

Proinde Circular 25-05-2016: Immigration fines due to crew overstay in Brazil

1. Introduction

Although strict enforcement of temporary visas and allowed stays by the Brazilian immigration authority (Federal Police) is in place after more than a decade, our offices are still seeing cases where vessels and crew have been fined for offences which could be easily avoided.

The situation is experienced in various Brazilian ports but is certainly more prevalent at the Port of Rio de Janeiro where stringent immigration controls are in place.

2. Immigration regulation

According to immigration laws¹, staying in Brazil beyond the allowed legal time is an offense subject to fines from the Federal Police against the carriers and crewmembers besides penalty of deportation.

The time within which a foreigner can stay in Brazil without holding a tourist (VITUR) or a business visa (VITEM II) depends on his nationality, type of passport used and purpose of the visit² - most nationals are visa exempted for stays not exceeding 30 (thirty) to 90 (ninety) days.

Foreign crewmembers working on vessels engaged in coastal-wise trade (cabotage) within Brazilian ports are required to hold a type 'V' temporary visa and have a period of grace of 30 (thirty) days to obtain the visa. The visa can be extended by a Brazilian Consulate only once and for equal period of time.

The actual allowed time of stay in the country is fixed at the first point of entry into Brazil. It is usually allowed a maximum stay of 30 (thirty) days from date of entry, at the discretion of the immigration officer in charge of the clearance. The length of stay is stamped in the bottom of the Immigration Entry/Exit Card (**see attached specimens**) and is also inserted in the immigration computer database through which the foreigner's stay in Brazil is controlled by the Federal Police.

3. The problem

The problem is that the control of the maximum allowed stay is frequently neglected by the vessel's owners who may not be aware of the requirements and the agents who fail to inform the owners about these immigration controls.

¹ According to Article 125, II, of Decree No. 6,815 of August 1980, amended by Law 6,964 of December 1981 and regulated by Decree No. 86,715 of December 1981 (collectively known as "*Estatuto do Estrangeiro*" or Foreigner's Act) it is an offence to remain in the country after expiration of the maximum allowed time of stay

² The updated list of entry visas requirements can be viewed and downloaded for free on the website of the *Ministério das Relações Exteriores* (Brazilian Ministry of Foreign Affairs) at: <http://www.portalconsular.mre.gov.br/estrangeiros/quadro-geral-de-regime-de-vistos>

A fine will be issued against the crewmember for to the number of days in excess of the allowed stay and he may be served with an order to leave the country on very short notice – usually between three to eight days from the service of the notice, under penalty of deportation in case of noncompliance. In addition, a fine is also levied on the shipowners for each overstaying crewmember³.

Notices of infraction and fines can also be issued and served on the agents after the vessel's departure from the country and while it is possible to present an administrative appeal within 5 (five) days of the receipt, the chances of dismissing the penalties on this instance are almost nil.

4. Preventive measures

The crew's immigration cards are often kept in Master's safe together with their passports and seaman's books. It is therefore essential that the Master or a designated officer closely monitors and controls the maximum allowed time of stay and inform the owners and agents of any approaching expiration date so that early action can be taken to avoid deportation notices and fines.

Where a crewmember does not hold a visa and is expected to exceed his maximum allowed stay in the country, he or vessel's agents must apply to the Federal Police for an extension of the stay, ideally within a maximum of 5 (five) days prior to the expiration date, by producing the passport or seaman's book, the receipt of payment of the extension tax⁴ and the application form⁵ (**see attached specimen**).

The immigration card must be returned to the Federal Police when leaving the country.

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³ As at May 2016, the fine for overstay on the crewmember is BRL 8.28 per day beyond allowance up to a maximum of BRL 827.75 and the fine imposed on the carrier is BRL 2,483.26 per overstaying crewmember, which amount is doubled up in case of recidivism

⁴ As at May 2016, the Immigration tax for extension of allowed stay is BRL 110.44 per application

⁵ The application form can be downloaded for free on the website of the Federal Police at:
<http://www.pf.gov.br/servicos/estrangeiro/>

Annex 1: Models of immigration entry/exit card

RAC-14 (015 782 004 826) R 782 004 826 000 - ENTRADA

MJ - DEPARTAMENTO DE POLÍCIA FEDERAL - DPMF
 FEDERAL POLICE DEPARTMENT - DEPARTAMENTO DE POLÍCIA FEDERAL
CARTÃO DE ENTRADA / SAÍDA
 AERIAL - DEPARTAMENTO GERAL - TABELA DE ENTRADA SAÍDA

