



## IMMIGRATION ACT, 2002 IN RELATION TO THE PSIRA AMENDMENT BILL

### 1. INTRODUCTION

The aim of this paper is to highlight the rights that refugees, asylum seekers and permanent residents have in South Africa.

### 2. REFUGEES AND ASYLUM SEEKERS

The Private Security Industry Regulation Amendment Bill [No 27 2012] proposes to make citizenship a requirement for registration as a security service provider. The requirement proposed in the Bill is changed from either citizenship or permanent residency to only citizens being allowed to apply in clause 11(a) which amends section 23(1)(a) of the Act.

Section 9 of the South African Constitution provides that everyone is equal before the law and should receive equal benefits and protection under the law. This includes all foreign nationals living in South Africa. Refugees enjoy all the human rights outlined in the Constitution except the right to vote.<sup>1</sup>

According to the Immigration Act (13 of 2002) in section 23, the Department of Home Affairs "may issue an asylum permit to an asylum seeker subject to the Refugees Act, 1998 (Act No. 130 of 1998)".<sup>2</sup> The Refugee Act in turn specifies in section 3:

A person qualifies for refugee status for the purposes of this Act if that person-

- 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

<sup>1</sup> BLACKSASH (2010) You and Your Rights: Refugee Rights in South Africa

<sup>2</sup> Immigration Act 13 of 2002



- b) owing to external aggression, occupation, foreign domination or other events seriously disturbing public order in either a 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 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).

Refugee status entitles the person to seek employment in the country. In addition Asylum seekers that are still awaiting the determination of their status are also entitled to work in terms of a Supreme Court of Appeal ruling (*Watchenuku vs. Minister of Home Affairs*).<sup>3</sup>

### **3. PERMANENT RESIDENCE**

In terms of granting the Permanent Residency permits, emphasis is placed on immigrants who are in a position to make a meaningful contribution to broadening the economic base of South Africa.<sup>4</sup>

#### **3.1 Permanent Residence**

Section 25(1) of the Immigration Act states that "The holder of a permanent residence permit has all the rights, privileges, duties and obligations of a citizen, save for those right, privileges, duties and obligations **which a law** or the Constitution explicitly ascribes to citizenship".

#### **3.2 Direct Residence**

Section 26(a) makes a provision for the issuing of a permanent residence to a foreigner who has been the holder of a working permit, including one issued under a corporate permit, in terms of this Act for five years and has received an offer for permanent employment.

#### **3.3 Residence on other grounds**

This category permits apply to foreigners who:

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<sup>3</sup> Case Number: 10/2003

<sup>4</sup> Department of Home Affairs



- Are in possession of a permanent work offer in South Africa.
- Have exceptional skills and qualifications.
- Intend to establish a business in South Africa.
- Qualify as Refugees in terms of Section 27(c) of the Refugees Act.
- Qualify as retired persons.
- Are financially independent.
- Are relatives (biologically or judicially adopted) of a South African citizen/permanent residence permit holder.<sup>5</sup>

## References

BLACKSASH (2010) You and Your Rights: Refugee Rights in South Africa

Department of Home Affairs

Immigration Act (13 Of 2002)

Supreme Court of Appeal (2003) Watchenuku and others vs. Minister of Home Affairs and others. Case 10/2003

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<sup>5</sup> Department of Home Affairs