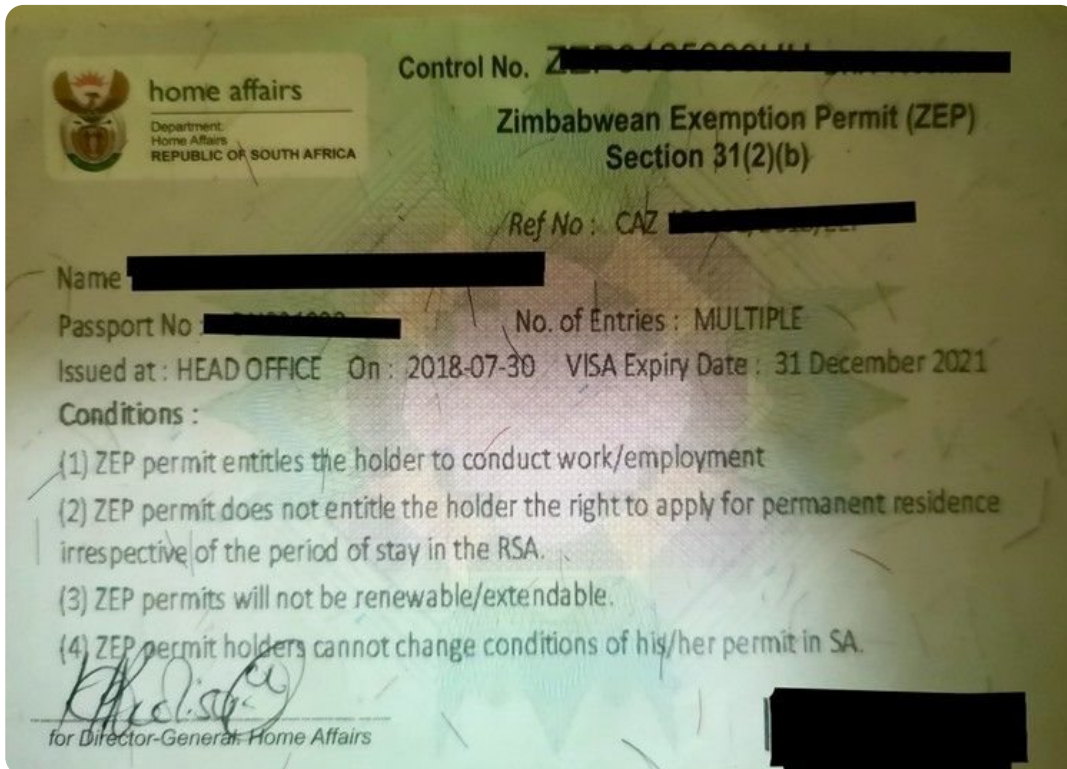


New Zimbabwe permit court showdown looming

At the heart of the matter is the question of whether the minister or Parliament can change the status of the permit.

By Tania Broughton ^{9 Jun 2025}



ZEP holders have won another court victory against the Minister of Home Affairs, but their legal battle to stay in South Africa is far from over. Archive photo: Tariro Washinyira / GroundUp

The Minister of Home Affairs has failed in his bid to overturn an interim interdict, granted in favour of the Zimbabwe Immigration Federation. The interdict prevented the arrest and deportation of Zimbabwean Exemption Permit (ZEP) holders.

The Supreme Court of Appeal (SCA) ruled on Friday that the interdict must remain in place, pending further court proceedings by the Federation. The Federation is seeking a ruling that the minister has no authority to all to terminate the ZEP regime. The permit was introduced in 2009 because of the “floods” of Zimbabweans entering the country at that time.

The Federation intends to argue that only Parliament can terminate the constitutional rights of the 180,000 holders of the permits. And that the Minister was wrong in law in believing that the termination of the regime would result in their deportation which was contrary to the principle of “[non refoulement](#)”.

[Read the judgment](#)

Complicated history

The matter has a legally complicated history. In June 2023, three judges sitting in the Gauteng High Court

Johannesburg ruled on two matters relating to the attempted termination of the ZEP regime by the minister

One was an application by the Helen Suzman Foundation (HSF), in which the court granted final relief, declaring the minister's decision to be unlawful. The court reviewed and set it aside and directed the minister to reconsider his decision following a "fair process".



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The court also granted protection to ZEP holders in the meantime.

The Federation's case was slightly different. It brought, and secured, an application (Part A) for interim relief preventing the arrest and deportation of ZEP holders pending a review (Part B) of the minister's decision.

The matter came before the Supreme Court of Appeal in an application by the minister to have the Part A order set aside on the basis that the pending review (in Part B), was now moot, given that his appeals in the HSF matter had all been rejected and he was now "following a fair process" as, ordered by the court.

But the Federation opposed the appeal. It said an interim order was not appealable in law. Also, that it had now amended the relief it was claiming in Part B and it was raising distinct issues that had not been considered in the HSF matter.

The minister's main contention was that the interim order could not be sustained because the review could not be litigated, given the HSF ruling. He thus claimed the order was "redundant" and should be set aside, with costs.

But the Federation argued that this was not so because it had amended its relief in the review and was now seeking a declarator that any decision to stop the ZEP regime was unconstitutional.



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Judge David Unterhalter, writing for the court, said the Federation had explained that the basis for this was that the minister did not have the power to undo or revise the protections that ZEP holders have enjoyed over a long period, and that only Parliament could do so.

Also, the Federation raised an issue of law that was not part of the HSF case: that the Immigration Act permits the Minister to withdraw a right for "good cause".

The minister, so it would be contended in Part B, did not establish the jurisdictional fact of good cause in the matter. He had acted without legal authority in doing so. And would continue to do so if he again sought to revoke the ZEP.

Judge Unterhalter said while both the HSF and Federation matters had "covered the same territory", the Federation had now raised other distinctive grounds.

These included the fact that the minister had not established “good cause”, given that the circumstances prevailing in Zimbabwe have not materially changed.

And the minister had made an error in law in that his decision was based upon the belief ZEP holders would be required to leave South Africa. But those who had fled would qualify as refugees and would enjoy protection under the principle of non-refoulement and may not be deported.

These grounds were not covered in the HSF review findings.



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“The HSF order remitted the matter back to the minister for reconsideration and to do so following a fair process,” Judge Unterhalter wrote.

“The premise of the HSF order is that it is open to the minister to exercise his powers under the Immigration Act to decide whether or not to extend the ZEP regime.

“The declaratory relief (by the Federation), by contrast, is predicated upon the proposition that the minister cannot exercise this power and no point would be served in sending it back to the minister. Rather the ZEP holders enjoy constitutional rights to remain in South Africa, unless Parliament decides otherwise.”

Judge Unterhalter said this, if granted, was “considerably more far-reaching, because it reaches into the future and is not based upon a reconsideration by the minister of his decision to terminate the ZEP regime

Thus the minister’s redundancy argument “cannot hold”.

He said the Part A order was not redundant because it was dependent on the final relief granted in the Part A review on grounds not determined in the HSF judgment.

In dismissing the appeal, and ordering the minister to pay the costs, Judge Unterhalter said: “I should not be understood to make any finding as to the prospects of the grounds advanced by the Federation. That awaits adjudication in the high court, in due course.”

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