

**PAHRO MANUAL**

**FOR**

**Asylum Seekers wanting Refugee Status**

**Refugees seeking Permanent Residence**

**Contents Page**

1. Introduction
   1. Relevant legal instruments
   2. Overview of entire process
   3. Flow chart (French & English)
2. Asylum Seekers to Refugees

2.1 Definition of a refugee

2.2 Asylum seeker permit

2.3 Rejected Applications

1. Refugees
   1. Refugee Status
   2. Rights and Obligations
   3. Rejected Applications
2. Permanent Residence
   1. Who is eligible for permanent residency?
   2. Certification of indefinite refugee status
   3. Permanent residency application
   4. Costs
   5. Required Documentation
3. Contact Details of Department of Home Affairs
   1. Head Office
   2. Refugee Reception Offices
   3. Standing Committee for Refugee Affairs
4. **Introduction**

Annually, South Africa takes in a large number of asylum seekers and refugees from its neighbouring nations pursuant to its international obligations and domestic laws. Although large influxes of migrants have created tension – most recently witnessed in xenophobic violence and simmering resentment in regard to job opportunities in the last two years, the RSA remains true to its legal obligations as the Department of Home Affairs (DHA) continues to process large numbers of applications daily. The object of this manual is to help asylum seekers and refugees understand their legal rights and obligations, and most importantly in clear, easy to understand terms – the relevant processes available to them when they enter the country.

In particular, this manual will help migrants who enter at the border as asylum seekers, the steps they have to undertake to be granted refugee status and later down the track – the process involved into gaining more permanent resettlement in South Africa – permanent residency and naturalization.

It is hoped that this manual will give refugees a clear reference and understanding of their situation in the RSA and an understanding of the application process which can be bureaucratic, confusing and slow – if not completely hampered by corruption, misinformation and general ignorance. Furthermore, for PAHRO interns the manual should give them a clear point of reference and easy to access information in order assist them with client consultations.

* 1. Relevant Legal Instruments

1.1.1 The RSA enacts its domestic legislation pursuant to the following international treaties on refugees of which it is signatory:

* *UN Convention Relating to the Status of Refugees,* 1951(hereafter the Refugee Convention), see
* UN *Protocol Relating to the Status of Refugees*, 1967 (which basically removes all the geographical and temporal limitations of the 1951 Convention).
* *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa,* 1969

These international instruments define what it means to be a refugee, the duties imposed upon nations in regard to taking asylum seeker applications and their treatment of those attaining refugee status. Most importantly is the duty of *non-refoulement* which essentially means that nations have agreed to not send refugees back to a place they are likely to be persecuted.

1.1.2 At the national level, there are two relevant domestic laws that have been enacted pursuant to the RSA’s international obligations:

* *Refugees Act,* 1998. (See Appendix 3)
* *Immigration Act,* 2000.(Appendix 4)

These two pieces of legislation give the international treaties effect at the domestic level, which is administered by the Department of Home Affairs and their subsidiary bodies. These laws define the rights and obligations of migrants and of particular significance to this manual is the sections relating to visas for asylum seekers and refugees as well as the setting up of administrative bodies to deal with refugee related matters, such as the Refugee Reception Office and Standing Committee for Refugee Affairs.

* 1. Overview of Entire Process

**Temporary Permit → Asylum Seeker → Refugee → Permanent Residency → Citizenship**

* Upon entering the South African border, immigration officers will issue the applicant with a **14 day temporary permit**
* Within the 14 days, the applicant must report to the **Refugee Reception Office**, if they fail to do so before the permit expires, they will be regarded as an illegal immigrant and subject to arrest and deportation.
* An application for asylum will be processed by a Refugee Receiving Officer, and applicants will be given an **asylum seeker permit** which is valid for 3 months and renewable at the end of each period.
* After two interviews (that is, after the passage of two 3 month ‘asylum seeker permits) a **Refugee Status Determination Officer** will make a decision on whether or not to grant refugee status or reject the application as fraudulent and unfounded. Questions of law and appeals to failed applications can be referred to the Standing Committee for Refugee Affairs. Appeals can also be made to the Refugee Appeal Board. Please note that at any stage should an application be rejected, the applicant is given 30 days to exit the RSA, thus any appeals must be completed in an expeditious and timely manner.
* Is asylum is granted, the applicant will receive refugee status for **2 years**. Within 3 months of its expiry, the applicant must obtain a **second status which is granted for 4 years** or they may return to their homeland.
* After 5 years of continuous residence *and* recognised refugee status, a refugee can apply for ***indefinite* refugee status**. Once this is granted, the applicant may apply for **permanent residency.**
* After 5 years of permanent residency, the applicant is **eligible for naturalization** to become a South African **citizen**.

