

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

- | | |
|-----|---------------------------------|
| (1) | REPORTABLE: NO |
| (2) | OF INTEREST TO OTHER JUDGES: NO |

04 February 2022
DATE

PHOOKO M.R
SIGNATURE

In the matter between:

CASE NO: 48133/2021

JONATHAN JAMES FIRTH

Applicant

and

DIRECTOR-GENERAL DEPARTMENT OF HOME AFFAIRS

First Respondent

THE MINISTER OF THE DEPARTMENT OF HOME AFFAIRS

Second Respondent

JOYCE MAMABOLO

Third Respondent

MANAGER: PERMANENT RESIDENTS PERMITS

Date of hearing: 20 January 2022

Date of judgment: 04 February 2022

Summary: Application for permanent resident permit under the Immigration Act 13 of 2002 as amended – prolonged delays – failure by the Respondents to process Applicant's application within a reasonable time – Respondent's non-response

JUDGMENT

PHOOKO AJ:**A. INTRODUCTION**

- [1] This matter concerns a protracted delay by the Respondents to consider and finalise the Applicant's application for a permanent residence permit under Section 27(e) of the Immigration Act 13 of 2002 as amended (the Immigration Act).
- [2] The matter came before me sitting in the Motion Court on 20 January 2022 as an unopposed application.

B. THE PARTIES

- [3] The Applicant is Jonathan James Smith (Mr. Firth) an adult male who is the holder of British citizenship. Mr. Firth presently resides in Roodepoort, Johannesburg.
- [4] The First Respondent is the Director General - Department of Home Affairs, cited in his official capacity. The First Respondent is *inter alia* responsible for overseeing the execution of immigration services in line with the Immigration Act. The Second Respondent is the Minister of the Department of Home Affairs, cited in his official capacity and is responsible for overseeing of the Department of Home Affairs Immigration Services operations in line with the Immigration Act. The Third Respondent is Joyce Mamabolo, Manager Permanent Resident Permits whose Unit includes the consideration and finalisation of applications for a permanent residence permit.

C. JURISDICTION

- [5] The Respondents' main offices are situated within the jurisdiction of this Court. Therefore, this matter is rightly brought before this Court.

D. THE ISSUE

- [6] The main issue to be determined in this matter is whether the Respondents have failed to consider and finalise the Applicant's application for a permanent residence permit within a reasonable period.

E. BACKGROUND FACTS

- [7] Mr. Firth is currently within the Republic of South Africa under a temporary residence visa that was issued to him by the Department of Home Affairs on 2 August 2017.
- [8] On 1 June 2018, Mr. Firth applied for a permanent residency permit in terms of section 27(e) of the Immigration Act through the VFS Global Office in Johannesburg. He was subsequently issued with reference number PRP2486915.
- [9] The records from VFS Global indicate that Mr. Firth's application for a permanent residency permit from VFS Global was received by the Department of Home Affairs on 6 June 2018. Further, VFS Global website indicates that "applications have a minimum processing time of 8 – 10 months for Permanent Residence Permit applications".¹ After 12 months, two months past the set time for the

¹ See <https://www.vfsglobal.com/dha/southafrica/faqs.html>.

outcome of a permanent residence permit application, Mr. Firth began to make inquiries from VFS Global regarding the outcome of his application for a permanent residence permit without success. It is on this basis that Mr. Firth, on September 2021 (almost four years after his application was submitted and he had unsuccessfully tried to engage VFS Global and the Respondents), decided to engage the services of attorneys to assist him.

[10] Mr. Firth's attorneys sent a letter of demand together with a copy of an application for a permanent residency permit to the Respondent *inter alia* raising concerns with the delay in finalising their client's application and demanding that they finalise it without further delay. Regrettably, no response whatsoever came forth from the Respondents. They, the Respondents, have not responded to Mr. Firth himself and his lawyers. The Respondents have simply adopted a no response attitude. Even in these current proceedings, the Respondents have for unknown reasons opted not to participate hence an unopposed application.

F. APPLICABLE LAW

[11] The processing period for an application for a permanent residence permit is not stipulated in the immigration laws of South Africa. The minimum processing time of 8 – 10 months is stipulated on the VFS Global website but not legislated. However, precedent informs us that eight months is considered to be a reasonable period for the outcome of a permanent residence application.²

² Se for example, *Director-General of the Department of Home Affairs and Others v De Saude Attorneys and Another* (1211/2017) [2019] ZASCA 46; [2019] 2 All SA 665 (SCA) (29 March 2019). *Eisenberg de Saude and Others v Director-General of the Department of Home Affairs and Others* (14705/14) [2015] ZAWCHC 130 (15 September 2015) para 16.

