

Immigration Law Creating Uncertainty in Education and Future of Children

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1. Introduction

The purpose of this paper is to examine the influence of the Immigration Control and Refugee Recognition Act¹ on the education and life course of children whose immigrant parents are undocumented, or under a “provisional release permit” in Japan. Previous research in the sociology of education have discussed different contributing factors to the educational achievements of immigrant children in Japan. Such factors included ethnic identity and social capital (Miura and Nukaga 2017), Japanese language skills and adaptation to schools (Shimizu 2008; Korekawa 2019), and social structures including high school examination (Kojima 2008). However, research has failed to comprehensively discuss the effects of immigration law on children, especially in instances when parents have limited rights due to visa status.

In brief, the Japanese government’s policy on education does not oblige children of foreign nationality to nine years of compulsory education. However, the Ministry of Education, Culture, Sports, Science, and Technology (MEXT) stated² that “If they (children of foreign nationality) wish to receive public compulsory education, they are accepted free of charge in the same manner as Japanese children, within the framework of international human rights conventions (translated by the author).” While it is stated that children with foreign nationalities are not subject to compulsory education, the title of “foreign nationality” is determined by various visa statuses. As the rights that immigrants have greatly differ depending on the visa status, it is necessary to see how the status impacts children’s education and life course.

There are two primary reasons why this paper focuses on children of undocumented parents. First, there are numerous possibilities for any foreign resident to become “undocumented” unexpectedly. Visa status is fluid and thus a person’s rights are subject to change based on their visa status under the immigration law. For example, one may come to Japan as a student and later acquire

¹ The Immigration Control and Refugee Recognition Act was first enacted in 1951 “to provide for equitable control over the entry into and departure from Japan of all persons and to consolidate the procedures for recognition of refugee status” and has been revised many times. For example, “illegal” entry and stay in Japan has become the subject for punishment since 1999 (Immigration Services Agency of Japan 1951).

² MEXT website, https://www.mext.go.jp/a_menu/shotou/shugaku/detail/1422256.htm (Last Accessed November 10, 2021).

a working visa. As a student, the person could work a maximum of 28 hours per week, but with a working visa, the same person has the right to work in a particular field longer than 28 hours. Thereafter, suppose the same person acquires a “spouse visa” upon marriage to a Japanese national, the person can work in any field unrestricted. Clearly, from this example, one single person experiences different rights as one’s visa status changes. Additionally, it is important to note that it is not uncommon for a person to lose their visa status. There are different stories about how people became “undocumented”. One may be a victim of human trafficking, another may have lost his or her visa status after being fired from work or getting divorced, another may have been rejected refugee status and still, another may have never had a visa since birth especially if borne to undocumented parents. Unfortunately, many people are uneducated about the kind of disadvantages they will encounter without a visa. Researchers in the education field have also not discussed thoroughly the effects of visa status on education.

Second, it is important to understand “the ‘illegal’ not as an essentialized, generic, and singular object but rather as a legal and political product of a particular historical and national contexts” (Garcés-Mascareñas 2010, 78). For instance, while “in Malaysia illegality often represents a way to escape from state control”, in Spain, “illegality has been the main path to later access to legality” (Garcés-Mascareñas 2010, 87). According to Carens (2010), with the moral logic that “people become members of our community over time” (23), France and the United States have been granting legal residence status to illegal migrants if “they had lived in the country continuously for ten years and met certain other requirements regarding employment, the lack of criminal record, and so on” (22). The question of “illegality” changes depending on the nation. De Genova (2004) also argues that “When undocumented migrants are criminalized under the sign of the ‘illegal alien,’ there is an ‘illegality’ that does not involve a crime against anyone; rather, migrant ‘illegality’ stands only for a transgression against the sovereign authority of the nation-state” (175). Consequently, illegality is a social, political construct (Garcés-Mascareñas 2010; De Genova 2004).

Even though the border between “legal” and “illegal” changes depending on the nation, political context, being “illegal” put people in a more vulnerable situation with fewer entitlements. Therefore, this paper aims to investigate how this “illegality” has impacted children whose parents are undocumented, especially their education and prospects.

