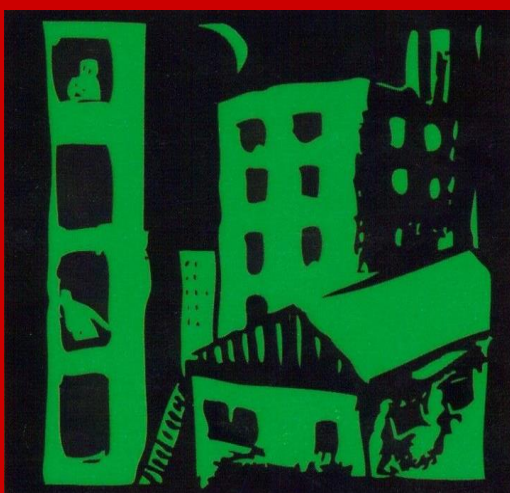


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**A comparative view
of the South African
and Canadian
framework for
issuing work visas
to skilled refugees
and asylum seekers**

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ABSTRACT

South Africa faces a shortage of skilled workers due to long-standing systemic challenges that prevent it from producing the skills necessary for economic development. In 2021, only 25 per cent of persons employed in South Africa were considered highly skilled. The critical skills work visa has been designed to facilitate the employment of skilled immigrants, but is unsuitable for doing so in the case of skilled asylum seekers and refugees, even though the latter could alleviate the shortage of skilled workers. While members of this group are eligible to apply for a critical skills work visa,

they face significant obstacles that hinder their chances of obtaining one. This article highlights the barriers this group encounters and draws lessons from Canada's Economic Mobility Pathways Project, which has successfully connected skilled refugees to employers and filled in-demand positions. In South Africa, the likelihood of obtaining a critical skills work visa without governmental intervention is low for many in this group, resulting in a waste of their skills. The article compares the South African case to how Canada has integrated skilled refugees to occupations requiring skills. Canada's partnerships with NPOs such as Talent Beyond Borders have been vital in assisting skilled refugees and connecting them to employers. The article thus argues that to employ skilled refugees in positions commensurate with their skills, the South African government has to assist and form partnerships with organisations specialising in this cause.

Keywords: barrier to employment; Canada; Immigration Act; Refugee Act; skilled asylum seeker; skilled refugee; skills shortage

1 INTRODUCTION

South Africa is a magnet to foreign nationals, especially asylum seekers and refugees, due to the size of its economy.¹ Many refugees and asylum seekers in South Africa are skilled and well educated,² with at least two-thirds of them holding a high school diploma or higher. Even so, finding employment in the country remains challenging for them.³

This is the case notwithstanding that the National Development Plan 2030 indicates that South Africa is in the midst of a severe skills crisis, stating that the economy is

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All arguments and errors in this article remain my own.

¹ *Minister of Home Affairs and Others v Somali Association of South Africa Eastern Cape (SASA EC) and Another* (2015) ZASCA 35 at para 2; Ruzungunde VS & Zhou S "Attitudes towards migrant workers in South Africa: A critical discourse analysis" (2021) *Journal of Local Government Research and Innovation* 1 at 3.

² Rampersad P "Skilled refugees and asylum seekers are an untapped resource for South African healthcare" (26 January 2023) *Daily Maverick* available at <https://bit.ly/3zdu1W> (accessed 8 February 2023).

³ Kalitanyi V & Visser K "African immigrants in South Africa: Job takers or job creators?" (2010) 13(4) *South African Journal of Economic and Management Sciences* 376 at 381.

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'choked' by skills shortages.⁴ The country faces shortages in managers, professionals, clerical support workers, plant and machine operators, service and sales workers, technicians and associate professionals, elementary occupations, and skilled agricultural workers.⁵ The supply of artisans does not meet demand either, and hence a skills shortage of artisans exists in South Africa.⁶ It is argued here that skilled migrant workers, including asylum seekers and refugees, could remedy the situation temporarily.⁷

Many of the causes of skills shortages in South Africa are long-term and systemic, and thus unlikely to be resolved soon. They include apartheid segregationist education policies which resulted in people of colour receiving an inferior education to that of people of white European descent;⁸ poor basic education, resulting in a lack of skills formation;⁹ mismatches between tertiary-education qualifications, leading to misaligned skills and shortages of the necessary skills;¹⁰ brain-drain, or loss of skills through emigration;¹¹ and brain waste, which contributes to skills shortages in that skills are wasted. Brain waste occurs where the skills of immigrants are not recognised and therefore not used in the host country's labour market.¹²

⁴ Department of the Presidency *The National Development Plan 2030: Our future, make it work* (2012) 55, 317, 323 (hereafter, "NDP"); Rasool F & Botha CJ "The nature, extent and effect of skills shortages on skills migration in South Africa" (2011) 9(1) *SA Journal of Human Resource Management* 1 at 6; Department of Higher Education and Training (DHET) *Skills supply and demand in South Africa: Labour market intelligence research programme* (2022) (hereafter, "DHET (2022)a") 64; Department of Employment and Labour *Draft national labour migration policy for South Africa* (2022) available at <https://www.labour.gov.za/DocumentCenter/Publications/Public%20Employment%20Services/National%20Labour%20Migration%20Policy%202021%202.pdf> (accessed 26 December 2022) 29 (hereafter, "DOL (2022)").

⁵ DHET (2022a) 96; Vandeweyer M & Verhagen A *Skills imbalances in the South African labour market: Detailed results from the OECD skills for jobs database* Department of Higher Education and Training: Cape Town (2022) 19.

⁶ Mzabalazo Advisory Services *Supply and demand of artisans in South Africa* (2022) 67.

⁷ Rasool & Botha (2011) 1 at 6.

⁸ Erasmus J & Breier M *Skills shortage in South Africa: Case studies of key professions* (2009) 1; DHET (2022a) 65; Owusu-Sekyere E, Wentzel M & Kanyane B et al. "Voices of critical skilled migrants in South Africa: A case study of Gauteng Province" (2019) 11(3) *African Journal of Public Affairs* 22 at 23.

⁹ DHET (2022a) 66.

¹⁰ NDP 317; Kruger N "South Africa has a skills shortage: How do we fix it?" *World Economic Forum on Africa* 10 May 2016 available at <https://www.weforum.org/agenda/2016/05/south-africa-skills-shortage-how-do-we-fix-it/> (accessed 26 December 2022); Rasool F & Botha CJ (2011) 1 at 7; DHET (2022a) 13; Rugunanan P, Xulu-Gama N & Batisai K et al. *Migration in Southern Africa: IMISCOE regional reader* (2022).

