

## Mobilizing Local Practical Knowledge: Granting of Schengen Visas at the Belgian Consulate General in Casablanca<sup>1</sup>

*Federica Infantino and Andrea Rea*

Relatively little analysis has been carried out on the issuance of Schengen visas. While there exists some important work providing a general analysis of this central instrument of European mobility policy,<sup>2</sup> there has been little scrutiny of its implementation at the consular level. This article offers an analysis of the production of practical knowledge developed by administrative officers for the purpose of examining Schengen visa applications and substantiating their decisions. The core of the administrative work of visa agents is based on their assessment of what official

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- 2 D. Bigo and E. Guild (eds.), *La mise à l’écart des étrangers: la logique du visa Schengen*, special issue of *Cultures & Conflits*, 49, 2003; V. Guiraudon, “Before the EU Border: Remote Control of the ‘Huddled Masses’”, in K. Groenendijk, E. Guild, and P. Minderhoud (eds.), *In Search of Europe’s Borders*, The Hague, Kluwer Law International, 2003, p. 191-214; E. Jileva, “Visa and Free Movement of Labor: the Uneven Imposition of the EU Acquis on the Accession States”, *Journal of Ethnic and Migration Studies*, 28/4, 2002, p. 683-700; G. Beaudu, “La politique européenne des visas de court séjour”, *Cultures & Conflits*, 50, 2003, p. 5-30; E. Guild, *Security and Migration in the 21st Century*, Cambridge, Polity Press, 2009.

texts refer to as the “migratory risk” inherent in applications within the context of tighter EU external border controls.<sup>3</sup> Our approach favours the distinction between instituted knowledge (laws, circulars, regulations) and local knowledge<sup>4</sup> produced from the bottom-up on a daily basis by *street-level bureaucrats*<sup>5</sup> in the Schengen visa attribution process.

This contribution is based on a three-week survey (in the year 2011) at the Consulate General of Belgium in Casablanca and on interviews conducted at the Office des Étrangers [‘Immigration Office’] in Brussels (OE), which resorts under the Federal Public Service of the Interior. An agreement was signed between the research team composed of the two authors and the Consul General. It requested the participation of the consular agents in the research, while the researchers guaranteed the anonymity of the interviews. The data collected includes consular statistics, internal notes, direct observations, interviews with all members of the visa service (Consul General, Consul, Vice-Consul for Visas, 4 out of 5 visa agents<sup>6</sup> and 10 out of 12 local agents). A daily presence in the Consulate’s offices also allowed the participation in interviews carried out by the agents with visa applicants. In addition, interviews were held with the staff of the *Visabel* company, part of VFS Global group, a sub-contracting company that has been providing information, receiving, checking, and transmitting files, collecting application fees, and returning passports since March 2010.

- 3 A. Rea, “Laisser circuler, laisser enfermer: les orientations paradoxales de politique migratoire débridée en Europe”, in C. Kobelinsky and Ch. Makareni (eds.), *Enfermés dehors. Enquête sur le confinement des étrangers*, Paris, Éditions du Croquant, 2009, p. 265-280.
- 4 Cl. Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology*, New York, Basic Books, 1983.
- 5 M. Lipsky, *Street-level Bureaucracy. Dilemmas of Individuals in Public Services*, New York, Russel Sage Foundation, 1980.
- 6 The visa agent has been part of the organization chart of the Belgian visa services since 2002. The position is accessible by competition. Subject to the diplomatic movement, these agents change consular posts every 5 years without ever returning to Brussels. They do not suffer any social downgrading as a result of the work they carry out. Thanks to the expat bonus, they benefit throughout their career from a very high salary, much higher than that of civil servants posted in Brussels, particularly at the OE [‘Immigration Office’].

By adopting Lipsky's<sup>7</sup> *street-level bureaucracy* perspective, we propose an analysis of the decision-making modes of administrative agents and the construction of their practical knowledge. This approach follows in the wake of research dealing with the implementation of policies from the perspective of the sociology of the uses of discretionary power by administrative actors<sup>8</sup> while taking a step back from theoretical approaches to the study of discretionary power. Nevertheless, this analysis cannot be assimilated to the work by Dubois and Spire, as it must be understood that the administrative treatment of dossiers at the Belgian Consulate in Casablanca does not occur through interaction at the consular window since the latter no longer exists following the outsourcing to *Visabel*. Our working hypothesis maintains that, while espousing a common legal framework based essentially on Regulation 539/2001 establishing the list of countries whose nationals are subject to the visa requirement for access to the Schengen area, the Schengen Borders Code<sup>9</sup> and the Schengen Visa Code<sup>10</sup> and carrying instituted knowledge, the granting of Schengen visas proceeds from the production of knowledge that is both practical and local.

