



# THE CONSEQUENCES OF OVERSTAYING YOUR VISA

If you hold a visa issued by the South African Department of Home Affairs, you must always check and be aware of the visa expiry date. If you are staying in South Africa longer than the validity of your visa, you must apply for a renewal of the visa 60 days before the visa expires, or you must leave the country before the expiry date. Failure to do so has severe consequences. This is set out in South Africa's Immigration Act.



## WHAT HAPPENS IF I OVERSTAY MY VISA?

In 2014, the Department of Home Affairs introduced new immigration regulations, which effectively 'ban' foreign nationals who overstay in the Republic from re-entering South Africa for a set period of time. <sup>\*</sup>

The immigration laws in South Africa state that a person who overstays in the Republic after the expiry of their visa will be declared as 'undesirable'. This person would receive a document, confirming them to be an 'undesirable' person, when they exit South Africa. Their passport is also stamped. The document 'bans' them from re-entering South Africa. The length of time that you are banned for depends on how long you have overstayed your visa.

- Persons who overstay their visa by more than 30 days will be declared 'undesirable' and banned for a period of 5 years. This means that this person will not be allowed to re-enter South Africa for the next five years.
- Persons who overstay their visa for a period of less than 30 days will be declared 'undesirable' and banned for a period of 12 months. This means that this person will not be allowed to re-enter South Africa for 12 months.

A person will be declared 'undesirable' and will receive a ban regardless of the reason for the overstay. The ban applies to any person who has overstayed, adults and children. The ban and being declared 'undesirable' also affects people who leave South Africa while their application for a visa (or visa extension) is pending, if their current visa has expired.



## WHAT CAN I DO IF I RECEIVE A BAN?

You are able to appeal a ban. The Immigration Act allows for people to lodge a formal appeal request to the Department of Home Affairs if they have been declared 'undesirable' and received a ban. The appeal must be submitted within ten working days of the day that you received the ban. To submit an appeal, you must email your request to the Department of Home Affairs, at [overstayappeals@dha.gov.za](mailto:overstayappeals@dha.gov.za), with the following documents:

- Written representations/letter with clear reasons for overstay,
- A copy of the document declaring you 'undesirable' (you would have received this at the border upon leaving South Africa, and a stamp in your passport),
- A copy of your passport: the information page and other relevant pages, such as pages with your South African visa(s), stickers or stamps,
- If you had applied for a visa extension, also include the acknowledgement of receipt of that application,
- A medical certificate if you overstayed due to medical reasons and
- Any other relevant documents that support your written representations (including documentary evidence proving your reasons for overstaying).

For confirmation that the appeal has been received, you should contact IMS Deportations on +27 (0)12 406 4985.



## HOW CAN I AVOID RECEIVING A BAN?

You can avoid receiving a ban by lodging your visa renewal application 60 days before the expiry of your current visa. If possible, we advise that you submit your application 90 days before your visa expiry date so that the Department of Home Affairs has enough time to look into your application. (You cannot submit the application six months before the expiry of the current visa, however.) If your visa has expired and your application for extension is still pending, do not leave South Africa unless travel is absolutely necessary. Contact a reputable immigration advisor or attorney should you have to travel.



## MY BAN HAS FINISHED - CAN I RETURN TO SOUTH AFRICA?

No You can only return to South Africa once you have applied to the South African Department of Home Affairs for the ban to be lifted as it is not automatically removed from the system. You must apply for the ban to be lifted. If you do not, you will be refused entry into South Africa at the Port of Entry. You can make this application at the email address provided above. It is also advisable to speak to your local South African consulate/embassy.



## HAS THE COVID-19 PANDEMIC IMPACTED THIS?

During the Covid-19 pandemic, the South African government implemented a nationwide lockdown as well as a closure of its borders. This meant that many people were unable to return to their country of origin before their visas expired.

The Department of Home Affairs issued Directions specifically for people whose visas expired during the National State of Disaster, from 15 March 2020. These Directions state that if your visa expired from 15 March 2020 and you remained in the Republic during the period of the national state of disaster, you will not be declared an undesirable person and you should not receive a ban when leaving the country up to and including 31 July 2020.

Any person who did receive a declaration of undesirability during this period, should have that ban set aside. You should contact the email address provided above to clarify this situation and ensure that any ban that may have been noted, is removed. For more information, and to download the Directions, see: [www.scalabrini.org.za/news/covid\\_info](http://www.scalabrini.org.za/news/covid_info).

For reliable information on the Covid-19 virus, visit [www.sacoronavirus.co.za](http://www.sacoronavirus.co.za).

