

IMMIGRATION LAWS SOUTH AFRICA

(Immigration Act No 13 of 2002, as amended by Act No 19 of 2004; Immigration Regulations of 27 June 2005)

Updated: July 2005

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

I. Introduction

- II. Change in Legislation 1 July 2005
 - 1. Legislative Process and Background
 - 2. Intention and Approach of the Legislator
 - 3. Evaluation
- III. Permits According to Grounds for Stay and Intended Activity
 - 1. Visit, Holiday
 - 2. Family Relation to South African Citizen or Permanent Resident
 - 3. Previous Citizenship or Permanent Residence
 - 4. Voluntary or Charitable Activity
 - 5. Education, Studies, Internship, Articles, Academic Sabbatical, Research
 - 6. Work in Employment
 - 7. Companies with an Ongoing Need for Foreign Employees
 - 8. Own Business, Entrepreneurship
 - 9. Financial Independence, Retirement

IV. General

- 1. Deposit
- 2. Place of Submission
- 3. Extensions
- 4. Permits for Accompanying Family of Applicants
- 5. Nature of Permanent Residence
- 6. Effect of Change in Legislation on Existing Permits and Pending Applications

V. Comment

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

I. Introduction

For many years, South Africa has been a popular destination for holiday makers, students,

work seekers and business owners, investors and retirees. Few of the foreigners coming

to South Africa remain untouched by the diversity and beauty of the country and its

people, and many decide to prolong their stay or settle here altogether.

For many foreigners, however, obtaining the relevant residence permit poses a great

challenge. As applicable laws, regulations and practice are complex and success is vital

for the foreigner's future life, seeking professional assistance is advisable.

In choosing the permit category and the application procedure and in preparing the

application, there are numerous pitfalls which can cause enormous delays and may

jeopardise the application. Once an application has been rejected, obtaining a permit is a

time-consuming exercise and may be impossible. Further, Departmental officials'

interpretation and application of the laws still lack transparency and consistency, which

may lead to misunderstanding and frustration on the side of the applicant. With the help of

a professional advisor, however, a foreigner's immigration can be a pleasant and stress-

free process.

The following is a summary of the most important elements of South African immigration

laws. It is not comprehensive and does not replace an individual consultation.

The various permit categories are listed according to the applicant's grounds for the

intended stay and the applicant's intended activity in South Africa. In each category, the

possibilities of obtaining temporary as well as permanent residence are laid out.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

II. Change in Legislation 1 July 2005

1. Legislative Process and Background

The recent change in legislation is the current Minister of Home Affairs' (Nosiviwe Mapisa-

Nqakula of the African National Congress - ANC) reaction to the immigration regime

which had been introduced by the former Minister of Home Affairs Dr. Mangosuthu

Buthelezi (Inkatha Freedom Party - IFP) and which had brought about revolutionary

changes.

Buthelezi and his advisors had introduced, amidst much controversy, an immigration

regime which attempted to keep up with global trends and to attract investment into the

country. It was meant to make immigration for bona fide applicants easier in order to free

resources for combatting illegal immigration, corruption and fraud.

The Immigration Act (Act No. 13 of 2002) and Regulations were widely criticised,

especially for the lack of consultation of the relevant bodies and organs during its drafting.

2. Intention and Approach of the Legislator

As publicised in the media and confirmed in personal conversations, the recent

amendments to the Immigration Act and Regulations were intended to correct legal errors,

to close gaps, to make the application of the laws simpler and to improve the conditions for

investors to South Africa. As is the case in all areas of South African politics, the situation

of South Africa's immediate neighbours and of the entire African continent is taken into

special consideration. Although South Africa's dire need for direct foreign investment is

acknowledged, the government is increasingly differentiating between various types of

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

investment and puts more and more value on a particular investment or foreigner's

contribution to the country's sustainable growth and to employment creation.

It is apparent that one of the Minister's prime intentions was not to make the same mistake

as her predecessor and to ensure that a comprehensive consultation took place and

relevant government as well as non-government organs were given an opportunity to

comment on the matter. Especially during the regulation-making, a consultative process

was followed which included the public, the Immigration Advisory Board (which reports to

the Minister), relevant Ministries and even Parliament. This way, the widest possible

consensus was meant to be found for this complex piece of legislation which inherently

touches a number of different interests and typically causes controversy.

