

So how did **Home Affairs** do?

Overview of 2016 and preview of 2017 in the immigration law sphere.

By **Julian Pokroy**

The year 2016, in terms of interfacing the Department of Home Affairs in dealing with matters under the Immigration Act, the Refugees Act and the various legislation and regulation governing civic affairs, with the Department of Home Affairs with the Director General and Minister of Home Affairs, has been an extremely rocky one.

It had been hoped that with the introduction of Visa Facilitation Services "VFS" as an intermediately interface with the Department of Home Affairs in all matters leading with the Immigration Act was going to facilitate a much smoother flow of work through the Department of Home Affairs in respect of dealing with temporary residency visas and permanent residency visas.

However this was not to be. Whilst the VFS was supposed to be a receiving and dispatching agent acting on behalf of the Department of Home Affairs, indeed to a very large extent it has become an advice bureau, freely dispensing advice to visa applicants, much of it in contravention of the tender agreement with the Department of Home Affairs and more often than not incorrect.

This has precipitated much delay in the process and many people coming out of the process disappointed as they have been told which category to apply for and what documents to present and then are faced with a refusal of their visa application

or extension thereof.

The problems that have plagued the central adjudication team at the Department of Home Affairs Head Office, when these applications are adjudicated and finalised, have continued unabated and much of the time it is impossible to obtain any information through the adjudication team as telephones do not get answered most of the time, e-mails do not get responded to and the telefax system appears to be in its death throes, or already demised.

All of this is very disconcerting for visa applicants. More often than not, incorrect and patently wrong decisions continue to emanate from the adjudication team, thereby forcing the individual applicants and their dependants to enter into an application process for a review of a wrong decision and that in itself constitutes the next problem.

The Department of Home Affairs appears to be overloaded and undercapacitated in terms of dealing with reviews and appeals in terms of the Immigration Act, and it has become almost impossible to predict how long it will take to finalise a review or appeal process. Very often, incorrect decisions that are taken on review simply have the prior incorrect decision being repeated and this forces the applicant to then apply for an appeal against that decision, this time to the Minister of Home Affairs in terms of Section 8 (6) of the Act.

That process is also indeterminate in respect to how long it will take to finalise and this is an invidious situation for someone who has been faced in the first instance with the wrong decision and now cannot continue working/studying or even accompanying a spouse on a work or other visa.

The Minister of Home Affairs very often in the media declares that all is well with the department and that new systems are going to be implemented but very little of that has trickled down to the

consumer or visa applicant him or herself.

The knock-on effects of the debacle surrounding unabridged birth certificates has somewhat been softened in that the Minister of Home Affairs advised during the course of the year of the relaxation of some of the stringent requirements and towards the end of the year under review announced that the child passport would be reintroduced in the foreseeable future and this indeed will be a very welcome step.

It would however be a reversion back to a status quo ante that existed prior to 2002 with the proclamation of the Immigration Act of 2002 where child passports were indeed issued. The only difference would be "new" innovation is that both parents' names will appear on the passport thereby obviating the necessity to carry an unabridged birth certificate.

The procurement of unabridged birth certificates still remains a tremendous problem with experiences being related to our office on a daily basis about waits of about six to 12 months from date of application for an unabridged birth certificate, before the certificate is ultimately produced. This is not much help to someone who is about to embark on an urgent journey or holiday that has been planned, and then finds out that their child can not technically accompany them.

The effects on the tourism industry have been widely dealt with by Cape Town Business Chamber which indicated that the unabridged birth certificate "debacle" resulted in not only a loss of thousands of jobs but also caused irreparable damage to the tourism industry in the Western Cape, which is the hub of tourism in South Africa, as well as in other destination hubs in South Africa.

I have previously commented about the detrimental effect the involvement of the Department of Labour has had on the process in the general work visa process and indeed it is an exception rather than a rule that applicants apply for general work visas.

A whip-around of colleagues over the last while revealed that very few of the immigration specialist attorneys canvassed had in fact lodged an application for a general work visa in the 12 month period under review.

Critical skills visas are not the answer to the broader spectrum of importation of skills and it is believed that a serious relook should take place and re-evaluation of the general work visa process, as it is my opinion that the Immigration Act process does make adequate provision for the vetting and screening of skills for importation.

During the year under review, the Minister of Home Affairs also announced that a revision will be taking place of Immigration policy. To this end, the draft Green Paper on migration has been gazetted for

public comment, which at the time of writing of this article is still ongoing.

All stakeholders were given an opportunity to input and it will be interesting to see which way the policy develops. The next phase will be to go into the White Paper process and then ultimately put that before cabinet for approval, which will hopefully result in a strengthened immigration policy.

Investment in business into South Africa has also slowed down somewhat, largely because of the global economic crisis but it has not become easier to apply, for investors, for an appropriate business type visa as more restrictive rules are being applied.

In the arena of the Refugees Act, there has also been a downward turn, quite considerably, in the processing of asylum seeker applications and in fact, despite court orders ordering the Minister and Director General of Home Affairs to reopen the Cape Town Office of Home Affairs and the Port Elizabeth office, this has not transpired.

Litigation against the Minister and Director General of Home Affairs has become a sub industry within the legal profession, rather reluctantly. What has been of the most concern however is the fact that very often the Department of Home Affairs and Director General of Home Affairs are simply ignoring court orders. The period is also being characterised by applications for appeals against orders given against the department and the Minister of Home Affairs that did not succeed. The legal costs are obviously borne by the taxpayer who should perhaps be a bit more concerned about this fact. The Minister of Home Affairs' budget vote each year details the expenditure in terms of legal costs and it is quite disconcerting to actually see how this amount has increased.

All these are however not doom and gloom.

South Africa remains a very attractive destination not only for investors or skilled migrants but also for retirees.

All that is required is for realisation of the value it adds to the South African economy and skills pool by accommodating suitably qualified (in terms of the Immigration Act) applicants and then facilitating the processing of their visas rather than the hindering thereof. ■

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.