



# GUIDE FOR STAFFING THE REFUGEE CLINIC

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## 1. ACRONYMS

- **DHA** – Department of Home Affairs
- **LHR** – Lawyers for Human Rights
- **RRO** – Refugee Reception Office
- **RSDO** – Refugee Status Determination Officer
- **UNHCR** – United Nations High Commissioner for Refugees
- **SCRA** – Standing Committee for Refugee Affairs
- **RAB** – Refugee Appeal Board
- **LSNP** – Law Society of the Northern Provinces
- **DG** – Director General

## 2. LEGISLATION/RELEVANT TEXTS

- Refugee Act 130 of 1998;
- Refugee Regulations (forms and procedures), 2000;
- Refugee Appeal Board Rules, 2013;
- United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees;
- 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and 1967 Protocol Relating to the Status of Refugees;
- 1993 Basic Agreement between the Government of South Africa and the UNHCR;
- Immigration Act 13 of 2002;
- Standard Operating Procedure Policy, 2008;
- Fatima Khan and Tal Schreier, 'Refugee Law in South Africa', Juta & Co. Ltd, First Edition (2014); and
- Promotion of Administrative Justice Act 3 of 2000  
Forms relating to the application for refugee status are available in the Refugee Regulations. The SOP is available from Probono.org's website.

### 3. INTRODUCTION

This manual is a basic guide to aid attorneys who assist asylum seekers and refugees at the Refugee Clinic. The manual provides rudimentary information on the procedures and processes applicable when assisting asylum seekers and refugees. It also provides the contact details of relevant DHA officials and other stakeholders.

### 4. APPLICABLE SECTIONS OF THE REFUGEE ACT

- **Section 1** – An asylum seeker is a person who is seeking recognition as a refugee in the South Africa.
- **Section 1** – A refugee is a person who has been granted status after having gone through the process.
- **Section 1** – a dependant is person who is either a spouse or an unmarried child or any destitute, aged or infirm family member of an asylum seeker or a refugee.
- Qualification for refugee status:
  - **Section 3(a)** states that a person qualifies for refugee status for the purposes of the Refugee Act if that person owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it; or
  - **Section 3(b)** states that a person qualifies for refugee status for the purposes of the Refugee Act if that person owing to external aggression, occupation, foreign domination or events seriously disturbing or disrupting public order either a part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge elsewhere; or
  - **Section 3(c)** states that a dependant is a person contemplated in section 3(a) or (b) above.
- **Section 22** permit (also referred to as an asylum seeker permit) is a temporary, renewable permit which allows an asylum seeker to remain in South Africa until their application has been finalised or their status has been revoked.
- **Section 27** permit is a written recognition of refugee status permit. It is a renewable permit which grants refugee status to the bearer and allows him/her to reside in South Africa and grants them full legal protection in terms of Chapter 2 of the Constitution. A person who holds this permit may apply for permanent residence after 5 years if the SCRA certifies that they will remain a refugee indefinitely.
- **Section 30** relates to an identity document issued to a refugee after they have received their recognition as a refugee.

- Permanent residence refers to a person who has been granted permanent residence in terms of Section 25, 26 or 27 of the Immigration Act.

## 5. INTAKE SHEETS

- Intake sheets are used to screen clients and record pro bono work undertaken by attorneys. The intake sheets contain the means ends test<sup>1</sup> and require clients to provide their contact information and details of their claim. The intake sheets require attorneys provide their names and details and what action they intend taking on their matter.
- An attorney staffing the clinic must complete an intake sheet for every person they consult with – even if the matter will be referred elsewhere.
- After staffing clinic, the attorney must scan and send the completed intake sheets (stating the action taken by the law firm) to Probono.org so that they may account to the LSNP and accredit the pro bono hours.

<sup>1</sup> The means ends test denotes the maximum amount a potential client should earn for us to provide them with free legal services. More information regarding the means ends test can be obtained from Probono.org.

