

SOUTH AFRICA / JUDGMENT

Alnajar v Director General, Department Home Affairs and Others (2025/109528) [2025] ZAGPJHC 748 (28 July 2025)

[2025] ZAGPJHC 748

COURT

South Gauteng High Court, Johannesburg

BEFORE

P. Malungana

CASE / FILE NUMBER

2025/109528

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

REPUBLIC

OF SOUTH AFRICA

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: 2025/109528

(1)

REPORTABLE: NO

(2)

OF INTEREST TO OTHER JUDGES: NO

(3)

REVISED.

In the matter

between: MANAR
SALEM SULIMAN ALNAJAR
Applicant
And
THE DIRECTOR
GENERAL, DEPARTMENT
HOME
AFFAIRS
First Respondent
THE
MINISTER OF HOME AFFAIRS
Second
Respondent
THE
DIRECTOR/HEAD LINDELA
REPATRATION
CENTRE
Third
Respondent

JUDGMENT

MALUNGANA AJ

Introduction

- [1] The applicant in this matter, Mr Manar Alnajjar, who is currently detained at Lindela Repatriation Centre, approached this Court on urgent basis seeking:(a) To be released forthwith from Lindela Repatriation Centre, pending an application to legalize his status in the Republic of South Africa in terms of Section 29(2), alternatively Section 32 of the Immigration Act,13 of 2002(“the Act”);
- (b) That the respondents be directed to, within 60 days of service of the order, to finalize the Upliftment of Prohibition in terms of Section29(2) of the Act which was instituted on 3 July 2025; (c) An order in terms of which he would be allowed to reside temporarily within the Republic of South Africa in the company of his life partner and minor child pending the finalization of the Section 29(2) upliftment application, and any subsequent internal review application provided for in Section 8 of the Act, which might be instituted thereafter.
- [2] The application is opposed by the State Attorney’s office who have thus filed a notice to oppose albeit without an opposing affidavit on the 23rd of July 2025. It is, however, noteworthy to state that counsel from the State has filed a short heads of argument summarising the points she wanted to argue in these proceedings.

Factual background

- [3] A useful starting point is the averments made in the applicant's founding affidavit. In his supporting affidavit, the applicant set forth that he previously held a Jordanian travel passport, and his family is originally from Gaza. Following the 1967 Six-Day War, his family along with others relocated to Jordan.
- [4] He is in a romantic relationship with a Ukrainian citizen whom he describes as a 'life partner.' The latter is a permanent resident of South Africa ('the country') and holds a permanent South Africa Non-Citizen document. They are both parents of 11 months old daughter.
- [5] He contends that he first entered the country in 2007 using a visitor's visa. He subsequently obtained a general work visa in February 2011. After aspiring to become a permanent citizen of the country, he engaged the services of an immigration agent. Thereafter, they visited the offices of Home Affairs in Nigel where he was furnished with the South African identity document under the name "Frederik Van Wyk" which contained his photograph.
- [6] Despite knowing the document was fraudulent, he nevertheless used it to apply for a passport.
- [7] In 2013 he married a Bulgarian citizen and divorced her in 2022. The applicant further contends that he is a successful businessman as shareholder of a company which operates in the recycling space in and outside the country. This company used to employ approximately 10 people and had been steadily expanding until his arrest five months ago.
- [8] Upon his return from a business trip in Dubai, on 28 January 2025, the applicant was arrested at OR Tambo International Airport on charges of being in possession of fraudulent South African identity document and passport.
- [9] He was arraigned before the Nigel Magistrate's Court, where he pleaded guilty to a charge under Section 49 of the Act and fraud on 08 April 2025. He was subsequently sentenced to 3 months direct imprisonment for fraud and R120 000.00 for being in South Africa illegally. R100 000 of the amount was suspended for three years on condition that he is not found guilty of similar offence.
- [10] Upon serving the two months of the sentence, he was transferred to Lindela Repatriation Centre for deportation proceedings.
- [11] On 3 July 2025 the applicant submitted his application for the removal of prohibition in terms of Section 29(2) of the Act.

Urgency

- [12] It is the applicant's contention that the application is urgent, in that on 3 July 2025 he was approached by the officials of the repatriation facility who informed him that they intended to take him to the Jordan embassy to apply for emergency travel document so he could be deported to Jordan in the following week. Once he is deported he will not be able to return to the country until his section 29(2) application has been finalised. These processes may

take years to finalize. If the section 29(2) application is refused this will lead to internal appeals, and possibly a judicial review.

