

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

BERMUDA IMMIGRATION AND PROTECTION AMENDMENT (NO. 2) ACT 2013

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WHEREAS it is expedient to amend the Bermuda Immigration and Protection Act 1956 to combat work permit violations, and to make connected provision;

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:

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 (No. 2) Act 2013.

Amends section 57

2 In section 57 of the principal Act, after subsection (2) insert—

"(2A) "work permit" means, for the purposes of this Part, written confirmation of the Minister's grant of permission to engage in gainful occupation granted to a person under this Part."

Amends section 61

3 (1) In section 61 of the principal Act, after subsection (1) insert—

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“(1A) Any such application shall be made on behalf of the applicant by his prospective employer who shall be responsible for ensuring that the application is complete and accurate in accordance with Guidelines issued by the Minister for the purposes of this section.”

(2) In section 61(5) of the principal Act, after “granted” insert “to a person”.

(3) Delete section 61(7) and substitute—

“(7) The Minister may extend, revoke, vary or modify the terms of any such permission.

(7A) Any such revocation or restriction of the terms of any such permission shall be effected by means of an order in writing served upon the person to whom it relates.

(7B) Before the Minister makes any order under subsection (7A) against any person, he shall cause a notification in writing to be served upon that person that he proposes to make such an order in his case at the expiration of fourteen days or such longer period as may be specified in the notification; and shall inform that person of the grounds upon which the Minister proposes to make the order and shall invite him within that period to submit in writing to the Minister any reason which he wishes to advance why such an order should not be made in his case.

(7C) The Minister shall not make any order under subsection (7A) until the expiration of the period specified in the respective notification served under subsection (7B) and the Minister shall, where reasons are submitted to him in accordance with subsection (7B), take those reasons into consideration when he decides whether or not the order should be made.

(7D) Any person aggrieved by any decision of the Minister to make an order under subsection (7A) against him may, subject to section 124, appeal to the Immigration Appeal Tribunal against such decision.

(7E) Where, in the case of a person who is employed by an employer pursuant to a work permit—

(a) the employment is terminated by the employer or employee or is regarded by the employer as having ended; and

(b) the employer informs the Minister of that fact in writing,

the work permit shall be deemed to have been revoked immediately upon receipt by the Minister of that writing; and subsections (7A) to (7D) shall not apply in such a case.”

Inserts sections 61AA and 61AB and amends section 31(7)

4 (1) After section 61 insert—

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“Minister not to grant work permit to exceptionable person

61AA Notwithstanding anything in section 61, the Minister shall not grant a work permit to a person deemed under section 31(7) to be an exceptionable person.

Cost of repatriation of employee and dependants

61AB (1) Subject to subsection (2), the most recent employer of a person (“former employee”) whose work permit has expired, been revoked, or is deemed to have been revoked under section 61(7E), shall be responsible for any costs associated with repatriation of the former employee and his qualifying dependants, and for reimbursing the Chief Immigration Officer if he incurs any such costs.

(2) Subsection (1) does not apply if the employer and former employee have agreed in writing that the former employee will be responsible for any such repatriation costs, but it shall apply if in any case the former employee is unable to meet those costs.

(3) Any costs associated with repatriation of dependants who are not qualifying dependants shall be the responsibility of the former employee, who shall be responsible for notifying the Chief Immigration Officer of any changes to the dependants listed on the original work permit in accordance with Guidelines issued for the purposes of this section.

(4) “Qualifying dependants” means dependants who were listed on the former employee’s original work permit application.”

(2) In section 31(7) of the principal Act, in paragraph (e) delete the words after “immoral purpose” to the end of that paragraph.

Inserts sections 71A to 71C

5 After section 71 of the principal Act insert—

“Power to impose civil penalties for work permit violations

71A (1) The Chief Immigration Officer may impose a civil penalty on a person who, in contravention of this Part,—

- (a) engages in gainful occupation without a work permit;
- (b) engages in gainful occupation which is outside the scope of his work permit;
- (c) employs a person to engage in gainful occupation when that person does not have a work permit; or
- (d) employs a person to engage in gainful occupation which is outside the scope of that person’s work permit.

(2) The Chief Immigration Officer may also impose a civil penalty on a person if the person has been given—

- (a) written notice of an investigation for a suspected contravention of this Part; and

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- (b) a request to submit specified documents to the Chief Immigration Officer within a 24 hour period,

but fails without reasonable excuse to do so.

- (3) The amount of a civil penalty imposed under this section shall be—

- (a) \$5000, for a person's first violation; or
- (b) \$10,000, for a person's second or subsequent violation within a period of seven years beginning with the date of the first violation.

(4) Where a civil penalty is imposed on a person under this section for a contravention of this Part, the person shall not also be prosecuted for an offence under section 64, 65, 133 or 134 relating to that same contravention.

Procedure for imposing civil penalties

71B (1) When the Chief Immigration Officer proposes to impose a civil penalty on a person, he must give the person a notice (a "warning notice") of—

- (a) the amount of the penalty;
- (b) the reasons for imposing the penalty; and
- (c) the right to make representations within seven days of the date of the warning notice.

(2) After considering any representations, the Chief Immigration Officer must decide, within seven days of the end of the period specified in subsection (1) (c) whether to impose a penalty.