3. Evaluation

The new legislation brings about some positive changes and clarifications and makes the

immigration laws more user-friendly. Some requirements for work permits have been

abolished (on the other hand, new ones were introduced and exemptions were removed)

and the financial requirements for retirees have been structured more logically. However,

the law also contains some elements which will be to the disadvantage of applicants and,

in our opinion, also work against the country's goals of attracting foreign investment and

promoting sustainable growth.

When reading the Amendment Act and new Regulations, it is evident that a variety of

different interests and wishes were considered and heard. Unfortunately, in spite of the

wide consultation followed by the Department, some vital organisations, which could have

provided insight into the practical problems caused by some of the regulations, were

omitted in this process. Warnings from the side of the Immigration Advisory Board, experts

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

and the public regarding those practical problems and effects thereof, were largely ignored

and the stance was taken that practical problems outside the Department of Home Affairs

could not be considered and would have to be addressed by the respective authority or

organization experiencing those problems.

In effect, changes implemented after much debate and with enormous effort in 2003, have

partly been reversed and in many ways the status quo of the previous system has been

restored. In some areas (for instance, in the case of the business permits), the

requirements are now even stricter than before 2003. The Department has been given

back much of the discretion that had purposefully been transferred to other experts in

2003, the review and appeal procedures have been significantly shortened and the

express obligation for the Department to endeavour to process all applications within 30

days from submission was abolished again. The creation of an independent body

regulating the profession of immigration practitioners (similar to a law society), thereby

outsourcing and centralizing this task, was largely reversed. Long-term visits to South

Africa are now only possible in specific and narrowly defined cases.

The legislative changes unfortunately lack a clear direction and vision, and it appears that

the importance of immigration law in all its details for South Africa's development and

growth is being underestimated. Instead of attracting investors, the changes have caused

confusion and bewilderment and have therefore failed to meet one of the Minister's prime

goals.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

III. Permits According to Grounds for Stay / Intended Activity

1. Visit, Holiday

1.1. Stay of up to 3 Months

A foreigner, who wishes to stay in South Africa for a period of up to 3 months without

following an activity which requires authorisation, can obtain a visitor's permit fairly easily.

Citizens of those countries which are visa exempt (e.g. UK, USA, Australia and most

European countries) will be issued with this permit upon entry to South Africa.

The following is required:

1.1.1.proof of sufficient funds to sustain applicant during stay (whereby the term "sufficient"

has not been defined),

or

undertaking by South African host to cover necessary expenses;

1.1.2.presentation of valid return air ticket covering the intended period of stay,

or

payment of a deposit to the value of such ticket.

Only **ONE** extension of the 3-month *visitor's permit* for an additional 3 months may be

granted under the above conditions. Until recently, the number of extensions was not

limited.

1.2. Stay for a Period of 3 to 36 Months

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

As of 1 July 2005, extended visitor's permits (valid for up to 3 years) are granted only in

narrowly defined cases (please refer to "Voluntary or Charitable Activity" and "Education,

Studies, Internship, Articles, Academic Sabbatical, Research" below). A mere long-term

stay without any specific purpose other than leisure or holiday and without any family

relationship to a holder of certain permits (refer to "Permits for Accompanying Family of

Applicants" below) is not provided for anymore.

1.3. Permanent Residence

For most activities referred to in chapter 1 there is no option of obtaining a permanent

residence permit. Solely spouses/life partners and dependent children of applicants for

permanent residence in most categories are included in the main applicant's application

(please refer to chapter IV.4. below).

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

2. Family Relation to South African Citizen or Permanent Resident

2.1. Spouses/Life Partners

Spouses and life partners of South African citizens or permanent residents who do not

qualify for study, work or business permits in their own right can be permitted to study,

work or conduct a business purely on the grounds of their spousal relationship and without

having to meet any further criteria.

The term "life partner" includes heterosexual and homosexual partnerships between a

foreigner and a South African citizen or resident independently of the country in which the

partnership has been concluded. As proof for such partnership an affidavit and further

documentary proof is to be furnished. The requirement of a so-called "notarial contract"

was abolished with the latest amendments to the legislation.

