

CASE STUDIES OF LEGAL INTERVENTIONS

OUTSTANDING VISAS & RESIDENCE PERMITS – EXCESSIVE DELAYS

The Scenario

A temporary or permanent residence application has been submitted and taken in by the Department of Home Affairs but it is taking a long time to be finalized.

- Foreign applicant applied for a temporary residence, receives a receipt of submission of the application and the permit is still pending after more than 2 months.
- Foreign applicant applied for a permanent residence, receives a receipt of submission of the application and the permit is still pending after more than 8 months.

Our Solution

Our immigration law firm provides cost-effective and professional High Court interventions against the Department of Home Affairs to finalize any outstanding temporary or permanent residence applications with unparalleled success.

Legal Action - Tactical Urgent or Non-Urgent High Court Litigation

We will require you to merely sign off court papers prepared by our law firm that set out the factual matrix in a carefully constructed manner together with the legal remedies relied upon to compel the Department of Home Affairs to provide the delayed outcome.

You do not go to court but are merely expected to be available to sign off the court documents. It is simple as that.

REJECTION OF APPLICATION FOR TEMPORARY OR PERMANENT RESIDENCE

The Scenario

We have noticed that foreign applicants are being refused more than ever before. There is nothing worse going to collect an outcome which is negative and this can lead to overstays, loss of work opportunities, unwanted return back to your country of origin and even separation from loved ones.

- Foreign applies for either temporary or permanent residence and finally receives a letter of rejection advising that the application is denied with written reasons.
- The reasons are in many instances vague, which prompts further confusion and uncertainty.
- An appeal must be lodged within 10 working days in a specific manner otherwise the decision stands.

Our Solution

Since time is of the essence we will need to see the letter of refusal and copy of papers submitted to the Department of Home Affairs.

We will immediately assess the facts against the law and determine whether the refusal is correct in law and advise on whether to pursue the refusal or not. There is no sense in pursuing a refusal when the decision is correct in law.

Action taken

We will prepare a well-crafted and articulate appeal setting out the law against the facts.

We will set out the correct legal position and put the Department of Home Affairs to terms should they fail to reverse the decision within 30 days.

EXCESSIVE DELAY IN APPEAL AGAINST REJECTION OF APPLICATION FOR TEMPORARY OR PERMANENT RESIDENCE

The Scenario

A foreign applicant submits and internal review request or appeals and no response is forthcoming and finalization is required.

Thirty days has elapsed since the date of submission of the appeal to the Department of Home Affairs.

Our Solution

Much like the excessive delays in making a decision pursuant to a temporary or permanent residence submission, the same legal solution applies when the Department of Home Affairs fails to make a decision on the submission of an internal appeal after 30 days.

Our immigration law firm provides cost-effective and professional High Court interventions against the Department of Home Affairs to finalize any outstanding temporary or permanent residence appeal applications with unparalleled success.

Legal Action - Tactical Urgent or Non-Urgent High Court Litigation

We will require you to merely sign off court papers prepared by our law firm that set out the factual matrix in a carefully constructed manner together with the legal remedies relied upon to compel the Department of Home Affairs to provide the delayed outcome on the appeal application.

You do not go to court but are merely expected to be available to sign off the court documents. It is simple as that.

LEGALIZATION OF OVERSTAY – AUTHORISATION TO REMAIN IN SOUTH AFRICA AND OBTAIN A FORM 20

The Scenario

- A foreign person overstays his or her visa and wishes to remain in South Africa and apply for a new status.
- There are grounds of 'good cause' that will excuse the overstay and allow such foreign person the right to remain in South Africa and submit a new application without leaving South Africa or being deported or arrested.

Our Solution

Our lawyers will attend on the Inspectorate who are authorized to enforce the immigration laws to represent individuals who have been arrested or are fearful of being arrested due to either overstays or visa contraventions.

At Craig Smith & Associates we will consider the merits of the overstay and prepare a well articulated set of representations reflecting the factual background and legal principles at play in 'explaining away' such overstay.

We will attend on the Inspectorate or immigration officer concerned and make submissions and present the written 'good cause' to facilitate prospective or continued legal status in South Africa.

Legal Action

We will act in accordance with section 32 and regulation 30 of the Immigration Act and its associated Regulations and craft the factors that will go to the core of the overstay and excuse such conduct.

There are times that this process may be expedited by proceeding to the High Court if the delays are beyond 30 days.

The difficulty in this process is in the event that the legalisation is refused and the foreigner is requested to either be prosecuted or ordered to leave South Africa. That is a matter that will then require further attendances.

DEPARTING SOUTH AFRICA ON EXPIRED VISA – DECLARED UNDESIRABLE

The Scenario

In many instances foreign persons are urgently required to depart South Africa even though their visas may have expired or they are still waiting for a status in South Africa.

As indicated above, it matters not what the grounds may be that resulted in the overstay and departure. Moreover, it makes no difference if the foreigner is 1 day old or 100 years years old or if the overstay is one hour or 10 years.

The fact is, the immigration officer, on departure is obliged in terms of section 50, read with section 30, of the Immigration Act to act in a manner and impose a ban on the foreigner.

Our Solution

We would request that the foreigner who receives a document declaring him or her undesirable or disqualified from re-entering South Africa sends us the following:

- Copy of his Identity Page of Passport
- Copy of the visa that has expired
- Copy of the Form 19 or document declaring undesirability
- Reasons for the departure and overstay
- Any other mitigating factors such as medical notes, marriage or birth certificates of family

Legal Action

We would immediately assess the merits of the case by looking into the grounds why such foreign person overstayed and departed.

