Refugees should obtain their permission to work once their status has been recognized; they should then be guaranteed access to the labor market and to employment-related support measures. In Luxembourg, all interviewees

additionally advocated for the removal of the existent labor-market test for non-EU citizen.

b) Implement existing laws to strengthen refugees’ labor market access: Once refugees obtain permission to work, this permission needs to be clearly documented and easy for employers to understand, to verify and to trust. USCIS’ e-verify program in the United States is a great step towards implementing this goal. However, my interview partners in the U.S. still saw room for improvement. Legal documents that are easy to access and easy to understand would bring employers and refugees looking to be employed closer together.

c) Create new laws to promote refugees’ labor market access: Conditions for refugees’ labor market access should not only be the same as for domestic workers, but they should receive additional support to account for their difficult starting position.

2. Expand possibilities for the recognition of foreign educational credentials:

a) Remove existing laws that hinder refugees’ labor market access: Lawmakers should remove the need to provide original educational credentials or certified copies thereof. Refugees may not be able to document their educational achievements and work experience – either because original documents are not available, or because skills have been acquired informally.

b) Implement existing laws to strengthen refugees’ labor market access: Existing laws guarantee equal treatment regarding the accreditation of educational credentials obtained abroad. Nationals and non-nationals both have to fulfill the
same requirements in order to have their professional certificates and diplomas officially recognized. To ensure refugees benefit from this equal treatment, they should receive administrative help to navigate the accreditation process, as well as financial help to pay for the (often costly) credential evaluation. Employers should be informed that – with the exception of the regulated professions – they are the competent authority for recognition of foreign degrees or qualifications, and may choose to accept foreign credentials even without requiring the help of credential evaluation services.

c) Create new laws to promote refugees’ labor market access: Luxembourg and the U.S. should strive to open their system of credential evaluation to refugees’ real-life situation. New assessment strategies are needed for the re-accreditation of professional qualifications in the regulated professions. For all other professions, practical assessments should be encouraged as a way of certifying skills that refugees cannot document.

3. Ensure access to the labor market at all levels:

a) Remove existing laws that hinder refugees’ labor market access: Replace short-term funding cycles and create incentives for adequate job placements and long-term success. All my interview partners in the U.S. mentioned the pivotal role of funding for their programs. Under the constraints of short-term funding, the top priority for service providers is to place refugees into employment as fast as

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possible. Economic pressure does not allow refugees the time to adapt to their new country and to the demands of a new labor market. Rather, they have to accept the positions available to them right away, regardless of their former qualifications, work experience, and career plans. In contrast, reliable long-term funding allows for a more refugee-centered approach. Unlike the experts I interviewed in the U.S., none of my interview partners in Luxembourg made funding the central point of their work. Through reliable long-term funding, service providers are able to take the time to develop individualized integration plans and to support refugees in their individual preparation for the new labor market they are about to enter. By attenuating the immediate economic pressure, refugees are given the time to prepare themselves and to search for an employment that will match their skills and experience more adequately. The labor market thus becomes accessible at multiple levels, not only via the lowest entry-level positions. By offering refugees the chance to enter the labor market at various different levels, refugees’ experience entering the labor market in Luxembourg comes much closer to the labor market entry experience of the local population than it does in the U.S. Funding mechanisms, especially in the U.S., thus need to be reviewed under this light.

b) Implement existing laws to strengthen refugees’ labor market access: In theory, there are no legal barriers to refugees’ employment, neither in Luxembourg nor in the United States. The labor market is open to refugees, there is no discrimination based on immigration status. Labor and Employment laws equally apply to

299 Horizontally, across different sectors, and vertically, across different hierarchical positions.
everyone who is legally employed in the country, and the same holds true for anti-discrimination laws. Both countries thus honor their commitment to the 1951 Convention. In practice, there is a striking divergence between the way anti-discrimination laws in both countries have evolved throughout the past decades, and the way refugees’ rights seem stalled in practice. Modern-day laws in the U.S. and in Luxembourg have evolved from a concept of theoretic equality of rights (de jure) to equal rights in practice (de facto), towards equality of opportunity, the most current development. Refugees are not considered a group specially deserving of protection in their access to national labor markets, but they are protected by anti-discrimination laws, on the basis of national origin. To ensure equality of rights is applied in practice, when it comes to refugees’ labor market access, more advocates are needed to make sure refugees receive the special protection awarded to them on the basis of their national origin under existing anti-discrimination laws (Title VII in the U.S. and Title V in Luxembourg).

c) Create new laws to promote refugees’ labor market access: Create targeted programs to ensure access and equity for refugees on the labor market. While the law does not allow discrimination on the basis of national origin, it does not account for the existing inequalities between national citizens and refugees. Refugees arriving to the U.S. or to Luxembourg are subject to a highly insecure phase of wait time until their application is decided upon and until they can access the labor market, they need to navigate complex bureaucratic processes related to

300 Title VII in the U.S., and Title V in Luxembourg.

301 Putz, Discrimination, 28.
their immigration status, and they face a labor market that is completely new to
them, having to learn its rules and expectations. Moderating these practical
disadvantages requires laws that consider refugees and asylees a class for the
matter of protection and offers them targeted programs to support their integration
into the labor market. This would ensure that refugees’ rights to access the labor
market in the U.S. and Luxembourg continue to evolve and eventually move
beyond the “old concept” of theoretic equality of rights.

Equality of opportunities would mean that refugees can actively participate in
shaping their career path in their new country, and that they are able to access the labor
market at all different levels, according to their qualifications and professional expertise.
To a certain extent, this possibility seems to be available to refugees arriving in
Luxembourg. They receive a guaranteed minimum income from the state which supports
them as long as they are searching for employment and preparing their skills to secure an
occupation that matches their former professional experience. Refugees arriving to the
U.S. are not presented with that choice. Since they have to provide for their cost of living,
they are forced into any available position, usually low entry-level positions. Service
providers who accompany them on their search for a first job face the same pressure; as
they operate under short term funding cycles, their ability to search for positions that
adequately match each refugees’ skills and professional experience is limited.

Although both countries honor their commitment and theoretically comply with
Article 17 of the Convention, my findings show that, in practice, there is much room for
improving refugees’ labor market access in the United States as well as in Luxembourg
(hypothesis, part a). On the positive side, current developments in Luxembourg allow for much optimism. Spurred through the increased inflow of refugees and through two important legislative changes, namely the entering into force of a unified labor law (Code du Travail) in 2006 and the comprehensive law of December 18, 2015, regulating international protection and temporary protection, Luxembourg has made fast progress towards a compliance with Article 17 of the Convention. It is, however, too early to decide whether refugees’ labor market integration is more successful in Luxembourg than it is in the U.S. Luxembourg has progressed quickly in its effort to comply more fully with Article 17 of the Convention. In the U.S., however, there is no evidence to confirm progress has been made – and, if so, at what speed (hypothesis, part b). In order to understand these questions more fully, much research remains to be done especially at the level of long-term empirical studies.
Appendix 1: Expert Interviews

Table 5: Overview: Interview Partners

<table>
<thead>
<tr>
<th>Institutional Affiliation</th>
<th>Location</th>
<th>Institution Name</th>
<th>Interview Partner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Govornmt. (1)</td>
<td>Sacramento, CA</td>
<td>California Department of Social Services</td>
<td>Chief of the Refugee Programs Bureau, State Refugee Coordinator</td>
</tr>
<tr>
<td>Govornmt. (2)</td>
<td>Boston, MA</td>
<td>Massachusetts Office for Refugees and Immigrants (ORI)</td>
<td>Director of Workforce Development</td>
</tr>
<tr>
<td>Govornmt. (3)</td>
<td>Luxembourg, Europe</td>
<td>Dept. of Foreign and European Affairs, MAE</td>
<td>Commissioner for Employee Services; and: Coordinator of Refugee Services</td>
</tr>
<tr>
<td>Govornmt. (4)</td>
<td>Luxembourg, Europe</td>
<td>LISKO, joint services provided through the Red Cross and OLAI Luxembourg, under the Dept. of Families, Integration, and the Greater Region</td>
<td>Agency Director; and: Social Worker</td>
</tr>
<tr>
<td>NGO (5)</td>
<td>Boston, MA</td>
<td>JVS, Jewish Vocational Service (Refugee Employment Services)</td>
<td>Manager of Refugee Services</td>
</tr>
<tr>
<td>NGO (6)</td>
<td>Boston, MA</td>
<td>Ascentria Care Alliance</td>
<td>Employment Department Coordinator</td>
</tr>
<tr>
<td>NGO (7)</td>
<td>Luxembourg, EU</td>
<td>ASTI, Support Association for Immigrated Workers</td>
<td>Speaker of the Executive Committee</td>
</tr>
<tr>
<td>NGO (8)</td>
<td>Luxembourg, EU</td>
<td>CLAE, Comité de liaison des associations d’étrangers</td>
<td>Psychologist; and: Social Worker</td>
</tr>
</tbody>
</table>

Source: Author.
Interview 1: USA, CA, Government

I. Demographics

*Please give the following information about yourself:*

*Organization:* California Department of Social Services

*Position:* State Refugee Coordinator, Refugee Programs Bureau Chief

*For how long have you held this position?* 1 year, 2 months

*For how long have you been working on topics related to refugees and their rights?*

For about 10 years.

*In your current position, what are your main tasks regarding refugees? Please give a short description:*

a. Oversee operations of the California Department of Social Services’ Refugee Program Bureau with all its programs and services, and its team of 19 people.

b. Ensure that ORR’s funds are appropriately and timely allocated to the 9 counties in California that are actively involved in refugee resettlement.

c. Ensure that partners at state and county level meet the goals set by ORR (the funder).

d. Work with partners at federal level (ORR, Department of State), at state level (e.g., other state refugee coordinators and state refugee health coordinators), and especially at local level.

II. Refugees’ access to the U.S. labor market

1. *Overall, how would you describe refugee’s access to the labor market in your state, California?* More difficult than for U.S. citizens in search of employment.
Please explain! To find employment is more difficult for refugees, including asylees and Haitian Entrants, as they arrive unprepared for the U.S. labor market: they often do not have the English language capability (not even the basics), some do not have the job skills required in the U.S. labor market – or any transferrable skills; especially those who were previously in refugee camps, those who have health issues, and those who have witnessed things beyond imagination are often traumatized and not job ready. On the other hand, there are refugees who are professionals, and who are now overqualified for the positions they hold after entering the U.S. job market – either because they do not have formal proof of their qualification, or because their qualification is not recognized in the United States.

