

4 October 2019

Mr Thulani Mavuso
Acting Director General: Department of Home Affairs
230 Johannes Ramokhoase Street,
Hallmark building,
Pretoria

Email: c/o: phindiwe.mbhele@dha.gov.za;

Dear Mr Mavuso

REQUEST FOR WAIVER OF CERTIFICATE BY DEPARTMENT OF EMPLOYMENT AND LABOUR REGARDING THE EMPLOYMENT OF FOREIGN NATIONALS IN THE MINING INDUSTRY

The Minerals Council is an industry body representing over 70 members who collectively produce about 90% of South Africa's mineral value. The Minerals Council's members currently employ about 45,482 foreign mine workers from Lesotho, Mozambique, Swaziland and Botswana.

The Minerals Council is approaching the Department of Home Affairs (DHA) for assistance in addressing the challenges that its members have been experiencing when they apply for corporate visas. The applications for corporate visas are delayed and/or declined on the basis of non-compliance with Regulation 20(1)(b) read with section 21(2)(d) of the Immigration Act.

One of the steps in the process for obtaining a new Corporate Visa or for the renewal of a Corporate Visa when it expires after three years, is to obtain a certificate (the DoEL Certificate) from the Department of Employment and Labour (DoEL) to the effect that the employer is unable to find suitable citizens or permanent residents to occupy the positions in question.

The Employment Services Act empowers the Minister of Employment and Labour to make regulations which include the requirement that employers must obtain a certificate from the DoEL that there are no other persons in the Republic with suitable skills to fill a vacancy, before recruiting a foreign national. The Minister of Employment and Labour has, to our knowledge, not published regulations in terms of the Employment Services Act. However, the requirements in Regulation 20(1)(b) are similar to those in section 8(2)(a) of the Employment Services Act.

Furthermore, it appears that the DHA places heavy reliance on the DoEL Certificate when assessing whether the requirements of the Immigration Act and its Regulations have been met in order to issue a corporate visa.

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The Minerals Council's members are no longer recruiting new foreign mineworkers. Accordingly, our members' corporate visa applications are aimed at facilitating the continued employment of currently employed foreign mineworkers.

It is our understanding that Regulation 20(1)(b), section 21(2)(d) of the Immigration Act and section 8(2) of the Employment Services Act are intended to address applications in respect of which new foreign nationals are being recruited. This is evident from the wording used in the Regulations and relevant sections. Accordingly, they are not intended to apply in cases where there is continuing employment, as is the case with the applications submitted by members of the Minerals Council.

The number of foreign mineworkers has been declining due to, amongst other things, natural attrition. Further, as indicated above, members are no longer recruiting foreign mineworkers. Therefore, there are no efforts to increase the number of foreign mineworkers.

The number of foreign mineworkers working on South African mines has reduced quite considerably over the last 19 years as follows:

- 107868 mine workers in 2000
- 85861 mine workers in 2009
- 45482 mine workers in 2019

In the circumstances, the Minerals Council requests the DHA to grant a waiver of the DoEL Certificate for employers who are no longer hiring new foreign employees, but are only continuing with the current employees when they apply for new corporate visas.

Yours sincerely



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