

FREQUENTLY ASKED QUESTIONS ON IMMIGRATION ACT, 2002 AND REGULATIONS, 2014

TRAVELLING WITH CHILDREN

Q: What does one require when travelling with children?

A: The following documents are required:

- i. **Child passport;**
- ii. **Unabridged birth certificate of the child;**
- iii. **Affidavit (consent), if the child travels with one parent and is registered as having two parents, unless the one parent has full parental responsibilities and rights (i.e. sole custody); and**
- iv. **If the child travels with a person who is not one of his or her parents, all the documents referred to in (i) to (iii), with the affidavit deposed to by both parents.**

Q: How long will it take to obtain an unabridged birth certificate?

A: 6 weeks

Q: Do you need original or certified copies of unabridged birth certificate?

A: Certified copies will be sufficient. However, the certification should not be older than 3 months from date of being deposed to date of travel.

Q: Should the unabridged birth certificate be translated to English?

A: Yes, if the certificate is not in any of the South African official languages. It must be translated by a sworn translator.

Q: Is there a specific format for the affidavit?

A: The affidavit must contain at least the details, including contact numbers, of the deponent, the particulars of the person travelling with the child and those of the child. The affidavit must be commissioned in accordance with the laws of the country where it is made.

Q: What if one of the parents is not known?

A: Where one parent is registered, we will accept it as such.

Q: What if one of the parents is completely unwilling to cooperate or in a coma?

A: Where one parent is not willing to give consent, the courts may be approached to give consent as is the procedure in law.

APPLICATIONS

Q: Where does one make an application for a visa?

A: All first time applications must be applied for at South African Missions abroad, at the country of citizenship of

ordinary/permanent residence.

Q: What about applications for extensions or renewals of visas?

A: All extendable or renewable visas may be applied for at any Visa Facilitation Service (VFS) Centre in South Africa.

Q: What does making an application in person mean?

A: It means that applicants must avail themselves for taking of biometrics (fingerprints and photograph) and interview, where required, at the Mission or VFS Centre, depending on where they are required to submit their applications. The procedure at Missions must be followed.

Q: Will letters of undertaking be accepted for police clearances?

A: No, a police clearance certificate is one of the critical requirements for determining the good character of a person and therefore should be submitted where required.

Q: Is the 60 days requirement for submission of renewals or extension or change of status or conditions referring to calendar days? The Regulations indicate that one must apply at least 60 days in advance but does not indicate that one cannot apply earlier.

A: The 60 days requirement is the minimum number of calendar days within which one must make an application for extension or renewal. However, it does not mean that one cannot apply earlier than that.

VISITOR'S VISA

Q: Can the holder of visitor's visa issued in terms of section 11(1) of the Act change his or her status in South Africa?

A: No, unless exceptional circumstances apply, as set out in the Regulations.

Q: Can a visitor's visa be extended in South Africa?

A: Yes.

Q: Can authorisation to conduct work in terms of section 11(2) of the Act be applied for in South Africa?

A: No, all persons who are from visa exempt or visa required countries must apply for section 11(2) authorisation at a South African foreign Missions in their country of citizenship or residence.

Q: Can authorisation to work (section 11(2) be extended in South Africa?

A: Yes, only once.

Q: Would frequent and trusted travellers attending business meetings throughout the year need to apply for section 11(2) visas every 3 months?

A: No, they can make an application with convincing motivation for issuance of a multiple entry visitor's visa for 12 months, with each visit not to exceed 90 days. This will be given to trusted business persons for whom the foreign missions would conduct verifications, for instance, of the legitimacy of their businesses, business activities, movements into South Africa and previous contravention of the laws. The applicants must however submit police clearance certificates.

Q: Can a spouse of a citizen or permanent resident who is the holder of a section 11(6) visitor's visa be able to extend or renew his or her visa in the Republic?

A: Yes.

STUDY VISAS

Q: Will a study visa of a spouse of the holder of a business, work or retired person's visas be issued for the duration of course even though the main applicant's visa is issued for a shorter period?

A: No, the duration of any visa issued (as an appropriate visa) to spouses or children of the holder of a business, work or retired person's visa will be aligned to the validity period of the main applicant.

