



**DEPARTMENT: HOME AFFAIRS
REPUBLIC OF SOUTH AFRICA**

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DEPARTMENT OF HOME AFFAIRS: HEAD OFFICE
DOMESTIC OFFICES
FOREIGN OFFICES

IMMIGRATION DIRECTIVE NO 22. OF 2007

THE IMMIGRATION ACT, 2002 (ACT NO. 13 OF 2002)

The implementation of the amendments to the Immigration Act, 2002 (Act No. 13 of 2002) has given rise to practical problems which need to be addressed in order to ensure consistency.

I. Section 10(6) - Change of status and/or conditions of a temporary residence permit

In terms of section 10(5) of the Immigration Act, 2002 (Act no 13 of 2002), prescribed individual terms and conditions may be attached to a temporary residence permit as stipulated in regulation 7(8) of the Immigration Regulations.

A foreigner who intends to change his or her status and/or conditions whilst in the country must submit a letter indicating good cause for such a change. Such an application must be considered on merit with due consideration to the aims and objectives of the Act, as well as possible consequences that may result from approving such an application.

Furthermore, regulation 7(6) of the Immigration Regulations requires that complete applications be submitted "*at least 30 days prior to the date of expiry*" to change status or condition, provided that in cases of failure to comply with this sub regulation, the foreigner shall demonstrate satisfactorily that good cause exists for its late submission and acceptance.

Imm Dir 1-2007

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Regulation 26(1) states that "Upon requesting authorisation as contemplated in section 32 (1) of the Act, an illegal foreigner who has neither been arrested for the purpose of deportation nor ordered to depart and who wishes to apply for a status after the date of expiration of his/her permit, shall-

- (a) demonstrate to the satisfaction of the Director-General that he/ she was unable to apply for such status for reasons beyond his/her control;
- (b) submit proof to the Director -General that he/she is in a position to submit his/her application for status ; and
- (c) if required to do so by the Director-General, pay a deposit; Provided 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 a facility exists".

Requests for the extension or change of status (i.e., visas that contain restricted endorsements such as the prohibition of studies or employment, or each visit not to exceed 15 days), may not be entertained without obtaining the reason for such restriction from the South African Foreign Office that issued the visa. Having received the explanation, an officer may either uphold the decision for the restriction, or reverse the decision for good cause and must indicate on file the reason(s) for his or her decision.

II. Section 11(l) - Visitor's permit with authorisation to conduct work in terms of section 11(2)

In terms of section 10(1), read with regulation 6(3)(iv) of the Immigration Regulations, a foreigner may only be admitted into the Republic if he or she is in possession of a temporary residence permit that is commensurate with the activities that he or she will undertake in the Republic.

The holder of a visitor's permit may not conduct work unless authorised by the Director-General. The provision of section 11(2) of the Act accommodates a foreigner who wishes to be admitted into the Republic urgently for a short period of time not exceeding three (3) months. Should the need arise and upon application thirty (30) days before the permit expires, this permit may be renewed for another final three (3) months.

Applications lodged by a foreigner for the change of status and/or conditions, should not be accommodated in instances when such a foreigner conceal his or her real intentions. This include accepting employment with a South African concern, gaining admission into the Republic as an ordinary tourist, or by means of a visitor's permit with an authorisation to conduct work for a short period of time on a specific short term contract or project.

A visitor's permit may be issued for any purpose other than those provided for in section 13 to 24 of the Act. A foreigner who therefore enters South Africa under false pretences shall be in contravention of the Act as stipulated in section 43(a).

III. Incomplete applications

Regulations 10 to 19 stipulates that "*An applicant shall submit...*" which prohibits an officer from accepting an incomplete application. There are two exceptions to this provision:

Section 31(2)(c) empowers Minister to waive any form or prescribed requirement for good cause and regulation 7(8)(c) of the Immigration Regulations allows for the postponement of outstanding documentation for a period not exceeding 6 months.

Foreigners may not apply for the waiving of forms or prescribed requirements after their current temporary residence permits had expired. They must leave the Republic and lodge such applications from abroad. Once the waiver has been approved, applications for an appropriate temporary residence permit may be lodged at the South African Foreign Office in their country of origin or residence.

Officers may not indiscriminately postpone prescribed documents which are required to process and assist in making an informed decision upon application. A letter signed by the Director: Permits, (NIB) confirming that specific prescribed requirements have been waived must be attached and placed on file.

