THE CORPORATE IMMIGRATION REVIEW

NINTH EDITION

Editor
Chris Magrath

THE LAWREVIEWS

© 2019 Law Business Research Ltd

THE CORPORATE IMMIGRATION REVIEW

NINTH EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in July 2019
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
Chris Magrath

THE LAWREVIEWS

© 2019 Law Business Research Ltd

PUBLISHER
Tom Barnes

SENIOR BUSINESS DEVELOPMENT MANAGER
Nick Barette

BUSINESS DEVELOPMENT MANAGER
Joel Woods

SENIOR ACCOUNT MANAGERS
Pere Aspinall, Jack Bagnall

ACCOUNT MANAGERS
Olivia Budd, Katie Hodgetts, Reece Whelan

PRODUCT MARKETING EXECUTIVE
Rebecca Mogridge

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATORS
Gavin Jordan, Tommy Lawson

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Simon Tyrie

SUBEDITOR
Rakesh Rajani

CHIEF EXECUTIVE OFFICER
Paul Howarth

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
© 2019 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.
The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as at May 2019, be advised that this is a developing area.
Enquiries concerning reproduction should be sent to Law Business Research, at the address above.
Enquiries concerning editorial content should be directed
to the Publisher – tom.barnes@lbresearch.com

ISBN 978-1-83862-027-1

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

© 2019 Law Business Research Ltd

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ADVOCAAT LAW PRACTICE

AFRIDI & ANGELL

ANDERSEN TAX & LEGAL

ARIAS, FÁBREGA & FÁBREGA

ARTHUR COX

BAYAT LEGAL SERVICES

CHOW KING & ASSOCIATES

ELVINGER HOSS PRUSSEN

ENRIQUE ARELLANO RINCÓN ABOGADOS S DE RL DE CV

GIBNEY, ANTHONY & FLAHERTY LLP

GLOBETROTTERS LEGAL

HARVEY LAW GROUP (HLG)

IBN IMMIGRATION SOLUTIONS

IMMIGRATION SOLUTIONS LAWYERS

KROES ADVOCATEN IMMIGRATION LAWYERS

LENZ & STAEHELIN

MAGRATH SHELDRICK LLP

MALHOTRA & MALHOTRA ASSOCIATES

MCNAMARA & CO, ATTORNEYS AT LAW

MICHELS.PMKS RECHTSANWÄLTE PARTNERSCHAFT MBB

MIFSUD & MIFSUD ADVOCATES

NAKAI IMMIGRATION SERVICES LPC

© 2019 Law Business Research Ltd

RODRIGO, ELÍAS & MEDRANO ABOGADOS

SCORNIK GERSTEIN LLP

TILIA LAW

VEIRANO ADVOGADOS

WILKINSON WILKINSON & WILKINSON

WITHERS KHATTARWONG LLP

© 2019 Law Business Research Ltd

CONTENTS

PREFACE vii
Chris Magrath and Ben Sheldrick

Chapter 1 ANTIGUA AND BARBUDA 1
Sam M Bayat and Bharth Charath

Chapter 2 AUSTRALIA 5
Anne O'Donoghue, Jenny Nguyen, Taraneh Arianfar and Syera Rehmani

Chapter 3 BELGIUM 25
Henry Hachez

Chapter 4 BRAZIL 39
Maria Luisa Soter and Gabriela Lessa

Chapter 5 DOMINICA 51
Colleen Felix-Grant and Sam M Bayat

Chapter 6 GERMANY 55
Gunther Mävers

Chapter 7 GHANA 76
Paa Kwesi Hagan

Chapter 8 GRENADA 87
Sam M Bayat and Margaret Wilkinson

Chapter 9 HONG KONG 97
Eugene Chow

Chapter 10 INDIA 113
Ranjit Malhotra and Anil Malhotra

© 2019 Law Business Research Ltd

Chapter 11 IRELAND 135
Cían Beecher and Rachel Barry

Chapter 12 JAPAN 146
Masahito Nakai

Chapter 13 KENYA 156
Andreas Krensel

Chapter 14 LUXEMBOURG 168
Pierre Elvinger and Philippe Hoffmann

Chapter 15 MALTA 184
Malcolm Mifsud

Chapter 16 MEXICO 194
Enrique Arellano Rincón

Chapter 17 MYANMAR 206
Jean-François Harvey and Bastien Trelcat

Chapter 18 NETHERLANDS 215
Jelle A Kroes

Chapter 19 NIGERIA 226
Adekemi Sijuwade

Chapter 20 PANAMA 243
Vivian Holness and Mónica Mendoza

Chapter 21 PERU 250
Iván Blume Moore

Chapter 22 SINGAPORE 260
Leon Kwong Wing and Lim Zhi Qi

Chapter 23 SOUTH AFRICA 273
Andreas Krensel

Chapter 24 SPAIN 284
Antonio Arenas López and Beatriz Leiva Baeza

© 2019 Law Business Research Ltd

Chapter 25 ST KITTS AND NEVIS 293
Sam M Bayat

Chapter 26 ST LUCIA 298
Jonathan McNamara and Sam M Bayat

Chapter 27 SWITZERLAND 301
Rayan Houdrouge

Chapter 28 THAILAND 310
Jean-François Harvey and Bastien Trelcat

Chapter 29 UNITED ARAB EMIRATES 319
Charles S Laubach and Zahra Zaidi

Chapter 30 UNITED KINGDOM 329
Chris Magrath and Ben Sheldrick

Chapter 31 UNITED STATES 363
Stephen J O Maltby, Ellen L Poreda and Michelle C Guardado

Chapter 32 URUGUAY 379
Federico Formento

Chapter 33 VIETNAM 390
Jean-François Harvey and Bastien Trelcat

Chapter 34 ZAMBIA 401
Andreas Krensel

Appendix 1 ABOUT THE AUTHORS 413
Appendix 2 CONTRIBUTORS' CONTACT DETAILS 429

© 2019 Law Business Research Ltd

PREFACE

As immigration lawyers based in the United Kingdom, it is easy to believe that the world outside our shores no longer exists. Over the past year, the country has become so consumed by the constitutional, political and procedural dramas of the Brexit process that is difficult to focus on the larger picture of change and development in global mobility or even identify the emergence of a clear long-term strategy for immigration and border control. The Brexit timetable has shifted from 29 March to 12 April to 30 June and finally to 31 October 2019. Who knows what the timetable will look like by the time this ninth edition of *The Corporate Immigration Review* is published.

