



CITIZENSHIP

INTRODUCTION	43
Laws governing citizenship	43
What does South African citizenship mean?	43
Citizenship problems	43
SOUTH AFRICA'S CITIZENSHIP LAW	44
Citizenship by birth	44
One parent is a South African and the other parent is a foreign national	44
Not born in South Africa: Born of a South African parent	45
Both parents are foreign nationals	45
Adopted Child	45
Citizenship by descent (not born in South Africa)	45
Citizenship by naturalisation	45
How can a person lose South African citizenship?	46
Resumption of citizenship	46
Dual citizenship	47
Permanent residence through first step of kinship	47
IMMIGRANTS AND MIGRANTS	48
Laws governing foreign nationals	48
Rights of non-citizens	48
Legal entry and staying in South Africa	48
Permanent residence	49
Temporary residence permit	50
Asylum Seekers and Refugees	52
Definition of asylum seekers	52
Applying for asylum	52

Refusing an application for asylum.....	53
Rights of asylum seekers	53
Applying for a refugee permit (Section 24).....	53
Rights and duties of refugees.....	54
CHECKLISTS	
Citizenship problems	54
Born in South Africa	55
Proof of birthplace and date of birth	55
Born in South Africa before 1949.....	55
Born in South Africa between 1949 and June 1961	55
Born in South Africa after June 1961.....	55
Requirements for permanent residency	56
RESOURCES	679

Introduction

To be a citizen of a country means that you belong to that country and have the right to live there. A country must protect its citizens if they need help when they are travelling in other countries.

LAWS GOVERNING CITIZENSHIP

- Children's Act No.38 of 2008
- Children's Amendment Act of 2010
- Immigration Act No. 13 of 2002
- New Immigration Amendment Act May 2014
- Refugees Act No 130 of 1998
- South African Citizenship Act No. 88 of 1995,
- South African Citizenship Amendment Act No.17 of 2010

BILLS

Refugees Amendment Bill, 2010

NOTE

There are a number of laws due for reform and undergoing reform, which may change the requirements described in this chapter.

WHAT DOES SOUTH AFRICAN CITIZENSHIP MEAN?

The Constitution gives many rights to 'everyone', but keeps certain rights for citizens only. If you are a citizen of South Africa you have the right to:

- vote
- stand as a candidate in elections
- live in any area in South Africa
- choose your trade, occupation or profession
- be given a South African passport for travel to other countries
- come into South Africa even if you have lived somewhere else for a long time

None of these rights apply to people who are not South African citizens, even if they have lived legally in this country for very many years until they become South African citizens. The government can pass laws which give certain rights to non-citizens but government can also pass a law which takes the vote away from them.

People who are not citizens must have permission to enter South Africa. If they want to stay, they must get a permit to live here.

South African citizenship and immigration legislation is very complicated, so this chapter only presents an outline of the laws. It definitely does not cover everything in our *Citizenship Act* nor the *Immigration Act*, or the laws that came before them. It is written to help you to know what kind of documents an advice seeker may need to collect before going to a lawyer, and so that you know what you need to cover in any letter to a lawyer asking for assistance.

CITIZENSHIP PROBLEMS

Problems are usually experienced by people who are having difficulties in getting a first Identity Document (ID). Very often it is because their citizenship is being questioned by the Department of Home Affairs. ID books are only issued to citizens and to those non-citizens who have been given a permit to stay permanently in South Africa.

If the person does not have a birth certificate or good proof of being born in South Africa, they will be asked to bring all sorts of information about their parents, their schooling and so on.

WARNING

Anyone giving advice must be very careful when dealing with citizenship problems. IF A MISTAKE IS MADE IT MAY MEAN THAT A CLIENT'S CASE IS RUINED AND CANNOT BE PUT RIGHT.

Advice givers can assist a person to collect all the right proofs and documents but should then refer the case to a Law Clinic, or public interest law firm such as the Legal Resources Centre, before doing anything else.

South Africa's citizenship law

There are three ways in which a person can be a citizen:

- *By birth*
- *By descent*
- *By naturalisation*

Citizenship by birth and descent are legal rights for anyone who can prove the facts of birth and parentage.

