Re-visiting the ‘black box’ of migration: state-intermediary co-production of regulatory spaces of labour migration

Linn Axelsson, Charlotta Hedberg, Nils Pettersson & Qian Zhang

To cite this article: Linn Axelsson, Charlotta Hedberg, Nils Pettersson & Qian Zhang (2022) Re-visiting the ‘black box’ of migration: state-intermediary co-production of regulatory spaces of labour migration, Journal of Ethnic and Migration Studies, 48:3, 594-612, DOI: 10.1080/1369183X.2021.1978285

To link to this article: https://doi.org/10.1080/1369183X.2021.1978285
Re-visit ing the ‘black box’ of migration: state-intermediary co-production of regulatory spaces of labour migration

Linn Axelsson, Charlotta Hedberg, Nils Pettersson and Qian Zhang

Department of Human Geography, Stockholm University, Stockholm, Sweden; Department of Geography, Umeå University, Umeå, Sweden

ABSTRACT

It is now widely held that a variety of intermediary actors, including recruitment and staffing agencies, multinational corporations and local brokers, shape labour migration. This paper argues that in order to better understand the global circulation of labour it is necessary to explore the involvement of these actors in the production of the regulatory spaces through which migrant labour is brokered. Indeed, migration intermediaries do not only navigate borders on behalf of their migrant clients. Nor is ‘the state’ primarily a backdrop against which the understanding of the role of intermediaries may be developed. Instead, we argue, regulatory spaces of labour migration are made and remade through direct and indirect exchanges and interactions between intermediaries and state actors. Through an analysis of three moments of regulatory change in Sweden, the paper shows that such interaction does not take place in an even landscape but, rather, that the ability of migration intermediaries to influence the regulation of migration lies in the capacity to form close relationships or establish a powerful presence. A focus on the dynamic co-production of regulatory spaces by intermediaries and state actors, in our view, offers a more nuanced account of how labour migration currently is brokered and regulated.

ARTICLE HISTORY

Received 11 November 2020
Accepted 6 September 2021

KEYWORDS

Migration intermediary; brokerage; migration governance; regulatory space; public–private relationships

Introduction

In recent years, there has been growing interest in the actors that enable and give shape to international labour migration, not least in this journal (e.g. Cranston, Schapendonk, and Spaan 2018; Deshingkar 2019; Elrick and Lewandowska 2008; Groutsis, van den Broek, and Harvey 2015; Hernández-León 2021; Krifors 2021; Pijpers 2010; Walton-Roberts 2021). Two special issues, both published in 2018, respectively explore the diversity and complexity of the strategies used by a wide range of migration industry actors to facilitate and commercialise migration (Cranston, Schapendonk, and Spaan 2018) and the complex relationships between migrants and brokers, and between precarity and agency, which characterise migration brokerage in the Global South (Deshingkar...
In the Southeast Asian context, the explanatory value of the concept migration infrastructure, that is, ‘the systematically interlinked technologies, institutions, and actors that facilitate and condition mobility’ (Xiang and Lindquist 2014, 124), has also been widely explored (e.g. Lin et al. 2017; Xiang and Lindquist 2018; Xiang and Lindquist 2014). It may consequently no longer be the case, as Johan Lindquist, Biao Xiang, and Brenda Yeoh (2012) argued almost a decade ago, that mediation is a ‘black box’ of migration.

What arguably remains less explored, however, is the role that migration intermediaries play in the regulation of international labour migration (Khan 2019), specifically how they, together with state actors, shape, and reshape the very regulatory spaces through which they broker migrant labour. These regulatory spaces, we suggest, are made up of and gain their shape through, migration policies and the myriad of bureaucratic practices to which these policies give rise. Indeed, the interest in state-intermediary relationships has been relatively limited in research on intermediary actors in migration. Instead, attention has been directed at the ways in which a growing variety of intermediary actors shape international labour flows by mediating between individual migrants and ‘the state’. In this research, states – more specifically, their emigration and immigration regulations – come across primarily as a backdrop against which to understand how migration intermediaries emerge and operate (e.g. Nyberg Sørensen and Gammeltoft-Hansen 2013). For example, some migration intermediaries exploit regulatory loopholes (Alberti and Danaj 2017; Goh, Wee, and Yeoh 2017) or work the immigration system (Millar and Salt 2007) to establish pathways for migrants through migration regulations. Others mediate migration by subverting (Fernandez 2013), avoiding (Alberti and Danaj 2017; Knox 2018) or circumventing (Spaan and van Naerssen 2018; Žabko, Aasland, and Endresen 2018) migration regulations altogether.

This view is increasingly challenged by work which suggests that, in the day-to-day management of labour migration, governments often depend on migration intermediaries to ‘package’ labour migrants in ways that make them governable (e.g. Findlay et al. 2013; Goh, Wee, and Yeoh 2017; Xiang 2012), share some of the administrative burden of labour migration schemes (Axelsson and Pettersson 2021; Hernández-León 2021; Xiang and Lindquist 2014) or surveil temporary migrant workers and enforce their return (Surak 2018; Tseng and Wang 2013). However, a nuanced understanding of the regulatory roles of migration intermediaries, beyond their involvement in managing labour migration on behalf of the state is still lacking. There is consequently a need to revisit the ‘black box’ of migration and explore in detail the variety of exchanges and interactions between migration intermediaries and state actors through which the regulatory spaces of international labour migration, we contend, are continuously made and remade.

