

Vol. 582

Pretoria,

6

**December
Desember**

2013

No. 37122

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GOVERNMENT NOTICE

DEPARTMENT OF HOME AFFAIRS

No. 955

6 December 2013

THE REFUGEE APPEAL BOARD RULES, 2013

THE REFUGEES ACT, 1998 (ACT NO. 130 OF 1998)

In the exercise of the powers conferred by section 14(2) of the Refugees Act, 1998 (Act No 130 of 1998), the Refugee Appeal Board hereby publishes the Rules in the Schedule, in terms of section 14(3) of the Refugees Act, 1998 (Act No 130 of 1998).

SCHEDULE

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1. Definitions

In these rules a word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned to it, and unless the context otherwise indicates:

1. **“the Act”** means the Refugees Act, No. 130 of 1998.
2. **“Appeal Board”** means the Refugee Appeal Board, established in terms of Section 12 of the Act;
3. **“Appeal”** means any appeal directed to the Appeal Board in terms of Section 26(1) of the Act;
4. **“Appellant”** means an asylum seeker who has lodged an appeal in accordance with Section 26(1) of the Act;
5. **“Chairperson”** means a member of the Appeal Board designated by the Minister of Home Affairs as Chairperson of the Appeal Board;
6. **“Hearing”** or **“Hear”** means either an appeal hearing or the consideration of evidence pertaining to the appeal;
7. **“Refugee Reception Office”** means the Refugee Reception Office where the asylum application was lodged;
8. **“Representative”** means a person as contemplated in Rule 9;
9. **“Serve”** or **“lodge”** has the same meaning within the context of these rules
10. Any reference to a rule in these Rules is a reference to a Rule contained herein;
11. Any reference to a form in these rules is a reference to a Form set out in the Annexure to these rules;
12. **“UNHCR”** means United Nations High Commissioner for Refugees.

2. Timeframes

1. For the purpose of calculating any period of time in terms of these Rules-
 - (a) day means a calendar day including Saturdays, Sundays and public holidays; and
 - (b) the first day is excluded and the last day is included subject to Rule 2(2)
2. The last day of any period must be excluded if it falls on a Saturday, Sunday or Public Holiday.

3. Authority of the Appeal Board and General Powers

1. In exercising its authority pursuant to section 14 of the Act, the Appeal Board may:
 - (a) set or postpone the time and venue fixed for the hearing of an appeal;
 - (b) convene as often as necessary;
 - (c) give directions to any party to the appeal on any matter within its jurisdiction arising in connection with an appeal;
 - (d) at any time request any party to the appeal to furnish any particulars which appear to be requisite for the determination of an appeal; thereupon that party shall direct the particulars to the Appeal Board within a period determined by the Appeal Board;
 - (e) postponed the hearing for any evidence or representations of the consideration of an appeal to such date as the Appeal Board may determine; and
2. If for any reason the Chairperson of the Appeal Board is unavailable to convene or attend any meeting of the Appeal Board, the Chairperson may designate one of the members of the Appeal Board to act as presiding officer.
3. In the event of the Appeal Board setting aside the decision of a Refugee Status Determination Officer, the matter may be referred back to the Refugee Status Determination Officer.

4. Lodging an Appeal

1. An appeal in terms of Section 26 of the Act shall be lodged in person with the Refugee Reception Office within 30 days of receipt by the asylum seeker of the letter of rejection by the Refugee Status Determination Officer. Such appeal shall be lodged at the Refugee Reception Office where the letter of rejection was handed to the asylum seeker.
2. The notice of appeal shall be in the form prescribed by Form RAB(01) and shall include:-
 - (a) the full name, current address, date of birth and nationality of the Appellant.
 - (b) an affidavit in which the reasons for appeal are set out and documents or certified copies thereof on which the Appellant seeks to rely; and such documents must be in duplicate;
 - (c) the signature of the Appellant and in the case of a minor or a person who is incapable of acting on his or her own behalf, the signature of the Guardian/Curator acting on behalf of the Appellant.
3. The designated Appeal Clerk shall record on the notice of appeal the date of lodgment of the notice of appeal.
4. The designated Appeal Clerk shall submit the notice of appeal together with copies of relevant documentation to the Appeal Board within 10 days after the notice of appeal is lodged.
5. Where good cause is shown the Appeal Board may condone any non-compliance with Rule 4(1).

5. Service of Documents

1. The Appeal Board may serve and accept service of any document in a manner it deems fit.
2. Where any party serves a document on another party, a copy of that document shall also be filed with the Registrar of the Appeal Board.
3. A party must serve documents on the Appeal Board as follows:
 - (a) A notice of appeal as contemplated in Rule 4 must be served according to the provisions as set out in Rule 4.
 - (b) All other documents arising out or relating to an appeal must be served as follows:
 - (i) personally on the Registrar of the Appeal Board; or
 - (ii) by facsimile to the Registrar of the Appeal Board; or
 - (iii) by sending a copy of the document by registered post to the Registrar of the Appeal Board
4. The Appeal Board may accept proof of service of any document in a manner it deems fit.