2. When it comes to integrating refugees into the labor market in your state, what do you consider:

a. the main strengths: Refugees who are fluent in English, who come with job skills and/or extensive training. This makes it easier for refugees to integrate in the U.S. and for service providers to work with them. They are ready to take on available jobs, most of which are in the service industry.

b. the main weaknesses: Refugees who are not literate, even in their own language, who are not job-ready, because of their skills or health. This makes work more challenging for all partners involved, as well as for the community, for potential employers, and for the country as a whole. Also, at a broader level, the way we see certifications from other countries in the U.S.

3. What trends do you see regarding refugees’ access to the labor market? Partners in CA have seen success – for fiscal year 2014, the ORR reports “Refugee Employment
Entered Rates” of 31% across California, and 46% for the San Diego Wilson Fish program (SDWF). Many of these jobs are in the service industries, in hospitality, in low-end factory and assembly-line type of work; some refugees work for the government, e.g., at state- or county-level, for the city, or in schools. However, highly-qualified professional refugees such as doctors, lawyers, or engineers for example coming from other countries have a hard time finding comparable employment where the refugee’s former professional experience, education, or training, cannot reasonably or easily be recertified.

III. The job-search

4. Are there administrative barriers to refugee employment? Which ones? Yes, there is a lack of easily accessible recertification programs, and available recertification programs are often very costly, cumbersome, complex, or nonexistent, e.g., in health care.

5. How important are refugees’ qualifications when trying to find a matching job?

Very important – but sometimes, even professionals cannot be hired for positions comparable to their qualifications, because there are no matching jobs available. Sometimes, refugees need to take any job, because they can’t simply wait for the

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About the Wilson-Fish program: “The Wilson-Fish (WF) program is an alternative to traditional state administered refugee resettlement programs for providing assistance (cash and medical) and social services to refugees.

The purposes of the WF program are to:

• Increase refugee prospects for early employment and self-sufficiency
• Promote coordination among voluntary resettlement agencies and service providers
appropriate or desirable doctor’s or nursing position to come up. Their qualifications are very important, but not always practicable/practical.

a. In the job search process, are refugees’ qualifications and preferences duly taken into account? Yes.

b. Do refugees find work across all sectors? Yes, but more so in the hospitality industry.

6. Once they are hired, do refugees receive the same type of work contracts as other employees? Yes.

7. Are there any indicators that working conditions are worse/more difficult for refugees than for the local citizen in comparable jobs? (→ please remember, we are only looking at registered, legally employed refugees – not speaking about undocumented immigrants) NO, I don’t think so. Working conditions should be the same.

IV. Institutional involvement / Institutional coordination

8. Today, most initiatives are run by NGOs, charities and private sector actors. Yet, there is no central coordination between these institutions, so refugee integration to the labor market is often handled by “single players” at local level. Do you think more coordination is necessary to get refugees into work? As the employment rates for refugees in California show, there is still room for improvement. The California Department of Social Services, Refugee Programs Bureau ensures coordination and keeps actors in the loop. Yet, the state is so big (currently with nine impacted counties that actively participate in refugee resettlement programs) that it would be problematic to have one single coordinator. The better strategy might be for local partners to work
directly with their clients, in order to make the most out of the 8 months during which they receive refugee cash assistance funds for refugees’ labor market integration. For employment services and language training, for instance, refugees can access up to 60 months from their date of entry into the U.S. The locals know their community, and they know employers within their county.

9. In some countries, institutions have been mandated to monitor and to guarantee the right to work and the implementation of labor rights for refugees. Is there an institution in charge of monitoring the right to work for refugees in the United States or in California? No, I am not aware of such an institution. Labor rights do not apply specifically to refugees – they apply to everyone (legally) employed in the United States.

10. In your opinion / experience: What would help refugees integrate into the domestic labor market? First, refugees have to have their basic needs met, especially housing and food. Then, they need to learn and acquire the English language. Finally, they need to obtain the skills for a job that allows them to earn a decent wage, giving them an opportunity to even earn a living wage down the road. It would be helpful to receive the recognition and support needed from federal partners, through assisting refugees and service providers with sufficient funds to carry out the expectations of ensuring that refugees who came to the U.S. will gain work, successfully integrate into the American society, and will be self-sufficient as quickly as possible. This should be team efforts among the federal, state, local partners working in all facets of the refugee

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resettlement program. Funding should adapt to each state’s specific situation, as housing cost for example varies considerably between states. In summary, what would be most helpful is to receive sufficient funding, placing refugees as the central point from which all programs and activities are conceived, and to work together as a team at federal, state, and local level.

V. Evolution of laws regarding refugee’s access to jobs

11. Do you know if refugees bring lawsuits related to employment? No, I am not aware of any.

   a. Are you aware of refugees who have filed an employment related lawsuit on the basis of anti-discrimination laws (Title VII)? No.

12. Do you think that today, refugees face discrimination on the labor market in your state? If they do, it’s not written anywhere – the law applies to everyone in the country. However, through personal experience as a refugee, and in working with refugees directly at the county level, he has seen that refugees face discrimination. Personally, he struggled when he first looked for work. He recalls the main reasons:

   a. because refugees don’t speak the language – that makes it easy for employers to bypass refugees, notwithstanding their qualifications.

   b. employers cannot trust or recognize foreign certificates or diplomas.

13. Should refugees be considered a protected group before the law, i.e., like other groups already protected against discrimination on the basis of race, religion, gender, political affiliation, etc.? (under Title VII) No, overall this might hurt more than it helps. While it may help refugees to land a job, it might also draw much more attention to their
refugee status – personal experience tells me, I wanted to fit in, I wanted to be American, and not to be labeled as refugee.

14. *Would it be helpful if there were more public discussion and debate about refugee’s situation on the labor market in your country?* In a different time and place: yes – but not in the middle of the ongoing U.S. presidential debate, at this time it might hurt more than help.

Interview 2: USA, MA, Government

I. Demographics

*Please give the following information about yourself:*

*Organization:* Massachusetts Office for Refugees and Immigrants (ORI)

*Position:* Director of Workforce Development

*For how long have you held this position?* 3 years, 10 months

*For how long have you been working on topics related to refugees and their rights?* 12 ys

*In your current position, what are your main tasks regarding refugees? Please give a short description:*

a. ORI as an administrative office receives funding to design programs and to work with contract providers to ensure refugee integration in Massachusetts.

b. Oversee the Wilson-Fish project, develop programs, oversee staff involved in program development and staff who oversee contract providers.
II. Refugees’ access to the U.S. labor market

1. Overall, how would you describe refugee’s access to the labor market in your state? My impression is that, overall, it’s the same for refugees as for other U.S citizens. However, refugees are such a diverse population that they cannot be put in one bucket. Ease of access to the labor market certainly depends on the refugees’ skills. While access may be more difficult for some, the effect is probably balanced by others who have easier access to the labor market. Access to the labor market may be a little bit more difficult for refugees, but due to the type of jobs that they target, they often find employment quickly because there is less competition from U.S. citizens. (Please also refer to local providers for a response to this question).

2. When it comes to integrating refugees into the labor market in your state, what do you consider:

   a. the main strengths: Refugee specific employment programs exist (across the country) which integrate English language classes that are geared towards the American workplace, the job search, job interviews, and thereby provide a comprehensive introduction to employment in the US. As of 2014, Massachusetts ranks second in Refugee Employment Services, with a rate of refugees entered into employment of 74%. See: “Fiscal Year 2014 Refugee Employment Entered Rates,” ORR, accessed 11/18/2016, http://www.acf.hhs.gov/orr/resource/fiscal-year-2014-refugee-employment-entered-rates. One of the main contributors to this success are the highly skilled professionals across Massachusetts, who are able to work with the very diverse refugee population.

   b. the main weaknesses: Funding available for working with refugees is extremely limited; and the training in mainstream employment services is not geared
towards refugees (nor toward very low-income populations) but rather towards the “mainstream” American population – this can make access to programs and resources very difficult for refugees and very low-income populations, resulting in lost opportunities.

3. *What trends do you see regarding refugees’ access to the labor market?* I notice that job markets have opened up. One reason is that the screening process for refugees is so intensive, that specific employers are more interested in hiring refugees who went through this process – for example, airports welcome refugees as employees, since the background and security checks which have been effected prior to refugees’ admission to the United States is more extensive than for other job applicants. Also, having a drivers’ license opens up many job opportunities, e.g., to access shift jobs or jobs outside the city, and jobs that require driving as part of the job. Generally, trends in accessing the labor market are very based on employer demand. (Please also refer to local providers for a more detailed response).

III. The job-search

4. *Are there administrative barriers to refugee employment? Which ones?*

Sometimes, employers are not familiar with the documentation provided by refugees to prove their status. This can cause a lot of back-and-forth regarding the proof of status and a refugee’s legal availability to work in the state. (Please refer to local providers for a more detailed response).

5. *How important are refugees’ qualifications when trying to find a matching job?*
They are important, and there always has to be a match between some qualification the refugee brings, and the job, in order for the match to be successful for the refugee and the employer. Service providers try to place refugees in an environment that matches their qualifications, in an environment that is close to what they used to do before their resettlement to the U.S. Timing is crucial here: much depends on how quickly a refugee needs to get into work. The pre-requisite to finding a matching job is to hold valid credentials for that type of employment in the U.S. Usually, that happens later in the process. Employment services are funded to help finding a first job – “the” matching job will eventually be found further down the road, it might be the second or third job a refugee holds after arriving to the U.S.

a. Do refugees find work across all sectors? Across the U.S., refugees’ first jobs tend to be in meat packing, or, more generally, in packaging factory work; employments with very clear and structured processes, which often facilitate the transition into the American workplace. In Massachusetts, FedEx, Yankee Candle and other distributor companies are big “first employers” for refugees, as well as the hospitality industry.

6. Once they are hired, do refugees receive the same type of work contracts as other employees? Yes, they should. However, U.S.-wide trend to hire workers on a temporary basis (through temp-agencies) also affects refugees. Refugees have easier access to temporary and part-time jobs, allowing them to enter the labor market and then eventually come back to receive support in finding their second job.

7. Are there any indicators that working conditions are worse/more difficult for refugees than for the local citizen in comparable jobs? (→ please remember, we are only
looking at registered, legally employed refugees – not speaking about undocumented immigrants) Please refer to local providers’ responses. If there is any difference, that’s because of a difference in accessing jobs, but not due to two different ways of treating employees.

IV. Institutional involvement / Institutional coordination

8. Today, most initiatives are run by NGOs, charities and private sector actors. Yet, there is no central coordination between these institutions, so refugee integration to the labor market is often handled by “single players” at local level. Do you think more coordination is necessary to get refugees into work?

