

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 23501/2022

1. REPORTABLE: ~~YES~~/NO
2. OF INTEREST TO OTHER JUDGES: ~~YES~~/ NO
3. REVISED: YES/ ~~NO~~
DATE: 7 November 2023

In the matter between:

MUHAMMAD AJMAL KHAN

Applicant

and

**MINISTER OF HOME AFFAIRS
THE DIRECTOR GENERAL: DEPARTMENT OF
HOME AFFAIRS**

**First Respondent
Second Respondent**

JUDGMENT

Marx du Plessis AJ

Introduction

1. The applicant applies for the judicial review of a decision taken by the Minister of Home Affairs (the '**first respondent**') on 11 March 2022 in terms of which the applicant's application for a waiver in terms of section 31(2)(c) of the Immigration Act, 13 of 2002 (the '**Immigration Act**') was refused. The respondents have opposed the application.

Brief background

2. The applicant is a Pakistani national who came to South Africa with his wife

and two children during November 2013. The applicant, who was employed by Bata Pakistan Limited, a company within the Bata Group, came to South Africa after joining Bata South Africa (Pty) Ltd via an intracompany transfer.

3. Due to the applicant's specialised skill and knowledge of managing Bata's manufacturing processes, he was assigned to Bata's manufacturing plant in Kwa-Zulu Natal, South Africa.
4. The intracompany transfer was temporary and due to expire during February 2015. The expiry date of the intracompany transfer was however extended due to the applicant's specialised knowledge and skill.
5. During the applicant's time in South Africa, he has made a remarkable contribution to Bata South Africa, its employees and the community he settled into with his family. This is evidenced by the long list of the applicant's achievements within Bata South Africa, the long list of contributions he has made to the community where the plant he manages is situated, as well as the numerous motivational letters from his colleagues and superiors annexed to the founding affidavit.
6. There can be no doubt that the applicant's presence and contribution has been beneficial to Bata South Africa, the community within which Bata South Africa functions and the economy of South Africa.
7. Before the extended expiration date of the applicant's intracompany transfer, and during November 2016, the applicant applied for and was granted a waiver in terms of section 31(2) of the Immigration Act.
8. The applicant proceeded to apply for a general work visa in terms of section 19(2) of the Immigration Act, which visa was granted. The applicant was awarded a work permit which was valid until 12 March 2022.
9. Prior to expiration of the work permit, and during August 2021, the applicant applied for a waiver in terms of section 31(2)(c) of the Immigration Act (the '**waiver application**'). The applicant sought to be exempted from complying

with the provisions of Regulations 18(3)(a) and 18(3)(b).

10. Regulation 18(3)(a) and 18(3)(b) determines which documents should accompany an application for a general work visa, critical skills work visa or intra-company transfer work visa.
11. The applicant, not having received a response to his waiver application, made numerous inquiries regarding the outcome of his application. These inquiries were directed to the office of the first respondent by the applicant's attorney and immigration consultant.
12. On 3 February 2022, the applicant's immigration consultant was informed by the office of the Minister of Home Affairs via email that *"the Minister is not approving waivers for general work visas currently, letters are being issued to request the applicant to contact labour...So the likelihood of the applicant receiving a waiver is very slim."*
13. On 2 March 2022, the applicant was informed that he would receive a response to his waiver application within two to three weeks. In view of the fact that the applicant's work permit was due to expire on the 12th of March 2022, which would result in the applicant and his family being in South Africa illegally, the applicant launched an urgent application for an order compelling the first respondent to consider his waiver application.
14. Before the urgent application was heard, and on the 18th of March 2022, the applicant was informed by way of correspondence, which correspondence is dated 11 March 2022, that his waiver application was rejected.
15. In the letter dated 11 March 2022, the first respondent records the following:
 - "1. Your application in the above regard refers.
 2. In terms of section 31(2)(c) of the Immigration Act, 2002, (Act no 13 of 2002), "upon application, the Minister may under terms and conditions determined by him or her for **good cause**, waive any prescribed

requirement or form.” With regard to applications for the waving of Regulation 18 (3)(a), I regret to inform you that I could not find any good cause why the waiver of the said requirements should be granted.

