pensar
Revista de Ciências Jurídicas
e-ISSN: 2317-2150
Universidade de Fortaleza

The need for flexibilization of Revalida in pandemic times*

A necessidade de flexibilização do Revalida em tempo de pandemia

Raquel Fabiana Lopes Sparemberger**

Thaís Cristina Alves Costa***

Júlia Oselame Graf****

Abstract

The current COVID-19 pandemic has brought to light the problem of the impossibility of immigrants who graduated in medicine abroad to exercise their profession in Brazil. As a methodological strategy, we use the hypothetical-deductive method in association with the documental bibliographic procedure. We aimed to understand how the exceptional situation of the COVID-19 pandemic could provide the flexibilization of legal bonds for these immigrants. Throughout the analysis of the Brazilian scenario, we tested the legal issues that permeate the discussion about the possibility of an immigrant who graduated in medicine practicing their skills during a pandemic. Data and recent experiences through teaching-service show that the flexibility of the Revalida exam is a viable alternative to expand access to healthcare and integrate the immigrant doctor, taking advantage of their best skills in favor of Brazilian society.
Keywords: Migratory Movements. Health Right. Pandemic. COVID-19. Revalida.

Resumo

A pandemia de Covid-19 escancarou a problemática sobre a impossibilidade do imigrante formado em medicina no exterior não poder exercer a profissão no Brasil. A pesquisa, elaborada a partir do método hipotético-dedutivo e do procedimento bibliográfico e documental, analisou em que medida a pandemia do Covid-19, enquanto uma situação excepcional, poderia legitimar a flexibilização das amarras legais que impedem o exercício profissional destes imigrantes. A hipótese foi testada ao longo do trabalho através da análise do quadro atual de médicos no Brasil e das questões jurídicas que permeiam a discussão sobre a possibilidade de atuação do médico imigrante durante a pandemia. Os dados e experiências recentes, através do ensino-serviço, mostram que a flexibilização do teste Revalida é uma alternativa viável para ampliar o acesso à saúde e integrar o médico imigrante, aproveitando suas melhores habilidades em favor da sociedade brasileira.
***Palavras-chave**: Movimentos Migratórios. Direito à Saúde. Pandemia. Covid-19. Revalida.*

---

* Artigo traduzido por Inteligência Artificial.

** Pós-doutora em Direito pela Universidade Federal de Santa Catarina (UFSC). Doutora em Direito pela Universidade Federal do Paraná (UFPR). Professora do Programa de Mestrado em Direito da Universidade Federal do Rio Grande (FURG). Professora dos cursos de graduação e do Programa de Mestrado em Direito da Faculdade de Direito da Fundação Escola Superior do Ministério Público (FMP/RS). http://lattes.cnpq.br/1275535624435246 Orcid: https://orcid.org/0000-0001-9366-9237E-mail de contato: fabiana7778@hotmail.com.

*** Doutoranda em Filosofia do Programa de Pós-Graduação em Filosofia da Universidade Federal de Pelotas (UFPel), atualmente em estágio doutoral no exterior na University of North Carolina - Chapel Hill (UNC), sob orientação do professor Geoffrey Sayre-MCcord. Mestra em Direito e Justiça Social pela Universidade Federal de Rio Grande (FURG). Lattes: http://lattes.cnpq.br/0301338236642593 e Orcid: https://orcid.org/0000-0002-1274-0431. E-mail de contato: tthais@email.unc.edu

**** Mestra em Direito e Justiça Social pela Universidade Federal do Rio Grande (FURG). Graduada em Direito pela Universidade Federal do Rio Grande (FURG) com período sanduíche na Faculdade de Direito da Universidade do Porto (U. Porto). Lattes: http://lattes.cnpq.br/3522872029951568. Orcid: https://orcid.org/0000-0002-2662-6963. Advogada. E-mail de contato: juliagrafadv@gmail.com

1 Introduction

At the end of December 2019, a new virus was detected in the city of Wuhan, China, and quickly spread around the world, causing the biggest pandemic in the last 100 years, it was Covid-19. At the time of writing this article, in the winter of 2020, Brazil had about two million infected and almost 100 thousand deaths as a result of the coronavirus. In a scenario that brought together the various botched quarantines and the lack of political commitment to deal with the health crisis, the problem of the lack of skilled labor emerged, along with the shortage of health professionals. Thus, we are faced with a reality that is at least confronting: that of the immigrant doctor who is prevented from practicing his profession in Brazil and the moment of scarcity of medical care.

These thousands of doctors trained abroad were unable to practice medicine, as they had to wait for the exam to revalidate their diplomas to practice their profession. Revalida, an exam for the revalidation of medical diplomas, applied by the National Institute of Studies and Research Anísio Teixeira (Inep), is the result of a partnership between the Ministries of Education and Health, not held since 2017. Without the revalidation of diplomas, professionals, duly qualified in their country of origin, are unable to exercise the profession in Brazil, even if for exclusively emergency purposes, as in the case of the pandemic.

Faced with this incoherence – which brings to light issues about migration, ethics, public health and class protectionism – we are proposing to write this article focusing on the discussion about the rights of immigrants and their relations with the community that receives them. It is stated that it was not the question of receiving the immigrant that concerned us mostly, but of how to insert him into society, taking advantage of the best skills in favor of the receiving community. This was a way to promote the greatest benefit for society as a whole – especially during the Covid-19 pandemic. Thus, the research, elaborated from the hypothetical-deductive method and the bibliographic and documentary procedure, will start from the following hypothesis: can the relaxation of legal constraints, in this exceptional situation caused by the pandemic, generate rights and guarantees for both the immigrant and the Brazilian population? Thus, if our hypothesis is confirmed, we will defend the flexibility of Revalida so that doctors trained abroad can be hired to practice the profession during the current pandemic in Brazil.