The points-based system, which is the central framework of UK immigration control for investors, workers and students, remains in place. The only significant change so far in 2019 has been the introduction of new routes for innovators and start-up entrepreneurs, which, at the time of writing, have gained little traction and generated plenty of confusion. Focus and resources at the Home Office have shifted to ensuring the protection of EU citizens' rights under the EU settlement scheme, deal or no-deal – a major task given that there are approximately 3.2 million EU nationals residing in the United Kingdom in exercise of their treaty rights. The protection of citizens' rights is one of the central aims of the Withdrawal Agreement that has been negotiated between the United Kingdom and the European Union and is, at the time of writing, before parliament in Westminster as a 'meaningful vote' pursuant to the European Union (Withdrawal) Act 2018. Despite three such votes there is little indication so far that the legislature will ratify the Withdrawal Agreement.

The EU Settlement Scheme has had a generally successful launch. In excess of 90 per cent of applications have been approved without hitch. So far, it has met its aim of being transparent, easy to navigate, digital and quick to respond. Only 10 per cent of qualifying residents have so far applied, so there is a long way to go. No amount of technology, however, can dispel the disdain that many resident EU citizens have for a process that they do not believe they should have had to engage with. For many, the emotional impact of Brexit has been more significant than the legal consequences, most of which have yet to take effect.

Regardless of whether we enter a transitional phase following ratification of the Withdrawal Agreement in both the British and EU parliaments, or a no-deal 'cliff-edge' Brexit is the outcome, the British government is committed to an orderly transition to a new set of immigration arrangements, likely to be launched in January 2021. Central to these new arrangements will be measures to 'take back control' of the border as the United Kingdom leaves the single market.

With this in mind, in December 2018, following an extensive piece of research by the Migration Advisory Committee (MAC), the government published a White Paper on 'The UK's future skills-based immigration system'. Anticipating the country's departure from the

© 2019 Law Business Research Ltd

freedom of movement pillar of the single market, the new post-Brexit policy approach will be based on a 'one world' system with no preferential access for EU citizens. An autonomous immigration policy will also give government the control mechanisms necessary to enable net migration to be reduced to 'sustainable levels' (for many years defined as below 100,000 per annum). This was, after all, one of the central arguments of the leave campaign as well as being a core policy of the incumbent Prime Minister since she entered government as Home Secretary in 2010.

The government proposes to engage with stakeholders over the course of the next 12 months before refining its proposals into a new set of immigration rules. In tandem, the government is working on a simplification project that aims to change the current set of labyrinthine rules into a new user-friendly, transparent scheme.

Although the current intention is to adopt a 'one-world' approach, this position may change as the negotiations on the future relationship get under way. Much will depend on the character of the United Kingdom's future political leadership. Some form of EU preferential scheme may be the price of a close trading relationship.

It will certainly be necessary to expand the ambit of the United Kingdom's youth mobility and temporary worker schemes to maintain a flow of labour into the United Kingdom to take the 'lower skilled' jobs that will not meet the proposed £30,000 salary threshold under the formal sponsorship scheme. Employers in healthcare, hospitality and construction are particularly concerned about the impact the United Kingdom's withdrawal from the single market will have on their ability to recruit key workers.

At the time of writing, it is uncertain whether the United Kingdom will leave the European Union with or without a deal in place, or indeed whether the United Kingdom will leave at all. It is unclear whether the current political leadership has sufficient authority to remain in place for much longer. In this context, individual Member States across EU27 are making their own domestic arrangements for the regularisation of resident British citizens in their countries in the event of a no-deal 'hard' Brexit. This is because, in the absence of a Withdrawal Agreement containing pan-European provisions on citizens' rights, it falls to individual Member States to implement domestic immigration laws for third-country nationals. Fortunately, most Member States appear to be developing a soft approach to protect the British citizens that have chosen to make their homes across the European Union.

In the United States, immigration policy continues to be a lightning rod for the Trump administration and, with the 2020 election in sight, is anticipated to be a primary strand of the president's attempt to reignite the support of his base. The shift in approach to immigration issues that resulted from the new US political settlement and its focus on protectionist policies has impacted the broad sweep of business and investment routes of entry to the United States, and is not limited to illegal or irregular migration trends.

Key to this is the Buy American Hire American (BAHA) Executive Order, which came into force in 2017 and seeks to protect US economic interests and provide greater employment prospects for US workers.

BAHA refers to the body of law and policy concerning how immigration, visa and guest worker programmes are operated to ensure proper protections for American workers. The executive branch is required to 'rigorously enforce and administer the laws governing entry into the United States of workers from abroad'. Specifically, BAHA demands that the Attorney General, the DOS, the US Department of Homeland Security and the Department of Labor 'as soon as practicable, and consistent with applicable law, propose new rules and issue new

© 2019 Law Business Research Ltd

guidance if appropriate, to protect the interests of United States workers in the administration of the immigration system, including through the prevention of fraud or abuse'.

