

CHAPTER II

FOREIGNER STATUTE OF BRAZIL AND BRAZIL'S IMMIGRATION PLAN

A. FOREIGNER STATUTE OF BRAZIL

1. History

Just like the other Latin America countries, Brazil had a history with a military dictatorship, during the year of the 1930s to 1980s, Brazil had a fair share of restrictive and repressive government under the rule of various repressive presidents, such as Getulio Vargas, Café Filho, etc. (BBC, 2017). As the similar characteristic between a militaristic country and another, they tend to focus on the internal of a country and the national security rather than expanding its relation to a broader, and more global approach with another country.

Although, during the year of 1980 to 1984, when the foreigner statute was released, Brazil was in a transitional era, when the state started moving on from the old militaristic regime to the democratic regime. During this era, Brazil was still profoundly affected by the repressive regime. Thus, the government prioritized the national security and interest rather than human rights and foreigner's facilities. Under the rule of Joao Figueiredo, Brazil released the Estatuto de Estrangeiro or foreigner statute in 1980 (Casa Civil do Brazil, 1980).

The foreigner statute was Brazil's first official immigration policy. Because of the time, when it was released, the articles inside foreigner statute reflected the characteristic of Brazil as a militaristic regime. The policy consists of 141 articles, ranging from articles about visa, naturalization of a foreigner, extradition, immigration bureaucracy, deportation, etc (Casa Civil do Brazil, 1980).

This policy had been long implemented from 1980 until early 2017 and also had been revised few times throughout the years until the last revision about tourist visa in May 2014

(Soares, 2014). However, the dated policy could not always be updated and revised to keep its relevancy for the next decade. Few articles need to be scrapped altogether. Thus the government decided to replace the policy with *Lei de Migração* or the new immigration policy.

2. Amendments Throughout the Years

After the release of the foreign statute in 1980, there were revisions happened within the year and the next decades. The foreigner statute of Brazil has been revised few times throughout the years, from 1980 to the last amendment at 2016 before being replaced by the new immigration law. I would divide the amendment into two, the 1981-2013 and the 2014-2016 version because from 2014 to 2016, there are few quite significant changes.

a. 1981-2013 Foreigner Statute Amendment

The 1980-1981 was the first original foreigner statute, and then it was updated four times until 2013. Most articles in Lei 6.815 or law number 6 version 815 as the original foreigner statute law was renumbered and mostly revoked after the consideration of article 2 of the law of introduction to the civil code 1942. The subject of this amendment contains in the republication of foreigner statute in 1981 (MINISTÉRIO DA JUSTIÇA, 1980).

Lei 7.180 or law number 7 version 180, the updated version of the previous law had the article 133 revoked in 1983, and then lei 8.422 or law number 8 version 422 had article 129 revoked in 1992. The alteration of Del 2.236 or Decree-Law number 2 in 1985 contains changes to the table of emoluments and fees of the on the article 131 of the foreigner statute (MINISTÉRIO DA JUSTIÇA, 1980). The Decree-law number 2 was later altered again in 1995 and 1997.

Lei 9.076 or law number 9 version 076 had the article 12 altered and also deleted article 53 in 1995, and article 53 contains about the return of an alien or foreigner with a consular tourist visa (MINISTÉRIO DA JUSTIÇA, 1995). Lei 12.878 or law number 12 had article 20 about foreigner stay was altered

in 2009, and the same law, article 80, 81 and 82 were also altered in 2013.

b. 2014-2016 Foreigner Statute Amendment

In 2014, there was a significant change in the foreigner statute, especially the law and articles that talk about tourism. The government Updated it as lei 12.968, the government added new sentences and paragraphs to the existing article, some of them are the new five paragraphs and items in article 9, altering and adding a new sentence in paragraph 2 of article 10, and renumbering in article 56.