For this, at first, we will specifically analyze the situation of the immigrant who enters the Brazilian territory already having a degree in some profession and who, due to legal bureaucracies, is prevented from exercising such a professional role and, consequently, adding value to Brazilian society. In the second moment, we will discuss the role that the immigrant

doctor can play in situations of scarcity such as the global pandemic of Covid-19, intertwining the right of the immigrant to work with the right of the people to health.

Based on this proposal, we will test the feasibility that doctors trained abroad, and who migrated to Brazil, can exercise their professions not only as a right of the immigrant, but as a duty of action towards society. In contrast, we seek to defend that class protectionism hurts the principles of liberalism that they themselves use to defend the state model. In other words, the arguments used by the public administration and the medical councils for the non-flexibility of Revalida would go against liberalism and the principle of equality in access to health that they themselves defend. To defend our position, we will use the arguments presented, mainly, by Ronald Dworkin, in *The Sovereign Virtue*. Finally, in the third moment, we will investigate the legal situation of the Public Civil Action promoted by the Public Defender's Office of the Union of the State of São Paulo and its legal developments.

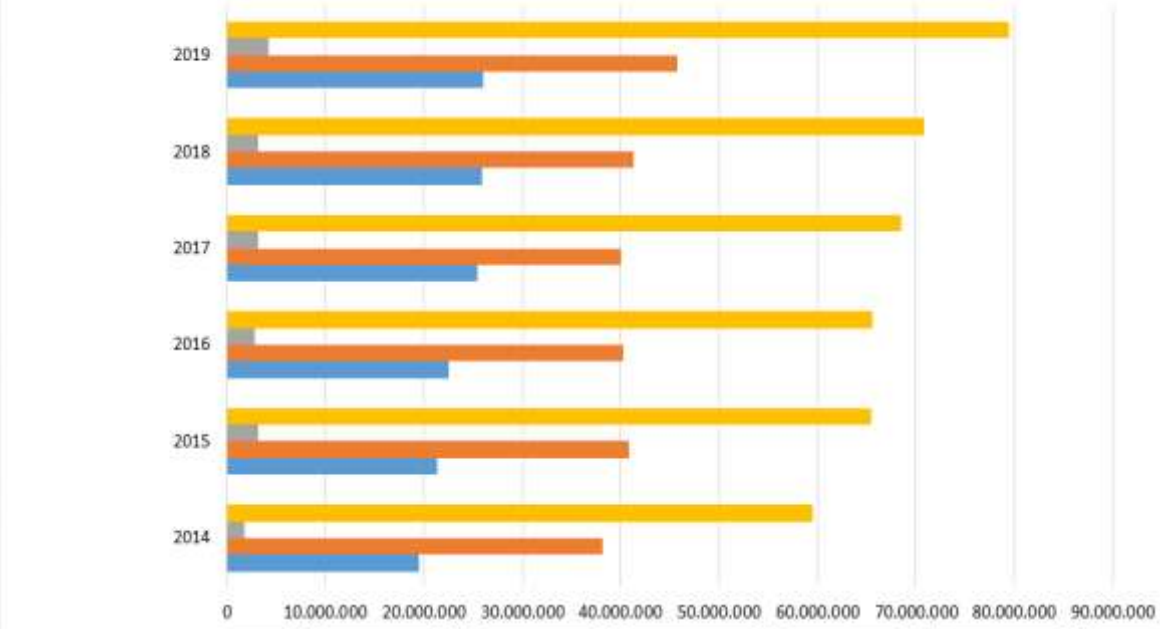
2 Migratory processes and the national exam for the revalidation of medical diplomas: contextualization

Migratory processes are historical and occur due to several factors. The development of Brazil, in recent decades, has made the country the destination chosen by many, given the resulting visibility. In this sense, according to the United Nations (UN) Report on the *Promotion and Protection of the Human Rights of Migrants in the Context of Large Movements*, it is necessary to observe the vulnerability that surrounds some migrations.

> When migrating, some people are inherently more vulnerable than others due to persistent unequal treatment and discrimination based on factors including age, gender, ethnicity, nationality, religion, language, sexual orientation or gender identity, or migratory status (IOM, 2018, p. 26).

In addition, data from the United Nations Global Trends Report on Forced Migration (UNHCR, 2020, p. 02) show that, by the end of 2019, 79.5 million people had been displaced due to persecution, conflict, violence, or human rights violations. Of this number, 26 million are refugees, 45 million and 700 thousand are internally displaced (internal migration) and 4 million and 200 thousand are asylum seekers. Thus, it is observed that in 2019 the total number of displacements was 79.5 million people, which demonstrates an increase of approximately 33.61% when compared to 2014 (UNHCR, 2020, p. 04).

Gráfico 1 – Migrações forçadas de 2014 a 2019 (ONU)

