

# Visa requirement update

New developments in respect of possible amendments to the Immigration Act and regulations.  
By Julian Pokroy

The author has written in *HR Future* about imminent changes in legislation and regulation has also covered some of the disasters that have followed on to the most recent amendment to the Immigration Act and regulations in May 2014 and the intended or unintended consequences thereof.

Perhaps it is important to note a bit of history in this regard. Prior to the coming into operation of the Immigration Act 13 of 2002 “the Act” a process was embarked upon by the then Minister of Home Affairs Mangosuthu Buthelezi in terms of which consultation about the intended legislation and regulation took place and which in the author’s opinion, became one of the most consulted upon pieces of legislation in recent history post 1994. All stakeholders were drawn into the process and had ample opportunities to input into the process and comment, and a national “roadshow” took place where public participation was not only encouraged but took place and ultimately this resulted in the Act being promulgated in 2012 but eventually only coming into effect in 2003.

Several amendments have taken place subsequently, most of which were consulted upon. The Act in fact places a duty on the Minister of Home Affairs to consult and in specific to consult with the Immigration Advisory Board in this regard.

However the 2014 amendments were precipitated by limited stakeholder consultation, if any took place at all. As is evidenced by the aftermath, for instance, the tourism industry was not consulted about the possible impact on South Africa’s tourism industry and certainly employers were not consulted

regarding issues such as the re-introduction of the Department of Labour into the equation relating to general work visas.

The Amendment Act and its regulations came into operation very suddenly on 26 May 2014, with the Gazette only having been published the previous Friday without notice or warning about its imminent implementation.

With immediate effect from that date, and by way of example, unabridged Birth Certificates in respect of all minor children having to be presented at ports of entry and exit became a requirement and havoc in this regard ensued.

Procurement of an unabridged Birth Certificate for a South African citizen is not a short process and can take anywhere up to a year to procure in terms of conditions prevailing at that time. Families arriving in South Africa and not having knowledge of this recently and suddenly imposed requirement were refused entry and many were refused exit when leaving South Africa on holidays with accompanying family, on this basis.

The furore surrounding this resulted in the Minister of Home Affairs having to grant a type of “moratorium” up to 1 June 2015 in order so as not to impact on the situation unnecessarily any further. The Minister has however been very specific that he will not back down from the requirement in the interest of preventing child trafficking and in the interests of security of the country.

This loses some impetus when one realises how many thousands of kilometres of porous borders South Africa has and the fact that a child trafficker would ostensibly have enough sense not to traffic someone through one of our ports of entry but rather to take the easy way out and simply to do so across our porous borders. Perhaps focus should rather have been brought to bear on this aspect.

The tourism industry was up in arms and through their organised industry bodies have drawn attention in the media endlessly over the last year to the fact that tourism has been in decline as a direct

result of the visa requirements and that this in turn has resulted in job losses for South Africans in the tourism industry.

The Minister’s intransigence ultimately led to an intervention by the Minister of Tourism Derek Hanekom and at cabinet level an announcement was recently made that the situation will have to be revisited. Thankfully this logic will prevail.

The unabridged Birth Certificate issue is merely one of the consequences of the new regulations. Another is the requirement that applications had to be lodged in person by the applicant irrespective of whether the nearest South African Consular Mission is thousands of kilometres away. By way of example this occurs in China, which is a major trading partner of South Africa.

On 6 November 2015, the Department of Tourism laid forward in a presentation to the Portfolio Committee on Tourism that the following is scheduled to happen within the next three months to one year:

- VFS Facilitation Centres in China, India, the UK, Nigeria, DRC, Angola, Ghana, Kenya and Uganda will be increased and fast-tracking will take place of the opening of a VFS centre in Zimbabwe, the UAE and Botswana;
- The Department of Home Affairs will install systems for pre-flight checks (including operational centres) at international airports and upgrade the Advance Passenger Processing systems. In addition, a Passenger Name Record to enhance the risk assessment and the finalisation of the automation of visa and permitting systems will take place;
- The recommendations were accepted regarding the implementation of current child travel requirements including the parental consent affidavits in order to protect the rights of children;
- In respect of foreign children on inbound travel the provision of original Birth Certificates or certified copies of required documents will continue during the visa application process and this is in line with practice in many other countries;
- For children from visa exempt countries, parents will be encouraged, and strongly advised, to bring along proof of the relation and consent from the absent parent or guardian (where applicable);
- In addition, school principals will have to issue letters confirming the permission for children to travel abroad on school tours and this authority will also be extended to include registered sports bodies. The parental consent affidavits as prescribed in the regulations will have their validity extended for a period of no longer than six months;
- Most importantly an unabridged Birth Certificate

will be changed in the regulations to read “Birth Certificate containing parental details” as a result of the confusion of definition that arose between Abridged and Unabridged certificates;

- Another welcome possibility is that the details of parents will be in due course printed into the passport of the children and where this has taken place the Birth Certificate will not have to be carried any longer; and
- The Inter-Ministerial Committee “IMC” has been empowered to deal with any further issues which may arise.

It is impossible to predict how long it is going to take for these changes to be effected, although indications in the media are that it should take place within the first quarter of 2016.

Another welcome development is that the necessary electronic equipment for capturing of biometrics will be implemented in due course, commencing with OR Tambo International Airport, Durban’s King Shaka International Airport and Cape Town International, with this being rolled out to various other ports of entry in due course. Again it is impossible to predict how long it will take for this roll-out. You can be assured that I will be watching this very carefully at this point and reporting in *HR Future*.

A further newsworthy development that has taken place was in terms of a Directive from the Director General of Home Affairs in October 2015, which has just been published and which indicates the provision for long-term multiple entry port of entry visas for frequent bona fide travellers.

With South Africa being part of the global world economy it has become important to acknowledge that there are business people who need to travel quite extensively as well as academics who similarly need to do so, to be granted for a period of one to two years for multiple entry purposes. This will not apply to first time applicants but only to persons who can provide proof by way of prior endorsed visas not only of South Africa but other countries that indicate that the travel requirement is necessary for them to carry on their business.

Where such a person can substantiate this not only by way of a copy of documents in their possession, visas endorsed in their passports, they will still have to motivate well the requirement for the multiple entry visa. ■

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