



Hon. B. Mbete
Speaker of the National Assembly
Parliament of the Republic of South Africa
Parliament Street
Cape Town
8000

Dear Honourable Mbete, Speaker of the National Assembly

Petition requesting intervention to secure a 12-month suspension of certain sections of the Immigration Amendment Act and Immigration Regulations

I am appealing to your office to suspend certain amendments of the Immigration Amendment Act and Immigration Regulations to avoid irreparable damage to South Africa's position as a world-class business and leisure destination. To date, Home Affairs Minister, Hon. Malusi Gigaba MP, has remained firm in his stance that the regulations will not be relaxed or temporarily halted.

The amendments in their current form will have far-reaching economic impacts and plunge many of our struggling citizens further into the clutches of poverty.

An independent research report has found that the regulations will cost South Africa R10 billion in tourism income alone and a loss of 21 000 jobs. We have all seen the most recent employment figures in the Statistics SA's Quarterly Labour Force Survey.

At a national level, unemployment is at its highest since 2008.

In a country where 5.2 million people are unemployed, even one job loss is too much.

Days after the implementation of these amendments and regulations, the Western Cape Government's Red Tape Reduction Unit was flooded with cases from affected parties.

Below, I will highlight some of the most pressing concerns:

Visa applications may only be made in one's country of residence, in person

The applicant has to be present at the mission, since the use of immigration practitioners for that purpose is prohibited through the repeal of section 46 ("Immigration practitioners") of the principal act, read with, for example, regulation 9(2) and 10(2), which stipulate that the applicant must submit the application in person. This may involve several hours of travel to the mission nearest to the applicant, for example in countries like Australia and China.

Biometrics facilities available only at certain missions

It was reported in the media that in the USA biometrics are only done at certain of the missions, which means that potential visitors must take a cross country flight within America to have their biometrics taken before they are allowed to come to South Africa.

There is extreme concern about biometric facilities in China and these concerns apply equally to India. There are only two biometric centres in both China and India. This will devastate tourism to South Africa from these important growing markets. Major tour operators already report the termination of marketing campaigns by Chinese operators.

Chinese tour agents report that they expect a 70 % decline in the number of Chinese tourists to South Africa, as it will now only be practical for Chinese tourists from Shanghai and Beijing to visit South Africa.

Five working days not honoured

Not all the embassies are adhering to the five working day period set as a standard to process visa applications. Industries such as film report that at the Pretoria office of the DoHA a 5-day turnaround is stipulated, but not being honoured.

A representative of the Commercial Producers Association (CPA) reported a German embassy advising applicants that it only accepts posted applications and that these applications would be attended to within 7 days of receipt.

In the film industry, a delay in production this will have a direct daily cost of upwards of R500 000.

The requirement for an unabridged birth certificate for each minor travelling across the country's borders set to implemented on 1 October 2014

It can take up to 6 months to obtain a birth certificate. Now that the legislation has come into effect, and challenges are being experienced due to the increased demand for these certificates, it is likely that the lead times may be further extended.

There is concern that this will materially and negatively impact outbound as well as inbound travel.

Currently, only a passport is needed to travel across borders. The new regulations mean that airlines will have to stop people boarding planes to South Africa if they do not have birth certificates for children accompanying them. This, industry representatives contend, is a public relations disaster for South Africa, playing into the hands of competitor destinations.

This will also have massive implications for sport travel, and, as a leisure destination, we will no longer be seen as family-friendly.

Declaration as an undesirable person

This is one of the most controversial aspects of the new regime, which has highlighted the incapacity and inefficiency of the DoHA's systems and processes and led to the recent judgments against the DoHA in the Western Cape High Court in the Delorie and Johnson cases, where the applicants' applications for extension of visas were not approved in time.

Application for extension of visa to be done in country of origin

All foreign nationals wanting to renew their visas must return to their countries of origin to apply for it at the SA mission in that country.

Medical treatment visas

Holders of visitor's and medical treatment visas cannot apply for a change of status (visa type) whilst in South Africa except in exceptional circumstances as prescribed. So, for example, if a visitor has had medical treatment and wishes to remain as "holiday" tourist, they will have to apply for another visa.

Corporate visas

South Africans cannot employ foreign nationals for more than three years. This will negatively impact foreign direct investment and multi-nationals where staff members rotate across the world.

Legal Opinion

We have obtained legal opinion from senior counsel in respect of some of the amendments.

Amongst many other things, counsel highlighted problems in the inter-relationship between certain parts of the Immigration Act and the Immigration Regulations.

An important example is that relating to the newly introduced category of "undesirable persons" contained in Section 30(1) (h). Section 30(1) provides that certain foreigners *may* be declared undesirable by the Director General. Undesirable persons do not qualify for admission on any basis into South Africa. The new category introduced by subsection (h) is "those persons who have overstayed the prescribed¹ number of times."

Regulation 27 of the 2014 Immigration Regulations gives effect to section 30 of the Act. But instead of regulating the number of times a foreigner has overstayed, it (in Regulation 27(3)) deals with the number of days – and not the number of times – a foreigner has overstayed. On this basis Regulation 27(3), no foreigner who has

overstayed can constitutionally be declared an undesirable person until a proper regulation dealing with the number of times a foreigner has overstayed is made by the Minister.

This new section of the Act is already having unfortunate impacts.

We have seen cases of foreigners who applied timeously for extensions of temporary permits and/or permanent residence permits. These were not processed efficiently, resulting in their temporary permits lapsing. They would become classed as over-stayers and be hit by section 30(1)(h) of the Act unfairly and unlawfully. When they leave this country, they will be declared undesirable persons through no fault of their own and without any opportunity to be heard. This may be, and probably is procedurally unfair and unlawful.

Conclusion

Considering these facts, I hereby request intervention to ensure a 12-month suspension of the amendments referred to above, which are impractical and/or irrational and/or unlawful, until a Regulatory Impact Assessment has been conducted. In this regard, the Red Tape Reduction could assist in securing co-funding for a RIA with the DoHA.

Petitioner:



ALAN WINDE
Western Cape Minister of Economic Opportunities
(Agriculture, Economic Development and Tourism)
Date: 1 September 2014