

EXPATRIATE QUOTA ADMINISTRATION IN NIGERIA:

Curbing Expatriate Quota Abuse



Jackson, Etti & Edu

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Under existing legal regulations, an Expatriate Quota (EQ) must be issued to the company employing an expatriate by the Federal Ministry of Interior (FMI) before it can employ such an expatriate to work in Nigeria.

In simple terms, an EQ is an authorization permit issued by the Nigerian government through the FMI to companies that have fulfilled the prerequisites for engaging expatriates on a long-term basis. It is not granted automatically but is subject to meeting certain qualification criteria. These include evidence of a shortage of required skill set in Nigeria and commitment to developing the same locally by employing Nigerians to understudy the expatriates employed. This is designed to prevent the indiscriminate employment of expatriates where there are suitably qualified Nigerians to fill such positions.

EQs are initially issued with 3 (three) years validity in the first instance and thereafter renewable every two years until the expiration of its 7 (seven) year lifespan. EQs are fundamental for the facilitation of long-term or recurring employment of expatriate personnel and without such approval, any company employing an expatriate does so ultra vires or illegally.

Post-Grant Conditions

Apart from the requirements for obtaining EQs, there are conditions imposed upon the grant of the EQ which an employer must comply with. Some of the conditions include:

- employment of suitably qualified Nigerians to understudy each foreigner employed,
- training for the shadowing Nigerian understudies,
- filing of immigration returns on the utilisation of the EQs with the FMI and Nigeria Immigration Service (NIS) each month and
- registration of expatriates with the appropriate professional bodies.

While these conditions appear to be straightforward, some employers struggle to comply and engage in attempts to circumvent the conditions by committing acts tantamount to EQ violations.

Expatriate Quota Abuse

The utilisation of EQs has been a subject of abuse and misuse by the employers of non-Nigerians thus creating challenges in the administration of EQs by the FMI. Expatriate quota abuse occurs when an EQ is not utilized for the purpose for which it was issued or when conditions attached to it have not been complied with. EQ abuse in whatever form negatively impacts the Government's efforts on EQ administration.

Common examples of EQ abuse include the following:

- **Quota Trafficking:** this occurs where expatriates under the EQ of one company work for another company for one reason or the other i.e., through corporate restructuring.
- **Quota/Job description Mismatch:** when the quota position does not match the job description or where the expatriate does not have the requisite academic qualifications. For instance, a quota position of an engineer is occupied by a welder or an expatriate with a qualification in accounting or no qualification at all.
- **Lapsed EQs** – the failure to renew an EQ upon expiration can also be deemed an EQ violation.
- **Quota over-placement** – that is, employing and placing more expatriates on already occupied slots to avoid applying for additional EQs.

Sanctions for non-Compliance

Compliance with immigration law and regulations is the responsibility of both employer and expatriate. Therefore, the penalty for non-compliance is vicariously borne by both an employer and individual expatriates. The law makes it clear that expatriates and their employers, if liable for any immigration offences, will both be punished individually and jointly. The penalties for liability range from the payment of fines or imprisonment or both, deportation of the expatriate employee to winding up of the company.



Responsibility and Role of the Employer

The primary burden of compliance and prevention of EQ abuse lies with the employer and the weight of sanctions falls heavily on the employer where culpability is established.

The position of the law is clear, a company that desires to employ a non-Nigerian must seek the authorisation of the Minister of Interior to do so. Furthermore, companies in regulated industries must in addition to the authorisation of the Minister obtain additional approvals to employ foreigners from their primary regulators.

Immigration laws make provision for several protective measures that a company can deploy in the management of its expatriate workforce. One of such is the 'Stay of Action' protection given against penalties on default relating to the renewal of EQs. If an EQ expires during the renewal process, the company may apply for a "stay of action letter" which would allow the foreign nationals in the company to remain

Additionally, under the provisions of the revised Handbook on EQ Administration in Nigeria, changes can be made to EQs to accommodate the needs of a company. Examples of such changes include redesignation, issuance of the project tagged EQs, upgrade of EQ to a PUR (Permanent Until Review) status.

Also, a temporary work permit (TWP) can be issued to allow a company to employ expatriates for short-term technical assignments i.e., installation, repair, and maintenance of equipment.

It is, therefore, in the best interest of employers to remain compliant and committed to their legal obligations. Maximum compliance is recommended to uphold the policy goals of the Government; the most significant being the transfer of skills and knowledge to Nigerian youth through the Nigeria understudy trainee programme.

Conclusion

Nigeria remains the most populous black nation and with heightened interest and focus on Africa; Nigeria will continue to experience a large influx of foreign businesses and expatriates taking up employment in Nigeria. It is therefore crucial that companies engage experts and specialists to advise them on their immigration needs.

At Jackson, Etti & Edu, our immigration advisory team is available to assist companies to achieve compliance with the law and engage with the FMI, NIS, NCDMB and other regulatory agencies.

Our team will assist your organisation to design a suitable immigration strategy and recommend the best-suited employment arrangements while also ensuring compliance with statutory requirements.

For further enquiries and assistance, please contact:

**AFOLASADE OLOWE**

Partner

sade.olowe@jee.africa.com

+234 (0) 906 244 1709