PAPER

CORPORATE IMMIGRATION IN NIGERIA: AN ANALYSIS OF THE REGULATORY FRAMEWORK

Prince Ebere Nwokoro

ABSTRACT

This article provides an in-depth examination of Nigeria's corporate immigration law, highlighting key regulatory considerations, challenges, and opportunities for foreign business entities and individuals. The discussion encompasses the principal legislation, regulatory framework, visa requirements, work permits, expatriate quota approvals, and residence permits. The article identifies implementation gaps, bureaucratic hurdles, and inconsistencies, proposing reforms to streamline procedures, enhance data protection, and align with international best practices. It underscores the need for clarity, guidance, and effective adjudication mechanisms to facilitate foreign investment, promote economic growth, and ensure a conducive business environment.

Keywords: Corporate Immigration Law, Nigeria, Foreign National, Regulatory Framework, Immigration Policy.

1. INTRODUCTION

The rapidly evolving global landscape, characterized by increasing globalization, technological advancements, and shifting socio-economic dynamics, has significantly impacted Nigeria's legal framework. The country's immigration landscape, in particular, has undergone substantial transformations, presenting complex challenges for foreign business entities and individuals seeking to navigate its intricacies. As the world becomes increasingly interconnected, the intersection of business, trade, and immigration law has become more pronounced, necessitating a nuanced understanding of Nigeria's corporate immigration framework.

Immigration law, inherently dynamic and constantly evolving, poses significant hurdles for potential corporate migrants seeking to enter Nigeria for investment, work, or residence. This complexity underscores the need for clarity and guidance on the extant corporate immigration regulations, mechanisms, and procedures. This article provides an overview of some salient corporate-related aspects of Nigerian immigration law, highlighting key legal considerations and hurdles that foreign business persons or corporations must overcome to successfully operate within the Nigerian market. By examining the current framework, this conspectus aims to: introduce the regulatory framework for corporate immigration law in Nigeria; analyze the primary mechanisms and procedures governing corporate migration; identify critical legal challenges and potential pitfalls confronting

Prince Ebere Nwokoro
LLM (LAGOS), Ph.D ABD,
Senior Lecturer & Director,
Prof Epiphany Azinge
Centre for Immigration
Law Studies,
Gregory University, Uturu,
Abia State, Nigeria
Principal Partner,
The FIRM Chambers.
eberenwokorosnr@gmail.com.

corporate migrants; and offer practical insights for navigating Nigeria's complex immigration landscape.

Through this examination, this article seeks to equip foreign investors, business leaders, and legal practitioners with a deeper understanding of Nigeria's corporate immigration law, facilitating informed decision-making and effective navigation of the country's regulatory environment.

2. REGULATORY FRAMEWORK FOR CORPORATE IMMIGRATION LAW IN NIGERIA

The Immigration Act 2015 (the "Act")[1] serves as the primary legislation governing immigration law in Nigeria, repealing the outdated Immigration Act 1963[2]. The Act is complimented by the Immigration Regulations 2017 (the "regulations")[3], issued by the Ministry of Interior pursuant to section 112(1) of the Act. The Act comprising 116 sections, provides a comprehensive framework that aligns with international best practices and contemporary migration management standards. It offers guidance on requirements for foreign individuals and entities seeking to conduct business and work in Nigeria.

The above regulatory framework is further supported by the Constitution of the Federal Republic of Nigeria 1999 as amended ("CFRN") and other laws, regulations and policies that specifically address entry for business purposes in Nigeria. These include: Companies and Allied Matters Act (CAMA) 2020,[4] Nigerian Investment Promotion Commission (NIPC) Act 1995,[5] Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995,[6] The Labour Act 2004,[7] The Mining Act 2007,[8] The Nigerian Content Development Act 2010,[9] Expatriate Quota Approval Guidelines 2022, the Nigeria Visa Policy 2020, the ECOWAS Treaty 1975[10] etcetera.

Immigration is an area of sole federal jurisdiction and multiple federal agencies exercise regulatory functions over immigration matters in Nigeria, notwithstanding the fact that the Act designates the Nigeria Immigration Service (NIS) as the principal body charged with responsibility for administering its provisions. Within the context of corporate immigration other relevant agencies include, but are not limited to the following:

(a) The Federal Ministry of Interior (FMI) whose Minister is charged with responsibility for immigration and assigned specific functions under the Act. As presently constituted, the FMI is responsible for matters related to the granting of expatriate quotas, business permits, inter alia.

