Is an **immigration audit still necessary** in 2017?

Employing foreign nationals without the appropriate documentation to be in the country is a high risk activity.

By Julian Pokroy

Almost 16 years ago I wrote an article bearing the headline "Is an immigration audit in the workplace necessary?" or words to that effect.

This article was intended to highlight for HR Directors, HR Managers and *HR Future* readers the importance of verifying and "auditing" visas of foreign nationals in their employment.

One of the main reasons for highlighting this was not only because it was topical at the time, but also because of the penalties that exist for employers when employing foreign nationals who do not have the appropriate permits/visas. In fact I also wrote about the need to sometimes verify South African Identity Documents.

That article resulted in a deluge of enquires that have not abated over the years, for verification to be done on this basis and indeed for an "immigration audit" to be done in the workplace.

Almost 16 years have passed and the topic has in fact become more relevant than what it was at the time of writing that initial article.

In terms of the exposure to potential prosecution of an employer that was remiss in not verifying a work or other visa, the penalties have in fact increased and for repeat offenders jail time became a possibility.

The purpose of this article is not to deal with the consequences for the foreign national bearing a false visa or Identity Document but rather to highlight the plight of an employer. However it is necessary to briefly state that for the foreign national bearing a false or fraudulent document, deportation and prosecution are the options.

Applying for a visa to any country is not a walk in the park. Specifically where one does perhaps not qualify for a skills visa and is desperate to be in the country, then such persons can easily fall prey to unscrupulous agents who make offers and promises of the ease with which they can procure visas. This is where the problem starts!

Once a person has embarked upon the trail of dealing with some of these unscrupulous agents then, regrettably, it is often a trail that cannot be obliterated.

With the advent of the 2002 Immigration Act, which came into operation in April 2003, we have thrown open our doors in many ways to highly skilled foreigners to come into the country. It was still however possible for a less skilled person to obtain a general work visa, provided the requirements of advertisement and recruitment had been complied with.

However, with the 2014 Immigration Amendment Act, the Department of Labour came into the picture as a "recommending" broker whether or not a foreign national who did not fall into one of the critical skills categories could apply for a work visa which was largely dependent on whether the Department of Labour would recommend the visa.

The Department of Labour has been notoriously inept in this process and generally the outcome is a negative recommendation, most of the time without a proper investigation into the matter.

This new dynamic therefore placed those who did not fall into critical skills categories into the unenviable position of simply not qualifying for a visa.

Many of the applicants for such visas are technically economic migrants, some of whom are in the country on other visas and now simply do not qualify for a visa any longer.

This makes them a prime target for unscrupulous agents.

Of course, none of this could happen without "assistance" from officials within the Department of Home Affairs.

Whilst much has appeared in the media about corruption being stamped out, the fact of the matter is that, while the lower level corrupt officials are being dealt with in some instances, those higher up the chain are not. This is not suggesting any complicity by the Department as a whole but does suggest perhaps an unwillingness to do what's necessary.

A further dynamic, which was introduced into the system in the 2014 amendments to the Immigration Act, was that VFS was initiated as a receiving and dispatching agent for the Department of Home Affairs and ostensibly as a "buffer" between the client/applicant and the Department of Home Affairs.

History will judge whether this was a good or bad move.

It is up to the reader to be the judge. But it is important to note that recently investigative TV programme, Carte Blanche, broadcast an exposé of such a scam, which resulted in fraudulent visas being issued with the resultant consequences.

The question now arises as to what the employer should be doing in order to mitigate any fallout that may occur as a result of a potential fraudulent visa in respect of one of their employees.

The purpose of this article is **not to deal with the consequences for the foreign national bearing a false visa or Identity Document** but rather to **highlight the plight of an employer.**

Section 49 of the Immigration Act and in specific 49 (3) states that "anyone who knowingly employs an illegal foreigner or a foreigner in violation of this Act shall be guilty of an offence and liable on conviction to a fine or imprisonment not exceeding one year, provided that such person's second conviction of such an offence shall be punishable by imprisonment not exceeding two years or to a fine, and the third or subsequent convictions of such offences by imprisonment not exceeding three years without the option of a fine".

There are further conditions and this section covers more than just that, but we will confine ourselves to this aspect only for purpose of this article.

The solution to dealing with this and mitigating any fallout is for an employer to be very responsible in their HR practices when seeking to employ or to continue to employ a non-South African employee/worker.

Prudent management of the recruitment process and vetting process should include ascertaining whether the foreign national is indeed possessed of appropriate paper work.

There has been an upswing in the incidence of false and fraudulent visas over the last 12 month period. It is, therefore, essential that employers, HR Directors and HR Managers be vigilant to this fact. ■

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