BRAZIL
IMMIGRATION FORECAST FOR 2017 AND BEYOND

AUGUST 2017
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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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.”

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.

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<tr>
<th>Year</th>
<th>Unemployment rate</th>
<th>Number of registered immigrants</th>
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<tr>
<td>2016</td>
<td>12%</td>
<td>126,258</td>
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<tr>
<td>2015</td>
<td>9%</td>
<td>117,341</td>
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<tr>
<td>2014</td>
<td>6.5%</td>
<td>118,286</td>
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<tr>
<td>2013</td>
<td>6.2%</td>
<td>107,621</td>
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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.
In May of 2017, President Temer approved Brazil’s New Law on Migration, Nova Lei das Migrações. 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.

**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
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.

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.
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. 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.
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.
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. Before 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.
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.
Today’s global enterprises face a particularly daunting challenge: getting the right people to the right global locations at the right time in full compliance. This challenge requires up-to-the-minute understanding of the world’s legal complexities and the capabilities to deliver truly meaningful solutions.

Our approach generates results—and confidence. We understand corporate immigration and how to get things done. Efficient execution is vital, but true effectiveness requires a holistic approach and a true partnership. We don’t seek to simply answer a question or even to deliver a solution. Instead, we dig deeper to understand the business context behind your question or your need. As your business partner, we then develop more innovative, more bespoke, and more meaningful advice and solutions that reflect our unsurpassed knowledge and technological capabilities.
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