

CAYMAN ISLANDS



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**A LAW TO AMEND THE IMMIGRATION LAW (2007 REVISION) TO
MAKE FURTHER PROVISION IN RESPECT OF PERMANENT
RESIDENCE; TO ESTABLISH CRITERIA RELATING TO THE IDENTITY
OF PROSPECTIVE WORK PERMIT HOLDERS; TO EXTEND THE
POWERS OF THE CHIEF IMMIGRATION OFFICER; AND FOR
INCIDENTAL AND CONNECTED PURPOSES**

THE IMMIGRATION (AMENDMENT) LAW, 2008

ARRANGEMENT OF SECTIONS

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25. Validation of certain acts and things

CAYMAN ISLANDS

Law 17 of 2008.

I Assent

Stuart Jack

Governor.

Date: 21 November, 2008

**A LAW TO AMEND THE IMMIGRATION LAW (2007 REVISION) TO
MAKE FURTHER PROVISION IN RESPECT OF PERMANENT
RESIDENCE; TO ESTABLISH CRITERIA RELATING TO THE
IDENTITY OF PROSPECTIVE WORK PERMIT HOLDERS; TO
EXTEND THE POWERS OF THE CHIEF IMMIGRATION OFFICER;
AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Immigration (Amendment) Law, 2008.
2. The Immigration Law (2007 Revision), in this Law referred to as the “principal Law”, is amended in section 2-
 - (a) by deleting the definition of “Administrator”;
 - (b) in the definition of “Board” by deleting the words “of section 52” and substituting the words “of sections 44(4)(b), 49 and 52”;
 - (c) by inserting in alphabetical sequence, the following:
“ “Director of Boards and Work Permits” means the Director of Boards and Work Permits holding office under section 7(1);

Short title

Amendment of section 2
of the Immigration Law
(2007 Revision) –
definitions

“seasonal worker” means a person who has been or may be granted a temporary work permit by the Chief Immigration Officer under section 53 for employment in the tourism, hospitality or water sports industry during the peak tourism season for a continuous period not exceeding eight months in any period of twelve months”;

- (d) in the definition of “worker” by inserting after the word “renewed” the word “, respectively,”; and
- (e) in the definition of “work permit” by adding after the words “temporary work permit” the words “or a temporary work permit for seasonal workers”.

Amendment of section 4
– Immigration Boards

3. The principal Law is amended in section 4-

- (a) in subsection (2)(f) by deleting the word “Administrator” and substituting the words “Director of Boards and Work Permits”;
- (b) in subsection (3)(f) by deleting the word “Administrator” and substituting the words “Director of Boards and Work Permits” and
- (c) in subsection (4)(h) by deleting the word “Administrator” and substituting the words “Director of Boards and Work Permits”.

Amendment of section 7
– appointment of
Immigration Boards,
Administrator and
functions of Boards

4. The principal Law is amended in section 7-

- (a) by deleting the marginal note and substituting the following:

“Appointment of Immigration Boards, Director of Boards and Work Permits and functions of Boards”;

- (b) in subsection (1) by deleting the words “an Immigration Boards Administrator” and substituting the words “a Director of Boards and Work Permits”; and
- (c) by repealing subsection (2) and substituting the following:

“(2) The duties of the Director of Boards and Work Permits shall include-

- (a) the planning and co-ordination of the activities of –
 - (i) the Boards; and
 - (ii) the Work Permit Administration section;
- (b) development and implementation of strategies and systems to promote efficiency in the processing of applications by the Boards and by the Work Permit Administration section;
- (c) meetings with the public, at his sole discretion, in relation to immigration matters; and

- (d) attending to administrative matters assigned to him by the Chief Immigration Officer.”.

5. The principal Law is amended in section 15(1)-

Amendment of section 15 – appeals from decisions of Boards

- (a) by deleting the marginal note and substituting the following:
“Appeals from decisions of Boards and Chief Immigration Officer”;
- (b) by adding after the words “any decision” the words “of the Chief Immigration Officer under section 42(5) or”; and
- (c) by adding after the words “to that Board” the words “or to the Chief Immigration Officer”.

6. The principal law is amended in section 22 by adding after subsection (7) the following:

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

“ (7A) Where pursuant to subsection (7) permanent residence is granted, the Chief Immigration Officer shall issue to the successful applicant a Residency and Employment Rights Certificate, which Certificate shall entitle the holder-

- (a) to accept employment from any employer of his choice; and
- (b) to have reside with him within the Islands such of his dependants as were listed in his application and were approved by the Chief Immigration Officer,

but the Certificate shall restrict him to working within the particular occupation specified by the Chief Immigration Officer; and such certificate may be varied by the Chief Immigration Officer.”.