¹¹ Rasool F & Botha CJ (2011) 1 at 4; DHET (2022a) 65.

¹² Ehrhart H et al. *Does migration foster exports? Evidence from Africa*. The World Bank: Africa Region: Poverty Reduction and Economic Management Unit, Working Paper (2014) 20.

For the sake of the economy, then, attracting and utilising skills already in existence in South Africa is necessary.¹³ Accordingly, section 19(4) of the Immigration Act 13 of 2002 (hereafter, “Immigration Act”) provides the legislative framework for the Critical Skills Work Visa (CSWV), and states as follows:

Subject to any prescribed requirements, a critical skills work visa may be issued by the Director-General to an individual possessing such skills or qualifications determined to be critical for the Republic from time to time by the Minister by notice in the Gazette and to those members of his or her immediate family determined by the Director-General under the circumstances or as may be prescribed.¹⁴

Skilled asylum seekers and refugees should theoretically be able to apply for a CSWV if they qualify, but their prospects of doing so successfully are usually remote.¹⁵ Long-term systemic issues often prevent them from working in their area of expertise in South Africa. Given the significant skills shortage problem in South Africa and the number of skilled asylum seekers and refugees already in the country, it is a concerning that many of them are not holders of the CSWV. The words of a skilled asylum seeker illustrate the point:

I have been in South Africa for 12 years and in exile for 18 years. Have managed to get [a] BSc, PGCE but [there] have been no teaching positions because of the document I am using. Yes, the country needs science teachers, but fails to give a teaching post no matter [that] I managed to work on short[-term] contract for some months. I hold unused talent that the country, the world, need[s] to profit from.¹⁶

This article focuses on skilled refugees and skilled asylum seekers and the practical barriers they face before and when applying for a CSWV. It also examines how the Canadian government has approached the issue of skilled asylum seekers to ensure that their skills are utilised in the country. For many years, Canada has been successful in allowing skilled refugees to work in occupations requiring skills. With many asylum seekers seeking refuge there, just as in South Africa, the Canadian perspective allows one to draw lessons for improving the plight of skilled asylum seekers and refugees in South Africa.

The article starts with an introduction that establishes that there are skills shortages in South Africa and introduces skilled migrant workers (SMWs), specifically skilled asylum seekers and skilled refugees as a potential source of labour to address skills shortages. This is followed with a discussion of the South African legislative framework that regulates employment of asylum seekers and refugees. The focal point of the article are the barriers that this group of SMWs face along with a discussion of how the Canadian

¹³ NDP 55, 317, 323; Rasool F & Botha CJ (2011) 1 at 6; DHET (2022a) 64–5; DOL (2022) 29; Peberdy S “From the past to the present: Regulating migration and immigration in post-apartheid South Africa” (2013) 29(4) *Journal für Entwicklungspolitik* 67 at 75.

¹⁴ Section 19(4) of the Immigration Act,

¹⁵ *Ahmed and Others v Minister of Home Affairs and Another* (2018) ZACC at para 60.

¹⁶ Msabah BA “Horizons in transformational development and transnational migration: Does hope matter?” (2018) 117 *Scriptura* 1 at 10; DOL (2022) 95.

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state approaches the employment of persons in this group to better absorb skilled asylum seekers and refugees into their labour market.

2 LEGISLATIVE FRAMEWORK

The Refugees Act 130 of 1998 defines a refugee as “any person who has been granted asylum in terms of the Refugees Act”;¹⁷ a refugee, indeed, is a person outside of his or her country and unable to return to it.¹⁸ The critical element in this definition is that refugees have a well-founded fear of persecution in their country of origin and lack protection there.¹⁹ This distinction separates refugees from economic migrants, who may leave their home country due to fear of poverty, economic crisis, natural disasters, and environmental degradation.²⁰ O'Regan J pointed out in *Union of Refugee Women v Director: Private Security Industry Regulatory Authority*²¹ that refugees had to leave their homes, livelihoods, possessions and families because “their home countries have been so disrupted by war [that they can no longer remain there]”.²²

In turn, asylum seekers are persons who are seeking recognition as refugees,²³ and their asylum application has yet to be finalised by the prospective country.²⁴ They, too, like refugees, enter South Africa to seek safety from persecution and make the necessary applications to be recognised as a refugee.

Upon entering the borders of South Africa, asylum seekers' admission is regulated by the Immigration Act.²⁵ At the port of entry, an asylum transit visa is issued to those who claim to be asylum seekers.²⁶ The asylum transit visa is valid for five days, allowing

¹⁷ Section 1 of the Refugees Act 130 of 1998.

¹⁸ A person qualifies for refugee status if he or she falls within one of three categories. (1) There is a well-founded fear of being persecuted due to their race, religion, nationality, political opinion, being a member of a particular social group, or being unable, or, due to fear, unwilling, to return to their home country. (2) External aggression, foreign domination or events seriously disrupt or disturb public order in their country of nationality, and they are forced to leave to seek refuge elsewhere. (3) Lastly, a refugee is a spouse or dependent of someone mentioned above. Section 3(c) of the Refugees Act 130 of 1998; article 1 of the Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969; Kavuro C “Refugees and asylum seekers: Barriers to accessing South Africa's labour market” (2015) 19 *Law, Democracy & Development* 232 at 238; *Ahmed and Others v Minister of Home Affairs and Another* (2018) ZACC at para 60.

¹⁹ Kavuro (2015) 232 at 239.

²⁰ *Somali Association of South Africa v Limpopo Department of Economic Development, Environment and Tourism* 2015 (1) SA 151 (SCA) at para 34.

²¹ *Union of Refugee Women v Director: Private Security Industry Regulatory Authority* 2007 (4) SA 395 (CC).

²² *Union of Refugee Women* (2007) at para 101.

²³ Section 1 of the Refugees Act 130 of 1998.

²⁴ Kavuro (2015) 240.

²⁵ Section 23 of the Immigration Act 13 of 2002.

