



home affairs

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Home Affairs
REPUBLIC OF SOUTH AFRICA

**PRESENTATION TO
THE SOUTH AFRICAN REWARD
ASSOCIATION
(SARA)
(JOHANNESBURG COUNTRY
CLUB)**

28 MARCH 2018

Presenter: Mr. Ben Makhalemele



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CORPORATE ACCOUNTS (GOVERNMENT GAZETTE)

BACKGROUND

The Department of Home Affairs through the Directorate: Corporate Accounts has established a partnership with the Gauteng Growth and Development Agency (GGDA), the Gauteng Investment Centre (GIC) and VFS Global which renders Visa Facilitation Services (VFS).

The purpose of this partnership is to establish a premium One-Stop-Shop for visa and permit renewals and a put in place a shorter, more efficient process for visa applications of foreign nationals employed by corporate companies.

The service will also include Immigration Advisory services to applicants and further manage stakeholder relations. This initiative will help to alleviate the pressure of visa application management for senior executives of companies who are holders of temporary residence visas as well as other foreign employees within these corporates.

In 2015 The Department of Home Affairs invited corporate companies and businesses recognised and affiliated to the various chambers of commerce to apply for membership for the Corporate Account status with the Department. This membership will be at no cost to the qualifying corporates

CORPORATE ACCOUNTS (GOVERNMENT GAZETTE)

SELECTION CRITERIA

In order to ensure that the selection process of companies is fair, ethical and transparent, the Department of Home Affairs will make use of the following score card system:

1. The number of visas required in key positions – this will be counted in man-years over the coming three years – Twenty points.
2. Magnitudes of the incremental Capex spend over the coming three years – Twenty points.
3. National priority/relevance of the visa requested to the development of national infrastructure – Twenty points.
4. Critical skills component – percentage of visas contained in the notice contemplated in section 19(4) of the Immigration Act, 2002 (Act No. 13 of 2002) – Twenty points.
5. Transfer of skills – related efforts by the relevant corporate applicant to transfer imported skills to locals – Twenty points.
6. Proof that at least 60% of the total staff complement employed in the operations of the business are South Africans or permanent residents employed permanently in various positions- Twenty points



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SELECTION PROCESS

1. Corporate companies within South Africa interested to be considered for registration with the Corporate Account Unit in collaboration with GGDA are required to submit applications to the secretary of the Director: Corporate Account, Mrs Nomvuzo Vilakazi by email nomvuzo.vilakazi@dha.gov.za.
2. The cut-off date for submission of applications is ten working days after the date of publication of this notice.
3. Applications must be submitted in writing and should not exceed 2 A4 pages in length.
4. Applications must be signed by the corporate applicants (companies) or their Human Resource Directors.
5. Applications must contain all information specified in the Selection Criteria set out above.
6. The scored results will be validated by a selected Advisory Committee composing of various Government Departments.
7. The Department of Home Affairs will make the final selection and the applicants will be advised of the outcome.
8. The decision of the Advisory Committee is final and the Department reserves the right to grant or not to grant a Corporate Account status to any company.



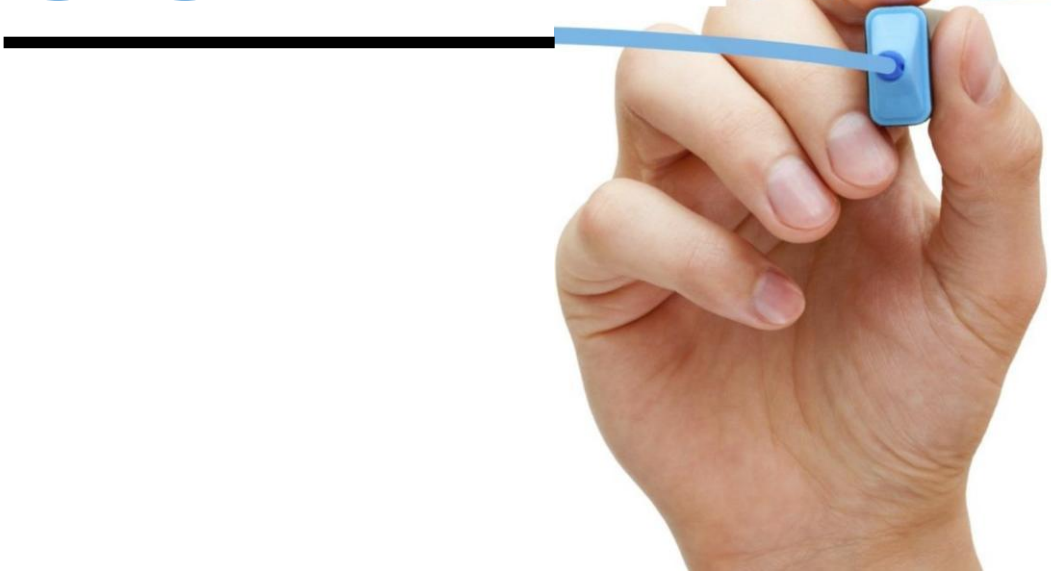
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COMPLIANCE



