

Regulations to the South African Refugees Act

GOVERNMENT NOTICE

DEPARTMENT OF HOME AFFAIRS

No. R 366

6 April 2000

REFUGEES ACT, 1998 (ACT NO. 130 OF 1998)

The Minister of Home Affairs has, in terms of section 38 of the Refugees Act, 1998 (Act No. 130 of 1998), made the Regulations in the Schedule.

SCHEDULE

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1. Definitions

1 (1) In this Schedule a word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned to it, and unless the context otherwise indicates-

"Aliens Control Act" means the Aliens Control Act, 1991 (Act No. 96 of 1991) as amended.

"dependant" means an applicant's spouse, unmarried dependant child under the age of 18 years, or any destitute, aged or infirm member of the principal applicant's family.

"family" means the father and mother and any children who, by reason of age or disability, are, in the opinion of the Refugee Status Determination Officer, mainly dependant on the father or mother for support. "Family" also means an aged or infirm member of the principal applicant's family.

"final determination" means a determination for which any appeals to the Refugee Appeal Board have been exhausted or the time period to file an appeal has expired, or may mandatory review by the Standing Committee has been completed.

"hearing" in the context of these regulations, means an informal, non-adversarial interview with a Refugee Determination Officer.

"spouse" with respect to any person, means the party of the opposite sex to whom that person is joined in marriage.

"the Act" means the Refugees Act, 1998 (Act 130 of 1998)

(2) Unless the context otherwise indicates, a reference to a section by a specific number shall be interpreted as a reference to the section of that number in the Act.

(3) In the regulations, any reference to an Annexure to the regulations shall be constructed as referring to an Annexure to the English text of the Regulations.

2. APPLICATION FOR ASYLUM

2 (1) An application for asylum in terms of section 21 of the Act:

(a) must be lodged by the applicant in person at a designated Refugee Reception Office without delay;

(b) must be in the form and contain substantially the information prescribed in Annexure 1 to these Regulations; and

(c) must be completed in duplicate.

(2) Any person who entered the Republic and is encountered in violation of the Aliens Control Act, who has not submitted an application pursuant to sub-regulation 2(1), but indicates an intention to apply for asylum shall be issued with an appropriate permit valid for 14 days within which they must approach a Refugee Reception Office to complete an asylum application.

3. ADJUDICATION PROCESS, TIME PERIODS, AND CONDITIONS

3 (1) Applications for asylum will generally be adjudicated by the Department of Home Affairs within 180 days of filing a completed asylum application with a Refugee Reception Officer.

(2) To apply for asylum and while the asylum application is pending, the applicant must appear in person as required at the designated Refugee Reception Office where the application was originally filed for the following purposes:

(a) completing the application with a Refugee Reception Officer;

(b) appearing for an interview before a Refugee Status Determination Officer on the date specified on the asylum seeker permit, normally within 30 days of the asylum application being completed;

(c) receiving the decision on the asylum application; and

(d) as otherwise required according to conditions specified in the asylum seeker permit.

(3) If the Department fails to adjudicate a case within 180 days, excepting delays caused by the applicant without just cause, the applicant will be permitted to apply to the Standing Committee for work or study authorisation or relief from other conditions that may have been imposed by the Standing Committee.

(4) If the applicant is unable to appear according to the conditions of the asylum seeker permit, the Department may provide condonation upon request if the applicant can establish just cause

(5) Unaccompanied children and mentally disabled persons who appear to qualify for refugee status must be assisted in applying for asylum in accordance with section 32 of the Act.

(6) Sub-regulation 3(3) does not apply to applications submitted prior to the effective date of these regulations.

