



CONSTITUTIONAL COURT OF SOUTH AFRICA

Minister of Home Affairs and Others v Johnson and Others; Minister of Home Affairs and Another v Delorie and Others

CCT 219/14

Date of judgment: 24 March 2015

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Today, the Constitutional Court handed down a judgment reiterating that it cannot determine an appeal against a High Court order granting temporary relief.

Mrs Egedal-Johnson and Mr Henderson are both foreign citizens, who held temporary residence permits while in South Africa. They are both married to South African citizens and have children with their respective spouses. On 28 May 2014, upon departing South Africa, Mrs Johnson (who had applied for renewal of her temporary permit before it had expired) was declared an “undesirable person” according to a new Immigration Regulation which came into force on 26 May 2014. Mrs Johnson had left South Africa with her baby but was denied re-entry into South Africa, while her husband remained in South Africa. Mr Henderson also departed South Africa on 28 May 2014. He had not applied for renewal of his temporary permit before its expiration date and was also declared an “undesirable person”. He was denied entry into South Africa, while his family remained in South Africa.

Mrs Johnson and Mr Henderson both launched urgent applications in the Western Cape Division of the High Court, Cape Town (High Court) against the Minister of Home Affairs and the Director-General of Home Affairs as well as two other employees of the Department of Home Affairs. The two applications were consolidated and heard together because they were based on similar facts and raised similar issues. Mrs Johnson and Mr Henderson requested the Court to suspend the declarations of undesirability and allow them to return to South Africa immediately. The applicants also requested the Court to declare the new Immigration Regulations constitutionally invalid. The High Court granted the parties the urgent interim relief requested and they were allowed to return to

South Africa pending final determination by the Court of the relief sought regarding the constitutional invalidity of the new Immigration Regulations.

The Minister and the Director-General launched an application for leave to appeal in the High Court and the Supreme Court of Appeal, both of which were dismissed. In the Constitutional Court, the Minister and the Director-General lodged an application for leave to appeal in which they submitted that the decision negatively interfered with their duty to perform their administrative functions.

This Court found that the High Court order was temporary in nature and did not finally dispose of any factual or legal issues. Additionally, the temporary relief granted only applies to Mrs Johnson and Mr Henderson and not to other persons. Therefore, the Minister and the Director-General did not meet the requirements necessary for this Court to determine an appeal against the granting of temporary relief. The application for leave to appeal was dismissed with costs.