



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Reportable/Not Reportable

Case no: 2025-019372

In the matter between:

STEVEN PAUL BEWLEY

APPLICANT

and

THE MINISTER OF HOME AFFAIRS

FIRST RESPONDENT

**THE DIRECTOR-GENERAL OF THE DEPARTMENT
OF HOME AFFAIRS**

SECOND RESPONDENT

Neutral citation: *Bewley v The Minister of Home Affairs and Another* (Case no 2025-019372) [2024] ZAWCHC (15 May 2025)

Coram: **SALLER AJ**

Heard: 02 May 2025

Delivered: 15 May 2025

Summary: Review and setting aside of an appeal under section 8(6) of the Immigration Act 13 of 2002 – application for a permanent residency permit for the

purpose of retirement under section 27(e)(ii) of the Immigration Act 13 of 2002 – remedy of substitution under section 8(1)(c) of the Promotion of Administrative Justice Act 3 of 2000

ORDER

The following order is made:

1. The decision of the first respondent on 20 May 2025 under Ref. No. PRA3680026 to refuse the applicant's appeal under section 8(6) of the Immigration Act 13 of 2002, as amended, is declared to be unlawful, reviewed, and set aside.
2. The first respondent is ordered, within 15 days of notice of this Order, to inform the applicant in writing of what additional supporting documentation the first respondent considers necessary to verify the information on which the application relies for the purpose of his appeal under section 8(6), and to accept any documents the applicant provides in amplification of his appeal.
3. The first respondent is further ordered to reconsider the applicant's amplified appeal, to determine it, and to inform the applicant of the decision and the reasons therefore, within 30 days of receipt of the applicant's amplified appeal documents.
4. The first and second respondents are ordered to jointly pay the party-party costs of the application on a scale A, one to pay the other to be absolved.

JUDGMENT

Saller AJ:

- [1] This is an application to review and set aside the decision of the first respondent (“the Minister”) on 20 May 2025, to dismiss the applicant’s appeal lodged under section 8(6) of the Immigration Act 13 of 2002 (“the Act”) against a decision of the second respondent (“the “Director-General”) to refuse the applicant’s application under section 27(e)(ii) of the Act made more than nine years ago, on 11 March 2016, for a permanent residency permit.
- [2] The applicant asks further that the court direct the respondents to issue and deliver to the applicant the permanent residency permit applied for within 30 days. In the alternative, the applicant asks the court to direct the Minister to retake the decision on appeal and deliver his decision within 30 days.
- [3] Neither respondent opposed the application, and the applicant’s case on the papers is unchallenged.

THE STATUTORY CONTEXT

- [4] The Act provides for the issuing of both visas and permanent residency permits by the Director-General on a variety of grounds. These include:
- a. Sections 10 to 24 of the Act deal with temporary residence visas. One of these is the retired person visa provided for in section 20(1).
 - b. Sections 25 to 27 of the Act deal with permanent residence permits. Section 27(e) provides for the issuing of permanent residence permits to retired foreigners in certain circumstances.

