

Insertion of sections 21A and 21B in Act 130 of 1998

14. The following sections are hereby inserted in the principal Act after section 21:

"Unaccompanied child and person with mental disability"

21A. (1) Any unaccompanied child who is found under circumstances that clearly indicate that he or she is an asylum seeker and a child in need of care contemplated in the Children's Act, 2005 (Act No. 38 of 2005), must—

- (a) be issued with an asylum seeker permit in terms of section 22; and
- (b) in the prescribed manner, be brought before the Children's Court in the district in which he or she was found, to be dealt with in terms of the Children's Act, 2005.

(2) Any person with a mental disability who is found under circumstances that clearly indicate that he or she is an asylum seeker must—

- (a) be issued with an asylum seeker permit in terms of section 22; and
- (b) in the prescribed manner, be referred to a health establishment contemplated in the Mental Health Care Act, 2002 (Act No. 17 of 2002), to be dealt with in terms of that Act.

Spouse and dependants of asylum seekers and refugees

21B. (1) A person who applies for refugee status in terms of section 21 and who would like one or more of his or her spouse and dependants to be granted refugee status must, when applying for asylum, include the details of such spouse and dependants in the application.

(2) Any refugee whose child is born in the Republic must, within one month of the birth of his or her child, register such a child as a dependant at a Refugee Reception Office that processed his or her application.

(3) Where a dependant of a recognised refugee is within the Republic in accordance with an asylum seeker permit or has been granted asylum in terms of this Act and ceases to be a dependant by virtue of marriage or cessation of his or her dependence upon the recognised refugee, as the case may be, he or she may apply in the prescribed manner to be permitted to continue to remain within the Republic in accordance with the provisions of this Act.

(4) Where a spouse of a recognised refugee is within the Republic in accordance with an asylum seeker permit or has been granted asylum in terms of this Act and ceases to be the spouse as a result of divorce or death of the recognised refugee, as the case may be, he or she may be permitted to continue to remain within the Republic in accordance with the provisions of this Act: Provided that, in the case of divorce, the Director-General is satisfied that a good faith spousal relationship existed between the recognised refugee and such spouse for a period of at least two years after having been granted asylum.

(5) Nothing contained in this Act prevents a dependant who has, in terms of subsection (3), been permitted to continue to remain in the Republic from applying for recognition as a refugee in accordance with the provisions of this Act."

Amendment of section 22 of Act 130 of 1998

15. Section 22 of the principal Act is hereby amended by—

- (a) the substitution for subsections (1), (2), (3) and (4) of the following subsections, respectively:

"(1) The **[Refugee Reception Officer]** Refugee Status Determination Officer must, pending the outcome of an application in terms

of section 21(1), **[issue to]** refer the applicant to the officers contemplated in section 8(3) to be issued with an asylum seeker permit in the prescribed form allowing the applicant to sojourn in the Republic temporarily, subject to any conditions[,] determined and endorsed by the [Standing Committee] Director-General, which are not in conflict with the Constitution or international law **[and are endorsed by the Refugee Reception Officer on the permit].**

(2) Upon the issue of a permit in terms of subsection (1), any permit issued to the applicant in terms of the **[Aliens Control Act, 1991,] Immigration Act** becomes null and void[,] and must **[forthwith]** be returned to the Director-General for cancellation.

(3) **[A Refugee Reception Officer]** The officers contemplated in section 8(3) [may] must, pending the decision on the application in terms of section 21, from time to time extend the period for which a permit has been issued in terms of subsection (1)[, **or amend the conditions subject to which a permit has been so issued].**

(4) The permit referred to in subsection (1) must contain **[a recent photograph and the fingerprints or other prints]** the biometrics of the holder thereof **[as prescribed]."**

(b) the deletion of subsection (5); and

(c) the substitution in subsection (6) for the words preceding paragraph (a) of the following words:

"(6) The **[Minister]** Director-General may at any time withdraw an asylum seeker permit in the prescribed manner if—".

Amendment of section 24 of Act 130 of 1998

16. Section 24 of the principal Act is hereby amended by—

- (a) the deletion of subsection (1);
- (b) the substitution for subsections (2), (3) and (4) of the following subsections, respectively:

"(2) When considering an application for asylum, the Refugee Status Determination Officer—

- (a) must have due regard for the rights set out in **[section 33 of the Constitution]** the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and in particular ensure that the applicant fully understands the procedures, his or her rights and responsibilities and the evidence presented; and
- (b) may consult with or invite a UNHCR representative to furnish information on specified matters.

(3) The Refugee Status Determination Officer must at the conclusion of the hearing—

- (a) grant asylum; **[or]**
- (b) reject the application as manifestly unfounded, abusive or fraudulent;
or
- (c) reject the application as unfounded**;** **or**
- (d) refer any question of law to the Standing Committee].**

(4) If an application is rejected in terms of subsection (3)(b) or (c), the Refugee Status Determination Officer must—

- (a) furnish the applicant with written reasons **[must be furnished to the applicant]** within five working days after the date of the rejection **[or referral]**;
- (b) **[the record of proceedings and a copy of the reasons referred to in paragraph (a) must be submitted to the Standing Committee within 10 working days after the date of the rejection or referral]**

inform the applicant of his or her right to appeal in terms of section 24B."; and

(c) by the addition of the following subsections:

"(5) An asylum seeker whose application for asylum has been rejected in terms of subsection (3)(b) or (c), must be dealt with in terms of the Immigration Act, unless he or she lodges an appeal in terms of section 24B(1).

