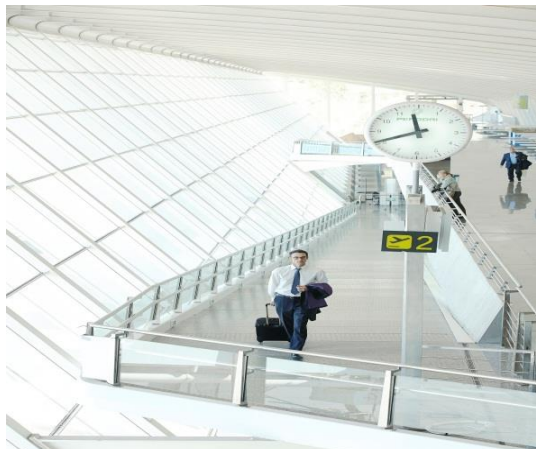


South Africa *Immigration Update* September 2015



South Africa

Regulations to the Immigration Act, 13 of 2011



VFS offices are now in operation across South Africa and also in the UK

Submissions in Person

In line with the *Advanced Passenger Processing* introduced in the Act in 2011, all applicants are now required to appear in person when lodging an application either at the respective South African Mission abroad or to the DHA in South Africa (facilitated through VFS).

Biometric information of an applicant should be taken upon submission, however constraints have limited universal implementation abroad.

Applications submitted in South Africa are routed through VFS at Visa Application Centres established throughout the country:

- Submissions will be by appointment and online request form; changes to the appointment system to curb “block “bookings
- A VFS Fee of R1 350 (including VAT) will be payable in addition to the DHA Fee prescribed; and
- A VIP Facility / Process available at an additional fee of R500 per person
- New Premium Service for CAU clients (Sandton office) – increased fee of R2 500

VFS currently facilitates visitors visa applications on behalf of certain South African Missions abroad (India, UK, Nigeria, Ghana etc) and their involvement is expected to increase in other countries.

Change of Status or Conditions in South Africa



New: Foreign Nationals now required to report a South African change in residential address to DHA

South Africa

Regulations to the Immigration Act, 13 of 2011

Applicant's holding valid work visas, in the absence of restrictive endorsements, may be permitted to change the status / terms and conditions of their existing work visas in certain instances. **Exemptions for corporate and ICT visas.**

Holders of existing Visitors Visas may not change to a longer term visa from within South Africa and will have to return to their home country to lodge such applications - the purpose of this amendment is to ensure that foreign nationals disclose intended purpose and duration of entry prior to arrival in the country.

Exception: Accompanying spouses / children of the holder of a business or work visa may apply for a change from a Visitors Visa to a study permit or work visa from within South Africa.

Challenges that may result:

- Extended lead-times (increased volume of applications abroad); and
- Potential impact on existing assignees (travel requirements to return to Home Country for processing of new application)

*Applications in South Africa must be submitted a minimum of **60 days** prior to expiry of the current permit / visa.*

South Africa

Focus on specific sections

Corporate Work Visa

A Corporate visa will be issued for a maximum period of 3 years and the validity of a Corporate worker certificate, issued to a foreign national under the Corporate visa, may not exceed the validity period of the Corporate visa.

Regulation 20(11) The holder of a Corporate visa may not renew the corporate visa or change status from within South Africa unless remaining in the employment of the holder of the Corporate Permit (Directive).

Corporate Applicants must prove that at least 60% of the total staff employed within its organisation are South Africa citizens or permanent residents.

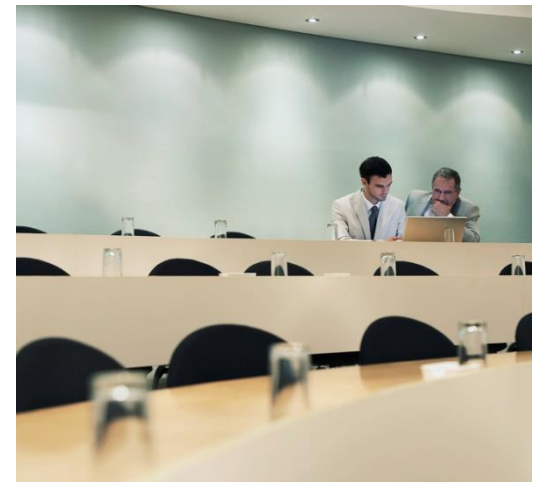
Extensive validation by the Department of Labour (“DoL”) will result in extended processing lead times.

