



## **Memo: Western Cape Government submission on the processing of permanent residency permits.**

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### **1. PURPOSE**

This submission argues for the urgent resumption of the processing of permanent residency permits by the Department of Home Affairs (DHA), in line with the Immigration Act 2002, Act No 13 of 2002, and Regulations.

### **2. BACKGROUND AND PROBLEM STATEMENT**

- 2.1 On 30 June 2021, DHA, gazetted amendments to directions issued in terms the regulations to the Disaster Management Act, 2002, Act 57 of 2002, following the newly announced adjusted level 4 lockdown. These changes included that DHA plans to only resume the processing of permanent residency permits from 01 January 2022.
- 2.2 In response, experts have warned that the delayed processing of permanent residency permits will come at a significant cost to the South African economy, highlighting specifically the negative impact on applicants looking to enter the country for extended periods of time. Immigration experts have come out publicly to denounce the new directions which, they claim, will likely impede South Africa's prospects of attracting skilled and wealthy applicants seeking permanent residency in the country.
- 2.3 The primary concern for the Western Cape Government is the impact that this delay will have on entrepreneurs and highly skilled individuals who see South Africa as an ideal destination, especially in light of the draft critical skills list published by DHA in February of this year, which clearly shows the skills shortages which South Africa urgently needs to address.
- 2.4 As the provincial Minister of Finance and Economic Opportunities, one of my primary mandates is the objective of creating opportunities for employment and growing the economy of the Western Cape. A substantial component of this requires the creation of an enabling environment for business.
- 2.5 It then follows that blockages in regulation, policy or process, which create systemic challenges for businesses and potential investors into the provincial economy, such as Home Affairs processes, require urgent intervention.

### **3. DELAYS IN PROCESSING OF PERMIT APPLICATIONS**

- 3.1 The Red Tape Reduction Unit (RTRU), housed within the Western Cape Department of Economic Development and Tourism, was established to, amongst others, serve as a contact point for the public to receive assistance on red tape, or regulatory, barriers or blockages which impact on economic growth or job creation. The unit is committed to supporting key role-players across the different levels of government in unlocking latent economic benefits and making it easier to do business in the Western Cape. The unit is likewise dedicated to working with colleagues in other departments at all spheres of government to remove blockages which have damaging, often unintended consequences, introduced by validly passed policy and/or regulation.
- 3.2 Immigration issues consistently add to the conveyor belt of cases reported to our Red Tape Business Helpline. Of those immigration issues reported over the past two years, are multiple cases of applicants who have been waiting for as long as five years for their permanent residency permit applications to be processed, while there is not a single case involving an applicant that has waited less than two years for feedback on such an application.
- 3.3 As an example, a client that lodged their application more than four years ago contacted the RTRU for assistance. Numerous requests to DHA for feedback subsequently came back without response before finally being informed by an official within the DHA that the application was in the process of adjudication and should be finalised by the end of June 2021. It is important to note that at the time of drafting of this memo, no further feedback on such finalisation has been forthcoming.
- 3.4 What the above example demonstrates, along with countless other cases of delays in processing permanent residency permit applications, is that the DHA administration has struggled to process such applications without excessive delay, even at the best of times.
- 3.5 That the DHA has struggled to put the necessary systems in place to meet the demands of its administrative burden has done little to quell the volume of applications and the appetite for permanent residency status in South Africa. The decision to place a moratorium on such applications therefore appears short-sighted, and unduly prejudicial to both individual applicants and the broader economic interests of the country.

### **4. REVIEW OF NEW DIRECTIONS**

- 4.1 Applications for permanent residency in South Africa are considered in terms of Section 26 (Direct Residency Permits) and Section 27 (Residency-on-Other-Grounds Permits) of the Immigration Act 2002, Act No 13 of 2002, read with Regulation 33 of the Immigration Regulations. In terms of granting Permanent Residency Permits, emphasis is placed on immigrants who are able to make a meaningful contribution to broadening the economic base of South Africa.
- 4.2 The DHA's 2017 White Paper on International Migration acknowledges the positive contribution immigration can make to the South African economy and introduces a range of policy and strategic

interventions. Some of these interventions highlight the need to adapt migration policies to suit the needs of the labour market. Other priorities that have been identified in this analysis and seem particularly relevant in South Africa are fighting discrimination and investing in immigrant integration.

4.3 The White Paper recognises that international migration policy is not sufficiently linked to the skills development and investment priorities of the country and proposes measures that would enable South Africa to compete more effectively for skills and investment.

4.4 Clause 3 of the new Directions for Alert Level 4 appears to go against the essence of the policy and strategic framework laid by the White Paper. The clause deals with the substitution of paragraph 17H of the existing Directions, inserting section 17H.2 providing:

*The permit services in terms of the Immigration Act will be rendered by the Department of Home Affairs as follows:*

- a) permanent residence permits appeals applications with effect from 1 October 2021;*
- b) proof of permanent residence permits applications with effect from 1 October 2021;*  
*and*
- c) permanent residence permits applications with effect from 1 January 2022.*

4.4.1 The insertion of section 17H.2 (c) has far reaching consequences not only for applicants, who have spent years waiting for their applications for permanent residency to be considered, but also for DHA which is already suffering a substantial administrative backlog of applications that is only set to be made heavier by the new Directions.

4.4.2 Further, there does not appear any rational reasons to prioritise permanent residency appeals, as found in 17H.2 (a) over new permit applications. A more considered approach would have prioritisation focused on the level of impact on either or both the individual and their interests in staying in the country on the permanent basis; where applicants with critical skills or high-value investment potential, for example, are prioritised over others. In either instance, we submit that it is wholly irrational and unduly prejudicial to place a moratorium on such a vital immigration service for as long as six months.

## 5. CONCLUSION

5.1 One of the DHA's core mandates, based on DHA's White Paper on Home Affairs, 2019, is to manage international migration to advance **economic**, social and cultural development. This Paper underscores the policy goal of managing permitting processes based on national priorities, with the aim of establishing a strategic approach to managing international migration.

5.2 Regulations, in addition to an enabling policy framework, need to be clear on the strategic importance of the DHA in promoting economic development, and adopting nuance to using immigration regulations as an instrument to solicit sought after critical skills, foreign investment and

promote tourism through strategic issuing of visas and permits. Legislative and policy interventions need to reflect cross-departmental cooperation with regards the immediate interests of the country in terms of the skills shortage and economic opportunities.

- 5.3 The value of processing of immigration permits should not be understated, especially during times of economic crisis, where opportunities to attract long-term foreign investors into the economy are critical to recovery efforts.
- 5.4 It is accordingly submitted that the Directions be amended to remove clause 3 as it currently stands. As submitted, the intention to place a moratorium on the processing of permanent residency applications is administratively flawed and requires immediate reversal as part of South Africa's plan to attract highly skilled workers and foreign investors. Any attempts to delay the processing of such applications without justification is likely to have far reaching consequences from which it will prove difficult to recover.