7. The principal law is amended by repealing section 28 and substituting the following:

Repeal and substitution of section 28 – revocation on conviction

“Revocation on conviction

28. Where the grantee of the right to be Caymanian or of Caymanian status under this or any earlier Law is convicted by any court of an offence-

- (a) for which he is sentenced to an immediate term of imprisonment of twelve months or more, other than for non-payment of a fine; and in respect of which conviction his rights of appeal have been exhausted; or
- (b) which, in the opinion of the grantor, was made possible by, facilitated by or connected with the grant, the grantor may revoke the grant on its own motion.”.

Amendment of section 30 – persons legally and ordinarily resident in the Islands for at least eight years

8. The principal Law is amended in section 30-

- (a) by repealing subsection (4) and substituting the following:

“ (4) In considering an application for permanent residence under subsection (1), the Board upon applying the criteria set out in the points system shall grant permanent residence to all applicants attaining one hundred points or more.”;

- (b) in subsection (5) by inserting after the word “applicant” the words “has not appealed against such refusal or” ; and

- (c) by repealing subsection (13) and substituting the following:

“ (13) A person who enjoys the status of permanent resident granted prior to 1st January, 2004, may apply to the Board for a variation of that status to enable him to acquire the rights outlined in subsection (6) and in the absence of exceptional circumstances the Board shall approve the application.”.

Amendment of section 31 – Residency and Employment Rights Certificate for spouse of a Caymanian

9. The principal Law is amended in section 31-

- (a) by repealing subsection (6) and substituting the following:

“ (6) The spouse of a Caymanian shall have no right to be gainfully occupied in the Islands unless he is the holder of a Residency and Employment Rights Certificate granted under this section and he shall not be entitled to apply for, or be granted, a work permit or the renewal of a work permit, but where at the 21st December, 2006, in respect of such spouse-

- (a) a work permit is in force, he may continue to work under the terms and conditions of the permit until its expiration; or

- (b) an application for a work permit was received but did not come before the Board until after that date, the Board shall give consideration to such application using the law that was in effect immediately before that date, namely the Immigration Law 2003.”;

- (b) by adding after subsection (6) the following:

“ (6A) Notwithstanding subsection (6), whenever the Board is satisfied that there are exceptional circumstances it may grant or renew a work permit for the spouse of a Caymanian for a period not exceeding three years in total after which no further permits may be granted or renewed in respect of that person.”.

- (c) in subsection (7)-
 - (i) by deleting the word “and” at the end of paragraph (a); and
 - (ii) by deleting the words “Appeals Tribunal” at the end of paragraph (b) and substituting the words “Appeals Tribunal; and”;
- (d) by adding after subsection (7)(b) the following:
 - “(c) where the spouse referred to in paragraph (a) is the holder of a work permit and he applies for a Residency and Employment Rights Certificate prior to the expiration of his work permit, he may continue to work during the period between the expiration of the work permit and the final determination of his application for the said Certificate by the Board, or where he has appealed the Board’s decision, by the Immigration Appeals Tribunal.”.

10. The principal Law is amended in section 33 by inserting after subsection (2) the following:

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

“(3) Where the holder of a Residency and Employment Rights Certificate is the surviving spouse of a Caymanian, he shall be allowed to make representations to the Board on his own behalf following which the Board may, in its discretion-

- (a) revoke the Certificate; or
- (b) allow the continuation of the Certificate.”.

11. The principal Law is amended in section 35(1) by deleting the words “a certificate” and substituting the words “a Certificate”.

Amendment of section 35 – spouse and dependants of the holder of a Residency Certificate for Persons of Independent Means

12. The principal Law is amended in section 36:

Amendment of section 36 - dependent child of the holder of a Residency Certificate for Persons of Independent Means

- (a) by deleting the marginal note and substituting the following:
“Dependants of the holder of a Residency Certificate for Persons of Independent Means”; and
- (b) by repealing subsection (2) and substituting the following:
“(2) Where a Residential Certificate for Retirees was issued under section 33 of the Immigration Law, 2003, or where a Residency Certificate for Persons of Independent Means was

issued under section 33 of the Immigration Law (2006 Revision), the Chief Immigration Officer may vary it.”.

