

THE ASYLUM APPLICATION PROCESS

In South Africa, the procedures for refugee status determination are contained in the **Refugees Act of 1998**.

There are two major stages in the refugee status determination process:

- becoming an asylum seeker and
- being recognised as a refugee.

Who Qualifies as an Asylum Seeker?

An asylum seeker is a person who has lodged an asylum application with the DHA and who is awaiting a decision on his or her asylum claim that will either grant or deny refugee status.

Who can apply for Asylum?

According to the Refugees Act, no person may be denied the opportunity to apply for asylum. A person who has applied for asylum is allowed to stay in S.A until there has been a final decision on the application. A final decision is one given after all possible appeals and reviews of a negative decision have been exhausted.

When and where should an Asylum application be lodged?



Application for asylum should be lodged as soon as possible after entry into S.A. Report to the nearest **Refugee Reception office**, within 14 days after arriving in S.A. If a person comes into contact with a police or immigration officer before having applied for asylum, he or she should express intention to apply.

Many people experience great difficulties accessing the refugee reception offices and sometimes have to queue for weeks before they are attended to for the first time. The DHA does not provide proof that a person has been queuing outside the refugee reception office. So until a person has obtained his or her Section 22 permit, even if attempting to follow the law, he or she could still be arrested by the police or immigration officials.

ASYLUM APPLICATION PROCESS



1. Eligibility determination form
2. receive a Section 22 (asylum seeker) permit
3. undergo a status determination interview
4. receive a decision
5. If asylum claim is rejected, file an appeal
6. appeal heard by the Refugee Appeal Board, and they will make a final decision about the claim

All of the above steps are free

STEP 1 – ELIGIBILITY DETERMINATION FORM

- ➔ To apply for asylum, you must fill out an Application form, also called an Eligibility Determination Form (**Form BI-1590**) in duplicate. The Refugee Reception Officer (RRO) must help you fill out this form. This stage of the asylum application is referred to as the “first interview.”
- ➔ Application for asylum should be made **in person** at a Refugee Reception Office with a RRO.
- ➔ Translators are not always provided so, if the applicant needs help understanding English, he or she should try and take someone he/she knows and trusts who can translate for him.
- ➔ A child’s asylum application is normally included in the application of the child’s parent, grandparent or legal guardian
- ➔ A spouse’s application is also normally included in the primary applicant’s application
- ➔ When applying together as husband and wife, make sure that **BOTH** are interviewed. Depending on the circumstances, it is possible that the wife of a family will have a stronger asylum claim than the husband.
- ➔ Should the applicant have a spouse and children in another country, they must also be declared at this time or they will not be included on his or her file.

- ➔ **It is important to bring any documents or evidence that verifies who you are and where you are from to the interview. It is preferable to bring the original copies**
- ➔ **However, remember that the DHA may only keep COPIES of the documents. The applicant must keep his or her originals.**



STEP 2 – RECEIVE A SECTION 22 (ASYLUM SEEKER) PERMIT

- Once the application form had been filled out, fingerprints and photographs taken, a Section 22 permit will be issued, which is also known as an asylum seeker permit. This permit should be received on the same day that the eligibility determination form has been filled out.
- This permit does not recognise the applicant as a refugee. It is only a document of acknowledgement by the government of SA that the person has applied for asylum.



Key things about the asylum seeker permit:

- Asylum Seeker should sign his or her Section 22 permit
 - The permit allows the asylum seeker to work and study in S.A
 - By law, the asylum seeker must keep the permit on him or her at all times
 - Make a copy of the permit and keep it in a safe place
 - Section 22 permits are often valid for one or three months at a time.
- Always renew Section 22 (asylum seeker) permit **BEFORE** it expires. If an Asylum Seeker walks around with an expired permit, he or she could be arrested and detained.
 - An asylum seeker permit, allows free movement around the country and the person can live wherever he or she want in S.A. It is advisable, however, to remain with the same Refugee Reception Office throughout the asylum determination process, as this reduces the possibility of a file being lost or a delay due to the change of offices.
 - However, a person has the right to renew a permit at the nearest Refugee Reception Office

