

ANTIGUA AND BARBUDA



THE IMMIGRATION AND PASSPORT (AMENDMENT) ACT 2021

No. 20 of 2021

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CLAUSES

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[L.S.]



I Assent,

Rodney Williams,
Governor-General.

5th October, 2021

ANTIGUA AND BARBUDA

THE IMMIGRATION AND PASSPORT (AMENDMENT) ACT, 2021

No. 20 of 2021

AN ACT to amend the Immigration and Passport Act 2014 and for other connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows —

1. Short Title

This Act may be cited as the Immigration and Passport (Amendment) Act, 2021.

2. Interpretation

In this Act,

“principal Act” means the Immigration and Passport Act, 2014 No. 6 of 2014

3. Amendment of section 2 – Interpretation

Section 2 of the principal Act is amended —

- (a) in the definition of “EPA Agreement” by repealing the definition thereof and replacing it as follows:

“EPA Agreement” means the EU-CARIFORUM Economic Partnership Agreement including its Protocols and annexes thereto which was signed between Member States comprising the CARIFORUM grouping and the European Community, on October 15 2008”

- (b) by inserting in the correct alphabetical position the following:

“marriage of convenience” means a marriage entered into with the primary intention of avoiding, or benefiting from, any of the provisions of this Act;

4. Amendment of section 10 – Administrative procedures

Section 10 of the principal Act is amended –

- (a) by repealing subsection (2) in its entirety;

- (b) by repealing subsection (3) and replacing it as follows:

“(3) Where an immigration officer refuses to grant or renew a permit to an applicant or revokes the permit of a permit holder, the immigration officer shall, in writing, promptly notify the applicant or, as the case may be, the permit holder, of the refusal or the revocation and the reasons for the refusal or revocation.”

- (c) by repealing subsection (4) and replacing it as follows –

“(4) Where the decision of the immigration officer –

- (a) is a refusal to grant or renew a residency permit; or

- (b) affects an application for citizenship,

the applicant shall be informed of his or her right to appeal under Part VI or Part VII.”.

5. Amendment of section 17 – Regulation of entry and departure

Section 17 of the principal Act is amended by repealing subsection (9) and replacing it as follows:

“A person who remains in Antigua and Barbuda after the expiration or cancellation of a permit granted to the person commits an offence.”

6. Amendment of section 38 – Application for extension of time etc.

Section 38 of the principal Act is amended in subsection (2) by repealing paragraphs (d) and (e) and replacing these as follows –

- “(d) has invested in developed residential real estate in Antigua and Barbuda in such amount as may have been prescribed, or owns, in whole or in part, a residential building in Antigua and Barbuda; or
- (d) has significant ties to his home country such as the applicant is gainfully employed, is married, is the owner of property or has children of whom the applicant is the legal guardian.”

7. Amendment of section 40 – Grant of residence permit

Section 40 of the principal Act is amended –

- (a) by the repeal of subsection (1) and the substitution thereof with the following:

“(1) The Chief Immigration Officer may, upon consideration of an application under section 39 subsection (1), grant a residence permit to the applicant if the Chief Immigration Officer is satisfied that the applicant –

- (a) has demonstrated an intent to permanently reside in Antigua and Barbuda;
- (b) has been lawfully resident in Antigua and Barbuda for a period of not less than 4 continuous years immediately preceding the date of the application; or
- (c) has, from a period of at least one year immediately preceding the date of the application, been living in a marital union with a citizen of Antigua and Barbuda; and
- (d) meets the other requirements for the grant of a residence permit”

- (b) by the inserting, immediately after subsection (1) the following new subsection:

“(1A) In this Part, “marital union” means that the applicant and his or her Antigua and Barbuda citizen spouse reside together in the same household in a marital relationship.”

8. Amendment of section 42 - Permanent residence permit

The principal Act is amended in section 42(2) as follows –

- (a) by repealing paragraph (a) and replacing it as follows:

“(a) maintain a permanent place of abode in Antigua and Barbuda and resides in Antigua and Barbuda for at least 30 days in a calendar year; or”

- (b) by the repeal of paragraph (d)(ii) thereof and the substitution therefor of the following –

“(ii) has an annual income of not less than US\$500,000 or such other sum as may be prescribed; and”

9. Insertion of Section 42A - Permanent residence as a path to citizenship

“42A. Permanent residence as a path to citizenship

(1) A person who is granted a permanent residence permit under this Act may be entitled to apply for citizenship of Antigua and Barbuda by registration if that person satisfies the Minister that he has, for an unbroken period of seven years since the grant of the permanent residence permit –

- (a) maintained a permanent place of abode in Antigua and Barbuda and resides in Antigua and Barbuda for at least 90 days in each calendar year;
- (b) been engaged in a substantial economic activity in Antigua and Barbuda;
- (c) has been complying with all applicable tax obligations; and
- (d) been complying with such other requirements for residency as set out in section 39(1) at paragraphs (a) to (e).

