

TEMPORARY RESIDENCE

FREQUENTLY ASKED QUESTIONS

I wish to come to South Africa as an au pair. What are the requirements?

In terms of section 22(b) of the Immigration Act, 2002 (Act No 13 of 2002) an exchange permit may only be issued to an applicant under the age of 25 who participates in a programme sponsored by an organisation accredited by the Department.

The following documentation/information will be collected together with a duly completed BI-1738 application form:

- 1) Passport valid for no less than 30 days after expiry of intended stay.
- 2) Vaccination certificate, if applicable.
- 3) Payment of the prescribed fee (Eur 51.00).
- 4) Non-refundable return ticket (deposit to the same value).
- 5) An offer of employment for no longer than 12 months.
- 6) Certification by the employer that the applicant's remuneration will comply with applicable legal requirements as indicated in section 12.16 of the BI-1738 application form. The statement must confirm that the remuneration to be paid will not be inferior to that prevailing in the relevant market segment for South African citizens/permanent residents and/or will not be less than the minimum remuneration laid down for a particular job sector by the Department of Labour.
- 7) The certification of the employer must contain the name and physical address of the host(s) in South Africa as well as their full names.
- 8) The accredited au pair organisation in South Africa must indicate in writing to take full responsibility for the applicant as well as his/her repatriation costs if and when required.
- 9) Proof of medical cover with a medical fund registered in terms of South African legislation.
- 10) Certification confirming the duration of visit by an accredited au pair organisation in South Africa that is responsible for the programme in which the applicant is participating.

If approved, the applicant's exchange work permit shall be endorsed "**shall not change occupation and may not apply for an extension/renewal and/or change of status.**"

On expiry of his/her permit the foreigner must leave the Republic and will not qualify for re-admission until he/she has been outside the Republic for at least two (2) years. It may be waived by the Department in extraordinary circumstances.

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I wish to do freelance work as a journalist in South Africa. What are the requirements?

Freelance work is not allowed in South Africa, since a general work permit may only be issued to a foreigner with special skills/qualifications not readily available in South Africa for a specific period of time to be employed by an exclusive employer.

May I do part-time work to pay for my studies in South Africa?

No. A foreigner may only be granted a study permit once he/she provides proof of adequate financial means to pay his/her tuition fees as well as to maintain him-/herself during his/her studies in South Africa.

I am studying in South Africa and require practical training as part of my studies. May I do this in South Africa and what are the requirements?

A foreign student studying in South Africa may do practical training in a field related to his/her studies, on submission of the following:

- (a) A letter from an educational institution registered with the Department of Education confirming that practical training is required to complete the intended study and before a diploma/degree can be obtained, as well as proof that the student will remain registered as a bona fide student for the duration of the period he/she will be doing practical training.
- (b) A letter from the prospective employer, offering practical training.
- (c) A passport valid for no less than 30 days after expiry of his/her intended stay in South Africa. The local office of the Department may provide permission to a student to do his/her practical training by issuing a letter to this effect.

I wish to do part-time work and part-time studies

□□ No, you may not do part-time work to subsequently finance part-time studies.

□□ Any foreigner who wish to take up studies in South Africa for a period not exceeding

3 months do not require a study permit and may study on a visitor's permit for up to 3 months.

□□ No foreigner **may not be allowed** to do part-time work on a visitor's permit.

□□ A foreigner who intends to take up full-time studies for any period exceeding 3 months will require a study permit.

□□ The following documentation will be collected when an applicant lodges an

application for a study permit at the South African foreign office in the applicant's

country of normal residence:

- (a) A duly completed BI-1738 application form.

(b) Passport valid for no less than 30 days after the expiry of intended visit.

(c) Payment of the prescribed fee.

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(d) Vaccination certificate, if required by the Act.

(e) Proof of:

(i) bursaries, if applicable

(ii) medical cover with a medical aid registered in terms of South African law.

(f) An official letter of provisional enrolment from the institution of learning concerned.

(g) Details regarding arranged accommodation.

(h) Proof of sufficient funds to cover tuition fees, maintenance and accidental costs.

(i) In the case of a minor, the particulars of the person in the Republic who will

act as the learner's guardian and confirmatory letter from such person, and proof of consent for the intended stay from both parents, or from the sole custody parent along with proof of sole custody.

(j) An outline of the course or academic programme for which the applicant has been accepted and proof of the required qualifications to attend it, if any.

(k) A police clearance certificate, if required, in respect of applicants of 23 years of age or older, in respect of all previous countries of residence for periods exceeding 1 year, to be submitted within 12 months of the application if not immediately available.

(l) A repatriation guarantee in the form of a deposit equivalent to the cost of an

air ticket to the country of origin or residence or a return ticket in instances where the period of studies does not exceed 12 months.

□□ The holder of a study permit may conduct work, provided that such a person may undertake part-time work which **shall not** exceed 20 hours per week, and provided that this limitation shall not apply during academic vacation periods and that the Registrar of the institution concerned consents to it in writing.

When a foreigner submits an application for a study permit he/she may simultaneously apply for authorisation to do part-time work.

Apart from the normal documents required for a study permit the applicant should present a letter of consent from the institution of higher education (an institution registered with the Department of Education), authorising the applicant to accept part-time work.

The study permit must be endorsed as follows: "*May undertake part-time work only, not exceeding 20 hours per week*" and/or "*May (also) work during academic vacation periods (only)*".

Alternatively a student may, whilst on a valid study permit, be offered part-time employment in which case the onus will rest with the individual student

to obtain the required written consent from the institution as well as an offer of employment for part-time employment from the prospective employer, to be presented to the nearest regional office of the Department in order to obtain permission to do part-time work in South Africa whilst

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undertaking his/her studies. The employer will furthermore be expected to produce proof that the period worked does not exceed the prescribed limits, to an Immigration Officer during inspections.

It should in conclusion also be mentioned that it will be expected of all employers to uphold the labour laws of the Republic when foreign students are being offered employment.

