

ANALYSIS OF THE NIGERIA IMMIGRATION REGULATION 2017



The Honourable Minister of Interior, Lt. Gen Abdulrahman Dambazau (retired), on March 20th, 2017 launched the new Immigration Regulations 2017 (“the Regulations”), in exercise of the powers conferred by Section 112(1) of the Nigerian Immigration Act 2015 (“Immigration Act”).

The Regulations are made up of ten (10) parts in total. Part 1 of the Regulations sets out its major objectives as the provision of a legal framework for the implementation of the Immigration Act as well as the consolidation of existing Immigration Regulations.

Part 2 provides for “Entry and Departure from Nigeria” while Part 3 provides for “Residence and Employment of Foreign Nationals in Nigeria.” Provisions for “Control of Crews and Stowaways” are contained in Part 4 while Part 5 and 6 deal with the “Control of Immigrants” and “Issuance of Nigerian Passports and Other Travel Documents” respectively. Offences and Penalties are provided for in Part 7 while Part 8 contains regulations on the ‘Smuggling of Migrants’. Part 9 and 10 deal with the command structure of the Nigerian Immigration Service (“NIS”) and miscellaneous provisions.

The importance of the Regulation can be brought to fore by

undertaking a brief examination of two (2) issues of national importance which have dominated news reports in recent times: ease of doing business and insecurity (especially in light of the frequent terrorist attacks and invasion of farmland by suspected Fulani herdsmen).

In addition to the two important issues mentioned above, this analysis will also highlight other issues addressed by the Immigration Regulations as well as review the penalties for violation of the Regulations. It will also identify drawbacks and provide recommendations.

Ease of Doing Business:

In February 2017, the National Bureau of Statistics (“NBS”) published its Nigerian Capital Importation Report for the Fourth Quarter of 2016 which showed that capital inflow into Nigeria fell by 46.86 percent, from by \$4.52 billion to \$5.12 billion, the lowest in nine years. Foreign Portfolio Investment (FPI) for the reviewed period dropped by 69.81 per cent while Foreign Direct Investors (FDI) fell by 27.83 per cent compared to the same period in 2015.

The figures, just as the ones from the preceding quarters in 2016, fuelled the discussion about the ease of doing

business in Nigeria, with many citing regulatory lapses and excesses as major factors inhibiting capital inflow. Many analysts for instance highlighted the possible impact a Visa-On-Arrival policy could have on tourism and investment alongside a general reform of the visa issuance process.

Discussions around a visa-on-arrival policy have been held for many years but in the absence of a regulatory framework permitting such, it remained illusory. Credence must therefore be given to the Minister of Interior for acting decisively by making provision for visa-on-arrival in Regulation 9 of the Regulations which grants the Comptroller-General ("CG") of the Nigeria Immigration Service ("NIS") the power to approve the issuance of "visa on arrival in respect of any person." In addition, the Federal Government has strengthened the framework for the issuance of visas on arrival by stating in Paragraph 16 of the Executive Order on Ease of Doing Business signed by the Acting President Yemi Osinbajo on 18th May, 2017 that "Visas on arrival shall be granted at all Nigerian ports of entry once applicants have met all the published requirements." The Executive Order also mandates the Immigration Services to ensure that the process of issuance of visas on arrival is transparent.

The expression "any person" is broad enough to accommodate tourists and prospective investors who may want to briefly visit the country to get a feel of the business environment or hold important meetings towards planned investment. Once a decision has been taken to invest in Nigeria, such foreigners may thereafter apply for a business permit and a residence permit provided for by Regulations 4 and 5 respectively. The CG is similarly empowered by Regulation 8 to issue a temporary work permit to foreign nationals who need to come into the country to work. The CG may also issue Visiting Permits and Business Permits as required when such applications are made.

It should however be noted that the issuance of a business permit to a person does not in any way dispense with the need to apply for an appropriate visa as well as a residence permit. While the visa requirement in Regulation 11(1) appears to create an additional obligation, it is relieving to note that pursuant to Paragraph 14 of the Executive Order on Ease of Doing Business issued by the Acting President, applications for visas are to be processed within 48 (Forty-Eight) hours.

Persons issued business permits may also have to bear in mind that the Minister reserves the right under Regulation 4(3) of the Immigration Regulations to revoke, vary or cancel a business permit at any time. In the absence of such variation, revocation or cancellation however, such permits

remain valid. In contrast, Residence Permits issued to expatriates are clearly stated in Regulation 5 to be valid for only two (2) years unless the CG otherwise directs. Mention must however be made of Regulation 5(7) which confers the benefit of permanent residence on foreign nationals who have imported an annual minimum "threshold of capital" over a period of time as stipulated in Section 37(11) of the Immigration Act 2015. Such persons may now be issued a permanent residence permit as long as they do not withdraw the investment from Nigeria.

