

# IMMIGRATION LAW PRACTITIONERS ASSOCIATION OF NIGERIA

## IMMIGRATION LAW AND POLICY CONFERENCE 2022

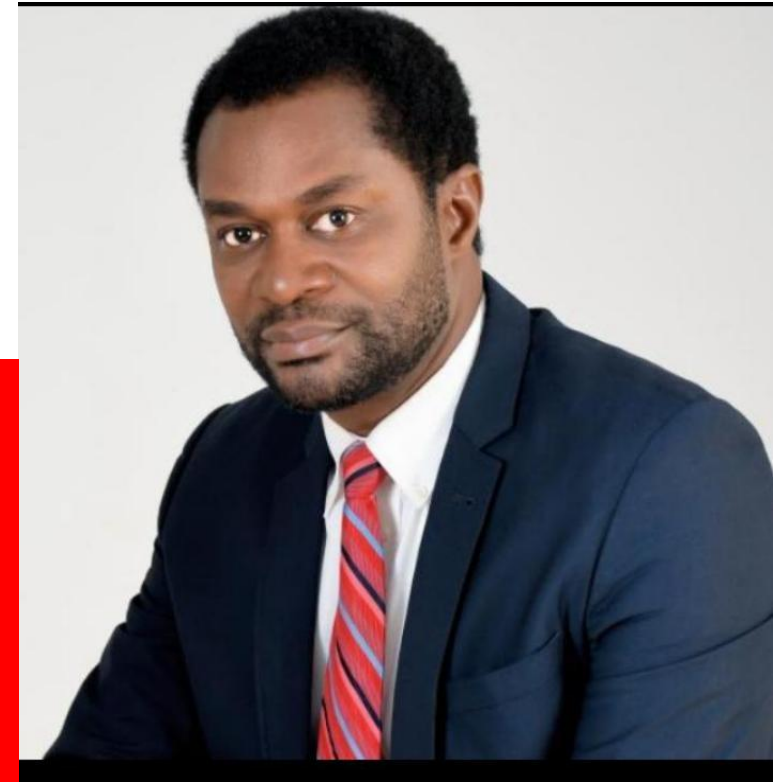
**Paper title:** The Ease of Doing Business: Navigating the Immigration Requirements in Nigeria

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### **The principal legal instruments regulating immigration in Nigeria:**

- ❖ The Nigerian Immigration Act (NIS Act) 2015
- ❖ The Nigerian Immigration Regulations (NIR) 2017
- ❖ The Nigeria Visa Policy (NVP) 2020

## Requirements for Entry and Exit of People from Nigeria: VISA

- ❖ Valid Travel Documents
- ❖ Visa
- ❖ No travel restrictions

By virtue of the Nigeria Visa Policy (NVP) 2020, there are now two Visa groups divided into 79 classes:

- ❖ **The Visa-Free Group**
- ❖ **The Visa-Mandatory Group**

The aim of the policy is to relax Visa classes for the purpose of simplifying the Visa application process.

## *Visa-Free or Visa Exemption Group - entitled to Visa on Arrival in Nigeria*

- ❖ **F1A - Citizens of ECOWAS member states:** ECOWAS Free Movement Protocol entitles them to enter Nigeria without a Visa but must have valid travel documents i.e. valid Passports, enter Nigeria through recognized entry ports, and must not be subject to any immigration restrictions.
- ❖ **F1B - Visa Abolition Agreement Countries:** entitles Citizens of Cameroun and Chad to enter and stay in Nigeria for a maximum of 90 days without the need for a Visa. However, persons intending to stay longer, work, or do any form of business must obtain Visa and necessary work or business permits.
- ❖ **F1C - Visa Waiver for International Organizations:** holders of travel documents from major International Organizations e.g. ECOWAS, AU, UN, and AfDB are entitled to enter Nigeria without Visa for 90 days per entry.
- ❖ **F1D - Reciprocity Visa Waiver Agreement Countries:** for Diplomats and Holders of Official Passports from countries with a Reciprocity Visa Waiver Agreement with Nigeria. By the 2020 Nigerian Visa Policy, 13 countries are included in this category, namely: Kenya, Mauritius, Namibia, Rwanda, South Africa, Sudan, Tanzania, Brazil, Cuba, Venezuela, Turkey, China, and Singapore.

