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BRAZIL IMMIGRATION FORECAST FOR 2017 AND BEYOND

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NEW IMMIGRATION LAW

On November 21, 2017 Brazil will implement a new immigration law that will reshape regulations for foreigners, expatriate workers and refugees. The law reorganizes visa categories and focuses on human rights, putting immigrants on the same footing as Brazilians and integrating all migrants—whether high-skilled workers or refugees—into Brazilian society.



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Berry Appleman & Leiden is a global corporate immigration law firm focused solely on meeting the immigration challenges of corporate clients around the world through an informed, strategic, and consultative approach. Our business is to serve you and to streamline corporate immigration.

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BACKGROUND

Current immigration framework

The current immigration framework is informed by the Law on Migration, passed in the 1980s when the country was under military rule and foreigners were considered a threat to national security. The government is moving away from that framework by passing new legislation that takes a more welcoming approach to foreigners, especially in the areas of refugees and humanitarian cases.

Senator Tasso Jereissati, the rapporteur of the bill, said: “There is a change of paradigm, of spirit, in which the immigrant is no longer seen under the police optics of mistrust, of criminalization. Subjected to the law, like any good Brazilian citizen, he will be welcomed here in his authentic desire to integrate with our people, working and building a new life.”¹

On the corporate side, the new law contains changes for business visitors and temporary work visas that promote flexibility. Brazilian immigration authorities have taken several steps in recent years to reduce red tape and improve processing for high-skilled foreign workers. All of this change is taking place while the economy begins to show signs of emerging from a deep recession and high unemployment.

Economic backdrop

A member of the BRICS bloc, Brazil, along with Russia, India, China and South Africa, is one of the emerging economic powers to watch. However, a recession of historic levels in recent years has impacted the economy and foreign investment. Brazil’s unemployment rate hit 13.7 percent in the first quarter of 2017, up from 10.9 percent in the first quarter of 2016. This record-high figure reflects that an estimated 14.2 million people are out of work, according to the Brazilian Institute of Geography and Statistics.

¹ Lise Alves, “Senate Approves New Immigration Amnesty Law in Brazil”, The Rio Times, accessed August 30, 2017. <http://riotimesonline.com/brazil-news/rio-politics/brazils-senate-approves-new-immigration-law/>

² Polícia Federal, “Registro de Estrangeiros,” Polícia Federal, accessed May 4, 2017, <http://www.pf.gov.br/imprensa/estatistica/estrangeiros>

President Michel Temer took office one year ago, after former President Dilma Rousseff was ousted from office by an impeachment vote. Temer is pushing through austerity policies, such as raising the retirement age, weakening labor laws and reducing pensions. These fiscally conservative initiatives are not popular with many Brazilians, and in the first nationwide general strike in 20 years, protestors took to the streets in April this year and clashed with police in several cities.

Unemployment and immigration

While some countries react to economic downturns by tightening immigration restrictions, the opposite is occurring in Brazil. In the past five years, according to statistics on the number of immigrants registered with the Federal Police, the number of lawful immigrants has increased as the unemployment rate has risen.²

Year	Unemployment rate	Number of registered immigrants
2016	12%	126,258
2015	9%	117,341
2014	6.5%	118,286
2013	6.2%	107,621

Sources: Brazilian Institute of Geography and Statistics (IBGE) and Policia Federal.

It should be noted that Brazil’s government began reviewing the immigration law in 2009, when the country’s economy was in a much better situation than today. Institutional delays caused a lag time between the proposed overhaul and legislative action. Additionally, Brazil is modernizing and liberalizing its trade, migration and other policies in response to pressure from foreign aid donors.



KEY PROVISIONS OF THE NEW LAW ON MIGRATION

In May of 2017, President Temer approved Brazil's New Law on Migration, *Nova Lei das Migrações*.³ As the government works toward implementing the provisions, BAL has been engaged in discussions with the government in advocating for businesses.

"BAL has been meeting with government officials to promote business-friendly provisions and ensure that the law provides as much flexibility as possible for employers and foreign employees," says Fernando Teixeira, an Associate Attorney in BAL's office in Sao Paulo, Brazil.

New Visitor Visa

Article 13 of the new law proposes a visitor visa category that will cover activities for business visitors and tourists, as well as artists and athletes. Business visitors will be able to use visitor visas rather than apply for a business visa. For the corporate world, this means that the line between business and work will be better defined, and compliance for short-term visits and professional activities will be easier to navigate. Visitors will also be able to change their status to resident visas in-country, although the criteria and procedures have yet to be established. Details are pending in an implementation decree.

