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**TO: HEADS OF PROVINCIAL EDUCATION DEPARTMENTS
HEADS OF PROVINCIAL GOVERNANCE SECTIONS
DISTRICT DIRECTORS
SCHOOL GOVERNING BODIES
SCHOOL PRINCIPALS
ALL SOUTH AFRICAN SCHOOLS
GOVERNING BODY ASSOCIATIONS**

CIRCULAR 01/LEG OF 2014

ADMISSION OF NON-CITIZENS AT PUBLIC SCHOOLS

1. INTRODUCTION

- 1.1 It happens quite often that schools find themselves facing a dilemma when a child who is not a South African citizen applies for admission. Seemingly contradicting provisions in the current laws of our country are at the root of this problem.
- 1.2 The purpose of this circular is to provide schools and school-related structures with information that, it is hoped, will help them to deal with this matter more successfully.

2. LEGISLATIVE FRAMEWORK

- 2.1 Four laws, one policy, and three government departments have an impact on this matter:
- 2.1.1 The Constitution of the Republic of South Africa, 1996 (hereinafter, "the Constitution").
 - 2.1.2 The South African Schools Act, 84 of 1996 (hereinafter, "SASA").
 - 2.1.3 The Admission Policy for Ordinary Public Schools (hereinafter, "the Admission Policy"), which was published in terms of section 3(4) of the National Education Policy Act, 27 of 1996 (hereinafter, "the NEPA").
 - 2.1.4 The Immigration Act, 13 of 2002.
 - 2.1.5 The Refugees Act, 130 of 1998.
 - 2.1.6 The Department of Basic Education (hereinafter, "the DBE").
 - 2.1.7 The Department of Home Affairs (hereinafter, "the DHA").
 - 2.1.8 The Department of Social Development (hereinafter, "the DSD").

institution on any ground whatsoever, and the NEPA provides that national education policy must help to advance and protect this right. The NEPA also states that education policy must help to advance and protect the right of every person to receive a basic education and to have equal access to education institutions.

- 2.3.1 **The SASA** defines a learner as any person receiving education or obliged to receive education in terms of the SASA. The definition of a parent in terms of the SASA is much wider than that of a learner. It includes the legal guardian or a person legally entitled to the custody of the learner, and the person who undertakes to fulfil the obligations of either the biological or the adoptive parent towards the learner's education.
- 2.3.2 The SASA also obliges every parent of a child of a prescribed age to make sure that such child goes to school. Most significantly, the SASA makes it compulsory for any public school to admit learners and to serve their education requirements without unfairly discriminating against them in any way.
- 2.3.3 The SASA does not distinguish between citizens of the Republic and foreign nationals.
- 2.4.1 Although the SASA makes no distinction between citizens and non-citizens, **the Admission Policy** does make provision for learners who are not citizens of the Republic and whose parents are in possession of a permit for temporary or permanent residence issued by the DHA. It also provides that persons classified as illegal aliens must, when they apply for school admission for their children or for themselves, show evidence that they have applied to the DHA to legalise their stay in the country.
- 2.4.2 This means that, when applying for admission at a public school, the parents of a non-citizen learner must present the documents stipulated in paragraphs 14 to 18 of the Admission Policy *as well as* the documentation stipulated in paragraphs 19 to 21.
- 2.4.3 Although the Admission Policy sets out the requirements for admission at ordinary public schools for citizens *and* for non-citizens, the DHA's administrative process and the issuing of the documentation that allows foreign nationals to enter and stay in the Republic are outside the control of the DBE. This means that schools and individual learners sometimes experience challenges in regard to admission in the public schooling system.
 - 2.5.1 **The Immigration Act** sets out how non-citizens should be allowed to enter the Republic, how they should be allowed to live here, and how they should leave the Republic. It also regulates the status of foreign nationals who voluntarily decide to enter and reside in the Republic.
- 2.5.2 One of the requirements of the Immigration Act is that citizens and non-citizens entering or departing from the Republic must have a passport. In the case of children younger than 16, such children need to be accompanied by parents in possession of a valid passport in which the names of the child have been entered.