3. *Section 19(2) of the immigration act inter alia, aims to promote economic growth through the employment of needed foreign labour which does not adversely impact on existing labour standards and rights and expectations of South African workers. When applying for a general work visa, the employer is obliged to satisfy the Director-General that the employment of a foreigner would promote economic growth and would not disadvantage South African citizens or permanent residents. A documentary proof, in the form of a certification by the Department of Employment and Labour, prescribed in Regulation 18(3)(a) of the Immigration Regulations, must be submitted as proof that a diligent search was done and that the employer was unable to employ a South African citizen or permanent resident with qualifications or skills and experience equivalent to those of the applicant. It is thus an important tool to identify positions being offered to foreign nationals and the private and public sector, to benchmark the duties that they are required to perform, as well as the skills and qualification needed to perform these duties, against the curricula vitae of unemployed South African citizens and permanent residents in the same occupational category.” (sic)*

16. It is this decision that the applicant seeks to have reviewed and set aside.

Legal framework and application to the facts

a. Non-joinder of Department of Labour

17. The respondents took issue with the fact that the applicant, whose employer made application to the Department of Labour for a certificate as envisaged by Regulation 18(3)(a)(iii), had not joined the Department of Labour as a party to the review application. The application by the applicant’s employer for a certificate was made months after the applicant submitted his application for a waiver to the Department of Home Affairs.

18. According to the respondents, the application for a certificate rendered the applicant's waiver application moot and as a result, the first respondent was relieved of his duty to consider the applicant's waiver application. The respondent further asserts that joining the Department of Labour would allow the department to either confirm or refute the applicant's assertions as set out in his application for a waiver.
19. It has been held by the SCA in the matter of **Judicial Service Commission and Another v Cape Bar Council and Another**¹ that:
- "[12] It has by now become settled law that the joinder of a party is only required as a matter of necessity – as opposed to a matter of convenience – if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned (see eg Bowring NO v Vrededorp Properties CC 2007 (5) SA 391 (SCA) para 21). The mere fact that a party may have an interest in the outcome of the litigation does not warrant a non-joinder plea. The right of a party to validly raise the objection that other parties should have been joined to the proceedings, has thus been held to be a limited one (see eg Burger v Rand Water Board 2007 (1) SA 30 (SCA) para 7; Andries Charl Cilliers, Cheryl Loots and Hendrik Christoffel Nel Herbstein & Van Winsen The Civil Practice of the High Courts of South Africa 5 ed vol 1 at 239 and the cases there cited.)"*
20. The Department of Labour's ability to either confirm or refute the correctness of the allegations made by the applicant in his waiver application, and the application by the applicant's employer for a certificate as envisioned by Regulation 18(3)(a)(iii), does not satisfy the requirements for the joinder of the Department of Labour as a party to these proceedings.
21. The application for a certificate as envisaged by Regulation 18(3)(a)(iii) by the applicant's employer and the applicant's waiver application to the first respondent are two separate processes, instituted by two separate parties.

¹ 2013 (1) SA 170 (SCA)

The applicant cannot be prohibited from applying for a waiver in terms of section 31(2)(c) simply because his employer applied for a certificate in terms of Regulation 18(3)(a)(iii) of the Immigration Regulations.

