



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

JUDGMENT

Case No: 148643/2024

In the matter between:

PETER SUNDAY AKINSANYA

Applicant

and

MINISTER OF HOME AFFAIRS

First Respondent

**DIRECTOR GENERAL DEPARTMENT
OF HOME AFFAIRS**

Second Respondent

Neutral citation: *Peter Sunday Akinsayna vs Minister of Home Affairs and one other* (Case no 148643/2024) [2025] ZAWCHC (04-11-2025)

Coram: **PATHER AJ**

Heard: 22 October 2025

Delivered: 4 December 2025

Delivered: This Judgement was handed down electronically by circulation to the parties' legal representatives by email and by uploading to Caselines and released to SAFLII. The date and time for hand down is deemed to be 04 December 2025 .

Summary: Immigration Act 13 of 2002 – section 29(1) – declaration of foreigner as prohibited person – reviewing and setting aside the Minister's decision to declare a person a prohibited person – factors to consider – fraud and non-disclosure by Applicant- whether good cause exists- whether the Minister acted unfairly- intention of the Applicant when he entered South Africa on a visitor's visa

Promotion of Administrative Justice Act 3 of 2000 – review – failure to consider relevant factors – consideration of irrelevant factors – sufficient evidence required to show consideration of all relevant factors

ORDER

1. The Application is dismissed.
2. The decision by the First Respondent not to review the applicant's status as a prohibited person is declared to be valid.
3. The Applicant is ordered to pay the costs of this review, including those of counsel, on scale A.

JUDGEMENT

PATHER, AJ

Introduction

[1] The applicant seeks an Order to review and set aside the decision of the First Respondent (“the Minister”) dated 4 September 2024 rejecting his Appeal in terms of Section 8(6) of the Immigration Act 13 of 2002, as amended (“the Act”) to be declared a non-prohibited person the Applicant to be a prohibited person.

[2] In the alternative, Applicant seeks that the First Respondent be directed to retake a decision on the Applicant’s application and to deliver such decision within thirty (30) days from service of this Order.

[3] The Application was brought in terms of Section 6(1) of the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”), read with Rule 53 of the Uniform Rules. Further, the Applicant relies on Section 33 of the Constitution.

The Applicant’s founding affidavit is somewhat absent about the actual facts surrounding his entry into South Africa, and light is shed on this from the Respondents’ answering affidavit.

[4] The Applicant first entered South Africa on 12 November 2014. He came to South Africa on a single-entry visitor’s visa which visa is used when one enters the country for holiday or a vacation. He did so as he was a Nigerian citizen, and an international traveller. A visitor’s visa is usually for persons who wish to enter the country on a temporary basis for tourism. Having a visitor’s visa does not mean that you may remain in the country indefinitely. It merely means that the application for a visa was reviewed by the South African embassy, and that the office of the Consulate General has determined that one is eligible to enter the country for the reason stated in the visa application. The visa application is a document where the visitor has an obligation to set out his/her details truthfully and in detail.

[5] The visa will stipulate one’s entry date into the country and the exit date out of the country. In respect of the Applicant, his visa would have expired on 22 November 2014. The Applicant, however, did not exit the country when his visa expired, as he was supposed to have.

[6] What the Applicant says, however, is that instead of exiting South Africa, he applied for a work visa from within the Republic. One cannot convert a visitor's visa to a work visa, and if another visa is required, it is clear that this must be applied for from the country of origin and not from within South Africa. In the present case, and if the Applicant decided that there was a prospective employment opportunity in South Africa, then he would have had to have exited the country and made an application from Nigeria for a work visa to be issued. This the Applicant did not do.

The Applicant says that:

- 2.1 he is a Nigerian citizen.
- 2.2. he entered South Africa on a 10-day Visitor's Visa on 12 November 2024;
- 2.3 applied for a work visa whilst on a Visitor's visa;
- 2.4 used the services of a Visa Agent only known as "Sam" whom Applicant says he paid R23 000 for his application for a work visa;

[7] It is difficult to track what the Applicant had in mind when he entered South Africa on the visitor's visa. Applicant states that he obtained a work visa from within the Republic of SA for the purpose of taking up employment at a company called Mortu Mortu (Pty) Ltd.

[8] By this stage, I had already been made aware that the Applicant's visitor's visa had expired and he was in the country illegally. He then applied for a work visa, also illegally. The Respondents uncovered that prior to the Applicant's visitor's visa being issued in 2014, there existed a work visa issued in the name of the Applicant on 19 December 2013, for employment by the same company as the one that was applied for in 2015, and which visa was "valid" up to 2018. There is no plausible explanation for how the 2013 work visa pre-dates the visitors' visa. Whilst the Applicant attempts to distance himself from the first work visa (2013), the Respondents demonstrate that the said visa was attached to the Applicant's permanent residence application.