In order to make this argument, we combine insights from the somewhat fragmented literature on intermediary actors in migration with scholarship on migration governance, which has demonstrated that non-state actors increasingly are involved in regulating international migration (e.g. Freeman 1995; Lahav 1998; Menz 2009). Loosely inspired by these bodies of work and a unique case study of the regulatory roles of migration intermediaries in Sweden, we propose that, in the regulation of international labour migration, state-intermediary interaction takes several shapes.
Sweden is a particularly interesting case to consider because, as we explain in more
detail below, in December 2008, it adopted one of the most neo-liberal labour migration
policies among the OECD countries (OECD 2011). Neo-liberal reform tends to result in a
growing involvement of private actors, including migration intermediaries, in the gov-
ernance of migration (Hedberg and Olofsson 2021; Menz 2013). Consequently, in
Sweden, we can expect a large number of private actors to exert an influence on the regu-
lation of labour migration. While in the literature, the definition of intermediary actor
generally is broad and encompasses actors involved in mediating all stages of migration,
the kinds of intermediaries that interest us in this paper are actors who engage with a
specific aspect of the migration process: the work permit system. These actors include
immigration service providers – commercial actors who have turned the processing of
work permit applications into a business. Document processing is also conducted by
recruitment and staffing agencies, and by firms who have opted not to outsource this
function. We also focus on constellations of actors, for example, business organisations
and interest groups, who in different ways, engage with migration policies and bureau-
cratic procedures. However, in this paper, our focus is not primarily on how these actors
mediate migration but, rather, the ways in which they influence the regulation of labour
migration in Sweden.

The following section begins to outline a typology of three forms that state-intermedi-
ary co-production of regulatory spaces of labour migration can take, with the subsequent
sections using the Swedish case study to develop this further. Based on three moments of
regulatory change related to the main flows of migrant labour to the Swedish labour
market – wild berry pickers, information technology (IT) professionals and restaurant
workers – the analysis outlines two types of direct interaction between state actors and
migration intermediaries through which the regulatory spaces of labour migration are
co-produced. The first is characterised by close engagement across the state-intermediary
divide; this is an engagement that enables some migration intermediaries to in-
fluence migration regulations from within (Axelsson and Pettersson 2021). The second involves
attempts by migration intermediaries to establish a presence powerful enough to pressure
governments into changing labour migration regulations. A third form of state-inter-
mediary co-production of the regulatory spaces of labour migration, we suggest, is the
outcome of indirect exchanges between migration intermediaries and state actors. In
this instance, migration intermediaries lack influence over the direction of regulatory
change. Not all intermediary actors, then, are equally influential in terms of fostering
the regulation of labour migration. Instead, a variety of often asymmetric exchanges
and interactions between intermediaries and state actors are currently at play in the gov-
ernance of international labour migration. In the last section of the paper, we discuss and
reflect on how an understanding of the different ways in which regulatory spaces of
labour migration are co-produced by migration intermediaries and state actors sheds
new light on the processes that shape the global circulation of labour.

The production of regulatory spaces of migration

Scholarship on migration governance has demonstrated that the regulation of migration
no longer is a capacity monopolised by the state. Instead, regulatory spaces of migration
are made and remade by a variety of state and non-state actors that interact in
increasingly complex ways. Gary Freeman’s (1995) influential article, for example, suggests that in liberal democratic states, immigration policies are formed through interactions between public officials and interest groups. Pro-immigration interest groups, often dominated by business organisations and employers, Freeman argues, tend to be better organised than constellations of actors wishing to limit migration. In consequence, they are often more successful at influencing governments than groups advocating for restrictionist immigration policies.

Interactions between state officials and pro-immigration interest groups, Freeman continues, mostly take place away from public view and with limited outside interference. Indeed, the ability to influence immigration regulations partly lies in the capacity to develop close working relationships with state officials (Axelsson and Pettersson 2021; Freeman 1995; Wright 2015). Others suggest that the business community and other organised interest groups campaign strategically in the public realm to popularise demands and exert pressure on governments into changing their labour immigration policies (e.g. Betts 2013; Menz 2011; Somerville and Goodman 2010; Statham and Geddes 2006). Successful campaigning appears to rely on an ability to organise, to join forces with other non-state actors to assert enough pressure on state actors (Statham and Geddes 2006). Georg Menz (2011, 540), for example, claims that in Germany, consistent lobbying through a ‘financially well-endowed public relations vehicle’, the New Social Market Economy Initiative, ultimately resulted in new immigration tracks being established for highly skilled migrants. However, not all attempts to put pressure on governments are conducted in the public sphere. Nor are they solely focused on changing immigration policies. Focusing on the Australian migration advice sector, Marina Khan (2019) demonstrates that migration law practitioners engage in micro-bureaucratic challenges, such as lodging a series of visa applications they know will be rejected, to influence immigration policy administration through ministerial intervention.

