



Consultative Immigration Reform Working Group

MIXED STATUS FAMILIES

SEPTEMBER 28, 2016

The Working Group

- ▶ Immigration Amendment Act tabled March 2016
- ▶ Protested and Withdrawn
- ▶ Letter formalizing the agreement created this Working Group
 - ▶ Mandate
 - ▶ Adoption
 - ▶ Mixed Status Families
 - ▶ Permanent Residents Certificates
 - ▶ Grant of Bermuda Status

Consultation Process Overview

- ▶ Guided by “Advising in Consultation” published in Judicial Review Sept 2007
- ▶ Information Gathering
 - ▶ Legal, Data, Civil Service
- ▶ Public Submissions and Information Gathering Meetings
- ▶ Develop Consensus position
- ▶ Test position against Legal Framework and Case Law
- ▶ Submit Position Report to Government and Stakeholders

Mixed Status Families Mandate

- ▶ From the letter Premier to Chris Furbert of 17th March 2016
- ▶ “Maintaining the integrity of mixed status families”
- ▶ EU Human Rights Article 8 “right to family life”
 - ▶ the right to respect for one’s established family life. This includes close family ties, although there is no pre-determined model of a family or family life. It includes any stable relationship, be it married, engaged, or de facto; between parents and children; siblings; grandparents and grandchildren etc. This right is often engaged, for example, when measures are taken by the State to separate family members (by removing children into care, or deporting one member of a family group).

Legislative Evolution - PRC

- ▶ Bermuda Immigration and Protection Amendment Act 2002
 - ▶ Creates PRC under section 31A (primary, able to pass 31B to family)
 - ▶ Long term resident before 31 July 1989, 20yrs resident, at least 40yrs old
 - ▶ Apply before 01 August 2010
 - ▶ Creates PRC under section 31B (secondary, unable to pass to family)
 - ▶ 10yrs resident, at least 18yrs old
 - ▶ Apply before 01 August 2010 (there are some exceptions)
 - ▶ Sibling has Bermuda Status or PRC under 31A
 - ▶ Parent of child with Bermuda Status or PRC under 31A
 - ▶ Child of a person with PRC under 31A
 - ▶ Spouse of a person with PRC under 31A

Legislative Evolution - Status

- ▶ Bermuda Immigration and Protection Amendment Act 1994
 - ▶ Creates right for certain Long Term Residents to apply for Status
 - ▶ Born in Bermuda or arrived before 6th birthday
 - ▶ Resident in Bermuda on 31 July 1989 and on 13 July 1994
 - ▶ Apply before 31 July 2008
- ▶ Bermuda Immigration and Protection Amendment Act 2002
 - ▶ Creates right for certain Long Term Residents to apply for Status
 - ▶ Resident in Bermuda before 31 July 1989
 - ▶ Resident in Bermuda 20yrs preceding application
 - ▶ Apply before 01 August 2010
 - ▶ All siblings are Bermudian, Parents of Bermudian resident for 20yrs on 31 July 1989
 - ▶ Non-Bermudian Parliamentary Electors registered on 01 May 1976

Mixed Status Family Examples

- ▶ Sections of the Act allowed for the Grant of Bermudian Status, some family members qualified for Bermudian status, and some not.
- ▶ A person possessing a Qualifying Bermudian Connection; what is termed QBC.
- ▶ A spouse, widow or widower of a Bermudian, but there may have been children in the family who did not qualify.
- ▶ A child, a wife or widow of a Bermudian who was deemed to possess Bermudian status (men did not originally qualify)
- ▶ Step-children who once were deemed to possess Bermudian Status but ceased to be so deemed as they did not meet the requirements
- ▶ A child born overseas to a Bermudian where the parent could not prove domicile.
- ▶ Where a family arrived with a child over the age of six years old and another child under the age of six years, the younger sibling could acquire Bermudian status but not the older one
- ▶ A person with siblings, all of whom possesses Bermudian status, but did not apply before the cut-off date of 1 August 2010
- ▶ A parent, resident in Bermuda before August 1969, of a child or children who possesses Bermudian status, but did not apply before 1 August 2010
- ▶ A person who was registered on the Parliamentary Register on 1st May 1976.

