

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

BERMUDA IMMIGRATION AND PROTECTION AMENDMENT ACT 2016

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WHEREAS it is expedient to amend the Bermuda Immigration and Protection Act 1956 to provide pathways to permanent residence and Bermudian status through long-term residence in Bermuda, to provide for the acquisition of Bermudian status by adoption in certain circumstances, and for related matters;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

BERMUDA IMMIGRATION AND PROTECTION AMENDMENT ACT 2016

Citation

1 This Act, which amends the Bermuda Immigration and Protection Act 1956 (the “principal Act”), may be cited as the Bermuda Immigration and Protection Amendment Act 2016.

Amends sections 2, 23 and 72

2 (1) Section 2(1) of the principal Act is amended by inserting, in correct alphabetical sequence—

“permanent resident” means a person who has been granted a permanent resident’s certificate (other than one that has been revoked under section 31D or has otherwise ceased to have effect);

“permanent resident’s certificate” means a permanent resident’s certificate granted under section 31A (including such certificate granted under section 31A as it was before being repealed and replaced by the Incentives for Job Makers Act 2011), section 31AA or section 31B;”.

(2) In consequence of the amendment in subsection (1), sections 23 and 72(1) are amended by, in both cases, repealing the definition of “permanent resident”.

Amends section 13D

3 Section 13D(1) of the principal Act is amended by—

- (a) deleting “20D to 20F”, both times it appears, and substituting “20BA”; and
- (b) after “31A”, each of the three times it appears, inserting “, 31AA”.

Amends section 16

4 Section 16(2B) of the principal Act is amended by, after “or (3)”, inserting “, or section 18AA(1) or (2)”.

Inserts section 18AA

5 The principal Act is amended by inserting after section 18—

“Acquisition of Bermudian status by adoption

18AA (1) Where, on or after commencement of this section, a person not possessing Bermudian status who, on the date of his adoption, is both a Commonwealth citizen and under the age of 12 years—

- (a) is adopted in Bermuda under the Adoption of Children Act 2006 and, on the date of his adoption, one of his adoptive parents possesses Bermudian status; or
- (b) is adopted outside Bermuda, under the law of an approved jurisdiction, and where—

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- (i) on the date of his adoption, one of his adoptive parents possesses Bermudian status and that parent is (on the date of the adoption) domiciled in Bermuda; and
- (ii) his overseas adoption is recognized by the law of Bermuda,

he shall possess Bermudian status from (and inclusive of) the date of his adoption.

(2) Where, before commencement of this section, a person not possessing Bermudian status who, on the date of his adoption, was both a Commonwealth citizen and under the age of 12 years—

- (a) was adopted in Bermuda under the Adoption of Children Act 1963 or the Adoption of Children Act 2006, and where—
 - (i) on the date of his adoption, one of his adoptive parents possessed Bermudian status; and
 - (ii) on commencement of this section, he is under the age of 18 years; or
- (b) was adopted outside Bermuda, under the law of an approved jurisdiction, and where—
 - (i) on the date of his adoption, one of his adoptive parents possessed Bermudian status and that parent was (on the date of the adoption) domiciled in Bermuda; and
 - (ii) on commencement of this section, he is under the age of 18 years and his overseas adoption is recognized by the law of Bermuda,

he shall possess Bermudian status from (and inclusive of) the date of commencement of this section.

(3) In this section—

- (a) “a person not possessing Bermudian status” includes a person who, by virtue of section 16(2), is only deemed to possess Bermudian status;
- (b) “approved jurisdiction” has the meaning given in section 46 of the Adoption of Children Act 2006; and
- (c) “commencement of this section” means the date on which the Bermuda Immigration and Protection Amendment Act 2016 comes into operation.

(4) For the avoidance of doubt, if a person becomes a British overseas territories citizen by virtue of section 15(5) or 15(5A) of the British Nationality Act 1981 (UK) from the date that his adoption is effected, he shall be taken for the purposes of this section to be a Commonwealth citizen on the day the adoption is effected.

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(5) Subsections (8) and (9) of section 18 shall have effect, mutatis mutandis, in construing the domicile of the adoptive parents under this section.”.

