



Response ***June 12th 2020***

Refugee Rights Extended

On 10th June Home Affairs Minister Aaron Motsoaledi issued directives (Government Gazette 43420) extending the validity of all refugee and asylum-seeker documents which have expired during the state of national disaster, until 31st July 2020. In the same Gazette he also set aside all declarations of undesirability, as well as the bans on re-entry issued to travellers exiting South Africa whose documents had expired during the period of the national lockdown. Both decisions are to be welcomed.

On 25th March this year, Minister Motsoaledi stated clearly that no one would be penalised if their documentation expired during the lockdown period, as Dept of Home Affairs offices would be closed in compliance with regulations. The Departmental website relayed the same message. It was also noted that the directives made by the Minister on 26th March in this regard only referred to the Immigration Act 2002, and thus did not cover all those affected by the expiry of documentation. Hence, the Deputy Minister's broader assurances in a later radio interview were especially welcomed.

Deputy Minister Njabulo Nzuzu reiterated the Minister's assurances and offered a more comprehensive position on 22nd May, specifically stating that a "blanket extension will be granted till July at least". His statement also implied that no one in such a situation would be regarded as being in the country illegally, and thus not be penalised with arrest or face deportation. While these statements were welcomed as offering clarity and certainty, it was pointed out that until they were published in the Government Gazette as a set of directives, they lacked the force of law. The directives gazetted on 10th June 2020 thus provide the necessary legal foundations for those repeated assurances. It also needs to be noted that these directives also apply to those whose presence in South Africa is subject to the Lesotho Special Permit.

The failure of the Department to provide directives earlier had several negative consequences. One was for those whose bank cards had to be renewed and whose documents had expired – they were not able to have their cards renewed and ran the risk of having accounts frozen. This caused untold hardship and inconvenience in an already financially stressed time.

A disastrous situation occurred under Level 4 of the national lockdown. In terms of the regulations of that level, repatriation of foreigners staying in South Africa was made possible. A very high number of non-South Africans had lost jobs, were unable to fend for themselves especially in the informal sector, or were unable to send remittances home due to their changed economic circumstances. For many, the issue of remittances was a key reason for being in South Africa, and if that was not possible then returning home was preferable. From 6th May 2020 such repatriation began, but by then the documents of many of those wishing to be repatriated had expired. This, in turn, was due to the fact that between the announcement of the state of disaster on 15th March, and the commencement of the lockdown and the closing of borders on 27th March, most people who had been thinking of returning to their countries would not have had enough time to make the arrangements to do so. It was also at

first envisaged that the lockdown would only last three weeks. In the end it lasted longer, and in the meantime thousands of people's documents expired and there was no way of renewing them with DHA offices closed. So, when after five weeks the country entered Level 4 on 1st May and the possibility of repatriation occurred, many of those wanting to take advantage of the possibility now had expired documents.

It is fair to say that the repeated reassurances from DHA had created the very strong impression that their exit would be without difficulties. There was an understanding that the narrative of 'no penalisation' would guide actions by immigration officials. The reality was something very different. Since there were no directives to the contrary, border officials were bound to act in terms of s30(1)(h) of the Immigration Act. Having thus carried out their obligation in terms of the law, they then relied on regulation 27(1)(c) of the Immigration Act, and declared that the travellers had overstayed their time in South Africa by more than 30 days and were thus deemed to be undesirable. In most cases this was accompanied by a five year ban on re-entry into South Africa.

It is impossible to overestimate the devastation that this caused, since the survival of most people thus affected lay in a return to South Africa after the lockdown. In times as uncertain as those occasioned by pandemics, the need to be close to family and to exercise care is a fundamental necessity. It is almost as if such people were being punished for making this temporary choice. Being declared an undesirable immigrant also renders future travel almost impossible, since such a declaration almost always results in the refusal of visas to just about any country in the world. To state the obvious: a simple directive formalising the much-publicised DHA promise that no one would be penalised for having documents that expired during the lockdown, would have obviated all of this unnecessary inconvenience and angst. It had been suggested to the Department by organisations calling for such a directives, that it should take a leaf from the book of the national Department of Transport, which had indicated that it would not penalise anyone for documents which expired during the lockdown and then immediately issued the necessary directives to ensure this in practice. There was thus precedent within government.

We hope that the DHA will now do everything in its power to ensure compliance with the new directives so as to ensure uniform, just and compassionate treatment of those exiting and later re-entering South Africa. On a practical level it is necessary to encourage people impacted by the declarations and bans to engage the South African Embassies in their countries in order to ensure the reversal of these decisions. We also hope that DHA and DIRCO will co-operate to ensure that no further obstacles of any sort are put in the way of those seeking this redress. It would be useful for those affected to keep the link to the Gazette handy.

We have also expressed the hope, on other platforms, that the DHA has a plan in place for when its offices reopen, that will enable it to deal expeditiously and fairly with the backlogs in the renewal of documents and the speedy and just determination of refugees' and asylum-seekers' status applications. Even before the lockdown, the backlog was enormous and it will now have increased significantly. These decisions are fundamental to people's wellbeing, livelihoods and ultimately their dignity. To be tardy about responding to their basic needs and rights is both an obstacle and an offence. It should not be tolerated.

The words of Pope Francis as far back as 2013 are apposite for this situation:

"Above all I ask leaders and legislators and the entire international community to confront the reality of those who have been displaced by force, with effective projects and new approaches in

order to protect their dignity, to improve the quality of their lives and to face the challenges that are emerging from modern forms of persecution, oppression and slavery. They are human people, I stress this, who are appealing for solidarity and assistance.”

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