(b) The Nigerian Investment Promotion Commission (NIPC) established in 1995 as a Federal

[1] Nigerian Immigration Act, 2015, LFN
[2] Nigerian Immigration Act, 1963 which was re-enacted as CAP 11, LFN, 2004.
[3] Immigration Regulations, 2017
[4] Companies and Allied Matters Act 2020, LFN
[5] Nigerian Investment Promotion Commission (NIPC) Act, 1995 (Act No16)
[6] Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, 1995
[7] Labour Act, 2004. CAP 123
[8] Mining Act, 2007
[9] Nigerian Oil and Gas Industry Content Development Act, 2010
[10] ECOWAS Treaty (Lagos, 28 May 1975)

Agency created to promote, coordinate and monitor all investments in Nigeria, as well as to maintain liaison between investors and other authorities concerned with investment.[11] The commission also issues companies with foreign participation with Business Permit.

(c) The Corporate Affairs Commission (NIPC), which administers the provisions of CAMA, the primary legislation that governs the incorporation and regulation of companies in Nigeria;

(d) The Nigerian Content Development and Monitoring Board (NCDMB) established under the NOGIC Act,[12] whose responsibilities include the administration and management of applications for expatriate quota, succession planning and the deployment of expatriates in the oil and gas industry; and

(e) The Federal Ministry of Labour and Productivity (FMLP) which is responsible for promoting employment, regulating the labour market, overseeing labour relations and monitoring employment conditions.

The FMLP has an international Migration Desk (ILMD)which is responsible for ensuring the protection of employment and social rights of foreign migrant workers within the country, and has a mandate, among others, to establish a database on migrants within and outside Nigeria.

3. THE LEGAL GATEWAY: CHANNELS FOR CORPORATE MIGRANTS ENTERING NIGERIA

Foreigners coming on business trips or intending to invest or establish business or work in Nigeria or visit Nigeria for any economic reason whatsoever must, as a threshold issue, obtain a Visa. In ***US vs Vargas***,[13] Justice Neaher hypothesized that "***a visa was traditionally affixed to a passport itself. It continues to be defined as an endorsement made on a passport by the proper authorities (as of the country the bearer wishes to enter) denoting that it has been examined and that the bearer is permitted to proceed.***"In Nigeria, the word Visa is statutorily defined to mean:

> ***"an impress, vignette or endorsement on a travel document purporting to be signed and dated by an officer appointed for that purpose by or on behalf of the government of Nigeria and authorizing entry or transit across Nigeria subject to compliance with any special requirements prescribed by the Immigration Authorities at a port of entry and valid for specified time and for the number of journeys stated therein."***[14]

From the ***ipsisima verba*** of section 20(1), (2) and (3) of the Act, a visa application can be made directly to the Comptroller General of Immigration or the diplomatic mission in the country of nationality of the applicant or the country where the applicant resides. Notably, a new Visa Policy[15] was unveiled by the Federal Government of Nigeria to, inter alia, simplify the visa application process, provide various visa

[11] Note 5
[12] Note 9
[13] 380 F. Supp.1162 (NY, 1974)
[14] Section 116, Immigration Act
[15] Note 11

options for travels, facilitate ease of doing business, and attract Foreign Direct Investment.[16] The policy adopts four (4) visa categories which are further expanded to seventy-nine (79) visa classes/types. The categories are: the Visa Free/Exemption which has four classes; the Short Visit Visas (SVV) which has 24 classes; Temporary Resident Visas (TRV) which has 36 classes; and Permanent Residence Visas (PRV) which has 15 classes.

The Nigeria Visa Policy (NVP) undoubtedly embodies progressive provisions specifically designed to foster a conducive business environment, thereby enhancing the ease of doing business and yielding mutual benefits for both corporate migrants and local enterprises. Among other things, it made provision for: E-Visa issuance for Short Visit Visas, accessible to African Union Member States passport holders and citizens of all countries for business, emergency relief, and other purposes; Permanent Residence Visas for eligible migrants, such as investors ($250,000-$100,000,000), highly skilled individuals, and others, offering 5-year renewable residency up to indefinite periods; Reclassification of Temporary Work Permit (TWP) and Subject to Regularization visas to align with short-term and long-term employment and residence requirements for expatriates.