## ***Visa-Mandatory Group – must obtain Visa in advance of their trip to Nigeria***

3 main categories and 75 classes:

- ❖ **Short Visit Visa (SVV):** 24 Visa classes: 90days; suitable for Tourism, Nigerian-born foreigner, honorary consul, and non-accredited diplomats.
- ❖ **Temporary Residence Visa (TRV):** 36 Visa classes; multiple entry not exceed a duration of 24 months; suitable for people who hold temporary work permits to accredited diplomats.
- ❖ **Permanent Residence Visa (PRV):** 15 Visa classes; suitable for Spouse of a Nigerian Citizen, a senior dependant (aged 65 and above) of a PRV holder, rare talent, or highly skilled worker, and retiree; Nigerians by birth who have renounced their Nigerian citizenship, exceptional investor i.e. investors with evidence of importation and retention of minimum capital of US\$250,000. PRV policy is subject to periodic review.

Application for Visa may be processed at the Nigerian Visa Application Center (VAC) or Nigerian Consular Mission nearest to them. Whereas Official / Diplomatic Passport holders may apply directly at the Nigerian Consular Mission.

**FEES:** these services attract prescribed fees available at NIS website and Nigerian missions and embassies around the world.

## 4 Channels for obtaining Nigerian Visa

- ❖ **eVisa:** Available only for persons visiting Nigeria for a period of 3 months. Prospective users are expected to apply and obtain Travel Authorization Letters online before embarking on their trip to Nigeria; suitable for transit, business, tourism, journalism, medical tourism, religious tourism, sports, entertainment, study tour, academic exchange program, international cultural exchange, humanitarian services, emergency relief work, International Non-Government Organizations (INGO) and national Non-Government Organizations (NGO work), and visits by Nigerians in diaspora holding passports of other countries.
- ❖ **Visa on Arrival:** Available only at International Airports in Nigeria and only for holders of travel documents of AU member states and for other persons traveling to Nigeria for a period not exceeding 3 months above purpose; Nigerians in the diaspora with dual citizenship; infants born to Nigerian citizens abroad; and Nigerians who have renounced their citizenship.
- ❖ Nigerian Consular Mission and Visa Application Centers

*These are subject to online Visa Payment via the NIS online payment portal and biometric capture on arrival but before Visa issuance.*

## Permits: Work and Residence (S.37 NIS Act, S.5 NIS Regulation)

- ❖ **Temporary Work Permit Visa (90-day) - F8A:** 90-day single-entry Visa to Nigeria obtainable only from Nigerian Diplomatic Missions, subject to a prior Visa Authority Letter from the CGI; available for persons entering Nigeria at the invitation of a corporate body, for the purpose of providing specialized skills services, such as installation of machinery, training, etc. Holders are not permitted to take up permanent residence and or employment in Nigeria.
- ❖ **Temporary Work Permit (6 Months) Visa - R11:** multiple-entry visa; available only at Nigerian Diplomatic Missions; available as in F8A; holder may pick up temporary employment in Nigeria.
- ❖ **Temporary Residence Visa (TRV) (formerly Subject to Regularization) (STR) Visa:** suitable for multiple purposes including expatriates intending to pick up employment in Nigeria (R2A), dependents of expatriates who are aged 65 years and above (R2E).

*Applicants must possess Passports with validity periods suitable for the intended Visa; complete their application forms for Visitors Pass as prescribed: Two recent passport size photographs, and a copy of the Letter of Approval from the CGI (F8A & R11); and 4 copies of application forms, 4 recent passport photographs, 4 copies of the letter of Expatriate Quota Approval from the Ministry of Interior, 4 copies of credentials, certificates, and curriculum vitae - all vetted by a relevant official of Nigerian High Commission/Embassy, 4 copies of offer Letter of Employment, 4 copies of Letter of Acceptance of employment, signed by the expatriate, NIS Visa Payment Receipt and Visa Acknowledgement Receipt (TRV)*