6. Late Notice of Appeal – Condonation

1. Where an Appellant lodges a notice of appeal after the expiry of the period stipulated in Rule 4, the Appellant must serve an affidavit with the notice of appeal showing good cause for the delay, supported by documentary evidence where appropriate;
2. The designated Appeal Clerk must refer such an affidavit for condonation to the Appeal Board within 10 days of receipt;

7. Parties to the Appeal

1. The Appellant and the Department of Home Affairs are parties to the appeal.
2. The parties must submit heads of arguments within 5 days prior to the hearing.
3. Where the Appellant is represented, service of the notice of hearing may also be served on the Appellant's representative.

8. Change in Address

The Appellant must serve a notice on the Registrar of the Appeal Board of any change in his or her address or personal details provided in the notice of appeal.

9. Right to Representation

1. The Appellant is entitled to representation at no expense to the Appeal Board.
2. An advocate, a practicing attorney or a candidate attorney with a right of appearance may provide such representation.
3. Any other person, who is duly authorised by the Appellant, may represent the Appellant after having first obtained leave from the Appeal Board.
4. Representation referred to in Rule 9(2) and (3) must be duly authorized by the Appellant by way of a Power of Attorney as prescribed in Form RAB(02).

10. Notification of Appeal Hearing

1. Where the Appeal Board decides to conduct a hearing, it shall serve written notice on the Appellant at least 10 days prior to the scheduled hearing. Such notice shall contain the date, time and venue fixed for the hearing as prescribed in Form RAB(03)
2. The Appellant shall acknowledge receipt of the notice of hearing by signing it and affixing his or her left thumb print thereon.

11. Postponement of a Hearing

1. The Appeal Board may grant an application for the postponement of a hearing upon being satisfied that there is good cause for the postponement requested;
2. The Appeal Board may also postpone the hearing on its own accord.
3. Where a hearing is postponed, the Appeal Board shall give notice either orally or in writing to the Appellant of the time, date and venue of the postponed hearing.

12. Non – appearance of Appellant

1. Where an Appellant is duly served with a notice of hearing in terms of Rule 10 but fails to attend the hearing and has neither notified the Appeal Board nor given any satisfactory explanation, the Appeal Board will determine the appeal on paper.

13. Conduct of Proceedings at Hearings

1. The Appeal Board shall conduct its proceedings in a manner appropriate for the purposes of determining the appeal before it.
2. The Appeal Board may require any party to an appeal or any witness to give evidence on oath or under affirmation.
3. The Chairperson may designate one or more members of the Appeal Board to hear and determine any appeal lodged.

14. Closed Proceedings

1. The hearings of the Appeal Board will not be open to the public. The Appeal Board may on application or on its own accord allow any person or persons to attend a hearing.
2. Where such persons are permitted to attend the hearing in terms of Rule 14(1) above, the Appeal Board may nonetheless exclude any person behaving in a manner likely to interfere with the proper conduct of the proceedings.

15. Subpoena of Witnesses

1. The Appeal Board may either of its own volition or on the request of any party to the appeal, subject to the approval of the Appeal Board, *subpoena* any person to serve as a witness at a hearing of the Appeal Board at such time and place as may be specified in the *subpoena* which shall be issued in Form RAB(04).
2. The Appeal Board may require a witness to answer any questions and/or to provide any relevant documentation related to an appeal.
3. No person shall be required to travel more than 50 kilometres from his or her place of residence in obedience to a *subpoena* unless the party at the request of which the *subpoena* is issued pays the reasonable expenses of such attendance as determined by the Appeal Board.
4. Service of any such *subpoena* issued shall be effected by a member of the South Africa Police Services, the Sherriff of the Court or in a manner determined by the Appeal Board.

16. Consolidated Hearings

The Appeal Board may, after consultation with the parties, decide that two or more appeals be heard together where it appears to the Appeal Board that --

1. a common question of law or fact arises; or
2. they relate to decisions or actions taken in respect of persons who are members of the same family; or
3. for some other reason it is practical and appropriate to proceed with two or more appeals under this Rule.

17. Record of Decisions and Reasons

The Appeal Board shall record the decision of any appeal and shall convey it in writing to the parties to the Appeal.

18. Cancellation of Appeal

An appeal is deemed cancelled if the Appellant gives notice of withdrawal or cancellation of his appeal to the Appeal Board and/or the designated Appeal Clerk.

19. Review of Decisions

Where the Appeal Board has conveyed its decision to the Appellant, the Appeal Board shall be functus officio.

20. Correction of errors

Clerical errors in any decision, or errors arising from any omission, may at any time be corrected and any correction made hereto, or to a record of the decision, shall be deemed to be part of the decision or record and a written notice of it shall be given as soon as practicable to the parties if the Appeal Board deems it necessary.