Q: Do students at Institutions of Higher Learning (incl. FET Colleges) need to apply for authorisation to conduct part time work for 2 hours per week?

A: No, the authorisation is inherent in the study visa.

BUSINESS VISAS

Q: Can the applicant for a business visa make an undertaking to comply with the 60% employment of staff (citizens or permanent residents) at a later stage?

A: Yes, if the business is still being established. In this instance the holder of a business visa must provide proof within 12 months of issuance of the business visa. AND

A: No, if the business is already established and operating.

WORK VISA**Quota work permit and Exceptional skills work permit – repealed**

Q: Will a person holding a quota or exceptional skills permit be allowed to apply for a critical skills work visa, upon expiry of his or her current permit?

A: Yes, provided the professional category for which such person holds a quota visa is in the Critical Skills List. If it is not in the list the applicant will have to find another work visa category for which he or she qualifies.

Q: What if the skills for which the quota or exceptional skills permit was issued is not on the critical skills work visa? What must a person apply for?

A: General work visa, and comply with requirements thereof.

General work visa

Q: What is the first step in applying for a general work visa?

A: The employer must make an application to the Department of Labour to obtain a certificate. The Employer must be registered for UIF and COID.

Q: How long will the Department of Labour take to issue the certificate?

A: A maximum of 30 working days, counted from the date when the Department of Labour acknowledges that it has received all required documents.

Q: Can a person who held a general work visa and applied for extension or renewal for the same employer continue employment if his or her visa lapses whilst awaiting the outcome of his or her application for extension or renewal?

A: Yes, the intention is not to interrupt employment, where extension or renewal has been applied for within the required period.

Q: What is the process to submit annual confirmation of employment in respect of a general work visa?

A: It is no longer a requirement

Critical skills work visa

Q: Will a critical skills work visa be issued to a person without having found employment?

A: Yes, with a condition that the holder thereof must find employment within 12 months of issuance and once the holder finds employment, he or she must notify the Director-General for a condition to be made linking him or her to such an employer. Where there is no employment contract the visa will be issued for 12 months and where there is an employment contract the visa will be issued in line with the validity period of the employment contract but not exceeding 5 years. Where the holder finds employment within 12 months the visa will be issued for the remainder of the validity period not exceeding 5 years. The Employer must also make an undertaking as referred to in regulation 18(1)(a) of the Immigration Regulations, 2014. Please refer to the Critical Skills List for specific conditions regarding professional categories that may renew without a need for an employment contract.

Q: Can a critical skills work visa be applied for from within South Africa?

A: Yes, but not by persons who are on a visitor's visa. (see also question below)

Q: Can a person who is on a general work visa or corporate visa apply for a critical skills work visa?

A: A person who is on a general work visa can apply for a critical skills work visa. However, a person who is on a corporate visa cannot apply for a critical skills work visa. A person who is on a corporate visa cannot move from a corporate visa to a critical skills visa as the worker under a corporate visa does not hold a visa but a corporate worker certificate.

Q: In the cases where applicants do not have formal qualifications, but relevant skills and experience (proven by way of reference letters or other means), can it be assumed that the SAQA requirement is not applicable?

A: The SAQA requirement applies where a person has qualifications but where a person has skills and experience, the relevant professional body, council or board recognised by SAQA or any relevant government Department must confirm the skills and experience.

Q: Does a person who is registered with a professional body require confirmation letter over and above his certificate of registration?

A: No, if a person is registered and was issued with a certificate to practice his or her profession by the relevant professional body, council or board he or she does not a confirmation letter.

Intra-Company Transfer Work visa

Q: Will current holders of Intra-Company Transfer Work Permits valid for two (2) years be allowed to extend their Permits to the new Intra-Company Transfer Work Visa that is valid for four (4) years?

A: No. An Intra-Company Transfer Work Visa is not extendable or renewable.

Q: Will people who have applied for waiver of certain requirements before 26 May 2014 be allowed to make applications in the country or should they leave South Africa to make applications at their countries of citizenship or permanent residence?

