



Response

13th June 2023

Another ZEP Extension

On 8th June, the Department of Home Affairs (DHA) announced that the validity of all Zimbabwean Exemption Permits would be extended for a further six months. They will now expire on 31st December this year. The reason for the latest extension is the high number of applications being received by the DHA from current ZEP holders seeking alternate visas or waivers. The DHA has encouraged such applications in order to provide ZEP holders with stability rather than the ongoing vulnerability of living on a permit that was dependent on periodic renewal. The Minister said that the DHA was receiving between 1 000 and 1 500 applications a day, and thousands had already been granted. He gave no exact figure, so there is no way of knowing the veracity of the claim. Some observers have said that it is altogether possible that, after the granting of the first waivers, many more holders have been encouraged to grasp the opportunity to explore that option for regularising their stay in South Africa. There has thus far been no research on which types of waivers have been approved. Anecdotally, there are reports of approvals having been given to both school teachers and nurses.

While not alluded to in the Minister's comments, it is also clear that the DHA is awaiting the judgement of the Gauteng High Court in the case against the Minister by three organisations which claim that the Minister's decision in December 2021 to terminate the ZEPs was both "unfair and irrational". The judgement of the court, which was reserved, will have a direct impact on the future and validity of the permits; it is thus prudent for the DHA to wait for the judgement before making a final decision. The Minister also acknowledged that the Departmental Advisory Committee led by Dr Cassius Lubisi is now dealing with the increased number of applications, and that more officials had been deployed to expedite the process.

The case heard in April of this year, and brought by the Helen Suzman Foundation (HSF), argued that procedurally, the decision was unfair and irrational. This was so because the Minister had terminated the validity of the permits without consulting ZEP holders or engaging with representations from the public. It is a matter of record that the Minister called for representations only after he had communicated his decision. In addition, the call for representations did not indicate the nature and purpose of the representations. It was, the court was told, in any event a moot point, since the Minister had repeated several times that he would not change his mind. The HSF also argued that the termination was an administrative act and thus subject to the Promotion of Administrative Justice Act. They also argued that the Minister had not taken into account the effect of the termination on the families, and especially children, of the ZEP holders. The Foundation thus called for the Minister's decision to be reviewed and set aside. With all this at stake, it is clear why there is a necessity to stall the process of termination.

In terms of the extension, the holder may not be arrested, ordered to depart the country or be detained for purposes of deportation for any reason related to their having an expired exemption permit. Holders of the ZEP can also freely leave and re-enter South Africa as long as they comply with other entry and exit requirements. The Minister also reiterated the point that ZEP holders would not be required to present an exemption permit or authorisation letter specifically for the current extended period. At present the permit affects about 178 000 Zimbabweans.

Zimbabweans interviewed by local journalists have called the latest extension a small reprieve for a big crisis. Advocate Simba Chitando, for the Zimbabwean Permit Holders Association (whose case against

the Minister over the ZEPs was joined to the HSF challenge, and which argued that, given the length of time the holders had already been in the country legally, they were *de facto* permanent residents) said after the Minister's announcement that it "was a small bandage for a deep wound". Adv Chitando added that he "didn't believe that Home Affairs would be able to resolve the papers they had received, the applications they are claiming they received. We don't believe that they can handle them before the end of the year".

But at least for the moment some might feel they can breathe a little easier as they continue to wait in hope. No matter what the reaction of those most affected, it remains a situation which cries out for justice to be done, and done soon.

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