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A hand holding a Brazilian passport. The cover is dark with the text 'REPÚBLICA FEDERATIVA DO BRASIL' and '15 de Novembro de 1889' visible. The word 'PASSAPORTE' is printed in large letters. A hand is holding the passport from the bottom right.

APPLYING FOR A TEMPORARY OR PERMANENT RESIDENCE VISA

All visa applications whether of a temporary or permanent residence nature fall under the ambit of the Immigration Act 13 of 2002 (as amended). In addition policy decisions of the Department of Home Affairs embodied in Departmental Directive are what make the Act work. Immigration law can be a minefield of obstacles and pitfalls. It is in the interest of foreign nationals for visas of any description to consult an attorney who is a specialist in this area of expertise in order to try and minimise the effects of the pitfalls and obstacles.

TYPES OF VISAS

Short-term visas which enables holidays and visits for medical purposes. Generally types of visas are valid for a period of 90 days and are extendable on good cause for a maximum period of a further 90 days, but no further.

Persons from non-visa exempt countries must apply in their countries of residence for the appropriate visas and await the outcome in that country before departing to South Africa. Persons from visa exempt countries can simply present themselves in South Africa and, depending on the duration of the visa exemption bilateral agreement with their country of residence, can visit for that length of time as prescribed in the agreement.

Certain type of limited ‘work related activities’ can be conducted on a Section 11(2) visa/visitor’s permit. These visas must be applied for in the person’s country of usual residence.

Intermediate type of visas or ‘temporary’ visas fall under the categories of work, study and business.

In terms of work visa the general criteria are that the South African employer must first take all the prescribed necessary steps to secure the services of a South African citizen or permanent resident for the position before a work offer can be made to a foreign national. This includes advertising in the national printed media, obtaining of a Labour Department report, a report form from the employment agencies and a salary benchmarking extract.

The only category of visa in terms of which the above requirements are absent are that of the critical work visa.

Critical Skills are defined in the critical skills visa list which is gazetted by the Minister of Home Affairs from time to time. The list consist of skill, trade, professions and occupations which are in the national interest and critical of nature.

Intra Company transfer work visas covers the category of international companies having a subsidiary, final, holding or associated company in South Africa and wishing to transfer an employee in the permanent employ at the overseas operation to South Africa on secondment for a period which may not exceed four years. Such an application must be made in the country of usual residence of the applicant and the outcome awaited in that country

Business visas can be applied for by foreign national wishing to start or purchase a business in South Africa. The criteria not only encompasses the fact that the business must be deemed to be in the ‘national interest’, but must also employ at least 60% South African staff complement and comply with all the labour and other delegated legislation in South Africa. In addition an investment into the business of at least R5 million must be made.

The Department of Trade and Industry must also provide a letter of recommendation regarding this type of application.

Retirement visas can be granted to qualifying foreign nationals that can provide proof of sufficient resources as determined by the Minister of Home Affairs from time to time to sustain themselves in South Africa without becoming a burden on the State. The funds must emanate from a pension, retirement annuity or investment account that delivers the qualifying level of income.

Relative’s visas can be applied for where a foreign national is in a relationship of kinship within two degrees of kinship to a South African citizen or permanent resident, and where the financial assurance – as prescribed from time to time by the Minister of Home Affairs – has been complied with and the required assurance given. A relative’s visa may be issued for a period of two years and is renewable.

PERMANENT RESIDENCE VISAS

Permanent residence visa are for indefinite periods. Persons with the following visas can apply for permanent residence:

Direct residence, which requires a work visa holder to have been in South Africa on a work visa for a continuous period of 5 years.

Critical skills work visa holders on the basis of their critical skills visa as soon as they have obtained their temporary residence visa in this category.

Business Category, permanent residence visas can be applied for by an investor or entrepreneur who has qualified for in terms of the investment and employment criteria in South Africa, can show sustainability and viability of an existing or intended business, and undertakes to employ 60% South African citizens or permanent residents in the business.

Foreign nationals married to South African citizens for a period of 5 years may apply in the ‘spousal’ category. This includes persons who are in recognised customary unions, traditional unions for the qualifying period.

Retirees who provide proof of the qualifying income in this category.

‘Financially independent persons’ who can provide proof of available qualifying funds and are prepared to pay an amount determined from time to time by the Minister of Home Affairs, as a non-refundable once off payment to the Director General of Home Affairs.

IMPORTANT INNOVATIONS

With the advent of the Immigration Amendment Act 13 of 2011 and new Regulations published on 26 May 2014, it became necessary for applicants for all types of visas to present themselves in person for the actual lodgement of the applications in order that biometric identification can be done.

Your attorneys may accompany you through this process and then bring the applications to finality.

The Department of Home Affairs has granted a tender to Visa Facilitation Services (VFS) in all the main centres in South Africa to act as receiving and despatching agents for lodgement and endorsement of visas when granted.

The Department of Labour must, in terms of the new Regulations, perform the function of certifying, in respect of work permits, that no South African citizens or permanent residents were available for the position prior to a work permit being finalised for a foreign national.

In terms of business visas, the term ‘national interest’ has become one of the backbone criteria for the Department of Trade and Industry certifications.

MAIN CRITERIA FOR QUALIFYING VISAS

One of the backbone requirements is that an applicant for any kind of visa must be a person of good character and accordingly police clearance certificates are required from any country in which the applicant has been resident for a period of longer than twelve months in the prior decade.

It is also important that the applicant be healthy and in a good physical state. A medical and radiological report is required.

At all relevant times employing South African and creating jobs for South Africans remains one of the main principles in our economy. Accordingly it is required – except in the critical skills visa category – that prospective employers must demonstrate the efforts made to secure the services of a South African citizen or permanent resident before they make any job offer to a foreign national.