Core documents that are required to process and assist in making an informed decision must be submitted upon application. Once officers apply regulation 7(8)(c) of the Immigration Regulations a temporary residence permit must be clearly endorsed to indicate when, and which document needs to be submitted at the relevant regional office.

IV. Study permit

Section 13 read with regulation 10(h) - Medical cover

Medical schemes in the Republic are administered by the Council for Medical Schemes. Only the said Council may recognise foreign medical schemes or medical insurances.

Foreign students who are in possession of foreign medical cover or a medical insurance (South African medical insurances as well as a foreign medical insurances) and who approach the Department with the view to apply for a study permit, must simultaneously present a letter from the Council for Medical Schemes which it confirms the recognition of medical insurance or foreign medical cover in the Republic.

A copy of such letter must be forwarded to the Director: Permits at Head Office in order to inform all Foreign Offices and local offices that a specific foreign

medical cover or medical insurance may be accepted upon application for study permit at that office.

V Business permit

Section 15(4) –

An endorsement must be entered on a business permit requiring proof to the satisfaction of the Director-General, which must be submitted at the nearest regional office of the Department where the applicant is operating his or her business in South Africa, that he/she has fulfilled the requirements contemplated in section 15(1) (a) within 24 months, and within every two (2) years thereafter.

A business permit may be issued for a period of 6 years and upon application as prescribed may be renewed for a further period of 6 years, provided that the applicant complies with the abovementioned prerequisite.

Section 15(3) only provides for the reduction or waiver of the capitalisation requirements in terms of the type of business prescribed in regulation 12(3) of the Immigration Regulations.

V1 Relative's permit

Section 18

In terms of section 11(1) (ii) (dd), read with regulation 9(4) of the Immigration Regulations, a visitor's permit with an endorsement "*to join spouse or parent,*" may only be granted to the foreign non-resident spouse or dependent child of a holder of a temporary residence permit issued in terms of sections 11, 13, 14, 15, 17, 19 or 22. The foreign non-resident spouse and child of a South African citizen or permanent resident who intends to settle in the Republic must, therefore, apply for a relative's permit, which will be issued free of charge. Proof of financial means may not be requested from the applicant or any member of his or her family in accordance with regulation 15(3) of the Immigration Regulations. The normal prescribed requirements and a letter of cohabitation from the South African citizen or permanent resident must still be submitted.

VII Quota work permit

(a) Section 19(1) -

Specific professional categories and occupational classes that were identified as scarce skills in the South African labour market have been determined and published in the Government Gazette.

Applicants who qualify for quota work permits do not require proof of a contract of employment. These permits may be issued for a period of five (5) years, with an option to extend the permit without having to comply with regulation 16(2)(a), and provided that proof of employment within the specific category or class can be presented. An endorsement on the permit must inform the applicant that

failure to submit confirmation of having secured employment within 90 days after the issuance of the permit in that specific category or class will result in the lapsing of the permit.

General work permit

(b) Section 19(2)

General work permits are granted for the duration of the contract of employment. In the case of a permanent offer of employment the permit may be issued for a period of five (5) years and upon application, as prescribed, the permit may be renewed for a further period of five (5) years, provided that the applicant submits proof of the initial contract of employment, as well as confirmation that he or she is still employed under the initial terms and conditions as stipulated in the contract.

Applicants who have been offered contracts of employment for a fixed period only will have to comply with all the prescribed requirements stipulated in regulation 16(4) and (5) of the Immigration Regulations when the contract is renewed or extended. [Section 10(6) or (7) of the Act read with regulation 7(a) of the Immigration Regulations].

All general work permits must be endorsed to remind the applicant that the permit shall lapse if within 6 months of its issuance, and within every year thereafter, the holder fails to submit satisfactory proof that he/she is still employed, of the terms, conditions and his/her job description.

- **Exceptional skills work permit**

(c) Section 19(4) - Exceptional skills work permit

In terms of the Immigration Act, 2002 (Act No. 13 of 2002), an exceptional skills work permit may be issued to a person with extraordinary skills or qualifications, which does not imply that such person must necessarily also be highly qualified. The word "exceptional" refers to unusual, uncommon, abnormal, extraordinary or very rare.

