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IMMIGRATION LAW

(1997 Revision)

IMMIGRATION DIRECTIONS

(1998 Revision)

Revised under the authority of the Law Revision Law (19 of 1975).

The Immigration Directions, 1995 made the 5th September, 1995.

Consolidated with the -

Immigration (Amendment) Directions, 1995 made the 5th September, 1995 (sic)
Immigration Policy Directions, 1998 made the 6th January, 1998.

Consolidated and revised this 27th day of October, 1998.

Note (not forming part of the Directions): This revision replaces the 1996 Revision which should now be discarded.

IMMIGRATION DIRECTIONS

(1998 Revision)

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IMMIGRATION DIRECTIONS

(1998 Revision)

PART I -Introductory

1. These directions may be cited as the Immigration Directions (1998 Revision). Citation

PART II - Work Permits

2. (1) The Immigration Board shall meet in accordance with section 6 and shall report monthly to the Governor in Council the total number of work permits granted, extended or revoked during the previous quarter. The report shall include a break down of those decisions. Meetings of the Board and work permits

(2) The Board may, at its discretion, impose conditions including a condition that no future work permit will be granted to the holder of a work permit until at least six months after he has left the Islands.

3. (1) For all holders of work permits except domestic servants and unskilled workers a ceiling of three persons (except in exceptional circumstances and at the discretion of the Board) shall be placed upon the admission of dependants. Dependants

(2) Persons admitted as domestic servants and unskilled workers may not be permitted to have any dependants accompany them to or join them in the Islands, except in exceptional circumstances and at the discretion of the Board.

4. During the currency of a work permit, or upon its termination, the holder of that work permit is not permitted to change employers unless - Change of employers

- (a) the Board believes -
 - (i) there are special circumstances; or
 - (ii) the person is being victimised by his employer, or other employees of that employer; or
- (b) the circumstances of that person's employment are within a description or class of descriptions specified in a direction made by the Governor in Council for the purposes of this direction.

5. (1) Persons married to Caymanians, or persons descended from Caymanians (which latter class of persons is deemed to include all persons who ceased to possess or enjoy Caymanian status immediately on reaching the age of eighteen years under section 21(1)(e)(iii) of the repealed Caymanian Protection Law (Revised) or section 19(1) of the Immigration Law (1997 Revision) shall be given preferential treatment in obtaining work permits. Persons married to or descended from Caymanians

(2) In the case of an application from a person married to a Caymanian, the Board shall take into account whether the spouses are separated or living apart and, if they are, all the circumstances thereof and the amount of maintenance paid, and whether the applicant (being male) will have an occupation to provide sufficient income to support a house and family.

(3) In the case of an application from a person descended from Caymanians, the Board shall take into account whether the applicant will have an occupation to provide sufficient income to support the applicant, the spouse and any members of the applicant's family.

(4) In the case of all applications to which this direction applies the Board shall also take account of the desirability of granting work permits to applicants with different backgrounds and from different areas, to maintain a suitable balance in the social and economic life of the Islands.

(5) In relation to an application from a person married to a Caymanian, this direction does not apply if the Board has reason to believe that settlement in the Islands was the main motive of the marriage or that the marriage was one of convenience.

Replacement work permits

6. A work permit to replace an existing gainful occupation licence or work permit may be granted up to three months before the expiry of the existing permit or licence of the person being replaced.

Rental or lease arrangements

7. Work permits shall not be required for beneficial owners of not more than two units of property in order to enter rental or lease arrangements:

Provided that a person shall not qualify for this exemption if that person's spouse owns, operates or has an interest in the property to be rented or leased.

Board has to be satisfied of certain manners

8. (1) In considering an application for the grant or renewal of a work permit the Board has to be satisfied that-

- (a) no Caymanian staff in the employment of the applicant are suitable, capable or able to fill the position for which the application is made;
- (b) the applicant has made efforts, including advertising for at least two issues in two consecutive weeks in a local newspaper to ascertain that -
 - (i) no suitable, capable or able Caymanians are available who are not employed by the applicant; and

- (ii) if there are no such Caymanians, no suitable, capable or able residents are available; and
- (c) the applicant has instituted, where appropriate, adequate staff training programmes to reduce the need for overseas recruitment.