²⁶ Section 23(1) of the Immigration Act 13 of 2002.

them to apply for asylum under the Refugees Act 30 of 1998 at a Refugee Reception Office.²⁷ Pending the outcome of this application, the applicant may then be issued an asylum seeker visa, which would allow such a person to sojourn in the country.²⁸ If this application is denied, options are available to appeal the outcome. Appealing may be of little help, since the Refugee Appeal Board is in crisis as it struggles to work through a massive backlog of cases.²⁹ Generally, this process has a long waiting period, especially given the backlog of the overburdened public administration offices.³⁰

As mentioned, skilled refugees and skilled asylum seekers may apply for a CSWV. Section 19(4) of the Immigration Act, read with regulation 18(1) and 18(5), stipulates that the Minister of Home Affairs may determine the skills or qualifications that are determined to be critical in relation to an application for a CSWV. Once determined, these critical skills or qualifications are listed on a critical skills list (CSL) that enumerates occupational shortages. The CSL was developed to cater for high-demand occupations that are critical to economic development in South Africa.³¹

Critical skills required in South Africa have changed dramatically in recent years, as evidenced by the changes to the CSL. The most recent CSL was published on 2 August 2022.³² According to the Department of Labour, the CSL is limited in terms of its “format, accuracy, measurement of vacancies and geographical breakdown”.³³ This raises the question of whether the CSL captures all the skills critical for advancing the South African economy. According to the DHET, if CSWVs are offered too liberally, employment opportunities may be removed from citizens, but if they are withheld too strictly, skills shortages will continue.³⁴ It is suggested that critical skills are the occupational shortages listed on the CSL. This article proposes that skilled refugees and asylum seekers have skills listed as critical for developing the South African economy, but they would have to be issued with a CSWV first.

Section 19(4) of the Immigration Act allows for persons with critical skills to be issued with CSWVs; members of their families will also be issued visas allowing them to sojourn in the Republic with the holder of the CSWV. Supposing the applicant meets all of the requirements for the CSWV as set by the Immigration Act, the regulations thereof, and the formalities required by the Department of Home Affairs (DHA), the applicant

²⁷ *Ahmed and Others v Minister of Home Affairs* (2018) at para 35.

²⁸ Sections 22 and 24 of the Refugees Act 130 of 1998.

²⁹ *Application to be admitted as an amicus curiae in the Constitutional Court of South Africa*, Case No: CCT 273/2017 at para 9.

³⁰ Kavuro (2015) 232 at 262.

³¹ Department of Home Affairs *Towards a white paper on international migration in South Africa* (2016) at 3; Department of Home Affairs *Annual report 2017–8* (2018).

³² Immigration Act 13 of 2002 regulations in GN 2334 GG 47182 of 2 August 2022.

³³ DOL (2022) 83–84.

³⁴ DHET *Finalisation of the critical skills list: Technical report* (2022) 8.

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should be issued with a CSWV. Once issued, the CSWV is valid for no longer than five years,³⁵ meaning that it must be renewed after five years.

3 ASYLUM SEEKERS AND REFUGEES' EMPLOYMENT IN SOUTH AFRICA

Once in South Africa, refugees and asylum seekers are expected to integrate into society and support themselves.³⁶ As such, refugees have the right to seek employment.³⁷ In South Africa, the legislative framework does not expressly provide asylum seekers a right to seek employment. However, the courts have held that their total exclusion from employment is unacceptable, as this would render the asylum seeker destitute.³⁸ South African courts have noted that there is no blanket prohibition against asylum seekers and refugees seeking employment.³⁹

Yet while there is no prohibition on seeking employment, there is also no rights framework in South Africa that expressly protects the right to work in general, even for citizens or other immigrants.⁴⁰ Sections 22 and 23 of the Constitution of the Republic of South Africa, 1996 (Constitution) contain certain aspects of the right to work as per international agreements such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), which South Africa has ratified,⁴¹ but sections 22 and 23 have not been interpreted to claim the existence of the right to work in the South African context.⁴²

South African courts have set a precedent allowing asylum seekers to engage in wage-earning employment and supports the idea that asylum seekers should be able to

³⁵ Immigration Act 13 of 2002 regulations in GN 413 GG 37679 of 22 May 2014, regulation 19(6).

³⁶ *Somali* (2015) at paras 30–31.

³⁷ *Minister of Home Affairs and Others v Watchenuka and Another* 2004 (1) ALLSA 21 (SCA) at para 32; section 27(f) of the Refugees Act 130 of 1998.

³⁸ *Somali* (2015) at para 27.

³⁹ *Somali* (2015) at paras 43–45.

⁴⁰ *Somali* (2015) at para 43; Theron J “Decent work and the crisis of labour law in South Africa” (2014) 35(7) *Industrial Law Journal* 1829 at 1831.

⁴¹ Committee on Economic, Social and Cultural Rights *Consideration of reports submitted by states parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights Initial reports of States parties due in 2017: South Africa* E/C.12/ZAF/1 (2017) at para 66 (hereafter, “Committee on Economic, Social and Cultural Rights, E/C.12/ZAF/1 (2017)”).

⁴² Govindjee A & Dupper O “Constitutional perspectives on unemployment security and a right to work in South Africa” (2011) 22(3) *Stellenbosch Law Review* 775 at 793; International Commission of Jurists *Submission to the committee on economic, social and cultural rights in advance of the examination of South Africa's initial periodic report under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights* (2018): Switzerland, 64th Session of the UN Committee on Economic, Social & Cultural Rights available at <https://www.icj.org/wp-content/uploads/2018/08/SouthAfrica-ICJSubmissionCESCR-Advocacy-Non-legal-submission-2018-ENG.pdf> (accessed 29 December 2022) at 5; Committee on Economic, Social and Cultural Rights, E/C.12/ZAF/1 (2017) at para 66.

engage in self-employment as well.⁴³ The right to seek employment gives substance to South Africa's international obligations as found in the Refugee Convention. The country's legal framework embodies some of these obligations by providing for the right to engage in wage-earning employment, the right to engage in self-employment,⁴⁴ and the right to practise a liberal profession.⁴⁵

4 BARRIERS FACING SKILLED REFUGEES AND ASYLUM SEEKERS

Upon arrival in South Africa, asylum seekers are granted an asylum transit visa.⁴⁶ Concerning this visa, Landau writes:

[A]sylum seekers are issued with a single piece of paper (the 'Section 22' permit), often with hand-written amendments and conditions. Few employers or government agents, including the police and many health care workers, recognise this document's legitimacy. Moreover, after a few months in a coat or trouser pocket, the document itself can become worn and illegible. It can also be easily lost or destroyed.⁴⁷

Asylum seekers still struggle to find work despite having a valid section 22 visa.⁴⁸ According to Msabah, employers often require a green bar-coded South African identity document or a new identity document card.⁴⁹ Employers often also refrain from employing asylum seekers, as visas are granted for a short duration. Asylum seekers must also take leave to renew these visas.⁵⁰

Without a green bar-coded identity document or passport, asylum seekers are prevented from opening bank accounts, entering into credit agreements, and engaging in economic activities requiring proof of identity.⁵¹ Without valid documents, asylum seekers and refugees cannot register with professional bodies, as is required for some

⁴³ *Somali* (2015) at paras 43–45.

