

Vol. 554

Cape Town,
Kaapstad, 26 August 2011

No. 34560

THE PRESIDENCY

No. 689

26 August 2011

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 12 of 2011: Refugees Amendment Act, 2011

DIE PRESIDENSIE

No. 689

26 Augustus 2011

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Nr. 12 van 2011: Wysigingswet Op Vlugtelinge, 2011

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President)
(Assented to 21 August 2011)*

ACT

To amend the Refugees Act, 1998, so as to amend, insert and delete certain definitions; to clarify how applications for refugee status rejected as manifestly unfounded and unfounded must be dealt with; to empower the Director-General to establish the Status Determination Committee; to revise the provisions relating to withdrawal of refugee status; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 130 of 1998, as amended by section 1 of Act 33 of 2008

1. Section 1 of the Refugees Act, 1998 (hereinafter referred to as the principal Act), 5
is hereby amended—

(a) by the substitution for the definition of “biometrics” of the following definition:

“**biometrics**” means [the measurable physiological or behavioural characteristics that can be used in verifying the identity of individuals, and may include the use of] photographs, fingerprints (including palm prints), hand measurements, signature verification [, facial patterns and] or retinal patterns, that may be used to verify the identity of individuals;”;

(b) by the substitution for the definition of “dependant” of the following definition:

“**dependant**”, in relation to an asylum seeker or a refugee, [includes] means any unmarried dependant child or any destitute, aged or infirm member of the immediate family of such asylum seeker or refugee who is dependent on him or her;”;

(c) by the substitution for the definition of “manifestly unfounded application” of the following definition:

“**manifestly unfounded application**” means an application for asylum made on grounds other than those contemplated in section 3;”;

(d) by the deletion of the definition of “Refugee Status Determination Officer”; 25

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woerde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordnings aan.
-
- Woerde met 'n volstreep daaronder dui invoegings in bestaande verordnings aan.
-

*(Engelse teks deur die President geteken)
(Goedgekeur op 21 Augustus 2011)*

WET

Tot wysiging van die Wet op Vlugtelinge, 1998, ten einde sekere omskrywings te wysig, in te voeg en te skrap; uit te klaar hoe aansoeke om vlugtelingstatus wat as klaarblyklik ongegrond en ongegrond afgekeur is hanteer moet word; die Direkteur-generaal te magtig om die Statusbepalingskomitee in te stel; die bepalings betreffende die intrekking van vlugtelingstatus te hersien; en voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 130 van 1998, soos gewysig deur artikel 1 van Wet 33 van 2008

1. Artikel 1 van die Wet op Vlugtelinge, 1998 (hierna die Hoofwet genoem), word hierby gewysig— 5
- (a) deur die omskrywing van "afhanklike" deur die volgende omskrywing te vervang:
“‘afhanklike’, met betrekking tot ‘n asielversoeker of ‘n vlugteling, [ook] enige ongetroude afhanklike kind of enige behoeftige, bejaarde of verswakte lid van die onmiddellike familie van daardie asielversoeker of vlugteling wat van hom of haar afhanklik is;”; 10
 - (b) deur die omskrywing van “biometrika” deur die volgende omskrywing te vervang:
“‘biometrika’ [die meetbare fisiologiese of gedragskenmerke wat gebruik kan word vir die verifiëring van die identiteit van individue, en wat die gebruik van] foto’s, vingerafdrukke (met inbegrip van palmafdrukke), handafmetings, handtekeningverifikasie [en gesigs- en] of retinapatrone [kan insluit], wat gebruik kan word om die identiteit van individue te verifieer.”; 15
 - (c) deur die omskrywing van “klaarblyklik ongegronde aansoek” deur die volgende omskrywing te vervang:
“‘klaarblyklik ongegronde aansoek’ ‘n aansoek om asiel wat gedoen word op ander gronde as dié wat in artikel 3 beoog word.”;
 - (d) deur die omskrywing van “ongegrond aansoek” deur die volgende omskrywing te vervang:
“‘ongegrond aansoek’, met betrekking tot ‘n aansoek om asiel ingevolge artikel 21, ‘n aansoek[—]
(a) wat gedoen word op ander gronde as die beoog in artikel 3; of
(b)] wat gedoen word op die gronde beoog in artikel 3, maar wat sonder verdienste is.”; 25 30

- (e) by the insertion after the definition of "spouse" of the following definition:
"Status Determination Committee" means the Status Determination Committee or any of its subcommittees contemplated in section 8(2);"; and
- (f) by the substitution for the definition of "unfounded application" of the following definition:
"unfounded application", in relation to an application for asylum in terms of section 21, means an application[—
(a) made on the grounds other than those contemplated in section 3; or
(b)] made on the grounds contemplated in section 3, but which is without merit;".

