



H.R. ON ALERT!

CORPORATE IMMIGRATION COMPLIANCE IN NIGERIA

INTRODUCTION

Nigeria is an emerging market with a number of companies with foreign interests either entering in to joint ventures with Nigerian companies or as wholly owned foreign companies. Often times, there is need for the engagement of specialized expatriate personnel to undertake assignments in various fields especially in technical services. Hence, companies source for expatriates who possess the requisite expertise to carry out these services or carry out intra-company transfer of employees from other countries.

This article seeks to highlight the various compliance issues that we encounter on a regular basis and the steps to ensure compliance with regulatory provisions.

BUSINESS VISA HOLDERS SEEKING EMPLOYMENT IN NIGERIA

A business visa ordinarily enables investors, businessmen, to attend meetings, workshops or seminar in Nigeria for short periods and further enables those who have the intention of establishing a business to do so. It is instructive to note that a business visa does not allow the holder to seek employment.

The Immigration Act provides that companies cannot employ a foreign national without the permission of the Director of Immigration except the Minister of Interior grants a waiver/exemption by notice¹.

¹ Section 34 Immigration Act Cap 11 Laws of the federation of Nigeria 2004



We have recently discovered that some companies are not aware of the need to apply for an expatriate quota for long term work authorization or to seek the permission of the Immigration Service to apply for a Temporary Work permit (TWP) for short term work authorization. The companies employ foreign nationals that arrive in Nigeria with visitors or business visas. It is paramount that the H.R confirm the immigration status of expatriate employees and take steps to regularize their immigration status.

ILLEGAL EMPLOYMENT OF EXPAT EMPLOYEE

All over the world strict compliance to immigration regulations is taking centre stage and Nigeria is not an exception. Companies desirous of employing foreign nationals in Nigeria must first seek and obtain the consent in writing of the Director of Immigration while persons entering Nigeria for business purposes must obtain the consent of the Minister of Interior in writing.² The employer company is responsible for the application and would be held liable for failure to obtain consent.

It has also become prevalent that immigration officials carry out unscheduled site visits to companies that employ foreign nationals, though the Immigration Act is silent as to on-site inspection, in practice there are departments created within the immigration service responsible for investigation if the need arises. It is therefore advised that the H.R team must have copies of their expatriate employee's work permits and passport pages.

² Section 8(1) Immigration Act Cap 11 Laws of the federation of Nigeria 2004



BACKGROUND CHECK OF EMPLOYEES QUALIFICATION

There is a need for background checks of documents (diplomas, degrees, and professional qualification) of prospective expatriate employees by Employer Company.

It is not unusual that employees' present fake documents, it is the responsibility of the company to conduct a preliminary verification of credentials and documents before the documents are submitted to the Immigration service, this will save the companies from any undue embarrassment.

JOB DESIGNATIONS FOR TEMPORARY WORK PERMIT HOLDERS

Companies that intend to engage the services of expatriates for short term assignments are required to apply to the Comptroller General of Immigration for a Temporary Work Permit (TWP). It is pertinent to note that TWP holders are not entitled to job designations. The job designations connote an intention to keep the expat employee on a long term basis and would definitely raise a red flag with the Immigration Service.

EXPIRATION OF EXPATRIATE QUOTA

An expatriate quota is a permit issued by the Federal Ministry of Interior which allows a company registered in Nigeria to employ foreign nationals. The Expatriate quota is granted for a period ranging between 2/3 years at the discretion of the Minister of the Interior and subject to renewal upon expiry.

We have discovered that a number of companies do not keep track of the expatriate quota's expiry date. On the expiration of the expat quota, the foreign



nationals do not have a basis of employment in Nigeria and this may jeopardize the company's operations. It is advisable that the company has a proper monitoring system that ensures that the expatriate quota renewal commences before the substantive expatriate quota expires.

NIGERIAN UNDERSTUDIES

To further protect local content/workers, it is advisable that companies advertise employment vacancies and also interview for positions in their organizations before seeking expat workers.

It is also pertinent to state that companies must ensure that foreign national employees have Nigerians understudies. The details of the Nigerian understudy must reflect in the monthly expatriate quota returns filed with the immigration authorities. All relevant information must be disclosed by the company to the immigration authorities and where an expat is desirous of working in Nigeria there must be evidence of work experience to fill any vacant position on the expatriate quota. The expertise of the expat must not be in question.

It is instructive to note that where foreign national has been convicted for deportation, the employer company shall pay the expenses incidental to the voyage from Nigeria of the Person to be deported and his dependants (if any) and maintenance of such person and his dependants³.

The Immigration Act further states that it shall be an offence for any employer of persons liable to repatriation to discharge any such persons without giving notice to

³ Section 22(3) Immigration Act Cap 11 Laws of the federation of Nigeria 2004



the Director of Immigration⁴, where this happens the business of the employer may be wound up subject to the provisions of the immigration Act⁵.

CONCLUSION

It is quite unfortunate that the immigration lawyer is always called upon after the fact (the arrest, detention for deportation of the foreign national employee) It is advisable that companies seek the counsel of an immigration lawyer every step of the way especially on issues of compliance with the relevant Immigration laws and regulations in place, Human resource experts rarely ever do this, when a company intends to employ an expat, The Immigration Lawyer can always guide the Human resource department of companies to avoid the pitfalls of our Immigration laws and regulations.

It should be noted that this article is for general information only. It is not offered as advice, on any particular matter, whether legal procedural or otherwise. If you have any questions about this article, please contact the author.

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⁴ Section 47 Immigration Act Cap 11 Laws of the federation of Nigeria 2004

⁵ Section 49 Immigration Act Cap 11 Laws of the federation of Nigeria 2004