22. Additionally, the first respondent considered the applicant's waiver application and made a decision in respect thereof. The decision made does not fall to the wayside simply because the applicant's employer applied for a certificate as envisioned by Regulation 18(3)(a)(iii)
23. The Department of Labour does not have a direct and substantial interest which will be affected, prejudicially or otherwise, should the relief sought by the applicant be granted.

b. Right to just administrative action

24. In terms of section 33(1) of the Bill of Rights everyone is entitled to just administrative action.
25. Constitutional rights which are afforded to 'everyone' means that the right so afforded extends to all persons, whether such persons are South African citizens or foreign nationals, including foreign nationals who are in South Africa without having been granted formal permission to remain in South Africa.
26. The Supreme Court of Appeal and the Constitutional Court have confirmed on numerous occasions that foreign nationals, just like South African citizens, are entitled to the protection of the human rights afforded to everyone in the Bill of Rights, barring those rights which have been specifically reserved for South African citizens only.²
27. The applicant therefore has a right to demand that his waiver application in terms of section 31(2) of the Immigration Act be considered in a lawful, reasonable and procedurally fair manner. Additionally, the applicant has a

² Lawyers for Human Rights and Another v Minister of Home Affairs and Another 2004 (4) SA 125 (CC); Minister of Home Affairs and Others v Tsebe and Others 2012 (5) SA 467 (CC); Kiliko and Others v Minister of Home Affairs and Others 2006 (4) SA 114 (C)

right, in terms of section 33(2) of the Constitution, section 8(4) of the Immigration Act and section 5 of Promotion of Administrative Justice Act, 3 of 2000 to be provided with written reasons for the decision to refuse his waiver application.

c. *The Promotion of Administrative Justice Act, 3 of 2000 ('PAJA')*

28. It is common cause between the parties that the decision to refuse the applicant's application for a waiver in terms of section 31(2)(c) of the Immigration Act constitutes administrative action.

29. As a point *in limine* the respondents argue that in terms of the provisions of section 7(2)(a) of PAJA, this Court is prohibited from adjudicating the applicant's review application as the applicant has not exhausted all internal remedies provided for in the Immigration Act.

d. *Obligation to exhaust internal remedies*

30. In terms of the provisions of section 7(2) (a), no court or tribunal shall, save in exceptional circumstances, review an administrative action in terms of the provisions of PAJA unless any internal remedy provided for in any other law has first been exhausted.

31. The duty to exhaust internal remedies is however not an absolute duty and a party, such as the applicant, should not be forced to make use of an internal process that would be ineffective.³

32. The respondent's argued that the internal remedy available to the applicant is that set out in section 8 of the Immigration Act. The internal review and appeal procedures are as follows:

"(1) ...

(2) ...

³ Koyabe and Others v Minister for Home Affairs and Others 2010 (4) SA 327 (CC) at para 44

(3) Any decision in terms of this Act, other than a decision contemplated in subsection (1), that materially and adversely affects the rights of any person, shall be communicated to that person in the prescribed manner and shall be accompanied by the reasons for that decision.

(4) An applicant aggrieved by a decision contemplated in subsection (3) may, within 10 working days from receipt of the notification contemplated in subsection (3), make an application in the prescribed manner to the Director-General for the review or appeal of that decision.

(5) The Director-General shall consider the application contemplated in subsection (4), whereafter he or she shall either confirm, reverse or modify that decision.

(6) An applicant aggrieved by a decision of the Director-General contemplated in subsection (5) may, within 10 working days of receipt of that decision, make an application in the prescribed manner to the Minister for the review or appeal of that decision.

(7) The Minister shall consider the application contemplated in subsection (6), whereafter he or she shall either confirm, reverse or modify that decision.

33. The provisions of section 8, as I read and understand it, only provides for an appeal or review to the Director-General against the decisions of lower-level functionaries.

34. No provision is made in section 8 of the Immigration Act, or in any other provision of the Immigration Act, for an appeal or review against a decision of the first respondent. In view hereof, there are no internal remedies available to the applicant and his application for review is correctly before me.

e. *Reasons for administrative action*

35. The applicant is entitled to reasons for the decision to refuse his waiver application, not only in terms of section 8 of the Immigration Act, but also in terms of the provisions of section 5 of PAJA which provides the following:

“(1) Any person whose rights have been materially and adversely affected by administrative action and who has not been given reasons for the action may, within 90 days after the date on which that person became aware of the action or might reasonably have been expected to have become aware of the action, request that the administrator concerned furnish written reasons for the action.