No, because every region and every labor market is so different. If anything, there is more need for awareness about who the other public or private actors are, more opportunities to create connections between actors in the field would be helpful.

9. In some countries, institutions have been mandated to monitor and to guarantee the right to work and the implementation of labor rights for refugees.305 Is there an institution in charge of monitoring the right to work for refugees in the United States?

Various institutions are involved through their work, but I am not aware of a federal office specifically investigating/monitoring the right to work. The Department of Labor and Department of Justice see that laws are applied, and since refugees are allowed to work immediately upon obtaining refugee status, there is no special institution monitoring their right to work.

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305 One example is Ecuador, where the Ministry of Labor Relations and the Ecuadorian Social Security Institute are tasked with monitoring and guaranteeing the right to work for refugees. See: Sozanski, Sarmiento, and Reyes, “Challenges to the Right to Work in Ecuador,” 93-94.
10. In your opinion / experience: What would help refugees integrate into the domestic labor market? Transportation is very important! Obtaining a driver’s license is crucial to access work and social life as well (getting to work, but also sharing rides with co-workers). Job-targeted English classes have proven to be a great tool to create connections between employers and employees, e.g., through English language classes held at the jobsite, and also including skills training. Micro enterprise programs encouraging refugees to start their own, small business, are a powerful tool that usually comes into play further down the road.

V. Evolution of laws regarding refugee’s access to jobs

11. Do you know if the recipients of international protection bring lawsuits related to employment? Not that I am aware of.

12. Do you think that today, refugees face discrimination on the labor market in your state? Yes – although the intent is often not discriminatory, but the result may be. For example, employers often reject a refugee’s (legal) documentation, not in an intent to discriminate, but because they are not 100% sure whether the documentation presented is complete and accurate. Another example would be the prevalence of temporary jobs among refugees.

13. Should beneficiaries of international protection be considered a protected group before the law, i.e., like other groups already protected against discrimination on the basis of race, religion, gender, political affiliation, etc.? (under Title VII) No, they are already covered under the existing laws which prohibit discrimination based on ethnic origin.
14. **Would it be helpful if there was more public discussion and debate about refugee’s situation on the labor market in your country?** What a question, in the middle of the presidential elections! It would be helpful to have more discussion with employers, and with other people involved in labor development. Many developments in the U.S. are grassroots developments. In order to obtain tangible results, more systematically organized conversations between stakeholders would be helpful – not just open forums – to ensure that participants have the necessary information about realistically available jobs and required skills.

   a. **What would be the most important topic to address?** Transportation, language learning, and required skills. Also, people should gain a better understanding about what refugees bring to the table, i.e., what they have to offer for the employer.

Interview 3: Luxembourg, Government

I. **Demographics**

*Please give the following information about yourself:*

*Organization:* Ministry of Foreign and European Affairs (MAE), Immigration Directorate

*Position:* Commissioner for employee services, including employees, independent workers, researchers, and professional athletes (CES), and Coordinator of Refugee Services (CRS).

*For how long have you held this position?* CES: 4 years, CRS: 14 years

*For how long have you been working on topics related to refugees and their rights?* CES: 4 years, CRS: 14 years
In your current position, what are your main tasks regarding refugees? Please give a short description:

a. CRS handles requests for international protection and ensures that national and international law is duly applied; this includes requests by unaccompanied minors as well as repeated requests for international protection in the Grand Duchy of Luxembourg.

b. CES handles exceptional requests for the regularization of immigration status, requests that do not fit the standard for obtaining international protection status (BIP), and requests for temporary work permits, AOT, for applicants to the status of international protection.

II. Refugees’ access to the U.S. / Luxembourg labor market

1. Overall, how would you describe refugee’s access to the labor market in Luxembourg? Please explain! CRS: Through the law of December 18, 2015, article 59 conveys the same access to the labor market for refugees as for Luxembourg citizens in search of employment. CES: In practice, we can draw parallels to third-country nationals who arrive to Luxembourg (not as refugees) and search for employment. They have more difficulties, in practice, to find an employment, due to language barriers for example. However, also based on language skills, some employers and sectors specifically target third-country nationals in their hiring, e.g., international banks which often recruit their own nationals from China, India, Russia, etc.

2. When it comes to integrating refugees into the labor market in Luxembourg, what do you consider:
a. **the main strengths**: CES: the variety of professional organizations that attend to refugees’ needs and promote professional networks to facilitate refugees’ labor market access. There are ONGs that are very active, like ASTI for example, and there are government agencies in charge, like ADEM and OLAI. This attention extends to the local and even personal level: especially when media attention was at its peak, we have seen many employers who take action and contact the MAE to know how they can directly employ refugees and what is the requested documentation. There have also been very targeted projects, e.g., for projects in the arts. Overall, there is a lot of positive response and support to help refugees accessing the labor market.

b. **the main weaknesses**: CRS: One still has to look and check attentively, because among all these helpful concrete offers, some should not be accepted, e.g., offers to take on non-remunerated work for a significant amount of time with an employer who does not commit to offering a work contract.

3. **What trends do you see regarding refugees’ access to the labor market?** CRS: we have seen an increase in the number of beneficiaries of international protection (granted status), but we don’t track their individual success on the labor market.

III. The job-search

4. **Are there administrative barriers to refugee employment? Which ones?**

CRS: No, as we said before, there are many professionals who help refugees get into work, so they are usually in good hands and their situation is comparable to that of Luxembourg citizens. CES: The only administrative barrier that comes to mind is the labor market test that applies to all third country nationals, including refugees during the
application process for international protection. As soon as they obtain refugee status, they can begin to work – unlike other third country nationals, who will still be subjected to the labor market test.

5. *How important are refugees’ qualifications when trying to find a matching job?*

CRS: As soon as a refugee presents himself to the MAE – and that means: before any decision is taken regarding his status as refugee in Luxembourg – MAE refugee services’ helps each applicant (DPI) to complete a professional profile. This profile is shared with the ADEM and with OLAI, who can contribute additional information over time, thus giving ADEM a complete profile to work with once people start looking for employment.

CES: Refugees with a high level of skills need to get their diploma recognized, which often takes time, especially when there is no bilateral agreement in place. From a legal perspective, however, equal treatment is guaranteed through Article 60(3) of the *Law of December 18, 2015*: BIP and Luxembourg citizens both have to fulfill the same requirements in order to have their professional certificates and diplomas officially recognized.

6. *Once they are hired, do refugees receive the same type of work contracts as other employees?* CRS: Yes – the Luxembourg Labor Code (Code du travail) applies to everyone who is (legally) working in the country.

7. *Are there any indicators that working conditions are worse/more difficult for refugees than for the local citizen in comparable jobs? (→ please remember, we are only looking at registered, legally employed refugees – not speaking about undocumented immigrants)* CES and CRS: No, not that we are aware of.
IV. Institutional involvement / Institutional coordination

8. *Today, most initiatives are run by NGOs, charities and private sector actors. Yet, there is no central coordination between these institutions, so refugee integration to the labor market is often handled by these “single players” at local level. Do you think more coordination is necessary to get refugees into work?* CRS: OLAI is responsible and coordinates all these players at national level. Once BPI status is granted, OLAI is no longer in charge and there is no institution for central coordination of all measures related to BPI.

9. *In some countries, institutions have been mandated to monitor and to guarantee the right to work and the implementation of labor rights for refugees.*\(^{306}\) *Is there an institution in charge of monitoring the right to work for refugees in Luxembourg?* CRS and CES: Not to our knowledge, no. Maybe the Ministry of Labor can provide more information about this.

10. *In your opinion / experience: What would help refugees integrate into the domestic labor market?* ---

V. Evolution of laws regarding refugee’s access to jobs

11. *Do you know if the recipients of international protection bring lawsuits related to employment?* CES: We have not heard about any cases, nor have we had complaints of discrimination towards refugees in the workplace. On this topic as well, the Ministry of

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\(^{306}\) One example is Ecuador, where the Ministry of Labor Relations and the Ecuadorian Social Security Institute are tasked with monitoring and guaranteeing the right to work for refugees. See: Sozanski, Sarmiento, and Reyes, “Challenges to the Right to Work in Ecuador,” 93-94, accessed 9/30/2016.
Labor and its inspection agency, “Inspection du Travail et des Mines,” (ITM) might be able to provide more information.

12. *Do you think that today, refugees face discrimination on the labor market in your country?* CRS: Not to my knowledge, no. As we said before, we have not heard about any complaints.

13. *Should beneficiaries of international protection be considered a protected group before the law, i.e., like other groups already protected against discrimination on the basis of race, religion, gender, political affiliation, etc.?* (under Title V)

CRS: I think that would only label refugees as persons who are being discriminated against – is that really helpful? Maybe they want to integrate into their host society as soon as possible, and then, being labeled as a special group might not help. Of course, if they feel discriminated against, they can resort to the existing law which offers protection against discrimination. But the existing laws apply to everyone, not only to refugees, since everyone can become a victim of discrimination.

CES: I agree. Creating a special status through anti-discrimination law might actually make it more difficult for refugees to find employment. Currently, employers feel safer employing BPI rather than third country nationals, precisely because the employment of third country nationals comes with more conditions attached, thus singling out a special category of workers.

14. *Would it be helpful if there was more public discussion and debate about refugee’s situation on the labor market in your country?* CRS and CES: Yes – dialogue is certainly helpful, but no fierce debates. Currently we see that the topic is present, but not
fierily debated, and maybe that’s a good sign, because it means things are working and need not be debated more than necessary.

Interview 4: Luxembourg, Government

I. Demographics

Please give the following information about yourself:

**Organization:** LISKO – Lëtzebuerger Integratiouns – a Sozialkohäsiounszerenter, Luxembourg Center for Integration and Social Cohesion, under the auspices of the Luxembourg Red Cross and the Ministry of Families and Integration.

**Position:** Assistant Director of National Solidarity Services, Head of LISKO Services (AD), and LISKO Social Worker (SW)

*For how long have you held this position?* 6 months (LISKO started in April 2016)

*For how long have you been working on topics related to refugees and their rights?* 6 months

In your current position, what are your main tasks regarding refugees? Please give a short description: To oversee LISKO services. Our mission is to support the beneficiaries of international protection (BIP) on their path to integration into Luxembourg’s society.

II. Refugees’ access to the U.S. / Luxembourg labor market

1. **Overall, how would you describe refugee’s access to the labor market in Luxembourg?** More difficult than for Luxembourg citizens in search of employment.