Despite these positive developments, its implementation has several shortcomings and untapped opportunities. For instance, the policy's expanded visa options, intended to cater to various travel purposes beyond transit, tourism, business, and work, remain largely inaccessible. Currently, applicants for non-work travel purposes are limited to Business or Tourist visas, while work-related purposes are restricted to Subject to Regularization (STR) and Temporary Work Permit (TWP).[17] Even the reclassification of TWP visas, expected to bring significant changes and benefits to businesses utilizing expatriate manpower, has not been implemented.[18] Similarly, the Investors Visa, designed to attract Foreign Direct Investment (FDI) for businesses, remains underutilized.[19] To fully leverage the NVP' benefits, addressing these implementation gaps is crucial.

4. CLEARING THE PATH: REGULATORY & IMMIGRATION REQUIREMENTS FOR FOREIGN BUSINESS & EXPATRIATE WORKERS

It is crucial to emphasis the distinction between visas and permits in the Nigerian context. While visas allow entry into Nigeria, certain permits (approvals) are required to confirm a foreign national' ability to stay and work in the country and do business.[20] In other words foreigners intending to do business and work in Nigeria are subject to regulatory approvals, control, and permits.

For foreign companies coming into Nigeria to carry on business, the law is that they must take all

[16] Olugbenro, Y., Arowolo, O., Nzeh, P., Okunade, T., Ogunbamawo, O., and Oladoke, F. 'Analysis of the Nigeria Visa Policy (NVP) 2020' (Deloitte, 2020) < https://blog.deloitte.com.ng/nigeria-issues-new-visa-policy/> *accessed* 27 February, 2020

[17] Olaniyonu, B., Olanrewaja, A. (2021), 'A Review of the Implementation Status of the Nigerian Visa Policy (NVP) 2020' (KPMG Nigeria, 2021) <https://www.mondaq.com/nigeria/work-visa/1164524/a-review-of-the-implementation-status-of-the-nigeria-visa-policy-nvp-2020> accessed 24 April, 2023.

[18] Ibid

[19] Ibid

[20] Amadi, V., 'An Analysis of Migration Governance Framework in Nigeria'. (Johannessburg: New South Institute, 2024) 17

necessary steps to obtain incorporation as a separate entity in Nigeria for that purpose and until so incorporated the foreign company shall not carry on business in Nigeria or exercise any of the powers of a registered company; and shall not have a place of business or an address for service of documents or processes in Nigeria for any purpose other than receipt of notices.[21] In tandem with the authoritative precedent set by the Supreme Court in **CITEC Int' Estates Limited vs EDICOMSA Int' Inc & Associates**,[22] Nigerian law unequivocally mandates that foreign corporations obtain domestic incorporation prior to engaging in business activities within the jurisdiction. Contracts executed by non-compliant foreign entities are thus rendered unenforceable and nullified by the illegality of the operations. Notwithstanding the illegality of contracts executed by unregistered foreign entities, it is essential to recognize that this restriction pertains exclusively to contractual enforceability. A foreign company' capacity to litigate, either as plaintiff/defendant, remains unaffected in Nigeria. See the case of **Ritz Pumpen Fabrik GMBH & Co KG vs Techno Continental Engineers Nig. Ltd & anor**[23] wherein the Court of Appeal in allowing the appeal held, *inter alia*, that a foreign company not registered in Nigeria can sue either by itself or through its local Agent in Nigeria, and that does not mean "carrying on Business in Nigeria"contrary to the provisions of CAMA.

In addition, foreign investors seeking to establish a business or engage in self-employed activities in Nigeria must consider section 36(1)b of the Act and Regulations 4 and 12 of the Regulations. These provisions stipulate that non-Nigerian citizens cannot practice a profession, establish or take over any trade or business or register a limited liability company without obtaining Written Consent from the Minister of Interior in the form of a Business Permit. Considering that the NIPC, the Agency responsible for promoting foreign investments already mandates and issues Business Registration Certificates to qualifying companies (the same as Business Permits) it is argued that the requirement for Business Permit under the Immigration Act (and the Regulations) is an overlap.[24]

Elebiju' compelling argument suggests that the Ministry of Interior' (MOI) Business Permit approval requirement has become a regulatory anachronism in Nigeria' statute books, contributes to bureaucracy that slows down the wheels of business, and should be eliminated.[25] One of the primary reasons supporting this argument is the redundant documentation required by the MOI, such as Certified True Copies (CTCs) of incorporation documents.[26] Since companies must already satisfy the Corporate Affairs Commission (CAC) –the agency responsible for overseeing company incorporation, administration, and liquidation –it is logical to assume that the MOI could rely on the CAC' judgment. The incorporation process itself demonstrates that promoters have met the necessary requirements, ensuring their proposed business ventures align with Nigerian laws and regulations. The CAC would not permit illegal or prohibited activities and as such this makes the MOI' additional approval unnecessary.