2. Education rights for undocumented migrant children

According to statistics by International Organization for Migration (2019), the number of international migrants was 272 million, 3.5% of the world’s population (3). Although it is difficult to find out exactly how many migrants are “undocumented,” “irregular,” or “unauthorized³” globally,

³ The terms “undocumented,” “irregular,” and “unauthorized” migrants are used interchangeably.

in the European Union, it is estimated that there are between 1.6 and 3.8 million migrants that lack legal status (The Platform for the International Cooperation on Undocumented Migrants 2012). In the United States, there is about a 10 million “unauthorized” population, of which, 737,000 are aged 3 to 17 (Migration Policy Institute 2021). In Japan, there is a total of 82,868 “illegal⁴” stayers (Immigration Services Agency of Japan 2021). However, the population by age is unknown since the statistics do not show it. Understanding that children without legal status would face various barriers, education rights for all children regardless of visa status are set as one of the goals by international organizations and in many nations. For example, the United Nations Convention on the Rights of the Child, an international agreement adopted in 1989, states in Article 28 that “Every child has the right to an education. Primary education should be free. Secondary and higher education should be available to every child. Children should be encouraged to go to school to the highest level possible. Discipline in schools should respect children’s rights and never use violence” (Committee on the Rights of the Child). In this statement, the child means “any person under the age of 18,” therefore including those without legal status (Committee on the Rights of the Child). Prior to this international agreement, in the United States, the Supreme court case, *Plyler v. Doe* in 1982 ruled that “undocumented children are ‘persons’ under the Constitution and thus entitled to equal protection under the law according to the 14th Amendment” (Gonzales 2009, 421). In Japan, the Ministry of Education, Culture, Sports, Science and Technology (MEXT) released a notification “Enhancement of Education for Foreign Children” in 2006 which stated that “When it is necessary to confirm the place of residence of a foreign child during the school enrollment process, the school should not be limited to confirmation with the alien registration card, but should be flexible to use a document that can be judged to have a certain level of reliability in confirming the place of residence” (June 22, 2006, MEXT notification No. 368)⁵. As these measures imply, there is an ideology in many nations that education for all children should be protected.

Based on the international agreement, are the educational rights of children well protected? Tidwell (2019) argues that in the case of Germany, although Germany has signed the United Nations Convention on the Rights of the Child, educative authority is left to each of the 16 states and there is

These imply “A non-national who enters or stays in a country without the appropriate documentation. This includes, among others: a person (a) who has no legal documentation to enter a country but manages to enter clandestinely, (b) who enters or stays using fraudulent documentation, (c) who, after entering using legal documentation, has stayed beyond the time authorized or otherwise violated the terms of entry and remained without authorization” (IOM 2011, 102).

⁴ Although the term “illegal” is used by the Immigration Services Agency of Japan, “The term ‘irregular’ is preferable to ‘illegal’ because the latter carries a criminal connotation and is seen as denying migrants’ humanity” (IOM 2011, 54).

⁵ This statement was carried over to the “Ensuing School Opportunities for Foreign Children” (July 5, 2012, MEXT notification No. 388) issued when the alien registration system was abolished and residence cards were issued in 2012.

no federal mandate which guarantees the rights to public education for all. Therefore, in some states including Berlin, school administrators are required to notify local law enforcement officials if a child without a proper legal residence permit enrolls in a public school (Tidwell 2019). This state law “scares many parents and children from attempting to access education” (Tidwell 2019, 173). While Tidwell (2019) claims that children without legal residence permit face difficulties in accessing education in some states of Germany, previous research on undocumented children mostly discussed that the problems would arise as they transitioned into adulthood. For example, Gonzales (2012) demonstrated through interviews that many adolescents without legal status in the United States “were unaware of their unauthorized immigration status or its significance” (262). They become aware of their situation when state-issued identification is required for driving, working, voting, joining social activities, and so on (Gonzales 2012, 262). Gonzales (2009) also pointed out, “While federal law does not expressly prohibit their participation in post-secondary institutions, they cannot compete for financial aid” (421) and questioned, “What does it mean to provide children with certain rights and protections that ultimately expire?” (421). According to Gonzales (2012; 2009), educational rights of students at the primary school level are protected, but they become more “illegal” as they grow up.