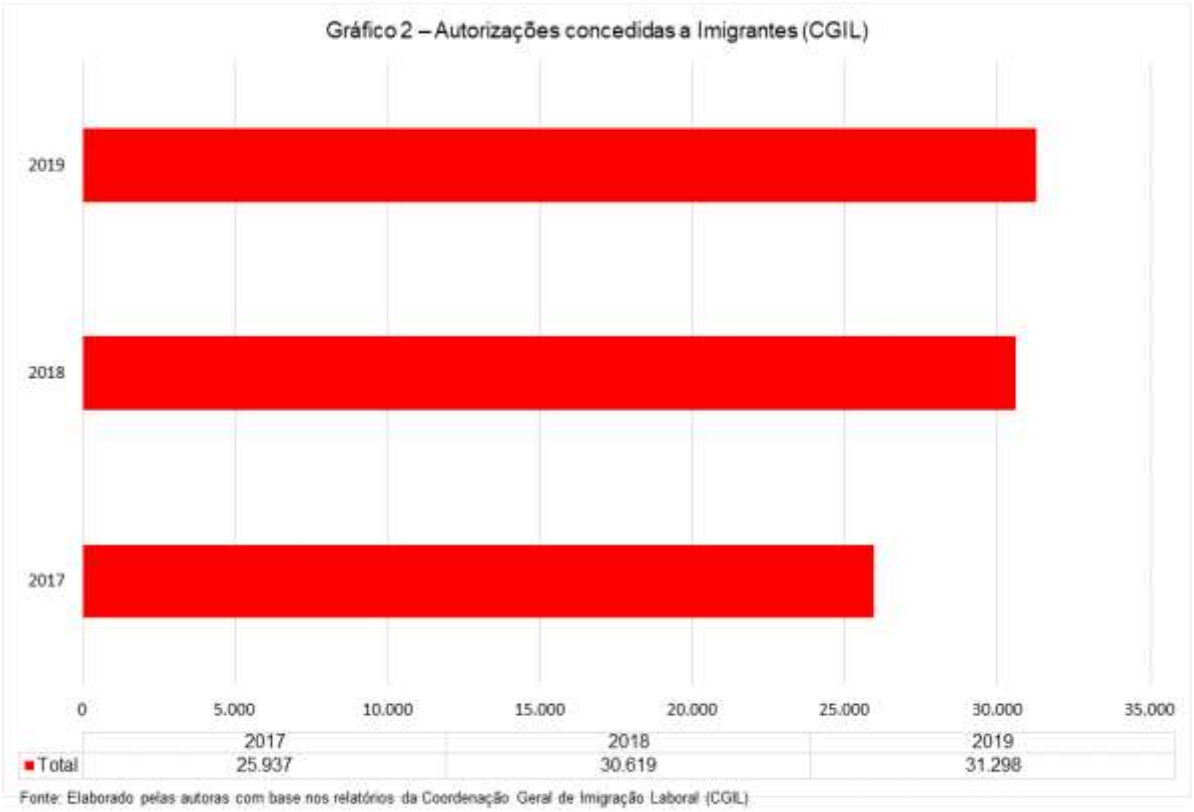


	2014	2015	2016	2017	2018	2019
Total	59.500.000	65.400.000	65.600.000	68.500.000	70.800.000	79.500.000
Solicitantes de Refúgio	1.800.000	3.200.000	2.800.000	3.100.000	3.100.000	4.200.000
Deslocados Internos	38.200.000	40.800.000	40.300.000	40.000.000	41.300.000	45.700.000
Situação de Refugiado	19.500.000	21.300.000	22.500.000	25.400.000	25.900.000	26.000.000

Fonte: Elaborado pelas autoras com base no Relatório de Tendências Globais da ONU (2014, 2015, 2016, 2017, 2018 e 2019).

According to data from the General Coordination of Labor Immigration (CGIL) and the National Immigration Council (CNIg), systematized by the Observatory of International Migration (OBMigra), [1]it is possible to observe that Brazil is the destination of many migrants, after all, between 2017 and 2019, 87,854 residence permits were granted by the CNIg – a fact that requires special attention to the integration policies of these people.

[1] For the purpose of elucidation, the Observatory of International Migration (OBMigra) "was established based on a cooperation agreement between the Ministry of Labor (MTb), through the National Immigration Council (CNIg) and the University of Brasília (UnB)" and "aims to expand knowledge about international migratory flows in Brazil, through theoretical and empirical studies, and to point out strategies for social innovation of public policies aimed at international migration". Available at https://portaldeimigracao.mj.gov.br/pt/observatorio. Accessed on: 30 jul. 2020.



Migratory movements can be differentiated in several ways, including forced migration and spontaneous migration, where in the first the subjective element of coercion is observed, including the threat to life and subsistence, whether by natural or human causes, with refugees as one of the examples. On the other hand, spontaneous migration is the one resulting from dissatisfaction caused by negative factors in the country of origin and attractive factors in the country of destination, which leads the individual to seek a better perspective in life (IOM, 2006, p. 39). In this sense, Márcia Gomes explains the various motivations for migration, including economic migration, whose purpose is to send money to family members who stayed in the country of origin.

> The first migratory flows had a farewell character, since the return to the place of origin was not certain and the possibility of maintaining contact was very small, almost nil. At the present time, in a world with diluted borders, the transit of individuals has intensified and gained new contours, since migration today is characterized by the profusion of ways to maintain contact with the place of origin, with the networks that are formed by the internet and make it possible to meet in the new land of those who are fellow countrymen and, still, when we think about economic migration, the figure of money remittances to help families who stay in the place of origin emerges (Gomes, 2017, p. 28).