(6) An application must be deemed to be abandoned if the asylum seeker has not renewed his or her asylum seeker permit within 90 days after it has expired: Provided that the asylum seeker advances valid reasons for the non-renewal of the asylum seeker permit."

Repeal of sections 25 and 26 of Act 130 of 1998

17. Sections 25 and 26 of the principal Act are hereby repealed.

Insertion of sections 24A and 24B in Act 130 of 1998

18. The following sections are hereby inserted in the principal Act after section 24:

"Review of applications rejected in terms of section 24(3)(b)

24A. (1) The Director-General must review any decision taken by a Refugee Status Determination Officer in terms of section 24(3)(b).

(2) Before reaching a decision, the Director-General may—
(a) request any person who is in a position to do so to provide him or her with information relevant to the matter being dealt with;

(b) make such further inquiries into the matter being dealt with as he or she deems appropriate; and

(c) request the applicant to provide such other information as the Director-General may deem necessary.

(3) The Director-General may confirm or set aside a decision made in terms of section 24(3)(b).

(4) The Director-General must inform the Refugee Status Determination Officer concerned of his or her decision in the prescribed manner and within the prescribed time.

Appeals to Refugee Appeals Authority

24B. (1) Any asylum seeker whose application has been rejected in terms of section 24(3)(b) or (c) may lodge an appeal with the Refugee Appeals Authority in the prescribed manner.

(2) The Refugee Appeals Authority may, after having determined an appeal, confirm, set aside or substitute any decision taken by a Refugee Status Determination Officer in terms of section 24(3)(b) and (c).

(3) Before making a decision, the Refugee Appeals Authority may—

(a) invite a UNHCR representative to make oral or written representations;

(b) request the attendance of any person who, in its opinion, is in a position to provide the Refugee Appeals Authority with relevant information;

(c) of its own accord make further inquiries; or

(d) request the asylum seeker to appear before it or to provide any such other information as it may deem necessary.

(4) The Refugee Appeals Authority must allow legal representation upon the request of the asylum seeker.

(5) The Refugee Appeals Authority must refer a matter back to the Refugee Status Determination Officer to deal with such asylum seeker in terms of this Act if new information, which is material to the application, is presented during the appeal.".

Amendment of heading to Chapter 5 of Act 130 of 1998

19. The following heading is hereby substituted for the heading to Chapter 5 of the principal Act:

"RIGHTS AND OBLIGATIONS OF REFUGEES AND ASYLUM SEEKERS".

Substitution of section 27 of Act 130 of 1998

20. The following section is hereby substituted for section 27 of the principal Act:

"Protection and general rights of refugees

27. A refugee is entitled to—

- (a) a formal written recognition of refugee status in the prescribed form;
- (b) full legal protection, which includes the rights set out in Chapter 2 of the Constitution of the Republic of South Africa, 1996, except those rights that only apply to citizens;
- (c) permanent residence in terms of section 27(d) of the Immigration Act after five years of continuous residence in the Republic from the date on which he or she was granted asylum, if the Director-General, after considering all the relevant factors and within a reasonable period of time, certifies that he or she would remain a refugee indefinitely;
- (d) an identity document referred to in section 30;

- (e) a travel document if he or she applies in the prescribed manner; and
- (f) seek employment."

Insertion of section 27A in Act 130 of 1998

21. The following section is hereby inserted in the principal Act after section 27:

"Protection and general rights of asylum seekers

27A. An asylum seeker is entitled to—

- (a) a formal written recognition as an asylum seeker in the prescribed form pending finalisation of his or her application for asylum;
- (b) the right to remain in the Republic pending the finalisation of his or her application for asylum;
- (c) the right not to be unlawfully arrested or detained; and
- (d) the rights contained in the Constitution of the Republic of South Africa, 1996, in so far as those rights may apply to an asylum seeker ."

Amendment of section 28 of Act 130 of 1998

22. Section 28 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) If an order is made under this section for the removal from the Republic of a refugee, any spouse or dependant of such refugee who has not been granted asylum, may be included in such an order and removed from the Republic if such spouse or dependant has been afforded a reasonable opportunity to apply for asylum but has failed to do so, or if his or her application for asylum has been rejected."

Substitution of section 29 of Act 130 of 1998

23. The following section is hereby substituted for section 29 of the principal Act—

"Restriction of detention

29. (1) No person may be detained in terms of this Act for a longer period than is reasonable and justifiable and any detention exceeding 30 days must be reviewed immediately by **[a judge of the High Court of the provincial division]** a court in whose area of jurisdiction the person is detained **[, designated by the Judge President of that division for that purpose]** and such detention must be reviewed in this manner immediately after the expiry of every subsequent period of 30 days of detention.

