

NATIONAL ASSEMBLY

**QUESTION FOR WRITTEN REPLY**

# QUESTION NO. 2004

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## INTERNAL QUESTION PAPER 29 OF 2016

**2004. Mr S Esau (DA) to ask the Minister of Home Affairs:**

Whether the Burundian national, (name and details furnished), was allowed to enter the country with photocopies of her travel documents in 2014; if not, what is the position in this regard; if so, (a) why was she allowed to enter the country with photocopies of her travel documents and (b) on what statutory grounds is this practice allowed? NW2315E

**REPLY:**

No, the passenger had no documents with her on entry into the Republic of South Africa (RSA) as it was reported to Immigration that she has been rescued and thereafter, intends to apply for asylum.

(a) She did not enter the RSA with photocopies of her travel document.

(b) In terms of the Immigration Act, 13 of 2002, as amended, as well as the Refugee Act, 130 of 1998, any person who enters the RSA with the intention to claim asylum is not required to have or produce any travel document.

The above is confirmed by the Supreme Court of Appeal Judgment in the matter of Bula & Others v Minister of Home Affairs & Others (589/11) [2011] ZASCA 209 (29 November 2011 in which the Court stated the following:

Ad Paragraph 59 “Most importantly, the provisions of Section 2 of the Refugee Act read as follows:

“Notwithstanding any provisions of this Act or any other law to the contrary, no person may be refused entry into the Republic, expelled, extradited or returned to any other country or be subject to any similar measure, if as a result of such refusal, expulsion, extradition, return or other measure, such person is compelled to return to or remain in a country where─

(a) he or she may be subjected to persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group; or

(b) his or her life, physical safety or freedom would be threatened on account of external aggression, occupation, foreign domination or other events seriously disturbing or disrupting public order in either part or the whole of that country.”

Ad Paragraph 61, the Supreme Court of Appeal further referred to one of its judgments in the matter of Abdi v Minister of Home Affairs 2011 (3) SA 37 (SCA) and stated the following:

“In Abdi v Minister of Home Affairs 2011 (3) SA 37 (SCA) paragraph 22, this court noted that the provisions of the Act referred to in the preceding paragraph mirror those of the 1951 United Nations Convention on the Status of Refugees and the 1969 Organisation of African Unity Convention. In paragraph 22 of Abdi this court went on to say that these provisions ‘patently prohibit the prevention of access to the Republic of any person who has been forced to flee the country of his or her birth because of any of the circumstances identified in Section 2 of the Act”.

It is evident from the above stated legislation and Court Judgments, including International Conventions that no one who is claiming asylum may be refused entry into the RSA.