Note should be taken that a study permit will be approved for the duration of the course, provided that periodic reports of satisfactory performance are submitted as provided for in section 13(1)(v) of the Immigration Act, 2002 (Act No 13 of 2002) and read in conjunction with regulation 22(4) of the Regulations. NO student will be allowed to continue with part-time work after his/her study permit had expired.

I have just obtained a degree at Oxford University. Can I do practical training in South Africa and if so, what are the requirements?

Yes. A foreigner who studied abroad and who wishes to do practical training in South Africa must apply for a general work permit and comply with all requirements in terms of section 19(2) and (3) of the Immigration Act, 2002 (Act No 13 of 2002) read in conjunction with regulation 28(5) and (6) of the Regulations.

What are the requirements for a general work permit?

The following documentation/information must be submitted at the South African High Commission or Embassy in the applicant's country of residence or where there is no South African diplomatic representative, the application must be lodged in any country nearest to where the applicant finds him-/herself or one that is most accessible to the applicant:

- A duly completed application form BI-1738.
- A passport valid for no less than 30 days after the expiry of the intended stay in South Africa.
- A vaccination certificate where applicable.
- Payment of a non-refundable administrative fee of (Eur 183.00).
- A repatriation deposit to the value of a single air return ticket.
- An employment contract containing the signature of both the employer and employee as well as the terms and conditions of employment.
- The employer must submit a certification from a chartered accountant of

the job description and that the position exists and is intended to be filled by such foreigner.

□□ Independent and reliable certification of the applicant's skills, qualifications and experience as well as a statement from the employer explaining the correlation between the qualifications and requirements of the position and the foreigner's relevant skills, qualifications or experience.

□□ Proof that all shortlisted candidates have been interviewed.

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□□ A letter of motivation from the employer of efforts made to obtain the services of a South African citizen/permanent resident and reasons why no candidate who applied for the position could be appointed.

□□ Proof of an advertisement that complies with the requirements in terms of regulation 28(6).

□□ Undertaking to register with the professional body/board/council in the RSA where applicable.

□□ Letter of approval from the Department of Labour or relevant organ of state.

Since applications are processed and finalised at the office where it is submitted, applicants should await the outcome and not proceed to the Republic prior to the issuance of the permit as applied for.

General work permits will be issued valid for a maximum period of 3 years and extensions of a permit must be lodged at a local office of the Department at least 30 days before the current permit is about to expire.

Where do I apply for a work / study / business permit?

An application for a work/study/business permit must be submitted at the South African foreign office in the applicant's country of normal residence or permanent residence or long-term temporary residence or for which the applicant validly holds a valid passport.

Should there be no South African foreign office present in the above instances, an application may be submitted at his/her nearest South African foreign office.

Within South Africa applications must be submitted at the nearest regional office of the Department of Home Affairs in the area where the applicant intends to work/study.

In all of the above instances applications may be handed in or mailed to the relevant South African foreign office or regional office within South Africa.

Please note that an application for a permit (status) does not automatically entitle the applicant to any status or to sojourn in the Republic pending the decision of the Department, thus an applicant may not commence work/study or business prior to the outcome of his/her application.

May a foreigner change his/her status (purpose) of entry from within South Africa if he/she initially entered for a visit and then receives an offer of employment?

Yes, a foreigner may apply for a change of status/purpose whilst inside the Republic and must submit his/her application at least 30 days prior to the date of expiry of his or her permit.

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Please note that the prescribed form "Application for change of conditions or status of existing permit" (BI-1740) does make provision that the applicant must provide full details of the reason(s) for requesting the change of status.

In this instance it is emphasised that foreigners are obliged, by law, to apply for the correct status permit prior to arrival in the Republic and **good cause must exist necessitating a change of status/purpose**. Applicants will not be allowed to change status or sojourn in the Republic through misrepresentation in the original application.

May a foreigner who is the spouse/life partner of a South African citizen/permanent residence holder apply for a work permit/study permit or business permit from within the Republic?

Yes, a foreigner may apply for a change of status whilst inside the Republic and must submit his/her application at least 30 days prior to the date of expiry of his/her permit.

"Spouse" means a person who is party to a *marriage*, or a *customary union*, or to a permanent same-sex or heterosexual relationship which calls for cohabitation and mutual financial and emotional support. Furthermore, in view of the Cape High Court ruling only the following requirements will be applicable in this category:

1. Foreigners who is party to a marriage or customary union:

1.1 In respect of a work permit the following documents/information must be submitted:

- (i) Passport valid for no less than 30 days after the expiry of intended stay and which must remain valid at all times.
- (ii) A duly completed prescribed application form BI-1738.
- (iii) Proof of a valid marriage contracted between the foreigner and a South African citizen/permanent resident.
- (iv) An employment contract signed by both the employer and employee and which must contain the applicable terms and conditions of employment.
- (v) The non-refundable administrative fee (Eur 183.00) provided that such fee may be waived if the foreigner had already lodged an application for permanent residence or has formally indicated in writing that he/she intends

to apply for permanent residence within the validity period of the work permit.

1.2 In respect of a study permit the following documents/information must be submitted:

- (i) Passport valid for no less than 30 days after the expiry of intended stay and which must remain valid at all times.
- (ii) A duly completed prescribed application form BI-1738.
- (iii) Proof of a valid marriage contracted between the foreigner and a South African citizen/permanent resident.
- (iv) An official letter of provisional enrolment from the educational institution concerned.

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(v) The non-refundable administrative fee (Eur 51.00) provided that such fee may be waived if the foreigner had already lodged an application for permanent residence or has formally indicated in writing that he/she intends to apply for permanent residence within the validity period of the study permit.

1.3 In respect of a business permit the following documents/information must be submitted:

- (i) Passport valid for no less than 30 days after the expiry of intended stay and which must remain valid at all times.
- (ii) A duly completed prescribed application form BI-1738.
- (iii) Proof of a valid marriage contracted between the foreigner and a South African citizen/permanent resident.
- (iv) Details of the proposed venture as well as the physical address from where the business will be operating from.
- (v) The non-refundable administrative fee (Eur 183.00) provided that such fee may be waived if the foreigner had already lodged an application for permanent residence or has formally indicated in writing that he/she intends to apply for permanent residence within the validity period of the business permit.

