

# Draft bill won't fix home affairs problems'

**LEON ISAACSON**

ALTHOUGH some of the changes in the new immigration bill (B32-2010), introduced to Parliament on October 1, have been expected for some time, the Forum of Immigration Practitioners South Africa (Fipsa) believes the proposed legislation would be impractical, would violate the constitution, and could destroy 20 000 jobs in the immigration sector.

The bill is the Department of Home Affairs' first attempt to deal with problems related to work, study, business and retirement permits. However, it does not take into account the huge capacity problems and backlogs, and addresses only the basic functions of the permitting system.

The permitting department has had a number of serious operational problems this year, resulting from poor policy and operational decision-making. Its decisions on some individual and group applications have led to court action – such as that recently taken by cross-border truck drivers. Home affairs has lost every case.

The department has a nine-month backlog of normal work permit applications which, by law, should be handled within 30 days. Threats of further court challenges seem to have spurred the department into action. And after recently creating and filling new staff posts, it is now promising the whole backlog will be cleared within weeks.

One of the changes in the bill is that Section 46 has been omitted.



**OUT IN THE COLD:** People wait outside Joburg's home affairs office to apply for work permits and have their papers processed. A proposed immigration bill could destroy 20 000 jobs, says lawyer Leon Isaacson.

This section defines which professions may legally assist applicants – namely, registered practitioners, advocates and attorneys. Omitting this part would have serious consequences, should the draft bill be passed, as the applicant's right to representation in immigration matters – a right entrenched in the constitution – would be removed.

The related advisory professions would also lose their recognition and right to do business in this field, and 20 000 jobs would be lost. The omission would result in an unregulated industry in which anyone would be able to advise applicants, causing further problems in a sector that home affairs has failed to regulate properly, and in which it

has not lived up to its legal responsibilities.

The bill also requires that all permit applications should be submitted in person at a home affairs office or an embassy overseas, although couriered applications have been acceptable in the past. Although some South African embassies offer a competent and efficient service, most do not have staff who understand the permitting process, and the service is poor.

Serious problems have been caused by home affairs counter staff, and sometimes more senior staff, misdividing applicants on the types of permits available, the requirements for each, and the options available once they have a

particular permit. Some permits, for example, impact on a future permanent residence application.

Many home affairs offices in South Africa are dirty and overcrowded, and asking anyone to queue at these centres would be a sure way of discouraging them from coming to the country.

In addition, the draft bill seeks to prescribe the investment categories for which business visas may be issued. Home affairs from time to time publishes regulations deemed "in the national interest", relating to this. However, it regularly misses the deadlines for the publication of these gazetted lists, and its consultation with other departments to establish the lists of ten seen fraught with problems, resulting in the lists either being late or incomplete, or both.

Another proposal is to replace the existing exceptional skills permit with a critical skills permit. Meeting the requirements for this may present difficulties, as a critical skill – unlike an exceptional skill – is not regarded, in normal terminology, as a stand-alone skill or qualification. It is a set of skills identified by human resource and labour analysts as being over and above the normal qualifications, which provides the individual with the ability to analyse, lead teams, and work with new technologies.

This proposed amendment is perhaps intended to address the skills shortages, which should be met through a more efficient quota system. The current quota list, which should have been published

in May 2010, is not yet available.

The process to change the status and conditions of a permit – for example, to extend it or to change from a study permit to a work permit – is well-established. The draft bill proposes escalating this process to ministerial level.

Fipsa believes that loading such operational matters on to the minister's office is likely to lead to further problems such as longer delays or court cases being brought against home affairs by applicants who believe their applications have been prejudiced during processing.

Intra-company and corporate work permits would be subject to a prescribed list of requirements not yet made public. The department would require new and different resources to implement this proposal.

The draft bill assumes too much in respect of the proposed changes, while on the other hand, it does not go far enough – with no provision for unhappy applicants to be heard by an outside, objective party, such as a court or judicially-trained ombudsman. Having recourse to an outside party or structure would restore confidence in South Africa in investors and skilled individuals, who would feel they were coming to a country that welcomed them and took the trouble to put an efficient permitting department in place.

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