

Traveling with minors

Make sure you know exactly what is required when traveling with a minor.

By **Julian Pokroy**

The advent of the new Immigrations Regulations on 26 May 2014 heralded in a new era surrounding traveling with minors.

In terms of the new Regulations, simplistically put, a traveling minor has to be accompanied by an unabridged birth certificate.

At the outset it must be noted that terminology “unabridged” is relatively unknown in many countries. The reason behind this is that most countries in any event issue the so-called “long” birth certificate which reflects particularity of the parents of that minor as a matter of course.

The first area of confusion therefore surrounded nomenclature with many persons intending to travel to South Africa and not knowing what an “unabridged” certificate was in the first instance.

The provision was bound to cause much confusion and a lot of unintended consequences flowed therefrom.

For this reason, the Minister of Home Affairs at the time agreed, after considerable pressure from the tourism industry and other sectors, to postpone the operation of this provision until 1 June 2015.

The first question that begs asking is to enquire as to what an unabridged birth certificate actually is.

Prior to the coming into operation of the Immigration Act 13 of 2002 in April 2003, the traditional naming of birth certificates was the “long” form of birth certificate and the “short” form of birth certificate.

Let’s deal with the latter first in that it is the easier of the two. A “short” form is merely an extract from the birth record and reflects only the name of the person who was born, the date, if a South African citizen, and the identity number allocated administratively at the time of registration of the birth.

By way of contrast, the “unabridged” certificate or “long” form is a lot more complex. The certificate itself bears the names of the parents of the person whose birth has been registered and it is not simply

an extract. In order to issue an unabridged birth certificate, the vault copy of the birth certificate must be inspected and a certification can only then be done of that document.

As a direct result of the aforementioned, unabridged birth certificates take a long time to procure.

Delays in obtaining unabridged birth certificates vary from six to eight weeks to more than a year. This is based upon anecdotal information obtained from colleagues and my personal professional experience.

The requirements for a South African child traveling would therefore become rather complicated if an unabridged birth certificate is not available and a departure is imminent. A classic example of this would be a child who has been selected to represent a school or college academically, in sport or for other reasons, outside of our borders.

The position becomes more difficult when the individual minor who is traveling to South Africa is not a South African citizen and has to procure the so called “unabridged” birth certificate from their country of birth. Part of the reason for this is stated above, but the situation becomes more complex in a scenario where it is sometimes extremely difficult or impossible to obtain a certificate in line with the requirements of the new provisions of the Immigration Act. One of the unintended consequences of this has been the amount of tour groups including minors, school groups and the like, that have been cancelled as a result of this provision.

In terms of South African law, a “minor” is defined as any person under the age of 18.

The underlying reason for the tightening up of entries into and departures from South Africa of minor children relates to the increase worldwide of child trafficking.

The Minister of Home Affairs, when approached by stakeholders regarding the possible negative effects and also negative impact the new requirement could have and has now indeed had, on tourism, has remained doggedly determined and has stated publicly in the media on a regular and ongoing basis that the Ministry’s office would not back down on this requirement.

Figures have been bandied around as to the actual number of children that have been trafficked but

these vary to such a degree that it is impossible to state numbers with any degree of accuracy. Without in any way detracting from the seriousness of child trafficking, it is relatively straightforward to deduce that persons engaged in child trafficking are highly unlikely to use our major ports entry for this purpose.

South Africa has thousands of kilometres of porous borders and that would be the more likely mode of trafficking children. Be that as it may, we are faced with the administrative dilemma presented by the new Regulations.

The purpose of this article is to clarify some of the administrative issues and we proceed to do so hereunder. The first category to be dealt with relates to children who are traveling with both of their parents. The requirement in this category is that the parents must produce an unabridged birth certificate and a valid passport for the said minor child.

It is suggested that, whilst the original should be carried as well, a certified copy should be presented to the Immigration official upon departure or entry into South Africa.

Please note that children from visa exempt countries in respect of South Africa do not need to carry this certificate in terms of a Directive issued by the Minister of Home Affairs recently. The list of visa exempt countries can be assessed at www.immigration-sa.com/home/immigration-forms.

The next category relates to that of a minor child traveling with one parent only. In this instance, the accompanying parent must produce an unabridged birth certificate and a valid passport for the said minor child. In addition, the consent, proved by way of an affidavit by the consenting absent parent must also be provided in a sworn affidavit format which confirms in writing the absent parent’s specific written consent and permission for that child to travel. The format of this affidavit is available on the Department of Home Affairs website. If the “absent” parent is deceased, then a certified copy of the death certificate would be required. In the event of the parent of the traveling minor being divorced, then the “absent” parent’s consent, again in an affidavit format, allowing and consenting to the travel must accompany the traveling minor. In addition, in the latter scenario, a certified copy of the final divorce order and/or custody order must also be provided.

The next category relates to the situation where a minor child is traveling sans both parents and is in custody of a guardian. In this scenario, again an unabridged birth certificate would have to be provided together with a valid passport, relevant affidavit by the parents of the traveling minor in which they give a specific consent and permission for the child to travel and name the guardian in that affidavit. If there is a divorce or death of one of the parents

then, as indicated in the previous paragraph, a certified copy of the divorce certificate/custody order or death certificate must be provided.

The final scenario relates to the situation where the minor child is traveling unaccompanied.

In this scenario the child must again be in a position to produce an unabridged birth certificate, valid passport, a court order (if applicable) relating to divorce and custody, of their parents, a death certificate in the event of deceased parent(s) and in the event of none of these being applicable then affidavits from both parents confirming permission and consent to travel and/or an affidavit from a legal guardian of that child.

A further requirement, which is absent in the other scenarios painted above, is that a letter will also have to be provided from the person(s) who will receive the child in South Africa for the duration of their stay including full contact details and address of that person and a certified copy of their green barcoded identity document or passport must be provided.

A further note is that any affidavit that is provided in any of the eventualities described above may not be dated more than four months prior to the first arrival or departure of the traveling minor.

A further note is that, where a minor is traveling from a non-visa exempt country to South Africa, an application would have to be brought for a visa in their country of usual residence seeking permission to enter South Africa.

In that application, one of the required documents would be the provision of an unabridged birth certificate. Further requirements would relate to the affidavits and/or certified copies and letters of consent dealt with elsewhere in this article.

In terms of the Department of Home Affairs guidelines in this regard, where it has been a specific requirement when applying for a visa at a South African Embassy abroad which has required an unabridged birth certificate to be presented, then it shall not be necessary for the unabridged birth certificate to be carried with that minor upon entry to South Africa. We do however advise to rather be safe than sorry and recommend that the document(s) be provided notwithstanding this guideline. ■

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