

CHAPTER III
THE DYNAMICS OF IMMIGRATION LAW AND
INFLOW IN BRAZIL (2013-2017)

A. SENATOR BILL 288/2013 TO THE NEW
IMMIGRATION LAW 2017

1. Senator Bill 288/2013

Senator bill 288/2013 was the pioneer of the new immigration law or *Lei de migracao* of Brazil, which had been published on May 2017 (Soares, 2017). The senator bill is just as it called, draft approved by the congress or senate of Brazil, specifically by Aloysio Nunes Ferreira as the senator of Brazil in 2013 (BRAZIL O CONGRESSO NACIONAL, 2013). The bill was released in July 2013, following the economic progress of Brazil. Senator bill 288/2013 is the preferred and ideal utopia of immigration law that fancies the foreigner who plans or resides in Brazil.

As Brazil advances through the ages of globalization, it is obvious that Brazil strived to be labeled as a progressive and democratic country. As what mentioned before in the previous chapter about Brazil's amendments. The government had significantly change the 2014 amendment of foreigner statute, especially in tourism, as the changes help tourists to apply for a visa, also strengthening the position of consular visa, which is recognized by the whole state (Casa Civil do Brazil, 2014).

Senator bill 288/2013 reflected on the vision of the progressive nation. The bill consists of 12 titles and 139 articles, ranging from the principle and rights of immigrants to the penalties for the violator of the law (BRAZIL O CONGRESSO NACIONAL, 2013). In the articles, the model of the bill is about more freedom and better facilitation of both tourist foreigner and immigrants who choose to reside, such as the article below.

Art. 2 The Brazilian immigration policy is governed by the following principles:

.....
..
VIII - facilitation of temporary entry of foreigners in order to stimulate the trade, tourism, international relations and cultural, sports, scientific and technological activities;

X - equal treatment and opportunity for immigrants, without prejudice treated more beneficial than the provisions of this law

Source: Brazil o Congresso Nacional. (2013). *PROJETO DE LEI DO SENADO No 288, DE 2013, p.2* (Original Portuguese). Retrieved January 2018 from Planalto Presidência da República: http://planalto.gov.br/ccivil_03/leis/16815.htm

From the article 2 of senator bill, we can see that the government of Brazil creates openness and hospitality as their main vision of the new immigration law. The equal treatment of the immigrants in the country helps to further strengthen the integration of the immigrants within the Brazilian locals, thus, directly helping them to live easier in Brazil. The facilitation of temporary entry of foreigners is also very helpful, yet, very ambiguous. The facilitation opens the way of many possibilities for Brazil's interest. However, it could be abused because of the cryptic definition of the interests.

In the old foreigner statute, the government never mentioned refugee as one of the holders of the permanent visa. It is only mentioned that the refugee will be a subject and a refugee that's failed to identify themselves will be sent to asylum (Casa Civil do Brazil, 1980). In article 55 number 1 letter c, a refugee is one of the subjects that can be granted a foreign passport, not permanent passport (Casa Civil do Brazil, 1980).

However, in the senator bill 288/2013, refugee got special treatment, as they are one of the eligible candidates for receiving the permanent passport. As the article below said:

Art. 11. The permanent visa may be granted to foreigners intends to permanently fix in Brazil, satisfied one of the following conditions:

III - be recognized as a refugee or benefited from grant asylum by the competent authorities;

Source: Brazil o Congresso Nacional. (2013). *PROJETO DE LEI DO SENADO No 288, DE 2013, p.2* (Original Portuguese). Retrieved January 2018 from http://planalto.gov.br/ccivil_03/leis/16815.htm

There, we can see that the permanent visa will be granted to a refugee that wished to stay in Brazil, which is very different from the article in foreigner statute. In the old statute, the permanent passport will not be granted to a refugee as a special case, rather than that, the refugee must do the same requirement like the others.

The senator bill has been updated and amended throughout the years of 2013 until late 2015. While the main point of the bill remains unchanged during the amendment, few articles are being amended. In these processes of amendment, it projects the behavior and reaction of the government toward particular issue, especially senators inside Brazil. Which will be covered in the later chapter (BRAZIL O CONGRESSO NACIONAL, 2013).

The amendment came from few senators, senator Cyro Miranda from the department of social affairs amended the bill four times, mostly regarding the wording and the tax exclusion (Miranda, 2013). Meanwhile, from the department of external relations and national defense, six senators demands revision, safeguards, or deletion, mostly about national security, extradition and few controversial articles about refugees,

however, majority of their revision got rejected in the final draft (BRAZIL O CONGRESSO NACIONAL, 2013). This revision is one of the examples proposed by the senators of external relations and national defense:

Art. 85. [...]

