

SA minor child no longer grounds for permanent residency

Issued by [Le Roux Attorneys](#)

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The 2014 amendments to the South African Immigration Act resulted in sweeping changes across national policy and regulations, attracting wide-scale criticism both locally and abroad. Of particular concern in recent times has been the ordinance mandating that all travelling minors produce an [unabridged birth certificate](#) when entering or exiting South Africa. However, an arguably more pressing immigration matter that continues to divide families yet stay under the media's radar, concerns permanent residency applications on the grounds of a South African minor child.



Cape Town-based immigration law firm, Le Roux Attorneys Inc. ([SAvisas.com](#)), recently brought the issue to light, adding that the Department of Home Affairs (DHA) ostensibly no longer recognised minor children as valid grounds for permanent residency applications. Consequently, foreign parents of South African minor children have been forced to either relocate their entire family abroad, or apply under the temporary relative's visa category, which does not make provision for the applicant to work, both of which are impractical solutions.



The DHA maintains the rejections stem from the South African minor child's inability to financially support and maintain the applicant, or in other words, a failure to meet the "prescribed requirements" of Section 27 (g) of the South African Immigration Act:

"The Director-General may, subject to any prescribed requirements, issue a permanent residence permit to a foreigner of good and sound character who - is the relative of a citizen or permanent resident within the first step of kinship."

The approval of such applications however, has traditionally been a long standing practice of the Department of Home Affairs, as is supported by caveat and point 15.12.13 of the old permanent residency application form (BI-947):

"Undertaking by citizen/resident regarding financial, medical, physical and emotional responsibility for applicant. **(Not applicable where the relative is the parent of a minor child of a South African citizen/resident.)**"

The DHA's seemingly capricious posturing has been challenged by Le Roux Attorneys Inc. on the grounds that the rejections are not congruent with the purport of the Immigration Act or the intentions of the legislature. The constitutional court observes that enforced separation of a family unit places strain on a spousal relationship, especially when children are involved. Moreover, the right to family life is acknowledged to be an integral part of the right to human dignity as instilled by the Bill of Rights. A counterargument might contend that the DHA is simply trying to prevent financially disenfranchised parents from sapping valuable state resources. According to Le Roux Attorneys Inc. however, past rejections have all been submitted by gainfully employed applicants, suggesting the rationale behind the decisions extends beyond the financial realm.

Whether this is just an oversight on the part of the lawmakers, or a deliberate consequence of a revised immigration strategy, there is no doubt that an enforced division of family does not facilitate socio-economic development or contribute towards protecting our borders.

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