STEP 3 - STATUS DETERMINE INTERVIEW

- According to the Refugees Act, within 30 working days after asylum seeker application, an invitation for a status determination interview with a Refugee Status Determination Officer (RSDO) should be issued.
- At this interview, the asylum seeker has the right to be accompanied by a legal representative and an interpreter of his / her choice. However, the legal representative is not allowed to intervene in the interview; he or she can only observe.
- Witnesses, affidavits from witnesses or any other evidence that might be important to the asylum seeker's case is allowed
- During this interview the RSDO will assess the asylum claim, consider the eligibility form that filled in and possibly ask additional questions related to the application
- The RSDO may ask questions to verify the applicant's identity and country of origin.
- According to the Refugees Act, the asylum process should be completed within 180 days.

Asylum applications which are found to be abusive or fraudulent, including those submitted by economic migrants, are processed through a fast-track procedure for manifestly unfounded claims with no right to appeal, which may result in deportation

STEP4 – RECEIVE A DECISION

Decision outcome of the Asylum application can be one of the following two things:-

Asylum Application has been approved



- The asylum seeker will receive a formal written recognition of refugee status (Form BI-1693) from the Department of Home Affairs, also known as a 'Section 24' permit, which is valid for 2 years.
 - Once declared or recognised as a refugee, the person are entitled to apply for a refugee identity document and a travel document
 - The refugee identity document will be valid for the duration period of the refugee status i.e. 2 years and it may be renewed.
- Application for renewal of this document must be made in person at the Refugee Reception Office prior to the expiry of the document.
 - Home Affairs may not withdraw a person's refugee status and replace it with a Section 22 Asylum Seeker permit when it expires.
 - Most banks will allow opening of a bank account with a refugee identity document.
 - Upon receipt of a refugee ID book, the refugee may apply for a United Nations Convention Travel Document (UNCTD), also at the Refugee Reception Office. This is a United Nations Travel Document that is issued by the SA government specifically for refugees.

- The UNCTD does not allow the refugee to travel to his/her home country, where he/she suffered persecution or where there is serious instability. The UNCTD allows travelling to any other country, subject to the visa requirements of that country.
- The Refugee should not apply for a passport from his/her home country's embassy while in SA as a refugee, since this may affect his/her refugee status.
- If an asylum seeker have not yet been issued with a refugee ID and are faced with an emergency situation that requires travel outside of the country, he or she will need to contact a legal counsellor or the UNHCR in Pretoria directly.

EMERGENCY PASSPORT

Even in the event of family illness or a personal emergency in another country, Home Affairs will NOT issue an emergency passport. Asylum seekers or refugees willing to give up their status may, in certain situations, apply for a one-way travel document. However, it is likely that such a person will not be allowed to return to SA to seek asylum.

Asylum Application has been rejected

The RSDO may decide to reject an asylum seeker's case as either "unfounded" or "manifestly unfounded".



- If an asylum application is rejected, it means that the person does not qualify for refugee status and that the DHA does not recognise him or her as a refugee.
- If an asylum seeker claim is rejected as "unfounded" he or she will be given a written decision stating the reasons why the application has been rejected. This is sometimes called a "must leave" letter because it states that the asylum seeker must leave SA or appeal the decision within 30 days.
- The rejected asylum seeker has the right to appeal the decision within 30 days of the date upon received of the rejection letter. Seek advice from a legal counsellor about the appeal.

