

THE REFUGEE APPEAL BOARD RULES, 2003

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 has made the Rules in the Schedule.

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; 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 the appeal; thereupon that party shall direct the particulars to the Appeal Board within a period determined by the Appeal Board;
 - (e) postpone the hearing for any evidence or representations or 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.

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) all the grounds of appeal and the documents or certified copies thereof on which the Appellant seeks to rely; and
 - (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 Refugee Reception Officer shall record on the notice of appeal the date of lodgement of the notice of appeal.
4. The Refugee Reception Officer 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 Rules 4(1) and 4(2).
6. The notice of appeal may be amended or supplemented at any time prior to the hearing.

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 a written explanation with the notice of appeal showing good cause for the delay, supported by documentary evidence where appropriate;
2. The Refugee Reception Officer must refer any written explanation for condonation to the Appeal Board within 10 days of receipt;
3. Where the Appeal Board is satisfied that the Appellant has shown good cause for the late serving of the notice of appeal, such late notice of appeal shall, as from the date of the decision of the Appeal Board, be treated for all purposes as if it had been given in accordance with Rule 4;
4. Where the Appeal Board is satisfied that the Appellant has not provided good cause for the delay, it shall be deemed that no notice of appeal has been lodged.

7. Parties to the Appeal

The Appellant and the Department of Home Affairs are parties to the appeal.

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 practising 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 authorised 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 hand thumb print thereon.

11. Postponement of Hearing

1. The Appeal Board may grant an application for a 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.
4. A party who has been absent throughout any scheduled hearing need not be given notice of the postponement.

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 showing good cause, the Appeal Board may dismiss the appeal subject to Rule 12(2) and(3).
2. Where an Appellant fails to attend a hearing as set out in Rule 12 (1), the Appellant may within 10 days of the scheduled hearing request the Appeal Board in writing for condonation.
3. In exercising its discretion whether or not to grant a hearing of the appeal the Board shall give due consideration to the reasons which prevented the Appellant to appear as scheduled.

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 any appeal lodge.
4. The Appeal Board may invite a representative of the UNHCR to make an oral or written submission in any appeal as it deems fit

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 kilometers 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 African Police Services, the Sheriff 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 Decision 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 Refugee Reception Officer.

19. Abandonment of Appeal

When a permit issued to an Appellant in terms of Section 22 of the Act lapses or is not renewed, the appeal may be deemed to be abandoned.

20. Review of Decisions

1. Where the Appeal Board has conveyed its decision to the Appellant, the Appeal Board shall, subject to Rule 20(2) be functus officio.

2. The Appeal Board may on the application by an Appellant or on its own accord re-open or rehear an appeal under the following circumstances:
 - (i) Where the party fails to appear for a scheduled hearing and complies with the provisions of Rule 12.
 - (ii) Where judicial review has been instituted and a settlement agreement has been reached prior to a decision of the High Court.
 - (iii) Where a jurisdictional error has occurred which results in the task of the Appeal Board remaining unperformed.
 - (iv) Where the Appeal Board has taken a decision without requesting the parties to appear before it. Such application must be lodged within 10 days after receiving the decision.
3. Where the Appeal Board rehears or re-opens any appeal, it may confirm, set aside or substitute its previous decision.
4. Applications in terms of this Rule shall be directed to the Registrar of the Appeal Board in writing.

21. Correction of errors

Clerical errors in any decision, or errors arising from any omission, may at any time be corrected and any correction made thereto, 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.

22. 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.

23. 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.

24. Citation and commencement.

These rules may be cited as the Refugee Appeal Board Rules, 2003 and shall come into operation on date of promulgation of these rules.