



IMMIGRATION
C A Y M A N I S L A N D S

The Immigration (Amendment) (No.2) Bill, 2013

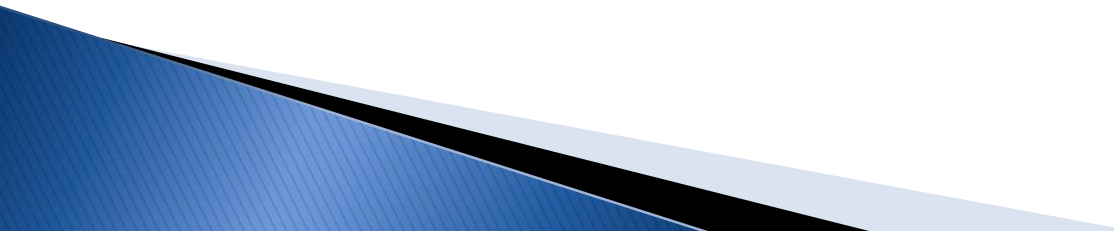
Summary of major of changes

Major Changes

- Term limit change from 7 to 9 years
- Key employee designation discontinued
- Now treated as legal and ordinary:

Term limit exemption permit
Specialist caregiver certificate
Spouses employed under 52 (12)

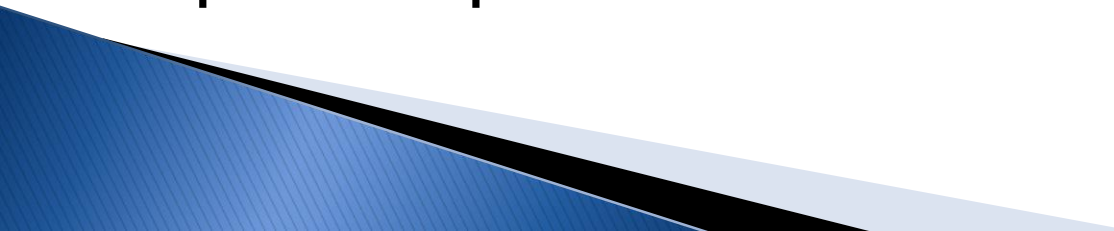
Major Changes

- Appeals process overhaul – paper based and two step process
 - All major restrictions removed from the CIO in handling work permits
 - CIO can decide on permanent residency applications (delegated authority)
 - New points system for permanent residency
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Work Permit Changes

- ▶ Section 52 (16) – If a person's term limit expired before the change in Law, and he did not hold a valid facility to work and reside and he left the island (or did not apply for one before leaving), then he must continue their break for a full year
- ▶ Those on island on a Term Limit Exemption Permit when the Law came into effect are entitled to 45 days (Dec 9th) in order for them to complete the requirements of the work permit process
- ▶ If applying for a Temporary Work Permit (having held a TLEP on 28th October) – normal advertisement requirements exist

Key Employee Designation

- ▶ Key Employee applications submitted prior to and still pending when the Law comes into effect will be processed and if approved will continue to have the benefit of the presumption of a renewal
 - ▶ Key Designation applications cannot be accepted after the Amendment Bill comes into effect
 - ▶ Those designated Key still maintain the presumption of a renewal
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Work Permit Changes

- ▶ Restrictions removed with the exception that a Business Staffing Plan cannot be granted or renewed by the CIO (Administrator)
 - So they will be able to decide on applications where:
 - a Caymanian has applied and was not hired
 - Where there is a complaint on file
 - A waiver of advert is requested
 - An application includes a re-designation or promotion of the worker
 - Amend a Business Staffing Plan

Work Permit Changes

- ▶ When the Work Permit Grant application requirements are completed and the job is advertised that is the first time that the job is known to exist to a Caymanian candidate
- ▶ If a qualified, willing and able Caymanian submits their application for the job and the Board or CIO determines that they are suitable for the role then they may make a decision to refuse the application
- ▶ The WOL has been discontinued (where the decision is appealed)

Work Permit Changes

- ▶ Where a person who when making a work permit application willfully:
 - withholds information that a Caymanian, Spouse of a Caymanian or Permanent Resident applied for the position for which a work permit is sought; or
 - provides inaccurate or incomplete information in an attempt to deceive the Board or CIO, either by act or omission,
- commits an offence and is liable on summary conviction in respect of the first offence to a fine of \$20k and to imprisonment for a year and in respect of the second or subsequent offence to a fine of \$30k and imprisonment for 2 years

Temporary Work Permit Appeals

- ▶ The Law currently allows for an appeal to be submitted to the Work Permit Board where a temporary has been refused
- ▶ The process has been made clearer in that the appellant will have 14 days to submit their grounds for such an appeal
- ▶ The appellant will still retain their eligibility to remain to await the outcome but the CIO will have to be satisfied that the prospective employee has sufficient funds to support himself and any accompanying dependants whilst on island, if any

