

GES NewsFlash

South Africa — New immigration regulations



April 8, 2014

Overview

- The regulations were published on the 17th of February 2014 for public comment with a closing date of the 28th of February 2014. The new regulations are proposed to become effective on the 1st of April 2014, however, this date is unlikely due to the government not being ready to implement by this date. In 2007, a similar situation occurred where government missed the due date and a month later the government published a government gazette on a Friday declaring that the regulations would be effective the next Monday.
- Categories initially termed as "permits" will now be called "visas." The only category that will make use of the word "permit" will be the **Permanent Residence Permit**.
- One will not be allowed to change their status from a **visitor visa** to another type of visa in South Africa. One will need to return home and make the application in their home country or country of permanent residence. Any party planning to convert their permit must be made aware that the legislation will change with little notice and must file their applications without delay.
- All Temporary Permit applications will no longer be submitted at a Regional Department of Home Affairs, but rather through a Visa Facilitation Service Center. The VFS pilot center will be launched on the 1st of June 2014.

Important Changes

Proposed Amendments

Visitors visas cannot be converted to work visas while the individual is physically resident in South Africa.

A foreign national who is in a relationship with a South African citizen can only apply for a spousal visa provided that they have been in a relationship for more than five years, and proof of the relationship is required when submitting the application.

The quota work permit and exceptional skills work permit will no longer exist in the new legislation. The two work permits have been combined into a new category, known as a critical skills visa. The Department of Home Affairs is in consultation with other government departments to establish and regulate the list of critical skills, but we are told that the list will be published in April 2014. Employers whose staff holds the two defunct categories will probably not be allowed to renew these permits, meaning that a risk exists that the individual may not qualify for any other work permits.

The Intra-company transfer visa, which is currently issued for a period of two years with no option of renewal, will now be issued for the period not exceeding four years. The legislation is not clear whether persons can be appointed by the South African subsidiary (thus, the individual resigns offshore and takes up employment with the SA sub), what is allowed is the offshore employment contract can be placed in abeyance while a secondment/transfer contract with the local legal entity is entered into, employment for four years is allowed.

A South African company wanting to employ a foreign national, who does not qualify under an intracompany transfer or the critical skills, can apply for a general work visa. Under the general work visa, the company is required to perform a diligent search for a South African citizen or a permanent resident permit holder before considering employing a foreigner. The Department of Labour will be advising the Department of Home Affairs whether an employer has performed a diligent search for the position and whether the skill is available in South Africa. This new proposal of involving the Department of Labour will cause a delay in processing applications as most of the government department takes time to resolve matters.

The proposed regulations are very clear about people who will overstay in the country after the validity of their permits for up to 30 days, a person will be declared undesirable for a period of two years; in the case of a person who overstayed for longer than 30 days up to 90 days declared undesirable for a period of three years; and in the case of a person who overstayed for more than 90 days, declared undesirable for a period of ten years.

Deloitte's View

The regulations have the positive objective to improve the processes within the Department of Home Affairs. Multinational companies who are simply transferring staff between offices will benefit since the four-year intracompany visa will lead to lower costs since the first work permit is no longer issued for 2 years. Direct employment of foreigners will require the recruitment team to be guided by the mobility professionals to ensure that the correct proofs are produced in terms of diligent search requirements.

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