As a result, lawyers in the United States have seen a significant shift in the administrative approach to immigration applications, even if the legislative framework itself has not changed substantially. This has distilled into a culture of refusal from the US authorities, notably at the consular level. Practitioners have witnessed an increase in denial rates coupled with ever-growing requests for further evidence, often for indefinable reasons. The application process has become more document- and detail-oriented with additional representations or evidence being the norm rather than the exception. The consequence is that each application now requires substantially more preparation and outcomes are difficult to predict given the lack of consistency in approach to decision-making. Client expectation management is crucial for US immigration practitioners in such an uncertain landscape.

Around the world, national security and border protection continue to be integral issues in the development of immigration policy. Joined-up government (easily sharing data and intelligence across government agencies and public bodies) is a cross-jurisdictional trend. For example, in Australia, a federation of independent security and law enforcement agencies, including the Australian Border Force has been brought together under the Home Affairs Portfolio and the Department of Home Affairs. This whole government approach to security has had an impact on all aspects of immigration with greater scrutiny and monitoring by Australian Border Force Officers. The restrictive reforms that we see in Australia, including an increased focus on the security of systems, use of metadata and a whole-of-government approach are trends that can be seen worldwide.

As ever, immigration practitioners around the world are at the centre of a complex web of political, legal, compliance and regulatory developments. The contributors to this text are leaders in the field.

We would like to thank all of the contributors to this latest edition of *The Corporate Immigration Law Review* for their sterling input.

Chris Magrath and Ben Sheldrick
Magrath Sheldrick LLP
London
May 2019

© 2019 Law Business Research Ltd

Chapter 4

BRAZIL

Maria Luisa Soter and Gabriela Lessa[1]

I INTRODUCTION TO THE IMMIGRATION FRAMEWORK

Brazil is a country with a population of approximately 209 million.[2] Immigration has been essential for the development of Brazil and it is still considered a key factor for the future of the country.

Recognising the importance of immigration, migration legislation (Law No. 13.445, the New Migration Law) was approved in 2017, with new policies aimed at making the process for foreign nationals coming to Brazil easier and faster. New procedures have been introduced to expedite and facilitate the granting of certain work visas, and also to grant immediate residence status in both cases where families were being reunited and under the Mercosur Agreement.

The fact that immigration into countries such as the United Kingdom and the United States is restricted represents an opportunity for Brazil, which, because of its current rules, not only allows, but also, in fact, encourages foreign nationals to study and work in the country.

While other countries around the globe are restricting the entrance of refugees, Brazil's New Migration Law and its implementing decree (Decree 9.199/2017) are primarily focused on the importance of humanitarian rights for foreign nationals and allowing refugees to travel to Brazil and apply for resident status while in the country.

i Legislation and policy[3]

On 4 August 2016, Brazil joined the Hague Apostille Convention[4] to expedite and simplify the legalisation of documents between Convention Member States.

On 21 November 2017, the New Migration Law and Decree No. 9.199, which establishes rules for the entry and residence of immigrants in Brazil, entered into effect.

Under the New Migration Law, it is possible for someone in Brazil with irregular immigration status to apply for a residence permit if, for example, the individual has a job offer. This represents an option for immigrants to regularise their immigration status, even though no amnesty was contemplated in the law, provided that they pay the fine for an irregular stay – 100 reais per day, up to a maximum of 10,000 reais.

1 Maria Luisa Soter is a partner and Gabriela Lessa is a senior counsel at Veirano Advogados.

2 Estimate provided at the official Brazilian Institute of Geography and Statistics at: www.ibge.gov.br/home/.

3 The Immigration Law, Decrees, Administrative Orders, Administrative Resolutions, Normative Resolutions and Recommended Resolutions are available at https://portaldeimigracao.mj.gov.br/pt/.

4 Convention of 5 October 1961, Abolishing the Requirement of Legalisation for Foreign Public Documents.

© 2019 Law Business Research Ltd

In addition, under the New Migration Law there is no 'permanent visa': the options are either a temporary visa, issued for a certain period (which varies depending on the type of visa), or a residence permit, for either a definite or an indefinite term, depending on which basis it is granted on. The residence permit ceases once the establishing conditions no longer exist.

Another relevant change is that foreign nationals with a university degree will be able to apply for a work visa, irrespective of whether a company sponsors the visa. The rules governing this option have still to be published in a specific normative resolution.

In addition, the new legislation introduced the category of visitor visas, which may be issued electronically for nationals of some countries. These e-visas are currently issued for Australian, Canadian, Japanese and US citizens, for tourism and business purposes, and for certain work activities, including consulting, auditing, offshore work and artistic and sports activities, for multiple entries, valid for a maximum period of two years but always limited to the period of validity of the visa holder's passport. It permits a maximum stay of 90 days in a single trip, but limited to a maximum stay of 180 days per year. As to the activities that are of a work nature, the term cannot be for more than 90 days.

On 16 March 2019, Decree No. 9731 was published in the Official Gazette exempting American, Australian, Canadian and Japanese citizens from the need to apply for a visitor's visa to travel to Brazil. Note, however, that the Decree will only start to be effective as of 17 June 2019.

Until 17 June 2019, visitor visas issued electronically, or visas issued by the Brazilian Consulate will be required for individuals of those nationalities to enter Brazil.

In view of the Brazilian authorities' concern for human rights, two new categories of visas have been created: humanitarian and health purposes (visas were already granted for those reasons, but they are now distinct visa categories listed in the law).

The National Immigration Council (CNIg) continues in the same role under the New Migration Law. To date, the following normative resolutions and inter-ministerial ordinances have been issued by the former Ministry of Labour and by the Ministry of Justice in relation to work visas and residence permits.