Please explain! They have to learn new languages and a new culture: expectations on the Luxembourg labor market can be very different from the expectations the newcomers
experienced back in their home country. It’s a different set of rules: How do you present yourself on the labor market? How do you introduce yourself to potential employers? What are the employer’s expectations? On top of all these questions, BIP often struggle to have their qualifications recognized, and employers do not have enough information regarding the equivalency of foreign diploma. Although, on the flipside, there are employers who are all too eager to employ refugees, thinking that they will work hard and never complain …

2. **When it comes to integrating refugees into the labor market in Luxembourg, what do you consider:**

   a. *the main strengths:* Luxembourg offers a multicultural society, with a very diverse workforce and with very diverse employment opportunities.

   b. *the main weaknesses:* Luxembourg’s labor market is also highly competitive and demands a high level of skills, academic and linguistic skills. With the large influx of workers from neighboring countries, (the “frontaliers”) competition is high across all sectors.

3. **What trends do you see regarding refugees’ access to the labor market?** Since LISKO started operating only six months ago, we think it’s too early to speak about trends at this point.

III. The job-search

4. *Are there administrative barriers to refugee employment? Which ones?*
Not specific to refugees, but there are barriers that affect all newcomers to the country. Once the BIP have acquired language skills and the skills to present themselves on the labor market, they don’t face any specific administrative barriers.

5. *How important are refugees’ qualifications when trying to find a matching job?*

SW: That depends on a case-by-case basis: experience is often more important than formal qualifications, because their recognition is so difficult, especially when the original documents are missing. And then, even if a title has formally been recognized and is valid as such in Luxembourg, this still does not give the employer clarity about a person’s real level of skills.

   a. *In the job search process, are refugees’ qualifications and preferences duly taken into account?* There is often so much pressure that refugees will take on whatever job is available. Economic pressure to earn a decent living, and social pressure – to find housing for example, most landlords want to see a work contract as part of the tenant’s application. Also, for adults who arrive and are younger than 25 years, there is no financial support and they have to find work right away. Young adults under age 25 are not entitled to receive the state’s guaranteed minimum income, RMG (revenu minimum garanti), and are thus often forced to find employment right away.

   b. *Do refugees find work across all sectors?* Given that Lisko services started operating only six months ago, it’s too early for us to answer this question. We have seen our clients enter many sectors, but we cannot know yet if they will remain in their initial positions.
6. Once they are hired, do refugees receive the same type of work contracts as other employees? Yes, the contracts they receive are the same, and they are usually very good contracts with good working conditions. Many refugees used to be independent workers, and they keep that entrepreneurial spirit and chose to be self-employed here in Luxembourg.

7. Are there any indicators that working conditions are worse/more difficult for refugees than for the local citizen in comparable jobs? (please remember, we are only looking at registered, legally employed refugees – not speaking about undocumented immigrants) No, not that we are aware of.

IV. Institutional involvement / Institutional coordination

8. Today, most initiatives are run by NGOs, charities and private sector actors. Yet, there is no central coordination between these institutions, so refugee integration to the labor market is often handled by these “single players” at local level. Do you think more coordination is necessary to get refugees into work? There is a round table that ensures an ongoing exchange of information between all actors involved in the topic of refugee integration in general, not only labor market integration. Regarding the labor market, ADEM is the biggest player with many projects depending on ADEM funding. The national employment agency, ADEM, the European Union’s Asylum and Migration Fund, AMIF, and the “Œuvre Nationale de Secours Grande-Duchesse Charlotte,” a public philanthropic organization under the auspices of the Prime Minister – these three

307 For more information about the “Œuvre Nationale de Secours Grande-Duchesse Charlotte,” see their website at http://www.oeuvre.lu/a-propos-de-loeuvre/qui-sommes-nous/.
are the main funders for all work related to refugee integration, but there is no central coordination between these three. New structures are currently developing, and we think that more coordination and organization is desirable.

a. If your answer is “yes”: What would be the appropriate level / institution for this coordination?

Coordination could happen locally and does not need to happen at state level. For example, the existing round tables work really well, and there is no need for the state to centrally coordinate all activities.

9. In some countries, institutions have been mandated to monitor and to guarantee the right to work and the implementation of labor rights for refugees.308 Is there an institution in charge of monitoring the right to work for refugees in Luxembourg? Not that we are aware of, but there are UNHCR-mandated observers with the LFR (Collectif Réfugiés Luxembourg), and the ADEM as well as the MAE have directorates in charge of refugee-workers.

10. In your opinion / experience: What would help refugees integrate into the domestic labor market? Getting more and better information to employers would be helpful. HR departments and employers should have more information regarding refugees’ legal status here in Luxembourg and in the European Union, and about their cultural background. That would facilitate employment integration, but also social and cultural integration.

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308 One example is Ecuador, where the Ministry of Labor Relations and the Ecuadorian Social Security Institute are tasked with monitoring and guaranteeing the right to work for refugees. See: Sozanski, Sarmiento, and Reyes, “Challenges to the Right to Work in Ecuador,” 93-94, accessed 9/30/2016.
V. Evolution of laws regarding refugee’s access to jobs

11. *Do you know if the recipients of international protection bring lawsuits related to employment?* No, we haven’t come across any cases so far.

SW: I think refugees are rather scared and would not initiate a lawsuit, for fear of losing their employment and/or their immigration status.

12. *Do you think that today, refugees face discrimination on the labor market in your country?* Yes, they certainly do.

   a. *If your answer is “yes”: What sort of discrimination do you think is common?*

      There is an informal “test period” that refugees have to go through under a new employer, and it will be more complicated, or longer, maybe even tougher than for their co-workers — at the same time, this is a chance as they receive a lot of attention and can demonstrate their skills and show their employer and colleagues the value they bring!

      SW: They also face discrimination in their relationship with co-workers: just think about cultural dress-codes as one example. Women wearing a headscarf or veil at work certainly face discrimination.

13. *Should beneficiaries of international protection be considered a protected group before the law, i.e., like other groups already protected against discrimination on the basis of race, religion, gender, political affiliation, etc.? (under Title V)*

No, that would only create another criterion that can be discriminated against. Existing laws include criteria that are universal and apply to everybody, including refugees. We don’t see the need to further extend these criteria, as it would probably create more problems rather than solve problems.
14. Would it be helpful if there was more public discussion and debate about refugee’s situation on the labor market in your country?

AD: Debate is always a two-edged sword: it is important for us to maintain social cohesion! Others in our society may face the same issues in finding employment that refugees face, so we need to be very careful in launching a debate. What shouldn’t happen is that we advocate unilaterally only for refugees and forget about the significant share of our resident population facing the same or very similar problems. Maybe it’s better not to trace a trench too deep.

SW: If debate favors all equally, it is welcome, but it should not foster disparities between those who receive attention and those who do not.

Interview 5: USA, MA, NGO

I. Demographics

Please give the following information about yourself:

Organization: Jewish Vocational Service, JVS

Position: Manager of Refugee Services

For how long have you held this position? 2 months (7 years with JVS)

For how long have you been working on topics related to refugees and their rights? 8 yrs

In your current position, what are your main tasks regarding refugees? Please give a short description:

a. JVS Refugee Services serves about 400 clients per year, including some who are not refugees – about 25% of our clients are other immigrants
b. Oversee JVS’ different programs and services for refugees: rapid employment and related vocational English and training programs for refugees and immigrants

c. Find short-term solutions to integrate clients in their first jobs in the U.S. Some secondary migrants also come to us from other U.S. states or are immigrants who may have had interrupted work experience in the U.S., but the majority of our work is finding first jobs in the U.S. for our clients

d. Offer job coaching services, which include: defining job goals, resume services, interview preparation, to accompany refugees to job interviews, to introduce them to employers and to assist during the initial period of employment if support is needed. Also provide post-employment follow-up support and referrals to services to advance long term goals including continued ESL services, education, trainings, etc.

II. Refugees’ access to the U.S. labor market

1. Overall, how would you describe refugee’s access to the labor market in your state? Please explain! At JVS, we look at entry-level positions with a focus on transferable skills – so our clients do not have to go back to school or get re-certifications. We try and meet them where they are, so we can work towards financial stability. Their situation is hard to compare to that of U.S. citizens, because we look at specific types of employment, at entry-level positions. Even so, it’s probably more challenging for our clients as they face cultural and linguistic barriers. These barriers vary significantly based on the client’s community: for example, some Spanish speaking communities and the Haitian communities can often rely on their own networks to find
jobs fast. Immigrants who arrive as part of a cultural minority cannot rely on such existing networks. Another aspect that makes labor market access more difficult for refugees than for U.S. citizens is that computer skills are a common requirement, e.g., to complete online applications. The refugee population often had less Internet access before coming to the United States, less than most U.S. citizens. Finally, we find that some of our clients face medical and behavioral health concerns that are specific to their experiences as refugees or immigrants. These concerns need to be addressed often during and before the job search process, and might require additional advocacy from job coaches to ensure that accommodations are made by employers.

2. When it comes to integrating refugees into the labor market in your state, what do you consider:

a. the main strengths: The Greater Boston area has seen growth in the service and healthcare industries. These industries offer employment opportunities that are accessible to refugees because they are often based on personality more than on formal qualifications. The UNHCR and ORRs resettlement process provides a certain form of self-selection, since it brings incredibly motivated individuals to the U.S., who are very motivated and know how to advocate for themselves, they have strong work ethics – all of these characteristics appeal to employers and once they are hired, refugee employees often serve as role models among staff.

b. the main weaknesses: As a consequence of the economic recession, employers have become more selective: now that the market has picked up again, we see higher requirements when compared to the pre-recession requirements for the same position. Particularly in the hospitality sector and food services, employers
in Boston say they cannot find the right employees. There is a mismatch of expectations, which represents a real challenge for refugees and requires advocacy from JVS.

3. Do you see specific hurdles that refugees have to overcome in their efforts to access the labor market? Yes: Language, and ongoing health concerns, mental health and medical needs, probably represent the biggest hurdles. Fortunately, health care is good in Massachusetts, but continuous medical needs and medical appointments make it difficult to be available for work. Another obstacle is the lack of networks for newcomers: not only professional networks to help them find jobs, but social networks are also necessary, e.g., to ensure childcare.

III. The job-search

4. Are there administrative barriers to refugee employment? Which ones?

One difficulty for newcomers is that they do not know where to begin, who to contact, or how to identify the skills that are relevant and “marketable” in the U.S. labor market. At JVS, we address all these questions in our programs, for example through the English vocational classes we provide that include information on the job search, on resume writing, etc.