## 6. ASSISTING AN APPLICANT WITH APPLYING FOR AN ASYLUM SEEKER PERMIT

- When an asylum seeker enters South Africa through a border post, they are issued with a transit permit. The transit permit is only valid for 5 days and allows such person to attend any RRO in South Africa to apply for an asylum seeker permit within 5 days.
- If the asylum seeker did not enter South Africa through a border post, advise them to attend the nearest RRO to apply for an asylum seeker permit.
- RROs are located in Pretoria (Marabastad), Cape Town, Durban; and Musina.
- Once at the RRO, they will be required to complete the eligibility form (also known as the BI-1590 form). The following information must be provided:
  - Their identity background information;
  - General knowledge of their country of origin;
  - The circumstances that led to them fleeing their country of origin; and
  - Why they cannot return to their country of origin.
- They must attend the DHA offices so that their biometric information can be registered on the DHA's electronic data base.
- A section 22 permit will then be issued to the foreign national who has now been granted asylum seeker status. The section 22 permit grants the asylum seeker the right to:
  - Access to basic public healthcare;
  - Access to basic public education;
  - Work/Study (This may vary for each asylum seeker);

- Open bank accounts;
  - Register for UIF;
  - Pay taxes; and
  - Access Certain Social Grants.
- The asylum seeker has an obligation to renew their permit as and when required by the RRO and must always be in possession of a valid permit. A failure to produce a permit may result in the asylum seeker being detained, whilst a failure to renew a permit may result in the asylum seeker having to pay a fine.

## **7. JOINING DEPENDANTS TO FILES**

- Children born in South Africa do not acquire citizenship by virtue of their place of birth but, acquire it through ancestry. For example, a child born of Congolese parents will also be Congolese regardless whether the child was born in South Africa. One of the biological parents has to either be a citizen or have permanent residence for the child to acquire South African citizenship.
- If the parents of the child have valid permits, DHA can issue birth certificates to their children. However, the parents still have a duty to join their children to their application for refugee status so that they are properly documented.
- However, if a child arrived in South Africa unaccompanied, the presence of the child in the country must be reported to the DHA. The DHA must assign a social worker to the matter so that a care-giver may be appointed to assist the child with an application for asylum as minors cannot apply for permits without a guardian or care-giver.
- In order to complete the joinder process, the main Applicant and his/her children must attend the RRO. The officials at the RRO can require the children to complete the eligibility form and submit their biometric information so that it will be captured on to DHA's electronic database.
- Thereafter, an official at the RRO will issue permits to the dependants and advise them to comply with the terms prescribed in the permit.

## **8. FILE TRANSFERS FROM DIFFERENT REFUGEE RECEPTION OFFICES**

- The process of applying for refugee status can take a considerable amount of time. As a result, some asylum seekers may relocate from the places where their initial applications were lodged making it difficult for them to travel to the RRO they initially applied at to renew their permits. Very often they seek assistance with transferring their files to the RRO where they are currently living.
- The Refugee Act does not make provision for file transfers. However, the SOP at clause 6 states that an asylum seeker may request that their file be transferred to another RRO.
- The person requesting the file transfer must furnish the RRO with proof of their current address.

## **9. FAILURE TO RENEW A PERMIT**

- The duty to renew an asylum seeker permit rests on the asylum seeker. However, sometimes, they are unable to renew their permits as and when required.
- In order to assist an asylum seeker in this situation, advise them that:
  - A fine between R500 – R3 000 will have to be paid by them before a permit is renewed unless they have a valid reason for failing to renew the permit.
  - The fine must be paid at the nearest Police Station or Magistrates' Court.
  - Thereafter, the receipt and the expired permit must be taken to the RRO so that a new permit can be issued.
- If the asylum seeker has a justifiable reason for not renewing their permit on time they may request that the fine be waived. The officials at the RRO will be less inclined to accept financial constraints as a reason for failing to renew a permit. Normally medical certificates are accepted; and letters from schools, if the person is studying and writing an examination.

## **10. ASSISTING AN ASYLUM SEEKER WITH THEIR APPLICATION FOR REFUGEE STATUS**

- After applying for asylum, the Applicant will attend an interview with the RSDO. The purpose of the interview is to ascertain the asylum seeker's reasons for fleeing their country of origin and assess the credibility of the asylum seeker's testimony against objective evidence.
- In considering the application for refugee status, the RSDO must consider whether the Applicant's claim falls under section 3(a), 3(b) or 3(c).
- Upon receipt of the application, the RSDO may:
  - Request any information or clarification from the asylum seeker or the RRO in order to make a determination on the application;
  - Consult with and invite a UNHCR representative to furnish information on specific matters; and
  - With the permission of the asylum seeker, provide the UNHCR representative with such information as may be requested.
- When considering the application, the RSDO must have due regard for the rights set out in section 33 of the Constitution, and in particular, ensure that the asylum seeker fully understands the procedures; his or her rights and responsibilities, and the evidence presented.
- After considering all of the evidence placed before him/her and objective country conditions, the RSDO will make a decision.