#### I. THE SCHENGEN VISA ON THE GROUND: SHORT STAY OR LONG STAY?

The Treaty of Lisbon maintains the distinction established by the Treaty of Amsterdam between short stay<sup>11</sup> and long stay.<sup>12</sup> The uniformity of the Schengen visa is due to the duration of this type of visa: any visa issued for a period of three months is known as a Schengen visa (type C visa) regardless of the purpose of the stay (tourism, business, etc.). Within the same third country, the signatory states of the Schengen Convention issue type

7 M. Lipsky, *op. cit.*

8 K. Hawkins (ed.), *The Uses of Discretion*, Oxford, Oxford University Press, 1995; V. Dubois, *La vie au guichet. Relation administrative et traitement de la misère*, Paris, Economica, 1999; A. Spire, *Accueillir ou reconduire. Enquête sur les guichets de l'immigration*, Paris, Raisons d'Agir, 2008.

9 Regulation 562/2006.

10 Regulation 810/2009.

11 Art. 77 (2) of the TFEU.

12 Art. 79 (2) of the TFEU.

C visas for often very different reasons, linked to the specificities of their migration policy. Conversely, long-stay visas (type D visas) are mainly governed by national legislation on access to the territory of foreigners.

As specified by European norms and in the *Handbook for the Processing of Visa Applications and the Modification of Issued Visas*, consular officers are responsible for assessing the ‘migratory risk’ when examining an application for a short-stay visa. This is understood by the European texts aforementioned as the risk of irregular migration embodied by the figure of the overstayer, i.e. the foreigner who entered the European territory with a regular title, for example a type C visa for tourism purposes, and who remains on the territory at the end of this period by becoming an irregular migrant. On the other hand, an analysis of the practices of consular officers highlights another aspect of the ‘migratory risk’ to which they pay much more attention, namely the risk of lawful settlement once a type C visa has been obtained, for example the person who, once on the territory, can apply for a residence permit in the context of family reunification. While European standards differentiate between short and long stays, this distinction does not stand the test of case-handling practices. Although the way in which applications are made (documents required) and the legal standards (conditions for obtaining them) differ for type C and type D visas, in the day-to-day administrative practice of visa officers this distinction dissolves. Indeed, consular officers are less attentive to the conditions defined by European legislation determining what a type C visa is and the national framework determining the granting of a type D visa, than in trying to identify the ‘*true reasons*’ for the visa application.

In order to understand the existence of this hidden meaning of ‘migratory risk,’ it is necessary to note the two conditions that constitute it. The former concerns the legal complexity leading to an increasingly inoperative distinction between immigration and integration laws, while the latter is approached from the perspective of migratory careers,<sup>13</sup> i.e. the various social and

13 M. Martiniello and A. Rea, “Des flux migratoires aux carrières migratoires”, *SociologieS*, 2011, <https://journals.openedition.org/sociologies/3694>

legal stages that constitute the individual careers of immigrants. More specifically, there is a strong intertwining in migrant careers between laws on access to the territory, residence, and acquisition of nationality. Consequently, the entry of a foreigner for a short period of time may lead him or her to apply for permanent residence, or even for citizenship. Although this is a legal process, it is considered abusive by consular agents. The second condition is related to the history of migration which underlies the development of strong links between the countries of departure and immigration, in particular for migrations which have become real diasporas in Europe, especially from Morocco and Turkey. The development of intense social networks between these countries leads to an acceleration and increase in mobility and processes of settlement.<sup>14</sup> Thus, the historical links between Morocco and Belgium have multiplied the number of transnational families of Moroccan origin.

These two conditions known to consular officers form the basis for the construction of their practical knowledge in the assessment of visa applications. In particular the interweaving of European and national legislation on access to the territory, whether national legislation on residence or on access to nationality, leads officials to think beyond the 'simple' application for a type C visa.

