



IMMIGRATION INSIGHTS: A LEGAL GUIDE





Service offering



Training on various aspects of immigration legislation and best practice in the workplace



Instituting legal proceedings challenging decisions of the Department of Home Affairs and representing parties in court process relating to immigration matters



Identifying appropriate work visas and assisting with visa and waiver applications



Verifying validity of work visas



Conducting and assisting with internal audits to ensure compliance with the Immigration Act 13 of 2002



Appeals:

- Undesirable and prohibited status
- Rejection of visa applications



Misconduct and incapacity processes in the workplace arising from fraudulent or expired work visas



Providing legal advice on immigration related matters



Work Visas authorising foreigners to work in South Africa:



General Work Visa



Section 11(2): Visitor's Visa with Authorisation to Work



Critical Skills Work Visa



Study Visa



Intra-company Transfer Visa



Remote Working Visa



Spousal Visa with Authorisation to Work



Business Visas

General Work Visa

Assessment = Points based system (a foreign national's age, qualifications, language skills, work experience, offer of employment and salary).



Valid job offer required



Valid for up to five years – renewable

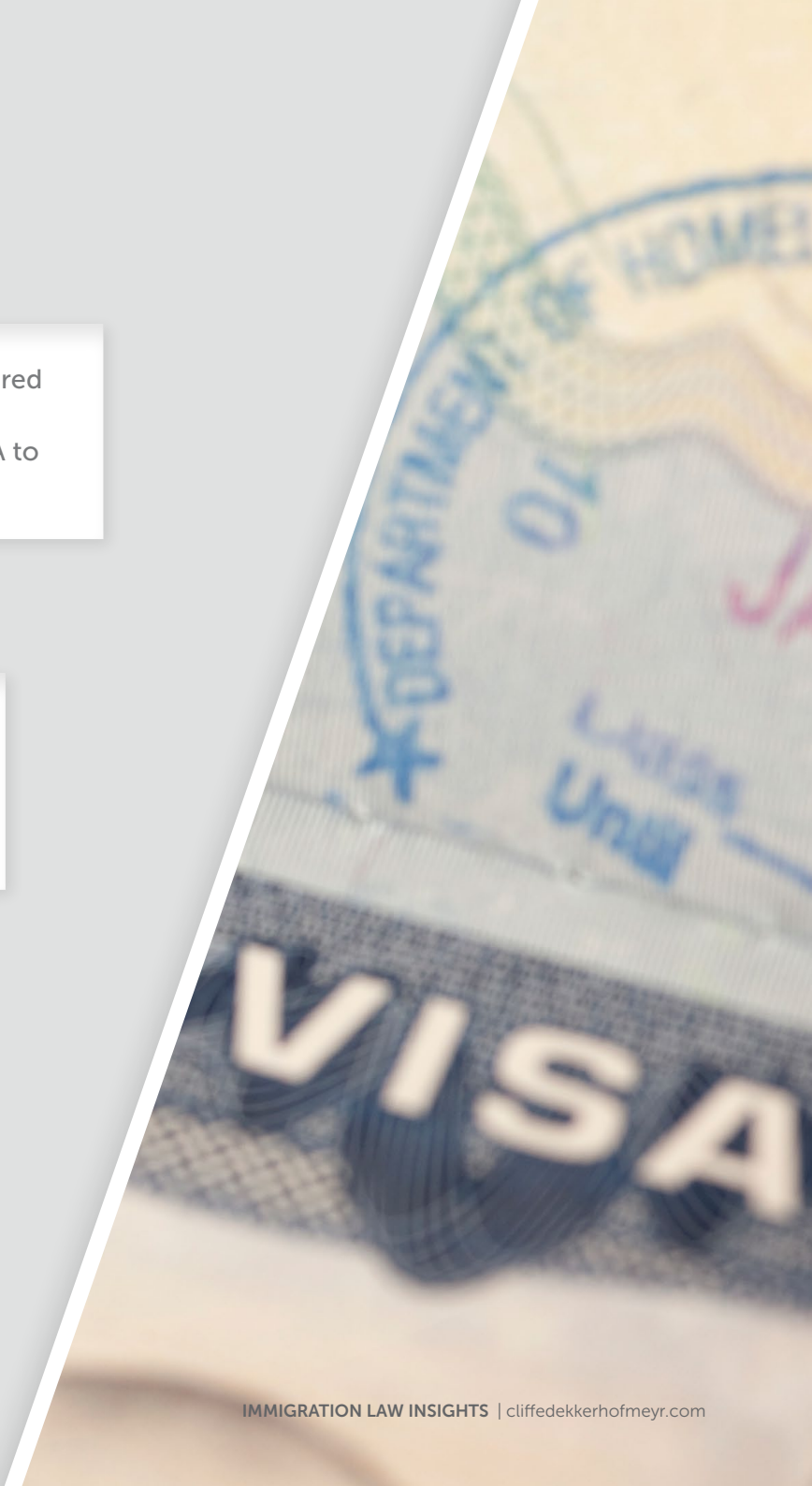
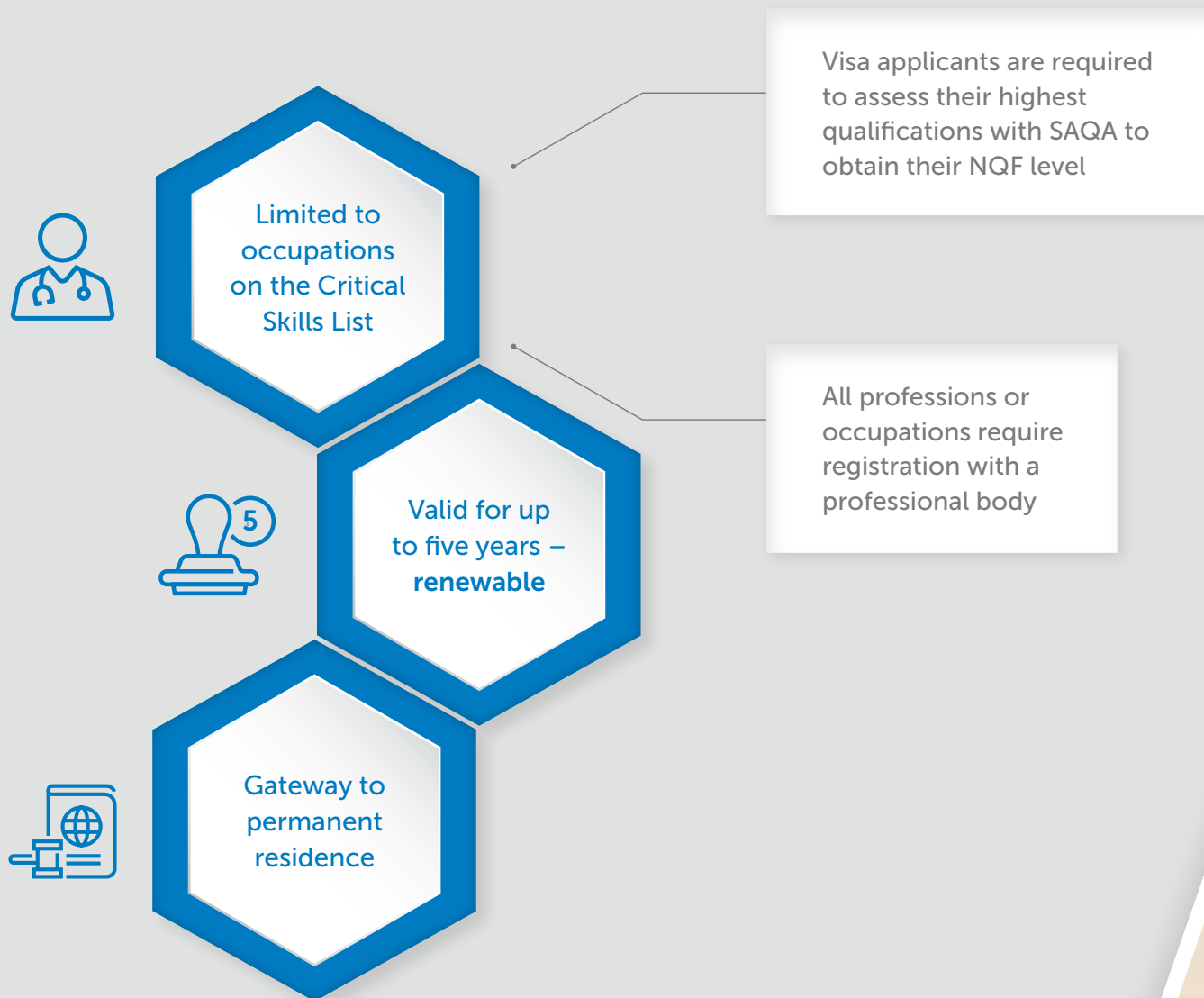


