

Critical skill work visa conundrum

It is important to ensure compliance when applying for a critical skill work visa.

By **Tarryn Pokroy Rietveld**

Since the implementation of the amendments to the Immigration Act and their Regulations, this has impacted severely in respect of the work visa application options specifically. Previous articles have been written in this publication with regard to those changes and the purpose of this article is to provide some further feedback with regard to practical issues surrounding the implementation of this new work visa structure.

Prior to the amendments, there were three main categories of work visas where the individuals were taking up formal employment in South Africa, which were the general work visa, quota work visa and the exceptional skills work visa. Both the quota work visa and exceptional skills work visa did not require you to be in possession of a job offer in South Africa in order to take up such work visa, whereas the general work visa did. I do not wish to go into the intricacies of the general work visa process which has been discussed numerous times in previous articles. The focus of this article is in respect of the quota work visa and exceptional skills work visa and the changeover to the critical skills work visa.

While both the quota work visa and exceptional skills work visa did not require a job offer, the quota work visa did always require that the work visa holder confirm employment with the Department of Home Affairs within three months of obtaining the visa and every twelve months thereafter. There was no such similar confirmation process for the exceptional skills work visa category.

In terms of permanent residence, the quota work visa allowed the work visa holder to apply for

permanent residence so long as they could prove at least five years' working experience in one of the professions, trades or occupations mentioned on the quota list. This was essentially a list of scarce skills prevalent in South Africa to which the quota work visa was intricately tied. With the exceptional skills permanent residence category it was merely required that the applicant be able to prove that they were indeed possessed of unique, exceptional or rare skills that were not readily available in South Africa.

When the amendments to the Immigration Act and Regulations came into operation in May 2014, the

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exceptional skills and quota work visa categories were replaced by the critical skills work visa.

This work visa category was far more similar to the quota work visa than the exceptional skills category. Once again, a list was put in place of the skills of

which South Africa was critically short, and it was these skills that were the subject of the critical skills work visa specifically. In addition to falling into one of these occupations, skills or trades mentioned on the critical skills list, it was also necessary to have your qualifications evaluated onto a South African level by the South African Qualifications Authority (SAQA) and to be registered with the appropriate SAQA accredited professional body in South Africa in that occupation or category.

Once again, the critical skills brought into place the confirmation of employment process which was required to be done within one year of having procured the work visa. The three month requirement had fallen away that was previously present with the quota work visa category. It was previously uncertain as to whether this would be a yearly

requirement in terms of the duration of the critical skills work visa which can be granted for up to five years at a time. However, based on the confirmations that have been issued by the Department of Home Affairs this confirms that it is only a requirement that must be undertaken within twelve months of having procured the critical skills work visa and thereafter the actual confirmation of employment that is issued by the Department of Home Affairs confirms that no further confirmation process is required. However, it is important to note that if this confirmation process is not undertaken the work visa may lapse. In many instances the initial critical skills work visa is only granted for a duration of one year in order to ensure compliance with the confirmation process and upon renewal of the critical skills work visa confirmation of employment is then required to be submitted in order to ensure such renewal process is approved.

In terms of permanent residence in the critical skills category, this is also similar to the quota permanent residence that was previously in place. The foreign national needs to be able to prove that they have at least five years' working experience in the relevant occupation, trade or industry as mentioned on the critical skills list. Again, compliance needs to be proven with their requirements for evaluation of the individual's foreign qualifications and professional registration in South Africa with the appropriate body.

Some of the greatest difficulties that are being

seen in respect of the changeover in our law is in respect of those individuals previously in South Africa on exceptional skills work visas, many of which are still valid for some time. However, such individuals, unless they qualify into one of the professions mentioned on the national critical skills list, do not qualify to be able to extend their exceptional skills work visa nor do they qualify to be able to apply for permanent residence. As a result, we are seeing a

large number of foreign nationals who do indeed present skills that are unique to South Africa and certainly in South Africa that are not able to procure a critical skills work visa and are not able to apply for permanent residence. As a result, their only option is to revert to a general work visa of which the requirements are far more stringent and the procedures required to be undertaken far more time consuming.

Further difficulties that are being experienced

with regard to the changeover in our immigration laws are with regard to the relevant professional bodies. In terms of the quota work visa that was previously utilised, the professional body that the foreign national applicant was required to be registered with was mentioned in respect of each professional category mentioned on the quota list. The same was not done in respect of the critical skills list which is rather unfortunate. As a result, we are seeing a number of refusals based on issues surrounding professional bodies, which certainly makes the process far more difficult for the foreign national applicant when no clarification was ever issued by the Department of Home Affairs with regard to the appropriate professional body to be registered with in respect of each category mentioned on the list.

It is vitally important to ensure compliance with all the requirements in terms of the Immigration Act and the Regulations and, due to the intricate nature of these work visa applications and also the work involved in respect of the permanent residence process, it is often advisable to utilise the services of a professional to assist with the application process. ■

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