Knowledge of these two conditions is shared by all staff, regardless of their hierarchical status. The Consul General does not intervene directly in the management of the service. A Vice-Consul acts as head of the visa service. This is followed by five visa agents, expatriate staff responsible of the decision-making. Then, the local staff prepares the files by encoding the data in the system and formulates comments as well as an advice for the decision. The sense of polyvalence that has been introduced to the service in recent years implies that all visa officers and local staff members process the entirety of visa applications (C and D), regardless of the travel purpose. Thus, the agents are not specialized in just one field and one legislation; they must master

14 D. Massey, "Why Does Immigration Occur? A Theoretical Synthesis", in Ch. Hirschman, Ph. Kasinitz, and J. De Wind (eds.), *The Handbook of International Migration*, New York, Russel Sage, 1999, p. 34-52.

all the legislative frameworks while developing their practical uses locally. This polyvalence, together with the line imposed by the hierarchy, produces a uniformization of the ways in which dossiers are processed. The agents' action, which is perceived as a mission, consists in asking themselves how an entry into the territory could become a lawful settlement. To illustrate this process, we will take as an example the travel purpose of the 'family visit,' which resorts under the type C visa.

## II. ASSESSING THE LEGITIMACY OF A FAMILY VISIT VISA APPLICATION

Requests for family visit visas make up the majority of applications in Casablanca. In 2010, the Consulate General received 12,375 type C visa applications and approved 7,384 of those (40.3% of refusals). The motive of family visit represents 63.1% of type C visa applications (7,815), of which 44.2% were rejected.<sup>15</sup> The significance of this travel purpose stems from the historic and transnational nature of Moroccan migration.

When visa agents assess type C visa applications for family visits, they first check the family relationship. Then they calculate and check the solvency of the guarantor. The past behaviour of both the applicant and the guarantor is included in the assessment process. The latter is based on a set of criteria. To this end, databases constitute an indispensable tool for traceability work. Thorough consultation of computer software providing a wealth of data and a history of past applications is part of the routine of practices enabling agents to form an opinion. The use of IT tools has effectively changed the work of agents,<sup>16</sup> who now have more information at their disposal than contained in the paper application. The fact of having already received a visa for a family visit and having complied with the conditions, i.e. having returned to Morocco, is an element that weighs in favour of the applicant's 'reliability.' In their assessment of likelihood, this constitutes a key element as nothing can guarantee an unwillingness to settle.

15 Source: Consulate General of Belgium in Casablanca.

16 A. Spire, "Échapper à l'impôt? La gestion différentielle des illégalismes fiscaux", *Politix*, 87, 2009, p. 143-165.

A first visa application is always looked at more carefully. In addition to the applicant's background, the background of the guarantor is also examined. A database makes it possible to verify whether a guarantor has already been involved in other dossiers, whether he has been refused, and on what grounds. Finally, consultation of the National Register<sup>17</sup> makes it possible to check whether persons for whom the guarantor has intervened in the past have remained legally in Belgium.

The mobilization of these instruments serves to build a criterion of 'reliability' for the guarantor. This way of proceeding is not part of the administrative procedures but embodies the formalization of a practice that each person, visa officer or local agent, applies according to the form and intensity he or she considers necessary. In spite of their status as executive agents, the action of local staff is not automatically neutral in relation to decision-making. They participate in the creation of the dossier by the way in which the information is encoded and, above all, by the mode and intensity of the research. An additional assessment criterion is that of 'ties to the country,' which should increase the likelihood of the applicant's return. In everyday practice, this criterion is construed by analysing the applicant's socio-economic profile. Thus, an employee whose economic status is easily verifiable, who is married, and who has children in Morocco represents a profile that is deemed less 'at risk' of migration than a young unemployed bachelor.

Visa officers are particularly vigilant to the risk of 'procedure circumventing' when processing family visit applications. By 'procedure circumventing' they understand any mobilization of laws favouring permanent settlement, whereas the purpose of the visa application concerned entry into the territory for a limited period. Mrs Alaoui's story is an exemplary case of what is referred to as 'procedure circumventing.' Mrs Alaoui applied for and obtained a visa for family visits. Once in Belgium, she applied to a town hall for the acquisition of Belgian nationality on the basis of Article 12bis of the Belgian Nationality Code

17 The National Register of Natural Persons is a computerized system that contains all the identification data and addresses of the persons registered in the municipal population register.

and obtained it even before the expiry of her type C visa. Faced with this type of 'procedure circumventing,' officials dread the secondary effects, such as the use by this person of their right to family reunification. The dread of the migratory chain is thus formulated in relation to the transposition of European directive (2003/86/EC), which allows a person who has enjoyed family reunification himself to use it for others, whereas Belgian legislation did not initially authorize this type of 'cascade' family reunification.