(2) ...

(3) If an administrator fails to furnish adequate reasons for an administrative action it must, subject to subsection (4) and in the absence of proof to the contrary, be presumed in any proceedings for judicial review that the administrative action was taken without good reason.” (own emphasis)

36. These provisions of PAJA and the Immigration Act echo the applicant's constitutional right to just administrative action and to be provided with reasons for the administrative action which adversely affects his rights.
37. The first respondent is afforded a relatively wide discretion and power in terms of the provisions of section 31(2)(c) of the Immigration Act and the manner in which he exercises this discretion and power has an extensive impact on the lives of many foreign nationals.
38. In view of the wide-ranging impact the manner in which the first respondent exercises his discretion and power has on many foreign nationals, the respondent must exercise his discretion and the attendant power properly and in a manner that observes the fundamental principles of administrative justice.
39. Requiring the first respondent to provide adequate reasons for its decision ensures that the first respondent exercises his power and discretion in an accountable manner. The first respondent, in providing adequate reasons, is required to consider and address all the factors which inform or should inform the exercise of his discretion and power.
40. In terms of section 5(3) of PAJA if an administrator fails to furnish adequate

reasons for administrative action where the administrator is required to do so, a reviewing court is to presume, *‘subject to subsection (4) and in the absence of proof to the contrary, that the administrative action was taken without good reason’*.

41. The effect of section 5(3) is that an onus is placed on the administrator to show that the action was taken lawfully notwithstanding the failure on its part to give reasons for the administrative action.

42. It has been held that adequate reasons are intelligible and informative⁴ and that simply setting out the conclusion of the administrator is insufficient.⁵ The administrator ought to set out its understanding of the applicable law, findings of fact upon which its conclusions are based and its reasoning for arriving at its conclusion.

43. Section 31(2)(c) of the Immigration Act provides that:

“(2) Upon application, the Minister may under terms and conditions determined by him or her-

(a)...

(b)...

(c) for good cause, waive any prescribed requirement or form;”

44. In the letter addressed to the applicant by the first respondent dated 11 March 2022, the first respondent stated that, in relation to the applicant’s application for an exemption of the requirements of Regulation 18(3)(a), he *“could not find any good cause why the waiver of the said requirement should be granted”*.

45. No reasons for this statement are provided.

⁴ Commissioner, South African Police Services, and others v Mailmela and another 2003 (5) SA 480 (T)

⁵ Gavric v Refugee Status Determination Officer and Others 2019 (1) SA 21 (CC) at para 69

46. The letter is silent in respect of the applicant's application for a waiver of the requirements of Regulation 18(3)(b).
47. The letter proceeds to record the importance of the certificate, which certificate is issued by the Department of Employment and Labour, which, in terms of the provisions of Regulation 18(3)(a), is required to accompany an application for a work visa.
48. The letter only records the first respondent's conclusion, using the language of section 31(2)(c) of the Immigration Act, in respect of the applicant's application for a waiver of the requirements of Regulation 18(3)(a), does not provide any reasoning whatsoever and is completely silent on the applicant's application for a waiver of the requirements of Regulation 18(3)(b). The failure to provide reasons for the refusal of the applicant's waiver application in respect of the requirements of Regulation 18(3)(b) is fatal and renders the decision administratively unfair.
49. According to the record provided by the respondents, the applicant's application for a waiver was voluminous and contained his personal details and the personal details of his family, a comprehensive employment history, a letter signed by his employer recording the requirements sought to be waived, a written motivation by his employer for the waiver of each of these requirements, a copy of the applicant's curriculum vitae, a copy of the applicant's employment contract and passport, which passport copy included copies of the applicant's visas and intracompany transfers, proof of the applicant's qualifications, proof of the employment of an 'understudy' for the position currently filled by the applicant and correspondence from an employment agency confirming that it is unable to find a suitable replacement for the applicant.
50. Regulation 18(3)(a) and (b) provides that an application for a general work visa be supported by the following:

“(3) An application for a general work visa shall be accompanied by-

(a) a letter issued to the prospective employer by the Department of Labour to the effect that a certificate has been issued to the Department confirming that-

(i) despite a diligent search, the prospective employer has been unable to find a suitable citizen or permanent resident with qualifications or skills and experience equivalent to those of the applicant;

(ii) the applicant has qualifications or proven skills and experience in line with the job offer;

(iii) the salary and benefits of the applicant are not inferior to the average salary and benefits of citizens or permanent residents occupying similar positions in the Republic; and

(iv) the contract of employment stipulating the conditions of employment, signed by both the employer and the applicant, is in line with the labour standards in the Republic and is issued on condition that the general work visa is approved;

(b) proof of qualifications evaluated by SAQA and translated by a sworn translator into one of the official languages of the Republic.”

51. Having regard to the nature of the waiver application, the documents and information provided by the applicant in support of his waiver application, the requirements of Regulation 18(3)(a) and (b), and the facts relevant to this matter, the ‘reasons’ provided by the first respondent for its refusal to grant the applicant’s application for a waiver of the requirements of Regulation 18(3)(a) are insufficient.

52. For the reasons set out in the preceding paragraphs, I do not believe the first respondent provided adequate reasons for its refusal of the applicant’s waiver application as is required.

53. In view of my finding that the respondent did not provide the applicant with adequate reasons for his decision to refuse the applicant's waiver application as is required in terms of section 5(2) of PAJA, the Court is enjoined by the provisions of section 5(3) of PAJA, to presume, in the absence of evidence to the contrary, that the decision taken by the first respondent was taken without good reason.
54. The respondents have sought to defend and substantiate the first respondent's decision to refuse the applicant's waiver application by setting out the first respondent's reasons for refusing the waiver application, and the evidence for it, in its answering affidavit. The answering affidavit is deposed to by the second respondent who asserts that he has personal knowledge of the facts deposed to in the answering affidavit as the '*documents and records pertaining to the applicant's account with the respondent*' are in his possession and under his control.
55. The reasons advanced by the respondents for the first respondent's decision to refuse the applicant's waiver application are that:
- 55.1 The first respondent exercised the discretion afforded to him in terms of the provisions of section 31(2)(c) of the Immigration Act and he did so by rejecting the applicant's waiver application.
- 55.2 The first respondent is concerned by the high rate of unemployment of South African citizens.
- 55.3 The applicant failed to transfer skills to South African citizens despite having a period of eight years within which to do so. This, according to the respondents, allowed the first respondent to reasonably conclude that the applicant and his employer are using the provisions of the intracompany transfer visa to keep the applicant in South Africa and that they are not committed to the transfer of skills.
- 55.4 The applicant failed to provide the names of the employment agencies contacted in order to find a replacement for the applicant, no dates on

which contact was made is provided and no confirmatory affidavits deposed to by these agencies are provided.

- 55.5 The purpose of the certificate required in terms of Regulation 18(3) is vital and its production cannot be waived.
- 55.6 The waiver application does not meet the requirements of Regulation 18(3) of the Immigration Regulations.
- 55.7 The applicant failed to attach proof to his waiver application in support of the applicant's contention that SAQA was unable to evaluate the applicant's qualifications.
- 55.8 The applicant failed to show good cause for the waiver to be granted.
56. Save for the importance of the certificate envisaged in terms of Regulation 18(3)(a)(iii) and the lack of good cause, the reasons advanced by the respondents are, objectively viewed, reasons the respondents found in the record that it seemingly believes justifies the decision of the first respondent.
57. As stated above, the duty to provide reasons for an administrative decision is central to the duty of an administrator to act fairly and the failure to provide reasons, which include adequate reasons, should ordinarily render the disputed decision reviewable.
58. The respondents have sought to supplement the first respondent's reasons for refusing the applicant's waiver application by disclosing further reasons for the first respondent's decision in its answering affidavit. When a decision is made unlawfully, the unlawfulness thereof cannot be remedied by the giving of different reasons for the making of the decision after the decision has been made.⁶
59. If I am wrong on this score, the additional reasons provided by the