Our Department of Home Affairs allows an appeal to the Director-General within 10 days of the receipt of the Form 19 ban. It matters not whether you appeal to the Director-General or the Minister within the 10 days. However, if the 10 days have elapsed since receipt of the ban then you must appeal to the Minister.

We will assist in the preparation and submission of the appeal.

It is vital that the grounds of the overstay are carefully presented. Ignorance or excuses that are within one's control are often ignored by the Department of Home Affairs. Thus, we would recommend you contact our law offices to discuss the grounds to have the ban lifted. We are successful in every matter thus far.

The only challenge can be that the Department of Home Affairs, in representing the Director-General or Minister, can take a long time in finalizing such matters. Thus, we would recommend a two-pronged attack:

Submit well prepared and meticulous legal document challenging the ban

If the appeal is beyond a reasonable time or very urgent we would follow up the ban with possible court action to expedite the outstanding decision on the ban.

In this way we can virtually guarantee success in achieving the desired result save for matters that are completely advised against by our law firm.

OVERSTAYS AND BEING CHARGED AS A CRIMINAL OFFENCE

The Scenario

A foreign person is unsuccessful in a legalisation claim and is referred to the Magistrates Court for prosecution and appear in terms of section 56 of the Criminal Procedure Act and charged in terms of section 49(1)(a) of the Immigration Act pay a fine.

An immigration officer will prepare a notice to appear in court and pay a fine as an admission of guilt where the fine will be less than R5000.

The immigration officer will take the foreign person's fingerprints in lieu of the appearance in the Court.

Upon the scheduled attendance, the foreign person will be prompted by the immigration officer to pay the fine. The immigration officer will stress that once the payment of the fine is made, he or she will obtain the necessary paperwork to apply for a status in South Africa.

Be very careful as the admission of guilt will attract a criminal record which will count against the foreign person for the rest of his or her life as in the case of any other criminal offence. It will have a massive impact on future travel and character assessments for work or other opportunities in the future.

The Solution

At all costs do not fall prey to the immigration officer's apparent sense of kindness. This is not so. You are being subjected to criminal conviction and will be a mark against you for the rest of your life.

Contact our law firm to be apprised of your rights and the prospects of success. We will attend on your behalf and provide legal representation in the criminal courts.

Legal Action

We will represent you on your first appearance and ensure that you are safely defended.

We will ensure that the aspect of continued detention is guaranteed whether as bail or right to be released on warning.

We will make representations to the senior state prosecutor with a view to withdrawing the charges against you.

Should the representations be turned down we will represent you in any trial.

Our considered legal view on a charged for an overstay is that it is in most cases unsustainable by the state prosecuting authorities as the Department of Home Affairs has incorrect and unlawfully criminalized an overstay, which is not a criminal offence.

WAIVER OR EXEMPTION WRITTEN REQUESTS

Scenario

- Certain foreign key individuals are sought to take office in South Africa to oversee important organisational strategies and interventions and the hence the need to acquire a work visas and in meeting all the typical work visa requirements is considered problematic under the immigration laws and therefore waiver relief is sought to reduce some of the more cumbersome, onerous or sensitive requirement for such work visa applications.
- Client is able to present good cause to acquire permanent residence based on a special circumstance.
- Client wished to conduct business with large foreign staff numbers without a corporate permit and certain key personnel require work permits without supplying all the legal requirements for good cause.
- Client wishes to establish a business but does not have the financial equivalent of R5 million to invest into the business and a waiver is sought to condone the non-compliance of the monetary requirements.

Our Solution

Our South African immigration lawyers will take instructions and make carefully articulated and well reasoned legal submissions on our letterhead on your behalf to the Waiver Section of the Department of Home Affairs in order to achieve relief against having to meet full compliance with all the legal requirements under the immigration laws.

Legal Action

Prepare professional and well formulated Waiver or Exemption Request and submit to Waiver Section of the Department of Home Affairs in Pretoria

CIVIL LITIGATION – DAMAGES CLAIM FOR COMPENSATION AGAINST DEPARTMENT OF HOME AFFAIRS

The Scenario

A foreigner who feels abused or civilly wronged by Home Affairs and he or she wishes to ascertain his or rights of prospects of success and extent of damages as a result of such conduct by Home Affairs with a view to litigation.

Our Solution

We are one of the leading specialist immigration law firms to prepare and pronounce on legal opinions relating to the immigration laws to suitably inform any prospective litigant who is considering instituting legal action against the Department of Home Affairs for damages sustained due to wrongful action by the said Department.

We may either proceed on a contingency basis or agreed fee to litigate against the Department of Home Affairs for monetary damages claims.

Legal Action

Legal Opinion and Advice on merits.

Institute legal action in Magistrates or High Court for Damages Claim.

CORPORATE RELOCATION AND STRATEGIC CONSULTING

The Scenario

Client wishes to relocate a branch of formally establish a large office in South Africa with the intention of employing large numbers of foreign staff to enter, work and depart South Africa in the most efficient manner.

Our Solution

We would take instructions and advise large corporate or commercial entities wishing to locate and establish offices in South Africa and provide a cost effective and comprehensive strategy document to facilitate the smooth and seamless introduction of foreign workforce ion South Africa.

Legal Action

Prepare and present Strategic Immigration Plan with Permitting Solutions