The growing involvement of non-state actors in the regulation of international migration is not only the result of attempts by organised interest groups to influence immigration regulations. Governments also deliberately shift responsibilities for immigration control onto private actors. For example, governments have sought to coerce employers into taking part in immigration control by performing identity checks in workplaces (e.g. Lahav 1998; Menz 2013). Along those same lines, the literature on intermediaries shows that in the Asian context, governments increasingly task brokers with duties associated with managing the return of temporary labour migrants at the end of their contracts (Goh, Wee, and Yeoh 2017; Surak 2018; Tseng and Wang 2013) or establish quasi-governmental institutions to extend their influence over migration (Xiang 2012). State actors also regularly invite employers and employer associations to be part of advisory committees, public consultation processes, taskforces, reference groups and a variety of informal fora where immigration policy and administration are discussed (e.g. Menz 2009; Somerville and Goodman 2010), or collaborate closely with employers on the implementation of work permit systems (Axelsson and Pettersson 2021; de Lange 2011). These spaces of public–private communication and collaboration arise around the regulation of migration because in order to manage migration, state and non-state actors often depend on each other (see e.g. Hernández-León 2021).

However, it is important not to overlook the fact that the regulatory spaces through which international labour is brokered also evolve through indirect exchanges between
intermediaries and state actors. Research on migration infrastructures and the so-called migration industry, that is, the wide range of actors which, directed by profit, enable international migration (Hernández-León 2013), suggests that the increasing complexity of migration policies and bureaucratic procedures has created a demand for actors who can navigate, or avoid, bureaucratic hurdles to migration (e.g. Goh, Wee, and Yeoh 2017; Lindquist, Xiang, and Yeoh 2012). Governments have tended to respond to this dramatic growth in the market for migration services by introducing even more regulations, some of which are intended to regulate migration and others that seek to eliminate or heavily regulate the operations of the actors who mediate migration (e.g. Deshingkar et al. 2018; Kern and Müller-Böker 2015; Lindquist 2018; Xiang 2012). These additional layers of regulation, in turn, create even more opportunities for actors who sell migration services. The result is an ever-expanding tapestry of regulations and migration services that, combined, shape and direct migration (Lin et al. 2017; Xiang and Lindquist 2018; Xiang and Lindquist 2014; Zhang and Axelsson 2021). While migration intermediaries, in this instance, have minimal influence over the precise direction of regulatory change, this body of work shows that these actors influence the regulatory spaces of labour migration in ways not fully understood in the literature on migration governance.

In the rest of the paper, we combine these insights about the roles of non-state actors in the regulation of international labour migration with results from a Swedish case study in order to further develop the understanding of how the regulatory spaces of labour migration are shaped and re-shaped through direct and indirect exchanges and interactions between state actors and migration intermediaries.

**A new regulatory space of labour migration**

In December 2008, the Swedish Parliament significantly altered the main piece of legislation governing migration: the Aliens Act. Contrary to the general trend, which was to favour the immigration of highly skilled professionals while at the same time, placing lower-skilled labour on circular migration paths (e.g. Gabriel and Pellerin 2012; Menz and Caviedes 2010; Ruhs and Martin 2008), parliament voted in favour of an entirely demand-driven work permit system, which opened the Swedish labour market to all workers from countries outside the European Economic Area (EEA), irrespective of their skills or educational background.

The legislative change was the result of successful attempts by Sweden’s largest business federation, the Confederation of Swedish Enterprise, and a host of other organisations representing Swedish businesses, at influencing Sweden’s labour migration policy (Hedberg, Hermelin, and Westermark 2014). Following the 2002 general election, which was won by the Social Democrats, the right-wing opposition formed an alliance that, with support of the Green Party, was able to push the appointment of a committee on labour migration through Parliament (Committee Directive 2004:21). The parliamentary committee presented its final report just after the next general election. This time a coalition of four parties to the right of the political centre won the vote. Together with the Green Party, the new conservative-liberal coalition government soon presented a bill that favoured the demand-driven work permit system (Government Bill 2007/08:147). The bill was approved and took effect in December 2008.
This shift in policy followed decades of restrictive labour migration policies, which had given trade unions significant influence over labour migration. For decades, shortage occupations lists, produced by national and regional labour market boards based on information provided by trade unions, had been at the centre of Swedish labour migration policy administration. Now, the labour market test was phased out and employers were given significant influence over labour migration (OECD 2011). Indeed, the December 2008 reform sought to reduce state involvement to a minimum and, instead, entrust employers to identify labour shortages (Frank 2014). As noted earlier, this extensive neo-liberalisation of Sweden’s labour immigration policy, in turn, should trigger growth in the number of private actors, including different shades of intermediary actors, in the governance of labour migration (Hedberg and Olofsson 2021).

After describing the materials on which the empirical analysis is based, below, we explore in detail three moments when exchanges and interactions between a wide variety of intermediaries and state actors, in different ways, have continued to shape Swedish labour migration regulations.