Permanent Residency

- ▶ Those persons who have time remaining on their term limit will be eligible to apply for a work permit until they have reached year 9
- ▶ If they have applied for PR upon reaching year 8 then they also have the option to make an application to seek permission to continue work until the outcome of that application or the subsequent appeal

Permanent Residency

- ▶ If an individual reached year 9 when the Law amendment came into effect he/she will have 90 days to apply for PR
- ▶ No applications can be accepted after the 90 days
- ▶ At any point during the 8th year you can apply for permanent residency but you will have to do so before the end of year 8

Permanent Residency

- ▶ Change from 100 points to 110 to qualify
- ▶ Administrators will be able to decide on applications for PR, supported by an audit by Compliance Officers and an internal committee to ratify those decisions
- ▶ All fees must be paid up front (no power to entertain the application otherwise)–
 - Application fee (changed from \$300 to \$1000)
 - Annual Fee (work permit equivalent)
 - Issue Fee (scaled to income)
 - Dependant fees, if applicable

Permanent Residency

- ▶ Applicant must disclose full particulars requested on their spouse and dependants whether or not they are intended to accompany him (Failure to do so is an offence)
- ▶ An applicant must inform the Board or CIO in respect of his application if there is a change in his circumstances since making the application:
 - Any convictions he may have received
 - Whether he has become unemployed
 - Whether he has been charged with an offence
 - Whether he no longer holds any of his assets listed on the application
 - Any change in his marital status or in respect of his dependants

Permanent Residency

- ▶ If you have applied for PR (whilst legal and ordinary) and it has been refused and you have appealed that decision then you will be eligible for permission to continue to work to await the outcome of that decision
- ▶ WOL changed to Permission to continue to Work
- ▶ Permission to continue to work
 - Can be refused, revoked and amended to add dependants
 - Set to anticipate any major changes whilst awaiting the outcome of the IAT decision such as new dependants, convictions or administrative fines

Permanent Residency

- ▶ Holders of Permanent Residency must complete an Annual Declaration which will provide details such as:
 - Change in contact details
 - Change in occupation (s), employer
 - Change in property ownership
 - Change in dependants
- ▶ Additional Loss Provisions:
 - Working outside your approved occupation (s)
 - Failure to complete the annual declaration
 - Failure to pay your annual fee
 - No longer supporting or able to support an approved dependant

Permanent Residency

- ▶ Employers will be required to make a declaration to the Board or CIO of who they have employed that is a Permanent Resident and any subsequent employment changes such as
 - termination;
 - promotion;
 - re-designation or
 - Demotion;

And failure to do so is an offence

Permanent Residency

- It is an offence to employ a permanent resident in an occupation not listed in his Certificate
- Final Non-renewable work permits have been abolished.
- Persons will instead be given permission to continue to work for a period of 90 days so that they can wrap up their affairs prior to departure

Permanent Residency

- ▶ Dependant children permanent residency will expire at 18 automatically
- ▶ The holder's PR can be varied to allow a dependant child to continue to hold residency if evidence is provided to the Board or CIO that they are in full time tertiary education and those applications can continue up to the age of 24
- ▶ Child of a PR holder who meet the requirements under Section 32 and wish to apply under that section, will only be eligible between the age of 18 and 24 to apply

Obligations

- ▶ Upon the death of the holder of the RERC issued under 30 (6) or upon the dissolution or breakdown of his marriage, it shall be the duty of:
 - a) the spouse of the deceased certificate holder; and
 - b) the holder of the certificate and his spouse in the case of the dissolution or breakdown of their marriage,

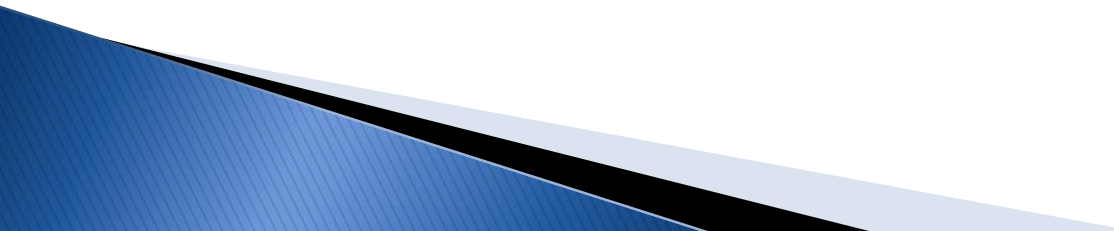
To notify the Board or the CIO within 6 months of the death, dissolution or breakdown

