

BACKGROUND

SOUTH AFRICA: Significant Immigration Changes on the Horizon

DHA proposes points-based system, national training scheme

March 10, 2017

The South African Department of Home Affairs has announced that it will present a White Paper on immigration to the Cabinet this month that proposes to overhaul South Africa's immigration priorities and usher in significant changes to the country's immigration system.

The White Paper is expected to introduce a points-based system for work permits, new fees on employers who use foreign labor to fund training and education programs for local workers, and heightened workplace inspections and stricter enforcement of companies who hire foreign workers without the proper work authorization.

With high unemployment, sluggish economic recovery and a steady influx of refugees, South Africa has made several indications that it will move to prioritize employment of local workers. Additionally, recent anti-immigration demonstrations have blamed foreigners for loss of jobs, and the Home Affairs Minister has signaled that businesses will be held accountable for illegal working violations.

The White Paper will formalize immigration proposals set out in a June 2016 Green Paper. The proposed changes, how they may take shape and what they mean for employers are summarized in the following table.

Proposed Change	Possible Scenarios	How it Would Affect Employers
<p>Introduction of a points based system for work permits and other business-based immigration applications.</p>	<p>A points-based system, sometimes combined with a critical skills list or a quota system, is used in countries such as Canada, Australia and the UK. The advantage of a points-based system is that it is transparent and can be used strategically by governments in response to changing labor market situations and needs. The disadvantage is that such systems are inflexible in dealing with candidates who do not meet pre-set criteria.</p>	<p>Best case scenario => Such a system could result in a more transparent immigration system with work permit category criteria that are easily met.</p> <p>Worst case scenario => The system could mean the loss of current long-term and short-term work permit categories that have been integrated into corporate assignment policies. Further, the introduction of any quota system would limit the employment of foreign workers.</p>
<p>Establishment of a national training scheme, to be funded by South African employers of foreign nationals, such that skills gaps in the domestic labor market are closed over time.</p>	<p>The recruitment of skilled migrants would be linked to a mechanism that ensures the direct or indirect transfer of skills to citizens. Where skills are not easily transferable, a training scheme could be established where employers of foreign nationals are required to contribute funds that would be used to train South Africans in the required skills.</p>	<p>Best case scenario => The skills gaps in the domestic labor market will be closed over time, diminishing the need to finance recruitment of foreign nationals.</p> <p>Worst case scenario => Employers of foreign nationals will be required to fund the training of citizens directly or via a levy. Companies would therefore be responsible for paying an additional charge to recruit migrants with critical skills and, depending on the amount of the levy, could significantly increase costs.</p>
<p>Introduction of a new work visa specifically for nationals of the Southern African Development Community.</p>	<p>A long-term work visa for skilled workers from the continent with priority being given to nationals from neighboring countries. This visa could accommodate those nationals whose skills are not included in the critical skills list. It could be argued that South Africa should in general favor workers from the SADC region before considering whether to grant a visa to a worker from other regions and continents.</p>	<p>Best case scenario => This could result in a fairer process whereby nationals of neighboring countries whose skills are not included in the critical skills list will qualify for a new long-term work visa.</p> <p>Worst case scenario => Employers may be required to conduct a resident labor market test to prove that they have given priority to nationals from neighboring countries. This would increase the overall timing of the visa application process as employers may have to advertise roles for a period of time before offering the role to a migrant worker outside a neighboring country.</p>
<p>Removing the current link between South African permanent residency and citizenship.</p>	<p>A foreign national can currently be eligible for South African citizenship on the basis of permanent resident status alone. The White Paper is expected to propose that citizenship be granted only on an exceptional basis, e.g. to foreign nationals who meet skills and/or investment and/or family-based criteria.</p>	<p>Best case scenario => Foreign nationals may become eligible for South African citizenship without needing to first secure permanent residency, which can itself take multiple years to obtain .</p> <p>Worst case scenario => The delinking of permanent residency from citizenship eligibility introduces a subjective qualifying criteria to the citizenship application processing skilled migrants to live and work in South Africa.</p>

BACKGROUNDER

<p>Removal of the automatic right of asylum seekers to work and study in South Africa.</p>	<p>Asylum seekers would not have the automatic right to work or study in South Africa since their basic needs will be catered for by new processing centers. However, asylum seekers may be granted such rights in clearly defined or exceptional circumstances.</p>	<p>Best case scenario => Asylum applicants will have a faster outcome to their applications and have a more secure and defined status while waiting for the outcome.</p> <p>Worst case scenario => The policy could potentially alienate a large proportion of legitimate asylum seekers. Further, as it is estimated that 10 percent of the South African labor market is made up of asylum seekers, the removal of the automatic right of asylum seekers to work in South Africa may significantly reduce the availability of skilled or non-skilled labor to employers.</p>
<p>Integration of customs and immigration into a new Border Management Authority.</p>	<p>A BMA establishment could create an operational balance between security, trade facilitation, tourism promotion and socio-economic development both within SA and the SADC region.</p>	<p>Best case scenario => The change could produce an integrated border control, with officials having a strong common identity while thoroughly carrying out the mandates of their particular area, e.g. health or customs.</p> <p>Worst case scenario => The authority, initially, may not be equipped with the necessary skills and knowledge in law enforcement, and the core functions of the various departments to ensure the efficient delivery of secure services.</p>

Timeline

The Department of Home Affairs has confirmed that it will present its proposals to the Cabinet by the end of March 2017. It is expected that the Cabinet will introduce amendments to the proposals, but that those amendments will be minor in nature.

Once the South African Cabinet has approved the proposals, the Department of Home Affairs will publish the White Paper for further public comment and, soon after, introduce new immigration legislation to the South African Parliament for debate and endorsement. It is expected that the new legislation will pass parliamentary scrutiny by the end of 2017.

Over and above the legislative process, the Department of Home Affairs has already committed to the launch of the new Border Management Authority by mid-2017 and, as such, the integration of customs and immigration into a single governmental agency.

BAL Analysis

The policy objectives and proposed changes have potentially far-reaching implications for South African employers and international companies that rely on foreign talent. Companies should anticipate significant changes to the country's immigration regime in the coming year. BAL is following the progress of these proposals and will release in-depth analysis of the White Paper as soon as it is published. BAL will continue to leverage its extensive experience in government advocacy to provide the Department of Home Affairs with international comparative analysis that will assist in the development of national policy. BAL will also be working closely with our clients to submit comments and recommendations that advocate policies favorable to foreign direct investment.