

27 May 2022

Mr. TW Nxesi MP  
Minister of Employment and Labour

**Written Comment on the Draft National Labour Migration Policy and Employment Services Amendment Bill**

Dear Mr. Nxesi,

On behalf of Permits Foundation, I would like to thank you for this opportunity to provide input towards the Draft National Labour Migration Policy (NLMP) and Employment Services Amendment Bill. We applaud the inclusive and transparent nature of this process.

[Permits Foundation](#) is an independent, not-for-profit initiative supported by [40](#) major global companies and other organisations. Permits Foundation engages with governments worldwide in order to help enable employment access for dependents of highly-skilled international employees. Our research shows that this policy results in a triple-win for the host country, employers and employee families. As our world map shows, [over 30 countries](#) have now legislated to adopt this best practice approach.<sup>1</sup> **South Africa is viewed by Permits Foundation as a priority country.** One third of our sponsors operate here and are supportive of policy that would facilitate dual-careers in the global workplace.

The Foundation supports the assertion within the draft NLMP that spouse work access is a significant factor in attraction and retention of talent and improved trade and investment. Both the draft NLMP and White Paper on International Migration for South Africa propose facilitated visa processing and work access for family members of international employees.

**We urge government departments to now work together to adopt policy that will facilitate visa processing and *direct* work access for dependents of OHDOFL, critical skills *and* intra-company transferee visa holders.**

As this issue falls within the remit of more than one area of government, to ensure a streamlined approach, we request that the lead department and relevant legislation be clearly set-out and that the inter-ministerial process outlines how accountabilities and responsibilities will be assigned.

Below, we provide supporting evidence, including how partner work access migration would help achieve the stated goal of a rights-based, gender-sensitive approach to international migration, based on labour market needs.

Yours sincerely,



Helen Frew  
Director, Permits Foundation

*CC Dr Aaron Motsoaledi, Minister of Home Affairs*

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<sup>1</sup> Information on our previous work in South Africa is available here: <https://www.permitsfoundation.com/worldmap/#ZA>

## The significance of partner work access

Permits Foundation supports section 5.3.3.11 of the draft NLMP regarding factors that play a decisive role in the attraction and retention of migrants with needed skills. In particular we were encouraged by reference in the text to establishing joint visa procedures and automatic issuance of work visas for spouses and dependents.<sup>2</sup>

Where the spouse or partner can be assured of employment authorisation directly upon recognition of their dependent status, companies find it easier to move required talent to that country. Employers place great value on the resulting transfer of knowledge, skills and technology. Dual career couples look for assurance that both partners can work before the decision to move is made. Family friendly policy can enhance the host country employment market, boost the economy and provide additional tax revenues.

Research data from Permits Foundation shows a clear link between partner employment access, talent acquisition, investment, inclusion and country reputation. At the end of 2021, we carried out a survey of HR professionals from 65 major international organisations.<sup>3</sup> Over 84% of respondents said that **where a host country allows partners to work, their organisation's ability to attract and retain people with desired qualifications and skills increases**. Moreover, 80% said that the reputation of the host country as being open for business improves. They also highlighted the negative impact where a country does not authorise spouse/partner direct work access. More than half of respondents reported that employees in their organisation had turned down international assignments in the past three years due to partner employment concerns.

## Intra-company transfers

The draft NLMP states that in relation to spouse work access, *“visa dispositions should accompany issuance of critical skills or any work visa whose holder falls under either the OHDOFL or the Critical Skills lists.”* We welcome this reference. We also recognise that to protect the local labour force, facilitation of international migration should take place where skills are most needed.

In that context and to address potential gaps in labour migration policy, **we urge the inclusion of intra-company transfers (ICTs) in any category of employees whose family members will be allowed to work and study**. Our conversations with HR representatives from international companies operating in South Africa indicate that they often use the intra-company transfer visa when relocating highly qualified or highly skilled staff. In our 2021 survey, **98% of HR managers said it was important or very important to their organisation to be able to transfer employees internationally**. Where governments legislate to enable partner work access, the ICT visa category is consistently included. Global competitors including Australia, Canada, Brazil, Peru, Argentina, the USA, the UK and all 25 EU Member States participating in the intra-corporate transferees Directive enable dependents of ICTs to access work directly.<sup>4</sup>

In terms of benefit to the country, there is a large overlap between the intra-company transfer visa and critical skills visa. There is similarity in skills profile and value delivered. And while intra-company

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<sup>2</sup> Draft National Labour Migration Policy for South Africa (February 2022) Section 5.3.3.11, page 85.