Temporary Work Visas

More flexibility for college grads

One of the most notable changes is that foreign nationals that hold a university degree may apply for a temporary work visa even if they do not have an employment offer letter. This is a significant change from the current prerequisites that require an applicant to have a job offer from a local Brazilian company willing to sponsor the applicant. Similar to Spain's Entrepreneur's Act of 2013, Brazil's new law is aimed at attracting high-skilled foreign talent and allowing more flexibility for foreign nationals with university degrees to work in Brazil.

BAL HAS BEEN MEETING WITH GOVERNMENT OFFICIALS TO PROMOTE BUSINESS-FRIENDLY PROVISIONS AND ENSURE THAT THE LAW PROVIDES AS MUCH FLEXIBILITY AS POSSIBLE FOR EMPLOYERS AND FOREIGN EMPLOYEES

"This provision should significantly broaden immigration routes to Brazil by allowing foreigners interested in working and living in Brazil to apply for a local residence or temporary visa, without needing a Brazilian sponsoring company, as is currently required," notes Luiza Domsin, an Associate Attorney in BAL's Sao Paulo office.

This provision should benefit highly specialized professionals who cannot meet the current requirements for a Brazilian work permit visa, and signals that Brazilian authorities are adopting policies that support businesses that recruit specialized professionals for their operations in Brazil, in turn boosting the economy and investment, while facilitating knowledge and skills transfers and providing new job opportunities for the local population.

Long-Term Work Authorization

The Permanent Visa

Although the new immigration law is silent on the permanent visa category, it does contain provisions that address the residence visa. Migrants will be able to obtain a residence visa if they are in Brazil for research, teaching or academic extension, medical treatment, a humanitarian situation, studying, working, family reunification, or investing or performing activities with economic relevance. As under current law, foreign nationals subject to bilateral or

³ Presidência da República, Lei Nº 13.445, De 24 De Maio De 2017, http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/L13445.htm

KEY PROVISIONS OF THE NEW LAW ON MIGRATION

trade agreements, e.g., the Mercosur Agreement, may also obtain a residence visa and this will not be affected. The visitor visa can be converted into a residence visa according to requirements to be established.

Fines and penalties

The new law establishes penalties for immigration violations:

- Employers are liable for a minimum of BRL 1,000 and maximum of BRL 1 million.
- Employees are liable for minimum BRL 100 and maximum of BRL 10,000.

Economic factors and repeat offenses will be considered in determining the amount of the fine.

Neighboring countries

In regional relations, Brazil has changed its approach to neighboring countries and has stabilized agreements with countries under the Mercosur Agreement, which gives citizens from Argentina, Bolivia, Chile, Colombia, Ecuador, Paraguay, Peru and Uruguay the advantage of requesting temporary residence in Brazil for two years with simplified documentation and without the requirement of a sponsor company.

“Companies hiring employees from Mercosur member countries enjoy significant privileges in terms of eased mobility and expedited processing,” says Leticia Godoy, a Senior Content Advisor in BAL’s São Paulo office. Additionally, Brazil has indicated plans to negotiate an agreement opening the way for a trade deal between Mercosur and the EU.

Brazil is also taking a new approach to foreign nationals from neighboring countries crossing its northern border in search of economic opportunities. Earlier this year, the National Immigration Council published a normative

resolution that provides a temporary residence benefit to nationals of countries that border Brazil but that are not part of the Mercosur Agreement. Under Brazil’s new policy, nationals of French Guiana, Guyana, Suriname and Venezuela, who frequently enter Brazil for economic opportunities, now have a path to a temporary residence permit that is valid for two years. Additionally, refugees from these countries who have pending refugee petitions may withdraw their applications and apply for temporary residence instead under this resolution.

COMPANIES HIRING EMPLOYEES FROM MERCOSUR MEMBER COUNTRIES ENJOY SIGNIFICANT PRIVILEGES IN TERMS OF EASED MOBILITY AND EXPEDITED PROCESSING

References to “foreigners”

Historically, Brazilian labor policy embodied loftier humanitarian goals than the current law—in 1943, Brazil created the *Consolidação das Leis do Trabalho* (CLT), which regulated the working relationship between employees and employers and which afforded equal rights to foreign workers and Brazilians. In 1980, the Brazilian military government drafted the “Foreign Statute,” which has regulated immigration for nearly 40 years and influenced policies towards refugees as well as high-skilled corporate travelers—two groups that, though quite different, were treated as distinct threats to national security.