Amends section 19

6 Section 19 of the principal Act is amended—

(a) in subsection (3)—

(i) by inserting after paragraph (a)—

“(aa) subject to paragraph (b) and subsections (3A) to (3E), for the purposes of subsection (1)(b), the applicant shall not have been absent from Bermuda for more than an aggregate of 120 days in any year of the ten-year period; but if the Minister is satisfied that absence for a period exceeding 120 days in any one or more of those years was necessitated by exceptional circumstances beyond the applicant’s control and, but for the exceptional circumstances, the applicant would have remained ordinarily resident in Bermuda, the Minister may count the period of absence necessitated by the exceptional circumstances as a period of ordinary residence in Bermuda;”;

(ii) in paragraph (c), by inserting “, (aa)” after “paragraph (a)”;

(b) by inserting after subsection (3)—

“(3A) For the purposes of subsection (1)(b), but subject to subsections (3B) to (3E), where—

(a) a person who was working in a company in Bermuda has been absent from Bermuda for any period for the purpose of working in another country in a subsidiary company (as defined in the Companies Act 1981), or the parent company, of the company which employed him in Bermuda; and

(b) the Minister is satisfied that but for that period of absence the person would have in fact continued to be ordinarily resident in Bermuda,

the Minister may take into account a period of ordinary residence immediately before and after that period of absence as if together they constituted a continuous period of ordinary residence in Bermuda but, for the avoidance of doubt, any such period of absence from Bermuda shall not be counted as a period of ordinary residence in Bermuda, and the period referred to in subsection (1)(b) shall be calculated accordingly.

(3B) The power conferred upon the Minister by subsection (3A) extends to the spouse, and a dependent child, accompanying and resident with the person referred to in that subsection.

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(3C) For the purposes of subsection (3B), a dependent child who for the purpose of his education is absent from Bermuda and resides in a country other than a country referred to in subsection (3A) shall be treated as resident with the person and his spouse.

(3D) Subsection (3A) does not apply to a person, and subsection (3B) does not apply to the spouse or dependent child of a person, who, while he is absent from Bermuda, is employed otherwise than as provided in subsection (3A); and, for the avoidance of doubt, it is hereby declared that in any such case a period of ordinary residence in Bermuda before such absence shall not be taken into account for the purpose of calculating a continuous period of ordinary residence in Bermuda.

(3E) Subsection (3A) shall not have effect unless the person, his spouse and dependent child, if any, resume ordinary residence in Bermuda within a period not exceeding 120 days beginning on the date when the person ceases to be employed outside Bermuda as provided in that subsection.”.

Amends section 19A

7 Section 19A(6) of the principal Act is amended by, after “Subsections (3)”, inserting “to (3E)”.

Amends section 20

8 Section 20(2) of the principal Act is amended by, after “Subsections (3)”, inserting “to (3E)”.

Repeals sections 20A and 20B

9 Sections 20A and 20B of the principal Act are repealed.

Inserts section 20BA

10 The principal Act is amended by inserting after section 20B (repealed by section 9 of this Act) the following—

“Right of certain long-term residents to Bermudian status

20BA (1) A person may apply to the Minister under this section for the grant of Bermudian status if—

- (a) he is a Commonwealth citizen;
- (b) he has been ordinarily resident in Bermuda for the period of 20 years immediately preceding his application; and
- (c) subject to subsection (2), he is a permanent resident.

(2) Subsection (1)(c) (the requirement that he be a permanent resident) does not apply to an applicant who on the date that the Bermuda Immigration and Protection Amendment Act 2016 comes into operation has been ordinarily resident in Bermuda for the period of 20 years immediately preceding that date.

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- (3) An applicant referred to in subsection (2) who—
- (a) on the date that the Bermuda Immigration and Protection Amendment Act 2016 comes into operation is not a Commonwealth citizen; and
 - (b) not before 18 months before his application under this section, applied for (and paid the fee prescribed under the Government Fees Act 1965 in respect of) a permanent resident's certificate,

shall, in respect of the application under this section, be entitled to a reduction in the fee prescribed under the Government Fees Act 1965 by the amount he paid in respect of the application for his permanent resident's certificate.

(4) Subsections (3) to (3E) and (4) to (9) of section 19 shall have effect, mutatis mutandis, in relation to applications under this section as those provisions have effect in relation to applications under section 19.”.

