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ZZZ200336.FE

Brazil and Haiti: Resident status of Haitian citizens in Brazil, including their rights and responsibilities (2010-September 2017)
Research Directorate, Immigration and Refugee Board of Canada

This Response replaces Response to Information Request ZZZ105986 of October 2017.

1. Status of Haitian Asylum Seekers in Brazil

Sources from 2016 state that the number of Haitian nationals who had migrated to Brazil since 2012 was estimated at 85,000 (US 3 Mar. 2017, 11) and over 85,000 since the 2010 earthquake (Jubilut, et al. Oct. 2016, 77). Sources report that most of the Haitians who arrived in Brazil [from 2010 to 2012 (IJDH and NWIRP 3 Apr. 2017, 1) or from January 2010 to February 2011 (IPPDH and IOM Aug. 2017, 64)] claimed refugee status (IJDH and NWIRP 3 Apr. 2017, 1; IPPDH and IOM Aug. 2017, 64).

Article 21 of Law No. 9,474 of 22 July 1997, on refugee status, states the following concerning temporary residence in Brazil:

Art. 21. After the application is submitted, the Federal Police Department will issue a receipt to the applicant and their family group located in the national territory, and consequently, they will have the right to stay until the final decision.

§ 1° Having issued the receipt to the refugee, the Ministry of Labour may issue them the temporary permit in order to work in Brazil.

§ 2° Minors, under the age of 14, will be included in the receipt issued to the refugees. (Brazil 1997)

A document dated 3 April 2017, on Haitians in Brazil and prepared by Norwest Immigrant Rights Project (NWIRP), an organization that defends the rights of immigrants, among others, by providing legal services and community education (NWIRP n.d.), in partnership with the Institute for Justice & Democracy in Haiti (IJDH), a non-profit organization in the United States that supports “the Haitian people in their struggle to achieve universal human rights, access to a just legal system, social justice, a society without violence and the right to participate fully in choosing their government” (IJDH n.d.), explains that, according to article 21 of Law No. 9,474, a migrant who applies for refugee status in Brazil will receive a provisional ID document, a temporary work permit, and a taxpayer ID number (Cadastro de Pessoas Fisicas, CPF) (IJDH and NWIRP 3 Apr. 2017, 1). Similarly, an article titled Haitian Migration in Brazil: Destination Study Results (La migration haïtienne au Brésil : résultat de l’étude à la destination[1]), published in July 2014 in the Cahiers migratoires n° 6 of the International Organization for Migration (IOM), states that applying for asylum in Brazil enables applicants to obtain a work permit and a CPF [2] (Fernandes and de Castro July 2014, 53).

Sources state that the National Committee for Refugees (Comitê Nacional para os Refugiados, CONARE), the Brazilian organization responsible for assessing and deciding on asylum claims and providing protection and assistance to asylum seekers (Brazil n.d.a), refused to grant Haitians refugee status (IJDH and NWIRP 3 Apr. 2017, 1; IPPDH and IOM Aug. 2017, 64), rendering the situation of Haitians in Brazil and of Haitians who had arrived at the Brazilian border [translation] “irregular” (IPPDH and IOM Aug. 2017, 65). According to a 2016 article in Forced Migration Review (FMR), published by the Refugee Studies Centre at the University of Oxford (FMR n.d.), the Brazilian government does not consider environment crises a valid reason for granting refugee status (Jubilut et al. Oct. 2016, 77).

According to sources, under Recommended Resolution No. 08/06 [of 19 December 2006 (de Souza Rodrigues 2016, 173)], the National Immigration Council of Brazil (Conselho Nacional de Imigração, CNIg) was able to consider the asylum claims of Haitian nationals and allow them to stay in the country (IPPDH and IOM Aug. 2017, 64; de Souza Rodrigues 2016, 173), by granting them [translation] “authorization to stay in Brazil for humanitarian reasons”
A report on Haitian migration to Brazil, prepared in November 2014 by Carlos Nieto, holder of a doctorate in social and political sciences at the Université de Louvain in Belgium and consultant for IOM (La RED n.d.), states that the Resolution No. 08/06 enabled Haitians to obtain [translation] “permanent residence [in Brazil] for humanitarian reasons” (Nieto Nov. 2014, 76).