**Methods and material**

This paper draws on almost a decade’s worth of research on the regulation of international labour migration in Sweden. Documentary analysis and interviews with state actors were conducted to map the roles of state actors in the production and reproduction of migration regulations through law, the migration appeals system and the discretionary decisions of civil servants. The documentary analysis included government bills and reports, records of proceedings in the Chamber, ministry directives, decisions by the Swedish Migration Court of Appeals, the Migration Agency’s annual reports and its guidance for staff— the so-called handbook of migration. It also included the Migration Agency’s webpage, administrative directives and other internal Migration Agency documents. In addition, we interviewed 20 state actors, including representatives of the Migration Agency, the Ministry for Foreign Affairs, the Ministry of Justice, the Ministry of Enterprise and Innovation, the Tax Agency, the police service and a representative for the parliamentary committee for labour migration 2004–2007.

In order to examine the role of intermediary actors in the regulation of labour migration, we conducted interviews with a wide range of intermediaries involved in channelling the three main flows of migrants to the Swedish labour market: wild berry pickers, predominantly from Thailand, IT professionals and restaurant workers. In the wild berry industry, a transnational network of intermediary actors is involved in shaping the regulatory space through which seasonal migrant labour is brokered. They include, among others, Thai staffing agencies and local brokers in villages in northeastern Thailand and, on the Swedish side, which is the focus of this paper, wild berry companies and wholesalers (Carmo and Hedberg 2019). In particular, the paper focuses on the role of an organisation, the berry companies’ interest organisation (sw. Skogsbärsbranschens intresseföroring, SBIF), which, in the 2000s, played a central role in the regulation of labour migration in the wild berry industry. Interviews were consequently conducted with three former chairs of SBIF, 15 representatives for wild berry companies in Sweden and ten staffing agencies in Thailand.
The international mobility of IT professionals is predominantly mediated by international mobility units of transnational corporations in countries of origin and destination, the human resources departments of smaller Swedish-based firms and immigration service providers. The latter, which include relocation companies, global accountancy firms and immigration lawyers, sell work permit administration services to transnational corporations as well as small-scale employers (Axelsson and Pettersson 2021). For this paper, we interviewed 21 employers and nine immigration service providers. The third-largest flow of labour migration to Sweden is restaurant workers. Due to the considerable concentration of people born in China in the Swedish restaurant industry, we chose to focus on migration intermediaries in the Chinese segment of the restaurant industry. We interviewed a set of actors who have always played key mediating roles in Chinese migration to Sweden: restaurant owners and their staff (23 interviews). As can be expected, the 2008 labour migration regime also attracted new migration intermediaries to the Swedish market, including recruitment agencies and immigration service providers, including migration consultants and accountancy firms (Zhang and Axelsson 2021), and 18 recruitment agencies and four immigration service providers were consequently included in the sample.

In addition to the above, we draw on a few key documents produced by intermediary actors, including SBIF’s criteria for companies that invite non-EEA wild berry pickers to Sweden and letters written by business organisations and employers to ministers and the Migration Agency.

Co-producing regulatory spaces of labour migration

In this section, we explore three moments when complex exchanges and interactions between, on the one hand, migration intermediaries in the wild berry, IT and restaurant industries and, on the other hand, state actors, including, for example, the Migration Agency, the Parliament and the Migration Court of Appeals, have resulted in changes to the regulation of labour migration in Sweden. We begin by considering a case where close-knit relationships between state actors and intermediaries were central to regulatory change before turning the focus to an example of regulatory change where exchanges between state actors and intermediaries were of an indirect nature. Finally, we explore the ability of a different set of intermediary actors to establish a presence powerful enough to persuade state actors to change immigration law. Combined the three cases show that there are many types of exchanges and interactions between state actors and intermediaries in migration governance; in some instances, state authorities draw intermediary actors into the regulation of labour migration, and in other instances, intermediaries join forces and actively push their way into the regulation of migration. Other migration intermediaries are simply unable to organise or establish close relationships with state actors or make their presence felt and, consequently, only influence immigration regulations indirectly.

Reshaping regulatory spaces through relationships of proximity

In Sweden, there are several examples of moments when state actors and intermediaries have formed close relationships and have jointly sought to govern migration. In this section, we focus on how, between 2002 and 2010, a key migration intermediary in the wild berry
industry in Sweden, the berry companies’ interest organisation, SBIF, and various state actors jointly developed and implemented new immigration regulations. We also draw attention to the growing importance of a new set of migration intermediaries: Thai staffing agencies, whose enrolment in labour migration became necessary following a tax review in 2005.

We first turn to the role of SBIF in the painstaking process through which the Swedish wild berry industry, which since the 1980s, had increasingly come to rely on non-EEA nationals, predominantly from Thailand, who every summer travelled to Sweden on tourist visas to pick wild berries on an informal basis, was drawn into Sweden’s demand-driven work permit system. This was closely linked to the establishment of SBIF in 2002. Until then, Thai migrant women and wild berry companies had acted as intermediaries in the wild berry industry. Often their operations involved the exploitation of migrant workers (Hedberg 2016). In order to end exploitation, the Migration Agency needed an industry partner with whom it could discuss regulations of seasonal labour migration in the wild berry industry. Consequently, the agency encouraged the formation of SBIF, which was made up of Swedish wild berry wholesalers and companies. Subsequently, for a couple of years, Migration Agency staff and SBIF met before and after each berry season. Representatives for the Tax Agency, the police service and trade unions were also present at the meetings. Dialogue between state actors and SBIF resulted in the introduction of a work permit requirement for seasonal non-EEA labour in the wild berry industry in 2007 – a move intended to regularise work in the wild berry industry (Hedberg and Olofsson 2021). Consequently, there is plenty of evidence that, at the time, key intermediaries in the wild berry industry and state actors collaborated to regularise labour migration in the industry.