1. IDENTIFICAÇÃO - IDENTIFICATION

042983246919

2. NOME (CONFORME PASSAPORTE OU EQUIVALENTE);
 NOME (AS IN PASSPORT OR EQUIVALENT DOCUMENT); NOMBRE (CONFORME PASAPORTE O EQUIVALENTE)

3. MOTIVO DA VIAGEM - REASON FOR THE VISITATION

1. TURISMO - TOURISM (3) COMÉRCIO/COMUNICAÇÕES
 2. NEGÓCIO - BUSINESS (4) OUTROS - OTHERS

4. Nº DO PASSAPORTE OU EQUIVALENTE
 NUMBER OF PASSPORT OR EQUIVALENT DOCUMENT / Nº DEL PASAPORTE O EQUIVALENTE

5. N.º VÍCIO - DEFECT / N.º VÍCIO

USO OFICIAL - OFFICIAL USE (1) PAÍS DE ORIGEM / PAÍS DE DESTINO
 ORIGINAL COUNTRY OF ORIGIN / ORIGINAL COUNTRY OF DESTINATION

COMPLEMENTO PARA NÃO BRASILEIROS
 ADDITIONAL INFORMATION REQUIRED FROM NON-BRAZILIAN CITIZENS
 COMPLEMENTO PARA NÃO BRASILEIROS

PARA RESIDENTES NO BRASIL - FOR RESIDENTS IN BRAZIL / PARA RESIDENTES EN BRASIL

(7) NÚMERO DO RNE - RESIDENT IDENTIFICATION CARD

PARA NÃO RESIDENTES NO BRASIL - FOR NON-RESIDENTS IN BRAZIL / PARA NO RESIDENTES EN BRASIL

LEO OFICIAL - OFFICIAL USE (8) PAÍS DE NACIONALIDADE - COUNTRY OF NATIONALITY / PAÍS DE NACIONALIDAD

LEO OFICIAL - OFFICIAL USE (9) PAÍS DE RESIDÊNCIA - COUNTRY OF RESIDENCE / PAÍS DE RESIDENCIA

10. SEXO - GENDER (1) MASCULINO - MALE (2) FEMININO - FEMALE

DATA DE NASCIMENTO - DATE OF BIRTH

USO OFICIAL - OFFICIAL USE

**BEM-VINDO AO BRASIL
 WELCOME TO BRAZIL
 BIENVENIDO A BRASIL**

**INFORMAÇÕES IMPORTANTES
 IMPORTANT INFORMATION
 INFORMACIONES IMPORTANTES**

- Preencha o cartão em letra de forma, sem rasura.
 Use capital letters, without alterations.
 Llene la tarjeta con letra impresa, sin hacer borradores.
- Apresente-o à Polícia Federal, com o passaporte ou documento equivalente, exigindo autenticação. É uma exigência legal e um serviço gratuito.
 Present this card to Federal Police Official, together with passport or equivalent document, and verify authentication. It is a legal obligation and a free service.
 Presentese a la Policía Federal, con el pasaporte o el documento equivalente; solicite autenticación. Es una exigencia legal y un servicio gratuito.
- Mantenha a 2ª via do cartão em seu poder. Ela é o comprovante de sua entrada legal e será recolhida no seu retorno.
 Keep your copy of the card with you. It is proof of your legal entry into the country and will be collected on your departure.
 Mantenga la copia de la tarjeta en su poder. Ella es un comprobante de su entrada legal y será exigida a su regreso.
- O turista não pode trabalhar.
 Tourists are not permitted to work.
 El turista no puede trabajar.
- Para a prorrogação do "prazo de estada", dirija-se à Polícia Federal (SPMAF) em qualquer Estado, antes de vencer o prazo inicial, munido dos seguintes documentos:
 a) Passaporte ou documento equivalente;
 b) 2ª via do cartão;
 c) Comprovante de recolhimento da taxa de prorrogação.
 Dispense intermediários.
 To extend your "stay in the country", apply to the Federal Police Department (SPMAF) in any State, prior to expiry of the valid date of your permanent, together with:
 a) Your passport or equivalent document;
 b) Your copy of this card;
 c) Receipt of payment of prorogation tax;
 Do not use intermediaries.
 Para prolongar el "plazo de permanencia", dirijase a la Policía Federal (SPMAF) en cualquier Estado, antes del vencimiento del plazo inicial, llevando los siguientes documentos:
 a) Pasaporte o documento equivalente;
 b) Copia de la tarjeta;
 c) Recibo de pago de la tasa de prorrogação.
 Dispense intermediarios.
- Para qualquer informação, ligue para a Polícia Federal (SPMAF).
 For any further information, call the Federal Police Department (SPMAF).
 Para cualquier información, llame para la Policía Federal (SPMAF).
- O tripulante não precisa preencher os seguintes campos: 3, 6, 7 e 9.
 Crewmembers are not required to complete areas number 3, 6, 7 and 9 of this card.
 El tripulante no necesita llenar los siguientes campos: 3, 6, 7 y 9.