An article published in January 2014 [3] on the website of the Instituto Migrações e Direitos Humanos (IMDH) (Institute of Migration and Human Rights), a non-profit organization located in Brazil whose mission is to promote recognition of citizenship for migrants and refugees and their rights and inclusion in public policies (IMDH 6 Jan. 2014), states that, during a plenary meeting in March 2011, the CNlg granted, under Resolution 08/06, [translation] “permanent residence in Brazil for humanitarian reasons” to 199 Haitian nationals (IMDH 20 Jan. 2014). According to that same source, the applications for refugee status presented to CONARE by Haitians continued to be sent to CNlg and, still based on Resolution No. 08/06, in September 2011, CNlg had granted [translation] “authorization for permanent residence” to more than 600 Haitians (IMDH 20 Jan. 2014).

Recommended Resolution No. 08/06 provides the following:

[translation]

**RECOMMENDED RESOLUTION N° 8 of 19 December 2006**

*To resolve on applications for refugee status to the National Committee of refugees (CONARE), and at the latter’s discretion, on the possibility of being examined by the National Immigration Council (CNlg) as special situations.*

**MINISTRY OF LABOUR AND EMPLOYMENT**

**NATIONAL IMMIGRATION COUNCIL**

The NATIONAL IMMIGRATION COUNCIL created by Law 8,490 of 19 November 1992, organized by Law No. 10,683 of 28 May 2003, under the authority granted to it by Decree No. 840 of 22 June 1993,

DECIDES:

**Article 1.** To recommend to the National Committee of Refugees (CONARE), organization attached to the Ministry of Justice, that the admissible applications for refugee status be sent to the National Immigration Council (CNlg) and, at the discretion of CONARE, that foreign nationals be granted the opportunity to remain in the national territory for humanitarian reasons.
The situation of staying in the country of foreign nationals, whose application was sent by CONARE to CNlg, is examined under Normative Resolution No. 27 of 25 November 1998, which resolves on missing and/or special cases.

**Article 2.** The present resolution becomes effective on the date of its publication.

**NILTON FREITAS**

**Current Chair, National Immigration Council.** (Brazil 2006, emphasis in original)

Normative Resolution No. 27, mentioned in the Recommended Resolution No. 08/06, provides the following:

[translation]

**Normative Resolution No. 27 of 25 November 1998**

...  

**Art. 01** Special cases and other contingencies that are not set out in the legislation will be subjected to the National Immigration Council, on a case-by-case basis.

**First paragraph.** Special cases will refer to cases that, although they are not expressly defined in the resolutions of the National Immigration Council, will have elements that enable them to be considered satisfactory for obtaining the visa or permanency.

**Second paragraph.** The other contingencies not set out in the legislation will refer to conditions that are not described in the resolutions of the National Immigration Council.

**Art. 02** For the assessment of applications based on this normative resolution, the immigration criteria, the principles and the reasons, as set out in the concerned legislation, must be respected.

**Art. 03** The decision based on the above constitutes neither evocable precedents nor cases of jurisprudence for decisions from other organizations or agencies.

**Art. 04** Resolution No. 32, of 19 October 1994, is therefore revoked.

**Art. 05** This normative resolution will be effective as of its date of publication.

**JOÃO CARLOS ALEXIM**

Chair, National Immigration Council. (Brazil 1998, emphasis in original)

An undated document prepared by the CNlg, the Ministry of Labour in Brazil (Ministério de Trabalho) and the IOM, on Haitian immigration in Brazil, states that 51,124 [translation] “authorizations for residence” were issued to Haitian nationals from January 2012 to May 2016 under Normative Resolution N°. 27 (Brazil and IOM n.d., 1).
1.1 Normative Resolutions Adopted from January 2012 to September 2016