[12] The importance of one knowing the outcome of their application cannot be gainsaid given the significance of a permanent residence permit and the impact it has on one's life. This was indicated in *Eisenberg & Associates and Others v Director General of Department of Home Affairs and Others* albeit about the temporary residence which I also find to be relevant in this case.³ There, Cloete AJ said:

"For a foreigner in South Africa these permits are the single most important document that they can possess. It is the basis of their legal existence in this country. Every aspect of their lives - the ability to travel freely ...; the ability to work and put food on the table for their families"

[13] In light of the above, the Respondents are under a duty to take decisions otherwise failure to do so will render our immigration laws meaningless. It is therefore clear that waiting for extended periods for a permanent residence permit application to be finalised, without any update whatsoever, is unlawful. Accordingly, I find that the Respondents have failed to consider and finalise the Applicant's application for a permanent residence permit within a reasonable period. They have no basis in law to keep Mr. Firth waiting indefinitely for the outcome of his application.

G. PUBLIC ADMINISTRATION

[14] The Constitution of the Republic of South Africa, 1996 mandates public servants to promote and maintain a high standard of professional ethics when

³ *Eisenberg & Associates and Others v Director General of Department of Home Affairs and Others* (2178/2011) [2011] ZAWCHC 437; 2012 (3) SA 508 (WCC) (23 November 2011) para 85.

executing their duties.⁴ Furthermore, the Batho Pele (“People First”) Principles requires government institutions to be responsive to the needs of the people.⁵

[15] The Department of Home Affairs is a core government department that produces important documents regarding peoples’ status and access to services in South Africa. The Department of Home Affairs is needed by any person who enters, lives in and/or exits South Africa. Therefore, a crucial department like Home Affairs needs to put the interest of those who approach it for any documentation first. The Respondents’ non-responsive conduct about the outcome of Mr. Firth’s application for a permanent residence permit falls short of what is expected from institutions rendering a public service. At the very least “when people approach state institutions, they expect a certain level of service and care, not indifference”.⁶

[16] Day in and out, the courts are inundated⁷ with cases concerning various permits where a simple response and/or explanation for the delay could have been provided to ease the frustrations on the part of the applicant. If the Department of Home Affairs continues with its non-responsive stance, cases such as this are nowhere near the end. The public purse is also going to be severely affected because of the cost orders that may be made against the Respondents. Already, the Department of Home Affairs has spent a lions’

⁴ See Section 195(1)(a)–(i) of the Constitution of the Republic of South Africa, 1996.

⁵ *Mathale v Linda and Another* 2016 (2) BCLR 226 (CC) para 54; *Joseph and Others v City of Johannesburg and Others* 2010 (3) BCLR 212 (CC) para 46, fn 39.

⁶ See F Mnyongani and M Slabbert “The cost of indifference in a medical negligence case: *Lushaba v MEC for Health, Gauteng* (17077/2012 [2014] ZAGPJHC 407 (16 October 2014) at 573.

⁷ See for example: *Director-General of the Department of Home Affairs and Others v De Saude Attorneys and Another* (1211/2017) [2019] ZASCA 46; [2019] 2 All SA 665 (SCA) (29 March 2019); *Eisenberg de Saude and Others v Director-General of the Department of Home Affairs and Others* (14705/14) [2015] ZAWCHC 130 (15 September 2015).

share budget in preceding years in payment of litigation costs made against it.⁸ In these trying COVID-19 times here at home and elsewhere where the resources are stretched, one hopes that the Respondents will soon rather than later put their house in order.

[17] I am of the view that the delay in processing and finalising Mr. Smith's application for a permanent residence permit is inexcusable and against the values and principles governing public administration as set forth in the Constitution.

H. CONCLUSION

[18] Consequently, having considered both the Applicant's written and oral submissions, I am satisfied that the Applicant has made out a proper case for the relief sought as per the Notice of Motion.

I. COSTS

[19] The Respondents in this matter have been uncooperative towards the Applicant. The reason that this application ended up before this court is because the Respondents failed to process and finalise the Applicant's application for a permanent residence permit within a reasonable period. In addition, they have simply opted not to respond to any correspondence from the Applicant himself and/or his attorneys. Therefore, in my view, the blameworthy party, the Respondents, should carry the burden of costs. In any event, the Applicant has been successful.⁹

⁸ See <https://pmg.org.za/committee-meeting/25419/>.

⁹ *National Coalition for Gay and Lesbian Equality & Others v Minister of Home Affairs & Others* 2000 (2) SA 1 (CC), 2000 (1) BCLR 39 (CC) at para 93.

J. ORDER

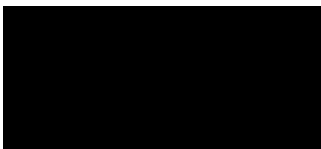
[20] For all these reasons, I, therefore, make the following order:

[20.1] The application must succeed;

[20.2] The First, Second and Third Respondents are ordered to consider the Applicant's application for permanent residence permit under Section 27(e) of the Immigration Act 13 of 2002 as amended, submitted on 1 June 2018 under reference PRP2486915;

[20.3] That the First, Second and Third Respondents are ordered to notify the Applicant of its decision within 10 (ten) days of date of service of this order; and

[20.4] That the Respondents are ordered to pay the costs of this application, on an attorney and client scale.



PHOOKO M.R. AJ

ACTING JUDGE OF THE HIGH COURT, PRETORIA

Counsel for the applicant:

J Van Wyk instructed by Malan Attorneys

Counsel for the respondents:

None