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REPUBLIC OF SOUTH AFRICA

REFUGEES AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. of) (The English text is the official text
of the Bill)*

(PORTFOLIO COMMITTEE ON HOME AFFAIRS)

[B11B - 2008]

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
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B I L L

To amend the Refugees Act, 1998, so as to amend, insert and delete certain definitions; to provide for delegation of powers; to provide for certain matters with regard to the establishment of Refugee Reception Offices; to provide for the dissolution of the Standing Committee for Refugee Affairs and the Refugee Appeals Board; to provide for the establishment of the Refugee Appeals Authority; to provide for the clarification and revision of procedures relating to refugee status determination; to provide for obligations and rights of asylum seekers; to provide for the repeal of certain obsolete provisions; to effect certain technical corrections; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 130 of 1998

1. The following section is hereby substituted for section 1 of the Refugees Act, 1998 (hereinafter referred to as the principal Act):

"Definitions

1. In this Act, unless the context [shows that another meaning is intended] indicates otherwise—

- [(i)] **'abusive application for asylum'** means an application for asylum made—
 - (a) with the purpose of defeating or evading criminal or civil proceedings or the consequences thereof; or
 - (b) after the refusal of one or more prior applications without any substantial change having occurred in the applicant's personal circumstances or in the situation in his or her country of origin; [(xiv)]
- (ii) **'Aliens Control Act, 1991'** means the Aliens Control Act, 1991 (Act No. 96 of 1991); (xxiv)
- (iii) **'Appeal Board'** means the Refugee Appeal Board, established by section 12; (ii)
- (iv)] **'asylum'** means refugee status recognised in terms of this Act; [(iii)]
- [(v)] **'asylum seeker'** means a person who is seeking recognition as a refugee in the Republic; [(iv)]
- [(vi)] **'asylum seeker permit'** means a permit contemplated in section 22; [(v)]
- 'biometrics'** means the measurable physiological or behavioural characteristics that can be used in verifying the identity of individuals, and may include the use of photographs, fingerprints, hand measurements, signature verification, facial patterns and retinal patterns;

[(vii)] **'child'** means any person under the age of 18 years; [(x)]

'court' means a magistrate's court;

[(viii)] **'Department'** means the Department of Home Affairs; [(vii)]

[(ix)] **'dependant'**, in relation to an asylum seeker or a refugee, includes **[the spouse,]** any unmarried child or any destitute, aged or infirm member of the immediate family of such asylum seeker or refugee; [(i)]

[(x)] **'Director-General'** means the Director-General of the Department; [(viii)]

[(xi)] **'fraudulent application for asylum'** means an application for asylum based without reasonable cause on **[facts,]** information, documents or representations which the applicant knows to be false and **[which facts, information, documents or representations]** are intended to materially affect the outcome of the application; [(vi)]

'immediate family' means the immediate family as defined in section 1 of the Immigration Act;

'Immigration Act' means the Immigration Act, 2002 (Act No. 13 of 2002);

[(xii)] **'manifestly unfounded application'** means an application for asylum made on grounds other than those on which such an application may be made under this Act; [(xi)]

'marriage' means—

(a) either a marriage or a civil partnership concluded in terms of the Civil Union Act, 2006 (Act No. 17 of 2006);

(b) a marriage concluded in terms of—

(i) the Marriage Act, 1961 (Act No. 25 of 1961); or

(ii) the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998);

(c) a marriage concluded in terms of the laws of a foreign country; or

(d) a marriage concluded in terms of Islamic or other religious rites;

[(xii)] **'Minister'** means the Minister of Home Affairs; [(xiii)]

[(xiv)] **'prescribed'** means prescribed by regulation;

[(xv)] **'refugee'** means any person who has been granted asylum in terms of this Act; [(xviii)]

'Refugee Appeals Authority' means the Refugee Appeals Authority established in terms of section 8A;

[(xvi)] **'Refugee Reception Office'** means a Refugee Reception Office established under section 8(1); [xx]

[(xvii)] **'Refugee Reception Officer'** means a Refugee Reception Officer referred to in section 8(2); (xix)]

[(xviii)] **'Refugee Status Determination Officer'** means a Refugee Status Determination Officer referred to in section 8(2); [(xxi)]

[(xix)] **'regulation'** means any regulation made under this Act; [(xvi)]

'residence' means a status recognised by competent authorities of a particular country that affords a person the right to sojourn in that country with the rights and obligations attached thereto;

[(xx)] **'rules'** means the rules made by the Appeal Board under section 14(2); (xv)]

[(xxi)] **'social group'** includes[, among others,] a group of persons of particular gender, sexual orientation, disability, class or [~~caste~~] background; [(xii)]

'spouse' means a person who is a party to—

(a) a marriage as defined in terms of this Act; or

(b) a permanent homosexual or heterosexual relationship as prescribed;

[(xxii)] **'Standing Committee'** means the Standing Committee for Refugee Affairs, established by section 9; (xvii)]

[(xxiii)] **'this Act'** includes the regulations made in terms of this Act; and [(ix)]

'unfounded application', in relation to an application for asylum in terms of section 21, means an application—

(a) made on the grounds other than those contemplated in section 3; or

(b) made on the grounds contemplated in section 3 but which is without merit;

[(xxiv)] 'UNHCR' means the United Nations High Commissioner for Refugees.