Citizenship by naturalisation is not a legal right. It can be granted or refused by the Minister of Home Affairs. According to the *Eighth Amended Act* of the Regulations in terms of the *South African Citizenship Act (1995)* that came into operation on 1 April 2003, a small fee may be applicable for a Certificate or written confirmation of South African citizenship.

CITIZENSHIP BY BIRTH

A person has to prove the **place** where he or she was born and the **date of birth**. The place must be in South Africa. Proving a birth can be very difficult if there is no birth certificate, or if the person was not born in a hospital or clinic. The Department of Home Affairs is not easily satisfied if the only proof is affidavits so try to find some other kind of documents which can be attached to the affidavits.

Documents which can help are:

- **Clinic cards or school reports**
- **An affidavit from the chief** of the area where the child was born, or from another respected person in the community, who has known the family for a long time and knows the child was born there
- **An affidavit from the owner of the property** where the child was born
- **An affidavit from the mother's employer** at the time of the birth
- **An affidavit from the person's older sister or brother** who already has an id and is accepted as a south african citizen
- **Affidavits can be made by people who helped the mother at the birth** or who were neighbours at the time of the birth

ONE PARENT IS A SOUTH AFRICAN AND THE OTHER PARENT IS A FOREIGN NATIONAL

In terms of the *South African Citizenship Act (No. 88 of 1995)* a child born in South Africa to parents where one was either a South African citizen or a South African permanent residence holder at the time of the child's birth, and the other parent is a foreign national, will be a South African citizen by birth in the case of births from 6th October 1995 when the Act came into operation.

NOT BORN IN SOUTH AFRICA: BORN OF A SOUTH AFRICAN PARENT

The requirements are:

- Proof of date and place of birth.(Full, unabridged certificate)
- Citizen status of parent/s at time of birth
- ID of South African parent
- Proof of birth registration

BOTH PARENTS ARE FOREIGN NATIONALS

A child who is born in South Africa from parents who are foreign nationals can apply for citizenship at the age of 18 years.

ADOPTED CHILD

Foreign children who are born in South Africa and legally adopted by a South African citizen are governed in terms of the Children's Act of 38 of 2005 and their birth is registered in South Africa. This means they will have citizenship of South Africa by birth.

(See page 54 Checklists)

CITIZENSHIP BY DESCENT (NOT BORN IN SOUTH AFRICA)

If you were born outside of South Africa to a South African citizen(s) or were adopted by a South African citizen in terms of the Children's Act, 2005 and your birth was registered in accordance with the Births and Deaths Registration Act, 1992, you can apply for citizenship by descent by submitting the following documents:

- Form DHA-24, to register your birth in terms of the Births and Deaths Registration Act, 1992 In the event you were born out of wedlock both parents must sign the birth registration Form BI-24 to confirm paternity
- Forms DHA-529 (completed by yourself and your South African parents)
- Your foreign, unabridged birth certificate
- Your and your parents' marriage certificate (if applicable) and copies thereof
- If 15 years and older, an application for an identity document (DHA-9) with two identity document photographs
- Proof of your South African parent(s)' foreign citizenship (if they have acquired such) and a copies thereof
- Proof of identity of your South African parent(s)
- If you were adopted by a South African citizen, a copy of the adoption order

CITIZENSHIP BY NATURALISATION

Naturalisation is the granting of citizenship to someone who has come to South Africa from abroad and stayed in this country for some time.

If a person is a citizen of another country but wants South African citizenship she or he can apply to the Minister of Home Affairs for citizenship. According to the *Eighth Amendment Act* of the Regulations in terms of the South African Citizenship Act (1995) that came into operation on 1 April 2003, a fee may be applicable.

These are the conditions that the person must fulfill when applying for citizenship:

- Must be over the age of 21
- Must have a permanent residence permit to live in south africa
- Must have lived in South Africa as a permanent resident for at least one year's ordinary residence immediately prior to the application for naturalisation

- After acquiring permanent residency, have an additional 4 years of physical residence in the country during the 8 years prior to the naturalisation. This does not include the one year mentioned above
- Must be able to communicate in one of south africa's official languages
- Must be of good character
- Must be knowledgeable of responsibilities of being a south african citizen and
- If married to a south african spouse, must have two years of permanent residence and two years of marriage to the south african spouse before submitting the application

BUT this application for citizenship can be refused by the Minister even if the person seems to fulfill all the conditions. It is regarded as a privilege not a right.

