

THE UNITED REPUBLIC OF TANZANIA

ACT SUPPLEMENT

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THE NON-CITIZENS (EMPLOYMENT REGULATION) ACT, 2015

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THE UNITED REPUBLIC OF TANZANIA



NO.1 OF 2015

I ASSENT,

JAKAYA MRISHO KIKWETE
President

25th April, 2015

An Act to regulate and realign the legal regime for employment and engagement in other occupations by non-citizens in Mainland Tanzania and to provide for related matters.

[.....]

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title and commencement

1. This Act may be cited as the Non-Citizens (Employment Regulation) Act, 2015 and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

Application

2.-(1) This Act shall apply to Mainland Tanzania.
(2) Without prejudice to subsection (1), the provisions of this Act shall not apply to-

- (a) an envoy or other representative of the Government of a foreign states accredited to Tanzania, family members of the official staff and domestic staff of such envoy or representative;
- (b) a consular officer or consular employee of the Government of a foreign States appointed to Tanzania and recognized as such by the Government of Tanzania; and
- (c) any other person exempted by the Minister pursuant to the provisions of this Act.

Interpretations

3. In this Act, unless context otherwise requires-
 “authorized officer” means a labour officer, police officer, immigration officer or any other public officer designated as such by the Minister pursuant to this Act;

Cap. 366

“employee” has the same meaning ascribed to it under the Employment and Labour Relations Act;

Cap.366

“employer” has the same meaning as ascribed under the Employment and Labour Relations Act;

“foreign investors” means:

- (a) in case of a natural person, a person who is not a citizen of the United Republic;
- (b) in case of a company, a company incorporated under the laws of a foreign state or in which more than fifty percent of its shares are held by persons who are not citizen of the United Republic; and
- (c) in case of partnership, a partnership in which the controlling interest is owned by a person who is not a citizen of the United Republic;

Cap. 300

“labour officer” means a labour officer appointed as such in terms of section 43(4) of the Labour Institution Act;

- Cap. 300 “Labour Commissioner” means the Labour Commissioner appointed in terms of section 43(1) of the Labour Institutions Act;
- “Minister” means the Minister responsible for labour and employment matters;
- Cap. 357 “non-citizen” means a person who is not a Tanzanian pursuant to the Citizenship Act;
- “prescribed profession” includes medical and health care professionals, experts in oil and gas and teachers and university lecturers in science and mathematics;
- “Register” means the Work Permit Register established under section 8;
- “self-employed person” means a person who is engaged in an economic activity not under any contract of employment or under supervision and who earns a living through such activity;
- “work permit” means a permit issued by the Labour Commissioner pursuant to this Act.

PART II ADMINISTRATIVE PROVISIONS

Roles and
powers of the
Minister

4.-(1) The Minister shall, subject to the provisions of this Act, be the authority in all matters relating to employment and engagement of non-citizens.

(2) For the purpose of subsection (1), and subject to the provisions of this Act, the Minister may give directives of a general or specific nature to the Labour Commissioner or any authorized officer as to the exercise of any power or the performance of any function conferred or imposed on him by this Act.

(3) Every person to whom directions have been given by the Minister under subsection (1) shall comply with such directions.

(4) The Minister may, subject to the prescribed regulations, exempt any person or class of persons from the application of the provisions of this Act.

(5) The regulations made under subsection (4) shall prescribe the procedure and grounds for granting exemptions.

(6) A person exempted pursuant subsection (4) shall be issued with a certificate of exemption in a form set out in the Fourth Schedule to this Act.

(7) The Minister shall, by notice published in the Gazette, declare the type and classification of employment or other occupation in which a non-citizen may be employed or engaged.

(8) A work permit or certificate of exemption shall not be issued for employment or engagement in any occupation other than in the employment and occupation declared under subsection (7).

Functions and
powers of the
Labour
Commissioner

5.-(1) The Labour Commissioner shall be responsible for the implementation of the provisions of this Act; and for that purpose, the functions of the Labour Commissioner shall be to-

- (a) advise the Minister on all matters relating to employment of non-citizens;
- (b) receive, process applications for and issue work permits pursuant to the provisions of this Act;
- (c) receive and process applications for exemptions and advise the Minister accordingly;
- (d) keep and maintain a Register of records for work permits and exemptions established under section 8; and
- (e) perform any other function as may be assigned to him by the Minister subject to the provisions of this Act.