2. Foreigners who are in a life partnership (a permanent same-sex or heterosexual relationship which calls for cohabitation and mutual financial and emotional support)

2.1 In respect of a work permit the following documents/information must be submitted:

- (i) Passport valid for no less than 30 days after the expiry of intended stay and which must remain valid at all times.
- (ii) A duly completed prescribed application form BI-1738.
- (iii) A duly completed prescribed affidavit BI-1712A together with a notarial contract.
- (iv) A copy of the South African partner's identity document.

- (v) An employment contract signed by both the employer and employee and which must contain the applicable terms and conditions of employment.
- (vi) The non-refundable administrative fee (Eur 183.00) provided that such fee may be waived if the foreigner had already lodged an application for permanent residence or has formally indicated in writing that he/she intends to apply for permanent residence within the validity period of the work permit.

2.2 In respect of a study permit the following documents/information must be submitted:

- (i) Passport valid for no less than 30 days after the expiry of intended stay and which must remain valid at all times.
- (ii) A duly completed prescribed application form BI-1738.
- (iii) A duly completed prescribed affidavit BI-1712A together with a notarial contract.
- (iv) A copy of the South African partner's identity document.

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- (v) An official letter of provisional enrolment from the educational institution concerned.
- (vi) The non-refundable administrative fee (Eur 51.00) provided that such fee may be waived if the foreigner had already lodged an application for permanent residence or has formally indicated in writing that he/she intends to apply for permanent residence within the validity period of the study permit.

2.3 In respect of a business permit the following documents/information must be submitted:

- (i) Passport valid for no less than 30 days after the expiry of intended stay and which must remain valid at all times.
- (ii) A duly completed prescribed application form BI-1738.
- (iii) A duly completed prescribed affidavit BI-1712A together with a notarial contract.
- (iv) A copy of the South African partner's identity document.
- (v) Details of the proposed venture as well as the physical address from where the business will be operating from.
- (vi) The non-refundable administrative fee (Eur 183.00) provided that such fee may be waived if the foreigner had already lodged an application for permanent residence or has formally indicated in writing that he/she intends to apply for permanent residence within the validity period of the business permit.

May the foreign spouses/life partner of a South African citizen/permanent resident inside the Republic start a business or be employed whilst on a valid visitor's permit or relative's permit?

No. In terms of section 11(2) and section 18(2) of the Immigration Act, 2002 (Act No 13 of 2002) the foreign spouse/life partner may not conduct work on

a visitor's or relative's permit respectively.

However, the foreign spouse/life partner may in terms of section 10(6) of the Act read with regulation 18(5)(a) apply for the change of status whilst inside the Republic and must submit his/her application at least 30 days prior to the date of expiry of his/her visitor's or relative's permit.

Please note that an application for change of status (purpose) does not automatically entitle the applicant to any status or to sojourn in the Republic. Thus, the applicant may not commence work, study or business prior to the outcome of his/her application.

Applications must be submitted to the nearest regional office of the Department of Home Affairs in the area where the applicant intends to work/study.

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Does the foreign spouse/life partner/child of a South African citizen/permanent resident have to pay the prescribed administrative fees for permits?

Yes. A non-refundable administrative fee as prescribed in the Regulations on Fees is at all times payable, provided that, in terms of the Cape High Court ruling, such fee may be waived only in instances where the foreign spouse/life partner/child of a South African citizen/permanent resident already lodged an application for permanent residence or can formally indicate in writing that he/she intends to apply for permanent residence within the period of validity of his/her permit.

I am the foreign spouse/life partner of a South African citizen/permanent resident. I have the intension to apply for permanent residence, but wish to enter the country in the meantime. On what kind of permit may I enter the country?

In terms of section 18(1) of the Immigration Act, 2002 (Act No 13 of 2002) a foreign spouse/life partner/child of a South African citizen/permanent residence must apply for a relative's permit.

What documentation/information must be submitted?

- (a) Duly completed prescribed application form BI-1738.
- (b) Passport valid for 30 days after expiry of intended stay and which must remain valid at all times until permanent residence is obtained.
- (c) Vaccination certificate, if required by the Act.
- (d) Statement and/or documentation confirming purpose and duration of stay and whether the applicant intends to apply for permanent residence before the permit applied for, is about to expire.
- (e) Birth certificate, to be unabridged where relevant to prove parenthood of dependent children who will accompany a parent to South Africa.
- (f) Marriage certificate, where applicable.

- (g) Proof of spousal relationship must be submitted on the prescribed affidavit BI-1712A together with a notarial contract, where applicable.
- (h) Divorce decree, where applicable.
- (i) Proof of custody, where applicable.
- (j) Death certificate in respect of late spouse, where applicable.
- (k) Consent from parents, in the case of children from previous marriage.
- (l) Proof of adoption, where applicable.
- (m) Proof of legal separation, where applicable.
- (n) Additional information which the Department may request to satisfy itself of the existence of a good faith spousal relationship by interviewing the applicant and South African citizen/permanent resident spouse, contacting family members and verifying other references, requesting proof of actual and intended cohabitation and/or inspection in loco of the applicant's place of residence.

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I am currently on a valid visitor's permit to accompany my husband who is employed in South Africa for the next 3 years. May I start my own business/accept employment?

Yes. In terms of section 10(6) of the Immigration Act, 2002 (Act No 13 of 2002) read together with regulation 18(5)(a) you may apply for a change of status whilst inside the Republic and such an application for a work permit or business permit must be submitted at least 30 days prior to the date of expiry of your visitor's permit.

I wish to tour South Africa for 8 months. May I accept employment to finance my visit?

No. In terms of section 11(2) of the Immigration Act, 2002 (Act No 13 of 2002) the holder of a visitor's permit may not conduct work.

In any case upon entering the Republic you will be required to submit proof of financial means to cover envisaged living expenses for the period of sojourning in the Republic.

What are the requirements to participate in South African cultural/social/economic exchange programmes?

In terms of section 22(a) foreigners participating in South African Cultural Exchange Programmes must apply for exchange permits.

