

JFBA Opinion on the Creation of a New System to Reinforce Immigration and Residence Control of Foreigners (Q&A)

February 24, 2006

Japan Federation of Bar Associations

The government is currently considering the creation of a new system that would reinforce immigration and residence control of foreigners. The purposes of this system are to prevent terrorism and crimes by foreign nationals and to reduce the number of illegal aliens. As a part of this, the government is going to submit to the Diet a bill to amend the Immigration Control and Refugee Recognition Act.

The JFBA has expressed opinions on this system from the perspective of guarantees of the right to privacy and right to control personal information and prohibition against discriminatory treatment of foreign nationals (Opinion Paper on the Creation of a New System to Reinforce Immigration and Residence Control of Foreigners, December 15, 2005).

* For further information, please see the JFBA web site. <http://www.nichibenren.or.jp/>

[Overview of System under Consideration by the Government (Parts Related to Amendments to the Immigration Act) and Summary of Opinion of JFBA]

Overview of System under Consideration by the Government	Summary of JFBA Opinion
Foreign nationals to be required to provide fingerprint and facial information and other biometric information (personal identification information) upon entering Japan.	<p>Requiring the provision of fingerprint information should not be applied because it contravenes Article 13 of the Constitution and Article 7 (prohibition against degrading treatment) of the International Covenant on Civil and Political Rights.</p> <p>Requiring the provision of facial image should be studied cautiously.</p> <p>Foreign nationals that have already entered Japan with status of residence should be exempt from such requirements at the time of reentry.</p>
Biometric information (such as fingerprint and facial information) provided by foreign nationals at the time of entry to be stored and used for subsequent residence control and criminal investigations.	Information should be immediately erased once immigration checks are completed. The JFBA opposes its storage and use for subsequent foreign residence control and criminal investigations.
Foreign nationals determined to be terrorists in consultation with relevant ministries and agencies to be refused entry or forcibly deported.	A clear and rigorous definition of terrorist is required. Due process should be guaranteed in the determination of a person as a terrorist and in entry refusals and deportation.

Q 1: Given the current international and social conditions, don't we need to strengthen immigration and residence control of foreigners in order to prevent terrorism and crimes by foreign nationals and to reduce the number of illegal aliens?

A 1: Certainly the prevention of terrorism and crimes is an important goal for any society.

However, it is only when the right to privacy and the right to control personal information are guaranteed that a democratic society and a society where people are free to live as they choose are protected and the formation of a society in which individuals are under constant surveillance by the state is prevented.

Guarantees of human rights foster social stability, and the stability is necessary for the prevention of terrorism and crimes.

Our society is rapidly becoming multiethnic and multicultural. In 2005, Japan saw an increase of approximately 690,000 incoming foreign nationals, bringing the number of incoming foreign nationals approximately 7.45, which was record-setting. At the end of 2004, Japan had 1,973,747 registered aliens, also a record high, and they came from 188 countries of nationality (country of origin), an increase of 2 countries compared to the end of 2003. By needlessly reinforcing immigration and residence control of foreigners in this context, we make foreign nationals objects of surveillance, alienating them from Japanese society and impeding peaceful coexistence. Such trends only serve to destabilize society.

The JFBA believes that it is necessary, even in the creation of systems to prevent terrorism and crimes, to consider from the perspective of guarantees of human rights such as the right to privacy, the right to control personal information and the prevention of discriminatory treatment of foreign nationals.

Q 2: Why does the JFBA believe that it is important to guarantee the right to privacy and the right to control personal information or to prohibit discriminatory treatment of foreign nationals?

A 1: Digital fingerprint and facial information can be used to identify individuals.

Its collection and store can lead to the creation of a "surveillance society" in which ordinary activities of persons are easily tracked by the use of this information for criminal investigations such as matching latent fingerprints and the collection and accumulation in many aspects of daily life such as on the streets or from train station turnstiles, unbeknownst to the person involved.

Digital information can be easily accessed through computers, which raises the threat that large volumes of information may be instantaneously stolen or released, and once information is out, there is no putting it back in.

As information technology advances, it becomes more important than ever that we guarantee the right to privacy and the right to control personal information.

The Constitution of Japan and international human rights law both guarantee the right to privacy and the right to control information for foreign nationals as well as citizens.

