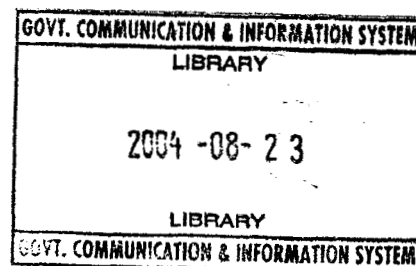


REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
IMMIGRATION AMENDMENT
BILL**

[B 11—2004]

*(As agreed to by the Portfolio Committee on Home Affairs
(National Assembly))*



[B 11A—2004]

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AMENDMENTS AGREED TO

IMMIGRATION AMENDMENT BILL [B 11—2004]

CLAUSE 1

1. On page 3, in line 3, to omit “constantly enriches” and to substitute:
[constantly enriches] and public consultations enrich
2. On page 3, from line 6, to omit paragraph (d) and to substitute:
(d) [the needs and aspirations of the age of globalization are respected and the provisions and the spirit of the General Agreement on Trade in Services is complied with] economic growth is promoted through the employment of needed foreign labour, foreign investment is facilitated, the entry of exceptionally skilled or qualified people is enabled, skilled human resources are increased, academic exchanges within the Southern African Development Community is facilitated and tourism is promoted;
3. On page 3, after line 31, to add:
(n) a human rights based culture of enforcement is promoted;
(o) the international obligations of the Republic are complied with;
and
(p) civil society is educated on the rights of foreigners and refugees.

CLAUSE 2

1. On page 4, in line 17, before “deportation” to insert “deport or”.
2. On page 5, in line 50, after “the” to insert:
status of a person as determined by the relevant
3. On page 5, in line 50, after “residence” to insert “permit”.

CLAUSE 4

1. On page 6, in line 29, to omit “**and review**”.
2. On page 6, in line 32, after “or” to insert “category of officers or an”.
3. On page 6, in line 33, after “employee” to insert:
or category of employees or a person or category of persons
4. On page 6, in line 34, to omit all the words after “delegated” up to and including “power” in line 35.

5. On page 6, in line 40, to omit all the words after "delegated" up to and including "power" in line 41.
6. On page 6, from line 42, to omit subsection (3).

CLAUSE 8

1. On page 8, in line 5, to omit "prohibited persons" and to substitute "illegal foreigners".
2. On page 8, from line 6, to omit "prohibited persons" and to substitute "illegal foreigners".
3. On page 8, in line 16, to omit all the words from "conditions" up to and including "issued" and to substitute:

requirements for the issuing of permits and certificates and the conditions to which such permits or certificates may be subjected,
4. On page 8, from line 19, to omit paragraph (f).
5. On page 8, in line 33, to omit "and".

CLAUSE 9

1. On page 9, in line 11, to omit "**Representations to Director-General**" and to substitute "**Review and appeal procedures**".
2. On page 9, in line 14, to omit "Director-General" and to substitute "Minister".
3. On page 9, in line 18, to omit "Director-General" and to substitute "Minister".
4. On page 9, in line 21, to omit "Director-General" and to substitute "Minister".
5. On page 9, in line 30, to omit "Director-General" and to substitute "Minister".
6. On page 9, after line 31, to add:

(3) Any decision in terms of this Act, other than a decision contemplated in subsection (1), that materially and adversely affects the rights of any person, shall be communicated to that person in the prescribed manner and shall be accompanied by the reasons for that decision.

(4) An applicant aggrieved by a decision contemplated in subsection (3) may, within 10 working days from receipt of the notification contemplated in subsection (3), make an application in the prescribed manner to the Director-General for the review or appeal of that decision.

(5) The Director-General shall consider the application contemplated in subsection (4), whereafter he or she shall either confirm, reverse or modify that decision.

(6) An applicant aggrieved by a decision of the Director-General contemplated in subsection (5) may, within 10 working days of receipt of that decision, make an application in the prescribed manner to the Minister for the review or appeal of that decision.

(7) The Minister shall consider the application contemplated in subsection (6), whereafter he or she shall either confirm, reverse or modify that decision.

CLAUSE 10

1. On page 10, from line 9, to omit subparagraph (ii) and to substitute:
 - (ii) exempted as an individual or falling within a category of persons exempted by the Minister, [as he or she deems fit,] on the recommendation of the Director-General, which exemption may be withdrawn by the [Director-General at any time] Minister; [and]
2. On page 10, in line 16, after "foreigner" to insert:

who is not the holder of a permanent residence permit

CLAUSE 11

1. On page 10, in line 37, to omit " , as prescribed," and to substitute "[, as **prescribed,**]"
2. On page 10, in line 38, after "conditions" to insert "as may be prescribed".
3. On page 11, in line 3, after "Director-General" to insert:

which he or she shall consider before making his or her decision

CLAUSE 12

1. On page 11, from line 10, to omit "12 to 24" and to substitute "13 to 22 and 25 to 27".
2. On page 11, in line 19, to omit all the words after "form" up to and including "11" in line 20.
3. On page 11, in line 23, after "to" to insert:

the holder of a passport, and such statement shall be endorsed in the passport concerned;
4. On page 11, from line 24, to omit subparagraphs (i) and (ii).
5. On page 12, in line 17, to omit "a prohibited person" and to substitute "an illegal foreigner".

