

Peru New Immigration Regulation for the Hiring of Foreign Worker

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In recent years, Peru has become an attractive destination for the migration of foreign workers, considering our economic growth, as well as the favorable conditions in commercial and labor matters. Let's not forget, also, that the Peruvian labor market was facing shortages of talent (qualified positions) not covered by local professionals or technicians, which was exacerbated by the demand for sophisticated products and services, upon which, businessmen found themselves in the need to look for foreign professionals.

Under the scenario described, there was a prominent need for a new migration regulation taking into account the country necessities in terms of technology, talent, development of industry, tourism, population policies among other aspects, that will constitute a new legal framework in accordance with the increase of foreigners migration and its different status, solving the past difficulties that where restraining foreigners to work in Peru formally and duly employed according to law and permitting foreign companies to designate foreign workers to perform services to Peruvian companies under the scope of services agreements.

Based on the labor aspects above mentioned, Legislative Decree No. 1350, Legislative Decree on Migration (dated 07.01.2017), regulates a series of migratory qualifications that authorizes foreigners to provide dependent and independent services in our country.

It should be noted that in terms of recruitment of foreign workers the streamlining of these procedures before the Labor Administrative Authority, (LAT) began with the approval of Legislative Decree No. 1246 (dated 10.11.2016), regulation which approves various measures of administrative simplification, eliminating some of the requirements that were cumbersome and made it difficult to comply with for the approval of foreign workers contracts.

After a brief description of the foreign labor framework, it is important to describe the process of hiring foreign workers in Peru, the same that entails 2 phases; the

Labor Phase that is filed before the LAT, and the Migration Phase which is filed before the National Superintendence of Migration, NSM.

It is essential for a foreign citizen to provide services as a worker in Peru to comply with the following:

- i) Hold a qualifying migrant status as worker, which may be granted through a temporary or resident workers visa, and
- ii) Hold a foreign workers contract approved by the labor authority (unless those cases exempted by law that will be further detailed).

A. Labor Phase

Legislative Decree No. 689 establishes the rules that regulate the Labor Phase or the procedure that must be followed before the LAT, to hire a foreign citizen, where a series of requirements, limits and exonerations are established to employers and employees. It should be noted that there is a special category and treatment for Andean migrant workers regulated by Decision No. 545 that applies to nationals of the Andean Community of Nations (Bolivia, Colombia, Ecuador and Peru).

It should be noted that, prior to signing the employment contract, it must be verified that the foreign citizen has an immigration authorization that allows him to sign contracts, be it a business visa, which can be obtained before entering Peru at a Peruvian Consulate or at time to enter Peru if they are citizens of countries with which Peru has signed agreements for such purposes. On the contrary, a special permit from the SNM must be obtained prior to the signing of the contract.

B. Migratory Phase

Once the work contract is approved, the application for the change of migratory worker status is filed before the SNM, which grants a temporary or resident visa taking into account the following details:

Temporary workers visa. Can be requested by the person to be hired in Peru before a Peruvian Consulate abroad, and shall be obtained prior to his entry into Peru or alternatively obtained before the National Superintendence of Migrations once the foreign citizen has entered into the country. Once the application has been approved, a temporary workers visa will be granted for up to 90 calendar days, extendable for up to one year. This visa will be stamped in the worker Passport.

Resident workers visa. The application is filed with the SNM, and will be granted for a period of one year. Once the procedure has been approved, the registration in the Central Registry of Foreigners shall be requested, after which the Foreigner Immigration Card will be issued, as the identity document for foreigners residents in Peru.

During the evaluation of the application and until its approval and issuance of the Foreigner Immigration Card, the foreign citizen cannot begin any working activity and cannot leave Peru without first requesting a special travel permit, which will be granted for 30 days.

On the other hand, it is worth mention that for the cases in which a company or entity not domiciled in Peru perform services in favor of a Peruvian company where the agreement contemplates sending to Peru workers to perform the same, the migratory rules provides for the temporary visa for designated worker (temporary designation), or permanent (Designated), for which it will be necessary for the foreign entity to previously subscribe a Service Contract, Technical Cooperation or another similar agreement with a Peruvian company providing for the designation of workers to perform the services to be provided to the Peruvian company.

In both cases, a temporary visa will be granted for up to 90 (ninety) days, the same that is subject to be extended for up to (01) one year.

We must point out that under this status, the designated worker is only authorized to provide services in favor of the foreign company rendering services in Peru, so there will be no dependency or subordination link between the designate worker and the Peruvian company receiving the service. Under this visa status, the designated worker is prohibited to provide remunerative or lucrative services in Peru, nor receive any income from a Peruvian source other than the one that supports its prominence or designation which shall be remunerated by the foreign company.

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