21. General

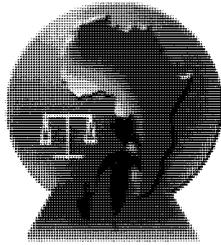
1. An Appellant or his representative may request copies of all relevant documents, transcripts or the contents of the file on payment of a fee determined by the Appeal Board.
2. The Appeal Board may in its discretion condone any non-compliance with the requirements of these rules.

22. Forms

The Forms referred to in these Rules shall conform substantially to the Forms in the annexure to these Rules with such variations as circumstances may require.

23. Citation and commencement

These rules may be cited as the Refugee Appeal Board Rules, 2013 and shall come into operation on 6 December 2013.



FORM RAB (01)

IN THE REFUGEE APPEAL BOARD

FILE REF NO: _____

In the matter between:

Appellant

and

Respondent

NOTICE OF APPEAL

PLEASE TAKE NOTICE that _____ (the appellant) intends to appeal the decision of the Refugee Status Determination Officer (RSDO) rejecting his/her application for refugee status for an order in the following terms:

- 1.
- 2.
- 3.

TAKE NOTICE FURTHER that the affidavit of the appellant, annexed hereto, which sets out reasons for this appeal, will be used herein.

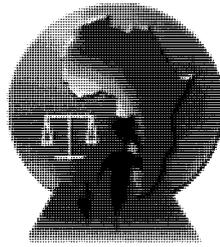
DATED at _____ this _____ day of _____ 20_____

APPELLANT

TO: THE REGISTRAR
REFUGEE APPEAL BOARD

AND

TO: RESPONDENT



APPEAL AGAINST A DECISION BY THE REFUGEE STATUS DETERMINATION OFFICER (RSDO)

File Ref No _____

(appellant)

and

(respondent)

AFFIDAVIT

I, the undersigned,

do hereby make oath and say:

1. Background

1.1 Date of birth: _____

1.2 Gender: _____

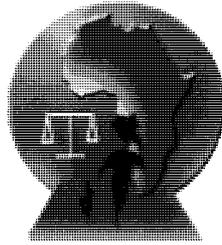
1.3 Nationality: _____

1.4 Marital status: _____

1.5 Tel/cell no: _____

1.6 Postal and Physical address (number and street, suburb, city and province) _____

1.7 Name, address and telephone number of appellant's representative (if any) _____



FORM RAB (03)

Republic of South Africa

REFUGEE APPEAL BOARD

7th Floor, 266 City Centre Building, Pretorius Street, Pretoria

Private Bag X500, Pretoria. 0001

Tel: +27 12 323 1020 (International) 012 323 1020 (Local)

Fax: +27 12 323 1038 (international) 012 323 1038 (Local)

Email: sarie.brits@dha.gov.za

Address all correspondence to the Registrar

NOTICE OF HEARING

APPELLANT:

FILE NO.:

You have lodged an appeal against the decision of the RSDO rejecting your asylum application. The Refugee Appeal Board will hear your appeal as follows:

DAY:

TIME:

PLACE:

If you are unable to speak English, you must bring a competent interpreter with you. You are also entitled to be accompanied by a legal representative of your choice. Both the interpreter and the legal representative will be at your own expense.

If you fail to appear for your appeal hearing on the date and place referred to herein, the Refugee Appeal Board will determine your appeal on paper in terms of Rule 12 of the Refugee Appeal Board rules.

.....
For Refugee Appeal Board

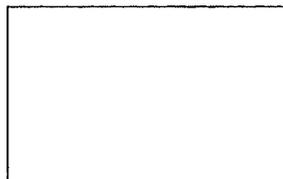
ACKNOWLEDGEMENT

I, the named Appellant, hereby acknowledge that I have received and understood the above Notice. I will attend the hearing as scheduled.

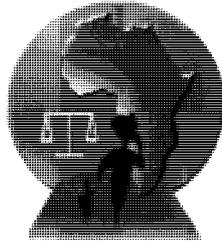
Date:.....

Signature:.....

Name:.....



Left Hand Thumb Print



FORM RAB (04)

Republic of South Africa

REFUGEE APPEAL BOARD

7th Floor, 266 City Centre Building, Pretorius Street, Pretoria

Private Bag X500, Pretoria. 0001

Tel: +27 12 323 1020 (International) 012 323 1020 (Local)

Fax: +27 12 323 1038 (international) 012 323 1038 (Local)

Email: sarie.brits@dha.gov.za

Address all correspondence to the Registrar

WITNESS SUBPOENA

TO:

Name:

Address

You are hereby required to appear in person before the Refugee Appeal Board on

the.....day of.....20.....at

(time).....(venue).....

to render evidence in the appeal of.....

.....and to bring with you all documents in your possession relating to this appeal.

You are required to give evidence during the appeal and to remain present until excused by the Appeal Board.

If your above-mentioned address changes before the proceedings are finalized or before you are officially excused as a witness, you must inform the Appeal Board thereof.

.....
p.p. REFUGEE APPEAL BOARD

I,hereby acknowledge receipt of the above subpoena.

Signature:.....

Date:.....

Name:

NB: Any person who fails to comply with this subpoena will in terms of section 37 of the Refugees Act, No 130 of 1998 be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.