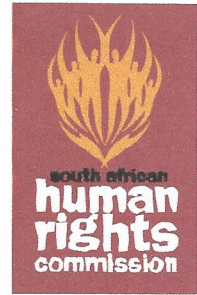


SOUTH AFRICAN HUMAN RIGHTS COMMISSION

33 Hoofd Street
Braampark, Forum 3
Braamfontein
2017

Private Bag X 2700
Houghton
2041

Tel.: 011 877 3600
Fax: 011 403 0668



25 July 2016

To: **The Honourable Minister Malusi Gigaba**
Minister of Home Affairs
Per email: minister@dha.gov.za

And to: **Mr Mkuseli Apleni**
Director-General: Department of Home Affairs
Tel: +27 12 406 2501
Per email: mkuseli.apleni@dha.gov.za

EXTREMELY URGENT

Dear Honourable Minister and Mr Apleni,

**PROPOSED ENTRY INTO SOUTH AFRICA BY PASTOR STEVEN ANDERSON ON 17 & 18
SEPTEMBER 2016**

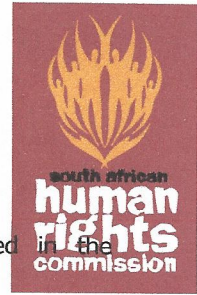
1. The Constitution of the Republic of South Africa ("the Constitution") mandates the South African Human Rights Commission ("the Commission") to promote respect for human rights as well as the protection, development and attainment of human rights. The Commission must also monitor and assess the observance of human rights in South Africa.
2. Under section 184(2) of the Constitution, the Commission has the power, among others, to investigate, to report on the observance of human rights, and to take steps to secure appropriate redress where human rights have been violated. The powers of the Commission are further supplemented by the South African Human Rights Commission Act, 40 of 2013 ("SAHRC Act"), allowing information to be requested from any organ of state in the execution of the Commission's mandate.
3. The mandate of the Department of Home Affairs ("the Department") is, in part, to control, regulate and facilitate immigration and the movement of persons through ports of entry. In performing its mandate, the Department contributes to ensuring national security, enabling economic development and promoting good international relations. Both the Commission and the

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Department must fulfil their mandates in accordance with the values enshrined in the Constitution.

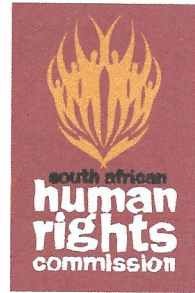
4. The Commission has received various complaints regarding the proposed entry of Pastor Steven Anderson ("Pastor Anderson"), an American citizen and founder of the Faithful World Baptist Church, and about 20 others into South Africa on 17 and 18 September 2016. These complaints are directed against both the Minister of Home Affairs ("the Minister") and Pastor Anderson.
5. In summary, the complaints are broadly based on the following allegations:
 - 5.1. Pastor Anderson has, on various occasions, expressed hateful, harmful and/or hurtful statements toward members of the lesbian, gay, bisexual, transgender and intersex ("LGBTI") community as well as members of the Jewish and Muslim communities, including through materials hosted on the website of the Faithful Word Baptist Church.
 - 5.2. An example of the speech complained of include recent remarks made by Pastor Anderson following the attack that killed 49 people and wounded 53 others, on 12 June 2016, inside Pulse, a gay nightclub in Orlando, Florida, United States.
 - 5.3. Pastor Anderson is alleged to have stated in statements about the shooting, inter alia, that:
 - i. The "*good news*" of the shooting was that "*there's 50 less pedophiles in this world*";
 - ii. "*Homosexuals are a bunch of disgusting perverts and pedophiles*";
 - iii. The "*bad news*" resulting from the attack will include people "*push[ing] an agenda against so-called 'hate speech'*"; and
 - iv. "*Obviously it's not right for someone to just shoot up the place because that's not going through the proper channels. But these people all should have been killed anyway but they should have been killed through the proper channels as in, they should have been executed by a righteous government that would have tried them, convicted them, and saw them executed.*"
6. The Commission is advised that a petition was submitted to the Minister of Home Affairs calling on the Department to take measures to prevent Pastor Anderson from entering South Africa.

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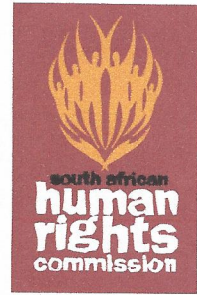
7. We note that the Department is reported as intending to refer this matter to the Commission. We note further the reported response from the Department to the petition stating that "*the minister empathises with the LGBT community*," but that American citizens do not require a visa to enter South Africa, and that although the Department feels that the comments made by Pastor Anderson were uncalled for, the law does not allow the Department to turn anyone away from entering the country based on what they have said outside South Africa.
8. The Commission wishes to draw the Department's attention to sections 29 and 30 of the Immigration Act, 13 of 2002. Section 29, read with regulation 26, contains the categories of foreigners considered to be 'prohibited persons' and therefore not qualifying for a port of entry visa or admission into the Republic. Further section 30, read with regulation 27, provides that the Director-General and/or Minister may declare the listed categories of foreigners as 'undesirable' and thus not qualifying for a port of entry visa or admission into the Republic. Based on the Commission's interpretation of these provisions, the Commission is of the view that, contrary to the reported views of the Department, the Immigration Act empowers the Department to prevent foreigners, within the categories specified, from entering the Republic.
9. It is with regret that the meeting with the Minister on Monday, 18 July 2016 regarding this matter could not proceed. The meeting would have provided both the Department and the Commission a valuable opportunity to discuss the complaints against the Department and Pastor Anderson more closely and the Commission's views on the interpretation of sections 29 and 30 of the Immigration Act.
10. For the purposes of the Commission's assessment of the complaints that have been levelled against the Department, we request a detailed report from the Department on its determinations in this matter and its intended future response herein. In particular, the Commission requests a detailed report on the following:
 - 10.1. Whether the Director-General and/or the Minister has made a decision, under either section 29 or section 30 of the Immigration Act and/or any other empowering provision, in this matter?
 - 10.2. If a decision has been made, please provide details of the decision as well as reasons thereof. Please include all information on the legal framework, policies and/or protocols relied on.

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- 10.3. If no decision has been taken, please provide information regarding the status of the matter in the Department as well as the anticipated next steps, including timeframes for the implementation of these actions.
11. In light of the urgency of this matter, we request a written response from the Department on or before 28 July 2016.
12. We thank your good offices in advance for your cooperation with the work of the Commission.

Yours faithfully,

A handwritten signature in black ink, appearing to read "M. L. Mushwana", is written over a horizontal line. The signature is somewhat stylized and cursive.

M. L. Mushwana
Chairperson
South African Human Rights Commission