[21] Section 78(1) CAMA 2020
[22] (2012) 3 NWLR (Pt 1606) 332 at 355 paras C-D; 367 para C-D
[23] [1999] 1 NWLR (Pt 598) 298
[24] Adedeji O., Odekuma O., Akpeme E., Olajubu O., PWC Regulatory Alert: An Overview of the 2022 Revised Handbook on Expatriate Quota Administration in Nigeria.
[25] Elebigu A, 'Nigeria: Musings II: Is Business Permit Under the Immigration Act Still Tenable in Nigeria?' <https://www.modaq.com> accessed April 24, 2023.
[26] Note 10

We therefore, argue that by eliminating MOI' Business Permit approval requirement, Nigeria can create a more business –friendly environment, reducing bureaucratic hurdle' and encouraging foreign investment.

Likewise, where a foreign national wishes to take up employment within the private sector, the proposed employer is required to initiate the application process to obtain consent from the relevant authorities. This is because under section 38(1) of the Act and Regulation 12 (3) of the Regulations, foreign nationals are prohibited from accepting private sector employment without Comptroller-General of Immigration' (CGI) Written Consent. It is of some moment to emphasize that it is the employer' responsibility to initiate this process. See the case of **Oliver vs Dangote Industries Ltd**.[27] To a discussion of this multiphased process, we now turn.

a. SHORT-STAY EMPLOYMENT ENTRY

Employers seeking to engage foreign nationals for specialized or skilled services or short-term projects can utilize the Temporary Work Permit (TWP) in Nigeria.[28] Historically, the TWP, issued as a Single Entry Visa (SEV), allowed foreign nationals invited by corporate bodies entry once for up to 90 days. However, revisions introduced by the NVP (cursorily discussed elsewhere in this article), now offer the TWP as a TRV, enabling multiple entries for six months.[29] This development facilitates repeated visits by foreign nationals within a short time frame.

The authority to issue TWPs is conferred on the CGI under section 37(8) of the Act and Regulation 8 of the Regulations; but both enactments do not offer much about how to get a TWP or what requirements need to be met to make a stay in the country to be legal.[30] Critics may contend that this lacunae imposes additional complexities and uncertainties for individuals seeking short-term employment in Nigeria. Nevertheless, the Nigeria Immigration Service (NIS) provides clarifying guidelines on work permit requirements via its official website, mitigating potential ambiguities.[31] Applications for (TWP) may be submitted by sponsor companies, organizations, or individuals, accompanied by documentation substantiating the specialized services required from the foreign national. Notwithstanding the provisions outlined in the NVP and the anticipated reforms, the TWP is presently obtained from the office of the Comptroller-General of Immigration (CGI) within the Nigeria Immigration Service (NIS). The permit is issued in the form of a letter of approval, which is subsequently transmitted to the relevant Nigerian diplomatic mission.[32]

---

[27] [2009] 10 NWLR (Pt 1150) 467

[28] Section 37(8) Immigration Act; Regulation 8, Immigration Regulations

[29] Note 24

[30] Note 30

[31] Temporary Work Visa F8A ,< https://immigration.gov.ng/visa-class/temporary-work-permit-F8a-2/> accessed 14 February, 2024.