Amendment of section 38 – general provisions relating to loss of permanent residency

13. The principal Law is amended in section 38-

- (a) by renumbering section 38 as section 38(1);
- (b) by renumbering paragraphs (i) and (j) as paragraphs (j) and (k) and inserting after paragraph (h) the following:

“(i) he fails to maintain the level of financial investment stated in his application for permission to remain permanently in the Islands”; and

- (c) by adding after subsection (1) the following:

“ (2) Where the substantive holder of permanent residence loses his right to permanent residence under this Law, a person who had acquired permanent residence and a Residency and Employment Rights Certificate by virtue of his being a dependant of the substantive holder, shall be allowed to make representations to the Board on his own behalf as to why he should not lose his right to permanent residence and the Board in its discretion shall determine the matter.”.

Repeal and substitution of section 42 – application for work permit

14. The principal Law is amended by repealing section 42 and substituting the following:-

“Application for work permit

42. (1) In this Part, unless the context otherwise requires, a reference to the Chief Immigration Officer in relation to the granting or renewal of work permits shall be construed as including a reference to anyone specifically designated by him to perform those duties.

(2) All or any of the powers conferred upon the Chief Immigration Officer under subsection (5) may be delegated by him to any members of his staff.

(3) A person who seeks to be self-employed or a prospective employer of any person may apply for a work permit or the renewal thereof-

- (a) to the Work Permit Board, the Business Staffing Plan Board or the Chief Immigration Officer, as the case may be, where the application is for gainful occupation in Grand Cayman; or
- (b) to the Cayman Brac and Little Cayman Immigration Board where the application is for gainful occupation in Cayman Brac or Little Cayman.

(4) An application for the grant or renewal of a work permit shall be in the prescribed form and accompanied by-

- (a) the administrative filing fee, the work permit fee and where applicable the dependant fee and repatriation fee and such documentary evidence as may be prescribed; and
- (b) a written undertaking by the worker to submit to being fingerprinted and to the fingerprints being recorded electronically.

(5) Notwithstanding anything contained in this Law, the Chief Immigration Officer or his designate shall process applications and otherwise make determinations in respect of-

- (a) the grant or renewal of a work permit except for those referred to in subsection (6);
- (b) the grant of a work permit under section 52(11);
- (c) the grant of a final (non-renewable) work permit where permanent residence has been refused; and
- (d) an amendment to a work permit except for those referred to in subsection (6)(c); and

(6) For the avoidance of doubt, nothing contained in this section shall derogate from the powers of the Boards to process applications of the types referred to in subsection (5) and those in respect of-

- (a) the grant or renewal of work permits where-
 - (i) a Caymanian had applied and was rejected for the post;
 - (ii) there is a signed complaint against a prospective employee on file; or
 - (iii) the data base of the Department of Employment Relations identifies a Caymanian as being capable and available for the position;
- (b) key employees;
- (c) promotions and re-designations;
- (d) the revocation of work permits;
- (e) the grant, renewal or amendment of a Business Staffing Plan; and
- (f) the waiver of the requirement to advertise a position.

(7) A delegation under subsection (2)-

- (a) shall be in writing or if made orally shall be

- reduced to writing as soon as possible afterwards;
- (b) may be made subject to such limitations and conditions as are specified in the instrument of delegation; and
- (c) may be revoked at any time by the grantor.”.

(8) Where the Chief Immigration Officer or his designates entertain an application under subsection (3) or section 53, it shall be his or their responsibility, as the case may be, to record and keep all minutes of the meetings and proceedings, including decisions taken.

Amendment of section 44 – consideration of application for work permit by Board

15. The principal Law is amended in section 44-

- (a) by deleting the marginal note and substituting the following:
“Consideration of application for work permit by Board or Chief Immigration Officer”;
- (b) in subsection (1) by deleting the words “The Work Permit Board or the Business Staffing Plan Board” and substituting the words “The Work Permit Board, the Business Staffing Plan Board or the Chief Immigration Officer”; and
- (c) in subsection (2)(c) by adding after the words “the Board” the words “or the Chief Immigration Officer, as the case may be,”

