

Immigration Insights

by CDH Employment Law

ALERT

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Deadline for holders of Zimbabwean Exemption Permits has been extended until 31 December 2023

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The objectives of the DZP were to provide Zimbabwean nationals who were in possession of fraudulently obtained immigration documents with amnesty, and to curb their deportation. The DZP expired after a period of five years on 31 December 2014 and was replaced by the Zimbabwean Special Dispensation Permit (ZSP). The ZSP was valid for a period of three years, until it expired on 31 December 2017.

The ZSP was replaced by the current ZEP, which was set to expire on 31 December 2021. Prior to this expiry date, a directive was issued by the Director-General of the Department of Home Affairs (DHA) on 29 November 2021 confirming Cabinet's decision that no further extensions would be granted to Zimbabwean nationals who are holders of a ZEP after 31 December 2021. This decision was set to affect approximately 180,000 Zimbabwean nationals.

Coupled with the above announcement, ZEP holders were granted a grace period of 12 months (i.e. until 31 December 2022) to obtain alternative visas through the mechanisms provided for in the Immigration Act 13 of 2002 (Act) and to legalise their status in South Africa after this date. During this grace period:

- No ZEP holder was required to produce a valid exemption certificate or a letter of authorisation to remain in South Africa when applying for any category of visa.
- No ZEP holder could be arrested, ordered to depart South Africa, or deported for any reason relating to the ZEP holder not being in possession of a valid exemption certificate in their passport.
- All ZEP holders were allowed to enter and depart from South Africa subject to meeting the requisite requirements in terms of the Act.



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Challenges to the Minister's decision

The surprising announcement by Cabinet not to extend the ZEPs after 31 December 2021 gave rise to numerous applications being instituted against the Minister of Home Affairs (Minister) and others by various interested parties and non-governmental organisations, which were argued before the Pretoria High Court at the beginning of April 2023. The main challenges to the Minister's decision were based on, amongst other things:

1. The decision having been made without consulting the South African public or ZEP holders, which deprived all of the protection afforded to them in terms of the Constitution of the Republic of South Africa, 1996. The Minister could therefore not have been aware of the impact of his decision on ZEP holders who have not only built their lives in South Africa, but also contribute so much to the South African economy, prior to terminating the ZEPs. This was argued to have rendered the Minister's decision unlawful.

2. The devastating effect the abrupt termination of the ZEPs would have on the ZEP holders and the best interests of their children. The crux of this argument was that the Minister unjustifiably limited the constitutional rights of ZEP holders – as well as their children, which include the rights to dignity and basic education.

The judgment in this litigation is expected to be handed down by the end of June 2023. If the Minister's decision is upheld, ZEP holders who have not obtained alternative visas – as well as their families – will have to disrupt the only lives they have ever known in order to leave South Africa.

Additional extensions

During the course of the above litigation, and despite an initial grace period of 12 months being granted to ZEP holders until 31 December 2022, the following additional extensions have been granted by the DHA:

- on 2 September 2022, a six-month grace period was granted until 30 June 2023; and



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- on 7 June 2023, an additional six-month grace period was granted from 30 June 2023 until 31 December 2023. The latest extension confirmed, amongst other things, that no ZEP holder may be arrested, ordered to depart from South Africa until 31 December 2023, or required to produce a valid exemption certificate or a letter authorising them to remain in South Africa.

Further to the directive of 7 June 2023, the DHA released a press statement in which the Minister's reasons for extending the validity of the exemption permit were explained. In summary, the Minister

has indicated that due to the significant increase in the number of visa and waiver applications that have been recently submitted, as well as the submissions received from interested parties, including affected Zimbabwean nationals and relevant officials of the DHA, the decision was taken to extend the validity of the permits until 31 December 2023.

ZEP holders will undoubtedly welcome the additional six-month extension of their permits.

Despite the latest extension, ZEP holders are encouraged to treat this extension as being the last one to be granted by the DHA (unless the Minister's decision is overturned)

and to make every effort to submit either a waiver or visa application as soon as possible. Employers are also encouraged to provide any ZEP holders within their employ with as much assistance as possible to apply for alternative work visas to ensure that they can continue to reside and work in South Africa after 31 December 2023.

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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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