## Obtaining Business Permit and doing business in Nigeria: Expatriate Quota (EQ)

- Companies wholly or partly owned by a foreigner wishing to employ expatriate(s) must:
- ❖ Obtain EQ from the Ministry of Interior (Citizenship and Business Department) specifying the number of expatriates a company may employ and the positions to be occupied by the expatriate in the company.
  - ❖ Have two Nigerians assigned to understudy the expatriate
  - ❖ Register investments with the Nigerian Investment Promotion Commission (NIPC) for the purpose of maintaining up-to-date records, and also for the purpose of developing suitable programs to attract investments.
- EQ is granted for a 3-year period renewable for an additional 2-year period up to maximum of 10 years. Periodic renewal is not required from a company with Permanent Until Reviewed (PUR) status for her EQ positions. EQ with PUR status may however be reviewed by the Ministry at periodic intervals.
- Companies with EQ may for convenience apply for the Combined Expatriate Residence Permit and Aliens Card (CERPAC) (resident permit plus work permit) to enable their expatriates CERPAC holder live and work in Nigeria for a period of two years.

# Maintaining Expatriate Quota

Companies to whom EQ has been granted:

- ❖ Must ensure that the expatriate and the Nigerian attached to him obtain NIN, and indicate how the company is utilizing the EQ positions obtained
- ❖ Supply updated contact details of their Representatives or consultants to the FMI – effective from the 24<sup>th</sup> January 2022.
- ❖ File monthly online reports (contrary to the old yearly returns) containing information such as the NIN of the expatriates (and the Nigerians understudying them), when the expatriates arrived Nigeria and where they reside in the country - effective from the 24<sup>th</sup> January 2022
- ❖ Companies granted EQ positions with Permanent Until Reviewed (PUR) Status must submit clear copies of the approval letters to the Office of the DD Enforcement, Inspection & Investigation FMI for the purpose of examination of all PUR instruments issued since the establishment of the Ministry and to assist the FMI to determine the length of time of each PUR instrument and ensure that the holders are eligible effective 24th of January 2022 and end on the 28th of February 2022.

*For the purpose of compliance with EQ requirements, the FMI has the right to inspect all companies, organizations, and facilities in Nigeria. That exercise attracts prescribed inspection fees as contained in the NIS Regulation as itemized below: Facilities outside FCT that require flight and overnight stay- N150,000 Only; Facilities within FCT or out of state which require overnight stay and journeys by Road - N80,000 Only; Facilities in FCT and neighboring states that do not require flight or overnight stay - N45,000 Only.*

## Denial of entry

Pursuant to Section 18 of the Immigration Act 2015, possession of a valid passport or such other travel document as approved by the Minister or CGI for admission into Nigeria, or possession of a valid visa, residence or work permit, or any other permit, or other forms of approval is the requirement for entry into Nigeria, foreigners may be denied entry:

- ❖ where the requisite Visa or Permit needed for entry or admission has not been validly obtained
- ❖ where, on the advice of a Medical Inspector, it is undesirable for medical reasons to admit such a foreign national
- ❖ where the person seeking entry is classified as a prohibited immigrant, considered a risk to public health, public interest, or national security
- ❖ and those who should not be admitted into Nigeria on any other grounds as may be prescribed from time to time by the Minister or the CGI.

## Important developments in immigration law: Things to note

- ❖ **NIS maintenance of Immigrant Register through the Electronic Passenger Automated Registration System (e-PARS)** - a database of migrants arriving and the departing the country through the international airports (see S. 22 of the NIS Regulation 2017)
- ❖ **Deployment of Digital Residence Permit, & Combined Expatriate Residence Permit And Aliens Card (CERPAC)** with enhanced machine readable security features that enables the NIS account for the location and activities of every foreigner in Nigeria. The new CERPAC is also more durable and is valid for two years as against the one-year validity of the old card. (*The automation of Immigrant Register and Deployment of Digital Residence Permit, & Combined Expatriate Residence Permit and Aliens Card (CERPAC) means it is not business as usual.*)
- ❖ **Employment of at least two (2) Nigerians** to understudy every EQ holder. This would increase local participation, and ensure that the Nigerian economy benefits from the wealth of knowledge of the expatriates.

