

JAMAICA

No. 14 – 2011

I assent,

[L.S.]


Governor-General.

12 MAY 2011

AN ACT to Amend the Foreign Nationals and Commonwealth
Citizens (Employment) Act.

[13 MAY 2011]

BE IT ENACTED by The Queen's Most Excellent Majesty, by
and with the advice and consent of the Senate and House of
Representatives of Jamaica, and by the authority of the same,
as follows:—

1. This Act may be cited as the Foreign Nationals and Commonwealth Citizens (Employment) (Amendment) Act, 2011, and shall be read and construed as one with the Foreign Nationals and Commonwealth Citizens (Employment) Act, hereinafter referred to as the principal Act. Short title and construction.

Repeal and
replacement
of section 2 of
principal Act.

2. Section 2 of the principal Act is repealed and the following substituted therefor—

“Interpre-
tation .

2. In this Act—

“authorized person” means—

- (a) an immigration officer under the Aliens Act; or
- (b) any person appointed as an authorized person under section 5;

“Caribbean Community” means the Caribbean Community established by Article 2 of the Revised Treaty;

“CARICOM national” means a person who—

- (a) is a citizen of a Member State; or
- (b) has a connection with a Member State of a kind which entitles him to be regarded as belonging to or, if it be so expressed, as being a native or resident of the Member State for the purposes of the laws thereof relating to immigration;

“Commonwealth citizen” means a person who has the status of a Commonwealth citizen pursuant to section 9 of the Constitution of Jamaica and who is not a citizen of Jamaica;

“foreign national” means a person who is not—

- (a) a citizen of Jamaica;
- (b) a Commonwealth citizen; or
- (c) a CARICOM national;

“Member State” means a Member State of the Caribbean Community in accordance with Article 3 of the Revised Treaty, excluding an Associate member within the meaning of Article 231;

“Revised Treaty” means the Revised Treaty of Chaguaramas establishing the Caribbean Community, including the CARICOM Single Market and Economy, signed at Nassau, Commonwealth of the Bahamas, on the 5th day of July, 2001; and

“work permit” or “permit” means—

- (a) in relation to a person who is or is about to be employed by another, a permit in writing—
 - (i) issued under this Act by the Minister to, and in the name of, the employee or person about to be employed; and
 - (ii) specifying the name of the employer, the place of employment, or both; and
- (b) in relation to any other person, a permit in writing issued under this Act by the Minister authorizing such person to engage in an occupation.”

3. Section 3 of the principal Act is amended—

Amendment of
section 3 of
principal Act.

- (a) in subsection (1), by inserting immediately after the words “Commonwealth Citizen” the words “, other than a CARICOM national falling within the category specified in the Schedule”;
- (b) in subsection (3), by deleting—
 - (i) the words “two hundred dollars” and substituting therefor the words “five hundred thousand dollars”; and
 - (ii) the words appearing after the words “; such fine and imprisonment”; and

(c) by inserting next after subsection (7) the following as subsection (8)—

“ (8) The Minister may, by order subject to affirmative resolution, amend the Schedule.”.

Amendment of section 6 of principal Act.

4. Section 6(3) of the principal Act is amended by deleting the words “fifty dollars” and substituting therefor the words “two hundred and fifty thousand dollars”.

Amendment of section 9 of principal Act.

5. Section 9 of the principal Act is amended by deleting the words “two hundred dollars” and substituting therefor the words “five hundred thousand dollars”.

Amendment of section 10 of principal Act.

6. Section 10(2) of the principal Act is amended by deleting—

(a) the word “six” and substituting therefor the word “twelve”; and

(b) the words “two hundred dollars” and substituting therefor the words “one million dollars”.

Insertion of new section 11 and Schedule in principal Act.

7. The principal Act is amended by inserting next after section 10 the following as section 11 and the Schedule—

“Minister may, by order, increase monetary penalty. 11. The Minister may, by order subject to affirmative resolution, increase any monetary penalty specified in this Act.

SCHEDULE

(Section 3)

Category of CARICOM Nationals Exempt from Work Permit Requirement

CARICOM nationals who, in accordance with the Caribbean Community (Establishment, Services, Capital and Movement of Community Nationals) Act, are already in, or are coming to, Jamaica to exercise rights of establishment, provide services or move capital.”.

