



## **Permission to Enter & Work: What Foreigners need to know about working in Kenya**

Kenya has one of the largest and fastest growing economies in East and Central Africa, specifically in the areas of agriculture, manufacturing and mining. As a thriving regional business market, the country has seen many multinationals and non-governmental organisations set up base here. This has caused a large number of foreign nationals to migrate into the country for work. Despite the growing economy, unemployment levels remain very high for locals and for this reason the Government has put in place laws to protect jobs that can be undertaken by locals, while at the same time putting up stringent legal processes for foreign nationals to gain work in Kenya.

The Kenya Citizenship and Immigration Act, 2011 (**the Act**) was enacted to provide for matters relating to citizenship, travel documents and immigration. The Act provides under section 34(1) that the presence in Kenya of a person who is not a citizen of Kenya shall be unlawful unless that person holds a valid work permit, residence permit or pass.

The Act makes it an offence for a foreign national to engage in any employment, occupation, trade, business or profession without being authorised to do so. It is also an offence under the Act for a person to employ a foreign national whom the employer knows or has reasonable cause to believe is not authorised to work in Kenya. Further, the Act empowers the Cabinet Secretary in charge of matters relating to citizenship to make an order in writing, directing that any person whose presence in Kenya is unlawful to be removed from and remain out of Kenya either indefinitely or for such period as may be specified in the Act.

### **Duties and Obligations of Employers**

Section 45(1) of the Act provides that no person shall employ a foreign national who entered Kenya illegally or whose status does not authorise that person to engage in employment. Employers are also prohibited from employing foreign nationals on terms different from those authorised in their status. Under section 45(2) of the Act, every employer must apply for and obtain a work permit or special pass conferring on the foreign national the right to engage in employment before granting the foreign national employment.

For the purpose of section 45, a person who performs any work or service of any kind which is commonly performed by a person in employment for the benefit of or at the request of another person is deemed to engage in employment and that other person shall be considered to employ that person. It should also be noted that the Citizenship and Immigration Regulations, 2012 (the Regulations) empower the Director of Immigration Services (the Director) to inspect places of employment and businesses with or without prior notice for the purpose of verifying information contained in a work permit or special pass application and monitoring compliance with the terms and conditions contained in permits and passes issued.

In the case of an employee ceasing to work for the employer for any reason, the employer specified in the work permit is required to report in writing to the Director within fifteen (15) days that the holder of a permit has ceased to engage in the employment in respect of which the permit was issued and any employer who fails to do so commits an offence.

**Types of Permits** There are nine (9) classes under which a work permit may be issued, namely:

- Class A is for a person who intends to engage, whether alone or in partnership, in prospecting for minerals or mining in Kenya who has obtained a prospecting or mining right or license and has a minimum of USD 100,000 for that purpose
- Class B applies to a person who intends to engage, whether alone or in partnership, in agriculture or animal husbandry in Kenya and who has all permissions necessary to acquire an interest in land of sufficient size and suitability for that purpose and sufficient capital or resources at his disposal for that purpose
- Class C is for members of a prescribed profession who intend to practise that profession, whether in partnership or alone, in Kenya. The applicant must possess the prescribed qualification, have sufficient capital or resources for that purpose and be registered with a professional body, association or institute in his own country. The prescribed professions include medical practitioners, dentists, advocates, surveyors, estate agents, valuers and land agents, architects and quantity surveyors, pharmacists, veterinary surgeons, engineers, nurses, physiotherapists, accountants, chartered secretaries, actuaries, scientists and information technology experts
- Class D relates to persons who are offered specific employment by a specific employer and who have skills or qualifications that are not available in Kenya. The processing fee is USD 100 and the issuance fee is USD 2,000. This permit tends to be more difficult to obtain due to the need to show that local expertise is not available, a requirement which stems from a ministerial policy aimed at preventing companies from employing foreign nationals for work that Kenyans can perform
- Class F applies to a person who intends to engage, whether alone or in partnership, in a specific manufacture in Kenya who has obtained a license, registration or other permission that may be necessary for that purpose and who has at least USD 100,000 at his disposal for that purpose
- Class G applies to persons who wish to engage, whether alone or in partnership, in a specific trade, business, consultancy or profession in Kenya (other than a prescribed profession, which are covered under Class C)
- Class I is reserved for persons who are members of institutions registered under the Societies Act (Cap. 108) and who are engaged as missionaries, members of companies limited by guarantee, and members of trusts registered under the Trustee Act (Cap. 167)
- Class K is designed for ordinary residents who are over thirty five (35) years and have funds or an assured annual income of at least USD 24,000 or its equivalent in Kenya Shillings and undertake not to accept employment (paid or unpaid) or engage in any income generating activity of any kind without a permit of the relevant class. The income must be derived from sources outside of Kenya which will be remitted to Kenya or from a pension or annuity payable from sources in Kenya
- Class M is for persons who have been granted refugee status in Kenya and the only supporting document required is a recommendation letter from the Department of Refugee Affairs. A person to whom a Class M work permit has been issued and the spouse of such person may engage in any occupation, trade, business or profession