4. DUTIES OF REFUGEE RECEPTION OFFICER

4 (1) A Refugee Reception Officer must:

(a) ensure that the applicant is provided adequate interpretation according to Regulation 5 and any guidelines established by the Department of Home Affairs;

(b) issue to the applicant an asylum seeker permit in the prescribed form, which includes notice in writing to appear before a Refugee Status Determination

Officer for an interview on a date specified, normally not later than 30 working days after the initial lodging of the application;

(c) verbally notify the applicant of the conditions of the permit and the requirement of appearing on the return date specified on the permit;

(d) verbally notify the applicant that the permit may be withdrawn upon failure to comply with the conditions of the permit, subjecting the applicant to detention and other consequences that may result from withdrawal of the permit;

(e) renew the asylum seeker permit each time the applicant appears as scheduled in the course of the adjudication process.

5. INTERPRETATION

5 (1) Where practicable and necessary, the Department of Home Affairs will provide competent interpretation for the applicant at all stages of the asylum process.

(2) When it is not practicable for the Department of Home Affairs to provide an interpreter and interpretation is needed, the applicant will be required to provide an interpreter. The interpreter may not be a representative or employee of the country in which the applicant fears persecution or harm.

(3) In cases where sub-regulation 5(2) applies, the applicant will be given at least 7 days advance notice that

(a) the applicant is required to bring an interpreter to the interview before the Refugee Reception Officer or Refugee Status Determination Officer;

(b) the interpreter must be competent to translate a language spoken and understood by the applicant, to a language spoken and understood by the Refugee Reception Officer or Refugee Status Determination Officer and visa versa;

(c) the interpreter cannot be the applicant's attorney or representative, a witness testifying on the applicant's behalf, or a representative or employee of the country in which the applicant fears persecution or harm;

(d) failure without just cause to provide a competent interpreter may constitute a violation of terms of the asylum seeker permit, but will not prejudice adjudication of the claim to refugee status once interpretation is obtained; and

(e) any delays caused by failure to provide a competent interpreter, after the 7-days advance notice required by this sub-regulation 5(3) has been given, will not count toward the 180-days adjudication period for purposes of eligibility for employment or study authorisation.

6. DISCLOSURE OF INFORMATION AND SURRENDER OF DOCUMENTS

6 (1) An asylum applicant shall

(a) comply with the fingerprinting and photographing requirements pursuant to section 21(3) of the Act;

- (b) provide all the information required in Annexure 1 to these Regulations;
- (c) provide, where available, any additional information that the Refugee Reception Officer deems necessary in order to verify the information furnished in Annexure 1 to these Regulations;
- (d) present for examination his or her identification and travel documents if he or she is in possession of these documents; and
- (e) surrender any permit issued to him or her in terms of the Aliens Control Act, for cancellation as contemplated in section 22(2) of the Act.

(2) Pursuant to section 21(5) of the Act, the information contained in an asylum application and elicited at the hearing, and other records that indicate an individual has applied for asylum, shall not be disclosed without the written consent of the applicant, except as provided in subregulation 6(3).

(3) Sub-regulation 6(2) does not apply to disclosures to a government official or employee of the Republic who has need to examine the information in connection with

- (a) the adjudication of the asylum application;
- (b) the defence of any legal action arising from the adjudication or failure to adjudicate the asylum application;
- (c) the defence of any legal action of which the asylum application or continuing eligibility for refugee status is a part;
- (d) or any investigation concerning any criminal or civil matter.

(4) Failure to comply with sub-regulation (1), without just cause, may constitute failure to comply with the terms of the asylum-seeker permit.

7. ASYLUM SEEKER PERMIT

7 (1) A permit issued in terms of section 22 of the Act:

- (a) must be in the form and contain substantially the information prescribed in Annexure 3 to these Regulations;
- (b) will be of limited duration and contain an expiry date;
- (c) will be renewed at the Refugee Reception Office upon the appearance of the applicant for each scheduled appointment; and
- (d) will specify the time and date when the applicant must return to a specified Refugee Reception Office.
- (e) will notify the applicant that failure to comply with the condition of appearing personally at a designated Refugee Reception Office no later than the time and date specified will result in withdrawal of the asylum seeker permit in terms of section 22(6) of the Act and subject the applicant to detention pending a decision on the asylum application.

(2) Asylum applicants must at all times be in possession of the original permit as proof of their legal status should such proof be required.