Parallel to these developments, there was intense debate about taxation on the work performed by seasonal non-EEA labour. In 2005, the Tax Agency drew the conclusion that both wild berry companies and seasonal workers were required to pay Swedish taxes (Swedish Migration Agency 2009). SBIF, by contrast, claimed that taxes would cut profit margins and kill the industry. Intense lobbying commenced and soon a broad spectrum of civil servants and leading politicians were drawn into talks with SBIF. Eventually, state actors and migration intermediaries came to an agreement, according to which Thai staffing agencies would act as the berry pickers’ employer (Axelsson and Hedberg 2018).

The Migration Agency also enrolled SBIF to implement the regulations that the organisation had played a role in developing. Between 2007 and 2009, SBIF was authorised to decide which wild berry companies could bring non-EEA labour to Sweden. SBIF’s criteria stated that ahead of the season, wild berry companies must sign contracts with a wild berry merchant that would buy the berries and with a Thai staffing agency that would act as the workers’ employer. A host of issues, including, for example, poor living conditions, vehicles that were not working properly and poor knowledge among wild berry pickers about Swedish rules and regulations, had long plagued the industry. Accordingly, SBIF now requested that wild berry companies provide evidence that they had organised appropriate accommodations and transportation if they were to be granted permission to bring non-EEA workers to Sweden. It also requested evidence that the staffing agencies that wild berry companies liaised with were registered businesses, had informed the workers of Swedish regulations and had agreed to accept financial responsibility should something happen to the workers in Sweden. Work permits were issued once SBIF was satisfied that
these criteria were met. SBIF also had an informal agreement with the Migration Agency about the number of non-EEA workers who could work in the wild berry industry each year. Accordingly, for a couple of years, an association of private actors asserted direct influence over who could bring seasonal workers to Sweden and how many workers they could invite – a role even SBIF itself felt gave too much influence over migration (Hedberg and Olofsson 2021).

However, SBIF was a conflict-ridden organisation and, after the Aliens Act was amended in December 2008, the organisation’s influence gradually diminished until it dissolved in 2013. Yet, SBIF’s legacy is still visible in the wild berry industry in the shift from unregulated, informal migration based on social networks to formalised labour migration within the work permit system, in the reliance on Thai staffing agencies to act as the wild berry pickers’ employers, and in the way that seasonal labour migration in the wild berry industry continues to be regulated. Indeed, the Migration Agency has introduced requirements for wild berry companies that want to bring non-EEA citizens to Sweden that are similar to SBIF’s criteria. The agency’s criteria now include among other things, a requirement to demonstrate that appropriate accommodations and transportation, and information about the terms of employment and traffic regulations will be provided (see Swedish Migration Agency 2015).

What this case suggests is that state and non-state actors often depend on each other to regulate migration and consequently may act jointly to achieve this goal. In this case, the Migration Agency needed an industry partner with whom it could discuss the regulation of seasonal labour migration in the wild berry industry. Consequently, the agency had to consider how it could draw industry actors into talks about the regularisation of the industry and incentivise them into sharing the administrative burden of the work permit system. The rise of SBIF is equally the result of industry actors’ ability to organise and their decision to position themselves close to state actors because they also had something to gain by becoming involved in the regulation of migration. As a result, for a number of years, a private actor, SBIF, asserted direct influence both on the regulation of seasonal labour migration and on the implementation of these regulations. Thus, in contrast to a significant share of the migration studies’ literature on intermediaries, which has tended to place intermediary actors in an external position between states and migrants (but see Xiang 2012), the case discussed here shows that, during moments when both state and non-state actors have something to gain from collaboration, they may actively seek each other out and construct shared communicative and collaborative spaces from within which they jointly shape the regulatory spaces of labour migration (Axelsson and Pettersson 2021).

However, not all changes to immigration regulations are the result of close collaboration between state authorities and intermediary actors. Instead, the regulatory spaces of labour migration, as the literature on intermediary actors in migration suggests, also evolve through indirect exchanges between governments and a growing number of migration intermediaries.

**Reshaping regulatory spaces through indirect exchange**

As noted earlier, the opening of the Swedish labour market to greater volumes of non-EEA labour in December 2008 attracted new migration intermediaries to the Swedish
market. Soon, however, signs of exploitation started to emerge. In 2009, for example, eight Chinese chefs protested against long working hours and low pay outside their place of work in Stockholm (e.g. SVT 2009). The eight chefs were not alone. Our interviews revealed that many restaurant owners were of the opinion that they provided a service by facilitating migration and providing a route to settlement in Sweden, which justified their abusive use of the workers (Axelsson, Malmberg, and Zhang 2017). A report from the Hotel and Restaurant Workers’ Union (2012), which was compiled following unannounced inspections at 118 restaurants in the greater Stockholm region, also suggested that non-EEA staff often lacked employment contracts and worked long hours for low pay. However, it was specifically the wild berry industry that had long been associated with the exploitation of non-EEA labour. The precarious position of workers in the industry became particularly evident in 2009, when hundreds of workers protested against their working conditions (Axelsson and Hedberg 2018). At the time, the media reported widely on exploitation in the wild berry industry, and in autumn 2009 the issue was debated intensely in Parliament (see e.g. Records of proceedings in the Chamber 2008/09:141).