Art. 9o

I - complete and send electronic form available at the Consular Portal of the Ministry of Foreign Affairs;

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Paragraph 5. The Ministry of Foreign Affairs may issue rules to:

I - simplification of procedures, reciprocity or other reasons deemed appropriate;

Source: Casa Civil do Brazil. (2014). LEI Nº 12.968, DE 6 DE MAIO DE 2014 (Original Portuguese). Retrieved December 2017, from Planalto Presidência da República:
https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/112968.htm

From the article above, we can see that this is one of Brazil's effort is to enhance the effectiveness of tourism visa, such as article 9, paragraph 1, it enables tourist to apply for an electronic or online visa. Paragraph 5 of the same article enables the official to simplify the procedure if it is deemed appropriate (Casa Civil do Brazil, 2014).

Brazil also eases the process and effectiveness of visa, in article 56, paragraph 2 stated that:

Art. 56.
.....

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Paragraph 2. The visa granted by the consular authority may be affixed to any travel document issued in the standards established by the International Civil Aviation Organization (ICAO), not implying the affixing of the visa to the recognition of a State or Government by the Brazilian Government.

Source: Casa Civil do Brazil. (2014). LEI N° 12.968, DE 6 DE MAIO DE (Original Portuguese). Retrieved December 2017, from Planalto Presidência da República:
https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/112968.htm

Brazil increases the effectiveness of visa granted by the consular authority. Thus, a tourist that already own a consular visa has the same permit as the visa granted by state or embassy.

Lei 13.193 or law number 13 was released in 2015, adding an article on the unilateral dispensation on the tourist visa as a response of the incoming 2016 Olympic in Brazil. And the last two updates of law number 13, which is lei 13.344 in 2016 about the prevention and repression of human trafficking. The last is lei 13.243 in November 2016 about disclosing scientific development and training, research and innovation. It also alters many previous laws, such as lei 10.973 of December 2004, Lei 8.958 of 1994, lei 12.772 of 2012 and few more (Casa Civil do Brazil, 2016).

3. Foreigner Statute Articles

a. Permanent Visa

Art. 16. A permanent visa may be granted to a foreigner who wishes to settle permanently in the Brazil.

Single paragraph. Immigration will primarily aim at providing specialized^[1] sectors of the national economy, aiming at the National Development Policy in all aspects and, in particular, increasing productivity, assimilating technology and raising funds for specific sectors.

Source: Casa Civil do Brazil. (1980). *LEI No 6.815, DE 19 DE AGOSTO DE 1980, p.3* (Original Portuguese). Retrieved December 2017, from Planalto Presidência da República:
http://www.planalto.gov.br/ccivil_03/leis/L6815.htm

A single paragraph in article 16 stated that the main objective of permanent residency is national interest, development, and increasing the overall productivity of Brazil (Casa Civil do Brazil, 1980, p. 3). Which furthermore stress the point of national interest as the primary objective that drives the policy. The permanent residence will be chosen by the productivity, which is explained more in the article 112 about naturalization (Casa Civil do Brazil, 1980, p. 13).

b. Rights and Duties of the Foreigner

In this category, the foreigner statute shows its direction toward national security and national interest, some articles about the duties and rights of the foreigner shown above explicitly describe the limitation and prohibition the foreigner bound to.

Art. 100. An alien admitted to the temporary condition under contract regime, can only exercise^[1] activity from the entity for which he was hired in the visa of

opportunity, unless authorized ^[1]_{SEP} issued by the Minister of Justice, after hearing the Ministry of Labor.

Source: Casa Civil do Brazil. (1980). *LEI No 6.815, DE 19 DE AGOSTO DE 1980, p.15* (Original Portuguese). Retrieved December 2017, from Planalto Presidência da República:
http://www.planalto.gov.br/ccivil_03/leis/L6815.htm

In article 100, it strictly prohibits a professional foreigner who applies visa for work to exercise any other professional related activity. Thus, a professional worker is bound to work in Brazil as he intended in their document and should not be able to exercise other professional activity.

Art. 107. An alien admitted to the national territory cannot exercise political activity, nor interfere, directly or indirectly, the government of Brazil, and it especially prohibited

Art. 108. It is lawful for foreigners associate for cultural, religious, recreational, charitable or assistance to affiliate to social and sports clubs, and other entities with the same purpose, as well as participate in commemorative meeting of national dates or patriotic significance of events.

