

Time is of the essence

Don't hold your breath when applying for a visa.

By **Julian Pokroy**

The heading of this article speaks for itself. When applying for any kind of visa under the Immigration Act 13 of 2002 "the Act" (as amended) there is always a degree of urgency. Relocating to South Africa, or anywhere for that matter, is a serious step which does not accommodate indecision. Therefore when a decision has been made then, generally, applicants for visas need to move rather quickly and decisively. Arrangements have to be made regarding the applicants' home, study arrangements for children and logistics surrounding vehicles and personal possessions.

In an ideal immigration scenario, visa applications through Embassies, High Commissions or Consular Offices or even those that are brought inside South Africa should therefore then move with some alacrity.

However, this is generally not the case. The purpose of this article is not to deal with service delivery issues but rather to deal with the time delays occasioned thereby. By way of example, an investor who is intending to start a business in South Africa would have done his or her homework, viability assessments, feasibilities and the like. The point where they decide to actually make the investment and make the move is where time becomes of the essence.

Dealing only at this point with the business visa aspect referred to in this paragraph, a long and arduous process needs to be followed and the question that comes out at the end of that process is whether the business visa applicant still has the appetite to make the quite considerable investment which he or she would have to make in order to start a business in South Africa. Assuming that the business is a "national interest" business as specified by the Department of Trade and Industry,

the next phase, after doing the formal business plan for feasibility and viability, is to submit that business plan together with all supporting documentation to the Department of Trade and Industry's investment facilitation division. At that department, a full and proper investigation is made into the viability aspects to ensure compliance with all of the business aspects, whereafter the Department of Trade and Industry submits a recommendation to the Department of Home Affairs. During this process, a submission is also made to the Department of Labour in order to get a recommendation letter from them.

Whilst the Department of Trade and Industry does move with a certain degree of urgency, the same cannot be said for the other allied departments who must also report and/or make decisions in the matter.

Therefore a period of time elapses from the date of submission of the requests to the before said departments, before an application can be lodged with the South African Department of Home Affairs through its Embassy, High Commission or Consular Office.

The recommendation letter from the Department of Industry is submitted, as stated above, directly to the Department of Home Affairs and therefore the applicant would not have had sight and would not even know whether it was a positive or a negative recommendation made. This is all very frustrating.

Then comes the day of submission of the business visa application to the Department of Home Affairs through its Embassy, High Commission or Consular Office and then the wait begins.

The application is taken in either through the VFS Office if there is one in the country concerned or the Embassy, and the matter is then referred on to the Department of Home Affairs Head Office Adjudication Team at Pretoria.

It is almost impossible to predict how long it will take for that adjudication process to be completed. Two to three, or even four months or sometimes even longer is the norm.

The question asked at the beginning of this article

as to whether the investor has the appetite to wait that long for an outcome when he or she is seeking to invest in our country and advance the economy and create jobs arises.

One of the more popular types of visas applied for is that of the Intra Company Transfer Work Visa. This is the visa that is applied for where a multinational has offices outside of South Africa and wishes to transfer one of its permanent employees to South Africa on secondment for a maximum duration of four years. The company relationship has to be that of a holding, subsidiary, filial or associated company to the overseas company.

This type of application has come under the spotlight somewhat over the last while because there has been a degree of abuse of this category of visa.

Be that as it may, this type of visa would have to be backed by documentary proof of the relationship between the overseas and local company and should technically be one of the quicker visas to apply for because of its relative simplicity.

However, this is not always the case. For reasons unknown to me, the Department of Labour very often gets involved in the matter and does inspections of the South African office, does an informal "audit" of the amount of South Africans working for the company and inevitably this causes delays in these type of applications.

This type of visa therefore sometimes falls victim to long time delays for the before said reasons. It is also important to note that certain Embassies or High Commissions are notorious for being incredibly slow in dealing with these administrative processes. All of this does not bode well for this category of visa in some instances.

The next category of visa that is struck by an unnecessary and avoidable time delay is the General Work Visa.

This type of visa requires advertisement in the National Printed Media in order to attempt to secure the services of South African Citizens or permanent residents, and it is understandable that that process in fact takes time as applicants have to be interviewed and assessed.

This element of the process however does not stop at that point as a submission then has to be made, proving the advertisement and details of the interviews to the Department of Labour who then conduct their own investigation, very often embarking upon a recruitment drive of their very own.

This appears to be an unnecessary and avoidable step as advertisements in the National Printed Media coupled to proper interview process records should be sufficient to demonstrate the inability to secure a South African citizen or permanent resident for the position.

The problem is that the Department of Labour then sits on the application for periods literally of three to six months and sometimes even more.

They do not permit communication with their

office, will not communicate with the visa applicant directly to make enquiries and very seldom make any contact with the employer, save to sometimes conduct an inspection of premises and again an "audit" of South Africans working for the company.

When they have done their assessment, if the position is still open and available, the Department of Labour submits their recommendation letter directly to the Department of Home Affairs and all that the visa applicant will get will be an SMS or e-mail confirming that the letter has been sent directly to the Department of Home Affairs. No indication is given as to whether it is a positive or negative recommendation.

All this does not bode well for a company that has been looking rather urgently to source a skill that they have been unable to source locally.

An alternative to the advertisement and Department of Labour process is to petition the Director General of Home Affairs for a waiver of these requirements. This waiver would have to put forward a convincing argument as to why it would be superfluous to advertise and approach the Department of Labour.

The waiver process itself is also not a brief process and can take months to finalise.

To sum up, and I apologise for being repetitive, will the job still be open? Will the visa applicant still be interested in coming to South Africa to take up a position and put their lives on hold pending the dirtily process? You can be the judge and answer that question.

Critical Skills Visas do bring some shining lights into the situation. The Critical Skills Visa list specifies trades, professions and occupations that are deemed to be "critical" and if an applicant has provided proof of the SAQA evaluation of their qualification and is registered in the professional body for that trade or professional occupation, then they can lodge their Critical Skills Visa application, obviously including the other administrative documentation for such visa, and it is our experience that these visas do get processed on a "fast track". There is some light at the end of the tunnel!

I have also not specifically dealt with the other categories of visas as they are mostly less urgent in terms of relocation aspects and arrangements that have to be made in that regard. However, let it suffice to say that speed is not one of the qualities imbued in the visa processing ethic. ■

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.