The requirements are as follows:

- (a) Prescribed application form BI-1738.
- (b) Passport valid for no less than 30 days after the expiry of intended visit.
- (c) Payment of the prescribed fee (Euro 51.00).
- (d) Vaccination certificate, if required by the Act.

- (e) Proof of financial means- □□ undertaking(s) by the host(s) in the RSA; □□ medical cover from a South African medical aid registered in terms of South African law; and □□ cash available or traveller's cheques.
- (f) Applicants travelling by air must be in possession of a return or onward ticket or proof of sufficient funds, or lodge a cash deposit or equivalent value to such a ticket.
- (g) Statement and/or documentation confirming purpose and duration of visit from an organisation accredited by the Department of Home Affairs.
- (h) A letter from the organ of State in the Republic confirming the status/existence of the exchange programme.
- (i) A letter from the educational institution in the Republic confirming that the permit holder, if a student, has been accepted to register, if applicable, or a letter from the entity or organisation where the foreigner intends to conduct his/her programme.

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- (j) A letter from an **organ of the foreign State** confirming awareness of the exchange programme.
- (k) A letter from the sponsoring body responsible for the organising or administering of the programme, confirming that it will take responsibility for the permit holder whilst he/she is in the Republic.
- (l) Annual reports from the sponsoring body, outlining progress of the programme. In the absence of a sponsoring body, the educational institution or organ of State must submit the reports, as well as the confirmation mentioned in (k).

In terms of section 22(a)(ii) an applicant shall on expiry of his/her permit leave the Republic for at least 2 years before he/she will be able to qualify for any other status in the Republic.

An exchange permit will be issued for a period of 12 months only except in cases or reciprocal agreements between organs of states, the period determined may be the agreement.

May I operate as a tour guide, if I entered South Africa as a tour leader?

No. You may not operate as a tour guide in South Africa if you initially entered the country as a tour leader. To operate as a tour guide in South Africa, you must be in possession of South African qualifications as a tour guide and apart from obtaining registration as a tour guide, you will be required in terms of section 19(3) of the Immigration Act, 2002 (Act No 13 of 2002) to be in possession of a **general work permit** prior to taking up employment in South Africa.

How can I start a business in South Africa?

You may start a business in the RSA if you have the permission from the Department by means of being in possession of a business permit.

A business permit is issued in terms of section 15 of the Immigration Act, 2002 (Act No 13 of 2002), read with regulation 24. This permit is issued to a foreigner who intends to **invest in or open an own business** in the Republic.

What are the requirements?

- (a) Duly completed application form BI-1738.
- (b) Passport valid for no less than 30 days after the expiry of intended visit.
- (c) Payment of the prescribed fee, if applicable.
- (d) Vaccination certificate, if required by the Act.
- (e) Medical certificate in respect of the applicant and all members accompanying him/her.
- (f) Birth certificate, to be unabridged where relevant to prove parenthood.

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- (g) Marriage certificate (if applicable) or
- (h) Proof of spousal relationship in terms of the Act and these Regulations or
- (i) Divorce decree (if applicable).
- (j) Proof of custody (if applicable).
- (k) Death certificate in respect of late spouse (if applicable).
- (l) Consent from parent(s) (if applicable).
- (m) Proof of adoption (if applicable).
- (n) Proof of legal separation (if applicable).
- (o) Police clearance certificates in respect of all applicants 21 years or older, in respect of all countries where person(s) resided 1 year or longer, to be submitted within 12 months of the application if not immediately available.
- (p) Additional information which the Department may request to satisfy itself of the existence of a good faith spousal relationship as set out in regulation 33(5), where applicable.
- (q) Proof of funds available for transfer from abroad.
- (r) Undertaking to register with the appropriate statutory body, if required by the nature of the business.
- (s) Business track record to prove entrepreneurial skill.
- (t) Proof that the business contributes to the geographical spread of economic activity.
- (u) Proof that at least 5 citizens or residents shall be employed.
- (v) A foreigner who is applying for a business permit must submit a certification by a chartered accountant which confirms that at least 2 of the following requirements have been met, **OF WHICH ONE MUST BE THE CAPITAL TO BE INVESTED [section 15(1)(a)]**:

1. proof that the business in question is in one of the following sectors:-

- (i) information and communication technology
 - (ii) clothing and textiles
 - (iii) chemicals and biotechnology
 - (iv) agro-processing
 - (v) metals and minerals
 - (vi) automotives and transport
 - (vii) tourism
 - (viii) crafts
2. the export potential of the business; or
 3. calls for or involves a transfer of technology not previously generally available in the Republic; or
 4. proof that at least 5 citizens/residents shall be employed; or
 5. business track record to prove entrepreneurial skills; or
 6. proof that the business contributes to the geographical spread of economic activity.

The Department may waive or reduce the capitalisation requirement of R2,5 million on recommendation or request of the Department of Trade & Industry, or Science & Technology, or on the basis of a recommendation of another competent organ of state.

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If the business no longer maintains the capitalisation requirement, the permit may be withdrawn.

A business permit may be issued for 24 months at a time.

May I extend my visitor's permit whilst in South Africa?

Yes, you may. In terms of section 11(1)(b)(i) of the Act, a visitor's permit may be renewed upon application. The application in respect of the aforesaid should be submitted at the Regional Director's office of the Department of Home Affairs nearest to you at least 30 days before your current visitor's permit will expire.

The prescribed BI-1739 application form accompanied by the following supporting documentation should be submitted:

- (a) Passport valid for no less than 30 days after the expiry of intended visit.
- (b) Valid permit, in the case of regional office, subject to regulation 18(6).
- (c) Payment of the prescribed fee, if applicable.
- (d) Proof of financial means, i.e.:
 - (i) bank statements;
 - (ii) undertaking(s) by the host(s) in the RSA;
 - (iii) cash available, including credit cards or traveller's cheques.
- (e) Applicants travelling by air must be in possession of a return or onward ticket and proof of a return booking with the relevant airline.

- (f) Statement and/or documentation confirming purpose and duration of visit.
- (g) A letter motivating the reasons for the request to extend his/her visitor's permit.