(3) An asylum seeker permit referred to in section 22(1) of the Act shall be valid only if a Departmental stamp has been affixed to it.

8. FAILURE TO APPEAR, WITHDRAWAL OF ASYLUM SEEKER PERMIT, AND DETENTION

8 (1) Failure to appear as specified in the permit or to otherwise comply with conditions specified in the permit, without just cause, may:

- (a) constitute grounds for withdrawal pursuant to section 22(6) of the Act;
- (b) if the asylum seeker permit is withdrawn, subject the applicant to detention in terms of section 23 of the Act; and
- (c) subject the applicant to the provisions of section 22(7) of the Act.

(2) The asylum seeker permit may be withdrawn pursuant to section 22(6) of the Act if

- (a) the applicant contravenes conditions endorsed on the permit;
- (b) a Refugee Status Determination Officer finds that the asylum application is manifestly unfounded, abusive or fraudulent and the finding has been upheld by the Standing Committee;
- (c) the asylum application has been rejected and any appeals to the Refugee Appeal Board have been exhausted or the time period to file an appeal has lapsed;
- (d) there is a final determination that the applicant is excluded from obtaining refugee status pursuant to section 4 of the Act;
- (e) there is a final determination that the applicant no longer qualifies for refugee status pursuant to section 5(1) of the Act, provided that, if section 5(1)(c) of the Act applies, the applicant has failed to establish compelling reasons arising out of any previous persecution for refusing to avail himself or-herself of the protection of the country of nationality, pursuant to section 5(2) of the Act.

9. LIMITATION ON DEPARTURE FROM THE REPUBLIC

9 (1) An asylum seeker whose permit has lapsed in terms of section 22(5) of the Act and who returns to the Republic seeking asylum will have violated the conditions of the asylum seeker permit and may be subject to detention pending the adjudication of the asylum application, unless the applicant can establish compelling reasons for leaving the Republic without the consent of the Minister.

(2) An asylum seeker who returns to the country of feared persecution or harm may, in terms of section 5 of the Act, cease to qualify for refugee status if there is evidence that, during the, return, he or she sought protection of the country or became re-established there.

10. HEARING BEFORE REFUGEE STATUS DETERMINATION OFFICER

10 (1) In complying with the provisions of section 24 of the Act, the Refugee Status Determination Officer will conduct a non-adversarial hearing to elicit information bearing on the applicant's

eligibility for refugee status and ensure that the applicant fully understands the procedures, his or her rights and responsibilities and the evidence presented.

(2) The Refugee Status Determination Officer may: -

- (a) verify the identity of any interpreter present;
- (b) verify the identity of any dependants seeking refugee status based on their relationship to the applicant;
- (c) receive evidence; and
- (d) question the applicant and any witness.

(3) The applicant must respond to any questions asked by the Refugee Status Determination Officer, including

- (a) information regarding his or her identity and the identity of any dependants seeking refugee status based on their relationship to the applicant;
- (b) reasons for seeking asylum; and
- (c) any grounds that might exclude the applicant from refugee status under section 4 of the Act.

(4) The applicant may: -

- (a) have counsel or a representative present, at no cost to the government, and subject to the conditions of sub-regulation 6;
- (b) present witnesses; and
- (c) submit affidavits of witnesses and other evidence.

(5) At the end of the initial hearing, the applicant's counsel or representative shall have an opportunity to make a statement or comment on the evidence presented, subject to the Refugee Status Determination Officer's discretion regarding the length of such statement or comment. Comments may also be submitted in writing.

(6) At the conclusion of the initial hearing, the Refugee Status Determination Officer will advise the applicant of the date and time to return to the Refugee Reception Office to conclude the hearing and receive the decision on the application.

11. BURDEN OF PROOF AND EVIDENCE

11 (1) The applicant bears the burden of proof to establish that he or she is a refugee as defined in section 3 of the Act and is not excluded from refugee status pursuant to section 4 of the Act.