Critical Skills Visa

The Critical Skills Visa is regulated by a Critical Skills List as published in the *Government Gazette*.

Regulation 18(6) confirms that a Critical skills work visa may not exceed five years.

The purpose of the Critical Skills Visa is to identify skills of value to the country and ease the importation of same.



DHA published a list of undesirable businesses for Corporate Visa applications

South Africa

Focus on specific sections

General Work Visa

Regulation 18(3)(a) requires an application for a General Work Permit to now be accompanied by a “Certificate from the **DoL** confirming that:

despite a diligent search, the prospective employer has been unable to find a suitable citizen or permanent resident;

the applicant has qualifications or proven skills and experience in line with the job offer;

the salary and benefits of the applicant are not inferior to the average salary and benefits of citizens and permanent residents occupying similar positions in the Republic; and

The contract of employment is in accordance with Labour standards in the Republic and conditional upon the general work visa being approved.

DoL Process

Employers will need to lodge an application for “labour” (not foreign labour) at the applicable DoL office including the required supporting documentation for consideration.

The DoL will search the Republic for suitable skills to fulfil the listed vacancy and refer any candidates deemed suitable to the employer for consideration.

Upon conclusion of the above, the DoL will issue a recommendation to the DHA which will be required prior to a foreign national lodging a General work visa application.

DoL estimated lead times to issue a recommendation are estimated at 2-4 months.

Opportunity: Waiver application where applicable.

Challenges

Extended lead times impacting the overall process to recruit skilled foreign labour;

Increased administration on employers (additional application process and / or interviewing referred candidates who may not meet the required job profile; and

Potential increase in Labour inspections at employer premises.

South Africa

Focus on specific sections

Study Visas

Study Visas may be issued for the full intended duration of study (subject to limitations where applicable – main assignee’s assignment period etc.) lessening the administrative burden by reducing multiple extension applications.

Additional compliance obligations now exist for learning institutions (Registrar / Principal undertakings).

Primary schooling, a study visa will not exceed 8 years

Secondary schooling, a study visa will not exceed 6 years.

Intra-company Transfer Work Visa

An initial **intra-company transfer work** visa to be issued for a period not exceeding four years (cannot be renewed in SA).

An existing 2 year Intra-company Transfer work visa may be extended with a further 2 years from within South Africa.

Regulation 18(8) prescribes a minimum period of 6 months employment prior to qualifying for an ICT work permit.



South Africa

Penalties for non-compliance

Foreign nationals departing South Africa under an expired visa will be classified as an Undesirable Person and subject to mandatory fines.

Foreign nationals departing South Africa under an expired visa (with proof of a pending application at the DHA) will also be regarded as overstaying, subject to a fine and classified an Undesirable Person.

With respect to the Employer / Deemed Employer

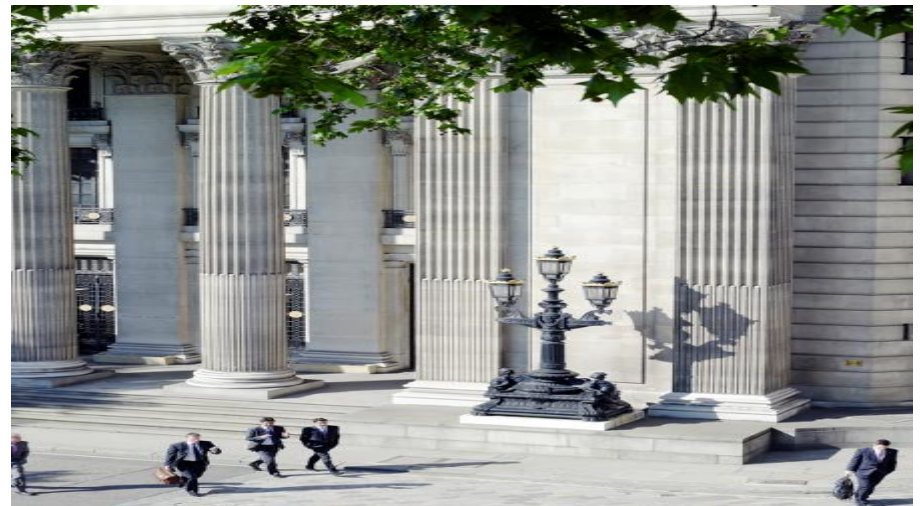
- Existing penalties (fines and / or imprisonment) increased
- Imprisonment without the option of a fine for certain offences (*mainly involving civil servants*)