- [5] The current matter concerns an application made by the applicant under section 27(e)(ii) of the Immigration Act for what is termed a Retired Person's Permanent Residence Permit, which has been repeatedly refused by the respondents. The applicant also made application for a so-called Retired Person Visa under section 20(1), which was granted. The significance of this will become apparent below.
- [6] In order to be issued a permanent residence permit under section 27(e)(ii), a retired foreigner must prove to the satisfaction of the Director-General that he or she "*has a minimum prescribed net worth*", subject to any additional prescribed requirements. It is worth mentioning that the Immigration Act uses the identical requirement for the issuing of a Retired Person Visa, but without the express additional reference to any additional requirements.
- [7] What this phrase means is prescribed in the Immigration Regulations, 2014 published as GN R 413 in Government Gazette 37679 on 22 May 2014 ("Immigration Regulations"), as amended from time to time. Regulation 24(11) says that "*the net worth contemplated in section 27(e)(ii) of the Act shall be a combination of assets realising, per month, the amount determined by the Minister by notice in the Gazette*".
- [8] Regulation 19(3) of the Immigration Regulations, relating to a Retired Person Visa under section 20(1) of the Immigration Act, mirrors that wording.
- [9] On 3 June 2014 the Minister made the required determination entitled "*Minimum Amounts as Payments per Month from Pension or Irrevocable Annuity or Retirement Account in relation to Retired Person Visa or Permanent Residence Permit*" in GN 451, published in Government Gazette 37716. The Minister determined that the monthly amount to be proven for the purpose of section 27(e)(ii) (and section 20(1)(b)) will be R 37 000. Despite the time elapsed that amount remains unchanged.
- [10] Neither statute nor regulations prescribe the manner of proof required under section 27(e)(ii). Regulation 23(1) of the Immigration Regulations, however,

requires such an application to be made in the prescribed form (described as Form 18 illustrated in Annexure A). Regulation 23(2) sets out information that must accompany any application for permanent residence generally, including the applicable application fee, police clearance, and where application is made from within South Africa, a valid visa at the time of application, as well as other documents.

- [11] Under section 8(4) of the Immigration Act, a review or appeal lies to the Director-General against any decision made in terms of the Act, effectively providing for a re-determination of the application. Section 8(6) of the Immigration Act provides for review or appeal to the Minister against any decision of the Director-General. In effect, these sections afford an applicant under section 27(e)(ii) with two potential stages of appeal or review.
- [12] Regulation 7(3) of the Immigration Regulation require the process under sections 8(4) and 8(6) of the Immigration Act to be “*on Form 49 illustrated in Annexure A*”. That Form, in turn, requires an applicant to submit supporting documents to substantiate the appeal or review.

THE FACTUAL CONTEXT

- [13] The applicant says he has been resident in South Africa since 2011. On 11 March 2016, he lodged his application for a permanent residence permit under section 27(e)(ii) of the Act. The application is not attached to his papers.
- [14] In support of his application under section 27(e)(ii), the applicant says he submitted documentation reflecting ownership of 11 immovable properties in the United Kingdom, from which he derives a rental income. Copies of these documents are attached to his affidavit. In respect of each property, the applicant has included 1. a tenancy agreement that reflects the applicant as landlord and the monthly rental in respect of such property; 2. an extract from the property register which reflects the applicant as registered owner and the respective property value; and 3. a print-out from a currency exchange website which reflects the GBP – ZAR exchange rate as of 23 October 2015 the time.

- [15] Additionally, the applicant says he submitted what he describes as a “*Chartered Accounts income verification*” – a report dated 15 October 2015 by a South African registered chartered accountant summarising the applicant’s monthly rental income from his properties amounting to R 94 371.99 over the preceding 48 months, on the basis of “*documentation regarding Steven Paul Bewley funds*”. That report, too, is attached.
- [16] The Director-General, however, failed to consider the application. He was compelled to do so by an agreed court order on 21 January 2020. On 10 February 2020 the Director-General refused the application. The applicant says this was on the basis that rental income from immovable property cannot be relied upon to satisfy the requirements of section 27(e)(ii) but does not attach the Director-General’s reasons.
- [17] On 24 February 2020, the applicant lodged an appeal on under section 8(4) of the Act against the refusal of his application for permanent residence under section 27(e)(ii). That appeal was determined, and dismissed, more than two and half years later on 1 November 2022. The applicant says that what happened is that the Director-General assessed the application under the wrong section – section 27(e)(i) rather than section 27(e)(ii). The reasons for dismissal of the appeal are again not attached.
- [18] It is significant that during this time, the applicant applied and was granted a Retired Person Visa under section 20(1) of the Immigration Act. As mentioned above, the substantive requirements for a Retired Person Permanent Residence Permit under section 27(e)(ii) and a Retired Person Visa under section 20(1)(b) are identical. The applicant says he relied on the self-same “*financial evidence*” in support of his visa application as in his application under section 27(e)(ii) for permanent residence. He attaches a copy of his Retired Person Visa with the Control No. AA0332328 which on the face of it indicates it was valid from 1 August 2020 to 1 August 2024.