(2) For the purpose of being satisfied of the matters specified in paragraph (1)(b) the Board shall consider all responses forwarded with the application from Caymanians and residents.

(3) The Board need not be satisfied of the matters specified in paragraph (1)(b) where-

- (a) a direction issued by the Governor in Council for the purposes of that provision; or
- (b) a decision of the Immigration Board,

has exempted the applicant for the grant or renewal of the work permit from satisfying the Board of those matters in respect of that application.

(4) Where a Caymanian has applied for the position, the Board shall, for the purposes of being satisfied of the matters specified in paragraph (1)(b), take into account the following information supplied by the applicant for the grant of the work permit -

- (a) the names of all applicants for the post;
- (b) the qualifications, working experience and background of all the applicants;
- (c) the reasons given for the choice of the successful applicant and the refusal to employ the other applicants;
- (d) a copy of the refusal letter and interview report for each unsuccessful Caymanian applicant; and
- (e) a copy of the job description and the resumes of the non-Caymanian applicants.

9. Grounds for refusing renewal or grant of work permits include -

Refusal of renewal or
grant of work permits

- (a) that the number of accompanying dependants, including illegitimate children, are more than permitted under direction 3;
- (b) that there is refusal or inability on the part of the applicant to support dependants properly;
- (c) that there are reasonable grounds for suspecting that the applicant uses or is involved in illegal drugs;
- (d) that the applicant has a background of subversive political activity, racialism or any other illegal activity;

- (e) that the applicant has been involved in financial problems including bankruptcy or liquidations of companies or entities where creditors have not been repaid the whole of their debts;
- (f) that the applicant has been convicted of a crime, excluding offences which the Board is satisfied are minor;
- (g) the promotion or re-designation of the work permit holder by his employer without the prior approval of the Board; and
- (h) that the applicant is in the Islands as a visitor.

Endorsement on work permits

10. Each work permit shall have an endorsement or be accompanied by a notice to the work permit holder, in the following terms-

“You are hereby informed that, under the existing Laws and Regulations, the granting of this work permit in no way confers any entitlement to, or preference in connection with, the granting of any application for the renewal hereof or of any application for Caymanian Status. Applications for renewal of a work permit, applications for a grant of permanent residence with the right to work and applications for the grant of Caymanian status are all considered on their own merits and in the light of circumstances existing at the relevant time.”.

Consideration of objections and inquiries

11. (1) Prior to the revocation of, or refusal to renew, a work permit, all objections must be considered and an inquiry made into the person or company.

(2) All allegations shall be corroborated and full investigations of such allegations carried out.

Confidentiality

12. All matters before or in relation to the Board shall be secret and any breach of such secrecy by any member of the Board shall be a ground for removal.

Attorneys-at-law

13. (1) This direction applies to applications for work permits for attorneys-at-law.

(2) The Board shall-

- (a) consult with the Attorney-General;
- (b) establish a policy of not giving a partner of a firm any greater security of tenure than any of its employees;
- (c) ensure that no work permit granted is granted if the result would be to create a situation whereby the legal profession became dominated by one or two firms;
- (d) notify the Attorney-General of every work permit applied for or granted;
- (e) not, except in exceptional circumstances, grant a work permit to a person wishing to enter into self-employment as an attorney-at-law; and

- (f) not grant a work permit to any person who is not ordinarily resident in the Islands or who does not intend to be so ordinarily resident.

14. (1) This direction applies to applications for work permits for health practitioners. Health practitioners

(2) The Board shall-

- (a) consult with the chairman of the Health Practitioners Board before granting a work permit, and shall have regard to any communication from the Health Practitioners Board in respect of the requirements in the Islands for health practitioners;
- (b) inform the Chairman of the Health Practitioners Board of the details of every application for a work permit and every grant of a work permit;
- (c) not, except in exceptional circumstances, grant a work permit to a health practitioner intending to work self employed; and
- (d) not grant a work permit to a health practitioner unless the Health Practitioners Board has satisfied the Board that the applicant has applied for and has been granted registration under the Health Practitioners Law (1995 Revision) as a health practitioner.

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(3) In this direction, "Health Practitioners Board" and "health practitioner" have the same meanings respectively as in the Health Practitioners Law (1995 Revision).