8. The provisions of the Foreign Nationals and Commonwealth Citizens (Employment) Exemptions Regulations, 1964, specified in the first column of the Schedule are amended in the manner specified in the second column of the Schedule.

Amendment
of the Foreign
Nationals
and Common-
wealth
Citizens
(Employment)
Exemptions
Regulations,
1964,
Schedule.

SCHEDULE

(Section 8)

*Amendment of the Foreign Nationals and Commonwealth Citizens
(Employment) Exemptions Regulations, 1964*

Provision	Amendment
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Regulation 4	Insert immediately after the words “such employment” the words “and shall apply to the Minister for a certificate stating the nature of the exemption”.
New Regulation 4A	<p>Insert next after regulation 4 the following as regulation 4A—</p> <p style="margin-left: 40px;">“4A. —(1) Subject to the qualification set out in regulation 5, a person who is a member of a class described in Part III of the Schedule, conducting business in Jamaica on—</p> <ul style="list-style-type: none"> (a) a visit not exceeding thirty days; <li style="margin-left: 20px;">or (b) more than one visit in any calendar year, not exceeding— <ul style="list-style-type: none"> (i) thirty days on each occasion; and (ii) six months in the aggregate, <p style="margin-left: 40px;">shall be exempt from the provisions of section 3(1) of the Act and shall not be required to apply for a certificate stating the nature of the exemption.”.</p>
Regulation 5	Delete the words “paragraph (b) of regulation 3 and in paragraph (b) of regulation 4” and substitute therefor the words “regulations 3(b), 4(b) and 4A”.

Provision	Amendment
Schedule	<ol style="list-style-type: none">1. Delete the heading “Part I” and substitute therefor the following— <p style="text-align: center;"><i>“PART I. Family Members and Students Requiring Exemption Certificate”.</i></p>2. Delete paragraph 2 of PART I and substitute therefor the following— <p style="text-align: center;"><i>“2. Persons registered as fulltime students and who are pursuing courses of studies approved by the University Council of Jamaica at such institutions providing tertiary education as the Minister may, pursuant to section 2 of the University Council of Jamaica Act by order, determine; and the husbands and wives of persons so registered.”.</i></p>3. Delete the heading “Part II” and substitute therefor the following— <p style="text-align: center;"><i>“PART II. Other Categories Requiring Exemption Certificate”.</i></p>4. Delete from PART II paragraphs 13, 15, 20, 21 and 24.5. Insert next after “Part II” the following as PART III— <p style="text-align: center;"><i>“PART III. Officials and Technical Experts not Requiring Exemption Certificate</i></p><ol style="list-style-type: none">1.—(1) Directors, inspectors and auditors of any company, association, organization or body (incorporated or established, whether in Jamaica or elsewhere) that—<ol style="list-style-type: none">(a) operates in Jamaica; or(b) controls any company, association, organization or body (incorporated

[No.] *The Foreign Nationals and Commonwealth Citizens
(Employment) (Amendment) Act, 2011*

Provision
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Amendment
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or established whether in Jamaica or elsewhere) which operates in Jamaica.

(2) In this paragraph “control” means the power of a person to secure—

(a) in relation to a company, association, organization or other body (other than a partnership) incorporated or established, whether in Jamaica or elsewhere—

(i) by means of the holding or the possession of voting power in or in relation to that body; or

(ii) by virtue of any powers conferred by the articles of association or other document regulating that body,

that the affairs of the body, are conducted in accordance with the wishes of that person; and

(b) in relation to a partnership, means the right to a share of more than one-half of the assets, or more than one-half of the income of the partnership.

2. Persons who visit Jamaica, on behalf of a principal who is not in Jamaica, in connection with the appointment of, or for the purpose of having business consultations with, a business agent or distributor that is based in Jamaica.

Provision

Amendment

3. Persons who visit Jamaica to inspect the plant, machinery or equipment of any factory or other industrial works, or to give technical advice on the operation of any undertaking, business or enterprise of whatever kind that is based in Jamaica.”.

Passed in the House of Representatives this 8th day of March, 2011 with one (1) amendment.

DELROY CHUCK
Speaker.

Passed in the Senate this 7th day of April, 2011.

OSWALD G. HARDING, O.J., C.D., Q.C.
President.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to the Houses of Parliament.