

THE NON-CITIZENS (EMPLOYMENT REGULATION) ACT,
(ACT NO. 1 OF 2015)

ARRANGEMENT OF REGULATIONS

Regulation *Title*

PART I
PRELIMINARY PROVISIONS

1. Citation.
2. Interpretation.

PART II
APPLICATION AND ISSUANCE OF WORK PERMIT

3. Eligibility for work permit application.
4. Documents to be submitted for work permit application.
5. Processing time of work permit applications.
6. Criteria and conditions for issuance of work permit.
7. Employment of Refugees.
8. Employment of non citizen employees in the public service.
9. Bulk recruitment.
10. Delegation of powers.
11. Restriction for use of work permit.
12. Validity for work permit.
13. Procedure and grounds for exemption.

PART III
ADMINISTRATIVE PROVISIONS

14. Designation of Public officer to be authorized officer.
15. Particulars of the register.
16. Submission of the succession plan to the labour Commissioner.

17. Period for renewal applications.
18. Report on cessation of employment.
19. Labour Inspections.
20. Returns on employment.
21. Appeal.

PART IV
GENERAL PROVISIONS

22. Employment promotion.
23. Repatriation.
24. Penalty.
25. Prosecution.

—
SCHEDULE
—

THE NON-CITIZENS (EMPLOYMENT REGULATION) ACT,
(ACT NO. 1 OF 2015)

REGULATIONS

THE NON-CITIZEN (EMPLOYMENT REGULATION) REGULATIONS, 2016

PART I
PRELIMINARY PROVISIONS

- Citation 1. These Regulations may be cited as the Non-Citizens (Employment Regulation) Regulations, 2016.
- Interpretation 2. In these Regulations, unless the context requires otherwise-
- Act No. "Act" means the Non-Citizens (Employment Regulation) Act;
- 1 of 2015 "authorized officer" has the same meaning ascribed to it under section 3 of the Act;
- "bulk recruitment" means recruitment of many non-citizen employees in phases for the execution of specific project within specified period of time;
- "employment" means the performance of a contract of employment by parties to the contract, under employer-employee relationship;
- "Labour Commissioner" has the same meaning ascribed to it under the Labour Institutions Act;
-
- Cap. 300 "Labour Officer" has the same meaning ascribed to it under the Labour Institutions Act;
- "non-citizen employee" means an employee who is not a citizen of the United Republic of Tanzania;
- Cap. 298 "public officer" means any public officer who has been designated to be an authorized officer by the Minister pursuant to section 6(2) of the Act;
- "professional body" includes any regulatory professional body responsible for recognition, accreditation, registration, and maintenance of standards and ethics of a particular profession;
- Cap. 37 "refugee" has the same meaning ascribed to it under section 4 of the Refugees Act;
- "register" means the work permit register established under section 8 of the Act; and

“work permit” means a work permit issued by the Labour Commissioner under the Act.

PART II APPLICATION AND ISSUANCE OF WORK PERMIT

Eligibility for
work permit
application

3.-(1) Any employer based in Mainland Tanzania who wishes to employ a non-citizen shall apply to the Labour Commissioner for a work permit.

(2) Any other non-citizen who intends to engage in any work, whether for reward or not, shall apply to the Labour Commissioner for a work permit.

Documents to
be submitted
for work
permit
application

4.-(1) An applicant for a work permit shall fill an application form set out in the First Schedule to the Act.

(2) The application form shall be accompanied by documents certified by the Commissioner for oaths as follows:

(a) in the case of a Work Permit Class A, an application shall be accompanied by:

- (i) a letter justifying why a work permit should be granted;
- (ii) two recent passport size photographs;
- (iii) a photocopy of a valid passport;
- (iv) sectoral approvals (where applicable);
- (v) previous work permit (for renewal application);
- (vi) a copy of industrial, business or operating license;
- (vii) a copy of certificate of Tax Identification Number (TIN);
- (viii) a copy of certificate of Value Added Tax (where applicable);
- (ix) a copy of certificate of incorporation or business name and extract from the Registrar of Companies;
- (x) Memorandum and Articles of Association (where applicable); and
- (xi) copy of Certificate of Incentive (if any);

(b) in the case of a Work Permit Class B, C and D, an application shall be accompanied by-

- (i) contract of employment or engagement, as the case may be, duly signed by relevant parties;
- (ii) job or engagement description;
- (iii) Curriculum Vitae of the non-citizen;
- (iv) two recent passport size photographs of the non citizen;
- (v) copy of academic or professional certificates of the non

- citizen;
- (vi) a copy of accreditation certificate, from respective professional entities; (where applicable)
 - (vii) certified translation of certificates or documents by competent Authority, Embassy or Consular office (if they are in a language other than English and Kiswahili);
 - (viii) photocopy of a valid passport;
 - (ix) previous work permit (for renewal application);
 - (x) a copy of industrial, business or operating license);
 - (xi) a copy of certificate of incorporation or business name and extract from the Registrar of Companies;
 - (xii) Memorandum and Articles of Association;
 - (xiii) a succession plan (for renewals);
 - (xiv) sectoral approvals (where applicable); and
 - (xv) Certificate of Incentive (if any).