Then, what of the case of Japan? Previous research on undocumented children in Japan also points out the phenomenon of increasing “illegality.” For instance, Kawamoto (2021) introduced the case of an undocumented child who was born and raised in Japan and given a provisional release permit. The child successfully attended elementary school, junior high school, and high school with public financial assistance, but the problem arose when the child wanted to apply for a university scholarship (Kawamoto 2021). Since all the scholarships required applicants to hold a visa, the child had no means to acquire funds and was ultimately forced to give up a university education (Kawamoto 2021). Kawamoto (2021) argued that rights for children after compulsory education should also be protected as “it is natural for children to have the wish to study and work with their friends in a country where they have grown up” (62). In addition, Ishii (2021) revealed the invisibility of the stateless. Ishii (2021) demonstrated through her in-depth interviews with staff at child-care facilities that while the nationality law defined abandoned children as “children without any trace of parents” (Ishii 2021:983), the reality was different in that abandoned children had gradually lost ties with their parents as well as their ability to apply for citizenship. In one case introduced by Ishii (2021), two children were believed to be of Thai descent, however, staff at the child-care facility failed to apply for Japanese nationality on the children's behalf. At the age of 22, the now-adult children suddenly found themselves stateless. It was too late to apply for Japanese nationality nor to that of Thai nationality (Ishii 2021). If the citizenship application had been processed at a time when contact with either their Thai mother or Japanese father was possible, their statelessness could have been avoided and their security guaranteed (Ishii 2021).

Although these researches on undocumented children in Japan are significant in that they brought the issues of undocumented children to light, a question remains. Do undocumented children at the primary school level in Japan have access to education and enjoy their rights as promised in the agreement? To answer this question, this paper focuses on primary school children in Japan.

3. Methodology

I conducted several interviews from June 2020 to November 2021 with the parents of two households because they demonstrated how their undocumented status influenced the education of their children's primary education. The parents of both households were given *Karihoumen* or the provisional release permit but under different circumstances.

To briefly explain the institutional setting of their situation, according to Article 24 of the Immigration Control and Refugee Recognition Act, both households were subject to a deportation order⁶. However, "illegal" foreign nationals are to be detained at the detention center if there are reasons preventing their return to their country of origin as Article 39 states, "An immigration control officer may, if he has reasonable grounds to believe that a suspect falls under any of the items of Article 24, detain the suspect pursuant to a *syuuyou reisyo*, or written detention order (Immigration Control and Refugee Recognition Act, 1951)." Both households were not immediately sent back to their country of origin because they had reasons to stay. After the stage of *syuuyou reisyo* (written detention orders) which is at a maximum of 60 days (Article 41), there is a stage of *taikyo kyousei reisyo* (written deportation orders). At this stage, the detention period is "until deportation becomes possible" according to Article 52 (5) (Immigration Control and Refugee Recognition Act 1951). Consequently, long-term detention has been raised as one of the big issues that violate human rights (Mochizuki 2020). The Filipino mother in the first household stayed at the detention center for one year and two months under this stage of written deportation order.

While people stay at the detention center under written detention orders or written deportation orders, they can be released if they are given a provisional release permit. According to Article 54, "Any person detained pursuant to a written detention order or deportation order, his/her representative, curator, spouse, lineal relative or sibling may apply for provisional release permit to the director of the immigration detention center or supervising immigration inspector in accordance with the procedures provided for by Ordinance of the Ministry of Justice" (Immigration Control and Refugee Recognition Act 1951). If the person was given this provisional release permit after going through inspection and depositing a stipulated amount, he or she can be bailed out of the detention center temporarily, but with limited rights such as "restrictions on the

⁶ "A person who has stayed in Japan beyond the authorized period" (Article 24, iv, (b)) and "Having foreign nationals engage in illegal work" (Article 24, iii-4, (a))

place of residence, area of movement and the obligation to appear upon receiving summons (Article 54 (2))” (Immigration Control and Refugee Recognition Act 1951). In addition, as the Immigration Services Agency of Japan notifies employers hiring foreign residents, the person under the provisional release cannot engage in any activities that produce reward or income. Employers are also subject to punishment if they hire undocumented migrants including those under the provisional release. Furthermore, undocumented migrants are not eligible for any public financial assistance. Both households which I introduce in the next section had such limited rights under their provisional release permit.