- [13] The applicant further states that if he is forced to leave South Africa, his family will suffer harm as his minor child will grow up without her father.

Relevant legislation

- [14] Section 29(1)(f) of the Immigration Act of 2002, deals with the categories of foreigners who are prohibited persons and disqualified to port of entry visa, admission into the Republic, visa or permanent residence permit. The section refers to:

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

- [15] Section 29(2) of the Act on the one hand provides that “The Director-General may, for good cause, declare a person referred to in subsection

- (1) not to be a prohibited person.”

- [16] In terms of Section 32 of the Act, “Any illegal foreigner shall depart, unless authorised by the Director -General in the prescribed manner to remain in the Republic pending his or her application for a status.”

Discussion

- [17] The main thrust of this application pivots on the approach that the applicant has launched an application in terms of Section 29(2) for the upliftment of the prohibition.

- [18] During argument on the 23rd of July 2025 I was informed that the 29(2) application has since been rejected by the Director -General on the 18th of July 2025.

- [19] In light of these developments counsel for the applicant sought to argue that there remains other avenues which the applicant intends to pursue. Specifically, the applicant intends to pursue an application in terms of section 32 of the Act. In this regard counsel for the applicant urged this Court to grant the relief sought in the notice of motion, and further arguing that the minor child’s interests to be with her father still need to be protected in terms of the Constitution.

- [20] I address the issue of urgency. Counsel for the respondents advanced the argument that the application was premature, and that the applicant has created his own urgency. He knew since 2008 when he entered the country that his papers were fraudulent but failed to regularize his status. He went to an extent of using a fraudulent identity document in order to obtain a passport. Insofar as urgency is concerned I do not agree with this argument.

- [21] It is apparent from the facts of this case that the applicant was moved to Lindela repatriation centre for the purpose of deportation. His deportation is now eminent. This in my mind renders the application urgent.

- [22] I return now to the merit of the application. The applicant manifestly has made himself guilty of fraud by using fraudulent identity document and passport. He was still serving his sentence when he was taken to the repatriation facility. It will not be in the interest of justice to release him from detention as he is a prohibited foreign person in terms of section 29(1). There is no merit in the argument advanced by his counsel that he has shown remorse by pleading guilty for fraud in circumstances where he was arrested in possession of those fraudulent documents. The Court cannot countenance the perpetuation of an illegal activities.
- [23] In *Jeebhai v Minister of Home Affairs and another* 2007 (4) SA 294 (T) at paragraph [21], the Full Bench held as follows: “To the extent that the judgments are to the effect that, after a determination is made in terms of section 8 that a person is an illegal foreigner or a decision is taken in terms of section 34 to deport the person, that person is not liable to be detained pending the outcome of appeal or review (to the Director-General and /or the Minister as the case may be), we disagree. With thousands of illegal foreigners entering the country every day it would mean there would literally be thousands of people without proper documentation roaming freely all over the country; no country would allow that.”
- [24] It appears to me that in terms of section 32 (1) an illegal foreigner should be authorised to apply for a permit in the prescribed manner by the Director General in order to remain in the country. At this stage no application has been submitted to the Director -General. With the section 29(1) application having been rejected, it is uncertain on the facts before me if such application will be successful.
- [25] For all the reasons stated above, it is clear to me that the applicant has failed to make out a case for the core relief sought in the notice motion. The applicant has known all along of his fraudulent identity document. It is only when the law caught up with him that he pleaded guilty, and has some sort of expectation for the law to prevent his deportation because he has some family and business interests in the country.
- [26] Accordingly, the following order is made:
1. The application is dismissed with costs.

P. MALUNGANA

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, JOHANNESBURG

DATE OF HEARING: 23 JULY 2025

DATE OF JUDGMENT: 28 JULY 2025

APPEARANCES:

COUNSEL FOR THE APPLICANT:

Adv L. Pretorius.

ATTORNEY FOR THE APPLICANT:

Chris Wentzel Attorney

COUNSEL FOR THE 1ST TO 3RD RESPONDENT:

Adv. A Sinclair

ATTORNEY FOR THE 1ST TO 3RD RESPONDENT:

The State Attorney

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAGPJHC/2025/748.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/alnajar-v-director-general-department-home-affairs-and-others-unknown-topic-agpjhc-2025>

Prepared on 13 October 2026 · Esheria