[32] Sijuade A., The Corporate Immigration Review: Nigeria, The Corporate Immigration Review, 10th Edition, Law Business Research, Chris Magrath (Editor)

b. LONG-STAY EMPLOYMENT ENTRY

The initial stage in the process for foreign nationals seeking long-term employment in Nigeria involves obtaining Expatriate Quota Approval (EQA). This official permit, granted to the employing company, authorizes the employment of expatriates in designated positions for a specified period.[33] Companies operating in Nigeria' Oil and Gas Sector additionally require Nigerian Content Development and Monitoring Board (NCDMB) approval before submitting applications for Expatriate Quota grants or renewals. It is pertinent to note that the EQA regime in Nigeria has notable exceptions. Specifically automatic expatriate quota and residence permits are granted to approved personnel in the Mining Sector.[34] Additionally, citizens of Economic Community of West African States (ECOWAS) Member States are exempt from the EQA regime, as per the Treaty of Lagos, 1975.[35]

Upon submission of the application, accompanied by requisite supporting documents and additional required information, the EQA application will be processed, if approved, the EQA will be granted for a maximum period of three years, subject to renewal, specifying the positions to be occupied by foreign nationals.[36] A key administrative protocol of the EQA regime requires strict adherence to the principle of understudy.[37] The purpose of the under study scheme is to ensure that Nigerians are given job opportunities in every organization and strategically placed to take advantage of skills and technology transfer.[38] Unfortunately, the EQA scheme has reportedly been subjected to various forms of abuse, the most prevalent being the employment of unskilled foreigners to the detriment of qualified Nigerians. Many observers have noted that the unmitigated influx of unqualified expatriates, and their placement on EQ slots for which there are adequate local manpower resources, has contributed greatly to the rising unemployment figures in Nigeria.[39]

The United Nations Conference on Trade and Development (UNCTAD) World Investment Report 2005 recommends that Nigeria adopt a skills development framework that assesses company – wide training performance. This approach would replace the conventional understudy model, ensuring that expatriate employment is paired with targeted local capacity building initiatives.[40] According to the Report, in this new system, which would be called "Extended EQ Scheme"Nigeria would introduce a "scarce Skills"list to be based on objective research, carried out in collaboration with the private sector.[41] The list would signal to employers where expatriate hire can be fast-tracked. At the same time an investment threshold to qualify for expatriate hire would be retained to ensure that the employer has sufficient substance to cover the upkeep, health where expatriate hire can be fast-tracked. At the same time an investment threshold to qualify for expatriate hire would be retained to ensure that the employer has

[33] See Regulation 12, Immigration Regulations regarding the authority of the Minister to issue EQA
[34] Section 25, Minerals and Mining Act 2007.
[35] Article 3(2) ECOWAS Protocol; Section 37(13) Immigration Act.
[36] Note 10
[37] Ibid
[38] Yomi-Faseun, A; Sada .L., Uzosike D., Ajay A., The Challenges of Expatriate Employment in Nigeria, KPMG. Newsletter, September 2015.
[39] Yomi – Faseun, A., Sada .L, Uzosike D., Ajayi .A., Current Developments on Expatriate Quota (EQ) Policy in Nigeria, KPMG. Newsletter, July 2016.
[40] United Nations World Investment Report 2005
[41] Ibid

sufficient substance to cover the upkeep, health costs and departure costs of expatriate employees.[42] Interestingly, the Revised Handbook on Expatriate Quota Administration (2022) introduces a progressive provision stipulating that EQA will be limited to positions listed on the "Critical Skills List."[43] This list identifies occupations requiring specialized qualifications, experience or skills essential for the country' economic development. Employers must demonstrate that the position cannot be filled by Nigerian national.[44] However, FMI' delay in publishing the critical Skills List hinders effective implementation and creates uncertainty.

Further, a foreign national or expatriate seeking long-term employment in Nigeria is required to obtain a Subject-to-Regularisation Visa (STR VISA) before arriving in Nigeria. The Visa is issued by the Nigerian Mission or Embassy in the expatriate' country of origin and is conditioned on providing the inviting company' EQA amongst other requirements.[45] Where there is no mission in that country; the Visa may be obtained from a Mission in the country nearest to the country of domicile. It is important to note that the STR Visa is not in itself a Work Visa. Upon approval the STR Visa shall remain valid for a 90 days period, facilitating the entry of the proposed employee and their dependents into Nigeria to assume the specified position as authorized by the relevant EQ. Notably, it is anticipated, that the proposed employee' immigration status will be duly regularized through the procurement of a Resident Permit prior to commencing work with the company and before the STR Visa expires. If the foreign national fails to enter the country within the 90 days or departs from the country before the regularization is complete, they will need to apply for another STR Visa.[46]