Normative resolutions issued by the CNIg

The following resolutions were issued by the CNIg:

a No. 1/17 of 1 December, as amended by No. 31/18 of 12 June – general procedures for work permit applications;

b No. 2/17 of 1 December – temporary visas and residence permits for work purposes with employment contracts in Brazil;

c No. 3/17 of 1 December, as amended by No. 33/18 of 12 June – temporary visas and residence permits for work purposes without an employment relationship in Brazil, for the rendering of technical assistance services;

d No. 4/17 of 1 December – temporary visas and residence permits for work purposes without an employment relationship in Brazil, for transfer of technology;

e No. 5/17 of 1 December – temporary visas and residence permits for work purposes without an employment relationship in Brazil for a seaman who works on board a cruise ship navigating the Brazilian coast;

f No. 6/17 of 1 December – temporary visas and residence permits for work purposes without an employment relationship in Brazil to act as a seaman on board a foreign-flag vessel or platform;

© 2019 Law Business Research Ltd

g No. 7/17 of 1 December – temporary visas and residence permits for work purposes without an employment relationship in Brazil to provide services or technical assistance to the Brazilian government;

h No. 8/17 of 1 December, as amended by No. 29/18 of 12 June – temporary visas and residence permits for work purposes without an employment relationship in Brazil under an international cooperation agreement;

i No. 9/17 of 1 December – temporary visas and residence permits for work purposes without an employment relationship in Brazil, to represent, in Brazil, a financial institution or similar institution based abroad;

j No. 10/17 of 1 December – temporary visas and residence permits for work purposes without an employment relationship in Brazil, to represent a non-profit private legal entity;

k No. 11/17 of 1 December – temporary visas, concomitant authorisations and residence permits for administrators, managers, officers or executives with management powers, to represent a civil or commercial society, group or economic conglomerate or legal entity, as well as concomitant authorisations for members of the board of directors;

l No. 12/17 of 1 December – temporary visas and residence permits for the exercise of a position, function or assignment, without an employment relationship, for an indefinite term, because specific federal legislation requires residence in Brazil;

m No. 13/17 of 12 December – temporary visas and residence permits for individual foreign investors;

n No. 14/17 of 12 December, as amended by No. 28/18 of 10 April, No. 30/18 of 12 June and No. 32/18 of 14 August – temporary visas and residence permits for religious activities;

o No. 15/17 of 12 December, as amended by No. 28/18 of 10 April – temporary visas and residence permits for the provision of voluntary services to a non-profit public or private entity or an organisation linked with a foreign government;

p No. 16/17 of 12 December – temporary visas and residence permits for performing artistic or sports activities, with a fixed-term contract, without an employment relationship with an individual or legal entity based in Brazil;

q No. 17/17 of 12 December – temporary visas and residence permits for work purposes without an employment relationship in Brazil, to perform an activity as a correspondent for a foreign newspaper, magazine, radio, television or news agency;

r No. 18/17 of 12 December – temporary visas and residence permits for work purposes without an employment relationship in Brazil, for an immigrant linked to an economic group whose headquarters is in Brazil, with a view to training and assimilating the business culture and management methodology of the company concerned;

s No. 19/17 of 12 December – temporary visas and residence permits for work purposes without an employment relationship in Brazil, to receive professional training from a Brazilian subsidiary, branch or headquarters;

t No. 20/17 of 12 December, as amended by No. 27/18 of 10 April and No. 33/18 of 12 June – temporary visas and residence permits for research, teaching or academic extension for a scientist, researcher or teacher, and for foreign professionals who intend to come to the country, with a term of stay of more than 90 days;

u No. 21/17 of 12 December – temporary visas and residence permits for work purposes with an employment contract in Brazil for a professional athlete, as defined by law;

© 2019 Law Business Research Ltd

v No. 22/17 of 12 December – temporary visas and residence permits for work purposes without an employment relationship in Brazil to act as a seaman on board a foreign fishing vessel leased by a Brazilian company;

w No. 23/17 of 12 December – special cases for the granting of residence permits related to labour-related issues for analysis by the National Council of Immigration;

x No. 24/18 of 20 February – temporary visas and residence permits for research, teaching or academic extension with an employment contract in Brazil;

y No. 25/18 of 20 February – temporary visas and residence permits for minors between the ages of 14 and 18 for performing sports activities;

z No. 26/18 of 20 February, in effect as of April 2 – temporary visas and residence permits for work purposes for professional internship or professional exchange programmes;

aa No. 30/18 of 12 June, in effect as of July 25 – renewal of the term of residence permits or the change for an indefinite term;

ab No. 35/18 of 14 August, in effect as of 26 October – temporary visas and residence permits for work purposes without an employment relationship in Brazil, for receiving training in the handling, operation and maintenance of machines, equipment and other goods manufactured in Brazil; and

ac No. 36/18 of 9 October, in effect as of November 21 – temporary visas and residence permits based on real estate investment in Brazil.