⁴⁴ Article 17(1) of the Refugee Convention; Article 18 of the Refugee Convention.

⁴⁵ Article 19(1) of the Refugee Convention.

⁴⁶ An asylum transit visa is given to a person seeking asylum and to be recognised as a refugee in South Africa. The transit visa allows asylum seekers to apply for asylum under the Refugees Act 30 of 1998 at a Refugee Reception Office. See *Ahmed and Others v Minister of Home Affairs* (2018) at para 35.

⁴⁷ Landau LB "Urbanisation, nativism, and the rule of law in South Africa's 'forbidden' cities" (2005) 26(7) *Third World Quarterly* 1115 at 1123.

⁴⁸ *Somali* (2015) at para 5; Scalabrini Institute for Human Mobility in Africa *Labour-related experiences of migrants and refugees in South Africa* Cape Town: Scalabrini Institute for Human Mobility in Africa (2020) (hereafter, "SIHMA 2020").

⁴⁹ Msabah (2018) 1 at 8; SIHMA (2020) 80.

⁵⁰ South African Human Rights Commission "SA legislation on migrants takes wrong path" (26 June 2018) available at <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1416-sa-legislation-on-migrants-takes-wrong-path> (accessed 14 February 2019); SIHMA (2020) 79.

⁵¹ *Amicus curiae application* (2017) at para 29; DOL (2022) 95; *Director-General of the Department of Home Affairs and others v De Saude Attorneys and Another* (2019) ZASCA 46 at para 32 (hereafter, "De Saude (2019)").

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occupations listed on the CSL, and ultimately applying for the CSWV will be extremely difficult.⁵²

Moreover, the Refugees Act and Immigration Act do not cater specifically for refugees and asylum seekers with critical skills, leading to brain waste. In reality, the shortcomings of the Refugees Act and the Immigration Act make it difficult for skilled asylum seekers and refugees to gain employment.⁵³ In most instances, regular applications for temporary visas must be made outside of South Africa.⁵⁴ Section 19(4) of the Immigration Act also has to be read together with regulation 9(2) of the Immigration Regulations, which provides that the application must be made at the mission of the Republic where the applicant is ordinarily resident.⁵⁵ This means that CSWV applications are usually to be made at the embassy or consulate-general in the applicant's country of origin.

Accordingly, this is a barrier preventing refugees and asylum seekers from making these applications, as they are already in the country where they are seeking refuge. Fortunately, refugees may apply for a status change and apply for a CSWV once they have been allowed to change their status;⁵⁶ however, the situation for asylum seekers is more complex.

In *Ahmed and Others v Minister of Home Affairs*, the Constitutional Court considered whether refugees and asylum seekers could apply for a temporary visa such as the CSWV.⁵⁷ Two applicants in the case each possessed a critical skill, with the one a sheep-shearer and the other, an information technology specialist.⁵⁸ The High Court⁵⁹ and Supreme Court of Appeal noted that section 10(2) of the Immigration Act provides that "any foreigner" may apply for the visa, without reference to whether they are refugees or asylum seekers.⁶⁰ The courts reasoned that this provision includes all individuals who are not citizens, which meant that refugees and asylum seekers were also eligible to apply.⁶¹

The Constitutional Court held that section 10(6)(a) of the Immigration Act, read together with regulation 9(5) of the Immigration Regulations, is an exception to the

⁵² Kavuro (2015) at 255.

⁵³ SIHMA (2020) 84.

⁵⁴ *Minister of Home Affairs and Another v Ahmed and Others* 2017 (6) SA 554 (SCA) at para 10.

⁵⁵ Regulation 9(2) of the Immigration Regulations in GG 26126 of 8 March 2004.

⁵⁶ Immigration Act, section 10(6).

⁵⁷ *Ahmed and Others v Minister of Home Affairs and Another* 2019 (1) SA 1 (CC) (hereafter, "Ahmed 2019").

⁵⁸ *Ahmed* (2019) at para 10.

⁵⁹ *Ahmed and Others v Minister of Home Affairs and Another* 2017 (2) SA 417 (WCC) at para 53.

⁶⁰ *Minister of Home Affairs and Another v Ahmed and Others* 2017 (6) SA 554 (SCA) at para 14.

⁶¹ *Ahmed* (2019) at para 12.

general rule that visa applications must be made outside of the Republic.⁶² Accordingly, it refers to a foreigner, specifically a refugee, applying to change his or her status in the Republic.⁵⁸ The Court noted that the exceptions do not apply to asylum seekers with visas issued in terms of the Refugees Act.⁶³ It is essential to acknowledge that the status definition does not mention refugees or asylum seekers.⁶⁴ The asylum transit visa is cancelled only when the asylum seeker visa is issued.⁶⁵ Unfortunately, the Constitutional Court judgment confirmed that the refugee and asylum seeker applicants for the CSWV “could not lawfully apply for work visas whilst in South Africa” due to their already having a status that was determined in terms of the Refugees Act. However, the Court advised that an application to be exempted from any prescribed requirement is provided for in section 31(2) of the Immigration Act.⁶⁶

The judgment implies that asylum seekers may apply for the CSWV, without a valid passport, only after the Minister has exempted them from the requirement of applying for the CSWV outside of the country.⁶⁷ While this is a welcome exception in favour of asylum seekers, a practical problem arises that the CSWV, if granted, is affixed to a passport, and it may be the case that some asylum seekers are not necessarily in possession of one, or if another document is provided in place of a passport, it may not be recognised by potential employers and other stakeholders and service providers.⁶⁸

The constitutional validity of the legislative provisions applicable to asylum seekers and refugees should have been dealt with holistically. While the judgment brings much-needed clarity on whether refugees and asylum seekers are allowed to apply for CSWVs, it fails to recognise that the vulnerability of skilled refugees and asylum seekers extends beyond merely lacking a passport. The other requirements of the application include a valid medical certificate and marriage certificate or divorce decree, as well as police clearance, a yellow fever vaccination certificate, an acceptance letter by an employer, and a South African Qualifications Authority (SAQA) evaluation report and proof of payment, among many other prerequisites that are cumbersome even for other foreigners applying for the CSWV.⁶⁹

⁶² *Ahmed* (2019) at para 33; section 10(6)(a) of the Immigration Act 13 of 2002.

⁶³ *Ahmed* (2019) at para 33.