A person who therefore applies for an exceptional skills work permit must satisfy the Director-General that he or she is either highly qualified, or has mastered unusual skills that are scarce or not available but needed in a particular occupational sector in the Republic. The aforementioned person qualifying for this category should, therefore, be easily recognisable as he or she will be well-known, if not famous, for his or her specific field of expertise.

Intra-company transfer work permit

(d) Section 19 (5)

In terms of current legislation an intra-company transfer work permit may not be extended or renewed. Any foreigner who will be transferred or seconded to a

business that operates in the Republic in a branch, subsidiary or affiliate relationship for a period exceeding the period contemplated in the legislation, may not qualify for an intra-company transfer work permit. He or she must therefore, apply for an appropriate permit in terms of section 19 of the Immigration Act, 2002 (Act No. 13 of 2002).

VIII Section 32(1) - Authorisation to remain in the Republic pending his/her application for a status - Form 20

One of the aims of the Immigration Act, 2002 (Act No. 13 of 2002) is to ensure that *"security considerations are fully satisfied and the State retains control over the immigration of foreigners to the Republic."*

Section 32 of the Act furthermore stipulates that-

- "(i) Any illegal foreigner shall depart, unless authorised by the Director-General in the prescribed manner to remain in the Republic pending his/her application for a status.*
- (ii) Any illegal foreigner shall be deported."*

The responsibility to ensure that a temporary residence permit remains valid whilst inside the Republic, rests with the individual. Officials have the responsibility to issue a Form 20 as prescribed in the Immigration Regulations in instances where applications are still pending and the temporary residence permit of a foreigner is about to expire.

Applicants must in all instances be informed in writing (i.e. by means of an endorsement on the acknowledgement of receipt of an application) to approach the office the day upon which or the day before his or her temporary residence permit expires, in order to be issued with such a form pending the finalisation of their application for a status. Such applications must furthermore receive immediate attention in order to avoid foreigners from sojourning in the Republic without a valid temporary residence permit.

IX Section 21 - Corporate permit

The Immigration Act, 2002 (Act no 13 of 2002), aims to promote economic growth through the employment of needed foreign labour, facilitate the entry of exceptionally skilled or qualified people, increase skilled human resources, facilitate academic exchange within the SADC region and promote tourism.

The corporate permit is specifically aimed at needed foreign labour in the mining and agricultural sectors, and the attraction of skilled human resources into the industrial and manufacturing sectors in the Republic. A corporate permit may be issued for a period of 5 years at any given time.

In the case of a foreigner who will be employed in the mining or agricultural sector as unskilled labour, the temporary residence permit authorising the applicant to conduct work in South Africa is issued at a port of entry for a period of 12 months, and is only endorsed with the name of the mine or farm where the person will conduct work. No applications for the extension or renewal of the said permit may be entertained and such permit may, furthermore, not be issued at a mission or any other local office of the Department. Skilled and semi-skilled workers employed by a corporate applicant, on the other hand, have to apply for a general work permit at either the South African foreign office in his or her country of origin/residence or may in deserving cases apply at the applicable local office whilst inside the Republic.

Mindful of the objectives of the Immigration Act, 2002 (Act No. 13 of 2002), it is important to note that a corporate permit may only be considered if the corporate applicant intends to employ foreigners to conduct work for such applicant and provided that such foreigner complies with the aims of the Act, namely to increase skilled human resources. (It is for this reason that labour brokers or employers who wish to employ exotic dancers for instance, do not qualify for corporate permits).

In terms of section 21(2)(c)(b) a corporate applicant is required to lodge a financial guarantee in the prescribed amount and in the prescribed form, 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.

Sub section (4) (d) provides for the waiver or the reduction of the financial guarantee under special conditions, and the delegation of powers in the aforementioned decision rests with the Director Permits (NIB) in Head Office. Applications for such waivers or reductions must be referred to Head Office before applications for corporate permits may be accepted and processed in local offices.

In terms of a mutual understanding between the Department of Home Affairs and the Department of Labour, immediate family members of mine workers who have become incapacitated, or deceased whilst conducting work in South Africa, may be issued with a corporate worker authorisation certificate to replace such mine worker.

This Immigration Directive must be brought to the attention of all immigration officers. This Immigration Directive is also confidential and for internal use only.



**G B JOSEPH
DIRECTOR: IMMIGRATION POLICY AND DIRECTIVES**

DATE: 18.06.07

This Immigration Directive follows Immigration Directive No 21, dated 1 June 2007, which deals with: Verification of Permits.