§2o. In cases not provided for in this Law, the Attorney General's Office, after consulting the Ministry of Foreign Affairs, will decide on the preference of the request, which will prioritize the requesting State that maintains an extradition treaty with Brazil.

Source: Senator José Agripino. (2015). *EMENDA No - CRE: ao substitutivo do PLS 288/2013* (original Portuguese). Retrieved Jan 2018, from <http://legis.senado.leg.br/sdleg-getter/documento?dm=4000538&disposition=inline>

Senator José Agripino attempted to amend the item two of senator bill 288/2013, as he listed, the reason of his decision is because of the function of attorney general office should not be branched out of their preferred function. Senator José Agripino reassesses the elimination of prolonged administration in the senator bill 288/2013, as he stated that it is incumbent upon public persecutors to perform other function that is conferred for them (Agripino, 2015).

2. New Immigration Law

a. Vetoes during the Ratification

While the senator bill 288/2013 is the reflection of Brazil's progressive movement towards humanity and development, the senator bill 288/2013 was not a clean draft that quickly got accepted and ratified. As what I stated before, the bill has been amended many times from 2013 through 2015, whether the amendment is rejected or approved.

The process of ratification of the bill into the new immigration law was rough. The ratification of new immigration law with the current president, president Michel Temer held in May 2017. While the ratification did happen and signed by the president on 25 May, the president infamously vetoed thirty items of the articles inside senator bill 288/2013 (Melito, 2017).

The civil house of Brazil later discussed these thirty vetoes before officially published, as the later sixteen articles were vetoed with either revision or revoke (Melito, 2017). The clean version of the new immigration law was ratified on 25 May 2017. These are vetoes that happened during the transformation of senator bill 288/2013 to *lei de migracao* or new immigration law 2017.

The first veto is article 1, section 1 item 1, which defines migrant, it was vetoed because it gives too broad definition of migrants and further underlining that the constitution has its own limitation on it. Article 10, section 1 item 2 about judgment of a person that has been rehabilitated is considered as legal-logical anomaly and thus, vetoed. The next veto is in the article 40, item 4 and sole paragraph of article 37 about children immigrants, both articles were vetoed because of the risk of child trafficking and illegal immigration. Article 44 about the strength of visa holder was vetoed because it weakens Brazilian police power (Brazil o Congresso Nacional, 2017, pp. 1-2).

Article 74 about merger exemption certificate for the soldier of former country was vetoed because of the violation of article 61, section 1 of constitution. Article 113, section 4 about the classification of asylum seekers as a vulnerable group was vetoed because of the probability of exploitation under immigration policy. Article 1 section 2 of the guaranteed rights for indigenous people was vetoed to gain control of the exit and entry of both Indians and non-Indians (Brazil o Congresso Nacional, 2017, pp. 3-4).

The other vetoes were article 116, paragraph and section 2 of article 55. Section 1 and 4 of article 66 about

naturalization and most of the sections in article 30, article 4 section 4. A sole paragraph of article 6, article 49 section 5, article 105 section 3 about the foreign judgment to a criminal. Last, the added attachment of work permit, which is about work authorization of migrants (Brazil o Congresso Nacional, 2017, pp. 4-5)

Mostly, the vetoes were targeting on articles that have probability of exploitation, weaken the constitution, or weaken the federal police of Brazil. It is similar to a countermeasure and prevention for an institutional threat the country is currently facing.

The last veto is one of the most controversial vetoes, which is the amnesty veto orchestrated by president Michel Temer. Article 118 of senator bill 288/2013 about amnesty was entirely vetoed and subsequently revoked after the release of *lei de migracao* or the new immigration law (Brazil o Congresso Nacional, 2017).

Art. 118

Be granted residence permits to immigrants who, having entered the country until July 6, 2016, so request within one (1) year after the entry into force of this Act, regardless of their immigration status prior.

§ 1 Immigrants who require a residence permit under the caption will be exempt from paying any fines, fees and consular fees.

§ 2 The Executive Branch will issue migratory regularization plan, with targets and indicators for the effective fulfillment of the benefits granted in the caption of this article.

§ 3 The immigrant with migratory regularization process in progress can choose to be benefited by this Act.

§ 4 The residence permit under this article does not imply criminal amnesty and does not prevent the processing of expulsion measures

and legal cooperation in respect of acts committed by the applicant at any time.

§ 5 There may receive a residence permit under this article people whose stay in the country has seen the foundation official or diplomatic.

§ 6 The residence permit will be canceled if, at any time, verify the falsity of the information provided by the immigrant.