Repeals sections 20C to 20F

11 Sections 20C, 20D, 20E and 20F of the principal Act are repealed.

Amends section 22

12 Section 22 of the principal Act is amended—

- (a) in subsection (1)(d)(i), by deleting “adopted parent” and substituting “adoptive parent”; and
- (b) in both subsections (3) and (5), by—
 - (i) after “19A” inserting “or 20”; and
 - (ii) after “20B(2)” inserting “or 20BA”

Amends section 31A

13 Section 31A of the principal Act is amended—

- (a) in subsection (4), by deleting “(6)” and substituting “(7)”;
- (b) by repealing subsection (6); and
- (c) in subsection (7), by inserting “to (3E) and (4)” after “Section 19(3)”.

Inserts section 31AA

14 The principal Act is amended by inserting after section 31A—

“Right of certain long-term residents to permanent resident's certificate

31AA (1) Subject to the provisions of this section, a person may apply to the Minister for the grant of a permanent resident's certificate if—

- (a) he—

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- (i) has been ordinarily resident in Bermuda for a period of 15 years; and
 - (ii) was ordinarily resident in Bermuda for the period of two years immediately preceding the application; or
- (b) he—
- (i) was born in Bermuda or first became ordinarily resident in Bermuda before his sixteenth birthday;
 - (ii) has been ordinarily resident in Bermuda for a period of 10 years;
 - (iii) was ordinarily resident in Bermuda for the period of two years immediately preceding the application; and
 - (iv) is not less than 18 years of age.

(2) For the purposes of subsection (1)(a)(i) or subsection (1)(b)(ii), as the case may be, but subject to subsections (3) and (4), periods of continuous ordinary residence in Bermuda of 12 months or longer may be aggregated for the purpose of calculating years of ordinary residence.

(3) For the purposes of aggregating periods of continuous residence for calculating years of ordinary residence under subsection (2), a period of absence from Bermuda shall not exceed two years.

(4) Subsections (3) to (3E) and (4) to (9) of section 19 shall have effect, mutatis mutandis, in relation to applications under this section as those provisions have effect in relation to applications under section 19.”.

Amends section 31B

15 Section 31B of the principal Act is amended—

- (a) in subsection (1)—
 - (i) in paragraph (a), by inserting “and” at the end of the paragraph;
 - (ii) in paragraph (b), by deleting “; and” and substituting a full stop; and
 - (iii) by repealing paragraph (c);
- (b) in paragraphs (c), (d), (e) and (f) of subsection (2), by deleting “under section 31A” and substituting “(which was granted other than under this section)”;
- (c) in subsection (4), by inserting “to (3E) and (4)” after “Subsections (3)”;
- (d) by repealing subsections (5) and (6).

Amends section 31C

16 Section 31C(1) of the principal Act is amended by deleting “under section 31A or 31B”.

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Amends section 31D

17 Section 31D(1) of the principal Act is amended by deleting “referred to in section 31A or 31B” and substituting “who has been granted a permanent resident’s certificate”.

Amends section 92A

18 Section 92A(1) of the principal Act is amended—

- (a) in paragraph (a), by deleting “; and” and substituting a full stop; and
- (b) by repealing paragraph (b).

Consequential amendments

19 (1) The Legal Executives (Registration) Act 2011 is amended in section 5(a)(ii) by deleting “section 31A or 31B of”.

(2) The Fisheries Regulations 2010 are amended in regulation 2(1), in the definition of “permanent resident”, by deleting “under section 23 of” and substituting “in”.

(3) The Government Fees Regulations 1976 are amended in Head 6 (Bermuda Immigration and Protection Act 1956)—

- (a) by inserting after paragraph (2)—
 - “ (2A) Applying for grant of Bermudian status under section 20BA \$2,500 ”;
 - (b) in paragraph (4), by deleting “or 18” and substituting “, 18 or 18AA”; and
 - (c) in paragraph (14)(a), by inserting “31AA or” after “section”.

Transitional

20 The provisions of this Act shall not affect any application for Bermudian status, or for a permanent resident’s certificate, that has already been made before this Act comes into operation.

Commencement

21 This Act shall come into operation on such date as the Minister responsible for immigration may by notice in the Gazette appoint.

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EXPLANATORY MEMORANDUM

This Bill would amend the Bermuda Immigration and Protection Act 1956 to provide pathways to permanent residence and Bermudian status through long-term residence in Bermuda. It would also provide for the acquisition of Bermudian status by adoption in certain circumstances.

