
GOVERNMENT NOTICE

DEPARTMENT OF HOME AFFAIRS

No. R. 413

22 May 2014

IMMIGRATION ACT, 2002 IMMIGRATION REGULATIONS

The Minister of Home Affairs has, in terms of section 7 of the Immigration Act, 2002 (Act No. 13 of 2002), after consultation with the Immigration Advisory Board, made the Regulations in the Schedule.

SCHEDULE

Definitions

1. In these Regulations, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and, unless the context otherwise indicates—

“**biometrics**” means fingerprints and a photograph;

“**learning institution**” means—

- (a) an institution of higher education established in terms of the Higher Education Act, 1997 (Act No. 101 of 1997); or
- (b) a college established in terms of the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006), but does not include—
 - (i) a school offering further education and training programmes under the South African Schools Act, 1996 (Act No. 84 of 1996); or
 - (ii) a college under the authority of a government department other than the Department of Higher Education and Training; or
- (c) a school contemplated in section 1 of the South African Schools Act, 1996 (Act No. 84 of 1996);

refer that person to the port health officer and after consultation with that officer determine his or her admissibility.

(3) Where a port health officer is not present at a port of entry, a person contemplated in subregulation (2) shall be refused admission, unless a registered medical practitioner certifies that such person is not infected with a disease contemplated in subregulation (1).

(4) If a prohibited person contemplated in section 29(1)(c) of the Act—

(a) has deposed to an affidavit illustrating to the satisfaction of the Director-General that he or she shall comply with the provisions of the Act;

(b) has been absent from the Republic for a minimum period of four years; and

(c) has provided a police clearance certificate,

the Director-General may rehabilitate that person by granting him or her a status after having considered his or her application for a status.

(5) A person rehabilitated as contemplated in subregulation (4) shall not be exempt from the requirements of a port of entry visa.

(6) The Director-General shall, in declaring a person not to be a prohibited person, consider the following factors:

(a) the reasons for the prohibition;

(b) the seriousness of the offence committed; and

(c) representations made by the prohibited person, which should include a police clearance certificate.

(7) The Director-General shall, upon making a decision as contemplated in section 29(2) of the Act, provide written reasons for such decision.

Undesirable persons

27.(1) For the purposes of subregulation (3), a time is calculated as days during a year for which the period of overstay is calculated from the date of expiry of the last valid visa.

(2) The Director-General may declare a foreigner who falls within a category listed in section 30(1) of the Act as undesirable on Part A of Form 19 illustrated in Annexure A.

(3) A person who overstays after the expiry of his or her visa, as contemplated in section 30(1)(h) of the Act, may—

(a) in the case of a person who overstays for a period not exceeding 30 days, be declared undesirable for a period of 12 months;

(b) in the case of a person who overstays for the second time within a period of 24 months, be declared undesirable for a period of two years; and

- (c) in the case of a person who overstays for more than 30 days, be declared undesirable for a period of five years.

Exemption

28. An application contemplated in section 31(2)(b) of the Act shall be made to the Minister on Form 47 illustrated in Annexure A, supported by reasons for the application.

Waiver of prescribed requirements

29. An application contemplated in section 31(2)(c) of the Act shall be made to the Minister on Form 48 illustrated in Annexure A, supported by reasons for the application.

Illegal foreigners

30.(1) Upon requesting authorisation as contemplated in section 32(1) of the Act, an illegal foreigner who has neither been arrested for the purpose of deportation nor been ordered to depart and who wishes to apply for status after the date of expiry of his or her visa, shall—

- (a) demonstrate, in writing, to the satisfaction of the Director-General that he or she was unable to apply for such status for reasons beyond his or her control; and
- (b) submit proof to the Director-General that he or she is in a position to immediately submit his or her application for status.

(2) Authorisation to remain in the Republic as contemplated in section 32(1) of the Act shall be granted on Form 20 illustrated in Annexure A.

(3) As soon as the final decision in respect of the application for status has been made, the authorisation contemplated in subregulation (2) shall lapse.

(4) An illegal foreigner who has satisfied an immigration officer that he or she will depart from the Republic as required by section 32(1) of the Act, shall be ordered by that immigration officer on Form 21 illustrated in Annexure A to depart from the Republic within a period of 14 days of having so been ordered: Provided that such period may, for good cause, be extended.

Immigration Officers

31. (1) In appointing immigration officers, the Director-General may from time to time designate any immigration official as an official tasked with permitting, ports of entry or Inspectorate functions, as the case may be, and issue an appropriate appointment certificate.

(2) The Director-General may, for good cause, withdraw an appointment contemplated in subregulation (1).