



# AELEX

## STEPS EXPATRIATES MUST UNDERTAKE IN ORDER TO WORK IN NIGERIA



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## 1. Introduction

A local company which intends to employ foreigners in Nigeria is required to assume immigration formalities as well as certain responsibilities for such employees. This entails obtaining several approvals and permits required by the Nigeria Immigration Service (“NIS”). This article briefly highlights these immigration requirements and provides a general guide to companies desirous of employing foreigners in Nigeria.

## 2. Expatriate Quota Approval (“EQA”)<sup>1</sup>

The EQA is an approval by the Minister of Interior, permitting a Nigerian company to employ a foreign employee. EQAs are issued to companies that have met the criteria for engaging the services of expatriates on a long term basis.

In order for an expatriate to work in Nigeria, the company employing the expatriate would need to be incorporated in Nigeria.<sup>2</sup> Furthermore, any company having foreign shareholders is required to obtain a business permit before carrying on business in Nigeria<sup>3</sup>. A Business Permit is the authorisation needed for the start and operation of a business by a foreigner either as an individually owned company or a subsidiary of a foreign company in Nigeria.

In practice, the application for EQAs may be submitted along with the pending business permit application. The following documents are required for the application:

- Application letter addressed to the Permanent Secretary, Federal Ministry of Interior;
- Lease agreement for opening premises;
- Joint venture agreement for partnership venture between Nigerians and foreigners;
- Business plan/feasibility report;
- Reference letter from the bank;
- Copies of incorporation documents of the company;
- Business permit form;
- Certificate of capital importation (CCI);
- Current tax clearance certificate;
- Details of the expatriates (including their proposed annual salaries, qualifications/CV and copies of credentials and job descriptions);
- Training program for Nigerians and management succession schedule; and
- Evidence that the skills of the required personnel are unavailable in Nigeria.

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<sup>1</sup> S.38 of the Immigration Act 2015

<sup>2</sup> S. 54 Companies & Allied Matters Act

<sup>3</sup> S. 36 (1) b Immigration Act 2015

It should be noted that the following persons are exempted from EOAs: Expatriates of companies operating in the free zones<sup>4</sup>, foreign students, expatriate technical officials of missions, expatriates of international non-governmental organizations (INGO) and government officials<sup>5</sup>.

It typically takes about 10-12 weeks to obtain the business permit and EQA. Upon the grant of the EQA, the company is expected to apply to the Nigerian Embassy in the expatriate's country, requesting that the employee be granted a Subject to Regularisation Visa ("STR Visa"). The STR Visa is to be utilised for a period of ninety (90) days during which the company must make an application to the Comptroller General of the Nigeria Immigration Service ("NIS") to regularize the stay of the expatriate<sup>6</sup>.

The requirements for the grant of the STR Visa are as follows:

- Valid passport with a minimum of 6 months' validity;
- Letter of employment;
- Letter of invitation;
- Expatriate Quota Approval of the company inviting or offering the employment;
- Acceptance of immigration responsibility;
- Curriculum vitae or resume of the applicant;
- Evidence of qualifications (credentials) of the applicant; and
- Duly completed form IMM 22.

### 3. **Combined Expatriate Residence Permit and Alien Card ("CERPAC")**

Upon receipt of the STR, the expatriate who intends to live and work in Nigeria for more than 56 days would be required to obtain a Combined Expatriate Residence Permit and Alien Card ("CERPAC") and multiple re-entry visas.

CERPAC is a work or resident permit required for any foreigner to reside in Nigeria for any lawful purpose. CERPAC may be valid for two years' subject to renewal upon expiration. The official fee payable for this permit has recently been increased by the NIS from US\$1000 to US\$2000, effective December 2018. It takes between 3 – 6 weeks to obtain a CERPAC.