Processing
time of work
permit
applications

5. Upon receipt of the work permit application, the Labour Commissioner may, within fourteen days approve or reject the application and communicate the same to the applicant.

Criteria and
conditions for
issuance of
work permit

6.-(1) The Labour Commissioner shall not issue a work permit unless he is satisfied as to whether-

- (a) the non-citizen employee is eighteen years of age or above;
- (b) the non-citizen employee, possesses skills, qualifications and experience required for the job or engagement applied for;
- (c) the non-citizen employee has been registered by a professional body of his profession in Tanzania Mainland, if any;
- (d) the employer has provided sufficient evidence from recognized job search mechanism that he has been unable to fill the particular post(s) due to lack of suitable qualified personnel in the Tanzania labour market; and
- (e) the employer has a well known physical address and is duly registered by the relevant competent authorities in Tanzania;

(2) The Labour Commissioner shall, in scrutinizing applications for work permits, take into consideration existing Regional Agreements on free movement of labour and any other bilateral agreements to which Tanzania is a signatory.

Employment of
Refugees

7.-(1) All application for employment of refugees shall be submitted to Labour Commissioner by the Director of Refugees and shall be accompanied by his recommendations for each refugee intending to work in the country.

Employment of non citizen employees in the public service

8. All applications for employment of non citizen employees in the public service shall be submitted to the Labour Commissioner by the Permanent Secretary (Establishment), and shall be accompanied by his recommendations for each non-citizen intending to work in the public service.

Bulk recruitment

9.-(1) An employer wishing to make bulk recruitment shall seek permission of the Labour Commissioner in writing.

(2) The Labour Commissioner before granting permission for a bulk recruitment shall-

- (a) carry out an inspection to determine the justification of the employer to resort to bulk recruitment.
- (b) satisfy himself that the employer has made every possible effort to recruit the local employees but has been unable to find a suitable candidate.
- (c) upon satisfaction under paragraph (b), may approve the bulk recruitment of specific number of non-citizen employees who possess the required knowledge and skills for the jobs applied for; and may require the employer to submit individual applications for work permit in respect of each non-citizen employee.
- (d) in the event of this bulk recruitment work permits may be granted at a ratio of ten local employees to one non-citizen employee.

Delegation of powers

10.-(1) The Labour Commissioner may appoint and delegate his powers to labour officers or any other public officers to be stationed at the offices of Tanzania Investment Centre and Export Processing Zone Authority.

(2) Officers appointed pursuant to sub regulation (1), shall be responsible for receiving, processing and approving work permit applications and submit monthly reports to the Labour Commissioner.

Restriction for use of work permit

11. 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 issued under Immigration Act.

Validity for work permit

12.-(1) Subject to the provisions of section 12(4) of the Act, the Labour Commissioner may issue a work permit for a lesser period if the applicant applied for, or taking into account duration as may be recommended by the professional entities in a certificate of registration accreditation or approval issued to the applicant.

(2) The work permit referred to under section 12(5) of the Act, may be issued for a period of not less than five years.

Procedure and grounds for exemption

13.-(1) Any employer who wishes to employ a non-citizen, shall apply, in writing, to the Minister for an exemption from the application of the provisions of the Act.

(2) Subject to the provision of sub-regulation (2), the Minister shall, before issuing exemption, seek advice from the Labour Commissioner.

(3) The Minister may, within fourteen days from the date of receipt of the application, make decision and communicate the same to the applicant.

(4) An exemption granted may be amended or withdrawn by the Minister after consultation with the Labour Commissioner.

(5) The Minister may grant exemption under these regulations where-

(a) employer who employing non citizen satisfies the Minister with sufficient evidence from recognized job search mechanism that he has been unable to fill the particular post(s) due to lack of qualified personnel in Tanzania Labour market and or complexity of technology employed by the business enterprise.

(b) the foreign investor or self employed person justifies to the Minister that his investment is of great value to the country's economy in terms of job creation, tax payments and transfer of technology.

(c) 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.

(6) On issuing exemptions, the Minister shall take into account any waiver of such fees as may be specified under the provisions of the Regional, Bilateral, Multilateral Agreements, and Memorandum of Understanding in which the United Republic is a Signatory.

(7) An exemption granted under this regulation shall-

(a) be in the prescribed form set in the Fourth Schedule of the Act;

(b) include any condition under which the exemption is granted;

(c) state the period of exemption.

