

# PROVISIONS OF THE IMMIGRATION BILL 2003 THAT SUPPORT CAYMAN'S BUSINESSES AND ECONOMIC DEVELOPMENT

## WORK PERMIT ARRANGEMENTS

### LONG-TERM PERMITS

#### Longer work permit durations

The Immigration board will be able to grant work permits of

- up to **three years** in general cases, as it may determine, or
- for **three to five years** for special categories of persons, including those authorized by the board in a Business Staffing Authority (see below).

#### Greater flexibility through Business Staffing Plans

When considering a work permit application the board will continue to take into account whether, among other things, there is a genuine need for that worker's services and, if the post is for a professional, managerial, or skilled person, whether the prospective employer has set up a proper training or scholarship programme for Caymanians.

In addition, every company, firm or other business employing 15 or more work permit holders will have to submit a Business Staffing Plan. Companies, partnerships or firms employing less than 15 work permit holders may submit a plan but it will not be mandatory.

The **advantage of the Business Staffing Plan** is that all establishments submitting one will be permitted to identify all posts that are vital to the business for the duration of the plan and to justify to the board the reasons for classifying those positions as such. These positions can then be designated as '**exempted positions**' for the period of the plan. These positions would be **exempted from the term limits** on work permit holders.

#### Term limits; exceptions for exempted employees and exceptional circumstances

The maximum length of time a person can normally live in the Islands on work permits is a **total of seven years**. After this period of continuous residence the board cannot normally grant the person any further work permits until two years after he/she has left the Islands. However, there will be a number of exceptions to this rule.

If the work permit holder is an '**exempted employee**,' or if the board considers that there are **exceptional circumstances**, the board may, at its discretion, grant such a person additional work permits to enable him/her to complete an aggregate period of nine years, thus making him eligible to apply for the grant of Permanent Residence.

#### Who is an 'Exempted Employee?'

Before the board can designate a worker as an "exempted employee" it will have to be satisfied that he fulfils certain requirements. Note that this section of the bill is being redrafted based on feedback that has already been received. Under the re-draft, the definition of 'exempted employee' will include:

- persons who are **experts** in their field;

- professional employees who have **specialised skills** that cannot be easily found within or outside the Islands and who need to be retained because these specialist skills are of substantial economic or social benefit to the Islands;
- persons whose **business contacts** are important to the continued success of the business and to the Island;
- persons directly involved in **training Caymanians** and developing their skills in the field in which they are employed or practices and their expertise in this regard is important to the effective continuation of such training and development;
- persons whose **absence would cause serious hardships** to their employers or to Caymanians; and
- such other persons as are considered by the Immigration Board to have **special reason** to remain based on the circumstances of a particular case.

A person can be identified as exempted prior to his arrival in the Islands or at anytime during his first seven years. It is up to the employer to make his case to the Immigration Board. It should be borne in mind that such identification of exempted persons shall be within the Board's discretion, subject always to the definition contained in the law and to a right to appeal.

## **RESTRICTIONS SURROUNDING LONG-TERM PERMITS**

### **Limitations on permits**

When the board grants a permit, it may specify any limitations or conditions and these will be stated on the permit. The board may modify the terms of a permit if the employer or worker applies for this to be done.

The fact that the board has granted a person a work permit and has granted a second one after the first one ends does not mean that the permit holder has a right to any further grants and the work permit holder should not expect such a right. The board can refuse an application for a work permit and the applicant will not have the right to appeal on the grounds that the previous grant meant he/she had a right to, or expectation of, a further grant.

### **Grounds on which work permit application can be turned down**

An application for the grant or renewal of a work permit may be refused on any of the following grounds:

- that the applicant is not able to, or will not, support his/her dependants properly;
- that there are reasonable grounds for suspecting that the applicant uses or is involved in illegal drugs; has a background of subversive political activity, racism or any other illegal activity or has been convicted of a crime, unless the board is satisfied it is minor;
- that the applicant has been involved in serious financial problems; or
- that the work permit holder has been promoted or re-designated by his/her employer without the prior approval of the Board.

### **Rights of applicants**

Before revoking, or refusing to renew a work permit the board would have to:

- consider all objections;
- conduct an inquiry into the applicant; and
- have to ensure all allegations are backed up and a full investigation of such allegations is carried out.

## **Board approval for changes in work permits – promotions, re-designations or changes in employer**

Work permit holders may not be promoted or re-designated unless they/their employer applied for and received the board's approval. In considering such an application the board will need to satisfy itself that the employer has complied with the Business Staffing Plan, if there is one.

In considering an application for the promotion or re-designation of a work permit holder to the level of partner (whether revenue partner or otherwise) the board must also take into account the effect the change will have on the opportunity for advancement to partner level of a Caymanian who is already in the same profession within the business enterprise and who has equal experience and expertise.

## **Board to take input from authority regulating professional employees**

When dealing with applications for work permits for professional employees, the board will have to consult with the appropriate authority representing or regulating that profession and take into account the authority's views on the Islands' needs for professional staff in the particular profession.

The board will have to notify the appropriate authority of the details of every work permit applied for, even if the permit is not granted.

In addition, the board will not be able to grant a work permit to a person wishing to be a self-employed professional or a professional employee unless the authority has satisfied the board that the applicant has been legally registered as a practitioner in his field and that he is, or intends to be, ordinarily resident in the Islands.