5. How important are refugees’ qualifications when trying to find a matching job?

Very important! Our clients span the range from devaluing to overvaluing their own qualifications. Some want to jump right back into their previous job, but they need some time to learn an additional skill before they can re-enter their sector here in the US. Others don’t recognize the skills they have, sometimes these can be non-formal skills
acquired for example through family work like childcare or health support – that’s often the case with women.

a. *In the job search process, are refugees’ qualifications and preferences duly taken into account?* I think they are, yes. With a lot of advocacy on part of the coaches, who talk to employers and explain why a refugee has no high school diploma, for example, or why he has not found a job after 6 months yet. Coaches also work with clients to teach them language for how to explain their own strengths and areas for growth when speaking with potential employers.

b. *Do refugees find work across all sectors?* Yes. A lot of jobs are in the service industry, in manufacturing, retail, hospitality and healthcare because the focus of our rapid employment programs is on entry-level jobs and the positions are available in these sectors. JVS follows refugees intensively for the first three months in their new job, then we continue to check-in throughout the first year of employment. Beyond this, we expect that clients are certainly moving toward their long-term goals which would vary even more so across sectors.

6. *Once they are hired, do refugees receive the same type of work contracts as other employees?* I haven’t seen any significant differences. There can be “cultural niches” in companies where some populations are over-represented, causing refugees from a different nation to feel isolated. It is difficult to determine if this is related to their status as being the new employee, or related to their refugee status.

7. *Are there any indicators that working conditions are worse/more difficult for refugees than for the local citizen in comparable jobs? (→ please remember, we are only looking at registered, legally employed refugees – not speaking about undocumented*
immigrants) No, not to my knowledge. The feedback we receive from clients says that the service industry as such is a tough place to work – for everyone.

IV. Institutional involvement / Institutional coordination

8. Today, most initiatives are run by NGOs, charities and private sector actors. Yet, there is no central coordination between these institutions, so refugee integration to the labor market is often handled by “single players” at local level. Do you think more coordination is necessary to get refugees into work? Yes, and initiatives around coordination are usually met very positively. Coordination and advocacy are both important. MORI coordinates services and funds provided by the ORR. They collect and report out on trends in the refugee population and that helps us in our work. There is a lot of coordination for new refugees who arrive to the U.S., and it decreases with their length of stay in the country as clients become more integrated and self-sufficient. Services then move on to become more community specific, allowing communities to grow and to thrive more independently (communities can be neighborhoods, or cultural and religious organizations). On the flipside: mutual assistance associations are also funded by ORI, at least in part. These associations are usually ethnicity or nationality based, and thus provide services that focus more on their own community’s needs rather than providing overarching services for all refugees.
9. In some countries, institutions have been mandated to monitor and to guarantee the right to work and the implementation of labor rights for refugees. Is there an institution in charge of monitoring the right to work for refugees in the United States?

Not to my knowledge; there is no agency to monitor this specific population’s access. We have done a lot of communication with USCIS regarding refugees’ documentation, especially regarding their eligibility for work. For example, we need to be able to advocate for refugees who are able to work but may not have their SSN yet, because it’s still in process. That’s where we need appropriate documentation for refugees, so that JVS can advocate on their behalf before employers.

10. In your opinion / experience: What would be some specific idea(s) to help refugees integrate into the domestic labor market? By necessity, the focus is on finding employment so quickly – financial necessity puts great pressure on refugees to find work fast, especially in places where the cost of living is so high as in the Boston area. Being able to receive more training or education before accessing the labor market would be a huge asset, but there is no time for this here in Massachusetts. Agencies like JVS tend to give intensive training for two to three months, because we work on such a tight timeline. With more time for training or additional certifications, refugees could start working in higher paying jobs but this would likely require more time before attaining a first job outcome.

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309 One example is Ecuador, where the Ministry of Labor Relations and the Ecuadorian Social Security Institute are tasked with monitoring and guaranteeing the right to work for refugees. See: Sozanski, Sarmiento, and Reyes, “Challenges to the Right to Work in Ecuador,” 93-94, accessed 9/30/2016.
V. Evolution of laws regarding refugee’s access to jobs

11. Do you know if the recipients of international protection bring lawsuits related to employment? Sometimes, we experience complaints from refugees whose documentation was not accepted by an employer, but these cases have fortunately been resolved outside of the courts: Typically, it’s just a matter of negotiating and informing all parties about the valid legislation, or giving the employers a hotline number to check with USCIS. Some clients went on to file a lawsuit, but we do not track this specifically. JVS does not provide legal services, but we refer to pro bono legal assistance, such as Greater Boston Legal Services. More recently, one of our clients claimed to have been terminated unfairly and due to discrimination, but the discrimination was not necessarily based on his or her refugee status.

12. Do you think that today, refugees face discrimination on the labor market in your state? Not necessarily on the individual level, but there are barriers that are implicit in the labor market itself: access to the labor market requires networks, language skills, computer skills even to fill out an application … So, there are barriers at the entry or in the application process that pose real challenges for refugees. Even over-qualification can become a barrier, as employers are not always open to hire over-qualified staff. Unfortunately, as in any area, individuals do experience discrimination in the labor market based on race, gender, socio-economic status, religion, family status, being an immigrant etc. but it is difficult to determine if this is specifically based on refugee status.

13. Should beneficiaries of international protection be considered a protected group before the law, i.e., like other groups already protected against discrimination on the basis of race, religion, gender, political affiliation, etc.? (under Title VII) That wouldn’t
necessarily help. If discrimination occurs, it may not be based on refugee status, but rather on one of the categories that are already covered by the law. JVS coaches its clients to not introduce themselves as refugees, since immigration status is and should be irrelevant to employment. We advocate based on people’s skills and qualifications.

14. Would it be helpful if there was more public discussion and debate about refugee’s situation on the labor market in your country? Yes, especially nowadays when topics related to refugees are often depicted as a concern, as a burden that is imposed on communities, or as safety concern. None of this shows how refugees actually contribute to the community. Conversations around employment would reveal how much refugees can bring to their community!

Interview 6: USA, MA, NGO

I. Demographics

Please give the following information about yourself:

Organization: Ascentria Care Alliance

Position: Employment Department Coordinator

For how long have you held this position? 9 years

For how long have you been working on topics related to refugees and their rights? 11 years

In your current position, what are your main tasks regarding refugees? Please give a short description:

a. Coordinate Ascentria’s employment services. Most programs are federally or state-funded, mostly through ORI, plus a small portion of funds form the
Department of Transitional Assistance (DTA) for programs that apply to refugees, (political) asylees, and green card holders.

b. Oversee employment counselors with their specific programs. These programs focus on a variety of situations, for example a client’s family situation, the professional level of qualification, etc., and we ensure that clients receive a program that matches their needs.

II. Refugees’ access to the U.S. labor market

1. Overall, how would you describe refugee’s access to the labor market in your state? Same as for U.S. citizens in search of employment.

   Please explain! My department has done a lot of work connecting with employers, we built good and long-term relationships with employers. Then, it becomes easy for refugees to access the labor market: employers know about the refugees, they know who they are, and how they arrived to the United States. They know about the refugees’ certifications and the immigration laws – these things are difficult to understand for new employers in the beginning, but our long-term relationships help. My department serves all refugees coming to Worcester, about 1,000 per year, also those who are referred to Ascentria through other providers, like Catholic Charities.

2. When it comes to integrating refugees into the labor market in your state, what do you consider:

   a. the main strengths: There are jobs available! The labor market is very good, there are a lot of jobs available.
b. *the main weaknesses*: We need more ways of informing and educating employers about the legal aspects of immigration status and employment; about how refugees actually get into the United States and are allowed to work. For refugees, the most common challenges are related to transportation, English language skills, and child-care. At Ascentria, we also find employment for those who need help with organizing things outside of work: we organize transportation for groups of workers, and car-pooling, we organize translators for larger groups of workers who speak the same language but no English, we organize child care; basically, we make sure they can go to work. It is not easy for refugees to go out there and just find a job on their own – it’s our relationships and experience which make it easy.

3. *Do you see specific hurdles that refugees have to overcome in their efforts to access the labor market?* Integration to the United States takes time and is difficult, it’s all about cultural orientation. No matter how much information refugees receive, there is still a change of mentality, and that does not happen overnight, that’s a process that they need to go through (even for those who speak English).

III. The job-search

4. *Are there administrative barriers to refugee employment? Which ones?*

Funding is important – through funding we can manage everything else. Sometimes it’s hard to see from outside what is really going on in the terrain. My department works as a team: we do not see each other as different entities or programs, but, when it comes to
funding, we are necessarily separated, as funds are allocated separately. When it comes to the work itself, we are one team, and that works.

5. **How important are refugees’ qualifications when trying to find a matching job?**

It’s extremely helpful if they arrive with some experience and language skills. Issues arise for those who have a higher level of education, or a lot of professional experience. Medical doctors are a good example: it will take years until they can practice in the US. In the process, I will help them navigate the system, e.g., getting their official credentials, transcripts, and re-certifications. That helps, but it will take years.

There are two extreme cases: highly qualified clients who don’t want to work in a lower level position – I try to manage by making an individual integration plan, asking them to accept a lower, initial position in their sector, e.g., healthcare, and see how they can move up from there. The other extreme case are refugees who arrive without professional or personal resources, let’s say a single mother with five kids, who is illiterate in her own language, and has no employment in the US. We see a lot of these cases.

   a. **In the job search process, are refugees’ qualifications and preferences duly taken into account?** Yes.

   b. **Do refugees find work across all sectors?** Yes.

6. **Once they are hired, do refugees receive the same type of work contracts as other employees?** Yes.

7. **Are there any indicators that working conditions are worse/more difficult for refugees than for the local citizen in comparable jobs? (→ please remember, we are only looking at registered, legally employed refugees – not speaking about undocumented immigrants)** No, none that I know of.
IV. Institutional involvement / Institutional coordination

8. Today, most initiatives are run by NGOs, charities and private sector actors. Yet, there is no central coordination between these institutions, so refugee integration to the labor market is often handled by “single players” at local level. Do you think more coordination is necessary to get refugees into work?

Absolutely! And this applies to all services around refugees, not only to employment services. It would help to have a centralized office, or event, to better coordinate all our activities.

   a. If your answer is “yes”: What would be the appropriate level / institution for this coordination? Coordination would have to start at the local level, and move up from there.

9. In some countries, institutions have been mandated to monitor and to guarantee the right to work and the implementation of labor rights for refugees.\textsuperscript{310} Is there an institution in charge of monitoring the right to work for refugees in the United States?

UNHCR, and USCIS take care of this. The information they issue then has to be transmitted back to employers.

10. In your opinion / experience: What would be some specific idea(s) to help refugees integrate into the domestic labor market?