HOW CAN A PERSON LOSE SOUTH AFRICAN CITIZENSHIP?

South African citizenship can be taken away if the person also has citizenship of another country. If the person acquires citizenship of another country, he or she will lose their South African citizenship unless they apply to retain it before acquiring foreign citizenship and paying the required fee.

A person can lose South African citizenship by:

- Getting the citizenship of another country unless the reason for that is a marriage to a citizen of the other country
- Renouncing the South African citizenship voluntarily
- Serving in the armed forces of another country while that country is at war with South Africa
- Using the passport of another country without the minister's permission
- Voting in another country's elections

OR

- If the certificate of naturalisation was obtained by means of fraud or false representation
- If the certificate was issued in conflict with the provisions of the act
- In the case of south african dual citizenship, the citizen has been sentenced to imprisonment for 12 months or more
- If the minister is satisfied that it is in the public's interest that such a citizen shall cease to be a South African citizen

NOTE

Anyone who complains that their South African citizenship has been taken away MUST be referred to an attorney.

RESUMPTION OF CITIZENSHIP

You may apply to have your South African citizenship reinstated if you are a former citizen by birth or descent and you have returned to South Africa permanently, or are living in South Africa permanently.

Former citizens by naturalisation must re-apply for permanent residence, or apply for exemption thereof, before they can be considered for resumption.

To apply for resumption, you need to:

- Complete Forms DHA-175 and DHA-52
- Complete application for identity document Form DHA-9

- Submit two identity document photographs that comply with the passport and ID photograph specifications
- Submit proof that you live in South Africa permanently (e.g a municipal account) and a copy thereof
- Submit your marriage certificate (if applicable) and a copy thereof
- Pay the prescribed fee

DUAL CITIZENSHIP

A South African citizen cannot have **dual citizenship**, in other words, be a citizen of two countries at the same time. The original citizenship will automatically be cancelled if a person is granted citizenship of another country. However, a South African citizen can apply for the retention of South African citizenship BEFORE acquiring a foreign citizenship, against payment of a prescribed fee.

According to the *South African Citizenship Amendment Act (No 17 of 2004)* a citizen is guilty of an offence and is liable to a fine or imprisonment if he/she:

- Enters or departs from the Republic by making use of the passport of another country
- While in the Republic, makes use of his/her citizenship from another country to gain advantage or avoid duty

PERMANENT RESIDENCE THROUGH FIRST STEP OF KINSHIP

A person can apply for permanent residence through a first step of kinship (family), for instance where the applicant is the father of a child born in South Africa and whose mother is a South African citizen. This application for permanent residence can also be made through the holder of a permanent resident's permit who is in the first step of kinship. BUT a foreigner cannot apply for permanent residence through a holder who obtained his or her permanent residence status through a first step of kinship.

EXAMPLES

1. APPLYING FOR CITIZENSHIP FROM A PERMANENT RESIDENCE PERMIT

A foreign national came into the Republic with an asylum seeking permit, and applied for status as a refugee which was granted for two years. After two years she applied for a permanent residence permit. If she stays for at least five years further, she can then apply for naturalisation.

2. APPLYING FOR PERMANENT RESIDENCE THROUGH A RELATIVE'S PERMIT

If a foreigner has married a South African citizen or permanent resident they can apply for a Relative's Permit from their country of origin. Once in South Africa, they can apply to become a permanent resident. If the person is indeed a member of the immediate family, and can satisfy the prescribed conditions, then the person can apply for permanent residency on the basis of first step of kinship.

3. APPLYING FOR PERMANENT RESIDENCE STATUS THROUGH A CHILD BORN IN SOUTH AFRICA (FIRST STEP OF KINSHIP)

A person who had applied for an Asylum Seeker's Permit, and whose permit is going to expire, wants to extend the permit. He has a relationship with a South African woman, and is the father of two children with her. The two children will be of South African birth due to their mother's citizenship. He wants to apply for his Asylum Seeker's Permit to be renewed. The person is advised to apply directly for permanent residence status based on the first step of kinship through his two children. If his name is on the birth certificate then he could present the birth certificate as proof of kinship. However if the biological father's name is not disclosed, then he would need to make a late application for an unabridged certificate.