§ 7 The loss process or residence permit cancellation notice guarantees of legal defense and contradictory, and may be initiated ex officio by the competent authority of the federal executive or by reasoned representation, provided the deadline for 60 feature (sixty) days from the notification of the decision.

§ 8 The procedure relating to the residence permit application referred to in the caput will be conducted in one step, in which will be presented the application and supporting documentation and carried out the collection of biometric identification and realization of the record. "

Source: Brazil o Congresso Nacional (2017). *Mensagem de Veto*, p.6. Retrieved January 2018, from Planalto Presidência da República: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/Msg/VEP-163.htm

The reason of the veto in the document stated that it would give an indiscriminate amnesty to all immigrants, thus, emptying the discretion of the state reception (Brazil o Congresso Nacional, 2017, p. 6). This matter will be covered in

the next chapter, regarding the background and reason of this veto.

b. New Immigration Law

After the veto finished, the new immigration law or *lei de migracao* was ratified on 25 May and subsequently should be applied 180 days after its initial release to the public, which then takes effect starting on 21 November 2017 (Taylor, 2017). The release of new immigration law is a memorandum of the restrictive foreigner statute law deletion in Brazil. Thus, this new law is also an event for Brazil's new start.

Underlining the idea of openness and embracing the immigrants that reside in Brazil, the law provides the equality of rights between immigrants and Brazilian locals, including social eligibility, security, job access and other benefits (Taylor, 2017). The law is indeed meant to attract skilled labor from all over the world to Brazil. This long project has been planned since 2013, responding to Brazil's economic growth.

The new immigration law also provides five different type of visa for foreigner, from tourist visa which its effectiveness has been enhanced from the previous 2014 law, temporary visa for foreign worker and investors since they will stay in Brazil for a period before going back to their native countries. There's also official and diplomatic visa, used for state-related matters for government official workers. Moreover, the last is courtesy visa for important figures that come to Brazil for a specific event unrelated to state affairs (Team Relocations, 2017).

As what mentioned before, senator bill 288/2013 is the proposal of this new immigration law, before eighteen ideas inside the bill was scrapped, thus, while the new immigration law serves its purpose, it might trails off from the original intention of the law. The matter of whether the intention of new immigration law is faithful to it source will be covered in the next chapter.

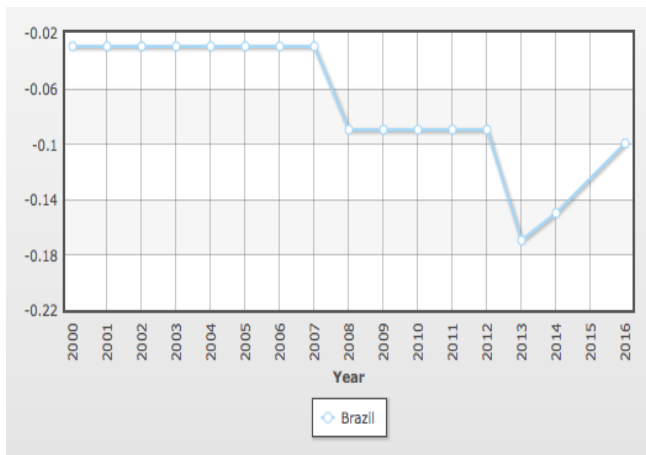
B. IMMIGRATION INFLOW IN BRAZIL

1. Brazil Immigration Rate before 2014

Brazil is a developing country with a fast-growing economy since the early 2000s. While the country is infamous for its drug cartel and violence, racking from about 132% increase of crimes and homicides during 1980 - 2011, rising from 11.5 per 100,000 to 27 per 100,000 (Wells, 2013). This high crime rates, however, does not slow the immigration rate in Brazil during the 2000s. This is proven by the graphic below

Figure ٢.١

Brazil Net Migration Rate 2000-2016



Source: Indexmundi. (2017). *Brazil Net Migration Rate*. Retrieved January 2018 from Index Mundi: <https://www.indexmundi.com/g/g.aspx?c=br&v=27>

The graph above shows the high immigration rate from the year 2000 until 2007, and the rate was 0.02 per 1000 population in Brazil. Thus, the rate of immigration rate was very

high for a developing country, especially in Latin America. The governor had not had any serious issues regarding immigrants during these years, and the natives were very welcoming for any new immigrants (Watts, 2015). However, Brazil's immigration rate had a downturn in 2007, dropping to about 0.09 per 1000 population. Then, the rate stayed stagnant for five years, from 2007 until 2012.