Accordingly, ahead of the 2011 wild berry season, the Migration Agency, in collaboration with a trade union confederation, took action and set up an inquiry to investigate whether it could use sections of the Aliens Act that regulate the terms of employment of non-EEA workers to protect migrant workers in the industry. The civil servant who led the inquiry concluded that exploitation in the wild berry industry would be eliminated if stricter controls were imposed on the actors involved in channelling non-EEA citizens to Sweden. Consequently, in 2011, the Migration Agency drew on its discretionary power to introduce requirements intended to regulate the operations of intermediaries in the wild berry industry. Wild berry companies now had to provide evidence of liquid assets and, if they previously had brought non-EEA labour to Sweden, evidence that salaries and employer contributions had been paid. However, as noted earlier, exploitation of non-EEA labour was rife in other sectors too, in particular, the restaurant industry and, in 2012, these regulations were rolled out to other sectors as well. From then on, firms in industries where exploitation was common, firms with less than 50 employees and all newly established businesses had to present evidence of liquid assets and earlier payments of salaries and employer contributions to be granted permission to bring non-EEA staff to Sweden (Swedish Migration Agency 2012).

The ways that migration intermediaries in the restaurant and wild berry industries, and a range of other low wage sectors, used and abused the work permit system consequently resulted in an altered regulatory and administrative landscape that migration intermediaries had to navigate. This landscape included a larger number of documents that intermediaries had to submit for their work permit applications to be considered by the Migration Agency. It also included increasingly long processing times as Migration Agency case officers worked to verify their contents. In turn, these changes altered the positions of, and ways that, migration intermediaries operate. For example, small-scale firms in IT expressed a great deal of confusion about what sort of evidence the Migration Agency required to make decisions on their applications. As a consequence, some firms had compiled a large folder of documents which they submitted with each application ‘just in case’. Others had started to rely on the services of immigration service providers, whose knowledge about the work permit system and close connections with Migration Agency staff,
were taken as a guarantee that their applications would be granted. Similar developments could be noted in the restaurant industry where immigration service providers, in particular accountancy firms which extended their services beyond conventional accounting to include migration services, also grew in importance. Large-scale Chinese restaurant owners, who were exempted from the stricter regulations due to their size, established recruitment agencies in China and started selling work permit services to small-scale restaurant owners in Sweden. Others opted to recruit from the pool of Chinese restaurant workers already in Sweden or returned to operate through the family reunification route, which was associated with the arrangement of marriages of convenience between potential migrants and a (Chinese) Swedish national and which, prior to the December 2008 amendments, was the main route used by restaurant owners from certain parts of China (Zhang and Axelsson 2021). At the same time, Chinese recruitment agencies all but disappeared from the Swedish market.

In contrast to the case discussed in the previous section and just as the literature on migration intermediaries has argued, the case of the 2012 employer controls shows that, at times, state authorities simply add layers of regulation without engaging directly with migration intermediaries. However, this layer of regulation would not have been added were it not for these actors’ attempts to circumvent regulations. Thus, even indirectly, migration intermediaries influence the regulatory spaces in and through which they operate. Moreover, the new regulatory and administrative landscape that emerged in 2012 produced a need for particular types of migration intermediaries that were exempted from the regulation due to their size or long term operation in Sweden, or whose expertise and close connections with the ‘right’ state actors gave them the capacity to navigate the new regulatory and administrative landscape efficiently. Thus, the introduction of an additional regulatory layer has not only resulted in a growth in the number of migration intermediaries involved in the governance of migration, as previous research would have us believe. Instead, we argue, in this case, it has served to redefine the roles of migration intermediaries in the brokerage of labour migration. Importantly for the argument pursued here, the case of the employer controls demonstrates just how central the ability to organise, mobilise resources and engage with others is if migration intermediaries are to have any influence over the direction of regulatory change. Indeed, to our knowledge, no migration intermediaries have successfully joined forces or built relationships with state actors which they could draw on to challenge the employer controls and, consequently, their strategies are limited to different ways of adapting to the new regulations.

If in these two sections, we have focused on aspects of labour migration regulation over which the Migration Agency has discretion, in the next section, we shift our attention to immigration law and the migration appeals system. More specifically, we focus on yet another moment when state actors and intermediaries have jointly continued to reshape the regulatory space of labour migration – a moment during which migration intermediaries worked intensely to make their presence felt and actively push their way into the regulation of labour migration.