NOTE: In the case of a couple who are not married, the particulars of the father will only be evident on the unabridged birth certificate if the father's name was put down at the time of registration of the birth. If it is not recorded then a new application would need to be made to amend the birth certificate.

Immigrants and migrants

LAWS GOVERNING FOREIGN NATIONALS

There are some people who come here for purposes of work, and they are called immigrants and migrants. There are others who are here to seek asylum and refugee status. (See page 52 *Asylum seekers and refugees*).

The new Immigration Act clearly states all applicants must present themselves to conduct the new biometrics capturing that are now required, namely a photograph and fingerprints being taken. A third party cannot apply on your behalf.

The *Immigration Act (No 13 of 2002)* deals with immigration and migration. It repeals the *Aliens Control Act of 1991* as well as the *Aliens Control Amendment Act (No 76 of 1995)* and regulates the admission of people to South Africa and their right to live and work here. The Act uses a licensing fee to manage the process of allowing foreigners to work and live in South Africa. It also regulates the movement of migrant workers in certain sectors such as mineworking and agricultural work.

Applications for general work visas will require:

- A certificate from the Department of Labour confirming that despite a diligent search the prospective employer has been unable to find a suitable South African or permanent residence holder to fill the position. If enforced, we anticipate a longer processing time will occur due to the added step in the already long process
- That the applicant must prove that s/he has the necessary skills and qualifications in line with the job offer
- That the benefits offered are not inferior to the average salary of a South African citizen or permanent resident holding similar positions
- A South African Qualifications Authority (SAQA) certificate is obtained and submitted. This is an evaluation of foreign education according to South African standards.

RIGHTS OF NON-CITIZENS

Remember that there is no 'right' for a non-South African to be given a permit to come to South Africa, or to live and work here. It is always a permission which may be granted or refused. However, anyone who applies for permission has the right to **administrative justice**. This means they have the right to be given reasons, in writing, why permission was not given. (See page 29 *Just Administrative Action*)

If a person is granted permission to live in South Africa on a **permanent basis**, they are entitled to most of the rights which apply to 'everyone' in the Bill of Rights.

If they are given permission to remain in South Africa on a **temporary basis**, such as a work permit, they are protected by some but not all of the rights. It will be many years before the courts have made enough rulings in individual cases to give us certainty as to what rights protect such temporary residents.

LEGAL ENTRY AND STAY IN SOUTH AFRICA

The *Immigration Act* says that every person who is not a South African citizen and who wants to come to South Africa must come in through a legal 'port of entry'. That means a border crossing by road or railway, or an airport, or a sea port where there is proper border control with immigration officials and police persons as well as customs officials. This is applicable for entering and departing the Republic. People who enter otherwise are illegally present in the country and if they are found they will be deported.

In order to enter South Africa legally a person must have a valid passport from her/his country, or a certificate applied for and issued by the home affairs department.

Such persons must also have some kind of permit to enter South Africa. If it is not the case, their passport must be valid for not less than 30 days after the expiry of their intended stay. There are two kinds of permits: permanent residence/immigration permits and temporary residence permits (legislation makes provision for no less than 13 types of temporary residence permits).

PERMANENT RESIDENCE

This permit allows a person to live permanently in South Africa, while remaining a citizen of another country. According to the *Immigration Amendment Act* this permit can be issued on condition that the holder is **not prohibited** (because of disease, outstanding conviction, previous deportation, association with terrorism or possession of fraudulent permits/passport) and **not undesirable** (declared incompetent, unrehabilitated insolvent, fugitive from justice or previous criminal convictions). In some instances such as in the instance of a scarce skill, a person who wants such a permit should **apply before coming to South Africa**. Sometimes a person who is here on a temporary work permit will be allowed to apply for an immigration permit while she or he is already here. The other permits that they are on must still be valid.

There are four ways of obtaining a permanent residence permit. If the person:

1. Has been the holder of a work permit for five years and has received an offer for permanent employment
2. Has been the spouse of a South African citizen or permanent resident for 5 years
3. Is a child under the age of 21 years and born of a permanent resident
4. Is a child of a South African citizen

The application forms are available at any South African embassy or consulate, or directly from the Department of Home Affairs in Pretoria.