The final step in the process involves the regularization of the proposed employees immigration status, which is accomplished through the company' submission of an application for the issuance of a Combined Expatriate Residence Permit and Alien Card (CERPAC). The CERPAC validates the foreign national' legal right to reside and work in Nigeria.[47] To acquire this card, an application letter from the Nigerian employer accepting immigration responsibility and requesting that the employee' stay be regularized is required. Additionally, the Applicant must provide a letter of employment and acceptance of the job offer, proof of EQA from the company, three passport photos, the Applicant' Passport with an endorsed TRV in this case a STR Visa, proof of payment of any applicable fee.[48]

Sijuwade'[49] assertion that a proposed employee must apply for both a CERPAC and a multiple entry visa to facilitate unrestricted movement in and out of Nigeria during their residency is misaligned with the current Nigerian Immigration Law.[50] According to section 18(2) of the Act, this requirement ceased to

[42] Ibid
[43] Note 10
[44] Ibid
[45] NIS Visa Application Guidelines < http://surl.li/mcryh accessed September 12> 2023.
[46] Obebe, A., Nigeria Immigration Law & Practice. (2017) First Edition.
[47] Note 30.
[48] NIS "Visa Types",< https://portal.immigration.gov.ng> accessed 12 September, 2023
[49] Sijuwade A., Nigeria: Introduction to the Immigration Framework, The Corporate Immigration Review, Law Business Research Ltd (2011)
[50] Section 18(2) Immigration Act

exist in 2015. To clarify, the CERPAC enables foreign nationals to reside and work in Nigeria, rendering the additional multiple entry visa requirements obsolete. This change simplifies the immigration process and eliminates unnecessary bureaucratic hurdles.

It is equally significant to highlight that the definition of a Work Permit in section 116 of the Act is problematic. It is described therein as " document that allows a Non-Nigeria expert to reside and work in Nigeria for a specified period."This definition in our respectful view has two major flaws. Firstly, it is overly restrictive, limiting Work Permits to "Experts" without clear justification. Secondly, section 36 and 38 of the Act reveal that Work Permits are not exclusively for experts, contradicting the definition. This inconsistency requires clarification.

5. THE ECOWAS FACTOR: NON-APPLICATION OF WORK AND RESIDENCE PERMIT REQUIRMENTS

The status of corporate migrants from ECOWAS Member States deserves attention. Under the Treaty of Lagos,[51] and the Supplementary Protocol of 1979, the Community Citizens have the right to enter, reside and establish on the territory of member states.[52] Notably, the exercise of these rights are predicated on possession of valid travel documents, including an international health certificate,[53] and applicants must present themselves at any of the official entry points of the member state.

The Supplementary Protocol on the Right to Residence A/SP.1/7/86 further enables the right to residence by providing that this right includes the right to seek and carry out income earning employment in Host ECOWAS States provided they had obtained an ECOWAS residence card or permit.[54] Additionally, by Article 23 thereof, individuals who migrate and comply with rules governing residence should receive equal treatment as the host country' nationals. This includes aspects such as job security, the possibility of re-employment in case of job loss, with community citizens given preference over newly admitted workers, assistance with re-employment and training.[55]

It is important to highlight that in compliance with the ECOWAS protocol on the free movement of persons, the relevant provisions under the Act relating to foreign nationals requiring visas, work permits and residence permits do not apply to nationals of member states of ECOWAS.[56] In other words, they are exempted from requiring entry visas and are allowed to reside, work and undertake commercial activities provided they register with the NIS as nationals of ECOWAS. However, concerns arise regarding security of migrant workers, including community citizens. Current legislation fails to address the ECOWAS Protocol' equality of treatment provisions. By addressing these gaps, Nigeria can promote a more inclusive and secure environment for corporate migrants from ECOWAS member states.

---

[51] Note 47
[52] Article 2(1) of the Protocol relating to the free movement of persons, residence and establishment A/P.1/5/79
[53] Article 3 of the Protocol relating to the free movement of persons, residence and establishment A/P.1/5/79
[54] Article 2 of the Supplementary Protocol on the Right of Residence A/SP/.1/7/86
[55] Article 23(1) (a)-(f) of the Supplementary Protocol on the Right of Residence A/SP.1/7/86
[56] Section 37(13) Immigration Act, and Regulation 11(4) Immigration Regulations.