Amendment of section 45 – Business Staffing Plan

16. The principal Law is amended in section 45-

- (a) in subsection (5)-
 - (i) by deleting the words “Neither the Work Permit Board” and substituting the words “Subject to subsection (5A), neither the Work Permit Board, the Cayman Brac and Little Cayman Immigration Board”; and
 - (ii) by adding after the words “section 56(2)” the words “, save that upon the applicant filing his Business Staffing Plan the Work Permit Board and the Chief Immigration Officer may, notwithstanding that it has been filed late, resume entertaining applications for the grant or renewal of work permits for that applicant”;
- (b) in subsection (5) by deleting the words “, in the case of the Work Permit Board or the Cayman Brac and Little Cayman Immigration Board,”;
- (c) by inserting after subsection (5) the following:
“ (5A.)Notwithstanding subsection (5), where an application for a Business Staffing Plan is submitted after any deadline

provided for in this section, it shall be accompanied by a fee amounting to double that which would otherwise have been paid if the application had been submitted within time.”; and

- (d) in subsection (7) by deleting the words “, and in the case of the Work Permit Board and the Cayman Brac and Little Cayman Immigration Board” and substituting the word “and”.

17. The principal Law is amended in section 46 by deleting the words “or the Business Staffing Plan Board” and substituting the words “, the Business Staffing Plan Board or the Chief Immigration Officer”.

Amendment of section 46 – responsibility of the Board in processing applications for professional employees

18. The principal Law is amended in section 47 by adding after the words “The Board” the words “or the Chief Immigration Officer, as the case may be,”.

Amendment of section 47 – employers in need of domestic helpers

19. The principal Law is amended in section 48-

Amendment of section 48 – grant or refusal of work permit

- (a) in subsection (1) by adding after the word “Board” the words “or the Chief Immigration Officer”;
- (b) in subsection (2) by adding after the word “Board” where it appears for the first, second and fourth time, the words “or the Chief Immigration Officer”;
- (c) by inserting after subsection (2) the following:

“(2A) Upon granting an application under section 42 with respect to a worker of eighteen years of age or older, the Board or the Chief Immigration Officer shall cause to be taken and retained electronically, the worker’s fingerprints.”.

- (d) in subsection (5) by adding after the word “Board” the words “or the Chief Immigration Officer”;
- (e) in subsection (6) by adding after the word “Board” the words “or the Chief Immigration Officer”;
- (f) in subsection (7) by adding after the word “Board” the words “or the Chief Immigration Officer”;
- (g) in subsection (9)(h) and (i) by adding after the word “Board” the words “or the Chief Immigration Officer”;
- (h) in subsection (9)(j) by deleting the words “section 52(1) and (21)” and substituting the words “section 52(1) and (20)”;
- (i) by adding after subsection 9(j) the following:

“(k) that the applicant failed to give the written undertaking referred to in section 42(4)(b).”

Amendment of section
50 – change of employer

20. The principal Law is amended in section 50 by repealing paragraph (a) and substituting the following:

“(a) the Board, including the Cayman Brac and Little Cayman Immigration Board, or the Chief Immigration Officer believes there are special circumstances;”.

Amendment of section
52 – term limits

21. The principal Law is amended in section 52-

(a) in subsection (3) by deleting the words “a new work permit for the unexpired period only of his term limit that remained on the date he left the Islands and,” and substituting the words “new work permits but his term limit shall remain the same as if his employment had not been interrupted, and”;

(b) in subsection (6)(b) by adding after the word “employer” the words “but in the same occupation as stated in his final work permit”;

(c) in subsection (7)(b) by adding after the word “employer” the words “but in the same occupation as stated in his fixed-term work permit”;

(d) in subsection (8) by deleting the words “section 49(1)” and substituting the words “section 49(2)”;

(e) by inserting after subsection (8) the following:

“ (8A.) Whoever fails to comply with the provisions of subsection (8) is guilty of an offence.”;

(f) in subsection (9) by deleting the word “grant” and substituting the word “issue”;

(g) in subsection (11) by adding after the word “Board” where it appears for the first, second and third time, the words “or the Chief Immigration Officer”;

(h) by inserting after subsection (11) the following:

“ (11A) A person working under subsection (11) whose spouse is granted permanent residence under section 30 and who has applied for a Residency and Employment Rights Certificate as a dependant of his spouse will not lose his right to work and may continue to be granted work permits until the final determination of his application where that application was submitted within ninety days of the grant of his spouse’s permanent residence.”;

(i) in subsection (13) by adding after the word “Board” the words “or the Chief Immigration Officer”; and

- (j) in subsection (14) by adding after the word “Board” where it appears for the first and second time, the words “or the Chief Immigration Officer”.