- 2.5.3 Section 10 of the Immigration Act states that, if a foreign national wishes to enter the Republic but does not have a permanent residence permit, he or she must have one of the temporary residence permits contemplated in sections 11 to 24 of the Immigration Act.
- 2.5.4 These permits specify the purpose for which the foreign national is allowed to live in the Republic and the period for which he or she may be here; and they are valid only for as long as the foreign national complies with the conditions of the issue of the permit.
- 2.5.5 Learners (school-going children) who intend to study in the Republic for longer than three months must apply for a study permit. As in the case of the residence permit, the study permit is issued on certain conditions, as stipulated in the Immigration Act.
- 2.5.6 The Director-General of the DHA issues a study permit only where he or she is satisfied that the proposed institution of learning –
- 2.5.6.1 has been approved and is in good standing with the Director-General of the DHA;
 - 2.5.6.2 certifies that it has received guarantees to its satisfaction that such foreigner's tuition fees will be paid;
 - 2.5.6.3 received the prescribed guarantees that such foreigner will have sufficient means to support himself or herself while in the Republic;
 - 2.5.6.4 in the case of a minor, provides the name of the person in South Africa who is, or has accepted to act as, such minor's guardian while in the Republic;
 - 2.5.6.5 undertakes to provide prescribed periodic certification that such foreigner is satisfactorily performing his/her curriculum of study; and
 - 2.5.6.6 undertakes to notify the Director-General when such foreigner has completed his/her studies or is no longer performing them satisfactorily.
- 2.5.7 In most cases, the provisions of the Immigration Act do not present serious challenges to the DBE when it comes to the implementation of its Admission Policy, for the following reasons:
- 2.5.7.1 The learner's status in the Republic is usually determined by the status of the parent, and the period of the learner's stay corresponds with that of the parent.
 - 2.5.7.2 In cases where entry into the Republic is voluntary and planned, it is easy for parents to comply with the requirements set out in the Admission Policy (in particular, the submission of the required documents).
- 2.5.8 Foreign learners in possession of permanent residence permits enjoy the same political rights as citizens, except for voting. Therefore, these learners would be entitled to school-fee exemptions and other benefits ordinarily enjoyed by learners who are citizens of the Republic.
- 2.6.1 **The Refugees Act** sets out how asylum seekers should be received in the Republic and regulates applications for, and the recognition of, refugee status in the Republic.

- 2.6.2 Refugee status is granted to a person who, owing to a well-founded fear of being persecuted by reason of his or her race, gender, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable or, owing to such fear, unwilling to return to it.
- 2.6.3 Before a foreign national is formally recognised in any of these categories, he or she is treated as an asylum seeker and is allowed to enter the Republic and to stay here temporarily, pending the outcome of the application to be accorded refugee status. Such an applicant receives an asylum seeker permit from a refugee reception officer, and this allows the applicant to stay in the Republic, pending the determination of his or her refugee status.
- 2.6.4 Once refugee status has been granted, an asylum seeker is a recognised refugee and, as is the case with permanent residents, a refugee is entitled to apply for an identity document and enjoys all the rights of citizens, such as education and health care services. A person's refugee status remains valid until it ceases in terms of the provisions of the Refugees Act.
- 2.6.5 As is the case in terms of the Immigration Act, the status of the child of an asylum seeker or a refugee is determined by that of his or her parents. However, since asylum seekers usually enter the country and stay here involuntarily, it is not always the case that the learner or child would be in the company of his or her parents.
- 2.6.6 There would be circumstances where the involuntary departure from a country of origin happened in haste; the child may have left in the company of adults who are not necessarily parents or relatives; or, in certain cases, the parents of that child may have died in unrest or war prevalent in the country of origin.
- 2.6.7 All of these matters are adequately addressed in the Refugees Act under the administration of the DHA and to the extent that it is necessary – where the guardianship of a learner or child cannot be easily established – the DSD.
- 2.7.1 The **DBE** is responsible for determining education policy. The **DHA** has the legal and administrative authority to issue documentation that legalises the status of foreigners – including learners – in the Republic. However, in regard to the general welfare of a learner, the **DSD** has the legal and administrative responsibility to place such learners in a suitable family environment – or, where necessary, in a care facility.
- 2.7.2 Between them, these three departments are responsible for making sure that foreign learners have the opportunity to access basic civil services, including education, as contemplated in the Constitution.

3 CONCLUSION

- 3.1 One must always remember that the Constitution recognises the application of laws that regulate how people – whether citizens or foreign nationals – enter, stay in, and leave the Republic. However, when public schools allow non-citizen learners to

study in the Republic, they should always guard against the possible problems inherent in migration, such as –

- (i) children with unknown identities;
- (ii) human trafficking; and
- (iii) the fact that such children could use legitimately issued school letters to have their birth irregularly and illegally registered so that they will appear to be citizens.

3.2 When receiving applications from non-citizen learners, public schools should pay close attention to the Admission Policy. Non-citizen learners should be admitted to public schools only if their residence status in the Republic complies with the Immigration Act and the Refugees Act, as explained above.

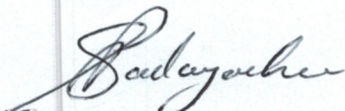
3.3 This means that, in the case of immigrants, a learner may be admitted only on production of a valid study permit or a permanent residence permit. In the case of a refugee, a learner may be admitted only if he or she produces an asylum seeker permit or a certificate granting refugee status.

3.4 Schools should not admit children of foreign nationals without proper residential documents. If a foreign national applies to a public school for admission of a child and submits an asylum seeker permit or a refugee status certificate on which the name of that particular child does not appear as a dependant of such adult, a school is not allowed to accept such permit or certificate. The same applies if the parental relations with, or guardianship of, the child cannot be easily established. In such cases, the adults should be referred to the DHA and the DSD to obtain proper documentation.

3.5 In case of uncertainties in general, PEDs should coordinate with the regional offices of the DHA to verify the residential status and permits produced by foreign learners during the admission and registration periods.

You are kindly requested to note this circular and to distribute it to all schools.

Yours sincerely



MR SG PADAYACHEE
ACTING DIRECTOR-GENERAL

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