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BREAKING NEWS!!!! UPCOMING AMENDMENTS

The Department of Home Affairs will be making concessions to the visa regulations which were implemented in May 2014. A following is a summary of the changes to be made. Please take note that these are still to be implemented – in the meantime the regulations still apply as normal.

In terms of the decision, on the requirement for travellers to apply for visas in person, in countries where there is no SA mission, the Department of Home Affairs will receive applications, including by post, and capture biometrics of travellers on arrival at ports of entry. To address concerns around the geographical spread of countries like China, India and Russia, certain measures will be put in place to ease the process of application, in particular for tourists.

Child-travel requirements for outbound travelling will stay, including proof of parental relations through unabridged birth certificates, and, as necessary, parental consent. In respect of inbound travel where visas are required, it will still be required that original birth certificates and, as necessary, parental consent or certified copies are submitted during the visa application process. Requirements regarding unaccompanied minors will remain, like providing copies of the identity document or valid passport and visa or permanent residence permit of the person who is to receive an unaccompanied minor.

For visa-exempt countries a strong advisory will be issued, with travellers advised to have proof of relationship and consent from the absent parent/s or guardian/s, in case they are asked to provide such on arrival. Cabinet has mandated Home Affairs to put in place the necessary legal instruments to give effect to this decision. The status quo will remain until such time as Home Affairs has provided a legal instrument

for this category of travellers. In the meantime travellers are encouraged to comply.

In the next three months:

- Implement the capturing of biometrics at ports of entry starting with a pilot at OR Tambo, King Shaka and Cape Town airports;
- Look at introducing an accredited tourism company programme for countries like China, India and Russia;
- Consider a long-term multiple entry visa for a period exceeding three months and up to three years for frequent travellers (for business meetings), business people and academics;
- Principals will issue letters confirming permission for children to travel on school tours; and
- Extend the validity of the parental consent affidavit to six months.

Within a year:

- Add visa facilitation centres, including in Zimbabwe, United Arab Emirates and Botswana;
- Consider a visa-waiver for India, China, Russia and other countries’;
- Look at issuing visas on arrival for persons travelling to SA having in their passports valid visas for the UK, USA and Canada or any other country that applies stringent checks on visitors to their countries, to ease travel for tourists;
- Consider granting a certain category of frequent travellers (business and academics) from Africa a 10 year multiple entry visitor’s visa;
- Open two business visa facilitation centres in Durban and Port Elizabeth, in addition to the centre recently opened in Sandton; and

- Print parents' details in their passports so that they do not have to carry birth certificates.

In the long term, one year and beyond:

- Install systems for pre-flight checks at international airports;
- Upgrade advance passenger processing systems and implement passenger name record, to enhance risk assessment; and
- Finalise automation of the visa and permitting system.

We do hope that this will bring about much needed relief on some rather restrictive regulations.

Further updates to follow as and when they happen.

WAIVER VS DEPARTMENT OF LABOUR

Prior to the amendments to our immigration laws in May of last year the process involved in respect of obtaining a general work visa was that either the employer advertise the position in the national printed media and prove that they could not find a suitable South African to fill the position and obtained a salary benchmarking for the position that the foreign national applicant would hold or they apply for a waiver directly to the Department of Home Affairs.

Since the amendments, to obtain a general work visa the prospective employer must advertise the position in the national printed media and prove that they could not find a suitable South African to fill the position but then this recruitment process is reviewed by the Department of Labour. They also undertake their own recruitment process to determine the availability of South African citizens or permanent residents for the position. They also undertake a site inspection at the premises of the employer to ensure compliance with Labour law standards. Ultimately, they then issue a report which is provided only directly to the Department of Home Affairs, not the applicant, not the employer and not the representing attorney's office. On the back of being advised that the Department of Labour report is completed the individual can then proceed to apply for the work visa. Again, the alternative here still remains the waiver process.

Waivers are generally only granted in exceptional circumstances. In other words, exceptional circumstances need to exist why the Department of Home Affairs should waive the requirement of the employer having to undertake the recruitment process. Exceptional circumstances need to be shown why the foreign national should be employed over any South African citizen or permanent resident that may apply or, alternatively, that there is a shortage in the specific field in which the employer is looking to fill the position.

Each application process has its own advantages and disadvantages which are discussed below.

DEPARTMENT OF LABOUR

| ADVANTAGES | DISADVANTAGES |
|---|---|
| <ul style="list-style-type: none"> • Less risky, specifically for a first time work visa applicant | <ul style="list-style-type: none"> • Timeframe can take a minimum of 2 – 4 months to complete dependent upon which Department of Labour office is required to be utilised |
| | <ul style="list-style-type: none"> • The outcome of the Labour report is not advised to the applicant, employer or attorney representative |
| | <ul style="list-style-type: none"> • The work visa application can only be made once the Department of Labour report has been issued |
| | <ul style="list-style-type: none"> • The discretion lies entirely with the Department of Labour head office ultimately to determine whether to grant a positive or negative report |

WAIVER

| ADVANTAGES | DISADVANTAGES |
|--|--|
| <ul style="list-style-type: none">The outcome of the waiver is provided to the applicant, employer and attorney representative | <ul style="list-style-type: none">Timeframe can take a minimum of 2 – 4 months to complete dependent upon which Department of Labour office is required to be utilised |
| | <ul style="list-style-type: none">The work visa application can only be made once the waiver has been issued |
| | <ul style="list-style-type: none">The discretion lies entirely with the Department of Home Affairs as to whether to grant the same or not |

It certainly becomes increasingly difficult to make a decision as to which process to follow based on the above. What is often chosen by clients as an appropriate alternative is to undertake both processes. The waiver application can run simultaneously to undertaking the advertisement and Department of Labour process due to an increase in the negative reports that are being issued by the Department of Labour which, in our opinion, are often incorrectly issued as negative reports, undertaking both processes simultaneously may prove to be the safest route to follow.

Obviously the decision ultimately lies with the employer but we do hope that the above provides a clear and succinct understanding of the options available in respect of applying for the general work visa.

REVIEWS AND APPEALS

Due to the large increase in refusals of applications through the Department of Home Affairs this has caused a massive backlog in respect of review and appeal applications against these refusals.

In having received a number of enquiries regarding the review process and seeing a number of the refusals that have been issued, most unfortunately, a large

number of these are refusals that should not have been issued in the first place.

Nonetheless, as a result of the backlog, an application for a review or appeal can currently take anywhere up to one year, if not more than that, to complete as from date of submission.

Certainly the problem in the meantime is that the individual most likely has no current and valid visa meaning that they are not able to travel outside of South Africa until such time as the review application has been dealt with. Additionally, where the appeal or review relates to a work visa application, technically having submitted the review or appeal application only allows the individual to be able to reside in South Africa until such time as the review or appeal application has been finalised and, hopefully, approved. This does not entitle the individual to be able to continue employment while awaiting the outcome of the application.

In certain instances there are alternatives to submitting a review application but it is vitally important for the applicant to then contact us as soon as possible after having received the refusal letter. Various options can then be explored and determined. A review application must be submitted within ten working days of having received the refusal notice so time is always of the essence.

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

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