

Will this “new” Home Affairs broom sweep clean?

Another Cabinet reshuffle sees a “new” Minister of Home Affairs appointed.

When newly inducted State President Cyril Ramaphosa announced a reshuffle of the Executive, it resulted in numerous Ministers and Deputy Ministers losing their position and some being shuffled into other positions.

Relevant to my area of specialist practice of law is that the Minister of Finance Malusi Gigaba has been shifted back to take up the portfolio as Minister of Home Affairs.

His tenure in the Ministry of Finance was short-lived and riddled with controversy. Hopefully, he will take up his reappointment as Minister of Home Affairs with vigour and enthusiasm and this time will perhaps make a difference to the Department of Home Affairs.

Challenges that present themselves to the “new” Minister of Home Affairs are the final formulation and ultimately implementation of the new Immigration Policy or as the author would like to refer to it as a “reshuffled” Immigration Policy.

This follows hot on the heels of the completion of the Green Paper on International Migration which culminated around public consultations with certain stakeholders and ultimately the White Paper on International Migration which was approved.

The next phase in the process is that a redrafting or Amendment of the current Immigration Act no 13 of 2002 (as amended) will take place and “new” draft regulations will be published.

It is hoped that in both instances the process will include consultation with all stakeholders who could be affected by such changes.

The President has talked about a “new dawn” in South Africa’s history and ultimately if his statements reach fruition, investment will start returning to South Africa. If that does happen then the Critical Skills shortage that we do have in the country becomes highly relevant to this topic.

It is has become abundantly clear that administration of the importation of skills has met hiccups along the way, and I have written on this topic in HR Future previously.

It is critical for a regenerating economy that the necessary skills and experience are available to deal with new projects and development of existing projects and to this end the time has come that an acknowledgement must take place, that not all of the skills are readily available, or available at all, in the South African Economy.

This is where the Critical Skills Work Visa Category and its predecessor the Quota Category of Work Permit were very effective in doing their job.

It is also time for an overhaul of the General Work

Visa requirements which at this stage have become impossible in most instances.

With advertisement in the National Media for a position in an effort to try and secure the services of a South African Citizen or Permanent Resident for the position, before making an offer to a Foreign National, the process thereafter becomes hamstrung in that the next step of the process which is to obtain a Department of Labour Certification will then either bog down or cause the application to fail. This is unashamedly due to the incompetence and inefficiency of the team that deals with the recommendations by the Department of Labour which unenviably and almost to the last are negative.

The Department of Labour refuses to interface with the applicant in person, the employer/prospective employer or any representative such as an Attorney, Advocate or Immigration Agent.

To complicate the matter further, the Department of Labour refuses to forward their outcome letter to any of the aforementioned persons, but merely advises the applicant that his/her representation has been finalised and forwarded to the Department of Home Affairs. Because that recommendation will be a negative in most instances, the Department of Home Affairs then takes in the application and refuses the application, irrespective of the merits, and bases that decision on the Department of Labour’s recommendation letter.

The only alternative to the above is to apply to the Director General of Home Affairs, who has an inherent jurisdiction to waive any requirement, for the Waiving of the Department of Labour and Advertisement requirements, but this too creates issues as it is taking an inordinate length of time to finalise applications and Petitions for waivers of these requirements. Six months or possibly longer appears to be the norm. I wrote an article in this publication some time back entitled, “Is the General Work Visa Category dead?” That article says it all.

How far this will go to assist in importation of skills leaves much to be desired. It is my fervent wish that when the “new” Minister of Home Affairs get to make recommendations in this regard, that these and other essential factors will be brought into the mix. ■

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