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<sup>4</sup> Part 9, Paragraph 12 of the Nigeria Export Processing Zones Authority (NEPZA) Regulations 2004

<sup>5</sup><https://immigration.gov.ng/visas/>

<sup>6</sup><https://immigration.gov.ng/visas/>

It should be noted that the fee increase does not apply to missionaries and students, and according to the Federal Ministry of Interior, the fee would subsequently be reviewed after 3 years.

The following are the requirements for the issuance of CERPAC:

- Application letter from the employer requesting regularization of stay and accepting immigration responsibility on behalf of the expatriate;
- Letter of appointment/employment;
- Acceptance of offer of appointment/employment;
- Form IMM22 with three (3) passport –size photographs;
- Quota approval;
- Credentials; and
- Valid Passport with STR visa and photocopies of relevant pages.

#### 4. **Temporary Work Permit (“TWP”)**

Regarding short term consultants providing specific services, the company may apply for a temporary work permit (TWP). This can only be obtained from the office of the Comptroller General of Immigrations, Nigeria Immigration Service, Abuja. A TWP is usually issued for an initial period of 3 months and may be renewed once.

The requirements for TWP are as follows:

- Letter of request or invitation;
- Confirmed airline return ticket;
- Acceptance of immigration responsibility by the company;
- Copies of the forms CAC7, CAC2, Memorandum and Articles of Association and **Certificate of Incorporation and the company’s profile;**
- An application from the company to the Comptroller General of Immigration on **the company’s letterhead; and**
- Name of the applicant.

There are also some industry-specific requirements for the approval of expatriate quotas in Nigeria. For instance, in the oil and gas industry, the Nigerian Oil and Gas Industry Content Development Act 2010 (NOGICD ACT) allows operators and project promoters to retain a maximum of five percent (5%) of their management roles as expatriates positions<sup>7</sup> with the condition that the operators submit a succession plan to the Nigerian Content Development and Monitoring Board (NCDMB)<sup>8</sup>. The purpose of the succession

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<sup>7</sup> S.32 Nigerian Oil and Gas Industry Content Development Act, 2010

<sup>8</sup> S.31 Nigerian Oil and Gas Industry Content Development Act, 2010

plan is to provide for Nigerians to understudy the expatriate for a maximum period of four (4) years, following which the position would become “Nigerianised”.

Also, section 33 of the NOGICD Act provides that all applications for EQAs must be submitted to the NCDMB for approval before submission to the Federal Ministry of Interior<sup>9</sup>. This includes applications for temporary work permit. The application to the NCDMB shall be supported by the following documents<sup>10</sup>:

- Succession plan;
- Organisational chart of the applicant company;
- Advert Report (for new applications);
- Job descriptions/ qualifications for the required positions;
- Training schedule for understudies and other Nigerian Staff;
- Employment commitment;
- Past FMI approval letters for the required positions; and
- Proof of expatriate registration with professional bodies in Nigeria.

In addition to the above, the NCDMB requires that expatriates working in the Nigerian oil and gas industry will undertake biometric registration as part of the conditions they must fulfil before their organizations can secure EQAs. This is to ensure that the details of all foreigners working for operating and service companies in Nigeria are captured on the Nigerian Content Joint Qualification System (NOGICJQS) being operated by the NCDMB<sup>11</sup>.

## 5. CONCLUSION

In conclusion, the expatriate quota regime in Nigeria is beneficial because, whilst offering investors the opportunity to protect their investments, it is also a means of improving the expertise of Nigerians as it mandates the companies employing expatriates to equip Nigerians with the required skills necessary for the eventual take-over of the expatriate quota positions occupied by the foreigners.

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<sup>9</sup> S.33 Nigerian Oil and Gas Industry Content Development Act, 2010

<sup>10</sup> Ch. 4.4, p. 4.4 Nigerian Content Development & Monitoring Board Guidelines 2016

<sup>11</sup> Ch. 4.4, p. 6 Nigerian Content Development & Monitoring Board Guidelines 2016

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