**Reshaping regulatory spaces by establishing an intense presence**

In recent years, many labour migrants have seen their applications for work permit extensions and permanent residence rejected due to minor administrative errors made
by their employers. The rise in rejection rates was the result of a decision by the Swedish Migration Court of Appeals to dismiss two appeals: one appeal against the refusal of an extension of a work permit (Migration Court of Appeals 2015a) and another against the rejection of an application for permanent residence (Migration Court of Appeals 2015b). According to a representative for the Migration Agency whom we interviewed, these decisions confirmed the agency’s view that a work permit extension should only be granted if the terms of earlier work permits had been met each month during the migrant’s stay in Sweden. Accordingly, following the decisions made by the Migration Court of Appeals, significant numbers of applications for work permit extensions were rejected, and labour migrants were presented with deportation orders because employers unintentionally had purchased the wrong insurance or paid an employee too little during a limited period of time. This section traces two routes of influence used by a set of migration intermediary: employers, who are able to establish a particularly powerful presence when they act collectively through business organisations, and, to a lesser extent, immigration service providers, to challenge this interpretation of the Aliens Act.

We begin by drawing attention to a series of exchanges and interactions between intermediaries, predominantly in the IT sector and state actors, which ultimately resulted in an amendment of the Aliens Act. One of the strategies that employers in IT relied on was to engage in dialogue and negotiation with Migration Agency case officers, for example, by suggesting that they could pay insurance retroactively even if the mistake was made by a previous employer. Others tried to make their presence felt by courting Members of Parliament and writing official letters. For example, in November 2016, 34 employers, business organisations and employers’ organisations wrote to the Minister for Justice and Migration, the General Director of the Migration Agency and others in leading positions to express their concern about ‘the inhumane and economically damaging interpretation of labour immigration law’ (Swedish IT and Telecom Industries 2016). However, the most common strategy among our interviewees was to establish a media presence to draw attention to the threat of expulsion directed at their non-EEA employees. Several employers in IT were in regular contact with the Swedish and international press. Other actors, including business organisations, joined the campaign to shape public opinion and, as the debate intensified, a special term was introduced to refer to the issue: talent deportations.

Pressure on those in charge was consequently building, and, in 2016, a government-appointed committee on the position of labour migrants on the Swedish labour market proposed that it was necessary to amend parts of the Aliens Act to stop the so-called talent deportations. In Sweden, recommendations from a government committee are sent out for consultation before the government addresses them. In this instance, the Confederation of Swedish Enterprise was among the agencies, authorities and organisations that were invited to express their opinion about the committee’s recommendations. The committee’s proposal, the confederation argued, along with other organisations representing Sweden’s business community and a number of individual employers in IT who also took the opportunity to express their views, did not go far enough in its efforts to protect international talent from the threat of expulsion (Government Bill 2016/17: 212).

Most of our interviewees, however, claimed that an amendment to the Aliens Act would make little difference. Instead, parallel to developments in Parliament, a host of
intermediaries attempted to contest the strict interpretation of the Aliens Act through a second route of influence: the migration appeals system. Several employers engaged immigration lawyers to help their employees appeal decisions to refuse their work permit extensions or applications for permanent residence. A few immigration service providers were also involved in challenging the strict interpretation of the Aliens Act in court. One of the cases concerned an appeal from an IT professional whose application for permanent residence had been rejected by the Migration Agency and the first tier Migration Court because during part of the appellant’s stay in Sweden, the insurance his employer had purchased did not fully align the terms set out in the collective agreement. The Migration Court of Appeals invited the Confederation of Swedish Enterprise to comment on the relationship between collective agreements and insurance. In its comment, the Confederation of Swedish Enterprise challenged the Migration Agency’s interpretation of the Aliens Act. The Migration Court of Appeals agreed with the confederation’s interpretation of the Aliens Act and granted the appeal (Migration Court of Appeals 2017). Not long thereafter, the Migration Agency published a legal position paper that outlined a less strict interpretation of the Aliens Act – one that clearly suggested a more flexible approach to mistakes made by employers (Swedish Migration Agency 2018).

The three cases discussed in this paper demonstrate that the regulatory spaces of labour migration, including immigration law, discretionary decisions by civil servants and migration policy administration, are made and remade through exchanges and interactions between intermediaries and state actors. In contrast to the cases explored previously, the regulatory changes we focus on in this section are not primarily the result of the formation of close alliances between state actors and intermediaries or the decision by state authorities to act independently to impose new regulations on the activities of intermediaries. Instead, the migration intermediaries in this section join forces and seek to make their presence felt through strategic action in the public realm. At the same time, in their role as organisations with which state actors regularly consult, some of these actors are closely involved in migration governance in Sweden and, consequently, just as SBIF once did, they were also able to reshape labour migration regulations from an internal position.

