



**A BUON
DIRITTO**
— ONLUS —

On the behalf of



Ero Straniero

L'umanità che fa bene

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Italian legal framework

The conditions of entry and residence of foreign citizens are regulated by Legislative Decree 286/1998, Consolidation Act on Immigration (TUI).

The President of the Council of Ministers prepares the Three-Year Planning Document that establishes the criteria for defining the maximum annual entry quotas for autonomous, subordinate non-seasonal and seasonal work.

By the November 30th, the President must establish the stock of quotas for the following year through the Flow Decree. In case of non-publication of the Planning Document, the Flow Decree can still be adopted, but in continuity with the previous one.

The three-year Planning Document has not been published since 2007. Therefore, the Flow Decrees of subsequent years did not change the quantity and quality of the quotas. Only in 2020 was the restriction abolished, making it possible to exceed the threshold of approximately 30,000 quotas, unchanged since 2015¹: the 2023 Decree provides for approximately 82,000 quotas, of which more than half for seasonal work².

With reference to subordinate and seasonal work, the TUI requires the employer to make an offer to the employee still in the Country of origin. Therefore, a foreign citizen without a residence permit but with a job offer will have to return to his/her Country and then ask to re-enter Italy legally - without any automatism. A serious concern is represented by the blackmail of foreign workers in this condition.

¹ <https://osservatoriocpi.unicatt.it/ocpi-pubblicazioni-l-immigrazione-regolare-in-italia>

² <https://www.lavoro.gov.it/notizie/Pagine/Flussi-pubblicato-il-decreto-per-ingresso-dei-lavoratori-stranieri-in-Italia.aspx>

As of today, it is estimated that there are around 500,000 migrants in an irregular condition³, a sum that has increased in recent years both due to the regulations that make it difficult to obtain a new work residence permit after losing the previous one (i.e.: to remain unemployed and not to find another job within a year) and due to the abolition of the residence permit for humanitarian reasons in 2018, 'replaced' by the Special Protection, which will be described later.

Therefore, in Italy the regular entry channels for work are not adequate in numerical and qualitative terms - mainly for seasonal work, which does not always guarantee stability for the future -, are characterised by a long and complex procedure and do not protect the real needs of workers and employers. Also, in view of the number of workers who are already irregularly present in the country but who cannot regularise their position.

Regularity of stay and access to rights

Regularity of residence is a requirement for access to rights of fundamental importance for the safety and dignity of the person. In particular: civil registration, registration with the National Health Service (SSN), welfare benefits, and the request for social housing.

Moreover, it is noted that irregularly staying foreigners face a serious risk of being victims of exploitation, including by organised crime: the blackmail related to the absence of a residence permit, the possibility of being detained in an expulsion centre and of being repatriated - in addition to the need to provide for their own sustenance and, in most cases, for their families in their Country of origin - are factors that contribute to the worsening of their conditions.

It is estimated that the incidence of irregular foreigners in irregular work is 17.3%, higher than that of regular workers⁴.

The National Plan for Combating Irregular Employment 2023-2025 of the Ministry of Labour and Social Policies highlights the disproportion between the conditions of Italian and foreign workers and, albeit briefly, calls for the revision of the TUI to "*effectively address the connections between the migration issue and irregular employment*"⁵.

In economic terms, it is then emphasised that the loss of the contributions of workers, who today are not regular because they do not have a residence permit, amounts to a considerable sum. In fact, it is estimated that for only the approximately 200,000 applications submitted in the context of the regularisation of 2020, analysed in the next paragraph, the lump-sum contributions would amount to 30.3 million in income, while the value of welfare and social security contributions, IRPEF and local surtaxes would amount to 363.5 million per year⁶.

The Regularisation (Sanatoria) 2020

In the absence of more effective legislation on work-related entry and residence, the main tool for regularising position for work reasons, without considering the application for international protection, is the Regularisation or Sanatoria. This is an extraordinary programme thanks to

³ <https://www.ismu.org/xxvii-rapporto-sulle-migrazioni-2021-comunicato-stampa-11-2-2022/>

⁴ <http://www.fondazioneleonemoressa.org/new/wp-content/uploads/2022/07/Slide-14.07.2022.pdf>

⁵ <https://www.lavoro.gov.it/notizie/Pagine/PNRR-adottato-il-Piano-Nazionale-emersione-lavoro-sommerso-2022-2025.aspx>

⁶ <https://associazionedomina.it/wp-content/uploads/2020/08/Sanatoria-analisi-Osservatorio-Domina-Comunicato-24.08.2020.pdf>

which a foreign citizen, either a beneficiary of a job offer or already irregularly employed, can obtain a residence permit.

Since 1990 - before the adoption of the TUI - 7 Sanatorie have enabled 1.8 million foreign nationals to obtain a document. The quota system has allowed 1.2 million people to enter for non-seasonal work since 1998⁷.

There is therefore a tendency to prefer the reiterated adoption of extraordinary regularisation programmes over the introduction of a structural mechanism.