A fee is charged on application for a permanent residence. Contact the local Department of Home Affairs office to confirm the fee amount.

The following documents (where applicable) must be submitted with the application:

- A full set of fingerprints
- Marriage certificate/proof of spousal relationship, if applicable
- Divorce decree/proof of legal separation, if applicable
- Proof of custody/maintenance, if applicable
- Death certificate in respect of a late spouse, if applicable
- Consent of parents in respect of minors, if applicable
- Proof of judicial adoption, if applicable
- Police clearance certificates in respect of all countries in which you resided for a period of one year or longer since your 18th birthday
- A valid temporary residence permit, if you are already residing in South Africa

When the application is received by Home Affairs, it is sent to a regional committee of the Immigrants Selection Board in the province where the applicant wishes to live. The members of these regional committees and of the Board as a whole are not officials of any government department, but are independent individuals. The committee will investigate the application.

The applicant must be:

- Of good character
- A 'desirable inhabitant' of South Africa
- Not likely to take a job for which there are enough South Africans available

The committee will give special consideration to the following applications, but there is still no 'right' to be granted the permit:

- Someone who is the **aged or destitute or disabled dependant** of a permanent resident, provided that the permanent resident concerned has enough money to support the dependants.
- The **husband or wife of a South African citizen or a permanent resident**. The Constitutional Court has said South Africans have a right to live in the country that they were born in with the partner of their choice. This means the government cannot refuse to give immigration permits to foreign-born spouses (husbands or wives) of South African citizens.

The court has also said that the Department of Home Affairs may not refuse to issue work permits to foreign-born spouses of South African citizens unless they have a very good reason. Therefore spouses and dependants of South African citizens do not pay for an immigration application (Permanent Residence). People who have entered into a civil union in terms of the *Civil Union Act*, life partners in common law or gay relationships should receive the same treatment as married applicants. Because they don't have marriage certificates, they have to supply affidavits stating they are life partners with their applications.

If the committee grants the permit, it may make it a condition that the person works and lives in the province concerned for at least 12 months.

If the permit is refused, the applicant may ask the Central Board to review the provincial committee's decision but it does not have to. Legal advice is definitely necessary to see if there can be any court challenge to the decision.

Withdrawal of a permanent residence permit can take place in circumstances including the following:

- If convicted of any listed offences
- Has been absent from the republic for more than three years unless exempted
- Has not taken up residence in the Republic within one year of the issuance

TEMPORARY RESIDENCE PERMIT

A temporary residence permit allows a person to stay in South Africa for a limited time.

A person who wants such a permit should **apply before coming to South Africa**. Application forms are available at any South African embassy or consulate, or direct from the Department of Home Affairs in Pretoria. An application fee will be charged. If the permit is refused there is no review procedure.

There are many different kinds of temporary permits which can be applied for. These are described in the *Immigration Act, Sections 11 to 23*:

- **Visitor's permit or tourist visa**
This is the easiest permit to get. These visitor's permits cannot be changed to any other kind of temporary permit. South Africa has visa agreements with certain countries, like the United Kingdom or the United States, which allow residents of these countries to just arrive at South Africa borders and ask for a visitor's permit. The visitor's permit is granted for a period up to 3 months. It may be issued for a longer period for visitors who have financial security and are engaged in specific activities such as research or charitable work.
- **Diplomatic permit**
This is issued to an ambassador, minister of a foreign state, career diplomat, or consular officer.
- **Study permit**
This is for a foreigner wishing to study for a period longer than 3 months, and who can satisfy prescribed conditions.
- **Treaty permit**
This is issued to a foreigner conducting activities in South Africa in terms of an international agreement to which South Africa is a party.

- **Business permit**

This is issued to a foreigner who is purchasing, investing in, or establishing a business in South Africa. It can also be granted to members of such foreigner's immediate family. Prescribed financial contributions apply.

- **Crew permit**

This is issued to a foreigner who is a member of a crew of a ship. The crew member has to remain in a predetermined area in terms of this permit.

- **Medical treatment permit**

This is issued to a foreigner who intends to receive treatment in South Africa for longer than three months.

- **Relatives permit**

This is issued to the immediate family of a citizen or resident,

- **Work Permit**

This is very difficult to get unless the employer can prove that every effort has been made to find a South African to fill the position.