15. Employers showing special needs for work permits for domestic servants shall be given priority. Domestic servants

16. The Board may restrict work permits to a particular project with the understanding that, on the completion of the project, the holders of the work permits shall return to their countries of residence. Particular projects

17. The Secretary shall, at least once every month, obtain from the courts a list of all convictions, divorces, civil cases and judgments and relevant particulars relating thereto, and monthly reports from the Police and the Registrar of Births, in order to ascertain whether or not any person should be allowed to remain in the Islands. Information from the courts, etc.

18. (1) The Board shall, except in exceptional circumstances in its discretion, issue work permits to be valid for a period of three years to the persons specified in paragraph (2). Three year work permits

(2) The persons are -

- (a) a person married to a Caymanian for at least five years; or
- (b) very senior employees where the company or firm has demonstrated an effective training and promotion scheme for Caymanians.

Two year work permits

19. The Board shall, except in exceptional circumstances in its discretion, issue work permits to be valid for a period of two years.

Spouse's employment rights certificate

20. (1) The Board may issue an employment rights certificate to an applicant for a work permit who is married to a person possessing Caymanian status where-

- (a) the applicant has been ordinarily resident in the Islands for at least the two years immediately preceding the application;
- (b) the applicant has been married to the person possessing Caymanian status throughout that two year period; and
- (c) the applicant produces to the Board upon application and upon any renewal thereof an affidavit sworn by the spouse possessing Caymanian status which provides evidence of the stability of the marriage and character of the applicant.

(2) Where an employment rights certificate is issued by the Board under paragraph (1), the certificate confers on the applicant for a work permit to whom it is issued, and the prospective employer (in respect of the employment specified in the certificate) the following benefits -

- (a) the prospective employer is not required to advertise the employment as specified in paragraph (b) of direction 8(1);
- (b) the applicant is not required to provide the Board with a letter of release from the applicant's previous employer indicating the employer's approval for the prospective change of employment; and
- (c) if the Board so decides, the applicant may be granted a work permit permitting the applicant to be self-employed.

Work permits for an employee in a profession

21. (1) Work permits for professional employees for public practice shall only be applied for by, and granted to, another professional of the same category as the applicant professional.

(2) In this direction,-

"professional employee" means a person qualified as a lawyer, accountant, medical professional, architect, surveyor or qualified in any other occupation recognised by the Board as a profession.

22. Where an application for a work permit has been made under section 29 of the Immigration Law (1997 Revision), and the Immigration Board is notified in writing by the Central Planning Authority or the Development Control Board that-
- (a) the applicant has applied under section 12 of the Development and Planning Law (1998 Revision) for permission to develop land;
 - (b) the application under the Development and Planning Law (1998 Revision) is connected with the application under section 29 of the Immigration Law (1997 Revision); and
 - (c) the application has been referred to the Development Advisory Board,

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the Immigration Board shall not begin or complete, as the case may be, the consideration of the application until it is notified in writing by the Central Planning Authority or the Development Control Board of the decision in respect of the application under the Development and Planning Law (1998 Revision); and the Immigration Board, in considering the application to it, shall take into account the decision under the Development and Planning Law (1998 Revision).

PART III - Grant of Caymanian Status

23. The policy for the grant of Caymanian status shall include-
- (a) that the grant of Caymanian status to any person shall not imply any obligations to permit the entry on temporary or permanent terms of servants, gardeners, etc., even if such persons may be in short supply within the Islands at the given time;
 - (b) that persons seeking Caymanian status must be able to satisfy the Board that they have sufficient financial resources to support adequately the applicant and any dependants;
 - (c) that Caymanian status shall not be granted to a person who has more than a spouse and three children under the age of eighteen years except in exceptional circumstances and at the Board's discretion;
 - (d) the economic situation of these Islands and the due protection of persons already engaged in similar gainful occupations;
 - (e) the advantage which the continued residence of the applicant or his family may afford to these Islands;
 - (f) that there are no reasonable grounds for suspecting that the applicant uses or has been or is involved in illegal drugs; a police report should be received before consideration of the application;