## 11. RSDO DECISION

- After conducting an interview with the asylum seeker, the RSDO must either:
  - Grant refugee status in terms of section 24(3)(a) of the Refugee Act;
  - Reject the application as manifestly unfounded in terms of section 24(3)(b) of the Refugee Act;
  - Reject the application as unfounded in terms of section 24(3)(c) of the Refugee Act; or
  - Refer any question of law to SCRA in terms of section 24(3)(d) of the Refugee Act.
- Below, we set out the procedure applied by the RSDO in each of the above instances.
  - **Section 24(3)(a)** of the Refugee Act – application for refugee status is granted
    - If the asylum seeker's application for refugee status is granted, they will be issued with a written formal recognition of refugee status permit. This permit is issued in terms of section 27(a) of the Refugee Act.
    - The refugee will enjoy the rights set out in Chapter 2 of the Constitution.
    - They are also entitled to apply for permanent residence in terms of the Immigration Act. In order to qualify for permanent residence, the refugee must have resided in South Africa for a continuous period of 5 years and the SCRA must certify that they will remain a Refugee indefinitely.
  - **Section 24(b)** of the Refugee Act – application for refugee status is rejected as manifestly unfounded
    - An application is rejected as manifestly unfounded if the application was made on grounds other than those in section 3 (a), (b) and (c) of the Refugee Act.
    - This will include applications that are:
      - Based on fraudulent facts;
      - Lodged for the purpose of defeating or evading criminal or civil proceedings in the country of origin;
      - Lodged after the refusal of one or more applications, based on the same facts and without any change of personal circumstances or the country conditions;
      - Excluded in terms of section 4, including applications submitted by people who have committed crimes against humanity; war crimes, crimes against peace, serious non-political crimes, if such crimes were committed in the South Africa would be punishable with imprisonment, or acts contrary to the principles of the UN or the AU.
    - Having made the decision, the RSDO must, within 5 working days, send written reasons to the Applicant. Such reasons must also be sent to the SCRA, within 10 days.
    - Decisions issued in terms of section 24(3)(b) of the Refugee Act are automatically reviewed by the SCRA. The purpose of the SCRA is to determine whether the decision made by the RSDO was reasonable in the circumstances.

- Before the SCRA reaches a decision, it may:
  - Invite a representative of the UNHCR to make written or oral representations;
  - Request the attendance of any person who is in a position to provide information relevant to the matter;
  - On its own accord, make such further enquiry and investigation into the matter; and
  - Request the asylum seeker to appear before it and provide information.
  - After considering the application, the SCRA may confirm or set aside the RSDO's decision.
  - In terms of Regulation 13(2) of the Refugee Regulations, if the SCRA sets aside the RSDO's decision, it will refer the matter back to the RSDO with direction for further action.
  
- **Section 24(3)(c)** of the Refugee Act – Application for refugee status is rejected as unfounded
  - An application for refugee status is rejected as unfounded if the Applicant has not satisfied the criteria in either Sections 3 (a), (b) or (c) of the Refugee Act.
  - The Applicant must, within 30 calendar days of receiving the RSDO decision, lodge an appeal with the RAB.
  - The RAB will hear the matter and at the end of the appeal hearing, they will either grant refugee status or uphold the RSDO's decision.
  
- **Section 24(3)(d)** of the Refugee Act– Referral to the RSDO
  - The RSDO may refer any question of law to the SCRA for further determination.
  - After the SCRA has made a determination on the question of law, they will refer the matter back to the RSDO for a final decision.

## 12. RECOURSE AFTER AN UNFAVOURABLE RAB OR SCRA DECISION

- Decisions made by the SCRA or the RAB are administrative decisions and can be judicially reviewed in terms of Promotion of Access to Information Act, 2000 by the High Court.
- Such reviews must be lodged within 180 days of receipt of the decision.
- The application for judicial review must be served on the RSDO, the RAB, the DG and the Minister of Home Affairs.
- While the review is pending, the Applicant must continue to renew his/her permit at the respective RRO. The attorney must inform the RRO of the review application so that the asylum seeker may renew their permit while the review is pending.