[(xxii)].".

Insertion of section 1A in Act 130 of 1998

2. The following section is hereby inserted in the principal Act after section 1:

"Interpretation and application of Act

1A. This Act must be interpreted and applied in a manner that is consistent with—

- (a) the 1951 United Nations Convention Relating to the Status of Refugees;
- (b) the 1967 United Nations Protocol Relating to the Status of Refugees;
- (c) the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa;
- (d) the 1948 United Nations Universal Declaration of Human Rights; and
- (e) any domestic law or other relevant convention or international agreement to which the Republic is or becomes a party."

Amendment of section 2 of Act 130 of 1998

3. Section 2 is hereby amended by the substitution for paragraph (b) of the following paragraph:

"(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**] any part or the whole of that country.”.

Amendment of section 3 of Act 130 of 1998

4. Section 3 of the principal Act is hereby amended by the substitution for paragraphs (a), (b) and (c) of the following paragraphs, respectively:

- "(a) 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; or
- (b) owing to external aggression, occupation, foreign domination or other events seriously disturbing [**or disrupting**] public order in [**either a**] any part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge [**elsewhere**] in another place outside his or her country of origin or nationality; or
- (c) is a spouse or dependant of a person contemplated in paragraph (a) or (b).".

Amendment of section 4 of Act 130 of 1998

5. Section 4 of the principal Act is hereby amended by—

- (a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"A person does not qualify for refugee status for the purposes of this Act if [**there is**] the Refugee Status Determination Officer has reason to believe that he or she—";

(b) the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) has committed **[a crime which is not of a political nature and which, if committed in the Republic, would be punishable by imprisonment]** a serious non-political crime outside the country of refuge prior to his or her admission to that country as a refugee; or";
and

(c) the substitution in subsection (1) for paragraph (d) of the following paragraph:

"(d) enjoys the protection of any other country in which he or she **[has taken residence]** is a recognised refugee, permanent resident or citizen."

Amendment of section 5 of Act 130 of 1998

6. Section 5 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

"(c) he or she becomes a permanent resident or a citizen of the Republic or acquires the nationality of some other country and enjoys the protection of **[the] that country [of his or her new nationality]: Provided that a person whose permanent residence status is withdrawn is not prevented from re-applying for refugee status;** or".

Repeal of section 6 of Act 130 of 1998

7. Section 6 of the principal Act is hereby repealed.

Substitution of section 7 of Act 130 of 1998

8. The following section is hereby substituted for section 7 of the principal Act:

"Delegation of powers

7. (1) The Minister may, subject to the conditions that he or she may deem necessary, delegate any power conferred on him or her by this Act, excluding a power referred to in section 8B(2), 8F, 8G or 38, to any officer or employee of the Department, but shall not be divested of any power so delegated.

(2) The Director-General may, subject to the conditions that he or she may deem necessary, delegate any power conferred on him or her by this Act, excluding a power referred to in section 8I, to any officer or employee in the Department, but shall not be divested of any power so delegated."

Substitution of heading to Chapter 2 of Act 130 of 1998

9. The following heading is hereby substituted for the heading to Chapter 2 of the principal Act:

"REFUGEE RECEPTION OFFICES[, STANDING COMMITTEE FOR REFUGEE AFFAIRS] AND REFUGEE [APPEAL BOARD] APPEALS AUTHORITY".

Substitution of section 8 of Act 130 of 1998

10. The following section is hereby substituted for section 8 of the principal Act:

"Refugee Reception Office

8. (1) The Director-General may, by notice in the Gazette, establish as many Refugee Reception Offices in the Republic as he or she[, **after**

consultation with the Standing Committee,] regards as necessary for the purposes of this Act.

(2) Each Refugee Reception Office must consist of at least **[one Refugee Reception Officer and]** one Refugee Status Determination Officer who must—

- (a) be **[officers]** an officer of the Department, designated by the Director-General **[for a term of office determined by the Director-General]**; and
- (b) have such qualifications, experience and knowledge of refugee matters **[as]** that makes **[them]** him or her capable of performing **[their]** his or her functions in terms of this Act.

