



Citizenship

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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 2005
- Children's Amendment Act No.41 of 2007
- Immigration Act No.13 of 2002
- Immigration Amendment Act, No.3 of 2007
- Immigration Amendment Act, No.13 of 2011
- Refugees Act No.130 of 1998
- Refugee Amendment Act No.17 of 2017
- South African Citizenship Act No.88 of 1995
- South African Citizenship Amendment Act No.17 of 2010

NOTE

There are a number of laws undergoing reform, which may change the requirements described in this chapter. In November 2023, the government released a White Paper on Citizenship, Immigration and Refugee Protection: Towards a complete overhaul of the migration system in South Africa. The White Paper was released for public comment. South Africa has different pieces of legislation dealing with citizenship, immigration and refugee protection, which are often not aligned with each other. The White Paper proposes that the government must review all the legislation relating to citizenship, immigration and refugee protection and include it all in a single law.

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 to 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 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.

General 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 they were 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 other documents that can be attached to the affidavits. Documents that 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
- An affidavit from **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 to 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 pg 88: *Citizenship 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 under 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 parent's 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 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, they can apply to the Minister of Home Affairs for citizenship. According to Regulations in terms of the *South African Citizenship Act (1995)*, a fee may be applicable.

These are the conditions that the person must fulfil 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 of ordinary residence immediately before the application for naturalisation
- After acquiring permanent residency, have an additional 4 years of physical residence in the country during the 8 years before 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 the 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 fulfil all the conditions. It is regarded as a privilege, not a right.

How can a person lose South African citizenship?

A person can lose South African citizenship by:

- Renouncing the South African citizenship voluntarily
- Serving in the armed forces of another country while that country is at war with South Africa

- If the certificate of naturalisation was obtained using 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 the 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

South African citizens can have citizenship in other countries, provided individuals comply with certain procedures. In terms of the *South African Citizenship Amendment Act of 2004* (No. 17 of 2004), an adult South African citizen who has dual citizenship or nationality can

freely use their foreign passport outside South Africa. However, they must use their South African passport to depart from or enter South Africa.

Anyone over 18 seeking dual citizenship must first apply to retain their South African nationality.

According to the *South African Citizenship Amendment Act*, a citizen is guilty of an offence and is liable to a fine or imprisonment if they:

- Enter or depart from the Republic by making use of the passport of another country
- While in the Republic, they make use of their citizenship from another country to gain an advantage or avoid duty

Permanent residence through the 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. However, a foreigner cannot apply for permanent residence through a holder who obtained their permanent residence status through a first step of kinship.

EXAMPLES

APPLYING FOR CITIZENSHIP WITH 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.

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 based on the first step of kinship.

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

Some people come to South Africa for the purpose of work, and they are called immigrants and migrants. Others are here to seek asylum and refugee status. (*See: Asylum seekers and refugees*).

The *Immigration Act* (No. 13 of 2002) clearly states all applicants must present themselves to conduct the biometrics capturing that is required, namely a photograph and fingerprints being taken. A third party cannot apply on your behalf.

The *Immigration Act* and amendments to the Act deal with immigration and migration.

It 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 mining and agricultural work.

Applications for general work visas will require the following:

- A certificate from the Department of Employment and 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
- The applicant must prove that they have 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 permission that 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 *Just Administrative Action*)

If a person is granted permission to live in South Africa **permanently**, they are entitled to most of the rights that 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 staying 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 seaport 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.

To enter South Africa legally, a person must have a valid passport from their country or a certificate applied for and issued by the Department of Home Affairs. Such persons must also have some kind of permit to enter South Africa. If this 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 many different 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 they are already here. The other permits that they are on must still be valid.

There are four ways to obtain a permanent residence permit. If the person:

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

In terms of the 2014 amendments to the *Immigration Act*, foreign spouses in possession of a visitor visa could not change their status while they were still in South Africa. This meant that if they wanted to apply for a change of status after entering South Africa on a short-term visa, they would have to return to their home country to make the application and wait there until they got the relevant visa. This provision also applied to minor children having to return to their country of origin to make the application.

This legislation was challenged in the Constitutional Court, and in 2019, the Court ruled that foreign spouses and minor children of South African citizens or permanent residents who had visitor visas did not have to return to their home country to apply for their long-term visa but could do this directly in South Africa. This means that the foreign spouse of a South African citizen or permanent resident permit holder may now apply for a spousal visa in South Africa as long as they have a valid visa.

