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Mr M R Mankge
Committee Secretary
Portfolio Committee on Home Affairs
Parliament
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Dear Mr Mankge

Public Hearings on the Immigration Amendment Bill

Business Unity South Africa (BUSA) is a confederation of employers organisations, corporate associations, chambers of commerce and industry and professional associations. We are recognised, both nationally and internationally, as the principal representative of organised business in South Africa. BUSA has been actively involved in the processes to develop our new immigration legislation and regulatory framework and has engaged extensively with the Department of Home Affairs on this matter for several years.

BUSA has been advised that the Portfolio Committee on Home Affairs will hold public hearings on the Immigration Amendment Bill on 16 and 17 October 2006. We would like to request that we be granted the opportunity to present evidence to the Portfolio Committee on the Bill. Our representatives with expertise in this area are unfortunately only available to travel to Cape Town on Tuesday, 17 October 2006 and we would request, therefore, that we be accommodated in the Portfolio Committee's programme on this day.

I look forward to your response to this request.

Yours sincerely

Corinna Gardner
Chief Officer: Social Policy

F346/06



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MR Martin

- 1 (a) - Definition of 'affiliate': an associate member of a company or organisation has an accepted meaning in company and accounting law and procedures and we have no objection.

- 1 (b) - The definition of 'branch' is equally acceptable. These two issues we understand relate directly to the intra-company work permit amendment.

This is merely corrective to include cross border and transit permits

and should be subject to guidelines, however, there are many circumstances in which persons, ~~members of the public or other special interest groups~~ should be allowed to enter longer visitor's permit to conduct work was critical and necessary. In due course an amendment was brought to allow the Director-General to authorise work as prescribed. The current proposed amendment makes no substantial change to these provisions. A special visitor's permit to conduct work is highly desirable, not merely as an exception but as a specific class of work permit. It would be a better solution bearing in mind the innumerable businessmen and company directors, writers and musicians etc., who visit the country purely for short term work purposes. As our incorporation into the globalisation of work becomes more prevalent, a

simplified process and a special category would make it clear that we welcome visitors for this purpose.

Section 15

This is again corrective and supported. However, on the level of contributions themselves, which are not amended in the Bill, BUSA has for years argued that the required contributions are excessive because such foreigners establishing business in the country are highly desirable and should be encouraged. Their resources will lead to the creation of job opportunities and economic development going far beyond merely the financial or capital contribution. We firmly adhere to this view and again request it to be considered.

Section 19

We are delighted with the extension to 5 years of the duration of an intra-company work permit for which most commerce and private interests have been appealing for years now. It is an important and desirable change and we appreciate the extension.

However, we request that serious attention be given to ameliorating the effect of subsection 6 by not prescribing onerous requirements under the permit to limit such deployment to a particular branch, subsidiary or affiliate.

Section 20

The reason for the amendment from 'such foreigner' to 'he or she' is not understood, bearing in mind the definition of foreigner. However, why should the person, annuity or account be from the country of his or her 'origin'? Surely any country will do? One has only one country of origin, but may be entitled to a pension from any number of countries where one has lived or worked.

The new subsection 1A, including spouse and dependant children, corrects a lacuna which has created some uncertainty, and is welcomed.

Section 26

The deletion of the requirement to confirm the permanent residence permit when the child turns 21 is thoroughly supported as it eliminates unnecessary bureaucracy and its accompanying expense.

Section 27

We appreciate the amendment as it helps to liberalise and fast track the entry of needed and highly desirable skills and allows for a simplified form of permanent residence permit for such persons. This is definitely beneficial, but suffers from the fact that the professional and occupational classes have not been properly consulted. Many classes of skills which should have been included have not been included. Presumably persons with extraordinary skills and qualifications are a separate category and the sub-paragraphs are alternative not cumulative, meaning that the conjunction 'or' should terminate such paragraphs (a), (b), (c) and (d). The

classes should at least be taken up with business perhaps through the JIPSA process. It is also true that the current amendment allows no relief or fast track procedure for those foreigners falling under s26, and this could usefully be examined to allow permanent residence on an accelerated basis when good reason exists under s26.

The new s27(c) brings about changes for consistency sake and is supported by BUSA. However, what it means for a financial or capital contribution to be 'still invested' is questionable in the context of a trading company repaying loans, paying dividends and reorganising its affairs according to normal financial pressures. We have made this point before.

Section 28

The inclusion of offences such as 'bestiality' is nonsensical and atavistic. We do not support the deletion of the previous requirements leading to the effect that permanent residence may be forgone upon a single conviction of one of the less heinous offences in Schedule 2. We would support only loss of residence for conviction of the heinous offences. These amendments are not supported and should be withdrawn or redeveloped.

BUSA considers this section to be **unconstitutional** and we held the same view on previous efforts to amend it.

Transitional Provisions

The Transitional Provisions are a formal requirement and seem adequate.

Conclusion

These are BUSA's comments, with one addition - would it not be a good idea to deal with other potential amendments in a more comprehensive review at the same time? The Department promised a comprehensive review of the Act, examining the previous commentary of stakeholders, some years ago, but this has apparently stalled or been abandoned. There are numerous inconsistencies in the Act and regulations causing immense difficulties to practitioners and damage to applicants. We are aware that some stakeholders will take the view that the current amendments are patchy and inadequate.

Nonetheless, we support most of the amendments as indicated, although the truncation of time for comment is not conducive to good consultation or good law. A much longer consultation period would lead to a more consistent, uniform and effective set of amendments.

**Business Unity South Africa
4 August 2006**