→ Rejection decision Manifestly Unfounded

- ▲ A 'manifestly unfounded' decision occurs when a status determination officer decides that the asylum seeker does not have a potential refugee related reason for being in SA.
- ▲ Persons who come solely for employment often receive manifestly unfounded decisions.
- ▲ A person may appeal the manifestly unfounded decision by writing a letter of appeal directly to the Standing Committee for Refugee Affairs within 14 days, setting out the reasons for leaving his/her country and why he/she believe that he/she cannot safely return to his/her country at the present time

STEP 5 - REJECTED ASYLUM APPLICATION APPEAL

- An appeal has to be initiated in person at the Refugee Reception Office.
- The Appeal will be before the Refugee Appeal Board, which is an independent tribunal that offers rejected asylum seekers a second chance to prove their refugee claim.
- The appeal is an oral hearing where the rejected asylum seeker will be given the opportunity to present his or her case and reasons for applying for asylum.
- You may have legal representation, at your own costs, at your appeal.

STEP 6 - REFUGEE APPEAL BOARD APPEAL HEARING



- Proof in the form of photos, diplomas, certificates, and newspaper clippings may help the asylum seeker's claim. Information about his or her country of origin, home city, or people who fled for similar reasons may help the judge understand the reasons for flight.
- DHA must do it's best to provide a competent interpreter however if this is not possible, the asylum seeker is allowed to bring one.
- The following individuals may **NOT** interpret for a asylum seeker:
 - ▲ His or Her legal representative,
 - ▲ a witness to the asylum seeker's claim testifying on his or her behalf, or
 - ▲ A representative of the country in which the asylum seeker fear persecution.
- In theory, the Refugee Appeal Board must make a decision within 90 days of the appeal hearing. Unfortunately, in practice it takes much longer to finalise appeals. The asylum seeker should continue to renew his/her asylum seeker permit and ensure that it remains valid.



- If the asylum seeker's appeal has been accepted, a formal recognition of your refugee status (Form B1-1693) will be issued by the Department of Home Affairs.
- If the asylum seeker's appeal has been rejected, the individual do not have any right to further appeal and he/she will be given the opportunity to leave SA on his/her own before his/her section 22 asylum seeker permit expires. If the persons section 22 permit expires and are found in SA, he/she may be arrested and deported to his or her home country.
- An appeal rejection may be reviewed by the High Court if the decision of the Appeal Board was reached improperly on legal grounds. This is not a review on the merits of a refugee claim; rather it is a review on "how" the Appeal Board made its decision. If the Court finds that the Appeal Board reached its decision incorrectly, the Court may send the matter back to the Appeal Board for a new appeal hearing. Please contact a legal counsellor to discuss whether a appeal rejection is reviewable.

REFUGEE STATUS MAY BE WITHDRAWN:-

- by the Standing Committee for Refugee Affairs (SC) if a application was granted upon false information or due to fraud or forgery.
- if the circumstances or reasons why asylum was granted cease to exist and no other circumstances have occurred which may give good reason for his/her refugee status to continue.
- if the refugee voluntarily re-avail himself/herself of the protection of his/her home country.
- The SC must inform the refugee of its intention to withdraw his/her status and the reasons for the withdrawal.
- The person has the right to make a written submission regarding the withdrawal of his/her refugee status to the SC within 30 days of receipt of this notice. Contact a legal counsellor for Assistance

ASYLUM APPLICATION FOR CHILDREN

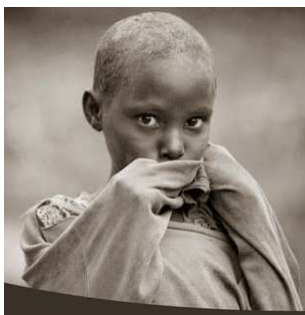
International and South African law recognises that child refugees have different requirements from adult refugees. Refugee children are vulnerable both as children and as refugees. They obtain legal protection as children generally and as refugees specifically.