In the first section of the proposed new law, the term “foreign” has been replaced with the word “immigrant” to remove any perceived negative connotations. Interestingly, this revised terminology includes Brazilians who are living abroad.

KEY PROVISIONS OF THE NEW LAW ON MIGRATION

Humanitarian aspects of the new law

In protecting the stateless, the law proposes that education is a human right, regardless of migratory status. In 2016, according to Brazil's National Committee for Refugees (CONARE), Brazil registered about 9,000 refugees from 79 different nations.⁴ The law addresses issues regarding repatriation, and lists circumstances in which migrants cannot be repatriated and circumstances that will not allow migrants to enter Brazil. Most importantly, the law defines Brazil's principles on immigration, clearly stating that one of Brazil's principles will be the noncriminalization of immigration and the repudiation of xenophobia and racism.

Brazilians residing abroad

Among the listed changes, the new law includes a chapter about Brazilian emigrants and establishes rules of protection and consular assistance for Brazilians who are living abroad.

The law addresses issues for Brazilians living abroad, including naturalization, stating that a child of Brazilian parents born abroad can, at any time, request Brazilian nationality.

⁴ Ministério Das Relações Exteriores, "Refugees and CONARE," Ministério Das Relações Exteriores, accessed May 4, 2017, <http://www.itamaraty.gov.br/en/politica-externa/paz-e-seguranca-internacionais/6286-refugees-and-conare>





CURRENT CORPORATE MOBILITY STRATEGIES

Until the new law is implemented, companies should expect to continue to operate under the existing framework for hiring foreign employees. The main feature of the existing law for work visas is the requirement of a local Brazilian company to sponsor a foreign employee.

Ratio of foreigners to Brazilians

Brazilian Labor Law establishes that at least two out of three employees of a company's workforce must be Brazilian. This same ratio applies to the Brazilian company's total payroll, which means the total salaries paid to foreigners cannot represent more than one third of the total payroll.

Foreign investment

Some visa categories require a minimum foreign investment in order for a company to hire a foreign professional in Brazil. The amount of foreign investment varies from US\$50,000 to US\$200,000, depending on the scenario.

Fines and penalties

Companies and individuals should be aware that immigration violations can result in serious consequences. Currently, employers that illegally employ foreign nationals may have to pay a penalty of 1 percent to 2.5 percent of their annual revenue. The penalty can be increased to twice the original amount for recurring offenses.

Companies employing workers without appropriate work visas or whose visas have expired may face a penalty of up to BRL 2,000 per infringing foreign employee (or double the amount for recurring offenses). This amount is currently under review. Foreign nationals who overstay their visa are subject to fines of approximately US\$5 per day.

In addition, companies that fail to meet sponsorship obligations are exposed to administrative or civil actions

that could jeopardize their future visa applications with the Ministry of Labor.

Professional experience

Foreign employees must prove they have a minimum of professional experience related to the intended work in Brazil. Proof of experience may vary from one to three years, depending on the type of work visa. Written proof of such experience, as well as academic credentials, are required for certain cases.

Salary thresholds for foreign employees

Brazilian companies are required to follow salary restrictions when setting remuneration for foreign workers:

- The salary paid to a foreign employee must be the highest prevailing wage for that category of worker. Foreign employees may not be paid less than local Brazilian employees in the same occupation or position. This salary requirement supports the underlying assumption that if a company cannot find a local Brazilian employee to fill the job, it must hire a foreign employee with rare skills at a premium.
- Brazilian Labor Law prohibits salary reduction of local employees, and this also applies to foreign employees that are transferred to Brazil within a multinational company. This restriction protects the Brazilian workforce by preventing companies from using foreign employees to replace local workers.
- Companies paying a "split salary" between local and foreign payroll should avoid a large proportion being paid through foreign payroll. Brazilian authorities will, in all likelihood, interpret this as an attempt to avoid Brazilian taxation and payment of local social security obligations (FGTS, INSS, etc.). While there is no mandated proportion for split salaries, BAL recommends a 50-50 ratio for most scenarios.