⁶⁴ Section 1 of the Immigration Act 13 of 2002.

⁶⁵ Section 22(2) of the Refugees Act 130 of 1998.

⁶⁶ *Ahmed* (2019) at para 35.

⁶⁷ *Ahmed* (2019) at paras 60, 64.

⁶⁸ *Ahmed* (2019) at para 63.

⁶⁹ For all of the requirements and formalities of the CSWV, see the Immigration Act 13 of 2002 regulations in GN 413 GG 37679 of 22 May 2014 regulation 9; regulation 18(1)a-b; Department of Home Affairs “Requirements for a critical skills work visa” available at <https://www.dha.gov.za/index.php/immigration-services/scarce-skills-work-permits> (accessed 19 August 2022).

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When individuals enter South Africa looking for refuge, most of the time they have only a few personal possessions with them, assuming even that their countries of origin had the frameworks and infrastructure to provide them with these necessary documents in the first place.⁷⁰ Usually, what they carry with them is what they need to survive their journey across the border. Marriage certificates, police clearance, and medical reports are not things that asylum seekers may consider essential. Depending on the state from which they are fleeing, these documents may be out of reach for many.⁷¹

In addition, many asylum seekers enter the country with little to no financial support, and the little they have is often extorted from them. Having money to pay for the CSWV application is a barrier even for regular immigrants. The costs involved in applying for a CSWV, along with the numerous documents that are required, reportedly deter regular foreigners from choosing South Africa as a place to work and reside.⁷² These factors may well be an even more formidable barrier to those who have to come to South Africa not out of choice but desperation.⁷³ Front desk visa services such as making the application for the CSWV and dealing with the payments and queries, for which the DHA is responsible, have been outsourced to the VFS since 2014;⁷⁴ outsourcing the work in this manner has thus also led to an increase in visa fees.⁷⁵

As an illustration of the costs involved, the application fee for the CSWV is R1,520, while the VFS service fee is R1,550.⁷⁶ Applicants must also have their foreign qualifications accredited with SAQA, which costs a minimum of R1,700 for the evaluation of the first foreign qualification and R850 for every subsequent qualification.⁷⁷ The South African state is in dire need of skills, so if there is no alternative but to outsource the work to the VFS, perhaps it ought to be considered whether asylum seekers and refugees who have been granted a CSWV should be offered a refund of some of the fees. A refund of this nature is likely to act as an incentive to skilled asylum seekers and refugees to undergo the daunting task of applying for a CSWV. If the incentive attracts greater numbers of applicants, then the likelihood of the state filling those critical occupations increases.

⁷⁰ See Rampersad (2023).

⁷¹ See Rampersad (2023).

⁷² Owusu-Sekyere et al. (2019) 22 at 36.

⁷³ See Rampersad (2023).

⁷⁴ DOL (2022) 34.

⁷⁵ DOL (2022) 34; Owusu-Sekyere et al. (2019) 22 at 36.

⁷⁶ VFS Global “Visa information: Critical skills visa” available at <https://visa.vfsglobal.com/one-pger/dha/southafrica/english/index.html#critical-skills-visa> (accessed 9 February 2023).

⁷⁷ SAQA “Payment per qualification submitted for evaluation” available at <https://dfqeas.saqa.co.za/dfqeas/docs/A%20Payment%20per%20qualification%20submitted%20for%20evaluation.pdf> (accessed 9 February 2023). As of September 2024, 1 USD is the equivalent of R17.95. The application fee for the CSWV would cost approximately 85 USD, the VFS fee costs approximately 86 USD, the fees at SAQA would cost 95 USD and 47 USD respectively.

In addition to the costs borne by asylum seekers and refugees applying for a CSWV, there is a further hurdle still: the appointment of the VFS has created a bureaucratic barrier preventing applicants from dealing with the DHA directly.⁷⁸ This was illustrated in *DHA v De Saude*, wherein it was stated that significant delays in the application process remained even after the VFS's involvement.⁷⁹ Instead of successfully facilitating the timeous processing of visa applications, the VFS was said to have become a hindrance when seeking to deal with the DHA.⁸⁰

Before 2022, skilled migrant workers could apply for a CSWV without a job offer; in this instance, the CSWV would have been valid for 12 months.⁸¹ Since 2022, the DHA published a directive which established that applicants of the CSWV must have secured employment or received an offer for employment.⁸² If an asylum seeker is fleeing persecution for instance, it is very unlikely for him or her to have the opportunity to have applied for an occupation listed on the CSL before fleeing from persecution.⁸³

The statements above are based on the assumption either that the country from which the asylum seeker is fleeing has the necessary frameworks to provide him or her with documentation required to apply for an occupation listed on the CSL in the first place, or that asylum seekers have access to this documentation.⁸⁴ So, while the *Ahmed* case has clarified that there is an exemption in recognition of the unique situations in which asylum seekers find themselves, the Immigration Act, the Refugees Act, their directives and regulations are wholly out of touch with the struggles of asylum seekers who require far more than an exemption in order to apply meaningfully for a CSWV and an occupation listed on the CSL. Given the vulnerable position of asylum seekers, the nature of the requirements for applying for the CSWV puts it far out of reach of this group of foreigners.

The CSWV is the only visa geared to facilitating the employment of skilled migrant workers in South Africa, yet by its nature it is unsuitable for applicants who are vulnerable due to the situation in their countries of origin. The CSWV, realistically, will be within reach to a minimal number of asylum seekers and refugees, and a large portion of those who will not qualify will be excluded from making a meaningful application, not necessarily because they lack the skills to qualify for a CSWV and an occupation listed on the CSL.

⁷⁸ *De Saude* (2019) at para 21.

⁷⁹ *De Saude* (2019) at para 20.

⁸⁰ *De Saude* (2019) at paras 20–21.

⁸¹ Khan F et al. *Immigration law in South Africa* Juta: Cape Town (2018) at 103.

⁸² Director-General's Immigration Directive No. 1 of 2022.

⁸³ See Rampersad (2023).

⁸⁴ See Rampersad (2023).