IMMIGRATION COMPLIANCE

DUTIES AND OBLIGATIONS OF EMPLOYERS

38. Employment

(1) No person shall employ—

- (a) an illegal foreigner;
- (b) a foreigner whose status does not authorise him or her to be employed by such person; or
- (c) a foreigner on terms, conditions or in a capacity different from those contemplated in such foreigner's status.

IMMIGRATION COMPLIANCE

- (2) An employer shall make a good faith effort to ascertain that no illegal foreigner is employed by him or her or to ascertain the status or citizenship of those whom he or she employs.

- (3) If it is proven, other than by means of the presumption referred to in subsection (5), that a person was employed in violation of subsection (1), it shall be presumed that the employer knew at the time of the employment that such person was among those referred to in subsection (1), unless such employer proves that he or she —



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IMMIGRATION COMPLIANCE

- (a) employed such person in good faith; and
- (b) complied with subsection (2), provided that a stricter compliance shall be required of any employer who employs more than five employees or has been found guilty of a prior offence under this Act related to this section

(5) If an illegal foreigner is found on any premises where a business is conducted, it shall be presumed that such foreigner was employed by the person who has control over such premises, unless prima facie evidence to the contrary is adduced



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SECTION 42: AIDING & ABETTING ILLEGAL FOREIGNERS

42. (1) Subject to this Act, and save for necessary humanitarian assistance, no person, shall aid, abet, assist, enable or in any manner help —
- (a) an illegal foreigner; or
 - (b) a foreigner in respect of any matter, conduct or transaction which violates such foreigner's status, when applicable, including but not limited to —



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SECTION 42: AIDING & ABETTING ILLEGAL FOREIGNERS

- (i) providing instruction or training to him or her, or allowing him or her to receive instruction or training;
- (ii) issuing to him or her a licence or other authorisation to conduct any business or to carry on any profession or occupation;
- (iii) entering into an agreement with him or her for the conduct of any business or the carrying on of any profession or occupation;
- (iv) conducting any business or carrying on any profession or occupation in cooperation with him or her;



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SECTION 42: AIDING & ABETTING ILLEGAL FOREIGNERS

- (v) assisting, enabling or in any manner helping him or her to conduct any business or carry on any profession or occupation;
- (vi) obtaining a licence or other authority for him or her or on his or her behalf to conduct any business or to carry on any profession or occupation;
- (vii) doing anything for him or her or on his or her behalf in connection with his or her business or profession or occupation;
- (viii) harbouring him or her, which includes providing accommodation; or



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SECTION 42: AIDING & ABETTING ILLEGAL FOREIGNERS

(ix) letting or selling or in any manner making available any immovable property in the Republic to him or her.



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SECTION 42(2): CRIMINAL PROCEEDINGS



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SECTION 42(2): CRIMINAL PROCEEDINGS

- (2) In any criminal proceedings arising out of this section, it is no defence to aver that the status of the foreigner concerned, or whether he or she was an illegal foreigner, was unknown to the accused if it is proved that the accused ought reasonably to have known the status of the foreigner, or whether he or she was an illegal foreigner.



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SECTION 49(3): OFFENCES

(3) Anyone who knowingly employs an illegal foreigner or a foreigner in violation of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding one year:

Provided that such person's second conviction of such an offence shall be punishable by imprisonment not exceeding two years or a fine, and the third or subsequent convictions of such offences by imprisonment not exceeding five years without the option of a fine.



