

Julian Pokroy

ATTORNEYS AT LAW – SINCE 1980
Immigration and Nationality Law Practice

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BREAKING NEWS!!!

CONSTITUTIONAL COURT RULES ON THE SITUATION REGARDING ASYLUM SEEKER TEMPORARY VISA HOLDERS AND REFUGEES IN TERMS OF CHANGE OF STATUS

On Tuesday 9th October 2018 the Apex Court of South Africa - the highest Court in the land - the Constitutional Court ruled on the situation surrounding the ability of Asylum Seeker Temporary Visa holders and Refugee Permit holders being enabled to change their status to mainstream visas in the Temporary or Permanent Residence categories under The Immigration Act.

Some years back the Department of Home Affairs, through the Director General, issued a Departmental Directive referred to as the “Debone Directive” in terms of which it became possible for an Asylum Seeker holding an Asylum Seeker Temporary Visa, as well as an Asylum Seeker who had been confirmed as a Refugee, to apply for an appropriate visa under The Immigration Act.

This did mean that the applicant had to qualify in the specific category of Temporary or Permanent Residence they were applying in, in order to achieve this, and all of this without them having to relinquish their Asylum Seeker or Refugee Status in that process.

A subsequent ruling by the Director General of Home Affairs saw the Debone Directive being withdrawn, thereby closing the door on this process. A series of Court Applications in the High Court in the Western Cape culminating in an Appeal to the Supreme Court of Appeals, then followed. During that process there was a see-saw of change. Firstly, in an Appeal against the original successful Court Application in the Western Cape High Court, the Appeal was upheld, thereby maintaining the status quo.

The Director General and Minister of Home Affairs then Appealed that ruling to the Supreme Court of Appeals, who then confirmed the court a quo, i.e. *the Western Cape High Court’s decision*, to uphold the Debone Directive.

There is only one more level of Appeal in South African Law and that is to approach the Constitutional Court on matters that relate to or have Constitutional implications and to Appeal to that Apex Court.

The current Judgement is therefore the end of the road on this topic.

WHAT DOES THIS MEAN FOR YOU IF YOU ARE THE HOLDER OF A CURRENT ASYLUM SEEKER TEMPORARY VISA OR REFUGEE PERMIT AND WISH TO AVAIL YOURSELF OF THIS “NEW” DISPENSATION?

What this does mean for you, is that if you indeed qualify in a specific category of Temporary or Permanent Residence that you wish to apply in, that you can in fact now do so. There may be a small time lag between the implementation of the Court Order and the current time, but the Constitutional Court has spoken on topic and this opens the door.

Therefore, if you hold an Asylum Seeker Temporary Visa that is current or a Refugee Permit that is current i.e. *has been renewed timeously on an on-going basis*, then we would suggest that you contact our office urgently so that we can evaluate the viability of you being able to change status at this stage without prejudicing your current status.

Please respond to enquiries@immigration.org.za and place in the subject line “Asylum Seeker/Refugee Change of Status”.

Should you have any further queries please do not hesitate to contact our office.

Julian Pokroy

Immigration and Citizenship Law Attorney