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Agnelo Guambe



Filipa Russo de Sá

NEW TYPE OF WORK VISA: Implications of its implementation

Late last year, the National Migration Services (hereinafter “SENAMI”) has informed that this entity is no longer issuing Residence Permit (hereinafter “DIRE”) for foreign citizens entering in Mozambique for work purposes and holding work visa, as result of the effective implantation the Decree No. 108/2014, of 31 December 2014 (hereinafter referred to as “Decree No. 108/2014”), which approved the Regulations of Law No. 5/93, of 28 December 1993, which sets out the Legal Framework applicable to Foreign Citizens (hereinafter “Law No. 5/93”).

It should be noted that notwithstanding the Decree No. 108/2014 has entered into force on 31 December 2014, in practice, SENAMI has only started its rules and procedures’ implementation late last year. For the best understanding of the change on the procedures stated above, it is worth presenting a brief description of the history of the legal regime of the “Work Visa” in Mozambique.

The Work Visa was introduced for the first time in the Mozambican Law System by the Decree No. 26/99, of 24 May 1999 (hereinafter referred to as “Decree No. 26/99”), which stated that the work visa would be granted to a foreign citizen holding a valid work authorization (“Work Permit”), for a period of 30 days, extendable up to 60 days. Afterwards, Decree No. 38/2006, of 27 September 2006 (the prior Regulations of Law No. 5/93), established the requirements for applying for the Work Visa.

Both Decree No. 26/99 and Decree No. 38/2006, of 27 September 2006 referred above have been revoked by Decree No. 108/2014.

Said Decree No. 108/2014 has introduced some relevant changes in the procedures related to the Work Visa, as follows:

- a) Under this Regulations, the first work visa should be granted by a Mozambican Embassy/ Consulate abroad to a foreign citizen entering in Mozambique for work purposes, and for his/her relatives (dependents), temporary permanence visas should be granted;
- b) With regards to the duration, the work visa should be valid for a period equal to the term of the employment contract duly authorized by the Ministry overseeing Labour (currently the Ministry of

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Labour and Social Security – “MITESS”). It should be noted that under the new regulations on the hiring of foreign employees (Decree No. 37/2016, of 31 August 2016, foreign citizens may only be hired under a fixed-term employment contract for a maximum period of 2 (two) years, without prejudice of its extension, subject to the approval of the MITESS;

- c) Temporary permanence visas should be valid for period of 1 year extendable while their relative's employment contract is in force.

However, it is important to note that, in practice, SENAMI is still not implementing the new procedures in the precise terms stated in the Decree No. 108/2014 and above mentioned. Mozambican Embassies/ Consulates continue to grant work visa for foreign employee and Residence Visa for his/her dependents, both valid for 30 days with a single entry. This was the procedure established in the previous Regulations, revoked by Decree No. 108/ 2014.

Thus, the Work Visa is subsequently extended for a period of 1 year by the relevant migration service in Mozambique.

Additionally, it is worth mentioning that Decree No. 108/2014, brought other relevant innovations regarding the Work Visa, that are yet being implemented, as follows:

- i) For foreign citizen entering in the country to work in the extractive industry, the application for the Work Visa shall be submitted by the company and addressed to the Minister overseeing Migration Services, along with the work authorization, upon favorable opinion form the Minister overseeing Natural Resources;
- ii) On the other hand, for the Work Visa, one of the requirements, is a “Guarantee” for potential repatriation of the foreign citizen, as well as his/her relatives, in the amount equivalent to the price of the return ticket to the country of origin, to be deposited in SENAMI’s bank account. Said Guarantee can be returned provided that the respective application is submitted 30 (thirty) days, counted from the date of departure of the foreign citizen of the country or whenever the Work Visa is canceled.

For all the foregoing, it is notorious that SENAMI and Mozambique Embassies/ Consulates abroad are making efforts to gradually implement the procedures related to the Work Visa set out in the Decree No. 108/ 2014. As such, until its full implementation, some uncertainties and constraints are expected. Thus, until said Decree is being fully applied permanent contacts with SENAMI and Mozambique Embassies/ Consulates are advised whenever necessary to apply for a Work Visa in order to confirm the applicable procedures.