**Flow Chart – ENGLISH**





**Flow Chart – FRENCH**





1. **Asylum Seekers to Refugee Status**

*2.1 Definition of a refugee*

2.1.1 Those seeking to be declared refugees are called asylum seekers. A person shall be granted refugee status if they fit the following criteria as defined in the UN Refugee Convention:

Art 1. “owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

2.1.2. Additionally, as South Africa is also party to the OAU Convention, which mirrors the UN Convention in its definition of refugees, but with the expansion of its meaning to include those also:

Art 1(2). “owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”

*2.2 Asylum Seeker Permit*

Asylum seekers arriving at the South African border will be granted a 14 day temporary permit to enter the Republic. Within these 14 days, the asylum seeker must present himself to a Refugee Reception Office to make an application for refugee status. There are five DHA offices in South Africa – Cape Town, Johannesburg, Port Elizabeth, Durban and Pretoria. If the asylum seeker fails to do so before the expiry of two weeks, then he or she will be deemed an illegal immigrant and subject to arrest and deportation.

2.2.1 Applications will be processed by a Refugee Receiving Officer who will grant an Asylum Seeker Permit that is valid for 3 months. This does not grant refugee status and the rights and obligations pursuant to international and domestic instruments, but applicants will be able to seek employment and study.

Refugee status will only be granted after a minimum of two successive grants of asylum seeker status. The decision will be made by a Refugee Status Determination Officer.

2.2.2 If an application is granted, the applicant will receive refugee status for 2 years – it is not a permanent status. Should a refugee like to stay in South Africa beyond that time frame, they must seek to renew their status within 3 months of its expiry date or return home.

The next grant of refugee status will be for a period of 2 year blocks. After a minimum of 5 years in the RSA, applicants will be eligible to apply for permanent residency.

*2.3 Rejected Applications*

Rejected applications are based on fraudulent or unfounded applications, and failed applicants will be given 30 days to leave the Republic. Question of law and appeals to the decision can be referred to the Standing Committee for Refugee Affairs, and beyond that to the Refugee Appeal Board, but they must be lodged before 30 days has passed.

Appellants must notify DHA of their intent to appeal in order to arrange an appropriate date for a hearing. There is often a long delay before appeals will be heard due to limited resources.

Please note that successive applications for refugee status must remain consistent in regard to reasons for fleeing the homeland and persecution in order to be successful. Applicants need to show the reasons for need of refugee status and continued persecution that prevents their return home, thus up to date information of the homeland status and political situation is often vital to a successful application.

1. **Refugees**

*3.1 Refugee status*

The granted refugee status is valid for 2 years – it is not a permanent status and must be renewed within 3 months before the expiry date for a second period. Often refugees will choose to continuously renew their status indefinitely.

Please note that successive applications for refugee status must remain consistent in regard to reasons for fleeing their homeland and persecution in order to be successful. Often changes in country situation/political climate can affect the approval of a refugee status, despite a series of previous successful applications. Thus applicants should not be lulled into a sense of complacency in regard to the permanency of their status is the RSA.

A successful application must carefully consider the definition of a refugee according to the two mentioned international instruments to which the RSA is party, as well as an awareness of the political situation and stability of a nation that the applicant is fleeing from persecution and cannot avail themselves to their motherland for protection.

*3.2 Rights and Obligations*

A valid refugee permit will allow the applicant to work and study, and they will be issued with paperwork and a green ID card (issued for non-south Africans).

Please note that refugee status means that applicants are fleeing persecution from their home country and avail themselves to the protection of South Africa. This means, that should they decide to return to their homeland they do so permanently and give up the protection offered by the RSA.

3.2.1 There are three options available to refugees: resettlement, reintegration and repatriation.

*3.3 Rejected Applications*

The decision to whether or not to grant refugee status is made by a Refugee Status Determination Officer. Rejected applications are on the grounds of fraudulent or unfounded claims. Appeals of this decision must be made within 30 days (also the time limit for the applicant to depart the RSA). Applicants should inform the RSA in writing their intent to appeal in order to arrange an appropriate hearing.

First point of appeal should be to the Refugee Appeal Board.

The second avenue of appeal, as well as to address questions of law for failed applications should be directed to the Standing Committee for Refugee Affairs.

1. **Permanent Residency**

For those who have obtained refugee status, the *Immigration Act* according to Section 27(c) of the *Refugees Act* 1998 (*RSA)* which permits those who have indefinite refugee status and continued residence for over 5 years in South Africa a right to apply for permanent residency.

If permanent residence is granted, then the applicant has the same rights and responsibilities of a South African citizen save for those rights specifically prescribed for citizens such as the right to vote in elections and eligibility to use a South African passport.

*4.1 Who is eligible for permanent residency?*

There a 3 main ways in which a refugee can obtain permanent residency:

4.1.1 Direct (spousal relationship or child)

Section 26(b) of the *Immigration Act* allows for those married to the South African citizen to also gain permanent residency in what it terms a “good faith spousal relationship” with condition that the relationship still exists (except in the case of death) 3 years from the date of the application.

Also, children under the age of 21 of a citizen or permanent resident will also be regarded as permanent resident provided that within 2 years of the child turning 21 they make an application of confirmation of their status. See s27(d) of the *Immigration Act.*

4.1.2 By other means (application)

Eligible person can also apply for permanent residency and refugees in particular are given the right to do so according to the s27(c) of the *Refugees Act* and s27(d) of the *Immigration Act.*

*4.2 Certification of indefinite refugee status BI-1754*

Before an application for permanent residency can be completed, refugees must apply to the Standing Committee for Refugee Affairs to be certified as likely to remain a refugee indefinitely. They are only eligible to do so after being a refugee for 5 years.

