



Zimbabwe Exemption Permit FAQ

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Q: What is the Zimbabwean Exemption Permit (ZEP)?

A: The ZEP was established by the Department of Home Affairs to “regularise” the stay of undocumented Zimbabweans in South Africa. Through ZEP, Zimbabwean nationals who moved to South Africa before 2009 were allowed to apply for a ZEP to live and work in South Africa legally. It is estimated that about 178,000 Zimbabweans hold the ZEP permits and would be affected by the Department of Home Affairs decision to terminate the permit.

Q: What decision has the DHA made with regards to ZEP?

A: On 29 December 2021, the DHA [issued a directive](#) that it would not be extending the ZEP, giving a 12 months to ZEP holders to regularise their stay by applying for “one or more of the visas provided for in the Immigration Act”. ZEP permits due to expire on 31 December 2021 were automatically regarded as valid until 31 December 2022. The 31 December 2022 deadline has since been extended to [30 June 2023](#), thus ZEP holders’ permits are **automatically** regarded as valid until this date, after which ZEP holders who have failed to secure an alternative permit will be regarded as having illegal status in South Africa.

Q: Can you reapply for a ZEP?

A: The ZEP application process is closed. ZEP permits which will expire before the 30 June 2023 deadline will automatically be regarded as valid until this date.

From now until 30 June 2023 deadline:

- ZEP holders are not required to produce a valid exemption certificate or letter of authorisation to stay in South Africa while they are applying for another visa

- ZEP holders may leave and return from South Africa provided they meet the requirements of the Immigration Act
- ZEP holders will not be arrested or deported if they are unable to present proof of a valid permit in their passport

The DHA has confirmed it will not be granting further extensions.

Q: What should ZEP holders do in the interim?

A: The DHA has urged ZEP holders to apply for another visa or waiver as soon as possible because it could take more than six months for these to be issued. ZEP holders will have to apply to a [Visa Facilitation Services](#) (VFS) for one of the visa options (listed below) to regularise their status. If you do not qualify for a visa, you could be forced to return to Zimbabwe or deported.

Q: What happens if you do not apply for a different visa?

A: The DHA will deal with former ZEP holders in the “same way” it deals with “someone who is in the country illegally and overstayed” – deport them.

Q: What alternatives exist for ZEP holders?

A: Anybody on a valid permit should apply immediately. There are generally two options for ZEP holders – obtaining a Critical Skills Visa or a General Work Visa with a waiver, although in the case of obtaining a waiver, this does not automatically regularise your status (see below). Again, due to the backlog, it can take several months for you to obtain your visa so apply as soon as you can.

Critical Skills Work Visa

If your occupation is listed on the [critical skills list](#), released by the Department of Home Affairs, you could apply for a Critical Skills Work Visa. This list is currently being reviewed.

To obtain a [Critical Skills Work Visa](#), you must show in your application that you have (among others):

- A written undertaking by the employer accepting responsibility for the costs related to the deportation of the applicant and his / her dependent family members should it become necessary.
- A written undertaking by the employer to ensure that the passport of his or her employee is valid at all times for the duration of his or her employment (where there is no employer: a written undertaking by the applicant to ensure that the passport of the applicant shall be valid at all times for the duration of his or her temporary visa).

- Proof that the applicant falls within the critical skills category by specifically indicating the occupation/critical skill for which the application is being made. The occupation/critical skill must be on the critical skills list.
- Proof of evaluation of the foreign qualification by **SAQA** and translated by a sworn translator into one of the official languages of the republic.
- If required by law, proof of application for a certificate of registration with the **professional body**, council or board recognised by SAQA in terms of section 13(1)(i) of the national qualifications framework act;
- A confirmation, in writing, from the professional body, council or board recognised by SAQA in terms of section 13(1)(i) of the national qualifications framework act, or any **relevant government department** confirming the skills or qualifications of the applicant and appropriate post qualification experience, (if not attached, VFS official to check directive 22 of 2014)

General Work Visa

This is by far the hardest work visa to obtain and requires the employer to prove they have exhausted all options to find a suitable South African or permanent resident to fill your role.