Amendment of section 4 of Act 130 of 1998, as amended by section 5 of Act 33 of 2008

2. Section 4 of the principal Act is hereby amended—
(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
“A person does not qualify for refugee status for the purposes of this Act if the [Refugee Status Determination Officer] Status Determination Committee has reason to believe that he or she—”; and
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
“(b) has committed [a serious non-political crime outside the country of refuge prior to his or her admission to that country as a refugee] a crime which is not of a political nature and which, if committed in the Republic, would be punishable by imprisonment without the option of a fine; or”.

Amendment of section 8 of Act 130 of 1998, as amended by section 10 of Act 33 of 2008

3. Section 8 of the principal Act is hereby amended—
(a) by the substitution for subsection (2) of the following subsection:
“(2) Each Refugee Reception Office must consist of at least one Status Determination Committee established by the Director-General in the prescribed manner to consider and deal with applications for asylum in accordance with section 24: Provided that the Status Determination Committee may establish subcommittees consisting of no less than two members.”; and
- (b) by the deletion of subsection (3).

Amendment of section 8C of Act 130 of 1998, as inserted by section 11 of Act 33 of 2008

4. Section 8C of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:
“(2) An appeal contemplated in subsection (1)(a) must be determined by a single member or such number of members of the Refugee Appeals Authority as the chairperson may deem necessary: Provided that at least one of such members is legally qualified.”.

Amendment of section 8E of Act 130 of 1998, as inserted by section 11 of Act 33 of 2008

5. Section 8E of the principal Act is hereby amended by the substitution for paragraph (f) of the following paragraph:
“(f) is a political office bearer holding a position in the national executive structure of any political party.”.

- (e) deur die volgende omskrywing na die omskrywing van "Staande Komitee" in te voeg:
"Statusbepalingskomitee" die Statusbepalingskomitee of enige van sy subkomitees in artikel 8(2) beoog;"; en
(f) deur die omskrywing van "Vlugtelingstatusbepalingsbeampte" te skrap. 5

Wysiging van artikel 4 van Wet 130 van 1998, soos gewysig deur artikel 5 van Wet 33 van 2008

2. Artikel 4 van die Hoofwet word hierby gewysig—

- (a) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
 "By die toepassing van hierdie Wet kwalificeer 'n persoon nie vir vlugtelingstatus nie indien die [Vlugtelingstatusbepalingsbeampte] Statusbepalingskomitee rede het om te glo dat daardie persoon—"; en
(b) deur in subartikel (1) paragraaf (b) deur die volgende paragraaf te vervang:
~~"(b) 'n [ernstige niepolitieke] misdaad gepleeg het wat nie van 'n politieke aard is nie en waarvoor, indien dit in die Republiek gepleeg is, gevangerisstraf sonder die opsie van 'n boete opgelê sou kon word [buite die land van toevlug voor sy of haar toelating tot daardie land en 'n vlugteling]; of".~~ 15

Wysiging van artikel 8 van Wet 130 van 1998, soos gewysig deur artikel 10 van Wet 33 van 2008 20

3. Artikel 8 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (2) deur die volgende subartikel te vervang:
~~"(2) Elke Vlugtelingontvangskantoor moet uit ten minste een Statusbepalingskomitee bestaan wat op die voorgeskrewe wyse deur die Direkteur-generaal ingestel is, om aansoeke om asiel ooreenkomsdig artikel 24 te oorweeg en te hanteer: Met dien verstande dat die Statusbepalingskomitee subkomitees kan instel wat uit minstens twee lede bestaan.";~~ en
(b) deur subartikel (3) te skrap. 30

Wysiging van artikel 8C van Wet 130 van 1998, soos ingevoeg deur artikel 11 van Wet 33 van 2008

4. Artikel 8C van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

- ~~"(2) 'n Appèl beoog in subartikel (1)(a) moet beslis word deur 'n enkele lid of deur die getal lede van die Appèlowerheid oor Vlugtelinge wat die voorsitter nodig ag: Met dien verstande dat minstens een van daardie lede oor regskwalifikasies beskik."~~ 35