If a child enters the country in the care of a relative other than a parent or a biological grandparent, that caregiver should apply to the Children's Court to be appointed as the child's legal guardian. This will entitle the caregiver to apply for a foster-care grant, which is a monthly payment from the Department of Social Development to assist foster parents in caring for foster children

ACCOMPANIED CHILDREN

- The asylum application of a child who is accompanied by his or her parents or guardians is normally included in the application of the parent, biological grandparent or legal guardian.
- Refugee status is granted to children and other dependants when the principal applicant's (head of the family/household) application is approved.
- In some cases it is advisable for a child to submit an independent asylum application, especially if the case for asylum for the child is stronger than his or her parents' claims. In many cases children are persecuted because they are children, especially in countries where child soldiers and female circumcision are common.
- A legal representative or a parent/legal guardian must always accompany a child asylum seeker to his or her interview.

UNACCOMPANIED/SEPERATED CHILDREN (UAM)



- A child asylum seeker is unaccompanied if no person can be found who takes primary responsibility for the care of that child, either by law or custom. This includes a child who is separated from his or her parents either before or during flight from the country of origin.
- Unaccompanied asylum seeker and refugee children possess all the rights of other asylum seeker and refugee children.
- However, because they are not in the care of parents or guardians, they require special protection.
- The legal responsibility for unaccompanied or separated asylum seeker and refugee

children lies with the South African government. It is the duty of the Department of Social Development to ensure that unaccompanied or separated asylum seeker and refugee children receive the protection, shelter, basic nutrition and social services that they require.



- Unaccompanied or separated children must submit an independent asylum application. An unaccompanied or separated child should approach a DHA representative at any of the refugee reception offices, state that he or she is an unaccompanied or separated child and request assistance with the application process.
- The DHA representative has a duty to contact a social worker from the Department of Social Development to further assist the child.
- However, if any problems are experienced, an unaccompanied or separated child can also approach the offices of any of the NGO legal counsellors listed in this guide for assistance.

No Unaccompanied child should include his / her asylum application with that of an unknown person as it might jeopardize the asylum application and the chances of family reunification

PERMITS



RENEWAL OF PERMITS

- The refugee must apply for renewal of his/her Section 22 asylum permit at one of the refugee reception offices before it expires.
- The DHA issues Section 24 refugee status permits for the duration of 2 years.
- Application for the renewal of a refugee status permit can be done 3 months before it expires at the refugee reception office. The DHA will reassess the applicant's refugee status in S.A based on the situation in the applicant's country of origin.
- The DHA are having asylum seekers arrested who do not renew their permits before they expire.
- A fine ranging from R500 – R3000 must be paid in order to have the asylum seeker permit renewed.
- The Refugee / Asylum seeker do have a right to contest this fine in court if he/she thinks that it wasn't justly issued.
- The Refugee / Asylum seeker should get legal advice if he/she decides to go to court and contest the fine.
- Asylum seekers and refugees enjoy the right to freedom of movement in S.A. This means that they can live wherever they want.
- He or she may renew his/her permit at any of the seven refugee reception offices in the country.
- A refugee reception office should never refuse to renew a permit because application for asylum was made at a different reception office.

LOST PERMITS

- It is not easy to replace lost permits.
- A Refugee / Asylum seeker should make many certified copies of his/her permit and keep them in a safe place. Remember the file number and the case number on the permit.
- Should a permit get lost, report the loss to the nearest police station and get a statement or affidavit from them.
- The police statement/affidavit together with a copy of the permit (if one is available) should be taken to a refugee reception office, and a new permit will be issued.

PERMANENT RESIDENCE

After 5 years of continuous residence in South Africa as a recognized refugee, application for permanent residence in South Africa can be made, if the Standing Committee certifies that you will remain a refugee indefinitely.



- In order to apply for permanent residence, a person may ask for an application form at a Refugee Reception Office or legal service provider. In the application form, a person must state the reasons why he or she will remain a refugee indefinitely due to the present conditions in the country of origin.
- Refugees do **NOT** have to pay to apply for permanent residence.
- Refugees do **NOT** have to provide a security clearance certificate from their country of origin. They must, however, obtain a police affidavit and a security clearance certificate

from the S.A police.

- It is possible that the Standing Committee, in denying an application for permanent residence, will withdraw a person's refugee status if it determines that there is no longer a well-founded fear of persecution in the country of origin.