I bought a house in Cape Town and intend to visit South Africa for 8 months every year. Is this possible and what are the procedures for a permit?

In terms of section 11(1)(ii)(dd) of the Immigration Act, 2002 (Act No 13 of 2002) you may apply for a visitor's permit.

The following documentation need to be submitted in respect thereof:

- (a) The prescribed BI-1739 application form.
- (b) Passport valid for no less than 30 days after the expiry of intended visit.
- (c) Payment of the prescribed fee of (Eur 51.00), if applicable.
- (d) Vaccination certificate, if required by the Act.
- (e) Proof of financial means, i.e.:
 - (i) bank statements;
 - (ii) salary advices;
 - (iii) cash available, including credit cards or traveller's cheques.
- (f) Applicants travelling by air must be in possession of a return or onward ticket or proof of sufficient funds, or lodge a cash deposit or equivalent value to such a ticket.

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- (g) Statement and/or documentation confirming purpose and duration of visit.
- (h) Valid visa, if required in the case of port of entry.
- (i) Valid permit, in the case of regional office, subject to regulation 18(6).
- (j) Birth certificate, to be unabridged where relevant to prove parenthood.
- (k) Marriage certificate (if applicable).
- (l) Proof of spousal relationship in terms of the Act and these Regulations.
- (m) Divorce decree (if applicable).
- (n) Proof of custody (if applicable).
- (o) Death certificate in respect of late spouse (if applicable).
- (p) Consent from parent(s) (if applicable).
- (q) Proof of adoption (if applicable).
- (r) Proof of legal separation (if applicable).
- (s) Additional information which the Department may request to satisfy itself of the existence of a good faith spousal relationship as set out in regulation 33(5), where applicable.
- (t) Documentation detailing the activity to be conducted and institutions or persons in the Republic involved, if any.
- (u) Proof of sufficient financial available means within the Republic to conduct the intended activity and meet living expenses calculated at R15 000 a month per person, to be provided in the form of a certification of a chartered accountant, which, inter alia, may take into account the value of available housing.

I secured a job in South Africa and intend to apply for a work permit. However, I am taking care of my elderly mother and would like to know for which permit she will have to apply.

She will have to apply for the retired person permit in terms of section 20 of the Immigration Act, 2002 (Act No 13 of 2002) read with regulation 29.

Such an applicant must meet the following requirements:

- (a) Duly completed BI-1738 application form.
- (b) Passport valid for no less than 30 days after the expiry of intended visit.
- (c) Payment of the prescribed fee, if applicable.
- (d) Vaccination certificate, if required by the Act.
- (e) Cash deposit to the value of a single air return ticket.
- (f) Statement and/or documentation confirming purpose and duration of visit.
- (g) Valid visa, if required in the case of port of entry.
- (h) Valid permit, in the case of regional office, subject to regulation 18(6).
- (i) Additional information which the Department may request to satisfy itself of the existence of a good faith spousal relationship as set out in regulation 33(5), where applicable.
- (u) Proof of the net worth envisaged in sections 20(1)(a) and 20(1)(b), and regulation 29, i.e.:

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- . The right to a pension with a minimum value of R20 000 per month or a lifelong irrevocable retirement annuity or retirement account equivalent to the value of R20 000 per month.
- . A net worth of not less than R12 million providing an income of at least R15 000 per month.

A retired person may be authorised to conduct work for a maximum period of 3 years subject to the period of the retired person permit, which may be renewed one or more times.

The following documents/requirements apply:

- (a) Duly completed BI-1738 application form.
- (b) Passport valid for no less than 30 days after the expiry of intended visit.
- (c) Payment of the prescribed fee, if applicable.
- (f) Valid permit, in the case of regional office, subject to regulation 18(6).
- (g) Marriage certificate (if applicable).
- (h) Proof of spousal relationship in terms of the Act and these Regulations.
- (i) Divorce decree (if applicable).
- (j) Death certificate in respect of late spouse (if applicable).
- (k) Proof of legal separation (if applicable).
- (l) Police clearance certificates in respect of all countries where person(s) resided 1 year or longer, to be submitted within 12 months of the application if not immediately available.

(j) Additional information which the Department may request to satisfy itself of the existence of a good faith spousal relationship as set out in regulation 33(5), where applicable.

(v) Proof of the net worth envisaged in sections 20(1)(a) and 20(1)(b), and regulation 29, i.e.: The right to a pension with a minimum value of R20 000 per month **or** a lifelong irrevocable retirement annuity or retirement account equivalent to the value of R20 000 per month. A net worth of not less than R12 million providing an income of at least R15 000 per month. (w) Proof that a citizen or resident is not ready, willing and able to take up the relevant employment.

I accepted employment in South Africa for 5 years and wish to bring our nanny with. What are the requirements?

Unfortunately, the Immigration Act, 2002 (Act No 13 of 2002) does not make provision for nannies that wish to accompany foreigners coming to the RSA.

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South African citizens should be given preference and the high unemployment in South Africa contributes to South African citizens be afforded job opportunities.

What is the difference between a “notarial contract in the case of cohabitation” and the “spousal affidavit”?

The spousal affidavit and notarial contract pertaining to a spousal relationship referred to in section 1(1)(xxxvi) of the Act is a requirement to be concluded in the Republic to allow it to legally sanction a permanent conjugal relationship, within the Republic, other than a marriage or a customary union concluded under the laws of the Republic. Foreign couples wishing to be admitted as spouses, must comply with their own countries’ “spousal” laws which will be deemed to be a “marriage” only if concluded abroad and proven by the documentation of the relevant foreign country. In other words, foreign couples cannot complete the Republic’s spousal affidavit (BI-1712) or the notarial contract abroad.

The notarial contract is a formal agreement entered into by a South African citizen/permanent resident and a foreign partner, notarised by a South African attorney, setting out the details of their rights and privileges in terms of their relationship. There is no standard format for this notarial contract and each one will be unique according to the party’s particular requirements and circumstances. A notarial contract must be registered with the Registrar of Deeds.

Should two foreigners apply for admission to the Republic with the sole intention of concluding a spousal relationship with each other, they must be informed that a spousal relationship so concluded will not give them a status in the Republic. Each must individually qualify in his/her own right for

admission on an applicable permit.