Wysiging van artikel 8E van Wet 130 van 1998, soos ingevoeg deur artikel 11 van Wet 33 van 2008 40

5. Artikel 8E van die Hoofwet word hierby gewysig deur paragraaf (f) deur die volgende paragraaf te vervang:

- ~~"(f) 'n politieke ampsdraer is wat 'n posisie in die nasionale uitvoerende struktuur van enige politieke party beklee."~~

Amendment of section 21B of Act 130 of 1998, as inserted by section 14 of Act 33 of 2008

6. Section 21B of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any asylum seeker or refugee whose child is born in the Republic must, within one month of the birth of his or her child, register such a child [as a dependant] in terms of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), and submit the certificate issued in terms of that Act at any Refugee Reception Office, to be included as a dependant of such asylum seeker or refugee.”.

5

Amendment of section 24 of Act 130 of 1998, as amended by section 17 of Act 33 of 2008

10

7. Section 24 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“When considering an application for asylum, the [Refugee Status Determination Officer] Status Determination Committee—”;

15

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The [Refugee Status Determination Officer] Status Determination Committee must at the conclusion of the hearing conducted in the prescribed manner—”;

20

(c) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“If an application is rejected in terms of subsection (3)[(b) or] (c), the [Refugee Status Determination Officer] Status Determination Committee must—”;

25

(d) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) furnish the applicant with written reasons within five working days after the date of the rejection; and”; and

30

(e) by the substitution for subsection (5) of the following subsection:

“(5) (a) An asylum seeker whose application for asylum has been rejected in terms of subsection (3)(b) and confirmed by the Director-General in terms of section 24A(3), must be dealt with in terms of the Immigration Act.

35

(b) An asylum seeker whose application for asylum has been rejected in terms of subsection (3)(c), must be dealt with in terms of the Immigration Act, unless he or she lodges an appeal in terms of section 24B(1).”.

Amendment of section 24A of Act 130 of 1998, as inserted by section 19 of Act 33 of 2008

40

8. Section 24A of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Director-General must review any decision taken by [a Refugee Status Determination Officer] the Status Determination Committee in terms of section 24(3)(b).”;

45

(b) by the substitution for subsection (4) of the following subsection:

“(4) The Director-General must inform the [Refugee Status Determination Officer] Status Determination Committee of his or her decision in the prescribed manner and within the prescribed time.”; and

50

Wysiging van artikel 21B van Wet 130 van 1998, soos ingevoeg deur artikel 14 van Wet 33 van 2008

6. Artikel 21B van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) 'n [Vlugteling] Asielsoeker of vlugteling wie se kind in die Republiek gebore is, moet binne een maand na die geboorte van sy of haar kind, só 'n kind [as 'n afhanklike] ingevolge die Wet op die Registrasie van Geboortes en Sterfes, 1992 (Wet No. 51 van 1992), regstreer en die sertifikaat wat ingevolge daardie Wet uitgereik is by 'n Vlugtelingontvangskantoor [regstreer] indien, sodat die kind as 'n afhanklike van sodanige asielversoeker of vlugteling ingesluit kan word.”.

5

10

Wysiging van artikel 24 van Wet 130 van 1998, soos gewysig deur artikel 17 van Wet 33 van 2008

7. Artikel 24 van die Hoofwet word hierby gewysig—

(a) deur in subartikel (2) paragraaf (a) en paragraaf (b) onderskeidelik deur die volgende paragrawe te vervang:

“(a) moet die [Vlugtelingstatusbepalingsbeampte] Statusbepalingskomitee die 'Promotion of Administrative Justice Act', 2000 (Wet No. 3 van 2000), behoorlik in ag neem en, in besonder, verseker dat die applikant die procedures, sy of haar regte en verantwoordelikhede en die getuienis wat aangebied is, ten volle verstaan; en

15

(b) kan die [Vlugtelingstatusbepalingsbeampte] Statusbepalingskomitee 'n VNHKV-verteenwoordiger raadpleeg of uitnooi om inligting oor bepaalde sake te verstrek.”;

(b) deur die woorde wat paragraaf (a) van subartikel (3) voorafgaan deur die volgende woorde te vervang:

“Die [Vlugtelingstatusbepalingsbeampte] Statusbepalingskomitee moet aan die einde van die verhoor gehou soos voorgeskryf—”;

