

Is the **skills shortage** in **South Africa** still a **myth**?

South Africa needs all the skills it can get, regardless of where they come from.

By **Julian Pokroy**

The vexing question raised in the headlines of this article has sparked an ongoing debate for more than two decades.

Immigration law premises itself upon the importation of much needed skills when such skills do not exist in the country or are not readily available in the country.

During the period under review, our immigration laws and regulations have changed and we have regrettably changed focus from a “skilled shopping” type environment where needed skills and qualifications were welcomed with open arms, to an environment which is less conducive to the importation of skills.

By way of background, when the Immigration Act 13 of 2002 (as amended) “the Act” came into operation on 7 April 2003, it ushered in an open-armed type approach to welcome skilled foreigners to come and use their skills, transfer their skills and make South Africa their home.

What has, however, evolved through the subsequent amendments, most recently the May 2014 amendments to the Act and its regulations, has been more of a “closed door” type of approach,

unless the holder of those skills and qualifications fell into the critical skills work visa category.

It has been my belief that the later amendments to the principal Act have readily lost touch with the realities on the ground in terms of skills shortages.

Our education system has horribly let down the country in two specific academic disciplines, namely Mathematics and Science.

As we have rapidly evolved over the last two decades into a technical and IT type environment

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and economy, the education system has not managed to keep pace with the reality of the needs of producing more Mathematics and Science graduates in order to cope with the shortages.

In terms of international best practice in immigration law, where such skills are in short supply, one introduces an immigration law regime and regulation as well as policy which opens up the countries’ arms to skilled foreigners.

It is my belief that this has only to a very limited degree been applied in South Africa over the last few years.

Energy and sustainable energy specifically has become one of the most important areas of science to be looked at, as does water generation and purification.

Realistically, South Africa competes in a world market environment where these skills are in short supply worldwide.

What does place South Africa at a disadvantage in this arena is that our education system, tertiary education and otherwise are not producing sufficient resources locally and it therefore becomes incumbent, as a gap measure, to import the skills from elsewhere.

First prize always has to be the employment of a South African. However, when that is not possible, one has to consider the option, as a bridging measure, of importing such skills, transferring such skills over a period of time to South Africans and upskilling South Africans in this regard.

When importing skills in this fashion, and one only has to refer back to numerous of my articles in this very publication, a “skills importation friendly” regulatory environment must exist in order to make this possible.

It is my belief that this simply has not happened and, with specific reference to the 2014 amendments to the immigration regulations, it has become more of a minefield to negotiate visa requirements and to get visas processed to finality.

The system is also being clogged up with very many incorrect decisions being made that are not

sound at law, sometimes even unconstitutional, and not in line with the Immigration Act and regulations and, in many instances, bad in administrative law as well. This leaves an applicant with no alternative but to either abandon their quest to bring their skills and

to transfer their skills within South Africa, alternatively to apply for an appeal or review of that decision, whichever is appropriate or applicable. The crunch then lies with the fact that there is a backlog in the processing of appeals and reviews and it is sometimes very difficult to predict how long it will actually take to process an appeal or review.

Where a skilled foreigner has the unfortunate experience of not falling into the critical skills visa list, he or she would have no alternative but to have the prospective employer advertise in

the national printed media and to obtain a positive recommendation letter from the Department of Labour certifying that no South African citizens or permanent residents could be found who could perform the job.

This presents a further huge obstacle as applications to the Department of Labour are taking three to six months or even longer and are generally negative in their outcome.

The alternative that they are left with is to apply for a waiver of the aforementioned requirements and, to this end, it is important to note that waivers are taking an inordinate length of time to process because of backlogs in the section at the Department of, dealing with the waiver petitions.

What this is doing to the importation of skills is left to your imagination ... ■

Julian Pokroy is one of South Africa’s leading immigration specialist attorneys, www.immigration.org.za, and currently heads the Law Society of South Africa’s Immigration and Refugee Law Specialist Committee and the Immigration, Nationality and Refugee law Committee of the Law Society of the Northern Provinces. He is a member of the South African Law Reform Commission Committee.