



Department of Immigration

Department of Immigration Instructions in Respect of a “Partner”

(Pursuant to the Work Permit Policies (Section 5.0) as at 1st March 2015)

In assessing whether someone is a “partner” of a work permit holder pursuant to “Sponsored Dependents” under Section 5.0 of Work Permit Policies made effective 1st March 2015, the following guidelines are to be considered prior to issuance of an entry/re-entry permit to the “partner”. The entry/re-entry permit allows the holder to seek employment unless otherwise stated on the entry/re-entry permit.

The Department of Immigration requires information to determine whether the “partner” of a Bermudian, PRC holder or work permit holder is in a relationship that is genuine and subsisting.

A partner means a person who has been living with a Bermudian, PRC holder or work permit holder in a relationship akin to a marriage for at least two (2) years prior to the date of application. This is not an absolute guideline and is indicative only. There may be circumstances where the required time period has not been met due to partners living in different jurisdictions, but are still in a genuine and subsisting relationship. Each case will be determined on the merits.

The following guidance provides factors that the Department of Immigration will consider when assessing whether a relationship is genuine and subsisting. Sham or forced relationships are not regarded as genuine and subsisting relationships.

Genuine and subsisting

An applicant and their partner will be asked by the Department of Immigration to provide evidence that they are in a genuine and subsisting relationship.

The Department of Immigration will consider the objective factors set out below when assessing an application for an entry/re-entry permit for a “partner” of the Bermudian, PRC holder or work permit holder. The outcome of an assessment may prompt additional scrutiny from the Department of Immigration to identify and evidence a non-genuine, non-subsisting relationship (which may include a sham or forced relationship) or, where indicated below, may result in an outright refusal.

The list of factors to consider, set out below, is **not** to be considered as a checklist. Its purpose is to assist and focus consideration of whether an applicant meets the genuine and subsisting requirement.

Decisions on whether a relationship is genuine and subsisting are to be considered as a whole, based on all the available evidence, on a case-by-case basis taking account of all the circumstances of the application.

Whether the relationship is 'genuine and subsisting' should be considered upon application. The Department of Immigration will be alert and sensitive to the extent to which religious and cultural practices may shape the factors present or absent in a particular case. Evidence of co-habitation or evidence of intent to marry (in accordance with Bermuda law) can be factors associated with a genuine and subsisting relationship; equally, their absence can be too.

The Immigration Board and Minister responsible for Immigration have discretion to grant or refuse an application based on an overall assessment, regardless of whether one or more of the factors below is, or is not, present in the case. Consideration of whether a relationship is genuine and subsisting is not a checklist or tick-box exercise. In assessing whether a relationship is genuine and subsisting, consideration should be given to the following factors which are not exhaustive.

Factors which may be associated with a genuine and subsisting relationship

The partners are in a current, long-term relationship and are able to provide satisfactory evidence of this by way of affidavits from both partners explaining the relationship. This must include details of living arrangements and other such pertinent details (such as those that are listed below).

- i. The partners are co-habiting and are able to provide satisfactory evidence of this e.g. a joint mortgage/tenancy agreement, a joint bank account and/or joint savings, utility bills in both their names.
- ii. The partners have children together (biological, adopted or step-children) and shared responsibility for them.
- iii. The partners share financial responsibilities (such as information per (ii) above).
- iv. The partners have visited the other's home country and family and are able to provide evidence of this.
- v. The partners have made definite plans concerning the practicalities of them living together in Bermuda.

If the Immigration Board or Minister responsible for Immigration determines that the relationship of the partners is genuine and subsisting, an entry/re-entry permit shall be granted for a period of five (5) years in respect of a partner of a Bermudian or PRC holder. Upon expiry of the entry/re-entry permit, the partner of the Bermudian or PRC holder will be required to re-apply for a new entry/re-entry permit in the normal manner. If there is a change in the status of the relationship the partners must immediately notify the Department of Immigration in writing.

In the case of a partner of a work permit holder, the entry/re-entry permit shall be granted for the duration of the work permit holder's work permit. Upon application of a new work permit, the sponsored partner must apply for an entry/re-entry permit in the

normal manner. If there is a change in the status of the relationship the partners must immediately notify the Department of Immigration in writing.

Factors which may be associated with a relationship which is not genuine and subsisting

If a case contains one or more of the factors listed below, this may prompt additional scrutiny of the application but will not necessarily result in a negative decision. The Department of Immigration will continue to look at the circumstances of the case as a whole. Even where additional scrutiny has been prompted by any of the following factors, it does not necessarily mean that the relationship is not genuine and subsisting.

The factors which **may** prompt additional scrutiny of an application include those listed below. Some factors **may** also, where specifically stated, lead to a refusal of an application without additional scrutiny but again, before deciding, the Department of Immigration must continue to look at the circumstances as a whole:

- i. One or both partners makes a public statement that their relationship is a sham. An application can be refused on the basis of such a public statement alone.
- ii. One or both partners makes a public statement (not in confidence) that they have been forced into a relationship. An application can be refused on the basis of such a public statement alone.
- iii. There is evidence from a reliable third party (e.g. police, social services, registration service) which indicates that the relationship is or may be a sham or forced relationship.
- iv. One or both partners does not appear to have the capacity to consent to the relationship, e.g. owing to learning difficulties, and independent evidence, e.g. from a social services assessment.
- v. Failure by one or both partners to attend an interview, without reasonable explanation, where required to do so to discuss the application or their welfare, or seeking to undermine the ability of the Department of Immigration to arrange an interview, e.g. by unreasonable delaying tactics by the partners or a third party.
- vi. The partners are unable to provide accurate personal details about each other (e.g. name, age, nationality, employment, parent's names and place of residence), provide inconsistent evidence, or do not have a shared understanding of the core facts of their relationship, e.g. how and where they met for the first time.
- vii. There is evidence of money having been exchanged for the relationship to be contracted.
- viii. There is a lack of appropriate contribution to the responsibilities of the relationship, e.g. a lack of shared financial or other domestic responsibilities.

- ix. Co-habitation is not maintained (except where one party is working or studying away from home) or there is no evidence that they have ever co-habited since the commencement of the relationship.
- x. One partner is a qualified medical practitioner or professional, or has worked as a nurse or caregiver, and the other partner has a mental or physical impairment which currently requires medical assistance or personal care in their own accommodation.
- xi. The partner has previously sponsored another partner to come to or remain in Bermuda.
- xii. The partner has previously been sponsored as a partner to come to or remain in Bermuda (i.e. the partner has obtained settlement on this basis) and that relationship ended shortly after the partner obtained settlement. This excludes circumstances where the partner is a bereaved partner, or where the partner obtained settlement on the basis of domestic violence perpetrated by their former partner.
- xiii. The past history of one or both partners contains evidence of a previous sham or forced relationship, or of unlawful residence in Bermuda or elsewhere.
- xiv. One or both partners have applied for leave to enter or remain in Bermuda in another category and been refused.