<sup>3</sup> Permits Foundation International Dual Careers Survey 2021 and report (2022)

<sup>4</sup> Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, article 19.6: *the family members of the intra-corporate transferee who have been granted family reunification shall be entitled to have access to employment and self-employed activity in the territory of the Member State which issued the family member residence permit.*

employees may not settle permanently, the experience that they bring is an important contributor to knowledge transfer and development. Moreover, the numbers are small. In 2014-2016, **only 2% of temporary residence visas were issued as ICTs** (and 6% as critical skills visas).<sup>5</sup>

## The global picture

Permits Foundation welcomes dialogue with policy makers and legislators. Our research and information benchmarking best practice has been used by a number of countries when developing business-related migration policy and work permit regulations.

Over **thirty** globally competitive countries now implement legislation that enables the partner or spouse of highly-skilled mobile employees to access employment. Almost all administer this directly, incident to visa status, without requiring a separate application process. Dependents of permitted categories of skilled mobile employees can look for work as soon as they have completed their arrival or residence formalities. In most countries, they are issued with a card which shows their visa status, employment permission and end date.

In South Africa, recognised dependents of a foreign national work visa holder are not at present granted this right, despite clear support for change here. In the Foundation's 2021 survey of global mobility professionals, **South Africa was ranked 6th out of 62** identified countries where (further) legislation to facilitate partner work access would be welcomed.<sup>6</sup>

## The national impact of enabling partner work access

Governments world wide are balancing policies to ensure protection of the local labour market while continuing to be seen as an attractive business destination and meeting future skills needs. Policy makers often explicitly reference the link between partner work access and meeting national objectives. In the revised EU Blue Card Directive adopted by Council in 2021, recital 50 states that: *Favourable conditions for family reunification and access to work for spouses should be a fundamental element of this Directive in order to better attract highly qualified workers from third-countries.*<sup>7</sup> In another recent example (2019), then Irish Minister for Business, Enterprise and Innovation, upon announcing new legislation enabling work access for spouses and partners for critical skills employment permit said, *"fundamentally, this is about ensuring Ireland's continued competitiveness as a place in which to live, work and invest."*<sup>8</sup>

Should the government extend direct employment access to spouses of ICT, those in occupations in high demand opened to foreign labour (OHDOFL) and critical skills visa holders, the evidence suggests that this policy would not negatively impact employment opportunities for South African nationals.

Across the board, where global assignees move with family members, the numbers involved are typically low. The Foundation estimates that on average, highly-skilled international employees make up around 1.8% of the total company workforce and less than 65% of international assignees are accompanied. The

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<sup>5</sup> Draft White Paper on International Migration in South Africa, Chapter 5, Table 4, Critical Skills Visa Section 19(1) and Work Visa Section 19(5).

<sup>6</sup> Permits Foundation International Dual Careers Survey Report (2022). South Africa was ranked 6<sup>th</sup> behind the US, China, India, the UK and Singapore.

<sup>7</sup> Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC

<sup>8</sup> Ministers Humphreys and Flanagan announce change to immigration arrangements for spouses and partners of Critical Skills Employment Permit Holders (September 2019) <https://www.gov.ie/en/press-release/290559-ministers-humphreys-and-flanagan-announce-change-to-immigration-arra/>

Permits Foundation, PO Box 162, Carel van Bylandtlaan 16, 2501 AN The Hague, The Netherlands  
Email: [contact@permitsfoundation.com](mailto:contact@permitsfoundation.com) Website: [www.permitsfoundation.com](http://www.permitsfoundation.com)

impact on the local workforce is therefore minimal. This was a view reflected in the 2015 UK Migration Advisory Committee review of measures to help bring down immigration levels while still attracting the brightest and best foreign talent, when it concluded that *“the total number of dependant workers is too small to significantly impact the UK labour market”*. Looking at the 2019 figures from EU Member States post implementation of the Intra-corporate transferee Directive, of the 12 Member States who submitted data, the average number of ICTs issued per country was only 676.<sup>9</sup>

An academic study looking at the impact of enabling H-4 spouses in the United States to access employment concluded that it had *“provided a positive and significant economic and fiscal boost to the U.S. economy”* and *“the data suggest that this cohort does little to displace domestic workers in the occupations and industries where they predominate.”*<sup>10</sup>

Finally, **dependents of international employees, if authorised to work, would be unlikely to exacerbate shortages of low-skilled employment.** Both Permits Foundation and NetExpat/EY surveys found that over 80% of accompanying partners hold either a bachelor’s, master’s degree or PhD. Authorising direct employment access simply allows dependents to have the opportunity to look for work. There is no job guarantee. Yet if employed, they can make a fiscal and skills contribution to the economy. Our research also shows that family integration and well-being is improved.

