



We have to find easy-to-get much needed skills into the country.

The Immigration Act 13 of 2002 “The Act” and the Regulations proclaimed and flowing from this, make provision that there are requirements prescribed in the Regulations which may be Waived by the Director General of Home Affairs. This is not an all-encompassing type of Waiver and the best way to illustrate it would be by way of the example here under.

The best illustration comes from the requirement in terms of Section 19 of The Act, for an applicant applying for a General Work Visa to provide proof that the prospective employer has advertised the position in the National Printed Media in a specified sizing and format in order to try and secure the services of a South Africa Citizen or Permanent Resident.

The requirement goes a bit further than that and it is incumbent in terms thereof for the prospective employer to provide specific details of all applicants who applied for the position, giving their contact details, CVs and setting out fully the reasons why they were not suitable for the position.

Once that has been done, the Department of Labour has to be approached for a “recommendation” letter confirming that, according to the database of unemployed, there are no South African’s available to fill the position.

This latter process is a cumbersome and onerous one to which there are no easy solutions or answers.

When this task was delegated to the Department of Labour, it is my belief, and evidence is embodied, in the subsequent inability of the Department to deal with these issues efficiently or at all. The Department

of Labour, as written about and reported in this publication previously, refuses to deal with any “third parties” or even the applicant personally or the prospective employer when conducting their “investigation”.

They also believe that there is no duty upon them to furnish their recommendation letter, whether positive or negative, to the applicant or the prospective employer.

Accordingly, the prospective employer and the applicant have absolutely no idea what the report will contain and whether it is negative or positive. There is no mechanism provided for an appeal process against an adverse finding.

This is an untenable situation.

The matter is further complicated by totally unreasonable blatantly incorrect “recommendations” which inevitably state that there are no South Africans to fill the position.

The process undertaken by the Department of Home Affairs remains a secret.

As before stated, the Department refuses to enter into any correspondence or have contact with any “third parties”, including the applicant and the prospective employer.

The Department of Labour then forwards this to the Department of Home Affairs and merely advises the applicant or prospective employer that they have completed their process and forwarded this document onwards.

I previously wrote an article in *HR Future* questioning as to whether it was even worthwhile considering even applying for a General Work Visa any longer, and came to the conclusion that it is highly unlikely that such application would achieve success.

The reason for elaborating on this issue is that the only way to get around the Department of Labour and advertisement process is to, in fact, apply to the Director General of Home Affairs for a Waiver of these requirements.

This is where the crunch now lies!

Waiver petitions are taking an inordinate length of time to process. This means upwards of six months and in some cases even up to one year from the date of lodgement of the Waiver petition.

Again, enquiries and attempts to expedite these matters are generally an exercise in futility, although sometimes responses are forthcoming, but not finality to the Waiver application. The criteria used to evaluate a Waiver petition are not particularly clear,

and it is literally impossible to predict the outcome of a Waiver petition. Petitions that qualified some years back are being refused on the same basis.

The reality of the matter is that employers cannot sit back for an indefinite period awaiting an outcome which is in all likelihood going to be a negative one and keep a job open for a Foreign National who qualifies for the position. This has had a detrimental effect in various sectors and skill sets, where there are shortages of such skills.

About a year ago, I wrote an article in this esteemed publication, which I refer to above, questioning whether the General Work Visa was viable or dead in the water. The purpose of this article is to bring you up to date that it is unlikely that a Waiver will succeed and even if advertisement has taken place, then the Department of Labour will probably shoot down or give a negative recommendation.

All this is not very conducive to the importation of skills on a much needed basis in this economy.

The Critical Skills Work Visa is a saviour in this regard, as the skills, trades, occupations and professions that are listed therein have a unique situation of virtually guaranteeing the granting of such Critical Skills Work Visa.

A great development a while back was that holders of qualifications obtained in South Africa by a Foreign National in one of the Trades, Professions or Occupations listed in the Critical Skills Category, fall under a general blanket exemption by the Minister of Home Affairs which allows them, without having them to provide a Professional Body Registration or testimonials and recommendations in terms of five years post-qualification experience, to apply for Permanent Residence in an effort to keep the skills and retain them in South Africa, as their qualifications do come at a cost to the South African fiscus.

Wishful thinking. I hope that the revised Immigration Act and Regulations which may very well see the light of day this year, will deal with some of these anomalies. ■

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