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 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 directly 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 that can be applied for. These are described in the *Immigration Act, Sections 11 to 23*:

VISITOR'S VISA 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's borders and ask for a visitor's permit. The visitor's permit is granted for a period of 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 VISA

This is issued to an ambassador, minister of a foreign state, career diplomat, or consular officer.

STUDY VISA

This is for a foreigner wishing to study for a period longer than 3 months and who can satisfy prescribed conditions.

TREATY VISA

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 VISA

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 VISA

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

MEDICAL TREATMENT VISA

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

RELATIVES VISA

This is issued to the immediate family of a citizen or resident and is issued for a fixed two-year period, which can be extended. It requires a South African relative to show they can financially support the foreign relative over the two-year period. This visa does not allow the foreign relative to work in South Africa.

WORK VISA

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.

Critical Skills Work Visa (CSWV)

The CSWV is a permit issued to applicants who have exceptional skills or qualifications that are scarce in South Africa. It replaces the Exceptional Skills and Quota Work visas.

Applicants for a CSWV must complete the Department of Home Affairs online form. It cannot be submitted by hand. Go to the

Department of Home Affairs website: www.dha.gov.za for a list of the requirements for a CSWV.

In 2022, a new Critical Skills List was published and the visa is issued in terms of this List. The list looks at occupations that are in high demand and those that are scarce, according to the Department of Higher Education and Training (DHET).

An offer of employment is not required when you apply for a CSWV but you will only be issued with a visa for one year to allow you to find employment within your Critical Skills category. You immediately qualify for permanent residency once you have been offered permanent employment in an occupation that appears on the Critical Skills List.

The CSWV is valid for up to five years, and it can be renewed in South Africa. The visa holder's spouse and dependent children can also be issued with a visa that is valid for the same period as the CSWV.

Employees who have been holding a Quota Work Permit are allowed to continue using this visa until it has expired. After this, they need to apply for a South African work permit or Critical Skills Work Visa. They can do this in South Africa.

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.

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 a specified period.

The employer who is applying for a corporate permit MUST prove that they have previously searched for workers in South Africa and were unsuccessful in finding the required amount of workers 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 VISA

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 4 years 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.

EXEMPTION PERMITS - NATIONALS OF ZIMBABWE AND LESOTHO

The Minister of Home Affairs created Exemption Permits to allow asylum seekers from Zimbabwe and Lesotho temporary entry for business, study or work. Initially, the Department set the ZEP status to expire in December 2022 but has extended this deadline and has published new policies regarding Zimbabwe Exemption Permits (ZEPs) and Lesotho Exemption Permits (LEPs) mostly to do with their expiration dates and application methods.

Automatic extensions

Nationals of Zimbabwe who were granted Zimbabwe Exemption Permits (ZEPs) in 2009 and nationals of Lesotho who were issued Lesotho Exemption Permits (LEPs) in 2019 will have the validity of their Exemption Permits automatically extended until December 31, 2024. These nationals now benefit from an automatic extension of their immigration status, which will save costs and time linked to extending this status.

Initial ZEP and LEP applicants applying after November 29, 2023

Initial LEP and ZEP applicants who applied for these permits on or after November 29, 2023, will automatically be granted a new validity period ending November 29, 2025. Those people applying for initial ZEPs and LEPs can now apply through the VFS Global online portal https://www.vfsglobal.com/ZEP/SouthAfrica/zimbabwean_special_exemption.html. Previously, they could only apply in person at the Department of Home Affairs. This will result in an easier and faster application process for these applicants.

Exemption permit holders are allowed to stay, work, seek employment opportunities and conduct business in South Africa during the validity of the exemption permit.

Exemption permit holders are not allowed to apply for permanent residence or change their immigration status in South Africa during the validity of the Exemption Permit.

It is not certain whether there will be another extension of Exemption Permits after 31 December 2024 for current LEP and ZEP holders and after 29 November 2025 for new LEP and ZEP applicants.