The Regulations provide that an application for a work permit shall be made to the Director in Form 25. The application must include a signed cover letter from the employer, applicant or organisation addressed to the Director, copies of the applicant's national passport, two (2) recent coloured passport size photographs and a copy of the applicant's current immigration status if in the country.

The Director will issue a work permit in any of the classes specified above upon payment of the applicable fees and if satisfied that the requirements of that particular class have been met and the engagement or the applicant's presence in Kenya will be of benefit to Kenya. While the Act provides that permits will be issued for a period not exceeding five (5) years, at the moment work permits are only issued for a maximum period of two (2) years.

### **Special Pass**

A person who is applying for a work permit or wishes to enter or remain in Kenya to temporarily to conduct any business, trade or profession may apply to an immigration officer in Form 32 for a special pass in accordance with the Regulations. Special passes are often applied for to perform a specific task within a specified period of time, for example installation and repair of machines, auditing of accounts, training and other specialist jobs for which Kenya lacks expertise.

The special pass will be issued for a period not exceeding six (6) months once the issuance fee of USD150 per month has been paid and will allow the permit holder to re-enter Kenya at any time during the period of validity of the pass. The special pass may be renewed for a further six (6) months upon payment of the prescribed fees.

## **East African Community**

The East African Community Common Market Protocol (**the Protocol**), which came into force on 1st July 2010, permits certain classes of workers who are nationals of a Partner State to move freely within the East African Community (**EAC**) region in pursuit of employment opportunities. The Protocol also guarantees EAC nationals the right to establish a business and pursue economic activities as self-employed persons in any Partner State and requires that Partner States remove all nationality-based restrictions on the right of establishment with respect to companies and self-employed persons.

Additionally, the Protocol grants holders of work permits and their families the right of residence in the Partner State where they are employed or established. To this end, Partner States are required to issue residence permits to holders of work permits and their families.

As far as work permits are concerned, Kenya and Rwanda have already waived the applicable fees for all Partner States while Uganda has done so on a reciprocal basis. This means that an EAC national is not required to pay the prescribed fees when applying for a work permit in Kenya.

However, the Protocol has maintained the requirement for a work permit. Consequently, EAC nationals who wish to work or establish a business in Kenya are still required to submit a work permit application to the Immigration Department.

The Protocol also grants competent authorities of Partner States the power to reject an application for a work permit. While the grounds for rejection are a matter left to national legislation, the Protocol does make provision for the right to be notified in writing of the reasons for the rejection and a right to appeal against the rejection. In case of cancellation of a work permit, for instance where the holder ceases to engage in the employment for which the work permit was issued, the Protocol grants the worker thirty (30) days within which to regularise his status or leave the Partner State.

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