Discussion and conclusion

It is now widely held that in order to understand the process of migration, it is necessary to include intermediary actors in the analysis. A growing body of work has opened this ‘black box’ of migration by drawing attention to the ways in which a broad variety of intermediaries enable and give shape to migration through the wide range of services they offer prospective migrants (see e.g. Cranston, Schapendonk, and Spaan 2018; Gammeltoft-Hansen and Sørensen 2013; Lindquist, Xiang, and Yeoh 2012). This paper has sought to highlight a role that intermediary actors play in migration that so far has received relatively limited attention: their multifaceted involvement in the production and reproduction of the very regulatory spaces in and through which they broker migrant labour. Indeed, migration intermediaries do not only navigate, manipulate or avoid migration regulations on behalf of their migrant clients. Nor is their regulatory role limited to conducting administrative tasks or managing labour migrants on behalf
of the state. Instead, at times, they are actively involved in shaping the regulation of labour migration. We have argued that in order to deepen the understanding of how regulatory spaces of labour migration are co-produced by migration intermediaries and state actors, the growing body of studies on intermediary actors in migration might be usefully brought into conversation with scholarship on migration governance (e.g. Freeman 1995; Lahav 1998; Menz 2009; Statham and Geddes 2006). To do so requires a shift in analytical attention away from the ways in which brokers mediate between individual labour migrants and the state to instead focus on the often asymmetrical exchanges and interactions between migration intermediaries and state actors through which the regulatory spaces of labour migration are produced. These exchanges and interactions, and the active role of migration intermediaries in the regulation of labour migration, we argue, have so far remained a ‘black box’ of migration.

In this paper, we have combined insights from these different strands of literature with an analysis of a Swedish case study in order to develop a typology of three types of state-intermediary interaction through which regulatory spaces of labour migration are continuously made and remade. We have demonstrated that regulatory change can be the outcome of attempts by constellations of state and non-state actors who, often away from public view, actively seek to draw others in, to build relationships of proximity, and work with others in order to manage international labour migration. The spaces of public–private collaboration that are the result of state-intermediary attempts to enrol others, as we have argued elsewhere, place private actors in a position where they can shape the regulatory spaces of migration from within, rather than from an external position (Axelsson and Pettersson 2021). In other instances, regulatory change is the result of attempts by autonomous migration intermediaries to push their way into migration governance, to achieve enough visibility and establish a presence powerful enough to influence immigration regulations. In contrast to regulatory change which is achieved through relational proximity, migration intermediaries often build their presence through strategic action in the public sphere. Finally, in yet other instances, the regulatory spaces of labour migration evolve without any direct interaction between states and intermediaries. Instead, regulatory change is the outcome of the responses of two sets of actors – state actors and migration intermediaries – to the operations of the other. The paper consequently shows that regulatory spaces of labour migration are not made and remade on a level playing field where all actors are equally able to mobilise enough resources to influence migration regulations. However, by demonstrating that migration intermediaries at both the lower and higher ends of the labour market can actively exert an influence on the regulation of labour migration, the paper shows that influence is not necessarily reserved for actors representing influential sectors of the economy. Instead, we argue that the ability to influence the regulatory spaces of labour migration lies in the capacity to build alliances, form close relationships or establish an intense presence, irrespective of one’s position at the higher or lower end of the labour market.

To move the debate forward concerning the role of intermediary actors in international labour migration, future research could continue to explore what further insights that can be drawn by combining the growing body of work on migration intermediaries with work that explicitly focuses on the growing involvement of non-state actors in the governance of migration. It can also explore what other forms that the
dynamic relationship between state actors and intermediaries can take in countries with other migration histories and ways of regulating migration, as well as how the regulatory roles of migration intermediaries intersect with, and are fostered by, their different positions and intermediary roles in the labour market.

Notes
1. Ethical approval was obtained from Stockholm Regional Ethical Review Board (registration numbers 2018/1780-31/5 and 2014/1258-31/5) and the recently established national Swedish Ethical Review Authority (registration number 2020/06711). Informed consent was obtained by providing the participants with a consent document that also served as a guide for the verbal explanation of the purpose of the study and what research participation would entail.
2. Additionally, Thai staffing agencies were required to register in an EU member country for the Migration Agency to grant admission to their employees.
3. Decisions by the Migration Agency can be challenged in one of four Migration Courts. The Migration Courts’ decision, in turn, can be appealed to the Swedish Migration Court of Appeals if the case may be relevant as a precedent.

Acknowledgements
We thank all respondents for participating in this research. We also thank Shuhui Bai and Irma Olofsson for assisting with fieldwork. Grants from Forum for Asian Studies, Stockholm University and Helge Ax: son Johnsons Stiftelse covered some of the costs of fieldwork and transcription of interviews.

Disclosure statement
No potential conflict of interest was reported by the author(s).

Funding
This work was supported by Formas [grant number 2013-01457]; Vetenskapsrådet [grant number 2017-01010].

ORCID
Linn Axelsson http://orcid.org/0000-0002-0969-1333
Charlotta Hedberg http://orcid.org/0000-0001-7888-780X
Nils Pettersson http://orcid.org/0000-0001-7990-1183
Qian Zhang http://orcid.org/0000-0001-8446-0183

References


Migration Court of Appeals. 2015a. MIG 2015:11 (Case Number UM5826-14). Stockholm: Migration Court of Appeals

Migration Court of Appeals. 2015b. MIG 2015:20 (Case Number UM4697-14). Stockholm: Migration Court of Appeals

Migration Court of Appeals. 2017. MIG 2017:24 (Case Number UM1350-17). Stockholm: Migration Court of Appeals


