

LESOTHO

THE MOUNTAIN KINGDOM'S IMMIGRATION LANDSCAPE



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INTRODUCTION

Located in the center of South Africa is a small mountainous country named Lesotho. The name Lesotho translates roughly to the land of people who speak Sotho. Its capital and largest city is Maseru and its population at present counts 2.1 million people. Lesotho is lovingly referred to as the Mountain Kingdom by most of its inhabitants and the neighboring South Africans.

Lesotho's key economic sectors are mining and manufacturing. Over the past 10 years diamond mining activities have expanded and this extractive sector is deemed to hold considerable potential. The majority of the population is engaged in subsistence farming.

Cotton farming and processing provides most of the formal employment in the country. The country's economy is of a modest size, yet the country has seen steady growth over recent years. There are multiple opportunities for foreign investors to enjoy the growth of the local consumer base.

This writing offers a brief overview of the immigration landscape of Lesotho.

ABOUT IBN

IBN Business & Immigration Solutions provides a full range of immigration services for Southern Africa. With our professional and trusted network of handpicked partners on the ground, we are familiar with the practical reality governed by immigration rules & regulations.

IBN has been in the industry for nearly 2 decades. The company holds its headquarters in Cape Town and boasts 3 offices; in Johannesburg, Stellenbosch and Windhoek (Namibia). Its team consists of over 20 caring and dedicated immigration professionals prepared to go the extra mile to find the best immigration solution for you.

IBN has recently opened its first international office in Windhoek (Namibia) in April 2016.

OUR SERVICES FOR LESOTHO

Our team of immigration specialists will facilitate your immigration into Lesotho. We provide first class service and comprehensive, expert advice – to global corporations as well as individuals. The IBN immigration team will offer tailored solutions for all your immigration needs for Lesotho with the assistance of our professional and trustworthy team on the ground.

LESOTHO'S IMMIGRATION LANDSCAPE

Lesotho's legal immigration framework is rather rudimentary. Illustrative is the fact that the last officially promulgated Act governing the presence of foreigners in Lesotho, the Aliens Control Act, stems from 1966.

Despite being an enclave within South Africa, Lesotho's immigration framework differs completely from that of South Africa.

Notable practicalities are that one needs to obtain a separate residence permit in Lesotho, over and above work authorization. Also the law does not create a separate short term work permit nor business visa.

As stated above; the system is basic and day to day reality has demanded for practice to meet the needs of the current business environment. Thus when studying the immigration landscape of Lesotho one is advised to focus on the factual management of foreigners entering, exiting and residing in the country rather than the legislation.

WHAT IS A VISA

A visa is an official endorsement in a passport, which allows the bearer to proceed to the relevant country's territory provided that such bearer complies with the terms and conditions stipulated on the obtained visa.

TYPES OF VISAS AND PERMITS OFFERED IN LESOTHO

Visitor's visa (business prospecting)

Work authorization

- *Exemption for the Ministry of Labour (short term work permit)*
- *Work permit (employment certificate)*

Dependents

- *Accompanying spouse and minor children visa*
- *Employee visa*

Study visa

Complimentary residence permit

(BUSINESS) VISITOR'S VISA

A specific business visa is not created under Lesotho's immigration framework. No distinction is made between a visitor intending to engage in business or to do what a tourist traditionally does. Thus unlike the typical tourist visa, activities traditionally conducted on a business visa, such as business prospecting and attending meetings or conferences, is done on a visitor's visa.

The business visitor visa is valid for 30 days

In terms of the Immigration Act, the Sotho government has placed countries in three specific categories. Depending on the passport one holds visitor visa applicants can either;

1. Be entirely visa exempted

This category includes countries such as South Africa, Namibia and the UK

2. Receive a tourist visa at the port of entry (maximum of 30 days at the discretion of the immigration official)

The second category includes applicants holding passports from Germany, Canada and the Netherlands, or;

3. Be obliged to apply for the relevant visa prior to travelling to Lesotho

The last category is made up by, for example, Russia, China and North Korea

Lesotho allows visitors to engage in a relatively wide scope of activities. However, holding a visitor visa does not equal having obtained work authorization. When actual work must be done in Lesotho work authorization must be obtained. One cannot just drive up to the border, despite holding a passport from the category 1 and 2 countries, get a visitor visa and conduct work. A typical example of a situation in which this provides challenges would be that of a foreigner entering Lesotho with a branded car carrying equipment to fix gates / elevators. It is likely that immigration officials refuse entry to this person, if they cannot establish they are authorized to work – the circumstances make it obvious that the applicant is not arriving for mere visiting purposes (work will be conducted)

Renewal

The need to renew a visitor visa rarely arises in practice. Lesotho is a relatively small country, holders of visas will thus exit the country (ordinarily by crossing the Maseru border post bridge) and re-enter the same day if so required. Only people from the third category mentioned above, which requires people to obtain their visa prior to traveling to Lesotho, would not be able to do this so easily.

They can either go back to their country of origin and apply at the relevant Embassy again, or approach the Ministry of Home Affairs and apply for an extension. This ought to be done timely.

SHORT TERM WORK AUTHORIZATION

Specific short term work visas are not created under Lesotho's immigration law. A pragmatic solution has been found for this predicament in practice.

