

Immigration Insights

by CDH Employment Law

ALERT

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INCORPORATING
KIETI LAW LLP, KENYA

IN THIS ISSUE

Welcome announcement for foreign nationals in possession of a Zimbabwean or Lesotho Exemption Permit

On 1 December 2023, Dr Aaron Motsoaledi, the Minister of Home Affairs (Minister), announced his decision to grant an exemption to Zimbabwean and Lesotho foreign nationals who are in possession of either a Zimbabwean Exemption Permit (ZEP) or Lesotho Exemption Permit (LEP). This exemption has been granted in terms of section 31(2)(b) of the Immigration Act 13 of 2002 (Act) which empowers the Minister to grant *inter alia* a category of foreigners the rights of permanent residence for a specified, or unspecified period, upon the existence of special circumstances which would justify such decision.



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INSIGHT INTO
OUR EXPERTISE
AND SERVICES

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On 1 December 2023, Dr Aaron Motsoaledi, the Minister of Home Affairs (Minister), announced his decision to grant an exemption to Zimbabwean and Lesotho foreign nationals who are in possession of either a Zimbabwean Exemption Permit (ZEP) or Lesotho Exemption Permit (LEP). This exemption has been granted in terms of section 31(2)(b) of the Immigration Act 13 of 2002 (Act) which empowers the Minister to grant *inter alia* a category of foreigners the rights of permanent residence for a specified, or unspecified period, upon the existence of special circumstances which would justify such decision.

In granting this exemption to ZEP and LEP holders, the Minister considered *inter alia* the following special circumstances:

- The pending expiry of LEPs on 31 December 2023; and ZEPs on 28 June 2024.
 - The pending appeal by the Minister in relation to the litigation launched by the Helen Suzman Foundation and others. The Minister has brought an application for leave to appeal to the Supreme Court of Appeal against the High Court's finding that his decision not to extend ZEPs after their expiry on 31 December 2021 was unlawful, invalid and unconstitutional.
 - The Department of Home Affairs' ongoing budgetary constraints.
 - The current employment, studies and businesses of LEP and ZEP holders in South Africa.
 - The need to avoid unfair and differential treatment of the same category of foreigners in similar circumstances.
- In accordance with the Minister's announcement, the affected Zimbabwean and Lesotho nationals will be entitled to apply for new exemption permits under the following terms and conditions:
- Only holders of the existing LEP and ZEP due to expire on 31 December 2023 or 28 June 2024, respectively, will be entitled to apply for a new exemption permit.
 - The new exemption permits will be issued with an expiry date of 29 November 2025, and these permits will not be renewable.
 - They will be entitled to sojourn, work, seek employment and conduct business in South Africa during the validity of their exemption permits.
 - They will not be entitled to apply for permanent residence in terms of sections 25, 26 and 27 of the Act or any other provisions in any other law, irrespective of the period of stay in South Africa.
 - They will be allowed freedom of movement between Lesotho and South Africa, Zimbabwe and South Africa, or any other country.



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- They are not allowed to change their status in South Africa as contemplated in section 10(6) of the Act during the validity of their permit.
- When applying for a new exemption permit, they must disclose and/or register all of their minor children born and residing in South Africa.

Applications for the new exemption permits must be submitted through VFS Global, which has been instructed to fast track the application process for new exemption permits. In order to do this, a dedicated team will be put together in order to deal with these applications.

Coupled with the above decision, the Minister also extended the validity of the current ZEPs and LEPs for an additional period of 12 months i.e. from 29 November 2023 to 29 November 2024, which decision was gazetted on 4 December 2023. The purpose of this extension is to allow holders of a ZEP or LEP an opportunity to apply for the new exemption permit and to give effect to the Minister's decision.

During this 12-month period:

- No LEP or ZEP holder may be arrested, ordered to depart or be detained for purposes of deportation for any reason relating to them not having a valid exemption permit in their passport.
- No LEP or ZEP holder can be dealt with in terms of sections 29, 30 and 32 of the Act, which deal with prohibited persons, undesirable persons and illegal foreigners.
- LEP and ZEP holders are allowed to enter or leave South Africa provided that they comply with all other requirements, except for not having an expired permit in their passport.
- No LEP or ZEP holder should be required to produce a valid exemption permit or an authorisation letter to remain in South Africa when applying for a new exemption permit.

All ZEP and LEP holders are accordingly allowed to continue working and residing in South Africa until at least 29 November 2024,

unless they obtain new exemption permits which will allow them to reside and work in South Africa as if they were permanent residents until 29 November 2025.

In addition to the above, the Minister announced that approximately 78,126 ZEP holders who applied for waivers and 10,427 ZEP holders who applied for alternative visas, will be afforded certain other protections while they await the outcome of their waiver and visa applications. These ZEP holders are therefore not required to apply for new exemption permits as the validity of their current ZEPs have been extended pending the outcome of their application for legal status in South Africa.

Employers should encourage all ZEP and LEP holders in their employ to apply for new exemption permits timeously, unless they fall within the category of ZEP holders who will be granted other protections.

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OUR TEAM

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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