What professions/qualifications are considered under the quota/extraordinary quota permit?

If the applicant complies with the qualifications and experience as indicated in the quotas determined and published in the Government Gazette by the Minister of Home Affairs, the profession does not matter.

How can I be sure that the repatriation undertaking of the company/institution where I am to be employed/where I will be studying will be sufficient? Can I be exempted from paying a repatriation deposit?

All foreigners who wish to study or work in South Africa will be required to lodge a repatriation deposit as repatriation guarantees by companies/institutions are not acceptable.

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I have obtained qualifications at a higher educational institution abroad. How do I go about to have them evaluated according to your requirements?

You should approach the South African Qualifications Authority (SAQA) at Postnet Suite 248, Private Bag X06, Waterkloof, 0145, telephone no (012) 346-5553.

Should any chartered accountant prepare the requested certificates/audits, or should any particular chartered accountant, as indicated by the Department of Home Affairs, do so?

The chartered accountant should be one recognised by South African law and if the applicant has not appointed one of his/her choice, the Department may appoint one in which instance a fee to the amount of R10 000 in respect of sections 15, 19, 21, 26 and 27 or R6 000 in respect of section 18 of the Act will be collected from the applicant.

Where can I find information about SAQA and the Department of Labour which, according to your requirements, must be approached when I wish to apply for certain permit categories?

An address list of all the Labour Centres of the Department of Labour has been forwarded to all the South African foreign offices and Regional Directors.

How long before my current permit expires, should I apply for an extension?

At least 30 days before the expiry date, but 6-8 weeks is recommended. A

foreigner who fails to apply at least 30 days prior to the expiry date of an existing permit, but still wishes to lodge the application within the validity period of the said permit, must first apply on a duly completed BI-1739 application form for the granting of a visitor's permit valid for a maximum period of 30 days. The reason for the extension should be stated. An amount of (Eur 51.00) in respect of this application will be collected and a visitor's permit will be issued immediately.

Simultaneously with the above-mentioned application the applicant must lodge an application for the required permit on a duly completed BI-1739 application form. The relevant non-refundable processing fee will be collected. The said application must be processed and finalised within 30 days of receipt. During this time a foreigner may not work, study or exercise any activity for which another permit is required.

Due to unforeseen circumstances, I have just realised that my work permit has expired 3 days ago. May I have it extended?

You have now become an illegal foreigner. A foreigner who fails to apply within the validity period of his/her permit, but calls at a local office on his/her own accord and has neither been arrested nor ordered to depart from the Republic, must be able to demonstrate, i.e.

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show or prove by evidence, why he/she was unable to apply timeously for the relevant permit or an extension thereof. Only if satisfactory proof (i.e. account proving that the applicant was indisposed in hospital) may an application for a visitor's permit be accepted.

Application must be made on a duly completed BI-1739 form for a visitor's permit in terms of section 11(3) of the Act. The applicant must state that he/she is awaiting the outcome of his/her application for an appropriate permit and comply with paragraph (iv) on the first page of the BI-1739. The required proof of his/her inability to apply in time must also be attached. The applicant must pay a non-refundable administrative fee of R800 and be issued with a visitor's permit valid for 30 days. Simultaneously the foreigner must submit a second duly completed BI-1739 application form for the appropriate temporary residence permit of a BI-1740 (application for change of conditions or status), if applicable, and also pay the relevant fee for this application, which must be processed and finalised within 30 days.

Should a foreigner fail to demonstrate to the Department that special circumstances exist to justify the granting of a visitor's permit in order to apply for and await the outcome of an application for an appropriate permit, he/she will be issued with a BI-1684, which is an order to an illegal foreigner to leave the Republic within 14 days only. In this instance the illegal foreigner will also be subject to a prescribed administrative fine when he/she leaves or re-enters the Republic.

Where to I submit my application for an extension of my permit?

At any regional office of the Department of Home Affairs within the area where the applicant will be resident and working.

If I am on a visitor's permit in South Africa, will I require a re-entry permit if I visit Botswana or any other neighbouring country and return to South Africa?

Visitor's permits issued to foreigners will, as a rule, be valid for multiple entries to enable them to make unforeseen visits to the neighbouring countries and return to the Republic before the said permit lapses.

If I am on a valid work permit and I have to travel abroad, do I require a re-entry visa?

During the period of validity of a work permit, the holder is entitled to report to an Immigration Officer at a port of entry for multiple admissions.

Must I pay a deposit if I request an extension of my visitor's permit?

Not necessarily. Apart from the motivation the applicant must, however, be able to provide proof of a return ticket, flight booking and financial means to maintain him-/herself for the 19 relevant period of stay in the country. If the person concerned is considered by an Immigration Officer likely to become a public charge, a financial guarantee shall be required. This may be in the form of a return or onward ticket, or proof of sufficient funds to purchase such a ticket, or a cash deposit or major credit card refundable charge equal to the cost of such a ticket and/or an amount not exceeding R10 000, to be returned upon his or her departure or forfeited in case of his or her failure to depart on time or breach of the terms and conditions of his/her status.

How do I get hold of a chartered accountant?

A list of chartered accountants is available on the following website: www.saica.co.za/FindCasResults.asp The chartered accountant should be one recognised by South African law and if the applicant has not appointed one of his/her choice, the Department may appoint one.

If a child is a registered pupil in grade 0 (pre-school) in a primary school registered with the Department of Education, does he/she need to have a study permit?

Yes. A study permit is issued to a foreigner intending to study in the Republic for longer than 3 months at any institution of learning. The child does, however, not require a study permit for a private crèche. Only students participating in approved exchange programmes do not need study permits, but must apply for an exchange permit.

My wife and I are retired and have bought property in the Republic. We wish to visit the RSA on a seasonal basis. Will the amounts mentioned in the retired persons permit category be per person or per household?

There are retired foreigners who alternate between their countries of origin and the Republic on a seasonal basis and, therefore, do not qualify for permanent residence. For such foreigners the option of a temporary residence retired person permit is provided for.

