September, 2015

The much awaited Immigration Act received presidential assent in May, 2015, finally repealing the Immigration Act of 1963 which had become outdated in addressing Nigeria’s immigration needs. The new legislation amongst other things seeks to reposition the Nigerian Immigration Service, its policies and procedures, ensuring that they conform to global best practice. The Act has introduced major changes to Nigeria’s immigration policy such as the establishment of the Nigerian Immigration Service (NIS), their functions and responsibilities, such functions and responsibilities having hitherto been charged to the Minister of Internal Affairs under the 1963 Act.

Section 1 of the 2015 Act provides that the NIS is to be responsible for *inter alia*: the control of persons entering or leaving Nigeria; issuance of travel documents including Nigerian passports to bona fide Nigerians within and outside Nigeria; issuance of residence permits to foreigners; and border surveillance and control. Consequently, the Act formally establishes the NIS as the sole body responsible for the regulation of immigration matters in the country and has appointed a single authority in the position of the Comptroller General of Immigration (CGI) as the head of the NIS charged with the day to day administration of the Act and through whom all matters relating to immigration, passports, visas and residence permits are to be routed. The Act further provides that the CGI is to be supported by a Deputy Comptroller General (DCG) as the second in command and Assistant Comptroller Generals (ACGs). The CGI is permitted to delegate some of his powers to his Deputy and Assistant Comptroller Generals of Immigration Services, Assistant Comptrollers of Immigration Services, Officers in Charge of Borders, Immigration Officers and Immigration Attachés in Nigerian Diplomatic Missions to ensure seamless regulation of immigration policies and provision of immigration services.
Having made provisions on the issue of the role, duties and responsibilities of the body charged with overseeing and implementing immigration policies, the Act in amending the 1963 Act, also introduces provisions relating to the movement of foreigners within the country, inclusive of those who seek residence either by virtue of employment or by naturalization. Below are some of the salient points in this regard:

- **Entry into and Departure from Nigeria:**

  As with jurisdictions with immigration laws and policies that seeks to attract foreign investors such as the United Kingdom and the UAE, the Immigration Act of 2015 permits an immigration officer stationed at a port of entry to admit into Nigeria any person who is in possession of a valid passport or such other travel document as may be approved by the Minister or CGI; is in possession of a valid visa or residence or work permit; is not a prohibited immigrant; and is not considered to be a risk to public health, interest or national security. Suffice to say, that any individual who does not meet the aforementioned criteria or any other criteria stipulated by the Minister or CGI will be refused entry into the country.

  With respect to the procurement of valid visas by foreigners to gain admission into Nigeria, Section 20 of the 2015 Immigration Act provides that the power to issue visas for entry into Nigeria is vested in the CGI. The various types of visas that can be issued by the CGI include Tourist Visas, Direct Transit Visas, Business Visas, Diplomatic Visas, Short Term Visas and Subject to Regulation Visas. The section further provides that applications for all Visas are to be submitted either to the CGI or the appropriate Nigerian Diplomatic Mission established in the country of the applicant’s residence. Where visa applications are made to such Diplomatic Missions, the approved visas are to be granted by the Immigration Attaché. However, all visa applications with respect to foreigners seeking to enter Nigeria for the purpose of taking up employment shall be referred by the Immigration Attaché or visa officer to the CGI for approval.

  Section 36 of the Act makes it an offence, punishable by deportation or payment of One Million Naira (N1, 000,000.00) fine or both, for a Non-Nigerian citizen to accept employment (not being employment with a Federal, State or Local Government) without the written consent of the CGI. The section also precludes a Non-Nigerian from owning a business, solely or in partnership with another, practicing a profession, establishing/taking over a trade, business or Company without
the prior written consent of the Minister.

- **Residence and Employment of Foreign Nationals**

Where a foreign national is desirous of residing and taking up employment in Nigeria, section 37 of the 2015 Act provides that such foreign national may, subject to obtaining the requisite entry visa as provided for in section 20, enter Nigeria for the purpose of residing and taking up employment on the production of a residence visa (which is commonly known and referred to as a Subject to Regulation (STR) Visa) and other travel documents signed by or on behalf of the CGI. Upon entry into Nigeria and submission of an application to the CGI, the CGI may grant to the foreign national a residence permit, commonly referred to as the Combined Expatriate Residence Permit and Aliens Card (CERPAC), for a period not exceeding two (2) years, subject to renewal for subsequent periods of two (2) years.