A: All those persons who applied for waivers before 26 May 2014 will be allowed to lodge their applications in South Africa, upon receipt of approval of their waiver applications.

CORPORATE VISA

Q: If a corporate identifies a critical skill that is not on the list, what is the process to add onto the list? How long will it take?

A: Inputs may be made to the Department which will conduct research and, if confirmed to be the case, request the Minister to amend the list. The list may be amended from time to time, as the Regulations provide. The currently listed skills were found to be critical for now but the situation may well change and some skills may be removed from the list with the next review.

Q: Since a corporate visa is issued for 3 years (as a maximum period), what happens where projects exceed a 3-year period? Can the visa be extended?

A: A corporate visa is not renewable. The corporate applicant may apply for a new visa and motivate for the required number.

Q: Where will applications for corporate visas be made?

A: Applications for corporate visas must be made through VFS centres and applicants must be corporations registered in South Africa.

Q: Who will be issuing the individual authorisation certificate?

A: VFS will issue the individual authorisation certificate but the applicants must submit their applications with all the required supporting documents at the South African Mission abroad of the country of citizenship or permanent residence. This is because as part of the Department of Labour and Department of Trade and Industry processes the employer would have indicated that he/she could not find any applicant in the Republic during the recruitment drive. The purpose of this visa is to get the required labour from abroad and not recycle foreigners who are already in the country on other work visas that are about to expire and are not renewable or cannot be extended, such as, for example, the intra-company transfer visa.

Q: For companies that are only operating in South Africa for the duration of the project will they still need to comply with the requirement that 60% of the total staff complement must be citizens or permanent residents?

A: Yes. In any case, a company that only operates for the duration of the project will NOT be issued with a corporate visa because the Immigration Regulations require that the total staff complement employed in the operations of the business must be citizens or permanent residents employed permanently in various positions.

UNDESIRABLE PERSONS

Q: What happens to foreign nationals whose applications are still pending at Home Affairs and they become illegal? When they leave the country on an expired visa will they be issued with a Form 19 (declaring them undesirable) even though the application is pending at Home Affairs?

A: Yes, they will be issued with a Form 19. However, if such a person is declared undesirable, he or she must send his or her copies of passport, last valid visa and proof of application to the e-mail address: Overstayappeals@dha.gov.za to have his or her undesirable listing removed.

Q: How long will it take to have the listing removed?

A: It should ideally take 24 to 48 hours.

Q: To avoid becoming an undesirable person can an authorisation to remain in South Africa be applied for under Form 20?

A: No, Form 20 is meant for cases where a person is unable to apply for extension or renewal of his or her visa due to reasons beyond his or her control, for instance, hospitalisation for the period until expiry of visa. The procedure is that the person should apply to the Provincial Manager (as delegated) to grant permission to make an application for status, and Form 20 will be issued whilst the investigation is conducted to verify the "good cause" given. If approved, the applicant will be given a specific period within which to submit an application for status. Form 20 cannot be used by those who simply forgot to extend or renew their visas.

eCORPORATE ACCOUNTS UNIT

Q: How many corporates are registered with this Unit?

A: There are about 123 corporates registered. However, there are other companies that are conducting Strategic Infrastructure Projects that are also assisted by the Unit even if they are not registered. All institutions of higher learning (universities), state-owned entities (ESKOM, Transnet, etc), researchers belonging to research foundations and holders of a critical skills visa and university employees are corporate clients by default.

Q: What are the benefits of becoming a corporate account client?

A: Companies that are corporate account clients do not necessarily need to use the services of private immigration practitioners. The unit provides advisory services and assists and supports companies that are involved with projects of national infrastructure when making representations to the Department. This includes regular advice, workshops and training of Heads of Human Resources within such companies whose responsibility is the management of expatriate workers within the companies.

Q: Can corporates register now or must they wait for an invitation to be published?

A: The criteria for being a corporate client is currently under review and once the process is complete a public notice will be made in the Government Gazette.

REGULATIONS ON FEES

Q: When are the fees going to be published?

A: The fees published as Notice R615 of 27 June 2005 are still applicable, as they were not repealed.