

What “Good Cause” entails

Foreign nationals who have overstayed their visas must choose between two evils.

By **Tarryn Pokroy Rietveld**

The procedures available to foreign nationals who have overstayed their visa while in South Africa have become more and more stringent since the coming into operation of the Immigration Amendment Act and its Regulations in May 2014.

A number of foreign nationals found themselves in a difficult situation when the Amendments came into operation as they were not aware that the process that they had always followed previously, albeit an inappropriate process that is, exiting South Africa even with an expired visa and merely paying an administrative penalty, would no longer be available to them. Under the Amendments, if a foreign national exits in South Africa without a current and valid visa, they are declared undesirable. The full impact surrounding this process has been dealt with in a previous article in *HR Future*.

Naturally, if a process can be followed that would avoid having to be declared undesirable for a duration of between one and five years, this would certainly be the preferred option.

The problem is that, with an expired visa, it is not possible for a foreign national to be able to attend to submission of an application for any other category of visa from within South Africa. The only way around this is by way of an application for good cause to the Department of Home Affairs.

This good cause process is dealt with very briefly in Regulation 30(2) of the Immigration Regulations. It specifically refers to authorisation to remain in the Republic of South Africa being granted on a “Form 20”.

A “Form 20” was always an administrative status granted by the Department of Home Affairs in order to allow a foreign national without any current or valid status to be able to make an application from within South Africa.

As such, where an illegal foreign national whose visa has expired and could not apply in time for any appropriate extension or renewal of visa at the Visa Facilitation Service Centre “due to circumstances beyond his or her control” such person should be referred to the inspectorate to determine whether or not good cause exists as to why they could not apply on time.

These kinds of applications are required to be made directly to the regional offices of the Department of Home Affairs and the application process is ultimately dealt with by the Provincial office.

The process requires the foreign national to report to the relevant immigration officer for purposes of an interview or to confirm the authenticity of supporting documentation submitted for the good cause process. Once the investigation has been concluded, a report is then prepared by the immigration officer with a recommendation being made by that immigration officer. The report, together with recommendations of the District Manager of Operations or Director of Immigration Services is then transmitted to the Provincial Manager. It is then with the Provincial Manager that a final decision is taken as to whether to authorise the illegal foreigner to remain in South Africa.

Where such authorisation is granted, a letter is issued which that individual can then present at Visa Facilitation Services which will allow them to proceed with making an application for a further temporary residence visa. That individual’s application must then be considered from within South Africa.

Where the good cause is not granted, the foreign national would be issued with a notice to depart from South Africa within a specified duration.

No specific clarity has been provided as to what such good cause may entail. It seems that the individual must be able to prove exceptional circumstances exist that would justify the reason for failing to comply with the relevant immigration laws in respect of ensuring continued validity of their temporary residence stay in South Africa. Again, one of the biggest problems being faced is processing times of this kind of application process. While turnaround times of anything from 30 days and up are being promised by certain regional offices of the Department of Home Affairs, these kinds of timeframes are

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simply not being adhered to. There is a substantial increase in respect of these kinds of applications also specifically as a result of the fact that applications which Visa Facilitation Services are not able to assist with, where visas have already expired, despite appointment dates having been booked for submission of applications and the relevant processing fees having been paid, such individuals are then referred to the Department of Home Affairs Regional offices to undergo this process.

The sad reality is that a number of the immigration officials within these regional offices are in fact advising foreign nationals not to undergo this process due to the lack of response being received on these kinds of applications.

For individuals who have overstayed their visas, even where they have done so with good cause, the only options that they have available to them are indeed to exit South Africa and be declared undesirable or to undergo this process of applying for good cause. The reality at this point in time is that it is still unclear which process is the lesser of two evils due to the long duration of either being in South Africa without status or being outside South Africa and declared undesirable. ■

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