Section 37 also provides for the issuance of other entry permits such as Temporary Work Permits outside quota provisions, Temporary Residence Visas for foreign nationals desirous of taking up employment in Nigeria for a period not less than three (3) months and not exceeding two (2) years, and Permanent Residence Visas usually granted to interested foreign nationals who are either married to Nigerians or are investors who have imported an annual minimum threshold of capital over a period of time as may be specified from time to time in the National Visa Policy or any other such policy.

Worthy of note is the introduction of Short Visit Visas, which are otherwise known as visas on arrival. The Act provides that the CGI may, at his discretion, authorize the issuance of a Short Visit Visa at the various ports of entry to frequent business travelers of international repute, executive directors of multinationals, members of government delegations, holders of United Nations, African Union and Economic Community of West African States Laissez-passer and holders of any other official travel documents of other recognized international organizations who are on short business visits to Nigeria.

Unfortunately, the Act is silent on the procedure involved in obtaining a Short Visit Visa, though NIS regulations state that applicants must have obtained an online approval from the CGI.

Up until very recently, expatriates applying for CERPACs to enable them reside in Nigeria were also required to simultaneously apply for “Re-entry” visas. Whilst the CERPAC entitled the foreigner to reside in Nigeria, the Re-entry visa was required by the foreigner to re-enter the country any time he or she travelled out. Such visas were issued at an extra cost and
the fees payable/number of permissible entries was dependent on the nationality of the expatriate. In the event that the expatriate was unable to obtain this visa, he or she would be denied entry upon their return. However, and perhaps in anticipation of the passage of the 2015 Act, the NIS released a circular in Q1 2015 stating that with effect from the 6th of April, 2015, expatriates holding valid CERPACs and their dependents would no longer be required to obtain Re-entry visas and would be permitted to exit and re-enter the country on the strength of their CERPACs alone. The provisions of this circular have now been codified in the new Act which provides in section 18 (2) that “a resident or work permit granted to a foreign immigrant shall be treated for purposes of entry into Nigeria as a multiple entry permit”. Consequently, where an expatriate holds a resident or work permit, he/she would be entitled to enter into and exit the country multiple times during the validity of the resident or work permit.

Additionally, Section 38 of the Act states that where a person in Nigeria is desirous of employing an expatriate, he shall (unless otherwise exempted) be required to make an application to the CGI and shall provide such information as required for the repatriation of the expatriate and his dependents as the CGI may require and no such expatriate may be hired without the permission of the CGI. This provision underscores the need to obtain the consent of the CGI before the employment of expatriates by a person or organization. Prior to the employer submitting an application to the CGI requesting to engage the services of an expatriate, he must have first applied for and obtained a Business Permit and Expatriate Quota Approval from the Citizenship and Business Department of the Ministry of Interior.

Without an Expatriate Quota Approval, a person cannot engage the services of an expatriate to work in Nigeria and failure to do so amounts to an offence. Where an expatriate who holds a tourist or business visa secures employment in Nigeria during the visit, he or she will be required to exit the country in order to obtain the appropriate visa. In contradistinction, UAE immigration laws permits an alien holding a visit visa to convert the visa to an employment visa whilst in country. Subject to the alien meeting certain conditions, his visitor’s visa can be converted to an employment visa within just two (2) days; thereafter he would then be required to obtain a residence permit within sixty (60) days. This is a feature that has undoubtedly helped in attracting foreign investors to the UAE and one which could be emulated in Nigeria, particularly with respect to the ease of carrying out such a conversion.

In ascertaining visas applicable to expatriates, it is important to
note that by virtue of the provisions of Section 37 (13) of the Act, nationals of Members States of the Economic Community of West African States (ECOWAS) are exempted from requiring entry visas and are allowed to reside, work and undertake commercial and industrial activities in Nigeria without residence permits. They are only required to apply for and obtain what is known as an ECOWAS Residence Card. For the avoidance of doubt, the Member States of ECOWAS are Benin, Burkina Faso, Cape Verde, Cote d’Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

Lastly, the CGI by virtue of section 39 has the power to revoke a resident permit or any other permit issued under the Act if he deems such revocation to be in the public interest. Where the CGI does revoke a permit, he may issue a new one on such terms and conditions as he deems fit; however where a permit is revoked without replacement, the affected person will be deemed to be a person seeking entry into Nigeria for the first time without the necessary authorizations and the Minister may at his discretion issue a deportation order.