In furtherance of Nigeria's commitment to regional economic integration, citizens of Economic Community of West African States (ECOWAS) member states only have to register with the NIS as ECOWAS nationals, to be issued residence cards. Regulation 11(4) clearly states that such ECOWAS citizens do not have to apply for entry visas, residence permits and work permits. A corresponding provision is made in Regulation 12 for foreign nationals not from the ECOWAS region but also free to engage in business or take up an employment once they have obtained a Business Permit or Expatriate Quota or both. A residence permit issued to such foreign national can be used for the purposes of re-entry within the period of validity within its validity period and suffices for the issuance of residence permits to their dependants for the same validity period.

The provisions above are expected to facilitate ease of entry for prospective investors and provide such persons an incentive to retain their investments in the country. They signal purposive action on the part of the government to remove bureaucratic bottlenecks impeding the entry of businessmen into the country and when taken together with other reform efforts can substantially boost the confidence of investors.

The World Bank in January, 2017 projected that Nigeria's economy would rebound from recession and grow by 1 (One) per cent. The Federal Government has similarly launched its Economic Recovery Growth Plan (ERGP) the implementation of which is hoped to result in growth of the economy through increased investments in various sectors. Foreign participants in such sectors as agriculture, mining, transportation and energy among others will no doubt play a major role in the success of that plan and it is only fitting that steps are taken to guarantee convenient entry. The effect of such investments thereby attracted will subsequently be seen in the number of jobs created and the contribution of such businesses to the national GDP.

Insecurity:



In April 2016, Louise Setshwaelo, the UN Food and Agriculture Organization's representative in Nigeria stated that an estimated fifty (50) percent of farming households in Borno state were unable to cultivate their lands as a result of the Boko Haram insurgency. Production of sorghum, millet and rice in the state also generally dropped by eighty-two (82) percent, fifty-five (55) percent and sixty-seven (67) percent respectively, compared to the five-year average. Boko Haram attacks also forced an end to food production in two (2) local government areas in Yobe state hitherto responsible for eighty (80) percent of food production in that state. Government and military officials have consistently claimed that majority of the Boko Haram insurgents are undocumented migrants from neighbouring countries in the Lake Chad region with access to Nigeria's porous borders.

The provision of Section 14(b) of the 1999 Constitution of the Federal Republic of Nigeria ("CFRN") that the security and welfare of the people "shall be the primary purpose of government," however placed a duty on government to do more than lament about undocumented migrants. The

issuance of new immigration regulations may therefore be considered as one of the steps to be taken to address the cross-border component of the insecurity challenge. Parts 2, 3, 5 and 7 of the Regulations contain extensive provisions on identification and control of persons moving in and out of the country through various ports and borders. Diligent enforcement of those provisions by concerned security agencies may help to improve the chances of identifying terror suspects and nip terror attacks in the bud.

Regulation 2(2) for instance places an obligation on a carrier conveying persons into Nigeria by land to make passenger manifests available to immigration authorities. The manifest is to show the full names, aliases and initials of such travellers as well as the signatures or thumb impressions of the passengers. Regulation 3 equally mandates all non-Nigerians arriving Nigeria "by any means" to produce a signed and dated disembarkation card as well as valid travel documents. Persons seeking to do business in Nigeria are also not spared from the obligation to provide adequate information to the immigration authorities and to seek the consent of the CG of the Nigeria Immigration

Service ("NIS") to "enter or remain" in the country where their visas have expired.

Enforcement of the aforementioned Regulations with the aid of electronic data collection as is obtained in advanced countries can serve the important purpose of identifying persons linked to terrorist cells in neighbouring countries. It is therefore hoped that the 'Registry of Immigrants' to be established under Regulation 22(2) will be adequately equipped with modern technology tools for proper identification, registration and control of immigrants for security benefits.

Persons below the age of eighteen (18) at the point of arrival in Nigeria as immigrants are ordinarily exempted from submitting their details to the Registry of Immigrants mentioned above but must report to the NIS within twenty-one (21) days of attaining maturity age to be examined and registered.

Beyond the provision for a Registry, the Regulations also create obligations for immigrants to provide updates whenever there are changes in residence while owners of hotels and buildings where such immigrants take residence are similarly mandated by Regulation 27 to "take all reasonable measures" to ensure compliance.

Altogether considered, the provisions of the 2017 Immigration Regulations are a major improvement on the previous Regulations as far as securing Nigeria's borders and monitoring the movement of immigrants is concerned. The diligent utilisation of powers granted under Regulations 32 – 35 to them by Immigration Officers who are tasked with the performance may lead to the perennial claim of Nigeria being a country with porous borders being discarded .

OTHER ISSUES ADDRESSED BY THE REGULATIONS

Human Trafficking:

The Regulations pay special attention to human trafficking which has been and continues to be a major problem in Nigeria. A United States Department of State report in 2016 revealed that out of the 2,500 minors engaged in full-time prostitution in the streets of Italy, 2,300 are minors from Albania and Nigeria. Young persons are often taken out of the country for prostitution while in many other instances children have been smuggled into Nigeria from neighbouring countries to work as domestic servants.

Regulation 46 restates Section 57(b) of the Immigration Act

which prescribes ten (10) years imprisonment and a Two Million Naira fine for persons convicted of presenting forged travel documents for the purpose of human trafficking for child labour or prostitution.

