

## SECTION 11 VISITOR'S PERMITS 'WORK AUTHORISATIONS'

There are a number of foreign visitors who have an intention to come to South Africa to undertake activities that are not purely of leisure, which gives rise to a number of uncertainties in terms of the Immigration Act (the "Act") and "work authorisations" in terms of section 11(1) and 11(2).

At the outset it is imperative to appreciate the interface between section 11(1) and 11(2) of the Immigration Act. Section 11(1) of the Act explicitly states that a visitor's permit may be issued for any purpose other than those provided for in section 13 to 24, and subject to subsection (2). This requires that section 11(2) cannot be read in isolation of section 11(1) when it comes to determining "work authorisations".

A visitor's permit is thus issued to a person who does not qualify for any of the temporary residence permits contemplated in the Act and an authorisation to work under section 11(2) should only then be considered when the applicant does not qualify for a work permit in terms of section 19 of the Act.

The Department of Home Affairs has formulated that any "work" or other activities that are undertaken as 'short-term' visits being less than 6 months would typically qualify under a visitor's permit endorsed with a "work authorisation" under section 11(2) on such visitor's permit.

We would advise that when a visitor's permit is applied for, which will only be issued for an initial 3 month period, it is important to disclose the contemplated purpose of activities that will be undertaken but also to clearly indicate that such activities will be 'short-term'. Such permit may then be extended in South Africa for a further period of 3 months allowing such foreigner to conduct 'short-term' "work" of 6 months.

It is advised that this approach is not abused to attempt to enter South Africa with every purpose to work on a 'long-term' basis i.e. over 6 months; otherwise such foreigner should apply for a work permit in terms of section 19 of the Act whilst in South Africa and comply with the 'long-term' requirements.

Typical instances of 'short-term' "work authorisations" are envisaged when an foreign model, journalist, artisan or contractor of sorts, or foreign director of 'local' offices may wish to come to South Africa to perform 'short-term' work and such activity is endorsed in such visitor's permit as a "work authorisation" under section 11(2).

Any longer term arrangement does reflect a greater intent to conduct activities and if the purpose falls within the typical residence permits contemplated in section 13 to 24 then we suggest that you take advices on the most suitable route to follow to ensure that your plans are not disrupted.

Remember specific foreigners who enter South Africa and enjoy visa exempt status and apply for "work authorisation" endorsements under section 11(2) must take cognisance of the fact that their home country may only qualify for a 30 day exemption as opposed to 90 days and would in terms of section 11(1)(b)(i) only qualify for an additional 3 month extension which would reduce their stay and "work authorization" in South Africa to an effective 4 month period and not 6 months.

It is also important to appreciate that under section 11(1)(b)(ii)(aa)-(cc) these are 'long-term' visitor's permits that may be endorsed for up to 3 years if the purpose of their entry and stay pertains to an academic sabbatical, voluntary or charitable activities or research and he or she controls sufficient financial resources during that stay.

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