## 13. NO GROUNDS FOR JUDICIAL REVIEW

- If an application for refugee status is rejected and the Applicant does not have grounds for review, the Applicant will cease to be an asylum seeker and will be in the country unlawfully and may be deported by immigration officers in terms of the Immigration Act.

## **14. CESSATION AND WITHDRAWAL OF REFUGEE STATUS**

- Applicants cease to be refugees if they:
  - Voluntarily re-avail themselves to the protection of their country of origin;
  - After having lost their nationality they, by some voluntary and formal act, reacquire it;
  - Enjoy the protection of another country by virtue of nationality;
  - Voluntarily re-establish themselves in their country of origin; or
  - Can no longer refuse to avail themselves to the protection of their country of origin because the circumstances under which they were granted refugee status has changed.
- An Applicant's refugee status will be withdrawn in terms of Section 36 of the Refugee Act if such person:
  - Was erroneously recognised as a refugee on an application which contained materially incorrect or false information;
  - Was recognised as a refugee due to fraud, forgery, a false or misleading representation; or
  - Ceases to qualify for Refugee Status in terms of Section 5 of the Refugee Act.
- In such instances, the SCRA is obliged to provide Applicants with the reasons for the withdrawal of their refugee status. The Applicants have 30 days to make submissions to the SCRA on the decision to withdraw their status. The SCRA must consider the Applicants' submissions and make a decision.

## **15. DETENTION AND DEPORTATION OF ILLEGAL FOREIGNERS**

- An illegal foreigner is a person who is in South Africa in contravention of the Immigration Act. Such person is considered an illegal foreigner if their presence in the country was never authorised; or the authority to be in the country has been withdrawn.
- In terms of Section 34 of the Immigration Act, an immigration officer may arrest an illegal foreigner without a warrant and detain such foreigner for the purpose of deportation without a warrant in circumstances where an illegal foreigner is explained of his/her right to a warrant of arrest and waives as well as his/her right to appeal the decision to deport him/her.
- Illegal foreigners are arrested at placed in the Police Station first and then transferred to the Lindela Repatriation Centre where they are deported to their country of origin.
- The illegal foreigner concerned may at any time request any officer attending to his or her detention to request a warrant of the court to be issued to him/her within 48 hours. If a warrant is not issued, the illegal foreigner must be immediately released from detention as the detention is unlawful.
- If the illegal foreigner does not request a warrant to be issued within 48 hours of their detention, then he or she may not be held in detention for longer than 30 calendar days without a warrant.
- The immigration officer may also request a further warrant from the Court ordering the illegal foreigner to be held in detention for a period not exceeding 90 calendar days. In

any event, an illegal foreigner may not be detained for a period exceeding 120 calendar days.

- In the event that detention continues without a warrant being within the prescribed periods, one may approach the Court on an urgent basis and request the immediate release of the illegal foreigner.

## 16. RELEVANT CONTACT INFORMATION

RESPONSIBLE OFFICE	CONTACT PERSON	CONTACT DETAILS
Port Elizabeth, RRO	Sabelo Ngxitho	sabelo.ngxitho@dha.gov.za
Cape town, RRO	Mr Elija Mathebula	elija.mathebula@dha.gov.za
Pretoria, RRO	Mr Mfundo Ngozwana	mfundo.ngozwana@dha.gov.za
Durban, RRO	Ms Naleen Balgobind	naleen.balgobind@dha.gov.za
Musina, RRO	Mr Jimmy Malemela	jimmy.malemela@dha.gov.za
Application for permanent residence permits	Ms Joyce Mamabolo	joyce.mamabolo@dha.gov.za
Application for waiers and exemptions	Ms Yogie Tavern	yogie.travern@dha.gov.za
Appeals and reviews	Ms Regina Menoe	reginah.menoe@dha.gov.za
Registrar: RAB	Ms Sarie Brits	sarie.brits@dha.gov.za
Lindela Repatriation Centre	Mr Job Jackson	job.jackson@dha.gov.za