[9] According to the Applicant, he has no knowledge as to how the 2013 work visa found its way as an annexure to his permanent residence application, but he could only assume that this was due to the fact that the Agent who processed the

application attached this, without his consent or his knowledge. If this were to be accepted as an explanation, there is no further explanation as to how the said agent would have acquired the visa, how the Applicant signed the application without noticing the annexure and why this was not explained by him at all. The permanent residence application was made on 18 February 2019.

[10] The Applicant's counsel in his heads of argument refers to the 2013 work visa and alludes to the suspicion of irregularity that the respondents approached the applicant with. What, however, is not dealt with is why this was not disclosed at all by the applicant in his application to this court. Also, the Applicant's permanent residence application was made 15 months prior to the expiry of the Applicant's 2015 work visa. The explanation tendered by the Applicant's attorney and counsel is that they are aware that the Respondents take a long time to deal with these applications, so they were of the view that if Applicant's attorney lodged the application earlier than the regulations prescribed, by the time the application was attended to, the 2015 work visa would have come to an end. They suggested that they were being proactive to act in advance. This reasoning is concerning.

[11] The above events can only be described as a calamity of illegal conduct by the Applicant, almost making an error at every turn in trying to stay in the country. The papers and in particular the Respondents' answering affidavit shines a light on the attempts made by the Applicant to remain in the country, and this has all been abortive.

[12] This application deals with Respondents' rejection of the Applicant's permanent residency application. The permanent residency application was rejected for various reasons which were inter alia summarized as follows:

- The Applicant had a negative police clearance.
- The work visa that was submitted was fraudulent.
- By virtue of the Respondents finding that the work visa was fraudulently obtained, this brought about the Applicant being rendered a prohibited person and he was flagged as such in terms of Section 29(1)(f) of the Act.

[13] Not deterred by the state of events and the fact that the Applicant is on the Respondents' radar, the Applicant is not dissuaded by the rejection of his permanent residence application, and he then applies for a study visa a few months after his permanent residence application was refused. This application was rejected for Applicant having submitted a fraudulent work visa purported to have been issued by the Department of Home Affairs.

[14] The Applicant then brought an application in 2021 in terms of Section 29 (2) of the Immigration Act for a declaration that the Applicant be declared to be a "non-prohibited person". The Applicant supplied a South African issued criminal expungement certificate, which would have been issued by the South African Police Services Criminal Records Centre. Despite the fact that the expungement certificate allegedly issued by SAPS was found to be fraudulent, the application was rejected for the fact that additionally, the Applicant had overstayed his visitor's visa, and he had attempted to change his status from a visitor status to work status, which is not permitted. The Department also raised the fact that the Applicant was found to have possessed two work visas that were purportedly fraudulently issued. The Respondents contend that this decision was not appealed by the Applicant. For the upliftment of the prohibition

[15] The Applicant then instituted another application in terms of Section 29 (2) of the Act on 8 February 2024. This application was rejected on 4 September 2024 for the following reasons:

- The fraudulent work visa and non-cooperation with the investigation;
- Lack of credibility;
- Lack of South African expungement of criminal record;

[16] The Applicant then instituted an application for the reconsideration of the above decision on 29 October 2024, challenging the reasons that were furnished in the rejection letter.

- There was no formal communication regarding the investigation.
- The lack of credibility of the Applicant's version;
- No authentic criminal expungement certificate existed

[17] What I am certain of in regard to the papers filed is that there existed 2 fraudulent work visas. The Applicant will contend that he is unaware and that this was the work of an agent. I do not accept that explanation. The Applicant met the agent, he was told that the Agent can assist. He knew that the agent was not an employee of Home Affairs, or else he would not have met him at the Gauteng Train Station. He paid him R23 000 in cash for the work that was to be done. This is suspicious and clearly was a “contact” being used to short-circuit the process and bypass the systems, rules and regulations that were in place. The fact that the two work visas are for employment at the same company is nothing short of a red flag. Sam, the agent, is clearly involved in underhanded activities with the Department of Home Affairs. The Applicant knew that Sam “would make a plan” and therefore engaged with him. The futile attempt by the Applicant to distance himself from Sam and blame Sam for filling in his forms is unacceptable.

[18] The Applicant had no intention to come to SA to visit in 2014, when he arrived with his visitor’s visa. His intention was to remain in the country and use whatever means he could to obtain status in South Africa and he did not have any difficulties in achieving this by illegal means.

[19] Everything that the Applicant did to regularise his stay in South Africa was through underhanded means. The Applicant was not a victim of a scam, but rather he cooperated with the scam so as to achieve his own agenda. This is borne out in the steps that he took.

