

CAYMAN ISLANDS



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A BILL FOR A LAW TO AMEND THE IMMIGRATION LAW (2015 REVISION) IN ORDER TO PROVIDE FOR AMENDMENTS TO THE GRANT OF RESIDENCY AND EMPLOYMENT RIGHTS CERTIFICATE; TO EXTEND THE POWERS OF THE CHIEF IMMIGRATION OFFICER TO THE WORKFORCE OPPORTUNITIES AND RESIDENCY CAYMAN DEPARTMENT; TO PROVIDE FOR AMENDMENTS TO THE RIGHT TO APPLY FOR EXEMPTIONS FOR SPECIALIST CAREGIVERS; TO TAKE AWAY THE TIME LIMITS FOR CERTAIN PERSONS TO APPLY FOR THE RIGHT TO BE CAYMANIAN; TO PROVIDE FOR THE ESTABLISHMENT OF A TRIBUNAL TO HEAR APPEALS AGAINST THE REFUSAL OF APPLICATIONS FOR ASYLUM; TO PROVIDE FOR THE PROCEDURE FOR CARRYING OUT APPEALS TO THE TRIBUNAL; AND FOR INCIDENTAL AND CONNECTED PURPOSES

THE IMMIGRATION (AMENDMENT) BILL, 2018

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to make several amendments to the Immigration Law (2015 Revision) (“the principal Law”). These amendments deal with a wide range of immigration matters which have been of concern for some time. The Bill also seeks to provide that the public officer in charge of the new department of Government called the Workforce Opportunities and Residency Cayman will share certain powers with the Chief Immigration Officer until further notice.

Clause 1 provides the short title and the commencement provisions relating to the establishment of the Asylum appeals.

Clause 2 amends the principal Law to insert a definition of the “Refugee Protection Appeals Tribunal”.

Clause 3 inserts a section 3A which provides that the public officer in charge of the new Government department i.e. the Workforce Opportunities and Residency Cayman Department of Government, shall have the same powers, duties, functions, rights, privileges and immunities of the Chief Immigration Officer except those powers, duties, functions, rights, privileges and immunities of the Chief Immigration Officer under the following provisions-

- (a) Part VI;
- (b) Part VII; and
- (c) Part VIII; and
- (d) sections 103 and 111 of Part IX.

Clause 4 provides for the amendment of section 19 of the Law in order that rules may also be made for appeals from the Refugee Protection Appeals Tribunal.

Clause 5 amends section 22(9) of the principal Law to provide that a person may at any age apply for Caymanian status where his or her status as Caymanian may have expired when reaching the age of eighteen.

Clause 6 amends section 23 of the principal Law to remove the date restriction on eligibility for persons to apply for the right to be Caymanian.

Clause 7 clarifies the categories of persons who may apply for permanent residence.

Clause 8 amends section 30(7) of the principal Law to provide that a person who applies for permanent residence under section 32 is required to pay certain fees otherwise the Chief Immigration Officer will not entertain the application.

Clause 9 amends section 31 to provide that a spouse of a Caymanian may, in certain circumstances, hold a Residency and Employments Rights Certificate for an indefinite period.

Clause 10 amends section 32 of the principal Law to clarify that an applicant for permanent residence who was a dependant is subject to most of the provisions of the principal Law relating to the rights and obligation of permanent residents under the principal Law.

Clause 11 amends section 33 of the principal Law relating to the loss of Residency and Employment Rights Certificate by a spouse who is the parent of a Caymanian child.

Clause 12 amends section 37C of the principal Law relating to applications for Certificates for Specialist Caregivers. It is proposed, among other things, that if the employment of the caregiver will be in Cayman Brac or Little Cayman, that the applicant may apply to the Cayman Brac and Little Cayman Immigration Board.

Clause 13 provides for amendments to section 84 of the principal Law. The first amendment corrects the reference in subsection (3) to subsection (1). The second amends subsection (6) so that appeals under that section are made to the Refugee Protection Appeals Tribunal.

Clause 14 provides for the insertion of new sections 84A through 84D which deals with the establishment and operation of the Refugee Protection Appeals Tribunal.

