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Health-Passports Part 2: CBI in a World Where Nationality Alone Doesn't Determine Mobility

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Published in:
Investment Migration Insider

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Recommended citation(APA):
Kratat, M. B. (2021). Health-Passports Part 2: CBI in a World Where Nationality Alone Doesn't Determine Mobility. *Investment Migration Insider*. <https://www.imidaily.com/due-process/health-passports-part-2-cbi-in-a-world-where-nationality-alone-doesnt-determine-mobility/>

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This article has previously been published in the *Investment Migration Insider* (2021) February 24th, available at <https://www.imidaily.com/due-process/health-passports-part-2-cbi-in-a-world-where-nationality-alone-doesnt-determine-mobility/>. (Last accessed March 5th 2021). ©2021

‘Health-Passports Part 2: CBI in a World Where Nationality Alone Doesn’t Determine Mobility’ (2021) February 24th, *Investment Migration Insider*.

Michael B. Krakat

Abstract

What is a passport’s nominal visa-freedom worth if health-restrictions prevent you from boarding a plane in the first place?

Introduction

This article is a follow-up to [Health Passports Are Coming – What Does That Mean for Investment Migration?](#)

This time, we are embarking on a discussion of the relationship between conventional passports and a new form of standardised health passports, with exceptional change and a new ordering on the horizon, depicted in the Nataraja, Lord of the Dance as an aspect of the Hindu God Shiva.

We need to ask whether these two concepts, conventional- and health-passports, are at all reconcilable.

On the one hand, there is randomly assigned (pandemic driven) global-individual health status. This status may result in a full or partial override of the quality and value of passports. After all, what is a passport worth if one cannot travel with it due to being barred for health-related risk assessments?

These new differences between passport holders add to the complexity of what was already a difficult assessment, evidenced in different types of rankings and methodologies involved.

Health-passports as prototype for global passports

Just as the spirit of humanity, global solidarity, as well as disasters such as climate change, the pandemic knows no borders. Their consequences and required action may, likewise, be superimposed and supra-national, pertaining to global health science as well as politics. Are pandemic passports effectively overcoming the value of actual passports, overwriting all conventional criteria with what effectively amounts to emergency rule beyond any *one* nation-state? May the pandemic passport even act as a blueprint for a global passport, or global citizenship?

The actual question may be whether fragmentation in the ways to address the crisis, that is, multiple vaccines and government policies as to distancing, etc. are already resulting in classes of pandemic modifications to passports' power. In other words, are there now different classes of global mobility emerging due to different status of formal and material health? With formal health, I mean the formal requirements, such as having overcome the disease or holding vaccination. With actual material health, I mean whether one is actually sick or not. Alone from this distinction flows a plethora of differing evaluations on health and, thus, on mobility.

For example, two passport holders of the same nation may be treated differently at the world's airports depending on health criteria, and at differing times, as the health requirements are constantly in a state of flux, with new strains discovered at random times. Health passports may have, albeit with benevolent intention and in the spirit of crisis response, dramatic consequences on actual passports, creating complexity and indeterminacy. They may either form a temporal emergency measure with a clear sunset application as to time, or, they should be referenced against clear and fixed global standards.

What could these standards be? The power over the definition of passports, their legal-, economic- and other perimeters (such as for visa-free travel so negotiated) has so far been in the sole hands of governments, a monopoly stemming from power, politics and the law. In any case, there is no global 'regulator' of citizenship at this time (such as any citizenship of the United Nations), but there are global paradigms that could lead to a global citizenship from the ground up, complementary to that of the nation state.

What health-passports mean for CBI

In the case of Citizenship by Investment (CBI), arguably, that power already experienced some effective shift. It has been subjected to the partial co-determination by global markets, market rule and –logic over the metes and bounds of the necessities pertaining to citizenship law. That type of law has so far been at the inner core of the nation-state, inward-facing. Now, it is coming from an additional supra-national mercantile perspective in addition to the municipal-national polity, functioning as both outcome and driver of globalization, new nationalisation, and – in our post-globalisation era – fragmentation and indeterminacy.

A cynic may remark that the bottom line of CBI is that different states are to exist, if only for the diversity of passports on a global market for membership entitlements.

At least, price-based CBI has increasingly been coming with some form of certainty and has perhaps even acted as a grand equalizer and leveller of travel- and strategic relocation-based mobility. It has most certainly re-introduced to the world of nation-states a concept of options and diversification: In theory, anyone could purchase passports, absent any substantive criminal record.

Price, as such, does not discriminate against the person, no matter one's heritage, religion, skin colour, or other factors. Of course, the often substantial prices may form a hurdle to be overcome. The world, itself, is yet not perfectly equal and everything, so it would appear, has at least a nominal price and could be commoditized. At least, there is room for CBI's growth and innovation, such as with [crowdfunding or government loans](#).

The private sector's new role as supra-national regulator

The demarcations between the public and the private are further shifting, especially so with public and private players on the borders of passports and pandemic health science.

Where the journey of CBI will go is not yet clear, but the changes now triggered by health related factors and additions to passports should spark an urgent discussion about the passport's use and nature within the global bordered paradigm. The demarcations of citizenship as meta-right are not yet so fragmented that the public-private sector would be able to sell separately, say, any rights so far bundled under the umbrella of citizenship.

Severable rights could include the right to safe residence, political protection, or visa-free travel through separate letters, certificates, or ad-hoc contracts for travel so negotiated between countries or between countries and corporations. Citizenship may even be broken down into actual, tradeable social credit points. There is nothing that cannot be sold or even re-sold, as a price can be assigned to any concept of market value. Decentralized blockchain ledgers may become utilized to create peer-to-peer 'citizenship' from the ground up.