(2) Where a person, who has maintained the status of permanent residence for seven unbroken years does not wish to become a citizen of Antigua and Barbuda, but wishes to continue with his permanent residence status, the person may apply to the Minister to have the status of permanent residence continued without payment of the prescribed fee.

(3) An application for continuance of permanent residence status shall be made no later than four (4) months before the expiration of the last permanent resident permit issued to the applicant.

(4) The Minister may, upon the advice of Cabinet, grant the application for continuance of the permanent residence status under this section without the payment of the prescribed fee, if the Minister is satisfied that the person –

- (a) has met all the requirements of subsection (1);
- (b) intends to continue to reside in Antigua and Barbuda and maintain a permanent place of abode in Antigua and Barbuda; and
- (c) will continue to be engaged in substantial economic activity.

(5) A permanent resident permit issued under this section is valid for a period of ten (10) years from the date of issue unless otherwise revoked.

(6) A person who is issued a permanent resident permit under this section may apply for citizenship at any time, or may apply to the Minister to have the permit residence status continued in accordance with subsection (3).”

10. Amendment of section 47 – Residence permit for spouses, etc. of citizens of Antigua and Barbuda

Section 47 of the principal Act is amended –

- (a) in subsection (2), by inserting immediately after paragraph (b) the following new paragraph:

“(ba) that the marriage is not a marriage of convenience;

- (b) in subsection (3),

- (i) by deleting the words “; and” appearing at the end of paragraph (c);

- (ii) by removing the end mark at the end of paragraph (d) and replacing the end mark with the words “; and”

- (iii) by inserting immediately after paragraph (d) the following new paragraph:

“(e) the marriage of the applicant to the citizen of Antigua and Barbuda is not a marriage of convenience.”

11. Amendment of section 48 – Loss of right of residence

Section 48 of the principal Act is amended by the repeal of subsection (1) and the substitution therefor of the following:

“(1) The Chief Immigration Officer may revoke a residence permit granted to a person who is the spouse of a citizen of Antigua and Barbuda if –

- (a) section 45(1) applies;

- (b) the spouse of the person ceases to be a citizen of Antigua and Barbuda;

- (c) the person ceases to be lawfully ordinarily resident in Antigua and Barbuda; or

- (d) within 3 years of the grant of the residence permit to the person –

- (i) the marriage is dissolved or annulled;

- (ii) the marriage has declined to a point where the parties are living apart;

- (iii) the marriage no longer subsists.”

12. Amendment of section 53 – Detention of persons

Section 53 of the principal Act is amended in subsection (8) thereof,

- (i) by deleting the word “and” at the end of paragraph (a) and replacing this with the word “or”;

- (ii) by inserting after the words “Police Force” which appears in the first line after paragraph (b) the words “, an Immigration Officer”

13. Amendment of section 59 – Duty of confidentiality

Section 59 is amended by inserting after subsection (3) the following new subsection:

“(4) Where a member of the Tribunal has a personal or pecuniary interest, direct or indirect, in any matter which is to be determined by the Tribunal, the member shall, if present at the meeting at which such matter is to be determined, forthwith disclose the fact and leave the meeting”

14. Amendment of section 67 – Specific offences

Section 67 of the principal Act is amended by inserting after subsection (3) the following new subsection:

“(3A) A person commits an offence if –

- (a) he or she enters into a marriage of convenience; or
- (b) being a marriage officer, he or she has reasonable grounds for suspecting that a marriage which will be solemnized by him or her is a marriage of convenience.”

Passed the House of Representatives on
the 9th day of September, 2021

Passed the Senate on the 21st day of
September, 2021.

Gerald Watt, Q.C.,
Speaker.

~~Alan Williams Grant,~~
~~President..~~

A. Peters
Clerk to the House of Representatives.

A. Peters
Clerk to the Senate