

# **EXECUTIVE ORDER 005: ANY IMPACT ON MIGRATION OF EXPATRIATES?**

**BY**

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## INTRODUCTION

The Nigerian Government has been proactive in initiating policies and directives aimed at improving the general business climate in Nigeria. Some of these policies and directives have been issued as Presidential Executive Order. The latest being the Executive Order 005, titled 'The Presidential Executive Order – For Planning and Execution of Projects, Promotions of Nigerian Content in Contracts and Science, Engineering and Technology' (E05).

The E05 is largely Nigerian content driven and provides guidelines for businesses with respect to sourcing foreign services for their business operations. The E05 specifically delineates the extent of use of non-Nigerian goods and services in the areas of contract procurement, science, engineering and technology.

Therefore, it is imperative for companies that employ foreigners in Nigeria understand the possible impact of the EO on their businesses.

## EXECUTIVE ORDER 005

The EO5 amongst other things, prohibits the Minister of Interior from granting visas and work authorisation to foreigners whose skills are available in Nigeria. Beyond that, the order further stipulates that the approval of expatriate quotas would be contingent on evidence of concrete arrangements to train Nigerians where the qualifications and competence of Nigerians are not available or cannot be readily ascertained.

A careful analysis of the above reveals the policy thrust of EO5, which in essence is to ensure the maximum utilisation of locally available manpower, particularly in sectors where local labour is in abundance. Implicitly, expatriates are only to be considered in circumstances where their skills sets are lacking and even in such cases, there must be demonstrable and verifiable training plans for Nigerians to succeed these expatriates.

To underscore its objective, the EO5 mandates the National Office for Technology Acquisition and Promotion (NOTAP) to maintain a regularly updated National Database of Nigerians with expertise in science, engineering and technology, amongst others. Correspondingly, the Ministry of Interior is also directed to take into consideration NOTAP's database in determining the availability of local skilled manpower in science, engineering and technology for the grant of expatriate quota.

Instructively, the EO5 appears to be less stringent on expatriates from Africa countries (excluding those from ECOWAS states) as it provides that the Ministry of Interior may, where necessary, create special immigration classifications to encourage expatriates from African countries. The objective is to encourage expatriates with skills that are not available in Nigeria with a view to sharing knowledge with Nigerians.

## LEGAL EFFECT OF THE 005

The EO5, like other executive orders, is a directive to the various Ministries, Departments and Agencies (MDAs) to enforce its provisions pursuant to existing legislations such as the Public Procurement Act 2007, Immigration Act 2015, National Office for Technology Acquisition and Promotion Act, Nigerian Oil and Gas Industry Content Development Act 2010.

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While it may be perceived that EO5 is merely an administrative instrument not being a legislative enactment, it places obligations on MDAs to enforce provisions of existing laws.

## PROVISION RELATING TO EMPLOYMENT OF EXPATRIATES UNDER THE IMMIGRATION ACT 2015

The Immigration Act 2015 and the Immigration Regulations 2017 which are the principal legislation regulating the entry of expatriates wishing to take up employment in Nigeria do not explicitly prohibit the placement of expatriates in jobs that Nigerians are qualified and available to hold.

However, as a condition precedent for the approval of expatriate quota applications, a detailed training program for Nigerians understudying the expatriates is required. Also, in practice, the Minister of Interior may refuse to grant expatriate quota approvals for positions/jobs that can be sourced locally within Nigeria; based on the power conferred on the Minister to prescribe the conditions for entry into Nigeria. In view of the foregoing, it is safe to say that the placement of expatriates in positions/jobs in which there are qualified Nigerians are qualified and available to hold is generally at the discretion of the NIS.

## CONCLUSION

Given that one of the penalties for non-compliance with the EO5 is punishment under the Public Service Rules, it is expected that the MDAs, particularly the NIS, NCDMB amongst others will be strict to the letter in enforcement of local content directive in the granting of visas and expatriate quotas. All of these implies that foreign concerns would have to strategically develop acceptable localisation policies for the transfer of knowledge and skills to Nigerian to promote capacity development.

In line with current directive, forward-looking companies may need to consider hiring expatriates from African countries when recruiting for skills that are not available in Nigeria.

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