- [19] The applicant again appealed against the refusal of his application for permanent residence, this time to the Minister under section 8(6) of the Immigration Act. He does not attach his appeal, nor the documentation submitted in support of the appeal, if any.
- [20] The Minister, too, initially failed to determine the appeal, and was ultimately compelled to do so by an agreed court order on 14 August 2023.
- [21] On 14 January 2025, the Minister refused the appeal. His decision was not preceded by any correspondence. He provided the following reasons, which are attached to the papers (my emphasis):

“Your client failed to prove that he has a minimum prescribed net worth of R 37 000 as required in terms of section 27(e)(ii) of the Immigration Act, which provides that the Director-General may, subject to any prescribed requirements, issue a permanent resident permit to a foreigner of good and sound character who intends to retire in the Republic, provided that such foreigner proves to the satisfaction of the Director-General that he or she has a minimum prescribed worth. Instead, he submitted lease agreements of his properties abroad which could not be verified. The said lease agreements are not supported by any bank or financial statements to prove the minimum prescribed worth of R 37 000. As a result, he does not qualify for permanent residence permit.”

DETERMINATION OF THE ISSUES

- [22] At the outset, it is important to note that where a review application is not opposed, it does not follow that a court may make an order exercising its review powers in the absence of grounds of review being established, simply because the application stands unopposed.
- [23] Absent lawful grounds for the making of any order, even agreement among the litigants on the terms of the order is not a sufficient basis for the making it. In *Eke v Parsons* 2016 (3) SA 37 (CC) Madlanga J cautioned at para 25 that

the court's power to make an order by agreement "*in no way means that anything agreed to by the parties should be accepted by a court and made an order of court. The order can only be one that is competent and proper.*" This holds true all the more in the case of judicial review of administrative action, which engages the separation of powers and is sourced in the rule of law, both principles that are cornerstones of our legal order. Whether through active agreement or passive lack of opposition, the failure of an administrative body to substantively engage with the case put up by an applicant for judicial review cannot absolve the court from a due consideration of its merits.

- [24] In the present matter, it appears from the Minister's reasons and from what the applicant has said in relation to the preceding decisions of the Director-General, that there is no dispute that the applicant is of good and sound character, and that he intends to retire in South Africa – indeed, it appears that he has been doing so under a Retired Person Visa issued to him by the Director-General for several years already.
- [25] The Minister in his reasons also does not dispute that the documentation which the applicant has submitted in support of his application under section 27(e)(ii) shows, on their face, the prescribed monthly level of income of at least R 37 000. What the Minister takes issue with is the manner of proof provided. He says the lease agreements could not be verified and are not accompanied by "*bank or financial statements*".
- [26] Mr Barcaly-Beuthin who appeared on behalf of the applicant submitted that the Minister's decision amounts to unlawful administrative action under the Promotion of Administrative Justice Act, 3 of 2000 ("PAJA") on a number of grounds. The applicant's main grounds of review are the following:
- a. The Minister's decision is said to be irrational, arbitrary and unreasonable because the self-same supporting documentation was accepted as proof of the identically worded requirement in the context of the applicant's application for a Retired Person Visa under section 20(1)(b).

- b. In the absence of any published policy or legal instrument requiring the submission of “verified” leases or bank statements, and absent any indication on the part of the Director-General or the Minister in what manner information supplied by the applicant had to be verified, the Minister is said to have acted unfairly and committed an error of law when he failed to identify and call for specific documents which he considered necessary before dismissing the appeal; and
- c. The Minister is said to have failed to take into account a relevant consideration, being the report of the Chartered Accountant submitted in support of the application confirming a monthly income from rental properties in the United Kingdom equivalent to R 94 371.99 over the 48 months preceding the date of the report in October 2015.