To obtain a [General Work Visa](#), you must show in your application that you have (among others):

- An offer of permanent employment in the form of a contract of employment.
- A letter from your employer confirming your current and permanent employment, which is not older than six months.
- Proof of qualifications evaluated by the South African Qualification Authority.
- Work references or certificates of service (covering at least the last five years).
- Endorsement related to Professional Association should be attached.
- Proof of five years continuous work visa, excluding work in terms of intra company transfer, corporate and Zimbabwean special project visas.
- Provide a Department of Labour certificate or a waiver. To obtain the certificate:
 1. the employer must advertise the job in the newspaper;
 2. the recruitment process will then reviewed by the Department of Labour,
 3. a site inspection will be done by the Department of Labour.

Waiver

In the case of unskilled workers, the employer can assist an employee to obtain a waiver by justifying why losing the employee would have dire consequences for the organisation.

The General Work Visa generally requires the submission of a certificate from the Department of Labour to confirm that the person is suitably qualified for the position and that there is no South African available to take up that position (see above).

However, if people can show that there's "good cause", they can apply to the Minister of Home Affairs to waive a regulatory requirement or form (under Section 32(1)(c) of the Immigration Act) to waive the requirement of a Department of Labour certificate to support a general work visa application.

The justification must outline the pivotal role you play in the organisation, not least the impact it would have on the employment of South Africans within the organisation should you be forced to leave the company.

Since the Department of Labour generally supports South African jobs for South Africans, it is very rare that this waiver is provided.

Only if the waiver is successful, can you apply through VFS for a general work visa without the labour certificate (so the waiver itself does not provide you with legal work status).

You should compile the application for a general work permit while preparing the waiver application as both processes will take several months due to the backlog.

Our experts have confirmed that obtaining the waiver is taking up to a year, so this may not be a viable solution for ZEP holders who have until 30 June 2023 to regularise their status.

Corporate Work Visa

Your employer must have a corporate permit to qualify for this option and it is largely extended to corporates which need to employ foreign personnel. The onus will be on the corporate to prove that they were unable to find South African citizens or permanent resident holders who can fill certain roles within the organisation.

Life Partner or Spousal Visa with Working Rights

If you are in a relationship with or married to a South African citizen or permanent resident, you may apply for a Life Partner or Spousal Visa with Working Rights.

In the case of the Life Partner Visa, valid for two years, you will have to prove that you have lived together for a minimum of 24 months, by presenting a lease agreement and letters of support from friends and family.

In the case of the Spousal Visa, you will have to show that you have been married for a period of five years. Importantly, if you have children you should indicate in your application that your ability to work is in the direct interests of supporting the minor child.

Study Visa

Study Visas must be applied for at VFS Centres near the educational institution the student will be studying at and are issued for the duration of the course. The holder of a Study Visa may work part-time for a period not exceeding 20 hours per week.

You can only pursue this option if your staff member is legitimately studying. In addition to working 20 hours per week they have registered for and are attending classes at an educational institution, which has an obligation to report the 'student' if they are not attending classes. This is not a long-term solution and if you are seeking to substitute a work visa with a student visa and have no intention of them studying, you could be complicit in a crime.

There are further caveats:

- No foreigner may displace a South African citizen / resident at a local educational institution
- The student must have proof of sufficient funds to pay for day-to-day living expenses and tuition
- The student must have adequate medical cover with a registered South African medical scheme and proof thereof

Q: What happens if I've applied for a visa, but haven't received it yet?

A: Even if you have applied for status, you are not considered as having the legal status to live and work. Between the expiry date of your existing visa and your new visa, you essentially have a gap of status.

However due to the [dramatic backlog facing the Department of Home Affairs](#), there is a concessions in place:

- If you have applied for a visa and can produce a VFS application receipt, your expired visa is automatically extended on its own terms until 21 March 2023.

Interestingly, if the concession is extended beyond 30 June 2023, it may be that ZEP holders who had applied for the renewal of their permits but had not received these yet may find that their permit is automatically extended until the next concession deadline, but there is no guarantee that the concession will be extended. The concession only applies if the applicant had a valid permit.

Q: As an employer what supporting document should I provide for visa applications?

A: An employer's letter motivating the work permit application must:

- Undertake to repatriate the visa applicant and his/her family
- A valid employment contract

- A supporting letter which outlines:
 - What the employee does
 - Why they are critical to the business
 - How difficult it is to find a South African to replace them
 - How the termination of their business will have an impact on your business and ability to employ South African citizens / residents

Q: Does my child having been born in South Africa confer me legal status?