20

(c) deur die woorde wat paragraaf (a) van subartikel (4) voorafgaan deur die volgende woorde te vervang:

“Indien 'n aansoek ingevolge subartikel (3)[(b) of] (c) afgekeur word, moet die [Vlugtelingstatusbepalingsbeampte] Statusbepalingskomitee—”;

25

(d) deur in die Engelse teks in subartikel (4) paragraaf (a) deur die volgende paragraaf te vervang:

“(a) furnish the applicant with written reasons within five working days after the date of the rejection; and;”; en

30

(e) deur subartikel (5) deur die volgende subartikel te vervang:

“(5) (a) 'n Asielversoeker wie aansoek om asiel ingevolge subartikel (3)(b) afgekeur is en ingevolge artikel 24A(3) deur die Direkteur-generaal bevestig is, moet ingevolge die 'Immigration Act' hanteer word.

35

(b) 'n Asielversoeker wie se aansoek ingevolge subartikel (3)(c) afgekeur is, moet ingevolge die 'Immigration Act' hanteer word, tensy hy of sy ingevolge artikel 24B(1) appèl aanteken.”.

40

Wysiging van artikel 24A van Wet 130 van 1998, soos ingevoeg deur artikel 19 van Wet 33 van 2008

8. Artikel 24A van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die Direkteur-generaal moet 'n beslissing wat ingevolge [subartikel] artikel 24(3)(b) deur [‘n Vlugtelingstatusbepalingsbeampte] die Statusbepalingskomitee geveld is, hersien.”;

50

(b) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Die Direkteur-generaal moet die betrokke [Vlugtelingstatusbepalingsbeampte] Statusbepalingskomitee oor sy of haar beslissing op die voorgeskrewe wyse en binne die voorgeskrewe tydperk inlig.”; en

55

(c) by the addition of the following subsections:

"(5) An application reviewed in terms of this section is deemed to have been finalised upon receipt of the said decision by the applicant in accordance with subsection (6).

(6) The Status Determination Committee must, in the prescribed manner, inform the applicant of the outcome of the review and the consequences thereof."

5

Amendment of section 24B of Act 130 of 1998, as inserted by section 19 of Act 33 of 2008

9. Section 24B of the principal Act is hereby amended— 10

(a) by the substitution for subsection (1) of the following subsection:

"(1) Any asylum seeker whose application has been rejected in terms of section 24(3)[(b) or] (c) may lodge an appeal with the Refugee Appeals Authority in the prescribed manner."

(b) by the substitution for subsection (2) of the following subsection: 15

"(2) The Refugee Appeals Authority may, after having determined an appeal, confirm, set aside or substitute any decision taken by a [Refugee Status Determination Officer] Status Determination Committee in terms of section 24(3)[(b) or] (c)."; and

(c) by the substitution for subsection (5) of the following subsection: 20

"(5) The Refugee Appeals Authority must refer the matter back to the [Refugee Status Determination Officer] Status Determination Committee to deal with such asylum seeker in terms of this Act if new information, which is material to the application, is presented during the appeal." 25

Amendment of section 27 of Act 130 of 1998, as substituted by section 21 of Act 33 of 2008

10. Section 27 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

"(c) permanent residence in terms of section 27(d) of the Immigration Act after five years of continuous residence in the Republic from the date on which he or she was granted asylum, if the [Director-General] Minister, after considering all the relevant factors and within a reasonable period of time, certifies that he or she would remain a refugee indefinitely;". 30

Amendment of section 36 of Act 130 of 1998, as amended by section 29 of Act 33 of 2008 35

11. Section 36 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"Subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and after consideration of all the relevant facts, the [Director-General] Minister may withdraw a person's refugee status if such person—"; and 40

(b) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 45

"(b) has been recognised as a refugee due to an error, omission or oversight committed by the [Refugee Status Determination Officer in good faith] Status Determination Committee; or".

Amendment of section 38 of Act 130 of 1998, as amended by section 31 of Act 33 of 2008 50

12. Section 38 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

"(d) the manner in which and the period within which applications for asylum which are manifestly unfounded, fraudulent or abusive, must be dealt with;".

(c) deur die volgende subartikels by te voeg:

“(5) 'n Aansoek ingevolge hierdie artikel hersien, word geag gefinaliseer te wees by ontvangs van die genoemde besluit deur die applikant ooreenkomsdig subartikel (6).”

