

## **Comment on the First Amendment of the Immigration Regulations published 29<sup>th</sup> November 2018**

What is surprising to me, for as long as I have interpreted the amendments correctly, is that there do not appear to be any specific documentation requirements for foreign parents (both) travelling with foreign children from non-visa required countries when either entering or leaving South Africa.

It provides for 1] a parent or parents, legal guardian or any other person travelling with South African children – 2] a parent or parents, legal guardian or any other person from a visa required country intending to travel with a child – 3] where one parent, legal guardian or any other person is travelling with a child and 4] an unaccompanied child.

This appears to me to be a significant oversight.

In addition, as you will see below, the Amendment in most cases adds additional documentation requirements per category over those contained in the original Regulations of 2014.

For reference purposes a –

**“child”** in terms of the Children’s Act 2005 means a person under the age of 18 years

**“birth certificate”** means any birth record of a child issued by the relevant authority indicating the full names, surname and the date of birth, including the names and surname(s) of the parent(s) of such a child”.

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Sections 12(A) and 12(B) under Regulation 6 (Admission and Departure) deal specifically with a parent or parents, legal guardian or any other person travelling with a child and entering or leaving South Africa.

### **Comment on Section 12 (A)**

*“Where a child presents a passport which contains the details of his or her parent or parents, an immigration officer shall not require such child to produce a birth certificate”.*

This exclusion covers the following circumstances only -

1. Where a parent or parents, legal guardian or any other person is travelling with a child who is a South African citizen
2. Where one parent, legal guardian or any other person is travelling with a child
3. Any unaccompanied child

Therefore, where a child is unable to present a passport a birth certificate (as defined above) is required. In addition, although silent on the matter, it would appear that the exclusion may well apply to foreign parents, legal guardians or any other persons travelling from visa exempt countries with one or more foreign children.

It should be noted that a birth certificate is required when making application for a visa - “where a parent or parents, legal guardian or any other person from a visa required country intends to travel with a child”.

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### **Comment on Section 12(B)**

As I understand the Amendment the situation is as follows -

#### **Sub-section providing for - a parent or parents, legal guardian or any other person is travelling with a child who is a South African citizen**

*Copy of a birth certificate or passport containing the details of the parent or parents of the child;*

This will definitely simplify matters. If the child has a passport no birth certificate will be required and if there is no passport a birth certificate will be required but it does **not** have to be unabridged for as long as it complies with the definition of "birth certificate" as provided above.

Additional requirements which were not specifically set out, but in some cases inferred, in the 2014 Regulations are -

- *a copy of an adoption order if applicable*
- *a letter of consent from the other parent or parents, or legal guardian, as the case may be, of the child authorising such person to depart from or enter into the Republic with the child he or she is travelling with;*
- *a copy of the passport, or identity card in the case of South African citizens, of the parent or parents or legal guardian of the child;*
- *the contact details of the parent or parents, or legal guardian, of the child;*
- *a copy of a court order granting full parental responsibilities and rights or legal guardianship in respect of the child, if he or she is the parent or legal guardian of the child; or*
- *where applicable, a copy of a death certificate of the deceased parent, parents or legal guardian of the child.*

As can be seen from the above, the new requirements are more comprehensive than those contained in the 2014 Regulation.

**Sub-section providing for - a parent or parents, legal guardian or any other person from a visa required country intending to travel with a child when applying for a visa for such child**

The requirements, in so far as visa required countries are concerned, essentially remain the same with all of the documentation having to be provided at the time of application for the visa.

**Sub-section providing for - An unaccompanied child**

Varies substantially from the original requirements set out in the Regulation of 2014 and provides for additional documentation depending on the circumstances.

Although sub-section (i) requires a copy of a birth certificate, section 12(A) is such that the birth certificate should only be required if the child does not have a passport!!

Additional requirements which were not specifically set out in the 2014 Regulations are -

- Adoption order (if applicable)
- Copies of parent or parents or legal guardian passports
- Court order granting full parental responsibilities and rights or legal guardianship
- Death certificate (if applicable)

Sub-section providing for - **one parent, legal guardian or any other person travelling with a child.**

In this section they have combined "one parent travelling with a child" together with "any other person travelling with a child". The 2014 Regulations separated these requirements.

Although decidedly unclear, this section would appear to apply to single parent, single legal guardian or any other person travelling with a child irrespective of whether or not the child is a South African citizen, whether or not they are from a non visa required country or from a visa required country.

In addition and adding still further to the difficulty when interpreting the requirements, is the inclusion of the wording "an immigration officer may require a copy of a birth certificate". It would appear that one parent, legal guardian or any other person travelling with a child from a country

other than a visa required country, whether the child is South African or not, may be required to produce a birth certificate.

The requirements also provide that “the immigration officer must, in examining such child for admission into or departure from the Republic request and consider, where applicable—” It then goes on to provide for a significant number of additional requirements that were not set out in the Regulations of 2014. Furthermore, if the information set out in the Amendment is not provided within 24 hours, the child may be refused entry into or out of South Africa.

Finally and adding further to the confusion it would appear probable that all of the requirements in this section are applicable to “one parent, legal guardian or any other person travelling with a child” irrespective whether or not they are from a visa exempt country, a visa required country or whether or not the child is South African.

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30<sup>th</sup> November 2018.