An applicant for this permit must have: the intention to remain in the Republic as a retired person for longer than 3 months at a time (for shorter periods a visitor's permit is required); a pension of irrevocable annuity or retirement account providing not less than R20 000 per month; or a net worth of not less than R12 million providing an income of at least R15 000 per month.

The permit may be issued for only 4 years at a time, but may be extended.

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(Since the BI-1738 application form was printed, the amount indicated in paragraph 12.13 thereof has been decreased to the amounts mentioned above. The BI-1738 will be amended accordingly when it is to be reprinted).

What is the purpose of a corporate permit and who may apply for the said permit?

An establishment (employer) which has been unable to recruit one or more suitably qualified or skilled workers in the Republic, may apply on a BI-1743 for a corporate permit in terms of which it will be authorised to employ one or more foreigners in a specific post and/or capacity.

Two types of fees are payable by a corporate permit applicant, i.e. an application processing fee (presently Eur 183.00), to be paid on lodging of the application and a training fee of 2% of each corporate worker's taxable remuneration, payable quarterly in advance on issuing of the corporate worker's work permit, unless such training fee has been reduced or waived.

Corporate workers are divided into three categories, viz.:

- . a corporate worker in terms of an agreement with a foreign state (mine workers from Mozambique, Botswana and Lesotho as well as other types of labourers from the BSL countries);
- . a corporate worker doing seasonal labour (farm labourers from Mozambique, Namibia and Zimbabwe); and any other corporate worker not included in the

above two categories.

Labourers employed in terms of inter-governmental agreements and ILO conventions and migrant labour as well as seasonal farm labourers from Mozambique, Namibia or Zimbabwe employed by a corporate permit holder are not charged a fee for their work permits, as they need not lodge an application for a work permit. However, any other skilled worker recruited in term of a corporate permit is required to lodge an application for a work permit and is therefore liable for the payment of the processing fee.

What are the advantages of recruiting foreign workers in terms of a corporate permit instead of in terms of a general or quota work permit?

For a general or quota work permit application a processing fee is payable by the applicant seeking employment. Mineworkers seeking employment in terms of ILO conventions and seasonal farm labourers employed in terms of a corporate permit, do not complete an application form and therefore, do not pay an application processing fee. They are issued with work permits free of charge at designated ports of entry on admission, thus also saving time and effort by not having to report to a Home Affairs regional office for a permit.

As the corporate permit holder has already satisfied the relevant departments that it has been unable to recruit persons in the Republic with qualifications and/or skills equivalent to 21 those of the applicant(s) the approval of corporate worker permits are greatly expedited taking only ± 15 days to issue.

Are all employers hiring foreign workers in terms of a corporate permit liable for payment of the training fee?

In the case of seasonal farm labourers, the minimum prescribed wage is below the tax threshold; therefore, the 2% training fee is not applicable. In terms of the labour agreement with Mozambique, Mozambican mineworkers' remuneration are not taxable and the training fee is therefore, also not payable.

How will training fees be collected?

Employers shall deposit the fees quarterly in advance into the designated Standard Bank of South Africa current account number 011135905, Van der Walt Street, Pretoria Branch Number 010145. Cheques deposited must be made out in the name of the Department of Home Affairs.

The training fee in respect of an initial temporary residence permit shall become payable by the employer upon notification by the Department that the relevant permit has been approved in principle. The permit shall only be issued on receipt of a deposit slip copy indicating that the fee has been paid into the above-mentioned account.

What requirements must a corporate worker, other than mineworkers and seasonal farm labourers, comply with?

In the case of all corporate workers other than mineworkers and seasonal farm labourers, the regional office shall, on approval of the corporate application, issue the applicant with a corporate permit (BI-1718) as well as a number of BI-1738 application forms equal to the number of foreign nationals approved for recruitment/employment. On recruitment of the workers required, the corporate permit holder shall ensure that a duly completed BI-1738 application form in respect of each worker is completed, attach the documentation required in terms of section 12.10 of the BI-1738 thereto and submit it to the regional office which approved its corporate permit together with the processing fee collected from the prospective employee, and the bank deposit slip for the first quarter's training fee. The relevant regional office will on approval of each application, complete a corporate worker authorization certificate for each approved corporate worker application and hand it to the corporate permit holder who in turn will send the certificate to the relevant approved applicant abroad. On receipt thereof, the applicant will approach the mission for a corporate worker permit.

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Intra-company transfer work permit / visitor's permit for other prescribed activities

The definition of work provided for in section 1(1)(xlili) of the Immigration Act, 2002 (Act No 13 of 2002) must be used as the criteria to determine if the applicant will require an intra- company transfer work permit or a visitor's visa with an appropriate endorsement.

An intra-company transfer work permit will be required if a foreigner, employed abroad by a business that is already operational in the Republic as a branch, subsidiary or affiliate of a mother company, intends to enter South Africa to conduct work in the Republic for a period not exceeding 2 years.

The following guidelines may be used to determine whether the foreigner will require an intra-company transfer work permit:

- . The person has formed part of the personnel structure of a foreign company and intends to take up a position at the local company.
- . The person will be partially or fully remunerated in South Africa or may become so fully or partially remunerated.
- . The person will be in possession of a written contract of employment with the South African company.
- . The person may enjoy benefits like pension and medical aid.

A duly completed application form BI-1738 signed by the applicant together

with the following documentation must be submitted at the South African diplomatic representative in the applicant's country of origin/residence, or that of a foreign country adjoining or nearby in which a South African foreign office is presented:

- (a) Passport valid for 30 days after expiry of intended stay.
- (b) Payment of the prescribed fee.
- (c) Vaccination certificate, if required by the Act.
- (d) Medical certificate in respect of the applicant and all members accompanying him/her.
- (e) Police clearance certificates in respect of all applicants or individual members of the family 21 years or older, in respect of all countries where person(s) resided 1 year or longer, to be submitted within 12 months of the application if not immediately available.
- (f) A letter from the international concern confirming that the foreigner will be transferred to a branch/affiliated South African company.
- (g) A letter from the South African company confirming the transfer of such foreigner from the parent/affiliated company abroad, as well as specifying the occupation and capacity in which the foreigner will be employed, and that the maximum duration will not exceed 2 years.
- (h) A certification by a chartered accountant acting on behalf of the employer that the employer needs to employ such foreigner within the Republic and outlining the foreigner's job description.
- (i) An undertaking from the employer that the foreigner will comply with the Act and to notify the Department if such foreigner contravenes the Act (e.g. absconds).
- (j) Repatriation deposit. Repatriation guarantee in the case of a conglomerate.

