Need a work permit? Good Luck!

What it’s like to apply for a work permit after 26 May – the date of the new immigration regulations coming into operation.

By Julian Pokroy

In February 2014, the then Minister of Home Affairs published Draft Immigration Regulations for public comment. The time given for such stakeholder comment was rather short and encompassed some “long weekend” time. Nevertheless, a fairly comprehensive input was given from one of the principal stakeholders of the Law Society of South Africa on various technical issues in the Draft Immigration Regulations, some of which related to the possibility of unconstitutionality and other aspects relating to administrative law issues. In addition, input was given on practical aspects surrounding the ultimate implementation.

No indication was given by the Minister of Home Affairs at the time as to when implementation would take place. Shortly thereafter, the Minister called for invited tenderers to submit tenders for the outsourcing of some of the administrative processors relating to visas, the lodgement thereof, collection thereof and, ultimately, the placing of visa stickers on passports.

The tender was granted to Visa Facilitation Services (VFS).

Still nothing was said about a possible implementation date either for the Amendment Act and Regulations or for the start date up to VFS.

On 24 May this year, we were suddenly confronted with a checklist of what needed to be done prior to 26 May. As far as we could see, the new Regulations had been gazetted and would come into operation on Monday, 26 May.

To put this in some perspective, I could point out that very often applicants or their representatives had to queue up in the dark in the early morning for several hours just to gain access to the building and no longer had any indication as to when the halls were empty.

The reality is that from Monday, 26 May, VFS was supposed to be operational and ready to take on applications on behalf of the Department of Home Affairs. It was only the Pretoria, George and Port Elizabeth offices that indeed opened their doors.

The rest of the regional offices opened only some two weeks later.

The harsh reality is that applications that were not yet lodged at the time of the coming into operation of the new Regulations now would stand to be adjudicated under criteria which appear in the new Regulations. This meant that many applicants, who would have qualified but whose applications were not ready for lodgement prior to 26 May, potentially now no longer qualified.

To say that confusion reigned would be an understatement. Employers on the brink of employing skilled foreign nationals who complied with the “old” Regulations requirements now could only use the qualifying documents in support of a newly introduced requirement that the Department of Labour make recommendations in respect of allocating that position to a foreign national.

The Department of Labour was certainly caught out by the Department of Home Affairs.

The reason for mentioning this is that a foreign national applying for any visa, or his/her representative, now has to interface with a VFS official, by prior appointment and at a cost of R1 350.00 per applicant.

It is understood that, if a person doesn’t qualify, a rejection notice would be justifiable. However, because of regional differences in opinions as to what is actually required for an application, it is conceivable that there might be a slight technical fault in the application which could be easily remedied by an e-mail or a telephone call to the applicant or their representative. In essence, this is not being done and applicants who apparently do not comply as in this latter example will be faced with a rejection.

A rejection of a visa now forces the applicant to apply for a review or an appeal of that decision. This would necessitate the preparation of an appeal, again via an appointment with VFS to lodge the appeal and a further payment to VFS of R1 350.00 per applicant.

All of the above charges are also followed by the usual Department of Home Affairs fees for the processing.

You be the judge as to how fair this is.

One has to ask the question: how is all of this going to facilitate the importation of highly skilled foreigners whose skills are not available in the country, into the country? Still, the processing blocks are certainly not the way to achieve this?

Over the next few months, I will be dealing with various aspects of the technicalities of the various visas and indeed any one has already been covered on General Work Permits in the July 2014 edition of HR Future.

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