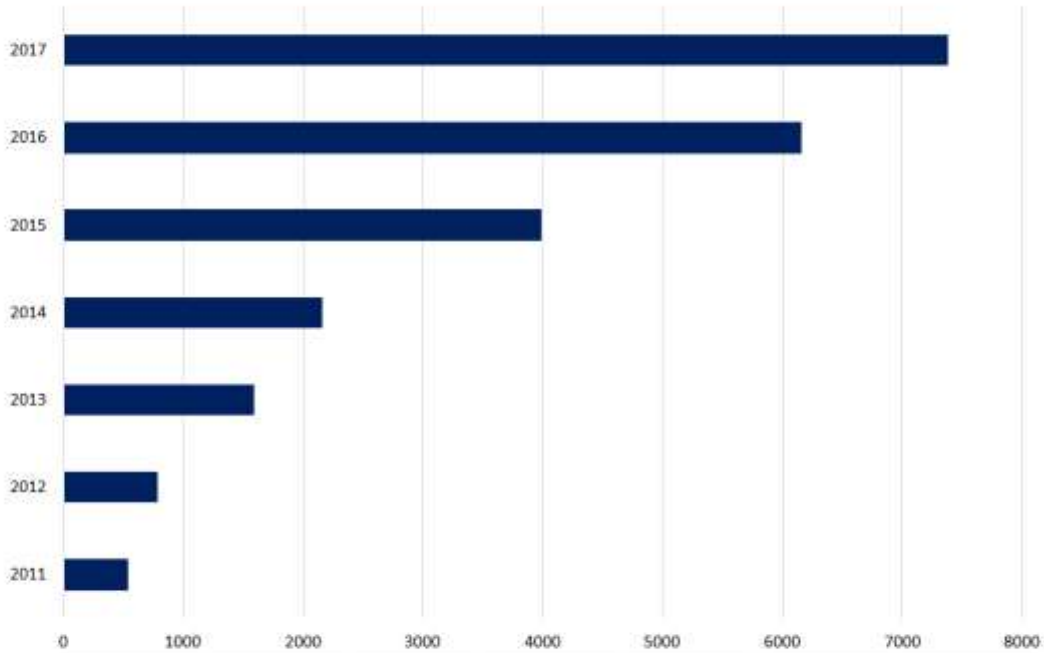
From this, it is imperative to highlight that the integration of immigrants goes through the process of recognition of their skills and training, not allowing qualified professionals to be

prevented from exercising their profession due to the absence of applying a test, as in the case of immigrant doctors. It is at this point that the possibility or not of making the National Exam for the Revalidation of Medical Diplomas (Revalida) more flexible comes into play.

The National Exam for the Revalidation of Medical Diplomas has been applied by the National Institute of Educational Studies and Research Anísio Teixeira (Inep) since 2011, in collaboration with the Subcommittee for the Revalidation of Medical Diplomas. According to Inep, the "exam evaluates doctors trained abroad, with isonomic parameters and criteria, suitable for gauging curricular equivalence and defining the corresponding aptitude for the professional practice of medicine in Brazil" (INEP, 2020).

The evaluation is divided into two stages, the first consists of a written test and the second consists of the evaluation of the candidates' clinical skills. According to the data available on the Inep platform, the last exam was held in 2017[2] and already showed a high number of enrollees, as shown in the table below.

Gráfico 3 – Número participantes Revalida de 2011 a 2017



	2011	2012	2013	2014	2015	2016	2017
Total participantes	536	782	1.595	2.157	3.993	6.162	7.380

Fonte: Elaborado pelas autoras com base no site do INEP

[2] It should be noted that not all those enrolled for revalidation of the diploma are immigrants, considering that Brazilians and foreigners who graduated abroad need, for the full exercise of the profession in Brazil, to go through the procedure of revalidation of their diplomas. In addition, it is noted that the exam registration fee exceeds the financial conditions of an immigrant in a vulnerable situation in the country, that is, many do not even have the possibility of taking the test.

Of the 7,380 registered in the last edition held three years ago, 3,243 participants came from other countries and, according to estimates made by the Federal Government, about 15 thousand doctors trained abroad, residing in the national territory, are waiting for the return of Revalida without the possibility of practicing the profession, although they are qualified as doctors abroad.

It should be noted that migrating involves several aspects, including life in society, the family group, work, health, public safety, among others, that is, considering that work is a primary source of income, depriving a being of freely exercising his profession is to remove the opportunity to reestablish himself in the country of destination.

Thus, in the context of the coronavirus pandemic, the debate arises about the possibility of making the exam more flexible, even if on an exceptional and temporary basis, for the exercise of the profession, in order to make up for the absence of application of the test and the consequent lack of use of the doctor's labor from abroad.

3 Perspectives and philosophical developments

Having understood the Brazilian historical context, we move on to the second moment of this chapter, that is, the understanding of philosophical perspectives and developments. For this, at first we will present the philosophical principles that guide the recognition of the equality and dignity of immigrants in Brazil, highlighting the importance of guaranteeing them the right to work like any other citizen. And then, analyzing the need for equal treatment in liberal molds, as the current administrative model claims to defend. For this, we will initially use the idea of Dworkinian justice.

Ronald Dworkin is a legal philosopher who defends liberalism associated with criteria of justice. His idea of justice is based on the liberal egalitarian sphere, in such a way that it comprises the perspective of distributive justice and individual freedoms. In this sense, more than stipulating what justice is in general, the question in vogue is to know what is the fair way to respond to injustice, that is, how to prevent inequality from exterminating the social values that should be distributed to all, such as "freedom and opportunity, income and wealth, and the social bases of self-respect" (Rawls, 2000, p.245).

Álvaro de Vita, in the work *Egalitarian Justice and Its Critics*, explains about social injustices, stating that, "in order to determine what kind of events qualify as 'injustices', we are inevitably led to engage in counterfactual comparisons between the *status quo* and institutional

structures that are possible alternatives" (Vita, 2007, p. 220). Equal justice, for Dworkin, will be guaranteed only to the extent that resources are distributed equally. According to Dworkin's egalitarian theory of justice, in the context of a Democratic State of Law, equality must always prevail over freedom, since it is the cardinal virtue present in the political community. Given its importance, equality of resources and opportunities emerges as a facet for distributive justice compatible with a society based on a political principle of equal consideration of all its members.

Dworkin will thus start from the assumption that there must be equality of any appeal. It will be up to the State, then, to function equally in the treatment of its national or foreign citizens, and there are two ways of understanding the right to equality. Namely, (*i.*) the right to equal treatment or (*ii.*) the right to equal treatment. Equal treatment (*i.*) consists of the right to an equal distribution of opportunity, resources and burden (*e.g.*, the right to vote or basic education), while the second (*ii.*) is configured by the right of all citizens to be treated with equal consideration and attention, which is an inalienable and fundamental right.

