

LATEST DEVELOPMENTS ON THE IMPLEMENTATION OF THE IMMIGRATION AMENDMENT ACT NUMBER 19 OF 2004 AND INTRODUCTION OF THE NEW IMMIGRATION REGULATIONS ON THE 1ST JULY 2005

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With the introduction of the Immigration Amendment Act and new Regulations on the 1st July 2005 several new requirements, innovations and developments have taken place and been introduced.

In terms of **spousal relationships** where the one party is a South African and the other a foreign national i.e. where the parties are either married to one another or in a customary union or permanently cohabitative with one another in heterosexual or same sex partners the parties cannot apply for permanent residence for the foreign national spouse of a South African citizen until five years of proven relationship has elapsed. This is a substantial departure from the prior requirements for duration of relationship or marriage.

In de facto marriages and good faith spousal relationships this requirement can be construed as being restrictive and possibly an infringement of the rights of a South African partner to such a relationship.

Intra company transfer work permits have been restricted to a period "not exceeding two years" in terms of Section 19(5) of the Act. This means that an intra company transfer permit cannot be extended and companies will have to do careful planning in the deployment of key people on transfer or secondment to their South African offices.

The **quota work permit** category has been rendered inoperative due to the failure of the Minister of Home Affairs to proclaim into operation the quota category schedule in terms of which both the numerical quotas and skills sets would have been set out. This schedule should have been gazetted into operation together with the implementation of the Immigration Amendment Act and new Immigration Regulations on the 1st July 2005.

The effect of the above is that applicants who would have qualified in the quota categories for a facilitated work permit i.e. without the post having to be advertised in the national printed media would now have to apply in the general work permit category for a work permit, at considerable expense to the company and the company would also have to demonstrate all steps take by it to first secure the services of a South African citizen or resident.

Prior to the implementation of the new Regulations the quota category was probably the single most innovative and successful method ever implemented by the Department of Home Affairs to encourage the importation of highly skilled people into industries or sectors where their skills were not readily available locally.

Whilst the Minister of Home Affairs has in media statements advised that the publication of the quotas is "imminent", this has not happened in the seven months since implementation of the new dispensation.

In respect of **change of status** applications there has also been a shift of focus when an applicant entering South Africa on a holiday or business visitors permit or visa cannot expect to automatically be allowed to change his/her status to that of a work or other permit. If a visitors permit bears any restrictive endorsement then the holder of such permit would not be allowed to change their status. If an applicant therefore enters South Africa on a declared holiday and disguises their actual intentions for the visit then they would be required to return to their country of usual residence and apply for an appropriate permit from that country.

The situation surrounding **evaluation of qualifications** by the South African Qualifications Authority remains in relative crisis as there has been a deluge of applications for evaluation which are now a statutory requirement which cannot be waived. "Priority" evaluations by SAQA are currently taking about two months

to process from date of lodgement and an application based on qualifications cannot be lodged unless it is complete in all respects and this would include the SAQA evaluation.

Back logs in respect of the handling of permanent residence applications continue to be a source of extreme concern to me as the Ministry of Home Affairs has acknowledged a backlog at Head Office of the department where all applications for permanent residence have to be finalised, in excess of 17,000. This figure excludes new applications coming in.

A lack of human resource capacity at Head Office of the Department has led to this backlog.

It is therefore impossible to give estimates of how long a permanent residence application will currently take to reach finality as one to two years becomes the norm from date of lodgement to date of finalisation. In terms of international norms this is not unusual as many countries take this amount of time or longer to process such applications.