4. Are Education Rights for Children Protected?

4-1. Receiving education as a hostage

A Filipino woman named Ellen divorced her Japanese husband and after three years in 2008, she lost her visa status and became an overstay. Ellen then met her Filipino partner and together gave birth to Haruto in 2013. Ellen was living in constant fear at the risk of being found undocumented with Haruto. Upon Haruto turning six years old in 2019, anxious, Ellen visited the city hall to inquire if Haruto could enter a public elementary school. However, the city officers told Ellen that Haruto had no right to enter school because they had no visa. Shocked, Ellen returned home that day unable to give elementary education to her child. In 2019, on a cold February morning, when Ellen and Haruto were outside disposing of garbage, two women and a man approached and talked to them. Soon after, Ellen and Haruto were separated. Ellen was taken to a detention center and Haruto to a child-care facility. Due to the timing of the separation, Ellen suspected that the city hall officers had notified the immigration officers of their illegal stay.

In the time Ellen had spent about one year and two months at the detention center, Haruto had been attending a public elementary school from a child-care facility. In May 2020, Ellen was granted bailout of the detention center after the Immigration Services Agency of Japan gave out more provisional release permits to avoid clusters of COVID19 at the facility (Immigration Services Agency of Japan 2020, 50). Although she was released, Haruto was still kept at the child-care facility. There was no explanation by authorities as to why Haruto could not live with his mother. Ellen was lucky to see Haruto once a month. Though Ellen was happy to meet Haruto at all, she was “saddened” by the fact that Haruto had already forgotten how to speak English and Ellen’s mother tongue, Tagalog. Haruto was calling Ellen “Mommy” before, but now it was “*Okaasan* (Mother).” Because Haruto could only speak Japanese, it became more difficult for him to communicate with his parents. Ellen became worried as Haruto’s weight had waned with every meeting. Was it because Haruto did not like the meals at the child-care facility? Or because Haruto was living in a state of constant stress? Ellen could not fathom the reason because she had no insights into Haruto’s life at the child-care facility nor the school and she had little time together with her son. Ellen wished to

live with Haruto and his father together in Japan, but her wishes were denied by welfare officers for unknown reasons. Ellen finally “chose” to leave Japan with Haruto so that they could live together. In September 2020, they went to the Philippines where Haruto had never been to. Upon arriving, according to Ellen, Haruto had difficulties adapting to the new environment. Since Ellen and Haruto had been undocumented for years in Japan, it will be at least after five years for them to be permitted entry to Japan.

This case has revealed the following two points. First, the international agreement or the notification by MEXT that pursues rights for all children was not necessarily effective practice. In Ellen’s case, given her failure to seek education for her child via visiting the city hall, Haruto would not have been granted his right to education. As Carens (2010) illustrated, irregular migrants “live ordinary lives” except for “one dramatic difference” which is “their vulnerability to deportation” (5). Many undocumented parents are fearful of deportation and decide to give up their children’s rights to education. Although Haruto was within his rights to education, the city officers informed Ellen that Haruto could not enroll in school due to his visa status. This happened in 2019, thirteen years after the MEXT notification had been released. In addition, the city officers probably have reported to the immigration by exercising their discretionary powers. While the Act 62(2) of the The Immigration Control and Refugee Recognition Act states, “Any official of the government or a local public entity shall, if he/she has come to have knowledge of such an alien set forth in the preceding paragraph in the execution of his/her duties, report such information,” Prime Minister Noda mentioned in 2011 that reporting is not an obligation. In his written response dated December 16, 2011, regarding the enhancement of education for foreign children, Prime Minister Noda stated, “In exceptional cases where reporting would not achieve the administrative purpose imposed on an administrative agency, it is also possible for the relevant administrative agency to decide whether or not to report the matter on an individual basis by weighing the public interest in the performance of its duties against the interests to be protected by the reporting obligation of the relevant administrative agency” (Cabinet Minute 179, No.121). Therefore, it depended on city officers’ judgment whether to report or not, which would make undocumented immigrant families hesitant to access public education. Consequently, this example shows the discrepancy between policy and practice. The agreement or the notification was ineffective in guaranteeing the right to education for the child.