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SECTION 43: OBLIGATION OF FOREIGNERS

A foreigner shall—

- (a) abide by the terms and conditions of his or her status, including any terms and conditions attached to the relevant visa or permanent residence permit, as the case may be, by the Director-General upon its issuance, extension or renewal, and that status shall expire upon the violation of those terms and conditions; and
- (b) depart upon expiry of his or her status.



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**ARE WORKERS
WITHOUT VALID
WORK VISAS
PROTECTED BY THE
LABOUR RELATIONS
ACT?**



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DEFINITION: EMPLOYEE

Section 213 of the LRA defines an 'employee' as:

- (a) any person, excluding an independent contractor, who works for another person or for the state and who receives, or is entitled to receive, any remuneration; and
- (b) any other person who in any manner assists in carrying on or conducting the business of an employer.

This definition is identical to the definition found in section 1 of the Basic Conditions of Employment Act (BCEA). Of relevance to these definitions is the Constitution, which provides in terms of section 23(1) that everyone has the right to fair labour practices. The Constitution also requires that international law be applied in the interpretation of South African law.



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CASE STUDY: Discovery Health Limited vs. CCMA & Others (2008) (LC)

In the matter of Discovery Health Limited vs. CCMA & Others (2008) (LC) the employee, an Argentinean national, had a temporary residence visa which was valid for three months. Subsequently he obtained a work visa, which was valid for a fixed period. Prior to the expiry of the work visa the employee asked his employer for the necessary documentation with which to renew his work visa. The employer complied, but only just prior to the expiry of the work visa.

Despite the above, when the employee's work visa expired, the employer then terminated his employment. The employee then referred a dispute to the CCMA, at which the question of the CCMA's jurisdiction to hear the case was considered. The CCMA ruled that it did have jurisdiction to determine whether the employee had been unfairly dismissed and found further that the employee had established the existence of a dismissal.

In view of the CCMA's ruling, the employer took the matter on review to the Labour Court. The court held, however, that the contract of employment between the employee and employer was valid, and remained so until it was terminated by the employer.

The court also found that the employee, despite being a foreign national, was deemed to be an employee for the purposes of section 213 of the LRA, and accordingly, enjoyed the protection afforded by the LRA.

TYPES OF VISAS AND PERMITS



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IMMIGRATION REGULATION 18(3) – WORK VISA



3. The contract of employment stipulating the conditions of employment and signed by both the employer and the applicant is in line with the labour standards in the Republic and is made conditional upon the general work visa being approved



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WORK VISAS & PERMITS

- (2) A general work visa may be issued by the Director-General to a foreigner not falling within a category contemplated in subsection (4) and who complies with the prescribed requirements.

- (4) Subject to any prescribed requirements, a critical skills work visa may be issued by the Director-General to an individual possessing such skills or qualifications determined to be critical for the Republic from time to time by the Minister by notice in the Gazette and to those members of his or her immediate family determined by the Director-General under the circumstances or as may be prescribed.

WORK VISAS & PERMITS

- (5) An intra-company transfer work visa may be issued by the Director-General to a foreigner who complies with the prescribed requirements.
- (6) Section 22 Asylum Seeker Permit
- (7) Section 27 Refugee Permit
- (8) ZSP: Zimbabwe Special Permit (Expires 31 Dec 2017)
- (9) LSP: Lesotho Special Permit
- (10) Visitors Visa (Sec. 11.2, Sec. 11.1(b))
- (5) Permanent Residence Permit



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CRITICAL SKILLS LIST



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CRITICAL SKILLS LIST – CORPORATE GENERAL MANAGER

OFO Code – 121901

Descriptor: Plans, organises, directs, controls and reviews the day-to-day operations and major functions of a commercial, industrial or other organisation (excluding government or local government) through departmental managers and subordinate executives.

May also be defined as “**director**” in terms of the Companies Act 71 of 2008 as amended by the Companies Amendment Act 3 of 2011, meaning a member of the board of a company, as contemplated in section 66, or an alternate director of a company and includes any person occupying the position of a director or alternate director, by whatever name designated.