Clause 15 amends section 100 of the principal Law to provide that the Cabinet may issue policy directions to the Refugee Protection Appeals Tribunal.

Clause 16 provides for the amendment of section 101 of the principal Law to include the Refugee Protection Appeals Tribunal as one of the entities empowered to question or request documentation of persons, such questions or documentation being reasonably required in the proper discharge of its functions.

Clause 17 contains transitional provisions relating to the legislation.

THE IMMIGRATION (AMENDMENT) BILL, 2018

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Amendment of section 2 of the Immigration Law (2015 Revision) - definitions
3. Amendment of the principal Law- insertion of section 3A
4. Amendment of section 19 - rules relating to appeals
5. Amendment of section 22 – acquisition of the right to be Caymanian by grant of the Board
6. Amendment of section 23 - persons who may apply to the Chief Immigration Officer for the right to be Caymanian
7. Amendment of section 29 - categories of permanent residence
8. Amendment of section 30 – persons legally and ordinarily resident in the Islands for at least eight years
9. Amendment of section 31 - Residence and Employment Rights Certificate for the spouse of a Caymanian
10. Amendment of section 32 - dependants of Residency and Employment Rights Certificate holders
11. Amendment of section 33 - loss of Residency and Employment Rights Certificate
12. Amendment of section 37C - certificate for specialist care givers
13. Amendment of section 84 - application for asylum
14. Insertion of section 84A - procedure for appeals
15. Amendment of section 100 - directions to Board and Chief Immigration Officer
16. Amendment of section 101 - power to put questions and require production of document
17. Transitional provisions

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A BILL FOR A LAW TO AMEND THE IMMIGRATION LAW (2015 REVISION) IN ORDER TO PROVIDE FOR AMENDMENTS TO THE GRANT OF RESIDENCY AND EMPLOYMENT RIGHTS CERTIFICATE; TO EXTEND THE POWERS OF THE CHIEF IMMIGRATION OFFICER TO THE WORKFORCE OPPORTUNITIES AND RESIDENCY CAYMAN DEPARTMENT; TO PROVIDE FOR AMENDMENTS TO THE RIGHT TO APPLY FOR EXEMPTIONS FOR SPECIALIST CAREGIVERS; TO TAKE AWAY THE TIME LIMITS FOR CERTAIN PERSONS TO APPLY FOR THE RIGHT TO BE CAYMANIAN; TO PROVIDE FOR THE ESTABLISHMENT OF A TRIBUNAL TO HEAR APPEALS AGAINST THE REFUSAL OF APPLICATIONS FOR ASYLUM; TO PROVIDE FOR THE PROCEDURE FOR CARRYING OUT APPEALS TO THE TRIBUNAL; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Immigration (Amendment) Bill, 2018.

Short title and commencement

(2) Sections 2, 4, 13, 14, 15 and 16 and 17(3) shall come into force on such date as may be appointed by Order made by the Cabinet.

2. The Immigration Law (2015 Revision), in this Law referred to as the “principal Law”, is amended in section 2 by inserting in the appropriate alphabetical sequence the following definition -

Amendment of section 2 of the Immigration Law (2015 Revision) – definitions

“Refugee Protection Appeals Tribunal” means the Refugee Protection Appeals Tribunal established under section 84A;”.

Amendment of the principal Law- insertion of section 3A

3. The principal Law is amended by inserting after section 3 the following section -

“Sharing of certain powers and duties of Chief Immigration Officer

3A. (1) The public officer in charge of administration of the Workforce Opportunities and Residency Cayman Department of Government, shall have the same powers, duties, functions, rights, privileges and immunities of the Chief Immigration Officer except those powers, duties, functions, rights, privileges and immunities of the Chief Immigration Officer under -

- (a) Parts VI, VII and VIII; and
- (b) sections 103 and 111 of Part IX.”.

Amendment of section 19 - rules relating to appeals

4. The principal Law is amended in section 19 by inserting after the words “Appeals Tribunal” the words “or the Refugee Protection Appeals Tribunal”.