To remain with the example granted above – let's imagine that a foreigner is urgently needed in Lesotho to swiftly repair the lifts of Lesotho's grandest hotel. Short term work permits are not

available in Lesotho. Entering the country on a visitor visa and executing the work would not be compliant with local immigration law. The solution is to write to the Labour Commissioner at the Ministry of Labour and request an exemption. He or she can be approached to seek permission for the work to be conducted. A detailed motivational letter accompanied by a valid passport are the crucial documents to be provided.

The discretion to grant such permission, in the form of an exemption, is vested in the Commissioner. The Commissioner may either grant permission by drafting a letter, sending an email or stamping and dating the request letter. Whether or not approval is granted will depend on the specific circumstances of the case. If approval is granted this is only for a maximum of 2 weeks. Short term work authorization, in the form of the above-mentioned exemption, is thus only helpful for rather short, urgent situations.

Renewal

Renewal of short term work authorization is not possible.

WORK AUTHORIZATION IN LESOTHO (EMPLOYMENT CERTIFICATE)

Granting work authorization to foreigners is the sole domain of the Ministry of Labour.

Long term work authorization in Lesotho is granted for a maximum of two years and renewable.

In order to obtain an employment certificate – which is technical term for a long term work permit - in Lesotho the most essential document to be provided is a motivational letter from the employer, stating why a foreigner is required to “do the job”. Although advertising of the position or creating a so called Transfer of Skills plan (a plan which outlines how skills will be transferred from the foreigner to a local understudy) is not compulsory, it will strengthen the application considerably. In the end, in immigration practice, local beneficiation is deemed highly important. Thus, if an employer can motivate that they aim to benefit locals but were not able to fill an essential position with a suitable local candidate at this stage, that is appreciated by local authorities.

When the internal review of the application at the Ministry of Labour is completed and approval granted the applicant will receive a letter.

At the police station final administrative work will then be conducted. This includes taking photos of the applicant. Once all the administrative work is done, an employment certificate will be handed to the applicant at the police station. The certificate is made of similar material and has a similar size as that of a bank card. On the card the picture of the foreigner, his employer, role and validity of the card will be included.

Processing time long term work permit

The processing time for a work authorization application is between four to seven weeks on average.

Renewal

Renewing an employment certificate is more challenging than getting the initial application approved. A more stringent approach is taken by the local authorities. Another motivational letter written by the employer has to be submitted to Labour. This letter has to state reasons why it has not been possible to replace the foreigner with a local in 2 years. With every renewal application submitted a stronger motivation from the employer is expected. The application form includes additional questions when it comes to a renewal application.

Departure notification

In case where a holder of an employment certificate leaves the employ of a company in Lesotho; the employer is obliged to collect the employment certificate from the holder and return the original to the authorities. Failing to comply with these rules, will affect any new application relating to the same employer.

ACCOMPANYING SPOUSE AND MINOR CHILDREN

Any spouse intending to accompany his or her partner can obtain a residence permit to do so. This is also applicable to children. The process is rather straightforward.

Documents required to obtain such residence permit are most importantly a marriage certificate, undertaking to sustain the accompanying family by the work permit holder and proof of financial means. The financial means must prove that the work permit holder is indeed able to cater for the accompanying applicants.

Life partners and same sex couples are not recognized for immigration purposes in Lesotho.

ACCOMPANYING EMPLOYEE

Quite remarkable and specific to Lesotho is Section 7 of the Aliens Act. This provision permits a work permit holder to be accompanied by an “employee”. An employee employed by the work permit holder in this case. This provision stems from the days when it was still rather normal to bring along a nanny and chef when moving with the family – remains possible today.

Also interesting about this provision is that although the employee will be working in Lesotho (for the work permit holder) he or she is exempted from obtaining separate work authorization.

STUDY VISA

Study visas in Lesotho are only required from a foreign national who wants to enroll at a tertiary institution. The holder of a study visa is not permitted to work.

Children accompanying their parents who are to enroll at a primary or high school are not required to apply for a study visa. The child accompanying his or her parents, must merely obtain a residence permit which correlates with the main applicant’s permit.

RESIDENCE PERMIT / LOCAL REGISTRATION

Lesotho makes a clear distinction between the right to work in the country and to reside in the country. The Ministry of Labour grants work authorization. The Ministry of Home Affairs on the other hand grants the right to actually reside in Lesotho.

A residence permit is thus crucial if a foreign national intends to stay longer than the period stipulated on their entry visa. Holders of work authorization or study permits usually stay longer than the normal 30 days set out in the visa. Thus a residence permit granting them permission to remain in Lesotho for longer is needed.

The application process takes about a 3 weeks and applications are lodged with the Department of Home Affairs. The residence permit is issued for a period corresponding with the work

authorization. There is no fixed period in which the residence permit must be obtained as long as the foreigner is never in the country without either a residence permit or valid entry visa.

Most important documents to obtain a residence permit in Lesotho are the work authorization or study authorization and a police clearance from the applicant's country of origin.

Practical plus: in case the police clearance application is still pending, a receipt establishing that the applicant has applied for a police clearance may permit the applicant to submit his residence permit application. The residence permit is then valid for three months and can be renewed in accordance with the validity of the work authorization as soon as the final police clearance certificate is provided. Even if a residence permit is issued at a later stage, this does not restrict a work authorization holder from commencing with work.

PERMANENT RESIDENCE / CITIZENSHIP

Permanent residence permits are not granted in Lesotho. In case an alien wishes to remain in Lesotho for an indefinite period, such person should apply for citizenship.

Discretion to grant citizenship is held by the Minister of Home Affairs. There are no set requirements to comply with, proof of financial means from the applicant is important though.

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