

File Ref: DD020401/07/DD/SLAO2

DEPARTMENT OF HOME AFFAIRS

**SUBJECT APPLICATION FOR A CORPORATE PERMIT TO ALLOW
EXOTIC DANCERS TO ENTER THE REPUBLIC-
CORPORATE PERMIT - TEAZERS**

ACTING CHIEF DIRECTOR: ADMISSIONS**1. PURPOSE**

- 1.1 To provide legal advice to Acting Chief Director: Admissions ("ACD: A") as to whether or not the Department correctly issued a corporate permit to one company known as Mavericks Revue Bar and Restaurant ("Mavericks").
- 1.2 To furthermore advise ACD: A as to whether or not a corporate permit may be issued to another entertainment company registered as Teazers, as well as to provide a legal opinion regarding the payment of fees and the collection of a deposit, as far as the work permits for corporate workers are concerned.

2. BACKGROUND

- 2.1 The ACD: A informs us that after the implementation of the Immigration Act, 2002 (Act No. 13 of 2002) ("the Act"), a policy decision was taken by the former Acting Chief Director: Admissions that Mavericks could recruit foreign dancers, provided that such dancers only practiced their profession in South Africa for a period not exceeding 3 months.
- 2.2 The recruited dancers mentioned in paragraph 2.1 above were then issued with visitor's permits in terms of section 11(1) of the Act valid for 3 months, whilst a restricted endorsement on the visa indicated that no extension would be granted.

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- 2.3 The Immigration Amendment Act, 2004 (Act No. 19 of 2004) ("the Amendment Act") amended the definition of "work". Section 1 of the Act now provides as follows:
- "work", includes—
- (a) conducting any activity normally associated with the running of a specific business; or
 - (b) **being employed or conducting activities consistent with being employed or consistent with the profession of the person**, with or without remuneration or reward, within the Republic."
- 2.4 This resulted in the said dancers not being able to conduct work unless they could obtain work permits in terms of section 19 of the Act, prior to proceeding to the Republic.
- 2.5 Mavericks then had to pay repatriation deposits and fees for general work permits in terms of the Regulations on Fees (made in terms of section 7(1)(h) and (i) of the Act) ("the Regulations on Fees"). Mavericks refused to comply with this requirement and this resulted in a Court case against the Department (case number 40565/2006), wherein the Court ruled in favour of Mavericks. The Department appealed against this ruling, but the appeal was dismissed.
- 2.6 The owner of another entertainment company, called Teazers (who is also engaged in a similar kind of business as Mavericks), also lodged an application for a corporate permit with the Department in terms of section 21 of the Act.

3. DELIBERATION

Corporate Permit

- 3.1 Section 21(1) of the Act provides as follows:
- "21. **Corporate Permit.**—(1)A corporate permit may be issued by the Director-General to a corporate applicant to employ foreigners who may conduct work for such corporate applicant."

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- 3.2 The corporate permit has been provided for in the Act to specifically accommodate the employment of foreign miners, foreign seasonal workers working on farms, and skilled or semi-skilled foreigners working in certain business sectors. If any person carrying on a legal business in the Republic, has identified a shortage of skills or expertise locally, that person may apply for a corporate permit in order to employ foreign workers to make up the shortage of skilled or experienced workers that he or she requires to conduct work for him or her.
- 3.3 An application for a corporate permit will include details relating to the number of foreign workers required to be employed, corroboration for not employing South Africans or permanent residents, the type of work they intend to do, copies of the relevant contract of employment, the payment of salaries, etc.
- 3.4 Section 21(2)(b) of the Act further provides as follows:
- " (2) After consultation with the Departments of Labour and Trade and Industry, the Director-General shall determine the maximum number of foreigners to be employed in terms of a corporate permit by a corporate applicant, after having considered—
- (a) ...;
- (b) the financial guarantees posted in the prescribed amount and form by the corporate applicant to defray deportation and other costs should the corporate permit be withdrawn, or certain foreigners fail to leave the Republic when no longer subject to the corporate permit;"
- 3.5 In terms of the Regulations on Fees, the Minister has prescribed, in accordance with section 7(1)(i) of the Act, that, *inter alia*, an amount of R1 520.00 be paid in respect of a corporate permit application.
- 3.6 Once the corporate applicant has made an application for a corporate permit in terms of section 21 of the Act, and has paid the prescribed fee of R1 520.00, the Departments of Labour and of Trade and Industry are consulted in order to determine the maximum number of foreigners to be employed in terms of the corporate permit requested by the corporate

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applicant. Both the aforementioned Departments will advise the Department by way of recommendation as to who, and how many foreigners, may be employed in terms of a corporate permit.