Among the main criticalities of the Sanatoria, we can mention:

(i) the exceptional nature of the measure, when the presence of a large number of foreigners, in some cases already irregular workers, is detected, and the need for labour required by different production sectors. Moreover, Sanatorie do not represent an organic measure to the TUI and often the connection between the two disciplines can cause confusion and administrative dysfunctions;

(ii) the limited application to specific labour sectors;

(iii) the impossibility for the worker to submit an application independently since the involvement of the employer is always required, who, in some cases, may exercise this 'imbalance' of power to the detriment of the worker

(iv) the long and complex procedure, which may generate inconvenience for applicants and endorse different interpretations among offices in the territory.

Emblematic is the example of the June 2020 amnesty, limited only to the sectors of domestic work, personal care, and agriculture, which has the same characteristics and critical issues as the previous ones. In October 2022, just over two years after the deadline for submitting applications, more than 200,000, 80% are being processed or have formally closed. While in only 37% of cases has a permit been issued⁸.

In addition to the delays, it must also be considered the chronic shortage of staff in the offices, the administrations unpreparedness, and the unclear regulations. It took seven ministerial circulars in a year to clarify almost all the theoretical and practical profiles⁹.

The Special Protection residence permit

Currently, the only regularisation mechanism for irregularly present migrants is the Special Protection, which allows the release of a two-years permit. In 2018, the institution took the place of the residence permit for humanitarian reasons, and focuses mainly on the protection of private and family life as codified by the European Convention on Human Rights (ECHR) and related Court. The cornerstones for the recognition of special protection are, among others, the rootedness in Italy, the existence of family ties and also the presence of an employment. However, no rule guarantees automatic recognition of the residence permit following the signing of a work contract or the promise of employment by the employer. The assessment is carried out by the competent authorities, but there are no unequivocal criteria for examining applications based on the presence of an employment contract or proposal (e.g.: short-

⁷ <http://www.fondazioneleonemoressa.org/new/wp-content/uploads/2022/07/Slide-14.07.2022.pdf>

⁸ https://erostraniero.radicali.it/wp-content/uploads/2022/12/Monitoraggio-regolarizzazione_aggiornamento-dicembre-2022.pdf

⁹ <https://www.interno.gov.it/it/speciali/emersione-dei-rapporti-lavoro>

term/indefinite-term, full-time/part-time, minimum wage, etc.), leaving wide discretion to the Administrations.

Special protection can be granted by the Territorial Commissions for the recognition of international protection within the assessment of an asylum application or with a special application.

The Italian system has, in fact, generated an overlap between two regularisation channels - international protection or for work - without, however, clearly defining the perimeter and guarantees of the second, especially when there is no need for protection or protection of family life but only the existence of an employment agreement.

The Popular Initiative law proposal of the Ero Straniero Campaign

As is clear from the previous points, Italy lacks an individual regularisation mechanism, organic to the TUI, which would allow migrants worker who has been offered a job or is already irregularly employed to apply for a residence permit at any time. Such an institution could have a four advantage:

- (i) progressively to empty the number of irregular-staying migrant workers;
- (ii) to generate an income for the State, thanks to the contributions paid by employers and workers in connection with the employment contract
- (iii) to facilitate access to the rights provided to legally resident migrants;
- (iv) to reduce the number of applications for international protection or special protection directly to the Questore - and, consequently, the workload of the Administrations involved in the procedure.

In 2017, the Ero Straniero Campaign drafted a popular initiative law proposal moving in this direction¹⁰ Among the various provisions,¹¹ we can mention:

- (i) individual regularisation of foreign nationals through the application for a residence permit for proven integration, which can also be assumed from the presence of a job offer;
- ii) the reintroduction of the private sponsorship system and the entry visa for job-seeking, in order to overcome the anachronistic rigidities of the procedure related to the Flows Decree.

The proposal was signed by more than 90,000 citizens - according to the law, at least 50,000 -, a sign of great attention to the issue raised and the need to find innovative solutions. However, after years of political immobility, the text, deposited in Parliament in October of the same year, decayed after the second legislature, in September 2022.

The Ero Straniero Campaign continues to reiterate the need for an organic reform of the TUI with a mechanism that favours the regularisation of foreign workers, the only tool that can really encourage the reduction of irregularity and profoundly affect labour policies with respect to the immigrant population, through advocacy activities - such as monitoring the work of the

¹⁰ The Ero straniero Campaign, launched in 2017, advocates for a reform of immigration legislation in Italy, with a focus on the promotion of legal residence, through a popular initiative law proposal entitled “*New provisions for the promotion of legal residence and the social and labour inclusion of non-EU foreign citizens*” deposited in Parliament on 27 October 2017. The campaign is promoted by: Radicali Italiani, Fondazione Casa della carità “Angelo Abriani”, Arci, Asgi, Centro Astalli, Cnca, A Buon Diritto Onlus, Oxfam Italia, ActionAid Italia, Fcei with the supporto of numerous Majors and organizations.

¹¹ <https://erostraniero.radicali.it/la-proposta/>

2020 Sanatoria - and support for the reform of legislation - such as the proposed popular initiative law and the package of amendments to the 2021 Budget Law¹².

¹² https://erostraniero.radicali.it/wp-content/uploads/2021/11/Monitoraggio-regolarizzazione-ed-emendamenti_25-novembre-2021.docx.pdf