[20] The Applicant started off with his visitor’s visa, then he attempted to seek asylum. He is told the process is long and he should rather apply for a work visa. At that point, he knew that he wanted to short-circuit the legal systems that were in place. He then applies for a work visa, then he finds out there was an existing work visa application in 2013, then he applies for a student visa. The application for a student visa is riddled with further queries. The applicant, according to his permanent residency application is a Software Engineer, yet in his student visa application, he wants to enrol to study to be an IT Software Developer. He does not apply to a recognised accredited institution but to a college. This is suggestive that he wanted

to tick any box applicable to remain in SA. This meant that declarations that he had to sign when filling in forms were not truthful.

[21] The version of events as set out by the Applicant is problematic on various grounds, and I cannot ignore this. The Applicant's founding affidavit omits salient information regarding his applications, yet these are not disclosed. The Respondents' answering affidavits deal with these issues and the Applicant then tries to answer these allegations in reply. This court views the b Applicant's conduct as disingenuous

in not being upfront with all of these facts, and the irresistible conclusion that the court can draw is that the Applicant was being cautious as he was unsure what the Respondents were aware of in so far as the facts were concerned. This is a dangerous tactic.

[22] I am in agreement with the Respondents that the reasons set out in the rejection letters are adequate. In *Koyabe v Minister for Home Affairs* the court stated as follows:

“Although the reasons must be sufficient, they need not be specified in minute detail, nor is it necessary to show how every relevant fact weighed in the ultimate finding. What constitutes adequate reasons will therefore vary, depending on the circumstances of the case. Ordinarily, reasons will be adequate if a complainant can make out a reasonable substantial case for a ministerial review or an appeal.”

[23] The reasons that the Applicant sets out for rejecting the Respondents' 2024 application are that the Applicant was unaware that a 2013 visa application was submitted in his name, that the 2015 visa was validly and legally issued, and that the Applicant had never been deported.

[24] On the issue of the 2013 Visa I do not accept that he was unaware of this, as his details were used and this could not have been a mere coincidence. The Respondents say that the Applicant, under oath stated that he applied for permanent residence after expiry of his visa, and according to the version that the Applicant puts before this court, the only visa that expired would have been the 2013 visa. Respondents' criticism of the Applicant goes further in that they say that he would not have had a work visa for the required minimum period of 5 years, thus qualifying him to apply for permanent residency in February 2019. They say that it is illogical that he prematurely applied for permanent residency in these circumstances.

[25] Whilst the Applicant's counsel contends that the Respondents do not allege that the 2015 visa was fraudulently obtained. The Respondents disagreed with this and submitted that the visitor's visa cannot be converted to a work visa. They also submitted that at the time the Applicant is alleged to have applied for the 2015 work visa, he was already in the country on a visitor's visa that was valid for 10 days, and this means that when he applied for the work visa he would have been in the country illegally. He also applied for a work visa from within the country. Also, the rejection letter of the 2015 visa, which the Applicant puts up in his papers clearly states that the Respondents were aware that the Applicant was in possession of two fraudulent work visas

[26] The various inconsistencies regarding his employment and Applicant's version that he was told where he would work and the position, he would occupy do not sound logical or convincing. One would expect that he would have been able to put up a bona fide offer of employment that he received. This was not put up in any of the papers that were before me.

[27] The Respondents submitted that the Applicant would have known that he was paying a bribe when he paid the cash to Sam at the Gautrain Station. It is common sense that the Applicant ought to have known that he should not have been in South Africa after his visitors visa had expired, and he should have returned to Nigeria and regularised his status in South Africa through formal, legal processes.

[28] Much was made of the fact that the Respondents made reference to the Applicant being deported when, in fact, this did not occur. Nothing turns on this. The fact is that the Applicant ought to have been deported the moment his visa expired unless compelling reasons required him to remain in South Africa despite the expiration of his visitor's visa. The dispute raised by the Applicant is a last-ditch attempt to render the Respondents' decision reviewable and this court does not accept this excuse. The overwhelming facts surrounding the expiration of the visitor's visa, the fraudulent work visas, the student visa application and the permanent residency application supersede the insertion of the deportation note in the letter of rejection. This cannot be a reason to review the decisions of the Respondents.

[29] The Court is aware of its power to judicially review an administrative action, and this is done where the court is aware that relevant considerations were not considered, and in the converse, irrelevant considerations were considered by the decision maker. In this matter, this is not the case. The Respondents considered material facts such as the factors that deal with the Applicant being in possession of at least two fraudulent visas, pursuant to irregular applications privately through a "visa agent". The Second Respondent is the only authority to issue a visa, and the Second Respondent categorically states that the visas that the Applicant was in possession of, were not issued by Second Respondent.