Meanwhile, retaining biometric information collected about all foreign nationals merely because they are foreign nationals and using it in fingerprint checks and other criminal investigations may foster prejudices that foreign nationals are the hotbed of crimes, which would in turn merely exacerbate discrimination against foreigners. Based on this standpoint, the JFBA believes it is important to guarantee the right to privacy and the right to control personal information and to prohibit discriminatory treatment of foreign nationals.

Q 3: Why does the JFBA oppose the requirement that foreign nationals provide fingerprint information upon entering Japan?

A 1: Even were we to accept the argument that biometric information needs to be used to check foreign nationals as they enter Japan, fingerprint information and facial image are not things that one normally discloses to other people lightly; depending upon how they are used, they have the potential to invade the private life of the individual. Therefore it is believed that this information is subject to privacy guarantees.

We also believe that the collection of biometric information has the potential to degrade the individual because the individual's body must be exposed in some way in front of a machine or other devices.

In Japan, the public authorities can only require people to provide fingerprint information for the purpose of criminal investigations. The past system where fingerprinting was mandatory for alien registration has been abolished as a result of campaigns against it.

Even in the recording of biometric information to passports, the standards of the United Nations' International Civil Aviation Organization (ICAO) only sets the standard where facial image is recorded to an IC chip in the passport, and indeed Japanese passports only record portraits.

The JFBA believes that across-the-board requirements for foreign nationals to provide fingerprint information upon entering Japan violate the privacy of foreign nationals (Article 13 of the Constitution) and contravene prohibitions against degrading treatment (Article 7 of the International Covenant on Civil and Political Rights). We therefore believe that these measures should not be applied.

Q 4: Why does the JFBA oppose to retaining fingerprint information etc. provided at the time of entry and using it for foreign residence control and criminal investigations?

A 1: The government is considering to accumulate fingerprint and facial information as digital information and use it for residence control on all foreign nationals (excluding those with special permanent residents etc.) who have passed the check of fingerprint and facial information at immigration and have been admitted to Japan.

However, there is a possibility that ordinary activities of persons are easily tracked by the use of this information for criminal investigations such as matching latent fingerprints and the collection and accumulation in many aspects of daily life such as on the streets or from train station turnstiles, unbeknownst to the person involved.

What is more, targeting all foreign nationals who have passed checks of facial information and others at the time of entry for surveillance and management despite the lack of suspicions of criminal activity will lead to the creation of a "surveillance society."

The potential damage from this is extraordinarily large because under the current system government agencies are allowed to share personal information merely at the discretion of the agency's head.

Finally, strengthening this kind of surveillance and management only for foreign nationals has the potential, as stated above, to exacerbate prejudice and discrimination and undermine a stable society in which there is peaceful coexistence with persons from other countries.

The JFBA therefore believes that even if Japan were to introduce a system under which foreign nationals are required to provide facial information at the time of entry, all biometric information collected in this process should be immediately erased after immigration checks have been completed. We oppose to the retention of this information after immigration and its use in foreign residence control and criminal investigations etc.

Q 5: What is the JFBA's opinion on the proposed system by which foreign nationals determined to be terrorists in consultation with relevant government agencies would be refused entry or forcibly deported?

A 1: The government is indeed considering a system by which foreign nationals determined to be terrorists in consultation with relevant government agencies would be refused entry or forcibly deported.

However, there is the potential for arbitrary determination if the definition of terrorist is unclear and ambiguous. For example, a person seeking refugee status because of her involvement in anti-government activities and a person involved in independence movements seeking ethnic self-determination could be determined to be a terrorist.

It is unclear who, using what information and following what procedures would make the determination of terrorist, which raises concerns that foreign nationals will be determined to be terrorists and refused entry or forcibly deported without assurances of due process.

Even were the system to be introduced, the JFBA believes that it is essential for the definition of terrorist to be articulated in a clear, precise and rigorous manner so as to avoid arbitrary interpretation under the name of “anti-terrorism.”

We also believe that due process should be assured. In the event that someone is determined to be a terrorist and refused entry or forcibly deported, the reasons for the determination should be disclosed to the extent possible and the person should be provided with an opportunity for appeal with attendance of agents and attorneys on their behalf.

Proposed System for the Authentication and Retention of Biometric Information at the Time of Entry