## Breaches and Penalties

Immigrants found committing an offence or found to have committed an offence can be arrested without a warrant and prosecuted:

- ❖ 5 million Naira fine and possible winding up of an offending body corporate
- ❖ 1 million Naira fine or possible deportation for non-compliance with provisions relating to entry for business purposes for individuals
- ❖ 3 years imprisonment or fine of Five Hundred Thousand Naira or both for expatriate that fail to comply with the provisions of the NIS Regulations
- ❖ 3 Million Naira for a body corporate that fails to renew the EQ or render its monthly returns
- ❖ Criminal responsibility to airline operators and commercial carriers for facilitating an immigration offence.

The Federal High Court (FHC) has jurisdiction with respect to immigration-related matters; and should dedicate a division of the FHC for hearing all matters relating to immigration so as to ensure speedy disposal of immigration cases as priority particularly offenses that have deportation as punishment. NOTE: *While the intendment is avoid to prolonged detention of immigrants due for deportation, such a person can still be remanded in custody for a period of up to 90 days.*

- ❖ Pre-action notice is a requirement for bringing civil action against the NIS (S. 109(1) of the 2015 Act

# Impact of immigration reforms on Ease of doing business in Nigeria

- ❖ **Automation of Visa**, Work Permit, EQ, Visa-on-arrival applications processing
- ❖ absence of *Manual search tables and Use of luggage scanners at departure halls of the Abuja and Lagos international airports*
- ❖ *one passenger interface to reduce time spent by travelers on airport checks and clearance by over 50%*
- ❖ **Elimination of passenger service charge (PSC) stickers**
- ❖ **Harmonization of multiple forms into one by the Nigerian Immigration Service & use of single form for arrival and departure**
- ❖ *Reduced questions for departure and arrival of travelers*
- ❖ *feedback kiosks at the Murtala Muhammed International Airport (MMIA) and Nnamdi Azikiwe International Airport (NAIA)*
- ❖ fines for flight delays and cancellations
- ❖ Issuance of Tourist and business visas within 48 hours
- ❖ Speedy post incorporation filing with CAC
- ❖ Introduction of electronic registration of business premises in Kano State
- ❖ **Establishment of Small Claims Courts** for ease of enforcement of contracts and settlement of cases of liquidated money demands with a threshold of N5 Million (Lagos and Kano States in April 2018 and January 2019 respectively; **Edo and Ogun States in 2020**)
- ❖ E-filing of taxes in Lagos State; removal of the infrastructure development charge (IDC) for 2-floor warehouses; removal of the requirement for submission of CTCs for purposes of obtaining title documents and survey plans (Lagos and Kano States)
- ❖ Publication of verified and kept up-to-date list of all requirements or conditions (timelines, fees, permits, licenses, waivers, tax related processes, filings and approvals) for obtaining products and services from MDAs at the MDAs premises and websites
- ❖ Resolving of conflict between a published and unpublished lists of requirements in favour of the published version
- ❖ default approval for failure to communicate approval or rejection of an application within the time stipulated in the published list
- ❖ Specification of reasons for rejection of applications
- ❖ Admission of electronic copies of the application, including electronic submission acknowledgements as proof of the date of submission of the application for purposes of determination of the commencement of the application timeline
- ❖ disciplinary proceedings to follow failure of the appropriate officer to act on any application within the timeline stipulated, without lawful excuse
- ❖ no touting whatsoever by official or unofficial persons at any port in Nigeria & criminal proceedings for soliciting or receiving bribes from passengers or other port users
- ❖ merge of all departure and arrival interfaces into a single customer interface
- ❖ 24-hour operations by the Apapa Port shall resume

## Ease of doing business (EDB) ranking

Nigeria made a significant rise on the EDB ranking in 2017. It is not unconnected to the immigration and sundry reforms with ease of doing business in focus. However the World Bank's discontinuation of the ranking exercise following allegations of infringement of ethics in the conduct of the exercise by Kristalina Georgieva (2017 to 2019) (a former Board official) in favour of China is of concern to Nigeria particularly when taking into consideration the reality on ground in Nigeria with respect to the World Bank criteria for ranking which are:

- ❖ **Starting a business** - Procedures, time, cost, and minimum capital to open a new business.
- ❖ **Dealing with construction permits** - Procedures, time, and cost to build a warehouse.
- ❖ **Getting electricity** - procedures, time, and cost required for a business to obtain a permanent electricity connection for a newly constructed warehouse.
- ❖ **Registering property** - Procedures, time, and cost to register commercial real estate.
- ❖ **Getting credit**
- ❖ **Protecting investors** - the extent of disclosure, the extent of director liability, and ease of shareholder suits.
- ❖ **Paying taxes** - Number of taxes paid, hours per year spent preparing tax returns, and total tax payable as a share of gross profit.
- ❖ **Trading across borders** - Number of documents, cost, and time necessary to export and import.
- ❖ **Enforcing contracts** - Procedures, time, and cost to enforce a debt contract.
- ❖ **Resolving insolvency** - The time, cost, and recovery rate (%) under a bankruptcy proceeding.

While it is easy to concede that Nigerian has done well in the area of starting a business, dealing with construction permits, paying taxes, and enforcing contracts, it is very difficult to concede improvement in the other areas of assessment. Irrespective of procedure getting electricity, registering property, getting credit, protecting investors, trading across borders, and resolving insolvency are disasters. The score is 4/10 i.e. 40%.

## Observed Challenges

- ❖ Inconsistency in government policy and very large gap between policy and implementation
- ❖ Absence of institutionalization of reforms
- ❖ Even at the height of the reforms on ease of doing business and celebration of success in improved ranking, Nigerian borders remain closed for about 3 years.
- ❖ Transaction across borders were literally discouraged as it took trucks an average of 72 hour to cross Seme Border into Nigeria.
- ❖ No uniformity in border access at all designated borders in Nigeria. While Seme and Idiroko Borders were under Lock and key, same was not the case with Illela Border and others in far north.
- ❖ While Apapa Port was instructed to run a 24hour operation, accessing to Apapa Port remains a nightmare.
- ❖ Only a few states appear to have taken significant interest in the reforms. Lagos, Kano, Edo and Osun states are the only states with significant achievement in settlement of minor claims through Small Claims Courts, and construction permits, registration of business premises.
- ❖ **The Federal High Court is yet to designate special courts for immigration matters.**

## Areas for improvement

- ❖ Power supply
- ❖ Crime, insurgency and Insecurity
- ❖ Internet penetration
- ❖ Centralized transparent reward system (an immigration officer reported of unlawful importation of arms and insisted on due process - he was dismissed)
- ❖ Starting a business
- ❖ Accessing finance
- ❖ Land and other property registration
- ❖ construction permits and development control
- ❖ getting electricity
- ❖ Streamlining of taxes, levies, rates and touting at Nigerian roads
- ❖ Speedy disposition of business related cases

## Conclusion

The governments desire to ease doing business in Nigeria aimed at improved experience for travelers and investment in Nigeria is paying off – although slowly.

Immigration reforms and accordion ease of doing business imperatives has done a lot of good to the business climate in Nigeria:

- ❖ The liberalization of Visa categories has reduced the level of discretion hitherto exercised by Immigrations Officers in Visa processing and approvals processes thereby eliminating corrupt practices in that regards.
- ❖ The introduction of timelines for specific official actions such as approval or denial of Visa application aids efficiency
- ❖ The requirement for stating the reasons for denial of approval of Visa eliminates official impunity just as online applications and eVisa.
- ❖ Penalty for default in taking official action timeously has made Lawyers, government officials and investors more circumspect in doing their business.

However, there is yet a lot to be done to improve and sustain the gains so far made. While policy has improved, physical infrastructure, market forces, policy implementation infrastructure, institutions, and human resource are yet to catch up. The reforms should be cascaded to more states and local governments within whose jurisdiction many small scale businesses operate. Similarly, reform need be institutionalized rather than personalized. Many of the improvements are not exactly institutional but individual efforts.

**Thank you  
and  
God Bless Nigeria**

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