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NEWSLETTER

2019 – QUO VADIS WITH THE DEPARTMENT OF HOME AFFAIRS

Each January we dispatch a Newsletter to our clients and on an on-going basis try and give an insight as to likely scenarios with the Department of Home Affairs in the application of Immigration/Visa Law and Citizenship Law.

This year is no different.

Firstly, we take the opportunity of wishing our clients the best of 2019 and thanking them for the support in the past year.

IMPENDING AMENDMENTS TO THE IMMIGRATION ACT AND REGULATIONS

As a starting point we draw your attention to the fact that the White Paper on Home Affairs was published by the Minister of Home Affairs Siyabonga Cwele requiring comment in writing by the 18th February 2019.

The White Paper on Home Affairs is part of a Parliamentary process to reformulate Immigration policy for the Republic of South Africa.

The document therefore only deals with Policy issues so as to create a platform for short to medium term planning within the Visa sphere.

It therefore deals with technical issues surrounding the vision and scope of the Department of Home Affairs and it will be interesting to see what type of inputs are made by stakeholders in this regard. We will then update this aspect in a later newsletter. Important to also note that formulated Immigration Policy dictates the basis, in many ways, for reformulated Immigration Law and Regulation.

The indications are, as per media statements last year 2018, that there will be changes to the Immigration Act and Regulations during the first portion of 2019. At this stage it is

impossible to predict, save for what is stated hereunder, what those changes will actually be.

One of the changes however, that has been announced in the Media is that certain of the trades, professions and occupations listed in the Critical Skills Visa list will be amended and supplemented with an expected Gazetting of the aforesaid ostensibly during April 2019.

Early indications, also based on Media information is that certain categories of professions will be removed from the Critical Skills Visa list with one of the first casualties to be that of Corporate General Managers.

As soon as further detail becomes available we will do an updated newsletter, in this regard.

It is welcome to note that certain categories have in fact been listed to be deleted from the list and these include, inter alia, Sheep Shearers and Jewellery Makers.

Word coming down the pipeline is that Maths and Science teachers are to be reintegrated as a Critical Skills Profession and will be re-introduced onto the list.

Only time will tell whether this is indeed going to happen.

TIMEFRAMES

We have written in our newsletter on previous occasions about the unnecessary delays in processing not only Temporary Residence Visas but also Permanent Residence Visas.

Various Ministers have made promises about service delivery and made a big song and dance about how they were going to improve the situation.

However, on the ground, the reality is simply not happening.

It is becoming impossible to predict how long it will take to process straight forward Visas through the South African Embassies / High Commissions abroad. The only advice we can give out to clients and potential clients is to apply timeously, i.e. ***well in advance of their intended departure to South Africa and to also await receipt of the approved Visa.***

This is absolutely critical so as not to have persons running into problems and companies experiencing issues because a Visa is taking longer than anticipated.

We also advise that applications for extension of current Visas from within South Africa should be dealt with timeously. At least 60-90 days prior to the visa's expiry will be enough time so as not to put the holder of a Visa in jeopardy and risk an overstay.

It would be best to rather not travel until the new Visa is granted but if someone needs to travel after the date of the visa's expiry and based on the premise that they applied for an extension and provide proof thereof, they can leave the country after the expiry date but will certainly be, despite their and our best endeavours, listed as an overstayer and

imposed with a prohibition or ban from returning to South Africa for a period of time. This can range from a one year ban for an overstay of up to 30 days, and a five year ban for anything longer than that.

The only remedy available to a person declared an overstayer would be to apply to the Department of Home Affairs for an appeal against the overstay, setting out the reasons and rationale for the appeal. Generally these appeals are successful. The crunch lies however with how long it takes to process and this could be anywhere between weeks and months.

Therefore this must be factored into your planning.

PERMANENT RESIDENCE APPLICATIONS

Applicants continue to experience problems regarding time frames taken to process Permanent Residence applications.

The delays are unacceptable and unexplainable and are causing untold problems for applicants as they have to obviously keep their Temporary Residence Visas current and valid for the duration pending the outcome of the Permanent Residence applications.

A further complication is that many applications, too many to be considered comfortable, are being refused on grounds that are incorrect, unacceptable and potentially even unconstitutional.

Particularly hard hit is the category of foreign nationals married to South African citizens. It must be remembered that a foreign national only qualifies to apply for Permanent Residence on the basis of marriage in that category, after 5 years of marriage, so these are not "*fly by night marriages of convenience*".

It is not uncommon to experience applications in this category that have been outstanding for almost 3 years and sometimes even longer. A further crunch comes with many of these applications again being refused on grounds that are not relevant to the subject matter of the application.

In every instance of a refusal an applicant has a right to apply for a review in terms of Section 8(4) of The Act against that decision but the further crunch comes with the processing time for appeals and reviews which is indeterminate. The same applies to appeals to the Minister.

Colleagues have mentioned to me they have review applications that have been outstanding for almost a year or longer.

All of the above is not conducive to a healthy and well administered Immigration regime. We wish to however assure our clients and applicants that we are giving our very best endeavours to try and resolve the impasse.

We will update in later newsletters.

REFUGEES AND ASYLUM SEEKERS

The Constitutional Court in November last year handed down a judgement in the Ahmed matter as well as a Court Order opening the door for Asylum Seekers and Refugees to apply to change their status to that of a mainstream Visa under The Immigration Act.

To date unfortunately the implementation thereof has not happened.

Technically what is holding everything up is that the Department has not yet issued a Directive empowering the VFS offices and Embassies / High Commissions / Consular Missions as well as offices of the Department of Home Affairs elsewhere to take in any application for a change of status and any waiver that may be required from an Asylum Seeker Temporary Visa or Formal Recognition Permit. Without that being in place these applications simply cannot be lodged at all.

Further, it is important to note that not just any holder of an Asylum Seeker Temporary Visa or Formal Recognition of Refugee Status can apply for either a Temporary or Permanent Residence. They would first have to qualify in the applicable category of a mainstream visa under the Immigration Act, and many of the persons enquiring about this simply do not qualify. It is therefore our advice that they should remain on their Asylum Seeker Temporary Visa until they obtain Formal Recognition of Refugee Status and later on Certification by the Standing Committee on Refugee Affairs.

CIVIC AFFAIRS MATTERS

We have reported previously about difficulties being experienced with Civic Affairs matters relating to Births, Deaths and Marriages.

The one item which has become abundantly clearer over the last while is that the Department is doing their utmost best to exclude what they define as "*third party agents*" such as Attorneys/Advocates and Immigration Consultants from interfacing in any way with the Department of Home Affairs.

DUAL CITIZENSHIP

Our office receives on a regular and on-going basis enquiries about Dual Citizenship and in most instances this comes from individuals who have left South Africa, obtained another Citizenship either by Ancestral links or otherwise and the taking up of that Citizenship without having first applied for Retention of their South African Citizenship Status.

A failure to apply for Retention prior to obtaining the new Citizenship results in an automatic loss of South African Citizenship Status.

If you are intending to take up another Passport by whatever grouping referred to then do not hesitate to contact our office as we can assist with doing all of the necessary steps to preserve your South African Citizenship Status.

We have always held the belief that holding more than one Passport never hurt anyone. Indeed the South African Constitution allows multiple Nationalities.

In an ever broadening Global Village mobility becomes important to businessmen and tourists and this is where the holding of another Passport can prove invaluable.

Should you have any queries relating to any of the above please do not hesitate to contact our office on enquiries@immigration.org.za setting out the basis of your question or query.

The Team At Julian Pokroy Attorneys