Single paragraph. The entities mentioned in this article, is made up of more than half of members foreigners can only work with the authorization of the Minister of Justice.

Source: Casa Civil do Brazil. (1980). *LEI No 6.815, DE 19 DE AGOSTO DE 1980, p.16* (Original Portuguese). Retrieved December 2017, from Planalto Presidência da República:
http://www.planalto.gov.br/ccivil_03/leis/L6815.htm

Article 107 limits a foreigner for any political activity until he or she becomes a permanent residence, the acts inside the article is also emphasizing the prohibition of the political activities. Article 108 while allowed the foreigner to associate with any cultural, religious, and any sensitive activity in Brazil. The government has the right to limit it if it is deemed necessary.

While it is not terrible to limit foreigner's activity inside the border, and it is proven to be an effective shield against foreign threat inside the state, it reflected clearly on the purpose of the foreigner statute in Brazil, to protect national interest during its military regime. The foreigner statute puts heavy emphasis on the prohibition. Whereas, it only mentions the rights of the foreigner in one specific article, which is the first article in this category, article 95. The article says that a foreigner allowed enjoying all facilities granted to Brazilian under constitution and laws (Casa Civil do Brazil, 1980, p. 14). However, it is unlikely to enjoy all of these with the bureaucracy that Brazil's government puts for the foreigner.

c. Naturalization

The article 112 of foreigner statute describes the condition for granting of naturalization in Brazil:

Art. 112. The conditions for the granting of naturalization:

- I - civilian capacity, according to Brazilian law;
- II - be registered as permanent in Brazil;
- III - continuous residence in the national territory for a minimum of four years immediately preceding the naturalization application;
- IV - read and write Portuguese, considering the conditions of naturalization;
- V - exercise of profession or possession of sufficient assets to own maintenance and the family;
- VI - good behavior;
- VII - no complaint, indictment or conviction in Brazil or abroad for a crime that is restraint applied minimum

prison sentence, abstractly considered, more than one (1) year; and

VIII - good health.^[1]

Source: Casa Civil do Brazil. (1980). *LEI No 6.815, DE 19 DE AGOSTO DE 1980*, p.16 (Original Portuguese). Retrieved December 2017, from Planalto Presidência da República:
http://www.planalto.gov.br/ccivil_03/leis/L6815.htm

The articles of foreigner naturalization in Brazil had been a problematic policy. Nearly all the acts from IV to VIII are problematic. The act IV and V go hand in hand. Brazil is a developing country, which, in this decade is filled with continually raising immigrants and refugees. Because of most immigrants that come to Brazil are not wealthy, studying the Portuguese language would need years to come. Thus, self-sufficient needs more than four years to come and the act 5 is directly rejecting any immigrants and refugees with a poor household income, which is the majority of the immigrants and refugees that came to Brazil. Because most of them came due to emergency or issues related to their home country, they do not have sufficient assets needed for themselves (Arantes, 2015).

Act VI is a problem because the interval of the jail time is a year. Thus, a person with a light criminal or heavy criminal record is treated the same and unable to be naturalized. Then, the acts VIII does not explain about the characteristic of good health required by the government, which can be a cumbersome issue in bureaucracy.

d. Deportation

Article 60. The foreigner may be exempted from any penalties related to irregular entry or stay in Brazil or a formality whose compliance could make deportation difficult.

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Art. 61. The foreigner, until the deportation is carried out, may be taken to prison by order of the ^[1]_[SEP]Minister of Justice, for a period of 60 days.