(2) For the effective discharge of his functions under this Act, the Labour Commissioner shall have powers to-

- (a) issue, vary, renew or cancel any work permit issued under this Act;
- (b) subject to the provisions of this Act, reject any application for work permit; and
- (c) perform any act for the better carrying out of his functions under this Act.

(3) Notwithstanding the provisions of any written law, the Labour Commissioner shall be the authority responsible for issuing of work permits in Mainland Tanzania.

(4) The Labour Commissioner may delegate any of his functions or powers to any public institution or person and such public institution or person shall perform such functions or exercise such powers as if they were performed or exercised by the Labour Commissioner.

(5) Notwithstanding the delegation of functions or powers under subsection (4), the Labour Commissioner may, where he deems necessary, perform or exercise any of the functions or powers, as the case may, so delegated and such performance shall not be construed as illegal.

Authorized
officers

6.-(1) For the purpose of this Act, labour officers, police officers and immigration officers are hereby designated authorized officers and shall exercise powers and discharge duties conferred to the authorized officer under this Act.

(2) Notwithstanding subsection (1), the Minister may, in consultation with the Labour Commissioner, designate any public officer to be authorized officer for the purposes of this Act.

(3) An authorized officer may require the holder of a work permit or certificate of exemption or any person claiming to be the holder of such a permit or certificate-

(a) to produce it for examination by the authorized officer at such time and place as the officer making the requirement shall specify; or

(b) to present himself to an authorized officer for examination at such time and place as the officer making the requirement shall specify;

(4) Any person who has been required under subsection (3) to submit a work permit or certificate of exemption or present himself to an authorized officer for examination shall answer truthfully and to the best of his knowledge every question put to him by the authorized officer.

(5) Any person who, without reasonable cause, fails to comply with a requirement under subsections (3) and (4) commits an offence and shall, on conviction, be liable to a fine not less than shillings five million or to imprisonment for a term not less than six months or to both.

Succession
plan

7.-(1) Any person who intends to employ or engage a non-citizen in an employment or any other occupation, as the case may be, shall prepare a succession plan which shall, among other things, set out-

(a) a well-articulated plan for succession of the non-citizen's knowledge or expertise to the citizens during his tenure of employment; and

(b) any other information as may be directed by the Labour Commissioner.

(2) Any person who employs or engages in an employment or any other occupation a non-citizen shall be required to establish effective training programme to produce local employees to undertake duties of the non-citizen expert.

Work
Permit
Register

8.-(1) There shall be a register to be known as the Work Permit Register to be kept and maintained by the Labour Commissioner into which shall be recorded information relating to work permit and certificate of exemptions and such other information as the Labour Commissioner may deem necessary.

(2) A person may, upon payment of prescribed fee, and within specified time, peruse the register and make copies from the register.

PART III

REGULATION OF EMPLOYMENT OF NON-CITIZENS

Employ-
ment, and
engagement
of non-
citizens

9.-(1) A non-citizen shall not engage in any occupation for reward, profit or non-profit unless he-

- (a) has a valid work permit that allows that person to engage in the occupation specified in the valid work permit; or
- (b) is the holder of a valid certificate of exemption issued to him under this Act.

(2) A person shall not employ, engage or cause to be employed or engaged in any occupation a non-citizen unless-

- (a) the non-citizen has a valid work permit that allows that person to be employed in the occupation specified in the valid work permit; or
- (b) the non-citizen has a valid certificate of exemption issued to him under this Act.

(3) Any person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to a fine of not less than ten million shillings or to imprisonment for a term of not less than two years or to both.

Application
for work
permit

10.-(1) Any person who wishes to employ or engage a non-citizen in any occupation shall apply for a work permit to the Labour Commissioner prior to entry by that non-citizen.

(2) An application under subsection (1), shall be made in a form set out in the First Schedule to this Act, and shall be accompanied by-

(a) a fee prescribed in the Sixth Schedule to this Act; and

(b) relevant documents specified in the Second Schedule to this Act.