Mixed Status Family Examples

- ▶ Between 1956 and 2000, children who were legitimate or legitimated could apply for Bermudian status as the stepchild of a Bermudian. At that time stepchild was defined as having been born within a marriage. Those children could apply for the Grant of Bermudian Status between the ages of 18 to 22, but must have also be registered as British prior to obtaining Bermudian Status.
- ▶ Couples who married and had children in the family born to the non-Bermudian parent, but where the child was not born within a marriage, had to obtain specific permission from the Department of Immigration to reside and attend school in Bermuda. Upon attaining their 18th birthday, provided they were still in continuing education, could apply for further permission, however, those children who ceased school at 18 had to apply for their own independent permission to remain in Bermuda. As they were raised as a child within a Bermudian family, many thought themselves to be Bermudian.

Mixed Status Family Examples

- ▶ Acquisition of Bermudian status does not confer any rights to Bermudian status to their children who have already passed their 22nd birthday.
- ▶ There are children who, by now, may still be under the age of 22 years, and only those children will become deemed to possess Bermudian status, and some of those children will too cease to be deemed because they will be unable to meet the requirements to qualify before their 22nd birthday.
- ▶ Now, we must also be reminded that prior to 1 January 1983, women could not pass on nationality, therefore, any child born overseas to a Bermudian mother, and who was born in a non-Commonwealth country, had to, in the first instance, be registered as a Citizen of the United Kingdom and Colonies, as the citizenship was at that time, in order to apply for Bermudian Status, as part of their application process. Not all qualified to be registered and I am sure in many cases, some parents did not know of the requirements for registration in the first place. Hence, those children do not meet any requirements to apply for Bermudian status.

Mixed Status Family Examples

- ▶ Sections of the Act that allow for Permanent Residency Certificates
- ▶ some of the persons who arrived before 31st July 1989, would have qualified under section 31A, but prematurely applied as a 31B to get the benefits offered.
- ▶ As there were a number of parents who qualified for the PRC because they arrived before 31 July 1989, and who had a child who acquired Bermudian status, rather than wait for 20 years residence to obtain it in their own right, they opted to apply as a 31B, which does not provide for it to be passed on. Hence, other children of the family who did not meet any other requirements of the Act for Bermudian status or PRC, remain as non-Bermudian, needing permission to remain and reside in Bermuda, permission to seek employment and/or hold a work permit.
- ▶
- ▶ So now can you have:
- ▶ Daddy and Mommy who have PRC
- ▶ or Daddy or Mommy are now Bermudian
- ▶ Sibling or siblings have Bermudian Status
- ▶ But Little Johnny does not qualify for PRC or Bermudian status

Data

- ▶ There are very few clear sources of Data on these situations
- ▶ Families which do not qualify under the existing legislation do not apply so there is nothing to count within the Dept of Immigration
- ▶ The details are suitably granular that it is not captured in the Census
- ▶ We are working to derive figures and may issue a survey or other means to independently collect information

Publicly Submitted Options

- ▶ Reinstate – children born in Bermuda or arriving before 6yrs old grant Bermudian Status
- ▶ Introduce 10yr requirement for PRC for children under 18
- ▶ Introduce 10yr requirement for PRC with “significant family connection”
- ▶ If otherwise eligible for PRC, provide right to reside and work in order for 2yr residency requirement to be fulfilled
- ▶ Review requirements for children of work permit holders to enter public school system
- ▶ Maintain Bermuda Domicile and Family Connection rules
- ▶ Grant Bermuda Status to full siblings of Bermudians and their children
- ▶ Deport persons for a period of 10yrs, who have been on Work Permit for a long time
- ▶ Consider “Life Partners” as Spouses regardless of gender

Guiding Principles

Balancing Considerations

- ▶ Maintenance of the Integrity of Mixed Status Families
- ▶ EU Human Rights Article 8 “right to family life”
- ▶ Equality and Non-Discrimination
- ▶ Multi-generational connection to Bermuda

- ▶ Factors under consideration
 - ▶ Impact on Population
 - ▶ Impact on Employment and the Workforce
 - ▶ Impact on Bermuda Economy
 - ▶ Impact on Tax Base

Discussion

- ▶ Mixed Status Families
- ▶ Other Immigration comments
- ▶ Follow up Discussions
 - ▶ October 11, 12, 13, 2016