According to the philosopher, equal consideration and respect should be demanded of the political community, equality being in fact the true sovereign virtue of the community. According to Dworkin, every government must demonstrate "equal consideration for the destiny of all [...]. Egalitarian consideration is the sovereign virtue of the political community – without it government is nothing but tyranny" (Dworkin, 2002, p. IX). Through the theory of equality of resources, Ronald Dworkin advocates the practice of an egalitarian model, with a view to promoting equal conditions for all people, regardless of whether they are national or foreign. In this sense, the right to health is a right that belongs to the sphere of equality, as highlighted by Sueli Dallari and Paulo Fortes,

> The limitations on human behavior are placed precisely so that everyone can equally enjoy the advantages of life in society. Thus, in order to preserve the health of all, it is necessary that no one should be able to prevent others from seeking their well-being or induce them to become ill. This is the reason for the legal norms that require vaccination, notification, treatment, and even the isolation of certain diseases, the destruction of spoiled food, and also the control of the environment, working conditions (Dallari; Fortes, 1997, p. 190).

This seems to be the case in the Brazilian situation, in which the poor distribution of doctors by regions reveals a process of exclusion from access to health, according to the report on Medical Demography in Brazil, published in 2020, the result of a Technical Cooperation Agreement between the University of São Paulo (USP) and the Federal Council of Medicine (CFM). Observe, for example, that while the national average ratio is 2.27 doctors per thousand inhabitants, the North and Northeast regions have, respectively, an average of 1.30 and 1.69

doctors per thousand inhabitants. Among the states in these regions, Pará and Maranhão stand out negatively, where the average ratio is 1.07 and 1.08 doctors per thousand inhabitants, whose astonishing difference reveals a rate 47% lower than the average ratio of the country. In addition, the poor distribution within the regions themselves should be highlighted, where cities in the interior are the most affected by the *deficit* of professionals[3]. Consequently, the shortage of doctors – intensified during the Covid-19 pandemic – violates the equal access to constitutionally guaranteed medical care.

The problem lies in the fact that exclusions from access to health care are "intolerable injustices" according to Amartya Sen. For him, the public power must necessarily avoid the injustice that is closely linked to the lack of public services and social assistance, such as, for example, the absence of epidemiological programs, a well-planned system of medical care, because for human development the agent needs to be well nourished and free of epidemics (Sen, 2000, p.18). To reinforce his argument, Sen takes up the thought of Adam Smith, the father of economic liberalism, to endorse the need for concerns about human development even in liberal societies like ours[4].

Contrary to common claims that liberal principles should prevail in society to the detriment of possible state intervention, Adam Smith maintained that the non-intervention of the state in commerce does not apply to social issues. On the contrary, for Smith "the State must intervene to guarantee everyone equal conditions to prosper" (Costa, 2018, p.165). Nevertheless, Adam Smith shows concern about the improvements in living conditions as a whole, as well as the need to eradicate poverty, recognizing that the market order could produce perverse effects on the poorest population (Smith, 1776, p. 526). Against such a situation, the government has the responsibility to take care of the most vulnerable, making use of certain public institutions to deal with the problems that may arise and not simply letting the market follow the free flow.

Nevertheless, the philosopher Stephen Darwall argues that theories such as the Smithian theory sustain a notion of human dignity (Darwall, 1999, p.142). This notion would be based on the need to renounce our egocentric feelings and assume without prejudice the interests and feelings of others, defended by Smith. In turn, the recognition and appreciation of the other

[3] In this sense, it is noteworthy that "residents of municipalities in the interior of all nine states of the Northeast have one or fewer doctors per thousand inhabitants. In the North region, five of the seven states are in the same situation" (Cf. Graf, 2021).

[4] For Sen, Smith argues that economic growth cannot be sensibly considered an end in itself, and should be related, above all, to the improvement of the quality of life we lead and the freedoms we enjoy (Sen, 2009, p. 6).

would reside in self-sacrifice, given that, against the "deformation of injustice; we must renounce our greatest private interests in favor of the even greater interests of others" (Smith, 1759, p.137). With this, the physical and psychic ills caused by situations of scarcity, such as the pandemic, would be avoided.

This demonstrates the concern of classical liberalism as a solution to problems of subsistence, quality of life and the possibility of human development, avoiding intolerable injustices. Therefore, if we take this classic theory and associate it with a pandemic relationship, when what is at stake is the health of society, we clearly perceive the need to defend that, based on liberal policy, we should be concerned with the poorest, necessarily demonstrating that even in liberal molds, there are social concerns. When we specifically enter conditions of scarcity such as the current health crisis we are observing, the need to worry about the population becomes even more evident.

Thus, processes that impede the health and survival of the population must be avoided at all costs, in order to guarantee the life of the population. And this guarantee, at the time of the pandemic we are experiencing, involves making Revalida more flexible for the benefit of the community as a whole. Thus, in addition to the right of immigrants to have equal treatment for work, there is a moral duty to contribute and care for the civil society of these qualified professionals who can add knowledge, experience and care for the well-being and survival of the Brazilian population, when national health professionals are overloaded and numerically outdated.

4 The free exercise of the profession and the integration of the immigrant: analysis of the Public Civil Action in times of Pandemic

The World Health Organization (WHO), through Director-General Tedros Adhanom, declared the coronavirus outbreak a Public Health Emergency of International Concern (PHEIC) on January 30, 2020 and emphasized that "the only way to defeat this outbreak is for all countries to work together in a spirit of solidarity and cooperation" (WHO, 2020). On March 11, the WHO upgraded the contamination status to the Covid-19 pandemic, a disease caused by Sars-Cov-2. Observing the emergency that Brazil would have to fight, Law 13,979, of February 6, 2020, was enacted, providing for measures to face the public health emergency of international importance resulting from the coronavirus.