CLAUSE 13

1. On page 12, in line 30, after "issued" to insert:

for any purpose other than those provided for in sections 13 to 24, and subject to subsection (2),

2. On page 12, after line 48, to insert:
 - (b) by the substitution for subsection (2) of the following subsection:

“(2) The holder of a visitor’s permit may not conduct work, unless authorised by the Director-General in the prescribed manner and subject to the prescribed requirements and conditions.”;
3. On page 12, after line 53, to add:
 - (e) by the addition of the following subsection:

“(6) Notwithstanding the provisions of this section, a visitor’s permit may be issued to a foreigner who is the spouse of a citizen or permanent resident and who does not qualify for any of the permits contemplated in sections 13 to 22: Provided that—

 - (a) such permit shall only be valid while the good faith spousal relationship exists;
 - (b) on application, the holder of such permit may be authorised to perform any of the activities provided for in the permits contemplated in sections 13 to 22; and
 - (c) the holder of such permit shall apply for permanent residence contemplated in section 26(b) within three months from the date upon which he or she qualifies to be issued with that permit.”.

CLAUSE 15

1. On page 13, in line 5, to omit “Department” and to substitute “[**Department**] Director-General”.

CLAUSE 18

1. On page 14, from line 13, to omit subsection (1) and to substitute:

“(1) The Director-General may, as prescribed, issue a crew permit to a foreigner who is a member of the crew of a conveyance.”.

CLAUSE 21

1. On page 15, in line 6, after “qualifications” to insert “or skills”.
2. On page 15, in line 7, to omit “and”.
3. On page 15, after line 19, to insert:

(b) satisfies the Director-General in the prescribed manner that the terms and conditions under which he or she intends to employ that foreigner, including salary and benefits, are not inferior to those prevailing in the relevant market segment for citizens, taking into account applicable collective bargaining agreements and other applicable standards; and
4. On page 15, in line 20, to omit “[~~(c)~~](b)” and to substitute “(c)”.

5. On page 15, in line 31, after “description” to insert:

: Provided that a general work permit shall remain valid for a period not longer than six months in respect of a holder whose employment contract has been terminated until that holder has exhausted all applicable rights of recourse: Provided further that the period may be extended for further periods of three months at a time on submission of proof to the satisfaction of the Director-General that, due to circumstances beyond the control of the holder, the recourse procedures have not been finalised

CLAUSE 22

1. On page 16, in line 40, to omit “(2)(d)” and to substitute “(2)[(d)](c)”.

CLAUSE 27

1. On page 18, from line 26, to omit paragraph (b) and to substitute:

- (b) [is] has been the spouse of a citizen or permanent resident for five years[, provided that] and the Director-General is satisfied that a good faith spousal relationship exists: Provided that such permit shall lapse if at any time within two years from the issuing of that permit the good faith spousal relationship no longer subsists, save for the case of death
 [(i) **the Department is satisfied that a good faith spousal relationship exists; and**
 (ii) **such permit is issued on condition that it shall lapse if at any time within three years from its application the good faith spousal relationship no longer subsists, save for the case of death];**

CLAUSE 28

1. On page 19, in line 20, after “establish” to insert “or has established”.
2. On page 19, in line 20, after “it” to insert “or in an established business”.

CLAUSE 31

1. On page 20, in line 49, to omit “Director-General may” and to substitute “Minister may, for good cause,”.

CLAUSE 32

1. On page 21, in line 16, to omit “[**rights**] privileges” and to substitute “rights”.
2. On page 21, in line 21, to omit “[**rights**] privileges” and to substitute “rights”.

CLAUSE 34

1. On page 22, from line 2, to omit paragraph (a) and to substitute:

(a) [On the recommendation of the Director-General, the]
The Minister shall appoint the head of the inspectorate.

CLAUSE 36

1. On page 24, after line 14, to add:

(8) A person in charge of a conveyance shall be responsible for the detention and removal of a person conveyed if such person is refused admission in the prescribed manner, as well as for any costs related to such detention and removal incurred by the Department.

CLAUSE 39

1. On page 24, in line 22, to omit "occupier" and to substitute "person in charge".
2. On page 24, in line 29, to omit "occupier" and to substitute "person in charge".

CLAUSE 40

1. On page 25, in line 3, to omit "and" and to substitute:

and shall take reasonable steps, as may be prescribed, to assist the person in verifying his or her identity or status, and thereafter,

CLAUSE 45

1. On page 26, in line 23, after "a" to insert "duly authorised".
2. On page 26, after line 27 to insert:

(c) by the substitution in subsection (11) for the expression "37(10)" of the expression "34(10)";

CLAUSE 47

1. On page 27, in line 38, to omit "22(b)(i)(cc)" and to substitute "22".

CLAUSE 49

1. On page 28, after line 17, to add:

(5) An application for a permit in respect of section 26(b) of the principal Act, submitted prior to the amendment of that section by this Act, shall be dealt with and finalised in terms of that section prior to its amendment by this Act.