2.2. Immediate Family

Members of a South African citizen or permanent resident's immediate family can obtain a

relative's permit. The term "immediate family" is defined to include "members within the

second step of kinship, whereby a spousal relationship is counted as one of such steps,

but any other common antecendent is not so counted". The relative's permit allows its

holder to stay in South Africa and does not include the right to work, to study or to conduct

a business. It is issued for a period of 2 years.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

2.3. Permanent Residence

In terms of the recent amendments to the immigration laws spouses/life partners of South

African citizens or permanent residents qualify for permanent residence on the grounds of

such spousal relationship only if and when their spousal relationship has subsisted for at

least 5 years. Life partners need to submit proof of their relationship still being intact after

2 years of permanent residence having been issued to the foreign partner.

Family members of South African citizens of permanent residents within the first step of

kinship also have a right to permanent residence. It needs to be noted that minor children

of permanent residents are required to confirm their status within 2 years after having

reached the age of 21.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

3. Previous Citizenship or Permanent Residence

3.1. Previous Citizenship

In specific cases, former South African citizens have an automatic right to permanent

residence.

There are many cases where the original South African citizenship is still intact in spite of

the holder having taken up the citizenship of another country. Where a citizenship by birth,

however, has been lost the former holder thereof often has an automatic right to

permanent residence, which right needs to be officially confirmed. The situation is similar

in the cases of former holders of Namibian (i.e. South West African) AND South African

citizenship and whose South African citizenship was withdrawn due to political changes.

3.2. Previous Permanent Residence

Persons who have been granted a permanent residence at some point in time and who

have given up their residence in South Africa, but wish to take it up again will find it worth

their while to have the validity of their original permits tested. Since the information to be

given and the statements to be made in the relevant application for confirmation of

permanent residence are often from the applicant's memory only, but vital in determining

the application result, a consultation with an immigration expert is particularly advisable.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

4. Voluntary or Charitable Activity

Persons wishing to take up charitable or voluntary activities in South Africa can obtain an

extended visitor's permit for a period of up to 3 years. It is within the nature and general

definition of such activities that they may not be remunerated.

The following requirements apply:

4.1. proof of sufficient funds to sustain applicant during stay (whereby the term "sufficient"

has not been defined),

or

4.2. undertaking by the charitable organisation to cover necessary expenses.

There is no possibility to obtain *permanent residence* on the grounds of the activities

referred to in chapter 4.

5. Education, Studies, Internship, Articles, Academic Sabbatical, Research

5.1. Study Permit

Persons wishing to attend school, university or other institutions of learning in South Africa

can obtain a study permit. The applicant needs to furnish a letter by the educational

institution confirming the applicant's provisional acceptance and the minimum period of the

studies or course. Holders of a study permit for higher education may take up part-time

work of up to 20 hours per week.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

As of 1 July 2005 all applicants for a study permit need to furnish proof of medical cover by

a provider which is registered or recognized in South Africa. Applicants younger than 21

years need to have a local guardian authorized by the applicant's holders of custodial

rights.

5.2. Vocational Training, Internship, Articles, Practical Year

Finding the correct permit category in South African immigration laws for practical work

which is part of training or studies has been problematic and hotly debated for years. In

the past, a visitor's, study or work permit was issued according to the respective office's or

official's interpretation of the law. What makes things worse is that in terms of the

amended legislation, the term "work" is defined to include any activity consistent with

running a business, or consistent with being employed or with the profession of the

person, with or without reward. Further, work or studies for a period of less than 3 months

are not covered by the visitor's permit anymore, as was the case until recently, and now

require a study or work permit.

A possible interpretation will now be that activities conducted as part of a course or

training in South Africa or abroad will call for a study permit, and that those outside an

official course or training will call for a work permit. In the former case, a confirmation by

the educational institution will in all likelihood be necessary. For applicants under the age

of 25 the possibility of an exchange permit exists, which is valid for 1 year and precludes

the holder from obtaining any other temporary residence permit for a period of 2 years

after its expiry.

Further, the amended laws on visitor's permits contain a rather vague clause whereby the

holder of a visitor's permit may be permitted to conduct work under certain circumstances

which have not been defined or prescribed. Short-term work, internships or articles may in

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

the future be categorised under this clause and permitted on a visitor's permit with the relevant permission by the Director-General.

Depending on the permit category which may apply in the various cases referred to above, the requirements for each category will apply.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

5.3. Academic Sabbatical, Research

Persons who wish to spend an academic sabbatical or conduct research in South Africa

(without being registered with or working for a local academic body, in which case a study

or work permit would have to be obtained) may obtain an extended visitor's permit valid for

a period of up to 3 years.