In any case, the boundaries between the public and the private are further dissolving: Private corporate health, as appointed and negotiated by governments, the European Commission, or the WHO, is effectively redefining the metes and bounds of passports at this time, leading to further metamorphosis of the concept of citizenship.

There is no common standard: COVID vaccinations are at this time offered by different producers, with various percentages of efficiency and protection, their availability

depending on countries' negotiations and their effect on the actual science and real-life outcomes. For example, Germany's governmental vaccination commission (the 'Ständige Impfkommission' (Stiko) is creating different age brackets, effectively amounting to a somewhat random two-class-vaccine program, [each class assigned with different types of vaccines](#): Those younger than 65 years are said to receive the AstraZeneca vaccine, those older the BioNtech one. With health parameters attached, this could turn the German Passport into a dual – (or plural) passport class system.

Different classes of vaccines could effectively mean different categories of acceptance in travel by different polities as well as corporate airlines and NGO's, in addition to the actual 'value' of one's passport for visa-free travel.

Residence- and citizenship by investment (RCBI) just became more indeterminate. However, this indeterminacy may be contained: The COVID related (and perhaps further upcoming) health related differences in persons, not their passports, may now globally become reflected in a more streamlined forum:

Private-public arrangements for travel, such as through IATA and individual airlines now effectively require vaccination status. At the same time, governments cannot readily supply equal standards of vaccination, whilst travel is about to return, whether in a streamlined or fragmented fashion.

Passport, tickets, wallet, vaccine certificate

The role of the travel industry as innovators and forerunners does not surprise in that the virus' spread may be linked to international travel. The International Transport Association (IATA) is an agency that counts as members around 300 airlines

worldwide. IATA acts in accordance with the United Nations' International Civil Aviation Organization (ICAO), which sets international standards for air travel, hence, in relation to a supra-national if not global public sphere.

IATA's health passport is called IATA Travel Pass and could be ready shortly. It is reported that Panamanian Copa Airlines will [partner to trial the IATA Travel Pass in Latin America](#). Likewise, Qatar Airways, Emirates, and Etihad have announced their intentions to launch the app. IATA introduced this as a global and standardized solution to validate and authenticate all country regulations regarding COVID-19 passenger travel requirements.

It will incorporate open-sourced and interoperable modules, such as Travel Pass, as a form of digital identity, as well as a platform to upload health-related certificates, test- and vaccination records, acting as a global registry. This approach is in addition to the European Commission exploring proposals to introduce vaccine passports or with British Airways and American Airlines launching its 'Verify Health Passport'.

Conventional passports are national concepts. Health-passports, however, appear as not merely international creations between nations but, indeed, as global-supranational concepts, with governments supporting ICAO and ICAO creating policy that applies to all private travellers. A traveller is still a national of some country, and the circle closes here. Partially through the law of contract, that traveller, effectively, becomes co-governed to a certain extent by way of supra-national regulation.

Corporate private as well as government run airlines and the United Nations' ICAO, are supra-national, beyond the law of any one jurisdiction. This may mean the emergence of some type of new global soft law and policy, of actual written as well as perhaps unwritten supranational law in form of a new Code of Travel. This is not

international law, as it is not about the law between nations, but between nations and corporate service providers as well as supra-national regulators.

Health-passports offer predictability but also shift regulatory power toward private companies

This conceptual backdrop would need to translate into actual, global safety. The effects on individual global mobility are yet not clear. Where health concerns are now linked with rights to travel borders, we may be experiencing fragmentation and indeterminacy, witnesses a new era of ‘enhanced’ local-global passports, born from the ashes of a failing, frail bordered paradigm, surpassed by the actual necessities of human health. The upcoming changes in passports referenced against borders may amount to one of humanity’s greatest challenges as well as a chance to grow. The new health passports may have become what Giorgio Agamben (in the seminal work of ‘Homo Sacer’) thought about as bare or naked life and new conceptions on top of an outmoded order.

Due to the COVID-19 pandemic, travel markets are volatile. They can change or shut-down at any time, and for an indeterminate time, placing an unprecedented level of uncertainty on all stakeholders, including travellers and airlines. In this regards, the new measures are making sense.

At the same time, airlines are not democratically elected governments. They are mostly of private-sector status. They are much more flexible as well as experimental in their proposed or existing regulation and private corporate governance of travel, effectively

requiring governments to follow the newly established industry standards or be left out of the new world of freedom to travel.

This is another supra-national aspect of the coming global mobility, no longer exclusively at the behest of states. Governments may become restricted from suggesting what effectively amounts to the coming health standards for accepted travel. These new measures may be effective but may pose various issues, such as in regards to privacy laws. These would need to be addressed urgently to make the system work and gain acceptance. IATA promises that there will be no central database or data repository storing the information, with travellers in control of their information, which appears as an important starting point to safely and humanely reconnecting the world.

The world of CBI passports may now face a profound re-definition from the perspective of health. Conventional passports mean a status that is somewhat fixed, reinstated, or updated every couple of years, attached to a nationality/citizenship, which is normally not constantly changing, even in the case of cash for passports. As we know, one's health may change on a daily basis, something one can only influence to a certain degree.

Conclusion

We are entering a period of time, perhaps an age, of indeterminacy as to travel, where exceptionality has become the new norm, and the power of the state over the concept of citizenship, and the relevance of that concept, has further faded, possibly,

demarking the beginning of the end of the relevance of conventional passports and, perhaps, of a metamorphosis of the idea of political-legal membership.

The demarcations of individual mobility are increasingly becoming privatized, with the decision of travel effectively in the hands of airlines and pharmaceutical corporations, in addition to -and at times (ie. on the example of Qantas requiring a 'no jab no fly' policy) in lieu- of nation states.

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