Sources state that in January 2012 the CNlg adopted Normative Resolution No. 97 to grant for a period of five years, to Haitian nationals [whose asylum claim was rejected (Fernandes and de Castro July 2014, 53)], [translation] “a permanent humanitarian visa” (Fernandes and de Castro July 2014, 53) or a [translation] “‘permanent' visa […] for ‘humanitarian reasons’” [4] (IJDH and NWIRP 3 Apr. 2017, 2). Normative Resolution No. 97 of January 2012 provides the following:

[translation]

**CNlg Normative Resolution No. 97 of 12/01/2012**

*Resolve on the issuance of a permanent visa to Haitian nationals under article 16 of Law No. 6,815 of 19 Aug. 1980.*

The National Immigration Council, created under Law No. 6,815 of 19 August 1980, and organized by Law No. 10,683 of 28 May 2003, under the authority granted to it by Decree No. 840 of 22 June 1993

States:

**Article 1.** A permanent visa set out in article 16 of Law No. 16 of Law No. 6,815 of 19 August 1980 may be granted to a Haitian national for humanitarian reasons, for a duration of five (5) years under article 18 of that same law, a circumstance that must be noted on the incumbent’s ID card.

Sole paragraph. For the purpose of this resolution, humanitarian reasons are considered to be those that result from the deterioration of the living conditions of the Haitian population following the earthquake in Haiti on 12 January 2010.

**Article 2.** Under this Normative Resolution, the visa is granted on an ad hoc basis by the Ministry of Foreign Affairs through the Embassy of Brazil in Port-au-Prince. *(Paragraph written pursuant to CNlg Normative Resolution CNlg No. 102 of 26/04/2013)* *(Revoked by CNlg Normative Resolution No. 102 of 26/04/2013):*

Sole paragraph. A maximum of 1,200 (one thousand two hundred) visas may be granted per year, which corresponds to an average of 100 (one hundred) visas per month, without prejudice to the other forms of visas set out in the legal provisions of the country.

**Article 3.** In compliance with the legislation in effect, prior to the end of the period set out in paragraph 1 of this normative resolution, Haitian nationals are required to provide justification of their employment to validate their permanence in Brazil and be issued a new foreign ID.
Article 4. This normative resolution is in effect for a period of two (2) years. The length of validity may be extended.

Article 5. This normative resolution enters into effect on the date of its publication.

PAULO SÉRGIO DE ALMEIDA
Chair, Council. (Brazil 2012, emphasis in original)

Sources explain that Resolution No.97 limited to 1,200 the number of humanitarian visas granted per year to Haitian nationals, that is, 100 per month (IPPDH and IOM Aug. 2017, 64; Fernandes and de Castro July 2014, 53; Nieto Nov. 2014, 76), excluding the visa applications for family reunification (IPPDH and IOM Aug.2017, 64; Fernandes and de Castro July 2014, 53). Sources state that these humanitarian visas could only be issued by the Consulate of Brazil in Port-au-Prince (IPPDH and IOM Aug. 2017, 64; Nieto Nov. 2014, 76).

Sources report that the adoption of Normative Resolution No. 97 failed to decrease both the surge of Haitian immigrants at the Brazilian border and the number of visas issued in Port-au-Prince (Fernandes and de Castro July 2014, 53; Lois and Rodriguez 2015, 396). According to the article published in July 2014 in the IOM's Cahiers migratoires n° 6, [translation] "[i]n November 2012, the schedule for the authorization of visas for 2013 was full, and the Consulate [of Brazil in Port-au-Prince] opened a waiting list" (Fernandes and de Castro July 2014, 53). A 2015 article on the protection of Haitian migrants in Brazil, written by Rivana Barreto Ricarte de Oliveira, who holds a Juris Doctor degree at the University of São Paulo and is currently [translation] “public defender at the 9th office of criminal defense” (Escavador 28 Aug.2017), explained that some Haitians had been [translation] “isolated” for about three months in Inãpari, a Peruvian city on the border with Brazil (Ricarte de Oliveira 2015). A 2017 joint publication on Haitian migration, prepared by the Instituto de Políticas Pública en Derechos Humanos (IPPDH) (Institute of Public Policy and Human Rights) of the Mercado Común del Sur (MERCOSUR) (Southern Common Market), with the support of the IOM, states that in Brasiléia, in the Brazilian state of Acre, local authorities had established a camp for Haitians (IPPDH and IOM Aug. 2017, 66).