The assessment of an application for a type C visa for family visits is not only based on the formal verification of the conditions and the authenticity of the documents submitted. In the absence of an interview organized at the Belgian Consulate for type C visa applications, contrary to what is suggested in the *Handbook for the Processing of Visa Applications*, the visa officers carry out an enquiry using IT tools and checking certain criteria (family ties, proof of non-establishment in Belgium based on the profile of the guarantor, and socio-economic criteria). The assessment of visa applications is based on local knowledge shared collectively and approved hierarchically, in particular on the basis of a few prototype situations and applications, such as that of Mrs Alaoui, which are narrated among consular officers as 'legendary administrative stories' and which function as references when new applications are examined. The agents link, on the one hand, the standards relating to type C visas and, on the other hand, their knowledge of the migration process from Morocco to Belgium. It is fundamentally for this reason that they must be considered, following Lipsky,<sup>18</sup> as *policy makers* because they do not only apply the policy, they also carry it out and even transform it. The analysis of the 'migratory risk' is based on a spontaneous calculation of probabilities. Because they feel that they have a mission to fight against irregular immigration, and even more so legal immigration but based on the use of European and national legislation that 'opens the doors,' their assessment is grounded in an instrumental rather than legal representation of these mobilities. Even when elderly people or individuals with

18 M. Lipsky, *op. cit.*



few qualifications have all the legal guarantees to obtain a visa, their applications will be analysed according to an *ultima ratio*, namely that of the potential risk of becoming a cost for the welfare state (in terms of health or financial dependence). This brings to light the concrete effects of discursive practices relating to ‘suffered immigration.’

### III. MISSION OF LIMITING ‘SUFFERED IMMIGRATION’ VERSUS COMPLIANCE WITH NORMS

Another concrete situation, i.e. elderly people visiting their children, makes it possible to see how the agents implement said methods of assessing applications while shedding light, on the one hand, on the institutional hierarchy between the consular post and, on the other hand, on the OE’s [‘Immigration Office’] different frameworks of application assessment between these two instances. Elderly dependants of their children residing in Belgium are considered by some visa officers as profiles at risk of ‘procedure circumventing.’ They are suspected of wanting to apply for a visa for family reunification once they will have arrived on Belgian territory. The higher one goes up in the consulate hierarchy, the more widespread the suspicion of misuse of the visa application, in particular to benefit from medical care services or welfare benefits, increases. In this case, the mission of the visa officers turns out to be the defence of what they perceive to be the best interests of Belgium. This is why one could consider them as ‘morality entrepreneurs’.<sup>19</sup> The use of social benefits is, in their view, neither legitimate nor based on merit, which is why they define it in terms of ‘abuse.’ “My parents left me the Belgian welfare state, I would like to have something left for my children too,” explains one of the visa officers.

Confronted with this type of application, a practice is formalized among the agents: the automatic sending of these requests to the OE [‘Immigration Office’] for a final decision. The consular posts under the FPS Foreign Affairs only have the competence to issue visas, the refusal being the exclusive competence of the

19 H. Becker, *Outsiders*, Paris, Métailié, 1968.

OE. Concerned only with the particular case example of Belgium, our analysis hence cannot completely follow those of Bigo and Guild<sup>20</sup> and Guiraudon,<sup>21</sup> which insist on the delocalization of border control to consular posts. Indeed, the division of the Belgian bureaucratic field in the processing of visa applications grants to an institution on the national territory the control of the borders. In order to track down ‘abuses’ and ‘misappropriations,’ the visa officer refers the decision to the OE. “Young unemployed people and widows are profiles I don’t like. Since there is the possibility of skipping from a type C visa to a type D visa, and given the abuses of Belgian welfare system, I decided to send any application from an elderly person to the OE,” says a visa officer.

At the OE, this type of application is subject to other kinds of considerations. Consider, for example, this OE officer’s account of the assessment of an application and how he justifies his decision. The applicant is a mother born in 1937 and living in Nador. This lady is unemployed and dependent on her daughter living in Belgium; the payments she has been receiving since 2008 serve as proof of this. Her guarantor is solvent and the woman has medical insurance.

The OE officer explains: “The advice is negative. The agent on duty writes us that there is a danger of settlement because she is dependent on the family in Belgium, there is therefore a risk of procedure circumventing. Since she is dependent on the family in Belgium, she can apply for residency if she wants.”

Contrary to the visa officer’s advice, the OE officer grants the visa and justifies his decision thusly: “If it’s the mother who comes to see her children, we are not going to stop her from coming. The family tie is proven, the guarantor is solvent, there is financial coverage [...]. The agent says she has no guarantees of return but she already respected a visa in 1999. Older people, Moroccan people, the ones I know in general do not want to stay here, they prefer to live in the sun there, so we have no reason to stop her even if legally you could, but if she applies for family reunification, she will get it.”