Second, Haruto’s rights to education were protected by means inconsiderate of Ellen’s and Haruto’s wishes. While the Immigration services Agency of Japan has been aiming to reduce the number of “illegal” stayers by penalizing them based on the Immigration Acts, the rights of children including those undocumented are to be protected under the Child Welfare Act. Therefore, Ellen was subject to punishment while Haruto was exempted from it as an “innocent” child. Ellen’s utmost

grievance was the separation from her child. In principle⁷ (Article 33, Child Welfare Act), forced separation of parents and their children can be executed under temporary protective custody for a maximum of two months. In the case of “illegal” stayers, under a written deportation order, there is no maximum period of detention. In other words, the long separation of parents and their children is justified under the Immigration Control and Refugee Recognition Act. Even after Ellen’s release, she could not live with Haruto. This may be attributed to the staff of the child-care facility evaluating Ellen to be incapable of taking care of the child financially or being detained again unexpectedly. Ellen was unsure of the basis of separation because insufficient information had been provided by the staff. For Ellen, the possibility of unending separation was tremendous torture. How separation would affect language, family relationships, and identity was never questioned. As a consequence of the actions of the authorities, Haruto lost his Tagalog language proficiency and a means of communicating with his family. Though the Immigration Services Agency of Japan gave Ellen a choice to stay in Japan, in reality, there was no choice as Eriko Suzuki pointed out in a news article in 2019, “Separation of undocumented families indicates that Ministry of Justice reinforced the policy to expel them from Japan.” The only option left to Ellen for her to be together with Haruto was to return to the Philippines where Haruto had never been to. It was akin to the Japanese government taking a child hostage. “We let the child stay and receive education in Japan, but won’t release him until you say you’d return to your country of origin” was the message Ellen received. Rights for education were protected through an invisible force of intimidation and coercion.

4-2. Cannot stay nor leave

Quan, a Vietnamese father of two children, had been detained for about a month after he recruited other foreign nationals to work in a field that was different from their visa status. In December 2020, Quan was given a provisional release permit due to the pandemic situation.

Quan lived with his Vietnamese wife named Chau and his two children. The older son, Le, was seven-years-old, in his first year of public elementary school and his younger brother was five-years-old in pre-school. Quan used to have a visa status called “Engineer/Specialist in Humanities / International Services” because he had a college degree, passed N1 (the highest level) of the Japanese Language Proficiency Test and had many working experiences such as an engineer, an interpreter, and a supporter for foreign students. However, after he lost his visa, he was not allowed to work anymore. His salary dropped from 170,000 yen to 0 yen per month. The visa status of family members also changed from a “dependent” visa to “designated activities” which did not allow Chau to work because they are supposed to prepare for returning to Vietnam. To survive, Chau had to keep working at the farm and earn 50,000 yen a month “illegally.” In December 2020, they had to move

⁷ Temporary protective custody could be extended to more than two months under some conditions.

to a cheaper house because they could not afford the rent with only Chau's income.

In such circumstances, the parents were less concerned about the worsening financial situation rather more so fixated on the children's education. Quan and Chau had always hoped their children would thrive in school and attain a proper education. They encouraged their children to study the school curriculum as well as the Vietnamese alphabet. The children similarly enjoyed going to school and the after-school child center. As many of his rights were diminishing, Quan was afraid of how it would impact the rights of his children. "Would Le be able to continue school? Can his children use the after-school child center? Are they still eligible for child welfare?" Quan visited the immigration bureau, city office, Vietnamese embassy and many other institutions for consultation but he did not receive useful guidance to ameliorate his circumstances. With time, he grew distressed at the disadvantages that his status might cause his children's education, saying, "If I make even a small mistake, my children will not be able to receive an education." Despite paying city tax, social insurance, pension, and so on for the majority of his years, after he made one mistake, he was eliminated from the residence registry and treated as nonexistent. He does not have any entitlements to receive public assistance. Even his and his family's health insurance are void. Therefore, they had to be very careful not to fall sick.