[27] These submissions are well made. Verification of information submitted by an applicant in administrative proceedings is undoubtedly an important consideration. However, any person who is affected by administrative action is entitled to know in advance of the case he or she will be required to meet. This includes formal requirements to which he or she will be held, and the type of information that will be required. Neither the Immigration Act nor the Immigration Regulations contain such requirements. If the respondents, or the Department of Home Affairs more broadly, has made such an administrative determination, the applicant’s uncontested evidence is that he was not made aware thereof. He says the information he provided fully addresses the substantive requirements of section 27(e)(ii), and this is not placed in issue by the Minister in his decision. Moreover, having found that the applicant failed to submit adequate proof of the prescribed monthly income, the Minister’s failure to consider and engage in his reasons with the Chartered Accountant’s report that speaks to this very issue is glaring. The fact that the applicant was previously granted a Retired Person Visa with identical substantive requirements on the strength of the self-same documentation which he also provided in support of his application for a Retired Person Permanent

Residence Permit is a strong indication that the Minister did not properly apply his mind to the information before him.

[28] In those circumstances I am satisfied that the Minister's decision on appeal in terms of section 8(6) of the Immigration Act against the Director-General's earlier refusal to grant the applicant's application under section 27(e)(ii) for a Retired Person Permanent Residence Permit should be reviewed and set aside on the grounds that the Minister's decision was taken irrationally, without considering all relevant considerations and in a manner that was procedurally unfair.

[29] Turning to the just and equitable relief in the circumstances, Mr Barcaly-Beuthin urged the court to find that this is an appropriate case for the court to engage its remedial powers under section 8(1)(c) of PAJA to correct the defect by substituting its own decision for that of the Minister.

[30] The leading case dealing with such relief is the matter of *Trencon Construction (Pty) Limited v Industrial Development Corporation of South Africa Limited and Another* 2015 (5) SA 245 (CC), where the Constitutional Court set out the following principles at paras 47-48 (footnotes omitted, my emphasis):

“[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 an administrator. The ultimate consideration is whether a substitution order is just and equitable. This will involve a 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. Generally, a court ought to evaluate the stage at which the administrator's process was situated when the impugned administrative action was taken. For example, the further along in the process, the greater the likelihood of the administrator having already exercised its specialised knowledge. In these circumstances, a court may very well be in the same position as the administrator to make a decision. In other instances, some matters may concern decisions that are judicial in nature; in those instances – if the court has all the relevant information before it – it may very well be in as good a position as the administrator to make the decision.

[31] With reference to the above dicta, Mr Barcaly-Beuthin highlighted the lengthy delays in the process which has running for more than nine years; the fact that the respondents failed, and had to be compelled, to exercise their powers in the past; that the issues to be determined were not complex and did not require specialist knowledge; and, most significantly, that all necessary documents were before the court and that the court was consequently in as good a position as the Minister to determine the key issue for determination, which is compliance with section 27(e)(ii) of the Immigration Act.

[32] In heads of argument, Mr Barcaly-Beuthin referred me to a recent and increasing tendency in this Division to grant substitution relief in case such as this, more particularly in cases relating to section 27(e)(ii) of the Immigration Act. In this regard, he cited the following cases: *Department of Home Affairs and Others v Link and Others* [2019] 4 AllSA 720 (WCC), paras 63-70; *Maier and Another v Minister of Home Affairs and Another* [2022] ZAWCHC 264 (15 December 2022) paras 43-58; *ZH and Others v The Minister of Home Affairs and Others* [2022] ZAWCHC 150 (20 July 2022) paras 44-49; *Harding v Minister of Home Affairs and Others* [2023] ZAWCHC 267 (30 October 2023); *Ling and Another v Director-General at the Department of Home Affairs and Another* [2022] ZAWCHC 177 (9 September 2022) paras 31-40; *Harding v Minister of Home Affairs and Others* [2023] ZAWCHC 267

(30 October 2023); *Geske and Another v Minister of Home Affairs and Another* (WCD Case No. 1885/18, unreported Judgment of 200 June 2018).