### **Overarching rights**

The draft NLMP emphasises the need for *“a rights based, gender sensitive approach to labour migration policy development”* and references the contribution made by the South African Government towards the UN’s Global Compact for Safe, Orderly and Regular Migration (GCM) as well as meeting the Sustainable Development Goal Indicators. Permits Foundation congratulates the South African government for the substantial work carried out at UN level and the progress achieved. When contributing to the Global Forum on Migration and Development, Permits Foundation promoted the inclusion of reference to facilitating work authorisation for family members as seen in 21(i) of Objective 5 in the GCM to *“Enhance availability and flexibility of pathways for regular migration”*.<sup>11</sup>

Policies enabling partner work access also help to support Sustainable Development Goals 5 and 8.8 by enhancing diversity, equity and inclusion in the global workplace. Over 75% of accompanying partners are women. Current day expectations around global mobility mean that enforced career breaks are less and less acceptable to dual career couples who, particularly in the wake of COVID-19, look for assurance before the move that they can stay together as a family unit and continue to work. Increasingly, relocating couples depend on the income of both partners with 77% of partners now working before assignment.<sup>12</sup> Our research shows that families with dual career earners report more positive family relationships, well being and adjustment into the host country.

### **Inter-departmental cooperation**

The draft NLMP proposes that *“coordination between the DHA and the NDEL be stepped up in order to work towards an integrated service for applications for general work, corporate and business visas... with*

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<sup>9</sup> <https://ec.europa.eu/eurostat/data/database> Intra-corporate transferee permits issued, renewed and withdrawn by type of permit, length of validity and citizenship. Bulgaria, Spain, France, Italy, Cyprus, Latvia, Lithuania, Netherlands, Australia, Portugal, Slovenia, Slovakia submitted data. The population average of all of these countries is 19 million.

<sup>10</sup> Repealing H-4 Visa Work Authorization: A Cost-Benefit Analysis, Jack Kemp Foundation and UW Oshkosh, (2019)

<sup>11</sup> [Global Compact for Migration 2018](#)

<sup>12</sup> NetExpat and EY Relocating Partner Survey Report (2018)

*a view to decreasing turnaround times, simplifying procedures and increasing exchange of information between departments in shorter times.”*

The Foundation would welcome this increased collaboration between departments. Both the Department of Employment and Labour and the Department of Home Affairs have expressed an intention to facilitate the process of family application and spousal work access in relation to highly-skilled foreign workers. The Foundation gave support in 2017 to the proposal within the White Paper on International Migration for South Africa for *“a special visa that could be fast-tracked and must enable the applicant and the immediate family to apply as one unit. The family members (first step of kinship) must be able to work and study using the long-term residence visa without the need to apply for other appropriate visas as currently required.”*<sup>13</sup>

The proposed NLMP suggests that the automatic issuance of a work visa for the spouse should accompany issuance of critical skills or any work visa whose holder falls under either the OHDOFL or the Critical Skills lists. Yet we note that there was no reference to family members in the proposed updates in the Employment Services Amendment Act.

We therefore request that the inter-ministerial process now clearly sets out which government department would take the lead in developing and implementing policy relating to work access for family members of international employees, as well as the likely procedural and legislative path.

In practical terms, we recommend that partner work access is administered directly, incident to visa status, without requiring a separate application process.<sup>14</sup>

## **Conclusion**

We commend the South African government for recognising the importance of facilitating visa processing and work access for family members of international employees and the benefits that this could bring to South Africa. We recommend that government departments work in alignment, clarifying the policy mechanism through which smooth visa processing and *direct* work access for partners of international employees might take place and we ask that the categories covered include dependents of OHDOFL, critical skills *and* ICT visa holders.

This outcome would not only help to address policy gaps and support gender equality, it would also streamline the visa system and reduce unnecessary administrative paperwork associated with separate applications.

Thank you for this opportunity to provide feedback. Permits Foundation is at your disposal should you require any further information.

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<sup>13</sup> White Paper on International Migration for South Africa (2017) Chapter 9, p 46.

<sup>14</sup> If aligning with international best practice, we suggest the following wording within the legislative text: *family members of the X visa holder who have been granted family reunification shall be entitled to have access to employment and self-employment in South Africa for the duration of the visa and co-terminus with the visa holder.* (where X visa includes OHDOFL, critical skills and ICT visa holders).