

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Booyesen v Minister of Home Affairs and another

Case CCT 8/01

Decided on 4 June 2001

Media Summary

The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.

This was an application for confirmation of the declaration of invalidity of two sections of the Aliens Control Act 96 of 1991 which deal with applications for work permits by foreign spouses of South African citizens or permanent residents. The applicants are four couples consisting of a South African married to a non-South African. The Minister of Home Affairs did not oppose the confirmation.

The first section concerns the obligation of such spouses seeking to work in South Africa to apply for a work permit while outside the country and then not to enter the country until the permit has been issued. The second section relates to the provision that work permits would only be issued to spouses of South African citizens if they do not pursue an occupation for which a sufficient number of persons are available in South Africa.

Van Heerden J in the Cape High Court declared that the provisions were inconsistent with section 10 of the Constitution which guarantees the right to dignity. She held that the provisions failed to give proper recognition to the importance of family life, particularly the reciprocal rights and duties of the spouses to cohabitation and to financial support.

In a unanimous decision written by Sachs J, the Constitutional Court confirmed the orders of invalidity, stating that it was in substantial agreement with the reasons advanced by van Heerden J that the provisions in question infringed the right to human dignity of the spouses. It suspended the two declarations of invalidity for a year in order to give Parliament a chance to remedy the defects. In the interim period the Director-General of the Department of Home Affairs is directed to accept any application for a work permit made within South Africa by any foreign non-resident spouse of a South African. He is also directed not to decline to issue or extend such work permits, unless good cause for refusal is established. In addition, he is ordered to give a decision on any application made by such spouse within thirty working days of submission, unless there is good cause for a longer period.