

The Challenges of Expatriate Employment in Nigeria



Introduction

Expatriate employment is fraught with so many challenges. These challenges are multi-dimensional and often range from adapting to a new environment and culture to tax related issues, immigration and so much more.

Most organizations, which require expatriates to run their operations, attempt to manage the personal expectations of their expatriate employees and the regulatory needs associated with expatriate employment. The steps taken in this direction will usually go a long way in ensuring that the expatriates and their employers comply with all the relevant laws and regulations.

The thrust of this newsletter is to provide HR Practitioners and other service professionals with the awareness of these regulatory challenges, the ability to identify the related issues and the relevant information for managing the challenges.

Regulatory Challenges in Perspective

One of the critical aspects of expatriate employment in Nigeria is the need for organizations seeking expatriate employees to comply with the laws and regulations defining the visa regime and residency in Nigeria. It is, therefore,

imperative for these organizations to ensure that they have authentic Expatriate Quota (EQ) approvals issued by the Federal Ministry of Interior (FMI).

Section 56 (5) of the Immigration Act, 2015 prescribes a jail term of five (5) years or a fine of one million naira (N1m), or both to anyone who makes a false representation to any officer of the Nigeria Immigration Service (NIS).

The Act seeks to address issues of non-compliance in all its ramifications with the enabling legislation. Consequently, it is no longer going to be business as usual for those who feel they can obtain EQ approvals through the back door and present such to the NIS as authentic documentation to support the applications for visas and residence permit on behalf of their expatriates. Anyone caught in this criminal act will face the penalty as prescribed by the law.

The administration and applicability of EQ positions have remained a contentious issue between HR Practitioners and regulatory agencies. Quota trafficking is one prevalent abuse in the EQ administration process. HR Practitioners are caught between the demand of meeting the business needs of their organizations and the huge challenges of meeting the statutory requirements of the regulatory agencies. Unfortunately,

most HR Practitioners, in their quest for meeting the perceived urgent needs of their organizations, tend to undermine the law in this respect. Any organization, which fails to align the job portfolio of its expatriate employee to the EQ approval granted to it, will be deemed to be in violation of the regulations guiding EQ administration.

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One easy way of identifying an expatriate whose job profile does not correspond with the EQ position occupied is through his business card. The designation on his residence permit will be different from the one on the business card. HR Practitioners and resident expatriates need to note this and ensure that the right things are done to remain compliant. Another variant of Quota trafficking happens where there is no

contractual agreement between company A and company B and the expatriate employed by Company A is working for Company B.

Where an expatriate is required to fill a particular position and the company does not have an approval to accommodate the need, the EQ approval process allows a company to either re-designate an existing position or apply for an additional position. There is no limit to the number of EQ positions a company can obtain, provided there is sufficient business justification for it.

A key administrative protocol of the EQ regime requires strict adherence to the principle of understudy. Quota approvals are issued with certain prescribed conditions, which the beneficiary companies must comply with. The conditions are explicitly stated in the letter bearing the approval of the Honorable Minister of Federal Ministry of Interior (FMI). Item 2(i) on the approval letter states that "for each expatriate quota position granted and on which an expatriate is placed, two (2) Nigerian understudies with minimum qualification of B.Sc./HND in the relevant profession/discipline should be attached".

The purpose of the understudy scheme is to ensure that Nigerians are given job opportunities in every organization and strategically placed to take advantage of skills and technology transfer. The understudies should be placed in a position to either assume the job or given the opportunity to vie for the position

after the 10-year life span of the EQ position. Adherence to the understudy scheme and EQ utilization is monitored by the NIS, State Security Service (SSS) and the FMI. It is imperative to state that the EQ returns submitted on monthly basisⁱ to NIS is a statutory self-reporting process, which documents the extent to which beneficiary companies satisfy the condition upon which the approval is granted. The returns are reviewed and questions raised accordingly by the NIS and other relevant regulatory agencies to address any instance of non-compliance. FMI has the power to withdraw EQ approvals granted to an organization if such organization abuses the conditions upon which the approvals were issued.

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Most married expatriate employees relocate with their spouses to Nigeria. The spouses are issued residence permit upon completion of their regularization process as Accompanying Spouses. However, they are not permitted to take up any paid-employment on this status.

There are cases where foreign nationals with accompanying spouse status work in the same establishment as the principal expatriate. This is a violation of the law. Any organization desirable of giving employment to an accompanying spouse must place such an employee on its expatriate quota approval. Similarly, dependants, who are accompanying parents, are not allowed to take up paid-employment.