Policy for the grant of Caymanian status

- (g) that the applicant has not had a background of subversive political activity, or of organising such activity, or is organising, causing or promoting racialism or any other illegal activities;
- (h) that the applicant has not been involved in financial problems including bankruptcy or liquidations of companies or entities especially where creditors have not been repaid the whole of their debts;
- (i) that the Board receives directly and not through the applicant at least three good character references from respectable persons of Caymanian status as well as a bank reference;
- (j) that the Board cause the applicant to insert an advertisement with a full face photograph not less than 1 inch by 1 1/2 inches for at least two times in two consecutive weeks in a newspaper published in the Islands stating that the applicant has applied for Caymanian status and that objections may be made in confidence to the Secretary of the Immigration Board;
- (k) the Board shall take account of the desirability of granting Caymanian status to applicants with different backgrounds and from different geographical areas, to maintain a suitable balance in the social and economic life of the country.

Applications for status
and quotas

24. All applications for the grant of Caymanian status falling into categories limited by annual quotas shall be dealt with on an annual competitive basis as follows-

- (a) the Board shall, each year, publish a closing date by which all applications must be received in order to qualify for consideration in that particular year; the date shall be about the middle of the year;
- (b) after every application has been processed and vetted in accordance with the Law and these directions, the Board shall consider all the applications together and shall determine to whom status shall be granted; it shall determine them in time for appeals to be lodged and dealt with before the end of the year;
- (c) the Board shall be under no obligation to grant Caymanian status to any applicant irrespective of whether less grants have been made than annual quotas permit;
- (d) after the successful applicants have been chosen and so advised, the remainder shall be informed of their right to appeal against the decision not to grant them Caymanian status; and
- (e) applications under section 17(6) (where a previous application has been rejected) shall be considered on their merits together with all other applications and the fact that any applicant has already been unsuccessful shall not be taken into account.

25. (1) This direction applies to an applicant who, under section 21(1)(e)(iii) of the repealed Caymanian Protection Law (Revised) or the equivalent provision of the repealed Caymanian Protection Law, 1984, ceased to possess or enjoy Caymanian status on reaching the age of eighteen years.

Certain children of status holders

(2) Unless the Board considers there are exceptional circumstances, it shall grant Caymanian status to an applicant referred to in this direction who was ordinary resident in the Islands immediately before reaching the age of eighteen years.

PART IV - Permanent Residence

26. In this Part -

Definitions in this Part

“person with close family connections with the Islands” means a person who is the spouse, parent or child (whether legitimate, illegitimate or adopted) of a person who possesses Caymanian status;

“person of independent means” means -

- (a) a person who satisfies the Board that he has adequate assets and a continuous source of income available to him without restriction, and without the need to engage in gainful employment in the Islands, sufficient for the needs of himself and his dependants; or
- (b) a person who is the spouse, parent or child (whether legitimate, illegitimate or adopted) of a person who complies with paragraph (a), and who is living with and supported by that person.

27. The grant of permission or the possession of a right to remain permanently in the Islands shall not imply any obligation on the Board to permit the entry on temporary or permanent terms of servants, dependants, relatives or other associates of the person so granted permission or possessing such a right.

Permanent residence is personal to the individual

28. (1) In considering applications for permission to reside permanently in the Islands, the Board shall attach weight to the fact that an applicant has invested in or acquired property in the Islands as evidence of that person’s good faith and of his intention to reside permanently in the Islands.

Matters for the Board to take into account

(2) The Board shall also take account of the desirability of granting such permission to applicants with different backgrounds and from different geographical areas, to maintain a suitable balance in the social and economic life of the country.