The following requirements apply:

5.3.1.Proof of sufficient funds to cover costs of the intended stay (whereby the term

"sufficient" has not been defined),

or

5.3.2. Undertaking by the local organisation or host to cover living expenses;

5.3.3. Explanation of and proof for intended activity (this is not an express requirement, but

it is expected that this will be necessary).

The term "academic sabbatical" is not defined in the immigration laws and is generally

defined as time taken off for learning or research. Administrative practice will show what

type of learning or research is covered by this type of permit and in what way it needs to

be proven.

5.4. Permanent Residence

On the grounds of the activities referred to in chapter 5. there is no possibility of obtaining

permanent residence.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

6. Work in Employment

Persons wishing to seek or take up employment in South Africa need to obtain a work

permit. There is a choice of various categories of work permits, which is to be made

according to the type and duration of the post as well as to the applicant's qualifications

and/or experience.

As is the case in almost all categories (refer to "General" below), an applicant for a work

permit needs to provide a valid air return ticket covering the period of the intended stay or

a deposit to the value of such ticket. In the case of work permits, however, the deposit can

in some instances be replaced by a written undertaking of the applicant's prospective

employer to cover the costs of the applicant's repatriation to his/her country of usual

residence if the need arises.

6.1. General Work Permit

The work permit as it was known even before April 2003 is the so-called general work

permit. Here, the prospective employer needs to motivate his need for the foreign

applicant's specific qualifications, skills or experience and to submit proof of his efforts to

recruit a local candidate (amongst other things, by way of an advertisement of the

position).

Since the recent amendments to the immigration laws, no-one is exempted from the

requirement to advertise the position anymore. Up until the implementation of those

changes, persons such as key personnel on management level, qualified chefs, medical

doctors and practitioners, as well as experts in the film industry on a seasonal basis were

exempted.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

As of 1 July 2005, the applicant's qualifications need to be evaluated by the South African

evaluation authorities, which is a time-consuming and costly exercise due to the large

number of applications received by this authority.

6.2. Quota Work Permit

The so-called quota work permit is issued to a prescribed number of foreigners who

possess certain academic degrees and/or a certain number of years of professional

experience. Individuals with a vocational or academic degree and (preferably relevant)

work experience of at least 2 years generally qualify for this type of permit. Here, the

employer does not need to motivate and prove that the position cannot be filled with a

South African citizen or permanent resident.

With the recent amendments to the immigration laws the "training fee" of 2% of the

applicant's taxable remuneration which was previously to be paid to the authorities has

been abolished. Further, no more opinion by the Department of Labour needs to be

obtained.

Of particular interest is the fact that a quota work permit can now be issued even if no job

offer or contract can be shown by the applicant. Such a contract is to be submitted to the

Department within 90 days of issuing of the permit. This way what was formerly known as

work seekers permit has been re-introduced.

As is the case in the *general work permit* category, here, too, the applicant's qualifications

need to be evaluated by the South African evaluation authorities which is costly and time-

consuming.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Phone: +27 (0)21 - 552 7707

Fax: +27 (0)21 - 552 7717

6.3. Exceptional Skills

Persons with exceptional skills or qualifications can be granted an exceptional skills work

permit purely on the grounds of those skills or qualifications and independently of a

particular job offer or position to be taken. The term "exceptional" is not defined. However,

the skills need to be confirmed by a South African or foreign organ of state, or an

established South African academic, cultural or business body and proven by further

documentation.

The exceptional skills work permit is valid for up to 3 years and may be extended.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

6.4. Secondment

In the case of secondments or transfers of employees between branches, related or

affiliated companies, a so-called intra-company transfer permit may be obtained. The

administrational effort and requirements for this type of permit are less than in the other

worker categories, but the permit is restricted to a period of 2 years and cannot be

extended.

6.5. Work for a Foreign Employer and Remunerated Abroad

Foreigners who are employed by a company outside of South Africa and who are

remunerated abroad, but who conduct part of their activities within South Africa with no

affiliation to a South African firm, previously qualified for an extended visitor's permit. The

relevant clause has recently been abolished and thus administrational practice will have to

show whether or not, and if so, with which type of permit such persons may reside in

South Africa for more than 3 months.