6. IMMIGRATION CONTROL MEASURES: REGISTRATION, OFFENCES AND PENALTIES.

Pursuant to statutory requirements, the NIS is entrusted with the responsibility of establishing and maintaining a register of foreign nationals resident in each state;[57] and foreign nationals must notify the NIS office in their state of registration within 7 days of any changes to their residence status or circumstances.[58] This regulatory framework facilitates effective monitoring, tracking and management of foreign nationals' activities within the country, thereby enhancing national security and immigration control.

The foreign national is also obligated to have a copy of the certificate of registration in his possession at all times, in the event an immigration officer demands for it.[59] In addition the Regulations place responsibility on householders who lease or rent their property to foreign nationals to ensure that such foreign nationals comply with these provisions;[60] as well as mandate owners or managers of hotels, boarding houses or any premises where lodging or sleeping accommodation is provided for pay, to keep a register of foreign nationals.

The Regulations provisions for data collection, identification, registration, and control of foreign nationals are, doubtless, commendable. However, a critical oversight is the lack of explicit safeguards for protecting collected data and establishing procedures for addressing complaints related to data misuse, abuse or privacy breaches. To address this gap, it is respectfully argued that supplementary regulations should be issued outlining clear guidelines on data management and imposing sanctions for non-compliance.

Furthermore, the requirement that households ensure immigrant compliance with the Regulations or report non-compliance to immigration authorities raises concerns. This obligation potentially transforms private citizens into defacto immigration officers, exposing them to sanctions for simply renting properties to foreign nationals. This provision may inadvertently deter homeowners from renting to foreign nationals undermining the Regulation' objective of fostering a conducive business environment. Reservation of this requirement is, therefore, necessary to strike a balance between national security and individual right.

The Act and Regulations stipulate various offences and penalties, categorizing them into individual and corporate liabilities. Notably, corporate migrants must be aware of key infractions, including: failure to regularize stay within 3 months;[61] and non- renewal of work visa or residence permit within 30 days of expiry.[62] Upon conviction, foreign nationals face severe penalties - 3 years' imprisonment, a fine of N500,000, or both.

[57] Regulations 22 and 23 Immigration Regulations
[58] Ibid
[59] Regulation 33(1) Immigration Regulations
[60] Regulation 29(1) Immigration Regulations
[61] Section 57(5) (a-c) Immigration Act; Regulation 47 (5) (a-c) Immigration Regulations.
[62] Ibid

We respectfully argue that the inclusion of imprisonment terms raises concerns. This approach diverges from international best practices, where deportation and financial penalties on employers are typical consequences for immigration law breaches. We further argue that the imprisonment term is excessive and potentially counterproductive. Instead, we recommend aligning Nigerian immigration laws with global standards, focusing on deportation and financial penalties to ensure compliance.

Stringent obligations are also imposed on employers regarding foreign nationals' employment. For instance, failure to notify the Comptroller-General of Immigration (CGI) of changes in a foreign national's employment status constitutes an offense and penalties for non-compliance under the Act include - deportation of defaulting non-Nigerian employers, foreign nationals, and their dependents ; and winding up of the employer's business. While under the Regulations it further attracts 5 years' imprisonment or N1 million fine, or both, for defaulting employers.[63] Similarly, corporate entities face stringent penalties for non-compliance. Failure to renew expatriate quota or submit monthly returns, for instance, attracts a fine of N3 million; and failure to employ Nigerian understudies for foreign employees renders the defaulting company liable to N3 million fine per month. Unauthorized utilization of expatriate quota positions also attracts a N3 million fine.[64]

The Regulations' repetitive penal provisions raise concerns. Despite the Act's recent origin, some provisions are unnecessarily restated in the Regulations, encroaching on the National Assembly's constitutional authority to prescribe punishments. Furthermore, the framework confers excessive powers on the Minister and immigration authorities without adequate checks. For instance, arbitrary revocation of business permits without stated reasons or parameters; and unfettered detention powers for suspected immigration offenders. Section 48(1) is particularly contentious, allowing detention for up to 3 months pending deportation orders. Scholars and experts argue this violates fundamental human rights, including freedom of movement. Ozor critiques this provision, labeling it "torturous humiliation" and advocating for specific time frames to curb Ministerial discretion.[65] To address these concerns, reforms should streamline penal provisions to avoid duplication; establish clear parameters for Ministerial powers; introduce time limits for deportation orders; and ensure compliance with international human rights standards. By revising these provisions, Nigeria can strike a balance between effective immigration regulation and protection of human rights.