## **TRANSITIONAL PROVISIONS FOR PEOPLE NOW ON WORK PERMITS**

When the law comes into effect, people who are on work permits will fall into five categories, based on the total length of time they have been on permits. There will be different arrangements for each group of people.

*Arrangements for the first three categories are as follows:*

- Persons who have been on work permits for five years in total but less than six shall be granted final work permits for up to a maximum of three years.
- Those here six years but less than seven may, at the board's discretion, be granted a final work permit for two years, maximum.
- Persons here on work permits for a total of seven years but less than eight may, at the board's discretion, be granted a final permit for one year, maximum.

If a person who falls into any of the above three categories can be considered an exempted employee, or if there are exceptional circumstances, the board may grant the person additional work permits to enable him/her to complete an aggregate period of nine years. The time periods set out above will enable all work permit holders of over five years but less than eight years to continue on work permits until they are eligible to apply for the grant of Permanent Residence when they reach year eight.

*Arrangements for the other two categories are:*

- Persons here between eight and 15 years would be able to apply for the grant of a Residency and Employment Rights Certificate if he/she is of good character, has made a substantial contribution to the community and qualifies under the new point system to be set out in the regulations to this law. If such application were unsuccessful the applicant would be given one final one-year work permit.

- Persons here on work permits for over 15 years, providing they satisfy the board of their good character, will be granted a Residency and Employment Rights Certificate, unless there are exceptional circumstances.

Note that all work permits or temporary work permits that are in force when this law comes into effect will continue as if they had been granted under this law

## **TEMPORARY PERMITS**

### **Short duration permits – six-month limit**

The Chief Immigration Officer will have authority to grant a temporary work permit for a visitor to enter or remain in the Islands to work for a short term. A temporary work permit can be issued for any length of time up to a maximum of six months.

*Requirements to be met* – Before a work permit is granted, the Chief Immigration Officer or person granting the permit must be satisfied that suitable living accommodation in the Islands will be available for the visitor concerned throughout his proposed stay. They must also take into account other matters that the law usually requires the board to consider before granting a full work permit.

*Temporary permits cannot extend beyond six months* – The Chief Immigration Officer can revoke a temporary work permit at any time or vary the conditions. The CIO can also extend the period of the permit but not beyond the six-month limit. Therefore, if a temporary permit was issued for six months in the first instance, it cannot be extended, but if it was granted for one month, for example, it could be extended up to five months more for a total of six months.

### **Business visitors permit – 14-day validity**

A company, partnership or firm that regularly throughout the year employs temporary people who are not ordinarily resident in the Islands will be able to apply once a year for one or more business visitors permits. These permits would cover one or more visits within that year, each visit being no more than 14 days.

## **RESIDENCY RIGHTS FOR ENTREPRENEURS / INVESTORS**

### **Who would qualify**

A person of substantial net worth who has and is likely to continue to have the necessary knowledge to successfully carry on the business proposed and who has invested a substantial sum of money in a licensed business or businesses which create jobs locally would be able to apply for a Residential Certificate for Entrepreneurs and Investors.

This certificate would be valid for 25 years and will carry a right to work in the licensed business or businesses in which he or she has invested.

### **Requirements to be met**

The applicant would be granted the certificate if he/she satisfies the Chief Immigration Officer that he/she has a clear criminal record, is in good health and has adequate health insurance coverage, and that the investment would make a significant contribution to the economic and cultural life of the Islands.

### **Arrangements for dependants**

The person's spouse and dependants would be given a Residential Holder's (Dependant's) Certificate, which would also permit them to reside in the Islands. If the holder of the Residential Certificate for Entrepreneurs and Investors dies or the marriage is dissolved, the other spouse's right to live in the Cayman Islands would end. However, that person could apply for a grant of a Residential Certificate for Entrepreneurs and Investors in their own right. The right of the dependant child to reside in the Islands as a dependant would end upon completion of his full-time tertiary education or at the age of 24, whichever ends sooner.

### **Conditions under which the right to permanent residence**

In addition to the general conditions under which the right of residence can be lost (See the Immigration Bill Summary) the holder of a Residential Certificate for Entrepreneurs and Investors would lose his/her right to live in the Islands if he/she does not provide the Chief Immigration Officer with annual statements of his investments, does not maintain the level of investment required, loses his/her business licence, or was ordinarily resident outside the Islands for more than 180 days in any 365-day period.

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**PERSONS WISHING TO OFFER INPUT MAY MAIL OR DROP COMMENTS AT THE FOLLOWING POINTS:**

The Immigration Review Team  
c/o the Immigration Dept.  
P.O. Box 1098G.T.

Leader of Government Business  
The Hon. McKeeva Bush  
c/o the Gov't. Administration  
Bldg.  
Elgin Ave., G.T.

**Chief Immigration Officer** at:  
[gerry.maguire@gov.ky](mailto:gerry.maguire@gov.ky)  
or  
**IRT Chairman**  
c/o Government Information  
Services, at : [gis@gov.ky](mailto:gis@gov.ky)

**Additional information can be found at [www.gov.ky](http://www.gov.ky) and [www.caymanchamber.com.ky](http://www.caymanchamber.com.ky).**