5 THE CANADIAN APPROACH TO REFUGEES AND ASYLUM SEEKERS

Canada has been exceptionally successful in attracting skilled migrants because its laws and policies favour skilled migrants.⁸⁵ The country may be considered an immigrant society as its development has been based largely on an influx of migrant workers over time.⁸⁶ In addition, its laws are favourable to immigrants, who are included in its Charter of Rights and Freedoms and treated equally.⁸⁷ Any foreign nationals, including refugees, who wish to work in Canada must be authorised to do so in terms of the Immigration and Refugee Protection Act (S.C. 2001, c. 27) (IRPA),⁸⁸ unless they are authorised to work without a permit.⁸⁹ All applicants for work permits are selected according to their ability to become economically established in Canada.⁹⁰

The IRPA and the Immigration and Refugee Protection Regulations SOR/2002-227 (IRPR) include objectives relating to refugees.⁹¹ The IRPA provides that the main aim of refugee programmes in the federal state is to save lives and offer protection to displaced and persecuted persons.⁹² Canada offers a haven to those at risk of persecution based on race, religion, nationality, political opinion or membership of a social group, or those at risk of torture or cruel and unusual treatment.⁹³

To be recognised as a refugee and receive protected status in Canada, one must be referred by either the United Nations High Commission for Refugees, a designated referral organisation, or a private sponsorship group. In order to be referred, one must fall within one of the classes of refugees. The first is known as a “convention refugee

⁸⁵ Ghosh S “A passage to Canada: The differential migrations of South Asian skilled workers to Toronto” (2014) 15 *International Migration & Integration* 715 at 715; Beine M, Burgoon BB & Crock M et al. “Measuring immigration policies: Preliminary evidence from IMPALA” (2015) 61(3) *CESifo Economic Studies* 527 at 537; Globerman S *Highly educated immigrants: Economic contributions and implications for public policy* Fraser Institute (2019) 8; Wickramasekara P “Globalisation, international labour migration and the rights of migrant workers” (2008) 29(7) *Third World Quarterly* 1247 at 1251.

⁸⁶ Connell J & Burgess J “Migrant workers, migrant work, public policy and human resource management” (2009) 30(5) *International Journal of Manpower* 412 at 415.

⁸⁷ Liston M & Carens J “Immigration and integration in Canada” (2008) *Allard Research Commons* 1 at 6. The Canadian Charter of Rights and Freedoms is similar to South Africa’s Bill of Rights, and forms part of Canada’s Constitution Act of 1982.

⁸⁸ Section 30(1) of the IRPA.

⁸⁹ Immigration and Refugee Protection Regulations SOR 2002/227 (Canada), reg 186.

⁹⁰ In terms of section 12(2) of the IRPA, ‘economically established’ means having the intention and ability to support oneself by entering the labour market. See Government of Canada “Operational Bulletin 499” (1 February 2013) available at <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/bulletins-2013/499-february-1-2013.html> (accessed 31 December 2022).

⁹¹ Section 3(2) of the IRPA.

⁹² Section 3(2)(a) of the IRPA.

⁹³ Section 3(2)(d) of the IRPA.

abroad class". It is applicable when an asylum seeker is outside of his or her country and cannot return due to fear of persecution based on race, gender, sexual orientation, nationality, religious beliefs, or political opinion.⁹⁴ The second is a "country of asylum class" refugee, which is applicable when one is outside his or her home country and has been seriously affected by armed conflict or war, or denied fundamental human rights.⁹⁵ Such as refugee is also considered as a person needing protection who cannot return to their home country as they may encounter danger, a risk to their life, and torture.⁹⁶

The Immigration and Refugee Board of Canada is an independent tribunal and decides the refugee class for each person. If the criteria are met, the asylum seeker will receive "protected person" status and then be able to apply for permanent residency.⁹⁷ Skilled asylum seekers may apply for work permits through Canada's usual labour mobility programmes, these are the Foreign Skilled Worker Class (FSWC), Canadian Experience Class (CEC), and Federal Skilled Trades Class (FSTC).

5.1 Legislative framework

5.1.1 Foreign Skilled Worker Class

A points-based system is used to determine whether skilled immigrants may be admitted to the FSWC.⁹⁸ The skills of the applicant must match a list of 26 occupations where a labour-market need is present.⁹⁹ The list of occupations may be ignored only in cases where the applicant has an existing offer of employment.¹⁰⁰ An individual who qualifies for the FSWC may work and become a permanent resident in Canada after meeting the following conditions as per regulation 75(2) of the IRPR.¹⁰¹

- The applicant must have at least one year of continuous work experience in the occupation, and it must have been acquired not more than 10 years before the application of the visa.
- During the period of employment, the applicant must have fulfilled the functions of the occupation as per the National Occupational Classification (NOC).
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⁹⁴ Section 96 of the IRPA and regulation 67 of the Immigration and Refugee Protection Regulations SOR 2002/227 (Canada).

⁹⁵ Section 97 of the IRPA.

⁹⁶ Section 97(1)(b) of the IRPA.

⁹⁷ Government of Canada "Claim refugee status from inside Canada: Who can apply" available at <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/claim-protection-inside-canada/apply.html> (accessed 10 March 2022).

⁹⁸ Boyd M "Recruiting high skill labour in North America: Policies, outcomes and futures" (2014) 52(3) *International Migration* 40 at 42.

⁹⁹ Finotelli C "Change of paradigms? A comparison of Canadian and Spanish labour migration models" (2013) 15(4) *Journal of Comparative Policy Analysis: Research and Practice* 331 at 337.

¹⁰⁰ Finotelli (2013) 331 at 337.

¹⁰¹ IRPR, reg 75(2)(a)-(e)i-ii.

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- During the period of employment, the applicant must fulfil the occupation's main duties and essential functions as per the NOC.
- The applicant must have submitted satisfactory language results in either English or French that are not older than two years.
- The applicant must submit Canadian educational credentials or his or her certificate or foreign diploma.
- Lastly, the credential and the equivalency assessment must be less than five years old when the application is made.

To determine whether a skilled migrant worker will become economically established in Canada, the worker will be assessed against certain criteria or points set out in the IRPR.¹⁰² To be considered under the FSWC, applicants must score at least 67 points.¹⁰³

5.1.2 Canadian Experience Class

The CEC allows applicants who have acquired work experience in Canada to become permanent residents if they are able to become economically established in Canada.¹⁰⁴ An applicant must meet the requirements set out in regulation 87.1(2) of the IRPR.¹⁰⁵ These are as follows:

¹⁰² IRPR, reg 76(1). The points are broken down as follows: a maximum of 25 points may be awarded for education; 24 points may be awarded for proficiency in English or French; 15 points may be awarded for work experience in a relevant occupation that corresponds to an occupation listed in the NOC; 12 points may be awarded for the age of the applicant; younger applicants are preferred; 10 points may be awarded for applicants who have an existing offer of employment, referred to as 'arranged employment' in the IRPR; and 10 points may be awarded for the adaptability of the applicant. Applicants who are between 18–36 years old will be allocated a maximum of 12 points, while points are reduced for applicants older than 36 years. No points are allowed in this category for applicants younger than 18 or older than 47 years at the time of the application. The allocation of the applicant's adaptability is calculated according to the following factors: the language proficiency of a common-law partner or spouse accompanying the applicant; an applicant will be more adaptable if he or she has studied and/or worked in Canada for a minimum of one year previously; the applicant is deemed more adaptable if related to a person living in Canada; and, lastly, it is considered whether the applicant has arranged employment. IRPR, regs 78(1), 79(3), 80(1), 80(5), 81 (a)-(m), 82(2), 83(1), 83(1)(a)-(e).