Inter-ministerial Ordinances issued by the Ministry of Justice and Public Security

The following Ordinances were issued by the Ministry of Justice and Public Security:

a No. 3 of 27 February 2018 – procedure to be followed in relation to the processing of applications for residence permits, registration and issuance of the National Migration Registry Card (CRNM), which specifies the documentation necessary for examining applications and defines the procedures for registering residence permits granted to refugees, stateless persons and asylum seekers;

b No. 4 of 27 February 2018 – procedure for granting a residence permit for cases not expressly provided for in the New Migration Law and Decree 9.199/2017;

c No. 5 of 27 February 2018 – procedure for recognising the status of being stateless and the resulting facilitated naturalisation;

d No. 217 of 27 February 2018 – administrative proceedings relating to requests for extradition and precautionary arrest within the Ministry of Justice;

e No. 218 of 27 February 2018 – procedure for assessing the condition of economic hardship for the purposes of exemption from fees for obtaining documents for regularisation of immigration status of immigrants and for payment of fines;

f No. 6 of 12 March 2018 – procedure for the loss and cancellation of a residence permit;

g No. 7 of 13 March 2018 – temporary visa and residence permit for study purposes;

h No. 8 of 13 March 2018 – temporary visa and residence permit for medical treatment;

i No. 9 of 13 March 2018 – residence permit for immigrants in the Brazilian territory who are nationals of a border state in which the MERCOSUR Residence Agreement is not in force;

j No. 10 of 6 April 2018, amended by No. 17 of 19 November 2018 – procedures for temporary visa and residence permit granted for humanitarian reasons to nationals of any stateless people resident in Haiti;

© 2019 Law Business Research Ltd

k No. 11 of 3 May 2018 – procedures for requests for naturalisation, equal rights, loss, reacquisition of Brazilian citizenship and revocation of the decision of loss of Brazilian citizenship;

l No. 12 of 13 June 2018 – procedures for temporary visas and residence permits for family reunion;

m No. 85 of 18 June 2018, amended by No. 193, of 24 September 2018 – procedures for issuance of labour card and social security for immigrants;

n No. 8.166-DG/PF, of 21 March 2018 – delegates competence in the procedures for loss and cancellation of residence permit in the processes in which the Federal Police is in charge; and

o No. 8.728-DG/PF, of 21 August 2018 – institutes National Migration Registration Cards and National Migration Registration Cards Provisory Document.

ii The immigration authorities

The new administration elected in January 2019 has abolished the Ministry of Labour and Employment, formerly the government body overseeing the immigration processes and procedures for foreign nationals to work, study and reside in Brazil through the CNIg and the General Immigration Coordination Office (CGIg). Provisional Measure No. 870 and Decree No. 9.662, both issued on 1 January 2019, establish that the body structured to regulate and assess, through the CNIg and the CGIg, the immigration processes and procedures for foreign nationals to work, study and reside in Brazil, will now be linked to the Ministry of Justice and Public Security.

Ministry of Justice and Public Security

The Ministry of Justice and Public Security is the government body that regulates nationality, immigration and other issues related to foreign nationals in general. The Immigration Division is structured to regulate and assess the immigration processes and procedures for foreign nationals to work, study and reside in Brazil through the CNIg and the CGIg.

CGIg

The CGIg is responsible for the assessment and granting of requests for advance residence authorisations for the issuance of temporary visas, and for residence permits for foreign nationals coming to work in Brazil or for training and internship purposes. Applications for residency permits for employment purposes are addressed to the CGIg and submitted by the interested party through the Immigration Management and Control System.

CNIg

Applications for residency permits based on Normative Resolution No. 23 of 12 December 2017 are addressed to the CNIg and regulated under the terms of Article 162 of Decree No. 9199 of 20 November 2017. Further, a request for a residency permit based on the CNIg and the National Committee for Refugees (CONARE) Joint Resolution No. 01 of 9 October 2018 must be submitted by means of a protocol in any Federal Police unit or to the Ministry of Justice and Public Security, and duly instructed with the required documents.

© 2019 Law Business Research Ltd

The CNIg is composed of appointed representatives from the Ministries of Economy, Justice and Public Security, Foreign Affairs, Agriculture, Science and Technology, Development, Industry and Foreign Trade, Health and Education, as well as representatives of companies and trade unions. It is also responsible for:

a formulating immigration policies and coordinating and directing immigration actions;
b regularly assessing the need for qualified foreign workers in relation to granting entry;
c undertaking research on immigration-related problems;
d issuing rules for immigrant selection aimed at providing specialist workers for the various sectors of the economy;
e collecting resources for specific sectors;
f clarifying and resolving undefined areas in immigration-related cases;
g providing opinions on changes to immigration law proposed by any sector of the executive branch; and
h creating internal control regulations, subject to the approval of the Minister of Justice and Public Security.

National Justice Secretariat

The main duties of the National Justice Secretariat are to coordinate, in partnership with other administrative bodies:

a national migration policy, particularly in relation to nationality, citizenship, the judicial regime and migration;
b national refugee policy; and
c national policy on combating human trafficking.

The Federal Police

This division authorises the entry of foreign citizens at the port of entry into Brazil and extensions of stay while in Brazil.

Federal Police agents have discretionary power to allow the entry of foreign nationals into the country irrespective of whether they hold appropriate visas. Registration with the Federal Police and entry on the CRNM system for those who carry temporary visas is mandatory within 90 days of the date of arrival, and this must be done within 30 days of the date of publication of the granting of the residence permit by those who have their residence permit granted in Brazil. In some Brazilian states, failure to register within this period will preclude the foreigner from re-entering the country and a new visa-request process would be required. Visitor visas are exempt from this rule. In the event of failure to register within the required deadline, the foreign national will be subject to a fine in the amount of 100 reais (for those entering Brazil) or a daily fine of 100 reais (for those who have their residence permit granted in Brazil).

CONARE

CONARE is the collective body that brings together representative segments of the public sector, civil society and the United Nations, with the aim of examining applications for recognition of refugee status; deciding on terminations of refugee status, *ex officio* or at the request of the competent authorities; issuing declarations of loss of refugee status; guiding and coordinating the actions needed for effective protection, assistance, local integration

© 2019 Law Business Research Ltd

and legal support for refugees, with the participation of ministries and institutions within CONARE; and of approving normative instructions that enable the implementation of refugee-related legislation.