Period of residence for persons with close family connections, etc.	<p>29. In the case of persons of independent means or with close family connections with the Islands, no period of residence in the Islands need be required as a precondition of a grant of permission to reside permanently in the Islands, provided that the timetable provided by section 21(1) is adhered to.</p>
Applicants with close family connections with the Islands	<p>30. (1) In the case of applications from persons with close family connections with the Islands the Board shall, subject to this direction, give priority to such applications.</p> <p>(2) The Board should be satisfied -</p> <ul style="list-style-type: none">(a) in the case of a spouse, that the marriage is genuine and not entered into for the purposes of settlement in the Islands; and in determining this the Board may have regard to the length of the marriage and to all other relevant factors; and(b) that the economic position of the applicant and the applicant's family in the Islands is sufficient for the support of the applicant and his dependants (whether here or elsewhere). <p>(3) Where the applicant would need to engage in gainful employment in order to maintain himself or his dependants the Board should be satisfied as to the criteria set out in direction 31, insofar as they do not conflict with direction 29 and this direction.</p> <p>(4) The right to remain permanently should always be conditioned to terminate automatically in the following circumstances -</p> <ul style="list-style-type: none">(a) in the case of a spouse, on the dissolution of the marriage;(b) in the case of a parent, on the death of the child by virtue of whom the close family connection exists; and(c) in the case of a child, on the attainment of the age of eighteen years;(d) in all cases on the loss of Caymanian status by the person by virtue of whom the close family connection exists; and(e) in all cases, upon the person by virtue of whom the close family connection exists ceasing to be ordinarily resident in the Islands: <p>Provided that in the case of such a termination the person concerned shall have the right to re-apply, and the fact of termination under these provisions shall not of itself be held against that person on the consideration of any subsequent application.</p>
Permanent residence and gainful employment	<p>31. (1) In the case of applications from persons requiring to enter into or continue in gainful employment to maintain themselves and/or their dependants the Board shall have regard to the following criteria -</p>

- (a) the applicant's length of residence in the Islands; and save for exceptional circumstances the Board should only entertain an application where the applicant has resided in the Islands for a period of at least five years:

Provided that this requirement shall not apply to persons with close family connections with the Islands;

- (b) the criteria established by section 30(1), giving particular weight to section 30(1)(f);
- (c) the criteria established in direction 9;
- (d) the connections that the applicant may have with the Islands; and
- (e) the applicant's standing in the community, and in particular to the contribution which the applicant has made, or may be capable of making, to the life of the community.

(2) In regard to such persons the Board should also observe direction 23(i).

(3) Save in those cases where the applicant also falls within the definition of a person of independent means, any permission to remain permanently within the Islands granted with an endorsement under section 25(1) shall be conditioned to lapse automatically on the termination of the employment permitted by the endorsement, unless the Board considers for special reasons that it should not be so conditioned.

(4) An endorsement, variation or entitlement under section 25(1) shall normally be restricted to a particular occupation only (but not unnecessarily to a specified employer) or, in the case of a self-employed applicant, to a particular field of employment specified by him, although this may be varied by the Board to reflect changing circumstances should the Board, having had regard to all the circumstances of the case, consider it appropriate so to do.

(5) An endorsement or variation of entitlement to a permanent resident who is self-employed shall specify the number of people, if any, the permanent resident may employ.

(6) The Board should require the same fees to be paid on the grant of an endorsement or variation of an entitlement so as to permit engagement in gainful occupation as would have been required had the application and grant been for a work permit for the type of work concerned.

32. (1) Subject to paragraph (2), the Board shall, upon request, grant a dependent child of a permanent resident a right to reside in the Islands until -

Right to reside: children
of permanent residents

- (a) the child attains the age of eighteen years; or

- (b) the permanent resident ceases to have a right to reside in the Islands,

being whichever first occurs.

(2) The Board may refuse to grant a dependent child of a permanent resident a right to reside in the Islands under paragraph (1) if it is not satisfied that the child is of good character, and may terminate any such right if it subsequently finds that the child was not of good character at the time of the grant or, in the opinion of the Board, the child subsequently ceases to be of good character.

Provisions in respect of persons resident for fifteen years or more

33. (1) The Board shall determine any application for the grant of permanent residence by a person who has been normally resident in the Islands for a total period of at least fifteen years in accordance with section 21.

(2) If the Board has granted to a person who has been normally resident in the Islands for a total period of at least fifteen years permission under section 21 to remain permanently in the Islands, the Board may, subject to direction 30, grant that person permission under section 25 to engage in a gainful occupation.

Revocation of permanent residence

34. In respect of the revocation of permission to remain permanently in the Islands pursuant to section 26, directions 11 and 17 shall apply with such changes as are necessary.

Publication in consolidated and revised form authorised by the Governor in Council this 27th day of October, 1998.

Carmena H. Parsons
Clerk of Executive Council