Support, by people like us here at Ascentria, and at the state and federal level. Constant support is necessary. Not only finding refugees a job, but also everything else that plays into it: case management, child care, etc. Ascentria is mandated to help during five years

\textsuperscript{310} One example is Ecuador, where the Ministry of Labor Relations and the Ecuadorian Social Security Institute are tasked with monitoring and guaranteeing the right to work for refugees. See: Sozanski, Sarmiento, and Reyes, “Challenges to the Right to Work in Ecuador,” 93-94, accessed 9/30/2016.
after a refugee’s arrival. Some take longer to find their path, and many refugees keep coming back after five years, but there are no more funds available after that time. Extending the (funded) time period would be crucial, ten years would make a difference.

V. Evolution of laws regarding refugee’s access to jobs

11. Do you know if the recipients of international protection bring lawsuits related to employment? No, I haven’t heard of any.

   a. Are you aware of refugees who have filed an employment related lawsuit on the basis of anti-discrimination laws (Title VII)? No.

12. Do you think that today, refugees face discrimination on the labor market in your state? No, absolutely not.

   a. How do you know? / What makes you think so? I work in this field every day: refugees are well-protected, there is no discrimination – I do not see or hear about any discrimination against refugees.

13. Should beneficiaries of international protection be considered a protected group before the law, i.e., like other groups already protected against discrimination on the basis of race, religion, gender, political affiliation, etc.? (under Title VII)

No. I don’t know what’s going on behind closed doors, but I have never heard from employers or refugees themselves about problems related to discrimination.

14. Would it be helpful if there was more public discussion and debate about refugee’s situation on the labor market in your country? Yes, it would help, but it would have to start at the local level, in the day-to-day operations, personal relationships, in talking to employers, NGOs, and state agencies. Discussions targeted at the public at
large are probably not going to help, because the public at large is not necessarily interested. What is important is to have discussions with and among employers. For example, when they ask me about the legal implications of employing refugees, about their documents, and experience, I connect them with other employers – big employers with big employers, local employers with local employers. They share their experience with refugees as employers, and that is a helpful discussion.

Interview 7: Luxembourg, NGO

I. Demographics

Please give the following information about yourself:

Organization: ASTI

Position: Spokesperson

For how long have you held this position? 4 years

For how long have you been working on topics related to refugees and their rights? 4 yrs

In your current position, what are your main tasks regarding refugees? Please give a short description:

a. Oversee projects run by ASTI, coordinate project communication, design and oversee new communication projects.

b. Coordinate ASTI’s political work and formulate ASTI’s political position statements: ASTI is involved in hands-on projects, and extracts learning and experiences from these projects to enhance existing or design new projects, and to formulate proposals to inspire political action and legal reforms.
II. Refugees’ access to the Luxembourg labor market

1. Overall, how would you describe refugee’s access to the labor market in Luxembourg? Please explain! Refugee’s access to the labor market is not comparable at all to other citizen’s access. In fact, the labor market is almost inaccessible for refugees. Applicants for the status of international protection may – through the help of their prospective employer – petition for a temporary work permission, called AOT. However, in practice this AOT is almost never granted. While there are about 3,000 applicants for the status of international protection living in Luxembourg, the Ministry of Foreign and European Affairs (MAE) issued 3 AOTs in 2015.311

Once refugee status has been approved and people become beneficiaries of international protection (BIP), there are no legal obstacles for them to access the labor market. Yet, throughout the application process – which can last up to two years, due to file backlogs! – there is not enough emphasis on empowering people and allowing them to become autonomous. They may become eligible for work without having acquired the necessary language skills or employability skills, de facto keeping them in a state of dependency, often relying on the “revenu minimum garanti, RMG,” the minimum income guaranteed as a form of welfare. Also, diploma recognition is a very difficult process. To summarize, I would say the biggest obstacles are of practical nature: refugees’ profiles (and often also lack of autonomy) make it difficult for them to find work in Luxembourg, language is a huge barrier, and there is a legal problem in the sense that diploma recognition procedures are extremely complicated.

2. When it comes to integrating refugees into the labor market in Luxembourg, what do you consider:

a. the main strengths: Highly qualified refugees can actually enter employment in Luxembourg quite easily. The labor market here is very diverse and international, and the highly skilled, with international experience, will be integrated quickly into English-speaking professional work environments.

b. the main weaknesses: For those who can’t find work in one of the big international institutions – and that usually means for those who do not arrive as high-skilled professionals – the language regime with its three official languages is a big hurdle.

3. Do you see specific obstacles that refugees have to overcome in their efforts to access the labor market? I think the hurdles are the same as for other foreigners who are new to the country, except for the diploma recognition, which is significantly more complicated for people from outside the European Union.

III. The job-search

4. Are there administrative barriers to refugee employment? Which ones?

Again: the recognition of diploma is a complicated, and often expensive procedure, constituting a real administrative barrier to employment. Also, as mentioned before, applicants for the status of international protection have the possibility to receive an AOT, yet the procedure is complicated, resulting in a minimal number of AOT’s issued each year. After spending six months in Luxembourg, an applicant for international protection is eligible to receive an AOT. However, he cannot request the AOT himself,
but must file a joint petition with the prospective employer. Besides filing the applicant’s
documents, including the CV, credentials, and a copy of the application for international
protection status, the employer must also provide a complete employment contract, as
well as a written justification for choosing the refugee as employee, showing that no EU
citizen is available to fill the position.\textsuperscript{312} This file is then submitted for review to several
Ministries and government agencies. In the meantime, the potential employer and his/her
employee are left in a highly insecure situation, awaiting the final decision on their AOT
petition. In case the decision about international protection is negative, the employer must
release the employee immediately.

5. \textit{How important are refugees’ qualifications when trying to find a matching job?}
They are absolutely crucial for rapid access to the job market, if these qualifications are
accredited and the documents are readily available. Refugees who were able to bring
original documentation and can prove their qualifications may access any employment
sector they are prepared to access. For those who need a re-certification or want to
continue their education, things are more difficult: adults from age 21 to 26 are not
eligible for financial support if they decide to study. Most of them will have to work for a
living and cannot sustain full-time studies.

a. \textit{Do refugees find work across all sectors?} Yes, they do.

6. \textit{Once they are hired, do refugees receive the same type of work contracts as other
employees?} Yes. This is certainly true for the high-skilled. For those with a lower level of
skills, the conditions are more difficult, but they are more difficult for everybody. For

\textsuperscript{312} On how to obtain AOT, see: “Engagement d’un salarié demandeur de protection internationale,”
ADEM, accessed 11/18/2016, http://www.adem.public.lu/fr/employeurs/recruter/recruter-
international/Embauche-ressortissant-pays-tiers/index.html.
example, working conditions in hospitality services are rather tough for everybody – yet, they constitute an important employment sector in the Grand Duchy. As soon as BIP status is obtained, there are no differences in the types of work contracts. However, during the application period, many seek “black labor” to maintain some financial autonomy, and here, the working conditions may indeed be very different.

7. Are there any indicators that working conditions are worse/more difficult for refugees than for the local citizen in comparable jobs? (please remember, we are only looking at registered, legally employed refugees – not speaking about undocumented immigrants) Not once they have obtained BIP status, but almost certainly in “black labor jobs,” while refugees are waiting for their official status to be granted.

IV. Institutional involvement / Institutional coordination

8. Today, most initiatives are run by NGOs, charities and private sector actors. Yet, there is no central coordination between these institutions, so refugee integration to the labor market is often handled by “single players” at local level. Do you think more coordination is necessary to get refugees into work? Yes! Actually, ASTI has been advocating for a stronger cooperation and coordination between the institutions that are involved in refugee’s integration. There have been significantly more refugees arriving to Luxembourg since September 2015 and only now are talks beginning at the highest official level! (e.g., talks about cooperation between the Ministry of Labor and the Ministry of Integration). Luxembourg did a great job in welcoming refugees and providing the necessary structures to host them. What needs to be taken care of now is refugees’ integration.
a. *If your answer is “yes”: What would be the appropriate level / institution for this coordination?* The ADEM should take leadership and be in charge of coordinating all measures related to labor market access. Others need to be implied, too, in order to ensure that refugees receive the specific support they need, tailored to their situation: OLAI (under the Ministry of Family, Integration and the Greater Region), as well as the Immigration and Asylum Administration (under the MAE).

9. *In some countries, institutions have been mandated to monitor and to guarantee the right to work and the implementation of labor rights for refugees.*\(^{313}\) Is there an institution in charge of monitoring the right to work for refugees in Luxembourg? No.

10. *In your opinion / experience: What would be some specific idea(s) to help refugees integrate into the domestic labor market?*

   a. Simplify the administrative procedure for obtaining a temporary work permit.

      Allow refugees to petition for an AOT themselves, on their own behalf, before implicating any potential employers. Cancel the requirement to check whether an EU citizen would be available to fill a position that a refugee has applied for, and concentrate the power to issue AOTs on one single institution. Also, it would be helpful to cancel the 6 months waiting period before refugees can apply for an AOT – we see people with skill sets that are in high demand, but instead of being immediately employable, they have to wait for six months, forcing them to forego opportunities.

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\(^{313}\) One example is Ecuador, where the Ministry of Labor Relations and the Ecuadorian Social Security Institute are tasked with monitoring and guaranteeing the right to work for refugees. See: Sozanski, Sarmiento, and Reyes, “Challenges to the Right to Work in Ecuador,” 93-94, accessed 9/30/2016.
b. Create agreements with the Ministries and/or educational institutions in charge in countries in the Middle East and in Asia to facilitate the recognition of diplomas.

V. Evolution of laws regarding refugee’s access to jobs

11. Do you know if the recipients of international protection bring lawsuits related to employment? Not at the national level in Luxembourg, no. However, some cases have recently been submitted at EU level.

12. Do you think that today, refugees face discrimination on the labor market in your country? Some cases of abuse have been reported, notably in the hospitality sector, but these are not focused on refugees. Rather, they affect those with the lowest level of language- and professional skills.

13. Should beneficiaries of international protection be considered a protected group before the law, i.e., like other groups already protected against discrimination on the basis of race, religion, gender, political affiliation, etc.? (under Luxembourg law, Title V)

No, existing laws already cover the different aspects of discrimination that are of importance to refugees. However, the Center for Equal Treatment, CET,314 should get more involved in cases of discrimination based on race or ethnic origin – maybe even expanding the definition to include “national origin.” Practice shows that the large majority of cases where CET gets involved are cases of discrimination based on

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314 The Centre for Equal Treatment (CET) was created by the law of 28 November 2006. Its mission is “to promote, analyse and monitor equal treatment between all persons without discrimination on the basis of race or ethnic origin, sex, sexual orientation, religion or beliefs, handicap or age.” See CET’s website at: http://cet.lu/en/.
handicap, not reflecting the fact that almost half of the population in this country consists of immigrants.