In Part 8, the Regulations go further to make extensive provisions prohibiting the aiding and abetting of smuggling of foreign nationals into the country, recommends restitution to the migrant and imposes an imprisonment term of ten (10) years with an option of fine not less than One Million Naira.

OFFENCES AND PENALTIES

Aside from offences relating to human trafficking and forged documents mentioned above, other notable offences under the Regulations include failure of foreign nationals to regularise stay within three (3) months; or renew visa, business permit or temporary work permit and resident permit within thirty days (30) before expiration. The foreigner shall be liable upon conviction to a term of three (3) years imprisonment or a fine of five hundred thousand naira (N500,000) or both.

The Regulations also impose a duty on corporate entities that employ foreigners to ensure that they obtain an expatriate quota or business permit. During renewal of an expatriate quota, a company may apply for a stay of action allowing the foreign worker to remain in Nigeria if the quota expires while the renewal and work permit extension is pending. Regulation 56 states that where the company fails to renew the expatriate quota or render its expatriate monthly returns, the corporation will be liable to a fine of Three Million Naira (N3,000,000).

A corporate entity that fails to employ Nigerians to understudy a foreign employee, as required by Regulation 52, or allows another body corporate to utilise its expatriate quota positions is liable to a fine of Three Million Naira (N3,000,000) for each month the foreigner has been in office without a Nigerian understudy. The expatriate employee will also be deported.

Company directors and secretaries who are found to have been negligent or complacent in the violation of the Regulations, the Immigration Act or other relevant laws may upon conviction be liable to a term of three (3) years imprisonment or to a fine of Two Million Naira (N2,000,000) or both. Where a company is convicted for an offence under the Regulations, the Court may impose a fine of Five Million Naira (N5,000,000) as well as issue an Order to wind-up the company.

DRAWBACKS

One glaring drawback of the Regulation is its repetitive nature, not only of existing provisions in the Immigration Act but also of some of its own provisions. The Immigration Act was amended by the National Assembly in 2015 and is relatively a recent legislation which also overrides the 1962 Immigration Regulations that the current Regulations replaces.

The sanctions contained in the 2015 Act were therefore in line with current realities and needed not be restated by the Minister in the Regulations since in any case only the National Assembly is constitutionally empowered to prescribe punishment for crimes.

The Regulations also appear to confer a lot of powers on the Minister and the CG without any measures to check abuse. The Regulations for instance allow the Minister to revoke or cancel a business permit any time he sees fit. The provision does not require him to state a reason or prescribe the parameters for the exercise of such powers. Understandably, this may remain a concern for many investors.

While it is commendable that the Regulations provide for data collection for identification, registration and control of the flow of immigrants into the country, little or nothing is said about the protection of such data collected and procedures for complaints in instances of perceived abuse, misuse or breach of privacy. It will be helpful if supplementary regulations are issued providing compliance guidelines on data management and sanctions for instances of abuse.

The obligation placed on householders to ensure immigrants residing in their premises comply with the Regulations or report non-compliance to Immigration Officers is over-reaching. It inadvertently converts private citizens into unpaid public officers who may also suffer sanctions for merely renting out their apartments. A possible effect is that many home owners may altogether prevent foreign nationals from taking residence in their buildings thereby defeating one of the aims of the Regulations which is to create an enabling environment for business.

Finally, the provisions demanding that replacement of damaged passports be done at the NIS headquarters do

not also in our estimation accord with modern trends. We believe there is adequate technology to process such applications at the offices of the NIS in each state and where such is unavailable; steps ought to be taken to address same.

CONCLUSION

The Regulations have largely been well-conceived as a timely policy response to contemporary challenges in the country especially in relation to Nigeria's security challenges and the desire to attract foreign investment for economic growth. It is of great significance that the visa-on-arrival policy now has a regulatory framework within which it can be implemented for the benefit of intending tourists and prospective investors without jeopardising national security. The creation of a Registry of Immigrants also serves as a signpost for a gradual departure from what currently obtains where official records are non-existent about persons coming in and going out through our national borders. The various provisions of the Regulations on the collection of appropriate information at all ports of entry and exit should be of great help to security agencies if properly enforced. It is hoped that the supervising ministry and other agencies of government will do well to monitor implementation and disallow corruption from inducing frivolous waivers of necessary checks to guarantee the effectiveness of the Regulations.

Finally, we are also mindful of the extent of powers granted to the Minister for instance to revoke business permits and to the CG to revoke a residence permit subject solely to their discretions. Such unlimited powers may create room for abuse. Similarly, powers granted to Immigration Officers to enter into hotels and buildings to demand certain documents without search warrants may also lead to an unintended consequence of exploitation if not properly monitored. We recommend a review to ensure a balance between the duty to protect and the corresponding right to dignity guaranteed to all persons, be they immigrants or citizens. To this end, we urge the Honourable Minister of Interior to assemble a team of legal experts to examine some the concerns raised and regularly advice on improvements based on the evolving nature of immigration related issues.

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