On March 20, 2020, the Ministry of Health recognized the community transmission of the coronavirus (Covid-19) throughout the national territory, determining the adoption of

measures by national managers "to promote social distancing and avoid agglomerations, known as non-pharmacological measures, that is, that do not involve the use of medicines or vaccines", according to Ordinance No. 454, of March 20, 2020. Legislative Decree No. 06, of 2020, recognized the state of public calamity in Brazil, related to the public health emergency of international importance related to the coronavirus (Covid-19).

The integration of qualified health professionals from other countries during the pandemic, more specifically immigrant doctors who did not take the National Exam for the Revalidation of Medical Diplomas (Revalida), appears not only as a possibility, but as a way to ensure the rights to life and health provided for in Articles 5, 6 and 196 of the Federal Constitution.

According to Article 5 of the Federal Constitution of 1988 "everyone is equal before the law, without distinction of any kind, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property". In this way, the integration of immigrants through the possibility of exercising the profession arises with the aim of guaranteeing the population's right to health in the face of the *deficit* of professionals in the health area, as well as reducing the social inequalities of those who seek a dignified life in a different country.

Thus, it is necessary to observe some important aspects that involve the rights of immigrants from the Migration Law (Law 13.445/2017), such as some principles and guidelines by which migration policy should be governed, among them, the social, labor and productive inclusion of migrants through public policies, promotion of academic recognition and professional practice in Brazil.

The free exercise of the profession by immigrants trained in medicine abroad, a fundamental right provided for in Article 5, XIII, of the Federal Constitution of 1988, remains impaired to the extent that it is not possible to comply with one of the requirements imposed through infra-constitutional legislation, the completion of the diploma revalidation test, since the exam has not been applied for three years and does not reach the most vulnerable immigrants.

Thus, the professional practice on a regular basis is hindered by Article 17 of Law No. 3,268/57, which determines that physicians can only legally practice medicine, in any of its branches or specialties, after the prior registration of their titles, diplomas, certificates or letters with the Ministry of Education and Culture and their registration with the Regional Council of Medicine. under whose jurisdiction the place of its activity is located. Regarding the prior

registration of the diploma with the Ministry of Education, the Law of Guidelines and Bases of National Education, Law No. 9,394/96, establishes in Article 48, § 1 and 2 that:

> Article 48. Diplomas from recognized higher education courses, **when registered,** will have national validity as proof of the training received by their holder.
> Paragraph 1 - Diplomas issued by universities shall be registered by them, and those conferred by non-university institutions shall be registered in universities indicated by the National Council of Education".
> Paragraph 2 - **Undergraduate diplomas issued by foreign universities shall be revalidated by public universities that have a course of the same level and area or equivalent, respecting international agreements of reciprocity or equivalence** (Brasil, 1996, emphasis added).

However, in view of the shortage of human resources in the health area during the pandemic, as well as the absence of application of the Revalida exam since 2017, the Federal Public Defender's Office filed Public Civil Action No. 5007182-62.2020.4.03.6100, in the 17th Federal Civil Court of São Paulo, aiming at hiring Brazilian and foreign doctors trained abroad, even if they have not carried out the validation of the diploma in the national territory, on an exceptional and temporary basis, especially in health units and public hospitals until the Covid-19 pandemic is overcome.

In this sense, it is important to mention that there is no possibility of granting definitive registration to practice the profession until there is a legislative change capable of supporting this decision – given the need to respect the tripartite structure of powers, and the judiciary cannot advance beyond its list of action, under penalty of violating the constitutional text – which provides, in its article 60, § 4, III, the separation of powers as a stony clause.

On the other hand, it is observed that it is possible to temporarily register these professionals in the medical staff for the duration of the pandemic, considered a public health emergency of international importance, in order to safeguard the right to health, life and the free exercise of the profession. Going against this idea, the Union argued against the possibility of exceptional hiring of doctors during the pandemic, stating that the "exemption from revalidation of foreign diplomas for emergency hiring of doctors to face the Covid-19 pandemic proves to be a dangerous practice, with the probability of putting at risk the safety of patients and users of the Unified Health System (SUS) who come to be treated by such professionals".

However, this registration is possible to the extent that the practice of medicine by a foreign doctor in Brazil, without the approval of Revalida, has already been made possible through exchanges carried out by the More Doctors Program (PMMB), established by Law No. 12,871/2013, which denotes that, except for the completion of the diploma validation test determined by law, Doctors trained abroad are able to practice their profession in Brazilian

territory. Therefore, in order to safeguard the right to health, life and the free exercise of the profession, the flexibility of the National Examination for the Revalidation of Medical Diplomas during the pandemic is presented as a temporary solution, enabling the provisional registration and performance of these professionals trained abroad in the public health network.

Thus, it is necessary to study the motivations for migration – for natural reasons or caused by human action, its reflections in the receiving countries or internally and, above all, the solutions proposed for the protection and integration of these groups –, enabling the free exercise of the profession also, but not only, during a pandemic scenario, after all, the migratory phenomenon gives rise to the implementation of quality public policies capable of offering the other what is theirs right, in this case, a dignified life based on the structural and social changes experienced.