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, or political opinion because they belong to a certain social group, for example, because of sexual orientation and/or
- 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 fall into one of these categories, then they could be regarded as refugees. But, a person does not qualify to be a refugee if they have 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

Where the person seeking asylum enters South Africa, they will be granted a transit permit 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. 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: Resources pg 1060 for names of organisations that will assist with refugee and asylum problems*)

THE REFUGEES AMENDMENT ACT (NO. 17 OF 2017)

The *Refugees Amendment Act* was signed into law on 14 December 2017, but it can only be properly implemented once the Draft Regulations are finalised. These are some of the main focus points of the Act:

APPLYING FOR ASYLUM

The *Refugees Amendment Act* requires an asylum seeker to report to a Refugee Reception Office no later than five days after arriving in South Africa – or they can be excluded from refugee status. Those without an ‘asylum transit visa’ will be interviewed by an immigration officer to determine whether they have ‘valid reasons’ or not. Those who’ve entered ‘illegally’ risk being excluded from applying for asylum. All existing dependents must be declared upon applying for asylum.

REFUGEE RECEPTION OFFICES

Under the *Refugees Amendment Act*, the Director-General of Home Affairs would be able to establish as many Refugee Reception Offices as they regard as necessary – ‘notwithstanding the provisions of any other law’. They would also be able to direct any category of asylum seekers to report to any ‘place specially designated’ when applying for asylum, implying something other than a Refugee Reception Office.

ABILITY TO WORK AND STUDY

Under the *Refugees Amendment Act*, asylum seekers would not have an automatic ability to work or study. The right to work or study would have to be ‘endorsed’ on an asylum visa following an assessment process to determine whether an asylum seeker can support themselves in any way.

EXCLUSION FROM REFUGEE STATUS

If implemented, the *Refugees Amendment Act* would expand the reasons why an asylum seeker could be excluded from refugee status. This would include committing a Schedule 2 crime, entering illegally into South Africa, or an offence related to fraudulent documentation. It would also include those who are fugitives from justice in countries ‘where the rule of law is upheld by a recognised judiciary’, and those who do not apply for asylum within five days of entering South Africa.

ABANDONING ASYLUM CLAIMS

Under the *Refugees Amendment Act*, an asylum claim will be considered ‘abandoned’ if an asylum seeker does not report to a Refugee Reception Office thirty days or more after the expiry of their asylum permit. Discretion is allowed but only if the asylum seeker can prove that they had ‘compelling reasons’ for having an expired permit. These reasons must be provided to the Standing Committee for Refugee Affairs.

CHANGES TO THE APPEAL SYSTEM

The *Refugees Amendment Act* will create the Refugee Appeals Authority, which allows for one member to make a decision (rather than the current quorum, which is three members) and for more flexible appointments of staff and Refugee Appeal Authority members.

WITHDRAWING REFUGEE STATUS

The *Refugees Amendment Act* would expand the reasons for which a refugee status could be withdrawn. Several actions could result in the withdrawal of refugee status – including a refugee seeking services from the consulate of their country of origin. The Act would allow the Minister of Home Affairs to announce a withdrawal of refugee status for a whole category of refugees (or an individual).

PERMANENT RESIDENCY

The *Refugees Amendment Act* would double the amount of time a refugee has to reside in the country before being allowed to apply for permanent residency. This application, which involves applying to be recognised as an 'indefinite refugee', will only be possible for those who've been granted refugee status for ten years, which is double the current requirement of 5 years.

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 they have been told that the application has been refused. The applicant must be allowed to bring a legal representative to the Appeal Board hearing if they request this.

RIGHTS OF ASYLUM SEEKERS

An asylum seeker:

- Has the right to healthcare and access to public healthcare 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 can speak English to assist them in telling their story. They must also bring supporting documents such as:

- Birth Certificates
- Photographs
- Personal records
- Research was 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 they 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
- They 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 right to 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 they were 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 pg 463: Social grants*)

If you would like to view a sample of Form BI-1590 'Eligibility Determination Form for Asylum Seekers (for Sections 22 and 24)', you can use the following link: <https://www.passport2000.com/files/BI-1590.pdf>

Checklists

General advice on citizenship

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 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, regardless of your parents' status. 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 for 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 for work or permission to be in South Africa
- The record from TEBA showing that he was a contract worker in 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 their 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 their Identity Document, permanent residence permit, or immigration permit in their 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**
- **Photographs:** 2 recent colour passport-type photographs
- **Passport:** Valid original passport
- **Birth Certificate:** Unabridged birth Certificate
- **Medical Report:** The 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 three 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 the 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 the applicant. (Not applicable where the relative is the parent of a minor child of a South African citizen/resident)
- **Confirmation from citizen:** Confirmation that the South African citizen/permanent resident did not obtain residence in terms of Section 27(g) of the Act
- **Payment of the applicable fee**