- [33] He also referred the court to a relatively recent statement of rental income, dated 22 July 2024, attached to the founding affidavit. This document reflects the name of what appears to be a property letting agency, Stuart Dyson Property Services, issuing a statement of rental in respect of the same eleven properties to which the applicant's other supporting documents refer. The statement shows a total rental for all eleven properties of GBP 8 455. In his affidavit, the applicant says evidences a monthly income equivalent to approximately R 196 000, well in excess of the prescribed amount.
- [34] Having carefully considered the evidence filed of record in light of the test set out in *Trencon* and the treatment of substitution relief in the cases referred to by Mr Barcaly-Beuthin, I have come to the conclusion that this court is not able to grant substitution relief on the papers filed of record.
- [35] In contrast to the cases relied on by the applicant where such relief was granted in this Division, neither the initial application nor the appeal documents are before me. I consider these to be necessary in order to be placed in the same position as the Minister to determine the appeal.
- [36] The statement of recent rental income relied upon by the applicant is also not the kind of supporting documentation which might provide the court with comfort that it has been fully appraised of the applicant's financial circumstances. The document reflects a statement number and date, but provides little other information – it does not say in respect of which time period the rental was due, how it is payable, or even to whom it is payable (although the implication is that it is due to the applicant to whom it is addressed). There is also no further information regarding the letting agency in either header or footer of the document, as one might expect in a formal statement. Nor does the applicant provide such further information in his affidavit.

[37] One might have been hoped, given the Minister's complaint about the insufficiency of the information relied upon by the applicant and stated preference for the submission of bank statements, that the applicant would have shown the initiative of annexing certified bank statements to his review application, and including a comprehensive narration of his current financial circumstances.

[38] I am also mindful of the fact that it may well be that in the time since the application was submitted some nine years ago, the Department has internally formulated procedural requirements as to the manner and form in which supporting documentation for the purpose of an application under section 27(e)(ii) is to be provided. If so, the applicant should have been told of such requirements, or, if not, in the context of his specific application, he should have been told what manner of proof would be considered sufficient. The fact that he was not, has contributed to the Minister's decision being reviewed and set aside. But when considering the appropriate relief, I cannot close my mind to the fact that it is the administrator who is best placed to determine what will be required to verify the information provided. In the case of foreign formal documents such as title deeds, should these be authenticated? It appears from the Minister's reasons that he considers bank statements to be sufficient proof of rental income, but over what period? Three months? Six months? If they are bank statements issued by a foreign bank, must they be confirmed by a professional such as a chartered accountant? These are not questions the court is well placed to answer.

[39] In the circumstances, it will be just and equitable that the Minister be ordered to inform the applicant what additional supporting documentation he considers necessary to verify the information on which the application relies, and the applicant must be given an opportunity to provide such information in amplification of his appeal. Given the long history of delay in the matter, I further consider it appropriate to set a timetable for the re-determination of the appeal.

[40] Lastly, on the issue of costs: there is no reason why the costs should not follow the result. The matter is not of great complexity, and while it is of undoubted importance to the applicant, the practical impact of the litigation on him is mitigated by the fact that he has been already granted a Retired Person Visa which allows him to enjoy his retirement here. The applicant did not ask for costs order exceeding scale A. In those circumstances a party and party costs order on scale A is warranted.

K S SALLER
ACTING JUDGE OF THE HIGH COURT

Appearances

For applicant: Mr Barcaly-Beuthin

Instructed by: De Saude Darbandi Attorneys Inc.

For First respondent: no appearance

For Second respondent: no appearance