According to sources, the Brazilian government adopted Normative Resolution No. 102 in April 2013 (IPPDH and IOM Aug. 2017, 66; Fernandes and de Castro July 2014, 53). Normative Resolution No. 102 of 26 April 2013 provides the following:

Normative Resolution No. 102 of 26/04/2013

Published in the Official Journal on 29 March 2013.

Modifies article 2 of Normative Resolution 97 of 12 January 2012.
The National Immigration Council, created under Law No. 6,815 of 19 August 1980, and organized by Law No. 10,683 of 28 May 2003, under the authority granted to it by Decree No. 840 of 22 June 1993

States:

**Article 1.** The paragraph of article 2 of Normative Resolution No. 97 of 12 January 2012 enters into effect with the following wording:

"**Article 2.** Under this Normative Resolution, the visa is granted on an ad hoc basis by the Ministry of Foreign Affairs."

**Article 2.** The sole paragraph of article 2 of Normative Resolution No. 97 of 2012 is repealed.

**Article 3.** This normative resolution enters into effect on the date of its publication.

PAULO SÉRGIO DE ALMEIDA

Chair, Council. (Brazil 2013a, emphasis in original)

Sources explain that Normative Resolution No. 102 revokes the limit of visas granted and eliminates the requirement that the visas be processed only from Port-au-Prince (IPPDH and IOM Aug. 2017, 66; Fernandes and de Castro July 2014, 53-54), opening up the opportunity for them to be issued by, [translation] “among others,” the Brazilian consulates in Ecuador, Bolivia and the Dominican Republic (IPPDH and IOM Aug. 2017, 66).

The following normative resolutions extend the validity of Resolution No. 97 of 12 January 2012 for the periods indicated: Normative Resolution No. 106 extends the validity for twelve months (Brazil 2013b), Normative Resolution No. 113 extends the validity until 30 October 2015 (Brazil 2014), Normative Resolution No. 117 extends the validity until 30 October 2016 (Brazil 2015) and Normative Resolution No. 123 extends the validity until 30 October 2017 (Brazil 2016).

The following table, published in the undated document prepared by CNIg, the Ministry of Labour in Brazil and the IOM, shows the number of visas issued by the Ministry of Foreign Affairs of Brazil (Ministério das Relações Exteriores, MRE) between 2012 and May 2016, under Normative Resolution No. 97, for a total of 48,361 humanitarian visas:

[translation]

<table>
<thead>
<tr>
<th>Place of application</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Port-au-Prince (Haiti)</td>
<td>1,387</td>
<td>5,045</td>
<td>7,020</td>
<td>13,923</td>
<td>12,975</td>
<td>40,350</td>
</tr>
<tr>
<td>Quito (Ecuador)</td>
<td>1,139</td>
<td>3,136</td>
<td>3,536</td>
<td>2</td>
<td>7,815</td>
<td></td>
</tr>
<tr>
<td>Santo Domingo (Dominican Republic)</td>
<td>112</td>
<td>2</td>
<td>32</td>
<td>6</td>
<td>152</td>
<td></td>
</tr>
<tr>
<td>Lima (Peru)</td>
<td>24</td>
<td>16</td>
<td>4</td>
<td></td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Buenos Aires (Argentina)</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3</td>
</tr>
</tbody>
</table>
### Place of application

<table>
<thead>
<tr>
<th>Place of application</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>MRE Sao Paulo</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1387</td>
<td>6296</td>
<td>10188</td>
<td>17507</td>
<td>12983</td>
<td>48361</td>
</tr>
</tbody>
</table>

(Brazil and IOM n.d.a, 2).