Employer specific



Gateway to permanent residence

Critical Skills Visa



Additional VISA Categories

Intra-company Transfer Visa

Transfer from foreign company to South African branch, subsidiary, or affiliate.



Skills transfer plan and identification of skills beneficiary are requirements for visa application



Valid for four years – non renewable

Spousal Visa

- Issued to spouse of South African citizen or permanent resident
 - “Spouse” = a person who is party to a marriage, customary union or permanent homosexual or heterosexual relationship.
- Only valid while the spousal relationship exists
- May be authorised to perform work or conduct a business (upon application)
- Obtain permanent residence in South Africa

Visitor's Visa

- May obtain authorisation to work
- Generally valid for three months – renewable for an additional three months
- May be issued for three years (if the applicant has sufficient financial means) and only if the applicant is engaged in:
 - An academic sabbatical
 - Voluntary or charitable activities
 - Research
 - Any other prescribed activities

Other Working Visas

Study Visa

- Enrolled in a higher education institution i.e. university
- Part-time employment – limited to 20 hours per week

Remote Working Visa (Nomad Visa)

- Employed by foreign employer
- Gross income of no less than R650,796.00 a year
- Registration with the South Africa Revenue Service may be required

PASSPORT
PASSEPORT



Permits


Permits authorising foreigners to work in South Africa:

- Asylum Seeker Permit
- Refugee Permit
- Zimbabwean Exemption Permit
- Lesotho Exemption Permit



Waiver application

- Standalone application process
- Used when applicants seek to waive a prescribed requirement of a mainstream visa
- Often used as the first step to applying for General Work Visa



Undesirable persons

- Section 30 of the Immigration Act
- Any person who *inter alia*:
 - is identified as an undesirable person by the Minister of Home Affairs (Minister);
 - has overstayed in South Africa;
 - is a fugitive from justice; and
 - has criminal convictions without the option of a fine.
- If declared an undesirable person, the foreign national will not qualify for a port of entry visa, admission into South Africa or permanent residence permit
- Prohibited from returning to South Africa for between 12 months and 5 years
- The Minister may, on good cause shown, remove an undesirable status upon application



Prohibited persons

- Section 29 of the Immigration Act
- Any person who *inter alia*:
 - is in possession of a fraudulent visa, passport, permanent residence permit or identification document;
 - is a member of a terrorist organisation;
 - was previously deported by the Director-General of Home Affairs and not rehabilitated.
- Do not qualify for a port of entry visa, admission into South Africa or permanent residence
- Indefinite prohibition
- The Minister may, on good cause shown, remove prohibited status upon application



Thinking of working in South Africa?

Here is what you need to know about work visas.

What liability, if any, would an employer incur where an employee is found to be in possession of a fraudulent permit?