Please note that applicants need to ensure that their statements are honest and consistent with regard to their reasons for fleeing their homeland and escape from persecution.

This application process takes approximately 6 months to complete. Upon submission of the form (faxing to Pretoria is usually the quickest route, but applications can be made to all DHA offices), the applicant should receive a “letter of acknowledgment” that the application is in process. Approximately 6 months later, the applicant should be informed whether or not he or she is successful.

4.2.1 Continued renewal of refugee status

Whilst this process is taking place, applicants must continue to renew their refugee status as per usual, failure to do so will mean that an expired grant will result in the refugee being deported, despite the pending application with the Standing Committee.

4.2.2 Rejection of indefinite refugee status  
Should an application be rejected, the applicant is given 30 days to leave the RSA, regardless of any current papers of continued refugee status. The rejection from the Standing Committee takes precedence over DHA papers.

*4.3 Application process for Permanent Residency (BI-947)*Applicants need to have all their appropriate documentation (as required according to the application) upon the lodgment of the application to avoid further delays.

Please see attached form.

*4.4 Costs*  
All services provided by Home Affairs for refugees is FREE. There should not be any administrative costs, tariffs or other fees whatsoever.

Of course corruption is an issue but if all procedures are processed through the correct channels, the entire process although lengthy will not incur any charges. Please be aware that there have been some incidences of officials demanding ‘fees’ from applicants promising the appropriate paperwork, but from our experiences this is often been a scam. In the past, some desperate refugees have paid extortionate amounts of money for papers they believed to be valid, only to find that they were issued with fake documents that were not registered on the official system.

Thus, whilst it may seem like a tempting option - our recommendation is to persevere through official channels in order maintain the integrity of the system and not give into corruption or bribes.

*4.5 Required documentation*

Please note that more/different forms may be required depending on personal particulars as requested in form BI-947. Documents must be originals or copies certified by the issuing authority. Applicants must ensure that all documentation is in order before submitting, as missing forms will further delay the process.

* 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 iro late spouse, if applicable
* Consent of parents iro minors, if applicable
* Proof of judicial adoption, if applicable
* Police clearance certificates iro all countries in which you resided for a period of one year or longer, since your 18th birthday
* Valid temporary residence permit, if already in SA.
* For refugees, valid paper trail (current and expired) of all granted refugee visas tracing back 5 years. Copies of expired visas acceptable.

1. **Department of Home Affairs – Contact Details**

**5.1 HEAD OFFICE**

**Minister: Dr Nkosazana Clarice Dlamini Zuma  
Deputy Minister: Mr. M.K.N Gigaba**

**Physical address**  
Corner Maggs and Petroleum Street,Waltloo, Pretoria

**Write to:**  
Director General, Dept. of Home Affairs  
Private Bag X114, Pretoria, 0001 **For enquiries**  
**Phone:** 0800 601 190  
**E-mail:** [csc@dha.gov.za](mailto:csc@dha.gov.za)

**Complaints and compliments**  
**Phone:** 0800 204 476  
**E-mail:** [ccu@dha.gov.za](mailto:ccu@dha.gov.za)   
**Fax:** 012 810 7667

**The Department's office hours**Monday - Friday (07:30 - 16:00)  
Saturday (07:30 - 12:00)

**5.2 REFUGEE RECEPTION OFFICES**

**Director**Ms B.J Mkhwebane-Tshehla

[t] +27(0)12 810 8685  
[f] +27(0)12 810 8177

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Office** | **Head** | **Address** | **Contact** | **E-mail Address** |
| **Pretoria** | Ms. Solani Ntukwana | Cnr DF Malan & Struben Str Pretoria West 0183 | [t] (012) 327 3515 [C] 082 883 0377 [f] (012) 327 5782 | Solani.ntukwana@dha.gov.za |
| **Crown Mines** | Ms Florencia Belvedere | 19 Planet Avenue Diepsprodukte Building Crown Mines | [t] (011) 226 4600 [f] (011) 226 4603/02 | florencia.belvedere@dha.gov.za |
| **Cape Town** | Mr Richard Sikakane | 18 Montreal road Sturrock building Airport Industia Nyanga Cape Town | [t] (021) 380 5000 [c] 082 806 4733 [f] (021) 421 5028 | Richard.Sikakane@dha.gov.za |
| **Port Elizabeth** | Mr Sipho Lucas | KIC 5 Sidon str, North End Pot Elizabeth 6001 | [t] (041) 403 7412/13 [C] 072 046 0050  [f] (041) 403 7433 | Sipho.Lucas@dha.gov.za |
| **Durban** | Ms.Naleen Balgobind | 132 Moore Street DURBAN 4023 | [t] (031) 362 1205 [c] 082 801 8691 [f] (031) 362 1220 | Naleen.balgobind@dha.gov.za |

**5.3 Standing Committee for Refugee Affairs**

Direct: 012 320 0961