Amendment of section 22 - acquisition of the right to be Caymanian by grant of the Board

5. The principal Law is amended in section 22(9) by deleting the words “prior to reaching the age of twenty-four”.

Amendment of section 23 - persons who may apply to the chief Immigration Officer for the right to be Caymanian

6. The principal Law is amended in section 23 by deleting the words “within one year from the 21st December, 2006”.

Amendment of section 29 - categories of permanent residence

7. The principal Law is amended in section 29 by repealing subsections (1) and (2) and by substituting the following subsections -

“(1) The Caymanian Status and Permanent Residency Board and the Chief Immigration Officer may grant the right to reside permanently in the Islands to the following non-Caymanian applicants -

- (a) persons, including their spouses, who have been legally and ordinarily resident in the Islands for a minimum period of eight years;
- (b) the spouse of a Caymanian; and

- (c) a dependant of a Residency and Employment Rights Certificate who meets the requirements set out in section 32.
- (2) The Chief Immigration Officer may grant the right to reside permanently to -
- (a) the surviving spouse of a Caymanian under section 22(7); and
 - (b) persons of independent means, including their spouses, under section 34A.”.
8. The principal Law is amended in section 30 (7) by inserting after the words “subsection (1)” the words “or section 32 (1b).”.
- Amendment of section 30 - persons legally and ordinarily resident in the Islands for at least eight years
9. The principal Law is amended in section 31 as follows -
- Amendment of section 31- Residence and Employment Rights Certificate for the spouse of a Caymanian
- (a) in subsection (1) -
 - (i) by deleting the words “The spouse” and substituting the words “Subject to section 33(3), the spouse”; and
 - (ii) by deleting the words “for a period of seven years and such Certificate when granted may, upon application, be renewed at the discretion of the Chief Immigration Officer or the Board”; and
 - (b) by repealing subsection (8) and substituting the following subsection -

“(8) Notwithstanding subsection (6), where a spouse is the holder of a work permit and the spouse applies for a Residency and Employment Rights Certificate during the currency of the work permit, the spouse may continue to work during the period between the expiration of the work permit and -

 - (a) the determination of the application for the Certificate by the Board or by the Chief Immigration Officer; or
 - (b) the determination of an appeal to the Immigration Appeals Tribunal where the spouse has appealed the Board’s or the Chief Immigration Officer’s decision to refuse the application.”.
10. The principal Law is amended in section 32 as follows-
- Amendment of section 32- dependants of Residency and Employment Rights Certificate holders
- (a) in subsection (1) -
 - (i) by deleting the words “at the discretion of the Board or the Chief Immigration Officer,”; and

- (ii) by deleting the words “under section 30(1)”; and
- (b) by inserting after subsection (1) the following subsections -

“(1a) A person who applies for a Residency and Employment Rights Certificate under this section is not subject to section 30(3) but, on obtaining such Certificate, is subject to the provisions of sections 30(6) to (23), 33 and 38.

“(1b) An application under subsection (1) shall be accompanied by the prescribed application fee, issue fee and the annual fee with respect to the first year.”.

Amendment of section
33- loss of Residency
and Employment Rights
Certificate

11. The principal Law is amended in section 33 as follows -

- (a) by repealing subsection (2) and substituting the following subsection -

“(2) A person who has forfeited his rights under subsection (1) and-

- (a) is or was the spouse of a Caymanian; and
- (b) is the parent of a Caymanian child,

may apply to the Board or the Chief Immigration Officer for a continuation of the Residency and Employment Rights Certificate -

- (i) until the child reaches the age of eighteen years; or
- (ii) where the child is enrolled in tertiary education, until he completes his education or has reached the age of twenty-four years, whichever happens earlier.”; and

- (b) by repealing subsection (3) and substituting the following subsection -

“(3) Notwithstanding section 31(1), where the holder of a Residency and Employment Rights Certificate is the surviving spouse of a Caymanian, that surviving spouse shall be required, in order to continue to hold that Certificate, to apply to the Board or the Chief Immigration Officer for the right to continue to hold the Certificate and-

- (a) the Board or the Chief Immigration Officer shall, in considering the application take into account -
 - (i) the length of the marriage;
 - (ii) whether there are any children;
 - (iii) whether immediately prior to the death the marriage was no longer subsisting as evidenced by a decree of a competent court, a deed of

- separation or what appears to be the breakdown of the marriage;
 - (iv) the applicant's ability to support himself and any dependants; and
 - (v) the applicant's health and character.”; and
- (b) thereafter, the Board or the Chief Immigration Officer shall either revoke the Certificate or allow the continuation of the Certificate.”.