- *Quota Work Permit*

The foreigner must fall within a specific professional category; these are proclaimed by the Minister annually.

- *General Work Permit*

This is only valid for the duration of the contract of employment, and certification of continued employment needs to be submitted annually.

- *Exceptional Skills Permit*

Foreign National applicant skills and qualifications which are deemed beneficial to SA development. Valid for 3 years only. This can include the family of the person holding exceptional skills.

- Intra-company transfer work permit may be issued to a foreigner required to work in the Republic for a period no longer than 2 years. They are restricted to work for the particular company referred to in the permit.

Foreign spouses of South African citizens are no longer charged a fee for a work permit and it may be applied for in South Africa. The work permit is issued on proof of the existence of the marriage and a work offer. The applicant should have applied for Permanent Residence. This service is currently free of charge.

Life partners in common law or gay relationships should receive the same treatment as married applicants. Because they don't have marriage certificates, they have to supply affidavits with their applications stating that they are life partners.

- **Corporate Permit**

A 'corporate permit' is applied for by a 'corporate applicant' (an employer), and permits the employer to employ foreigners for a documented purpose, and for specified period of time.

The employer who is applying for a corporate permit MUST prove that s/he has previously searched for workers in South Africa and was unsuccessful in finding the required amount of workers in order to receive the permit.

Unskilled workers will need temporary residence permits to enter the country, under a corporate permit.

Skilled workers will need to apply for General Work Permits, under a Corporate Permit.

- **Retired Person's Permit**

This is issued to a foreigner who wishes to retire in the Republic of South Africa, provided they have proof of a pension from their country of origin or a minimum prescribed net worth. This is issued for a 4 year period and can be renewed.

- Exchange Permit

This is only issued to foreigners not older than 25 years who wish to participate in cultural, economic or social exchange programmes.

ASYLUM SEEKERS AND REFUGEES

The *Refugees Act (No 130 of 1998)* says that South Africa cannot refuse to allow a foreigner into the country or force them to return to their own country if in their own country:

- They would be persecuted because of their race, religion, nationality, political opinion because they belong to a certain social group for example because of sexual orientation
- Their lives would be in danger because of a war or serious disruption of public order.

Some of the people from other countries who are among us are 'asylum seekers' – they are people who have fled from their own countries because of political conflict or war. They are asking for refugee status in South Africa so that they can have some protection, while they wait for the time when it is safe for them to go home again. The Refugees Act of 1998 and regulations apply to refugees living in South Africa.

DEFINITIONS OF ASYLUM SEEKERS AND REFUGEES

A refugee is a person from another country who has fled to South Africa to escape war or persecution, and who has been granted refugee status under the Refugee Act, No. 130 of 1998.

An asylum seeker is a person from another country who has fled to South Africa to escape war or extreme violence, and who is formally seeking refugee status, but has not yet been granted it.

An undocumented foreign national is a person from another country who has entered South Africa and who is in the country illegally, because they have not engaged with any formal processes to legalise their residence – or they have not engaged successfully. The person is undocumented in South Africa, however they may have documentation in their country of origin.

If a person or their dependants falls into one of these categories then they could be regarded as refugees. But, a person does not qualify to be a refugee if he or she has committed a serious non-political crime. People who are fleeing from economic hardship (no employment) or natural disasters (like floods or earthquakes) are not recognised as refugees in terms of the Refugees Act.

APPLYING FOR ASYLUM

At the place where the person seeking asylum enters South Africa, s/he will be granted a transit permit which is valid for 14 days in terms of the *Immigration Act*. A person who wants to apply for asylum must go to the refugee reception office during this time to submit an eligibility determination form (form BI-1590).

You have the right to be assisted in English when making an application. Once you have made an application for asylum you will receive an asylum seeker permit. This is often referred to as a Section 22 permit. If you have been issued with this permit, then any other permit issued under the *Immigration Act* falls away.

The asylum seeker permit can be extended from time to time and will be valid for up to 6 months, after which it can be renewed.

(See page 679-680 Resources for names of organisations that will assist with refugee and asylum problems)

The government can withdraw the asylum seeker permit (Section 22) if:

- The applicant goes against any of the conditions on the permit

- They find that the application is not based on the truth
- The application for asylum has been rejected

If a permit has been withdrawn the person seeking asylum can be arrested and detained until their application for asylum has been finalised.

