

Zimbabwean and Lesotho Dispensations

Illegal nationals from Zimbabwe and Lesotho can rectify their status.

By **Tarryn Pokroy Rietveld**

In terms of Section 31(2)(b) of the Immigration Act 13 of 2002, as amended, the Minister is entitled to grant a foreign national the rights of permanent residence for a specified or unspecified duration when special circumstances exist which would justify such a decision. This section of the Act first states that the Minister may exclude one or more identified foreigners from such category and may for good cause withdraw such rights from a foreigner or category of foreigners.

Although the term permanent residence is utilised here, it is, under this specific dispensation, the situation that such a visa is granted for a specified duration and is seen more as a temporary residence visa than that of a permanent residence permit.

A special dispensation has been offered in terms of the Immigration Act under this section by the Minister initially to Zimbabwean nationals and now, more recently, to Lesotho nationals. This exemption, apart from offering such individuals who take advantage of such dispensation, allows such foreign national applicants to also rectify any illegal status that they may have in South Africa. As such, where a Zimbabwean or Lesotho national has acquired status by anything other than legal means either in terms of having acquired a temporary residence visa, permanent residence permit or South African citizenship, such status in South Africa is illegal or fraudulent, and such an individual is entitled to take

advantage of the situation and rectify their status accordingly.

The reality is that there are a number of foreign nationals currently in South Africa on illegal or fraudulent status but it is only to Zimbabwe and Lesotho nationals at this time that a certain amount of leeway is being offered in order to allow these individuals to rectify their status.

The Zimbabwean Dispensation initially started in 2010 when the Department of Home Affairs announced the amnesty for Zimbabwean nationals who obtained, or were using, South African

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documents through misrepresentation. Such individuals were given the opportunity to return those documents to the Department of Home Affairs and apply for an appropriate visa using their Zimbabwean passports. The project started on 20 September 2010 and ended on 31 December 2010. Visas were

granted up until the end of 2014 and, in some instances, the beginning of 2015. Thereafter, a further dispensation was offered in respect of individuals who had already been granted such Zimbabwean Dispensation Permit to allow them to allow for a further permit which is then valid until the end of 2017. It was only the individuals who took advantage of the initial dispensation that were offered the opportunity to then extend the visa.

A further directive was then issued in respect of the Lesotho Dispensation Permit in October 2015. This allows Lesotho nationals currently residing illegally in South Africa, some with fraudulently obtained South African documentation and others abusing the visa waiver between Lesotho and South Africa, to be able to rectify their status in South Africa. The requirement in terms of the Lesotho Dispensation is that Lesotho nationals first need to surrender their fraudulent or illegally obtained documentation to the Department of Home Affairs and obtain an amnesty letter and only once they are in possession of the same can they then proceed to making the application for the Lesotho Dispensation Permit through one of the Visa Facilitation Centres that have been designated to deal with the Lesotho Dispensation programme.

Both the Lesotho Dispensation and the Zimbabwean Dispensation have been offered to allow these individuals, in South Africa with fraudulent or illegally obtained status, to then be able to rectify their status and apply for a visa either to be able to work, study or run a business in South Africa. Only minimal documentation is required in order to be able to prove your work, study or business activity and obtain the appropriate visa accordingly.

In terms of the Lesotho Dispensation, the initial deadline for the applications to be received was 30 June 2016 but this has recently been extended until 30 September 2016. The visa being issued to such Lesotho nationals is valid until the end of 2019.

It is vitally important to note that the visa issued in terms of both of the above mentioned dispensations does not allow for such individual to then apply for any change of status to a different category of visa

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from within South Africa. As such, if such an individual holding such a visa is in South Africa and wishes to apply for and qualifies for an appropriate alternative category, they would have to return to either Zimbabwe or Lesotho in order to apply for such visa through the South African Embassy there and to await the outcome there as well.

Furthermore, unless any extension is offered by the Department of Home Affairs in terms of such dispensation, no extension of these visas will be allowed.

Since this is not seen as formal status being taken up, the time spent in South Africa, no matter how long that may be, does not offer such foreign national any right to be able to apply for permanent residence. In order to qualify for permanent residence they would need to return to their country of origin and apply for appropriate alternative status there and whatever status they do apply for will determine if and when they would qualify for permanent residence status ultimately.

Certainly many difficulties are still being experienced in other avenues as a result of the South African documentation that was initially and fraudulently issued to these applicants. Issues such as having utilised such documentation in respect of registration of their marriage or their child's birth in South Africa and now no longer being in possession of such South African citizenship status certainly causes difficulties for the foreign national and their accompanying family members. Furthermore, in terms of purchasing property, opening of bank accounts as well as employment records and the like, any South African identity document obtained by these individuals is also utilised for these applications. As such, this is still something that the Department of Home Affairs is yet to rectify or find an appropriate solution to. ■

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