(3) A non-citizen employed or engaged in any occupation pursuant to this Act shall possess qualifications, knowledge and skills requisite for the performance of the job for which the work permit is issued.

Consideration
of
application

11.-(1) The Labour Commissioner shall, on receipt of the application for work permit, consider it and may, if satisfied that-

(a) the application complies with the provisions of this Act, issue a work permit; or

(b) the application does not comply with the provisions of this Act, refuse to issue a work permit,

and shall immediately, in any case, inform the applicant in writing of his decision and reasons to that effect.

(2) The Labour Commissioner shall, before approving an application for a work permit, satisfy himself that all possible efforts have been explored to obtain a local expert.

(3) The Labour Commissioner may; summon the person who lodged the application for examination, at such time and place as he may specify.

(4) Any person who summoned for examination shall for the best of his knowledge answer any question put to him.

(5) The Labour Commissioner shall, when considering application for a work permit take into account of the regional and bilateral agreements which the United Republic is a signatory.

Work
permit

12.-(1) A work permit issued under section 11 shall be in a form set out in the Third Schedule to this Act and may be accompanied with conditions.

(2) Breach of any conditions attached to a work permit shall have the same effect as the contravention of any of the provisions of this Act.

(3) A work permit issued under this Act shall not be transferable and shall be valid only for the purpose for which it was issued.

(4) Unless earlier cancelled, a work permit shall be valid for a period of twenty four months from the date of issue and may, subject to the provisions of this Act, be renewed provided that the total period of validity of the first grant and its renewals shall not, in any case, exceed five years.

(5) Notwithstanding the provisions of subsection (4), the total period of validity of a work permit of an investor whose contribution to the economy or the wellbeing of Tanzanians through investment is of great value, may exceed ten years.

(6) The provisions of sections 9 and 10 shall apply *mutatis mutandis* in relation to the renewal of work permit.

Categories
of work
permit

13.-(1) There shall be five categories of work permits as follows:

- (a) Class A which shall be issued to a foreign investor who is a self-employed;
- (b) Class B which shall be issued to a non-citizen who is in possession of a prescribed profession;
- (c) Class C which shall be issued to a non-citizen who is in possession of such other profession;
- (d) Class D which shall be issued to a non-citizen employed or engaged in a registered religious and charitable activities; and
- (e) Class E which shall be issued to refugees.

(2) Prescription of a work permit fee shall take into consideration the class of a work permit applied for.

(3) Where a person issued with a permit of one class of work permit is subsequently granted a permit of another class, he shall surrender the former permit to the Labour Commissioner for cancellation.

Cancellation
of work
permit

14.-(1) The Labour Commissioner may cancel a work permit if -

- (a) the holder fails without reasonable cause, to comply with conditions prescribed in the work permit;
- (b) the holder ceases to engage in the employment or occupation for which such permit was issued for;
- (c) it has come to the knowledge of the Labour Commissioner that there was a misrepresentation of information in the application by the permit holder; or
- (d) in the opinion of the Labour Commissioner, the presence of the work permit holder in the United Republic jeopardizes public interest.

(2) The Labour Commissioner shall, after cancelling a work permit in accordance with subsection (1), notify the principal Commissioner for Immigration of the cancellation.

Lost and
Stolen work
permit,
certificate of
exemption

15.-(1) Where a work permit or certificate of exemption is lost, stolen or severely damaged, the permit or certificate holder shall apply for replacement to the Labour Commissioner.

(2) The application under subsection (1), shall be accompanied by-

- (a) a prescribed fee;
- (b) sworn declaration as to the circumstances surrounding the loss, theft or damage of the permit or certificate; and
- (c) certification from the authority to whom the loss, theft or damage was reported.

Returns

16.-(1) Every person who employs or engages a non-citizen in any occupation shall, on every 30th June and 31st December of every year, submit to the Labour Commissioner returns on employment of non-citizens so employed or engaged in a form prescribed in the Fifth Schedule to this Act.

(2) Notwithstanding subsection (1), in event the term of employment of a non-citizen ceases earlier than the six months of returns, the employer shall immediately report the cessation to the Labour Commissioner.

Surrender of
work permit

17.-(1) The work permit or certificate of exemption, as the case may be, issued under this Act shall be in the name of the United Republic and remain the property of the Government of the United Republic.