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Family members who wish to reside with the applicant in the Republic during his/her employment must apply for visitor's visas and the following documentation/information will be called for when applications are lodged:

- (a) Passport valid for 30 days after expiry of intended stay.
- (b) Payment of the prescribed fee, if applicable.
- (c) Vaccination certificate, if required by the Act.
- (d) Medical certificate in respect of each member of the family accompanying him/her.
- (e) Birth certificate, to be unabridged where relevant to prove parenthood.
- (f) Marriage certificate (if applicable).
- (g) Proof of spousal relationship in terms of the Act and its Regulations.
- (h) Divorce decree (if applicable).
- (i) Proof of custody (if applicable).
- (j) Death certificate in respect of late spouse (if applicable).
- (k) Consent from parent(s) (if applicable).
- (l) Proof of adoption (if applicable).
- (m) Proof of legal separation (if applicable).
- (n) Police clearance certificates in respect of all applicants 21 years or older, in respect

of all countries where person(s) resided 1 year or longer, to be submitted within 12 months of the application if not immediately available.

(o) Additional information which the Department may request to satisfy itself of the existence of a good faith spousal relationship as set out in regulation 33(5), where applicable.

(p) Repatriation deposit. Repatriation guarantee in the case of a conglomerate.

A foreigner who intends to enter South Africa merely to render a service to a local branch, subsidiary or affiliate of a business abroad and who will not be transferred to the South African company will require a visitor's permit appropriately endorsed, provided the following information/documentation can be presented in support of the nature of intended visit to South Africa:

A contract (referred to in the definition of work), which only partially calls for activities in the Republic and which, inter alia, contains the following:

- who the employer is
- the post the person is appointed in
- where the person is permanently stationed
- who will be responsible to remunerate the person
- the nature of activities to be performed in South Africa
- the period required to perform and finalize the activities in South Africa
- specify any benefits that will be accrued during the person's stay in South Africa (subsistence, allowance, etc.).

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Immigration fees (with effect from 1 April 2008 and is subject to changes)

The Department may levy fees in respect of the applications for permits, certificates, visas or other services in terms of the provisions of the Act, as set out in the following table. Fee exacted outside the Republic shall be paid in the legal tender of the foreign country concerned.

FEES SERVICES RENDERED IN EURO

1. Confirmation of permanent residence	Eur 12.00
2. Application for a visa in terms of section 11(1)(a), or for a visitor's permit in terms of section 11(1)(b)(ii) of the Act 425,00	Eur 51.00
3. Application for a transit visa in terms of section 24(2) of the Act	Eur 51.00
4. Application for a visitor's permit by an illegal foreigner in terms of section 11(3) of the Act	Eur 96.00

5. Extension of a visitor's permit granted to an illegal foreigner in terms of section 11(3) of the Act	Eur 51.00
6. Granting of a visitor's permit in terms of section 11(1)(b)(i) of the Act	Free -
7. Application for a renewal of a visitor's permit in terms of section 11(1)(i) of the Act	Eur 51.00
8. First application for a study permit in terms of section 13 of the Act	Eur 51.00
9. Subsequent application for a study permit in terms of section 13 of the Act	Eur 51.00
10. First application for a business permit in terms of section 15 of the Act	Eur183.00
11. Subsequent application for a business permit in terms of section 15 of the Act	Eur183.00
12. First application for a medical treatment permit for medical treatment in terms of section 17 of the Act	Eur 51.00
13. Subsequent application for a medical treatment permit in terms of section 17 of the Act	Eur 51.00
14. First application for a work permit in terms of section 19 of the Act	Eur183.00
15. Subsequent application for a work permit in terms of section 19 of the Act	Eur183.00
16. First application for a corporate permit in terms of section 21 of the Act	Eur183.00
17. Subsequent application for a corporate permit in terms of section 21 of the Act	Eur183.00
18. First application for an exchange permit in terms of section 22 of the Act; provided that the fee is not payable where a reciprocal exchange agreement grants exemption from payment of fees	Eur 51.00
19. Subsequent application for an exchange permit subject to the proviso in item 18	Eur 51.00
20. First application for a diplomatic permit in terms of section 12 of the Act; provided that the fee is not payable where a reciprocal	Eur 51.00

diplomatic agreement grants exemption from payment of fees	
21. Subsequent application for a diplomatic permit, subject to the proviso in item 20	Eur 51.00
22. First application for a treaty permit in terms of section 14 of the Act; provided that the fee is not payable where a reciprocal treaty agreement grants exemption from payment of fees	Eur 51.00
23. Subsequent application for a treaty permit subject to the proviso in item 22	Eur 51.00
24. Application for a certificate in terms of section 9(3)(c)(i) and 31(2)(c)	Eur 51.00
25. Application for a permanent residence permit(s) in terms of sections 26 and 27 of the Act, per individual or per family; provided that this fee is waived in respect of an applicant who is the spouse, a partner in a spousal relationship, or a dependent child of a person permanently and lawfully resident in the Republic	Eur183.00
26. Application for the extension of a period of absence from the Republic exceeding three years in terms of section 28(c) of the Act 63 5	Eur 8.00
27. Application for permission to a permanent resident in terms of section 27(a) and (c) of the Act to change occupation	Eur183.00
28. Application for the extension of validity of a permanent residence permit in terms of section 28(d) of the Act	Eur183.00
29. Processing fee for a first application to be registered as an immigration practitioner in terms of Schedule F of the Regulations to be paid to the relevant Association	Eur377.00
30. Processing fee for a subsequent application to be registered as an immigration practitioner in terms of Schedule F of the Regulations to be paid to the relevant Association	Eur50.00