(2) The detention of a child must be used only as a measure of last resort and for the shortest **[appropriate]** possible period of time, taking into consideration the principle of family unity and the best interest of the child."

Substitution of section 30 of Act 130 of 1998

24. The following section is hereby substituted for section 30 of the principal Act:

"Identity document to refugee

NEW See Report for Amendment

30. A refugee must, upon application, be issued with the prescribed identity document within a reasonable time."

Repeal of sections 31, 32 and 33 of Act 130 of 1998

25. Sections 31, 32 and 33 of the principal Act are hereby repealed.

Substitution of section 34 of Act 130 of 1998

26. The following section is hereby substituted for section 34 of the principal Act:

"Obligations of refugees

34. (1) A refugee must—

(a) abide by the laws of the Republic; and

(b) inform the Refugee Reception Office of his or her residential address and of any changes to that address.

(2) The address contemplated in subsection (1) is, for the purposes of this Act, deemed to be the address to which the service of processes or correspondence may be made."

Insertion of section 34A in Act 130 of 1998

27. The following section is hereby inserted in the principal Act after section 34:

"Obligations of asylum seekers

34A. (1) An asylum seeker must—

(a) abide by the laws of the Republic;

- (b) renew his or her permit in person at any Refugee Reception Office in the Republic; and
- (c) inform the Refugee Reception Office of his or her residential address and of any changes to that address so provided.

(2) The address contemplated in subsection (1) is, for the purposes of this Act, deemed to be the address to which the service of processes or correspondence may be made."

Substitution of section 36 of Act 130 of 1998

28. The following section is hereby substituted for section 36 of the principal Act:

"Withdrawal of refugee status

36. (1) Subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and after consideration of all the relevant facts, the Director-General may withdraw a person's refugee status if such person—

- (a) has been recognised as a refugee due to fraud, forgery, false or misleading information of a material or substantial nature in relation to the application;
- (b) has been recognised as a refugee due to an error, omission or oversight committed by the Refugee Status Determination Officer in good faith; or
- (c) ceases to qualify for refugee status in terms of section 5.

(2) A person whose refugee status is withdrawn in terms of subsection (1), must be dealt with in terms of the Immigration Act, unless he or she lodges an appeal in terms of subsection (3).

(3) A person whose refugee status is withdrawn in terms of subsection (1) may lodge an appeal with the Refugee Appeals Authority within a period of 30 days from the date of receipt of the decision."

Amendment of section 37 of Act 130 of 1998

29. Section 37 of the principal Act is hereby amended by the deletion of the word "or" at the end of paragraph (c) and the addition of the following paragraphs:

- "(e) intentionally assists a person to receive public services to which such person is not entitled; or
- (f) provides false, inaccurate, or unauthorised documentation or any benefit to a person, or otherwise assists such person to disguise his or her identity or status, or accepts undue financial or other considerations, to perform an act or to exercise his or her discretion in terms of this Act."

Amendment of section 38 of Act 130 of 1998

30. Section 38 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (b) and (d), of the following paragraphs respectively:

- "(b) the manner in which and period within which a matter must be referred to the **[Standing Committee]** Refugee Appeals Authority;
- (d) the manner in which and the period **[in]** within which applications for asylum which are manifestly unfounded, fraudulent or abusive, must be dealt with;"

Repeal of sections 39 and 40 of Act 130 of 1998

31. Section 39 and 40 of the principal Act are hereby repealed.

Transitional provisions and savings

32. (1) The Standing Committee for Refugee Affairs established by section 9 of the principal Act and the Refugee Appeal Board established by section 12 of the principal Act are hereby dissolved.

(2) The members of the Standing Committee for Refugee Affairs and the Refugee Appeal Board in office immediately before this Act takes effect, become members of the Refugee Appeals Authority established by section 8A and must be regarded as having been appointed to the Refugee Appeals Authority in terms of section 8B(2).

(3) The Minister must appoint one of the members contemplated in subsection (2) as chairperson of the Refugee Appeals Authority.

(4) The members contemplated in subsection (2) holds office for the unexpired period for which such members have been appointed as members of the Standing Committee for Refugee Affairs or Refugee Appeal Board, as the case may be, as at the date of members' assumption of office in the Refugee Appeals Authority in terms of subsection (3).

(4A) Any review pending before the Standing Committee for Refugee Affairs immediately before this Act takes effect, must be regarded as matters before the Director-General and must be dealt with by the Director-General in terms of the principal Act, as amended by this Act.

(5) Any matters pending before the Refugee Appeal Board immediately before this Act takes effect must be regarded as matters before the Refugee Appeals Authority and must be dealt with by the Refugee Appeals Authority in terms of the principal Act, as amended by this Act.

(6) Any decisions and determinations made by the Standing Committee for Refugee Affairs and the Refugee Appeal Board in terms of the principal Act immediately before this Act takes effect, remain in force.

Short title and commencement

33. This Act is called the Refugees Amendment Act, 2008, and comes into operation on a date determined by the President by proclamation in the *Gazette*.