

WORK PERMIT UPDATE: NEW WORK PERMIT REGULATIONS ISSUED BY THE GOVERNMENT.

The Minister of State under Prime Minister's Office responsible for Labour, Youth, Employment and Persons with Disability recently has issued the Non-Citizen (Employment Regulations) Regulations 2016 vide Government Gazette Number 331 dated 30th December 2016.

The Regulations, which are made under the Non-Citizens (Employment Regulations) Chapter 436 of the Laws, provide various clarifications on the procedures, timelines and compliance document for checklists while processing each type of work permit, grounds for exemptions and procedure for obtaining approval for bulk recruitment for specific projects in Tanzania.

REQUISITE DOCUMENTS TO BE ACCOMPANIED WITH APPLICATION FOR WORK PERMIT:

A) An Application for Work Permit Class A shall be accompanied by:

1. A letter justifying why a work permit should be granted;
2. Two recent passport size photographs;
3. A photocopy of a valid passport;
4. Sectoral approvals (where applicable);
5. Previous work permit (for renewal application);
6. A copy of industrial, business or operating license;
7. A copy of certificate of Tax Identification Number (TIN);
8. A copy of certificate of Value Added Tax (where applicable);
9. A copy of certificate of incorporation or business name and extract from the Registrar of Companies;
10. Memorandum and Articles of Association (where applicable); and
11. Copy of Certificate of Incentive (if any);

B) An application for Work Permit Class B, C and D, shall be accompanied by:

1. Contract of employment or engagement, as the case may be, duly signed by relevant parties;
2. Job or engagement description;
3. Curriculum Vitae of the non-citizen;
4. Two recent passport size photographs of the non-citizen;
5. Copy of academic or professional certificates of the non-citizen;
6. A copy of accreditation certificate, from respective professional entities; (where applicable);
7. Certified translation of certificates or documents by competent Authority, Embassy or Consular office (if they are in a language other than English and Kiswahili);

8. Photocopy of a valid passport;
9. Previous work permit (for renewal application);
10. A copy of industrial, business or operating license;
11. A copy of certificate of incorporation or business name and extract from the Registrar of Companies;
12. Memorandum and Articles of Association;
13. A succession plan (for renewals);
14. Sectoral approvals (where applicable); and
15. Certificate of Incentive (if any).

STIPULATED TIME FRAME TO HANDLE AN APPLICATION:

According to the Regulations, the Labour Commissioner may within 14 days approve or reject any submitted applications and communicate the same to the applicant.

ELIGIBLE CRITERIA AND CONDITIONS FOR GRANTING WORK PERMIT:

The Labour Commissioner shall not issue a work permit unless he is satisfied of the following criteria and conditions:

1. Applicant is eighteen (18) years of age or above;
2. Applicant possesses relevant skills, qualifications and experience;
3. Applicant is registered by a professional body of his profession in Tanzania Mainland i.e. National Board of Auditors and Accountants (NBAA), Tanzania Insurance Regulatory Authority (TIRA) to mention a few;
4. Employer provides sufficient evidence from a recognized job search mechanism that it is unable to fill the post within Tanzania; and
5. Employer has a well-known address and duly registered by relevant authorities.

OBTAINING WORK PERMITS BY BULK RECRUITMENT:

An employer wishing to make bulk recruitment shall seek permission of the Labour Commissioner in writing. Regulations 2 states bulk recruitment as recruitment of many non-citizen employees in phases for the execution of specific project within a specified period of time.

The ration in determining bulk recruitment is being regarded by the Labour Commissioner that; in the event that bulk recruitment work permits are granted, the work permit may be granted at a ratio of ten local employees to one non-citizen employee.

IMPOSED RESTRICTION FOR USE OF A WORK PERMIT AS A RESIDENCE PERMIT:

The current regulations has imposed restrictions of using work permit as a residence permit, whereas under Regulations 11 stipulate that:

“ FOR AVOIDANCE OF DOUBT, A WORK PERMIT ISSUED UNDER THESE REGULATIONS SHALL NOT, IN ANY CASE BE CONSTRUED AS PERMITTING A FOREIGNER TO RESIDE IN ANY PART OF THE UNITED REPUBLIC OF TANZANIA, UNLESS HE IS IN POSSESSION OF A VALID RESIDENCE PERMIT UNDER THE IMMIGRATION ACT. ”

The latter clearly clarifies that an investor or the employee intend to work and reside in Tanzania must have both work and residence permits prior to commencement of employment or business in Tanzania.

PROCEDURES FOR EXEMPTIONS TO EMPLOY A NON-CITIZEN:

Any employer who wishes to employ a non-citizen and he is restricted by the conditions imposed by the law which requires certain post(s) to be filled by only Tanzanians citizens shall apply in writing to the Minister for an exemption from application of the provision of the Act. In doing so, the Minister shall seek advice from the Labour Commissioner and may communicate her/his decision within 14 days. The granted exemption may further be amended or withdrawn by the Minister after consultation with the Labour Commissioner.

Grounds for Exemption include:

1. Sufficient evidence to satisfy Minister that employer is unable to fill particular post(s) due to lack of qualified personnel in Tanzania Labour Market and or complexity of technology employed by the business enterprise;
2. Justification that investment is of great value to the country's economy in terms of job creation, tax payment and transfer of technology; and
3. The non-citizen has a valid and legally recognized marriage to a Tanzanian and such marriage has subsisted for a period of not less than three years.

In issuing the exemption the Minister may take into account waiver of fees specified under the provisions of the Regional, Bilateral, Multilateral Agreements and Memorandum of Understanding in which the United Republic is a signatory.

Important Features of the Regulations include:

1. Work permit register, which is publicly available, shall contain information such as name and address of the employer, name of non-citizen, previous work permit number (if any), nationality and country of origin, place and date of birth, date of commencement of employment, name of previous employer (if any), place of employment or duty station, job title, duration of work permit, place of residence of non-citizen while in Tanzania and class of work permit and its reference number;
2. Existing business to submit succession plans with applications; new businesses to submit succession plan within 3 months of permit approval;
3. Work permit renewal applications must be accompanied by a Progress Report against the succession plan;
4. Application for renewal must be lodged two months before the expiration of the permit;
5. The Labour Commissioner may issue a work permit for a lesser period taking into account duration as may be recommended by the professional entities in a certificate of registration, accreditation or approval issued to the applicant;
6. Employer to notify in writing within 14 days from date of cessation, where a holder of permit has ceased to engage in such employment;
7. If employee fails to enter Tanzania within 90 days of issuance of work permit, the permit shall cease to be valid;
8. The Labour office may with or without prior notice visit any place of employment, business, training education or residence for the purpose of verifying information contained in the applications and monitoring compliance;
9. All employers are required to submit Returns of Employment of non-citizen employees twice a year, every 30 June and 31 December;
10. Any applicant aggrieved by the decision of the Labour Commissioner may, within 30 days from date of such decision, submit an appeal in writing to the Minister;
11. Upon termination of employment of a non-citizen for any cause, the employer shall be responsible for returning back the non-citizen employee to his place of recruitment; and
12. Any person, who contravenes the provisions of these Regulations or the Act, commits an offence and shall on conviction be liable to a fine of not less TZS 5M or imprisonment of term of 6 months.

FURTHER INFORMATION:

This editorial is intended to give you a general over view of the Law. If you would like further information on any issue raised in this column, please contact.

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