7. JURISDICTIONAL COMPETENCE IN IMMIGRATION MATTERS

The constitution of the Federal Republic of Nigeria 1999 as amended unequivocally vests exclusive jurisdiction in the Federal High Court.[66] Furthermore, the Act mandates the establishment of a dedicated division within the Federal High court to exclusively handle immigration cases.[67] There is also provision

[63] Regulations 48(1)b, 48(2) Immigration Regulations.
[64] Regulation 52(1)(6-7) Immigration Regulations.
[65] Ozo, C, 'Nigerian Immigration Practice and Procedure Detention of Expatriates and Migrants – Has the Immigration Act crossed the Legal Threshold?' DCSL Corporate Services Limited <https://www.dcsl.com.ng > accessed 24 April, 2023.
[66] Section 251(I)(g) and 3 CFRN 1999
[67] Section 67, Immigration Act

for an immigration case to be dealt with in priority to any other case, civil or criminal, where a person is charged with an offence the conviction for which, would result in deportation.[68]

Regrettably, the provision relating to the establishment of an Immigration Division under the Federal High Court remains unimplemented; and this failure or inaction has significant implications including but not limited to:

- Inefficient Adjudication: The absence of specialized jurisdiction hinders effective and expeditious resolution of immigration disputes.
- Lack of Expertise: Judges without specialized knowledge of immigration law may struggle to navigate complex issues.
- Increased Backlog: Overburdened courts may prioritize other cases delaying immigration proceedings.
- Inconsistent Rulings: Without a dedicated division inconsistent decisions may arise, undermining the rule of law.

It is respectfully opined that the non-establishment of an Immigration Division under the Federal High Court is a missed opportunity for effective immigration adjudication; and urgent attention is required to fulfill the statutory mandate and ensue Nigeria' immigration system operates efficiently and justly.

It is equally noteworthy that the Act provides for the issuance of a pre-action notice before a Claimant can bring an action against the NIS.[69] It has been argued in some learned quarters that the insertion of a provision in an Act mandating pre-action notice usually constitute an obstacle that may erode or impede the right of access to court by aggrieved persons.[70] This school of thought maintains that anachronistic rules such as pre-action notice serve no end of justice and is often a procedural requirement which is employed by defendants to delay or deny an inquiry into the merits of the case.

Notwithstanding this controversy, it has long been laid to rest that the rationale behind the jurisprudence of pre-action notice is to enable the Defendant know in advance the anticipated action and a possible amicable settlement of the matter between the parties without recourse to adjudication by the court.[71] It affords the Defendant a breathing space to decide whether or not to settle or make reparation to the aggrieved party.[72] Accordingly, we posit that a pre-action notice requirement in the Act constitutes a salutary innovation. It heralds a significant advancement in promoting judicial efficiency, encouraging dispute resolution, and fostering a culture of litigation avoidance.

[68] Section 48(1) Immigration Act
[69] Section 109(1) Immigration Act
[70] Nwokoro E, 'The Companies and Allied Matters Act 2020: A Randomized Analysis of the Reforms Introduced by the Act'. *Gregory University Uturu College of Law Journal,* December [2020] (1) 1A
[71] Niger Care Development Co. Ltd v Adamawa State Government & Ors (2008) 9 NWLR (Pt 1093)
[72] Ngelegla v Tribal Authority Nongowa [1953] 13 WACA 325.

8. FINAL THOUGHTS!

In conclusion, Nigeria's corporate immigration framework presents complex challenges for foreign business entities and individuals. The Immigration Act 2015 and subsidiary regulations provide a foundation for navigating these complexities. However, implementation gaps, regulatory overlaps, and outdated requirements hinder the effectiveness of the framework. To enhance the business environment, Nigeria should address these challenges by streamlining regulatory approvals, eliminating redundant documentation, and clarifying guidelines for expatriate quota administration. Additionally, revising penal provisions to align with international standards and establishing a dedicated Immigration Division within the Federal High Court will improve adjudication efficiency. By implementing these reforms, Nigeria can foster a more conducive business environment, attract foreign investment, and promote economic growth. As the global landscape continues to evolve, Nigeria's corporate immigration framework must adapt to meet the needs of a rapidly changing world.