Clause 1 gives the citation and is self-explanatory.

Clause 2 repeals the existing definition of “permanent resident” in sections 23 and 72(1), and inserts in section 2 (interpretation) a new definition of “permanent resident”. A definition of “permanent resident’s certificate” is also added and, for the avoidance of doubt, it is expressly stated that this includes any such certificate granted under section 31A as it was before being repealed and replaced by the Incentives for Job Makers Act 2011.

Clause 3 amends section 13D (which provides for the determination by the Immigration Appeal Tribunal of appeals of the Minister’s decisions under various provisions of the Act) to include references to the new sections 20BA and 31AA (which are inserted by clauses 10 and 14 of this Bill respectively). It also deletes references to section 20D to 20F (which are spent, as applications under those sections had to be made before 1 August 2010, and those sections are therefore repealed by clause 11 of this Bill).

Clause 4 amends section 16(2B) to include a reference to section 18AA (inserted by clause 5).

Clause 5 inserts section 18AA (acquisition of Bermudian status by adoption). Currently, under section 16(2), every child adopted (in a manner recognized by Bermudian law) by a person who has Bermudian status is “deemed” to possess Bermudian status. But, in order to acquire (actual) Bermudian status, that person must, after he reaches the age of 18, but before reaching 22, apply under section 20 to be granted Bermudian status. Section 18AA provides for automatic (actual) Bermudian status to be acquired in certain circumstances by a child who is legally adopted by a person with Bermudian status while the child is under the age of 12 years on the date of his adoption.

Clause 6 amends section 19 by inserting subsection (3)(aa) and subsections (3A) to (3E). Subject to other provisions of the section, subsection (3)(aa) requires the Minister, for the purposes of determining the period that the applicant for Bermudian status has been ordinarily resident in Bermuda, to be satisfied that (unless there are in the Minister’s opinion exceptional circumstances beyond the applicant’s control) the applicant was not absent from Bermuda for more than an aggregate of 120 days in any year of the period. This is subject to the current section (3)(b) which allows the Minister to count, as a period of ordinary residence in Bermuda, a period of absence from Bermuda for the purposes of education outside Bermuda if the Minister is satisfied that, but for such period of absence, the applicant would have in fact continued to be ordinarily resident in Bermuda. Subsection (3)(aa) is also subject to subsections (3A) to (3E), which more or less mirror the current section 20C(3) to (7). Subsection (3A) provides that if a person who was working in a

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company in Bermuda has been absent from Bermuda for any period for the purpose of working in another country in a subsidiary, or the parent company, of the company which employed him in Bermuda, and the Minister is satisfied that but for that period of absence the person would have in fact continued to be ordinarily resident in Bermuda, the Minister may take into account a period of ordinary residence immediately before and after such absence but not the period of absence. Subsections (3B) to (3E) deal with the ordinary residence of the spouse and any dependent child accompanying and resident with the person, and related matters.

Clause 7 amends section 19A in consequence of the amendment to section 19 to apply, with necessary modifications, the newly inserted provisions of section 19.

Clause 8 amends section 20 in consequence of the amendment to section 19 to apply, with necessary modifications, the newly inserted provisions of section 19.

Clause 9 repeals section 20A (right of certain long-term residents to Bermudian status) as the section is spent. (Subsection (1)(e) requires an application for the grant of Bermudian status under that section to have been made on or before 31 July 2008.) It also repeals section 20B (right to Bermudian status in certain other cases). As section 20B applies only to certain Commonwealth citizens who were ordinarily resident in Bermuda on 31 July 1989, this amendment would affect only such persons who have not applied for Bermudian status before the Act comes into operation. However, once the Act comes into operation, section 20BA would offer an alternative pathway to status.

Clause 10 inserts section 20BA (right of certain long-term residents to Bermudian status). Subsection (1) provides that a person may apply to the Minister under this section for the grant of Bermudian status if: (a) he is a Commonwealth citizen; (b) he has been ordinarily resident in Bermuda for the period of 20 years immediately preceding his application; and (c) he is a permanent resident. But the requirement that he must be a permanent resident does not apply to an applicant who has already been resident in Bermuda for the period of 20 years immediately before this Act comes into operation. Subsection (4) applies subsections (3) to (9) of section 19 (inclusive of the newly inserted provisions), with necessary modifications, to applications under this section.