Annex 2: Model of application for extension of allowed stay



DEPARTAMENTO DE POLÍCIA FEDERAL
SUPERINTENDENCIA REGIONAL EM
DELEMIG – NÚCLEO DE REGISTRO DE ESTRANGEIROS

1	NÚMERO/PROTOCOLO
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TURISTA TEMP. II TEMP. III

REQUERIMENTO DE PRORROGAÇÃO DE PRAZO			
PREENCHER EM LETRA DE FORMA / FILL IN CAPITAL LETTERS			
2 NOME COMPLETO / FULL NAME			
3 NOME DO PAI / FATHER'S NAME			
4 NOME DA MÃE / MOTHER'S NAME			
5 DATA, LOCAL E PAÍS DE NASCIMENTO / PLACE AND COUNTRY OF BIRTH		6 NACIONALIDADE / NATIONALITY	
7 SEXO / SEX	8 ESTADO CIVIL / CIVIL STATUS	9 PROFISSÃO / PROFESSION	10 CARTÃO DE ENTRADA/SAÍDA
<input type="checkbox"/> M <input type="checkbox"/> F			
11 REFERÊNCIA PESSOAL NO BRASIL – NOME/ENDEREÇO / PERSONAL REFERENCE IN BRAZIL – NAME/ADDRESS			
12 REQUER PRORROGAÇÃO / REQUEST PRORROGATION			
POR / FOR		DIAS / DAYS	
13 LOCAL/DATA / PLACE AND DATE		14 ASSINATURA DO REQUERENTE / SIGNATURE	

USO OFICIAL / OFFICIAL USE			
15 DOCUMENTO DE VIAGEM		16 NÚMERO	17 LOCAL E DATA DA EXPEDIÇÃO
<input type="checkbox"/> PASPT <input type="checkbox"/> C.I. <input type="checkbox"/> OUTROS			
19 CLASSIFICAÇÃO		20 NR. VISTO	21 LOCAL E DATA DA CONCESSÃO
<input type="checkbox"/> TUR. <input type="checkbox"/> TEMP. II <input type="checkbox"/> TEMP. III			
22 VALIDADE DO DOCUMENTO	23 LOCAL DE ENTRADA	24 DATA DE ENTRADA	25 ESTADA ATÉ
26 MEIO DE SUBSISTÊNCIA		27 BIHETE DE PASSAGEM	
<input type="checkbox"/> SIM <input type="checkbox"/> NÃO		<input type="checkbox"/> SIM <input type="checkbox"/> NÃO	
28 DARF		29 SIMPI	
<input type="checkbox"/> SIM <input type="checkbox"/> NÃO		<input type="checkbox"/> SIM <input type="checkbox"/> NÃO	
30 IDONEIDADE FINANCEIRA		31 CONTRATO TRABALHO	
<input type="checkbox"/> SIM <input type="checkbox"/> NÃO		<input type="checkbox"/> SIM <input type="checkbox"/> NÃO	
32 PROPOSTA DO CONFERENTE			
<input type="checkbox"/> PRORROGAR DIAS <input type="checkbox"/> INDEFERIR			
33 OBSERVAÇÕES			
34 DECISÃO			
<input type="checkbox"/> CONCORDO. INDEFIRO O PRAZO DE DIAS, ATÉ		<input type="checkbox"/> CONCORDO. INDEFIRO A PRORROGAÇÃO.	
<input type="checkbox"/> DISCORDO. INDEFIRO A PRORROGAÇÃO.		<input type="checkbox"/> DISCORDO. DEFIRO O PRAZO DE DIAS, ATÉ	
35 LOCAL / DATA / ASSINATURA / MATRÍCULA			
36 CIENTE			
ASSINATURA			