Solution: *Ensure accurate record keeping, assignment tracking and compliance with the Reasonable Employer requirement (if employing more than 5 employees)*

Overstaying results in an **Undesirable Person**

Up to **30 days** – declared undesirable for 12 months (first offence) / 24 months (if second offence occurs in 2 year period)

Longer than **30 days** – declared undesirable for up to 5 years



New Directives



Directive 9 of 2014

Directive 9 of 2014: Full unabridged Birth Certificate in respect of accompanying children

Implementation

As from 1 June 2015 all children entering or departing the country, will be required to present a copy of their Full Unabridged Birth Certificate upon each arrival or departure point.

Until such date, all children travelling with their parents will be permitted to travel without the presentation of this document.

Foreign national parents of an accompanied child(ren) are requested to obtain this document in advance as certain countries may have extended processing times to issue the required documentation.

If in doubt as to whether a document will meet this travel requirement, please send through a copy of the current Certificate to your Engagement Team who will review and confirm if acceptable.

Directive 5 of 2014

Discontinuation of PR Permits

The aim is to enhance the security features of a Permanent Resident Permit

Endorsement of Permanent Residence Permits

Previously, upon the granting of Permanent Residence (“PR”) to a foreign national, a Permanent Residence Permit (commonly known as an endorsement) was endorsed in the foreign national’s passport in addition to the issuance of a PR Certificate.

In order to improve the authenticity and integrity of PR Permits, in the view of the DHA, such “endorsements” will no longer be issued in the passport.

The PR holder will now be required to travel with their PR Certificate and present same upon departure and arrival for verification purposes (which increases the administrative burden).

The discontinuation of the PR permits is prospective and thus does not impact foreign nationals currently in possession of endorsed PR permits (until such time the passport needs to be renewed).

Related Legislation



South African Immigration Employment Services Act (effective from 9 August 2015)

What are the highlights of the Bill?

- Establishment of public employment services to match job-seekers with suitable available work;
- Employers will have to register job vacancies in order for the public employment services system to be effective (in addition to the advertisement that is required as part of the work permit process);
- Employers will be required to undertake additional steps prior to hiring foreign nationals; and
- Locals Citizens may be favoured over foreign nationals in employment.

The above is only an extract of the main features and does not include all changes

Obligations on employers?

The Minister may regulate the following when considering a foreign national for an employment opportunity in South Africa:

- (a) the employers must satisfy themselves that there are no other persons in the Republic with suitable skills to fulfil a vacancy before recruiting a foreign national;
- (b) the employers may make use of public employment services or private employment agencies to assist the employers to recruit a suitable employee who is a South African citizen or permanent resident; and
- (c) preparation of a skills transfer plan by employers in respect of any position in which a foreign national is employed.



South African Immigration Protection of Personal Information Bill

Consequences (for employers) of non-compliance?

The South African Labour Court has exclusive jurisdiction in respect of matters arising from the Bill and The Basic Conditions of Employment Act applies in respect of monitoring & enforcement of the Bill.

The Labour Court may, on application by the Director-General, impose a fine not exceeding R 50 000 on an employer that contravenes any of the provisions listed in Schedule 3.

Schedule 3 – Offences for which a fine can be imposed by the Labour Court in terms of “requiring or permitting a foreign national to perform work for which such foreign national is not authorised to perform in terms of his or her work permit.”

Summary of Obligations

- May only collect personal information which is prescribed or requested in terms of law
- Data must be requested for a specific purpose
- Must obtain consent to collect and process personal information and be able to justify the need for the such information
- A person can object at any stage in processing to providing such information or request the correction/change of information
- Security measures must be taken to protect information and
- Notify person of any breaches of security/unauthorised access

In Summary

How can PwC continue to support you?



Our Solution

How will we partner with you?

*Agility to
change*

*New Business
Model*

*Streamlined
Solutions*

Solutions already in operation:

- Introduction of custom built immigration technology to support and manage the end to end compliance process, reduce lead times, ensure online tracking and manage risk.
- Specialist teams to assist with adapting your business model (where required) to the New Act to ensure effective immigration solutions and delivery.
- PwC have developed all encompassing solutions to ensure employer compliance with all related legislation (in addition to Immigration) impacting the movement of foreign nationals into South Africa.

PwC will navigate you through these challenges by identifying and mitigating such risks...

Questions?

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