The Migration LAW

FOREIGNER NEW STATUTE

The Migration Law - or the "New Foreigner Statute" (Law No. 13,445 / 2017) has brought many advances, mainly regarding the reception of migrants, refugees, asylum, humanitarian and preservation of the rights of foreigners residing in Brazil for years, since the previous Law treated the resident aliens and transients (visitors) equally.

According to the "New Law", specifically with regard to expulsion, it should be noted that, now, expulsion will not take place when the expulsion has a cohabiting partner or spouse residing in Brazil (not mentioning if it has to be Brazilian), and the previous law required that the spouse be of Brazilian nationality and had been married for more than 5 years, to add jurisprudence that required economic dependence.

Another important change, was that the relation to the duration of the Decree expelling, which will now be in force proportionally in relation to the time of the sentence applied and never more than double the conviction, that is, if the expelling was sentenced to a penalty of 3 years, their expulsion will last for a maximum of 6 years.

Finally, another new rule was in relation to foreigners who entered the country until the age of 12 (and who have resided in the country since) and in relation to those who have more than 70 (and who have lived in the country for more than 10 years), which can not be expelled, of course always considering the gravity and basis of the expulsion.
Legislative changes with regard to compulsory measures and transfer of convicted persons follow, with the entry into force of Law No. 13,445, OF MAY 24, 2017 (Migration Law):

Chapter 5
COMPULSORY WITHDRAWAL MEASURES

Section I General Provisions

Article 46. The application of this Chapter shall comply with the provisions of Law No. 9,474 of July 22, 1997, and with the legal provisions, treaties, instruments and mechanisms dealing with the protection of stateless persons or other humanitarian situations.

Article 47. Repatriation, deportation and expulsion shall be made to the country of nationality or origin of the migrant or visitor, or to another that accepts it, in compliance with the treaties to which Brazil is a party.

Art. 48. In cases of deportation or expulsion, the head of the Federal Police unit may represent before the federal court, respecting, in judicial proceedings, the rights to ample defense and due process of law

Section II From Repatriation

Art. 49. The repatriation consists of an administrative measure for the return of a person who is in a situation of impediment to the country of origin or nationality. Paragraph 1. The notified act of repatriation shall be immediately communicated to the carrier and to the consular authority of the country of origin or nationality of the migrant or visitor, or to whom it is represented. Paragraph 2. The Public Defender's Office shall be notified, preferably by electronic means, in the case of paragraph 4 of this article or when immediate repatriation is not possible. § 3 Specific conditions of repatriation can be defined by regulation or treaty, observing the principles and the guarantees provided in this Law. Paragraph 4 No repatriation measure shall be applied to the person in situations of refuge or statelessness, de jure or de jure, to the minor of 18 (eighteen) years unaccompanied or separated from his family, except in cases in which he proves favorable to the guarantee of their rights or for reintegration into their family of origin, or to those who need humanitarian assistance, nor, in any case, a measure of return to a country or region that could present a risk to the life, personal integrity or freedom of the person.

Section III
Article 50. The deportation is a measure resulting from an administrative procedure that consists in the compulsory withdrawal of a person who is in an irregular immigration situation in the national territory.

Paragraph 1. The deportation shall be preceded by personal notification to the deportee, expressly stating the irregularities verified and a period for regularization not less than 60 (sixty) days, and may be extended, for an equal period, by reasoned order and by commitment of the person to keep their household information updated.

§ 2 The notification provided for in paragraph 1 does not prevent the free circulation in national territory, and the deportation informing him of his domicile and his activities.

Paragraph 3. Once the term of paragraph 1 has expired without any regularization of the migratory situation, deportation may be carried out.

Paragraph 4. The deportation does not exclude any rights acquired in contractual relations or arising from Brazilian law.

§ 5 The voluntary departure of a person notified to leave the Country amounts to compliance with the notification of deportation for all purposes.

Paragraph 6. The period provided for in paragraph 1 may be reduced in the cases that fall within the subsection IX of art. 45.

Art. 51. The procedures leading to the deportation must respect the adversary and the ample defense and the guarantee of appeal with suspensive effect.

Paragraph 1. The Public Defender's Office shall be notified, preferably by electronic means, to provide assistance in deporting in all administrative deportation proceedings.

Paragraph 2. The absence of manifestation of the Public Defender of the Union, provided prior and duly notified, will not prevent the effectiveness of the deportation measure.

Article 52. In the case of stateless persons, the deportation procedure will depend on the prior authorization of the competent authority.

Art. 53. Deportation shall not be carried out if the measure configures extradition not allowed by Brazilian law.

Section IV From Expulsion

Art. 54. Expulsion consists of an administrative measure of compulsory withdrawal of migrants or visitors from the national territory, together with the impediment of re-entry for a specified period.

