

## OUTSTANDING DOCUMENTS WHEN LODGING TEMPORARY RESIDENCE APPLICATION

As an applicant there is a prescriptive process to follow in order to satisfy the requirements to successfully acquire the necessary temporary residency application applied for. Many of such residency applications have generic and specific requirements for each category of permit.

The Immigration Regulations often specify the exact documentation that is required and the format and specifications it must adhere to. When lodging the documentation, at the outset, all the necessary founding and supporting documentation must be vetted before it is formally assessed and finalised to eliminate incorrect or deficient applications.

Often, however, and in many instances, an applicant may encounter tremendous logistical and practical difficulties in procuring all the documentation at the time of lodging the application. For instance, in terms of the general or quota work permit categories an applicant's qualifications must be assessed by the South African Qualifications Authority ("SAQA") to assess the foreign qualifications relative to South African standards. This process may take anything from 6 to 18 weeks to finalise.

Moreover, other documentation like a police clearance certificate to confirm the applicant's security status may also take an inordinate amount of time to process since it is a requirement that a police clearance is required for every country that the applicant has resided in for a period of 12 months or more after attaining the age of 18 years of age. Then documents, especially birth certificates, which require re-issue from the country of origin, can also create practical difficulties.

In overcoming some of these obstacles an applicant should consider making use of section 10(5) of the Immigration Act read with Regulations 7(8)(c)(i) which allows the Director-General to grant the applicant a window period of 6 months to finalise outstanding documentation from the time of submitting the application.

The Department has provided guidance as to when it will accommodate outstanding documentation requests. They have determined that any documentation that would not influence the outcome of an application would be permissible to supply within the window period of 6 months.

In practical terms this would mean that a police clearance or birth certificate or other administrative document that has no material bearing on the merits of the application may be dispensed with but "for good cause" as it is not a right and needs to be motivated.

Documentation, however, that is material to the merits of an application like a SAQA document under a work permit application or letter of motivation or CV under an exceptional skills work permit are material to the substance of the skills required for such work permits and hence no waiver would be granted in these circumstances.

It is important to bear in mind that it is generally not expected of an applicant to submit documentation that is already in the possession of the Department which can be retrieved or copied from the records of the Department as set out in Regulation 7(5) of the Immigration Regulations. This instance would be encountered when an applicant wishes to proceed with a change of status from one residence category to another whilst in South Africa and is perfectly permissible.

Often the general documentation is duplicated save for certain specific documents material to the new category being applied for. In this regard standard documentation that has already been submitted like police clearances or medicals that can be retrieved or copied will not be required to be re-submitted and this is useful in maximising processing and administrative efficiencies.

Obviously material information cannot be dispensed with as it goes to the merits of the application similar to the outstanding documentation cases above.