

Access to student financial aid for permanent residents

Centre for Child Law and Another vs NSFAS and Another



In December 2020 the CCL launched an application challenging the discriminatory Guidelines of the Department of Higher Education and the National Student Financial Aid Scheme (NSFAS) which excluded applicants who are not South African Citizens from accessing funding for Higher Education.



Our client M arrived in South Africa at the age of 4 as an unaccompanied minor. She had travelled to South Africa with a group of Burundi nationals who were fleeing the genocide resulting from the Burundi Civil War. She was in the care of various adults through her childhood, but those adults either did not try to obtain a permit for her, or made numerous attempts but were unsuccessful. At a certain stage the Burundi Civil War ended, which meant that M was no longer eligible for a refugee permit- or any other permit for that matter. However, despite being ineligible for any permit available under South Africa's laws, the Children's Court deemed it to be in M's best interests to remain in South Africa: by that stage, she had spent her formative years in South Africa, developed relationships with her foster mother and later the director of her Child and Youth Care Centre (CYCC), and further, she did not know anyone in Burundi. Thus, by order of the Children's Court she remained in South Africa until she turned 18 years old.



When M was almost 18 years, M and staff of her CYCC approached the Centre for Child Law to investigate whether there was any possibility of her obtaining a permit that they may not be aware of: although she had turned 18, it still did not make any sense for her to return to Burundi, for the same reasons that held weight when she was a child. Accordingly, the Centre for Child Law prepared and submitted an application for permanent residence based on M's special circumstances. The application was submitted to the Minister of the Department of Home Affairs, who accepted it. In December 2019, the application for permanent residence was approved by the Minister of Home Affairs.



In 2019, M matriculated with a university exemption. Following matric, she was offered a place at the University of Johannesburg to study Public Relations and Communications. She had intended to take up the offer but required funding for her tuition and residence to enable her to do so. She consequently applied for funding from the National Student Financial Aid Scheme (NSFAS). NSFAS, however, did not consider her financial aid application on its merits and took the view that only South African citizens are eligible for financial assistance from it. This funding is a loan which has to be repaid by the recipient when he/she starts working.



The Centre for Child Law, as an institutional client and M challenged the administrative decision taken by NSFAS in order to obtain 2022 funding for M and for NSFAS to assess financial aid applications on their merits, in a context-and fact-specific manner, so as to ensure that the right to further education is realised.



CENTRE FOR
CHILD LAW



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The CCL and M were seeking an order in the following terms:

01

Reviewing, setting aside and declaring unlawful the decision taken by the NSFAS on 20 November 2020, that the applicant is not eligible to apply for and obtain financial aid on the basis that she is not a South African citizen;



02

Declaring that an applicant for funding does not have to be a South African citizen to be eligible to apply for a loan or bursary from the first respondent;



03

Alternatively, declaring that paragraph 5 of the Guidelines for the Department of Higher Education and Training Bursary Scheme for Students at Public Universities, 2020 is unconstitutional and invalid insofar as it dictates that only South African citizens are eligible to apply for a loan or bursary from the NSFAS;



04

Reviewing, setting aside and declaring invalid NSFAS failure to consider M's funding application on its merits; and



05

Directing NSFAS to consider M's funding application on its merits and on the basis that the applicant is eligible to receive funding from it, in tandem with other applications for financial aid.



OUTCOME

NSFAS and the Minister of Higher Education acceded to our demands and the matter was settled.

Revised NSFAS Guidelines

5.1

Recipients of the DHET Bursary Scheme must be South African citizens or permanent residents and must have a valid South African National ID number.



Impact of the case

The impact of this case is that young persons who have permanent residence can now apply for funding to pursue higher education in South Africa.

