

Immigration Alert

Making sense of the post-verification phase: *Tough measures for work permit and special pass applicants*

Following the conclusion of the highly publicised work permit verification process that ran between 21 May and 22 July 2018, the Interior Cabinet Secretary (CS) Dr. Fred Matiang'i has directed the Department of Immigration to implement a raft of measures. Some of the actions have been informed by the lessons learnt during the verification exercise. This alert draws to your attention a number of measures that are likely to be implemented by the Department of Immigration.

Re-structured issuance of work permits and passes

Realising that a number of foreign nationals were working on business visas and noting that special passes are prone to misuse, the CS has directed that all work permits and passes applicants should only travel to the country once their applications are approved.

This means that the previous practice where a foreign national could potentially engage in work related activities in the intervening period will no longer be possible. Applicants will have to wait until the necessary approvals are secured before gaining entry to Kenya.

Subsequently, the processing and issuance of special passes has been centralised to curb any misuse of special passes. It was noted that some applicants have been making multiple applications for special passes from different lodgement points i.e. at the regional offices and at the headquarters.

Part of the new centralised approach will include the formation of a committee to determine special pass and dependant pass applications as has been the case with work permits. This begs the question whether the introduction of a committee phase will lead to longer processing times for pass applications.

Enforcement

As has been indicated in our previous informational alerts, the post work permit verification period will be marked with tight enforcement of immigration laws. It was anticipated that the post 22 July 2018 period would be characterized by police/immigration swoops. The CS confirmed the deportation of 60 foreigners who were found to be in the country illegally. The raids will continue for an unspecified



period and government officials have been rallied to support the implementation of this directive. Although the number of deportees seems fairly low in light of the potential scale of non-compliant foreigners in Kenya, it is a step in the right direction.

Members of the public have been urged to volunteer any information that would lead to the arrest, prosecution and/or deportation of illegal foreign workers. Accordingly, a toll free number (+254 745 660 151) has been shared for anyone with information to contact government officials.

Although the CS recently outlined a raft of measures to address various aspects including security and regulation of employment of

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foreigners, we are yet to receive clear guidelines on the next steps. A number of questions remain unanswered such as whether the proposed changes are aligned with the relevant legal provisions.

For example, a Class G permit applicant (for an investor permit) is expected to have registered a company in Kenya and transferred funds into the country at the time of applying for the work permit. How then will they wait for permit approval before they come to Kenya?

The Security Laws (Amendment) Act, 2014 provides that an applicant needs to get an approval for work permit before they come into the country. However, the immigration laws provide an avenue where one can apply for a special pass in anticipation of a long term work authorization.

A similar question regards the fate of foreign nationals currently on valid special passes who have applied for or are in the process of applying for a work permit. Will they have to leave the country and wait for a work permit approval notification before they return to the country? Presumably, an applicant can travel to Kenya once their special pass is approved but prior to approval of the longer term permit. However, the legal requirements (as captured in various instruments) need to

be harmonised to ensure that any conflicts and uncertainties are addressed.

When it comes to the aspect of whistleblowing, what would guide the public in spotting a 'suspicious' illegal foreign worker and thus calling the toll free number? There is a risk that the immigration teams tasked with investigating the tips from the hotline will spend a lot of time on nuisance or malicious allegations.

These issues/ questions remain unanswered and we can only trust that the department of immigration will issue an administrative circular to guide policy implementers as they discharge their mandate. Similarly, we anticipate a number of legal changes to immigration laws to pave way for some of the measures taken by the CS.

What this means to employers & employees

As we wait for further communication from the Department of Immigration, it is important for employers and employees to ensure that they plan adequately for their work authorisation documents to be processed in good time for the foreign employees to travel to Kenya.

This will likely involve lodging permit applications well in advance of the desired

arrival date of the expatriate employees, investors, professionals or consultants.

Crucially, organisations need to ensure that their employees have the requisite work authorisations i.e. work permits or special passes and that they avoid cases where foreign nationals work on business visas.

At PwC, we are a trusted immigration partner – please reach out to any of the team members below for information or assistance.

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