Department of Migration

The main duties of the Department of Migration, which is part of the National Justice Secretariat, are to process, provide opinions on and address issues regarding nationality, naturalisation and the judicial regime in relation to foreign nationals. It is also the body responsible for matters related to coercive measures of expulsion, extradition and deportation; for instructing processes for the transfer of prisoners and recognition of refugee status and political asylum; and for providing support to CONARE.

Ministry of Foreign Affairs

The Ministry of Foreign Affairs is the body responsible for foreign policy and Brazilian international relations at the bilateral, regional and multilateral levels. It advises the President on the formulation of Brazilian foreign policy and implementation of diplomatic relations with foreign states and international organisations. Brazil has more than 220 representative institutions abroad, including embassies, consulates general, consulates, vice consulates, diplomatic missions or delegations, and offices. The Ministry of Foreign Affairs, through its embassies and consulates, is responsible for the issuance of visas to foreign nationals coming to Brazil.

iii Exemptions and favoured industries

In Brazil, there are no specific legal or favoured industries for immigration purposes. It is, however, mandatory, depending on the type of visa, to respect the two-thirds rule (at least two employees out of every three must be Brazilian),[5] or have the candidates transfer technology or know-how, or train Brazilian-registered employees, so all industries that comply with these requirements may be seen as favoured industries: the more foreign manpower that can come to Brazil to transfer know-how and train the Brazilian labour force, the better.

II INTERNATIONAL TREATY OBLIGATIONS

i Mercosur

Decree No. 6.975 of 7 October 2009 regulates the Agreement on Residency for Nationals of the States who are a party to the Mercosur Agreement.

The Mercosur Agreement applies to citizens of Mercosur signatory (Argentina, Brazil, Paraguay and Uruguay) and associated countries (Bolivia, Chile, Colombia, Ecuador and Peru).

On the basis of the Mercosur Agreement, nationals of these countries may apply for temporary residence in any of the other member countries, and are entitled to work under the same conditions as a national; after two years they may apply to change their temporary residence status to one of an indefinite term.

5 Article 354 of the Brazilian Labour Code.

© 2019 Law Business Research Ltd

The application for temporary residence can be made either abroad or in Brazil, even if the candidate is in Brazil in an irregular situation, in which case he or she does not have to pay a fine and is not subject to any other administrative sanctions.

ii Schengen Agreement

Decree No. 7.821 of 5 October 2012 promulgated the Agreement between the Federative Republic of Brazil and the European Union on Short-Term Visa Waiver for Common Passports, signed in Brussels on 8 November 2010, and is applicable to individuals travelling for tourism or business purposes.

III THE YEAR IN REVIEW

Brazil is now governed by President Jair Bolsonaro, who has appointed Paulo Guedes to be the Minister of Finance. Mr Guedes is in favour of privatising all state-owned enterprises, such as part of the oil company Petrobras, Brazil's largest utilities company Eletrobras and Brazilian bank Banco do Brasil.

According to Guedes, the privatisation of all state firms would raise billions of US dollars and would lower federal debt. This measure will most likely increase investment into Brazil again from foreign investors, such as those from China, Europe and United States.

The oil and gas sector is expected to recover in the coming years following successful licensing rounds. In addition, last November saw the issuance of the new normative resolution, and for the first time it is possible to file a process for a residency permit based on investment in real estate in urban areas.

IV EMPLOYER SPONSORSHIP

i Advance residence authorisations and residence permits

Except in the case of a visitor's visa, for all work-related visas it is necessary to obtain an advance residence authorisation from the CGIg in Brazil; residence permit applications are also assessed directly by the CGIg, now under the purview of the Ministry of Justice and Public Security.

The timescale for approval and publication in the Official Gazette of an advance residence authorisation for the issuance of a temporary visa or granting of a residence permit in Brazil is 30 calendar days. In the event of a refusal, it is possible to file an appeal.

After approval and publication of the advance residence authorisation for the temporary visa, the Ministry of Foreign Affairs sends, within approximately five business days, an authorisation for the consulate to process the visa application. The timescale for the granting of the visa varies, depending on the workload of the consulate, from three business days to two months. Upon arrival in Brazil, the visa holder has 90 days to register with the Federal Police.

The timescale for the processing of the 180-day visa is an exception, and the CGIg completes the assessment for this application within five business days or, in the case of emergencies, two business days, and the consulates are advised immediately of the approval of the advance residence authorisation.

In the case of those applying for a residency permit authorisation (i.e., those doing so while already in Brazil), upon approval and publication of the residence permit authorisation, the foreign national has 30 days from the date of publication to register with the Federal Police.

© 2019 Law Business Research Ltd

The CNIg normative resolutions (NRs) stipulate the requirements for the granting of advance residence authorisations for the issuance of temporary visas and for residence permits. The most common work visas and residence permits are as follows.

Officers' work visas and residence permits

Officers' work visas and residence permits (NR No. 11/17) are appropriate for foreign administrators, managers, officers, directors and executives with managerial powers who come to Brazil as representatives of companies, commercial groups or economic conglomerates.

The company that intends to appoint a foreign national to a managerial position must prove (1) an investment equal to or higher than the equivalent, in foreign currency, of 600,000 reais for each appointed foreign manager, or (2) an investment equal to or higher than the equivalent, in foreign currency, of 150,000 reais, for each appointed foreign manager, and generate a minimum of 10 new jobs during the first two years after the establishment of the firm or the arrival of the foreign national.

Although the residence permit is for an indefinite term, the migrant's CRNM will be valid for up to nine years. However, at the moment the Federal Police is still issuing CRNMs with an initial validity of five years, even though they should be for nine years, and it is only issuing them for nine years upon renewal. Migrants will only be able to renew the identity card if they continue to exercise the function in the designated company for which the visa or residence permit was approved.