• **Immigration Offences & Penalties**

The list of offences under the 2015 Act, in contrast to the 1963 Act have been expanded to cover modern day immigration offences committed by both Nationals and Non Nationals and such offences now include, but are not limited to, aiding any person to enter Nigeria in contravention of the Act, contravening any condition imposed on a person by the Act, knowingly making any untrue statement to an immigration officer, altering any document issued under this Act without lawful authority and restricting an immigration officer in the lawful execution of his duty. Penalties for offences under the new Act range from imprisonment for a term of ten (10) years or a fine of N2,000,000 or both to imprisonment for a term of one (1) year of N100,000 fine or both.

In addition to offences in breach of the provisions of the Act are newly introduced offences committed by holders of Nigerian passports. Section 57 of the Act provides that where a Nigerian is deported for immigration related offences, he is not to be issued another passport for two (2) years after the deportation and where the deportation is as a result of the commission of a criminal offence under the penal laws of another country, a replacement passport is not to be issued to the offender for a period of five (5) years from the date of deportation. In such circumstances, the deportee’s passport is usually withdrawn by immigration officials at the port of his entry. Where an expatriate fails to apply for the regularization of his stay in
Nigeria within the stipulated three (3) months period, or the renewal of his Business, Transit, Visitors’ Pass or Temporary Work Permit after expiration, or renewal of his residence permit thirty (30) days after its expiration, the said expatriate commits an offence and upon conviction is liable to imprisonment for a term of three (3) years or a fine of N500,000 or both. Chapter VII of the Act which deals with deportation provides in Section 46 that where a court convicts an offender under the Act for an offence punishable by imprisonment for one (1) year and above, the court may in addition or in lieu of the sentence, recommend the deportation of the offender and the Minister may order his deportation accordingly.

It thus appears that the deportation of an expatriate that has been convicted of committing an immigration offence may not be automatic and only occurs when a deportation order is made by the court. In other climes such as the United Kingdom, the immigration laws go a step further by permitting the Secretary of State or the courts to make a deportation order against persons who belong to the family of a foreigner that has or will be deported particularly where such persons are dependent on the deported foreigner. It is suggested that this measure should also be considered by the NIS as the Act is silent on how dependents of an offending expatriate who may not themselves be in breach of any immigration regulation are to be treated in the event of deportation of the expatriate on whom they depend.

Whilst the Act has greatly improved on the outdated 1963 Act, it appears that several key present day matters were still not taken into consideration by the drafters. Matters which ought to be considered and addressed by the NIS and perhaps issued in subsequent regulations should include but not be limited to:

- **Marriage and civil partnerships as it relates to the acquisition of citizenship (including sham/fake marriages):** Although the Act does mention in passing that marriage by a foreigner to a Nigerian citizen would entitle the foreigner to permanent residence permit, it is silent on the process to be followed by the foreigner in obtaining the said permit. Furthermore, in practice it is a lot easier for foreign women married to Nigerian men (Niger Wives) to gain naturalization than it is for foreign men married to Nigerian women; and whilst the NIS has specific regulations relating to Niger Wives obtaining CERPACs, it is silent on regulations relating to foreign men married to Nigerian women obtaining same.

- **Immigration status of refugees and those seeking asylum:**
in recent times, there have been increased levels of civil unrest, violence and terrorist attacks which have led to an exodus of West African refugees, including those seeking asylum in Nigeria. The Immigration Act does not however make any provisions for people seeking asylum in Nigeria for the aforementioned and other reasons and accordingly there are no laid down procedures to be followed in dealing with such refugees.

- Right to appeal immigration decisions: given the powers bestowed on the Minister of Interior and the CGI to deny applications for visas revoke residence permits and order the deportation of foreigners amongst others, the Act is curiously silent on the right of aggrieved foreigners to appeal such decisions. Consequently as the Act stands now, it appears that where a foreigner’s residence permit is revoked and not replaced for instance, it appears that the only remedy available would be for him or her to leave the country as there are no stated procedures for appealing decisions made by the immigration authorities.

In conclusion, the signing of the Immigration Act 2015 into law is a step in the right direction in repositioning Nigeria’s immigration laws to ensure that same is in alignment with global best practices. Many countries particularly those with high levels of migration frequently review revise and update their immigration laws and policies to meet migration trends and attract needed foreign investment. It is hoped that this is a trend that the Minister of Interior and the NIS will follow in order to ensure that Nigeria’s immigration policies continue to remain investor friendly.

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