

Julian Pokroy

ATTORNEYS AT LAW – SINCE 1980
Immigration and Nationality Law Practice

BREAKING NEWS!!!!

RETENTION OF CRITICAL SKILLED FOREIGN WORKERS WHO ARE CURRENTLY ON CORPORATE VISAS.

The Minister of Home Affairs has announced an executive decision recognizing the need to fill critical gaps in the South African economy and to eliminate impediments to the importation of critical skills.

The critical skills visa category which was proclaimed in the middle of last year, having been published on the 3rd of June 2014, restricted holders of corporate visas, “corporate workers” who had received corporate work visas in terms of Regulation 20 (11) from applying for a change of status whilst in South Africa.

The executive decision announced allows corporate work visa holders who also possess critical skills as listed in the aforementioned Government Gazette, to now change status whilst in South Africa. This represents a major positive step forward as previously the corporate work visa holder had to go back to their country of prior residence and apply for a new visa and await the outcome in that country.

Hopefully this will ease off the process and is therefore to be welcomed.

UNABRIDGED BIRTH CERTIFICATES IN RESPECT OF APPLICATIONS FOR CHILD PASSPORTS.

In June last year the Minister of Home Affairs issued a directive, pursuant to the new Immigration Regulations which came into operation on the 26th of May 2014, in terms of which it now became a

requirement at law for a minor who was traveling in or out of South Africa to carry certain documentation.

The primary document in this regard being the unabridged birth certificate.

What was not factored into this was the inordinate lengthy of time it was taking for the processing of unabridged birth certificates.

The furor that this precipitated resulted in the Minister of Home Affairs then issuing a further declaration postponing this requirement up to the 1st of June 2015, which is almost upon us at the date of writing this note.

On the 8 May 2015 the Director General of Home Affairs issued a further directive clarifying, and hopefully in an effort to facilitate the situation, indicating and qualifying that all applicants applying for child passport or travel documents would be urged to simultaneously apply for their unabridged birth certificate.

In terms of this Directive the Director General of Home Affairs office anticipates that the turnaround time for the unabridged birth certificate lodged together with the child passport or travel document would be some 6 to 8 weeks.

This is a considerable and drastic improvement on the current turnaround times.

The purpose of this note is to alert parents and/or guardians of minor children who will be traveling that there is ostensibly an expedited manner of obtaining the unabridged birth certificate in the process outlined above.

A Further Directive has also been issued which clarifies certain other aspects surrounding travelling minors, these are as follows:

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- Minors whose “first travel date” into or from South Africa was before the 1 June 2015 deadline should not be required to produce the new required documents on the return leg of the journey, in the event of such return being post the 1 June 2015;
- Where a minor child applies for a visa from within the borders of the Republic of South Africa or at a South African embassy overseas, it would be required in any event that all submitted documents supporting the application would have been submitted prior to the visa being issued.
- Sworn translations of all documents submitted for visa applications have to be submitted except in the case of applicants who come from visa exempt countries

Please note:

The Directive also goes forward to state that way and authentic visa is produced that by a minor traveller but other supporting documents are not available, then it may be safely assumed by the immigration official at the port of entry that all the supporting documents were indeed provided for purpose of the application of the visa and will not have to be produced again.

INTERESTING NEW DEVELOPMENT JUST ANNOUNCED FOR WORK VISA HOLDERS WISHING TO STUDY PART TIME AT TERTIARY EDUCATIONAL INSTITUTIONS.

The Department of Home Affairs has just announced a “dispensation” allowing holders of the following types of visas to study part time:

1. General work visas
2. Critical skills work visas
3. Intra company transfers work visas
4. Business visas

A foreign national holding any one of the above listed visas no longer needs to apply for an endorsement on their work visa enabling them to take up part time studies with an institution of higher learning.

With effect from the 21st of May 2015 when this was announced by the Director General's office and formulated into a Departmental Directive it would have been necessary to make an application for inclusion of this “study” element of the principal visa. It must be stated clearly that this only covers part time studies and specifically with institutions of higher learning that are registered with the Department of Higher Education.

It is also important to note that the duration of the study course may not exceed the period of validity of the principle work or business visa. This is a welcome development.

SERVICE DELIVERY ISSUES.

From time to time in our updates we have spelt out to you the ongoing saga surrounding service delivery issues with the Department of Home Affairs and in the interface with VFS.

Many of the VFS processes have been refined pursuant to the interfaces between the Law Society of South Africa, Law Society of the Northern provinces and VFS upper management. We are grateful to them for the time they have given in this regard.

On the downside however, we cannot say the same about the Department of Home Affairs on service delivery issues.

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We and many of our colleagues are experiencing ups and downs in this regards but the overall trend seems to be moving towards some degree of improvement on temporary residence visas on turnaround times. Hopefully this will maintain that forward movement and maybe even improve.

On the downside, the amount of inconsistent, incorrect, potentially unconstitutional and blatantly unfounded refusals of applications has tremendously increased.

When an incorrect decision is given in this manner then one of the options presented is for the applicant to apply for a review in terms of section 8(3) of the Immigration Act, against that refusal.

This would then draw that applicant into an already overloaded an undercapacitated review section within the Department of Home Affairs and it has become almost impossible to predict how long a review application will actually take.

In terms of those decisions that are potentially unconstitutional we report that ultimately such cases will have to end up going through to the constitutional court for final decisions.

We continue, and assure you of this, that we pursue all applications dealt with by our office with vigor and tenacity and assure you of our best service at all times.

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

JULIAN POKROY

AND

TARRYN POKROY RIETVELD

AND

THE TEAM AT JULIAN POKROY ATTORNEYS