

Is this innovation?

Critical Skills Visas in terms of the Immigration Act.

By Julian Pokroy

The Immigration Amendment Act 13 of 2011 together with new regulations came into operation on 26 May 2014. One of the “innovations” of this Amendment Act was the introduction of Section 19 (4) of a Critical Skills Visa.

The purpose of the Critical Skills Visa is to create an environment in respect of professions, trades and occupations that are deemed to be, by regulation by the Minister of Home Affairs, critical skills and ostensibly to “facilitate” the granting to such critically skilled foreigners to gain access into the upper skills market of the skills shortage pool to fill this vacuum.

The harsh reality of the South African jobs arena is that the country is not producing sufficient of the nominated categories as set out in the regulations, and is unlikely to be able to fill this gap in the short to medium term. The manner of dealing with this in terms of international best practice in the Immigration Law sphere is to import such skills into South Africa.

First prize at all times must always remain the employment of trained skilled and experienced South Africans in the skills category. However, with the reality being otherwise, it becomes necessary, as stated above, as an interim measure, to bring these skills into South Africa and hopefully also for such skilled foreigners to transfer skills to South African citizens or residents.

Here is a link to the Critical Skills Visa categories which would give a better understanding of which trades, professions or occupations qualify under the current dispensation:

<http://www.immigration-sa.com/wp-content/uploads/2014/07/JPA-Critical-Skills-List.pdf>

It must be remembered that this list may vary from time to time over the years by way of a

proclaimed government gazette in consultation with Department of Home Affairs, Department of Trade and Department of Labour.

In each of the categories, it is abundantly clear that not only is the skilled profession or trade required to be proved, but that the foreign national applying for such visa will have to provide proof that they have applied for, or are already registered with, an “accredited professional body, council or board recognised by SAQA or any relevant government department”. Apart from merely registering with such professional body the individual will also have to confirmation of their skills or qualifications and

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appropriate post-qualification experience from such professional body.

The previous quota work permit and the schedule relating to professions applicable to such quota work permit specifically listed the professional body that was required to be registered with in respect of each profession. It is most unfortunate that, in respect of the Critical Skills Work Visa, the same was not done on the national critical skills list gazetted. It is now

required of the individual applicant to determine the appropriate professional body that is required to be registered with.

In addition, the SAQA evaluations have to be done of all academic tertiary and post-graduate qualifications with any certifications being in foreign languages to be translated by a sworn translator into one of the official languages of the Republic of South Africa.

The crunch lies in the fact that there are trades, professions or occupations that are listed on the Critical Skills Visa gazette and in respect of which accredited professional body, council or board was not consulted prior to the gazetting and in respect of which such professional council or board is perhaps able to confirm a registration but cannot comply with the second leg thereof which is to confirm the skills or qualifications and appropriate post-qualification experience.

SAQA is also not statutorily enabled to give any evaluation on experience, post-graduate or otherwise and is only able to assess equivalent and parallel qualifications.

As a direct result of this, it has become exceptionally difficult to obtain such certification, and all that is possible to be obtained is proof of either a registration or proof of a provisional registration or proof that an application has been made for registration.

A recent meeting between representatives of the Law Society of South Africa’s Immigration, Nationality and Refugee Law committee with the relevant Director of Qualifications at SAQA highlighted the situation for SAQA and it is hoped that this impasse will be resolved shortly.

In the meantime, applicants for Critical Skills Visas will have to comply with at least the following:

- A SAQA evaluation of their qualifications with sworn translations where applicable;
- Confirmation in writing from the accredited professional body, council or board confirming the qualifications and professional registration or proof of application therefor by the applicant; and
- Proof of application for a certificate of registration with the accredited professional body, council or board recognised by SAQA.

In addition to the above, the applicant for a Critical Skills Visa would also have to provide proof of employment within 12 months after obtaining their Critical Skills Work Visa in the form of an employment contract specifying the occupation and

capacity in which the foreigner shall be employed.

As was the case with the previous quota work permits, it is not necessary to be possessed of a job offer and a foreign national applicant who has obtained a Critical Skills Visa authorisation may enter South Africa without having found employment and then seek employment upon arrival.

A failure to adhere to the requirement of reporting within 12 months and confirmation of employment will negate and cancel the visa.

The duration of a Critical Skills Visa is five years and it is renewable.

Applications for Critical Skills Visas must be brought in the country of usual residence of the applicant and the outcome must be awaited in that country.

Foreign national applicants already in South Africa

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on other types of permits or visas should consult the Department of Home Affairs or an appropriately qualified Immigration Specialist Attorney to determine whether they may indeed apply for a change of conditions to that of a Critical Skills Visa from within the country. ■

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