

29 March 2024

FAO The Chief Director, Legal Services

**Written response to the Draft Second Amendment of the Immigration Regulations, 2014**

On behalf of Permits Foundation, thank you for this opportunity to comment on the Draft Second Amendment of the Immigration Regulations, 2014<sup>1</sup>. **South Africa is viewed by the Permits Foundation network as a [priority country](#)**. More than one third of our sponsors operate in South Africa. They include companies that are participating in the Trusted Employer Scheme.

The Immigration Act aims to promote economic growth by facilitating foreign investment and attracting exceptionally skilled and qualified foreigners to South Africa. Accordingly, in our response to the draft Regulations, **Permits Foundation would like to highlight the following:**

1. Our support for **clearly available information and formalised rules around the rights of dependents of highly-skilled international employees**<sup>2</sup>, enabling them to:
  - Move together and stay together as a family unit
  - change status without having to leave South Africa e.g. in order to receive work authorisation
2. Should the Department view the **Digital Nomad Visa as an option to enable spouses/partners of Intra-company Transfer (ICT) and Critical Skills Work Visa holders to work remotely while living in South Africa**, we suggest that *for these accompanying spouses/partners*, the Digital Nomad Visa:
  - can be applied for in country
  - duration can be co terminus with the employment permission of the principal applicant or can be renewed in country for the same period.
  - allow for a lower minimum salary threshold than the proposed ZAR one million
  - include safeguards that allow the spouse/partner to retain or easily regain family member status in country
3. Permits Foundation maintains that a significant aspect of country attractiveness as a business destination is assurance pre-move **that accompanying partners of ICTs and Critical Skills Work Visa holders may directly access employment while in the host country**. We refer to our prior submissions to the Department of Home Affairs and the Department of Employment and Labour, which also address concerns about the impact on the local labour market.<sup>3</sup>

Please find below further evidence in support of our recommendations.

Yours sincerely,

**Helen Frew,**

**Executive Director, Permits Foundation**

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<sup>1</sup> Referred to hereafter as “the draft Regulations”.

<sup>2</sup> including spouses of Critical Skills employees and Intra-Company Transferees

<sup>3</sup> Further details can be found in Permits Foundation’s prior submissions responding to the [White Paper on Citizenship, Immigration and Refugee Protection \(2024\)](#), the [draft National Labour Migration Policy \(2022\)](#), [draft Critical Skills list \(2021\)](#) and to the [White Paper on International Migration for South Africa \(2018\)](#).

## SUPPORTING INFORMATION

### About Permits Foundation

[Permits Foundation](#) is an independent, not-for-profit initiative supported by over 40 major global companies and other organisations ([listed here](#)). The Foundation engages with governments worldwide to recommend direct and open employment access for spouses, partners and where possible, other dependents of highly-skilled international employees. Research data reveals that this policy can benefit the host country economy without negatively impacting the local workforce, assist attraction and retention of skills and talent and also aid integration.

### South Africa in the global context

Over [thirty-five](#) globally competitive countries have implemented legislation that enables the partner or spouse of highly-skilled mobile employees to access employment.<sup>4</sup> Most of these countries administer employment access directly, incident to dependent status, without requiring a separate application process.

In the Foundation's recent survey of global mobility professionals, South Africa was ranked 6th out of 62 identified countries where legislation to facilitate spouse/partner work access would be welcomed.<sup>5</sup> More than one third of our sponsors operate in South Africa, including companies that are participating in the Trusted Employer Scheme.

In Xpatweb's Critical Skills Survey of South African employers, an overwhelming 96% of employer respondents agreed that the spouse/partner of a Critical Skills Work visa holder should be authorised to work in the host country upon recognition of their dependent status.<sup>6</sup>

### The significance of spouse and partner work access

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

Research data from Permits Foundation and others shows a clear link between partner employment access, talent acquisition, investment, integration, inclusion and country reputation. Permits Foundation's international survey of employers found that for 91% of respondents, where a host country allows partners to work, their organisation's ability to attract people with desired qualifications and skills increases.<sup>7</sup> Eighty percent said that the reputation of the host country as being open for business improves. Respondents highlighted a negative impact where a country does not authorise spouse/partner direct work access. More than 40% of respondents reported that employees in their organisation had cut short or turned down international assignments due to partner employment

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<sup>4</sup> They include the US, UK, Canada and Switzerland, countries cited as case studies in the White Paper on Citizenship, Immigration and Refugee Protection.