Prior to the enactment of the 2015 Immigration Act, there were increased activities by the NIS geared towards facilitating the completion of all protracted applications for Regularization of Stay (ROS). The steps taken by the erstwhile Comptroller General to remove the bottlenecks in the approval process for ROS appear to have been successful.

The intent of the Immigration Act aligns with the vision of the Comptroller General to facilitate prompt issuance of immigration facilities to deserving expatriates. However, failure to obtain and revalidate appropriate immigration facilities for expatriate workforce would be met with stiff penalties.

Section 57 (5) of the Act states that: Any expatriate person who fails, neglects or refuses to apply for the (a) regularization of stay in Nigeria within the stipulated period of three months, (b) renewal of his business, Transit, Visitors Pass or Temporary Work Permit (TWP) after expiration; or (c) renewal of his residence permit within 30 days after its expiration - shall be guilty of an offence and shall be liable to imprisonment for a term of three (3) years or a fine of five hundred thousand naira (N500,000) only'.

HR Practitioners and their organizations, therefore, need to avoid unnecessary penalties and possible reputational damage that may arise from non-compliance with the Act. Consequently, timely and proper planning should be done in order to address the pitfalls that may either elongate or forestall the process of obtaining Green Cards for expatriate employees within the stipulated three-month period for the completion of Combined Expatriate Residence Permit and Alien Card (CERPAC) processing.

The NIS, CONTEC Global Limited (the technical partner on the CERPAC Green

ⁱ Please see our Newsletter on Management of Expatriate Monthly Returns (EMR) to Avoid Potential Tax Liabilities of August 2015



Card project) and Skye Bank (designated bank for the sale of CERPAC forms) need to key into the new initiative and provide the right support, structure and enabling environment to promote the policy and aspirations of the government.

It should be noted that EQ approvals are not expatriate specific but issued to deserving companies to meet their expatriate needs. Thus, expatriate employees, who have either completed their assignment in Nigeria and departed the shores of the country or left their current employment to join another company, should be deleted from the company's EQ position. Unfortunately, most HR Practitioners do not pay attention to this key requirement and retain the names of expatriates who have long left their employment on the quota record of their organizations.

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HR Practitioners need to ensure that departing expatriates submit their original residence permits and a copy of their departure tickets in order to support the company's application for deletion. The deletion process, when completed, releases the hitherto occupied position for future use. The deletion slip, which is issued as evidence of completion of the process, will serve as supporting documentation for resolving tax related issues that may arise in future.

Companies should run their business operations with the approved EQ positions granted to them at every point in time. Any company that exceeds its EQ approval contravenes the law. Companies with large number of EQ positions run the risk of assigning one EQ positions to two or more expatriates. This situation is prevalent where the company's immigration portfolio is not centrally managed. Poor record keeping and improper tracking can also contribute to this

Managing the Challenges

Public Relations Officers, HR Practitioners, Regulatory Personnel and Protocol Officers have the responsibilities for managing the various issues that may arise with respect to expatriate employment. They therefore need to be more solution focused in their handling of the attendant issues and the seemingly unpredictability of the regulatory environment.

In managing their immigration portfolio, HR Practitioners and other service professionals need to:

- Have a good understanding and knowledge of the relevant visas and endorsements for resident expatriates and the corresponding documentation required for obtaining such facilities
- Maintain a tracking system that will serve as a reminder for prompt actions to be taken with respect to revalidating immigration facilities due to expire in the immediate future.
- Maintain good records of quota utilization
- Institute an efficient structure that will facilitate the prompt retrieval of original residence permits and departure tickets from departing expatriates.

Expatriate employees must pay attention to their visas, residence permits and other immigration endorsements. They should seek clarifications whenever they are in doubt about the validity or suitability of their immigration facilities. They also have responsibility for returning their residence permits to their HR department or supervisors prior to their final departure from Nigeria. It is important to state that expatriates do not need their original residence permit to exit Nigeria. The residence permit is the property of the Nigeria Immigration Service and should be handed to the company prior to expatriate final departure from the country.

Conclusion

It is clear from the above that there are various challenges surrounding expatriate employment in Nigeria. However, these challenges are not insurmountable. It is therefore imperative that organizations

fully equip their HR Practitioners and other service professionals with the knowledge of the issues and how to address them if they arise. KPMG can equip your HR professionals with best-in-class education and resources on immigration matters. This will ensure that they are prepared and sufficiently motivated to succeed in their responsibility.

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