(2) In the absence of documentary evidence, an applicant's credible testimony, in consideration of conditions in the country of feared persecution or harm, may suffice to establish eligibility for refugee status. However, the Refugee Status Determination Officer may request the applicant to provide documentation, where available.

12. ELIGIBILITY DETERMINATIONS AND SERVICE OF DECISIONS

12 (1) With exception of cases decided under section 35(1) of the Act, each eligibility determination will be made on a case-by-case basis, taking into account the specific facts of the case and conditions in the country of feared persecution or harm. In making a determination on eligibility, the Refugee Status Determination Officer may

- (a) request information or clarification from the applicant or Refugee Reception Officer;
- (b) consult with and invite a UNHCR representative to provide information and, with the permission of the asylum seeker, provide the UNHCR representative with any information requested by the UNHCR, pursuant to sub-sections 24(b) and (c) of the Act;
- (c) consider country conditions information from reputable sources; and
- (d) refer any question of law to the Standing Committee pursuant to section 24(3)(d) of the Act.

(2) The applicant must return to the designated Refugee Reception Office to conclude the initial hearing and personally receive the decision on his or her asylum application. At his or her discretion, the Refugee Status Determination Officer may ask the applicant additional questions regarding eligibility for refugee status.

(3) If an application is rejected, the applicant must be provided with a written decision identifying the reason for the rejection.

(4) If an application is approved, the Refugee Reception Office will provide the applicant with written acknowledgement of refugee status.

13. REFERRAL TO STANDING COMMITTEE

13 (1) In determining whether an application was correctly rejected as manifestly unfounded, abusive or fraudulent, the Standing Committee may:

- (a) invite the UNHCR representative to make oral or written representations;
- (b) request attendance of any person who may provide the Committee with information relevant to the determination;
- (c) make further enquiry and investigation as it deems appropriate; and
- (d) request the applicant to appear before the Committee and provide other information deemed necessary.

(2) The Standing Committee may confirm or set aside the decision. If the Standing Committee sets aside the decision, it will send it back to the Refugee Status Determination Officer with direction for further action.

(3) The Standing Committee shall inform the Refugee Status Determination Officer concerned of its decision and such decision shall be in the form and contain substantially the information prescribed in Annexure 2 to these Regulations.

(4) Normally, the Standing Committee shall inform the Refugee Status Determination Officer of the decision within 5 days of referral to the Standing Committee.

14. APPEALS TO THE APPEAL BOARD

14 (1) An appeal in terms of section 26 of the Act:

- (a) must be lodged in person within 30 days of receipt by the asylum applicant of the letter of rejection from the Refugee Status Determination Officer; and
- (b) must be lodged in person directly at a designated Refugee Reception Office.

15. REFUGEE STATUS AND IDENTITY DOCUMENT

15 (1) An asylum applicant who has been granted asylum in terms of section 24(3)(a) of the Act: -

- (a) shall be issued with a written formal recognition of refugee status;
- (b) is entitled to apply for a refugee identity document in accordance with section 30 of the Act;
- (c) is entitled to full legal protection and the right to remain in the Republic in accordance with the Act;
- (d) is entitled to apply for an immigration permit in terms of the Aliens Control Act after five years' continuous residence in the Republic from the date he or she was granted asylum, if the Standing Committee certifies that he or she will remain a refugee indefinitely;
- (e) is entitled to apply for and receive a UN Convention Travel Document (UN-CTD) issued by the government of South Africa;
- (f) is entitled to seek employment; and
- (g) is entitled to the same basic health services and basic primary education as the inhabitants of the Republic.

(2) The refugee identification document will be valid for an initial period of 2 years from the date asylum is granted, unless refugee status is withdrawn pursuant to section 36 of the Act within that time period.

(3) To avoid lapses between the date of expiry and any renewal of the identity document, an individual must apply to the Standing Committee for renewal of the document not later than ninety (90) days prior to the date of expiry of the refugee identity document.