A: No, children born to parents who are not South African citizens or permanent residents are not automatically conferred residence or citizenship of South Africa. They take the citizenship of their parents. Consequently, your relationship does not confer legal status.

Q: How likely is that the ZEP will be extended?

A: The DHA has confirmed it would not extend beyond 30 June 2023, but there are mixed views on whether they will or not. The [Helen Suzman Foundation](#) is also bringing an application to court to challenge the termination of ZEP. The consensus however from our experts is that you should not wait until 30 June 2023 to see whether it has been extended. If you are a ZEP holder, apply for a visa to regularise your status now. If you are an employer, take the practical steps suggested by our experts and outlined below.

Q: As an employer, what should I do if I have a ZEP holder in my employ?

A: You have a legal obligation to suspend or retrench the ZEP holder by the 30 June 2023 unless they can provide proof that they have secured the legal status required to live and work in South Africa. Give them notice as soon as possible that they must apply for another category of visa by a set deadline. If they have been unsuccessful in securing a visa, their employment will have to be terminated. The ZEP holder must also provide the employer with proof that they have applied for another visa.

Luke Brodziak, Director [Integrated Labour Solutions](#), provides a practical and fair process that hospitality employers can follow to ensure they are legally compliant. The process entails employers suspending for illegal incapacity as the law requires them to have a valid permit. This should be a provisional suspension, allowing the ZEP holder to regularise their status. If the permit is issued within the set period, the suspension can be lifted and employers will have satisfied the fairness provisions. The fact that a ZEP has lapsed does not allow the employer to circumvent fair process. Take note: even if you suspend the employee, they are still employed by you.

[Click here](#) for Luke's presentation.

Should you wish to retrench the ZEP holder instead since it is an operational requirement that they have the proper work permit, you will have to follow the [legal retrenchment process](#).

Q: Am I obligated to assist the ZEP holder to obtain a work permit?

A: There is no obligation to the employer set out in the Labour Relations Act to assist permit or visa applicants to regularise their status. However, you are required to provide administrative support, i.e., writing a letter of support for Critical Skills Visas, or fulfilling the employers' obligations in terms of applying for a General Work Visa, i.e., applying for a waiver, advertising the job, etc., as outlined above.

Q: My staff member has a permit. Am I obliged to ensure that it is valid?

A: The Act talks about conducting a 'diligent search' so your responsibility is to at least check with the Department of Home Affairs whether the visa or permit is valid. You can do so by emailing a copy of the visa or permit to visaverifications.missions@dha.gov.za. Keep proof of your email so that you can show that you have done your best to comply should an immigration official ask if you have checked. Until such time as you have received verification from DHA, you can assume the visa is valid.

Further contact details can be found here:

<http://www.dha.gov.za/index.php/immigration-services>

Q: What is the likelihood immigration officials will check on businesses in the hospitality industry?

A: There is a high likelihood and in fact there has already been an increase in immigration officials visiting hospitality businesses to ensure compliance. FEDHASA urges its members to ensure that they are legally compliant.

Q: Can a foreigner apply for UIF even if their permit is expired?

A: Legally they are entitled to claim UIF whether or not they possess a valid permit because they have contributed UIF. In practice however, foreign workers have struggled to access UIF so it will require them to keep following up.

Q: What is the situation with asylum permits?

A: The [DHA website outlines the requirements](#) to apply for asylum or refugee status. However, the DHA's refugee directorate has decided not to renew asylum seeker permits of Zimbabweans and Malawians as these, they believe, have used this system to obtain

residential and working rights when they are in fact economic migrants, not legitimate refugees. Consequently, these are in danger of not having their current visas renewed.

Q: What are some of the commonly held perceptions about migrants?

A: These are some of the myths associated with migrants and their impact on the country:

1. South Africa is swamped by migrants: This is not true; they comprise only 6.5% of the population.
2. Migrants steal jobs from South Africans: The statistics is that for every migrant in South Africa two jobs are created.
3. Migrants are responsible for the crime: The statistics do not validate this myth.
4. Migrants are flooding our healthcare system: Once again, this is statistically impossible.

Take Note: The information provided above should be used as a guideline only and should not be regarded as legal advice. FEDHASA accepts no responsibility for any inaccuracies.