Progress **or not?**

The new Immigration Amendment Act 13 of 2011 and new Immigration Regulations.

By Julian Pokroy

The Immigration Amendment Act 13 of 2011 together with new Immigration Regulations were gazetted on 23 May 2014 and came into operation on Monday 26 May 2014.

The ostensible purpose of the new regulations was to usher in a new methodology and process in terms of lodgement and upliftment of all types of visa applications, lodged within the borders of South Africa with the declared intention of "accelerating" the processing of such visas through this innovation.

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For purposes of this article it is important to note the cut-off date of 26 May as it is necessary to deal with applications that were lodged prior to 26 of May under the Act as it stood prior to that date and regulations as they were up to that date, on the first hand, and on the second hand to deal with progress or lack thereof under the new dispensation of the Immigration Regulations.

To place matters into perspective it is the author's belief that the situation prior to 26 May 2014 should be dealt with in terms of applications that were in process up to that date and what has transpired with those applications.

By way of background Visa Facilitation Services "VFS" is tasked through eleven offices countrywide with the acceptance of lodgement of all types of visa applications and certifications, including appeals and reviews as well as waiver applications. However, the actual adjudication of applications for any type of visas remains to be dealt with by the central adjudication hub at the Department of Home Affairs head office in Pretoria.

This is where the crunch lies!!!

In a recent television interview the Deputy Minister of Home Affairs Chohan, in response to a question in parliament stated that the backlog of applications lodged prior to 26 May was in excess of 40 000 applications. In response to a further question on the specifics of spousal applications the Deputy Minister indicated that more than half of those were in fact spousal/life partner applications.

Anecdotally it would appear not only from the Deputy Minister's answer but, again anecdotally, there is a perceived reluctance by the Department of Home Affairs to finalise applications of foreign nationals who were either in permanent cohabitative relationships with South African citizens or married to or in civil unions with South African citizens. This is an unacceptable situation and since the interview last month with the Deputy Minister it would appear that little progress has been made since then.

Bearing this in mind, the adjudication team dealing with applications under the "new dispensation" of regulation post 26 May 2014 are faced with much of the same old situation and that backlogs are now beginning to accumulate under this new dispensation.

The situation has been complicated by the fact that VFS was not up and running in an efficient and proper manner on 26 May and indeed certain of the regional offices including the largest in Johannesburg only came up and running on 20 June 2014, almost one month after implementation of the new system.

A point worth mentioning, is that in addition to the Administrative Fees which are payable to the Department of Home Affairs, as prescribed in the Regulations, the fee of R1350 is payable to VFS in respect of each application lodged through their offices. This includes applications, for which there were previously no fees payable. Surprisingly, this provision also covers spouses, life partners, children and parents of South African citizens or permanent residents, who in terms of previous Court rulings were exempt from payment of any administrative fee. It is the author's belief that to levy such fee in respect of the spouse, child or parent of a South African citizen or permanent resident is unconstitutional and will probably be dealt with through our courts in due course. In the meantime, this fee is unfortunately payable.

With the introduction of services relating to lodgement and collection of applications through VFS it was mooted By the Department of Home Affairs that waiting times for lodgement of applications would be reduced. This is not always the case and waits of anywhere between three and five hours are not uncommon. There are exceptions to this rule and sometimes applicants are dealt with fairly quickly. In addition VFS offers a so-called "premium service" where, for a fee of R500 per applicant, one can sit in a fairly ostentatious lounge, drink coffee and have biscuits, and wait to be dealt with. This however is not a guarantee that there will be no wait.

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By way of information, VFS is not empowered to deal with queries on applications nor follow-ups and the functionality, beyond lodgement and delivery does not go as far as the previous "track and trace "system which informed applicants as to where their applications were with in the central adjudication hub system. This has now unfortunately been removed from the sequence.

When approaching upper level management in the Department of Immigration at Home Affairs in order to merely find out what is going on with an application that has been long outstanding, the philosophy of "passing the buck" seems to be prevalent as senior management forward on the enquiries to subordinates within the department and the track usually runs dead at that point.

The effect and damage to the economy is incalculable.

A further point worthy of mention is that, as VFS is not an adjudicator but only a receiving and dispatching agent, they will take in all applications, irrespective of whether the application bears merit or not.

This will certainly lead to a dearth of refusals which then results in a further dearth of reviews and appeals!!

A pessimistic view is that the system will now become log jammed with appeals and reviews. This is all good for VFS who charge R1350 for each and every application, of any nature, for just being a receiving agent. It is worthy to also note that the Department of Home Affairs has never charged an administration fee for an appeal or review application but this VFS fee is imposed on the application regardless.

The Law Society of South Africa through its Immigration and Refugee Law committee is endeavouring at this point to meet with top level management of the Department of Home Affairs at head office in order to convey these sentiments across on a "face to face" basis and hopefully to resolve some of these issues.

Whilst I do understand that new systems may very well have hiccups, the haste within which this new system was introduced was perhaps too zealous and perhaps premature and to this end the solution could have been a series of road shows to educate immigration attorneys and consultants as to the workings of the system and in fact also to educate departmental officials who have to deal with these matters on a day to day basis. ■

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