Work visas and residence permits based on employment contracts

Under NR No. 2/17, Brazilian companies may require an advance residence authorisation for the issuance of a temporary visa or a residence permit under an employment contract if two-thirds of the employees of the Brazilian company are Brazilian citizens and that two-thirds of the total of the company's payroll is paid to Brazilian employees.

For purposes of this two-thirds rule,[6] foreign nationals who have been living in Brazil for 10 years or more and are married to Brazilian citizens or have Brazilian children, Portuguese citizens, irrespective of any other individual situation, and nationals of the Mercosur countries who live in Brazil with residence granted under the Agreement, are treated as Brazilians.

Foreign nationals applying for residence must prove that they have education, qualification and professional experience compatible with the role to be exercised in Brazil. Education and qualification are proven by means of diplomas or certificates, and for people who do not have a college or technical diploma, a minimum of 12 years' study must be proven. In the case of candidates whose artistic or cultural activities do not depend on formal education, a minimum experience of three years in the exercise of the profession must be proven. The documents must be apostilled at the jurisdiction in which the documents were issued and translated in Brazil by a sworn public translator.

Professional experience is proven by means of a statement from the company for which the candidate worked, showing a minimum experience of four years for medium-level candidates, three years for technical-level education, two years for candidates who hold a bachelor's degree and one year for candidates who have attended postgraduate courses with a minimum of 360 class hours. Holders of a master's or PhD degree do not need to submit letters of experience.

6 Article 354 of the Brazilian Labour Code.

© 2019 Law Business Research Ltd

If the Brazilian sponsoring company belongs to the same economic group of the current employer of the candidate, then a letter of experience may be prepared in Brazil and signed by an officer of the Brazilian company. In this case, the letter should be prepared in Portuguese, and there will be no need for further notarisation or legalisation.

If the individual has not been working for the same economic group for the required minimum period, a letter from previous employers will also be required, as well as a minimum of five years' experience.

The foreign national will be an employee of the Brazilian company and have the option of earning his or her total remuneration in Brazil or part in Brazil and part abroad (split payroll). The employment contract will be governed by Brazilian labour law and the foreign national will have all the benefits provided by the Brazilian labour legislation, such as a Christmas bonus, 30-day annual holiday, one-third holiday bonus, guaranteed severance fund and social security. During the first two years, the employment contract must be for a definite period. Should the Brazilian company want to extend the contract beyond a two-year period, the new employment contract must be for an indefinite term.

The visa will be valid for up to two years (either for one year and then renewed, or two years from the beginning), and at the end of the second year it can be changed into a residence permit for an indefinite term.

In considering the visa extension or change-of-status request, the following aspects will be taken into consideration: the need for continuous services to be rendered by the foreign national, respecting the interests of the Brazilian workers; compliance with any conditions that may have been established at the moment the initial work permit was granted; and the development of the workforce – both Brazilian and foreign employees – from the moment when the original work permit was granted to the moment when the extension is being requested. In the case of a change of status, a justification presented by the foreign national about his or her intention to permanently settle in Brazil is also required.

Work visas and residence permits based on technical assistance agreements with no employment contract

Under NR No. 3/17, an advance residence authorisation for the issuance of a temporary visa or a residence permit may be granted for up to one year, renewable for another year, for technicians coming to work in Brazil under a technical assistance contract for foreign equipment, or a cooperation or convention agreement between a Brazilian company and a foreign company. Foreign nationals will remain as employees of the foreign company and cannot receive salaries from Brazilian companies. This visa or residence permit cannot be granted to foreign nationals who will hold functions in Brazil that are merely of an administrative, financial or managerial nature.

In matters of urgency and cases of emergency, for the short-term temporary visa valid for up to 180 days, it is also mandatory to apply to the CGIg in Brazil to obtain an advance residence authorisation, before the visa can be granted by the consulate abroad.

A copy of the document issued by the Brazilian federal revenue service agency in the case of the sale and purchase of foreign equipment, or of the contract between Brazilian and foreign companies for the rendering of services, must also be submitted. However, if the companies belong to the same economic group or if the visa being applied for is a short-term visa for up to 180 days, an extract of the contract will suffice.

© 2019 Law Business Research Ltd

Work visas and residence permits under a transfer-of-technology agreement with no employment contract

Under NR No. 4/17, an advance residence authorisation for the issuance of a temporary visa or a residence permit may be granted for up to one year, renewable for another year, for foreign individuals coming to work in Brazil under a technology transfer contract or a technology transfer cooperation or convention agreement between a Brazilian company and a foreign company. Foreign nationals will remain as employees of the foreign company and cannot receive salaries from Brazilian companies. This visa cannot be granted to foreign nationals who will hold functions in Brazil that are merely of an administrative, financial or managerial nature. As part of the work application documentation, an outline of the technology-transfer training programme must also be submitted, including:

a the professional qualifications of the foreign national;
b the scope of the training programme;
c the number of Brazilians who will be trained;
d the form of execution of the training programme;
e the place where the training will be given;
f the expected duration of the training programme; and
g the results expected from the training programme.

If the place of signature of the contract is not in Brazil, and the agreement is executed abroad, an apostilled or legalised copy, as the case may be, of the contract between the Brazilian companies and the foreign companies for the rendering of services must also be submitted. In the case of a cooperation agreement between companies belonging to the same economic group, a statement signed by an officer of the Brazilian company identifying the companies and explaining the existing link between the companies is also required.

ii Labour market regulation

The labour market is protected on the basis of legislation that stipulates that two out of any given three employees must be Brazilian, with this rule being applicable to both payroll and headcount.

iii Rights and duties of sponsored employees

In Brazil, the obligations placed on employees with sponsored status vary depending on the type of visa or residence permit applied for.

The normal rule is that a foreigner can only work for the employer sponsoring the visa, and only in the position or function for which the visa or residence permit was granted.