### 2. Permanent Visas in Brazil

The website of the Visa Application Reception Center for Brazil (BVAC), managed by the IOM and the [translation] “exclusive provider of special permanent visa applications and family reunion visa applications (VIPER) in Haiti for the visa section at the Embassy of Brazil in Port-au-Prince” (Brazil and IOM n.d.b), states the following:

[translation]

**For family reunification**, a permanent visa may be granted to dependents of any Brazilian or foreign citizen over the age of 18, having a permanent visa for Brazil.

Dependents are considered:

a. Spouse (husband/wife);

b. Ascendants (father/mother), as long as the applicant (Brazilian citizen) proves their need for assistance;

c. Single children, under the age of 18, or over on the condition that they are unable to meet their own needs;

d. Brothers/sisters, grandson (granddaughter) or great grandson (great granddaughter) if orphans, single and less than 18 years old, or over on the condition that they are unable to meet their own needs;

The abovementioned dependents will be considered as such until the age of 24, on the condition that they are enrolled in a higher training or doctorate curriculum, and that Brazilian nationals are treated in the same manner in the foreign national's country of origin. (Brazil and IOM n.d.c, emphasis in original)

That same source states that

[translation]

[t]he Embassy of Brazil in Port-au-Prince and the International Organization for Migration (IOM) report that appointments through BVAC for applications for humanitarian permanent visas are suspended because no dates are available until 30 October 2017, when Resolution 97/2012 of the National Immigration Council (CNIg) of Brazil expires. Appointments may resume based on the decision of CNIg to renew the said Resolution.

BVAC will continue to receive applications for appointments for permanent visas under family reunification (husband/wife/children). (Brazil and IOM n.d.d)
A copy of the BVAC web page indicating the documents to provide to obtain the family reunification visa and the special permanent visa is attached to this Response.

For further information on the permanent visa in Brazil, consult Response to Information Request BRA105515 of May 2016.

3. Permanent Residence in Brazil

The IJDH and NWIRP document explains that, to apply for permanent residence Haitians must go to the Federal Police Department before the expiration of their five-year visa (IJDH and NWIRP 3 Apr. 2017, 2). Based on article 18 of Law No. 6,815 of August 1980, Haitian nationals must prove that they are working and living in Brazil (IJDH and NWIRP 3 Apr. 2017, 2). Article 18 of Law No. 6,815 states the following:

[translation]

Art. 18. The granting of the permanent visa may be conditional, for a period of 5 (five) years at the most, to the exercise of a specific activity and settlement in a given region in the Brazilian territory. (Brazil 1980, emphasis in original)

Sources state that the validity period of the permanent residence is indeterminate (IJDH and NWIRP 3 Apr. 2017, 8; ACHAM Brazil 2014/2015, 24), but that permanent residence must be re-issued periodically, currently at nine-year intervals (ACHAM 2014/2015, 24). According to a document by the American Chamber of Commerce for Brazil (AMCHAM) dated 2014/2015, re-issue of permanent residence is automatic and there is no question of re-application or re-qualification (ACHAM 2014/2015, 24).

According to the website of the Consulate of Brazil in Montréal, foreign nationals will lose their permanent resident status in Brazil [Brazil English version] “if absent from the national territory for a period exceeding two years” (Brazil n.d.b). That same source states the following:

[Brazil English version]

The Consular Authority may grant a new VIPER to a foreigner who once lived in Brazil as a permanent resident and then left in order to pursue or complete:

- University studies (undergraduate or graduate level);
- Professional training;
- Research activity at an institution recognized by the Brazilian Ministry of Science and Technology;
- Professional activity for the Brazilian government.

The application should be submitted directly to the Consular Office which has jurisdiction over the applicant’s place of residence. The following documents are required:
Proof of the activities developed abroad;
Official proof of the prior permanent residence status in Brazil until the start date of the activities abroad;
Certificate of absence of criminal record (Police clearance certificate (non-fingerprint name check from RCMP or local police department for applicants), and other documents required by the Consular Office. (Brazil n.d.b)

3.1 Permanent Residence Granted to 43,781 Haitian Nationals

A joint ministerial act from the Ministry of Labour and Social Security and the Ministry of Justice states that, considering that CNIlg invoked, under Normative Resolution No. 97, [translation] “humanitarian grounds to justify the immigration of Haitians following the earthquake of 12 January 2010 in Haiti,” the Haitian citizens whose names are on the list attached to the communiqué were granted “permanent residence” (Brazil n.d.c).