¹⁰³ Variyam MN "Canada's skilled worker immigration regulation and its impact on the Canadian economy" (2007) 13(2) *Law and Business Review of the Americas* 469 at 474.

¹⁰⁴ IRPR, reg 87.1(1).

¹⁰⁵ IRPR, reg 87.1(2)(a)-(d).

- Within three years of making the application, the applicant must acquire at least a full year of work experience in “in an occupation listed in ‘Skill Type 0 Management Occupations or Skill Level A or B of the NOC, exclusive of restricted occupations’”.¹⁰⁶
- The applicant must perform the functions for the occupation in the NOC.
- The applicant must perform a substantial amount of the main duties of the listed occupation.
- Lastly, the applicant’s language proficiency must be tested, and the applicant should meet a sufficient standard of proficiency in English and/or French.

5.1.3 Federal skilled trades class

The FSTC allows persons who are skilled in trade occupations, such as “electrical, industrial, and construction trades”,¹⁰⁷ “maintenance and equipment operation trades”,¹⁰⁸ and chefs,¹⁰⁹ to work and permanently reside in Canada if they are able to become economically established.¹¹⁰ The FSTC visa allows applicants to become permanent residents in Canada.¹¹¹ Refugees who already work in Canada may apply and use the FSTC as a pathway to becoming permanent residents.

5.2 Barriers facing skilled asylum seekers when applying for work permits

As Canada does not have a central office responsible for assessing foreign qualifications and credentials, applicants usually navigate a lengthy, complex, costly and frustrating process.¹¹² Applicants may have to approach one or all of the following institutions: “(1) provincial and territorial credential assessment services, (2) regulatory or professional bodies, (3) educational institutions, and (4) employers”.¹¹³ Guo notes that the assessment of the same foreign credential by different institutions often leads to

¹⁰⁶ “What type of jobs qualify as CEC work experience?” (23 February 2021) *My Visa Source* available at <https://www.myvisasource.com/blog/what-exactly-qualifies-as-cec-work-experience> (accessed 5 January 2024). In regard to NOC Skill Level 0, it includes managerial jobs such as “[a]dvertising, marketing and public relations managers, [a]rchitecture and science managers [and] [b]anking, credit and other investment managers”. Skill Type A includes professional jobs such as “[f]inancial auditors and accountants, [f]inancial and investment analysts [and] [s]ecurities agents, investment dealers and brokers”. Skill Type B includes “[a]ccounting and related clerks, [a]dministrative assistants and [b]anking, insurance and other financial clerks”.

¹⁰⁷ IRPR, reg 87.2(1)(a).

¹⁰⁸ IRPR, reg 87.2(1)(b).

¹⁰⁹ IRPR, reg 87.2(1)(e).

¹¹⁰ IRPR, reg 87.2(1), reg 87.2(2).

¹¹¹ IRPR, reg 87.2(2).

¹¹² Guo S “Difference, deficiency, and devaluation: Tracing the roots of non-recognition of foreign credentials for immigrant professionals in Canada” (2009) 22(1) *The Canadian Journal for the Study of Adult Education* 37 at 41.

¹¹³ Guo S (2009) 37 at 41.

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inconsistent results.¹¹⁴ Once an immigrant is in possession of a FSWC, there is no guarantee of employment. Restrictions from regulatory bodies and the requirement of work experience limit applicants from finding employment and act as a basis for discrimination.¹¹⁵ Also, applications for the FSWC are processed slowly.¹¹⁶

According to Bashir, while the points-based system for the FSWC, and immigration law in Canada generally, have been effective in attracting highly skilled immigrants, the integration of SMWs into the labour market and society has not been catered for sufficiently.¹¹⁷ When immigrants arrive in Canada, there is no guarantee that they will be employed in their area of expertise or occupation, as it is not guaranteed that their qualifications will be recognised; this often results in underemployment.¹¹⁸

While there is more than one office for the recognition of foreign credentials and qualifications, SMWs usually face protracted delays in the recognition of their foreign credentials and experience.¹¹⁹ The skilled immigrant is vulnerable to “a number of perils after [he or she] lands” due to the potential non-recognition of foreign credentials and work experience, which tend to be discounted by employers.¹²⁰ The devaluation of foreign credentials and experience amounts to skills discounting.¹²¹ Non-recognition of foreign credentials and work experience has a significant impact on the wage differences between Canadians and immigrants.¹²² To address these and other barriers, Canada initiated the Economic Mobility Pathways Project (EMPP) to assist skilled refugees in finding work commensurate with their skills.¹²³

¹¹⁴ Guo S (2009) 37 at 41.

¹¹⁵ Applicants are required to have worked in Canada to meet the Canadian experience requirement. Kaushik V & Drolet J “Settlement and integration needs of skilled immigrants in Canada” (2018) 7(76) *Journal of Social Sciences* 1 at 5.

¹¹⁶ Finotelli (2013) 331 at 336.

¹¹⁷ Kaushik & Drolet (2018) 1 at 2.

¹¹⁸ Kaushik & Drolet (2018) 1 at 5; Joshee R “The unmaking of citizenship education for adult immigrants in Canada” (2005) 6(1) *Journal of International Migration and Integration* 61 at 77; Farashah A, Blomquist T & Ariss A (2023) 478 at 481.

¹¹⁹ Kaushik V & Drolet J (2018) 1 at 5.

¹²⁰ Somerville K & Walsworth S “Vulnerabilities of highly skilled immigrants in Canada and the United States” (2009) 39(2) *American Review of Canadian Studies* 147 at 147.

¹²¹ Somerville K & Walsworth S (2009) 147 at 152.

¹²² Bashir A “Immigration of skilled workers to Canada: The underutilised potential” (MA thesis, Lahore University of Management Sciences, 2009) at 46.

