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South Africa – New Regulations in Force Bringing Change to Immigration Regime

by KPMG, South Africa (a KPMG International member firm)

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South African Immigration Regulations were finally published in a 272-page Government Gazette on 26 May 2014.¹ The Regulations are expected to have a considerable impact on the handling and processing of South African inbound expatriate employees and on the global mobility and immigration departments of the organizations that serve them. In particular, the visa application process is expected to be very challenging.

Why This Matters

The new Regulations introduce a significant amount of change and global mobility professionals dealing with immigration matters need to be aware of the changes that impact their employees seconded to (and currently working in) South Africa and their families. In general, visa/work permit applicants will now be confronted with a new set of rules and requirements which range from terminology changes to substantive process changes.

Individuals who overstay their visa duration will face severe sanctions.

Background

The Regulations further clarify and define the amendments embodied in the Immigration Amendment Act, No. 13 of 2011² and concern provisions introduced by that Act.

Summary of the Changes

Terminology change: Henceforth “permits” will now be referred to as “visas.” The only category that will make use of the term “permit” will be the Permanent Residence Permit.

Renewals: Applications for renewals will no longer be submitted at the Regional Office of the Department of Home Affairs, but rather through a Visa Facilitation Service Centre (VFS Centre) 60 days before the expiry of the current visa. The VFS centres are being launched throughout South Africa.

Changing visas: Applicants will no longer be allowed to change their status from a visitor's visa to a long-term visa within South Africa unless exceptional circumstances exist. Applicants will need to travel back to their home countries to submit applications should they need to change their status.

Expired visas: Foreigners who overstay their visas for a prescribed number of days will be declared “undesirable” upon departure – and this will last for a period varying from 12 months to 5 years depending on the extent to which they have exceeded their permitted stay – and will not be allowed re-entry into South Africa during the period.

Spouses and life-partners: Applicants in a life-partnership or spousal relationship with a South African/permanent resident or a foreign national who holds a long-term visa will be required to prove that the relationship existed for at least two years in order to qualify for an accompanying or dependent visa.

Children: All children are now required to travel on their own passport. As from 1 October 2014, an unabridged birth certificate of the child reflecting the particulars of the parents is required for children travelling with parents (in addition to the child's own passport).

In addition to the above, requirements and procedures for the following categories of visas have been amended:

- Authorisation to conduct work on a visitor's visa;
- Intra-company transfer work visa;
- General work visa;
- Critical skills work visa;
- Corporate visa.

KPMG Note

In our view the new Regulations appear to be a positive enhancement and clarification of the country's immigration system and should help bring South Africa in line with other countries' immigration regimes. However, it is possible that the increased bureaucracy entailed by the new Regulations could give rise to complications and frustrations for foreign individuals immigrating to South Africa as well as for local companies seeking to employ foreign skilled workers.

Moreover, omissions and ambiguities in the rules and procedures have been identified which, if not properly addressed, could cause disruptions for South Africa's immigration system.

More Details to Come

The KPMG International member firm in South Africa is preparing an article containing more details on the New Regulations which will be published shortly in KPMG's online "insight & analysis" publication, [*The Expatriate Administrator*](#).

Footnotes:

1 Government Gazette No. 37679, 22 May 2014. (For prior coverage of the Regulations, see [*Flash International Executive Alert 2014-024*](#), 24 February 2014.)

For the Media Statement & Transcript by Minister Malusi Gigaba on New Immigration Regulations, Pretoria, 28 May 2014, see: <http://www.dha.gov.za/index.php/statements-speeches/465-minister-malusi-gigaba-s-address-on-new-immigration-regulations-pretoria-28-may-2014> .

2 See: www.gov.za/documents/download.php?f=149533 .

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