



COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA (LSSA)
ON THE PROPOSED PROFESSIONAL BODY RECOGNITION AND PROFESSIONAL
DESIGNATION REGISTRATION OF
FORUM OF IMMIGRATION PRACTITIONERS OF SOUTH AFRICA (FIPSA)

In terms of Government Gazette number 38870 dated 12 June 2015 regarding a requested input on the proposed professional body recognition and professional designation registration of Forum of Immigration Practitioners of South Africa (FIPSA), we wish to comment as follows.

INTRODUCTION

Whilst the Law Society of South Africa (LSSA) would welcome the formalisation of a statutory qualification for Immigration Practitioners and/or consultants, sight must not be lost of the fact that there is a considerable number of Immigration Specialist Attorneys practising in South Africa for whom a far more stringent statutory qualification and professional registration, code of ethics and disciplinary code is in place.

This concern is raised against the background that many immigration “practitioners” and/or consultants in fact brand and often advertise themselves as immigration “lawyers”.

All too often, legal advice is certainly being given. There has not been enough time to assess the impact of the Legal Practice Act on this aspect.

Further consideration must be given to the fact that, in order to practice in the field of immigration law, one must be not only well versed in Immigration Law but also Administrative Law, Constitutional Law, Refugee Law, as well as Criminal Law, Customs and Excise, Tax and Company law. The area of expertise is that widely spread and interwoven.

A further consideration is that the poor administrative control by the Department of Home Affairs as the relevant authority at the time in the regulation and control of immigration “Practitioners” has left a legacy that is fraught with incorrect advice being given daily by

The Law Society of South Africa brings together the Black Lawyers Association, the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces and the National Association of Democratic Lawyers in representing the attorneys’ profession in South Africa.

persons not qualified to be giving legal advice and sometimes having severe personal and financial consequences on persons who have been advised wrongly.

Bearing this in mind, we therefore wish to make nominal input only to the proposed professional body recognition and professional designation registration of Forum of Immigration Practitioners of South Africa (FIPSA).

PARAGRAPH 2.2

The only way to achieve the main objectives of FIPSA insofar as errant Practitioners is concerned is to have effective disciplinary mechanisms in place. This should include defined sanctions, to be specified in the Government Gazette and specific rulings regarding non-compliance vis-a-vis such disciplinary sanctions.

To this end the recognition given on page 18 of the Government Gazette to “applicants in possession of the section 46 certificate issued by the Department of Home Affairs” should also be viewed with some degree of circumspection. Initially the examination by which those certificates were granted was in strict compliance with the requirement at the time but subsequently, when the Minister of Home Affairs withdrew those regulations and rescinded section 46(1) of the Act, no control was in place any longer. In practice, the Department has eschewed policing the Immigration agent/ practitioner industry and has not done so. In about 2012 the Minister of Home Affairs stated that no agent had been “struck from the roll” or was under investigation.

Regarding the latter paragraph and to avoid this becoming in effect an amnesty, we would therefore suggest that persons who were previously registered under section 46 of the Act should still be required within a specified time period, such as one year, to acquire efficiency continuing professional development (CPD) points to allow for a renewal. Failure to do so should carry the sanction of an inability to register professionally for that year.

It is our considered belief that any person who carries on the business of an Immigration Practitioner as envisaged in the Government Gazette under consideration without having the required registration should be guilty of a criminal offence. There are parallels for this in the Attorneys Act, Act 53 of 1979 and the Admission of Advocates Act, Act 74 of 1964.

PARAGRAPH 3: CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

The sanction for non-compliance is termed as that it “could” lead to disciplinary steps (in other words it does not have to) which “could” in turn lead to “possible withdrawal” of designation. It would appear unlikely that CPD can be properly enforced as formulated.

Further, we believe that it is in the public interest that any withdrawal of the professional designation of a person be made public. There is no provision for same.