14. Would it be helpful if there was more public discussion and debate about refugee’s situation on the labor market in your country? The topic is very present in Luxembourg, papers talk about refugees’ situation every day. Media coverage is satisfying, and the necessary public debate ensues. It’s important to acknowledge that too much information can sometimes create a backlash: some people lose interest in the topic or even feel oversaturated, due to too much information and debate. What would be most welcome, though, is more debate at political level. Government authorities should debate much more about ways to find real solutions to the challenges we are still facing!

Interview 8: Luxembourg, NGO

I. Demographics

Please give the following information about yourself:

Organization: Comité de liaison des associations d'étrangers, CLAE Services a.s.b.l.

Position: Social Worker (SW) – Psychologist (P)

For how long have you held this position? 8 years (each)

For how long have you been working on topics related to refugees and their rights? 8 years (SW) and 16 years (P)

In your current position, what are your main tasks regarding refugees? Please give a short description:

a. Socio-professional support: together with the refugees, we look at how to best integrate them into employment. We discuss the professional project(s) they have
for themselves, and then help them realizing it; based on a realistic assessment of
their skills and qualifications, we help them on their path into employment, for
example with administrative tasks like diploma recognition.

b. Our activities are financed through the European Union Asylum and Migration
Fund (AMIF, providing 50% of funding) and Luxembourg’s Ministry of Families,
Integration, and the Greater Region (providing 50% of funding). These funds
finance our projects for six-year cycles. During this time period, we can support
refugees as long as necessary – which is usually until they find employment and
begin to work.

II. Refugees’ access to the Luxembourg labor market

1. Overall, how would you describe refugee’s access to the labor market in
Luxembourg? Same as for Luxembourg citizens in search of employment. Please
explain! Legally speaking, once people’s status as a refugee is recognized, they have the
same rights as Luxembourg citizens and other EU citizens to access the labor market and
related support measures. In practice, however, the language barrier is very difficult to
overcome and employers are very exigent when it comes to linguistic skills. Vocational
training is also difficult to access for refugees, because most training is held in German
only. Here in Luxembourg, refugees have the possibility to have their skills recognized
based on practical experience: once they can show they have a minimum of three years of
professional experience in their field, they can obtain a formal diploma that is equivalent
to Luxembourgish diplomas (VAE, Validation des acquis par l’expérience). However,
even this diploma is directly tied to their language skills because fluency in at least one of
the three official languages is required to obtain a VAE.
2. When it comes to integrating refugees into the labor market in Luxembourg, what do you consider:

   a. the main strengths: Recognized refugees have the same labor and employment rights as EU citizens, they can use the VAE as a comparatively easy means to obtain a Luxembourgish diploma, and there are established administrative ways for the recognition of foreign qualifications and diplomas.

   b. the main weaknesses: Luxembourg’s tri-lingual structure creates a significant challenge for refugees. Also, some foreign diplomas are not recognized at all, unless there is a bilateral agreement in place between Luxembourg and the country in which the diploma was issued. For example, refugees who wish to work in the health care sector usually have to have their foreign diploma re-validated, and one of the prerequisites is that they speak at least two of the official languages. That’s a time-consuming and costly procedure.

3. Do you see specific obstacles that refugees have to overcome in their efforts to access the labor market? Once they are granted refugee status, they can use the employment services that are available to everyone in the country, including adult- and continuing education, as well as employment services offered through ADEM, the national agency. They can begin to work right away and do not need a special work permit – in this respect, their situation to access the labor market is easier than for other third-country nationals who came to Luxembourg without being refugees. It is especially the language skills and the diploma recognition that are difficult obstacles to overcome, but these are not specific to refugee status.
III. The job-search

4. *Are there administrative barriers to refugee employment? Which ones?*

No, there are no barriers that are specific only to refugees. As we said before: diploma recognition can be long and difficult. Oftentimes, the original diplomas are missing, that’s a big hurdle since copies or scans are usually not accepted. Still, even for those who can present original documents, the procedure is complicated: the Ministry of Education decides on an individual case-by-case basis, according to their own guidelines and depending on the bilateral agreements that are in place. Diplomas may be recognized either in full, only partially, or not at all. The criteria and conditions leading to these decisions are not easily accessible to the public, which means that an applicant cannot evaluate his or her chances beforehand. Nevertheless, they have to pay for the recognition procedure.

5. *How important are refugees’ qualifications when trying to find a matching job?*

We usually see refugees who are either highly qualified or hold a lot of practical experience and skills. The latter tend to find jobs quite easily, for example in the construction industry. For those who are highly qualified, it takes more time to find a job that really matches their level of skills and experience. This is partly due to the fact that they need time to gather all the required documentation and proofs of their qualifications and diplomas obtained abroad, and then have them recognized here in Luxembourg.

a. *In the job search process, are refugees’ qualifications and preferences duly taken into account?* Usually they are, but there is also some time-pressure, because refugees really want to find work as quickly as possible. Once they have obtained
refugee status, they receive a guaranteed income from the state, the RMG. This income is automatically paid by the state, but the refugees we see have trouble accepting that payment: they do not want to depend on the state and would much rather work for pay. They are often willing to accept any kind of employment, even if they are really overqualified for the job.

b. *Do refugees find work across all sectors?* The beneficiaries of international protection we see are rather concentrated in fields that require a lot of manual work, e.g., in the construction sector. The situation is different for highly qualified refugees. They usually take the time necessary to bring their skills up to the level required on the Luxembourg labor market. They acquire the necessary language skills and build first networks for their labor market integration. After a while, this allows them to access the jobs they are qualified for and that they chose to do.

6. *Once they are hired, do refugees receive the same type of work contracts as other employees?* Yes, absolutely – the same types of employment contracts.

7. *Are there any indicators that working conditions are worse/more difficult for refugees than for the local citizen in comparable jobs?* (→ please remember, we are only looking at registered, legally employed refugees – not speaking about undocumented immigrants) No.

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315 Guaranteed minimum income, called RMG (revenu minimum garanti): the amount depends on household composition, e.g., number of children, adults, and elderly persons living in one household; as of August 1, 2016, the basis amount is 1,348.18 Euro per month for one adult. See: “Paramètres sociaux: Le revenu minimum garanti,” Chambre des Salariés Luxembourg, accessed 11/21/2016, http://www.csl.lu/parametres-sociaux.
IV. Institutional involvement / Institutional coordination

8. Today, most initiatives are run by NGOs, charities and private sector actors. Yet, there is no central coordination between these institutions, so refugee integration to the labor market is often handled by “single players” at local level. Do you think more coordination is necessary to get refugees into work? ADEM, the employment agency, coordinates the activities that are directly related to employment. For about one year now, there have been more refugees arriving to Luxembourg, and with the increasing number of refugees, there has been an increasing number of actors involved in the field of refugee employment. This has led to some temporary lack of coordination, while new structures were emerging. Most initiatives are funded either by the European Union’s AMIF, or by Luxembourg’s “Œuvre Nationale de Secours Grande-Duchesse Charlotte,” a public philanthropic organization under the auspices of the Prime Minister. The current situation is somewhat “experimental,” and it can be difficult for refugees to know whom to turn to for support. Now, there is a newly created working-group on migration and social cohesion, where all actors meet on a regular basis to communicate about their work and to avoid duplicate measures. This has proven a very effective means of coordination, especially as our country is small enough to allow for direct communication between all stakeholders.

9. In some countries, institutions have been mandated to monitor and to guarantee the right to work and the implementation of labor rights for refugees. Is there an institution in charge of monitoring the right to work for refugees in Luxembourg?

316One example is Ecuador, where the Ministry of Labor Relations and the Ecuadorian Social Security Institute are tasked with monitoring and guaranteeing the right to work for refugees. See: Sozanski, Sarmiento, and Reyes, “Challenges to the Right to Work in Ecuador,” 93-94, accessed 9/30/2016.
Not to our knowledge. There are institutions in charge of monitoring labor and employment rights, especially ADEM and the MAE, but these institutions are there for every worker, not only for refugees. Additionally, we have the LFR\textsuperscript{317} (Collectif Réfugiés Luxembourg): the LFR is an umbrella organization, uniting all groups and associations that actively work with refugees here in Luxembourg. They monitor refugees’ rights across the nation, and across all topics – not only labor and employment rights. The LFR includes two observers mandated by UNHCR and is a recognized authority here in Luxembourg, they are in charge of addressing issues related to asylees’ and refugees’ rights.

10. In your opinion / experience: What would be some specific idea(s) to help refugees integrate into the domestic labor market?

Diploma recognition should be made easier, especially in view of refugees’ real life circumstances: their original diplomas and certificates are often unavailable, due to the circumstances under which they fled their home country. So we should find another method of proving and validating their skills, rather than relying on paper documents as proof. Also, it would be helpful if access to vocational training opened up to refugees before they satisfy the language requirements. Combining vocational and language training would be helpful, instead of having language proficiency as a requirement to access vocational education and training.

\textsuperscript{317} The LFR is currently chaired by Amnesty International, Luxembourg, and each member organization chairs the LFR on a rotating basis. For more information, see: “Migrants et Réfugiés,” Amnesty International Luxembourg, accessed 11/21/2016, http://www.amnesty.lu/campagnes/migrants-et-refugies/?gclid=CM7EorTy6c8CFUwW0wod9LgG8A#.WAj9A-B97ic.
V. Evolution of laws regarding refugee’s access to jobs

11. Do you know if the recipients of international protection bring lawsuits related to employment? Not that we are aware of. Employers in Luxembourg are aware of refugees’ situation and sensitized regarding the topic. We have seen many employers reach out on their own initiative to offer employment to refugees. We see a lot of support and good-will out there – which also benefits employers, because Luxembourg is a small country and word-of-mouth travels fast.

12. Do you think that today, refugees face discrimination on the labor market in your country? Not to our knowledge, no. We have never heard feedback from refugees we work with about discrimination. Neither has this topic come up at the LFR’s sessions.

13. Should beneficiaries of international protection be considered a protected group before the law, i.e., like other groups already protected against discrimination on the basis of race, religion, gender, political affiliation, etc.? (under Luxembourg law, Title V) To us it seems that this isn’t necessary, because the existing law already protects them against the various forms of discrimination that can occur in the world of work. Adding a “refugee-category” would rather point to them as a special and distinct group, and that is probably not helpful. From our experience, this need to add refugees as a special category protected against discrimination has never come up in practice.

14. Would it be helpful if there was more public discussion and debate about refugee’s situation on the labor market in your country?