20 D. Bigo and E. Guild, *op. cit.*

21 V. Guiraudon, *op. cit.*

We could suggest an element explaining the variability in the considerations made to evaluate the applications when moving from the consular position to the OE. In the construction of the practical knowledge of OE agents, the judicialization<sup>22</sup> of the policy on foreigners holds greater weight. Indeed, appeals against refusal decisions are made against the OE. The latter is increasingly called upon by the Aliens Litigation Council, to which appeals are lodged, as well as by the Federal Mediator, who receives complaints. According to another OE official “the jurisprudence of the Aliens Litigation Council on the short stay has a huge influence on the way we make our decisions.” In the consular post, local knowledge and legislative knowledge prevail in the construction of the practical knowledge that is used to track down ‘abuses,’ but within the OE the agents are also concerned with integrating the orientations stemming from jurisprudence. Although legal appeals are much more used in the context of long-stay visas, they represent a more accessible and therefore more frequently exploited opportunity in the case of short-stay visas for family visits since family members living in Belgium may revert to it.

#### IV. CONCLUSIONS

This analysis of the practices for granting Schengen visas at the Consulate General of Belgium in Casablanca reveals the distance between the established knowledge governing this policy and the practical knowledge developed by the *street-level bureaucrats*. The agents formulate their assessment on the basis of the production of local practical knowledge nourished by considerations that go well beyond the administrative processing, but which nonetheless constitute it. Although they use criteria that may seem objective (solvability, socio-economic conditions, previous applications, etc.) to evaluate a dossier, their decisions are based on criteria aimed at tracking down ‘abuses’ in terms

22 J. Commaille, “La judiciarisation, nouveau régime de régulation politique”, in O. Giraud and Ph. Warin (eds.), *Politiques publiques et démocratie*, Paris, La Découverte, 2008, p. 305-319; T. Vallinder, “The Judicialization of Politics. A World-Wide Phenomenon: Introduction”, *International Political Science Review*, 15/2, 1994, p. 91-99.

of settling on the Belgian territory and ‘illegitimate’ use of the welfare state, which the visa officers define as ‘pseudo-legal’ immigration. Using their local practical knowledge, they develop practices aimed at uncovering ‘fraud’ in order not to ‘get fooled.’ However, this conception presupposes premeditated intentionality on the part of applicants, even though it is known that it is sometimes chance that turns travellers into migrants and that only an inquiry among applicants<sup>23</sup> can reveal this.

Preferring the perspective of the ‘implementation trick’<sup>24</sup> rather than that of the ‘implementation gap’ to explain the gap between the definition of policies and their application, we suggest, following the example of Spire,<sup>25</sup> that consular agents feel invested with a mission, namely that of tracking down requests which they suspect are abusive and fraudulent. However, at the Belgian Consulate in Casablanca, this mission is socialized by the internal work organization within the consular service and by the weight of the institutional hierarchy. In this case, said attitude is independent of the different moral and professional careers of the agents, contrary to what Spire<sup>26</sup> (2008) observed. In their assessment of a type C visa application, visa officers emphasize the likelihood of a risk of settlement based on compliance with formal criteria. To take up the hypothesis of the ‘implementation trick,’ these administrative actors work to render inoperative certain rights given to foreigners because they feel they are used illegitimately although lawfully. Discursive practices relating to immigration have concrete effects since they are transformed into a logic of action. More specifically, we cannot grasp the practices for granting Schengen visas if we do not include in the analysis the discourse on immigration in general and the specific discourse on Moroccan immigration to Belgium. What cannot be declared on the scene of the access policy to the Belgian territory, namely

23 F. Infantino, “La frontière au guichet. Politiques et pratiques des visas Schengen aux Consulat et à l’Ambassade d’Italie au Maroc”, *Champ pénal/Penal field*, 7, 2010, p. 2-19.

24 V. Dubois, “Politique au guichets, politique du guichet”, in O. Borraz and V. Guiraudon (eds.), *Politiques publiques. 2, Changer la société*, Paris, Presses de la FNSP, 2010, p. 265-286.

25 A. Spire, *Accueillir ou reconduire*, *op. cit.*

26 *Ibid.*

the fight against the risk of lawful but unwanted immigration, becomes operational in the behind-the-scenes practices constituted by the daily work of the implementing agents.

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