

White Paper on Immigration released by South Africa's Department of Home Affairs, July 2017

On 28 July 2017 the South African Government has released its anticipated White Paper on Immigration that provides a policy framework for comprehensive review and overhaul of South Africa's immigration system and the introduction of significant changes over the next two years.

Some of the significant statements are:

- If you wish to apply for citizenship based on years in South Africa - do it fast.
- If you wish to set up an own business or are highly skilled - South Africa explicitly wants you.
- If you are a foreign student, studying a critical skills subject, you are welcome and desired to stay.

In the past, the policy of South Africa's international migration was set out in the 1999 White Paper on International Migration, which was implemented through the Immigration Act, 2002 (Act No. 13 of 2002) and partly through the Refugees Act, 1998 (Act No. 130 of 1998).

The Department of Home Affairs has identified this past approach as being largely static and limited to compliance rather than to management of international migration strategically. As a result, there has been a lack of proactive management of international migration and this does not advance the national security and development agenda of the country.

Initially expected at the end of March 2017, but then delayed due to the appointment of a new Minister, the White Paper is now intended to update South Africa's immigration system to a more integrated and intelligence-based approach. It's guiding star is South Africa's Vision 2030 of embracing international migration for development while guarding sovereignty, peace and security. Starting from the entry and departure of foreigners, improving regional integration and especially attract critical skills and foreign investment, it is a clear statement in favour of migration.

The elements of the new policy which only require administrative action can be implemented immediately, other elements requiring legislative steps will take at least one, if not two years.

The main changes for our readers are:

Delinking citizenship from permanent residence

The White Paper clearly suggests that there should be no link between the duration of having permanent residence and the right to apply for citizenship by naturalisation. “The granting of citizenship to foreign nationals should be considered as being exceptional and requiring an executive decision of the Minister”. An advisory panel will be established for citizenship. Skills, investment amount, contribution to South Africa could be criteria to be considered, but number of years in South Africa will carry little weight. There will be an induction and naturalisation ceremony.

Replacing permanent residency with long-term resident visas

The Permanent Residence Permit will be entirely replaced by a long-term residence visa. The reason for this is to dispel a misconception that immigrants have a constitutional right to progress towards citizenship. The big difference between the permanent residence and the new suggested long-term residence visa is that once permanent residence is granted, it can be hardly lost. The long-term visa will be reviewable. It is suggested that long-term visa will be open to relatives, business visa holders as well as critical skills holder.

Management of migrants with skills and capital- introduction of a points-based work permit system

The White Paper surprises with a few clear statements in favour of skilled migration. Firstly, it states that so far South Africa has not been successful to attract enough highly skilled foreigners. Causes for this were identified as the international migration policy which isn't linked to the skills development and investment priorities of the country, the lack of proactivity and flexibility of the permitting regime as well as in the missing inter-sectoral and inter-governmental approach. The main objective of the reform is henceforth a simplified and predictable immigration regime that contributes to the economic growth of the country.

The paper proposes a points-based system combined with critical skills lists or quotas, and recommends a scoring system to be based on factors such as qualifications, work experience, age, amount to invest, type of business and ability and willingness to transfer skills to South Africans.

Another important point is that the recruitment of skilled foreign workers are to be linked to a mechanism that ensures that skills are transferred to South African citizens, either through direct training programs or through a levy on employers. The skills transfer is a very African topic and must be seen in this context. How this will be implemented, will make the difference and can only be assessed after implementation.

Lastly, there is good news for investors who wish to set up their own business in South Africa. The current approach of a minimum investment of 5 million Rand and the recommendation of the DTI is seen as rather inflexible and the paper clearly suggests a more liberal and open approach to entrepreneurs rather than increasing the capital contribution even further. How this rather open statement will be implemented is not indicated.

Resident visas for students

To promote retention of international talent, international students are to be granted resident permits upon graduation from one of the subjects qualifying as critical skills to encourage them to stay in the country and contribute to the economy.

Management of international migration within the African context

The new South African immigration landscape shall be especially aligned to the regional integration of the country in the SADC as well as the African Union. We expect that there will be easier criteria for fellow Africans to obtain work visa or extra points will be given. In addition there is a clear statement to establish visa free travel within Africa during the coming years.

The White Paper is a clear statement in favour of skilled migration as well as regional integration. However, the real challenge will be to draft proper legislation, which reflects the liberal, well informed and open suggestions of this White Paper.

Andreas Krensel

Cape Town, 1 August