When the government is deciding on an application for asylum they must explain the procedures to the person and tell them what their rights and duties are.

The Refugees Act says asylum seekers are not allowed to work or study. The South African Human Rights Commission challenged the Refugees Act which states that asylum seekers are not allowed to work or study. As a result the Department has instructed all Refugee Reception Offices to endorse the Section 22 permits allowing asylum seekers to work or study.

(See page 679-680 Resources for names of organisations that will assist with refugee and asylum problems)

REFUSING AN APPLICATION FOR ASYLUM

If an application for asylum is rejected the person must be given the reasons in writing within 5 days of the refusal. If asylum is refused on grounds that the application is 'manifestly unfounded, fraudulent or abusive', the Standing Committee for Refugees will review the decision to refuse asylum. Such a case does not go to the Appeal Board.

An asylum seeker can lodge an appeal with the Appeal Board once he or she has been told that the application has been refused. The applicant must be allowed to bring a legal representative to the Appeal Board hearing if he or she requests this.

RIGHTS OF ASYLUM SEEKERS

An asylum seeker:

- Has the right to healthcare, and access to public health care services
- Has the right to look for work. If employed, the Basic Conditions of Employment Act will apply, and the person must be paid a minimum wage.
- Cannot be refused access to education. As a holder of either a Section 22 or a Section 24 permit, a child is entitled to access to education at public schools.

APPLYING FOR A REFUGEE PERMIT (SECTION 24)

Applicants will be interviewed for their refugee status application. They may bring witnesses or a person who is able to speak English to assist them to tell their story. They must also bring supporting documents such as:

- Birth Certificates
- Photographs
- Personal records
- Research done about conditions in their home country, including newspaper articles

They will be notified about the outcome of their application within 180 days.

WHAT HAPPENS IF AN APPLICATION FOR REFUGEE STATUS IS DECLINED?

The person will be given 30 days to submit an appeal to the Refugee Reception Office or to leave the country. In the appeal the person must state reasons why he or she should not go back to their home country.

A person can appeal on the basis that:

- The correct procedure for processing the application was not followed
- The facts on the application were not taken into consideration
- The person who interviewed him or her was biased

WHAT HAPPENS IF THE APPLICATION FOR REFUGEE STATUS IS APPROVED?

- If the application is successful, the person will be granted refugee status and a Section 24 Permit that is valid for two years
- He or she will immediately be issued with a Refugee ID in terms of Section 30 of the Refugee Act
- This Section 24 Permit must be renewed at the Refugee Reception Office 90 days before the expiry date


RIGHTS AND DUTIES OF REFUGEES

A refugee:

- Has all the rights contained in the Bill of Rights, except rights specifically reserved for citizens, for example the vote
- Can apply for an immigration permit in terms of the *Immigration Aliens Control Act* after living in south africa for 5 years after the date that he or she was given asylum
- Can get an identity document and passport
- Can look for work and the basic conditions of employment act applies if employed.
- Can use the basic health care services and primary education facilities
- May apply for social assistance grants, mainly the Disability Grant and Foster Care Grant.

(See page 293 Social Grants)

ANNEXURE 1 BI-1590


REPUBLIC OF SOUTH AFRICA
DEPARTMENT OF HOME AFFAIRS

ELIGIBILITY DETERMINATION FORM FOR ASYLUM SEEKERS

1. PERSONAL DETAILS

A. SURNAME /FAMILY NAME:

o NAME/S:

o DATE OF BIRTH:

MALE		PLACE OF BIRTH	COUNTRY OF BIRTH
FEMALE			
CURRENT NATIONALITY	ETHNIC GROUP	PREVIOUS NATIONALITY/IES (IF ANY)	
LANGUAGE	OTHER LANGUAGES	RELIGION	
RESIDENCY DURING THE LAST TEN YEARS			

Sample of form for Sect 22, 24

CHECKLISTS

Citizenship problems

As an advice –giver you must be very careful when dealing with citizenship problems. If a mistake is made it may mean that a client's case is ruined and cannot be put right. You can help people to collect all the right proofs and documents but you should then refer the case to a Law Clinic, or public interest law firm. Remember to check a person's story as far as possible, in case they are using false documents to get citizenship illegally.