(4) When a refugee applies for renewal of the refugee identity document, the Standing Committee will consider whether he or she will remain a refugee indefinitely, pursuant to section 27(c) of the Act, if such certification has not already been issued pursuant to sub-regulation (5), or is subject to a withdrawal of refugee status under section 36 of the Act, with the following consequences:

- (a) If the Standing Committee determines that the individual will remain a refugee for the foreseeable future, the Standing Committee will certify that the individual will remain a refugee indefinitely, and the individual may apply for an immigration permit pursuant to section 27(c) of the Act.

(b) If the Standing Committee determines that grounds for withdrawal of refugee status apply pursuant to section 36 of the Act, the Standing Committee will issue a notice of intent to withdraw refugee status pursuant to sub-regulation 17(2).

(c) If the Standing Committee fails to find that the individual will remain a refugee in the foreseeable future and that no grounds for withdrawal of refugee status apply, the Refugee Status Determination Officer will renew the refugee identity document, valid for period of 2 years.

(5) At the time refugee status is granted, the Standing Committee may, in its discretion, certify that an individual will remain a refugee indefinitely, if the refugee has established compelling reasons arising out of previous persecution for refusing to return to the country of persecution, even if conditions in that country have fundamentally changed or are likely to fundamentally change in the foreseeable future.

16. DEPENDANTS

16 (1) Dependants who accompanied the asylum applicant to the Republic may apply for refugee status pursuant to section 3(c) of the Act.

(2) The Refugee Reception Officer will assist in including in the principal's asylum application each dependant who seeks asylum pursuant to section 3(c) of the Act.

(3) The principal asylum seeker or dependant must provide proof of relationship. Proof of relationship may be established by documentary evidence, such as marriage or birth or baptismal certificates, or travel documents. In the absence of such documentary evidence and a reasonable explanation as to why such documentary evidence is not available, relationship may be established by affidavits or credible sworn statement.

(4) Each dependant included on an asylum application shall be issued an asylum seeker permit and must comply with the terms prescribed on the permit, including required appearances at the Refugee Reception Office.

(5) Any dependants applying for refugee status pursuant to section 3(c) of the Act must appear for the hearing before a Refugee Status Determination Officer with the principal asylum seeker.

(6) Pursuant to sections 33(2) and (3) of the Act, a dependant of a recognised refugee, who ceases to meet the definition of dependant under the Act, because of divorce, marriage, attainment of majority, or death;

(a) may continue to remain in the Republic provided the dependant has an asylum seeker permit or has been granted asylum; and

(b) will be given the opportunity to apply for asylum pursuant to section 3(a) or (b) of the Act.

(7) If the asylum seeker permit of the principal applicant is withdrawn, the asylum seeker permit of any dependant based on section 3(c) of the Act will also be withdrawn. However, such withdrawal does not preclude the dependant from applying for asylum independently pursuant section 3(a) or (b) of the Act.

17. WITHDRAWAL OF REFUGEE STATUS

17 (1) Before refugee status may be withdrawn, the Standing Committee must provide written notice to the refugee:

- (a) explaining that the Standing Committee intends to withdraw the status;
- (b) identifying the reasons for the intended withdrawal; and
- (c) giving the refugee notice that he or she has the right to make a written submission to respond to the Standing Committee within 30 days of the date of notice.

(2) The burden of proof is on the Standing Committee to establish that a refugee is subject to one or more of the grounds for withdrawal enumerated in sub-regulation 17(a).

(3) If the refugee fails to respond within the prescribed period of time or the response fails to overcome the reasons provided for the withdrawal, the refugee status may be withdrawn and the individual may be treated as a prohibited person under the Aliens Control Act and be subject to detention pursuant to section 36(3) of the Act.

18. RETROSPECTIVE APPLICATION OF REGULATIONS

18 (1) The provisions of regulations 3(1) and 3(3) shall only apply to those applications lodged after the publication of these regulations.

19. SHORT TITLE AND COMMENCEMENT

These Regulations will be known as the Refugee Regulations (Forms and Procedure) 2000.