⁶ National Lotteries Board v South African Education and Environment Project 2012 (4) SA 504 (SCA) at para [28]

respondents in any event do not assist the respondents in proving that the decision of the first respondent was made with good reason.

60. Although the first respondent is afforded a discretion in terms of the provisions of section 31(2)(c) of the Immigration Act, the first respondent must still exercise this discretion in the appropriate manner.

61. In the matter of *Kemp NO v Van Wyk*⁷ the Court observed at para 1:

'A public official who is vested with a discretion must exercise it with an open mind but not necessarily a mind that is untrammelled by existing principles or policy. In some cases, the enabling statute may require that to be done, either expressly or by implication from the nature of the particular discretion, but, generally, there can be no objection to an official exercise a discretion in accordance with an existing policy if he or she is independently satisfied that the policy is appropriate to the circumstances of the particular case. What is required only that he or she does not elevate principles or policies into rules that are considered to be binding with the result that no discretion is exercised at all.'(sic)

62. From the reasons appearing from the respondent's answering affidavit, summarised in paragraph 53 above, it is evident that the first respondent refused the applicant's waiver application because the first respondent considers himself bound by the Immigration Regulations, and acting in accordance with this view held by him, the first respondent was unwilling to consider any information placed before him by the applicant other than the certificate required in terms of Regulation 18(3)(a)(iii) of the Immigration Regulations.

63. The first respondent's approach is indicative of the fact that he has not exercised his discretion and negates the purpose of the provisions of section 31(2)(c) of the Immigration Act which allows an affected person to apply to be exempted from complying with any provision of, or regulation made in terms of, the Immigration Act.

⁷ 2005 (6) SA 519 (SCA)

64. Moreover, the email correspondence from the office of the first respondent wherein it is recorded that the chances of the applicant's waiver application being granted is slim because the first respondent does not approve waivers is a further indication that the first respondent did not apply his mind to the information and application before him, thereby failing to exercise his discretion and predetermining the applicant's waiver application.
65. The first respondent furthermore records that it is apparent that the applicant and his employer are abusing the intracompany transfer permits in order to keep the applicant in South Africa.
66. The difficulty with this reason is the fact that the applicant's intention is to apply for a work visa in terms of the provisions of section 19 of the Immigration Act and not an intracompany transfer.
67. The applicant is currently in South Africa in terms of a work visa which was awarded to him during November 2016. The intracompany transfer expired during the course of 2015 already.
68. Based on the evidence produced by the parties, in addition to the lack of reasons for the first respondent's decision, it is evident that the respondent failed to exercise his discretion in terms of section 31(2)(c) properly, or at all.
69. In the circumstances, the application for review should succeed.

Appropriate remedy

70. That leaves the question of an appropriate remedy.
71. In terms of section 8 of PAJA a Court hearing a review application may grant an order which is just and equitable.
72. The applicant seeks an order in terms of which the decision of the first respondent is reviewed and set aside and substituted by order of this Court. The Court is empowered to do so in exceptional circumstances.

73. In *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another*⁸ Khampepe J restated some of the principles and clarified the test for exceptional circumstances. Broadly, she held the following:

[46] A case implicating an order of substitution accordingly requires courts to be mindful of the need for judicial deference and the obligations under the Constitution

....