(8) Section 4 and 10 of the Act shall apply mutatis mutandis on application of exemptions.

PART III ADMINISTRATIVE PROVISIONS

Designation of Public officer to be authorized officer

14. (1) The Minister in consultation with the Labour Commissioner may designate any public officer, by notice published in the *Gazette* to be the authorized officer for effective performance of the Act.

(2) Designation made under sub regulation (1), may specify time, conditions and terms as the Minister may deem necessary to do so.

Particulars of
the register

15. The Work Permit Register shall contain the following particulars:

- (a) name and address of the employer;
- (b) name of non-citizen;
- (c) previous work permit number (if any);
- (d) nationality and country of origin;
- (e) place and date of birth;
- (f) date of commencement of employment;
- (g) name of previous employer (if any);
- (h) place of employment or duty station;
- (i) job title;
- (j) duration of the work permit;
- (k) place of residence of non-citizen while in Tanzania; and
- (l) class of work permit and its reference number.

Submission of
the succession
plan to the
labour
Commissioner

16.-(1) For any existing business, new applications for recruitment of noncitizen shall be accompanied by succession plan as set out in the Schedule to these Regulations to ensure that Tanzanian employees have been designated to understudy the non citizen for the purpose of skills transfer.

(2) For any new business, employers are required to submit to the Labour Commissioner, the succession plan within 3 months from the date of issue of the work permit, indicating the appointment of a suitable citizen employee to undergo on job training under the non citizen employee for the job in which the work permit was issued.

(3) Any application for renewal shall be accompanied by a progress report against the succession plan.

Period for
renewal
applications

17. Application for renewal should be lodged two months before the expiration of the permit.

Report on
cessation of
employment

18.-(1) Notwithstanding the provision of section 17 of the Act, where the holder of work permit ceases to engage in the employment in respect of which the work permit was issued, the employer, shall within fourteen days from the date of such cessation, report in writing to the Labour Commissioner that the holder of a work permit has ceased to engage in such employment or occupation.

(2) A work permit issued to a non-citizen shall cease to be valid if such non-citizen employee fails to enter Tanzania for any cause whatsoever within ninety days from the date of issue.

(3) The employer shall after the expiration of the period of ninety days referred to in sub regulation (2) report to the Labour Commissioner that the non-citizen has failed to enter Tanzania.

Labour
Inspections

19.-(1) The Labour officer may, where necessary and for the better administration of these regulations, visit, whether with or without prior notice, places of employment, business, training and education or residence for the purpose of verifying information contained in the applications, monitoring compliance with the terms and conditions contained in the work permit.

(2) Subject to sub regulation (1), the work permit shall be kept by the holder, its copy be deposited to the employer and produced to any authorised person on demand.

Returns on
employment

20. The employer shall be required to submit to the Labour Commissioner returns on employment of non-citizen employee by dully filling the Form set out in the Fifth Schedule to the Act.

Appeal

21.-(1) An applicant aggrieved by the decision of the Labour Commissioner may, within thirty days from the date of such decision, submit an appeal in writing to the Minister.

(2) The Minister may, within thirty days from the date of receipt of the appeal, make decision and communicate the same to the appellant.

PART IV GENERAL PROVISIONS

Employment
promotion

22. Employer intending to employ non-citizen employees should endeavor to increase employment opportunities of local employees and ensure compliance with employment standards taking into account the objectives of the National Employment Policy and other national initiatives on employment promotion.

Repatriation

23. Upon termination of the contract 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.

Penalty

24. Any person who contravenes the provisions of these Regulations of which the penalty is not provided under these Regulations or the Act, commits an offence and shall on conviction, be liable to a fine of not less than five million Tanzanian shillings or imprisonment of a term of six months or both.

Prosecution

25. For the purpose of administration of the Act and these Regulations, a labour officer who is appointed by Director of Public Prosecution may Institute Proceedings in the Resident or District Court in respect of any contravention of the Act.

SCHEDULE

THE UNITED REPUBLIC OF TANZANIA



SUCCESSION PLAN FORM
(Made under Regulation 16 (1))

| Particulars of a non-citizen employee | | | | | Particulars of a local employee (designated to succeed the Non – Citizen) | | | | Planned date of takeover | Comments if any | |
|---------------------------------------|------|----------|-----------------|------------------------|---|----------|-----------------|--------------------------------|---|-----------------|--|
| S/No | Name | Position | Qualifications | | Name | Position | Qualifications | | | | |
| | | | Education level | Area of specialization | | | Education level | Current area of specialization | Expected skills or area of specialization | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |

Date:

Signature and Official stamp of the Employer:

Dar es Salaam,
21.12.2016

JENISTA J. MHAGAMA
Minister of State, Prime Minister's Office, Policy,
Parliamentary Affairs, Labour, Youth, Employment
and Persons with Disability