Section 30 of the Immigration Act 13 of 2002 (Act) prohibits employers from employing amongst others illegal foreigners. Section 49 of the Act contains different offences for contravening the Act. In terms of section 49, an employer may be liable for the payment of a fine or imprisonment upon conviction.

Are the family members of a person who is in possession of a work visa eligible to apply for a visa? Will this visa make the family members also eligible to work in the host country?

As a general rule, family members of a person who is in possession of a valid work visa will not be eligible to apply for the same work visa. However, the family members can apply for a different visa, provided that they meet the requirements for the visa that they have applied for.

Can a person hold multiple visas simultaneously?

As a general rule, applicants may not simultaneously be in possession of multiple work visas. It is, however, possible to apply for permanent residence based on certain work visas (General Work Visa, Critical Skills Visa and Spousal Visa).

When will a temporary visa holder be eligible for permanent residence?

In terms of section 26 of the Act, the Director-General may issue a permanent residence permit to a temporary visa holder if they have been the holder of a general work visa for five years and have received a permanent offer of employment; if they have been the spouse of a citizen or permanent resident for five years; or if they are the offspring of a citizen or permanent resident, and under the age of 21.

Do holders of work visas enjoy protection under South African labour law?

Holders of work visas will benefit from the protection of South African labour law, provided that they fall within the definition of an employee, as defined in the Labour Relations Act 66 of 1995.

How long does it take to obtain a work visa/permit?

As these applications are assessed on an individual basis, their processing times may vary. As a guideline, the process however, takes between two to three months, depending on the visa adjudicator.

In the event that a work visa is denied, can one appeal that decision?

Yes. An aggrieved person may make an application, in the prescribed manner, to the Director-General within 10 working days from receipt of the decision that their visa has been denied.

What is the government fee for obtaining a work visa?

There is no fixed amount. This depends on the type of visa the individual is applying for. There is a fee with the Visa Facilitation Services and an additional fee with the DHA.

Are there exceptions for work permits for nationals of certain countries?

Yes. Country specific exemptions include the Zimbabwean or Lesotho Exemption Permit which authorises foreign nationals from Lesotho and Zimbabwe to work in South Africa.

What are the consequences of possessing a fraudulent visa?

In terms of the Act, individuals found in possession of fraudulent visas may be declared to be prohibited persons and accordingly will be banned from entering South Africa and placed on the V-list or No Entry lists.

MARKET RECOGNITION

Our Employment Law team is externally praised for its depth of resources, capabilities and experience.

Chambers Global 2025 ranked our Employment Law practice in Band 1 for employment and from 2014–2024 in Band 2. *The Legal 500 EMEA 2020–2025* recommended the South African practice in Tier 1. *The Legal 500 EMEA 2023–2025* recommended the Kenyan practice in Tier 3 for employment.

The way we support and interact with our clients attracts significant external recognition.

Sammy Ndolo is the Kenya Managing Partner. *Chambers Global 2025* ranked Sammy Ndolo in Band 3 for Fintech. *Chambers Global 2021–2025* ranked Sammy in Band 4 for corporate/M&A. *Chambers Global 2025* ranked him in Band 3 for banking & finance and in Band 4 from 2023–2024. *The Legal 500 EMEA 2024–2025* recommended Sammy as a 'Leading Individual' for banking, finance & capital markets. *The Legal 500 EMEA 2022–2023* recommended him for banking, finance & capital markets. *The Legal 500 EMEA 2023–2025* also recommended Sammy for corporate, commercial/M&A. *IFLR1000 2021–2024* ranked him as a 'Notable Practitioner'.

Chambers Global 2025 ranked **Alex Kanyi** as an 'Up & Coming' tax lawyer. *The 2025 ITR World Tax release* ranked him as 'Highly Regarded' in general corporate tax and tax controversy in Kenya.

Chambers Global 2021–2025 ranked **Imraan Mahomed** in Band 2 for employment and in Band 3 from 2014–2020. *The Legal 500 EMEA 2020–2025* recommended him for employment.



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.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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