“(6) Die Statusbepalingskomitee moet, op die voorgeskrewe wyse, die aansoeker inlig oor die uitkoms van die hersiening en die gevolge daarvan.”.

5

Wysiging van artikel 24B van Wet 130 van 1998, soos ingevoeg deur artikel 19 van Wet 33 van 2008

9. Artikel 24B van die Hoofwet word hierby gewysig— 10

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) 'n Asielversoeker wie se aansoek ingevolge artikel 24(3)[(b) of] (c) aangekeur is, kan op die voorgeskrewe wyse 'n appèl by die Appèlowerheid oor Vlugtelinge aanteken.”;

(b) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Die Appèlowerheid oor Vlugtelinge kan, nadat hy tot 'n beslissing oor 'n appèl gekom het, 'n beslissing wat deur 'n [Vlugtelingstatusbepalingsbeampte] Statusbepalingskomitee ingevolge artikel 24(3)[(b) of] (c) geveld is, bekragtig, tersyde stel of vervang.”; en

(c) deur subartikel (5) deur die volgende subartikel te vervang:

“(5) Die Appèlowerheid oor Vlugtelinge moet 'n aangeleentheid terugverwys na die [Vlugtelingstatusbepalingsbeampte] Statusbepalingskomitee, wat met die asielversoeker ingevolge hierdie Wet moet handel, indien nuwe inligting wat wesenlik betrekking het op die aansoek, gedurende die appèl aangebied is.”.

20

25

Wysiging van artikel 27 van Wet 130 van 1998, soos vervang deur artikel 21 van Wet 33 van 2008

10. Artikel 27 van die Hoofwet word hierby gewysig deur paragraaf (c) deur die volgende paragraaf te vervang:

“(c) permanente verblyf ingevolge artikel 27(d) van die 'Immigration Act' na vyf jaar van ononderbroke verblyf in die Republiek vanaf die datum waarop asiel aan hom of haar verleen is indien die [Direkteur-generaal] Minister, na oorweging van al die toepaslike faktore en binne 'n redelike tydperk, sertificeer dat hy of sy onbepaald 'n vlugteling sal bly.”.

Wysiging van artikel 36 van Wet 130 van 1998, soos gewysig deur artikel 29 van Wet 33 van 2008 35

11. Artikel 36 van die Hoofwet word hierby gewysig—

(a) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“Behoudens die bepalings van die 'Promotion of Administrative Justice Act, 2000' (Wet No. 3 van 2000), en na oorweging van alle toepaslike feite, kan die [Direkteur-generaal] Minister 'n persoon se vlugtelingstatus intrek indien sodanige persoon—”; en

(b) deur in subartikel (1) paragraaf (b) deur die volgende paragraaf te vervang:

“(b) as 'n vlugteling erken is weens 'n fout, weglatig of vergissing wat [in goeie trou] deur die [Vlugtelingstatusbepalingsbeampte] Statusbepalingskomitee gemaak is; of”.

40

45

Wysiging van artikel 38 van Wet 130 van 1998, soos gewysig deur artikel 31 van Wet 33 van 2008

12. Artikel 38 van die Hoofwet word hierby gewysig deur in subartikel (1) paragraaf (d) deur die volgende paragraaf te vervang:

“(d) die wyse waarop en tydperk waarbinne aansoeke om asiel wat klaarblyklik ongegrond, bedrieglik of [misbruik] onregmatig is, afgehandel moet word;”.

50

Substitution of words in Act 130 of 1998

13. The principal Act is hereby amended by the substitution for the words “Refugee Status Determination Officer”, wherever they occur, of the words “Status Determination Committee”.

Short title and commencement

5

14. This Act is called the Refugees Amendment Act, 2011, and comes into operation immediately after the commencement of the Refugees Amendment Act, 2008 (Act No. 33 of 2008).

Vervanging van woorde in Wet 130 van 1998

13. Die Hoofwet word hierby gewysig deur die woord "Vlugtelingstatusbepalingsbeampte", waar dit ook al voorkom, deur die woord "Statusbepalingskomitee" te vervang.

Kort titel en inwerkingtreding

5

14. Die Wet heet die Wysigingswet op Vlugtelinge, 2011, en tree onmiddellik na die inwerkingtreding van die Wysigingswet op Vlugtelinge, 2008 (Wet No. 33 van 2008), in werking.