[47] To my mind, given the doctrine of separation of powers, in conducting this enquiry there are certain factors that should inevitably hold greater weight. The first is whether a court is in as good a position as the administrator to make the decision. The second is whether the decision of an administrator is a foregone conclusion. These two factors must be considered cumulatively. Thereafter, a court should still consider other relevant factors. These may include delay, bias or the incompetence of administrator. The ultimate consideration is whether a substitution order is just and equitable. This will involve consideration of fairness to all implicated parties. It is prudent to emphasise that the exceptional circumstances enquiry requires an examination of each matter on a case-by-case basis that accounts for all relevant facts and circumstances.'

[48] A court will not be in as good a position as the administrator where the application of the administrator's expertise is still required and a court does not have all the pertinent information before it. This would depend on the facts of each case...'

74. A waiver application may be granted on good cause. What constitutes good cause depends on the facts unique to each application.
75. When having regard to the requirements of Regulations 18(3)(a) and (b), as well as the purpose thereof and of the Immigration Act, it is clear that the

⁸ 2015 (5) SA 245 (CC)

applicant has placed all the information these requirements seek to elicit before the first respondent in support of his waiver application.

76. The respondent has persisted with his view that the applicant must first comply with the requirements of Regulations 18(3)(a) and (b) before he can consider the waiver application. This view impedes the exercise of the first respondent's discretion as well as the purpose of section 31(2)(c) of the Immigration Act.
77. Moreover, the respondents simply state in the answering affidavit that the applicant's waiver application does not meet the requirements for an application of its nature. The respondents however fail to inform the applicant, and this Court, what the requirements for such an application are. The alleged shortcomings in the applicant's waiver application are not disclosed by the respondents, not as part of its letter dated 11 March 2022 and not as part of its answering affidavit.
78. In doing so, the respondents have made it impossible for the applicant and this Court to determine what is wrong with the applicant's waiver application. This effectively prevents the applicant from remedying any perceived shortcomings in his waiver application which, to my mind, renders the remittal of the waiver application to the first respondent for reconsideration futile.
79. Consequently, I find that there are exceptional circumstances that would justify a substitution order.

Conclusion

77. In the circumstances, I am satisfied that the applicant has made out a case for the relief sought and accordingly I make the following order:
 - 77.1 The first respondent's decision dated 11 March 2022 to refuse the applicant's application for a waiver of the requirements of Regulations 18(3)(a) and 18(3)(b) in terms of section 31(2)(c) of the Immigration Act, 13 of 2002 is reviewed and set aside.

77.2 The first respondent's decision dated 11 March 2022 is substituted as follows:

“The applicant’s application for a waiver of the requirements of Regulations 18(3)(a) and 18(3)(b) in terms of section 31(2)(c) of the Immigration Act, 13 of 2002, is approved.”

77.3 The applicant is granted leave to, within 30 (thirty) days from the date of this order, make an application to the Department of Home Affairs for a general work visa in terms of section 19 of the Immigration Act, 13 of 2000. Pending the finalisation of the applicant’s application for a general work visa in terms of section 19 of the Immigration Act, 13 of 2000 the respondents are interdicted from taking steps to declare the applicant and any member of his family, being Sobia Yasmeen Khan (bearing a Pakistani Passport with Passport Number P[...]), Shaznay Binte Ajmal (bearing a Pakistani Passport with Passport Number A[...]) and Muhammad Abdullah Ajmal (bearing a Pakistani Passport with Passport Number C[...]), as “undesirable” or “illegal” persons as envisaged in terms of the provisions of the Immigration Act, 2002, and from taking any steps towards deporting any of them and from taking any steps to interfere with the applicant continuing to work for his employer as at the time of the granting of this order.

77.4 The respondents are to pay the costs of the application, jointly and severally, the one paying the other to be absolved.

MARX DU PLESSIS AJ

Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 19 May 2023

Judgment delivered: 7 November 2023

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