6.6. Permanent Residence

Permanent residence on grounds of permanent employment or of exceptional skills may

be issued to workers in the categories mentioned under paragraphs 6.1. and 6.3., whereby

almost identical requirements apply as in the respective temporary category. Further,

foreigners who have held a work permit in terms of the Immigration Act of 2003, as

amended, qualify for permanent residence. Barring those with exceptional skills,

applicants for permanent residence in this category need to be in possession of a

permanent employment offer.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

7. Companies with an Ongoing Need for Foreign Employees

Companies with a proven ongoing need for foreign employees can obtain a so-called

corporate permit. This permit is issued not to the individual worker, but to the employer

and allows it to employ a specific number of foreigners in specific positions on an ongoing

basis.

The corporate applicant needs to motivate and prove its need for foreign staff. As is the

case in the quota work permit category, the "training fee" of 2%, payable to the

Department of Home Affairs, has been abolished. When issued with a corporate permit,

the corporation can recruit foreigners who will be issued with corporate worker permits on

submission of their personal documentation in a much simplified procedure. The *corporate*

permit allows corporations a more flexible and predictable staff planning.

8. Own Business, Entrepreneurship

The so-called business permit is issued to foreigners who wish to establish a new

business in South Africa, or to invest in or take over an existing business. Wide protest

from the public, from European business organisations, from experts and from the

Immigration Advisory Board after the publication of draft Regulations in January 2005

prevented the introduction of extremely onerous requirements for the business permit...

However, some illogical, unnecessary or inappropriate criteria were upheld in the

amended laws which were eventually implemented.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

8.1. Requirements

The following requirements need to be met as of 1 July 2005:

8.1.1.Minimum Investment

Certification by a chartered accountant confirming that

o Cash to the value of R 2,5 million,

o A capital contribution to the value of R 2,5 million, or

Cash to the value of R 2 million as well as a capital contribution to the value of R 0,5

million,

originating from abroad, are available to be invested into the book value of the business.

The above minimum investment can, however, be reduced or waived if so requested by the Department of Trade and Industry, or when the business is within an industry which has been declared by the Minister to be in the national interest. Currently these industries

are:

Information and Communication technology;

Clothing and textile manufacturing;

Chemicals and bio-technology;

Agro-processing;

Metals and mineral refinement;

Automotive manufacturing;

Tourism;

Crafts.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

8.1.2.Business Plan

A comprehensive business plan needs to lay out the short and long-term viability of the

business.

8.1.3. Employment of South African Citizens or Permanent Residents

Each applicant is to undertake to permanently employ at least 5 South African citizens or

permanent residents.

8.2. Validity and Extension

Two years after being granted a business permit the holder is to submit to the Department

proof that the above-listed requirements have been met, and every 2 years thereafter

proof that the requirements are still being met.

8.3. Permanent Residence

A permanent residence permit on grounds of establishing or investing in a business may

be obtained when meeting the requirements as laid out above. Here, proof of the

requirements being met is to be submitted 2 years after issuing of the permit, and again 3

years thereafter.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

9. Financial Independence, Retirement, Pension

9.1. Retirees/ Pensioners

The retired person permit is issued to foreigners of all ages who are able to submit proof of

sufficient financial means available to them for their retirement in South Africa. The holders

of this permit may reside in South Africa on a seasonal or continuous basis.

With the recent amendments to the immigration laws the requirements for a retired person

permit have been made more logical, but in some cases also more restrictive.

Proof of the following is to be submitted:

9.1.1.A life-long monthly income from abroad of R 20 000 from a pension, an irrevocable

annuity or retirement account; or

9.1.2., Combined assets" (no minimum value) realising a monthly income of R 20 000.

The above-listed requirements apply per person. This, in effect, means that the income or

net assets of spouses or life partners are considered separately and each partner needs to

qualify for the permit in his/her own right.

The holder of a retired person permit may be permitted to work. The criteria for such a

permission have not been prescribed.

The retired person permit can be issued for a period of up to 4 years and is renewable for

a further period of 4 years at a time.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

9.2. Financial Independence

As laid out in paragraph 1.2. above, financial independents who wish to stay in South

Africa for more than 3 months without following an activity which requires an authorisation,

cannot simply obtain an extended visitor's permit anymore.

In most cases these financial independents choose to apply for a retired person permit

even when they are far from having reached retirement age.

They further have the option of applying for a business permit (provided they meet the

relevant criteria) which gives them the right, but not the obligation to work in the business.