Brazil had a huge plan in 2013, as a developing country with an emerging market. It was Brazil's turn to host Olympics in 2016 and have three years of preparation before the event started. In this year, the government chose to fund the Olympic, by start investing in the infrastructure of Brazil. President Dilma Rousseff herself did not hold back and invested massive amount of government fund for Olympic 2016, which would be the attractor of investors and tourists in 2016 (Khanna, 2013).

In order to cope with the loss of government fund in the investment, the government raised bus fare in Brazil, from R\$ 2.70 to R\$ 3.00, then it was raised again a month later to R\$ 3.00 to R\$ 3.20 (Romero, 2013). The rise of the fare sparked controversy, and thus, huge protests happened in the various cities in Brazil. Brazilian protested in front of the national congress building, not only for bus fare but also for corruption in the country and more than a million Brazilian attended this protest (Watts, 2013)

Due to bad situation in Brazil, the effect also impacted the immigration rate in 2013. From the graph above, the rate had a significant downturn during 2012 to 2013 period, dropping from 0.09 to about 0.17 per 1000 population. This phenomenon immediately affected the growth of economy in Brazil. Moreover, also, the significant drop would later become an incentive for Brazil's action on the reform of immigration policy.

2. Brazil's Immigration Rate 2014-2016

By the execution of Brazil's plan and declaration to UNHCR in 2014 (UNHCR, 2014), Brazil sets up a footing for immigrants and refugees that planned to settle in Brazil and

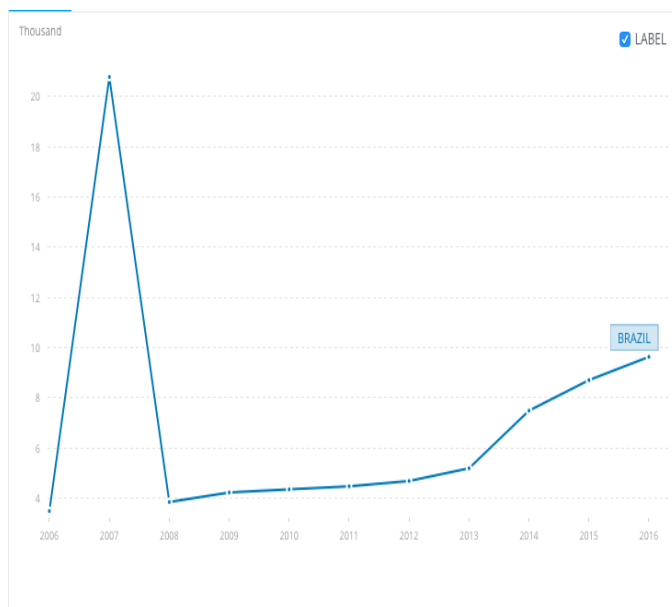
become part of the working class in there. The public excitement of Olympic 2016 in Brazil also flared the hype for Brazil, due to its nearly guaranteed economic boom, many investors and businessmen were considering Brazil as a potential market, one of the examples is the positive respond of many foreign investors even though Brazil had an economy drop in 2014 (Costas, 2014).

We can see from the diagram about net migration rate presented in figure 2 above (see figure 3.1). The data shows that from the huge drop in 2013, the immigration rate in Brazil had been steadily increasing and also increasing exceptionally in 2015-2016 to the point of 0.1 per 1000 population (Indexmundi, 2017). This data based the fact that Brazil opens its hand to refugees and immigrants alike, thus, refugees and immigrants from Syria and especially the neighboring country that has an economy and political crisis, Venezuela flocking to Brazil as an attempt to save themselves from the chaos happened in their country (Watson, 2017).

The rise could also be contributed by the chance of rapid growth in Brazil, considering the effect of Olympic 2016 and its economic progress throughout the year until 2015 (see figure 2.1), it is possible that immigrants in Latin America see Brazil as the most suitable place to settle.

Originally suffered from low refugee rate from the significant drop in 2008 and continuing the low rate until 2011, Brazil's refugee rate increases steadily from 2012. Thus, government's original intention on accepting refugee works just well, although not as high as its 2007 counterpart. The figure below shows the rate of refugee in Brazil from 2007 to 2016.

Figure ۳.۳
Brazil Refugee Rate



Source: The Worldbank Group. (2017). *Refugee population by country or territory of asylum, Brazil*. Retrieved January 2018 from The World Bank:
<https://data.worldbank.org/indicator/SM.POP.REFG>

From the figure above, the sharp raise happened in 2007 and also a sharp downturn in 2008, and then it is stagnant in low 5000s refugees until 2013. The rise is happening again in 2014 up until now. This data is only counting the documented and legal refugees, not the illegal one, which is also happening in Brazil (Saxena, 2013). While the increase of immigrants and refugee might be useful for some country, but Brazil has problem with it, which will be covered in chapter 4.