Failure to do so in the case of b) is an offence for which both are liable

Debarred clause amendment

- ▶ The PR application has been refused and the applicant has not been appealed or has appealed and lost his appeal, he is debarred from reapplying
- ▶ Debarment shall continue until:
 - Until the worker re-qualifies under Section 30 having taken a break in stay of one year
 - In the case of a government employee, for a period of nine years following the date of refusal or any subsequent appeal in respect of that application

Correspondence

- ▶ In the ordinary course of post has been defined – deemed to have received by him no later than seven (7) days from the date of dispatch; or
 - ▶ By electronic mail, be deemed to have been received by him no later than twenty four (24) hours after its transmission.
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New Appeals Process

- ▶ Any person aggrieved by, or dissatisfied with any decision of the Board or CIO may serve notice to the IAT of his intention to appeal such notice
- ▶ On receipt of a notice the IAT shall, within 14 days notify the CIO or the Board of the notice of appeal against its decision
- ▶ CIO or Board, as case may be, deliver to the IAT or the Board and the appellant, the reasons for his or its decision

New Appeals Process

- ▶ Upon receipt of the reasons the appellant shall have 28 days to submit detailed grounds of appeal to the IAT upon which a hearing shall be determined (or 14 days if its to a Board)
- ▶ Grounds must be made under one or more of the following:
 - Erroneous in Law
 - unreasonable
 - contrary to principles of natural justice
 - at variance with the Regulations

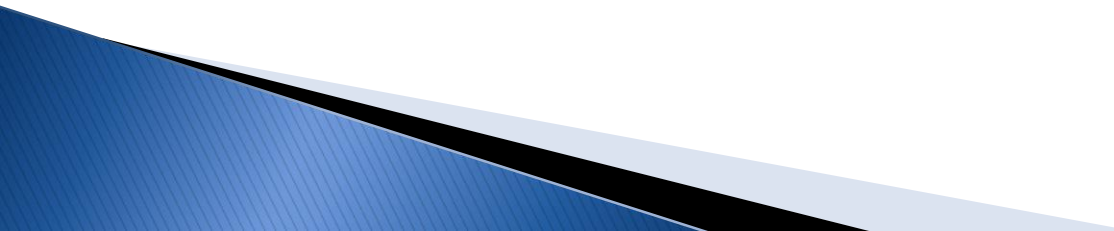
New Appeals Process

- ▶ Section 15 (8) –Upon receipt of the detailed grounds the Board or IAT may–
 - a) if it is satisfied that the appellant has complied with the requirements of this section, proceed to with the hearing on grounds; or
 - b) if it is satisfied that the appellant has failed to comply, quash the appeal without hearing on grounds.

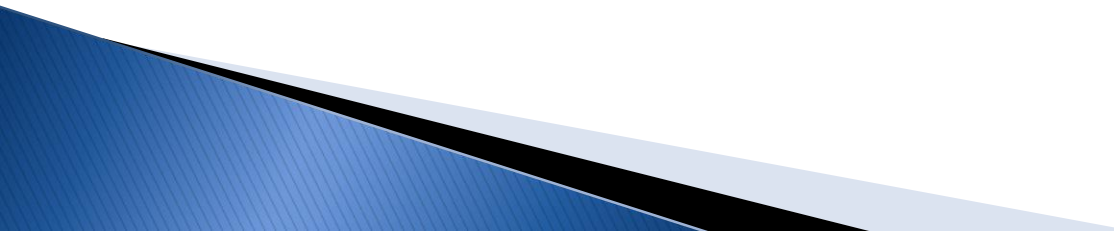
New Appeals Process

- ▶ Hearing on grounds shall be on basis of written grounds filed and neither the appellant nor their representatives shall be present at the hearing
- ▶ IAT or the Board in its absolute discretion may call upon either party or any persons as it deems necessary and relevant to address it
- ▶ Rehearing – hearing *de novo* and shall take into account fresh evidence put forward by the appellant or the CIO or the Board

Transitional Provisions

- ▶ The appellant will have 60 days to submit detailed grounds of the appeal to the IAT from the amendment coming into effect
 - ▶ A person who held a WOL on the basis of having submitted an application for permission to reside permanently in islands shall be deemed to hold permission to work and reside until the WOL expires
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Transitional Provisions

- ▶ Applications for grant or renewal or variation of a work permit, TLEP, Certificate of Specialist Caregivers or key employee shall deal with such application in accordance with the Law in effect prior to the commencement of the amendment
 - ▶ Applications made for PR prior to the new amendment and still pending will be heard in accordance with the Law in effect immediately prior to such commencement
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Thank You
QUESTIONS?