[30] This court finds that it was immaterial that the Applicant owned/owns property in the country, had a valid driver's license as compelling reasons for the First Respondent to consider the application for permanent residency favourable. In fact, this court has serious concerns regarding the purchase of immovable property by the Applicant and the documents used to give effect to the transfer. No proper information was put up of the transfer, but rather a letter from the conveyancer. There are strict compliance requirements to transfer immovable property and none of these documents were put up. I am concerned that the acquisition of the property could have been done so fraudulently or irregularly.

[31] The Respondents state in their heads of argument that the Applicant was not declared undesirable in terms of Section 30(1) of the Act. They state that to do so

would be considered irrational. What they say they did was declared the Applicant to be prohibited in terms of Section 29(1)(f) of the Act which states:

“The following foreigners are prohibited persons and do not qualify for a port of entry visa, admission into the Republic, a visa or a permanent residence permit:

(f) anyone found in possession of a fraudulent visa, passport, permanent residence permit or identification document”

[32] The Respondents stated that in 2024, the Applicant applied in terms of Section 29(2) of the Act, in which he endeavoured to show good cause why the Second Respondent should declare him a *non*-prohibited person. The Respondents state that on both occasions that the applications were brought, they were considered and then rejected. The Respondents believe that the Applicant felt entitled to additional engagement before the decision was made. The Court does not believe that any further engagement was necessary.

[33] The Court accepts that the Respondents considered all the factors governing the applications and the rejection was validly made. The Applicant’s counsel argued that the case that I should consider is *Bihombel & Makali v Minister of Home Affairs And another (9940/2022) [2024] ZAWCHC 72 (6 March 2024)* and stated that the present case is indistinguishable from the said authority.

[34] I disagree with the Applicant’s reliance on the Bihombel authority, as when the applicants in the case referred to applied for a work visa they were already legally in the country. We know that the Applicant’s visitor’s visa had expired. The Applicants made enquiries in regard to the discovery that their visas were fraudulent. In the present matter, the Applicant does nothing and, in fact, uses the fraudulent visa to advance his permanent residence application. The Applicant in the authority facilitated the arrest of the visa agent. In the present matter the Applicant stated he knew nothing about Sam and could offer no details whatsoever. What is also telling is that when the Applicant in the present matter is told that his visa is fraudulent in 2019, he does not report the matter to the authorities, nor does he deal with the

agent or find out where the agent was. He instead applies for another category of visa, i.e. Student visa.

[35] Section 33(1) of the Constitution gives everyone the right to “administrative action that is lawful, reasonable and procedurally fair”. Section 33(3) states in part that “[n]ational legislation must be enacted to give effect to these rights”. The relevant national legislation is the PAJA. In *Minister of Defence and Military Veterans v Motau and Others* 2014 (5) SA 69 (CC) Para 33, the Constitutional Court explained the factors to consider when determining whether conduct amounts to administrative or executive action. It stated:

“The concept of “administrative action”, as defined in section 1(i) of PAJA, is the threshold for engaging in administrative-law review. The rather unwieldy definition can be distilled into seven elements: there must be (a) a decision of an administrative nature; (b) by an organ of state or a natural or juristic person; (c) exercising a public power or performing a public function; (d) in terms of any legislation or an empowering provision; (e) that adversely affects rights; (f) that has a direct, external legal effect; and (g) that does not fall under any of the listed exclusions.”

[36] In the present matter, the actions of the Respondents, whilst administrative in nature, were correct and the execution of their administrative functions was valid.

[37] This is not the first time that decisions by the respondents to declare a person prohibited in terms of section 29 of the Act is before our Courts and in circumstances that warrant a review, this falls within the definition of administrative action and is reviewable under the PAJA. In *Klemenc v Head of Immigration Inspectorate and Others* 2024 JDR 1729 (GP) page 12, this Court said:

- a) “The most important question before me is whether the prohibition can be regarded as administrative action.
- b) There must be a decision to declare a person prohibited.
- c) That decision is taken by an organ of state, exercising a public power performing a public function in terms of any legislation...

- d) In this instance the decision is taken in terms of Section 29(1)(f) and 29(2) of the Immigration Act .
- e) The Respondents were exercising a public power in terms of legislation.”

[38] Having considered these authorities, there is no other conclusion that I can reach but that the Respondents’ actions are administratively correct and that the Applicant has failed to show good cause as was required from him in his application. The Application cannot succeed.

[39] The Respondents were successful and there is no reason that costs should not follow the result.

[40] In the result the following order is made:

Order

1. The review application is dismissed.
2. The Applicant is ordered to pay the costs of this review, including those of counsel, on scale A.

PATHER AJ
ACTING JUDGE OF THE HIGH COURT

Appearances

For Applicant: S G Barclay-Beuthin

Instructed by: Stefanie De Saude-Darbandi

For Respondent: Diana Murote

Instructed by: Andre Strauss – State Attorney