(3) The Director-General **[must, with the approval of the Standing Committee, ensure that each officer appointed under this section receives the additional training necessary to enable such officer to perform his or her functions properly]** must appoint such number of officers as he or she deems necessary to perform administrative functions connected with the Refugee Reception Office.".

Insertion of sections 8A, to 8I in Act 65 of 1996

11. The following sections are hereby inserted, in the principal Act after section 8:

"Refugee Appeals Authority

- 8A.** (1) There is hereby established a Refugee Appeals Authority.
- (2) The Refugee Appeals Authority is independent and must function without any bias.
- (3) The headquarters of the Refugee Appeals Authority must be determined by the Minister.

Composition of Refugee Appeals Authority

8B. (1) The Refugee Appeals Authority consists of—

- (a) a chairperson who is legally qualified; and
- (b) such number of other members as the Minister may determine, having regard to the likely volume of work to be performed by the Refugee Appeals Authority.

(2) The chairperson and other members of the Refugee Appeals Authority are appointed by the Minister with due regard to their experience, qualifications and expertise, as well as their ability to perform the functions of the Refugee Appeals Authority properly.

Functions of Refugee Appeals Authority

8C. (1) The Refugee Appeals Authority must—

- (a) determine any appeal lodged in terms of this Act; and
- (b) advise the Minister on any matter which the Minister refers to the Refugee Appeals Authority.

(2) An appeal contemplated in subsection (1)(a) must be determined by the chairperson and such a number of members of the Refugee Appeals Authority that the chairperson may deem necessary.

(3) The Refugee Appeals Authority may determine its own procedure and make its own rules, which may not be in conflict with the provisions of this Act.

(4) Rules made under subsection (3) must be published in the Gazette.

Term of office of members of Refugee Appeals Authority

8D. (1) A member of the Refugee Appeals Authority serves for a period of five years and is eligible for reappointment upon expiry of his or her term of office.

(2) A member may resign by tendering a written notice of resignation to the Minister.

Disqualification from membership

8E. A person may not be appointed as a member of the Refugee Appeals Authority if that person—

- (a) is not a South African citizen;
- (b) has been sentenced to imprisonment without the option of a fine during the preceding four years;
- (c) is an unrehabilitated insolvent;
- (d) has been judicially declared of unsound mind;
- (e) has been removed from an office of trust on account of misconduct involving theft, fraud or corruption; or
- (f) is a political office bearer.

Removal from office of member of Refugee Appeals Authority

8F. (1) The Minister may remove a member of the Refugee Appeals Authority from office on account of misconduct or inability to perform the functions of his or her office effectively and efficiently.

(2) The Minister may remove a member of the Refugee Appeals Authority in terms of subsection (1) if such member has been given an opportunity

to make representations or comments on the matter and the Minister has taken any such representations or comments into consideration.

Filling of vacancies in Refugee Appeals Authority

8G. Whenever a vacancy arises in the Refugee Appeals Authority as a result of death, resignation or removal from office of a member of the Refugee Appeals Authority, the Minister may appoint a suitable person for the remainder of the term of office of such member.

Remuneration of members of Refugee Appeals Authority

8H. The members of the Refugee Appeals Authority must receive such remuneration, allowances and other benefits as the Minister may determine with the concurrence of the Minister of Finance.

Administrative staff of Refugee Appeals Authority

8I. The administrative work connected with the performance of the functions of the Refugee Appeals Authority must be performed by officers of the Department designated by the Director-General for that purpose.

Annual Reports of Refugee Appeals Authority

8J. (1) The Refugee Appeals Authority must, within 30 days after the end of each financial year, prepare a report on all its activities during that financial year and on its financial position as at the end of that financial year.

(2) The Refugee Appeals Authority must, immediately after the report contemplated in subsection (1) is finalised, submit the report together with the audited balance sheet and accounts pertaining to the funds of the Refugee Appeals Authority to the Minister for tabling in Parliament."

Repeal of sections 9 to 20 of Act 130 of 1998

12. Sections 9 to 20 of the principal Act are hereby repealed.

Amendment of section 21 of Act 130 of 1998

13. Section 21 of the principal Act is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:

"(1) An application for asylum must be made in person in accordance with the prescribed procedures to a **[Refugee Reception Officer]** Refugee Status Determination Officer at any Refugee Reception Office or at any other place designated by the Director-General by notice in the Gazette.

(2) The Refugee Status Determination Officer must, upon receipt of the application contemplated in subsection (1), deal with such application in terms of section 24.

(3) When making an application for asylum, every applicant, including his or her spouse and dependants, must have his or her **[fingerprints or other prints]** biometrics taken in the prescribed manner **[and every applicant who is 16 years old or older must furnish two recent photographs of himself or herself of such dimensions as may be prescribed]."**