Clause 11 repeals section 20C (qualification for grant of Bermudian status under sections 20D to 20F), section 20D (right of siblings of Bermudians to Bermudian status), section 20E (right of parents of Bermudians to Bermudian status) and section 20F (right of non-Bermudian Parliamentary Electors to Bermudian status) as, under section 20C(2)(d), these provisions are spent. (Section 20C(2)(d) requires a person making an application under section 20D, 20E or 20F to have done so before 1 August 2010.)

Clause 12 amends section 22 (loss of Bermudian status) to add references to section 20 (right of persons within s 16(2) to Bermudian status) and to the newly inserted section 20BA. For clarity, it also replaces the incorrect expression “adopted parent” with “adoptive parent”.

Clause 13 amends section 31A (right of persons designated under section 5 of the Economic Development Act 1968 as exempt from Part V of this Act, to a permanent resident’s certificate) by repealing the current subsection (6) (which applies, with necessary modifications, sections 20C(3) to (5)). It also amends subsection (7) to apply, with necessary

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modifications, the newly inserted provisions of section 19 (which contain essentially the same provisions as are currently in sections 20C(3) to (5)).

Clause 14 inserts section 31AA (right of certain long-term residents to permanent resident's certificate). Subsection (1) provides that a person may apply to the Minister for the grant of a permanent resident's certificate if he has been ordinarily resident in Bermuda for a period of 20 years and was ordinarily resident in Bermuda for the period of two years immediately preceding the application. It further provides that, if the person was born in Bermuda or first became ordinarily resident in Bermuda before his sixteenth birthday, he may so apply if he has been ordinarily resident in Bermuda for a period of 10 years, was ordinarily resident in Bermuda for the period of two years immediately preceding the application, and is not less than 18 years of age. The newly inserted provisions of section 19 apply, with necessary modifications, to applications made under this section.

Clause 15 amends section 31B (right of certain other persons to permanent resident's certificate) by repealing subsection (1)(c), thereby reviving certain provisions. The repealed subsection provides that an application for a permanent resident's certificate under the section cannot, subject to subsection (6), be made on or after 1 August 2010. Subsection (6) provides that subsection (1)(c) does not apply to a person referred to in subsection (2)(e) or (f), i.e. a son or a daughter who is above the upper limit of compulsory school age, or the spouse, of a person who has been granted a permanent resident's certificate (which was granted other than under section 31B). The effect of the amendment is therefore that the other categories of family member or persons with Bermudian status or permanent residence, listed in subsection (2), may again apply for permanent residence under this section if they are at least 18 years of age and have been ordinarily resident in Bermuda for a period of 10 years immediately preceding the application. Section 31B is further amended by repealing the current subsection (5) (which applies, with necessary modifications, the current sections 20C(3) to (7)), and by amending subsection (4) to apply, with necessary modifications, the newly inserted provisions of section 19.

Clause 16 amends section 31C (rights, etc. of permanent residents) in subsection (1) by changing "permanent resident under section 31A and 31B" to "permanent resident". This reflects the new definition of "permanent resident" inserted by clause 2.

Clause 17 amends section 31D (revocation of permanent resident's certificate) in subsection (1) by deleting "referred to in section 31A or 31B" and substituting "who has been granted a permanent resident's certificate". This reflects the new definition of "permanent resident's certificate" inserted by clause 2.

Clause 18 amends section 92A (restriction on acquiring tourist accommodation or a hotel residence) by repealing subsection (1)(b) as, pursuant to amendments made by the Bermuda Immigration and Protection Amendment Act 2015, tourist accommodation or hotel residences are no longer required to be designated by the regulations as eligible to be held or acquired by restricted persons.

Clause 19 makes minor consequential amendments to the Legal Executives (Registration) Act 2011 and the Fisheries Regulations 2010, relating to the description of "permanent resident's certificate" and the definition of "permanent resident" respectively. It also amends the Government Fees Regulations 1976 to add fees for applications under the newly inserted sections.

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Clause 20 is a transitional provision and is self-explanatory. It states that the provisions of this Act shall not affect any application for Bermudian status, or for a permanent resident's certificate, that has already been made before this Act comes into operation.

Clause 21 provides for commencement and is self-explanatory.