Another big concern was the uncertainty of the future. At first, Quan thought of applying for *Zairyu-tokubetsu kyoka*, or the "Special Permission to Stay in Japan"⁸ to stay in Japan with his family. However, an officer of the Immigration Services agency of Japan informed him that there was a very low possibility for him to be granted the status. Since his children were still little, it was more likely that a judge would argue, "Little children would be able to adapt to life in Vietnam easily, therefore there would be no special reason for Quan and them to stay in Japan." Quan doubted that the children would adapt to Vietnam with ease since their home is in Japan. Nevertheless, the comment by the officer indicated that there were no options for him. Ultimately, Quan "chose" to go back to Vietnam with his family. However, due to the pandemic, booking a flight back to Vietnam was like winning the lottery. Moreover, since he "chose" to return, he was fully responsible for funding ticket purchases and quarantine fees which totaled at about 200,000 yen per person. It was not realistic for him to afford that much money for four people at once. Consequently, he first went back to Vietnam, leaving Chau and two children in March 2021. The uncertainty of when Chau and the children would join him unsettled Quan and his family members.

Suddenly a single mother of two children in Japan, Chau was struggling to juggle work and

⁸ The person may be granted the "Special Permission to Stay in Japan" after taking many things into consideration including "the reason for the requested stay, family circumstances, the applicant's conduct, situations in Japan and abroad, consideration of humanitarian grounds, and, moreover, the potential impact on other persons without legal status in Japan" (Immigration Bureau, Ministry of Justice 2009).

taking care of the children. Quan also had difficulties in finding work in Vietnam to support the family financially. In September 2021, Chau was finally notified by the embassy that the flight ticket would be ready in a few days. Thinking they could return to Vietnam unimpeded, Chau reported to teachers of the children's elementary school that the children would no longer attend school. Soon after that, it was revealed by the Vietnamese embassy that only Chau had attained a flight ticket, not including her children by mistake. Therefore, they had to wait for an extended period. She again visited the school to inform teachers that her children wanted to return to school. Chau as well as teachers were confused. As this showed, they were uncertain when they could fly to Vietnam, making their daily lives unstable. Finally, at the end of October 2021, Chau and her children received the flight tickets to Vietnam. The problem however was that schools in Vietnam do not accept new students in the middle of the year. According to Quan, the new school year starts in September in Vietnam and after about two months, schools no longer accept new students. Even worse, students who do not understand the Vietnamese language are more likely to be refused. Consequently, Le cannot attend school until the start of the new school year, which is September 2022. Le will be out of school for almost a year in Vietnam because he missed September. Chau wanted Le to continue receiving education, so she asked elementary school teachers in Japan if Le could participate in class online from Vietnam. Unfortunately, the teachers said it was impossible. All in all, Le will not be able to receive a school education for almost a year.

From this case, the following three points were revealed. First, Quan was afraid of what kind of rights would be left for his children as his rights such as to work and to receive financial assistance were deprived of. Chau was also not permitted to work anymore, forcing her to work secretly to survive. In other words, the limitation of rights made them more "illegal" as De Genova (2002) called "legal production of illegality" (419). The parents' concern was if attending school would also be "illegal" as many of their rights were deprived of. Although the international agreement and the notification of MEXT in 2006 stated that all children have the right to education, they were not effective in addressing Quan's fear. The immigration officers told Quan what rights he did not have. They did not inform him and his family of the rights they had. There was no institutional infrastructure for children with foreign nationalities or without documents that protect their rights to education. Quan and his family suffered from the uncertainty of their rights. Second, it seems that the Immigration Control and Refugee Recognition Act provided them options and it was the parents who "chose" to return, but in reality, they had no options. Quan had the right to claim for Special Permission to Stay in Japan, but he was told by the immigration officer that the possibility to be accepted was so low considering the age of the children that it would be in vain to apply. Therefore, Quan "chose" to leave Japan. Because they "chose," it was their responsibility to pay all expenses and to face any consequences of their choice. One of the unexpected consequences was that Le would be out of school for almost a year in Vietnam. They could not stay in Japan nor leave Japan

for a while. Currently, the system victimizes the 7-year-old child through no fault or actions of his own.