9.3. Permanent Residence

Financial independents can obtain a permanent residence permit based on establishing or

investing in a business or on retirement, whereby the same criteria as laid out above

apply.

Alternatively, a permanent residence permit based on financial independence can be

obtained, provided the applicant can submit proof of a net value of R 7,5 million and is

willing to pay a fee of R 75 000 to the Department upon granting of the permit. (The

amounts were previously R 20 million and. R 100 000, respectively. After widespread

protest they were - insignificantly - lowered. Due to the exaggerated fee and the more

accessible alternative of the retired person permit this permit category will remain

obsolete.)

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

IV. General

1. Deposit

In terms of the recent amendments to the immigration laws, all of the above-listed

applications for temporary residence are to be accompanied by a deposit to the value of a

return air ticket to the applicant's country of origin or usual residence. As indicated for

some categories above, the deposit can in some categories be replaced by showing the

actual return air ticket covering the period of the intended stay or, in the case of a work

permit, by the prospective employer's written undertaking to cover any costs incurred for

the applicant's repatriation to his/her country of origin.

2. Place of Submission

Generally, an application may be submitted at the South African mission in the applicant's

country of origin or permanent residence. Depending on the respective mission's authority,

the application can be processed and finalised there, or it needs to be referred to the

Department's Head Office in Pretoria, South Africa.

Alternatively, a foreigner who is already in South Africa can submit to the nearest office of

the Department an application for extension of his/her permit or for a change of status, for

instance from the status of visitor to that of worker, student, retiree or business owner.

In the past, the question of whether or not foreigners could enter the country as visitors

even if they had the intention of applying for a different kind of permit from within the

country, was hotly debated. The clause which previously expressly allowed for such

procedure has been abolished with the latest legal changes. The current legislation does

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

not contain any restrictions with regards to the possibility of changing status from within

the country. However, the impression that entry to South Africa was obtained on the basis

of untrue statements should be avoided.

3. Extensions

Almost all temporary permits can be extended from within South Africa. The intra-

company transfer permit and the exchange permit (which has not been discussed above),

for instance, are not extendable. It is to be noted that all applications for extension or for

change of status are to be submitted at least 30 days before the expiry of the current

permit. Applicants submitting their applications after such date were previously charged

with an additional fee. In terms of the current legislation, the application can even be

rejected if good cause for the late submission cannot be sufficiently shown. Rather

obscurely, this also applies if the original permit is only valid for 30 days and a timeous

submission is therefore impossible.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

4. Permits for Accompanying Family of Applicants

The rights and status of an applicant's family (which includes spouses/life partners and

dependent children) differ according to the main applicant's permit category. In some

categories, the family is automatically included in the main applicant's permit, in others the

family has a right to a visitor's permit for the purpose of accompanying the main applicant,

and in further categories the family members are seen as independent and need to qualify

for a permit in their own right. Where children are to attend school during their stay, a

separate study permit needs to be obtained for them in any case until such time as they

are granted permanent residence.

In terms of the current amended legislation, the term "life partner", when referring to the

partnership of two foreigners, includes non-married homosexual or heterosexual partners

only if the partnership was concluded in South Africa or is officially recognised in the

applicants' country of origin or residence.

4.1. Visit

The family of holders of extended visitor's permits may be granted visitor's permits valid

for the same period.

4.2. Relatives

The family members of holders of a relative's permit need to qualify for a permit in their

own right. In most cases, however, they fall within the second step of kinship to the South

African relative and can therefore obtain a *relative's permit* themselves.

4.3. Students

The family members accompanying the holder of a study permit have a right to visitor's

permits valid for the same period as the study permit.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

4.4. Workers

The family members accompanying the holder of a work permit have a right to visitor's

permits valid for the same period as the work permit.

4.5. Business Owners

The family members accompanying the holder of a business permit have a right to visitor's

permits valid for the same period as the business permit.

4.6. Retirees/Pensioners

The family members accompanying the holder of a retired person permit have NO right to

visitor's permit. The family members need to qualify for a permit in their own right.

4.7. Permanent Residents

The family members accompanying an applicant for permanent residence in most

categories are included in the application. This does, for example, not apply to the family

of applicants in the retired category. In those cases where the family is not automatically

included and cannot qualify in their own right, the family members can apply for

permanent residence as relatives of a permanent resident as soon as the main applicant's

permit is granted.