12. The principal Law is amended in section 37C as follows -

Amendment of section 37C - certificate for specialist care givers

- (a) by repealing subsection (1) and by substituting the following subsection-

“(1) The employer or former employer of a person who meets the criteria contained in subsection (2) may apply to the Work Permit Board, or the Chief Immigration Officer, or, where the employment relates to employment in Cayman Brac or Little Cayman, to the Cayman Brac and Little Cayman Immigration Board, for the grant or renewal of a Certificate for Specialist Caregivers in respect of that person.”; and

- (b) in subsection (2), by repealing paragraph (b) and substituting the following paragraph -

“(b) the person is or was employed with the employer or former employer making the application, as a domestic helper, nurse or nanny, or in some other care giving capacity -

- (i) for at least three years immediately before the permission to be employed in that capacity terminated; or
- (ii) for a period of at least one year preceding the expiration of his term limit and the Work Permit Board, the Cayman Brac and Little Cayman Immigration Board or the Chief Immigration Officer, as the case may be, is satisfied that there are, in relation to the application, exceptional circumstances;”.

13. The principal Law, is amended in section 84 as follows -

Amendment of section 84 - application for asylum

- (a) in subsection (3), by deleting the words “subsection (4)” and substituting the words “subsection (1)”;
- (b) in subsection (6), by deleting the words “Immigration Appeals Tribunal” and inserting the words “Refugee Protection Appeals Tribunal”.

Insertion of section 84A
- procedure for appeals

14. The principal Law is amended by inserting after section 84 the following sections -

Refugee
Protection
Appeals Tribunal

84A. (1) There is established a Refugee Protection Appeals Tribunal for the purpose of hearing appeals from decisions by the Chief Immigration Officer to refuse applications for asylum under this Part.

(2) The Tribunal shall consist of a Chairman, a Deputy Chairman and three other members, all of whom shall be appointed by, and hold office at the pleasure of the Cabinet.

(3) The Chairman shall be an attorney-at-law of at least seven years' call to the bar and the Deputy Chairman shall be an attorney-at-law of at least five years' call to the bar.

(4) The Cabinet shall appoint a Secretary to the Refugee Protection Appeals Tribunal to record and keep all minutes of the meetings, proceedings and decisions of the Tribunal and who shall have no right to vote.

(5) The Tribunal under this section shall meet on such occasions as, in the opinion of the Chairman, may be necessary or desirable to ensure an efficient and timely disposal of appeals.

(6) Any member of the Refugee Protection Appeals Tribunal who, without obtaining the prior written permission of the Chairman, is absent from more than two out of five consecutive meetings of that Tribunal shall cease to be a member of the Tribunal.

(7) In the temporary absence of the Chairman or in the event of the Chairman's inability to act, the Deputy Chairman shall act as chairman and exercise all the powers and functions of chairman including the convening of meetings.

(8) At every meeting of the Refugee Protection Appeals Tribunal -

- (a) it shall reach its decisions by a majority of the votes of members present and voting;
- (b) the Chairman or presiding member shall have no original but only a casting vote; and
- (c) three members present shall form a quorum.

(9) Where a member of the Refugee Protection Appeals Tribunal has a personal or pecuniary interest, direct or indirect, in any matter which is to be determined by the Refugee Protection Appeals Tribunal, the member shall, if present at the meeting at which such matter is to be determined, as soon as possible after the commencement thereof, disclose the fact and leave the meeting.

(10) Subject to subsections (5) through (9), the Refugee Protection Appeals Tribunal shall have power to regulate its own procedure.