Student permits may be changed to a residence permit with a local employment contract in Brazil.

V INVESTORS, SKILLED MIGRANTS AND ENTREPRENEURS

Investor and entrepreneur visas are now regarded as one type of visa or residence permit, which falls within the scope of NR No. 13/17. The prior residence authorisation for the issuance of the temporary visa and the residence permit can be granted to foreign nationals who want to come to Brazil to invest their own foreign capital in Brazil in productive activities or start-up companies.

© 2019 Law Business Research Ltd

Foreign nationals will need to prove the investment of a minimum amount of the equivalent, in foreign currency, of 500,000 reais.

In special situations, if the investment is lower than the equivalent of 500,000 reais but not less than 150,000 reais, the CGIg may render a decision granting the advance residence authorisation or residence permit to foreign nationals who can prove the social relevance of the projects concerned.

In the case of start-ups, the required capital is only the equivalent of 150,000 reais to 500,000 reais.

The residence authorisation or permit will be for an indefinite term. Note that the identity card issued to the immigrant by the Federal Police will be valid for nine years and will then have to be renewed. However, to maintain that authorisation, the individual is required to present evidence that he or she remains a foreign investor, that the business plan was complied with, and that the project generated the job positions for Brazilians that were indicated in the original process.

Furthermore, the New Migration Law provides that skilled migrants can apply directly for a temporary visa or a residence permit even if without a Brazilian sponsor. However, this provision has still to be regulated to be implemented by the Brazilian immigration authorities.

VI OUTLOOK AND CONCLUSIONS

Following the recent changes to the Brazil's migration legislation, the country is more open than ever before and has embraced humanitarian immigration rights and family reunion for foreign immigrants. The country welcomes foreign nationals struggling in their home countries because of persecution on grounds of race, creed, nationality, social group and politics.

Brazil is eager to develop new sectors and industries and is making it easier for foreign nationals to travel to and work in the country. There is already a variety of industries and sectors such as renewable energy, oil and gas, information technology, healthcare, manufacturing, biotechnology and pharmaceuticals that can benefit from the transfer of technology and know-how of companies that have developed their business around the world.

In Brazil, the residency programme for investment in real estate is completely new. In this regard, Brazil is now in the 'golden visa' route and hopefully foreign nationals will be interested in investing in property and working in the country owing to these relevant changes.

As to being able to live in Brazil for a more indefinite term without the requirement to work for a specific company or employer, there is likely to be an increase in the number of filings for Brazilian citizenship by those nationalities that allow dual citizenship.

© 2019 Law Business Research Ltd

Appendix 1

ABOUT THE AUTHORS

MARIA LUISA SOTER

Veirano Advogados

Maria Luisa (Isa) Soter is a partner in the firm's Rio de Janeiro office. She focuses her practice in the areas of corporate immigration and labour and employment law, advising international and Brazilian corporations on the complexities surrounding successfully navigating Brazilian labour law. Ms Soter also advises companies on immigration matters and manages multiple inbound cases annually for corporate clients across a range of industries, including banking, oil and gas, and telecommunications.

Ms Soter also has a dynamic and varied labour practice, advising Brazilian and international employers on issues related to outsourcing, overtime, collective bargaining agreements, terminations and drug testing. Clients from Australia, the United Kingdom and the United States rely upon Ms Soter's expertise and knowledge of Brazilian labour codes.

Ms Soter brings a unique perspective to clients based upon her early career experience as a labour judge and her knowledge of, and ability to interpret, key Brazilian labour laws. Serving on the bench from 1992 to 2000, she began her judicial career as a substitute judge in the trial courts and was elevated to presiding judge in 1994. Within two years, she moved to the appellate labour court, where she presided over four different groups of judges, as well as in the specialised section on individual labour disputes and in the specialised section on collective labour disputes.

Ms Soter is an active member of Ius Laboris, an international alliance of leading human resources law practitioners, with more than 2,500 lawyers providing local labour law knowledge and coverage in more than 100 countries. She is also an invited professor on the postgraduate programme at the Getúlio Vargas Foundation and taught labour law at the University of St Úrsula for three years.

GABRIELA LESSA

Veirano Advogados

Gabriela Lessa is a senior counsel in the firm's Rio de Janeiro office. She focuses her practice in the areas of corporate immigration and intellectual property (IP). She advises in-house counsel, as well as human resources professionals on all aspects of Brazilian, global immigration law and IP-related matters.

Ms Lessa has more than 12 years of experience handling immigration matters and was instrumental in helping to develop the firm's corporate immigration practice. She works with a broad cross-section of international companies representing multinational

© 2019 Law Business Research Ltd

corporations in the pharmaceutical, mining, oil and gas, entertainment, and hotel industries. She provides legal assistance on the necessary visas required for working in Brazil, assists with the preparation of specific contracts required for visa purposes, as well as providing assistance in the labour area aiming for compliance with Brazilian legislation, both in connection with immigration and emigration-related issues.

In the areas of IP and corporate practice, Ms Lessa regularly assists Brazilian and international corporations with trademarks prosecution, copyrights, anti-counterfeiting and contracts in general.

Prior to joining Veirano Advogados, Ms Lessa worked and lived overseas gaining cross-cultural and international experience in Asia, Central America and Europe.

VEIRANO ADVOGADOS

Avenida Presidente Wilson 231
25th Floor
20030-021 Rio de Janeiro
Brazil
Tel: +55 21 3824 4747
Fax: +55 21 2262 4247
isa.soter@veirano.com.br
gabriela.lessa@veirano.com.br
www.veirano.com.br

© 2019 Law Business Research Ltd



ISBN 978-1-83862-027-1

© 2019 Law Business Research Ltd