OTHER RECENT CHANGES

In the past few years, the Brazilian government has made several changes, easing the process for immigrants seeking to live and work in Brazil. These measures illustrate that Brazil is trying to simplify application procedures and reduce bureaucracy for companies seeking to hire foreign professionals.

New immigration routes

Brazil has introduced two notable new immigration routes in recent years. A special work visa was created last year for highly specialized professionals to benefit from a simplified application procedure. The new visa route is pending implementation.

A two-year temporary residence permit introduced in 2009 allowed undocumented immigrants to regularize their status and obtain work authorization.

Simplified authentication procedures

In August 2016, Brazil joined the Hague Apostille Convention, allowing government ministries and other local authorities to accept foreign documents that are apostilled instead of requiring document legalization procedures. Be-

fore this change, document legalization procedures could take several months, dragging out application timelines. This switch to apostille procedures is a positive step toward speeding up the process for foreign workers submitting work permit applications with supporting documents issued in foreign countries, such as educational diplomas, marriage and birth certificates.

Eased visa conversions and renewals

A resolution in December 2016 allows foreign students completing or engaged in graduate or postgraduate courses in Brazil to convert their student visas into temporary work visas without having to leave the country, simplifying procedures to request their work authorization. Previously, they were required to leave Brazil to convert their status, causing delays and interruption for them and employers seeking to hire them.

A decree last year allowed foreign nationals who hold a business visa or student visa to change their status to a temporary work visa while in Brazil. Additionally, an online process allows foreign employees seeking to renew their work contract visas to submit their renewal applications electronically directly to the Ministry of Labor.

CONCLUSION

Brazilian authorities are creating welcoming policies for immigrants by introducing a number of improvements that should streamline procedures, reduce processing times, strengthen the Mercosur common market and provide flexibility to Brazilian employers seeking to sponsor foreign workers.

“At a time when many countries are becoming more protectionist in their immigration policies, Brazil is signaling that it is opening its doors to professional skilled migrants and taking a humanitarian approach to refugees,” says Adriana Coelho, an Associate Attorney in BAL’s Rio de Janeiro office.

As the government implements the new law, BAL will continue to engage with clients and update them on significant developments that impact their businesses, mobility of foreign professionals and ability to recruit, hire and retain international talent.

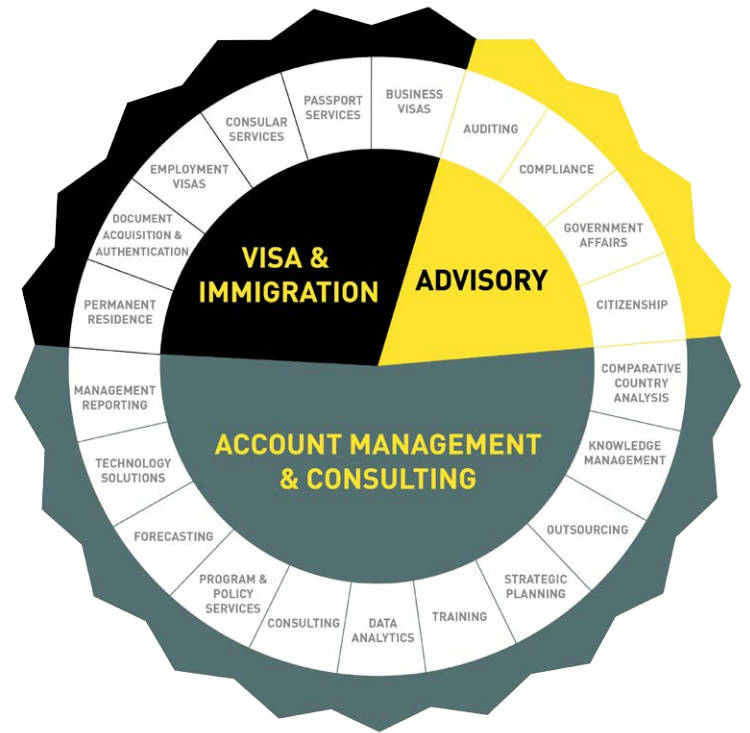
AT A TIME WHEN MANY COUNTRIES ARE BECOMING MORE PROTECTIONIST IN THEIR IMMIGRATION POLICIES, BRAZIL IS SIGNALING THAT IT IS OPENING ITS DOORS TO PROFESSIONAL SKILLED MIGRANTS AND TAKING A HUMANITARIAN APPROACH TO REFUGEES.



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