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**BRA106054.FE**

Brazil: Whether a permanent resident automatically loses permanent resident status if outside the country for more than two years; recourse available to contest cancellation of permanent resident status (2017-March 2018)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

### 1. Legislation


Article 135 of Decree No. 9,199 provides the following:

[translation]

Article 135. A residence permit will be revoked in the following circumstances:

I. the original basis for the residence permit no longer exists;
II. a residence permit has been obtained on different grounds; and
III. absence from the country for a period of more than two years with presentation of a justification.

Paragraph 1 – The immigrant must notify the Federal Police immediately if he or she ceases to meet the conditions of his or her residence permit during its validity period.

Paragraph 2 – The provision in point I of the introduction does not prevent the immigrant from applying for a residence permit on other grounds. (Brazil 2017)

In correspondence with the Research Directorate, a lawyer in Rio de Janeiro practising in immigration law, among other fields, indicated that “if the person was away from Brazil for more than two years, he or she will not be able to reenter Brazil as a permanent resident” (Lawyer 6 Feb. 2018). The same source stated that, in accordance with Law No. 13,445 of 2017, permanent residents of Brazil who are outside the country for more than two years lose their permanent resident status (Lawyer 30 Jan. 2018).

The lawyer explained that, according to Law No. 6,815 of 1980 [superseded by Law No. 13,445 of 2017], an individual with permanent resident status in Brazil would “automatically” lose this status if he or she was absent from Brazil for more than two years, while Law No. 13,445 of 2017 provides that permanent resident status is lost when the individual is outside Brazil for more than two years “without justifying [his or her] absence” (Lawyer 30 Jan. 2018, emphasis in original). According to the same source, “there is nothing [in the 2017 law] that defines what type of justification would be acceptable” for being outside Brazil that would allow permanent residents to retain their status (Lawyer 30 Jan. 2018).
2. Available Recourse

In a telephone interview with the Research Directorate, a lawyer from Pontes Vieira Advogados, a São Paulo law firm specializing in, among other fields, immigration law, stated that if permanent resident status is lost, an administrative proceeding takes place, and the client has the right to administrative recourse (Lawyer 1 Feb. 2018). Similarly, the lawyer from Rio de Janeiro explained that, according to the 2017 law, permanent resident status can be lost only upon completion of an administrative proceeding in which the individual has the right “to the principles of contradictory debate and ample defence” (Lawyer 30 Jan. 2018).

The lawyer from Rio de Janeiro stated that an individual who has lost permanent resident status has 10 days to present his or her defence at the administrative proceeding (Lawyer 30 Jan. 2018). According to the same source, if permanent resident status is declared lost, the individual has 10 days to appeal the decision (Lawyer 30 Jan. 2018). The same source added that “the procedures for the administrative proceeding for loss of residence [status] have yet to be established in the norm to be issued by the Ministries of Justice and Labour” (Lawyer 30 Jan. 2018). The lawyer from Rio de Janeiro noted that these norms will also establish the conditions for appeal of judgments (Lawyer 6 Feb. 2018). Regarding the possibility of contesting the judgment rendered on appeal in the administrative proceeding, the same source stated that, “in principle,” there is no available recourse, but it remains to be seen whether the standards to be issued by the Ministry of Justice and Labour will confirm this (Lawyer 6 Feb. 2018). Further and corroborating information on current practices regarding administrative recourse options could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

References


Lawyer, Rio de Janeiro. 6 February 2018. Correspondence with the Research Directorate.


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**Additional Sources Consulted**

**Oral sources:** Cáritas Arquidiocesana – Rio de Janeiro, São Paulo; consultant in Brazil specializing in immigration law; immigration consulting firm – Brazil office; Instituto Migrações e Direitos Humanos; law firms in Rio de Janeiro and São Paulo; legal advisor in Brazil.

**Internet sites, including:** Asylum Research Consultancy; Brazil – Ministério da Justiça e Segurança Pública; ecoi.net; Human Rights Watch; International Organization for Migration; UN – Refworld.

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