5. Nature of Permanent Residence

The permanent residence permit allows its holder maximum flexibility with regards to entry

and exit as well as activities followed in South Africa. In some categories or instances, the

permits are issued under certain terms and conditions. After 5 years at the latest, every

permanent resident is free to choose his/her activity in South Africa.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

The status of *permanent resident* does not affect the holder's citizenship. The *permanent*

resident can obtain a South African identity book endorsed as "non-citizen", but not a

South African passport.

Each foreigner is advised to carefully contemplate his/her taking up of permanent

residence, as this may in some instances lead to the loss of certain tax advantages.

6. Effect of Change in Legislation on Existing Permits and Pending

Applications

All existing permanent residence permits remain valid and are not affected by the

legislative changes.

All existing temporary residence permits remain valid, but can only be renewed or

extended if the relevant requirements of the legislation valid at the time of submission are

met.

In terms of general legal principles, all applications submitted before the implementation of

the amended laws need to be considered and finalised in terms of the requirements of the

previous laws valid at the time of submission.

V. Comment

Some may feel that the South African immigration laws are restrictive and counter-

productive to attracting investment into the country. Without particularly wanting to defend

the legislator, it needs to be considered that South Africa is one of the main destinations

for immigrants from the entire African continent and that its sound legal and democratic

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

structures and its comparatively healthy economy represent a political and economic

paradise to most of its neighbours' citizens.

Due to the above South Africa experiences an influx of a substantial number of illegal

immigrants specifically from its adjacent neighboring countries. Adding to the above,

South African immigration continues to suffer from corruption and fraud. These problems

need to be addressed and considered in the country's legislation without discriminating

according to race or a foreigner's country of origin.

Many foreigners will be able to find a legal way of staying in South Africa and following the

preferred activity. However, the challenge is to identify the appropriate permit category for

the specific purpose and situation. What also needs to be considered is the steady

increase in monitoring (for instance, controls at the workplace or at home) with regards to

the violation or circumvention of immigration laws. Overstaying the validity of a permit

incurs penalties and can lead to deportation. If a foreigner is deported once, he/she has no

claim to a future permit, especially to a permanent residence permit. Further, employers of

foreigners and property owners with foreign lessees have specific duties in terms of

immigration laws, which are not to be under-estimated.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

VI. ASSISTANCE

Theoretically, it is possible to apply for any type of permit without the help of an attorney or

immigration practitioner. However, engaging an expert as a representative before Home

Affairs bears a number of advantages.

> Realistic assessment of chances of being granted a particular permit before

commencing preparations

> Accurate and up to date information on appropriate permit and respective

requirements

Co-ordination and advice on optimal timing of relevant elements and procedures

necessary in the preparation of the application

> No need to put up with compiling and co-ordinating the paperwork, with long

queues, negative attitudes and misinformation at Home Affairs

Certainty about the relevance and consequences of information provided in

application

Especially in times of changes in the laws and procedures, a great degree of confusion

exists within the Department, which in some cases leads to applicants being seriously

prejudiced when they are not fully aware of their rights. We are registered Immigration

Practitioners and have more than 5 years experience in the field. Therefore, we can most

competently represent you before the authorities.

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc

Web: http://www.ritztrade.com

IMCOSA offers professional advice and assistance in all immigration matters as well as in many related fields. With regards to immigration, the service includes the following:

- Consultation in respect of the appropriate permit type and respective requirements
- Professional guidance in respect of the necessary documentation and information
- Tight control of time frames/deadlines according to client's individual requirements
- Co-ordination of translation and certification of documents by third parties
- Facilitation of chartered accountant's certificates
- Drafting of a business plan
- Obtaining recommendations by the Departments of Trade and Industry or Labour
- Application for evaluation of applicant's qualifications by South African authorities
- Obtaining extracts from benchmarking organisations' databases
- Liaising with future employer
- Coordination of placement of newspaper & media adverts
- Completing of application forms
- Drafting of relevant correspondence and motivations
- Submitting of the application
- Accompanying the applicant to interviews (depending on region of submission)
- Close monitoring of the application procedure and its timely processing
- Representing the client before the authorities in all aspects
- Collection of the permit (depending on region of submission)

Please feel free to contact us for any assistance you may need.

Julia Willand

Director / Assessor iuris / Immigration Practitioner

Julia Willand

Assessor iuris / Immigration Practitioner

IMCOSA - Immigration and Consulting South Africa cc