<sup>5</sup> Permits Foundation International Dual Careers Survey Report Part 1 (2022). South Africa was ranked 6<sup>th</sup> behind the US, China, India, the UK and Singapore. (available [here](#))

<sup>6</sup> <https://www.xpatweb.com/participate-in-xpatwebs-2022-2023-critical-skills-survey>

<sup>7</sup> Permits Foundation International Dual Careers Survey Report Part 1 (2022)

concerns.<sup>8</sup> Increasingly, families report that it is critical or significant for them to have two incomes in the host location.<sup>9</sup>

### **Impact on the local labour market**

Where highly-skilled international employees move with family members, the numbers involved are typically low. In South Africa, the 2023 Report of the Work Visa Review cites that only 729 ICT visas were issued in 2021. In the seven years up to 2021, approx. 16,100 Critical Skills Work Visas were granted.<sup>10</sup> The Foundation estimates that on average, highly-skilled internationally mobile employees make up less than 2% of the total company workforce and not all international assignees are accompanied. Where they are accompanied, our surveys show that 88% of accompanying partners hold a bachelor's degree or higher.<sup>11</sup> As our previous submissions have outlined, the impact on the local workforce is low and would be offset by the potential benefits. This was a view reflected in a recent academic study looking at the impact in the United States of enabling H-4 spouses to access employment. It concluded that this 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>12</sup>

### **Streamlined rules around family members**

Particularly in the wake of the pandemic, the right of the globally mobile family to move together and stay together as a unit is of high importance for international employees, their families and employers. Permits Foundation supports provisions within the Immigration Regulations that formalise rules enabling spouses, partners or children to change status from a Visitor Visa to work authorisation without leaving South Africa. We ask that the Departments continue to take measures to facilitate the processing of family members of Intra-company Transfer and of Critical Skills Work Visa holders at the same time as the principal applicant.

### **Remote work as an employment option for spouses accompanying highly-skilled international employees in South Africa**

In South Africa, recognised family members of a foreign national on a temporary work visa holder are not permitted to carry out employment or self-employment incident to their dependent status. In the absence of direct employment access, the Department may be looking to the Digital Nomad Visa as an option for certain accompanying partners who seek assurance pre-move that they may (continue to) access work. The Foundation's 2022 survey reports found that 60% of global mobility professional respondents had been asked by international employees about the right of their partner to work virtually. Thirty percent of partner respondents said they would like to work remotely for an employer based in another country. Similar figures were reported in Xpatweb's South Africa focussed Critical Skills Survey. Here, 57% of employers confirmed that in the past 2 years they have had enquiries from international employees about the right of their partner to work virtually during the assignment.<sup>13</sup>

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<sup>8</sup> Permits Foundation International Dual Careers Survey Report Part 1 (2022): in 44% of organisations, employees had returned home early from an international assignment due to concerns about the partner's employment. In over 50%, an employee had turned down an international assignment for this reason.

<sup>9</sup> The 2023 NetExpat EY Relocating Partner Survey Report found that the importance of a second income to families increased from 69% to 74% since 2018 (available [here](#))

<sup>10</sup> Operation Vulindlela Report of the Work Visa Review 2023

<sup>11</sup> Permits Foundation International Dual Career Survey Report Part 2 (2022)

<sup>12</sup> Repealing H-4 Visa Work Authorization: A Cost-Benefit Analysis, Jack Kemp Foundation and UW Oshkosh, (2019)

<sup>13</sup> <https://www.xpatweb.com/participate-in-xpatwebs-2022-2023-critical-skills-survey>

Because the Critical Skills Work Visa runs for up to 5 years and the ICT visa for up to 4 years, if looking to make the Digital Nomad Visa an option for accompanying spouses/partners, for this cohort, the Department may wish to look at options allowing its validity or renewal to match the duration of the principal applicant's work visa. We also recommend that provisions be put in place to enable spouses/partners to apply for the Digital Nomad Visa in country.

Secondly, the proposed threshold of ZAR one million, may render the Digital Nomad Visa unattainable for accompanying spouses/partners, many of whom look to work part-time.<sup>14</sup> A lower salary level would not put South Africa at odds with other countries. The majority of existing digital nomad visas have lower equivalent minimum salary level than ZAR one million and/or require proof of sufficient funds to cover expenses during their stay.

Should the accompanying partner look to apply for a Digital Nomad Visa, we find it important that there is security within the family unit. Ideally the accompanying partner would be able to retain their dependent status here but if this must be revoked, we request that the draft Regulations include provisions for these family members to swiftly regain dependent status without having to leave the country for example, in the event of the spouse terminating their remote work or the Digital Nomad Visa expiring or not being renewed.

Finally we note that after 6 months of the Digital Nomad Visa, there is a requirement to register with the South Africa Revenue Services. For international families considering the Digital Nomad Visa option, clarity around tax and compliance will be of fundamental importance. A key part of pre-move assurance is the knowledge that the accompanying partner or indeed the employer would not be at risk of falling foul of rules in the home or host country.

## **Conclusion**

Permits Foundation commends the Department of Home Affairs for taking measures to streamline immigration rules and to create a new Digital Nomad Visa. We ask that the relevant Departments give consideration to immigration policy that would facilitate employment access of spouses/partners of Intra-company Transfer and of Critical Skills Work Visa holders. The Foundation remains available to assist the Department both as a resource and as a means to convey information to the international employers within our network.

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<sup>14</sup> Permits Foundation International Dual Career Survey Report Part 2 (2022). 44% of partner respondents not in employment signalled that they would like to work part-time.