5 Conclusion

Returning to the fundamental question presented in the introduction of this article and paraphrasing the philosopher Peter Singer, the flexibility of Revalida for the possibility of hiring these migrants is the greatest good we can do for everyone[5]. There seems to be, in fact, an inconsistency when we observe the acts of obstacle to the hiring of foreign doctors to deal with the pandemic in Brazil. On the other hand, exercising the profession is a right of the immigrant, given the principles of equality guaranteed by the Federal Constitution of 1988 and which cannot be read differently between nationals and migrants. It is also important to note that the flexibility of Revalida would allow doctors trained abroad, willing to work and who just need a chance, to have the opportunity to help the government and the population in an extreme circumstance, such as the pandemic[6]. In addition, arguing that this flexibility hurts the principles of liberalism is incoherent, given that liberals such as Ronald Dworkin and Adam Smith argue that such models need to be egalitarian and promote human progress.

[5] In the work *The Greatest Good We Can Do* , Peter Singer states that effective altruism is an important role in changing the world in which we live. In this reality, rules such as do not steal, do not cheat, do not hurt, or do not kill – are not enough for prosperity in the world. The philosopher argues that leading a minimally acceptable ethical life implies using a substantial part of our resources to spare to make the world a better place; On the other hand, living a fully ethical life entails doing as much good as possible. Thus, in a new era, it is to be expected that the next generations will be up to the responsibilities regarding problems that are as global as they are local.

[6] In addition, another point not addressed due to time, but which deserves attention, is the criteria and the amount charged for Revalida, which represents an obstacle for many immigrants in situations of economic vulnerability.

In view of this, we argue that human dignity must supplant any bureaucratic legal issue that hurts humanity. To this end, our proposal is to defend that the flexibility of Revalida is beneficial and guarantees the greatest good we have: life. In this sense, utilitarian arguments that defend the maintenance of Revalida and the non-possibility of such professionals saving lives in the period of scarcity represent the violation of autonomy, dignity and respect for otherness.

We emphasize again that when this article was written in the middle of last year, the great calamity was only a "prophecy." At that time, the World Health Organization (WHO) had just announced that South America would be the new epicenter of Covid-19 and that Brazil would be the most affected country. Therefore, our original conclusion was that we ran the risk of having an even greater public calamity than the one already faced due to a lack of professionals. Unfortunately, this situation was materialized and today, about a year after this article began to be prepared, we are bitter about the more than 600 thousand lives lost in the country. However, it is important to emphasize that many things have changed since then, such as the arrival of vaccines and a certain attempt to return to a reality that will never be the same.

For all these reasons, the people's right to health and medical care during the pandemic goes beyond the demands of professional classes, being a matter of humanitarian necessity in times of scarcity. Unlike other avowedly liberal countries such as the United States of America and Chile, which even relaxed legal procedures so that immigrant medical professionals could practice their professions in times of pandemic, Brazil remained adamant about the work of immigrant doctors during the health crisis. In this sense, the question that remains is about how many deaths could have been avoided if Revalida had been made more flexible at the time we wrote this text. In fact, there were many factors that contributed to this announced tragedy that still seems to be far from an end, however, one factor that seems to weigh substantially is the lack of access to health associated with the *shortage* of doctors in some regions. In other words, this reality could have been reduced with the relaxation of the diploma revalidation exam, after all, recent experiences, through teaching-service, show that the flexibility of the Revalida test is a viable alternative to expand access to health and integrate immigrant doctors, taking advantage of their best skills in favor of Brazilian society.

References

ANÍSIO TEIXEIRA NATIONAL INSTITUTE OF EDUCATIONAL STUDIES AND RESEARCH. National Exam for the Revalidation of Medical Diplomas Issued by Foreign

Higher Education Institutions (Revalida). **INEP**, Brasília, 2020. Available at: http://inep.gov.br/web/guest/educacao-superior/revalida. Accessed on: 29 jul. 2020.

ANÍSIO TEIXEIRA NATIONAL INSTITUTE OF EDUCATIONAL STUDIES AND RESEARCH. Historic. **INEP**, Brasília, 2020. Available at: http://inep.gov.br/educacao-superior/revalida/historico. Accessed on: 28 jul. 2020.

BRAZIL. [Constitution (1988)]. **Constitution of the Federative Republic of Brazil.** Brasília, DF: Senado Federal: Editora Saraiva, 1988.

BRAZIL. 17th Federal Civil Court of São Paulo. **Public Civil Action**. Case No. 5007182-62.2020.4.03.6100. Author: Federal Public Defender's Office. Defendant: Federal Union, Federal Council of Medicine. Rapporteur: Marcelo Guerra Martins, May 14, 2020. Available at: https://pje1g.trf3.jus.br/pje/ConsultaPublica/listView.seam. Accessed on: 25 jul. 2020.

BRAZIL. **Law 12.871, of October 22, 2013**. Establishes the More Doctors Program, amends Laws No. 8,745, of December 9, 1993, and No. 6,932, of July 7, 1981, and makes other provisions. Brasília, DF: Presidency of the Republic, [2020]. Available at: http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2013/Lei/L12871.htm. Accessed on: 29 jul. 2020.

BRAZIL. **Law 13,979, of February 6, 2020**. Provides for measures to address the public health emergency of international importance resulting from the coronavirus responsible for the 2019 outbreak. Brasília, DF: Presidency of the Republic, [2020]. Available at: http://www.in.gov.br/en/web/dou/-/lei-n-13.979-de-6-de-fevereiro-de-2020-242078735. Accessed on: 29 jul. 2020.

BRAZIL. **Law 3.268, of September 30, 1957**. Provides for the Councils of Medicine, and makes other provisions. Brasília, DF: Presidency of the Republic, [2020]. Available at: http://www.planalto.gov.br/ccivil_03/LEIS/L3268.htm. Accessed on: 29 jul. 2020.

BRAZIL. **Law 9.394, of December 20, 1996.** It establishes the guidelines and bases of national education. Brasília, DF: Presidency of the Republic, [2020]. Available at: http://www.planalto.gov.br/ccivil_03/leis/l9394.htm. Accessed on: 29 jul. 2020.

