

Nigeria - Immigration Regulations, 2017

Introduction

On Monday, 20 March, 2017, the Honourable Minister of Interior, Lt. Gen. Abdulrahman Dambazau (Rtd), announced at a press conference the release of the Immigration Regulations, 2017. However, the Regulations became effective from 27 February, 2017.

The objectives of the new immigration regulations are to provide a legal framework for the effective implementation of the Immigration Act, 2015 and consolidate existing Immigration Regulations in Nigeria. Therefore, the 1963 Immigration Regulations and the 1963 Immigration (control of Aliens) Regulations are now repealed.

The Regulations would serve as the operational framework for the implementation of the Immigration Act, 2015. It would also enable global mobility practitioners and other relevant stakeholders to better understand immigration policies relating to expatriate employment and related border control issues in the country. The expectation, therefore, is that the Regulations will facilitate the easy entry of foreign nationals into the country and consequently help to improve the ease of doing business in Nigeria.

This Newsletter provides a brief summary of the key points contained in the Regulations and examines some of the implications.

Summary of Key Points / Implications

Business Permit

The Regulations reiterate the requirement to obtain a Business Permit for the establishment of a profession, business or trade in Nigeria. The issuance of the permit is subject to any condition(s) that the Minister of Interior may choose to impose. The Minister can, therefore, revoke, vary or

cancel a business permit, if the stipulated conditions are not met. In addition, the Minister or the Comptroller General should be notified within 21 days of any change of name, nature or address of a business or trade. However, having a business permit does not give any right or entitlement to the holder to enter or remain in Nigeria without a valid residence permit or visa.

There are questions about the continued relevance of the requirement for Business Permit, given that there are many other provisions that serve the same purpose. For example, issuance of expatriate quota can also serve as an authorization for the establishment of a business, trade or profession in the country. The concern therefore is why duplicate such authorization if the intention is to improve Nigeria's competitiveness in the Doing Business Index of the World Bank Group. There is also a provision in the Nigerian Investment and Promotion Commission (NIPC) to the effect that any business with foreign shareholding must register with the Commission.

Employment of Foreign Nationals

Applications relating to employment of non-Nigerians shall be made to the Comptroller General in writing. The information, which must be provided on the application, includes the full name of the prospective employee, date and place of birth and nationality.

Issuance of Residence Permits

A foreign national who has imported an annual minimum "threshold of capital" over a period of time may be issued a permanent residence permit, provided that the investment is not withdrawn. This is designed to encourage foreign nationals to make investments in the country, while remaining compliant with any other condition prescribed for the issuance of such permit. This is a

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welcome development as an investor can be given a residence permit on his own merit, without occupying an Expatriate Quota slot or coming on the platform of a registered company in Nigeria.

However, the enabling Act and the Regulations do not specify the minimum capital threshold. It is likely that this will be subject to government's dictate on annual basis.

The residence permit, which has a maximum validity period of two (2) years, shall be valid for the purposes of re-entry into Nigeria by the holder while the permit remains valid. However, expatriates awaiting regularization shall be allowed re-entry within ninety (90) days from the date of endorsement of "Awaiting Regularization" (AR) on their international passports. This is important as it reinforces the need for expatriates to obtain permanent residence permits (green card) within three months of receiving the AR endorsement.

Paragraph 14 of the new Regulations provides for issuance of residence permits to all foreign nationals (male or female) married to Nigerians, as multiple re-entry permits, irrespective of the class of visas with which they entered Nigeria. In essence, male spouses can now enjoy same privileges as Niger-wives.

Visa-on-Arrival²

The Regulations provide the legal framework for the introduction of the visa-on-arrival scheme in Nigeria. The Comptroller General is empowered to issue visa on arrival on application by any person. In practice, the scheme is limited to those coming to Nigeria on business, and not for tourism.

Establishment of an Immigrant's Registry/ Notification of Arrival and departure of Immigrants

There is a provision for the establishment of the Registry of Immigrants, which should contain the relevant information and particulars that may be required for identification, registration and control of all immigrants in the country.

Registered Immigrants are required to notify the State Registry within seven (7) days, if they intend to change residence from one state to another, and before leaving their places of residence for any period exceeding seven days. They will also be expected to report to the Immigration officer in the new State of residence within seven (7) days of arrival and submit their international passports, residence permits for necessary registration.

This aspect of the Regulations is to ensure an effective monitoring of

movement of expatriates within the country.

In-transit and other Visitors

The Regulations clearly outlines the entry requirements for in-transit visitors and the conditions for obtaining a Visa on Arrival. It further stipulates that every visitor should hold a visiting permit issued by the Comptroller General, for a period not exceeding ninety (90) days.

Issuance of Fresh International passports to naturalized Nigerians and adopted children

The Regulations stipulate that all applications for the issuance of fresh international passports to naturalized Nigerians as well as children adopted by Nigerians must be processed at the Immigration Headquarters in Abuja only.

Penalties for Immigration offences

The Regulations further emphasizes the implications of non-compliance with immigration policies as stated in the Immigration Act, 2015. The related penalties for immigration offences, such as presentation of forged documents, failure to renew immigration facilities, altering of travel documents, enabling illegal residence, smuggling of illegal immigrants, obstruction of justice and other relevant offences by corporate

bodies, have been highlighted for clarity.

The Regulations also emphasizes that any corporate body, which fails to employ Nigerians to understudy expatriate employees or allows the un-authorized utilization of its expatriate quota positions by any other organization, commits an offence and is liable to paying a fine of three million naira (N3m) for each month the position has been occupied by an expatriate without such understudy, and the expatriate employee shall be deported.

Immigration officers are also empowered to arrest, without warrant, any person for which there are reasonable grounds to believe that he or she has committed an offence under the Immigration Act.

Conclusion

The Regulations will serve as a standard operating procedure to facilitate a more efficient management of Nigeria's immigration processes. It is, therefore, expected that government, through its relevant agencies, would put in place measures for the effective implementation of the regulations and ensure compliance by relevant stakeholders. There should be a monitoring mechanism to identify and address any potential issues that may arise in the course of the implementation.

¹ This is sequel to the revocation of re-entry visas in Nigeria.

² Please see our Newsletter of 13 March, 2017 on the Visa-on-Arrival Scheme.

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