5. Discussion

Previous research showed that the “illegality” of children increased as they transitioned into their adulthood (e.g. Gonzales 2012; Kawamoto 2021). This paper, however, points out that it does not necessarily imply education rights for children at the primary level are well protected. Two households were also manipulated by the immigration law. To sum up, this paper nonpublicly revealed the following three points.

First, the international agreement or the notification by MEXT that pursues rights to education for all children is potentially flawed in the field of practice when migrants are subject to punishment due to their “illegality.” In Ellen’s case, the city officers did not know about the notification and provided incorrect information that Haruto did not have the right to enroll at a primary school. Even worse, the city officers may have reported their “illegality” to the immigration by exercising their discretionary powers. It became evident that processing for entry in to a school at the city office has a great risk of being reported since the officers have considerable authority over the fate of immigrant families. Quan also consulted with different people about his children’s rights, but he did not receive a definitive answer. Authorities were uncertain if his children could continue attending school. As his rights were deprived, he was anxious whether his children’s rights to education would also be revoked. The international agreement and the notification do not have any legal binding force if they are not acted upon. As Ellen and Quan were ill-informed of theirs and their children’s rights, they were constantly anxious whether their children could be deprived of their educational rights in an instant.

Second, while the system appeared to provide undocumented migrants some choice to decide their future, in reality, their “choice” or “will” was ingeniously controlled by the system. Before being detained, Ellen’s wish was that Haruto attends a public elementary school in Japan. Her wish came true in a way that agonized her the most; to be separated from Haruto for an unlimited period. Ellen finally had to “choose” to leave Japan because Haruto was taken hostage. Under the name of Immigration Control and Refugee Recognition Act and Child Welfare Act, the separation of immigrant parent and child was justified. This led to Haruto’s degradation of language skills and means of communicating with his immigrant parents. In Quan’s case, he had an option to submit Special Permission to Stay in Japan for him and his family to continue living in Japan. Though an option, the possibility to be accepted was significantly low. Quan had also suffered financially since he was not allowed to work or receive welfare under the immigration law. Quan’s wife, Chau had to commit to “illegal” activity, which was to work, to support herself and her family. Yet, her income was still insufficient. Therefore, Quan gave up letting his children continue their education in Japan

and “chose” to return to Vietnam. Since Chau and her children were in Japan as “dependent” of Quan, they also had to leave upon the availability of flight tickets.

Finally, when children move from one country to the other under the regulations of immigration law, there are always risks that their education is interrupted due to timeframe mismatch of the education system between countries. For example, according to Quan, his child, Le, will not be able to go to school for almost a year in Vietnam because schools in Vietnam do not accept new students two months after the new school year starts in September. It was ironic that Le could continue going to school in Japan with unstable residence status, but he would not be able to go to school in Vietnam where he has stable residence status. Rights to education were what Quan cared about the most and ultimately he failed to provide primary education to his child. Fortunately, the children could continue school when they lived in Japan, however, their right to education was comprised once they were “sentenced” to return to Vietnam. Had Le had the choice to remain in Japan until September 2022, he could have been in school, but he had no choice due to immigration law.

6. Limitations and Future research

This paper demonstrated the discrepancy between what is stated in the international agreement and the reality of individual lives. The agreement aims to guarantee rights for children. People generally agree that “children had little say in their illegal migration and should not be punished for the ‘sins’ of their parents” (Gonzales 2009:421). Yet, educational rights for children are not well guaranteed when it came to practice. While this paper demonstrated the struggles of undocumented parents for their children’s educational rights, there are limitations to the study. The first limitation was that while this paper discussed children attending public primary schools, it is important to note that there are nonpublic schools that accept undocumented children. The nonpublic schools include unauthorized, unlicensed ethnic schools that are not subject to public subsidy and graduation eligibility. While many of those unauthorized schools are in financial difficulties, they take an important role in guaranteeing educational rights for undocumented children. Second, even though this paper focused on parents with provisional release permits, in reality, many more parents and children are undocumented and not reported. It is difficult to conduct research targeting them because they would be afraid of openly talking about their undocumented status. It takes time to build rapport, but for academics to catch up with reality, the researcher should investigate occurrences at the ground level.

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