¹²³ Baker S, Cousins S & Higgins C et al. “Refugees are a valuable but overlooked economic resource, and it is time to update our approach to migration” (2022) 55(2) *The Australian Economic Review* 273 at 274; Cortinovis R & Fallone A “An analysis of the Private Sponsorship of Refugees (PSR) program and the Economic Mobility Pathways Pilot (EMPP)” available at https://www.asileproject.eu/wp-content/uploads/2022/05/D4.2_Canada_Interim-Country-Report.pdf (accessed 19 May 2022).

5.3 The Economic Mobility Pathways Project

Phase 1 of the EMPP, Canada's complementary pathway for refugee labour mobility, began in 2018. As of 31 October 2023, 77 highly skilled refugees and their dependants have been connected with employers in Canada.¹²⁴ The idea has been to use existing economic immigration programmes such as the FSWC, CEC and FSTC to provide an easier application process for skilled refugees in Canada.¹²⁵ While it may seem like the EMPP has had limited success, it must be noted that the EMPP is a complementary pathway and exists in addition to other pathways that skilled asylum seekers and refugees may use. The EMPP allows them to apply for work permits, waives various requirements in this regard, such as the requirement of a passport and certain payments, and assists in establishing online profiles which employers can search through in order to select applicants suited to their needs.¹²⁶ Refugees applying through the EMPP will also have their applications expedited and required medical tests paid for, in addition to which successful applicants receive further assistance with costs such as travel and accommodation.¹²⁷

Those involved in the EMPP are the United Nations Refugee Agency, Immigration Refugee Citizenship Canada, provincial governments in Canada, Refuge Point, Talent Beyond Boundaries (TBB), and refugees themselves.¹²⁸ TBB, for instance, is a non-profit organisation which connects skilled refugees to employers.¹²⁹ Refuge Point and TBB provide activities involving the facilitation, preparation and submission of the refugee immigration applications that later become profiles. As mentioned, the non-recognition of qualifications and competencies is one of the greatest barriers that skilled refugees face. In instances where the refugee is not able to find employment, Refuge Point and TBB assist in facilitating the process between the refugee and a potential employer.

¹²⁴ Dauvergne C et al. *Research handbook on the law and politics of migration* (2021) at 110; Government of Canada 'CIMM – Economic Mobility Pathways Pilot (EMPP) – October 24, 2023' available at <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/committees/cimm-october-24-2023/economic-mobility-pathways-pilot.html> (accessed 31 March 2024); UNHCR Canada 'EMPP alumni survey report 2023' available at <https://www.unhcr.ca/wp-content/uploads/2024/02/EMPP-Alumni-Survey-Report-2023.pdf> (accessed 10 September 2024) 2.

¹²⁵ Dauvergne et al. (2021) 110.

¹²⁶ UNHCR "Economic immigration of skilled refugees" available at <https://help.unhcr.org/canada/economic-immigration-of-skilled-refugees/> (accessed 31 March 2024).

¹²⁷ Government of Canada "Immigrate through the Economic Mobility Pathways Pilot: How the pilot works" available at <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/economic-mobility-pathways-pilot/immigrate.html> (accessed 31 March 2024).

¹²⁸ Dauvergne et al. (2021) 110; Cousins S "International leaders launch Global Task Force on refugee labour mobility" available at <https://www.talentbeyondboundaries.org/blog/international-leaders-launch-the-global-task-force-on-refugeelabour-mobility> (accessed 20 August 2022).

¹²⁹ Higgins C et al. "Refugees as skilled migrants: Insights from Australia's 2018 Employer-sponsored refugee migration pilot" (2023) *Social Indicators Research* 1 at 13.

6 CONCLUDING REMARKS

The Government of Canada finds ways to tap into refugees as a source of human capital due to its belief that they contribute meaningfully to their new communities.¹³⁰ In regard to the EMPP, employers can recruit skilled people from within displaced populations by working with organisations such as TBB; at the same time, government departments and civil society organisations help with visas and applications, and even cover the costs of successful applicants.¹³¹ The EMPP has shown that skilled refugees can meet the requirements for economic programmes while filling the skills shortage.

This approach could work for South Africa too. Refugees are entitled to apply for a CSWV in South Africa, but for their employment in an occupation listed on the CSL to become a reality, the government would have to revise specific requirements. There is also a need for collaboration between government departments, humanitarian organisations, and individuals willing to volunteer and support refugees. Organisations such as Refuge Point and TBB would do well to assist skilled refugees in South Africa in finding meaningful employment.

It has already been suggested that the South African government consider refunding the application fees of those refugees successfully occupying positions listed on the CSL; now it is suggested that it develop its own version of Canada's EMPP. Refugees can find a solution to their displacement by following normal migration processes only if their particular circumstances are considered, but this is not the case in South Africa. The South African state must become cognizant of the fact that asylum seekers and refugees require additional assistance to become employed in occupations requiring critical skills.

The DHA may reject this proposal based on the number of asylum seekers already in the country. Creating a project like the EMPP does not create a new pathway for refugees to enter South Africa; instead, it breaches the barriers they face when applying for the CSWV and positions listed on the CSL. It is in the interests of the government to fill skills shortages. It is entirely possible for this kind of approach to work in South Africa – the remaining question is whether the government wishes to extend this kind of assistance, especially in a political climate in which state officials often frame immigrants and refugees, skilled or not as enemies.

For this suggestion to work in South Africa, it is vital that refugees are not regarded as enemies and competitors for jobs and state resources, it has already been proved that this is not the case. The time has come for state officials to recognise their own role in

¹³⁰ Government of Canada “Immigrate through the Economic Mobility Pathways Pilot: How the pilot works” available at <https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/economic-mobility-pathways-pilot/immigrate.html> (accessed 22 May 2022).

¹³¹ Higgin C et al. “Complementary refugee pathways: Labour mobility schemes” available at <https://www.unsw.edu.au/content/dam/pdfs/law/kaldor/resources/2024-03-factsheets/2024-02-labour-mobility-pathways.pdf> (accessed 10 September 2024).

the perpetuation of xenophobic attitudes and hostility towards African refugees in particular. South Africans must adjust, change course, and like Canada, recognise the immense value immigrants and refugees bring to the societies they enter.

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AUTHORS' CONTRIBUTIONS

Kim-Leigh Loedolf authored 65 per cent of the article, and Megan Hector, 35 per cent. Most of the article was extracted from the unpublished work, Loedolf K "The effectiveness of the South African critical skills visa in comparative perspective" (LLD thesis, University of the Western Cape, 2023). The article also contains extracts from Megan Hector's LLB research paper supervised by Kim-Leigh Loedolf. The latter edited and finalised the manuscript for publication.

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