Source: Casa Civil do Brazil. (1980). *LEI No 6.815, DE 19 DE AGOSTO DE 1980*, p.9 (Original Portuguese). Retrieved December 2017, from Planalto Presidência da República:
http://www.planalto.gov.br/ccivil_03/leis/L6815.htm

The deportation according to foreigner statute seems to be a top priority to protect national interest from any foreign threat. In article 60, which stated that a foreigner may not be charged for his or her illegal entry, and may as well skip the formality if it is proven to be a hindrance to the deportation. Article 61 stretched the importance of security even further. It stated that a deportee might be jailed for 60 days period before the deportation. If a deportee's wealth is sufficient to pay the penalty fee, it is hefty, such as an American pilot named Dale R. Hersh, who paid 36000 BRL or \$11000 for his deportation to Brazilian government (Nes, 2017).

B. BRAZIL'S IMMIGRATION PLAN

1. Brazil Declaration in UNHCR

Brazil hosted a ministerial meeting called Cartagena +30 attended by United Nations Refugee Agency or UNHCR and 28 representatives from other countries in December 2014. After this meeting, Brazil alongside other 28 countries and three Latin America and Caribbean territories adopted the Brazil declaration and plan of action to work together to solve the refugee crisis and help the crisis of stateless persons throughout the region of the declarants within a decade until the end of 2024 (UNHCR, 2014).

This declaration mainly focused on Latin America and Caribbean territory due to UNHCR observation of good cooperation inside Latin America and Caribbean territory in

dealing with displacement (Americas; Others, 2014, p. 7). The declaration consists of agreements between the declarants, to promote the declaration, congratulate the ratification, deepening the cooperation, while continue strengthening and supporting the programs for aiding and solving the problem of the refugee and stateless person that came to Latin America and Caribbean territory. The declaration also talks about facilitation, encouraging and reaffirming the commitments between the countries to help the refugees. (Americas; Others, 2014, pp. 3-6)

The plan of action consists of eight chapters, the first chapter talks about the condition of refugees and the stateless person in Latin America. The second chapter gives protection and stretches the asylum seekers definition. Chapter three and four and five respectively talks about solution and solidarity of Latin America and Caribbean to solve the issue. Chapter six talks about the problem with statelessness, the seventh chapter talks about regional cooperation formed after the Cartagena +30, and the last chapter is about the follow-up and implementation (Americas; Others, 2014, pp. 7-19).

Brazil is one of the main actors of this declaration because it took place inside Brazil and it resonates with Brazil's plan for increasing the immigration inflow rate. Although, This is not the only declaration that Brazil took. Brazil had also hosted a ministry meeting in 2010, attended by nearly all Latin America countries and UNHCR itself. The declaration produced from this meeting is called Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas, released on 11 November 2010 (UNHCR, 2010). The 2014 declaration is the extension of the 2010 declaration, stressing the problem and creating allegiance to solve the issue of immigrants and stateless people. Brazil, as the leading member had been planning about rising its immigration all along.

2. Brazil's Refugee Acceptance

Aside from the declaration and also the immigration policy changes that were already planned in 2013 when Brazil's government released of senator bill 288/2013 as the proposed

law before the ratification of the official law in mid-2017, Brazil is already planning the rising of immigration from before. Brazil had an open hand for Syrian refugee around 2013, even promising to accept 100.000 Syrian refugees in exchange for Germany assistance for their transportation to Brazil (Young, 2016).

3. Brazil's Economic Incentive

The economic situation in Brazil played a role in the development of the immigration law. Because, as mentioned earlier, Brazil is a country with an active emerging market, and it is very promising for investors and businessmen to set up a business and investment there. The figure below showed the growth of Brazil's economy.

Figure 2.1
Brazil GDP Annual Growth rate (2012-2014)



Source: Trading Economics. (2017). *Brazil GDP Annual Growth Rate*. Retrieved January 2018 from Trading Economics: <https://tradingeconomics.com/brazil/gdp-growth-annual>.

Brazil had impressive GDP growth in 2013, peaked at 4% on July 2013. Investors and businessmen saw Brazil as a valuable country. Thus, Brazil used this as an advantage and incentive. Brazil needed human resources, while its human resource was already good, it expected the high-valued and skilled immigrants or refugees to settle and contribute to Brazil's economy. This economic growth was the main incentive of Brazil's shift of immigration policy because Brazil wanted to continue the great economic development (Castillo, 2012).