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CURRENT STATUS AT DEPARTMENT OF HOME AFFAIRS

As always our plight continues within the Department of Home Affairs to ensure that applications are processed as speedily as possible.

Currently, in respect of temporary residence applications, the Department seems to slowly be clearing their backlog of long outstanding applications. However, more often than not, it seems that applications are still taking months to finalise as from date of lodgment.

In instances where an application is simply not receiving the appropriate attention from the Department of Home Affairs it is often necessary to take matters a step forward and higher. Our office makes every effort to ensure that the appropriate action is taken to finalise applications as promptly as possible under the circumstances involved and the continual lack of service delivery from the Department of Home Affairs.

In respect of permanent residence applications, the backlog is also slowly being attended to although it is not always the case of dealing with the oldest applications first.

The average time taken for permanent residence application is generally no less than one to two years as from date of lodgment of the application. Two years seems to be a more realistic timeframe in respect of the finalisation of permanent residence applications at this time.

The best alternative, specifically in respect of temporary residence applications, is for the application to be lodged through our Embassies or High Commissions abroad prior to the foreign national entering South Africa.

This then means that the outcome has to be awaited in the foreign country and once the permit is obtained the applicant can immediately enter South Africa on the appropriately endorsed permit. Processing times through our Embassies abroad are generally no more than one month to process through to finalisation although there are certain Embassies that do take longer than this.

BANK ACCOUNTS IN RESPECT OF FOREIGN NATIONALS WHO ARE IN SOUTH AFRICA ON A TEMPORARY RESIDENCE PERMIT

The situation regarding foreign nationals who are in South Africa on temporary residence permits and who have applied timeously for extension of such temporary residence permits but have not yet received the outcome of the applications is a confusing and vexing one in so far as their bank accounts are concerned.

Many banks have taken arbitrary decisions and simply frozen their bank accounts as soon as that foreign national has reached the expiry date of their current permit.

The situation is complicated by the position of such foreign nationals who are technically not either overstayers under the Immigration Act in terms of their temporary residence nor are they technically illegally in the country.

In terms of the Director- General's directive number 43 of 2010 every foreign national who has so timeously applied for an extension of an existing permit and has not yet received an outcome from the Department of Home Affairs is understandably in a bit of a grey area and "quasi" legal pending the outcome of their application for extension of their existing and current permit.

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This directive allows such foreign national to travel in and out of the country upon presentation of an original receipt for the application and is it designed to allow re-entry without any complications.

A similar “dispensation” exists where an applicant has had a permit refused and has either applied for a review or appeal of that decision or he has perhaps even litigated against the Department of Home Affairs, in terms of which that individual foreign national would be entitled to be in the country “quasi” legally pending outcome of such application for review or appeal or any other processes.

The banks however do not see this issue necessarily in this way.

Many of our clients experienced the pain of this arbitrary act on behalf of the banks and this in turn ultimately forced our office to intervene and when it became known that the problem was far wider than anticipated by our office, the matter was followed up through the Law Society of the Northern Provinces to the Law Society of South Africa where Julian Pokroy chairs the Immigration and Refugee Law Committee. This committee then met on the 18th of August with the South African Banking Association and SABRIC in an effort to try and resolve the impasse. It immediately became apparent that the issue was not only a Banking Association matter and that the Financial Intelligence Centres “FIC” also needed to be involved.

The banks were in essence saying that the FIC was there to ensure compliance on their part and that they could not necessarily comply with the requirements that FIC if an individual did not have a valid and current permit in his or her passport.

As a result of that meeting a further meeting took place on the 18th September 2013 at which a Deputy Director-General of immigration of the Department of Home Affairs attended together with compliance

officers from the FIC, with the Banking Association of South Africa and SABRIC also attending.

Whilst the situation has not been resolved it has now become abundantly clear that the reason for the freezing of the accounts has been associated not only to compliance with FIC but also to the assessment of risk in respect of the account profile of a foreign national who would hypothetically be on a tenuous status.

The bottom line is that it appears now that rather than a freezing of an account there will be an “orderly closure” of such accounts, taking into account the grey area of legality or quasi legality of an individual foreigner’s status pending the outcome of the adjudication of his permit or any appeal or review that may follow thereafter.

Further meetings will be held in due course and news regarding this will be updated on this website.

**AS ALWAYS, WE ENDEAVOUR TO KEEP YOU UP TO DATE
ON ALL IMMIGRATION RELATED ISSUES**

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AND

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AND

THE TEAM AT JULIAN POKROY ATTORNEYS