

1 JULY 2020

PRO BONO & HUMAN RIGHTS ALERT

IN THIS ISSUE

Asylum seekers and special permit holders now eligible to apply for COVID-19 Social Relief of Distress Grant

The national state of disaster and lockdown has taken a significant financial toll on citizens and foreign nationals alike as many have lost their jobs and sources of income. In an effort to cushion the impact on the economy, the government introduced various social relief measures through the newly established Solidarity Fund, and the Department of Social Development's Disaster Relief Fund. This includes increasing the social grant amount for existing beneficiaries, food parcels and the special COVID-19 Social Relief of Distress grant of R350 (SRD grant), which is only available for a 6-month period from May 2020.

Asylum seekers and special permit holders now eligible to apply for COVID-19 Social Relief of Distress Grant

Only South African citizens, permanent residents or refugees registered with the Department of Home Affairs were eligible for these relief measures, including the special SRD grant.

The national state of disaster and lockdown has taken a significant financial toll on citizens and foreign nationals alike as many have lost their jobs and sources of income. In an effort to cushion the impact on the economy, the government introduced various social relief measures through the newly established Solidarity Fund, and the Department of Social Development's Disaster Relief Fund. This includes increasing the social grant amount for existing beneficiaries, food parcels and the special COVID-19 Social Relief of Distress grant of R350 (SRD grant), which is only available for a 6-month period from May 2020.

However, only South African citizens, permanent residents or refugees registered with the Department of Home Affairs were eligible for these relief measures, including the special SRD grant. Asylum seekers and special permit holders were not eligible to apply for this much-needed relief. This resulted in many Non-Profit Organisations receiving increased requests for social & food assistance. The Scalabrini Centre of Cape Town (Scalabrini) confirmed that it had seen a surge in the number of clients calling for food assistance. It noted with concern that these numbers were much higher than the usual numbers seeking welfare assistance prior to the lockdown.

Many of these were families with children who would usually have benefited from school feeding programmes. Lawyers for Human Rights also noted a similar trend and reported an increased number of up to 70 queries per 24-hour period for food assistance on their legal support hotline.

After attempts to engage with the relevant state parties were unsuccessful, Scalabrini launched an urgent application in the Pretoria High Court to declare the directions issued by Minister Lindiwe Zulu unconstitutional and unlawful to the extent that they exclude special permit holders and asylum seekers whose asylum seeker visas/permits are valid or were valid on 15 March 2020 from eligibility for the SRD grant.

In the application, Scalabrini highlighted that the exclusion of special permit holders and asylum seekers from accessing the SRD grant was arbitrary, unreasonable and irrational – violating asylum seekers' and special permit holders' right to equality, dignity and access to social security. Furthermore, many asylum seekers, whose visas expired during lockdown lost their employment, had their bank accounts frozen and were excluded from the majority of the governmental financial relief packages including food parcels as a 13-digit ID number was required to register.

Asylum seekers and special permit holders now eligible to apply for COVID-19 Social Relief of Distress Grant...continued

On 18 June 2020, the Pretoria High Court found that the exclusion of asylum seekers and special permit holders from eligibility of the SRD grant was unlawful, unconstitutional and invalid.

On 18 June 2020, the Pretoria High Court found that the exclusion of asylum seekers and special permit holders from eligibility for the SRD grant was unlawful, unconstitutional and invalid. The court held that special permit holders and asylum seekers whose asylum seeker permits are or were valid on 15 March 2020 will be eligible to apply for the SRD grant.

Furthermore, the Court ordered that the Minister of Social Development had to determine within five days of the order the cost that will be incurred in extending the SRD grant, and a further five days after determining the cost to publish the amended directions to include asylum seekers and special permit holders for eligibility for the SRD grant.

Government admitted that the order would place strain on the Department of Social Development and add to the government's financial burden - the cost estimate to increase the pool of eligible applicants for the SRD grant would be approximately R700 million. Economists also warned that it would increase the burden on the tax base as government was already spending R9 billion extra a month on SASSA grants, and that this addition would add about 2% more to payments.

Special permit holders and asylum seekers whose asylum seeker permits are or were valid on 15 March 2020 will be eligible to apply for the SRD grant subject to the same SASSA eligibility criteria namely, applicants cannot be receiving an income, any other form of grant, or any economic relief from the Unemployment Insurance Fund. Furthermore, an applicant's documents must be valid or must have been valid at the start of the national state of disaster in order to be eligible to apply for the SRD grant.

All applications for the special SRD grant are to be made electronically through the following platforms:

- WhatsApp on 082 046 8553
- USSD number *134*7737#
- Email: srd@sassa.gov.za
- Call centre: 0800 60 10 100

Applicants may only apply once on one channel and may not use multiple channels to apply as SASSA will only process one application received from each applicant.

The Department of Home Affairs has also recently gazetted amended directions to extend the validity of permits for asylum seekers. In terms of these directions

Asylum seekers and special permit holders now eligible to apply for COVID-19 Social Relief of Distress Grant...*continued*

The above judgment comes as welcome relief for an extremely vulnerable group of people, many of whom have been living in dire circumstances since the nationwide lockdown.

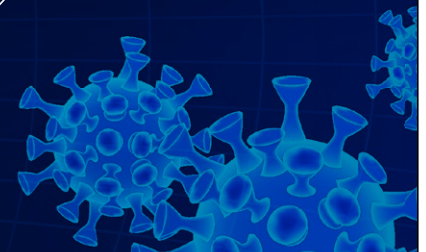
an asylum seeker permit lawfully issued/refugee status granted in terms of the Refugees Act, which expired from 15 March 2020, or is to expire or which status was to be withdrawn during the period of the national state of disaster is deemed to have been extended up to 31 July 2020. These directions provide much needed clarity after many asylum seekers' permits expired during the state of disaster and those affected have been unable to extend same due to the refugee reception offices remaining closed. It also remains unclear to date when the reception offices will reopen.

The above judgment comes as welcome relief for an extremely vulnerable group of people, many of whom have been living in dire circumstances since the nationwide lockdown. The argument rings true that *"the coronavirus knows no border and does not stop to ask for one's nationality status."* But not all are celebrating the judgment. Many South Africans are of the view that the judgment is humane but are apprehensive about its full implications and how it will impact the limited funds allocated for the SRD grants.

Tricia Erasmus and Omolola Botsane

CDH'S COVID-19 RESOURCE HUB

Click here for more information 



OUR TEAM

For more information about our Pro Bono & Human Rights practice and services, please contact:



Jacquie Cassette
National Practice Head
Director
Pro Bono & Human Rights
T +27 (0)11 562 1036
E jacquie.cassette@cdhlegal.com



Tricia Erasmus
Senior Associate
Pro Bono & Human Rights
T +27 (0)11 562 1358
E tricia.erasmus@cdhlegal.com



Gift Xaba
Associate
Pro Bono & Human Rights
T +27 (0)11 562 1089
E gift.xaba@cdhlegal.com



Brigitta Mangale
Senior Associate
Pro Bono & Human Rights
T +27 (0)21 481 6495
E brigitta.mangale@cdhlegal.com

BBBEE STATUS: LEVEL TWO CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

©2020 0478/JUNE