BRAZIL. Ministry of Health. Ministry of Health declares national community transmission. **Gov.br,** Brasilia, 21 mar. 2020. Available at: https://www.gov.br/saude/pt-br/assuntos/noticias/2020/marco/ministerio-da-saude-declara-transmissao-comunitaria-nacional. Accessed on: 29 jul. 2020.

BRAZIL. Ministry of Health. National Health Surveillance Policy**. Gov.br,** Brasília, 22 nov. 2020. Available at: https://www.gov.br/saude/pt-br/assuntos/saude-de-a-a-z/p/politica-nacional-de-vigilancia-em-saude-1. Accessed on: 29 jul. 2020.

BRAZIL. Ministry of Justice and Public Security. General Coordination of Labour Immigration. **CGIL 2017-2018 annual**: residence permits granted to immigrants. Available at: https://portaldeimigracao.mj.gov.br/images/dados/relatorio_trimestral/comparativo-cgil%202017-2018.pdf. Accessed on: 28 jul. 2020.

COSTA, T. A. Human development from Amartya Sen and Adam Smith. **Peri**, Florianópolis, v. 10, n. 1, p. 165-179, 2018.

DALLARI, Sueli Gandolfi; FORTES, Paulo Antônio de Carvalho. Sanitary law: theoretical innovation and a new field of work. *In*: FLEURY, Sonia (ed.). **Health and democracy:** the struggle of CEBES. São Paulo: Lemos Editorial, 1997. p. 39-55.

DARWALL. S. Sympathetic liberalism: recent work on Adam Smith. **Philosophy and Public Affairs,** Princeton, v. 28, n. 2, p. 139-165, 1999.

DIAS, Hélio Pereira. **Rights and obligations in health**. Brasília: ANVISA, 2002.

DWORKIN, Ronald. **Sovereign virtue**: the theory and practice of equality. London: Harvard University Press, 2002.

DWORKIN. Ronald. **Sovereign virtue**: the theory and practice of equality. São Paulo: Martins Fontes, 2012.

GOMES, Márcia Letícia. **Migration, refuge and human rights**: a look at contemporary migratory movements. Curitiba: Editora Prismas, 2017.

GRAF, Júlia Oselame. **Migratory movements in Brazil:** the dignified reestablishment and the realization of the right to health from the integration of the immigrant. 2021. Dissertation (Master's Degree in Law and Social Justice) – Faculty of Law, Federal University of Rio Grande, Rio Grande, 2021.

GUIMÓN, Pablo; SANDOVAL, Pablo Ximénez. Coronavirus forces Trump to accept foreign doctors and keep immigrants in the field. **El País,** Washington, Los Angeles, 13 Apr. 2020. Available at: https://brasil.elpais.com/internacional/2020-04-13/coronavirus-rompe-as-costuras-da-politica-imigratoria-linha-dura-de-trump.html. Accessed on: 23 jul. 2020.

INTERNATIONAL ORGANIZATION FOR MIGRATION. **International Law on Migration n. 7:** gloss on migration. Geneva: IOM, 2006. Available at: http://publications.iom.int/system/files/pdf/iml_7_sp.pdf. Accessed on: 29 jul. 2020.

INTERNATIONAL ORGANIZATION FOR MIGRATION. **Legal aspects of the care of indigenous migrants from Venezuela to Brazil**. Brasilia: IOM, 2018. Available at: https://brazil.iom.int/sites/default/files/Publications/BRL-OIM%20004.pdf. Accessed on: 29 jul. 2020.

LAING, Aislinn. Migrant doctors in Chile go to the front in the fight against the coronavirus. **Reuters**, Santiago, July 3, 2019. 2020. Available at: https://lta.reuters.com/articulo/salud-cronaviruschilemedicosidLTAKBN24420K-OUSLT. Accessed on: 24 jul. 2020.
MELLO, Celso Antônio Bandeira. **Legal content of the principle of isonomy.** São Paulo: Malheiros, 2000.

RAWLS, John**. A theory of justice.** Revised Edition. Cambridge: Harvard University Press, 2000.

SCHEFFER, Mário *et al*. **Medical demography in Brazil 2020.** São Paulo: FMUSP: CFM, 2020.

SEN, Amartya. Capitalism beyond the crisis. **The New York Review**, New York, 26 Mar. 2009. Available at: http://www.nybooks.com/articles/2009/03/26/capitalism-beyond-the-crisis/. Accessed on: 04 jul. 2020.

SEN, Amartya. **Development as freedom**. São Paulo: Companhia das Letras, 2000.

SINGER, Peter. **The greatest good we can do:** how effective altruism is changing ideas about living ethically. Translation: Pedro Elóy Duarte. Lisbon: Edições 70, 2018.

SMITH, Adam. **An inquiry into the nature and causes of the wealth of nations.** Chicago: The University of Chicago Press, 1776.

SMITH, Adam. **The theory of moral sentiments**. Cambridge: Cambridge University Press, 1759.

UNHCR. **Global Trends forced displacement in 2019.** Copenhagen: UNHCR, 2019. Available at: https://www.unhcr.org/globaltrends2019/. Accessed on: 29 jul. 2020.

VITA, Álvaro de. **Egalitarian justice and its critics**. São Paulo: WMF Martins Fontes, 2007.

WORLD HEALTH ORGANIZATION. Who Director-General's statement on IHR Emergency Committee on Novel Coronavirus (2019-nCoV). **WHO,** [*s.l.*], 30 jan. 2020. Available at: https://www.who.int/dg/speeches/detail/who-director-general-s-statement-on-ihr-emergency-committee-on-novel-coronavirus-(2019-ncov). Accessed on: 29 jul. 2020.

Received: 07.09.2020
Accepted: 10.25.2021