

JULIAN POKROY ATTORNEYS

Attorneys at Law - Immigration and Nationality Law Practice

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ZIMBABWEAN NATIONALS- CURRENT DISPENSATION **TO END**

The Minister of Home Affairs last week announced a dispensation for Zimbabwean nationals currently in South Africa, with or without appropriate documentation.

The previous dispensation announced by the former Minister of Home Affairs in April 2009 allowed Zimbabwean nationals the opportunity to enter South Africa on visitor's permits which entitled them to take up casual labour and study for a period of 6 months.

This dispensation has come to an end and has been replaced by the current announcement.

At a meeting held between high level management of the Department of Home Affairs held on the 6th September 2010 with Civil Society organizations and NGO's operating in the sector, the Deputy Director-General of Home Affairs, Jackie McKay announced that there is a plan to document Zimbabweans who other would not have qualified for work and other permits under our current immigration laws.

He announced that this would include unskilled and semi-skilled Zimbabweans who previously would not have qualified for any of the available temporary residence permits under the Immigration Act.

One of the main objectives of the dispensation will be to document Zimbabwean nationals and to bring them into the system.

The dispensation will run until the 31st of December 2010 although he indicated a hint that it may very well be extended.

The dispensation will cover all categories of Zimbabwean nationals in South Africa including, but not limited to the following:

- Asylum Seekers;
- Undocumented Zimbabweans;
- Zimbabweans in possession of fraudulent identity documents;
- Zimbabweans in possession of fake permits.

A distinction was now solidly being drawn in the category of Asylum Seekers between *de facto* Asylum Seekers, i.e., those who have fled the country for fear of persecution and economic migrants. The latter category would be encouraged to rather document themselves under the Immigration Act.

Asylum Seekers who are *de facto* applicants under the Refugees Act would retain the right to be processed as Asylum Seekers on their past refugee status.

Mr McKay further indicated that if the project regarding Zimbabwean nationals were successful that it could be spread out to our other neighbouring SADC country citizens in South Africa.

The foundation block of any application would be possession of a Zimbabwean passport. This is where part of the crunch lies in that the Zimbabwean Consulates in Johannesburg and Cape Town are simply not geared to deal with the expected massive influx of applications for passports. Currently passport applications are taking up to 6 months.

The second foundation block relates to the handing over of any fake or fraudulent documentation which is in possession of ostensibly undocumented Zimbabwean nationals and in respect of this aspect there will be an amnesty and such documents can be handed over without fear of consequences.

The third foundation block will be the “right” of the undocumented Zimbabwean national to apply for an appropriate other permit under the Immigration Act.

This would include all categories of work or study permits. For full particularity relating to the various types of permits you can peruse our website by following the links on our website at www.immigration.org.za. You are also welcome and encouraged to complete the Immigration Questionnaire for a free assessment on our website.

The statement further indicated that there would in all likelihood be a waiver of the administrative fee payable to the Department of Home Affairs in respect of permits applied for and this would mean a waiver of the R1 520.00 for work and other temporary residence permits and R425.00 for study and relatives permits, which are usually payable.

It appears also that there will be a relaxation of the conditions relating to required documentation for the various permits and that indeed the skilled and semi-skilled workers would in all likelihood have to provide proof of employment and other documentary proof but not the rigorous advertisement and salary benchmarking requirements.

The most important foundation block to the whole dispensation however remains that the Zimbabwean national who is applying must be able to prove that they entered South Africa prior to the 31st of May 2010, otherwise the dispensation will not apply to them.

Work permits that will be issued under the dispensation will be issued for a maximum period of 4 years and would be renewable. The study and business permit processes will have the same rules applied.

We reiterate that Zimbabweans who are currently in the Asylum process and who chose to migrate to the new dispensation are free to do so and that those who wish to remain in the Asylum process are similarly entitled to do so.

The Department of Home Affairs has indicated a turn around time from the point of application for the permit to be 10 days.

Given the current backlogs with the Department of Home Affairs in terms of temporary residence coupled to the horrendous affect of the Civil Service strike which is ongoing, it is unlikely that this time turn around will be met.

The 3 month dispensation also appears, against this background and the inability of the Zimbabwean Government to process passports speedily to be a stumbling block.

We would however encourage any Zimbabwean national who believes that they indeed do qualify for this dispensation to contact our offices at enquiries@immigration.org.za or to complete the Assessment Questionnaire and to submit same urgently.

Julian and Tarryn and the Team at Julian Pokroy Attorneys

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