Paragraph 1. The expulsion can be condemned by a judgment that has the force of res judicata regarding the practice of I - crime of genocide, crime against humanity, war crime or crime of aggression, as defined by the 1998 Rome Statute of the International Criminal Court, promulgated by Decree No. 4,388, of September 25, 2002; or II - common intentional crime punishable by deprivation of liberty, considering the gravity and the possibilities of resocialization in national
Art. 55. No expulsion shall be made when: I - the measure to set extradition inadmissible under Brazilian law; II - or expelling: a) have a Brazilian child who is under their care or economic or socio-affective dependency or has a Brazilian person under their care; b) has a spouse or companion residing in Brazil, without any discrimination, recognized judicially or legally; c) has entered Brazil until 12 (twelve) years of age, residing since then in the Country; d) is a person over 70 (seventy) years of age who has lived in the country for more than 10 (ten) years, considering the gravity and the basis of the e) (VETOED).

Art. 56. Regulation shall establish procedures for the filing and processing of applications for suspension and revocation of the effects of expulsion measures and of preventing entry and stay in national territory.

Art. 57. Regulation will provide for special conditions of residence authorization to enable measures to re-socialize migrants and visitors in compliance with sentences applied or executed in national territory.

Art. 58. In the process of expulsion, the adversary and ample defense will be guaranteed.

Paragraph 1 - The Public Defender's Office of the Union will be notified of the initiation of expulsion proceedings, if there is no defender constituted.

Paragraph 2 - A request for reconsideration of the decision on the expulsion shall be made within 10 (ten) days from the personal notification of the expulsant.

Art. 59. The migrant's expulsion situation shall be considered to be regular, the proceedings of which are pending decision, under the conditions set forth in art. 55.

Art. 60. The existence of a process of expulsion does not prevent the voluntary departure of the expelling of the Country.

Section V From the Fences

Art. 61. Collective repatriation, deportation or expulsion shall not be carried out. Single paragraph. A repatriation, deportation or collective expulsion is understood as one that does not identify the
irregular migratory situation of each person. Art. 62. No person shall be repatriated, deported or expelled when there is reason to believe that the measure could endanger life or personal integrity.

Section II
Transfer of Execution of Penalty

Article 100. In cases where a request for extradition is enforceable, the competent authority may request or authorize the transfer of execution of the sentence, subject to the principle of non bis in idem. Single paragraph. Without prejudice to the provisions of Decree-Law no. 2,848, of December 7, 1940 (Penal Code), the transfer of sentence execution will be possible when the following requirements are met: I - the convicted in a foreign territory is a national or has a habitual residence or personal attachment in Brazil; II - the judgment has become final; III - the duration of the sentence to be served or remaining to be served is at least one (1) year, on the date of submission of the request to the sentencing State; IV - the fact that gave rise to the conviction constitutes a criminal offense under the law of both parties; and V - there is a treaty or promise of reciprocity. Article 101. The request for transfer of execution of the foreign State penalty shall be requested through diplomatic channels or through central authorities. Paragraph 1. The request shall be received by the competent organ of the Executive Branch and, after examining the presence of the formal admissibility requirements required by this Law or by a treaty, referred to the Superior Court of Justice for decision on the homologation. Paragraph 2. If the conditions referred to in paragraph 1 are not fulfilled, the request shall be filed by reasoned decision, without prejudice to the possibility of renewal of the application, duly instructed, once the objection has been overcome. Art. 102. The form of the request of transfer of execution of the sentence and its processing will be defined in regulation. Single paragraph. In the cases provided for in this Section, criminal execution shall be the responsibility of the Federal Court.

Section III
Transfer of Sentenced Person

Article 103. The transfer of a convicted person may be granted when the request is based on a treaty or there is a promise of reciprocity. Paragraph 1. The convicted person in the national territory may be transferred to his / her country of nationality or country in which he / she has a habitual residence or personal bond, provided that he expresses an interest therein, in order to comply with a sentence imposed by the Brazilian State by a final judgment. Paragraph 2. The transfer of a convicted person in Brazil may be granted together with the application of a measure preventing the re-entry into national territory, in the form of a regulation. Art. 104. The transfer of sentenced person will be possible when the following requirements are met: I - the sentenced person in the territory of one of the parties is a national or has habitual residence or personal bond in the territory of the other
party that justifies the transfer; II - the judgment has become final; III - the duration of the sentence to be served or remaining to be served is at least one (1) year, on the date of submission of the request to the sentencing State; IV - the fact that gave rise to the conviction constitutes a criminal offense under the law of both States; V - there is an expression of will of the condemned person or, when applicable, of his representative; and VI - there is agreement of both States. Art. 105. The form of the request for transfer of condemned person and its processing will be defined in regulation. Paragraph 1. In the cases provided for in this Section, the criminal execution shall be the responsibility of the Federal Court. Paragraph 2. No transfer shall be made when extradition is inadmissible.