CORPORATE GENERAL MANAGER



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CRITICAL SKILLS LIST – CORPORATE GENERAL MANAGER

C- Level Executives

Chief Executive Officer (CEO) – The CEO is the highest level executive in the corporate world. He leans on the other C-suite members for advice on making major corporate decisions. He serves as the face of the company, setting the strategy and direction that the company should take in order to achieve its vision.

Chief Financial Officer (CFO) – The top of the corporate career for a financial analyst and accountant in the financial industry is the CFO position. Portfolio management, accounting, investment securities, investment research and financial analysis are examples of skills that are built over the years.

Chief Information Officer (CIO) – The CIO is a leader in information technology and usually starts from a business analyst position, working his way up to the C-level while developing technical skills in programming, coding, project management, MS Office, mapping etc. The CIO is sometimes referred to as the **Chief Technology Officer (CTO)**, although in some companies, these two may be separate.

Chief Marketing Officer (CMO) – The CMO is usually from a sales and/or marketing background, and is responsible for managing social innovation and product development across brick-and-mortar and electronic platforms: a function which is in high demand as the world shifts to a digital era.

REPOSITIONING



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The DHA was structured and budgeted for as a colonial administrative department in 1910



Home Office UK

Internal affairs
National Security
Police
Prisons (to 2005)
Domestic intelligence
Immigration
Civil registration
Elections



Department of the Interior Crown Colony of SA

Immigration /movement control
Civil registration / ethnic, race
Elections
Official printing
Censorship
Statistics

Reginald McKenna
Home Secretary
1911 – 1915 when
the first South
African state was
constructed

**Most senior
minister –
Secures the
state**

Louis Botha
Head of first
Government
King George V
was the Head of
State

**Functioned as a
general colonial
administrative
department**

DHA'S Policy Trajectory post- 1994

Phase I

One DHA and expansion of services to the whole of society

1994

New democratic government : policy focus is to **build a single national population register** and **expand services**

Phase II

- Turnaround
- NPR Campaign
- 2010 World Cup

2006 -09

Service delivery crisis
Citizen oriented turnaround

Phase III

Modernisation (Integrated, digital, professional)

2012-2016

Modernisation program launched to develop secure integrated digital systems managed strategically by professionals

FUTURE

Argument made in the Repositioning Business Case

Advances, but ..

- ID Smart card and passports digital process
- Biometrics at POEs
- Client service centre
- Learning Academy
- Partnerships – e.g., banks

Investment in

- Professional, secure, fully digital DHA
- Required IT and related skills
- Secure e-government platform
- Reliable access by all to broadband

Will result in

- Minimal fraud, lower costs and high efficiency
- More secure and more investment
- Fast responsive services; access to information
- Empowered citizens and inclusive growth



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Approval of the Business Case and consultation process

- On 1st March 2017 Cabinet approved the Business Case and the following statement was released:
 - The Department must be positioned within the security system of the state so that it contributes to national security and is able to protect its people, systems and data.
 - This will better enable the department to deliver against its full mandate as a critical enabler of inclusive economic development, national security, effective service delivery and efficient administration.
- A Discussion Paper summarising the Business Case was gazetted on 19 May 2017 for public comments by 30 September 2017 and for consultation nationwide and within government.

DEFINING REPOSITIONING – it is more than transformation

Repositioning means achieving :	Timeframes
Anchor legislation, that defines the mandate of the department and its conditions of service	2018: DHA White Paper 2019: DHA Bill tabled
Modernising all systems and processes with an integrated digital platform	2020: Basic National Identity System in place
Appropriate operating, organisational funding models with professional staff	2022: Key elements of the new models all in place
Securing the department and the DHA playing an active part in the security system	2018: Security Standards 2022: Basic DHA security standards achieved

The DHA's mandate, vision and role

- **The core mandate of the DHA remains the same:** to manage identity and citizenship and immigration for empowerment, development and security.
- **The DHA's vision will not change:** “A safe, secure South Africa where all of its people are proud of, and value, their identity and citizenship.”
- **The DHA's role** in a world full of risks and opportunities, is to be the nerve centre of security and the backbone of digital platforms our lives depend on.

Thank You!