Application of sections 9 and 10 to Refugee Protection Appeals Tribunal 84B. Sections 9 and 10 apply to the Refugee Protection Appeals Tribunal as if references in those sections to the Boards are references to the Refugee Protection Appeals Tribunal.

Procedure for appeals 84C. (1) Appeals under section 84(6) shall be by notice in writing addressed to the Secretary of the Refugee Protection Appeals Tribunal and the notice shall set out the decision against which the appeal is made and be accompanied by a copy of the original application which is the subject of the appeal and a copy of the Chief Immigration Officer's decision.

- (2) Any correspondence to the appellant -
 - (a) by post, shall be deemed to have been received no later than seven days from the date of dispatch; or
 - (b) by electronic mail, shall be deemed to have been received no later than twenty-four hours after its transmission.
- (3) The Refugee Protection Appeals Tribunal

shall notify the Chief Immigration Officer of the decision being appealed against within seven days of receipt of a notice of appeal.

(4) The Chief Immigration Officer shall deliver to the Refugee Protection Appeals Tribunal and the appellant the reasons for the decision being appealed against within a reasonable period of receipt of the notification under subsection (3).

(5) Upon receipt of the reasons, the appellant shall, within fourteen days, file the details of the grounds of appeal and serve a copy on the Chief Immigration Officer.

(6) Upon receipt of the appellant's detailed grounds of appeal, the Chief Immigration Officer may, within fourteen days, provide a written defence which shall be filed with the Refugee Protection Appeals Tribunal and served on the appellant.

(7) Upon receipt by the Refugee Protection Appeals Tribunal of the appellant's detailed grounds of appeal under subsection (5), the Tribunal may request additional information or further particulars from the appellant.

(8) The period within which -

- (a) the detailed grounds of appeal shall be filed under subsection (5); and
- (b) the Chief Immigration Officer may file a written defence under subsection (6),

may be extended by the Chairman of the Refugee Protection Appeals Tribunal at the written request of the appellant or the Chief Immigration Officer for good reason shown.

(9) Upon receipt of the appellant's detailed grounds of appeal, including any additional information or further particulars requested from the appellant, and upon receipt of the Chief Immigration Officer's written defence, if any, the Refugee Protection Appeals

Tribunal shall proceed with the hearing of the appeal.

(10) At the hearing of an appeal, the parties may appear before the Tribunal in person or be represented.

(11) There shall be no fee payable for an appeal under section 84.

(12) The Refugee Protection Appeals Tribunal shall provide an appellant under this Part with a decision within seven days of the conclusion of the hearing of an appeal.

Appeals from decisions of the Refugee Protection Appeals Tribunal 84D. An appeal may be made to the Grand Court from a decision of the Refugee Protection Appeals Tribunal on a point of law only.”.

15. The principal Law is amended in section 100 by inserting after the words “Immigration Appeals Tribunal” the words “; Refugee Protection Appeals Tribunal” each time that it appears.

Amendment of section 100 - directions to Board and Chief Immigration Officer

16. The principal Law is amended in section 101 by inserting after the words “Immigration Appeals Tribunal” the words “; Refugee Protection Appeals Tribunal”.

Amendment of section 101 - power to put questions and require production of documents

17. (1) A person who, immediately before the commencement of this Law, is in possession of Residency and Employment Rights Certificate is, upon the commencement of this Law, taken to have been issued such Certificate subject to the terms and conditions of the principal Law as well as those terms and conditions under the principal Law which are amended by section 8 of this Law.

Transitional

(2) Where prior to the commencement of this Law an application has been submitted for the grant or renewal of a certificate for a Specialist Caregivers under the principal Law and that application has not been determined at the date of the commencement of this Law the application shall be determined in accordance with this Law.

(3) Where prior to the commencement of this Law an appeal relating to an application for asylum was filed the appeal shall be dealt with as if this Law had not come into force.

(4) In this section “this Law” means the principal Law as amended by this amending Law.

Passed by the Legislative Assembly the day of , 2018.

Speaker.

Clerk of the Legislative Assembly