The more people and administrators are informed, the better. It certainly helps to raise awareness for refugees’ specific situation, for the difficult journey they had to make to get here to Luxembourg, and then to get into work here in Luxembourg. Generally
speaking, it would be helpful to educate people about refugees’ life realities, about the
difficulties they face from the beginning of their journey. This is not restricted to
questions of employment and employability – but it is an important part of the story.
Most refugees we receive have left very stable employment and economic situations
behind when they had to flee their country, and they arrive here with a very rich
professional experience. So far, we have not seen anyone among the beneficiaries of
international protection that we work with who was previously unemployed.
Appendix 2: Definition of Terms

Asylum: Asylum is the granting, by a state, of protection on its territory to persons from another state who are fleeing persecution or serious danger. Asylum encompasses a variety of elements, including non-refoulement, permission to remain on the territory of the asylum country, and humane standards of treatment.\footnote{United Nations Alliance of Civilizations UNAOC and Panos Europe Institute, eds. \textit{Media-Friendly Glossary on Migration} (Marseille and New York: 2014), 5, accessed 2/8/2016, http://www.panoseurope.org/publications/media-friendly-glossary-migration.}

Asylum seeker: An asylum-seeker is an individual who has crossed an international border and is seeking international protection. In countries with individualized procedures, an asylum-seeker is someone whose claim for asylum has not yet been finally decided on by the country in which he or she has submitted it. Not every asylum-seeker will ultimately be recognized as a refugee, but every refugee is initially an asylum-seeker.\footnote{UNAOC and Panos Europe Institute, \textit{Media-Friendly Glossary}, 10.}

Common European Asylum System: CEAS II was created in 2013 (replacing CEAS, originally created in 1999) and represents the European Union’s current legal framework on asylum. It consists of five legal instruments:

1. The Asylum Procedures Directive: regulates the asylum claims process.
2. The Reception Conditions Directive: establishes standards of reception conditions for asylum applicants in regards to housing, health care, employment, etc.
3. The Qualification Directive: establishes common grounds to grant international protection.

4. The Dublin Regulation: establishes Member State responsibility for the examination of an asylum application.

5. The EURODAC Regulation: establishes an EU asylum fingerprint database.\textsuperscript{320}

Convention Relating to the Status of Refugees (Geneva, 28 July 1951), as amended by its Protocol relating to the Status of Refugees from 31 January 1967:\textsuperscript{321}

“The 1951 Convention relating to the Status of Refugees is the key legal document in defining who is a refugee, their rights and the legal obligations of states. The 1967 Protocol removed geographical and temporal restrictions from the Convention.”\textsuperscript{322} The Convention was drafted and signed by the \textit{United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons}, held at Geneva from July 2 to 25, 1951. It entered into force on 22 April 1954, and the Protocol entered into force on 4 October 1967. As of April 2015, 142 state parties have signed both, the Convention and Protocol, and 148 state parties have signed at least one of the two. The Convention defines the status of refugees and is based on fundamental principles, very much like the UN


\textsuperscript{321} When referring to “the Convention,” I include both, the 1951 Convention Relating to the Status of Refugees, and the 1967 Protocol relating to the Status of Refugees. (Unless otherwise specified).

Universal Declaration Of Human Rights of 1948: non-discrimination (on the basis
of race, religion, and country of origin; see Article 3), non-penalization (for the
entry into a foreign country without proper documentation; see Article 31), and
non-refoulement (prohibiting a refugee’s country of destination from returning
her or him to an unsafe territory against their will; see Article 33). The
Convention Relating to the Status of Refugees further confers personal rights to
refugees, including, for example, the right of association (Article 15), access to
the courts of law in his or her new country of residence (Article 16), and the right
to gainful employment (Articles 17-19).323

Decent work: “Decent work sums up the aspirations of people in their working
lives. It involves opportunities for work that is productive and delivers a fair
income, security in the workplace and social protection for families, better
prospects for personal development and social integration, freedom for people to
express their concerns, organize and participate in the decisions that affect their
lives and equality of opportunity and treatment for all women and men. ‘Decent
work’ is a key element to achieving a fair globalization and poverty reduction. To
achieve ‘decent work’ requires job creation, rights at work, social protection and
social dialogue, with gender equality as a crosscutting objective.”324

Gainful employment (wage earning employment): Gainful is defined as:

“productive of gain, paying money, profitable.”325 In the context of the 1951

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324 UNAOC and Panos Europe Institute, Media-Friendly Glossary, 10.

Convention, “[t]he phrase ‘wage-earning employment’ is to be interpreted in its widest sense to apply to every case in which a person is in paid employment. Self-employment and the liberal professions are excluded (cf. Arts. 18 and 19), although persons assisting members of the liberal professions or other self-employed refugees and employed by them would fall within Art. 17.”

Labor migration: The movement of persons from one geographical location to another in order to find gainful employment. International labor migration involves the crossing of a border for the same purposes. In terms of economic theory there is no difference between internal (e.g., rural to urban) and international labor migration. Differences stem from legal issues that arise if someone wishes to take up employment in a foreign country or when an employer reaches over a border to recruit a worker.

Labor mobility: “the movement of workers between occupations or between geographic locations.”

Low-wage labor vs low-skilled labor: The term “low-wage labor” is sometimes used to define workers in certain employment sectors by the amount they are paid. Low-wage sectors include domestic work, construction work, agricultural work and other forms of manual labor that are considered dirty, dangerous and difficult.

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327 UNAOC and Panos Europe Institute, Media-Friendly Glossary, 22.

328 UNAOC and Panos Europe Institute, Media-Friendly Glossary, 22.
Although the term “low-skilled labor” is often used synonymously, it should be avoided since it implies a negative value judgment regarding the workers’ experience, proficiency and capacity for growth. It also does not take into account that there are a variety of skill levels within the general category of “low-skilled labor,” that workers have training as well as knowledge that can both come from formal and non-formal learning experiences. Especially when talking about migrant workers, it is important to consider that they are often confined to a particular sector regardless of their skills (this is especially often the case for female migrant workers).  

Migrant and humanitarian migrant:  

*Migrant* is a generic term and there is no internationally recognized definition. The International Federation of Red Cross and Red Crescent Societies’ policy on migration describes migrants as people who leave or flee their places of habitual residence to go to a new place, across international borders or within their own state, to seek better or safer perspectives. Migration can be forced or voluntary, but most often it involves a combination of choices and constraints, as well as the intent to live abroad for an extended period of time.  

The OECD defines permanent migrants as: “people whose status enables them to stay in the host country under the circumstances that prevailed at the time they arrived. In this group, four broad categories may be distinguished:

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long-term migrants within a free-mobility zone, labour migrants, family migrants and humanitarian migrants.”\textsuperscript{331}

*Humanitarian migrants* are people who have successfully applied for asylum and have been granted protection, either through refugee status, subsidiary or temporary protection. They may also have been resettled, “through humanitarian programmes with the assistance of the UNHCR or through private sponsorship – often the case in Australia, Canada and the United States.”\textsuperscript{332} For this thesis, I will apply the term *humanitarian migrant* to all recipients of protection – be it under a granted refugee status, subsidiary or temporary protection. Also, following the example of the OECD’s definition, I will use the terms “refugee, person in need of protection,” and “humanitarian migrant” interchangeably.

Receiving country (destination country): The country where an asylum seeker, refugee, or migrant habitually resides after leaving his country of origin; not a country where “in transit,” but the country where s/he establishes a new residence.

Refugee: “A … person who meets the eligibility criteria under the applicable refugee definition, as provided for in international or regional refugee instruments, under the United Nations High Commissioner for Refugees’ mandate, and/or in national legislation.”\textsuperscript{333} The definition provided in Article 1A (2) of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol is the most widely circulated today:


\textsuperscript{332} OECD, *Making Integration Work*, 7.

\textsuperscript{333} UNAOC and Panos Europe Institute, *Media-Friendly Glossary*, 5.
As a result of events occurring before 1 January 1951 and owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.  

Restrictions of time and place, as contained in the above article, were subsequently removed by the 1967 Protocol relating to the Status of Refugees, Art. 1 (2):

For the purpose of the present Protocol, the term “refugee” shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words “As a result of events occurring before 1 January 1951 and ...” “and the words”... “a result of such events”, in article 1 A (2) were omitted.

Schengen area: Currently, the Schengen area consists of 26 European countries (of which 22 are EU states): Belgium, Czech Republic, Denmark, Germany, Estonia, Greece, Spain, France, Italy, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Slovenia, Slovakia, Finland and Sweden, along with Iceland, Liechtenstein, Norway and Switzerland. These countries do not carry out border checks at their internal borders (i.e., borders between two

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334 UNHCR, Convention and Protocol, 14.

335 UNHCR, Convention and Protocol, 46.
Schengen states); they do carry out harmonized controls at their external borders (i.e., borders between a Schengen state and a non-Schengen state).³³⁶

Sending country (country of origin): The last country where an asylum seeker, refugee, or migrant had his habitual residence before beginning his journey to a new country of residence.

Subsidiary Protection: Subsidiary protection is, along with refugee status, a form of international protection which is granted in Europe to a third country national or to stateless persons who are in need of an international protection but who do not fulfil all the requirements to be provided with refugee status. Subsidiary protection is defined in the Article 2(e) of the EU Directive 2004/83 which identifies the person eligible for subsidiary protection as “a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm” and “is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country”. The content of this serious harm is fully expressed in the Article 15 of the same Directive and consists of: (a) Death penalty or execution; (b) Torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; (c) Serious and individual

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threat to a civilian’s life or person by reason of indiscriminate violence in
situations of international or internal armed conflict.337

Temporary protection: For countries belonging to the European Union, the EU

_Council Directive 2001/55/ECA_ defines temporary protection as:

a procedure of exceptional character to provide, in the event of a mass
influx or imminent mass influx of displaced persons from non-EU countries who
are unable to return to their country of origin, immediate and temporary
protection to such persons, in particular if there is also a risk that the asylum
system will be unable to process this influx without adverse effects for its
efficient operation, in the interests of the persons concerned and other persons
requesting protection.338

In the United States, temporary protected status is defined by USCIS as follows:

The Secretary of Homeland Security may designate a foreign country for
TPS due to conditions in the country that temporarily prevent the country's
nationals from returning safely, or in certain circumstances, where the country is
unable to handle the return of its nationals adequately. USCIS may grant TPS to
eligible nationals of certain countries (or parts of countries), who are already in
the United States. Eligible individuals without nationality who last resided in the
designated country may also be granted TPS.339

337 UNAOC and Panos Europe Institute, _Media-Friendly Glossary_, 30.


339 “Temporary Protected Status,” USCIS, accessed 4/7/2016,
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