(3) The Chief Immigration Officer must give the person a notice (a "decision notice") of—

- (a) his decision not to impose a penalty; or
- (b) his decision to impose a penalty and—
 - (i) the amount of the penalty;
 - (ii) the reasons for his decision;
 - (iii) the right to appeal to the Supreme Court within 21 days of the date of the decision notice.

(4) A person upon whom a penalty is imposed by decision notice who does not appeal under subsection (3)(b)(iii), shall within 21 days either—

- (a) pay the penalty; or
- (b) pay a portion of the penalty and apply to the Chief Immigration Officer for a payment schedule for the remainder.

- (5) The Chief Immigration Officer—

- (a) shall pay any civil penalties into the Consolidated Fund; and

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- (b) may recover any unpaid civil penalty as a debt owing to him in any court of competent jurisdiction.

Appeals to Supreme Court

71C (1) A person may appeal to the Supreme Court against a decision of the Chief Immigration Officer to impose a civil penalty.

(2) An appeal must be brought within the period specified in the decision notice.

(3) A decision appealed against under this section shall not have effect—

- (a) until the end of the period within which the appeal can be brought; and
- (b) if such an appeal is brought, until it is determined or withdrawn.”

Amends section 111

6 (1) After section 111(3) of the principal Act, insert—

“(3A) If there is any shortfall under subsection (3) or if no money was deposited, and the person to be deported was previously employed under a work permit granted under section 61, the person’s most recent employer shall be responsible for any expenses—

- (a) of or incidental to the person’s journey out of Bermuda; and
- (b) of the maintenance until the departure of the person charged and his qualifying dependants (as defined in section 61AB) (if any).”

(2) In section 111(4) of the principal Act, after “subsection (3)” insert “or (3A)”.

Amends section 141

7 In section 141 of the principal Act—

- (a) in subsection (1A), delete “\$5000” and insert “\$10,000” ; and
- (b) in subsection (1B), delete “\$10,000” and insert “\$25,000”.

Amends Employment Act 2000

8 In section 29A(2) of the Employment Act 2000 (whistle-blowers), at the end insert—

“(n) the Chief Immigration Officer of the Department of Immigration;”.

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Commencement and application

9 (1) Subject to subsection (2), this Act shall come into operation on such day as the Minister responsible for immigration appoints by notice published in the Gazette, and different dates may be appointed for different provisions.

(2) Sections 71A to 71C of the principal Act (inserted by section 5 of this Act) apply in relation to acts or omissions which occur on or after the commencement date of section 5; accordingly, any violations of Part V which occur before that date shall be dealt with under the principal Act as it was immediately before the commencement of section 5.

(3) Sections 61AB and 111(3A) of the principal Act (inserted by sections 4 and 6) apply in relation to any former employee who was employed by an employer on the commencement date of sections 4 and 6.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Bermuda Immigration and Protection Act 1956 (“the principal Act”) to combat work permit violations, and to make other minor and related amendments.

Clause 1 is self-explanatory.

Clause 2 amends section 57 of the principal Act to insert a definition of “work permit”.

Clause 3 amends section 61 of the principal Act to clarify that the employer must make the work permit application on behalf of a prospective employee and is responsible for ensuring that the application is complete and accurate in accordance with Guidelines issued by the Minister for the purposes of this section. Section 61(7) is set out in full for clarity, so readers will no longer need to look back at section 34(2)-(4) which was previously applied via the two provisos to subsection (7).

Clause 4, subsection (1), inserts new sections 61AA and 61AB into the principal Act. Section 61AA provides that a work permit will not be granted to an exceptionable person. Section 61AB provides that the most recent employer of a person whose work permit has ended is responsible for any costs associated with repatriation of the person and his qualifying dependants. Subsection (2) makes a related minor amendment to section 31(7) of the principal Act (exceptionable persons) to remove unnecessary and discriminatory words from paragraph (e).

Clause 5 inserts the new civil penalty scheme in sections 71A to 71C. Section 71A provides that the Chief Immigration Officer may impose a civil penalty of \$5000 (or \$10,000 for a second or subsequent violation) on a person who works without, or outside the scope of his, work permit, or employs a person to do that, and on a person who is being investigated for a suspected contravention and fails to submit specified documentation. Where a civil penalty is imposed on a person under section 71A, he shall not also be prosecuted for a criminal offence under section 64, 65, 133 or 134 of the principal Act relating to that same contravention. Section 71B sets out the procedure to be followed before a civil penalty is imposed. Section 71C provides for an appeal to the Supreme Court against the decision to impose a penalty.

Clause 6 amends section 111 of the principal Act by inserting new subsection (3A) which provides that a person’s former employer shall be responsible for deportation expenses of the employee and any qualifying dependants not covered by the monies referred to in subsection (3).

Clause 7 amends section 141 of the principal Act to increase the criminal penalties for offences under the Act, from \$5000 to \$10,000 for a summary conviction and from \$10,000 to \$25,000 for an indictable offence.

Clause 8 amends section 29A of the Employment Act 2000 (whistle-blowers) to add the Chief Immigration Officer to the list of persons to whom a protected disclosure may be made.

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Clause 9 provides for commencement and application of the new provisions.