Ask the person the following questions:

- Are you a citizen of another country who wants to apply for South African citizenship?
- Are you a South African who has lost your citizenship?
- What was the reason for refusing to issue you with an identity document or birth certificate?

Born in South Africa

PROOF OF BIRTHPLACE AND DATE OF BIRTH

1. Have you got a birth certificate?
2. If you haven't got a birth certificate, can you find at least two or more of the following documents?
 - the record of your birth from the hospital or clinic where you were born
 - your baptismal certificate
 - clinic cards from when you were a baby
 - a letter from the chief in the area in which you were born
 - a letter from the owner of the farm where you were born
 - a letter from your mother's employer at the time of your birth
 - a letter from any midwife who helped your mother at the birth
 - affidavits from the people who helped your mother at the time of your birth
 - affidavits from your elder brothers or sisters who have got IDs and are recognised as South African citizens
 - your primary school records or a letter from the school principal
 - a house permit on which your name is written, if your family lived in an urban area

BORN IN SOUTH AFRICA BEFORE 1949

You have a right to South African citizenship, no matter what your parents' status was. BUT the proof of the place and date of your birth must be very good. Affidavits from other people are not usually considered to be sufficient.

BORN IN SOUTH AFRICA BETWEEN 1949 AND JUNE 1961

You will also have to prove your father's position at the time of your birth:

- Is your father a South African citizen?
- Can you prove this with his identity document?
- If he is not a South African citizen:
 - Does he have an ID showing him to be a permanent resident in South Africa?
 - Does he have a passport of the country he came from?

You will need to try to find proof of his status at the time you were born. These might be:

- Old passports showing his registration in work or permission to be in South Africa
- The record from TEBA showing that he was a contract worker on the mines
- Any other paper showing that he was working legally in South Africa at the time you were born

BORN IN SOUTH AFRICA AFTER JUNE 1961

1. Was either your mother or your father a South African citizen at the time you were born?
2. Can you prove this with her or his Identity Document?
3. Was either your mother or your father a permanent resident at the time you were born?
4. Can you prove this with her or his Identity Document, or permanent residence permit, or immigration permit in her or his passport?

REQUIREMENTS FOR PERMANENT RESIDENCY

THE MAIN APPLICANT IS THE RELATIVE OF A CITIZEN OR RESIDENT WITHIN THE FIRST STEP OF KINSHIP

This service applies to a prospective permanent resident who wishes to apply for a permanent residence permit on the basis of being a family member of a South African citizen or permanent resident within the first step of kinship. For the purpose of permanent residence, family members within the first step of kinship are prescribed as biological and judicially adopted children or adoptive parents and step-parents.

- Fully completed application forms. (Immigrations Unlimited will assist you in the completing of these application forms)
- Photographs: 2 recent colour passport-type photographs
- Passport: Valid original passport
- Birth Certificate: Unabridged birth Certificate
- Medical Report: Report must not be older than 6 months
- Radiological reports: All applicants 16 years and older (excluding pregnant women)
- Police clearance certificate: In respect of all countries of residence in excess of we months (Originals only) Only accepted if issued by the relevant police authority)
- Marriage Certificate: Unabridged certificate. Proof of registration of customary marriage. Documentary proof of cohabitation and extent to which the related financial responsibilities are shared by the parties
- Divorce Certificate: Divorce decree(s) or proof of legal separation and all relevant court orders regarding custody & maintenance of children and previous spouse(s) (Required irrespective of whether or not the applicant has since re-married)
- Education: CV (Detailed curriculum vitae) - including highest educational, trade or professional certificates evaluated by the South African qualifications
- Proof of kinship: Relationship confined to biological or judicially adoptive parents, biological or judicially adopted children or a spouse
- Proof of cohabitation: Proof in the form of communal accounts or other documents reflecting cohabitation
- Undertaking by citizen: Undertaking from Citizen/resident regarding financial, medical and emotional responsibility for applicant. (Not applicable where the relative is the parent of a minor child of a SA Citizen/resident
- Confirmation from Citizen: Confirmation that the SA citizen/permanent resident did not obtain residence in terms of section 27(g) of the Act
- Payment of the applicable fee