- 3.7 However, the Department ultimately exercises a discretion in determining the maximum number of foreigners to be employed in terms of the corporate permit having regard to the requirements set out in section 21(2) of the Act, read together with the requirements set out in regulation 18 of the Regulations made in terms of the Act ("the Regulations").
- 3.8 In terms of regulation 18(5) of the Regulations, the financial guarantees contemplated in section 21(2)(b) of the Act are, at the discretion of the Director-General—
- (a) a deposit in respect of each corporate worker which is refundable, and which may be paid by means of a bank guaranteed cheque or credit card at places where such facility exists,
 - (b) a written undertaking *in lieu* of the deposit contemplated in paragraph (a).
- 3.9 Once the application for a corporate permit is approved, a corporate permit holder is issued with as many corporate worker authorization certificates as he or she has requested and was approved in respect of each corporate worker to be recruited by the holder of that permit. The holder of a corporate worker authorisation certificate may then apply to the Department for a work permit.
- 3.10 Section 21(5) of the Act authorises the holder of a corporate permit to also employ foreigners in terms of section 19 of the Act. To this end section 21(5) of the Act provides as follows:
- "(5) The holder of a corporate permit may also employ foreigners in terms of section 19."
- 3.11 Regulation 18(6) of the Regulations provides that an application for a work permit to be issued to a corporate worker employed by the holder of a corporate permit, shall comply with certain requirements. To this end regulation 18(6)(b)(iii) of the Regulations provides as follows:

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"(6) An application for a work permit to be issued to a person employed by the holder of a corporate permit shall comply with the following requirements:

- (a) ...;
- (b) in all other cases, the submission of—
 - (i) ...;
 - (ii) ...;
 - (iii) at the discretion of the Director-General, proof of a valid return air ticket, a deposit or a written undertaking by the employer accepting responsibility for the costs related to the deportation of the applicant and his or her dependent family members, should it become necessary, respectively: Provided that in the case of a deposit, such deposit shall be refunded to the depositor after the final departure of the applicant or after a permit contemplated in section 25 of the Act has been issued to the applicant: Provided further that the payment of the deposit may be effected by means of a bank guaranteed cheque or credit card at places where such facility exists."


3.12 The Supreme Court of Appeal ("the SCA") in the case of the **Director-General: Department of Home Affairs and Minister of Home Affairs v Mavericks Revue CC [2007] SCA 149 (RSA)** ("the Mavericks-case") held that the work permit envisaged by regulation 18(6) of the Regulations is not a work permit contemplated in section 19 of the Act. The SCA further held that the said permit is not one of the permits provided for in sections 11 to 23 of the Act. The SCA furthermore, in relation to the payment of fees in respect of a corporate permit, held that an application for a work permit envisaged by regulation 18(6) of the Regulations does not attract any fee stipulated in the Regulations on Fees.


4. CONCLUSION

4.1 The circumstances under which the said corporate permit was issued to Mavericks are not clearly defined in the brief. It is therefore difficult for us to advise as to whether or not the Department correctly issued a corporate permit to Mavericks.

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- 4.2 With regard to the question as to whether or not the Department may issue a corporate permit to Teazers, we are of the opinion that based on the deliberations in paragraph 3 above, the question is to be answered in the positive, provided that Teazers meets all the requirements set out in the Act and the Regulations in order to be issued with a corporate permit.
- 4.3 Finally, in view of the fact that the SCA ruled in the Mavericks-case that an application for a work permit envisaged by regulation 18(6) of the Regulations does not attract any fee stipulated in the Regulations on Fees, it is recommended that such fee should not be levied from Teazers.


ACTING DIRECTOR: DRAFTING
DATE: 2008/06/19


CHIEF DIRECTOR: LEGAL SERVICES
DATE: 2008/06/19