

To Stay or Not to Stay: The Dilemma of the Foreigner in South Africa

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Migration has become an unavoidable topic world over, as more people have become empowered to leave unstable environments for more stable economies. According to the UN population report at least 3 per cent of the human population are migrants who have moved across borders to live in other countries for twelve months or more. People migrate for varied reasons. The population of migrants is diverse often varying from labourers and unqualified artisans to highly qualified professionals and business people. South Africa has been no exception in this discourse.

Post apartheid South Africa has enjoyed a fairly peaceful political arena and stable economy as compared to its counterparts in Southern Africa. As a result of its considerable stability both economically and politically, the migration of foreigners into South Africa has continued to grow. As a result of its economic and political landscape in South Africa, the discourse about migration has become unavoidable.

Statistics show that from the 2011 census, the population of South Africa had 6.2 million foreigners and estimates that 1.5 million of those foreigners were undocumented. It is no secret that the numbers continue to rise as a result of the factors we have already discussed above.

In South Africa, our immigration is primarily regulated by the Constitution of South Africa and the Immigration Act of 2002. The Immigration Act states clearly that one of its objectives is *facilitating and simplifying the issuance of permanent and temporary residence to those who are entitled to them and concentrating resources and efforts in enforcing this Act at community level and discouraging illegal foreigners.*

The Immigration Act states that no person shall enter the Republic unless he has entered at a point designated as a port of entry and is in possession of a valid passport and has been issued with a temporary residence permit in the Republic. Most will be able to meet the requirement of entering the Republic through a port of entry and being in possession of a passport but the traveller is further required to have qualified for a valid temporary residence permit. The question then remains

how does one become eligible for a valid temporary residence visa? This article will explore the various temporary residence visas that are in the Immigration Act and give a brief overview of who is eligible to make application for the respective visas.

TEMPORARY RESIDENCE PERMITS IN SOUTH AFRICA AND THEIR REQUIREMENTS

Temporary residence permits are regulated by section 11 to section 23 of the Immigration Act. Below are the different types of temporary residence visas available in the Immigration Act:

A. The Visitor's Visa

The visitor's visa is regulated by section 11 of the Immigration Act. This visa allows anyone who wishes to enter the Republic strictly for the purposes of visiting in the Republic to apply for this visa. The visa can only be granted for a period not exceeding three months. The Applicant may however, apply for an extension of this Visitor's Visa to a period not exceeding three months once in the Republic.

The Act however, acknowledges that the Visitor Visa may extend to persons who may need to visit the Republic for a period longer than 6 months. Such persons include:

- the spouse or dependant of holders of study visa or any form of business or work visa,
- persons teaching at an international school,
- persons involved in the production of films or advertisements,
- foreign journalists seconded to the Republic by a foreign news agency,
- an artist who wishes to write, paint or sculpt,
- a tour leader or a host of a tour
- a foreigner who is required to stay in the Republic in order to testify as a state witness in a criminal court case.

This particular type of visa is regulated by section 11(1)(b)(iv) of the Immigration Act. This particular Visitor's Visa can be granted for a period not exceeding 3 years.

B. The Study Visa

In terms of section 12 of the Act, the study visa is for any person studying at an institution of learning in the Republic whether elementary, secondary or tertiary.

C. The Treaty Visa

The Treaty Visa is granted persons who wish to enter the Republic to perform an activity whether it be study, work, or business based on a program that have been agreed upon by South Africa and the Applicant's country.

D. The Business Visa

This visa is for any person wishing to invest an amount not less than R5 million in a business to be established in South Africa or an already existing business.

E. Crew Visa

This visa is for officers or members of a crew of public conveyance in transit in the Republic. Crew members of the public conveyance must have valid status to enter the Republic.

F. The Medical Treatment Visa

This visa is granted to anyone who wishes to enter the Republic for medical treatment. The visa cannot be granted for a period of 6 months. One needs to be wary of this visa as it cannot be extended while in the Republic.

G. The Relatives Visa

The Relatives Visa is for person who are related to a citizen or permanent resident in the second step of kinship. The visa is granted for not more than two years.

H. The Work Visa

The work visa is divided into 3 categories namely, the general work visa, the critical skills visa and the intra - company visa.

- The general work visa can be granted to any individual who is not considered a 'critical skill' in terms of the Immigration Act. The employer of the applicant of this visa will however, in support of the application for the work visa, show that despite a diligent search, the prospective employer was not able to find a suitable citizen or permanent resident with qualifications or skill equivalent to the applicant.

- The critical skills visa is available to individuals who can show that they have skills which fall under the list of professions which are listed in the Government Gazette 37716 of 2014.
- Lastly there is the intra – company visa available to applicants who work for companies with subsidiary internationally and in South Africa. The applicant must have a contract of employment with his employer abroad for a period longer than six months. The applicant will then have to show that the employer is now offering him a position in South African company. The applicant of this visa is entering the country to transfer skills to the company in South Africa. The applicant will not be able to renew his or her visa.

I. The Retired Person Visa

The applicant of the Retired Person Visa will have to show that net worth determined by the Minister in the gazette from time to time. The government gazette currently states that one must have a net worth from which he or she is able to receive a payment of R37 000 per month for his maintenance. The visa can only be granted for a period of not more than four years. The Applicant must have a net worth of R1 776 000.00.

J. Corporate Visa

This visa is relevant when an organisation considered to be a corporate seeks to employ a specific number of people of skilled/semi – skilled/unskilled workers.

K. Exchange Visa

Exchange visas may be issued to foreigners to foreigners who are older than 25years of age and who wish to participate in cultural, economic or social exchange programmes administered by an organ of State or a public higher educational institution in conjunction with an organ of a foreign state.

It is encouraged that when a person intends to enter the Republic, they educate themselves about the options available for legal status in the South Africa. Should one fail to do so, once he or she is in the Republic, that persons remains at risk of imprisonment and/or deportation.