22. The principal Law is amended in section 53-

Amendment of section
53 – temporary work
permit

- (a) by repealing subsections (1) and (2) and substituting the following:

“(1) The Chief Immigration Officer or his designate appointed under section 42 may on application in the prescribed form, accompanied by such documentary evidence as may be prescribed, by or on behalf of a person who desires to enter and remain in the Islands temporarily for the purposes of gainful occupation-

- (a) grant to such person a temporary work permit in the prescribed form upon payment of the prescribed fee;
- (b) vary or modify the terms of such permit upon payment of the prescribed fee;
- (c) refuse the application for the permit; or
- (d) revoke a temporary work permit so granted.

(2) A work permit granted under subsection (1) may be either-

- (a) a temporary work permit, for a continuous period of up to six months which may, if granted for a period of less than six months, be renewed so long as the total period of validity does not exceed six months;
- (b) a temporary work permit, for a seasonal worker for a continuous period of eight months and such permit cannot be extended or renewed, nor may a work permit be issued with respect to the same worker unless that person has left the Islands for at least three months immediately following the expiry of the temporary work permit for a seasonal worker.”.

- (b) by adding after subsection (7) the following:

“(8) Where the application under subsection (1) is to engage in work as an entertainer, the Chief Immigration Officer or his designate, in addition to complying with subsection (3), shall, where appropriate, take into account-

- (a) the genuineness of the application;
- (b) the nature and content of the proposed performance;

- (c) the views of the Cayman National Cultural Foundation;
- (d) the views of the Cayman Islands Music Association; and
- (e) whether a local artist or act has been engaged to participate in the event.

- (9) For the purposes of this section “entertainer” includes-
 - (a) a person performing musical acts individually or as part of an orchestra;
 - (b) a singer, disc jockey or comic; and
 - (c) a circus or carnival performer.”.

Amendment of section 56 - offence to engage in gainful occupation or to employ persons in contravention of this Part

23. The principal Law is amended in section 56-

- (a) in subsection (2)-
 - (i) by deleting the word “Assistant” wherever it appears and substituting the word “Deputy”; and
 - (ii) by deleting the words “or for the forfeiture of anything liable to forfeiture under this Law or to restore anything seized as forfeited under this Law”;
- (b) in subsection (3) by adding after the word “Board” wherever it appears, the words “or the Chief Immigration Officer”; and
- (c) in subsection (4)-
 - (i) by adding after the word “Board” the words “, including the Cayman Brac or Little Cayman Immigration Board, or the Chief Immigration Officer”;
 - (ii) by adding after the word “refused” the words “or cancelled”; and
 - (iii) by adding after the word “refusal” the words “or cancellation”.

Repeal and substitution of section 64 – duty to produce passport, etc.

24. The principal Law is amended by repealing section 64 and substituting the following:

“Travel documents

64. (1) Unless exempted by this Law, every person entering and leaving the Islands shall, if required to do so by an immigration officer, produce for inspection a relevant passport or some other valid document establishing the identity and nationality or place of permanent residence of such person to the satisfaction of the immigration officer, and, in such cases as may be prescribed, a relevant visa.

(2) An application for a visa shall be in writing and

accompanied by the prescribed fee.

- (3) Subject to his complying with the prescribed criteria-
 - (a) an immigration officer not below the rank of Assistant Chief Immigration Officer may-
 - (i) approve or refuse an application for a visa; and
 - (ii) refuse permission for a person in possession of a current visa to enter the Islands; and
 - (b) the Chief Immigration Officer acting in person may-
 - (i) revoke a current visa; or
 - (ii) waive the requirement for the production of a visa to land in the Islands.

(4) Whoever fails to comply with the provisions of subsection (1) is guilty of an offence.”.

25. All acts and things done or purported to be done or omitted to be done by the Board or the Chief Immigration Officer between 1st April, 2007 and the commencement of the Immigration (Amendment) Law, 2008, under or in pursuance of the powers conferred by section 43 of the Immigration Law (2006 Revision), shall not be invalid by reason only that the provisions of subsection (5) were not complied with, and no legal proceedings or other action whether pending or not shall be entertained in respect of or in consequence of such acts and things.

Validation of certain acts and things

Passed by the Legislative Assembly the 15th day of October, 2008.

EDNA MOYLE

Speaker.

WENDY LAUER

Clerk of the Legislative Assembly.