

Nigerian Government inaugurates task force on business permit and expatriate quota violations

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Executive summary

On 1 December 2020, Nigeria's Honorable Minister of the Federal Ministry of Interior (FMI) - Ogbeni Rauf Aregbesola, inaugurated a nine-person Special Ministerial Task Force (SMTF) to monitor and enforce Business Permit (BP) and Expatriate Quota (EQ) administration in Nigeria.

Following its establishment, the SMTF has been mandated to carry out the following tasks within six months:

- i. Audit all documentary requirements presented by EQ applicants for approval/renewal from 2015 to date.
- ii. Verify compliance with all statutory returns as stipulated in the Immigration Regulations 2017.
- iii. Verify compliance with the mandatory two understudies for each EQ position in terms of the qualification of the Nigerian understudy as well as remuneration.

Detailed discussion

Background - Expatriate Quota (EQ) Administration in Nigeria

The EQ policy seeks to promote Foreign Direct Investment into Nigeria and facilitate the employment of highly-skilled individuals in specialized domains where there is a shortage of local talent. The policy is designed to promote the transfer of knowledge and technology, as well as encourage the development of qualified Nigerians through the understudy program.

Accordingly, companies that require the services of foreign nationals for long-term employment must apply for EQ approval from the FMI, to facilitate the deployment of the required foreign resources to Nigeria.

Upon obtaining the FMI's approval for the required EQ slots, companies are required to meet the under listed conditions, in line with the stipulations of the *Nigeria Immigration Act 2015* and the Immigration Regulations 2017:

- ▶ **Compliance with the Nigerian Understudy Program** - A minimum of two Nigerians to understudy each expatriate to be placed on the approved EQ slots. This is to encourage the employment of qualified Nigerians and ensure the transfer of skills.
- ▶ **Submission of Nigerian Understudy Report** - A report showing details of the Nigerians understudying expatriate assignees on the allotted EQ slots and training programs designed for their skills development, are to be submitted to the FMI within three months of obtaining the EQ approval letter.
- ▶ **Submission of statutory EQ returns** - EQ returns are required to be submitted on monthly basis to the FMI as well as relevant offices of the Nigeria Immigration Service (NIS) within the stipulated timelines.

Violation of the EQ policy by companies in Nigeria

The EQ administration has been contentious with respect to the transfer of talent to Nigerians, as there have been numerous reports of non-compliance with the EQ policy on the part of some companies.

Some of the recurrent instances of violation include:

- ▶ Non-compliance with the Nigerian understudy program/ failure to employ Nigerians to understudy their expatriate counterparts

- ▶ Failure to implement training programs/succession plans for Nigerian understudies
- ▶ Inadequate remuneration for Nigerian employees
- ▶ Mismanagement of EQ Positions granted by the FMI
- ▶ Illegal transfers of EQ approvals between and among organizations
- ▶ Employment of expatriates without obtaining approval from the FMI and NIS, respectively
- ▶ Obtaining fake residence permits for expatriate employees
- ▶ Failure to submit statutory EQ returns to the FMI and NIS
- ▶ Failure to submit the understudy report to the FMI as required

Accordingly, there has been a level of mistrust by the FMI in granting EQ approvals due to the low level of compliance by stakeholders. Therefore, greater scrutiny is placed by the FMI in the review of all EQ-related applications and in many cases, very limited EQ slots are eventually approved on discretionary basis.

The above-mentioned instances have necessitated the establishment of the SMTF by the Government, with the overall objective of re-building trust in the system and promoting the effective implementation of the EQ policy.

Sanctions for non-compliance

The Government has put in place various sanctions for violations of the EQ policy as well as other immigration related obligations. These sanctions are imposed against defaulting companies and or individuals as the case maybe.

Attendant sanctions for non-compliance with the EQ policy with reference to the *Immigration Act 2015* and regulations 2017 include:

- a. **Failure to employ Nigerian understudies** - NGN3 million for each month without an understudy and deportation of the expatriate occupying the EQ position.
- b. **Failure to obtain the Minister's approval for business set up by a foreign entity (i.e., Business Permit Issuance/amendment)** - NGN1 million or deportation or both.
- c. **Failure to obtain Minister's approval for employment of expatriates (i.e., EQ Approval)** - NGN1 million or deportation or both.

- d. **Non-renewal of EQ/Non-submission of EQ returns (within the stipulated period)** - NGN3 million on conviction.
- e. **Working on a business visa (without a residence permit on approved EQ)** - NGN1 million on conviction or deportation or both.
- f. **Failure to initiate regularization within 90 days of arrival/Non-renewal of residence permit (within the 30 days window)** - Imprisonment for a term of three years or a fine of NGN500,000 or both.
- g. **Obtaining fake residence permits for expatriate employees** - Imprisonment for a term of five years or a fine of NGN1 million on conviction or both.

Though some of the abovementioned sanctions have not been fully implemented by the regulatory authorities in the past, it is expected that the new drive for compliance by the Government will bring about a more aggressive approach, especially in the coming months, based on the mandate of the SMTF.

Impact of SMTF

Upon successful conclusion of the SMTF's mandate, the EQ system and its administration in Nigeria should become more effective, especially with respect to driving and tracking compliance. Furthermore, the Government anticipates that, through the effective implementation of its understudy program under the EQ policy, more employment opportunities will be created for qualified Nigerians.

Next Steps

In light of this development, all affected stakeholders, i.e., joint ventures, foreign-owned, as well as indigenous organizations that employ the services of expatriate assignees in Nigeria, should conduct a pre-audit review of its immigration-related documents in preparation for possible selection by the SMTF. This is very instructive as it is expected that relevant regulatory sanctions, which may include prosecutions and/or fines, may be imposed on organizations that are found to be non-compliant.

EY Nigeria's People Advisory Services (PAS) Mobility Immigration team has experience in assisting organizations to carry out comprehensive pre-audit review of its relevant immigration documentation.

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EYG no. 008940-20Gbl

1508-1600216 NY
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