**NATIONAL ASSEMBLY**

**WRITTEN REPLY**

**QUESTION 643**

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**INTERNAL QUESTION PAPER: 10/2017**

**643. Mr K P Robertson (DA) to ask the Minister of Basic Education:**

With respect to children who are affected by the choices their parents make by illegally immigrating to South Africa, what are the rights of children or minors whose parents have moved to South Africa illegally to join the working class, in light of the fact that the specified children are now prevented from (a) writing matric, (b) opening bank accounts and (c) contributing to the economy? NW701E

**REPLY**

The following legislative framework is applicable:

* The Constitution of the Republic of South Africa, 1996 (hereinafter, "the Constitution").
* The South African Schools Act, 84 of 1996 (hereinafter, "SASA").
* The Admission Policy for Ordinary Public Schools (hereinafter, "the Admission Policy"), which was published in terms of section 3(4) of the National Education Policy Act, 27 of 1996 (hereinafter, "the NEPA").
* The Immigration Act, 13 of 2002.
* The Refugees Act, 130 of 1998.

**The Constitution**

Chapter 2 of the Constitution guarantees certain fundamental rights for everyone in the Country. One of them is the right to a basic education, and various pieces of legislation strengthen this right.

**The South African Schools Act (SASA)**

The SASA defines a learner as any person receiving education or who is obliged to receive education in terms of the SASA. The definition of a parent in terms of the SASA includes the biological or adoptive parent or legal guardian of a learner or the person legally entitled to the custody of a learner, as well as the person who undertakes to fulfil the obligations of the above-mentioned persons towards the learner’s school education.

The SASA also obliges every parent of a child of a prescribed age to ensure that such a child goes to school – section 3(1). Most significantly, the SASA makes it compulsory for any public school to admit learners and to serve their education requirements without unfairly discriminating against them in any way.

The SASA does not distinguish between citizens of the Republic and foreign nationals.

**Admission Policy**

Although the SASA makes no distinction between citizens and non-citizens, the Admission Policy does make provision for learners who are not citizens of the Republic and whose parents are in possession of a permit for temporary or permanent residence issued by the Department of Home Affairs (DHA). It also provides that persons classified as illegal aliens must, when they apply for school admission for their children or for themselves, show evidence that they have applied to the DHA to legalise their stay in the country.

This means that, when applying for admission to a public school, the parents of a non-citizen learner must present the documents stipulated in paragraphs 14 to 18 of the Admission Policy, *as well as* the documentation stipulated in paragraphs 19 to 21.

**The Immigration Act**

Learners (school-going children) who intend to study in the Republic for longer than three months must apply for a study permit. A study permit is issued on certain conditions, as stipulated in the Immigration Act.

The Director-General of the Department of Home Affairs (DHA) issues a study permit only if he or she is satisfied that the proposed institution of learning –

* Has been approved and is in good standing with the Director-General of the DHA;
* Certifies that it has received guarantees to its satisfaction that such foreigner’s tuition fees will be paid;
* Received the prescribed guarantees that such foreigner will have sufficient means to support himself or herself while in the Republic;
* In the case of a minor, provides the name of the person in South Africa who is, or has accepted to act as, such minor’s guardian while in the Republic;
* Undertakes to provide prescribed periodic certification that such foreigner is satisfactorily performing his/her curriculum of study; and
* Undertakes to notify the Director-General when such foreigner has completed his/her studies or is no longer performing them satisfactorily.

**The Refugees Act**

The Refugees Act provides for the manner in which asylum seekers should be received in the Republic and regulates applications for, and the recognition of, refugee status in the Republic.

Refugee status is granted to a person who, owing to a well-founded fear of being persecuted by reason of his or her race, gender, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it.

Before a foreign national is formally recognised as falling within any of these categories, he or she is treated as an asylum seeker and is allowed to enter the Republic and to stay here temporarily, pending the outcome of the application to be accorded refugee status. Such an applicant receives an asylum seeker permit from a refugee reception officer, and this allows the applicant to stay in the Republic, pending the determination of his or her refugee status.

Once refugee status has been granted, an asylum seeker is a recognised refugee and, as is the case with permanent residents, a refugee is entitled to apply for an identity document and enjoys most of the rights of citizens, such as education and health care services. A person's refugee status remains valid until it ceases in terms of the provisions of the Refugees Act.

1. In terms of writing the matric examination, the Council of Education Ministers (CEM), has taken a decision that foreign learners that have been in the system, but do not have the appropriate documentation to register for the NSC examination, should be allowed to register provisionally, and on condition that they will not receive their results, until the appropriate documentation is provided.
2. Children are not allowed to open bank accounts and may only do so when they reach the age of majority (18)
3. Most children in general do not contribute to the economy as they only start working once they finish their school career**.**