According to the IJDH and NWIRP document of April 2017, the ministerial act was signed in November 2015 (IJDH and NWIRP 3 Apr. 2017, 2). Sources explain that the 43,781 Haitian nationals authorized by the ministerial act arrived in Brazil in the last five years, but could not be accepted as refugees (HaïtiLibre 12 Nov. 2015) or applied for refugee status in Brazil between January 2011 and July 2015 (Folha de S. Paulo 11 Nov. 2015). An article from November 2015 in the newspaper Folha de S. Paulo, a Brazilian daily, reports that previously permanent residence could only be requested by Haitians who arrived in Brazil with the humanitarian visa created in 2012 and issued by the Embassy of Brazil in Port-au-Prince (Folha de S. Paulo 11 Nov. 2015).

However, the April 2017 IJDH and NWIRP document indicates that Haitians who applied for refugee status prior to 13 January 2012, the effective date of Normative Resolution No. 97, are also authorized under the ministerial act (IJDH and NWIRP 3 Apr. 2017, 2). According to that same source, to apply for permanent residence through this process, the Haitians must submit to the Brazilian authorities: “a photo, a birth or marriage certificate translated by a sworn translator, or a consular certificate, a negative certificate of criminal record issued in Brazil [showing that no crime was committed in Brazil], and a statement that they have not been prosecuted criminally in Haiti,” as well as proof of payment of the registration fee and the issuance of the Foreign Identity Card (CIE) (IJDH and NWIRP 3 Apr. 2017, 2). That same source states that Haitians had one year from the effective date of the ministerial act to apply for permanent residence and that, according to the Ministry of Labour, 31,223 Haitians had completed the procedure as of January 2017 (IJDH and NWIRP 3 Apr. 2017, 2-3).

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.

Notes

[1] The article titled *La migration haïtienne au Brazil : résultat de l'étude à la destination* was written by Duval Fernandes, Coordinator of the Higher Studies Program in geography at the Pontifical Catholic University of Minas Gerais and Maria da Consolação Gomes de Castro, Researcher in the Higher Studies Program in geography at the Pontifical Catholic University of Minas Gerais and professor in the Department of Social Service at that same institution (Fernandes and de Castro July 2014, 51).

[2] The website of the Ministry of Finances (Ministério da Fazenda) states that the CPF is a databank created for the Federal Revenue Service that contains taxpayers' information (Brazil n.d.a).

[3] The article published on the IMDH website was written by Duval Fernandes, a professor in geography at the Pontifical Catholic University of Minas Gerais; Rosita Milesi, lawyer and director of IMDH; and Andressa Farias, recipient of a Masters in Geography at the Pontifical Catholic University of Minas Gerais (IMDH 20 Jan. 2014).

[4] The BVAC website states that the [translation] “[s]pecial [p]ermanent [v]isa is a humanitarian permanent visa granted exclusively to Haitian nationals searching for opportunities in Brazil and wanting to live and work there. This visa category falls under the existing cooperation between the governments of Brazil and Haiti to regularize Haitian migration in the Brazilian territory” (Brazil and IOM n.d.b).

References


Brazil (Conselho Nacional de Imigração (CNIg) and Ministério do Trabalho) and the International Organization for Migration (IOM). N.d.a. *Imigração haitiana no Brasil: Características sociodemográficas e laborais na Região Sul e no Distrito Federal*. [Accessed 18 Sept. 2017]


**Additional Sources Consulted**

**Oral sources:** Brazil – Consulate in Toronto, Conselho Nacional de Imigração, BVAC; Conectas; Viva Rio.

**Internet sites, including:** Amnesty International; ecoi.net; International Crisis Group; UN – Refworld, ReliefWeb; US – Department of State, Library of Congress.

**Attachment**


**Date modified:**

2020-06-01