

# Police Clearance Certificates

Amendment to the process regarding police clearance certificates for temporary residence visas and permanent residence permits.

By Julian Pokroy

It has always been a requirement of Immigration Law regimes worldwide that a certificate of "good conduct" be provided by an applicant for a temporary residence visa or permanent residence permit, demonstrating that they are persons of good character in the countries they have previously resided in or find themselves now.

The technical term for such "good conduct" certificate in terms of the South African Immigration Act No. 13 of 2002 (hereinafter referred to as "the Act") is that of a Police Clearance Certificate.

Until the 2014 amendments to the Act, it was a requirement that a Police Clearance Certificate should be provided in respect of all countries that an applicant for a visa had been resident in for a period of more than 12 months, covering the last 10 years.

With the advent of the 2014 amendments to the Act, this extended to Police Clearance Certificates having to be provided in respect of all countries in which an applicant has resided for a period of longer than 12 months since their 18th birthday.

There are times when it is impractical or impossible to obtain such Police Clearance Certificates and

this constitutes a major issue. Prior to the advent of the Immigration Act in April 2003, it was possible to ask the Director General of Home Affairs to exercise discretion and to condone the failure to file a Police Clearance, if "good cause" could be shown as to why such clearance would not be issued. A typical example of that kind of situation would have been someone who had left their country of birth at a young age and never returned, in many cases with 20 years having elapsed, and with the country of birth having changed its geographical boundaries or constitution and refusing to give any documentation.

This would have made out a good case for a condonation or waiver of the requirement. However this ceased to be a possibility and with the advent of the 2014 amendments to the Act, the administrative requirements were tightened up. It then became a fatal defect to an application, resulting in its rejection, if such Police Clearance Certificates could not be provided. This obviously would include a South African Police Clearance Certificate.

It is important to note that Police Clearance Certificates only have a "shelf life" of six months from the date upon which they were issued and that Police Clearance Certificate which has passed its "sell by date" is no longer of any use.

All of the above remains valid and is not affected by the gist of this article.

However the Director General of Home Affairs, on 15 September 2016, issued a Directive which replaces the process for obtaining South African Police Clearance Certificates and which came into effect on 1 October 2016.

An indulgence period up to the end of October 2016 has been granted for the normal "paper" Police

Clearance Certificate" obtained in the prior fashion from the South African Criminal Records Bureau to be lodged. However, after that date, the process outlined hereunder will be the only way to lodge a South African Police Clearance Certificate.

The Department of Home Affairs has introduced a biometric background check service which is linked to the South African Police Services database. This process will replace the existing "paper copy" Police Clearance Certificate previously required. At the time of lodgement of the application for whatever visa, the applicant has to attend in person in any event for biometric identification in respect of lodgement of that visa application. What they will now have to do is make a payment of R175.00 to the VFS office (inclusive of VAT), where biometric identification through fingerprinting will take place in addition in respect of a Police Clearance Certificate. Therefore, whilst the requirement remains in place to provide a South African Police Clearance Certificate, if the applicant has resided in South Africa for a period of longer than 12 months remains, the process has changed.

This process does not apply to Police Clearance Certificates or certificates of good conduct from any

other country and those rules remain in place and those certificates do have to be submitted in person.

These changes are to be welcomed because of the amount of applications that were being wrongfully refused on the basis of valid police clearance certificates (paper copy) on the basis that those police clearance certificates were not valid. It was then only upon application for review or appeal that such incorrect decisions were being reversed.

In addition to that, there has been an insurgence in the amount of forged or fraudulent Police Clearance Certificates being submitted and the general feeling is that the paperless system with actual photographs being taken and biometrics is a far better system.

Watch this space for new developments. ■

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